

COMMISSION OF INQUIRY INTO STATE CAPTURE
HELD AT
CITY OF JOHANNESBURG OLD COUNCIL CHAMBER
158 CIVIC BOULEVARD, BRAAMFONTEIN

23 FEBRUARY 2021

DAY 348



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Recording & Transcriptions

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TRANSCRIBERS:

B KLINE; Y KLIEM; V FAASEN; D STANIFORTH



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PROCEEDINGS RESUME ON 23 FEBRUARY 2021

CHAIRPERSON: Good morning Mr Soni. Good morning everybody.

ADV VAS SONI SC: Good morning Chairperson.

CHAIRPERSON: Are we ready?

ADV VAS SONI SC: We are ready.

CHAIRPERSON: Okay alright. Let us start. Good morning Ms Peters.

MS PETERS: Good morning DCJ.

10 **CHAIRPERSON:** Yes. The oath you took yesterday will continue to apply today.

MS PETERS: Thank you.

CHAIRPERSON: Okay alright.

ELIZABETH DIPUO PETERS: (s.u.o.)

EXAMINATION BY ADV VAS SONI SC (RESUMES):

Ms Peters, you will recall yesterday that we said if you have your mask on it gets muffled. Sorry about that.

MS PETERS: [No audible reply]

20 **ADV VAS SONI SC:** Ms Peters, just to orientate you. I am just going to ask you a few more questions about the appointment of the CEO. Then I am going to go on to the other two matters that I raised with you yesterday, namely the attempt by or the allegation by Mr Molefe that you attempted to stop Werksmans' investigations and then the dismissal of the board by yourself.

Before I deal with those two topics though, let me just get back to the question of the appointment of the CEO. We know that from the time Mr Montana left on the 15th of July 2015 until the end of March 2017 when you relieved of the position there was no permanent CEO appointed. That is correct, is it not?

MS PETERS: That is correct Chair.

ADV VAS SONI SC: In the meantime there were acting CEO's.

10 **MS PETERS:** That is correct Chair.

ADV VAS SONI SC: One of the issues, forgetting the other matters you raised, that you said had in a way hindered the appointment of the CEO was the fact that you wanted to approach the President before the matter went to Cabinet or your recommendation went to Cabinet. You remember that?

MS PETERS: Yes, Chair.

ADV VAS SONI SC: Now you had a recommendation prepared for Cabinet.

20 **MS PETERS:** It was not yet prepared Chair like I indicated yesterday.

ADV VAS SONI SC: Can I ask you this? Had you identified the three persons that you would recommend to the Cabinet or to the President before it went to Cabinet?

MS PETERS: The three persons that would be put into

the Cabinet Memorandum would have been those that the board had recommended Chairperson.

ADV VAS SONI SC: This is the recommendation that was made around the end of 2015.

MS PETERS: I do not remember when it was the end of 2015 or end 2016 Chair.

ADV VAS SONI SC: Okay but it – you did not change those recommendations.

MS PETERS: I was not going to change them.

10 Chairperson, like I indicated yesterday, we had the bulk from ...[intervenes]

ADV VAS SONI SC: No, we have been through that and I do not want to stop you Ms Peters.

MS PETERS: Oh, okay.

ADV VAS SONI SC: We need to get your evidence. You said to me before we started that you want to be in Parliament. Can I guarantee you that you will get to your flight? Now I am just trying to keep my promise to you.

MS PETERS: Thank you, Chair.

20 **ADV VAS SONI SC:** Right. So. Now when Mr Montana left, we know that Mr Zide was appointed as the... Oh, sorry Mr Khena was appointed as the acting CEO.

MS PETERS: Correct.

ADV VAS SONI SC: Who appoints this – the acting CEO?

MS PETERS: The acting CEO was appointed by the

board.

ADV VAS SONI SC: No, no, no. I am not asking in this case. Ordinarily who would appoint the acting CEO?

MS PETERS: Ordinarily the acting CEO would be appointed by the board.

ADV VAS SONI SC: And without consulting you.

MS PETERS: They would – once the board had taken a decision would consult with the Minister as a shareholder responsible for this sector or for the industry.

10 **ADV VAS SONI SC:** So if the board recommended, will say Mr Zide instead of Mr Zide Mr Khena, you would have said to the board: No, I do not want Mr Zide. I want somebody else. And they would recommend Mr Khena. Is that the position?

MS PETERS: Not necessarily Chair. Unless there are factors in my knowledge that would really be presented to the board that says for these particular reasons, these are the reasons why this individual but in this instance, it never happened.

20 **ADV VAS SONI SC:** But you would have a veto power over the board even in regard to the appointment of the acting CEO.

MS PETERS: I would not say it is a veto power Chairperson.

ADV VAS SONI SC: Before the board appointed

Mr Khena, they consulted you. That was the process. And with that – process was followed in this case.

MS PETERS: They appointed Mr Khena and informed me.

ADV VAS SONI SC: No, I am asking you a different question. Before they appointed Mr Khena.

MS PETERS: There was a vacancy and the board, when they were trying to inform me of the departure – or actually, not the board, the chairperson when he came.

He did not come, he called me to inform me of
10 the departure of the then CEO, the Group CEO and that the board had taken a decision to appoint.

Obviously, they would not allow for a vacancy – I mean, a vacuum. They appointed an acting.

ADV VAS SONI SC: Did you consult the President before you responded to Mr Molefe's request or communication to you?

MS PETERS: In instances of acting, it is not part of the Cabinet protocols that allowed for that because it is an emergency. It is a stopgap measure that you are putting in
20 place. So there is a process that would then unfold.

After that, I then informed the President that there has been this situation at PRASA and the board has appointed an acting. And the process of the appointment of the CEO will then unfold.

ADV VAS SONI SC: Which did not happen though.

MS PETERS: It did not happen immediately Chair.

ADV VAS SONI SC: Well, it did not happen at all. We do not even – throughout the period you were there, there were no CEO and no attempt was made to take that matter to Cabinet.

MS PETERS: Chairperson, the consultation process is part of the attempt to get to Cabinet.

ADV VAS SONI SC: Yes. Okay I just want to pursue because you raised it. Now you say the appointment of an
10 acting CEO is a stopgap measure. This was ...[intervenes]

CHAIRPERSON: I am sorry Mr Soni. I am sorry. Please do not forget the question you want to put to Ms Peters.

ADV VAS SONI SC: No.

CHAIRPERSON: But the position, as I understand it from your evidence, is that by the time you left you had not even commenced with that consultation process, is it not?

MS PETERS: The matter had not as yet not arrived at Cabinet. Chair, you would remember yesterday that I indicated that part of the consultation process, even with
20 Cabinet colleagues, helps you to arrive at a point ...[intervenes]

CHAIRPERSON: Ja. No, no. I understand ...[intervenes]

MS PETERS: ...strengthening your case towards Cabinet.

CHAIRPERSON: I understand that part. The reason why I am asking you this question is because Mr Soni said to

you. By the time you left as Minister of Transport the issue of the appointment of the CEO had not been taken forward.

And I understood to be suggesting that the consultation had started and that is why I wanted clarification because my understanding is that. In your mind you may have been planning to start the consultation but it actually had not started. Is that correct?

MS PETERS: Yes, Chair.

CHAIRPERSON: Okay. Thank you Mr Soni.

10 **ADV VAS SONI SC:** Thank you, Chairperson. So after Mr Khena was appointed you informed the President about his appointment or that the board had appointed Mr Khena.

MS PETERS: I reported that as part of my reporting process that there is this particular situation that is prevailing at PRASA and the process, like I indicated to you Chair, was now we would be starting with the process of going towards appointing the full CEO.

20 And for me Chairperson, it would – it was a principle that I believed in is correct to have a head of state that all these entities, all these departments actually report to him.

And it is important that he then know what is happening. And I believed Chairperson, like I indicated yesterday, maybe my history and my experience in the previous positions that I had held informed me on this

particular approach.

ADV VAS SONI SC: When Mr Khena left in July of 2016, Mr Letsoalo was appointed. Is that correct?

MS PETERS: Yes, Chair.

ADV VAS SONI SC: Now did you inform the President about that?

MS PETERS: I wrote a report because at that particular time, there was a lot of activities or a lot of things that were happening in the country and so I wrote a report to
10 the President.

And Chair, I think if I am not mistaken, that report is part of the package or documents that you might have received if I am not mistaken. I will just check on it.

ADV VAS SONI SC: So when Mr Khena was appointed you told the President. When Mr Letsoalo was appointed you wrote a letter. I am just trying to understand the differences in processes.

MS PETERS: Yes, Chair.

ADV VAS SONI SC: When Mr Letsoalo was then removed
20 by yourself on the 3rd of March – and I am going to come to that in a moment – in 2017, Mr Zide was appointed. Is that correct?

MS PETERS: [No audible reply]

ADV VAS SONI SC: Did the board not tell you that?

MS PETERS: At that particular time Chairperson, like I

indicated, I had episodes of ill health. So I would not necessarily have followed the actual sequence of what happened but I know that there was a stage where Mr Zide was acting.

ADV VAS SONI SC: Now Mr Zide was the Company Secretary. Is that correct?

MS PETERS: Yes, Chair.

ADV VAS SONI SC: How does a company secretary qualified to be appointed as a CEO albeit in an acting
10 capacity of a major organisation like PRASA which is incurring losses in the region of R10 billion to R 15 billion a year? Not losses, sorry, which is incurred in irregular expenses. We have been through that yesterday.

MS PETERS: I think Chairperson the best person to answer to that question would be Mr Molefe.

ADV VAS SONI SC: And I will tell you why you cannot avoid responsibility Ms Peters. It is because there was no permanent CEO that all these acting appointments have to be made. And it was you who, according to Mr Molefe,
20 were the person who frustrated the board's attempts to appoint somebody as the permanent CEO.

MS PETERS: Chairperson, in my life and in my experience I have never frustrated a process. And if you allow me Chairperson, I will just make a short example of a situation that prevailed in another entity in the Department

of Transport where we were faced with an appointment process, which when it arrived at the platform of Cabinet, it was returned because one of the sister department's ministers picked up that this particular individual was leaving this entity from that department because of serious irregularities and litigation ...[intervenes]

CHAIRPERSON: Uhm ...[intervenes]

MS PETERS: I am making that as example.

CHAIRPERSON: Yes.

10 **MS PETERS:** A consultation process Chairperson always helped us with regard to that.

CHAIRPERSON: Okay alright. No, I just wanted to make sure that you appreciate that that example is not going to help you to answer this question ...[intervenes]

MS PETERS: H'm.

CHAIRPERSON: ...whether in this case you frustrated the process or not.

MS PETERS: I did not frustrate the process Chair.

CHAIRPERSON: H'm.

20 **ADV VAS SONI SC:** But certainly you did not expedite the process.

MS PETERS: I was working on it Chair.

CHAIRPERSON: Well, maybe Mr Molefe in his affidavit might not be specifying in the manner of saying what Ms Peters did to frustrate the process, were the following

things.

But it may well be that one of the things he has in mind as frustrating, as you frustrating the process, is when despite the fact that, on his evidence, they, that is the board, had undertaken a vigorous recruitment process and were ready with the candidate or candidates in August 2016. You said to him PRASA is not ready for a new CEO.

Why should that not be seen as an act on your
10 part that may have frustrated that process?

MS PETERS: Chairperson, in my discussions with Mr Molefe we agreed that there are serious underlining challenges in PRASA that needed to be addressed.

And that was as a result of the indications from him that the then acting CEO, Mr Khena, was not productive. I do not want to use the word he used. And that he does not seem to be able to be contributing to changing the scenario that he was supposed to have changed.

20 And that is why he then felt he is useless and he is not working together with them as the board. He even went further to say ...[intervenes]

CHAIRPERSON: Are you talking about Mr Khena?

MS PETERS: Ja, that is Mr Khena now.

CHAIRPERSON: Okay.

MS PETERS: He indicated at that particular time that it was his suspicion that Mr Khena might be drawing his mandates from elsewhere. And based on that frustration, we went the next step.

CHAIRPERSON: Well, I do not know whether – I cannot remember where Mr Molefe has furnished the Commission with an affidavit where he responds to what you may have to say about whether or not you frustrated the process.

But it would be strange if he would agree that he
10 agreed with you that PRASA was not ready for a new CEO
and in his affidavit say that you frustrated the process.

And particularly when the board had done what he calls a vigorous recruitment process, one would have thought the board would have made up its mind that there is a need to appoint a Group CEO.

What do you say to that?

MS PETERS: Chairperson, I would not probably be responsible for their thoughts and the views of or impressions that Mr Molefe got but in my discussions with
20 him as the chair and the Minister, we arrived at that particular indications that there are serious problems.

At that time Chairperson there was the issue of the AG report. There was the issue of the Public Protector's report.

CHAIRPERSON: Yes, I think you mentioned those

yesterday.

MS PETERS: Yes.

CHAIRPERSON: You do not have to repeat, ja.

MS PETERS: We had a meeting Chairperson with him and the Chief Procurement Officer. There were a lot of things. And all of them bordered on issues of finance in PRASA.

CHAIRPERSON: Yes. Yes, but I thought that you and I agreed yesterday that it was not correct for you to say the CEO should not be appointed because PRASA was not
10 ready for it.

MS PETERS: Ready.

CHAIRPERSON: We agreed on that. And I take that to mean, you accept that there was no valid reason why in August 2016 when, according to Mr Molefe's letter of August 2016, they were ready with a name or names. I take it that you accepted that there was no valid reason why the appointment was not made then. Do you accept that?

MS PETERS: Chairperson, at that point like I indicated,
20 that was a time the board through Mr Molefe brought me the information which the process then determines must be processed. And one of those was like I have indicated Chair.

And I must concede here that if the consultative processes that led up to the – I do not want – I - for a lack

of a better word, I do not know what to say, but it gives the Minister the confidence to say this is what I can take to Cabinet and stand with it because I have done what would have been expected of me.

I have checked with my sister colleagues. I have even – the Chair of Cabinet, the indication on the matter that will be before Cabinet and therefore I do have a particular confidence.

The experience of also working in that Cabinet
10 has also provided me with an understanding that Cabinet is not a rubberstamp. You just do not go there and say this is what I am bringing and ...[intervenes]

CHAIRPERSON: I am sorry. I am sorry. I am stopping you because you mentioned that yesterday as well.

MS PETERS: Yes.

CHAIRPERSON: Look, I accept that when I say I take it you accept that there is no valid reason why the CEO was not appointed in August 2016. I do not mean that the consultation process such as you may have wanted to do
20 should not have happened.

So I am quite happy to say from August when you were given the information, maybe you were given it a little earlier than that, I am not sure but from August maybe another month or two maybe that process would have been enough.

So maybe I should reformulate my question and say. I take it that you accept that there was no – there is no valid reason why by end of 2016 the new CEO had not been appointed. Would you accept that?

MS PETERS: Chairperson, sitting here... Let me take responsibility for the two years that it took.

CHAIRPERSON: H'm, h'm.

MS PETERS: But Chairperson I would want to go further to say.

10 **CHAIRPERSON:** H'm?

MS PETERS: I can not further take a responsibility for the ensuing five years that PRASA ...[intervenes]

CHAIRPERSON: No, no, no. Obviously, obviously, obviously. And I do want to say. It is important that leaders take responsibility for where they may not have done what should have been done because if they do not acknowledge where they may not have done the right thing, then they cannot change, they cannot find the party or the solution because they are in denial, you know.

20 So it is very important that where one sees that: Look, here I did not do the way I should have done things. That there is an acceptance of responsibility. And I accept that you accept that responsibility for the ...[intervenes]

MS PETERS: For the two years.

CHAIRPERSON: ...before you left. Ja, ja. Okay.

Mr Soni.

ADV VAS SONI SC: Just to reinforce that though. When Mr Molefe, whenever it was, said to you he had reservations about Mr Khena.

MS PETERS: Pardon?

ADV VAS SONI SC: I say when you – you for the first time have told us today that Mr Molefe expressed to you during the tenure of Mr Khena that he had reservations about the appropriateness of the choice for whatever
10 reasons. You have said that today. You remember that?

MS PETERS: [No audible reply]

ADV VAS SONI SC: I would have thought that would have been a spur to you to say: We must get somebody whom we have vetted and we must sort this problem out once and for all. Or am I wrong?

MS PETERS: You are not wrong Chairperson but with the – with knowledge and experience and understanding of the situation at that particular moment, you would have also been able to agree with me and the board Chairperson at
20 that particular time.

CHAIRPERSON: Sorry, just repeat that. I am not sure that I follow it.

MS PETERS: I am saying. The question that is being asked now Chairperson. I am saying that if you have the information and the knowledge of what was happening at

that particular time, you would have agreed with me at that particular time that...

Yes, we when we agreed that Mr Molefe and the board can release Mr Khena from the acting position, there was no way that the next morning we can appoint the – another – I mean, the Group CEO because the process had not started in terms of the concluding part of that particular process Chairperson.

CHAIRPERSON: Mr Soni.

10 **ADV VAS SONI SC:** Yes. We are – I must say to you Ms Peters, we are going in circles. You have already conceded, as the Chairperson pointed out to you yesterday, that what – when you said there were good reasons not to appoint. You conceded that you were wrong. You said 2020 – I remember your words, 2020 is a perfect hindsight. I mean, is a perfect science.

MS PETERS: Chairperson, I said I conceded that it was wrong not to appoint in that period but without going into the details on why it was not done. Yes, I still say. 2020,
20 you realise that the two years that it took to appoint the CEO was a long period Chairperson.

But I am saying, if you were in my shoes at that particular time you would have arrived at another conclusion. And I am saying I accept Chairperson and I cannot run from that fact that there was a period of two

years where there was a vacancy of the Group CEO in PRASA.

And I accept Chairperson that that period coincided with my presence in the Ministry of Transport. That one I accept. Without going to the rationale and the reasons why we ended up in a situation where the appointment was not taken, was not made.

CHAIRPERSON: Well, out of your evidence it may well be that telling me about those things that prevented the
10 appointment of a Group CEO, that might be the most important evidence you give.

MS PETERS: Pardon Chair?

CHAIRPERSON: I am saying that, telling me about the rationale for not appointing the Group CEO for that two year period of two years or two and a half, I am not sure, before you left the ministry, might turn out to be the most important evidence coming out of you because I want to try – I want to understand but I cannot understand even now why PRASA stayed for – I do not know if it is five years
20 without a Group CEO.

And of course, you can only talk for the time that you were Minister of Transport but maybe if you tell us exactly the rationale that might help us to understand why for five years or whatever the period such an important entity was allowed to have no permanent Group CEO.

It is just difficult to understand. So I am saying to you, you might not have intended to tell me maybe because you say because of time but I am saying to you it is very important because when I write the report and still I have not been told anything that makes me understand, I may come hard on certain people and even on you.

And you had the opportunity to explain to me to say: Chairperson, this is why I did what I did. This is why I did not do what I did not do. Okay?

10 So I am saying it is quite something important because on the face of it, it appears as a dereliction of duty but it may that one suspect that there may be something sinister behind it.

Why this entity that it was known by all concerned to being carrying a lot of irregular expenditure year in and year out and about which there was so many allegations of corruption in the public domain?

20 Why was it allowed to have a situation where there was no permanent Group CEO? Did it – was it convenient for certain people that it should just be acting people? What was going on?

So those are the questions in my mind and if you can help me understand that that would be very helpful. And it is your own opportunity to say: Well, I may have been Minister but here with constraints that I was working

within. Okay?

MS PETERS: Let me ...[intervenes]

CHAIRPERSON: If you want to tell me you can tell me.

MS PETERS: Chairperson, if I may? I express a little bit. When I was appointed in July 2015 to Transport, I met one person – I mean, during that period people come and congratulate you and wish you well but there was one that stood out that today I remember.

And that person did not just congratulate me,
10 said congratulations and condolences. And now there would condolences really is more prominent in my situation with regard to why the word condolences.

I never asked him why are you saying condolences. I just left it and passed on. No, passed on. And went ahead.

And Chairperson, I would want to indicate that when the Group CEO left PRASA the board appointed Mr Khena and I like I indicated, in a few months the board chairperson came back and said...

20 In fact, he said Mr Khena is useless and all those types of things. He is drawing mandates from the previous CEO and all those type of situations and he had the impression that even in the organisation that is still happening.

Then we went on to engage with the board

because according to them Mr Khena was useless and they said that – I mean, we met with the board and the board confirmed that the situation under Mr Khena deteriorated and that they wanted to replace him with immediate effect.

CHAIRPERSON: With whom?

MS PETERS: With immediate effect.

CHAIRPERSON: Oh, okay.

MS PETERS: And with immediate effect meant that they were going to appoint an acting. They made a
10 recommendation on Mr Zide and I raised a concern with regard to Mr Zide being the company secretary.

And the board Chairperson made even a recommendation that one of my advises would be acting and I said that person would be outside the department, outside because of the public service and all that. And we agreed.

I even said to him: Why do you know want to cripple my ministry? And I raised that. After discussion on the 30th, we had a – of June, we had a discussion with the
20 board and after their consideration of all the factors that showed that the matters under PRASA were actually financial matters...

I even said to them: You know, you – if these matters are more financial - and they also involved the department because it has a bearing on the ability of the

department for oversight.

There were also allegations from the department on the non-responsiveness of the management of PRASA to the issues that the department wanted answers to. Equally so with the engagement that we have had with the AG as well as the investigation that the AG was supposed to have started.

And then the report of the Public Protector Chairperson and all those particular things and at that
10 particular time, both myself and Mr Molefe agreed that PRASA is not ready because there are all these many problems.

CHAIRPERSON: Well, let me stop you there Ms Peters. What you have been telling me for the past few minutes is what happened after Mr Molefe had left ...[intervenes]

MS PETERS: Mr Montana.

CHAIRPERSON: ...and who was going to act and what, what, what, what. A lot of that you did mention yesterday. I thought you were going to tell me when you said you did
20 not go into the rationale why you – why the Group CEO was not appointed for quite some time, I thought you were going to tell me something you have not told me, namely ...[intervenes]

MS PETERS: I am talking ...[intervenes]

CHAIRPERSON: ...here are the things that made it

difficult for me to ensure that the Group CEO was appointed without delay. I thought that was what you were going to tell me.

MS PETERS: Mr Chairperson, in the discussions that – like I indicated earlier on if I have to backtrack, that the bulk of the issues that were a source of concern and problem in PRASA were financial.

CHAIRPERSON: Yes, but that would not make it difficult for you to get a CEO appointed. That would be all the
10 more reason why you should get a CEO appointed.

MS PETERS: I agree Chairperson.

CHAIRPERSON: Yes. So ...[intervenes]

MS PETERS: No, like I indicated Chairperson, with hindsight I agree.

CHAIRPERSON: Yes, yes.

MS PETERS: But at that particular moment there were things that we were dealing with, with the chairperson.

CHAIRPERSON: Yes.

MS PETERS: And I am very sorry and I feel aggrieved
20 that the chairperson of PRASA after our engagements throughout those processes...

He came to the Commission to want to project that particular delay of appointing the CEO as the reason for him to believe that I was creating an environment for the company to be captured.

CHAIRPERSON: Well, let me leave out the question of whether he presented evidence that suggests that you did something to enable the company to be captured. Let me leave that out for now.

What we do know is that for about two years after Mr Montana had left, close to two years, that is from when he left to when you left the ministry yourself, that was close to two years.

The Group CEO was not appointed. That we
10 know. What we also know because you do not dispute, is that the board, according to the letter that Mr Molefe sent to you in August 2016, had engaged in what they say was a vigorous recruitment process to have a Group CEO appointed and that they even had a name or had names, three names and they had given this to you.

It was up to you to take that process forward. We know because you have given evidence to this effect that you did not take that process forward. We know that you say in your mind, at least in 2017.

20 Now we know that I think up to the end of 2016, based on your evidence, you were still of the view that PRASA was not ready for a Group CEO. That is my understanding of your evidence yesterday but I think you said early in 2017 you changed your mind.

So based on that, who would you say prevented

the appointed of a Group CEO at PRASA between August 2016 and the time when you left the ministry?

MS PETERS: If the Chairperson says who...

CHAIRPERSON: H'm. I think ...[intervenes]

MS PETERS: I think that ...[intervenes]

CHAIRPERSON: I am sorry.

MS PETERS: ...I indicated Chairperson ...[intervenes]

CHAIRPERSON: I am sorry. I am sorry Ms Peters. I am saying prevented but that might not be the right word. But
10 the ball was placed in your court by the board. And you did not do what was necessary to be done in order for the Group CEO to be appointed. Would you accept that?

MS PETERS: Chairperson, even at the point of appointing, after Mr Khena, the CFO of the Department of Transport, Mr Collins Letsoalo into PRASA as the eh ...[intervenes]

CHAIRPERSON: Indeed, was it convenient for certain people that it should just be acting people? What was going on? So those are the questions in my mind and if
20 you can help me understand that, that will be very helpful and it is your own opportunity to say well, I may have been minister but here were constraints that I was working within. Okay? If you want to tell me you can tell me.

MS PETERS: Chairperson, if I might digress a little bit. When I was appointed in July, July 2013 to Transport, I met

one person – I mean, during that people come and congratulate you and wish you well. There was one that stood out that today I remember and that person did not just congratulate me, said congratulations and condolences. Now the word condolences really is more prominent in my situation with respect to why the word condolences and then I asked him why are you saying condolences. I just laughed it and passed on, no, not passed on, and went ahead. And Chairperson, I would
10 want to indicate that when the Group CEO left PRASA the board appointed Mr Khena and, like I indicated, in the few months the board Chairperson and said – in fact he said Mr Khena is useless and all those type of things, he is drawing mandates from the previous CEO and all those type of situations and he had the impression that even in the organisation that is still happening.

Then we went on to engage with the board because according to them Mr Khena was useless and they said that – I mean, back with the board and board confirmed that the
20 situation under Mr Khena is terminated and then they wanted to replace him with immediate effect.

CHAIRPERSON: With whom?

MS PETERS: With immediate effect.

CHAIRPERSON: Oh okay.

MS PETERS: And with immediate effect meant that they

were going to appoint an acting. They made a recommendation on Mr Zide and I raised a concern with regard to Zide being the company secretary and that Chairperson made even a recommendation that one of my advisers could be the acting and I said that person would be outside the department outside because of the public service and all that and we agreed. And I even said why do you now want to cripple my ministry and I raised that. After discussion all of it, yes, of June, we had a discussion
10 with the board and after their consideration of all the factors that showed that the matters under PRASA was actually financial matters. I even said to them, you know, if these matters are more financial and they also involve department because it would have a bearing on the ability of the department for oversight. There are also allegations from the department on the non-responsiveness of the management of PRASA to the issues that the department wanted answers to. If that is so we have engagement that we have had with the AG as well as the investigation that
20 the AG was supposed to have started and then the report of the Public Protector, Chairperson, and all those particular things.

And at that particular time both myself and Mr Molefe agreed that PRASA is not ready because there's all these many problems.

CHAIRPERSON: Well, let me stop you there, Ms Peters, what you have been telling me for the past few minutes is what happened after Mr Molefe had left ...[intervenes]

MS PETERS: Mr Montana.

CHAIRPERSON: In terms of who was going to act and what, what, what, what. A lot of that you did mention yesterday. I thought you were going to tell me when you said you did not go into the rationale of why you – why the Group CEO was not appointed for quite some time, I
10 thought you were going to tell me something you have not told me ...[intervenes]

MS PETERS: I am coming to that, Chair.

CHAIRPERSON: Namely where are the things that made it difficult for me to ensure that the Group CEO was appointed without delay. I thought that is what you were going to tell me.

MS PETERS: Mr Chairperson, in the discussions that I indicated earlier on, if I have to backtrack, that the bulk of the issues that were a source of concern and problem in
20 PRASA were financial.

CHAIRPERSON: Yes, but that would not make a difficult for you to get a CEO appointed. That would be all the more reason why you should get a CEO appointed.

MS PETERS: I agree, Chairperson.

CHAIRPERSON: Yes, so ...[intervenes]

MS PETERS: And as I indicated, Chairperson, with hindsight I agree.

CHAIRPERSON: Yes, yes.

MS PETERS: But at that particular moment there were things that we were dealing with with the Chairperson.

CHAIRPERSON: Yes.

MS PETERS: And I am very sorry and I feel aggrieved that the Chairperson of PRASA, after our engagements throughout those processes, he came to the Commission to project that particular delay of appointing the CEO as the
10 reason for them to believe that I was creating an environment for the company to be captured.

CHAIRPERSON: Well, let me leave out the question of whether he presented evidence that suggested you did something to enable the company to be captured. Let me leave that out for now. What we do now is that for about two years after Mr Montana had left, close to two years, that is from when he left to when you left the ministry yourself, that was close to two years. The Group CEO was
20 not appointed, that we know. What we also know, because you no dispute, is that the board according to the letter that Mr Molefe sent to you in August 2016, had engaged in what they say was a vigorous recruitment process to have a Group CEO appointed and that they even had a name or had names, three names and they had given this to you. It

was up to take that process forward. We know because you have given evidence to this effect that you did not take that process forward. We know that you say in your mind, at least in 2017 – now we know that I think up to the end of 2016, based on your evidence, you were still of the view that PRASA was not ready for a Group CEO. That is my understanding of your evidence yesterday but I think you said early in 2017 you changed your mind.

So based on that, who would you say prevented the
10 appointment of a group CEO at PRASA between August 2016 and the time when you left the ministry?

MS PETERS: If the Chairperson says who, I indicated Chairperson ...[intervenes]

CHAIRPERSON: I am sorry. I am sorry, Ms Peters, I am saying prevented but that might not be the right word but the ball was placed in your court by the board and you did not do what was necessary to be done in order for the Group CEO to be appointed. Would you accept that?

MS PETERS: Chairperson, even at the point of appointing
20 after Mr Khena the CFO of the Department of Transport, Mr Collins Letsoalo into PRASA as the Acting Group CEO, we continued engaging with regards to the fact that the direction to recruit – I mean, not to recruit, to get to the appointment of the CEO must continue.

CHAIRPERSON: Yes.

MS PETERS: And we were busy with it at that particular time.

CHAIRPERSON: Yes but ...[intervenes]

MS PETERS: And Chairperson I did indicate that after receiving the bundle from Mr Molefe we were busy with the process to say this matter must then be processed into a cabinet process. Whilst it is being processed, at the same time I am busy also engaging consultatively with the relevant stakeholders. And in this instance the most
10 important relevant stakeholder for me was the head of state because he was the chair of cabinet and I needed to inform him that we have now arrived at the board having taken a decision to appoint and that particular slot we have not yet arrived at.

CHAIRPERSON: But why should it take seven months or so, that is now from August 2016 to March when you left, 2017, for you to consult the head of state or your colleagues? Why should it take so long?

MS PETERS: Chairperson, from around the 1 July up until
20 sometime into 2016 you would remember in this country it was local government election time and most politicians are involved in those particular processes and if that is so, my opportunity to sit down with the President would then have to be slotted into that particular process.

CHAIRPERSON: No, my recollection is that the local

government elections happened before August 2016.

MS PETERS: It was on the 6 August 2016.

CHAIRPERSON: Was it on the 6 August. That was 18 August.

MS PETERS: That was the day of the elections.

CHAIRPERSON: Yes.

MS PETERS: And after the elections, as per political parties, there is protracted engagement that is involved and it involves the team leaders in the party as well as the
10 President and other role-players. So as ...[intervenes]

CHAIRPERSON: That cannot justify taking seven months, can it?

MS PETERS: Pardon?

CHAIRPERSON: That cannot justify taking seven months.

MS PETERS: It cannot be divided into seven months, Chairperson. Earlier on I conceded that it took long but in between the role of engaging with regard to matters of PRASA, we are also engaging with regard to other matters of other equally important departments that equally
20 contribute. So it – I was not seized solely with the responsibility of PRASA, Chairperson.

CHAIRPERSON: But ...[intervenes]

MS PETERS: At this particular time, Chairperson, you would remember I was part of a panel where the Deputy President should deal with the challenges that were raised

with regard to the – it was in Gauteng, the meeting that we had on a daily basis.

CHAIRPERSON: That is – well, I do not necessarily remember that but the fact of the matter is the ball was placed in your court by the board by giving you the names, giving you the files and you did not take the matter or the names ...[intervenes]

MS PETERS: To cabinet.

CHAIRPERSON: To cabinet.

10 **MS PETERS:** I agree, Chairperson.

CHAIRPERSON: Whatever explanations you have, that is where the whole thing got stuck.

MS PETERS: Yes, Chairperson.

CHAIRPERSON: Okay, alright. Mr Soni?

ADV VAS SONI SC: Thank you, Chair. Ms Peters then just out of that, when the Chairperson needs to work out where accountability should lie or the non-appointment of the CEO you have told the Chairperson everything in your defence, you have set out everything you want to set out,
20 there is nothing more that the Chairperson needs to take into account, is that correct?

MS PETERS: That I indicated ...[intervenes]

ADV VAS SONI SC: No, it is a yes or no. If there is anything more, tell us what it is.

MS PETERS: Chairperson, I have said I indicated to the

Chairperson that I take responsibility for the two years of lack of appointment of the CEO of PRASA for reasons that I have laid before this Commission.

ADV VAS SONI SC: I want to get on with something else now. Can I ask you to look at bundle D. This is Mr Molefe's affidavit at – it is SS6, Chairperson, page 25, paragraph 95. Bundle D, page 25 on the right hand side, paragraph 95.

MS PETERS: 25? Paragraph?

10 **ADV VAS SONI SC:** 95, right on the top. It says:

“Thereafter on the 12 August 2016...”

Do you see that? Do you see that, Ms Peters?

MS PETERS: I see that.

ADV VAS SONI SC:

“...where Ms Peters herself attempted to stop the investigations”

this is the investigations being conducted by Werksmans, and in support of that allegation he annexes a letter you wrote to him. Now letter is at page 154. I want us just to
20 briefly look at that letter. Please go to page 154. This letter is dated the 12 August and I am just going to read to you just so that we can expedite this process, Ms Peters. You say:

“As a shareholder, I hereby write to express my concern over the long and protracted investigation

by Werksmans Attorneys into several irregularities identified in the AG's report and the ever-rising costs there."

Then in paragraph 2 you say:

"The situation..."

This is in the middle of the – oh sorry, let me just read this first part.

10 "Whilst efforts to clean up the organisation and enhanced with corporate governance are commendable, I am deeply concerned that this investigation seems endless and without a clear scope with a specific end objective."

And you say:

"The situation has resulted in excessive spending which is reported to be in the region R80 million."

Right in the last paragraph then you say:

20 "I therefore ask that you close off this investigation process and consider the results or report thereon. Furthermore, the board is required to submit a detailed report indicating the progress and the outcome of the investigation."

And then you say:

"A determination of in further investigation anywhere forward will subsequently be made after studying the report in detail."

You confirm you wrote this letter?

MS PETERS: I confirm, Chair.

ADV VAS SONI SC: Okay, I want you to please look at your affidavit. Now your affidavit appears at bundle L and it is SS22 and I want you to look at page 13 on the left hand side.

MS PETERS: 13?

ADV VAS SONI SC: Yes, paragraph 10.2. I am just going to read to you or read what you say there:

10 “Where I refer to clause...”

And this is in response to now Mr Molefe’s allegation that you asked them to close off the – stop the investigation, you say:

 “Where I refer to clause and not the investigation I did not suggest that it be stopped immediately. I predicated it upon receipt of a report first which had to be considered and then later a way forward be determined thereafter which is a far cry from terminating with impunity at the instance of those
20 who might have been fingered in that report. My letter is self-explanatory.”

And now you are referring to this letter that I have just read. Well, Ms Peters, I do not want to debate this with you but your paragraph, the last paragraph is quite clear, close off this report. If there is anything to be done

thereafter, it will be done after we have considered that report. I am just saying to you that that is what a proper reading of your – the last paragraph of your letter, yes, I am putting that to you.

CHAIRPERSON: The purpose is for you to, if you do not agree with his understanding of your letter, to indicate that you do not agree and indicate why you do not agree.

MS PETERS: Chairperson, thank you very much for that assistance. I do not agree with the view that the evidence
10 leader is placing before this meeting. It might be a wrong choice of words but honourable – no, Mr Molefe knows because prior to writing this letter we had an engagement.

ADV VAS SONI SC: So we do not agree. Okay
...[intervenes]

MS PETERS: It was not closed off.

ADV VAS SONI SC: Chair, with respect, it is matter of interpretation.

MS PETERS: Ja, okay.

ADV VAS SONI SC: I do not want to debate the matter.
20 For two reasons, one is, is of the essence but the other is, it will be an ongoing issue. I submit that the words here are quite clear.

CHAIRPERSON: Yes. No, but – well, I do not know, you indicated that there was a discussion between yourself and Ms Peters, I assume with her counsel, what kind of time

you had in mind?

ADV VAS SONI SC: It is quarter to – we agreed that we would finish by quarter to twelve.

CHAIRPERSON: Quarter to twelve?

ADV VAS SONI SC: Yes.

CHAIRPERSON: Okay, alright. Well, it is an important aspect.

ADV VAS SONI SC: As you please.

CHAIRPERSON: And I do not want her not to appreciate
10 the significance, so taking a few minutes on it might be justified.

MR MAJAVU: Chair, just to be – good morning, Chair.

CHAIRPERSON: Good morning.

MR MAJAVU: Just to give assistance to the Commission and I hope Chair does not mind addressing while I am sitting as I am using this mic.

CHAIRPERSON: No, no, that is fine. Yes, that is fine.

MR MAJAVU: Thank you, Chair. I think I am acutely
20 aware of the importance thereof and we should not rush it along on account of my own commitments, I will make a contingency plan so that we deal with this matter sufficiently.

CHAIRPERSON: Yes, okay.

MR MAJAVU: And of course anticipatedly I was going to pick it up in reply.

CHAIRPERSON: Yes.

MR MAJAVU: So timelines ought not to be of concern to the Commission.

CHAIRPERSON: Yes.

MR MAJAVU: And I will make similar arrangements for my client's flight.

CHAIRPERSON: Okay, no, no, that is fine. And, if need be, if we do not finish we can always arrange even for an evening session, sir. She might not need to be here
10 physically, we can do a video link as well as counsel. So if it is fine, they can come here, if it is convenient not to come, those arrangements can be made.

MR MAJAVU: Yes.

CHAIRPERSON: But it is just important that those important issues be dealt with properly.

MR MAJAVU: Yes.

CHAIRPERSON: Okay, alright, but I understand why you were approaching it the way you were approaching.

ADV VAS SONI SC: Chairperson, may I express my
20 appreciation to my learned friend.

CHAIRPERSON: Yes, yes, thank you.

ADV VAS SONI SC: Ms Peters, can I just say the first sentence reads:

“I therefore ask you to close off this investigation process and consider the results or report thereon.”

That is what it is reads, is that correct?

MS PETERS: Yes, Chair.

ADV VAS SONI SC: Now I do not want to look at it in isolation because the law requires us to see everything in context. You then go to indicate what is to happen. You say:

“Furthermore, the board is requested to submit a detailed report indicating the progress and the outcome of the investigation.”

10 Now I take it when you are talking about the investigation you are talking about the Werksmans’ investigation, is that correct?

MS PETERS: Alright.

ADV VAS SONI SC: So you have two processes now ...[intervenes]

CHAIRPERSON: I am sorry, please articulate your response otherwise it will not go into the record, you were saying yes to his question.

MS PETERS: Yes, Chair.

20 **CHAIRPERSON:** Okay, alright.

ADV VAS SONI SC: Thank you, Chairperson. Now so you say close off the report and - close off the investigation, give me a report. Then the next step was going to be the determination of any further investigation and a way forward will subsequently be made after studying the report

in detail.

MS PETERS: Yes, Chair, can I – Chairperson, you would understand that this letter was written at the time where we have had a discussion and an engagement with Mr Molefe and the Chief Procurement Officer with regard to the Derailed Report. Mr Molefe was conscious of the fact that there was also the AG investigation, the auditor general then said his part of the investigation would then be collapsed into the one that will be dealt with by the office
10 of the Chief Procurement Officer. He even then said because the levels that is being investigated even go lower to the threshold that I, as the AG, was working on because according to the Public Protector report, the officer of the Chief Procurement Officer was supposed to do investigations which is under National Treasury with effect from R10 million and above and for me, Chairperson, in dealing with that and in the discussion that we have had with Mr Molefe and the then Chief Procurement Officer, Mr Brown, we had in my office, where it was agreed on a
20 consolidation of all these investigations and this report, Chairperson, I will give you an example, Chairperson, and unfortunately I said to Advocate Soni earlier on that [indistinct] 26.38 were not given a chance to speak, I need to speak. Chairperson, with all these investigations and also the wise words used by the late AG in terms of

officials suffering lethargy in the investigations because it would be the same ones that goes to this investigation, the same ones go to the office of the Chief Procurement Officer, the same ones go to the AG's – we agreed and therefore it was important that there be a report with regard to this because Werksmans – and I want to indicate, the beginning of the work of Werksmans, because it was almost like an emergency when these things came up in the report in the public space, Mr Molefe came to me and
10 even said I have identified the company and I said okay, it is fine. That is why even in parliament I reported about this investigation. But what Mr Molefe was supposed to do was to go back to the board, regularise this appointment and make sure that it is according to the prescripts of the law because it was then found to be irregular by the AG's report. And that some of those things that happened informs you when you have to make a decision and, Chairperson, the ...[intervenes]

CHAIRPERSON: Remember that the question
20 ...[intervenes]

MS PETERS: The close off, I am coming ...[intervenes]

CHAIRPERSON: Ja, ja, that. I wanted to go back to that because that is the question of what is it that you can tell me that supports your interpretation?

MS PETERS: Chairperson, closing of the report was let

us get - these people have been investigating. Do you have a report that says this is what we now found so that if there is a need for continuing with the investigation we then say now follow – because let me make an example, Chairperson, if you give terms of reference to an investigator, they would come to you and say up to so far this is what we found but in the process of investigation we found new evidence that says there is need for further investigation and then you then go back and say continue
10 with this investigation or we take a decision that says this is a matter for the police or this is a matter that we will deal and it is that in that context that this particular issue was raised here to say can you conclude on this particular Werksmans investigation, it was not budgeted for, it was unforeseen and even next year because in the previous year it was unforeseen, Chairperson. In the next financial year it cannot be unforeseen, it means we are already busy with the work, you either go to the board and say to the board there is an investigation, let us continue with it and
20 there is a resolution of the board that said we have continued with this company. And for me, these were the things, this matter was also one of the things that were fed in a letter – no, it is not in a letter, in a report that I received from my PLO from parliament that there is a query raised about the irregularity of the appointment. And my

issue was, if you close it, you get a report, you bring it. We then agree and the other parameters, because I will make a very good example to you Chairperson about some of these investigations we were involved in. I don't ...[indistinct] raising them here Chairperson.

CHAIRPERSON: [Indistinct] don't let them go that far. You, you have made ...[indistinct] points you wanted to make namely, you wanted to obtain the reports, you were baring in mind that the chief procurement officer was going
10 to do certain investigations.

And you are saying that after you had studied the report a decision could be taken on the way forward. That is what you are saying.

MS PETERS: Yes Chairperson.

CHAIRPERSON: Okay, alright. Mr Soni.

ADV VAS SONI SC: I am going to say to you Ms Peters that having regard to what the words you used say it's not consistent with what you are trying to say this was implied.

But I want to also say to you and I want to say it to
20 the Chairperson, for present purposes it is irrelevant, because I want to suggest that what is contained in this letter must be seen against further developments that took place in this, in, in as regards to this issue.

I want to then take you and Chairperson it - I just don't, there are times when anything rests on a particular

issue and there are times when they don't. I submit this is one of those. I want you to look at Mr Molefe's reply now, which is PM8 to the letter, which is at page 157 of Bundle D, SS6.

Right and you will see there he says, right at the top, I acknowledge receipt of your letter of the 12th. That is the same letter. But I want you to bear in mind one important factor Ms Peters.

Look at the date of that letter. It is the 24th of
10 August. So Ms Peters, are you, do you accept that the letter is dated the 24th of August?

MS PETERS: Yes Chair.

ADV VAS SONI SC: Right. Now he refers to meetings and then he changed his response to what you have asked him to do. He complains that they can't comply with your request, because they are obliged by the different provisions of the PFMA, to continue with those matters. But again for present purposes that's irrelevant, because at page 160 he talks about this meeting in regard to the
20 Public Protector's report.

You see the reasons for the referral of the investigations, part of the implementation, the Werksmans' report, there is a realisation, there are similarities between the two investigations. You see that?

MS PETERS: Which page?

ADV VAS SONI SC: This is at page 160.

MS PETERS: Which page Chairperson?

ADV VAS SONI SC: The first. Where he says, Werksmans attorneys was the investigation part of the remedial action by the Public Protector. Right at the top. You see that?

MS PETERS: I see that Chairperson, but I don't think that that statement was correct. Because that ...[indistinct] started even before the release. They work of Werksmans was increased as a relief of the Public Protector report.

10 **CHAIRPERSON:** Can I just ask this question? And it goes back to the question that about who, what meaning one should attach to your letter where you say the Werksmans, Werksmans investigation should be closed off. You can't hear me well?

MS PETERS: I couldn't hear you well.

CHAIRPERSON: Oh is that so? You must just tell me then I can raise my voice. One of the points you made earlier on, was that you wanted the – you wanted Werksmans to submit a report. That report would be studied and
20 thereafter the way forward would be decided upon. Is that right?

MS PETERS: Yes Chair.

CHAIRPERSON: That is what you said. Now I see that the last sentence of Mr Molefe's letter, response to your letter, his response being the letter that starts at page 157. It

does say:

“The Minister directs us to close off the investigation and submit a detailed report to your office so that the Minister can make a determination as to whether there is a need for a further investigation.”

It is the last sentence at page 157, that is in the – Mr Molefe’s letter, response to you. That is in Bundle D, EXHIBIT SS6. So but that is the letter that Mr Soni
10 referred you to. Have you got it?

The bundle that has got Mr Molefe’s affidavit. If you go to page 157 on that bundle, at the red numbers this time, not the black numbers. Can you see the letter?

MS PETERS: Can you ...[indistinct] Chairperson, can you ...[indistinct] I am struggling to follow because your voice is a bit low.

CHAIRPERSON: Oh, okay. You see I am used to people saying my voice too loud. So it is not often that I’m accused of having a voice that is soft. Okay, you
20 remember Mr Soni read your letter to Mr Molefe? You remember your letter?

MS PETERS: Yes Chair.

CHAIRPERSON: And thereafter he referred you to Mr Molefe’s response to your letter.

MS PETERS: Yes.

CHAIRPERSON: You remember that?

MS PETERS: Yes Chair.

CHAIRPERSON: You – that’s the letter I’m talking about.
Have you got it? It appears at page 157.

MS PETERS: Yes.

CHAIRPERSON: You have got the letter?

MS PETERS: Yes Chair.

CHAIRPERSON: Okay. If you go to the last sentence of
page 157, which is the first page of that letter. This, that
10 is the sentence I am talking about. And I read it again:

“The Minister directs us to close off the
investigation and submit a detailed report to your
office so that the Minister can make a determination
as to whether there is a need for further
investigation.”

You see that sentence? You see the sentence,
where – that’s what I want to know at this stage.

MS PETERS: I see that sentence Chairperson. Like I
indicated that ...[indistinct].

20 **CHAIRPERSON:** Don’t indicate anything. I just wanted
you to first ...

MS PETERS: Oh I see the sentence.

CHAIRPERSON: Ja.

MS PETERS: I see the sentence.

CHAIRPERSON: So I am saying to you, it would appear

that Mr Molefe's understanding of your letter was at least in this respect the same as yours, namely that after the report, after that Werksmans' report had been studied there would be a determination of the way forward.

And as he understood the – your letter, the determination of the way forward would be whether there was a need for further investigation. So I am simply saying, this sentence may well support part of what you were saying. You understand?

10 **MS PETERS:** I understand Chairperson.

CHAIRPERSON: Yes. But Mr Soni will see how he deals with that. It suggests to me that it was not necessarily contemplated in your letter that there will be no further investigation.

MS PETERS: Yes Chair.

CHAIRPERSON: That as to who would do such an investigation if there was to be an investigation, that was something to be dealt with later.

MS PETERS: Yes Chair.

20 **CHAIRPERSON:** That is the impression I get. But also what is clear from your letter to Mr Molefe is that you are not saying, you were not saying let Werksmans stop for now, give us a report and then we will take it from there.

MS PETERS: Yes Chair.

CHAIRPERSON: You, you don't put it that way.

MS PETERS: Yes.

CHAIRPERSON: Do not then say, let them suspend their investigation for now until we have studied their report.

MS PETERS: Yes.

CHAIRPERSON: You are saying to the board close off this investigation. And then of course you say the other things as well. So I am just mentioning this to one, share with you my understanding of what this seems to say. But to also enable Mr Soni to, to deal with the various features
10 that I am raising.

MS PETERS: Okay Chair.

CHAIRPERSON: Okay, alright.

ADV VAS SONI SC: That is what your letter said that in fact there were three things that were to happen. The investigation, there must be an investigation report from Werksmans. That report, the board must send you their report on the Werksmans' report.

MS PETERS: Yes.

ADV VAS SONI SC: And then the determination will be
20 made. That is what your, your letter said, is that correct?

MS PETERS: Yes Chair.

ADV VAS SONI SC: Right. Now what though is important is and the Chairperson is right that it was not going to be the end of the matter forever. Everything would depend on the developments. Would that be correct?

MS PETERS: Yes Chair.

ADV VAS SONI SC: Right. Okay, now there are two things go about the letter, and I said to you in a sense, whatever interpretation one places on that there's a – is for present purposes, not decisive.

Now as part of this letter yesterday I read to you the issue at page 163, which was the issue of the ...[indistinct], I am just saying that it's part of the same letter. I want to refer you to something else. He says to
10 you at page 160 in the last paragraph.

MS PETERS: 1?

ADV VAS SONI SC: Page 160. In the last paragraph. He says that, litigation has flowed from this investigation and it involves a lot of money. And he says that one of the problems that has arisen is the very people against whom PRASA was litigating was seeking funds from PRASA to fund their, their fight or their litigation fight against PRASA.

You see that? For example, one of the companies
20 he makes mentions is Siyangena. Do you see that Ms Peters.

MS PETERS: Yes I see it in the second paragraph, on this page.

ADV VAS SONI SC: Yes. Now what he is saying in the letter is that there are serious matters that arise from this.

And we can't stop the investigation. That is, that's what he is effectively saying. But would that be correct? That's how you understood it? Now I want you then to look at page 161.

In the middle – oh sorry. Right at the top he says, Werksmans had advised the board that as a result of their investigations, the board is obliged to report the matter to the police or to the, the crime – the DPCI in terms of the prevention and combating of corrupt activities Act. That is
10 what he says there. Right.

Then he says that PRASA is funding their forensic investigation. But we will deal with that at a different time in these proceedings. But I want to look at the last sentence of that. He then says to you – sorry before the last sentence, he says, they've asked the DPCI for assistance.

They are not aware of any instance where DPCI have begun taking statements or any other investigative action of significance. Do you recall reading this in Mr
20 Molefe's letter?

MS PETERS: Yes Chair.

CHAIRPERSON: Then he says to you:

"I therefore implore the Honourable Minister to intercede on PRASA's behalf with the Minister of Safety and Security to expedite these matters which

are of national importance.”

You saw that?

MS PETERS: Yes Chair.

ADV VAS SONI SC: Who was the National Minister? Who was the Minister of Safety and Security at the time?

MS PETERS: I am sure, I am not sure whether it was still Minister Nhleko. I would, I would have to recollect.

ADV VAS SONI SC: Okay.

MS PETERS: But it was either Minister Nathi Nhleko, but
10 it was not Minister Nqakula.

ADV VAS SONI SC: Did you approach the Minister?

MS PETERS: I did approach the Minister. And you see Chairperson, here it indicates that we should engage the Minister to and expedite this matters which were under now the DPCI. The Minister at that time in fact to his credit, we were discussing it as we were seated in the house.

So it was not a formal meeting. I indicated to him that there is this particular request from, from PRASA and at that time it was not only PRASA. There were matters of
20 the STMC and many others. And I said to him, if, if need be we could have a meeting so that we have full presentation.

And he even said, you know with regards to matters that have been referred to the police, they sometimes the an impression created that we politically influence some of

these things.

So we, we – at the end we have not had a meeting formally with the Minister with regard to this particular matter.

ADV VAS SONI SC: But I am trying to understand your answer and tell me if I am wrong. Mr Molefe asks you to intercede because there is no progress in these important investigations that involves perhaps billions of rands.

You talk informally to the Minister whoever it was,
10 but you don't formally raise with him the concern that Mr Molefe raised with you.

MS PETERS: We had not as yet arrived at the point where we – here we are in cabinet. I have this particular letter and I say to the Minister, there is a meeting I request that we have with regards to matters that pertains to the matters referred to the police and all that.

And he then said, no we will make the arrangement for a formal meeting, but I just want to indicate to you at times I am as a Minister, in fact I'm worried to involve in
20 matters that are already under investigation because then it may be misconstrued as political interference.

Then he started the process to request for a meeting with, with the Minister. I just want to, to respond to one aspect Chairperson. I'm sorry not to look at you and address you with regard to that particular matter.

In this response of the 24th of August to my letter of the 12th of August Chairperson, this summary of the report, if I had received it prior I would not have written this particular letter. I just wanted to put that on record. Because ...

CHAIRPERSON: I'm sorry, just start afresh. If you had received?

MS PETERS: This response on what has happened since they have employed Werksmans ...

10 **CHAIRPERSON:** Yes.

MS PETERS: Because Chairperson at the time that Werksmans was ...

CHAIRPERSON: Yes but I want you to complete the sentence. You completed it earlier on. If you had received this you would not have ...

MS PETERS: Because this is a report.

CHAIRPERSON: Yes.

MS PETERS: On where exactly they are.

CHAIRPERSON: Yes.

20 **MS PETERS:** With the process of the investigation.

CHAIRPERSON: Yes.

MS PETERS: Then they are the one.

CHAIRPERSON: Ja.

MS PETERS: And, and there would not have been a need for saying close off the report, because the report is

reflected here on exactly where they are.

CHAIRPERSON: Oh okay.

MS PETERS: But also Chairperson, in the report it does indicate that there has since been – you know in most investigations in my areas of diplomat, I have realised that investigations moves in a loop.

Once you open it, it becomes when the loop is supposed to close, new evidence and new information comes in and then investigators go on. So you need to be
10 able to make sure at different intervals you engage with this investigations.

Every time in parliament Ministers are asked questions about this matters and if you are not conversant with what is happening, you won't know. And that particular time Chairperson there was already a decision that we had made with the Chairperson of the board, as well as the OCP, I mean the officer, the Chief Procurement Officer, that there is going to be a consolidation on this investigations.

20 So in essence we were now at the stage where we are supposed to now start getting reports from the Chief Procurement Officer that says, with regard to all these matters this is where exactly we are.

CHAIRPERSON: Just to make sure I have understood your evidence. So you are saying when you look at Mr Molefe's

response to your letter, and you look at the content what he says about progress that had been made, had you, had you been aware of this progress at the time you wrote the letter to him which said, close off the investigation, you would not have said the investigation should be closed off. That's what you are saying?

MS PETERS: Yes Chairperson, because I'm the ...[indistinct] progress reports.

CHAIRPERSON: Okay, alright. Mr Soni.

10 **ADV MAJABA SC:** Chair. Might I just interject? Firstly Chair I am going to seek guidance from the Chair purely to be of assistance to the proceedings.

CHAIRPERSON: Yes.

ADV MAJABA SC: And this is where I come from and Chair will, will correct me if I am wrong.

CHAIRPERSON: Yes.

ADV MAJABA SC: I am acutely aware that these proceedings are *sui generis* and holding what you have read over Ms Peters, comes with some constraints.

20 **CHAIRPERSON:** Yes.

ADV MAJABA SC: On my part.

CHAIRPERSON: Ja.

ADV MAJABA SC: Because I want the proceedings to flow.

CHAIRPERSON: To go smoothly.

ADV MAJABA SC: And I am not one to interject every now and then as if we are in adversarial proceedings.

CHAIRPERSON: Yes.

ADV MAJABA SC: These are inquisitorial, the evidence leader is ...[indistinct] on mere facts.

CHAIRPERSON: Yes.

ADV MAJABA SC: Good or bad against ...

CHAIRPERSON: Ja.

ADV MAJABA SC: The witness. And that is why I have
10 kept numb on a number of issues. Now the clarity that the
Chair has now elicited from Ms Peters is what would have
prompted me to say, but hang on, don't put a witness in a
position where she may be misunderstood because you are
drawing correlations.

We started off with the conclusion and the interpretation that my learned brother sought to put on a conclusion. And as we were dealing with that, he started gravitating to the letter of the 24th of Mr Molefe.

And the point that I wanted to make or that I would
20 have made was, if we are going to put a submission to a
witness to say, I submit or I put it to you that this is the
interpretation.

One tends to enter into a usual terrain with a none legal witness, let the hawk alight where the eagle spat. Because if you look at that letter, the very opening salvo

talks about what animated her concerns.

Her concerns were an irregularity that of neglect and the exorbitant amount of money that may have been paid at the time. So she is following through.

So I left it at that because I thought it may well be that when we make submissions we will have a look at it.

CHAIRPERSON: Ja.

ADV MAJABA SC: And the Chair then summarised it in a manner that the witness said, I agree with the
10 interpretation Chair. And even with this matter of the 24th, she – it is clear because we have read the affidavits.

But a person watching this proceedings from home does not understand. And it is because of the Chair's intervention that she was able to say, actually the letter of the 24th is a sequel to mine of the 22nd.

So if I had received a summary of the progress report, which I do now two days later, it would have been nonsensical for me to write a letter about this interpretation we are quibbling.

20 And I am simply trying to say, if Chair I am right in saying, I have the right to come back not necessary ala re-examination, but where a witness can give clarity to Chair every time.

It has not happened so that we do not interrupt the floor. Otherwise if I use it too late, it may well be that an

opportunity may be squandered for the Commission. Not for me, not for the witness to understand. So I am placing my dilemma on record.

CHAIRPERSON: Ja.

ADV MAJABA SC: Ordinarily if we were in a criminal trial I will be up on my feet and raising objections.

CHAIRPERSON: Ja.

ADV MAJABA SC: And it is not my style.

CHAIRPERSON: No, no, no. I understand. I think that
10 my, my understanding of how you represent your clients gives me comfort that if you were to ask for an opportunity to interrupt, it would really be because it is something quite serious.

My understanding you are not appearing for the first time here. My understanding is that you are really constructive, you want the Commission's proceedings to go smoothly, but obviously you are looking after your client's interest in the process.

So I, I would say as far as possible keep your notes
20 for – because I will give you a chance to re-exam and during that time obviously where you think she might have given an answer that was based on a misunderstanding of the question, there can be clarification.

I accept that there may be situations where it's necessary to come in and not wait for later. But I think

those would not, those would be rare. So, so I am sure that we can, we can handle the situation.

ADV MAJABA SC: And Chair in so saying I was not suggesting in any form or shape that Mr Soni was being unfair to the witness.

CHAIRPERSON: Yes. Yes.

ADV MAJABA SC: I think as long as we know where we are going ...

CHAIRPERSON: Yes.

10 **ADV MAJABA SC:** To ...[indistinct] nonetheless may be ...

CHAIRPERSON: Yes.

ADV MAJABA SC: Unnecessary. But ...

CHAIRPERSON: Yes.

ADV MAJABA SC: Thank you Chair I will leave at that.

CHAIRPERSON: Okay. No that is fine. Thank you. Mr Soni?

ADV VAS SONI SC: And again it's not a reflection on my learned friend or the witness. I have read the response of the witness' affidavit to what Mr Molefe said. She has
20 given a whole affidavit, including Annexure 7 and 8.

She responded to Annexure 7 in 10.4 – 10.2 which is what I had read to her. Is why the issue had arisen. And she in her affidavit said, but look I am sorry had I received Annexure PNT, PN8 I, I would not have even written Annexure PM7.

So you must read Annexure PM7 together with PM8. But that, that's what she had said today. But that is not what she said in her affidavit, which is why the question had took place.

CHAIRPERSON: Yes. No, I think I am satisfied that we can go, go on. Mr Majaba has a full understanding and ...

ADV VAS SONI SC: Yes.

CHAIRPERSON: He will be noting areas that might need clarification for later. Ja.

10 **ADV VAS SONI SC:** Absolutely and he must be entitled to do that.

CHAIRPERSON: Yes, no. That's fine. Thank you.

ADV VAS SONI SC: Now Ms Peters, this is what I want to ask you next, did you respond to Mr Molefe's letter, when you have told the Court, I mean you have told the Commission today that look had I received or had this what is set out in this letter been sent to me, I would have understood what it is.

I would not have asked for their report. Did you
20 respond to this letter from Mr Molefe? The letter of the 24th of August?

MS PETERS: Chairperson I don't remember full whether I ever responded to that letter. Except to say that there was a meeting some time ...[indistinct], so I don't know whether I responded in writing.

ADV VAS SONI SC: Okay, because I tell you why I ask this. If you look at that letter in the very last paragraph of the letter at page 166, Mr Molefe says, hadn't set out what the position of the board is. He says:

"I trust that this clarifies the board's stance in this regard with showing correspondence to follow by the end of August provide you a detailed report of the forensic investigation undertaken by Werksmans Attorneys on the board's instructions."

10 Now two questions; did you receive such a report from the Board?

MS PETERS: I do not remember receiving it because at that time we were preparing already towards the AGM of the company, so I would need to go back and find out, I do not remember Chairperson.

ADV VAS SONI SC: But I also understood you to say that you had talked, then is it possible in that talk you had said to him, but do not worry about the report because what you have said to me, satisfies me that these investigations
20 should not continue. I am just asking, because you have not complained about the fact that there was no report.

MS PETERS: Chairperson, in talking to Mr Molefe the only thing that I said to him is, when are you going to make sure that this issue of the appointment of Werksmans get regularised because we go now into the third or fourth year

of this, it was actually the 30th of this investigation, and in terms of the PFMA, it cannot be at all times, unforeseen, an unplanned Chairperson.

And my concern was can the Board regularise this then create an avenue where again it becomes an audit finding because that was the issue Chairperson, that this investigation - can you okay now we have got this report that you promised that by the end of August, you will present to me because we then said, they are going to do a
10 consolidated report, they will present the report.

But I then said over and above the consolidated report - again I am speaking to Comrade Popo Molefe a leader in this environment to say get your Board to regularise this appointment so that we do not end up again – Chairperson no two wrongs makes a right. You are chasing, and I will make an example, you are chasing like you use to say I am chasing the thieves, I said you are chasing the thieves but you going about chasing the thieves in the wrong way where you end up being found at
20 fault for violating the procedures.

I even said to him [speaking in vernacular], if you find your house burning down you see that Dipuo is responsible for burning down your house, you know it is that Dipuo. Do you know choose people instead of putting out the fire and then get the relevant agencies to chase Dipuo because you

have seen Dipuo has burned down, your house. And I was saying to him in an idiomatic expression you need to focus on the key other issues that are related to PRASA as a company which are related to the performance of the company that trains the finances and all those, whereas the investigation is ongoing in my mind, I was satisfied with the meeting that we had held in my office where they have a clear indication that we are going to consolidate all this investigation.

10 And we even said we did acknowledge that these investigations have got a tendency of running for years and now that they are under National Treasury, you need not even have the fear of the budget and all those because it would have to be in their budget to be able to do that work. And in that way – and it is taking me back to advice that I once got from one of our leaders who passed away Ambassador Maseko. He used to say and that time he was an Ambassador in Namibia. One thing - and he was giving good advice as a leader and a father. In the way in which
20 you do your work do it in such a nature that you do not have challenges later because of either things – in fact he told me that because either or, he said if it is a matter of not doing your work because of some limitations of a training whatever you can be trained. [speaking in vernacular].

So in my doing of my work...[intervene]

CHAIRPERSON: Just remember to give us a translation as well, because not all your response would be understood by everybody.

MS PETERS: I have this advice from a leader and the advice from this leader was to the effect that, in the way in the way in which you do your work, you must do it effectively, you must do it to the best of your ability, but one of the challenges of working in a government
10 environment he said is that rather be found for your inability to do some work as opposed to being a thief, for a lack of a better word. And I always carried that in the back of my mind because I really because he said it clearly that, a thief cannot be trained differently [speaking in vernacular].

But if you have got limitations in terms of the ability to do work you can be trained, you can be re-skilled and if it was wrong for me not to write to Mr Popo Molefe in terms of this method that you had written that showed that they
20 do have a report. Remember in his affidavit he says they were going to, at the end of that month of August present me with a consolidated report with regard to this Werksmans report and that is what we were waiting for.

And I want to put it on record in the beginning when the investigation was with – what is this, Werksmans there

were not an issue that needed to be investigated in PRASA. I agreed with Dada Molefe to say there are those things that truly need the organisation to follow, which is those that worked 350, the payments and the advance payments, because there were allegations from the AG's report that service providers were paid to be able to do work so that they get paid before they do it.

That is wrong that is where they were irregular and then Chairperson there was also investigations, one of the
10 things that were cited, in this report of the AG was the issue related to the rolling stock and to the signatories and whatever and I said to Dada Molefe me and you growing up in South Africa knowing the challenges Chairperson of the passenger rail system and they that are putting in the system you know that we have to save especially the hoodwinks[?]

CHAIRPERSON: Okay, okay, okay, okay.

MS PETERS: That is why this podium does not give one chance to explain some of even the challenges the ones
20 had to experience.

CHAIRPERSON: Yes, but I think you - what emerges from your answer is either that you did not respond in writing to Mr Popo Molefe's letter, or you cannot remember whether you did respond, but you say that there was a meeting that the two of you had, after his response to your letter, ja,

that much you saying, Mr Soni.

ADV VAS SONI SC: Now, you might recall that I said to you, Mr Molefe's letter is that the 24th of August 2016. On the 25th of August 2015 or 2016. Mr Molefe know in an affidavit which had major repercussions on his standing in the ANC, certainly according to what appears to have happened in Parliament.

MS PETERS: Come again?

ADV VAS SONI SC: What I am saying to you, on the 25th
10 of August, Mr Molefe an affidavit in this refundable matter, which according to what appears to have happened in Parliament, had a major impact on the Parliamentarians, the ANC Parliamentarians approach to him and I am come back to that in a moment, but I want to first deal with the allegations he made on the 25th of August 2016. There contained in his replying affidavit, parts of which appear at page 259 of bundle D.

CHAIRPERSON: What is the page number?

ADV VAS SONI SC: 259, Chairperson that is the first
20 page and the because the allegations appears...[intervene]

MS PETERS: 259 of?

ADV VAS SONI SC: 259 of bundle D, that is Mr Molefe's replying affidavit. Now, I do not want to go through the whole thing, but this is a replying affidavit in the refundable matter, that is the R3.5billion contract that we

talked about yesterday, and this is what he says if you go to page 262 he talks about what he was told by a Mr Auswell Mashaba.

Mr Mashaba told us...[intervene]

CHAIRPERSON: I am sorry; I am sorry what I have at page 259 is the first page of Mr Molefe's entire affidavit but the next page relates to Mr Mamobolo's affidavit. I do not have the other pages of Mr Molefe's affidavit that starts at page 259. So from 259, my bundle skips to 277. I do
10 not know whether I may have taken out the affidavit myself to read it and then did not replace it.

ADV VAS SONI SC: What somebody did I tell you why Chairperson.

CHAIRPERSON: Yes.

ADV VAS SONI SC: When Mr Molefe gave the affidavit we went as evidence.

CHAIRPERSON: Yes.

ADV VAS SONI SC: We went through this affidavit.

CHAIRPERSON: Yes, is there a spare one by any chance
20 and then arrangements can just be made for replacement pages. I see that we have gone past quarter past 11 but since Ms Peters has to leave by quarter to...[intervene]

ADV VAS SONI SC: Yes.

CHAIRPERSON: I thought we would take the tea break a little later.

ADV VAS SONI SC: Yes, as you please Chair.

CHAIRPERSON: So that she can take leave and then arrangements would be made for when we can continue, okay alright. Thank you, so you said we must go to page 261, yes I am there.

ADV VAS SONI SC: 262, Chairperson.

CHAIRPERSON: 262?

ADV VAS SONI SC: Yes.

CHAIRPERSON: Okay, yes.

10 **ADV VAS SONI SC:** Well, he says that:

“Mr Mashaba told him that he was aware that this refundable agenda was under investigation.”

And then on the next page he says:

“Mr Mashaba told him in addition that through his involvement that Mr Mashaba is involved with Mr Mabinde he had been in contact with a Maria Gomez who had initially contacted him telephonically.”

Then Mr Molefe says:

20 “Mr Mashaba explained that he met with Ms Gomez, Ms Gomez told him that Mr Mashaba, that she wanted money for the movement.”

Ms Gomez also told him:

“That she need the bid to supply locomotives to PRASA with values and she could not understand

why 10% of the value of the debt could not be paid to the African National Congress. Ms Gomez was insistent that the money should go to the movement.”

In paragraph 9.11:

“Mr Mashaba explained further that Mr Mabinda had instructed him to pay some of the money received from PRASA into specific accounts without Mr Mashaba knowing who has been paid, or the reason for the payment. Mr Mashaba was insistent that he did not know the identity of the beneficiaries and he was merely informed that the money would be benefit of benefit for the movement.”

Now, when did you first become aware of these allegations?

MS PETERS: I became aware of these allegations in – through the – first it was in the public space based on the submission of Mr Molefe to the courts.

ADV VAS SONI SC: Now, what was your reaction to it?

20 **MS PETERS:** I asked him, Mr Molefe about this and then he explained that there was this matter and he is following up with the investigation, and we left it as such.

ADV VAS SONI SC: Is that the total reaction?

MS PETERS: Not the discussions between him and Mashaba just that there was Swifambo and there was

allegations that certain amount of money from Swifambo flew in back into the African National Congress, that is what I read.

ADV VAS SONI SC: Were you concerned about, firstly, the allegations being made?

MS PETERS: I was concerned definitely Chairperson, and I think there was even an interview that I did with the Sunday Times newspaper, after I had also called on Mr Molefe to verify these stories in the papers, and he
10 confirmed to me that that is part of the investigation, and it is going to help PRASA to recoup the money.

And Chairperson earlier on when you stopped me, I was coming to these two points about this investigation, the one of Swifambo and the one of the new modernisation trains to say....[intervene]

ADV VAS SONI SC: Siyangena ...[intervenes]

MS PETERS: No, not Siyangena, Siyangena is the signalling and other things, there was this issue of - there was a finding related to the trains to be built.

20 **ADV VAS SONI SC:** Yes.

MS PETERS: And I said to him, they must ensure that the urgently deal with these matters and respond to it so that they can release. Remember Chairperson, there was going to be about R53billion investment into the country for the new trains, the factory to be build, to do the supplying

components, and also the training of our young people with technology, I mean techniques and skills that are necessary for the rail industry.

So it was lots of investment that I said to him, we need to make sure that this one is dealt with so that the work can start. Our people are unemployed, it is affecting the data, we need to make sure that that one is unfolded. We agreed and then these others like those Swifambo and Siyangena and other others, that you are investigating, go
10 ahead and investigate this particular matter. There was no, never a time when we did not agree on the need for investigating this particular issues.

When the story about the money that flow through the ANC came, it was not a discussion, it was not well submitted in the court papers, and I even said now that this matter is an investigation, and I said, and I am still believing it what I said to the journalist at the Sunday Times. If I was the Treasurer General of the African National Congress, I would also oversight of the
20 investigation of the element and its entity with regards to this procurement.

Investigate these people who are said to have received money in the name of the African National Congress, because for me as a member of the ANC, it was not good that people go around doing whatever they do

and later on it is said that the money sneaked to the ANC.

So the ANC had to investigate that, whether he investigated I do not know because I made a public statement that was in the Sunday Times to say, I said go ahead and investigate on your side as the ANC because if there are people who are going around making money for themselves and their families in the name of the ANC it is not, it is also incorrect because the name of the ANC is always brought into these procurements unnecessarily so
10 because certain people will do one random things, and then say I did it for the ANC, which is not true.

ADV VAS SONI SC: Now...[intervene]

CHAIRPERSON: Mr Soni I proposed that we should stop with Ms Peters evidence at half past it is in five minutes' time.

ADV VAS SONI SC: Yes.

CHAIRPERSON: Then I take the tea break then she is released.

ADV VAS SONI SC: Yes.

20 **CHAIRPERSON:** I know she is available up to quarter to, but we take a tea break at half past because in any event, we are not going to finish with her evidence. So I am just mentioning so that in terms of what is left.

ADV VAS SONI SC: Yes, can I – Chairperson it may take a couple of minutes more than five, is that going to be?

CHAIRPERSON: That is fine.

ADV VAS SONI SC: Ms Peters, can I then ask you to look at Parliamentary bundle 3, page 382 on the left hand side.

CHAIRPERSON: I take it that a couple is more than five minutes but not ten.

ADV VAS SONI SC: That I do not think so Chair.

CHAIRPERSON: Ja, I am thinking about seven or so.

ADV VAS SONI SC: Yes.

MS PETERS: The bundle?

10 **ADV VAS SONI SC:** Bundle 3, page 382.

MS PETERS: Eight?

ADV VAS SONI SC: 382.

MS PETERS: 382, yes.

ADV VAS SONI SC: Remember, Mr Molefe's affidavit is dated the 26th of August, as you have said it was widely reported in the newspapers. Now on the 21st of August 2016 this matter came up before the Portfolio Committee and this is what Mr De Freitas says about, he says:

20 "At the meeting held on the 21st of August - this is of the Portfolio Committee - the acting CEO Mr Collins Letsoalo explains that PRASA had a dysfunctional administrative system. He explained that only 20 executives were required as opposed to the current 65. He claimed that it appeared that PRASA Board members were telling themselves

additional unauthorised remuneration, Mr Sibanda expressed concern that the Board members retain themselves.”

Now, I just want to deal with the first issue first, the one about 20 executives, as opposed is 65. Have you been made aware of that before Mr Letsoalo raised it in Parliament?

MS PETERS: This matter Chair, like I indicated was going to be probably, be the subject of the meeting of the AGM because the AGM was coming. We were working towards
10 the AGM; I have not as yet received a report with regard to these details. But one thing that I knew from the history of engagement with PRASA was that it has a blow back structure, and the executives would be just moved willy nilly from across irrespective of their competencies and whatever.

And I had requested the Board, remember
Chairperson, I indicated yesterday that I had requested the Board to do a skills and competency and qualifications
20 audit, so that they could then do a better matching and placing within the organisation because there was just too many people who you did not know what they were doing, and others were all over.

And there were a lot of labour related disputes of others who were dismissed, and the Board Chairperson at

times took a decision to say some of those who were dismissed must just be brought back and it would have needed a particular review or an organisational design type of study to be able to get to that particular point.

ADV VAS SONI SC: Then the next point that Mr De Freitas makes in this summary he says:

“Mr Ramatlakane stated that recently, there have been an extraordinary Board meeting where a resolution had been taken to dismiss Mr Letsoalo. He requested PRASA and the Chairperson to appraise the Portfolio Committee developments in this regard, and that the Portfolio Committee received a copy of the Board minutes.”

Now, this is Mr De Freitas’s comment on this:

“I got the distinct impression that this had been discussed by the ANC and there was an agenda of sorts to protect Mr Letsoalo.”

You were not present at this meeting, is that correct?

MS PETERS: No Chair, I was not at the meeting.

ADV VAS SONI SC: Alright, then Mr Molefe asks the meeting if they could discuss the matter in committee, and that was refused. Now I am raising all of this in the context of what I read to you in Mr Molefe’s affidavit because if you look at the next page, page 383 on the fourth paragraph this is what is reported Mr Ramatlakane

stated:

“That Popo Molefe had insinuated that the ANC had received R80million from PRASA.”

And then he says this was a reference to articles that had been appeared in the newspapers and he gives the whole thing. Then he says:

10 “Molefe denied that he had made such a statement stating that he had heard allegations that PRASA had paid the ANC R80million. He explained that PRASA never gave the ANC money and he had never made such claims. He indicated what the media had reported were records before the court.”

Then this is the response from Mr Ramatlakane he says:

“He had a concern that PRASA’s spent R93million on private legal firm for services.”

Now this is Mr De Freitas’s comment:

20 “This was the ANC’s attempt at deflecting from the true issue of corruption by deflecting from the real problem, it was very clear that the ANC was positioning Molefe as the enemy or the bad guy in this saga.”

Now this is a commentator who is in Parliament, of course, he is in the opposition and one would expect him to say things that do not reflect well on the ANC. But when you look at the two things that appears here, the first thing is

that there is this story about corruption relating to this Swifambo contract from which a political party allegedly received R80million, and then R93million is spent in an investigations.

Now, does it make sense that you would concentrate on the cost of the investigations, as opposed to allegations of corruption in an R3.5billion contract?

MS PETERS: Chairperson I cannot answer for the Portfolio Committee, because I do not know the context of
10 them arriving at this point, because usually what happens is that the department and the Board would come and make their presentations, and then the questions and statements would flow from that.

So I was not there, and I cannot make a case for what happened in the Portfolio Committee.

ADV VAS SONI SC: I just want to read to you though, the second last line on...[intervene]

CHAIRPERSON: You have just gone to ten minutes.

ADV VAS SONI SC: Ja, can I just finish this Chairperson
20 and I undertake that it will be my last point I want to make.

CHAIRPERSON: Okay.

ADV VAS SONI SC: Mr Gadebe, the ANC member on the committee suggested:

“That the committee had to approach the South African Police Service to investigate investments,

political and business links.”

I am putting this in context and I know you are right; you cannot answer for them. I am only making the point that that is what the fallout was, from what Mr Molefe disclosed and what Werksmans investigations have been, as he said it was probably procedurally flawed but there are two issues here. Do you agree with that?

MS PETERS: Chairperson, I am unable to relate to what Honourable De Freitas is referring to here with regards to
10 the matters in the committee. Usually after the committee, the committee report would be tabled in Parliament, and what will be tabled in Parliament would be the decisions that the committee have made not the debates in the committee. So Chairperson this is a reflection on the debates in the committee and like I indicated I was not probably part of that particular meeting.

ADV VAS SONI SC: Okay Chairperson we will have to stop here.

CHAIRPERSON: Ja, we will have to stop here,
20 arrangements will be made for the Commission to hear the balance of your evidence, and everything will be done to try and make sure that that happens as soon as possible. And if there is a need to have your evidence via video link or zoom in order to expedite that that can be done. So, I will stop here. Thank you very much and thank you to Mr

Majava.

MR MAJAVU: Mr Majavu.

CHAIRPERSON: Majavu, I am sorry.

MR MAJAVU: Thank you Chair.

CHAIRPERSON: I think it is the second time...[intervene]

MR MAJAVU: Actually the third time.

CHAIRPERSON: And I have not done that before it is just today, ja. Okay we will stop here. Thank you very much, Ms Peters. There was one question I wanted to ask just
10 for clarity because I saw in some newspapers this morning, they seem to portray your evidence in a manner that I thought was not correct. But maybe let me ask, with regard to Mr Molefe's evidence that at the meeting of the 20th of August. His, I think he says, one of the things that he says is that President Zuma said, Mr Montana's talent should not be lost to the country that is one, and two, he says he got the impression or it was clear to him. He says one either one of the two that Mr Zuma wanted Mr Montana to be taken back at PRASA. And your evidence with regard
20 to the statement that Mr Zuma said Mr Montana's talents should not be lost to the country. What do you say, do you remember it, do you not remember it, do you say it never happened?

MS PETERS: Chairperson, remember that I indicated that every time the Board Chairperson came to inform me of the

fact that Mr Montana's contract will be coming to an end and what they had discussed with him. In fact, even him Mr Molefe was of the same mind with me at the time that this is something that we need to elaborate on, about how do we as a country, not PRASA utilise the knowledge institutional memory and the expertise must...[intervene]

CHAIRPERSON: But remember because you have to catch a flight...[intervene]

MS PETERS: Yes, Chairperson.

10 **CHAIRPERSON:** This is to whether your recollection...[intervene]

MS PETERS: Yes, I went to President Zuma and said to him that there are still CEO's whose contracts are going to end, and I said they started with transport in 1994 we cannot lose them Chair.

CHAIRPERSON: Okay, I remember that all I need is whether you have a recollection that Mr Zuma did say that at the meeting or you have no recollection, or you say he did not say it at the meeting?

20 **MS PETERS:** At the meeting I do not remember what President Zuma had said that is why Chairperson remember I said there is a possibility that in there informal, it might have been raised but at the meeting, the President actually got exhausted before the meeting finalised.

CHAIRPERSON: Yes.

MS PETERS: They could not conclude that meeting.

CHAIRPERSON: Okay, alright. Now of course, when I was putting certain questions to you yesterday, you did say and you must tell me if I misunderstood you, that you understood the proposition that President Zuma must have said something that made Mr Molefe invite him to come to the Board and address it so as to understand the rationale of the Board's decision not to or to release, Mr Montana. I
10 think you said you can understand the logic that he must have said something, is that correct?

MS PETERS: Yes, Chairperson but also knowing that Mr Montana's was lobbying and I want to just put it on record here that probably Mr Montana's attitude towards me is based on the fact that when he lobbied me I said it is a no and there he goes.

CHAIRPERSON: Yes, yes and I think I did say yesterday make the proposition that on the face of it, it seems that, it seems logical that Mr Zuma must have said something that
20 suggested that he did not understand the rationale of the Board's decision to release Mr Montana, you had no quarrel with that, is that right?

MS PETERS: Chairperson the only thing I think you remember Mr Zuma said Mr Molefe and Mr Montana and myself are ANC members, [speaking in vernacular]

CHAIRPERSON: Yes, why are you fighting.

MS PETERS: Why are you fighting.

CHAIRPERSON: Okay, alright I will release you now. I will take the tea break and we will resume at 12 o'clock and then we will start with the next witness.

ADV VAS SONI SC: As you please Chairperson.

CHAIRPERSON: You are excused.

MR MAJAVU: Chair might I also be excused, Chairperson?

10 **CHAIRPERSON:** Yes.

MR MAJAVU: Thank you Chair.

CHAIRPERSON: We adjourn.

MS PETERS: Thank you.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Are you ready? Just put on your – ja. Okay.

20 **ADV VAS SONI SC:** Thank you Chair. Chairperson the next issue we are going to deal with is the matters raised about the appointment ...[indistinct] to do with the investigation. And as you would have realised it's something that has appeared on an off our radar screen from the time Mr Molefe gave evidence.

CHAIRPERSON: Yes.

ADV VAS SONI SC: What we intend doing Chairperson is

Ms Ngoye has prepared a report with the Chairperson of the new board, which is a fairly recent report, prepared at the end of last year.

And she has made that report available to us and she will talk to that report which sets out all the facts certainly as presented by her. We have then Ms Manase, an affidavit from Ms Manase. We have an affidavit from Mr Hobbs from Birkmans(?) and effectively as you said yesterday Chairperson, the facts, the essential facts are
10 not in dispute.

There may be issues here and there where there is a difference, but the question really would be, have the provisions of Section 217 in compliance.

CHAIRPERSON: Just repeat that. That question would be?

ADV VAS SONI SC: Have the provisions of Section 217 been complied with.

CHAIRPERSON: Yes.

ADV VAS SONI SC: 217(1) Of the Constitution.

20 **CHAIRPERSON:** Yes. Well to the extent that that's the question, really one does need to spend a lot of time for on the issue.

ADV VAS SONI SC: Yes.

CHAIRPERSON: Because once the facts are undisputed, it's a question of applying the law to the facts and even

answer to that question.

ADV VAS SONI SC: Yes.

CHAIRPERSON: And if, if there is no suggestion by anybody that to the extent that there may, there might not have been compliance with Section 217 and whatever other provisions of the law, if there is nobody who suggests that, that none compliance was deliberate in a sense that somebody knew it was wrong and did it. Or some ulterior motive, then, then really one does not need to spend too
10 much time on the issue.

ADV VAS SONI SC: Absolutely Chairperson.

CHAIRPERSON: Ja, ja.

ADV VAS SONI SC: Except may I make this point here Chairperson, the one of the reasons that just necessary to air this issue is ...

CHAIRPERSON: No, I agree. I agree. I agree. No I agree that it should be aired.

ADV VAS SONI SC: Yes.

CHAIRPERSON: Publicly. It is just that there might be no
20 need to spend too much time on it.

ADV VAS SONI SC: Absolutely, absolutely.

CHAIRPERSON: Ja.

ADV VAS SONI SC: Yes.

CHAIRPERSON: Okay, alright. Good morning Ms Ngoye.

MS NGOYE: Good morning Chair.

CHAIRPERSON: You are back?

MS NGOYE: I am back Chair.

CHAIRPERSON: Okay. Alright. Thank you for coming back.

MS NGOYE: Thank you Chair.

CHAIRPERSON: Yes.

ADV VAS SONI SC: May the witness be sworn in.

CHAIRPERSON: Registrar please administer the oath of the nation.

10 **REGISTRAR:** Please state your full names for the record?

MS NGOYE: Onica Martha Ngoye.

REGISTRAR: Do you have any objection to taking the prescribed oath?

MS NGOYE: No I don't.

REGISTRAR: Do you consider the oath binding on your conscience?

MS NGOYE: Yes I do.

20 **REGISTRAR:** Do you solemnly swear that the evidence you will give will be the truth, the whole truth and nothing but the truth? If so please raise your right hand and say, so help me God.

MS NGOYE: So help me God.

CHAIRPERSON: Okay, you may proceed Mr Soni.

ADV VAS SONI SC: Thank you Chairperson. Ms Ngoye you have given evidence before this ...

CHAIRPERSON: Maybe you can just announce for the, the Court which bundle we are ...

ADV VAS SONI SC: Oh yes, sorry.

CHAIRPERSON: Using now.

ADV VAS SONI SC: Chairperson there would be two bundles we will be looking at while Ms Ngoye is giving evidence.

CHAIRPERSON: Ja.

ADV VAS SONI SC: E2, which is her affidavit in relation to
10 this matter.

CHAIRPERSON: Yes.

ADV VAS SONI SC: And then there will be a reference to what mister, Ms Manase says in her affidavit and what Mr Hobbs says in his affidavit. And those appear at Bundle M.

CHAIRPERSON: Okay, alright.

ADV VAS SONI SC: Ms Ngoye as the Chairperson indicated you have been here before. Is that correct?

MS NGOYE: It is correct Chair.

ADV VAS SONI SC: And you've given evidence here
20 before?

MS NGOYE: Yes I have Chair.

ADV VAS SONI SC: Now I just want to place on record, because you have asked me to do this that you on the previous occasions you came, you dealt in general with matters relating to corruption at PRASA, the manner in

which the former CEO Mr Montana ran PRASA.

But in particular you dealt with the problems that were found with the appointment or the award of a, several contracts to Siyangena with about 2,8 billion rand, is that correct?

MS NGOYE: That is correct Chair.

ADV VAS SONI SC: And of course there were other matters like the Siyaya matters and so on. But well let's leave that out for the time being. Today you are being
10 called on to deal with an entirely different matter and that is the appointment of Werksmans to conduct the investigation. But before you, before I go on, I understand you want to address the Chair on something.

MS NGOYE: Chair if I may please, may I be given an opportunity to address you?

CHAIRPERSON: Yes.

MS NGOYE: And in fact I have put my thoughts in writing Chair so that I am not all over the show. If you will also allow me, because it is quite emotive for me ...

20 **CHAIRPERSON:** Okay.

MS NGOYE: To go through this.

CHAIRPERSON: Yes, okay.

MS NGOYE: This is about you know the mixed emotions Chair that I had coming back to the Commission this time. In light of what has transpired. And you will note in my

affidavit I do state that I am no longer employed at PRASA.

And I just penned some notes down Chair so that you, I think it is important for us as whistleblowers to express this frustration that we have had to deal with. And, and with your permission Chair if may please ...

CHAIRPERSON: No, that is fine.

MS NGOYE: Read what I have written.

CHAIRPERSON: Ja.

MS NGOYE: You know I start off by saying from the
10 inception of the Commission, Chair you made an impatient call to people who are aware of instances of State Capture to come to the Commission, to share the information with the Commission.

The people who will have direct evidence of State Capture, are people that witnessed it closely. These people fall in a number of categories, and I list those categories. These are the proponents of State Capture who directly benefitted from the Capture, I say these are the main actors.

20 I talk to person who assisted the actors, knowingly and benefitted indirectly by being appointed to positions that they did not deserve. Earning salaries that they did not deserve. Or being afforded privileges that they did not deserve. Like coal and overseas trips, local and overseas trips and the purporting act.

I talked to persons who watched the State Capture unfold before their eyes and did nothing about it. Or looked the other way and also, also persons who steps to fight the State Capture.

And I call those the villains to the Capture. And I do regard myself as one of those. Now the only people in my view that has come and can come to the Commission are those that are regarded as villains.

Right, by the main actors and the supporting acts,
10 the overwhelming majority of these people are people who were pushed out of their jobs and have been rendered lepers by the stance that they took against Capture.

Because Capture is collusion between the public sector and the private sector, both sectors regard these people as dangerous and refuse to touch them. It is a reality Chair. It's been there, we know, we know about it.

So when I first came to the Commission, I was regarded as a villain. I was still employed at PRASA so I came into the Commission being an employee of an
20 organisation I was giving evidence about.

At the time, after a number of attempts to push me out of PRASA for spurious reasons Chair, they failed, obviously. I still was employed at PRASA and protecting the interests of PRASA, from enemies of PRASA, both inside and outside.

Now what happened to me Chair is that on the 29th of January, this year, the board of PRASA and I must state the current board is only three, three, four months at PRASA. And the Acting Group CEO of PRASA file another spurious and unlawful reason to push me out of PRASA.

The approach that they took was simply to write a dismissal letter on the 21st of – the 29th of January this year, so that I then can be forced to use my resources, which they have blocked anyway you know to fight against
10 this injustice.

Whilst ...[indistinct] the State resources you know are to maintain their unlawful act. And I say this is, this is very critical for me Chair, it goes really to the heart of, of what one is experiencing right now.

I say further, nothing prevented the board from affording me a hearing before taking this drastic decision. However, affording me a hearing had an inherent risk in placing a spotlight on the unlawfulness of their action.

They could not afford that. So the easy way was to
20 conduct a review of my contract of employment themselves, and find a clause and a policy that is nowhere in my contract and of a policy that does not exist in PRASA to dismiss me with immediate effect, on the basis that my contract had expired.

In fact what they said is that it expired in 2019.

The day after my unlawful dismissal, what they did Chair is that they reduced PRASA to an organisation which in my view suffered from an inexplicable bout of bitterness against me. They launched a smear campaign against me.

They issued media release that said, that my contract had lapsed a few years ago, I was aware of this and I did not advise PRASA accordingly. Chair, I mean I am a legal person you know, you know. I do not have to say much on that.

10 In my position I was expected that in my position as the Head of Legal, I was to tell the organisation that my contract had expired. And I had not done so. Therefore you know there were issues of distrust.

Then they go further Chair and they accuse me of having unlawfully approved a transaction of an amount, a payment in fact they say of 58 million rand to a company called SA Fence and Gate.

Mr Montana talks to this thing in his affidavit. I have dealt with it, unfortunately we have not had an
20 opportunity to deal with that. And also what they say, is that my suspension by Mr Montana was lawful.

Now you will recall Chair I dealt with this. You know and I am not going to go through it. And I say to you Chair, that the above are all not true.

CHAIRPERSON: Sorry, did you say, the current board.

MS NGOYE: The current board Chair.

CHAIRPERSON: Which you say is, has been at PRASA four months?

MS NGOYE: It's about – ja it's four months.

CHAIRPERSON: You are saying your suspension by Mr Montana was ...

MS NGOYE: Was lawful.

CHAIRPERSON: A number of years ago.

MS NGOYE: Was lawful.

10 **CHAIRPERSON:** Was lawful.

MS NGOYE: Yes.

CHAIRPERSON: Why did they have to go, go to that, go back that issue of you ...

MS NGOYE: Well Chair ...

CHAIRPERSON: Understand or do you not understand.

MS NGOYE: Ja, I don't know. And this is why I am saying you know the bitterness invoked this thing, they couldn't hide within them and therefore they felt that they even needed to go back to you know all those issues.

20 **CHAIRPERSON:** And they were not there at the time?

MS NGOYE: And they were not there at the time. They were not there.

CHAIRPERSON: They don't know the facts.

MS NGOYE: Ja, they don't know the facts. They have never asked me, they have never engaged me. My view

Chair and it's a strong view that I have and I believe that I have, is that they have been engaging with Mr Montana.

Because all these issues are issues that are arising out of the affidavit of Mr Montana, to which I have responded. You know. And they have never bothered to ask me or communicate with me in any respect. But they went to the public and my view is that the issues that they were raising in any event at the time were not in the public interest.

10 They terminate my contract you know and they say, I have overstayed my welcome at PRASA. As I am not sure why that is, is of public interest. Because what then happened is that the first opportunity that the media had, as a breaking story, this was reported to say the Head of Legal, PRASA, you know and all this things.

 It's out there in the media. And they defamed my character when they did that. Now the reality Chair is that you know when an, when an organisation like PRASA sends a statement like this to the media, they will latch onto it
20 you know.

 And this is exactly what happened. So it was breaking news on the Saturday of, of the 29th, 30th of January. Now I do say at the time they released this thing, the board had been there for three months. Right. They had interacted with me.

See, I was a member of some of the subcommittees of the Chair. There – also of the board. They also invited me in my capacity as the Group Executive of Legal Risk and Compliance into the board meetings. So I sat there.

And what I also did is that as part of the reporting to the board, I, I would report on litigation matters which I dealt with. Fence and Gate was one of them. The one that they are accusing me of, of having paid or advanced payment for.

10 So for me that media statement clearly reflected that they hadn't even bothered to read the reports that I had sent to them. But be that as it may Chair ...

CHAIRPERSON: Okay, just one second. Mr Soni, we have got to see how this should be handled. Because I think, while it is quite fine that Ms Ngoye can talk to the Commission about the challenges, that whistleblower space, because ...

MS NGOYE: Ja.

CHAIRPERSON: That is a very important ...

20 **ADV VAS SONI SC:** Letter.

CHAIRPERSON: Part. But to the extent that ...

ADV VAS SONI SC: Sorry Chairperson can I, I have been asked ...

CHAIRPERSON: Can't hear me?

ADV VAS SONI SC: Yes.

CHAIRPERSON: Okay. To the extent or maybe let me start so that they can hear. I was saying we need to look at how to handle this, because while it is important that the Commission gets to know whatever challenges whistleblowers you know face, because maybe some of the things that the Commission is looking into might not have happened if there was a proper environment for whistleblowers ...

MS NGOYE: Ja.

10 **CHAIRPERSON:** And proper protection. And it may be that the Commission will need to make recommendations with regard to the protection of whistleblowers, to the extent that her statement might be making certain accusations against certain people. The question would be whether we have notified them.

ADV VAS SONI SC: Yes.

CHAIRPERSON: You see so ...

ADV VAS SONI SC: Yes.

20 **CHAIRPERSON:** It may be that it is something that we should hear, but after, after that be notified that she would be, she will be here on a certain date and she will talk about the challenges.

ADV VAS SONI SC: Yes.

CHAIRPERSON: That whistleblowers face and in the course of addressing that issue, she will implicate them in

certain things.

MS NGOYE: Sure.

CHAIRPERSON: Yes, so, so maybe we should ...

MS NGOYE: Wrap it up.

CHAIRPERSON: To put it that way, so you, you ought to get another opportunity. But after this due process. What do you think Mr Soni?

ADV VAS SONI SC: Yes Chairperson, I would with respect we had not thought about it. I didn't understand that ...

10 **CHAIRPERSON**: Yes.

ADV VAS SONI SC: Persons would be implicated. I thought it was going to be a general statement.

CHAIRPERSON: Ja.

ADV VAS SONI SC: Hadn't seen the statement.

CHAIRPERSON: Yes.

ADV VAS SONI SC: But, but with respect Chairperson you are absolutely correct.

CHAIRPERSON: Yes.

ADV VAS SONI SC: We don't want to be accused ...

20 **CHAIRPERSON**: Ja.

ADV VAS SONI SC: Of the same thing that they have been accused of.

CHAIRPERSON: Ja.

ADV VAS SONI SC: It is being unprocedural – being procedurally unfair to them.

CHAIRPERSON: Ja. Ja, so, so basically we are interested in hearing those challenges Ms Ngoye, but just to do the due process ...

MS NGOYE: Okay.

CHAIRPERSON: And so arrangements will be made for you to, to add this properly.

MS NGOYE: I understand Chair.

CHAIRPERSON: Okay, alright.

MS NGOYE: And thanks for the opportunity. I think it is
10 important because ...

CHAIRPERSON: Yes. No, no.

MS NGOYE: It is what it is.

CHAIRPERSON: You are directly involved.

MS NGOYE: Ja.

CHAIRPERSON: So sometimes it's when you are directly involved it is not the same as when you are a distance away from ...

MS NGOYE: Sure, ja.

CHAIRPERSON: From the situation.

20 **MS NGOYE:** Ja.

CHAIRPERSON: Okay, alright.

MS NGOYE: Thank you Chair.

ADV VAS SONI SC: Chairperson then the process as far as this issue goes will be, we will get a copy of Ms Ngoye's statement and serve it in terms of Rule 33 ...

CHAIRPERSON: Yes.

ADV VAS SONI SC: On the different implicated persons.

CHAIRPERSON: Yes, yes, no that is fine.

MS NGOYE: Thank you Chair.

ADV VAS SONI SC: Ms Ngoye, may I just to finish that though, your matter came up before the Labour Court as an urgent application, is that correct?

MS NGOYE: That's correct Chair, this is unlawful dismissal. We brought an urgent application, yes.

10 **ADV VAS SONI SC:** And you haven't, all that's happening, all that's awaited now is the judgment of ...[indistinct].

MS NGOYE: That's correct Chair.

ADV VAS SONI SC: Alright Ms Ngoye then, then in regard and let me apologise that these matters are, these things are happening to you, it won't be fair for me to say that they are attributed to your being here, because I would be prejudging your situation. But I, I just express a concern that it is happening to somebody like you.

MS NGOYE: Thank you.

20 **ADV VAS SONI SC:** Can I ask you then ...

CHAIRPERSON: Do remember to speak up a bit.

ADV VAS SONI SC: Oh sorry, sorry. Sorry sir.

CHAIRPERSON: Ja, I couldn't hear some of the words.

ADV VAS SONI SC: Oh.

CHAIRPERSON: Ja.

ADV VAS SONI SC: I just, I was person to person I was saying to Ms Ngoye that I was sorry that somebody like her is facing this with, without saying that there is a link between, the fact that she gave evidence and what is happening because that still is a matter that would need to be heard.

CHAIRPERSON: Okay.

ADV VAS SONI SC: Now Ms Ngoye in regard to the matter you are going to testify today, you have made an affidavit
10 and that appears at Bundle E2, starting at page 656 and ending at page 657. Is that correct?

MS NGOYE: That's correct Chair.

ADV VAS SONI SC: And that affidavit has an annexure which is a memorandum which contains the much of the contents of the evidence you are about to give today.

MS NGOYE: That's correct Chair.

ADV VAS SONI SC: Oh, now in regard to the affidavit, do you confirm that what is contained in the affidavit is true and correct?

20 **MS NGOYE:** I do Chair.

ADV VAS SONI SC: And in regard to the memorandum itself, do you confirm that what's contained in there is true and correct?

MS NGOYE: I do Chair.

ADV VAS SONI SC: Then may I ask, ask leave for Ms

Ngoye's affidavit to be admitted as SES7 and it will be placed in Bundle E2.

CHAIRPERSON: The, the affidavit of Ms Onica Martha Ngoye, starting at page 656, red numbers, as admitted together with its annexures as EXHIBIT SS7.

ADV VAS SONI SC: As, as you please Chairperson.

CHAIRPERSON: Yes. Okay, thank you.

ADV VAS SONI SC: Now Ms Ngoye can I just ask, can I just ask that, so that it is properly identified you've made
10 four other affidavits before the Commission, am I right?

MS NGOYE: That's correct Chair.

ADV VAS SONI SC: Chairperson, just to distinguish it, instead of simply saying it is SS7, we call it SS7E, because there are the previous ones. I am told now that those ...

CHAIRPERSON: Are they SS7A, B, C, D?

ADV VAS SONI SC: In terms of the new index we have been given, that's how it is. And I think that index is in your bundle as well Chairperson.

20 **CHAIRPERSON:** Yes, but were they admitted and given that label?

ADV VAS SONI SC: No. That's why I didn't want to, to introduce something that was not there.

CHAIRPERSON: Yes, because it could cause confusion.

ADV VAS SONI SC: Absolutely Chairperson.

CHAIRPERSON: Well, do you know whether there is SS7.1? Because if there isn't maybe we can make this SS7.1.

ADV VAS SONI SC: There isn't an SS7.1 Chair.

CHAIRPERSON: Okay, shouldn't we do that?

ADV VAS SONI SC: Yes. That, that would be pref ...

CHAIRPERSON: Then, then we will refer to SS7.1.

ADV VAS SONI SC: Yes.

CHAIRPERSON: So the affidavit of Ms Onica Martha
10 Ngoye, which starts at page 656 of PRASA bundle.

ADV VAS SONI SC: Yes. E2.

CHAIRPERSON: E2. Is admitted as EXHIBIT SS7.1. I am correcting the previous exhibit number. I said earlier it would be EXHIBIT SS7, but I am now amending that it will be EXHIBIT SS7.1.

ADV VAS SONI SC: As you please Chair.

CHAIRPERSON: Okay.

ADV VAS SONI SC: Now Ms Ngoye can I just ask, as you regard the memorandum which is Annexure 1 to your
20 affidavit, can you briefly tell the Chairperson how it came about that that memorandum was compiled?

MS NGOYE: Chair, one of the issues that the board, the current board as I indicate it's a new board at PRASA, wanted to understand and get clarity on, was the appointment of Werksmans.

In fact who had appointed Werksmans, what processes were followed when Werksmans was appointed and what the involvement of the legal department were or was in the, in the appointment of Werksmans.

The understanding that was, that is I got from the questions that were raised by the board, was that perhaps also the legal department had played a role in the appointment of Werksmans.

And we sought to clarify that. And, and indicate our
10 involvement as the legal department, you know, in the investigations and how it came about that we as the legal department of PRASA became involved in the, in the investigations themselves.

In fact Chair if I may say, we've done this report for all the other previous boards in fact, that is one of the first things a lot of the boards have come in and have said, we want to know, give us the Werksmans report and their appointment thereof.

So this is the basis of, of this report where the
20 board said put it down in writing and tell us what has transpired.

ADV VAS SONI SC: Now in, in the memorandum and the memorandum is dated the 21st of December 2020, is that correct?

MS NGOYE: That's correct Chair.

ADV VAS SONI SC: Who compiled the memorandum?

MS NGOYE: Chair I compiled this memorandum together with Mr Fani Dingiswayo who was the General Manager of Legal at the time. He has since left the organisation.

So because we have been dealing with this matter, the both of us throughout, so we compiled it together and sent it to the board.

ADV VAS SONI SC: Now Mr Dingiswayo has given evidence before this Commission as well.

10 **MS NGOYE:** Yes Chair he has.

ADV VAS SONI SC: Is he still employed at PRASA?

MS NGOYE: No Chair, in fact he left on the 29th of – the end of, at the end of January.

ADV VAS SONI SC: Alright. Now in paragraph 2 of the memorandum, you point out that as regards the appointment of Werksmans, there were two – sorry.

CHAIRPERSON: Mr Soni, we just have to be consistent whether we call it a report or we call it a memorandum.

ADV VAS SONI SC: Yes.

20 **CHAIRPERSON:** Otherwise whoever reads ...

ADV VAS SONI SC: Of course.

CHAIRPERSON: Of things you are referring to, some ...

ADV VAS SONI SC: Yes.

CHAIRPERSON: And other documents.

ADV VAS SONI SC: No, sure.

CHAIRPERSON: Ja.

ADV VAS SONI SC: It is headed memorandum, so perhaps we should stick to that Chairperson. So in this memorandum in paragraph 2, you refer to two other investigations regarding the appointment of Werksmans.

As you would have heard the Chairperson say, the facts are not in dispute. We needn't go into details. But were those two appointments, those two investigations?

MS NGOYE: Chair the first investigation was done by the
10 Auditor General. There would be an audit and the second investigation in fact was commissioned. It is not so long ago. It was done by the SIU where I think it was part of the proclamation that was issued by the President to have Werksmans appointment also investigated in there.

ADV VAS SONI SC: Now in paragraph 2.2 you say that the AG had found that the – Auditor General had found that the appointment contravened Section 214 ... (indistinct) the Constitution.

MS NGOYE: That is correct. That was the finding that
20 was made by the Auditor General.

ADV VAS SONI SC: Now I am just placing on record that in his affidavit Mr Hotz disputes that. That is of course a legal ... (indistinct), I am just placing it on record because he may not get a chance to come before the commission or he may chose not to come.

MS NGOYE: I read Mr Hotz affidavit, yes I am aware of it.

ADV VAS SONI SC: Okay and do you know what has happened to the SIU investigation?

MS NGOYE: I do not Chair in fact. I mean we were also investigated by the SIU. You know in terms of our involvement and so we gave our evidence to the SIU and we have not heard since as to you know where the matter is. So I am not sure if it has been completed or not.

CHAIRPERSON: When did the SIU start its investigation
10 or when did they interview PRASA ... (indistinct).

MS NGOYE: Ja it started in 2020 Chair. This was when the administrator was at PRASA and the momentum I suppose of the particular investigations took place and that is when they started interviewing us.

CHAIRPERSON: Okay.

ADV VAS SONI SC: Now you then set out in paragraph 3.1 how it came about that Werksmans had been appointed.

MS NGOYE: Yes.

20 **ADV VAS SONI SC:** That is the history.

MS NGOYE: Yes.

ADV VAS SONI SC: Now just again in terms of context. At the time Werksmans were appointed must I understand that you and Mr Dingiswayo were on suspension?

MS NGOYE: That is correct Chair.

ADV VAS SONI SC: So that information that you are giving, you set out at paragraph 3.1 and 3.2, is based on what you have been told by a different persons?

MS NGOYE: Well some of it is Chair and some of it is what I know because we came back from suspension. I think I came back on the 27th July and Werksmans letter of engagement was signed on the 6th August. So I am aware of you know that process. But in terms of what had transpired before I had been told to say this is what the board had decided and this is what happened.

CHAIRPERSON: Did they start their investigation before the letter of engagement or ... (intervenes).

MS NGOYE: No, no, no ... (indistinct).

CHAIRPERSON: ... they only started after.

MS NGOYE: They started after Chair.

CHAIRPERSON: Okay.

ADV VAS SONI SC: We in Annexure BBH9 – perhaps I should just place this on record. Mr Hotz has filed an affidavit which is with the commission or it is one of the documents before the commission that has not been admitted yet. It is Exhibit SS25 and it appears in bundle M.

Now Mr Hotz in paragraph or sorry in Annexure BBH19 through his affidavit sets out how that came about. How the appointment came about. If I could just briefly tell

you what I understand the version to be. That in fact it is correct that Ngubane was earmarked first to do the investigation. But certain developments took place which resulted in the fact that Werksmans were appoint.

Now I am just asking you in terms of your – you have looked at that. Does that fit in with what you understand the facts to be?

MS NGOYE: Yes Chair.

ADV VAS SONI SC: So you accept the correctness of
10 what is contained in BBH19?

MS NGOYE: Yes I do Chair. Insofar obviously as it relates to the timeframe you know that I was involved. I do accept that.

ADV VAS SONI SC: You see there is one important issue and I do not – I just say it is important as Mr Hotz wants to stress that there was never such a thing as the Ngubane consortium. He is saying that their appointment effectively replaced the appointment of Ngubae in the circumstances described in his affidavit.

20 **MS NGOYE:** Yes Chair that is what he says.

CHAIRPERSON: Well I do not want to be unfair to anybody. But when I read Mr Hotz affidavit – I do not know whether somebody else's affidavit. It kind of gave the impression that Ngubane and then they have been aimed to be appointed for the project but Werksmans came into the

picture and kind of pushed them aside. And then they were appointed. It might be unfair.

I am just saying when I was reading it looked like this whole idea of attorney client privilege may have been used ... (intervenes).

MS NGOYE: Ja Chair I ... (intervenes).

CHAIRPERSON: I may be unfair to them.

MS NGOYE: So my understanding and I gave – counsel was asking about the Ngubane consortium. I think we had
10 referred to their being an Ngubane consortium – I think in our speak. Because we have understood that the entire team initially started as part of the Ngubane consortium because the initial letter that was signed for this particular investigation was with Ngubane.

And what we understood was Ngubane would then bring in other sub-contractors and Werksmans would be one of them. But obviously we were then told, no that was not the case. In fact Ngubane was appointed first. I think
20 round about the 24th of July in 2015. And then you know with further discussions that happened Werksmans was introduced into the team.

And because of that – the legal privilege as you say – attorney and client privilege the – they were not necessarily kicked out. They remained as part of the team. But the lead was then taken by Werksmans.

CHAIRPERSON: Now they became a sub-contractor.

MS NGOYE: That is right.

CHAIRPERSON: Ja it is – it certainly came across to me when I was reading as if the attorney client privilege may have been used to make sure that Werksmans became the leader. But as I say I may be unfair to them.

MS NGOYE: Ja ... (intervenens).

CHAIRPERSON: Right or wrong that is the impression that I got and it may well be that there is a lot of work that
10 should be attached to attorney and client privilege in these investigations. But I am not sure. But it is – I was just saying that is the impression I got. It may be a wrong impression.

But it just came across as there is an accounting firm or a firm that was going to be given the work and to lead and then there was this big white law firm that came in. Initially maybe it was not going – it was going to be sub-contractor. And then the issue of attorney client privilege came in. Became prominent and they ended up
20 being the leader.

MS NGOYE: Ja Chair let me explain perhaps just to give a bit of context as well. When – or at least what we were told is that Regulation 16A of the treasury regulations was used to appoint Ngubane by the board. But just through speaking to the company secretary as he was giving us

feedback on what had transpired. So we then indicated that Regulation 16A does not apply to PRASA.

You know and the process that the board would have followed in appointing Ngubane would not have been correct. And then – I think at the time that we got it we – Werksmans and the other sub-contractors were already you know part of the discussions. And the question and I do allude to this in the report.

To say the questions that then came back to us from
10 the board was whether Werksmans was on the panel of PRASA's legal attorneys. And we confirmed it because Werksmans had been doing work with PRASA at the time. So that is how effectively – I think perhaps maybe. I do not know I am just also you know saying this is how I understand it happening.

CHAIRPERSON: Okay Mr Soni.

ADV VAS SONI SC: As you please. Certainly from the letter Mr Hotz wrote and that letter which is BBH19 is addressed to the SIU following the meeting between
20 Werksmans and the SIU relating to this very issue.

MS NGOYE: That is correct Chair.

ADV VAS SONI SC: And he makes the point you made, namely that 16A did not apply – regulation – treasury regulation 16A did not apply and therefore the appointment of Ngubane would have been invalid. But I am just saying

that it is also contained in this letter.

MS NGOYE: That is correct Chair, that is what the letter is saying.

ADV VAS SONI SC: Alright so that the appointment ... (intervenes).

CHAIRPERSON: I am sorry. I am just going to go back to this – the issue of attorney client. We do not need to spend too much time on it. And I know that you will – well you are testifying as somebody who was head of legal.

10 And I guess that you would have experience of other investigations being conducted at PRASA by other entities at some stage or another.

MS NGOYE: No this is the first one Chair.

CHAIRPERSON: Oh was it the first one?

MS NGOYE: Ja this was the first investigation that I had to be involved or that I experienced with PRASA. The other ones I was not ... (intervenes).

CHAIRPERSON: Well I am just wondering at what stage the issue of – I mean now you investigate matters of
20 corruption. If you find that there is *prima face* evidence of certain people having been involved ... (indistinct) that is going to be handed over to the law enforcement – police – law enforcement agency. So why is attorney client privilege important?

MS NGOYE: What I guess you know from – the

understanding that I have Chair is that obviously when you deal with – and I understand what you saying in relation to law enforcement agencies. That would have been ... (indistinct) anyway in terms of the law. To say if you find anything unlawful you have to report it.

But in relation to other matters perhaps that were confidential and that the board might not necessarily have wanted to be communicated or expressed out in the public before finalisation. And I am assuming Chair this is the
10 scenario. That the attorney client privilege you know would work and I think you know a client finds comfort ... (intervenes).

CHAIRPERSON: Work against whom?

MS NGOYE: Sorry Chair?

CHAIRPERSON: I know I am not cross-examining you ... (indistinct). I am just trying to understand because if you are asked to investigate allegations of corruption you are going to interview with ... (indistinct). You are going to interview implicated persons and you will prepare a report
20 on the basis of that.

MS NGOYE: Yes.

CHAIRPERSON: And the idea is that if there are – and this is a public entity. It is not a private company.

MS NGOYE: Yes Chair.

CHAIRPERSON: It is a public entity. If there is money

that has been ... (indistinct) taxpayers' money.

MS NGOYE: That is right.

CHAIRPERSON: So you are going to take your report, give it to the board but as far as you are concerned, whatever is in your report about acts of corruption should go to the law enforcement agencies. So who is going to invoke attorney client privilege? Or whose benefit is attorney and client privilege in that case?

10 Because the board should be wanting that your report should be handed over to law enforcement agencies and the statements or affidavits that you got – you collected from people and exhibits and so on.

MS NGOYE: Yes. Chair the way I understood, I mean as part of it and also from a client perspective you know clients, I guess they do find comfort with the fact that they do have that protection from attorneys. But also the investigation involved obviously employees being investigated. The names of people in the reports and so on.

20 And what I had understood is that at some point you know some of those employees were not necessarily advised for instance – let's say of their names going to be communicated elsewhere. And for that protection as well – in terms of that information until all the i's were dotted and the t's were crossed in relation to the investigation.

Now this happened because there was a time when the board I think had to present to Parliament and the names of the people that were in the reports could not be released because you know the investigations had not been completed. And the board did advise that you know, they were not able to do so.

You know the attorneys obviously advised accordingly as well until the rights of everybody was protected.

10 **CHAIRPERSON:** Ja. Alright maybe at some stage you know one will have proper – one would have clarification. But it is fine let's proceed.

ADV VAS SONI SC: As it pleases. Then in paragraph 4 of your report you deal with the involvement of the legal department or that is the limited involvement of the legal department. Will you briefly summarise what your involve – the legal department's involvement was.

MS NGOYE: Yes Chair. When we got back from suspension as I indicated, you know the ... (indistinct) in
20 relation to the decision to conduct a forensic investigation by the board. So effectively what we were asked was to look at the terms of engagement of the respective parties who were going to be part of the relationship.

And that is where we came in as the legal department. In fact I think at one point we had met with

Ngubane to try and see if we can assist finalising, not aware that there was already a letter of engagement that was signed. But when we came in we were – you know told that Ngubane is going to obviously be the lead and there was going to be a letter of engagement with Ngubane.

So we – you know we were coming in and we still trying to find ourselves as to what was happening. But it so turned out that no, a letter had already been signed. You know by the CEO at the time. And we then were now,
10 you know engaging with – we were then instructed in fact by the board to say this particular transaction is going to happen and we have letter of engagement that needs to be finalised with Werksmans taking the lead and we need you guys to review as the legal department that letter.

And that was basically you know, was our involvement in looking at the terms of that letter of engagement and trying to negotiate you know the terms. Because what we understood as the legal department is that if you have a project as big as the one that was
20 basically going to be given by Werksmans you approach it differently in terms of you know the fee structure and so on.

Because it is not just a simple transaction where you give one instruction to an attorney and you know they charge you accordingly. So that was the mind frame that

we had. To say we will look at this letter of engagement, go in on that basis and that is effectively what we did.

ADV VAS SONI SC: Ms Ngoye at paragraph 4.2 and I just ask this for clarification sake so that when Ms Manase gives evidence we know that we readily are talking about the same occasion. At 4.2 you say a subsequent meeting was arranged with Ngubane and that meeting included the different people.

Now in her affidavit at paragraph 9 Ms Manase says
10 – ... (indistinct). Ms Manase says there was a meeting on the 27th July, is that the meeting you are talking about at paragraph 4.2?

MS NGOYE: Yes it could be the meeting, yes.

ADV VAS SONI SC: Well I would like you to check so that when Ms Manase – you see she is ... (intervenes).

MS NGOYE: Okay Chair can I asked to be taken to exactly what Ms Manase is saying so that I know ... (intervenes).

ADV VAS SONI SC: Says:

20 “On the 27th July the chairman of the board and myself met with the forensic team led by Ngubane. The purpose of the meeting was to discuss the scope of the investigation and so on and then he says in this meeting one of the forensic team members introduced us to

Werksmans. I attach a document, Annexure 2, which is a letter from Werksmans to Mike Kikuya of the SIU.”

And that is the letter I just read to you.

MS NGOYE: It was at the same meeting Chair. So when we had the meeting with Ngubane the chairperson of the board as well as Ms Manase – I do not recall them having been part of the meeting. So that would be a separate meeting that we had. Because the 27th July, the day that
10 we came back and – back to the office and so we were not involved in any meeting.

ADV VAS SONI SC: So you were not present?

MS NGOYE: No.

ADV VAS SONI SC: Because that is her point.

MS NGOYE: Yes.

ADV VAS SONI SC: So that is a separate meeting.

MS NGOYE: It is a separate meeting Chair.

ADV VAS SONI SC: Alright sorry then what was the outcome of the involved or how did the legal department at
20 PRASA become involved?

MS NGOYE: Well as I indicated Chair, you know we were meeting this team for the first time, trying to make sense of who is who and what is happening in terms of this particular transaction. Because also the basis of our involvement was really around, you know being able to

settle the engagement letter because we understood at that time in any event that there was an identified person within PRASA who would be working on the investigations.

And it was not necessarily the legal department. So our role effectively was just to try and understand the terms of this particular team. Who was who in the team and you know how everybody – what role each party would play.

ADV VAS SONI SC: Then at paragraph 4.5 you say that in
10 regard to the amount we charged for fees, Ms Manase said that if you want quality work you do not negotiate fees.

MS NGOYE: Yes Chair she said that to us.

ADV VAS SONI SC: Sorry come again?

MS NGOYE: No she did say that to us. In fact we had started the negotiations at the time with Werksmans. And I guess as part of the report back to her we then said look, one of the things that we negotiating with Werksmans is the fees. And she turned around and she said no, you guys cannot negotiate the fee.

20 And the amount – you cannot expect to receive quality advise if you are not going to pay, you know what the fees are supposed to be. So you know we kind of like thought okay, suppose it is what it is.

ADV VAS SONI SC: Can I ask you this. Well let me put her version and I am summarising. She says when the

question of fees came up she said to you that she is aware of fees that accountants found and you as a lawyer would be familiar with the fees this lawyer's charged. And you – it is for you to determine whether those fees were ... (indistinct). But she just ... (indistinct).

MS NGOYE: No I do not agree with her Chair. I am very clear and I do remember and we repeated this point every so often to say no, that is not what you said to us. You know yes you did speak about the fees relating to the
10 auditors because it is for regulated amounts. But when it came to us saying this is what we going to – we are doing as well as part of the negotiations. You know she basically told us not to deal with the fee element.

ADV VAS SONI SC: Can I ask you though, you were asked not to deal with the fee element?

MS NGOYE: That is correct Chair that is what she had said to us.

ADV VAS SONI SC: Now but you were aware of what fees had been agreed. Those fees you say were between Ms
20 Manase and Mr Molefe and Werksmans.

MS NGOYE: Well effectively Chair in terms of the engagement letter we got to see the fees. And I do not think you know there was a change because one of the things that we had identified – we looked obviously at the categories and what each partner for instance would

charge and so on.

And there was a point where I think Werksmans had minuted their directorship to 10 years experience. And I think they had a further amount – a number of years. So we requested them to actually you know combine those number of years to charge – even if it is a 15 year director, to charge the same fees. You know and not necessarily increase their fees because of the number of years.

So that discussion had happened you know at the
10 time that we had spoken to Director Manase. So I guess in engagement letter it remained as such and you know we just continued.

CHAIRPERSON: So are you saying that discussion had happened in a different context ... (intervenes).

MS NGOYE: In a different ja.

CHAIRPERSON: With Werksmans?

MS NGOYE: Yes. So, so, so ... (intervenes).

CHAIRPERSON: But you say that whatever they had agreed with you on that occasion, you do not think it had
20 changed when this happened.

MS NGOYE: Yes.

CHAIRPERSON: And you were comfortable with the earlier arranged rates?

MS NGOYE: What we had agreed with them yes.

CHAIRPERSON: Yes.

MS NGOYE: Yes.

CHAIRPERSON: And you say ultimately when you saw the letter of engagement with regard to this investigation ... (intervenes).

MS NGOYE: Had not changed.

CHAIRPERSON: ... appear to be the same.

MS NGOYE: It had not changed.

CHAIRPERSON: It had not changed.

MS NGOYE: Well it had taken our comment ...
10 (intervenes).

CHAIRPERSON: Ja into account.

MS NGOYE: That is correct Chair.

CHAIRPERSON: Okay so that although Ms Manase might have made ... (intervenes).

MS NGOYE: That comment.

CHAIRPERSON: In the end you did not have a problem with ... (intervenes).

MS NGOYE: No we did not.

CHAIRPERSON: ... the rates.

20 **MS NGOYE:** No we did not.

CHAIRPERSON: Okay alright, okay.

ADV VAS SONI SC: And in addition to not having a problem with the rates was it your view that the rates were reasonable or would you if you had negotiated, negotiated differently?

MS NGOYE: Well Chair in light of you know what – as I indicated before our approach and this is what we discussed with Werksmans. Our approach was you know when you work with attorneys in transactions of huge nature and we took it that this is one of them.

You would negotiate reduced fees. You know to say look guys, you getting a lot of work and really you cannot expect us to be paying the same fees that you would normally charge a client. And I stand to be corrected. I
10 think that some of the rates were changed but I cannot remember which ones. But the Werksmans team took that into account because we pushed very hard on that.

You know and they took it into account in relation to you know charging us also for some of the things that were there. So what we then ultimately received for us was a better rate that it was before – you know the letter was finalised.

ADV VAS SONI SC: And it is a rate you were comfortable with.

20 **MS NGOYE:** That is correct Chair.

ADV VAS SONI SC: Alright so you – it is the legal ... (intervenes).

MS NGOYE: It is the legal department that is right Chair.

ADV VAS SONI SC: Now in regard to the reporting from Werksmans, how did that work? Because you address that

in paragraphs 4.7 ... (intervenes).

CHAIRPERSON: I am sorry Mr Soni, we are at 13:02.

ADV VAS SONI SC: Yes I am sorry Chair.

CHAIRPERSON: So let's take the lunch break and then we will resume at 2 o'clock.

ADV VAS SONI SC: As it pleases.

CHAIRPERSON: We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

10 **ADV VAS SONI SC:** As you please Chairperson. Ms Ngoye, you were saying to the Chairperson that the legal team at PRASA, the legal department at PRASA, had limited engagement in regard to these investigations.

MS NGOYE: That is correct Chair.

ADV VAS SONI SC: And that changed after some time. Can you tell the Chairperson how that happened?

MS NGOYE: Chair, I think from our perspective as the legal team of PRASA, we felt that we were not utilised properly you know, in the investigations as well as having
20 an appreciation that it is a law firm you know that is conducting the investigations and we would be better placed as lawyers to understand how other lawyers function. So we engaged with the Chair, Dr Bopo Molefe and said to him you know, I think the organisation must decide whether they want us to really be involved or not,

because what we were basically doing at the time was just getting information. You know, we said to the Chair we cannot just be golfers, you know. We have got skills. Utilise the skills. Even though we appreciate the confidentiality of the matters perhaps that would have been dealt with, but we are not utilised properly you know in relation to the investigations and he listened to us you know, conceded but obviously even then we were given you know, limited access to the actual details of what is in the
10 investigations because it was confined to the Board.

ADV VAS SONI SC: And to the extent that Werksmans produced reports, how were they ... to what extent were they made available to the legal team, now forgetting the Board?

MS NGOYE: The arrangement that was then made Chair, where we were concerned as the legal department, this is after we spoke to the Chairperson. He then suggested that we can only have access to the reports at Werksmans offices and read them there obviously and not take them
20 out, and that is basically how we could see obviously what was in the investigation reports.

CHAIRPERSON: Mr Soni?

ADV VAS SONI SC: Yes.

CHAIRPERSON: I am wondering how much do I need to hear about Werksmans and their investigation in

circumstances where the only issue really was whether their appointment was legal.

ADV VAS SONI SC: Yes, yes.

CHAIRPERSON: You know, I am not sure.

ADV VAS SONI SC: Absolutely.

CHAIRPERSON: Ja, ja because it seems to me that really the important thing is just to confirm the facts that seem to be uncontroversial.

ADV VAS SONI SC: Yes.

10 **CHAIRPERSON:** And well, Ms Ngoye being head of legal, I guess she can express her view on whether it was legal or not.

ADV VAS SONI SC: Yes.

CHAIRPERSON: Whether the appointment was legal or not.

ADV VAS SONI SC: Yes.

CHAIRPERSON: It may be that she may, I am not sure.

ADV VAS SONI SC: Yes.

20 **CHAIRPERSON:** But she probably should express her view.

ADV VAS SONI SC: Yes.

CHAIRPERSON: Because her job involves advising ...[intervenes]

ADV VAS SONI SC: Yes.

CHAIRPERSON: What is legal and what is not legal for

PRASA to do.

ADV VAS SONI SC: Yes.

CHAIRPERSON: She might not have been there when the whole discussion started about Werksmans, but she came at a certain stage and she may have taken a certain view and she may be having a certain view.

ADV VAS SONI SC: Yes.

CHAIRPERSON: And I know that Werksmans express in one of their affidavits a certain view. I think that is the
10 part that really ...[intervenes]

ADV VAS SONI SC: Yes, as you please Chairperson. Ms Ngoye, can I just ask and just to finalise this, in your memorandum you attach a number of documents in which you set out what the outcomes and so on were. You confirm the correctness of what is set out in each of those annexures?

MS NGOYE: Yes, I do Chair.

ADV VAS SONI SC: Now the nub of the issue before the Commission is the reference I take it, perhaps even the
20 propriety of the appointment of Werksmans. Now is that a matter that you, well you must have a view on it, and would you take this opportunity expressing to the Chairperson what your view is?

MS NGOYE: Ja. Chair, we as the legal function in fact considered, the question has come up if I may say, I mean

we have had these discussions also with the AG in terms of their audit investigations and so on and even amongst ourselves, when you know this particular issue around Werksmans became a hot potato so to speak, but at the time as I indicated Chair, we were asked whether Werksmans was on the panel of the legal function and we said yes, and they were on the panel because they had been doing work for PRASA for a while, and when we looked at it you know, we thought that there was nothing
10 untoward with the appointment, because how we understood the panel to be utilised, there would be instances where we approach instructions on the basis of horses for courses. So if a particular law firm has got better skills than the other, we would then suggest that that particular law firm be used. So in this particular regard, we you know we accepted the fact that it would be one of those where the Board had decided that this is what they wanted to do and this is the skill set that sits within Werksmans. So we accepted it on that basis that that is
20 the case, and that is what we communicated also to the AG in trying to explain why we did not believe that there ought to have been a separate tender process for the appointment of Werksmans. Now we also explained that the way the panel work, is allocated for instance we did not in all respects go out to tender or go out and asked for

quotes in relation to matters that we asked lawyers to do, to conduct for us, because we had a panel that had already gone through the process and was appointed you know, based on their strengths. We then, if we had a particular instruction with them instruct the law firm concerned and we would continue, and one of the examples that we would make, we made with the AG for instance was we said we find it difficult to have this understanding, because when you get an urgent instruction it is not going to be possible
10 to actually go out and get quotes and in certain instances you will also not be able to specify the amount of money that would be required to be spent you know on a particular transaction and we debated that, to say how would we then have to deal with instances where the fees perhaps that they would have quoted for were above, because the matter is not finalised and those were the discussions that we had and as the legal function we understood that you know, on the basis on horses for courses and the fact that there had been, for them to have
20 been on the panel of PRASA, they would have gone through a tender process and they would have been selected accordingly. So we looked at it from that perspective and we did not see anything untoward, and that is what we had said, but also I must say Chair, one of the things that we then said to the AG at the time when this

issue was raised, we said to the AG we want to do this right. You know, tell us because we are not just defending this thing but it has got to make sense and we asked the AG then to also establish from other parastatal how they do it. I was at Transnet and I could speak to how Transnet did it, and I did not understand to be a situation where you go out every time and ask for an RFQ. So that was the understanding that we had, but also one other thing that we said Chair, to the AG, was look if we are going to find

10 that this appointment is irregular, let us look at the entire panel of PRASA's legal firms. It had been in existence for a long time. That we conceded Chair, and it needed to have been changed, but it had not been changed and we then explained as well that from a legal perspective, our side 2014 in fact when Dingiswayo came in to, he started the process of wanting to put a new panel in place, but the procurement process was not finalised properly so we were not able to do so. So we then said to the AG look at the entire panel of PRASA because if you then say the

20 appointment of Werksmans is illegal, what about all the others because they too are in the same panel that Werksmans was in. So if we do this, we need to do it properly. So we had quite extensive engagements Chair, with the AG around this and obviously from a Board perspective you know, we believe that if the Board had

also you know, taken that particular decision, they were within their rights because this was a forensic investigation and we understood also at the time that Mr Montana for instance, as this Group CEO had the authority I think in terms of the delegations to appoint forensic investigators. So you know, and understanding obviously how from a legal succession act as to who has got the powers and the Board obviously delegates the powers to everybody else, but the ultimate powers basically sit with the Board and

10 that is how we explained it to the AG and we said look, we do not find anything untoward, but you know obviously the AG had then come back and said they do not agree with us and found it to be irregular, but what we also found interesting Chair, is that when the AC makes the finding they do not come back to the legal department for comment. They went to the Company Secretariat for comment and he conceded that yes, it was irregular and therefore a different process you know would have been, should have been adopted. So there was that conflict

20 really in terms of what we said as the legal department in engaging with them, trying to understand exactly what we are dealing with and ultimately what the Company Secretary responded to the query that was raised by the AG.

ADV VAS SONI SC: Let me ask you, there are two issues

that we have. One is whether the appointment of Werksmans was in terms of PRASA's SCM policy. Now Mr Kgotse says it was quoting what you have said, but this is the proposition and sorry, before I go into the issues that arise from what we have seen, what was the AG's stance on having paying for legal advice?

MS NGOYE: The AG's stance Chair, was that every time there is an instruction we should go out on an RFQ and that is where we really differed with the AG and we said it is not possible and that is why we made the example of
10 urgency to say what do we then do. You know, these legal matters prolong and once there is an amount obviously you are regulated as well. Treasury tells you that if the amount you are going to spend is more than 15% or 10%, then it you cannot just do a variation. You know, you have got to get the necessary approvals. So we then said our understanding was that once a panel has been selected, this is how it works but they believed that for every instruction we needed to go out and we did not agree with
20 it.

CHAIRPERSON: Well, if one is talking about normal matters, legal matters it might ... there might be some challenges, but I do not know whether there are challenges when you talk about the big investigation that needs to be done. otherwise, if you are talking about matters where, I

do not know how often, maybe every month you have two weekly decisions to make about which law firm to use and so on and so on, but maybe when one is talking about a big investigation that is going to take place sometime, maybe one sense is that maybe there should be a normal process of procurement, you know. Tender. But when one talks about normal legal matters, it may well be that strictly speaking the law still requires the same thing you know, but it might be difficult to do and a tender for normal
10 matters but of course even with tenders as I understand it there is always the idea that if it is below a certain amount, you just need quotations.

MS NGOYE: Yes, Chair.

CHAIRPERSON: And I guess if certain quotations are made and unforeseen circumstances occur which push the amount later to more, they must be aware of handling that but if at the beginning it was not contemplated that the cost could go beyond the threshold and you had to get quotations I guess it is just a question of getting those
20 quotations, but the difficult thing about you know quotations and legal matters, I guess is that very often it is not just a question of fees, but it is also the question of the identity of the person of the lawyers you, that can handle the matter. If you, they have a certain reputation or if you have used them before that is that. I do not know to what

extent that would apply to other jobs. I guess if you wanted to go to a doctor for medical attention, also you might in regard to certain matters want to go to somebody you have used before. Maybe there might be cases where you do not mind that somebody you do not know, as long as the information you have got about them suggest that they are credible and reasonable. So but I am just saying that maybe when it comes to a big investigation, maybe the case for going out on tender is more understandable than
10 when you talk about just daily legal matters. What do you say?

MS NGOYE: Well, as far as that is concerned Chair, I still have a bit of a challenge and my challenge once again would be around you know, when you go out you set out the scope. You say, you know in fact you budget. A budget was obviously one of the issues that was at play here, and because you have to have those. Price becomes important as part of the procurement process, and you know in a case like this where you would not actually also
20 know what it is that you are dealing with, you might be found wanting as far as that is concerned, when the matters prolong and you exceed the price that you would have quoted at the end. So the challenge is still there Chair, and that is why I guess the approach of looking at horses for courses who can do what better in relation to

whatever it is that we want to do, was the approach that we had adopted because we thought we would run into these difficulties, but also from a confidentiality perspective, we thought about it. I mean at the time although you know, now we got to know what the scope was, we did not know what the Board was would have looked at when they took this decision, and perhaps from that perspective as well, they might have thought look, we do not want this thing to go out into the open, we want to deal with it confinely you know, in terms of the process and I think the SCM policy provided for a confinement process, where you could just confine a particular matter to you know, a particular supplier depending obviously on the circumstances. So you know, and those were the issues that we had debated at the time and I guess even now Chair, I cannot say I have got an answer that says yes, it must go out. if it is like forensic, one would expect that there would be you know, quite a lot of confidentiality that is involved and do you want it out in the public, do you want to know people to know exactly what you are doing when you are trying to deal with I guess the ill that you are trying to deal with that. So ...[intervenes]

CHAIRPERSON: Well, in terms of legal cases, you can never be definite about what it will cost.

MS NGOYE: Cost, ja.

CHAIRPERSON: That, you can never be definite, but you can in most cases you would be able to have an estimate that it will not be less than a certain amount and not above a certain amount. I think for most cases you might be able to do that and of course, also when you make an assessment that whether it will reach a certain amount, you might have to have in mind questions such as will I be using experts in this branch of the law. Will I be using senior counsel or will I be using attorneys and I guess it
10 might depend also where about in the country, even in Joburg it cannot be the same as if you are in some outlying area, small town in terms of this. So I guess, I guess that from your point of view as the entity that needs an investigation to be done, I would imagine that you ought to put aside a certain amount to say this investigation we do not want to go beyond a certain amount and maybe that is what should guide you.

MS NGOYE: Ja, but this was not done in this particular instance Chair. You know.

20 **CHAIRPERSON:** Yes.

MS NGOYE: If you recall from the evidence, I do not know if it has been given already to say that there was not a budget that was even allocated for the investigations. So and I hear what you are saying Chair ...[intervenes]

CHAIRPERSON: Yes.

MS NGOYE: In relation to when you have planned that this is what you want to do ...[intervenes]

CHAIRPERSON: Yes.

MS NGOYE: You would naturally say this is what we would like to spend in relation to this particular project.

CHAIRPERSON: Ja, and I ... it seems to me you could have a situation where even though you do not know how far the investigation will end up going, you do not have unlimited resources. Therefore you have got to put some
10 curb. So you say well, we are putting aside an amount of so much for this investigation. Therefore, because this is the amount that we think should be enough for this investigation, we work on the basis of that amount. It may be that already at that time you have taken the view that we will not allocate more. If the investigation is not done within this budget, then hard luck will just have to do deal with whatever report we will get. Then there could be situations where you leave room for allowing the investigation to go further and allocating more money for it
20 and then maybe those are things that could be taken into account, and it may well be that the prescripts would allow you after you have given the job to a particular firm to do within what you regard as your budget or the investigation, but if what they earn persuades you that you must let, there must be more investigation, it may well be that the

regulations would either allow you to extend their mandate or to go out to tender, but they would come with the advantage that they have done the first part.

MS NGOYE: Yes, Chair.

CHAIRPERSON: But you will still be able to let others compete.

MS NGOYE: Ja.

CHAIRPERSON: So when they were appointed, it was lawful because the investigation was not going to exceed a
10 certain amount, so it was lawful but once you see that now it is going to go beyond, you allow others to compete, but they do come with the advantage of having the uncertain part.

MS NGOYE: Ja.

CHAIRPERSON: Or it might be a disadvantage if they have not done a good job. So, but you have that but you might end up being able to comply both in regard to the initial, the first stage and the second stage.

MS NGOYE: Ja.

20 **CHAIRPERSON:** I am just thinking aloud.

MS NGOYE: Yes Chair, and I understand what you are saying, and I guess we need to take obviously the lessons that we have learnt in relation to this particular approach that was taken. Also Chair, if you recall that the initial instruction for Werksmans was to do I think 33 matters

arising from the AG's report and following derailed, it move to 141 matters that they had to deal with.

CHAIRPERSON: Yes.

MS NGOYE: So naturally it had increased the scope.

CHAIRPERSON: Yes.

MS NGOYE: So all those variations I guess going forward, I mean this is a lesson that we cannot say we just need to put by the way side, but we need to take those factors into consideration I guess going forward.

10 **CHAIRPERSON:** Ja, ja.

MS NGOYE: And deal with things properly.

CHAIRPERSON: Ja, okay. Mr Soni?

ADV VAS SONI SC: Chairperson, I am going to raise the matters, because I have given some anxious consideration to this issue having been asked to deal with this part of the investigation.

CHAIRPERSON: Ja.

ADV VAS SONI SC: I am going to put some questions to Ms Ngoye. If Chairperson you think they are not helpful, I
20 am more than happy to stop.

CHAIRPERSON: Yes.

ADV VAS SONI SC: But I just want to vote on some of the matters you have raised.

CHAIRPERSON: Yes, okay. Okay.

ADV VAS SONI SC: You will see Ms Ngoye, you have read

Mr Hotz's affidavit?

MS NGOYE: Yes, I have Chair.

ADV VAS SONI SC: Now he correctly says that in terms of the SCM policy, this appeared to be permissible and in paragraph 22 Chairperson, that is if you want to have a look at it, Bundle M page ... sorry. SS25, page 8.

CHAIRPERSON: M for Mary or N for Nelly?

ADV VAS SONI SC: M, yes.

CHAIRPERSON: Bundle M for Mary?

10 **ADV VAS SONI SC**: Yes.

CHAIRPERSON: Okay, on what page?

ADV VAS SONI SC: It is page 8, sorry page 157.

CHAIRPERSON: Okay.

ADV VAS SONI SC: So this is what she says and I am not in principle disagreeing with her, but if these are the nuances that may assist the Chairperson when he draws up his report regarding the appropriateness of certain mechanisms to secure services, that would be helpful. Now Mr Hotz says that the PRASA's SCM policy, as at
20 paragraph 22, is single source / confinement. This occurs when the need for needs of the business preclude the use of the competitive bidding process, and for practical reasons only one bidder is approached to quote for goods and services. Then it says:

“This method can only be used for:

- A. The appointment of professional services such as legal, financial, technical contracts and security where unique expertise and or security are required and
- B. If it is an emergency as defined in Clause 11.3.6. The decision to use a single source shall be motivated for approval and ratification by the CEO.”

Now is there not a difference, because the point
10 you made is correct. That we are faced with an urgent
application to interdict something that PRASA is doing,
when you do not have time to do that or you are faced with
a particulars of claim to which you have to respond quite
quickly. Now that is what the panel is intended for. That is
the normal legal services and that is the point you were
making Chairperson, that one would understand that that is
why you have a panel. You do not run around, you also
know as you call them horses for courses, who would fit
this bill. But there is another principle in regard to
20 procurement and that is with the organ of state to identify
the services that are required and identify the services not
meaning that forensic services are required, but forensic
services to investigate matter A or B or C or D or matters
A, B, C and D. Would you accept that?

MS NGOYE: I agree, yes Chair.

ADV VAS SONI SC: Now is the problem with the way this was handled, not and whoever it is that is responsible irrelevant, that instead of saying we have a problem because the attorney, the Auditor General has identified, lists the matter and say how do we comply with Section 217 but also comply with the instructions of the Auditor General. That would say that we may require five service providers or ten service providers, but you did not need one single service provider, but I am just trying to say
10 because there is, the Auditor General is quite correct. Section 217 when applied generally with the identification of services as I have indicated, would be applied properly, would avoid the criticisms that has been labelled.

MS NGOYE: Ja.

ADV VAS SONI SC: Would you agree with me?

MS NGOYE: I cannot say I disagree fully, but I guess Chair the circumstances of each case needs to be looked at and as we say you know, as lawyers we like saying that and you know, one does not know obviously the
20 deliberations that happened at the Board for this particular decision to have been taken, as I indicated one was not there, but yes one understands that when you leave aside the normal legal instructions, because there I think you know, we have expressed the view that it would be difficult to go out every time, but in relation to you know other

matters, we know nothing trumps you know the provisions of Section 217 in relation to you know, tendering and having to do processes properly, especially where state organs are concerned. So and again it is a difficult question here counsel, because the reality is you are dealing with as I say the forensic investigation. I do not know what the concerns were, so it becomes difficult for me to have an appreciation in relation to this specific one and maybe that is why you know, there is this concern to

10 say that there were a whole lot of matters that were given to Werksmans. Could you not have split it up to various other organs of state for them to conduct the investigations and the rational for effectively going there was solely based on the issue of the panel. Maybe Chair, one other thing I need to perhaps highlight, was when the initial concern was raised for instance by the AG, it moved from the fact that there was not a panel, because we could not produce the document.

ADV VAS SONI SC: The attorney, the Auditor General has

20 identified and lists the matters and say how do we comply with Section 217 but also comply with the instructions of the Auditor General. That we say that we may require five service providers, ten service providers but you did not need one single service provider and I am just trying to say because the Auditor General is quite correct. Section 217

when applied generally with the identification of services as I have indicated, applied properly would avoid the criticisms that have been labelled.

MS NGOYE: Ja.

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MS NGOYE: I cannot say I disagree fully, but I guess Chair the circumstances of each case needs to be looked at, and as we say you know, as lawyers we like saying that, and you know, one does not know obviously the
10 deliberations that happened at the Board for this particular decision to be taken. As I indicated one was not there, but yes one understands that when you leave aside the normal legal instructions, because there I think you know we have expressed the view that it would be difficult to bar it every time, but in relation to you know other matters, we know nothing trumps you know the provisions of Section 217 in relation to you know, tendering and having to do processes properly, especially where state organs are concerned, and again it is a difficult question here counsel, because the
20 reality is you are dealing with, as I said the forensic investigation I do not know what the concerns were, so it becomes difficult for me to have an appreciation in relation to this specific one, and maybe that is why you know, there is this concern to say there were a whole lot of matters that were given to Werksmans, could you not have split it

up to various other organs of state for them to conduct the investigations, and the rationale for effectively going there, was solely based on the issue of the panel. Maybe Chair, one other thing I need to perhaps highlight was when the initial concern was raised for instance by the AG, it moved from the fact that there was not a panel, because we could not produce the documentation that showed that this panel was properly constituted. You know, so the question of 217 came in at a particular time to say look, you guys
10 cannot even give us documentation to show that yes, indeed Werksmans was part of the panel. So you know, it moved from that into then specifics as we were debating the issues you know with the AG around the appointment of Werksmans. We could not produce those documents and I guess it moved then to that, and that is why one was saying with the discussions that we had, what we then asked the AG to say is you know, tell us how we should do it, because we want to get it right and not necessarily just argue for the sake of arguing, but on this case we thought
20 Werksmans is on the panel and there is a specific expertise that is required here, forensic expertise. They had it and therefore being on the panel we can proceed with them, and that was the basis of you know, with this thing. But I hear what counsel is saying in relation to I guess other matters that are different and maybe a

forensic, I am not a specialist in forensic investigation and there were a lot of nitty gritty and other subcontractors that were there, that required to be part of this team, because Werksmans would not have been able to do other things. They tried to get some subcontractors. So it is just one of those things where you have to look at it holistically and say what is it that you are looking at. I cannot disagree with counsel altogether and say no, you know you have to do it this particular way and I will stress
10 the point that that is why at the time we thought this is the approach, because 217 was already done. But we could not produce evidence on the 217.

ADV VAS SONI SC: Ms Ngoye, let me tell you what I think is the fundamental flaw in the approach you suggest. Any time an organ of state is required to make a decision, this decision to appoint a service provider as administrator, it must act reasonably and it must act procedurally fair. So the first question that that organ of state must ask itself, is how do you we appoint somebody procedurally fairly and
20 Section 217(1) of the Constitution provides the answer. It says you must have the following criteria. There must be a fair procedure. It must be transparent, it must be open, cost effective. All of those criteria set out in Section 217, it is not helpful to say we do not know what the Board will get. What the Board must do, is the Board must say we

considered our obligations in terms of Section 217 and this is the procedure we adopted and unless that is shown, that procedure is fatally flawed.

MS NGOYE: Well Chair, I go back to the panel itself and I say in relation to the panel, my understanding is that 217 was followed. Right at the onset. In relation to putting these law firms in place. So from that perspective, that is how I see it. to say you put a legal panel in place, you must follow the procedure as stipulated in terms of Section 10 217 of the Constitution and when the list was then ultimately decided, then it means that you know, the organisation was comfortable with what the law firms would charge, what you know services they would be getting from the law firms and I guess it makes it something that and I must say Chair, I do not know what discussions happened at the Board. I really do not and I cannot surmise in relation to that, whether they have thought that was the case. The question that only came to us was is Werksmans on the panel and we said yes. as to what other 20 issues were considered, I do not know but one would then say you know, it is not like you dealt with an environment where 217 was never followed at all. The criticism are there Chair. They have always been there to say why have you know Werksmans been appointed alone, in light of the fees that they have been paid and you know, everybody

being concerned about the amount of money that PRASA was paying and also the fact that it was not budgeted for at the time. You know, those were the concerns that were raised. I cannot say that 217 was never followed altogether. I concede that at the time that the AG had asked for proof, we did not have it, because from SACRCC times to PRASA quite a lot of movements happened within the organisation and one was not there to also vouch that yes, this is what had happened.

10 **ADV VAS SONI SC:** I have told you what my view is ...[intervenes]

MS NGOYE: Okay.

ADV VAS SONI SC: Ms Ngoye, and I have got to say to you it is insufficient for in justification for what happened, to say I do not know what happened.

MS NGOYE: Well Chair, the reality is I do not know what happened. I was not there, you know and I unfortunately I am not going to take the responsibility of the Board when I was not part of it. They must come and then say exactly
20 how it is that they came to that specific decision.

ADV VAS SONI SC: I just want to make this point that one should not use this as a basis to say every Board can make its own decisions, otherwise Section 217 will never be objectively determined. In other words, there must be a mechanism like one has in terms of the SCM provision that

Mr Hotz ...[intervenes]

MS NGOYE: I agree.

ADV VAS SONI SC: And the question is whether that procedure should be applied to this and those are the nuances that need to be taken into account when determining whether Section 217 has been complied with. May I make this point? As far as the interchanges are, it is quite clear half set out what view is of the Commission's legal team. I understand what Ms Ngoye says, and I have
10 indicated that objectively speaking I do not believe Section 217 was complied with and not because there was ...[intervenes]

CHAIRPERSON: One second Mr Soni. Can somebody lower down the air con please? I think somebody must fasten your, the level at which they put it where I do not complain. They can always, so that I do not have to ask every day that it should be lowered. Yes, okay.

ADV VAS SONI SC: I just make the point again Chairperson. One looks at everything and says it did not
20 seem to be an intent to favour, it did not seem anything untoward if I can put it. That is a different question from objectively asking as a prescript that the writers of the constitution put into the constitution has it been complied and that is the question that would be among the recommendations.

CHAIRPERSON: Ja, no it appears that nobody is a, to the extent that there was non-compliance. It was deliberate because there was some agenda to favour anybody. The question was simply whether the legal prospects were complied with. Ja.

ADV VAS SONI SC: Chairperson, may I make one other point? One of the reasons that 217 is such a valuable tool in the allocation of government work in South Africa, that any person agreeing by a decision or a decision that was
10 taken or to be taken, and approach the Courts and say that process is unfair because it obviously is state resources being allocated and I am not saying it in a nasty way but allocated to certain service providers, and there must be a fair process. Now what we have got to do Chairperson, is to look at if another law firm had after Werksmans had been appointed, in these particular circumstances, do that scope of work. If they had approached a court to say no, that cannot be wrong, what would the Court have said, because otherwise 217(1) becomes a really [indistinct
20 00:12:51].

CHAIRPERSON: Yes, and of course if ultimately the position is that Werksmans appointment was not lawful, that might not detract from the work that they did. They seem to have done quite a good job in terms of investigations, such as those relating to Siyangene and

Ivambo, and ...[intervenes]

ADV VAS SONI SC: And the legal proceedings they brought ...[intervenes]

CHAIRPERSON: Yes, and a lot of tax payers money may have been saved because of the work they did.

ADV VAS SONI SC: Yes.

CHAIRPERSON: So it is important to separate the two, to say there is the question whether their appointment was legal or not legal, and then there is the question whether
10 PRASA and the public benefitted from the investigation they did. Those were maybe two separate issues, and I think you made the point Ms Ngoye that to the extent that it might be said that their appointment might not have been lawful, that might not be the case with them only. That might be the case with any other law firm that you might have appointed, for one thing or another because there was no understanding that there was something wrong with how it was done at the time.

MS NGOYE: Ja, maybe perhaps Chair if I can say, this
20 issue did come up. You know, I do recall when the whole you know, it was news that Werksmans appointment was on, that perhaps the Board needs to then request a deviation to be approved by national treasury. A condonation rather than a deviation to the process so that you know, you regularise ...[intervenes]

CHAIRPERSON: Regularise.

MS NGOYE: Then even after the fact, because obviously you would then have to show in terms of the condonation process, that the PRASA did not lose any monies, there was no fraud and there was benefit to the organisation in relation to what was done. Perhaps if that was done by the Board ...[intervenes]

CHAIRPERSON: Ja.

MS NGOYE: You know, we would have closed that loop.

10 **CHAIRPERSON:** Ja.

MS NGOYE: But unfortunately it never got there.

CHAIRPERSON: Yes.

MS NGOYE: And this is something that we take as well we should take. The organisation should take, I am not there anymore. The organisation should take going forward ...[intervenes]

CHAIRPERSON: Ja.

20 **MS NGOYE:** Going forward in relation to matters of this nature, because it is very clear that there was not any fraud that was perpetuated. There was not, you know those requirements that are stipulated for condonation to be successful, I think this would meet those requirements and it would have been condoned properly by national treasury.

CHAIRPERSON: Okay, yes.

ADV VAS SONI SC: Those are the submissions.

CHAIRPERSON: Yes.

ADV VAS SONI SC: My submissions and questioning
...[intervenes]

CHAIRPERSON: Yes.

ADV VAS SONI SC: In regard to the lawfulness.

CHAIRPERSON: No, thank you Ms Ngoye.

MS NGOYE: Thank you, Chair.

CHAIRPERSON: Thank you very much for availing
10 yourself again. I have a suspicion that we might see you
again.

MS NGOYE: Okay.

CHAIRPERSON: Based on our earlier discussion.

MS NGOYE: Yes, Chair. Certainly.

CHAIRPERSON: Okay, no thank you very much for
availing yourself. Mr Soni, are you ready to call your next
witness?

ADV VAS SONI SC: Can we just have five minutes
Chairperson. I think Mr Molefe may be ...[intervenes]

20 **CHAIRPERSON:** Ja. Okay. We will adjourn.

ADV VAS SONI SC: As it pleases.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Good afternoon Mr Molefe.

DR MOLEFE: Good afternoon Chairperson.

CHAIRPERSON: Welcome back.

DR MOLEFE: Thank you. I think I should submit an invoice at the end of the session.

CHAIRPERSON: [laughs]

DR MOLEFE: I have been here just too many times.

CHAIRPERSON: Because we have called you back too many times. [laughs]

DR MOLEFE: Ja. I might still be asked to come again.

CHAIRPERSON: Ja. [laughs] No but thank you for
10 availing yourself once again. Please administer the oath
or affirmation.

REGISTRAR: Please state your full names for the record.

WITNESS: My name is Popo Simon Molefe.

REGISTRAR: Do you have any objection in taking the prescribed oath?

WITNESS: No.

REGISTRAR: Do you consider the oath binding on your conscience?

WITNESS: Yes.

20 **REGISTRAR:** Do you solemnly swear that the evidence you will give, will be the truth, the whole truth and nothing but the truth? If so, please raise up your right hand and say, so help me God.

WITNESS: So help me God.

POPO SIMON MOLEFE: (d.s.s.)

CHAIRPERSON: Thank you. You may be seated.

ADV VAS SONI SC: Chairperson, the ostensible reason that we called Mr Molefe and I say ostensible because to a large extent any of the issues as a progress had been confined to the legal issue concerning of the appointment of Werksmans to do the investigations.

Now Mr Molefe was originally called for that but we thought we would use his presence today to clear up some matters that arose when Ms Dipuo Peters gave
10 evidence over the last two days.

CHAIRPERSON: Ja, okay.

ADV VAS SONI SC: Now can I just say Chairperson and I must apologise for this. Mr Molefe had prepared a wider affidavit during the other matters as well but in three pages of this affidavit it deals with the question of the appointment of Werksmans. I am just going to ask him to confirm that what he had said is correct.

CHAIRPERSON: Yes.

ADV VAS SONI SC: Can I hand this to you without an
20 exhibit number for the time being?

CHAIRPERSON: H'm.

ADV VAS SONI SC: Because we may just want to separate the affidavit relating to his evidence.

CHAIRPERSON: Okay, okay. Is this is affidavit plus annexures or is just the affidavit?

ADV VAS SONI SC: Yes. No, his affidavit plus annexures
Chairperson.

CHAIRPERSON: Yes.

ADV VAS SONI SC: It is, as you will see, it deals with
more issues that are before us today.

CHAIRPERSON: Oh, okay, okay.

ADV VAS SONI SC: But at page 8 of this affidavit,
starting at paragraph 5, he deals with ...[intervenes]

CHAIRPERSON: I am sorry. I am just thinking if we are
10 not admitting it as yet, how we will refer to it.

ADV VAS SONI SC: Yes.

CHAIRPERSON: And for purposes of the transcript.

ADV VAS SONI SC: For the record, yes.

CHAIRPERSON: Or for the record.

ADV VAS SONI SC: Yes.

CHAIRPERSON: Well, at this stage you have not
identified from what page to what page the matters are that
are not necessary for our purposes.

ADV VAS SONI SC: Unfortunately, for our purposes it is
20 only three pages in between Chairperson.

CHAIRPERSON: That we need?

ADV VAS SONI SC: Yes.

CHAIRPERSON: Oh, in the affidavit?

ADV VAS SONI SC: In the affidavit.

CHAIRPERSON: And we do not need any annexures?

ADV VAS SONI SC: No, no.

CHAIRPERSON: Oh. Well, in that event... Well, if that is what we need... Why do we not... And the other matters that we do not need, are really not for us?

ADV VAS SONI SC: No. Ja.

CHAIRPERSON: Ja. It would work if we effectively took out the three pages from the affidavit.

ADV VAS SONI SC: Yes.

CHAIRPERSON: And it will be recorded that they are part
10 of an affidavit dated whatever, whatever.

ADV VAS SONI SC: Yes.

CHAIRPERSON: But we do not need the other pages.

ADV VAS SONI SC: Yes.

CHAIRPERSON: I think it would work like that.

ADV VAS SONI SC: Yes.

CHAIRPERSON: And those pages get submitted as exhibits.

ADV VAS SONI SC: Yes.

CHAIRPERSON: As the exhibit.

20 **ADV VAS SONI SC:** As you please Chairperson.

CHAIRPERSON: Yes, yes.

ADV VAS SONI SC: So ...[intervenes]

CHAIRPERSON: Okay so ...[intervenes]

ADV VAS SONI SC: Maybe ...[intervenes]

CHAIRPERSON: So we could basically use those and

only. So later on you take them out.

ADV VAS SONI SC: Yes.

CHAIRPERSON: And they would be put into the bundle as exhibit whatever.

ADV VAS SONI SC: Yes.

CHAIRPERSON: Okay alright.

ADV VAS SONI SC: It will then be Exhibit SS-6.1
Chairperson.

CHAIRPERSON: Double S, six, one?

10 **ADV VAS SONI SC:** Yes. And it will be in Bundle D.

CHAIRPERSON: Okay what page numbers are the ones that we need in the affidavit?

ADV VAS SONI SC: It will then be from page 359
Chairperson.

CHAIRPERSON: 59?

ADV VAS SONI SC: Three, five, nine. Yes.

CHAIRPERSON: 359. No, no. I am sorry. I mean from the affidavit.

ADV VAS SONI SC: Oh, okay.

20 **CHAIRPERSON:** Which three pages do we use?

ADV VAS SONI SC: Yes.

CHAIRPERSON: You are going to need?

ADV VAS SONI SC: Well, 8, 9 and... Sorry, 8, 9, 10 and 11. It is four pages.

CHAIRPERSON: 8, 9, 10 and 11. Okay. Well, I think

what you would then do is that Mr Molefe to confirm that these pages 8, 9, 10 and 11 are from his affidavit that he deposed to on whatever date and whatever the place was.

ADV VAS SONI SC: Yes.

CHAIRPERSON: And once he confirms them then we can – I can admit them.

ADV VAS SONI SC: As you please.

CHAIRPERSON: Ja, okay.

ADV VAS SONI SC: Yes.

10 **CHAIRPERSON:** And later on, you or your team will put them in the right place in the bundles.

ADV VAS SONI SC: Yes.

CHAIRPERSON: I will just mark them here and they can be taken out. Okay alright.

ADV VAS SONI SC: Mr Molefe, you have the document in front of you. It is an affidavit by yourself. Is that correct?

DR MOLEFE: That is correct. Yes, Chairperson.

ADV VAS SONI SC: And it has been done just for formality sake Mr Molefe. The affidavit that is in front of
20 us at the moment is an affidavit you made on the 22nd of February 2021. That is yesterday. Is that correct?

DR MOLEFE: That is correct Chair.

ADV VAS SONI SC: Now that affidavit deals with other matters than the Werksmans issue.

DR MOLEFE: It is so Chairperson.

ADV VAS SONI SC: And... Sorry, and including the Werksmans issue.

DR MOLEFE: It is so Chairperson.

ADV VAS SONI SC: Now if you look at page 8. Is that where you start off this affidavit? Is that where you deal with the Werksmans issue?

DR MOLEFE: That is correct Chair.

ADV VAS SONI SC: And it continues until the end of page 11, the Werksmans issue.

10 **DR MOLEFE:** That is correct Chair.

ADV VAS SONI SC: Alright. Now can I ask you. Well, I would imagine that what is contained in the whole affidavit and for present purposes is what is contained on page 8 to 11 inclusive true and correct?

DR MOLEFE: That is so Chairperson.

ADV VAS SONI SC: And it is part of the affidavit you made on the 22nd of December.

DR MOLEFE: That is correct Chair.

20 **ADV VAS SONI SC:** Chairperson, I then ask that to be admitted as Exhibit SS-6.1.

CHAIRPERSON: I note that when I page through after page 11, I see it deals with matters that seem to me to relate to matters that we are looking at. So I am wondering why you were saying those other pages do not concern us.

ADV VAS SONI SC: Yes, Chair.

CHAIRPERSON: I see at page 12, it is the relationship with Minister Dipuo Peters. And I think there is a property report. Now I do remember that in his evidence when he came to give evidence for the first time there was reference to a property report. And I see there is reference to Montana and R 30 million elsewhere. I may be wrong.

ADV VAS SONI SC: Yes.

10 **CHAIRPERSON:** But some of the matters sound familiar to me.

ADV VAS SONI SC: Yes. They arise from Mr Montana's affidavit.

CHAIRPERSON: Yes.

ADV VAS SONI SC: So you will remember that in Mr Montana's affidavit.

CHAIRPERSON: Yes, yes. Oh, is that where they...

ADV VAS SONI SC: Yes.

20 **CHAIRPERSON:** Oh, okay. Because there is uncertainty about the status of that affidavit.

ADV VAS SONI SC: Yes.

CHAIRPERSON: Why you were saying... Okay alright.

ADV VAS SONI SC: Indeed Chair.

CHAIRPERSON: No, no. That is fine then. So we said 8, 9, 10 and 11?

ADV VAS SONI SC: Yes, that is...

CHAIRPERSON: Ja. What could be done is that when the four pages get put into the bundle, maybe there could be a cover page that explains that these come from such and such an affidavit.

ADV VAS SONI SC: Yes.

CHAIRPERSON: Ja, ja. So that is – and you said it should be Exhibit S6...

ADV VAS SONI SC: Six point one Chair.

10 **CHAIRPERSON:** Six point one. Pages 8, 9, 10 and 11 of the affidavit deposed to by Mr Molefe on the 22nd of February 2021 will be admitted here then as Exhibit SS-6.1.

THE AFFIDAVIT BY DR POPO SIMON MOLEFE IS ADMITTED AND MARKED AS EXHIBIT SS-6.1

ADV VAS SONI SC: As you please Chair.

CHAIRPERSON: Ja, okay.

ADV VAS SONI SC: Sorry Mr Molefe. I understand that you wanted to say something before I start by leading you.

20 **DR MOLEFE:** No, it is okay counsel. Chairperson, the matter was corrected by counsel.

CHAIRPERSON: Oh, okay.

DR MOLEFE: I wanted to talk about four pages instead of three.

CHAIRPERSON: Oh, okay alright. Okay.

ADV VAS SONI SC: Mr Molefe, you were asked at the time you deposed to this affidavit or before you or before you deposed to it. You deal with the appointment of Werksmans.

Now I do not know if you heard the evidence on that matter. I am just going to try and confine your evidence to the matters that are still live before the Commission... There are matters that have been... relating to...

10 The first question I want to ask you is. Is it correct that it was the board that made the appointment?

DR MOLEFE: It is correct.

ADV VAS SONI SC: Yes.

DR MOLEFE: No, no. Not appointment. It is the board that took the decision that there was a need for the investigation. The actual appointment was made by the acting Group Chief Executive Officer.

ADV VAS SONI SC: So in other words, he signed the contract?

20 **DR MOLEFE:** Ja, ja. He signed the scope of work and the ...[intervenes]

ADV VAS SONI SC: But the choice of Werksmans as the service provider was from the board.

DR MOLEFE: I do think so. Yes, it was from the board.

ADV VAS SONI SC: Yes. And to a large extent,

Ms Ngoye gave this evidence, you and Ms Manase who was the chairperson of the Audit and Risk Committee of the board, were overseeing the process.

DR MOLEFE: That is correct Chair.

ADV VAS SONI SC: And on account of confidentiality you confined the reporting process to yourself, Ms Manase and a little later on the head of legal at PRASA. Is that correct?

DR MOLEFE: That is correct. That would also include the
10 acting Group CEO.

ADV VAS SONI SC: No, of course. Of course.

DR MOLEFE: Ja.

ADV VAS SONI SC: Yes. And payments were then approved by Ms Manase.

DR MOLEFE: No, no. Payments were not approved by Ms Manase. Payments were being approved by management because as it were, we never discussed the rates that Werksmans were going to charge but is a matter that was discussed with the acting Group CEO and of
20 course later our legal department.

CHAIRPERSON: Let me just make sure I understood. I am not sure I understood your answer to an earlier question. You said the board made a decision that there was a need for an investigation.

DR MOLEFE: That is correct.

CHAIRPERSON: That is one point. But in terms of which service provider will conduct the investigation, the board was or was not involved in that decision?

DR MOLEFE: Well, ultimately the board approved that decision.

CHAIRPERSON: Ultimately they ...[intervenes]

DR MOLEFE: I may have to talk ...[intervenes]

CHAIRPERSON: No, no. That is fine because we – you sometimes answering yes or no.

10 **DR MOLEFE:** Yes.

CHAIRPERSON: Ja. So feel free because the ...[intervenes]

DR MOLEFE: No, in the end the board approved the specific service provider, Werksmans.

CHAIRPERSON: Approved. Yes, yes. Would it have approved it on the basis that there was a recommendation or somebody had made a decision but for whatever reason the board felt it needed to approve or is that something you cannot ...[intervenes]

20 **DR MOLEFE:** There was a recommendation arising from the work by the Audit and Risk Committee had done and also informed by the Legal Advisory Board on whether Regulation 16(a)(6)(6) was applicable.

CHAIRPERSON: H'm, h'm.

DR MOLEFE: Because at that time already the acting

Group CEO already had appointed Ngubane.

CHAIRPERSON: H'm, h'm.

DR MOLEFE: The situation changed only when we were advised that Regulation 16(a)(6)(6) would not be applicable to Schedule 3(b) entities.

CHAIRPERSON: Okay alright. Mr Soni.

ADV VAS SONI SC: As it please Chair. And the reports of the board... I mean, the reports in respect of the investigation were shared only with the board and the
10 Minister and of course the CEO.

DR MOLEFE: That is correct.

ADV VAS SONI SC: And the purpose for that was what?

DR MOLEFE: The purpose for that was to maintain confidentiality. If the Chairperson will allow me, I would like to tell a little bit about the context.

CHAIRPERSON: Ja-no, that is fine.

DR MOLEFE: Werksmans were appointed.

CHAIRPERSON: Yes.

DR MOLEFE: In my earlier evidence before this
20 Commission. I cannot remember. Probably around June/July.

ADV VAS SONI SC: Yes.

DR MOLEFE: I gave evidence demonstrating that right from the beginning, earlier in his office - in his term in office, the board was subjected to misinformation. The

first instance was the what we called the Braamfontein depot modernisation rails and turnout tenders estimated at the amount of R 2.4 billion.

And we were misled at the time by the Group Chief Executive, Mr Montana but they have been probed to conduct it which later turned out that it was not conducted.

I mean, I do not want to go into the details of what it was but the second instance – I am painting this picture to show why confidentiality was critical.

10 The second instance was when we saw in the media that the Public Protector had actually released a preliminary report to PRASA and asked for certain questions to be answered by PRASA. PRASA did not do.

And the Group Chief Executive of the time did not report that to the board. And when I raised these things pertinently and inquiry whether there was perhaps a – any mistrust existing between him myself or him and the board.

20 At that point he then decided that he was going to leave the company early. Of course, he had advised us previously as soon as the board came into office.

Now I am giving this to show how difficult it was for the board to manage. The second ...[intervenes]

CHAIRPERSON: You... Have you not left out the time when – I think it is what you said on your first occasion

when you came to give evidence, when you said you asked him, that is Mr Montana, to give the board or give you all the contracts that were in existence.

DR MOLEFE: Yes.

CHAIRPERSON: And you said he did not give you those ...[intervenes]

DR MOLEFE: That is correct Chairperson.

CHAIRPERSON: H'm.

DR MOLEFE: I can maybe make one more point. I can go
10 on and on but I think I have established ...[intervenes]

CHAIRPERSON: Ja.

DR MOLEFE: ...the fact that there were difficulties.

CHAIRPERSON: H'm.

DR MOLEFE: They did not stop there. They interfered with the information in the company, stealing documents, making it impossible for us to access information.

Even appointing the internal computer experts to interfere with information to deprive the board of information that would have been necessary for decision
20 making.

So it was clearly sensitive, you know which meant that if you allow too many people to have access in the investigations. So it was already clear to us.

You have that Braamfontein depot thing, R 2.4 billion. You had R 500 million irregular expenditure.

And we were beginning to see other things in the company.

So if we had just said: No, let it just go to management. Then management who were actually the subordinator of Mr Montana at the time, it would have meant that the objective for finding the truth was going to be defeated.

And that is why you have this abnormal situation where the board that is not operational found itself having to be extraordinarily hands on.

10 **CHAIRPERSON:** Okay. Mr Soni.

ADV VAS SONI SC: Now just in terms of timeframes. About when was it decided that the investigations should be... In other words, in relation to Mr Montana's leaving. We know Mr Montana left on the 15th of July. When were – when was it decided by the board that this – or resolved by the board or endorsed by the board that these investigations were to take place?

DR MOLEFE: Chairperson, my recollection is that on or about June/July the Audit Committee having considered the
20 draft management report of the Auditor-General made recommendations that there be investigations as required by the Public Finance Management Act and they recommended that to the board, to me and to the board but the actual appointment would have happened at the beginning of August, the first week of August.

ADV VAS SONI SC: Now then mean it to contradict anything you say but that was after Mr Montana left?

DR MOLEFE: [No audible reply]

ADV VAS SONI SC: He left on the 15th of ...[intervenes]

DR MOLEFE: No, when we took the decision that we are going to investigate he had not yet left.

ADV VAS SONI SC: I see.

DR MOLEFE: Ja. I think we would probably have taken that decision in a board, in committee.

10 **ADV VAS SONI SC:** I am missing a slightly different issue. You see, you raised the question of confidentiality in relation to Mr Montana but you have also made the point that people who were still in senior management positions in PRASA were loyal to Mr Montana. I am just trying to establish that even after the 15th of July the need for confidentiality still existed. That is all I am trying to establish.

DR MOLEFE: It existed.

20 **ADV VAS SONI SC:** And the reason is that it was not only Mr Montana but people who were, who the board thought were still loyal to him.

DR MOLEFE: That is correct.

ADV VAS SONI SC: Now in relation to the investigation by Werksmans the results that they produced, and there will be evidence that will emanate in regard to that or

certainly parts of the investigations.

May I just ask you this? Were you satisfied with the work that they did, the quality of the work and the results they produced?

DR MOLEFE: We were very satisfied with the quality of the work and the results. Apart from the briefings that we were given regularly to myself and Ms Manase, we also had regular briefings with the board and to the Minister.

10 So we were satisfied with the work. We knew what was coming out. That is why you probably would think that very early on we were already placing complaints with the Hawks in terms of the...

ADV VAS SONI SC: Now the results of the Werksmans' investigation led to two major court applications by PRASA to review decisions of multi-billion rand contracts it had concluded with different service providers.

DR MOLEFE: That is correct Chairperson.

ADV VAS SONI SC: The one was the Swifambo Contract. Is that correct?

20 **DR MOLEFE:** That is correct.

ADV VAS SONI SC: And that was R 3.5 billion.

DR MOLEFE: That is correct.

ADV VAS SONI SC: And that contract... No, I mean the validity of the decision of the high court reviewing and setting aside the award of the contract was confirmed by

the Supreme Court of Appeal and the Constitutional Court refused Swifambo leave to appeal.

DR MOLEFE: That is correct Chairperson.

ADV VAS SONI SC: In regard to the other contract – the other major application you brought, it was against Siyangena.

DR MOLEFE: That is so Chairperson.

ADV VAS SONI SC: And since you gave evidence the last time, the high court set aside that contract as well, the full
10 bench of the high court even in ...[intervenes]

DR MOLEFE: That is correct Chair.

ADV VAS SONI SC: So that is the result of their investigation.

DR MOLEFE: That is correct. That is the value of the investigations.

ADV VAS SONI SC: Yes.

DR MOLEFE: It was used for the company and the South African public.

CHAIRPERSON: I think Mr Soni, for the sake of
20 completeness since in relation to Swifambo, you mentioned the figure. You should mention the figure as well in regard to Siyangena.

ADV VAS SONI SC: Yes, absolutely. Sorry Chair. There was not a single contract with Swifambo that was set aside. It was a series of contracts especially one that had

been concluded three months as in deemed and three months after the main contract was concluded. Is that correct? That is the R 800 million contract.

DR MOLEFE: [No audible reply]

ADV VAS SONI SC: I can tell you that because that is what the court paper say.

DR MOLEFE: That is so but I think they tried the force of this as well which were rejected.

ADV VAS SONI SC: So I just want to get the facts. So
10 we do not need the details Mr Molefe.

DR MOLEFE: Ja, ja.

ADV VAS SONI SC: May I ask you? That contract
...[intervenens]

DR MOLEFE: May I just say that the fact I said earlier,
the prejudgment.

ADV VAS SONI SC: No, sure.

DR MOLEFE: And my founding affidavit in that
application.

ADV VAS SONI SC: Yes.

20 **CHAIRPERSON:** Maybe what you might recall – maybe
what Mr Molefe might recall is here Mr Soni. Is the overall
figure that is associated with Swifambo and the overall
figure that is associated with Siyangena.

ADV VAS SONI SC: With Siyangena, yes.

CHAIRPERSON: Maybe if ...[intervenens]

ADV VAS SONI SC: Ja, I am going ...[intervenes]

CHAIRPERSON: Ja.

ADV VAS SONI SC: But that is about R 2.8 billion, the Siyangena contracts that were set aside by the high court.

DR MOLEFE: Sorry?

ADV VAS SONI SC: I say the Siyangena contracts were valued at about R 2.8 billion, those that were set aside by the high court.

DR MOLEFE: That is correct.

10 **ADV VAS SONI SC:** So we know now that the Werksmans investigation led to the setting aside of contracts worth more than R6 billion.

DR MOLEFE: That is correct, Chairperson.

ADV VAS SONI SC: Now I do not need to deal with the further matters relating to the Werksmans' contract. I want to use your presence here today, Mr Molefe, for a slightly different reason and to get some clarity with regard to certain matters that were raised with Ms Dipuo Peters when she gave evidence yesterday and earlier today.

20 Okay? Now one of the issues – and it is a major issue in the evidence or in the matters that she was questioned on was the failure to appoint a permanent CEO from time Mr Montana left in July 2015. I am just putting that to you, that was an issue.

DR MOLEFE: I am listening, Chairperson.

ADV VAS SONI SC: One of the things she said was that you and she had discussed whether PRASA, if I could just put it crudely, ripe for the appointment of a permanent CEO. In other words, as she put it, the environment in PRASA was not conducive to the appointment of a permanent CEO. Those are the words she used in parliament and she used similar words in her affidavit. I would like you to respond to that in regard to your view and the view of the board.

10 **DR MOLEFE:** For lack of a better description I would say that that assertion by the former minister is ingenuous and it is false. The board has always been of the view that we needed a Group CEO from the time when Mr Montana – in fact before Mr Montana left. I gave evidence here previously to say that we had agreed with Mr Montana that during this period of six months notice that he had requested he would work with the board, assist the board to identify a successor to his position. By January 2016 we had already gone out – we even had given him the
20 responsibility of helping to identify recruitment agencies for that purpose.

CHAIRPERSON: You said January 2016. Did you mean 2016 or 2015?

DR MOLEFE: We took a decision in 2015 with him before he left to say that that six months from March – he gave us

the letter of notice that he is leaving in March, I do not know, I cannot remember the exact date.

CHAIRPERSON: H'm I think the end of March.

DR MOLEFE: And we said from March then to I think November or beginning of December he would be working with the board to identify a successor to him and he would help us identify talent search companies. For some reason by the time he left he had not identified any company.

But by January 2016 the board had identified a
10 company to do the search for the CEO. Just this morning I was actually looking at an email that the leader of that company sent to my secretary at the time asking for the name of the [indistinct] 04.31, so began the progress early, we considered the appointment of the Group CEO very critically because the organisation had no captain of the ship, had no leader, so I could not have said to the minister were are not ready and that exercise was undertaken pretty fast or expeditiously and shortly after it was done we gave a list of three names with the specific
20 recommendation that detailed the abilities of – qualifications and abilities of each one of the three candidates and then we gave her a file of the CVs of each one of those individuals in case she might have wanted to make any reference to it. I listened to Mrs Peters, seeming to suggest that she was just given the whole room full of

files and she was unable to go through them. That is false. I think she was scraping the bottom of the barrel, really, to find reasons for not doing what she was supposed to do.

ADV VAS SONI SC: Mr Molefe – sorry.

CHAIRPERSON: I am sorry, let me understand something that I keep thinking I do not understand. Mr Montana, as I understand it, was he meant to leave at the end of – at some stage in March 2015 but the board asked him to stay for an additional six months or was the position that his
10 contract was going to end somewhere towards the end of 2015 but he wanted to leave earlier or did he say I am leaving towards the end of the year so I am giving you notice of six months? What exactly was the position? When was his contract meant to end?

DR MOLEFE: My recollection, Chairperson, is that his contract was meant to end at the end of November.

CHAIRPERSON: 2015?

DR MOLEFE: Ja but then he said to the board – I think we can refer to my earlier evidence and the record, but he
20 said to the board I will not wait for that time, I give you my resignation now, I am not going to wait for that time but I am actually giving you notice that I want to leave but because my contract requires me to serve notice of six months, I will stay for six months to work with you whilst you identify my successor. So he was then going to stay

on until I think around the end of November, beginning December.

CHAIRPERSON: So is the position that – my understanding that it was the board which asked him to stay six months more was incorrect, he is the one who actually said I am giving you six months notice. So is the understanding I had that it was the board which asked him to stay six additional months, an additional six months incorrect?

10 **DR MOLEFE:** He offered to stay six months more and we agreed with him but I think we can refer to the record.

CHAIRPERSON: Yes, yes.

DR MOLEFE: We thought that it was reasonable to have him there for six months whilst we are working on replacement.

CHAIRPERSON: Yes.

DR MOLEFE: Because it had to do with his contract coming to an end.

CHAIRPERSON: Yes. You know, that is important
20 because I may have wanted to criticise you and your board for starting to look for his replacement late if the position was that his contract was going to come to an end in March and you started later – would have expected you to start earlier, but if his contract was going to end towards the end of the year that might change the situation. You

understand why I want to find out when was his contract actually going to end?

DR MOLEFE: I may need to make some kind of reference to establish the exact date, Chairperson.

CHAIRPERSON: Yes.

DR MOLEFE: But remember, Chairperson, we started off actually trying to persuade him to stay on.

CHAIRPERSON: Yes, yes, during the first half of 2015?

DR MOLEFE: Yes, we say we are new – no, no, even –
10 we would have been willing to extend his contract.

CHAIRPERSON: Yes, yes.

DR MOLEFE: Because at that time we did not even know about the malfeasance

CHAIRPERSON: Yes.

DR MOLEFE: Which were committed under his watch and where he played a key role. So we were working on the basis that here is a leader of this organisation, we are new, we are beginning with the modernisation programme of the company.

20 **CHAIRPERSON:** Yes.

DR MOLEFE: So we need stability and of course he said no, he wanted to go. But what accelerated him wanting to even leave and ignore our request for him to stay on.

CHAIRPERSON: Yes.

DR MOLEFE: Is when he realised that we were beginning

to look at issues of governance which had been flouted during his period.

CHAIRPERSON: Yes, well I know there is his letter of resignation somewhere and that might clarify.

ADV VAS SONI SC: It is PM4 at bundle D page 147, Chairperson.

CHAIRPERSON: Yes, does it throw light on any of these issues?

ADV VAS SONI SC: It does, Chairperson.

10 **CHAIRPERSON:** Okay.

ADV VAS SONI SC: What is says, is that Mr Montana had offered – the letter is written on the 1 April by Mr Molefe, it says:

“You have offered six months, if we find a replacement earlier, we will ask you to leave early.”

CHAIRPERSON: Yes.

ADV VAS SONI SC: That is the essence of the letter.

CHAIRPERSON: Yes, yes, because the other complicating factor was the moment there is the notion of a resignation
20 because if his contract was going to expire towards the end of the year one would not expect him to resign, one would expect him maybe to just notify you that in case you were thinking of extending, I will not be available, so I am leaving at the end of my contract, rather than resigning. So that is another part that causes confusion for me.

DR MOLEFE: Well, Chairperson, that is the correct way, that is how it should have been said but the letters were written in the manner in which they were written, they do not necessarily reflect the reality.

CHAIRPERSON: Yes, yes.

DR MOLEFE: Save that the essence was that he was going to leave.

CHAIRPERSON: Yes, okay, okay, okay. And you got to know about this intention to leave sometime just end of
10 2014?

DR MOLEFE: I beg your pardon, Chairperson?

CHAIRPERSON: Did you get to know about his intention to leave sometime towards the end of 2014?

DR MOLEFE: No, no, that becomes clear – firmly confirmed in March in 2015.

CHAIRPERSON: In 2015, in March. So whatever he might have said earlier was the fact he was now firm.

DR MOLEFE: Ja. It turns out that Mr Montana had played that game before. He said to the previous board I am
20 leaving and the previous board said no, no, no, please do not leave. And then he says to him I have got an offer, a better offer and then the board would sign a new contract and an increase, remuneration as well. He probably expected that from the new board and it did not happen.

CHAIRPERSON: Okay, alright. I think that gives me a

better picture. So his contract was going to end towards the end of the year, maybe November or October or thereabout and in March he formally said he was going to leave but he offered to stay for six months.

DR MOLEFE: Yes, Chairperson, but I think we should confirm the exact date from the record.

CHAIRPERSON: Yes, the actual month, ja. No, that is fine. Mr Seleka?

ADV VAS SONI SC: So what the letter says, Chairperson,
10 is – Mr Molefe’s letter, is:

“I acknowledge receipt of your letter dated 15 March 2015 and note that you wish to serve a six month notice period with effect from the 1 June.”

So he wanted to leave effectively at the end of November as his contract was going to expire at that time.

CHAIRPERSON: Yes but if the six months period was with effect from June then the end of six months would be end of December, is it not? Oh, no, no, end of November.

ADV VAS SONI SC: End of November, yes, yes.

20 **CHAIRPERSON:** End of November, ja. No, I am wrong. Ja, end of November. Okay, alright. So at least now we know.

ADV VAS SONI SC: Yes.

CHAIRPERSON: Ja, okay.

ADV VAS SONI SC: Now, Mr Molefe, this is a matter on

which I pressed the minister and I am going to press you on. You see, the PRASA Act places the responsibility to appoint a CEO on the board but of course it needs to consult with the minister. Do you agree?

DR MOLEFE: That is correct.

ADV VAS SONI SC: Right. So you knew in April – say you, I am talking about the board knew in April.

DR MOLEFE: Yes.

ADV VAS SONI SC: That Mr Montana is to leave soon. I
10 understand you to say that that process only began at the
beginning of 2016.

CHAIRPERSON: And '16?

ADV VAS SONI SC: Sorry, January 2016, yes.

DR MOLEFE: The decision to work on the search should
have meant identifying individuals started in 2015. I think
the biggest mistake that we regret is that we asked Mr
Montana who was the party to drive that process because
he was still there as the Group CEO to assist in that regard
and of course at that stage we would not have imagined
20 that he would deliberately act in a manner that delays that
process. And it is true in hindsight that we should have
once two months passed and we did not see concrete work
we should have then begun to plan differently.

ADV VAS SONI SC: No, Mr Molefe, this is the position, he
tells you in April or in March I am going to leave in six

months.

DR MOLEFE: Ja, ja.

ADV VAS SONI SC: You had prior to that said to him you must leave. He then on the 15 July you confirm that that is his last day at work.

DR MOLEFE: No, no, we did not tell him prior to that that he must leave, the board tells him to leave on the 15 July.

ADV VAS SONI SC: Okay, he leaves on the 15 July.

DR MOLEFE: Ja.

10 **ADV VAS SONI SC:** Now you could not be under any misapprehension about what Mr Montana was doing at PRASA because he was not at PRASA from the 15 July until January. So there is now a six month period when the board knew nothing was being done about the appointment of a new CEO.

DR MOLEFE: Ja, that is correct and I am not suggesting that we were under any misapprehension of what he was doing in PRASA at the time, he was away. The question that we may have to deal with, Chairperson, is – which we
20 must be criticised for, is that we did not move fast enough on getting a person to replace him.

CHAIRPERSON: Are you able to ...[intervenes]

DR MOLEFE: In fact, I think I ...[intervenes]

CHAIRPERSON: I am sorry, I am sorry.

DR MOLEFE: I think I am actually probably making a

mistake by even suggesting that the process starts only in 2016. We may have to go to the records. I think in 2016, the beginning of 2016, we are talking about the panel which means work had already progressed, now we need to interview the candidates, the company called – I think it was called Talent Search, now says who is going to be on the panel. They would not have asked for who is going to be on the panel in January 2016 if the process of recruitment had not started.

- 10 **CHAIRPERSON:** Well, the first question is to the extent that the board had decided that it would need the services of a company that would do the recruitment or search for talent, to the extent that the board had decided it would need the services of such a company for purposes of identifying the right candidate. The board ought to have come to that decision probably before Mr Montana left because he told you in March or at the beginning of April in November I will be leaving, therefore – but I will help you while you are looking for somebody. So obviously the
- 20 immediate question there is okay, we must decide how we are going to go about finding the right candidate, are we going to just advertise and we conduct the whole recruitment process ourselves or are we going to look for somebody, a service provider who will do that, and if we look for somebody, that is the first thing we must take a

decision on. Now if he told you in March, you have got April, May, June, there is no reason why by June actually you would not have made that decision, is it not? That is three months. And then allowing that service provider to run with the process, obviously you, as the board, would need to put some deadlines to say look, this person is needed urgently, we do not have all the time so complete the process by such and such a date. Would you agree that more or less that should have happened?

10 **DR MOLEFE:** The decision – Chairperson, may Chairperson repeat the question, so that my answer should be yes or no.

CHAIRPERSON: Yes, okay, that is right.

DR MOLEFE: Maybe it should be just yes or no.

CHAIRPERSON: I am putting the proposition to you that as soon as Mr Montana had told you or the board in March or early April 2015 that he was going to be leaving at the end of November, at the end of the six month period, that he talked about, there was a duty on your board to make
20 up its mind whether in order to find his replacement it would do without a service provider who would assist it to recruit or it would conduct the search itself but that decision needed to have been made, there is no reason why that decision could not have been made by June, that is the proposition I am making.

DR MOLEFE: I do think, Chairperson, that decision was made by that time.

CHAIRPERSON: Was made by that time.

DR MOLEFE: It was made by that time.

CHAIRPERSON: Yes.

DR MOLEFE: And I have to check when did we advertise, it would have been there around 2015.

CHAIRPERSON: Yes, yes.

DR MOLEFE: A service provider role would be twofold.

10 **CHAIRPERSON:** Yes.

DR MOLEFE: To collate all the applications.

CHAIRPERSON: Yes.

DR MOLEFE: Analyse them on behalf of the board.

CHAIRPERSON: Yes.

DR MOLEFE: Search for further talent.

CHAIRPERSON: Yes.

DR MOLEFE: That might not be in the applications available.

CHAIRPERSON: Yes.

20 **DR MOLEFE:** Combine all of that, produce a shortlist and then when ready, begin the process. There was a committee of the board that was overseeing that process. I think it was led by our human capital committee working together with the chair – I think she also belong to that committee, Ms Matlala, and Alan Vichy(?) of the audit

committee was also assisting in that regard.

CHAIRPERSON: So would you go – would you accept that the recruitment process should ordinarily not have taken longer than three months starting from the date of advertisement or are you saying that is too short for this high profile appointment?

DR MOLEFE: I would not ...[intervenens]

CHAIRPERSON: You would not know.

DR MOLEFE: I do not want to surmise on that.

10 **CHAIRPERSON:** Yes, yes.

DR MOLEFE: Because, I mean, you are guided also by HR policies of the company.

CHAIRPERSON: Responses.

DR MOLEFE: How long do you advertise in what newspapers and then the process of – I mean, short listing, you know, hundreds of CVs would take time. Ja, so one could have said we wish it to end quickly but if you have a professional company doing the work you have got to make sure that you give them enough room to do their job
20 properly.

CHAIRPERSON: Well, the only reason why I am asking these questions is because I want to see to what extent your board may share blame for the delay. When Ms Peters was giving evidence here I did tell her that it seems to me that from her side, she failed to do certain things in

terms of ensuring that the Group CEO was appointed as soon as possible but I want to see whether there is also some blame on the part of the board because maybe it started too late with the process or it allowed it to go on for too long. So that is why I am asking these questions because I do not want to blame the board unjustifiably.

DR MOLEFE: Well, I would like to go back to the records and find the date.

CHAIRPERSON: And check.

10 **DR MOLEFE:** What the policy says. I hope I can find some.

CHAIRPERSON: Yes, yes.

DR MOLEFE: And when exactly did we start.

CHAIRPERSON: Ja.

DR MOLEFE: At what point did we get the shortlist.

CHAIRPERSON: Yes.

DR MOLEFE: Because, by the way, also – yes, I would like to do that and then ...[intervenes]

CHAIRPERSON: Yes. No, that is fine.

20 **DR MOLEFE:** So that we come back and when blame is apportioned, is based on facts.

CHAIRPERSON: No, no, that is correct, ja.

DR MOLEFE: That had been determined, I do not...

CHAIRPERSON: Ja, that is correct, ja.

DR MOLEFE: Ja.

CHAIRPERSON: Because it may well be that it is no one person who is responsible for this, maybe it is a combination of various factors and maybe different people in terms of their different roles and it is only fair that one should look at everybody to see what happened.

DR MOLEFE: Ja, but Chair ...[intervenes]

CHAIRPERSON: The point you make about wishing to have an opportunity to check information, check correspondence documents is a fair point. That you will
10 do.

DR MOLEFE: And Chairperson, I do not have to come and sit in the Commission, I can submit a ...[intervenes]

CHAIRPERSON: You can submit an affidavit.

DR MOLEFE: A supplementary affidavit in that regard.

CHAIRPERSON: Yes, yes, yes. No, that is fine, ja.

DR MOLEFE: But whatever the minister says, she cannot justify leaving office in 2017 without having appointed a Group CEO. In May - in May 2016 and that was not the first letter. It is just that I do not have my correspondence,
20 I may have to search for it. In May 2016 I write to her and say the appointment of the Group CEO is an urgent matter, please expedite this matter.

CHAIRPERSON: Well, to her credit, I can say that she said here, that is Ms Peters, that she takes responsibility for the non-appointment of the Group CEO for the two

years or the period after Mr Montana had left up to the time that she left the ministry herself. She said that. So – but nevertheless, one is just looking whether – exactly what happened.

DR MOLEFE: Thank you, Chairperson.

ADV VAS SONI SC: Mr Molefe, the issue about the delay and who is responsible is quite critical in this matter for a few reasons. One is, since Mr Montana has left until I think earlier this year there has been no CEO, that is
10 period of [indistinct – dropping voice]. This is a major multi-billion rand organisation which incurs, according to the auditor general report, irregular expenses that ballooned from R100 million to R24 billion (indistinct – recording distorted).

Secondly, the auditor general says in his report that part of the problem is the instability in the organisation and that is partly, if not mainly, due to the fact that it does not have a CEO.

The third issue is this, that nobody can simply make
20 an appointment, the Act and the internal regulatory measures relating to PRASA determines who has the power. I just want to read to you what the powers are, and this is in terms of the Board Charter.

It says in 15.5:

“Amongst the reserved powers of the Board are

recommending to the Executive authority [that is obviously the Minister] the appointment and removal of the Chief Executive Officer.”

Now when Ms Peters was here I pressed her quite firmly as to why she did it and as the Chairperson has rightly pointed out, she said, yes I accept responsibility but when powers are shared, so must responsibility. I’m going to come to you again, you know in- at latest when Mr Montana leaves, 15th of July that this needs to be – this position
10 needs to be filled but on your version the first recommendation to her is in early...[indistinct – dropped voice], surely a six month period must be an excessive period, then your Board has the power to make the recommendation surely?

DR MOLEFE: Chairperson, I can’t bleed this stone anymore. I did say that I would have to return to look at the records, to look at the facts, when the process started, how the short listing began and when it began and then we come to the recommendations because there will be a link
20 between the point at which the recommendation is made and the time at which the process began. Appointing a Group CEO also means careful selection of the individual required, so, I’m sure there would have been reasons why there were delays and I accept that we could have done it in a shorter period than that, but I’d like to look at the

factors that impacted on our ability to move faster – sorry Chairperson, I should have been looking at you. On our ability to deal, faster with the problem.

ADV VAS SONI SC: Anyway, we'll wait for that but I want to, when you give your – I'm going to request, Dr Molefe, when you give the information, that it is not sufficient to say that we made the recommendation on this day it must – to ensure that there is no criticism of the Board or the criticism is limited to say, we started the process at this
10 time, we were told it will take so long and this the period it took because if you know that a period is – of nine months is required it doesn't help you start the process three months after the need arises, it must start six months before the need arises.

DR MOLEFE: I will do as requested, Chairperson, we will deal with the processes.

CHAIRPERSON: Yes.

DR MOLEFE: There's just one point I wanted to raise, because for the public listening out there, if counsel says
20 there was no CEO for five years as a result of which there's been an escalation of irregular expenditure, the Auditor General reported this and that. I think we have to separate the period of this, the Board that I was Chairman of from that five...[intervenes].

CHAIRPERSON: Yes, yes.

DR MOLEFE: And also, recognise the fact that, that Board did make a recommendation that goes through a tedious process of the political party structures, they probably have no4 spending in terms of appointing constitutional but those are the rules that, that party has designed and for its Ministers that they have to go that particular route of going to the deployment committee that deployment committee doesn't meet and ...[indistinct – drops voice] does not get discussed and in the end, as the
10 Minister told us, that she herself never took it to the Cabinet. So, I will deal with that in the response that I'm going to give but I think I want to absolve this Board for the ballooning irregular expenditure. In fact, give credit to my Board because part of that ballooning in irregular expenditure was a result of the investigations that Werksmans conducted. I think at some point we gave the Auditor General a report that shows that we had uncovered R15billion of irregular expenditure and the Auditor General used our reports to produce his own report so we
20 contributed to that and how does that irregular expenditure occur. You have contracts which PRASA has signed with service providers, various contracts. PRASA cannot stop paying the service providers until such a time that the Board set aside the contract as unlawful – determines that the contracts are unlawful and then set them aside. So

PRASA continued to pay but those contract, the Auditor General had determined that they were irregular and it was not only about Swifambo by the way Chairperson, there were also irregularities pertaining to a contract called Gibela which was manufacturing the trains and the Minister spoke, ...[indistinct – drops voice] our people needed jobs, we needed the trains moving, that project – I told the Board that, that project should go on. It is the Board, with advice from the attorneys of record that determined that, 10 although the Auditor General says that the Gibela contract is irregular. When you look at the materiality of that irregularity, was of a major – it was of a major that should not lead to the cancellation of the contract and on that basis, we then asked the Minister, condone this and we apply to National Treasury to condonation but until such time that those contracts were condoned, all the monies spent there were considered to be irregular.

CHAIRPERSON: Well, I would like to say this, that leaving aside anything else that your Board may or may not 20 be criticised for, these speakers that we get from the Late Auditor General's affidavit – answering affidavit about the irregular expenditure that seem to be ballooning from the 2013/2014 financial year and your Board wasn't there during that financial year, you Board came, I think, in August 2014 and left in 2017 but when you look at, I think,

if I recall correctly during the 2013/2014 financial year, the figure put up by the Auditor General is that it was about R100million irregular expenditure during that year, financial year. From 2014 to 2015, and I guess if your Board needed to be blamed it might only need to be blamed for half of that financial year because it seems to have started in August 2014. During that financial year, 2014 to 2015 I think the amount of the irregular expenditure, according to the Auditor General was about

10 R550million and then from 2015 to 2016, that financial year, it shot up to R15billion, an astronomical amount that is irregular expenditure and from, I think – for the next financial year I think it was R20billion and the last financial year which – your Board was no longer there, I think, it was R24billion. So, I certainly, am very interested in hearing the full explanation from yourself, as to, what was the story about this irregular expenditure that was going on that was going up like this every year as if there was nobody on the face of it, I mean, you might be able to

20 explain, you are referring to the investigations that were going on. You might be able to say, no, part of these amounts that are said to be irregular, they may have been irregular but they had been used to good cause, it's money that's connected with the investigation, maybe it's payment for Werksmans or whatever but when I look at those figures

and I know that, for most of those years it's your Board that was there and I think in one of your letters to – ja in one of your letters to Minister Peters, I think the one for August 2016, where you were responding to her letter where she had said stop the investigation. I think you referred to relevant legislation with regard to the obligations of the Board, and if I'm not mistaken you refer to provisions which seems to suggest that it's the Board that must prevent irregular expenditure or fruitless and
10 wasteful expenditure. So, I think it's important that, at least for the years that your Board was there, you are able to deal with this – these irregular expenditure amounts that seem to be going up every year as if nobody was trying to keep them down. So, if you say, look I'm not ready to deal with this because it needs preparation and some documents that I need, that's fine but I think it's important that it be explained and that you explain it as the Chairperson of the Board, at least for the years that your Board was...[indistinct – drops voice].

20 **DR MOLEFE:** Ja, Chairperson, thank you very much. We will certainly – I will certainly go and prepare a comprehensive report.

CHAIRPERSON: Yes.

DR MOLEFE: Fortunately, the investigations that we conducted through Werksmans would show where

irregularities occurred and the amounts attaching to those irregularities.

CHAIRPERSON: Yes, yes.

DR MOLEFE: PRASA is a big organisation without that investigation we would not have known where these irregularities are occurring and I would not say that the Auditor General's report that says there was R100million irregularity, that was necessarily accurate. They use a sample they were not given all the...[intervenes].

10 **CHAIRPERSON:** It may have been a tip of the iceberg.

DR MOLEFE: It was the tip of the iceberg even the R500million. Once you begin to get into these things as we did – I mean there were lots and lots of small contractors in the category of work called the general overhauls which would have been the repairs of – and maintenance of locomotives, coaches and so on. That's where some of these big irregularities occur. Procurement of diesel, for example, how contracts had been awarded but we would not have know without this investigation that
20 we conducted and the Auditor General would not have known the extent of the irregularities without us sharing information with the Auditor General. There were regular meetings, also, between the Auditor General and our investigators which assisted the Auditor General in dealing with those things.

Part of the difficulty and of course we take blame for this is that the delay in appointing the Group CEO has meant, also that the management of the subordinates who are the actual ones in the supply chain management and so on were not properly supervised and the Board would not have been able to do that job itself, there's no way that any Board would do that the Board works through the Executive team and it has to be a proper and reliable Executive team.

- 10 **CHAIRPERSON:** No, no that's fine, when you deal with that issue of how those amounts of irregular expenditure occur as far as the Board is concerned and what measures the Board took and so on and so on, do deal with certain issues, I understood you to be talking about having to go to or approach, I don't know whether it's the ruling party or whoever and there being delays at the deployment committee and so on. Deal with the situation to, you know, properly to say, these were the constraints if there were constraints on the Board acting because as far as I'm
- 20 concerned the PRASA situation is difficult to understand, how it is possible, under any govern that an organisation that is so important to the country, that was going through such challenges in terms of allegations of corruption, irregular expenditure and so on, big amounts could be allowed to have no permanent Group CEO for as many

years as we know it was without, how is this possible. So there may be certain things that we need to be told – we need to be told about, that produced this situation. So, I'm just saying – ask when you do that as the best picture that you can give us in terms of exactly what were the challenges, if there were any challenges.

DR MOLEFE: We will do that Chairperson, I suppose at the end of its work, this Commission, as part of the recommendations that it will make it would separate the
10 roles of the politicians from the roles of the company and the Executive but we shouldn't – the deployment committee of the party was not intended to determine who the Board applies, things changed, I think, the last ten years or so, it had always been there to say, who amongst us are the best qualified people we would like to encourage to apply for certain positions because they were well trained for it but they would still have to go through the proper process of interviews and selection. They succeed if they perform well, not because they carry the label of a particular party
20 that has never been the intention and I think that this point must be made that, structures of political parties must have nothing to do with the institutions of the State organs or State and the same should apply to the Cabinet as a role. Executive authorities must have their own role, we must review the Board charters, memoranda of

incorporation to say that you can't have a memoranda of incorporation of a Board charter that ties the hands of a Board. When the Companies Act says that the Board is the ultimate authority of the company. So, all of those things will have to be dealt with. The Chairperson will see, I'm just gracing the counsel, the Chairperson will see that in the submission that we were asked to make as Transnet and we were asked to say, okay, you came to us you talked about all of these things that had happened, now we want
10 you to make a submission that tells us what you have done about this, what are the remedial action. Some of these issues we were raising in that submission, we won't make everybody happy but we are not in the business of making individuals happy we are in the business of protecting public interest.

CHAIRPERSON: Well, that submission relating to Transnet, I think it was mentioned to me, if I'm not mistaken, Mr Soni – or an affidavit or something.

ADV VAS SONI SC: No.

20 **CHAIRPERSON:** Okay, maybe it is somebody else because I think I was told at some stage that there was a plan for Mr Molefe to come and testify but he was going to deal with – maybe it's a different work stream, maybe it's the Transnet work stream.

ADV VAS SONI SC: Yes.

CHAIRPERSON: Ja, he was going to testify with regard to what steps the Board has taken at Transnet to sort out certain problems and I indicated that I'd like to see that submission but it might not be important for him to come and give oral evidence in the light of our time constraints but we would take it into account. So, to the extent that you have already sent it to the Commission, it probably is with another work stream of the Commission but at some stage it will come to me but I do want to say, based on
10 what you have just said, it seems to me that, part of what you are saying is, part of the delay at PRASA in dealing with certain matters may have been because the reality was that the Board or yourself as Chairperson had to consult with a structure of the ruling party such as the deployment committee and it doesn't sit all the time and that may delay things, is my understanding correct?

DR MOLEFE: No, no Chairperson the understanding is not correct, the Board does not have to consult with the structure of the party. The Board it accounts to the
20 Executive authority being the Minister it is the Minister who consults with the structures of the party, but these are unwritten rules, the convention that they have adopted.

CHAIRPERSON: But written or unwritten they might contribute to certain problems.

DR MOLEFE: Certainly they did that certainly contributed

to this and I'm happy to write about it in my feedback.

CHAIRPERSON: Please, because we can't arrive at the right recommendations if we don't know the full picture, you know, so it's important to know the full picture. What caused this, what caused that, what contributed to this so that one can say, this must stop, that's the recommendation, this must stop, that's the recommendation in order to create an environment where these entities can be run properly, professionally and successfully, okay.

10

ADV VAS SONI SC: Thank you Chairperson. Molefe I only say this because you appear to think that it is I who drew a link between the non-appointment of the CEO and these figures. So, when you're dealing with these increases in irregular expenditure, please look at paragraph 62 of Mr Makwethu's unsigned affidavit because that is where the link is drawn, I'll tell you what he says, he says,

20

“The instability in the Board and at PRASA's key management level, negatively impacted the operations of the entity and contributed to the collapse of controlled environment”,

That's where the link is from not by me. I say that - want to also say to you Mr Molefe, I have looked at the contribution that your Board made in PRASA, looked at

contribution of previous Boards, negatively but positively fair that your Board and the negatively shaped subsequent Boards on PRASA. So, don't for one minute believe that I'm suggesting that the Board was bad but I have a duty to say that in this regard the Board didn't do what good governance required and that's the only point in asking those questions and I need to contextualise that. When I challenged Ms Peters about the appointment she put part of the problem on the Board and so when you have, what
10 you call, two centres of power you never know who's right and who's wrong. So, that's why I asked you so that you could identify precisely when the Board made the recommendation, how long it took, so that we know the extent of the attribution. I wouldn't like you to think that I am disparaging of the good work, I'm not.

Now let's just get back to the issue of the non-appointment of the CEO. If you, when you are making – and I don't want to hold you to something today, but you, when you are making your submission, and I know it will be
20 in writing, set out and annex all your correspondence, urging upon the Minister to expedite that process, that's the first point but the second point I want to raise with you is this, and it's a question of good governance. The charter gives you the power to make a recommendation. Now, let's say you had made the recommendation in

early...[indistinct – dropped voice] and the Minister hadn't acted on it. The question is, what should an organ of State, like the Board of control of PRASA do when it has fulfilled its function, because remember, ultimately it's not the Minister as the Executive authority who will be held responsible, in terms of the PFMA you are held responsible and so the question really is, did you take other steps, for example did you write to the President, I'm not saying you should have these are just the questions, I think, that may
10 require a fuller examination so that the Chairperson can look and say, well these are the weaknesses in the business and these are the structural changes that need to be made so that we don't have a repeat of this and that's why this Commission is so important because it is in a unique position to re-visit the way we are running the ...[indistinct dropped voice] and you can contribute. You and all organs of State can contribute to that.

DR MOLEFE: I agree Chairperson.

CHAIRPERSON: Yes, you can keep your mic on ja.

20 **ADV VAS SONI SC:** Now the...[intervenes].

CHAIRPERSON: No, no, don't switch it off it is fine you can keep it on ja.

ADV VAS SONI SC: The further issue that Ms Peters made in regard to the relationship between the Board and the Minister was, she often said, well Mr Molefe agreed

with this, we met and he agreed with this and the question arises as to how does one determine where responsibility lies for non-performance and one of the issues that comes up is, when something is not done, how does one place it on record because you're, of course, in a difficult situation, you're a Board you don't want to antagonise the Executive. That is an issue too in this Commission. Now Ms Peters is ...[intervenes]

DR MOLEFE: But Chairperson am I – should I respond to
10 this thing? See where Ms Peters says I met with the Chairperson, we agreed, and quite often some of those discussions she was talking about as if they were casual in the passages, she mentions talking in the passage. I do not know if – whether it is material for me to respond that.

CHAIRPERSON: Well you might have a situation where you never met with her in passages therefore you say no but I never met with her in passages. You may have a situation where you say yes we met sometimes in passages or whatever and there may have been casual talk but I do
20 not remember that specific issue or I do remember, but until it was raised formally I was not going to pay attention to it, so it just depends, but if you do not wish to comment on it you are free to say no I do not wish to comment on it.

DR MOLEFE: Well I will comment just very crisply. The Chairman of the Board, is the leader and representative of

the Board. There will be many instances where the Chairman of the Board will meet with the executive authority just between the two of them, and of course, he will report back to the Board. But there are meetings where we require the executive authority to meet with the Board. Sometimes the Chairman of the Board meets with the executive authority together with a Chair of the Audit and Risk Management Committee, which happened quite often as in the case where we met with the chief
 10 procurement officer, except that what she said was incorrect.

That meeting agreed that PRASA will continue to be the custodian of the investigations and will coordinate that National Treasury, his findings will be channelled into PRASA not the other way around. Then I will attach in my, you know, supplementary affidavit that I have agreed to do to make the correspondence where we were inviting the Minister to address the Board and she was not updating herself, we will do that.

20 **ADV VAS SONI SC:** Chairperson in so far as Ms Peters is evidence goes I do not have any further questions for Mr Molefe because the issue I was still raising with her related to the termination of was going to culminate in the circumstances leading to the Boards termination and on that score with respect I - it seems to me that some of the

allegations made by Mr Molefe appear to be more consistent with the objective facts as partly revealed in the Parliamentary matters that I was going to ask.

I do not have any further questions relating to Ms Peters at this stage for Mr Molefe.

CHAIRPERSON: Yes, I think there might just be one or two questions that I want to ask with reference to the meeting of the 20th of August 2015, if you still remember that important meeting at the presidential guesthouse. Ms
10 Peters said that President Zuma at the time President Zuma succumbed to exhaustion, I think that is how she put it, succumbed to exhaustion before he could say much at that meeting, except what he said at the beginning. I think that is what she said, what is your comment on that?

DR MOLEFE: I have confirmed that he fell asleep. I confirmed that he fell asleep Chairperson.

CHAIRPERSON: Yes.

DR MOLEFE: In my previous...[intervene]

CHAIRPERSON: Yes, it is a question...[intervene]

20 **DR MOLEFE:** And I did also confirm that, I did also state that that happened after I had said to the President, that I was not going to sit in a meeting of a political party, as a result of which go back and change the decision of the Board because I did not understand what his problem was with the fact that the Board had agreed to release Mr

Montana.

And I invited him to come and explain his problems to the Board. I think it was shortly after I made that point that day, that he fell asleep.

CHAIRPERSON: So are you - I think part of your affidavit say something along these lines, either you say, you got the impression that Mr Zuma wanted the Board to take Mr Montana back, either you said put it like that or you said you - it was clear to you that that is what he wanted. Do
10 you remember which is which?

DR MOLEFE: Chairpersons, because he did not say reinstate him.

CHAIRPERSON: Yes.

DR MOLEFE: So I can only talk about the impression, I got.

CHAIRPERSON: Yes.

DR MOLEFE: Firstly from the fact that he calls a meeting, the prior, Mr Montana to prepare thoroughly for that meeting, and that meeting is preceded by a report on
20 PRASA to Mr Jeff Radebe who is the one who urges the President to meet with me and at that meeting, the content of the speech of Mr Montana is largely that that report that he wrote to Mr Radebe.

I got the impression that they tried to say, he is a good man, you are treating him badly, this Board does not

want him to do his job. There is nothing wrong with him, you know, you just hate him. You cannot work with your CEO, which is a refrain that I picked up in the evidence of Ms Dipuo Peters. She says every time the Chairman went overseas with the CEO when they come back, they are not in good terms. So in a way that is ridiculous, but...[intervene]

CHAIRPERSON: So the one thing we can get out of the way, as far as what Mr Zuma may have said at that time, is
10 that he never said reinstate Mr Montana.

DR MOLEFE: No he did not.

CHAIRPERSON: He never put it like that, but you say you got the impression that that is what he wished for, to say the least.

DR MOLEFE: Yes, Chairperson you are right.

CHAIRPERSON: And, but there was a discussion, I think you said in your evidence, one of the occasions when you came here, during the meeting, when there was a discussion about the Board's decision to release Mr
20 Montana, is that correct or did I misunderstand was there a discussion of the decision?

DR MOLEFE: There was a discussion Chairperson on that.

CHAIRPERSON: And how did that arise, if you are able to remember you might not remember?

DR MOLEFE: Well firstly, it was the first point is it arose because the President was saying that Mr Montana should not have been allowed to leave because he is a very experienced rail asset there. According to him an excellent manager who has a great contribution to make to the future of PRASA.

And Minister Dipuo Peter says, well, you know, the Board did not warn me before it acted that it was going to release Mr Montana, they did not consult me had they
10 consulted me I would have treated the matter differently. You know, I would have dissuaded them making that decision, it was in that context that that it arose.

CHAIRPERSON: Yes, okay no that is fine thank you. Now nothing arising Mr Soni?

ADV VAS SONI SC: Nothing arising.

CHAIRPERSON: I will excuse you, Mr Molefe and you have undertaken to furnish a further affidavit to deal with some of the earlier matters that we discussed. I think Mr Soni and yourself will talk about the timeframe and so on.
20 It might not be necessarily for you to come back, but a lot would depend on what the content looks like, you have come back to the Commission quite a few times.

So, if you would prefer not to come back, I would understand, but it may well be that when one has read the affidavit, particularly on this very important issue of the

irregular expenditure, it may well be that it would not be right not let you come in and deal with whatever questions but when I say come in, it may be that you might not need to be physically here. It may be that we do a Zoom or video link but nevertheless get a chance to put certain questions to you.

DR MOLEFE: Thanks, Chairperson I will take guidance from counsel.

CHAIRPERSON: Yes, thank you very much, we have come
10 to the end of today's proceedings then.

ADV VAS SONI SC: Chairperson, may I say for tomorrow, we have subpoenaed Mr Auswell Mashaba, we have summoned him, a summons has been issued.

CHAIRPERSON: Yes.

ADV VAS SONI SC: And we expect him to be here at 10 o'clock tomorrow morning and after he gives evidence we will lead the evidence of Mr Sacks, the forensic investigator appointed by PRASA and Werksmans to investigate the irregularities and improprieties in the
20 Swifambo contract. His produced a 112 page report
Chairperson and he will talk to the report.

CHAIRPERSON: Yes, that is the liquidator?

ADV VAS SONI SC: No, no that is the investigator, and then thereafter, Mr Hannes Muller, who is the liquidator of Swifambo will come and set out what the position was at

February 2020 in relation to the liquidation account of Swifambo.

CHAIRPERSON: Yes.

ADV VAS SONI SC: They are quite - I just point this out - they are quite revealing as to who, on the face of it appearing not to be involved in providing any services received major benefits in some cases, amounting to millions of rands, Chairperson.

CHAIRPERSON: Okay, you choose not to say anything
10 about how certain you are that Mr Mashaba would be here for now you, you want to deal with that if it arises.

ADV VAS SONI SC: Okay, let me place it on record, Chairperson.

CHAIRPERSON: I think it is important, ja.

ADV VAS SONI SC: What happened is once we got Mr Sacks's report, and once we got the – well then we need the liquidators report and Mr Molefe's replying affidavit in the Sifambo matter, we served a 3.3 on Mr Mashaba he did not respond to it. We then asked for a 10.6, a regulation
20 10.6...[intervene]

CHAIRPERSON: Affidavit.

ADV VAS SONI SC: Affidavit...[intervene]

CHAIRPERSON: Did the Commission issue regulation 10.6 directive for him to file an affidavit?

ADV VAS SONI SC: Which he did, and then we have

asked thereafter, we were not certain whether he would come because he did not indicate any positive response to the 3.3 we therefore issued a summons for him to come tomorrow.

In response, we got a letter from his attorney to say that they are of the view that summons is defective without giving any details about what was wrong with the summons, and Mr Mashaba will not be coming. We immediately wrote back to them and said...[intervene]

10 **CHAIRPERSON:** When was the letter received that came from his attorney saying the summons was effective and they would not attend?

ADV VAS SONI SC: I do not have it with me but it was early last week, Chairperson.

CHAIRPERSON: Well, you did send me the letter, I think it was on the same day, I think it was on Monday last week.

ADV VAS SONI SC: It was.

CHAIRPERSON: The same day that Mr Zuma was supposed to appear before the Commission, and I
20 understood you to say the Commission received that letter a few minutes after I had the adjourned those proceedings.

ADV VAS SONI SC: Indeed Chairperson, and that is a point we raised in our response to – because what we are concerned about Chairperson...[intervene]

CHAIRPERSON: I think I must just say, Mr Molefe you

can feel free to leave you are excuse, if you would like to leave.

ADV VAS SONI SC: But you are free to stay.

CHAIRPERSON: But you are free to stay, as well, okay alright.

ADV VAS SONI SC: Chairperson and you are quite right, it is just that it was a week ago, and I had really been immersed myself in all of this.

CHAIRPERSON: Yes, yes

10 **ADV VAS SONI SC:** We noticed as soon as the letter came from the attorney that it was at around 2:30 it was about the time proceedings of the Commission ended last Monday in regard to Mr Zuma's non-attendance and the decision that you Chairperson had announced as to what was going to follow.

CHAIRPERSON: And of course, there had been a letter from Mr Zuma's attorneys that had come in the previous week, I do not know if it was Friday, which for the first time raised the issue of the summons have been irregular
20 without any substantiation.

But what you are saying is that the attorneys for Mr Mashaba sent a letter to the Commission not long after the proceedings on Monday relating to Mr Zuma, we adjourned and they to raised the issue that the summons was irregular or defective, and that he would therefore Mr

Mashaba would therefore not appear before the Commission.

ADV VAS SONI SC: Yes.

CHAIRPERSON: And just like Mr Zuma's attorneys Mr Mashaba's attorneys did not substantiate their contention that the summons was defective. They did not say, what were the grounds for them saying the summons was defective, and they cited that Mr Mashaba would not comply with the summons tomorrow.

10 **ADV VAS SONI SC:** Yes. We immediately wrote and Chairperson I must place that on record, we immediately wrote back and said, two important things. We dealt with the timing of the letter, that it had come just about the time that the proceedings had been finalised on Monday last week. But the second point we made is and it was based once the issues you Chairperson had raised that Mr Zuma's non-attendance might have these consequences.

20 And we pointed out that you had in those proceedings said if you have a problem take the matter to court and set aside the summons, until it is set aside the summons remains effective. And that is where we are, we have sent that letter back we have not received a response to that. So we are hoping that good sense prevails and Mr Mashaba will be here, and he will then be questioned on the bases of his affidavit.

CHAIRPERSON: Yes, okay no that is fine. Okay, we are going to adjourn for the day then otherwise tomorrow we will proceed with PRASA related evidence as Mr Soni indicated.

ADV VAS SONI SC: As you please, Chairperson.

CHAIRPERSON: We adjourn.

INQUIRY ADJOURNS TO 24 FEBRUARY 2021