

**COMMISSION OF INQUIRY INTO STATE CAPTURE**

**HELD AT**

**PARKTOWN, JOHANNESBURG**

10

**07 MAY 2019**

**DAY 90**

20

**PROCEEDINGS ON 7 MAY 2019**

**CHAIRPERSON**: Good morning Mr Pretorius, good morning everybody.

**ADV PAUL JOSEPH PRETORIUS SC**: Morning Chair.

**CHAIRPERSON**: Thank you. Good morning Mr Molefe.

Good morning Chair.

**CHAIRPERSON**: Thank you. Are you ready Mr Pretorius?

**ADV PAUL JOSEPH PRETORIUS SC**: Yes we are ready may the witness be sworn?

**CHAIRPERSON**: Yes thank you.

10 **REGISTRAR**: Please state your full names on record

**MR POPO SIMON MOLEFE**: My name is Popo Simon Molefe.

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

**MR POPO SIMON MOLEFE**: I do not.

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

**MR POPO SIMON MOLEFE**: I do.

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

**MR POPO SIMON MOLEFE**: So help me God.

**REGISTRAR**: Thank you.

**CHAIRPERSON**: Thank you very much.

**ADV PAUL JOSEPH PRETORIUS SC**: Chair perhaps this should have been done before Mr Molefe was sworn but there are a number of

representatives of various parties here may they place themselves on record?

**CHAIRPERSON**: Yes let them do so. Thank you.

**ADV KENNEDY TSATSAWANE**: May it please you Mr Chairperson I appear on behalf of Mr Brian Molefe.

**CHAIRPERSON**: Thank you.

**ADV KENNEDY TSATSAWANE**: And my name is Kennedy Tsatsawane from the Johannesburg Bar.

**CHAIRPERSON**: Thank you very much.

10 **ADV THATO SEROTO**: Morning Deputy Chief Justice Zondo.

**CHAIRPERSON**: Good morning.

**ADV THATO SEROTO**: I appear on behalf of the Chinese entities being CRRC E-LoCo Supply and other related entities. My name is Thato Seroto.

**CHAIRPERSON**: Thank you very much.

**ADV ANDREW STRACHAN**: Morning Chair.

**CHAIRPERSON**: Good morning.

**ADV ANDREW STRACHAN**: Andrew Strachan from Norton Rose Fulbright South Africa we appear for Bombardier Transportation South  
20 Africa.

**CHAIRPERSON**: Thank you very much.

**ADV MNCEDISI NDLOVU**: Morning Chair.

**CHAIRPERSON**: Good morning.

**ADV MNCEDISI NDLOVU**: My name is Mncedisi Ndlovu I represent Transnet.

**CHAIRPERSON:** Transnet.

**ADV MNCEDISI NDLOVU:** And MNS attorneys.

**CHAIRPERSON:** Thank you. It looks like that is all? Thank you.

**ADV PAUL JOSEPH PRETORIUS SC:** Thank you Chair. Chair you have before you two lever arch files. They are the files which contain the statement and annexures to the statement of Mr Molefe. It is Exhibit BB1A and BB1B.

**CHAIRPERSON:** Yes thank you for the two lever arch file will respectively be marked Exhibit BB1A and BB1B. Thank you.

10 **ADV PAUL JOSEPH PRETORIUS SC:** Mr Molefe at page 33 of Exhibit BB1A is a signature, whose signature is that?

**MR POPO SIMON MOLEFE:** It is mine Sir.

**ADV PAUL JOSEPH PRETORIUS SC:** And the document at pages 1 to 33 is that your affidavit before the Chair?

**MR POPO SIMON MOLEFE:** 1 to 33 yes Sir.

**ADV PAUL JOSEPH PRETORIUS SC:** Subject to a few corrections which will be drawn to the Chair's attention are you satisfied that the contents of this document are true and correct?

**MR POPO SIMON MOLEFE:** I do Sir.

20 **ADV PAUL JOSEPH PRETORIUS SC:** And we will very shortly draw your attention to a typographical error Chair that – although it is a small error is significant.

**CHAIRPERSON:** Okay thank you.

**ADV PAUL JOSEPH PRETORIUS SC:** Mr Molefe what position do you occupy at present in relation to Transnet?

**MR POPO SIMON MOLEFE:** I am the Chairman of the Board of Directors of Transnet.

**ADV PAUL JOSEPH PRETORIUS SC:** And when were you appointed?

**MR POPO SIMON MOLEFE:** I was appointed on the 23 May subsequent to the cabinet approval and so appointed by Minister Pravin Gordhan.

**ADV PAUL JOSEPH PRETORIUS SC:** Was that 2018>

**MR POPO SIMON MOLEFE:** 2018 correct.

**ADV PAUL JOSEPH PRETORIUS SC:** And you provide the statement  
10 and your evidence to the Chair in your capacity as such I understand?

**MR POPO SIMON MOLEFE:** That is correct Sir.

**ADV PAUL JOSEPH PRETORIUS SC:** Just very broadly what topics or what category of topics will your statement cover? You deal with that in paragraph 2 of your statement?

**MR POPO SIMON MOLEFE:** The – essentially the statement would cover the what – what the board discovered when it came into office subsequent to its appointment and we do so to the extent that we have been able to – to discover these things. I also informed the commission of the remedial steps that the board had taken to – since  
20 its appointment to correct the wrongs that it found in the company.

**ADV PAUL JOSEPH PRETORIUS SC:** In the draft before – or it is not a draft – in the signed statement before the Chair in paragraph 3 it reads:

“I hasten to state that I have personal knowledge of  
the happenings prior to my appointment to the  
board.”

Is that correct?

**MR POPO SIMON MOLEFE:** It is not correct. What is correct is that I have no personal knowledge and this is what was in the initial draft and I think something fell through the cracks as we were doing the final draft.

**ADV PAUL JOSEPH PRETORIUS SC:** It appears so.

**MR POPO SIMON MOLEFE:** Yes.

**ADV PAUL JOSEPH PRETORIUS SC:** The Rule 3.3 Notices that were issued Chair mentioned the version that you see before you that in fact  
10 the witness did have personal knowledge and that is why although a small correction it is an important correction that needs to be made which will be placed before you in a supplementary affidavit.

**CHAIRPERSON:** Thank you.

**ADV PAUL JOSEPH PRETORIUS SC:** What is the status of Mr Morwe?

**MR POPO SIMON MOLEFE:** At the time of the writing of this statement Mr Morwe was Chairperson the acting group CEO of Transnet. He had been appointed for a period of six months and that period expired after midnight on the 30 April. So at – and the board had decided that it would not extend his contract. Accordingly he is no longer the acting  
20 group CEO and that would require that the necessary correction be made on that statement.

**ADV PAUL JOSEPH PRETORIUS SC:** Do you have any comment in relation to Mr Morwe's current status and how that came about?

**MR POPO SIMON MOLEFE:** The board of Transnet when it heard that it would be required to present before the commission on behalf of

Transnet. It took a view that the perspective that informs its presentation would be that it would give full disclosure to the commission of all matters that it was aware or it knew of. That it took a view that there was nothing to defend because its purpose is to assist the commission to find the truth and to make the necessary recommendations to the President. We – we – we also took the view that in making this full disclosure therefore we would endeavour to be as honest as possible. May I say that despite the fact that the term of contract of Mr Morwe had come to an end matters had come to our  
 10 attention that suggested that there were matters that he would have been aware of which we were not aware of which were not fully disclosed and even if we would have considered in the unlikely event of us considering extending his appointment we would still have taken the view that unless he embraced the perspective of the board of full disclosure and – and of telling the truth and the perspective that there is nothing to defend we would not have been able to present him to the commission as a representative of Transnet.

**ADV PAUL JOSEPH PRETORIUS SC:** So...

**CHAIRPERSON:** Maybe Mr Pretorius before you proceed it looks like  
 20 there may be no need to make a correction in regard to him Mr Molefe because I see your affidavit was signed while he was acting group CEO so in regard to that part maybe there will not be a need to correct anything it is – it may be enough that you have said that he is now no longer acting group CEO.

**MR POPO SIMON MOLEFE:** As the Chair pleases.

**CHAIRPERSON:** H'm.

**MR POPO SIMON MOLEFE:** However.

**CHAIRPERSON:** Ja.

**MR POPO SIMON MOLEFE:** Later on

**CHAIRPERSON:** Yes

**MR POPO SIMON MOLEFE:** When we deal with the matters that we thought he would deal with

**CHAIRPERSON:** Yes.

**MR POPO SIMON MOLEFE:** They would indicate that the new acting  
10 group CEO

**CHAIRPERSON:** Yes.

**MR POPO SIMON MOLEFE:** Would deal with those matters.

**CHAIRPERSON:** No that is fine Ja.

**ADV PAUL JOSEPH PRETORIUS SC:** So it is a matter Chair for the present not necessarily of correcting the statement

**CHAIRPERSON:** Yes.

**ADV PAUL JOSEPH PRETORIUS SC:** But merely updating it.

**CHAIRPERSON:** Yes no that is fine ja.

**ADV PAUL JOSEPH PRETORIUS SC:** And explaining what has  
20 happened since this statement is signed.

**CHAIRPERSON:** Yes no that is fine.

**ADV PAUL JOSEPH PRETORIUS SC:** And that will happen on several occasions during the course of the evidence.

**CHAIRPERSON:** No that is fine.

**ADV PAUL JOSEPH PRETORIUS SC:** Mr Molefe when you were



appointed and you took office as the Chair of the Transnet board you clearly did so with an intent and purpose and in paragraph 4 you give a background to how you would approach your tasks at Transnet and what personal attributes of yourself would qualify you to do so and would direct you in your tasks. Would you tell the Chair about that please?

**MR POPO SIMON MOLEFE:** Briefly Chair – Chairperson I – when I was asked to consider the appointment I could not but accept and believing that this is being done in recognition of the commitment to good  
 10 governance the ethical leadership, responsible use of public funds and the courage to confront the wrongs that happened in state companies and in the country. And I think for approximately five decades of my life Chairperson I was involved in the struggle for freedom, the struggle against oppression, exploitation of our people and in favour of the restoration of the dignity of all South Africans and their human rights to ensure that all of them enjoyed equality before the law. And in doing so I continued to be inspired by the values and the principles of the freedom charter which served as a corner stone of my belief. And that freedom charter its significance lies in the fact that it is a democratic  
 20 document that was written or crafted by South Africans of all nationalities and all races and one can truly say it contains cardinal democratic principles which provided a vision for a new South Africa as we see today and must still continue to build. And when I looked at some of – I reflected on some of its provisions and in relation to Transnet as an entity that I have been asked to check I could not but

remember a provision that talks about the wealth of the country being shared amongst all those – all the people of South Africa. And looking at what was happening in the country where small sections of people, small clicks or groups were – were appropriating public funds, appropriating the wealth for themselves I had to say that but the freedom charter does not say this should be the case. The freedom charter says let the wealth be shared amongst all the people clearly not amongst the thieves, amongst crooks by the people of South Africa therefore it had to be a wealth that benefit and better the lives of the

10 ordinary people. Now in the context of Transnet Chairperson which is a vehicle owned by the Development of State with the developmental agenda. It is expected that it has to be managed in a manner that the resources that it controls are used prudently and for the development of the country and in particular the disadvantaged communities. The challenge that the country is facing now is that of huge unemployment amongst the young people, the youth of our country. Their inequities that exist in respect of women so we have got to deal with the challenges of gender equity both in terms of their upward mobility within the company Transnet but also in terms of their own economic

20 empowerment and anticipation. Included of course would be other marginalised groups like the disabled people and the veterans who spent their lives serving this country in the military. Both in statutory and non-statutory where non-statutory being those military organs that existed before the advent of democracy in 1994. And not they have been – they have [indistinct] into a single national defence force and

they continue to become veterans and therefore an entity like Transnet advancing their agenda of this development of state would have had therefore to take into – has to take into account their interest as well.

**ADV PAUL JOSEPH PRETORIUS SC:** Yes you will deal later in your evidence...

**MR POPO SIMON MOLEFE:** So – so what am I saying therefore Chairperson? I – when I was told come help us at Transnet I did not consider it to be only an honour but it was a rare opportunity for me to join those who are working selflessly to turn around this very important  
10 vehicle that should drive a strong relation and growth of the economy of South Africa. And serve various other businesses, industries in our country.

**ADV PAUL JOSEPH PRETORIUS SC:** Thank you Mr Molefe you will give evidence in due course I understand in respect of both the extent to which against the context that you have drawn Transnet was able to fulfil its mandate in recent years and the extent to which steps have been taken to ensure the fulfilment of the mandate that you have described.

**CHAIRPERSON:** One second Mr Pretorius.

20 **ADV PAUL JOSEPH PRETORIUS SC:** Thank you Chair.

**CHAIRPERSON:** Thank you Mr Pretorius.

**ADV PAUL JOSEPH PRETORIUS SC:** In paragraph 5 you describe at a high level the role of Transnet in the South African economy. Would you deal with that please?

**MR POPO SIMON MOLEFE:** Chairperson the – Transnet is a very

complex organisation and its [indistinct] the easily the entire economic spectrum of South Africa. It is a very important – it provides a very important logistics and freights system for the country. A system necessary for the movement of goods and services. It is a custodian of the rail – rail network and pipelines. It has also the Transnet engineering which is a very important component that does maintenance and also does manufacturing of locomotives. At this stage mainly light locomotives for shunting mainly in the mines. It does haulage of goods across the country, vital routs which would include

10 major, major export products such as iron ore, manganese, coal and so forth. This is just at a high level. But it also play a very critical role in the Southern African region because it connects countries like Botswana, Zimbabwe, Zambia, it assists with the port of Maputo. They move their goods through South Africa to our port terminals. Transnet also as I said controls the port and port terminals in South Africa. It also has a property division. It has got a huge property base that it controls. I think therefore I did say that it is critical to the advancement of the goals of the developmental state to this extent clearly it contributes critically to the development of infrastructure,

20 industrial capabilities and it ensures that there is regional integration and ensures any energy security through the transportation of multi-products such as diesel, jet fuel, petrol from Durban to various parts right – I think it goes right up to here into [indistinct] and Alberton and from there it moves to other parts of the country.

**ADV PAUL JOSEPH PRETORIUS SC:** Transnet is also the custodian of

our ports?

**MR POPO SIMON MOLEFE:** It is the custodian of our ports yes Sir.

**ADV PAUL JOSEPH PRETORIUS SC:** In paragraph 6 you talk of the announcement by the President on 15 February 2018, would you deal with that please?

**MR POPO SIMON MOLEFE:** Chairperson the – when we came into office as a new board some of the first things we had to – to consider was what is the context in which this new board is being appointed? And it was the context that was amongst others characterised by this  
10 important development that on 15 February 2018 President Cyril Ramaphosa was sworn in as the President of the Republic of South Africa. And as was articulated in his speech and indeed as was perceived by many South Africans his appointment represented the ushering in of a new dawn for South Africa. It created high expectations amongst our people. But what was this new dawn as was seen by him and ourselves? We saw a new dawn – the new dawn as the beginning of the recognition and acknowledgment of the wrongs of the past. We had spent many years denying that things were going wrong. His coming into office began to provide a new pyridine that  
20 says indeed things are not what they should be. Things have gone wrong. There has been a systematic weakening and or destructions of vital organs of the state, state owned entities, the erosion of talent and skills in all these institutions. They had set in untold levels of corruption which had begun to define the South African society – corruption had become endemic. So the new dawn therefore posed the

challenge of cleaning up of reversing this phenomenon of corruption. It also called for the beginning of a process of reconstruction of these institutions. Perhaps something similar to what we have begun doing when President Nelson Mandela took over in 1994. There we were reforming or radically changing the institutions whose ethos were based on – in apartheid and began to bring in ethos that reflected a broader society in South Africa that belongs to all of us. So this is the – therefore the context that we saw and therefore for us it meant the beginning of this very arduous thorough going task of rebuilding.

- 10 **ADV PAUL JOSEPH PRETORIUS SC:** Mr Molefe the statements of intent in the paragraphs that you have just summarised for the Chair are matters that provide a context for the work of the commission obviously the task of the commission remains to assess the causes and effects of all the allegations of state capture, fraud and corruption and we dealing now particularly with Transnet and we have been dealing and we will deal with other state owned entities but a question that has been asked of prior witnesses and will no doubt be asked of witnesses who are still to come is what necessitated a new dawn? In other words how did it come about that reconstruction or reform was necessary at
- 20 all? How did it happen that the circumstances in Transnet for example were such as to require the actions taken by you?

**MR POPO SIMON MOLEFE:** Chairperson the – I have spoken about the erosion of skills and I have spoken about the weakening of the institution. In the context of Transnet on or about 2011 the new CEO was appointed to Transnet. A man who was well educated and in many

ways was respected, was trained by the government under some of the Ministers who are highly respected like Trevor Manuel and President Mbeki, Brian Molefe was appointed. He became the CEO, but before he became the CEO the strange thing was that a publication owned by – company owned – by a family called the Guptas had already published that he was going to be the CEO of the company.

**ADV PAUL JOSEPH PRETORIUS SC:** My apologies for interesting Mr Molefe. Would you pull the microphone closer to you so that you can be heard?

- 10 **MR POPO SIMON MOLEFE:** *Ja.* The - The New Age which is a publication owned by the Guptas had already pronounced that Mr Molefe was going to be the CEO of Transnet and in our view therefore when – once they came in there we began to see a process of a collection of individuals with the common purpose that advanced the interests of those who were pursuing quick accumulation of wealth for themselves through certain companies and their linkages to important big businesses some of which later were awarded contracts by Transnet and later on we will show how monies would flow to these companies and that began to weaken governance within the company because in
- 20 order for money to flow to friends who want quick accumulation systems must be weakened within the company. Governance must be flouted. The rules of procurement such as the Procurement Procedure Manual of Transnet, Public Finance Management, Section 217 of the Constitution had to be ignored but also it was necessary as I said to weaken the skills base of the company but on top there you would have

people who have we say a veneer of skills and professionalism but what is lacking from them is the ethical leadership and the moral values necessary to under kill the qualifications that they have and to ensure that the manner in which they were to advance their interest of Transnet as a company.

**ADV PAUL JOSEPH PRETORIUS SC:** Mr Molefe in – unless the Chair wants to ask any questions concerning that – we can move onto a new topic.

**CHAIRPERSON:** No, we may. I hope that either in the annexures or if  
10 no in the annexures arrangements or attempts would be made to find The New Age article that announced Mr Molefe's appointment.

**ADV PAUL JOSEPH PRETORIUS SC:** Yes Chair.

**CHAIRPERSON:** Ja. Other than that if - then – then you may continue.

**ADV PAUL JOSEPH PRETORIUS SC:** Perhaps just one question arising from your evidence now Mr Molefe - how was it that this operation or the circumstances as you have described were not detected and acted upon? Can you assist the Commission in that regard?

**MR POPO SIMON MOLEFE:** It is very difficult for me to – to say in detail but to say that it – it was a sophisticated operation. It starts off  
20 with people who are known to have served the country, the Government who have the qualifications who have been proclaimed as great managers and corporate leaders but these people once they are there therefore they take control of the mechanisms that provide a counter veil against rampant corruption or irregularities in the business. Now if you look at the – the delegations of authority within Transnet – when



we came in there we found that the way in which it was applied was such that an individual could sign off a contract for huge amounts of money from 500 million to a billion without any reference to the Board save to go to the Board only when they decide that it has happened and that opened up a space for lots of contracts signed in this manner and contracts that favoured certain selected individuals but the second way in which it was done it was through a system of confinement. Now a system of confinement – and I know that the Commission will hear evidence from experts in that regard – is a system that has to be done

10 very – applied very restrictively and Treasury Regulations and Transnet Procurement Procedure 91 would require that you use only if there is extreme urgency and the urgency must mean that if you do not act there would be dire consequences for the business or for the lives of the people. Secondly, it is used where you have had probably equipment from a particular supplier and you – you have part of that equipment in operation and you need therefore to standardise by way of bringing further equipment manufactured and designed along the lines of what you have and I think the – the other one is – relates to very scarce restricted skills necessary for the business to do its work. In

20 short Chairperson confinement would be used in that regard but because the door was open for confinement those in authority applied it even in circumstances that did not require that it be applied and in many instances - and I have become aware of that even after I came onto the Board - management would simply delay when they know that a contract is going to expire they do nothing about it. They do not

issue the RFP on time and at a very late hour they come and say we – we need to confine this. If we do not confine it there will be collapse of business. We will not be able to do our work. So it is continuing even now and I will respond later on how we are seeking to change that environment and to do things differently.

**CHAIRPERSON:** So – so the last part that you said effectively means that management would create a situation of urgency or emergency themselves by not doing what they are supposed to do in time and then when the contract is about to expire they say now it is urgent and if – if  
10 we do not confine it this will happen and they use that to say this is a ground to justify confinement?

**MR POPO SIMON MOLEFE:** That is correct Chairperson.

**CHAIRPERSON:** Hm.

**ADV PAUL JOSEPH PRETORIUS SC:** Thank you Chair. In paragraph 7 Mr Molefe you deal with the appointment of the new Board which coincided with your own appointment. Would you please tell the Chair of the contents of paragraph 7 of your statement?

**MR POPO SIMON MOLEFE:** Can I make a comment outside that? I ...

**ADV PAUL JOSEPH PRETORIUS SC:** Of course.

20 **MR POPO SIMON MOLEFE:** I must be a very difficult witness for you ...

(Laughing)

**MR POPO SIMON MOLEFE:** Because I run away but I am sure you will talk to me during the break.

**CHAIRPERSON:** Ja. No, I think he just wants you to tell me the gist of

paragraph 7.

**MR POPO SIMON MOLEFE:** *Ja.*

**CHAIRPERSON:** *Ja.*

**MR POPO SIMON MOLEFE:** Chairperson ...

**ADV PAUL JOSEPH PRETORIUS SC:** May I just add if you leave here today dissatisfied that you have not been able to tell your whole story it would be a sad day indeed. So you must feel free to tell the Chair what you believe is important about your role.

**MR POPO SIMON MOLEFE:** Thank you very much. Thank you very  
10 much. Chair – Chairperson we – we were – Minister Pravin Gordhan was appointed by President Cyril Ramaphosa and on 23 May 2018 he appointed the Chair of the Board and other 11 members of the Board. Their names are set out there. If I am required to mention the names I can do so.

**CHAIRPERSON:** It is really up to you.

**MR POPO SIMON MOLEFE:** *Ja.* It was Mpho Letlape, Louis Van Zeuner, Ursula Fikelepi, Dimakatso Matshoga, Ramasela Ganda, Edward Kieswetter - who is currently the Commissioner for Revenue Services - and Aluwani Ramabulana,  
20 Flolisani Mufamadi – Dr Mufamadi, Vivian McMenamin. Now Vivian has since resigned so has Professor Kieswetter as of yesterday because he has had to go and start his new job on the 1<sup>st</sup>. The others are Advocate Motaung and Gratitude Ramphaka. At the time of the appointment of this new Board the Acting Group CFO Mr Mohammed Mohamedy who by virtue of being the Acting Group CEO

would be a member of the Board and also actual a future member of the Board but he – he therefore had to be appointed by the Minister. He had been appointed earlier on 15 May before we go appointed and he replaced Mr Garry Pita as the Acting Chief Financial Officer of Transnet.

**ADV PAUL JOSEPH PRETORIUS SC:** Are there any ...?

**MR POPO SIMON MOLEFE:** And then of course on 1 November with the consent of the Minister the Board had then appointed Mr Tau Morwe. The consideration in appointed Mr Morwe was that as a  
 10 new Board coming into this very complex and big organisations – organisation knowing that it has got all these problems that had been reported in the media we felt that to bring in a new person from outside who did not understand the organisation when we still do not know who is who in this company it would have probably been a – a big mistake because if the existing management did no collaborate – cooperate with the new person it would have been very difficult for the period of the appointment of the individual for that individual to lead the organisation. So Mr Morwe from the point or view of seniority and 17 years of knowledge of Transnet became for us an appropriate candidate  
 20 to do this job.

**ADV PAUL JOSEPH PRETORIUS SC:** Mr Molefe you go on to speak in paragraph 8 of the role that the Board as a collective must play with in Transnet and perhaps you can also when dealing with that topic also deal with the necessary qualifications - if any - that Board members must possess in order to occupy their position and carry out their

responsibilities.

**MR POPO SIMON MOLEFE:** Thank you very much Chairperson. The – the President in his State of the Nation Address announced that we were going to change the way in which the Boards were being appointed and he said that it must be people who have got business background, understanding commerce, good corporate governance the necessary skills – technical skills that would inform the Board - financial management skills and so on. Those are some of the considerations that the President referred to and therefore the Board

10 that was appointed is a multidisciplinary Board of people who are hardworking but also ethical and have the courage to confront the issues facing Transnet as an entity. They are also selfless. They spent long hours working and they do not get paid for those many hours that they work and amongst them are young people who should really be spending that time to earn a living but they have devoted that time to serve Transnet because they recognise that Transnet is a very important company for the country and for the economy. So I am making that statement. So we were therefore – Chairperson – as a Board that has the skills understood our responsibility as directing and

20 overseeing the affairs of Transnet. In a normal business you talk about creating shareholder value but in the new situation that has unfolded over time where the question of sustainability becomes critical as well the Board must also work in a manner that creates a balance – finds a balance between the interest of the shareholder and the interest of the stakeholder. The stakeholders being the customers of the business in

communities in places where Transnet operates the organised labour all of those things and also dealing with issues of – of the environment. So it is the responsibility of the Board to do that but this responsibility of the Transnet Board also include it serving as the deemed Board of Transnet National Ports Authority which is a component of Transnet but that is prescribed in the National Ports Authorities Act. So – so – and of course it has to do also with the managing – the subsidiary of Transnet called Transnet International Holdings which was created in 2017 with the express mandate of exploring trade and development –

10 economic development opportunities on the continent to see how the skills we have in managing ports, in building rail infrastructure and operating freight rail businesses could be deployed to assist our – our neighbours on the continent. So Transnet International is doing that kind of work. They are already doing work in Ghana. They are busy in Kenya. We have been working on – in Zimbabwe to assist them to turnaround their own economy starting with the movement of – of the mining boots and ore because they can generate revenue – export revenue out of that. So – so – and of course we are working with Botswana also whose economy is growing and we are connecting their

20 rail from Botswana to Lephalale right to Richard's Bay in KwaZulu-Natal. So broadly Chairperson therefore the role of the Board is one of providing strategic direction but also oversight on operation to ensure that there is accountability of management to ensure that those things that are articulated in the memorandum of incorporation and the shareholder compact are aligned with the actions of management and

the work of the Board and the Board can account in respect of the requirement of those critical documents but also that it would then show that the – the corporate plan of the business that issues out of the strategy that is developed between the Board and management gives rise to key performance indicators within specific key performance areas for each one of the managers of the company to ensure that each one does their work and that the overall mandate of the company collectively can be achieved. I – I do hasten to say also that it is the responsibility of the Board also to – apart from accounting

10 to the Minister – to account to Parliament but also to ensure that there is compliance with the legislative framework of the Companies Act, the provision – relevant provisions of the Constitution, the – the (indistinct) Report and so on. All of those provide a gamut of instruments that the Board needs to acquaint itself with as it pursues its mandate of making Transnet work. In sum therefore Chairperson the Board remains accountable for leading the organisation ethically and effectively. It reports to the shareholder representative being the Minister. We were not always going to be perfect in pursuing these things but what matters is that there is a determination and an effort that is being made

20 to do so.

**ADV PAUL JOSEPH PRETORIUS SC:** Mr Molefe you do not deal with it directly but I know it is a matter of concern to the Chair of the Commission and that is the oversight that is exercised by Parliament over State Owned Entities and in this case Transnet. How is that oversight exercised and do you have any comment on the efficacy of

that oversight?

**MR POPO SIMON MOLEFE:** Transnet Chairperson resorts under a Portfolio Committee on Public Enterprises. From time to time the Transnet Board is required to report to that Committee. It has to submit the Annual Report once the audit has been completed and the report has been submitted to the Minister but it also reports on the program implementation of its program of work and strategy. In recent times we have had to report on what we are doing about corruption. When we – the first time I went to Parliament Chairperson Mr Gama  
 10 was still the Group CEO of Transnet. The Portfolio Committee refused to listen to us. They said that they were not going to listen to us if Mr Gama was there because they said they told him never to come to Parliament anymore and they took a view that they would only talk to a Transnet Board once Transnet had solved the issues of those individuals implicated in rampant corruption within the company. So indeed we could not come but we undertook that once we have dealt with the issues we would go back. Indeed we went back. Now part of the difficulty and that is what we discovered when we went to Parliament was that in the period preceding our appointment there was  
 20 lack of transparency from the Board of Transnet. Quite often and I remember – I think it was the date of 6 December 2017 - when Parliament wanted to meet the Board because the Board knew the difficult questions that they were going to be asked. They did not go to Parliament. They stayed away. So they were not opening up and the refusal to open up was influenced by the fact that there was this denial



in Transnet of accepting that there was a capture – the capture of the business. That the business was no longer focused on his mandate adequately and they sought to explain things differently. I mean when we wrote the first integrated report we came in the audit had already been done and management wanted me to put as the Chairman of the Board things that say allegation of corruption were levelled against us. I said no, no. We are going to write it as corruption that we have become aware of and that is how we are going to write it because we do not want to say things that we want to – to back – retreat on. We

10 want to say things that we believe we can continue to maintain going forward. So we went to Parliament. We opened up to Parliament. We told them some of the things that we are saying hereto this Commission and Parliament embraced our report and they made some complimentary statement which said we wish this Board was there three years ago when we met in Transnet. We believe that we would have been far by now in our work. We had a similar experience Chairperson with the – another Portfolio Committee for Trade and Industry which Portfolio Committee wanted to understand how transport – Transnet complied with the provision of Policy on Local Content and Supplier

20 Development. We did say that yesterday when the introduction was made one of the presenters made a distinction to say there are certain components that have to be sourced inside the country and in respect of the locomotives which Transnet had procured. If you – you were procuring diesel – electric locomotives the local content required there would have been 60 percent and in respect of respect of diesel

locomotives it would have been 55 percent and DTI has set out designated certain products which must be used including manufacturing them here locally as part of that procurement process and Transnet had not reported fully on those matters. We had to do it and I remember when we got to Cape Town we had asked management to prepare our presentation. We had to cancel it in Cape Town and say okay keep your document. I am going to make five points which I am going to use to address Parliament and it is five points which acknowledge our weaknesses, which reflect transparency, which say

10 what we are busy doing to fix the wrongs of the past. We still have to go back to Parliament in January to now report to them on where we are today in enforcing Local Content and effecting Supplier Development.

**CHAIRPERSON:** No, I am grateful that Mr Pretorius asked you this question and he is right that it is something that I am really interested in, also in terms of how Parliament played its oversight role in regard to Government Departments and SOE's and so on and so on, in regard to periods where there are allegations of all kinds of wrongdoing that one hears happening over a certain period of time, because it will be

20 important to see to what extent Parliament may have always adopted the kind of attitude that you found when you started as the Board with the Portfolio Committee concerned, is that the attitude that different Portfolio Committees had always adopted or was it different and if it was different over the years why was it different, or are we dealing with a situation where they were trying their best but there were certain,

there's just certain difficulties and if there were certain difficulties were no mechanisms to assist them to do their job properly because I believe that at some stage the Commission must look at if A, B, C, D happened that was wrong, who had the opportunity and the obligation to stop these things from happening, what did they do, what did they not do, and why did they not do what they were supposed to do?

Is it connected in any way with State Capture or is it incompetence or is it other things, so it will be important for us to look at all of those things and maybe somebody like you, because I believe  
 10 Transnet is not the first State Owned Entity in which you get involved, it may be that maybe not this time, maybe some other time you might come and share more experience because it's important that I get a full picture of different portfolio committees in Parliament and how Parliament has played its role, so I thought I would mention that, ja.

**MR POPO SIMON MOLEFE:** Chairperson the question you raise it's tempting me to go outside the realm of what I am here for, but I am going to say one or two or three things briefly about that.

**CHAIRPERSON:** Yes, yes.

**MR POPO SIMON MOLEFE:** I served as a Chairman of the  
 20 Armaments Corporation of South Africa, ARMSCOR, for two terms and I served also, that was from 2004 to 2010 and I served also as the, I normally say Chairman of Petroleum and Gas Corporation of South Africa, that is PRASA [?] for the period 2004 and 2010 and I'm saying Chairman because I define myself in line with the Companies Act, once we change it I will call myself what is in the Act.

**ADV PAUL JOSEPH PRETORIUS SC:** PetroSA.

**MR POPO SIMON MOLEFE:** PetroSA, ja thank you PetroSA, I also served as the Chairman of Passenger Rail Agency of South Africa, PRASA, which made big headlines in the period following the report of the Public Protector called Derailed. During that period Chairperson I had occasion to interact with Portfolio Committees, various Portfolio Committees. They were very robust, and I did not discern anything that suggested that they were not regarding ...(intervention)

**CHAIRPERSON:** ... properly.

- 10 **MR POPO SIMON MOLEFE:** Their oversight role as important, towards in when I was at PRASA and we began as a Board to confront the issues raised in the Public Protector report we went into that extensive investigations we found that in Parliament there appeared to be people in the Portfolio Committee who were being lobbied by those who were defrauding PRASA, because all that they were interested in was trying to stop us from continuing our investigation and insisting that we should move the investigations from where we were conducting them and to give them to Law Enforcement Agencies which had manifested, witnessed and reluctance to deal with issues and Chairperson would
- 20 recall that I have had to compel Law Enforcement Agencies, in particular the Hawks, to go to Court and explain to the Judge and the people of South Africa why they were reluctant to discharge their constitutional mandate, so from that time we began to see that elements of State Capture were incipient in these, and in that particular committee, and of course we saw it beginning now to spread, but I must

say that since I joined Transnet I have designed a definite mind shift and seriousness in dealing with the issues.

SCOPA for example came to visit us, they seemed to have been pretty aware of the state of fear of lower down employees, of the management on top, and I recall in one meeting they said they are going to talk to the employees of Transnet, they don't want any manager to be there, and they did that exactly that, and employees disclosed to them how they were being thoroughly intimidated, that they were not allowed to raise the voice when they see something wrong.

10           So Parliament is doing its work, but if you're at SCOPA you're very robust and I think that going forward if this mood that prevails in the country is allowed to grow and spread we would see a different South Africa and at Parliament that place the kind of roll that was envisaged when we conceived in 1993, I say when we conceived it because at that time I was also a politician, so I would like to stop there Chairperson because some of these things that I mentioned I might well have to come back here, as you correctly pointed out.

**CHAIRPERSON:** Yes I think you probably have a lot of experience, you have mentioned various SOE's in which you have been involved, so you  
20           probably could be quite helpful because to the extent that it may be true that for a certain period different portfolio committees seem to be performing their oversight role the way they should, but from a certain period there seems to be a difference it might be important to get people who really have experience in regard to those periods so I think that must be looked at and from your own point of view you can reflect

and if really you believe you can help the Commission understand though what was happening then you could really come back and share your observations.

**MR POPO SIMON MOLEFE:** Thank you Chairperson, I will certainly go and reflect on that and just to say that I am willing to assist because the problems of this country are problems for all of us, the solution would be one that would benefit all of us.

**CHAIRPERSON:** Yes, definitely, thank you.

**ADV PAUL JOSEPH PRETORIUS SC:** Mr Molefe in paragraph 9 you  
10 deal at a general level with issues directly relating to the concept of State Capture and its manifestation as you testified to in Transnet, many of the points made in paragraph 9 you have already dealt with, perhaps you can just look at paragraph 9 and say to the Chair or tell the Chair which – what points you wish to emphasize from that section of your evidence, and I do have one or two questions arising out of paragraph 9, if I may.

**MR POPO SIMON MOLEFE:** That is where I think I am a difficult  
witness, because you ask me something and I go and traverse other paragraphs, but Chairperson I think the two points that need to be  
20 made is that we think that there was a clear pattern of how the capture was implemented, the starting point is to make sure that you capture the decision maker, the person in the top position. Identify all other strategic positions, which positions would play a critical role in the allocation of budgetary resources of the company, so you would capture the Group CEO, the Group CFO, the Treasurer of the Company, Shift

Procurement Officer and the key people in operating divisions and this is the pattern that we have seen and because these people as I said earlier on are people who manifest this professionalism and they can show they have qualifications, there has not been of looking deeper into their ethical values, their ethics and moral values to see if they are the kind of ethical leaders that the company should have, and it is something that we are going to be dealing with when we interview people for all the strategic positions that we would be appointed to later in Transnet, in the next four months.

10                So that is one point I want to make but also I need to say that there are always little cliques of people who agree, who are – who share common understanding of how they want to implement procurement processes to benefit their friends outside, and half the time this collective that works together is a collective that is also known to the people outside, and who are defrauding the company, so they collude amongst themselves, they weaken the governance system and they identify high value tenders because that's where big monies are and quite often once those tenders have been issued they would constantly review and extend the scope of the business, of the  
20 contract, and when they extend the scope of the contract they would also then increase capital allocation for that contract, so that's really a few points that I would like to say but to indicate that these things that I am talking about are things that we have experienced in Transnet.

I think later on when we deal further with the evidence there will be examples that show what people have done to have money

flowing for work that was not done and out of that money would flow to other entities that are not connected with any service to Transnet.

**ADV PAUL JOSEPH PRETORIUS SC:** Mr Malefe perhaps this is a convenient time for a break. Chair with your leave could we take the short adjournment?

**CHAIRPERSON:** Yes, we will take a short adjournment, tea adjournment, and we will resume at half past eleven. We adjourn.

**INQUIRY ADJOURNS**

**INQUIRY RESUMES**

10 **CHAIRPERSON:** You may proceed Mr Pretorius.

**ADV PAUL JOSEPH PRETORIUS SC:** Mr Molefe we were dealing with the statement at paragraph 9 where you make some general observations about the phenomenon of state capture as you understand it and as you have testified it is prevalence in Transnet when you arrived there. Before we leave paragraph 9 may I ask you speak in paragraph 9.4 of weakening of governance systems and you say in paragraph 9.5 that that indeed occurred in Transnet. Do you have an example you mentioned earlier to me in consultation the example of Mr Richard Vallihu in the context of the weakening of governance systems  
20 within Transnet.

**MR POPO SIMON MOLEFE:** Chairperson the – there are various ways in which this weakening occurs. I did say that at one level you erode the skills simply because – let me start off by saying you – those who are committed to the agenda advancing the capture of state owned companies which translate broadly into state capture would seek to turn



– would bring in first their own cronies. They surround themselves with cronies. Where they are not able to – and then they seek to turn those who are there but were not their cronies they seek to turn them into cronies. And when there is a resistance from those upon which an attempt is made to turn them into cronies they then remove them from the positions that they are holding and make them redundant. And when that moment comes they appoint to those positions quite often strategic positions people who have no knowledge, qualifications or skills to manage those positions. Because for those who advances

10 state capture what is important to them is collusion with them. Is [indistinct] with them. Is not – is not the skills that the company needs. So they do that. And I made the example that you can make is this. That Transnet had an engineer this time I think he is probably 21 years or 22 years in the company, Richard Vallihu. He was running an engineering division, operating division of Transnet. It is engineering operation division. The man is senior is an engineer. He gets removed. He is substituted for by a teacher. H'm? And in Transnet you would have had a thing called Group Leadership Team. Chairperson in your normal knowledge and probably even common

20 sense knowledge your executive team would be comprise the leaders of key operating divisions or units in the business. Because when they meet there they talk about how they implement their strategy, what needs to be refined in that strategy? That GLT was just a group of friends. They were not linked to operating divisions of the business. But once they were sitting there amongst themselves they determined

where – how to influence the awarding of tenders and they do that outside the governance structures of the company. They also put themselves in a position where they attempt to determine – they determine what the procurement needs of the business are. So the effect of that was that they are really more like a screening house than a structure that facilitates effective management and operations of the business. And it also meant that the heads of operating divisions of the company did not have easy access to the top structure or even to the group CEO. They have to report to the chief of operations. What

10 happens about what they report one never knows? Probably they would just get a report that says no we do not agree with the proposal that you are making, we are not doing it. So that is how the structure was operating. But what made it even worse Chairperson was that it was also a structure that determined what information come to the board of directors. The board of directors was persistently and consistently – let me say consistently frustrated. Documents which were brought to the board were unprofessional, not properly prepared and they would come at the last minute to the board and the board would be required to make decisions about matters that they have not adequately been able

20 to apply their minds to. So that is one – that is one of things. So you – they then remove people from positions who are good – they put their own people. They have the structure which behaves in a manner that overrides the governance structures that the governance assisting of the company it created. Let me give you an example. Transnet has got the internal audit unit. The chief of internal audit ideally should be

reporting directly to the audit committee. And if information is given to management is for information to get them to correct the wrongs that have been picked up by internal audit. But our experience in the organisation was that the internal audit unit had to dilute or okay had to be selective as well on which report would come to the board and to the audit committee. I had said Chairperson that I am a very difficult witness for my evidence leader but my experience in the investigations we have been doing with MNS was that we could not even get all the internal audit reports from our own internal audit unit because we  
10 needed to know what reports are there, what findings, what recommendation, have they been implemented, to what extent, what – what sanctions were issued, were the sanctions commensurate with the gravity of the offence? Many of the reports and the information that MNS got came from other sources.

**CHAIRPERSON:** And not from within?

**MR POPO SIMON MOLEFE:** Not from within so it is this culture of secrecy, this culture of withholding information. Yesterday in the presentation of evidence we were told that Werksmans could not access certain information they wanted. Yes it is true I spoke to  
20 Werksmans the man who was leading the investigation team and I asked him what does it mean for the report then that you have prepared. He said no our fundamental – our findings are fundamental nothing will change by – it will not be changed by the fact that there might be some information we did not get. So that is what he said. But that is the difficulty you have. MNS if you take the example of Ubeck –

Qhubeka that we spoke about ...

**CHAIRPERSON**: Oh ja ...

**MR POPO SIMON MOLEFE**: Ezolo yesterday.

**CHAIRPERSON**: H'm.

**MR POPO SIMON MOLEFE**: MNS had to go to KwaZulu Natal to go and get it there. They have had to talk to a number of audit firms to say man please give us we understand the – you did this investigation for Transnet where is the report? So that is the difficulty we had in trying to get to the root of corruption knowing the truth so that we can fix the  
10 organisation. So clearly you have people there resisting and that is what we mean when we say there is a fired back because they do not only do that then they will disseminate information calculated to tarnish the image of those who are cooperating. So that is how I think they then weaken the systems and achieve their objectives.

**CHAIRPERSON**: Well before you proceed let me just ask this. I would have thought that if somebody is employed by Transnet as for argument sake head of the audit unit and therefore as the person who should be in possession or should have custody of certain reports relating to Transnet that have something to do with auditing and so on that if there  
20 are reports that are supposed with – to be with him and he is approached or she is approached and if they are there that person is obliged to make them available to whoever Transnet has said maybe give him those reports. And if they are not there maybe you might understand with one but also you might check well somebody else must have it, it cannot be that if it is – you do not have it nobody has it. But

if you begin to have a number of reports which are supposed to be there within the possession of that person or official and – and he or she is refusing or keeps on coming up with excuses certain consequences should follow and I would imagine that those are being taken. But I do not know whether the basis in which attempts are made that you do not get the reports are such that it is difficult to take disciplinary action.

**MR POPO SIMON MOLEFE:** Chairperson in an ideal situation and things being equal you would expect that a person entrusted with  
 10 certain responsibility – responsibilities and who is accountable to and loyal to the company would understand that they have the obligation to give information to the company when it is required. But the situation is not normal. We have begun acting on a number of these individuals and I am sure we will continue to do so until we get right to the last person in the chain. So that we are dealing with.

**CHAIRPERSON:** No thank you. Because it is obvious that such a person is not in possession of a report such as that in his or her personal capacity is not his or hers it is Transnet's and the only reason why he or she has control is because she or he is in that position where  
 20 Transnet has put them you know. But I think you have given indication that something is being done. Thank you.

**ADV PAUL JOSEPH PRETORIUS SC:** Mr Molefe in paragraph 9.4 you also mention the practice of recruiting what you referred to as reputable consultancies. Would you explain that please to the Chair?

**MR POPO SIMON MOLEFE:** Chair the reputable companies in order to

– are consultancies are appointed or recruited as part of the agenda of the – these individuals. Let us take an example. McKinsey is a globally recognised company. You would not fault it their knowledge is just until recently it has been impeccable. But if you look at the investigations into Transnet and even what we have seen in the reports about Eskom they got embroiled in instances where they got monies for work that they did not do. The former acting group CEO of Transnet considered that an employee of McKinsey wrote his research for his dissertation that he was doing for his master's degree and McKinsey is

10 a service provider of Transnet. I do not understand why it was necessary. He made that admission and McKinsey told me that they have investigated it he made the admission and they disciplined the person. So reputable companies are brought in but then they got – they get harnessed to an agenda – a strategy, a programme that advances an agenda that does not serve Transnet or that facilitates the syphoning of funds from Transnet.

**CHAIRPERSON:** So from what you have said at least in terms of your understanding it seems that people who were pursuing the agenda of state capture, the agenda of capturing SOE's but at least certainly with

20 Transnet in your experience sometimes they would try and make use of individuals who enjoy because of the past to enjoy good reputation as managers who are well educated, who have done well up to a certain point and then – but once they have got them they use them or they get them to do wrong things and then – but you say sometimes they would use people who might not have the requisite qualifications and

experience like you said you made the example of an engineer of 21 years' experience in Transnet being replaced by a teacher in relation to a unit that deals with engineering as I understood the position. And you are now saying sometimes consultancies would also be brought in who have a good reputation, [indistinct] internationally but then they are used to do wrong things.

**MR POPO SIMON MOLEFE**: It is correct Sir. I think in the evidence that probably would be given by – in the evidence that would be given by the acting group chief financial officer some of these things would  
10 be elaborated further and the – I know I have got a bit of it in my statement.

**CHAIRPERSON**: Yes.

**MR POPO SIMON MOLEFE**: When you deal with the question of capital raising dealings which historically were done by the treasury of Transnet which was whose expertise was world acclaimed. But then someone in a strong top position whose chief financial officer collude with the – a consultancy to marginalise treasury of the company to make them redundant and they take over. They do what treasury would have done and get billions out of that you know millions and millions  
20 out of that as a fee and they would say capital raising fee. I mean if you think of how capital raising was done in respect of the locomotives in particular for I think it was China South Rail we had a similar experience and then people walk away with millions of money. So they have now weakened treasury because I am sure that I am almost certain that one of the individuals who was there in the treasury would

be called by the commission who when she saw this and I have had occasion to talk to her said she told them that what was happening in the company was so grossly wrong and she said to them I came here with my integrity. I tell you now I am going to leave this company with my integrity. I am not going to allow the happenings in this business to compromise my integrity and my professionalism. So – but these are the things that are happening. Many of them were happy to sell to sell their reputation, their integrity on the altar of making quick money and not thinking about the future of the country. Even their own future  
 10 because it is something quick you get and we catch you, you lose everything that you had had which you would have kept if you had been an honest citizen of the country.

**CHAIRPERSON:** Thank you.

**ADV PAUL JOSEPH PRETORIUS SC:** Mr Molefe in the remainder of paragraph 9 you refer to and you quote the report of the Public Protector which gave rise to the appointment of this commission. You also deal with a certain report of the Public Affairs Research Institute and you deal with the - what has become known what have become known as the Gupta Leaks. Is there anything you wish to add to those  
 20 observations by way of background to what is to follow?

**MR POPO SIMON MOLEFE:** It is the first difficult question I have to answer. The [indistinct] the report of the Public Protector invest – which she done investigation to – into alleged improper and unethical conduct by President and state functionaries relating to the alleged – oh it is called the Capture of State of Capture. I think that is the name



of the report. Details clearly some of the things that I have said how the – those seeking to capture the state set out to do so and mainly at the heart of which was the Gupta family. And in Transnet Chairperson you will see that in many of instances where monies were lost they were channelled to companies linked with this particular family. But the commission would also have received evidence from people who had been heads of government departments who have shown how when they did not acquiesce in the manipulation of tenders or defrauding of the state they found themselves out. You know people like James Maseko  
10 and others. And the same applies to the government itself. So how some of people and the evidence was led here – how some of the people who had been suspended, disciplined and were out of the business were later brought in when Ministers alleged – a Minister allegedly captured by this family was appointed to the position and suddenly that person came back into the position. So we saw that and of course the other report Chairperson which we referred to here is one in May 2017 by the Public Affairs Research Institute PARI which published what was considered to be a ground breaking study on state capture called the The Betrayal of the Promise. And it shows how  
20 South Africa was stolen. Maybe a bit of an exaggeration but it is quite clear when now the facts come out that indeed the country was on the edge of the cliff so was Transnet itself as a company. With its very critical role that it plays to the economy. And then of course you have all those thousands of emails, correspondence between the Gupta families and various officials in state entities and government

departments which were leaked. And which have been established to be a fact now by many investigations that subsequently ensued. And I – I am advised by my lawyers that most of these things that I am talking about, these reports and the correspondence and so on are in the possession of the commission. Chair I would like to leave it there but I am happy to maybe try better

**CHAIRPERSON**: Yes.

**MR POPO SIMON MOLEFE**: If there is a need for me to elaborate more.

- 10 **CHAIRPERSON**: Yes. No that is fine. What you can do afterwards if there are issues that you feel you might wish to share with the commission you can be in touch with the legal team and arrangements can be made because you know you might have a certain perspective on some of the issues that are covered by one or other report. So we would like to make sure that if you have got something that you believe is important it is not left out unless it is really been captures already, been taken care of.

**MR POPO SIMON MOLEFE**: Thank you Chairperson.

**CHAIRPERSON**: Ja thank you.

- 20 **MR POPO SIMON MOLEFE**: I hope my attorneys are taking notes.

**CHAIRPERSON**: Yes they should take notes otherwise you might be reluctant to pay them. Thank you.

**ADV PAUL JOSEPH PRETORIUS SC**: Thank you Chair. Mr Molefe in paragraph 10 you describe in general terms what the new board found upon its appointment at Transnet and for example in paragraph 10.3

you use fairly strong language in relation to your discoveries on your appointment. You talk of for example total paralysis and you talk of a horror show. If you could assist the Commission please to understand the facts and circumstances that you discovered on your arrival at Transnet in your position as Board Chair. Those facts and circumstances which led you to draw the conclusions you have drawn in your statement.

**MR POPO SIMON MOLEFE:** Thank – Chairperson the – many of these things contained – there is a combination of things. There are those  
10 that we – we – are contained in the reports of the investigations, MNS and – and Werksmans and then others of course are those that we became aware of through whistle blowers. If I am allowed Chairperson I am not going to go through what I have written in my statement there.

**CHAIRPERSON:** *Ja*, you may do that.

**MR POPO SIMON MOLEFE:** The evidence leader is happy with that. I just want to say that we refer to paralysis – total paralysis. The examples to support that would be – let me take this one. In – sometimes I think 2000 and ...

**CHAIRPERSON:** I am sorry Mr Molefe - one second. Can I find out  
20 whether anybody feels that it is hot inside here? I had earlier on said they should put down the air conditioner. Well it does no look like anybody is particularly feeling any heat.

**ADV PAUL JOSEPH PRETORIUS SC:** No one is saying so.

**CHAIRPERSON:** Okay. The relevant people will monitor and where necessary they will switch it on but not too much.

**ADV PAUL JOSEPH PRETORIUS SC:** Yes Chair.

**CHAIRPERSON:** Okay, thank you. Thank you Mr Molefe.

**MR POPO SIMON MOLEFE:** By way of emphasis Chairperson let me repeat part of this statement. We say that it is not an exaggeration to state that the Board was astonished by the wide spread corruption and wilful disregard of the rules. These rules pertain to policy on procurement process that must be followed by various procurement - supply chain management structures. Each one of which had a defined role - they were disregarded and some of these examples you see in  
10 the manner in which the Neotel confinement and procurement was – was done. So we – we go further to say that that kind of a situation the prevalence of this rampant disregard for systems and rules and mechanisms put in place suggest that there is a state of paralysis that has set in and we argue that the way in which monies would be siphoned off and nothing being done to stop it. For those of us who were accustomed to working in the interest of the businesses and the country it represented what I called a horror show. It looked more like a – a movie or a theatre where those who are in key positions and made decisions were the protagonists the main actors. So that is what  
20 it does. I give an – let me give one example. I – as we were busying doing our job we were made aware that we needed to do a road show. Visit the National Port Authority and Transnet Ports Terminal. So we went to Durban. Having received the report for – of the whistle blowers and having seen some correspondence – correspondence from complainants who had entered into a lease arrangement with Transnet I

have asked that management should take the Board of Directors to the old Durban Port. Now the old Durban Port when it was discontinued on the back of the opening of the new Durban International Port it was purchased from Acsa by Transnet for R1.9 billion ostensibly to create a dig out port in Durban as an extension of the facility to assist the port to deal with the congestion that was building up in Durban.

**ADV PAUL JOSEPH PRETORIUS SC:** Are you talking of the land that compromised the old airport at Durban?

**MR POPO SIMON MOLEFE:** Yes. The land that compromised the old  
10 airport was bought by Transnet.

**CHAIRPERSON:** Had it belonged to somebody else before? It must have, yes.

**MR POPO SIMON MOLEFE:** It belonged to Acsa the Airports Company of South Africa ...

**CHAIRPERSON:** Oh, okay.

**MR POPO SIMON MOLEFE:** Because they are the ones who were paid the money ...

**CHAIRPERSON:** Okay.

**MR POPO SIMON MOLEFE:** For that land.

20 **CHAIRPERSON:** Hm.

**MR POPO SIMON MOLEFE:** And the Airports Company of South Africa is a company that is renowned for efficient management of various airports here in South Africa and outside South Africa. I think they go as far as India in doing that job. Indeed the – later after they dug a port the land was bought on which construction was to commence in

2020. There was a downturn in the economy and Transnet itself had begun to experience – had experienced over a period of time a decline in volumes for export. So there was a postponement of construction of that land but what was strange is that when we got to that airport we found that there were a number of businesses that had moved into occupy what was Transnet land. There were logistics companies and there was once company that was – that had a huge – a 100 by 100 square metre warehouse where they were cutting tiles and manufacturing some kind of product and storing cement. There was no

10 lease arrangement between them and Transnet. They were there. Transnet was not getting money into its account. There were others who were running. It ran management businesses. They were running restaurants that they had opened there and management of Transnet. The Chief Operations Officer including the Acting –the then Chief Executive Mr Gama pretended that they did not know that there is illegal occupation of the land. After much engagement Mr Gama said to me *ja* they have occupied the land but you know there are laws in our country which say that we may not remove squatters unless we can provide to them an alternative accommodation. Clearly that provision

20 of the law would not have applied to rogue businesses who behave like mafia and came to occupy the land that belonged to a company that is owned by the taxpayers of South Africa but that is what happened. So for years they were there. We ask ourselves a question they must have been paying money. Who were they paying money to? They must have been assured that you can occupy this land, you can build a factory

here and warehouse. Nothing is going to happen to you because the assessment we – we made was that that factory was built for close onto R50 million. Nobody spends R50 million if there is uncertainty – if there is a risk. So they were assured by management. Now I am mentioning these things to show the problems we have had – this paralysis that we are talking about - this horror show we are referring to. At the same time in the same place Transnet had signed a lease agreement with a company called Seaworld. Seaworld was going to operate that place over 10 years – begin to run domestic flight business like Lanseria linking up with Lanseria. After 10 years they would give it back to Transnet. They could not operate because other more powerful people had occupied that place and Transnet Management did not deal with them. Of course they have now taken them to court. There are several litigations to get them out of the land. They also occupied that land without permission of the City of EThekweni. So now this is the horror show we are talking about. This is paralysis that we are talking about. Money can come into the company. Nothing can be done because people who are there and are friends of people in top positions can stay there and nobody can do anything about it.

**ADV PAUL JOSEPH PRETORIUS SC:** You say in paragraph 10.4 Mr Molefe that the ability of the Board to tackle these issues were not immediately possible and was negatively affected by a number of factors and you list those factors in paragraphs 10.4.1 to 10.4.3. You have already mentioned some of them but perhaps you want to

summarise your evidence in that regard.

**MR POPO SIMON MOLEFE:** Chairperson I – I referred to that structure that I call the screen house. The structure that selected what may come to the Board. So they kept the secret. This Durban dig out port story is one of the secrets that they kept away from the Board. There are many others which we will deal with later. Well the biggest one which almost collapsed Transnet we talk about it and which only came about as a result of the qualified audit report but we will come and deal with it later on. So – so we had that problem. We could not get  
 10 information. No employee could simply talk to Directors because that is like a regimental arrangement in the company. It is like a command system in the army. If the Commander has not commanded you – instructed you to do something nobody does anything and if the Commander chooses not to instruct you to do the right thing so you have got to stay with the wrong thing which is what was happening and made it very difficult for the Board. If people spoke to Directors they would be called aside and told you got no right to be talking to the Directors. We - the top management – are the only ones who talk to the Directors. So you got – if visitors come to the business – to  
 20 Transnet employees must be scared to talk to them and that is why SCOPA when it came there it says we do not want your management because we know that the employees will not talk if you are there. We want to talk to them alone which is what I have also done when I go to port terminals. We tell management to go and allow the employees to tell us about their problems and what they think we should be doing



which we are not doing. So that is the culture we are doing because it is important that we encourage a culture of openness, a culture of transparency, a culture of participation without any fear in the affairs of the business.

**ADV PAUL JOSEPH PRETORIUS SC:** You mention names in paragraph 10.5. Would you deal with those please?

**MR POPO SIMON MOLEFE:** Well Chairperson in the reports that we – we got and when we look at the history of the transactions that – that happened there we identify three key protagonists – three actors. We  
 10 call them the architects and the implementers of the capture of the State and these were Mr Brian Molefe, Mr Anoj Singh and Mr Siyabonga Gama. The records and exhibits will show that they signed for some of these big and irregular contracts including deviations or confinement. The – even changing the procurement – evaluation criteria for –for some of these – these tenders in orders to facilitate entry of those companies which were their darlings which later on we saw that they siphoned money out of Transnet and then of course you had a man who was chairing the Board Acquisitions and Disposals Committee – Mr Iqbal Sharma – who was a business associate of  
 20 Salim Essa a darling of the Guptas and the guy who – who had all solutions for the Guptas and who was running their businesses. Salim – Mr Iqbal Sharma was working for Transnet and the – there was an associate. I think that business was called VR Laser which – which we know also involved with – with Denel and it associated with other companies that then procured business with Transnet. Purely this is

the abrogation of Corporate Governance Rules and a gross violation of fiduciary duties of Directors and senior management of the business and all of these people including Mr Sharma were people who were appointed by Minister Gigaba when he took over as Minister of Public Enterprises. It is a – it is a matter of public record that he was a big buddy of the Guptas. He has been called several times to Saxonwold. I think I was unlikely. They probably did not know my name. They never asked me to go there and you know the opportunity ended before they could call me.

10 **CHAIRPERSON:** Yes.

**ADV PAUL JOSEPH PRETORIUS SC:** You have also dealt Mr Molefe to some extent with the matters raised by you in paragraphs 10.6 and 10.7. Are there anything in those paragraphs that you feel you should add to what you have already said?

**MR POPO SIMON MOLEFE:** Not much of substance Chairperson save to say that we make a point that the manner in which these individuals operated they treated Transnet as their piggybank. You know the little bank that kids play with. They put in money - they take it out. Transnet was that kind of a thing that they – they could put in money

20 take it out at will but I think they were taking more out than they would have put in anything and – and in this regard – this context they would have been diverting funds to various entities through these nefarious methods of inflating the prices and changing the scope of contracts. So that you justify increase of the costs and they were also using these advisory services somewhere. In the exhibits the Honourable Chair will

– will see that Trillian would be paid money for the work that they had not done for Transnet. I think we will probably see it later. It is probably in the region of R93 million which – which was paid to them. This was all part of this sophisticated game that was being played by those in – in power.

**ADV PAUL JOSEPH PRETORIUS SC:** Paragraphs 10.8 to 10.10 Mr Molefe similar observations apply. You have dealt with issues raised in those paragraphs and in paragraph 10.9 by way of summary you talk of three basic pillars of the corruption and model of State Capture as  
10 you refer to it. That was prevalent in Transnet when you arrived. Do you wish to add or mention those three pillars by way of summary - paragraph 10.9?

**MR POPO SIMON MOLEFE:** All of them, okay. We did refer to them that we – we did say that the – a particular model of capture and corruption was constructed based on basic pillars. I did say that that – those pillars would be you are either with us or without us – against us. So employees who did not support the agenda were dismissed. They were transferred elsewhere or they were rendered redundant. In this connection I must say we found many hardworking, loyal and  
20 experienced employees pushing paper and not knowing what they are doing. They are still there many of them and we are in the process of doing this. We also know that those who could not stomach this kind of behaviour resigned. Not because they wanted to go but because they felt that they had no future but this organisation needs the skills that they had and we are in the process of bringing them back provided that

in doing so we will not find ourselves to be acting in conflict with any law of our country because we think the – the company needs them and we do say that oh look they introduced new methods – procurement methods or they flouted decision making in respect of our procurement processes. They used systems that facilitated State Capture. You asked me how. I think probably Neotel again would provide an extractive example where normally the process of determining the business needs, the quality and the scope or the quality of product required and the scope of work would originate from the owner of  
10 business. When we look at what had happened at certain points with regard to Neotel the memorandum comes from the top. It does not come from the owner of business and it ends up being endorsed by the CEO of the Operating Division and Management and they get settled with a mess of dysfunctional equipment which was obsolete which later on of course the company would have been required to buy back. It is one example that that we have seen and we have said also Chair that reprisals were enforced. There were concoctions - fabrications of charges and people subjected to disciplinary hearings found guilty and fired. Some of them are subjected to this disciplinary hearings on  
20 matters that they know they had – they are not guilty of but in the end because they have considered that they are unwanted in the business they go away. So this – this has been the – the method that has been used by those in power and the culture that had developed was that you do not ask your superior questions. You do not debate with your superior. You just listen and carry out orders. That had been the

culture and it is a culture we are seeking to reverse. It is very difficult because it had become not only a culture but a practice within the organisation and I have got to turn that around if we have to unchain the creativity, innovation and talent of the many employees who understand this business, love it and are committed to working.

**CHAIRPERSON:** Well part of what you are – you are telling me in terms of people who maybe – may have been seen to resist attempts to get them to be involved in wrongdoing that they were – disciplinary charges were brought against them and you were suspended and/or  
 10 dismissed or things were made difficult for them with the result that some would leave – you know. It seems consistent with what I have been told by other witnesses in relation to - for example - the Law Enforcement Agencies. Of course I will still hear more evidence and see whether there is any – there are any witnesses who dispute that analysis but what you are saying seems to be consistent with what they told me or some of the witnesses in the Law Enforcement Agency told me what is happening in that sector as well.

**MR POPO SIMON MOLEFE:** It is indeed consistent Chairperson. Without getting into the details I have had the opportunity to work with  
 20 Law Enforcement Agencies when I was Chairman of PRASA.

**CHAIRPERSON:** Yes.

**MR POPO SIMON MOLEFE:** We started off very well. We had professional police officers who were doing a good job.

**CHAIRPERSON:** Yes.

**MR POPO SIMON MOLEFE:** And we gave them files and files of

evidence.

**CHAIRPERSON:** Hm.

**MR POPO SIMON MOLEFE:** They agreed ...

**CHAIRPERSON:** Hm.

**MR POPO SIMON MOLEFE:** To work with our forensic investigators because they had lack of capacity in that area.

**CHAIRPERSON:** Yes.

**MR POPO SIMON MOLEFE:** Then of course when the President changed the Head of the Hawks and brought in a gentleman  
10 Berning Ntlemeza...

**CHAIRPERSON:** Hm.

**MR POPO SIMON MOLEFE:** He got in there and he removed ...

**CHAIRPERSON:** Hm.

**MR POPO SIMON MOLEFE:** All these good people ...

**CHAIRPERSON:** Hm.

**MR POPO SIMON MOLEFE:** And we started seeing – getting the story of files which were disappearing.

**CHAIRPERSON:** Huh-uh.

**MR POPO SIMON MOLEFE:** The work we had given not been done. As  
20 I am sitting here now ...

**CHAIRPERSON:** Hm.

**MR POPO SIMON MOLEFE:** Talking in this Commission ...

**CHAIRPERSON:** Hm.

**MR POPO SIMON MOLEFE:** There are volumes of evidence ...

**CHAIRPERSON:** Hm.

**MR POPO SIMON MOLEFE:** Sitting there ...

**CHAIRPERSON:** Hm.

**MR POPO SIMON MOLEFE:** With the Hawks ...

**CHAIRPERSON:** Hm.

**MR POPO SIMON MOLEFE:** Which – which they are yet ...

**CHAIRPERSON:** Hm.

**MR POPO SIMON MOLEFE:** To go to the National Director of Prosecution ...

**CHAIRPERSON:** Hm.

10 **MR POPO SIMON MOLEFE:** To deal with.

**CHAIRPERSON:** Hm.

**MR POPO SIMON MOLEFE:** It is precisely for that reason ...

**CHAIRPERSON:** Hm.

**MR POPO SIMON MOLEFE:** That I had to haul them before the court ...

**CHAIRPERSON:** Hm.

**MR POPO SIMON MOLEFE:** And say do your job ...

**CHAIRPERSON:** Hm.

**MR POPO SIMON MOLEFE:** And it was a simple thing. Do your job.

**CHAIRPERSON:** Hm.

20 **MR POPO SIMON MOLEFE:** You discharge your constitutional mandate. I am not asking you to do something that's not part of your responsibility and your duties.

So there is a correlation between what we have painted here and what happened to these Law Enforcement Agencies. I needed ... (intervention)

**CHAIRPERSON:** But what's quite important in relation to the last bit that you have said about the Law Enforcement Agencies is, you are not basing that on what you may be reading in the newspapers or hearing in the media you are basing it on your experience as Chairperson of PRASA at a certain time when – from a certain time the Hawks seemed to have good people who were keen on their job doing it properly but from a certain time your experience showed that things began to be different, that's personal experience you – in matters in which you were involved in, that capacity.

- 10 **MR POPO SIMON MOLEFE:** Certainly Chairperson, I said with the most – some of the senior people, I've never said with Mr Ntlemenza because he was not there and when he came in they stopped doing the job but I sat in meetings with his deputy who is still there now. I needed to have added one point, Chairperson, which – when I spoke about reprisals and disciplinary hearings.

**CHAIRPERSON:** Yes.

- MR POPO SIMON MOLEFE:** To say that justice in Transnet was applied selectively where the person implicated in reports was somebody who knew a lot about the wrongs of some of the people in  
20 senior positions. That person would be charged but deliberately, not enough evidence would be adduced before the disciplinary hearing.

**CHAIRPERSON:** Yes.

**MR POPO SIMON MOLEFE:** We had one example where there was a devastating report for example on the matter of the NMPP, National Multi Product Pipelines and that report, during the disciplinary hearing,



was not used. The result was that the person was not found guilty. So it is deliberate because they had the report but they didn't want to use it. Transnet lawyers or lawyers instructed by Transnet were either not made privy to that report or they did not ask for that report but Transnet, knowing the gravity of the transgression, the offence, they should have used it, but they didn't but on smaller persons, individuals they descend heavily on, they punish them, they fire them from work.

**CHAIRPERSON:** Well it might not be exactly the same thing that some of the witnesses and the Law Enforcement Sector told me, but  
 10 they did say that in regard to persons, officials who seemed to be fighting corruption there seemed to be quite determination to get them arrested, charge them criminally even when, either there was no case or if there was something they'd done wrong was really a minor thing but when it was certain other people then even if there was clear evidence nothing would be done against them in terms of arrest or being suspended or charged or transferred or when it was done it was done in such a way that they would not be found guilty or something like – I hope I'm not misrepresenting what they told me but there was something like that but I just mention to say that there is also that  
 20 came from a different sector thank you.

**MR POPO SIMON MOLEFE:** It is so Chairperson that's my observation from where we are sitting what we have seen but I've also seen it by working closely with Law Enforcement Agencies.

**CHAIRPERSON:** Yes.

**MR POPO SIMON MOLEFE:** The – there was a point I wanted to

make, maybe I can make it once advocate Pretorius concludes that paragraph 10 but if you allow me, Chairperson, I can just rattle on and say that...(intervention).

**CHAIRPERSON:** Yes Mr Pretorius is that fine in terms of your own planning?

**ADV PAUL JOSEPH PRETORIUS SC:** Well I was coming to paragraph 10.12 and had a few questions in relation to the manner in which the Board responded to what it found and began its own series of investigations.

10 **MR POPO SIMON MOLEFE:** I was going to do something – say something before that paragraph 10.

**CHAIRPERSON:** Okay say so.

**MR POPO SIMON MOLEFE:** And that is 10.11 basically where we say that one of our primary tasks was to investigate the extent of abuse of procurement processes at Transnet and to make sure that we clean up the mess as much as possible. I think to this extent there are a number of these big matters we are dealing with, one of them is that the Durban Dig-out Port I referred to earlier, the other one is that one of the cranes which has been dealt with. We received further whistle blowing reports  
20 in respect of the multi product pipeline that I've spoken about, we still have to look at how to use that information. I'm advised that we have approximately 400 000 documents which came as a result of the whistle blower and MNS Attorneys went to collect it in Durban and the whistle blower says, you stand a chance of recovering 12billion rand that Transnet has lost but I don't know if people would have been sitting in

the 12billion rand but it is worth demonstrating to the South African public that we're acting decisively so we will deal with that.

You might ask, Chairperson, but what mechanism have you created to make sure that matters that you have not referred to in your evidence here are followed up are not allowed to disappear. We are working on that, we have recently been – received approval from National Treasury in the use of Transversal contract to use forensic investigators who are on their panel and the intention is to make sure that we move rapidly, we don't go through tedious processes of trying  
 10 to find investigators through a public tender. Of course, even as we do that we will still have to go through Transnet procurement to achieve that but we are looking at – these cases that I'm referring to would go to them.

Yesterday advocate Pretorius said Transnet is no longer at the Carlton Centre, Transnet has moved now to Waterfall Corner and he said, well this might be the subject of investigation, I don't know who whispered to him. It is indeed the subject of investigation, I should have seen the preliminary report of it yesterday or today it has not been brought but is the subject of investigation. Some of the strange  
 20 things that have happened and the questions that I've asked management was, how could it be so coincidental that Waterfall Corner, the building you want is occupied by Group Five, Group Five has a five year contract – lease, Group Five has used two years of that lease and suddenly Transnet comes in and takes a lease of three years in the same building. Is this not a bail out of some kind because in my

personal experience if you had a lease the Landlord would have said to you, you can't leave my property now unless you find me a tenant who will take the remainder of your contract.

So it is that red flag that we'll pursue from where I'm sitting I've been privy to some of the emails that suggested that, in fact, even before the RFP went out there had been discussions between management of Transnet and management of Group Five, management of a company called Attack which is a listed property company of – why do I forget the holding company, I'll remember it but there had been  
10 those discussions and we also look at how the RFP was designed. Transnet needed a lot of parking space if it was to move everybody from the Carlton Centre to the Waterfall Corner, it would also have needed additional space to accommodate Executives coming from the operating divisions when they come to the meetings of Exco but Transnet did not do that. It designed the parking requirement to suit what exists already there in that building, the result being that when there is Exco, members of management, top Executive team, they don't have place to park. So it's one of those things that will be investigated there are many more similar ones and we will be using this – the panel  
20 of National Treasury to follow up on these things. There are other things which Funduzi, in his report, became privy to but they were falling outside their mandate but they reflect the violation of procurement and other things happening within Transnet they would have to be packaged as well and included in the next phase of our investigations.

**ADV PAUL JOSEPH PRETORIUS SC:** You deal in paragraph 10.12, Mr Molefe with the beginnings of the review process embarked upon by the new Board and a number of high-value tenders were identified in that process. We're going to deal with some of them in your evidence in due course but as you yourself has stated the question arises, what about the possibility of malfeasance outside of those high-value tenders and you've told the Chair about some of the activities of the Board in that respect. May I refer you to a statement you made – public statement you made, it's not part of the bundle Chair but it will  
10 be handed up. In January 2019 it's in the Business Report and its under the headline, Transnet Reviews Thousands of Contracts and Clean Up, and towards the end of the article you are quoted as saying that Transnet would spend a significant amount of time going through a pile of contracts which you, Mr Molefe, estimated to be in the thousands that the company had entered into during the past few years and you are quoted as saying, "the reality is that once that exercise is completed, the 8.1billion rand reported in irregular expenditure last year, that number could be significantly higher", did you make that statement?

20 **MR POPO SIMON MOLEFE:** That is correct Chairperson, I did.

**ADV PAUL JOSEPH PRETORIUS SC:** Do you have anything to add, how is it that...(intervention)

**MR POPO SIMON MOLEFE:** I did not suck the number thousand from my finger, I had a discussion with our Treasury and the Acting Chief Financial Officer and said, what would it take for us to get to the

bottom of this corruption. It is quite clear that when we came in the focus was on the 1064 locomotives, on Neotel, on T Systems as well as 95 and 100 locomotives procurement but the reality is that there are many others falling outside that which, if indeed we want to clean up, we'd have to deal with. So the statement is correct sir and we are committed to doing so and one of the things that – items that we're already dealing with on which there's a preliminary report is one relating to what is called Ambrose Park, is the land of Transnet where Transnet was attempting to create an opportunity for emerging oil and  
10 gas businesses to establish there but unfortunately whilst economic transformation, inclusiveness and empowerment are necessary, some opportunist circumvented the processes, so we are looking at that and it's a complex thing, Chairperson, because the companies that signed these lease agreements were Transnet, themselves did not want to defraud Transnet unless they might have been giving kickbacks to somebody. It's that somebody inside Transnet chose not to follow the process.

The result was that once those companies had signed the lease agreements they spent millions. I spoke to one company that  
20 says we have already put 100million into this thing. So Transnet, in resolving these matters it is going to have to find a balance between dealing robustly with compliance with the procurement system but also deal with the impact that our failures as Transnet has had on innocent businesses. Perhaps that is probably the point at which lawyers would call about just and equitable arrangement.

**CHAIRPERSON:** Yes, yes.

**ADV PAUL JOSEPH PRETORIUS SC:** Mr Molefe in embarking upon the project or projects that the Board has chosen to, have you found a change in relation to the readiness of whistle blowers to come forward?

**MR POPO SIMON MOLEFE:** Yes Chairperson, increasingly South Africans in and outside Transnet, employees of Transnet are coming forward disclosing information which hitherto we would not have been able to access and we think that it (indistinct) for the process of changing the culture, rebuilding the institution and restoring public  
10 confidence in State owned companies.

**ADV PAUL JOSEPH PRETORIUS SC:** Mr Molefe at paragraph 10.12.1 and following you deal, at a high level, and in summary with some of the larger contracts which have been reviewed through your investigations or through the investigations that you've mandated your legal representatives and others to undertake. Shall we start first with the issue of the 95 locomotives at paragraph 10.12.2 if you could tell the Chair, in summary, what investigations have revealed?

**MR POPO SIMON MOLEFE:** The key investigation in this regard – investigations where MNS and Funduzi, especially Funduzi and the  
20 investigations reveal that, again, as is prevalent Transnet at the time – as was prevalent in Transnet at the time procurement processes were flouted, prices were increased. If you look at these two they start off with Transnet saying we need to confine because we're going to prepare our locomotives aging there's a number of them which would be phased out, they will go out of service so we need to move rapidly.

Now there were companies that provided service at this stage, I recall one of them was Mitsui, I think it's called Mitsui.

**ADV PAUL JOSEPH PRETORIUS SC:** That's Mitsui.

**MR POPO SIMON MOLEFE:** M-i-t-s-u-i.

**ADV PAUL JOSEPH PRETORIUS SC:** Yes.

**MR POPO SIMON MOLEFE:** It had previously provided locomotives of the type that Transnet required and management advised that in order to ensure that the costs are not high that we implement – we manufacture these locomotives quickly and therefore can deploy them  
10 in services quickly as possible. The confinement should be in Mitsui, they have the design, they have the production line so they're not going to spend time still trying to figure out how to design that locomotives and that is where, probably, the question of standardisation would have arisen in that regard and which is provided for in confinement and in the deviations of National Treasury regulations, if I recall well should be regulation 16 or so but China South Rail entered, things changed.

What was, initially intended to be a confinement to Mitsui was now changed, it was made a confinement now to China South Rail which did not have the design that Transnet required at that time and  
20 therefore Transnet ends up with a locomotive design that they did not require and again, the business owner, which would have been TFR would have said this is a kind of locomotive we want it gets up there to the big bosses at Corporate, they decide no, no you're not going to get what you want, you will get what we say is good for you. You're not going to get what you want which would be cheaper for Transnet you're



going to get what we say is good for you and which will lead to escalation in terms of price but you must pay that price, I just want to make that point. I know that the details will be dealt with by other witnesses who were more into operation and we're dealing with issues of governance and procurement there are experts in that regard.

**ADV PAUL JOSEPH PRETORIUS SC:** We know from investigations that there were three contracts in relation to – well many more than three contracts but three categories of contract in relation to the procurement of locomotives, that's the procurement of the 95  
 10 locomotives then the procurement of 100 locomotives and then the procurement of the 1064 locomotives, those issues have been raised yesterday and will be the subject of further evidence. You summarise separately in relation to the 95 the 100 and the 1064 the findings. You've dealt with the 95 I think and in paragraph 10.12.4 you summarise the findings in respect of the 100 locomotives. Would you just summarise those for the Chair please, that's in paragraph 10.12.4.1 and following?

**MR POPO SIMON MOLEFE:** Chairperson we – I identified the irregularities in respect of the acquisition of a hundred locomotives and  
 20 I did say that, already, what was initially intended to be a confinement to Mitsui now shifted to become a confinement of the hundred locomotives to China South Rail and this was not in compliance with the requirement of urgency, standardisation and highly specialised goods as prescribed by the policy and of course the Treasury regulation. So it's one of those things so we – it's irregular, that's

Funduzi has found that and so did MNS investigators...(intervention).

**ADV PAUL JOSEPH PRETORIUS SC:** Was there any escalation of cost that raised concern?

**MR POPO SIMON MOLEFE:** The – I'm coming to that, the investigations – the report showed that the China South Rail proposal did not meet the objectives of confinement as set out in the memorandum of 21 January 2014 which had been approved by the Transnet Board of Directors and then of course that on the – in response to the question by advocate Pretorius SC it is indeed true that  
10 the acquisition cost escalated from 3.8billion to 4.4billion and this memorandum was submitted by Mr Brian Molefe, Mr Singh and Mr Ganda justifying the increases. So I'm advised, from the investigations that Transnet overpaid at least 3.47million per locomotive and at most paid 6.2million per locomotive.

**ADV PAUL JOSEPH PRETORIUS SC:** Overpaid?

**MR POPO SIMON MOLEFE:** Sorry overpaid yes overpaid by that amount sorry and the conclusion was that Messrs. Molefe – Brian Molefe, B S Ganda, Singh and Giani had failed in discharging their fiduciary duties in the acquisition of hundred locomotives for China  
20 South Rail, the fiduciary duties being one that requires care and diligence. So – and these are the things that show that, wilfully, people could just ignore the rules.

**ADV PAUL JOSEPH PRETORIUS SC:** Chair its two minutes to one we're about to move to a new topic. Would it be convenient now to take the long adjournment?

**CHAIRPERSON:** Okay we'll take the lunch adjournment and we'll resume at two o'clock, we adjourn.

**INQUIRY ADJOURNS**

**INQUIRY RESUMES**

**CHAIRPERSON:** Okay you may proceed Mr Pretorius thank you.

**ADV PAUL JOSEPH PRETORIUS SC:** Thank you Chair. Mr Molefe before the long adjournment we were dealing with the various locomotive transactions and you were about to refer to the findings of the investigations mandated by the board of Transnet into the purchase  
10 of the 1064 locomotives which is at paragraph 10.12.5 of your statement. If you would summarise please for the Chair what the investigators found in respect of that transaction.

**MR POPO SIMON MOLEFE:** Chairperson in summary the findings of the investment – I mean the investigators sorry the investigators was that the request for proposal, the RFP's did not comply with the Preferential Procurement Policy Framework Act. The investigators found that Transnet did not follow National Treasury instruction note which provided for 90 10 preferential point system. Being 90 I think on the side of pricing and then 10% on side of empowerment. Which is a  
20 provision provided for in the Preferential Procurement Police Framework Act. They also found that Transnet unlawfully deviated from the evaluation process when evaluating technical compliance. That Transnet did not track production and content threshold as the price changed during post tender negotiations with regard affecting three bidders in this connection. I earlier on referred to the requirements of

local content and variously looking at matters requirements in respect of electrical locomotives which was 60% and the diesel locomotives being 55%. I – in reading the scores in respect of all of them in fact none of them complied, none of the bidders. So they were allowed to go through but it also suggests that you know the environment was such that bidders could come and simply ignore policy and procurement strategy of the company that is procuring their services.

**ADV PAUL JOSEPH PRETORIUS SC:** In relation to the local content it is quite a complex issue I understand because as you say in paragraph  
10 10.12.5.3 prices changed in post tender negotiations which resulted in a change to the local content calculations, am I correct?

**MR POPO SIMON MOLEFE:** Yes Sir.

**ADV PAUL JOSEPH PRETORIUS SC:** Sorry I interrupted you.

**MR POPO SIMON MOLEFE:** No I do not – I do not intend to add anything unless...

**ADV PAUL JOSEPH PRETORIUS SC:** Alright.

**MR POPO SIMON MOLEFE:** I am required to do so.

**ADV PAUL JOSEPH PRETORIUS SC:** In 10.12.5.5 you mention a circumstance involving China South Rail and Mr Salim Essa and a  
20 payment made there that tainted the procurement process. You there referring to a payment to a company called Tequesta.

**MR POPO SIMON MOLEFE:** It is so Sir the – now Chairperson the procurement Public Procurement in South Africa is provided for or is governed by Section 217 of the Constitution of the Republic of South Africa. And it is also the Public Finance Management Act and Transnet

has developed also a robust policy in what is called procurement procedure manual which clearly define how this process should be undertaken. Of course at the heart of it apart from your local content and so on is the fact that the process has got to be fair. It has got to be just. It has got to be cost effective amongst others. Those clearly were ignored and these provisions were ignored and one sees in the findings of the reports unimaginable arrogance where China South Rail bid to supply if I remember well it is 359 locomotives to South Africa I think those ones were electric if I remember well. And then they also

10 allow for a back to back service agreement to be entered into between Tequesta which is a company of Salim Essa an associate of the Gupta's with a company called China South Rail Hong Kong. And the basis of that agreement says we are responsible for you getting the contract in South Africa. Which means they are saying there was no fair competition. We went in there, we told our friends inside Transnet in the board acquisition and disposals committee that you must get this contract and you got it. Now because you got it you got to pay us a success fee and you will pay us through another vehicle that you have created and will be in Hong Kong, registered in Hong Kong China South

20 Rail Hong Kong. And for each invoice that Transnet pay you going to pay us 21%. If my recollection is good but I suppose the experts will deal with the exact detail, I think S at the time when I last checked this matter Tequesta had already been paid over R3 billion on the basis of this so called success fee. Now...

**ADV PAUL JOSEPH PRETORIUS SC:** Who was the chairman of the

board acquisition and disposals committee at the time?

**MR POPO SIMON MOLEFE:** No the chairman of the board acquisition and disposals committee at the time was a man called Iqbal Sharma who was a business associate of Salim Essa who owned maybe if not 100% but majority – huge majority stake in Tequesta. And the money therefore arising out of the contract awarded by Mr Iqbal Sharma on Mr Iqbal Sharma's recommendations to the board found its way, part of that found its way to the company of his business associate Mr Salim Essa. We said earlier on they were business associates in VR Laser

10 ja.

**ADV PAUL JOSEPH PRETORIUS SC:** May we move on then?

**CHAIRPERSON:** I am sorry ...

**MR POPO SIMON MOLEFE:** Just – I had wanted to go back to 10.1.2 – 10.12.5.4

**CHAIRPERSON:** Oh I was also wondering whether that you left that out deliberately?

**MR POPO SIMON MOLEFE:** No I had left it – I had intended to leave it Chairperson.

**CHAIRPERSON:** Oh okay.

20 **MR POPO SIMON MOLEFE:** But now I see money there.

**CHAIRPERSON:** Well that is what...

**MR POPO SIMON MOLEFE:** That is what I see.

**CHAIRPERSON:** That is what I saw too.

**MR POPO SIMON MOLEFE:** I thought South Africans want to hear about that.

**CHAIRPERSON:** Well I thought when I saw that figure I said how could you leave it out. Yes.

**MR POPO SIMON MOLEFE:** So, so, so. That – the finding there – the MNS it is contrary to Transnet negotiation strategy. The post standard negotiation team permitted the bidders to prize for split in batches thus causing Transnet to incur additional R2.7 billion in the total estimated costs. So every time there is failure to observe the rules, the processes and regulation Transnet loses money, pays more and in this instance it is paying an extra R2 billion. I would imagine that as they  
10 keep paying more some of this money then finds its way to the pockets of these individuals.

**ADV PAUL JOSEPH PRETORIUS SC:** The purpose of post tender negotiations would be to establish what is known as the best and final offer, am I correct?

**MR POPO SIMON MOLEFE:** That is correct Sir.

**ADV PAUL JOSEPH PRETORIUS SC:** And what is the purpose normally for the party issuing the tender?

**MR POPO SIMON MOLEFE:** Chairperson the purpose normally of the party issuing the tender is to use that process to reduce the costs in a  
20 way they use that to negotiate the prices down. And it is normally done with post tender. It is done with those who have already been advised that they have been the preferred bidders and they are being awarded the tender. Something that has been strange with this process we have found that when negotiations take place on the best and final offer the prices just go up. We – I am yet to call to mind any negotiations where

the – the price went down. So that is the difficulty we have with the way in which the BAFO negotiations was handled. BAFO meaning the best and final offer.

**CHAIRPERSON:** Well I guess that these kinds of things would not be picked up most of the time where those within the company who were supposed to exercise oversight are either not able to because they are incompetent or not able to because they do not know the subject or because they too are party to the scheme. Because otherwise when there are so many things going wrong if there are people who are paid  
10 to do oversight they must pick these things up.

**MR POPO SIMON MOLEFE:** Chairperson that is true things being normal. But we now know that the phenomenon of state capture has ushered in anomalies that boggles the minds of normal thinking human beings. They should be doing that but they are not doing it. The Transnet procurement procedure manual requires that people in supply chain need to be trained regularly. Of course your management would say that it is – it should not end only with employees that directors too need to be subjected to this training so that they understand the processes and when they ask questions interrogate those who are  
20 making submissions requesting approval they should be able to ask the right questions and they should also be able to detect where processes have been violated. The finance and capital investment committee of the board which has been mandated to exercise oversight on procurement and to recommend to the board when they are satisfied that the procurement mechanisms and policies have been applied in a



manner that is satisfactory. They would then come to the board and recommend that they are satisfied that it has been done. But we have also said probably we need to do more than that. The way to do it is to stop the situation where one person is the person delegated to sign approval can do so without the collective view of the committee. So we have introduced the committee system to ensure that the committees would then serve as a counter vale against the weaknesses or the disregard of rules and policies. But we went further to say probably we need a new way also where you could – you could say to each

10 individual you need to sign off in a particular list where you – you confirm that you agree with everything, you have done your best to make sure that policy is complied with. And therefore if you write that and it comes to the board as a result of that recommendation the board approves and later it is found that you mislead the board that should lead to summary dismissal of the individual.

**CHAIRPERSON**: Of course ...

**MR POPO SIMON MOLEFE**: But of course it is a matter that procurement and governance section of the company must further elaborate that policy.

20 **CHAIRPERSON**: Of course the fact that people who are supposed to do oversight might not have done it might be directly the result of the effectiveness of the strategy that you talked about before lunch of going to the people who have strategy – who occupy strategy positions in the entity and making sure that those people are on their side. In that event now whatever training the person has whatever expertise

that person has will not work because he or she is deliberately not wanting to expose what they are supposed to expose so because they are already part of the scheme.

**MR POPO SIMON MOLEFE:** It is so Chairperson but the question is – that must be asked, would anybody have the incentive not to want to apply policy, the rules and procedures when that person has got no material benefit out of that process? I would be surprised if anybody would simply commit to doing these sorts of things on behalf of a company bidding for a contract in their company and a company that

10 they have nothing to do with except the professional relationship of requiring them to provide a service. It is pretty clear I mean the reasonable assumption is that there is material benefit for those who bend the rules to ensure that companies that do not comply and get the contracts. I must hasten to say by the way that some of the companies that may not have complied might not necessarily have offered any material benefits to these individuals but the individual in order that they do not get confronted with the questions to say why is it that you are excluding these other companies? They make everybody to pass even those who do not pay the incentives to them which is what we see

20 in the 1064 process of the OEM's. I think and it is a matter we have to deal with. China South Rail features prominently in this matter and that is where investigations see trails or traces of movement of monies. We have tried to talk with them. They have played games. They are – they have been so far the most uncooperative, delaying not responding to our requests which are aimed at finding an agreement which together

would enable us to have these contracts cancelled and together approaching the court on what is the most appropriate or equitable and a just remedy for this. We have found it difficult. Of course the lawyers and probably Chairperson you being a judge and a very – the highest court in the land you might also say look what is unlawful is unlawful. The law has been broken is unlawful you cannot make it lawful. And we agree but we are saying that when you deal with a company like Transnet whose critical role we have indicated earlier on when we were talking, when we have a problem like this you cannot deal with that

10 problem in a manner similar to how we have dealt with a problem of non-compliance in the case of PRASA. In the case of this OEM's the locomotives are per the designs approved by Transnet and some of them have already been delivered, tested, accepted and they have already been deployed in service. In the case – in the case of Transnet I mean PRASA the locomotives were not fit for purpose. They were tall, they were not meeting the safety regulations, requirements of safety regulator of South Africa. They were not even complying with the rail network requirement of Transnet itself. So there you could say it serves no purpose for us to keep a product that we cannot use or a

20 product which when we use there are certain places where we cannot use which is what we did not ask for. Ja. Here it is a very critical matter management when they went into procurement they went through detailed assessment and presentation that showed the life of the existing locomotives. The number of them who were becoming obsolete and therefore would go out of service and seeing the urgency of getting

the new ones to replenish their stock. So then you have the business imperative – business imperative that would need to be taken into account even as you proceed towards cancelling the contract. You may want to say then the – you got to invoke the principle of equitable and

**CHAIRPERSON**: Just and [indistinct].

**MR POPO SIMON MOLEFE**: Just remedy that would arise. But there may well be some of these OEM's and entities that have been involved in so much corruption that we would simply not be able to apply that – that remedy to them.

10 **CHAIRPERSON**: Ja.

**MR POPO SIMON MOLEFE**: I am sorry I am pretending that I am a lawyer.

**CHAIRPERSON**: Thank you.

**MR POPO SIMON MOLEFE**: I am not a lawyer just that I talk I spend a lot of time talking to MNS.

**CHAIRPERSON**: Yes. Yes Mr Pretorius.

**ADV PAUL JOSEPH PRETORIUS SC**: On page 16 or at least at paragraph 10.12.6 Mr Molefe you deal with the relocation issue. It has been mentioned in presentations yesterday. What was at issue in  
20 relation to relocation?

**MR POPO SIMON MOLEFE**: The Chairperson as I understand it and listening to management of Transnet and having seen some correspondence that they exchanged with the Minister Brown, Lynne Brown the – the intention in talking about the relocation was to say this procurement programme is so big and it involves so much money it

needs to be used also as an opportunity for industrial development or capacitation and development of local businesses in other parts of the country and they chose KwaZulu Natal for that purpose. But I think to call it a relocation was a misnomer and I agree with the Advocate Pretorius SC I think he is the one who summarise it so eloquently yesterday, because the findings of a company appointed by Transnet to look into this question of relocation. I think it was called Loliwe - arrived at the conclusion that in fact there was no relocation because relocation presupposes that you have got an established establishment  
 10 elsewhere and you have to move that establishment if not in its entirety but a – the big – a significant proportion thereof to a different place but in this instance what appears to be pretty clear from the beginning is that it was really just an establishment in KwaZulu-Natal of – of manufacturing in an assembly plant rather than a relocation. At the beginning as Chairperson would see in the document the initial so called relocation prices that are given by the OEMs range between four and nine million and then suddenly a company called Bex ...

**ADV PAUL JOSEPH PRETORIUS SC:** Is that B-E X?

**MR POPO SIMON MOLEFE:** Bex - B-E-X - is brought in we do not  
 20 know how but by the BADC to advise them on how to cost the relocation. The result of that was that Bex then say for you – for one – call them by name – for you Bombardier Transport relocation would cost 618 457 125 and for China North Rail it will cost 647 181494. So it jumped from four to nine million to this figure. So what do you do then on this question of relocation you just dig into the – the vault. You dig

into the vault of Transnet and pull out R1.3 billion or so for that purpose and – and this question of relocation again was no part of the RFP initially. It is a matter that was brought in – in the post award negotiations.

**ADV PAUL JOSEPH PRETORIUS SC:** Yes, through variation.

**MR POPO SIMON MOLEFE:** It is a variation yes of – in a sense also tampering with the relevant aspect of – of the RFP as well.

**ADV PAUL JOSEPH PRETORIUS SC:** Yes. The costs I understand from what you say in your statement and from the investigators were  
10 unjustifiably inflated according to Transnet investigators.

**MR POPO SIMON MOLEFE:** That is so.

**ADV PAUL JOSEPH PRETORIUS SC:** The advisor in that respect was – B-E-X – Bex as you refer to them?

**MR POPO SIMON MOLEFE:** Yes sir.

**ADV PAUL JOSEPH PRETORIUS SC:** They apparently received a large payment for their advice in relation to costings. Do you recall the amount of that payment?

**MR POPO SIMON MOLEFE:** I – where I am sitting I am not able to remember the exact figure but it is a figure that is in excess of 30  
20 million.

**CHAIRPERSON:** 3-0?

**ADV PAUL JOSEPH PRETORIUS SC:** Does R67 million ring a bell?

**MR POPO SIMON MOLEFE:** Oh, yes. 67 million, yes sir. 67 million.

**ADV PAUL JOSEPH PRETORIUS SC:** Right. Chair - may I place on record that we have received substantial submissions in regard to

issues raised in relation to Bombadier Transport from the legal representatives of Bombadier Transport - Norton Rose Fulbright? Those have been placed before the legal team and have been made available to the investigators. Of course we believed it would be inappropriate to debate the rights and wrongs of those outside of the Commission. They need to be debated in public before the Commission. They will be placed before the Commission in due course preferably by Bombadier itself and they will be brought to the attention of witnesses who deal with these issues as and when they need to deal

10 with them when we are dealing with applications for cross-examination.

**CHAIRPERSON:** Okay. That is fine.

**MR POPO SIMON MOLEFE:** If – whilst advocate is ...

**ADV PAUL JOSEPH PRETORIUS SC:** Yes.

**MR POPO SIMON MOLEFE:** Still looking at his papers if I may  
Chairperson ...

**CHAIRPERSON:** Yes.

**MR POPO SIMON MOLEFE:** Interject on this matter it is for Transnet a very serious matter ...

**CHAIRPERSON:** Yes.

20 **MR POPO SIMON MOLEFE:** And it is so for the Government of the Republic of South Africa and the people of South Africa – the SIU proclaimed by the President in April 2018 has also found that these contracts – 1 064 contracts – are irregular. MNS has found that they are irregular so did Werksmans. Now there is a big challenge that the Board of Transnet now faces as an accounting authority. Parliament is

going to say so will SCOPA say to us you became aware that these contracts are irregular. You say that they are unlawful as well but you continue to perform. You continued to use the taxpayers' money to finance contracts that you say are unlawful. Now I am raising this question because the need for us understanding the complexities of this contract and the business imperatives that I refer to – to go into an arrangement where we can arrive at a conclusion together with the parties to this – these contracts. The urgency thereof cannot be overemphasised and that is why I must say I do not know what

10 Bombadier Transport is saying in its submissions but the reality is that all of us have got to move rapidly and close this major problem for the country that is being phased by Transnet and the country. Ordinarily if there was proper enforcement of performance taking into account milestones, the delays and so on. They should have been imposed on many of them several penalties. Those were not done. Of course probably some of them will say *ja* you compelled us to use Transnet Engineering. Transnet Engineering was not ready to deliver the volumes and in time that we wanted them to deliver. They would not have been able to assemble and manufacture bogies as quickly as we

20 would have wanted them to do so but that does not mean we can delay this process to eternity Chairperson. We have a responsibility as the Board to Parliament and to the Government to resolve this matter and we have sent messages to the parties that we want to talk we want to rapidly resolve these matters. MNS together with their Acting Group Chief Executive Officer and the Acting Chief Financial Officer supported



by teams from TFR and TE have been working on these things and it is important - I must place on record - that they be resolved. We may well in the next few weeks find it difficult to sustain continued payment – performance when we know that in doing so we are also breaking the law on our side.

**CHAIRPERSON:** Well you have said it is a complex matter and I – I will not give advice. I am sure you have enough advisors.

(Laughing)

**CHAIRPERSON:** All - all I can say is that South Africans will expect  
10 that if it is a matter where the Board must tread carefully they must do so but they would also expect that things should not take too long to be finalised and they will also expect that the Board should not be scared of taking difficult decisions if it has to take difficult decisions and that the Board should – should apply its mind and where it should draw a line it should do so but those would be different expectations of people in South Africa. So ultimately the Board would need to apply its mind properly to different routes and avenues but I am sure that they will not expect that things should go on without resolution indefinitely.

**MR POPO SIMON MOLEFE:** Thank you Chairperson. Let me agree  
20 with the Chairperson on – on that matter and the Board has been very cautious and it sought to act responsibly on these matters. There are two aspects to this matter. The first one the legality of the contract. They probably will treat every contractor the same. Then there would be the question of justice...

**CHAIRPERSON:** Equity justice (intervenes).

**MR POPO SIMON MOLEFE:** Just and equitable remedy.

**CHAIRPERSON:** Hm.

**MR POPO SIMON MOLEFE:** In that regard there will be a varied approach. There are complexities that I have not spoken about here but Bombadier Transport understands some of those complexities which extend beyond themselves and ourselves ...

**CHAIRPERSON:** Yes.

**MR POPO SIMON MOLEFE:** Which – which would have to deal with – which relates to how ...

10 **CHAIRPERSON:** Hm.

**MR POPO SIMON MOLEFE:** The funding for this procurement was – was handled ...

**CHAIRPERSON:** Hm.

**MR POPO SIMON MOLEFE:** And what kind of agreements were – the terms of that funding was done but – but we cannot keep it going on for every as the Honourable Chair said. We would have to move. The Board has to be decisive but the Board has to be rational and responsible.

**CHAIRPERSON:** Yes, thank you.

20 **ADV PAUL JOSEPH PRETORIUS SC:** Thank you Chair. Thank you Mr Molefe. In paragraph 10.12.7 you summarise the results of Transnet's investigations in relation to the relocation issue which in turn I understand relates to the procurement of the 1 064 locomotives. Is there anything you wish to add from that list in paragraph 10.12.7?

**MR POPO SIMON MOLEFE:** Chairperson unless there are further

questions I think the paragraph is straightforward.

**ADV PAUL JOSEPH PRETORIUS SC:** Yes.

**CHAIRPERSON:** Hm.

**ADV PAUL JOSEPH PRETORIUS SC:** It is there as a matter of record and then in relation to the findings of the investigation conducted by Loliwe those are summarised in paragraph 10.12.9. Once again you may wish to summarise those findings. If you need to read the report (intervenes).

**MR POPO SIMON MOLEFE:** I - I just want to restate that Transnet  
10 appointed a railway logistics expert company – Loliwe Rail Solutions (Pty) Ltd. Loliwe- called Loliwe – to conduct an assessment of inter alia the reasonableness of the relocation costs accepted by Transnet. The findings of Loliwe were that there was no relocation of either BT or CNR. Variation orders were inflated intentionally by the OEMs and inadequately violated by Transnet ...

**ADV PAUL JOSEPH PRETORIUS SC:** Evaluated.

**MR POPO SIMON MOLEFE:** Sorry – inadequately evaluated by Transnet prior to concluding the approval and amendment of the contracts. That there is no justification for either the direct or indirect  
20 costs presented by BT – sorry – Bombardier Transport and China North Rail. That it was improper for Transnet to have agreed to lump sums for the relocation. These are the lump sums that I referred to earlier Chairperson going into over 600 million.

**ADV PAUL JOSEPH PRETORIUS SC:** In each case.

**MR POPO SIMON MOLEFE:** In each case.

**ADV PAUL JOSEPH PRETORIUS SC:** In fact over R1.2 billion.

**MR POPO SIMON MOLEFE:** Ja, overall it is R1.2 billion. In each case it went over 600 million. Now the – the approval of the direct and indirect costs was done without the representation or valid and substantiated documentation and now the process followed in the approval of the relocation costs was not in accordance with the standard contract management protocol and then the – the investigations report goes further to conclude that Mr Gama has approval of relocation costs without appraising himself of the  
10 circumstances the amount – may have caused Transnet to incur fruitless and wasteful expenditure and our recommendation – our investigators recommend that Bombardier Transport and China North Rail be directed to provide a statement and debatement of the funds paid in relocation to – paid to them ostensibly for relocation.

**ADV PAUL JOSEPH PRETORIUS SC:** Right.

**MR POPO SIMON MOLEFE:** So in a sense show us your records - your documents. Give us those documents. We will give you ours and show you our report to say that this – this is irregular but we do not want Chairperson to spend time splitting hairs. This is a matter that is very  
20 serious and urgent. We now all know about the irregularities. Somebody might try to dispute it and play legal technicalities but I think the big picture require us to move beyond the game of lawyers trying to demonstrate that they know the law better than others. We must look at the big picture – the impact on the country, the impact on those companies themselves and the impact of institutions that financed this

program.

**ADV PAUL JOSEPH PRETORIUS SC:** Right and you have already told the Chair that the engagement with Bombardier Transport and China North Rail is continuing.

**MR POPO SIMON MOLEFE:** It is – it is so Chairperson. I must say and probably will provide an incentive to those OEMs that are lagging behind – which are still lagging behind. The negotiations with General Electric have gone extremely well. Most of the issues our negotiators and their negotiators are able – were able to reach some measure of  
10 consensus and we think that and – and they accept where they have failed to meet the requirements that they have failed. So we have to deal with what then - we would not be able to sign off until we have dealt with the question of the legality of all of those contracts which must then be followed by a process of determining just and equitable remedy.

**ADV PAUL JOSEPH PRETORIUS SC:** Before we move on Mr Molefe one correction necessary that has been drawn to my attention – B-E-X – Bex was I understand the advisor to China North Rail and not to the BADC of Transnet. My apologies.

20 **MR POPO SIMON MOLEFE:** That is correct. They were – they were advising China North Rail but once they had given the figures about China North Rail somehow in a way that I am unable to explain here - maybe it is something if I need to do further research on I may have to but I do not think there is a need – the figure around 600 million was then applied to Bombardier as well. Not the exact figure as to the

Honourable Chair will see.

**CHAIRPERSON:** More or less?

**MR POPO SIMON MOLEFE:** Ja, in respect of Bombadier Transport it is 618 million and the other one was 647 million for – for China Rail.

**CHAIRPERSON:** Yes, thank you.

**MR POPO SIMON MOLEFE:** China North Rail.

**CHAIRPERSON:** Hm.

**ADV PAUL JOSEPH PRETORIUS SC:** In paragraph 10.12.12 Mr Molefe you deal with the engagement of T-Systems and what occurred there.

10 Would you tell the Chair about that please?

**MR POPO SIMON MOLEFE:** If I am allowed to gallop on this one Chairperson – I simply want to say that ...

**CHAIRPERSON:** Hm.

**MR POPO SIMON MOLEFE:** At a point and that was in – in 2017, 22 February – Transnet awarded to T-Systems a data services tender after tenders – after determining that they continued to need this service. It was not the first time. They had been there before. So it was in a sense a further award but it followed the RFP that was issued – a competitive process. The competitive process pointed to the Gijima  
20 company being the one that really performed better and I think T-Systems came out second but the Board Acquisitions and Disposals Committee reviewed the recommendation that came from management and disagreed with management. Ostensibly after the assessment of risk and these risks are said to have been identified by a company called (indistinct) Consultants and of course post (indistinct)

assessment the constituted objective criteria. This matter became the subject of debate and later subject of disagreements between Transnet and National Treasury. National Treasury having reviewed how the procurement process was handled – concluded that Gijima should have been awarded that contract. By that time of course the BADC – Board Acquisitions and Disposals Committee – of Transnet had already issued the letter of intent to T-Systems. That would have required them then to rescind their decision and withdraw the letter that they had written to T-Systems. T-Systems decided no they were now going to agree. They  
10 were offered the tender – they want it. So it became the subject of litigation for a while. Litigation now between Transnet and T-Systems. Of course Transnet was then joined later by Gijima as an interested party in the matter. It is now common cause that a judgment was handed down which – which annulled the LOI accepted the application of Transnet which was for a declaratory order approving the withdrawal of that letter and – and which then opened the way for the contract to be given to Gijima. I must say that the Board of Transnet that I am Chairman of spent also time engaging T-Systems to say to them we have had too much trouble already. Let us not spend time to eternity in  
20 court finding the technicalities. The issues facing us are not only this one. There are other historical issues that are affecting you. Let us agree that you do not oppose further this application of – of Transnet and indeed to the credit of the T-Systems they cooperated and the order was - was given. I do not want to pretend that it was simply a clean fight in court which Transnet won. It was facilitated also by the

fact that T-Systems was willing not to oppose that application.

**ADV PAUL JOSEPH PRETORIUS SC:** I understand this however to be an example of where a procurement process at that hands of the procurement management of Transnet was overridden by the BADC – the Board Acquisitions and Disposals Committee.

**MR POPO SIMON MOLEFE:** That is correct Chairperson. In this instance we must give credit to the management of Transnet. They did the right thing but they were overruled by Directors and it is strange that – well of course we do not know why – it is strange that Directors  
10 got involved in procurement instead of exercising oversight *ja* but it was a demonstration of instance where they were overruled.

**CHAIRPERSON:** As a matter of interest the management that you are – you are referring to that was involved in this one was it the same management that you found as a new Board when you came in or was it new management or was it a mix?

**MR POPO SIMON MOLEFE:** No Chairperson is it the same management that we ...

**CHAIRPERSON:** That you found there.

**MR POPO SIMON MOLEFE:** We found there. There might well – I do  
20 not know when Mr Garry Pia left Transnet. He might well have been there at the time. I cannot remember now ...

**CHAIRPERSON:** Yes.

**MR POPO SIMON MOLEFE:** But Mr Gama was there and ...

**CHAIRPERSON:** Hm.

**MR POPO SIMON MOLEFE:** He supported the management ...



**CHAIRPERSON:** Yes.

**MR POPO SIMON MOLEFE:** Application ...

**CHAIRPERSON:** Yes.

**MR POPO SIMON MOLEFE:** Submission to the Board.

**CHAIRPERSON:** Okay.

**MR POPO SIMON MOLEFE:** For – in favour of Gijima.

**CHAIRPERSON:** Okay, thank you.

**ADV PAUL JOSEPH PRETORIUS SC:** In paragraph 10.12.15 you make reference to an audio recording of a meeting of the BADC held in  
10 February 2017 in relation to the appointment ultimately of T-Systems. Have you listened to that recording?

**MR POPO SIMON MOLEFE:** I – I know that we discussed that recording in the Board Meeting. We were given the transcript of the recording. I personally did not listen to it but it - it was listened to by our investigators.

**ADV PAUL JOSEPH PRETORIUS SC:** What conclusion did you draw or did the Board draw or your investigators draw having had regard to the recording or the transcript?

**MR POPO SIMON MOLEFE:** Well what we are saying is that the –  
20 having seen the transcript and those who listened to it collectively with us arrived at the conclusion that the so so-called procurement in this regard was a mere charade or a sham, was sham because you listen to – you read what Mr Shane was saying there in the – in that audio that he didn't have respect for anybody and he's basically saying in that thing, by the way when we issued this RFP it was not our intention to

get the best service provider. We were just issuing it as a mechanism that would enable us to control pricing so that we could negotiate better pricing but we didn't really intend that the contract would not go to T-Systems. So a predetermination had already been made that this contract is going to T-Systems but we must create this facade or this charade of procurement.

**ADV PAUL JOSEPH PRETORIUS SC:** In paragraph 11 Mr Molefe you focus on the remedies employed under the auspices of the Board to deal with the circumstances or some of the circumstances which you've  
10 described to the Chair, would you relate those please to the Chair.

**MR POPO SIMON MOLEFE:** Perhaps, and I haven't had the opportunity to discuss this with the evidence leader, perhaps that is one section where we need to tweak the formulation. We established a steering committee on the 1064 locomotives but we had agreed that this structure would not be really called the steering committee *per se* because – well it would act like a steering committee not a Board committee that would form the formal detailed definition of the terms of reference. So it was really for purposes of engaging with MNS regularly to see how they are implementing the recommendations and to debate  
20 those matters that they would want referred to the Board and find a way of processing them before they come to the Board. I must say that the structure did not consist of audit committee members and the Board Chairperson only, it consisted of, on the contrary, the Chairman of the Board and the Chairs of various sub-committees of the Board. Of course other people, especially those who are lawyers and who are on

our Board would participate in those meetings and one of the members Ms Ursula Fikelepi we asked here to constantly liaise with MNS and coordinate us. It was purely about ensuring that the recommendations in the report are implemented.

**CHAIRPERSON:** So from the fact that it consisted of the Chairperson of the Board and Chairpersons of other committees of the Board it must have been a strong committee but you say it was not a formal committee is that correct or is it difficult to describe it?

**MR POPO SIMON MOLEFE:** Yes it was not – it was an adhoc  
10 structure for this specific...(intervention).

**CHAIRPERSON:** An informal kind of structure or maybe not really informal, just for the time being?

**MR POPO SIMON MOLEFE:** I beg yours.

**CHAIRPERSON:** It was for a specific purpose it wasn't going to be there all the time, it was just going to be there on an adhoc basis.

**MR POPO SIMON MOLEFE:** On an adhoc basis.

**CHAIRPERSON:** Yes.

**MR POPO SIMON MOLEFE:** And it would meet also with MNS on an  
adhoc basis, it was not the – you know the Board Committees have a  
20 schedule.

**CHAIRPERSON:** Yes.

**MR POPO SIMON MOLEFE:** Of meetings that is planned well in  
advance.

**CHAIRPERSON:** Yes.

**MR POPO SIMON MOLEFE:** This one would meet with them on an as

and when basis. It was a strong committee because the Board considered these matters very serious but that committee could not make any final decisions with the investigators.

**CHAIRPERSON:** Oh okay.

**MR POPO SIMON MOLEFE:** It would still revert to the Board – defer to the Board for decisions.

**CHAIRPERSON:** So it was kind of facilitatory?

**MR POPO SIMON MOLEFE:** Facilitate and (indistinct) assisting also on processing some small issues before they go the Board.

10 **CHAIRPERSON:** And to make sure that when issues that – when certain issues came to the Board they came to the Board when they had been properly looked at for the Board to make a final decision.

**MR POPO SIMON MOLEFE:** That is correct Chairperson.

**CHAIRPERSON:** Ja.

**MR POPO SIMON MOLEFE:** But it was also the kind of a committee that would also reflect on the complex issues I raised about whether you cancel a contract, what are the business imperatives, what are the ramifications for the funding structure of the programme of modernisation, of freight transportation system.

20 **CHAIRPERSON:** So for all intents and purposes if one calls it a Board Committee provided one bears in mind that it was not like other Board Committees in certain respects and that it could not make final decisions. That description wouldn't be wrong, if one understands that context, is that right?

**MR POPO SIMON MOLEFE:** That is correct.

**CHAIRPERSON:** Okay thank you.

**ADV PAUL JOSEPH PRETORIUS SC:** In summary Mr Molefe you have commissioned several reports, from amongst others, MNS and Funduzi and in these reports recommendations are made to Transnet.

**MR POPO SIMON MOLEFE:** It is correct Chairperson.

**ADV PAUL JOSEPH PRETORIUS SC:** And if I understand the Board to have put together a mechanism to enable it best to consider these recommendations and to supervise their implementation.

**MR POPO SIMON MOLEFE:** The Board having received all these  
10 matters yes, it then took a view that MNS who were *au fait* with these investigations be appointed to implement all matters that arise out of this investigation. I said I'm a difficult witness, of course, in my discussion with the leader – the lead investigator of Funduzi he made it clear to me that in the course of the investigation there are many other extraneous matters that arose which was identified affecting Transnet which relay to further irregularities in Transnet which could not be overlooked but they could not deal and conclude anything on them because the scope of their work did not cater for that. So those would be some of the matters that the mechanisms we spoke about earlier of  
20 – for dealing with other issues, like your relocation from the Carlton to Waterfall, you know your Ambrose Park leases investigation and so on, they would also be looked into, comprehensively by our risk committee together with the management and relying on the panel of National Treasury that National Treasury allowed us to use, in terms of the Transversal contract arrangement would then look at all of those

investigations.

**ADV PAUL JOSEPH PRETORIUS SC:** Thank you, in paragraph 11.3 and following Mr Molefe, you talk of the engagement between Transnet on the one hand and the Directorate of Priority Crimes Investigations, the Hawks on the other, would you tell the Chair about that engagement please.

**MR POPO SIMON MOLEFE:** Chair the – when we got into Transnet as we indicated there were investigations that had ensued and the reports – one report was ready of Werksmans the other one of MNS  
10 came about – was released around, I think 13<sup>th</sup> of June, if I remember the date but then on the side we have the SIU proclaimed by the President and expressly to investigate Transnet amongst others. They were doing, of course, Eskom as well. So we had to ask ourselves a question, now that we're aware that the SIU is doing its investigating and it is investigating matters similar to what these other law firms investigated and also that the Hawks in their own right as a Law Enforcement Agencies having seen all the reports in the media and the Public Protector report on the irregularities and violation of the law in Transnet's procurement we're also investigating. The Board took the  
20 view that we can't allow this process to go uncoordinated because there'll be duplication both in terms of work that we do but also in terms of the resources all of which are the resources of the South African public so we needed, therefore, to bring all these entities together to agree that there are certain things that we will need to share information on and that we would not duplicate, that we would not

run ahead of one party in litigating and if we don't talk MNS can go and litigate on the OEM's matter but the SIU is also working on that and you have also, the issue is that, my advocate, it think he is now feeling that I'm talking too much I'm going to try and summarise sir.

If you look at the importance of coordination it is that where monies have moved around and some monies left the country other monies are here, even if Transnet knows where the money is, Transnet has got no powers to subpoena, search and seize. The SIU is able to do so, the Hawks are able to do so, so it's important that we do the  
 10 work together but they also work with the Asset for Future Unit and with the existence of the legal assistance programme between our country and other countries and Law Enforcement Agencies and the Extradition Treaties signed, those Law enforcement Agencies are in a position to chase the monies outside the borders of South Africa, they can collaborate with the Reserve Bank and the banks outside South Africa to get the money they can subpoena the banks to give them bank statements, we can't, we can't do so. Even if I were to get whistle blowers report I would not be allowed to talk about it because how do I become privy to private bank details of a person or a company. So  
 20 there is the importance therefore there Chairperson of this collaboration but we have also that we have these regular meetings with the SIU in particular where we share reports and you would hear us referring – we do refer to the fact that the SIU has written us a letter because I'd asked them to tell me where they are in the – their own investigations because by the way, Transnet is paying for their

investigation as well because the proclamation and the Act provides that, if they're investigating Transnet, Transnet becomes the recipient of their services and therefore must pay for that but Transnet has to account to Parliament. The way in which we account to Parliament is that we must show the product for which we are paying. I don't know if I need to go more than that Chairperson.

**ADV PAUL JOSEPH PRETORIUS SC:** Well I – we understand from your evidence Mr Molefe that Transnet and the Board of Transnet in particular is working with the Law Enforcement Agencies to address the  
 10 consequences of what has occurred in Transnet about which you have testified. Two questions if I may, the first is, what steps, if any is Transnet taking to recover monies lost as a result of malfeasance within Transnet and the second question, if I may just ask at the same time, on everybody's – well on the minds of many people is – are prosecutions contemplated and if so can you assist the Commission in relation to detail?

**MR POPO SIMON MOLEFE:** Chairperson I know advocate Pretorius sees that we're going to say everything as it is here but it looks like in this instance I have to move rapidly because the issues are similar.  
 20 The first point is that, yes we've begun the process, Chairperson of recovering those monies that we have identified and able to do so. In respect of China South Rail we have already received back 618million which was paid in advance to them for a maintenance programme under Material Reliability Supply Agreement which they had entered into with Transnet. It was entered into pretty early, even before they delivered, I



think, the locomotives, they already our money. They have cooperated with us, they paid us 618million but the full amount that was paid to them was 700million. It became 700million because VAT was inclusive, we are still waiting to – awaiting the repayment of our VAT they've got to go and claim it from SARS pay it to us, so we are doing that but in addition I said I'm galloping there are many other service providers who we said received payment either for services that they had not – they had not provided or they had received payment because the prices had been inflated. Chairperson if we look at – if counsel would agree that I

10 move there, under the category of recovery monies, I could move then, counsel, to deal with paragraph 11.8.1 onwards. Otherwise I can go back and follows...(intervention).

**ADV PAUL JOSEPH PRETORIUS SC:** Shall we follow the sequence of your statement, my apologies for taking you out of sequence.

**MR POPO SIMON MOLEFE:** Ja okay.

**ADV PAUL JOSEPH PRETORIUS SC:** What I wanted to refer to is the global amount of monies that have been lost to Transnet. Now I know I'm putting it very loosely and perhaps as a legally trained person I shouldn't put it loosely but what is remarkable about your evidence is

20 the frequent mention of amounts running into billions of rand and hundreds of millions of rand. In your press statement of 19 May – sorry 19 January – 18 January 2019 you referred to an amount of 8.1billion rand reported in a regular expenditure during 2018, what sort of amounts are we talking about here in total, the cost to Transnet, are you able to give us an estimate?

**MR POPO SIMON MOLEFE:** Chairperson the – I would rather stick to the 8.1billion and simply add to that 8.1billion the figures that are contained in the statement which counsel said we would come to later.

**CHAIRPERSON:** Yes.

**MR POPO SIMON MOLEFE:** There are other monies that we are aware that Transnet needs to recover, I think in that regard we estimate 7.2billion rand part of which has already left the country but part of that is still in the country. I think what is still in the country is approximately 1.8billion but those are matters that we would like to  
10 deal with when our collaboration with the Law Enforcement Agencies, including the Reserve Bank, have reached a point where we are now able to follow but the monies that are inside the country we will chase. So what then are we talking about, I have not added these figures that I have here, we can do so later on but they are there, we can add them but you're probably talking a loss running into 17/18billion rand. You talk about this other money that we are tracing and it doesn't end there, there are many other monies that we need to recover but in respect of these locomotives we're talking approximately 16billion.

**ADV PAUL JOSEPH PRETORIUS SC:** That's in relation to the  
20 locomotives?

**MR POPO SIMON MOLEFE:** It's in relation to – well if you combine it with the audit findings it's in the region of 16/17billion.

**ADV PAUL JOSEPH PRETORIUS SC:** And perhaps it was an unfair question because there are different categories of expenditure which comprise fruitless, wasteful, unlawful and the like. If we may then go

to the next section please of your statement and where you deal with suspensions and dismissals and if you could tell the Chair please of the actions taken on behalf of the Transnet Board in relation to discipline of Transnet Executives and senior managers.

**MR POPO SIMON MOLEFE:** Chairperson thank you very much, Chairperson the Board sought to act expeditiously on the recommendations of the reports of the investigators and in this regard several suspensions were effected starting with Mr Gama which was – and as the Group CEO of the company and whilst he was suspended  
 10 the Board took a view that because his position is such a senior position and an important – in fact he was a Director that he should not be treated as if he was a junior employee where we're going to spend months on end in a disciplinary process, we got legal opinion from counsel which advised that we could actually act decisively and dismiss him, we did that. He took us to the Labour Court which he lost and he re-appealed he lost the appeal as well, so for us the matter is closed. We have also then said that because he's involved in matters that could have caused matters to lose money that we would freeze his pension. We asked the pension fund to freeze his pension and that is what we  
 20 did.

The next person is Mr Thamsanqa Gianni, the matter is still before the disciplinary panel. Evidence has been led against him so the hearing is continuing it had started on the 31<sup>st</sup> of January 2019. The next – the third employee subject to disciplinary process is Ms Lindiwe Mdletshe who was suspended in September 2018, her matter

has also sat before the disciplinary hearing and it was set for February 2019 but I'm not going to go into the details of the postponement but we're at a point at which I've been advised that she proposes a settlement and Transnet is awaiting a formal settlement proposal, the parting of ways. Then there is Mr Edward Thomas who was the acting Group Chief Supply Office – Supply Chain Supplier Officer, he was suspended in October 2018, his hearing was set for April 18, 2019. I'm advised that on the eve of the hearing he asked for electronic devices to enable him to prepare for the hearing, Transnet has consented to  
10 that on – in a controlled way, give him that access to devices in a controlled environment. So alternative days of hearings are being discussed in respect of Mr Thomas. Then there is Mr Phetolo Ramosebudi, Mr Phetolo Ramosebudi was the Treasurer of Transnet. He was very much involved with the regiment and the entities like Trillian and later given notice so the intention to suspend him was sent to him. On receipt of this letter he decided to resign, so he resigned, again here Transnet has freezed his pension fund. Thabo Lebelo, Thabo Lebelo was the CEO of Transnet Property which is an important division of Transnet, responsible for its real estate, he too having  
20 transgressed many regulations, policies and PFMA requirement a letter was served on him of intention to suspend him, he also resigned and I see we are not saying his pension has been freezed but we have instructed management to do that. Anyone who was involved in causing the company to lose money should not be allowed to draw their pension until the matters have been settled.

Mr Ravi Nair, some people say Nair, but I grew up with us calling that name Nair, Mr Ravi Nair is Transnet Freight Rail (indistinct) Chief Executive, he resigned in January 2019 shortly after receiving notice placing him under precautionary suspension, again here I have to check...(intervention).

**CHAIRPERSON:** I'm trying to see Mr Nair on my statement...(intervention).

**ADV PAUL JOSEPH PRETORIUS SC:** Yes that name doesn't appear in the version that was signed.

10 **MR POPO SIMON MOLEFE:** It is paragraph 11.6.10.

**CHAIRPERSON:** Oh it's much later.

**ADV PAUL JOSEPH PRETORIUS SC:** Yes which we do not have in the signed version.

**CHAIRPERSON:** Oh it is much later.

**MR POPO SIMON MOLEFE:** Oh okay.

**CHAIRPERSON:** Oh okay.

**MR POPO SIMON MOLEFE:** Okay. Then I must apologise.

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

20 **MR POPO SIMON MOLEFE:** Now I understand. I met with the lawyers...

**CHAIRPERSON:** I guess Mr Pretorius you must guide him about whether if it is not in the statement he should still deal with it or not.

**ADV PAUL JOSEPH PRETORIUS SC:** Well we have not given any notice in respective persons not in this particular statement.

**CHAIRPERSON:** Ja.

**ADV PAUL JOSEPH PRETORIUS SC:** But then again I stand to be corrected because we have been presented with a number of versions of the statement by the attorneys for Transnet and I would have to check that.

**CHAIRPERSON:** Ja.

**ADV PAUL JOSEPH PRETORIUS SC:** But perhaps the evidence should be given in its complete form and then we will deal with the consequences in terms of the rules in due course.

**CHAIRPERSON:** Well...

10 **ADV PAUL JOSEPH PRETORIUS SC:** Or otherwise it can be done at a later stage.

**CHAIRPERSON:** Ja maybe at a later stage. Maybe later – maybe at a later stage.

**ADV PAUL JOSEPH PRETORIUS SC:** Alright. Yes. So the one – as this matter is being dealt with Chair.

**CHAIRPERSON:** H'm.

**ADV PAUL JOSEPH PRETORIUS SC:** It has been suggested that he should give his evidence and we can file a supplementary affidavit and then issue the notices immediately thereafter.

20 **CHAIRPERSON:** No remember we try where we can as far as possible we strive to make sure that people are notified so that they are not taken by surprise when they hear their names being mentioned in relation to maleficence.

**ADV PAUL JOSEPH PRETORIUS SC:** Alright.

**CHAIRPERSON:** Without any – without being alerted to. Unless of

course which might be a factor if it is something that is already in the public domain I am not sure but we must just be careful because we do not want to be seeing as not giving people notice when we should be unless there are exceptional circumstances.

**ADV PAUL JOSEPH PRETORIUS SC:** Yes I agree Chair. The only qualification that I would add is that notice might have been given in respect of the statement that he is about to make but not having had an opportunity to check that it is premature to insist that the evidence be given.

10 **CHAIRPERSON:** Ja no that is fine ja.

**ADV PAUL JOSEPH PRETORIUS SC:** So if we can then go on Mr Molefe to the civil action that you talk of in paragraph 11.7 and following.

**MR POPO SIMON MOLEFE:** I do not know if I am allowed to comment on the earlier discussion?

**ADV PAUL JOSEPH PRETORIUS SC:** Yes of course.

**CHAIRPERSON:** On the earlier discussion ja.

**MR POPO SIMON MOLEFE:** Ja.

**CHAIRPERSON:** We excluded you.

20 **MR POPO SIMON MOLEFE:** Yes I was excluded. Chairperson.

**CHAIRPERSON:** Yes, yes.

**MR POPO SIMON MOLEFE:** The point I want to make is that these matters came in when I said I wanted an update on where we are in respect of each case.

**CHAIRPERSON:** Yes.

**MR POPO SIMON MOLEFE**: That section that we are dealing with is not accusing anyone of those from Mr Ravi Nair to Mr [indistinct] and Ms Shiceka of anything it just states that they have resigned that is all.

**CHAIRPERSON**: No.

**MR POPO SIMON MOLEFE**: But alright of course...

**CHAIRPERSON**: Okay.

**MR POPO SIMON MOLEFE**: I defer to

**CHAIRPERSON**: Okay.

**MR POPO SIMON MOLEFE**: I defer to the Chair of the commission if  
10 that requires us to you know still...

**CHAIRPERSON**: No as I said I do not have that part so that is why...

**ADV PAUL JOSEPH PRETORIUS SC**: The names you have mentioned are persons I understand who have resigned.

**CHAIRPERSON**: Who have resigned?

**MR POPO SIMON MOLEFE**: Yes so there is nothing...

**ADV PAUL JOSEPH PRETORIUS SC**: Not against [indistinct] allegations of wrong doing.

**MR POPO SIMON MOLEFE**: There is nothing more to it than that at this stage.

20 **ADV PAUL JOSEPH PRETORIUS SC**: Well that solves that problem.

**CHAIRPERSON**: Ja.

**ADV PAUL JOSEPH PRETORIUS SC**: Thank you Chair.

**CHAIRPERSON**: Ja no it does okay.

**ADV PAUL JOSEPH PRETORIUS SC**: Thank you.

**CHAIRPERSON**: So you can continue.



**ADV PAUL JOSEPH PRETORIUS SC:** Paragraph 11.7 you highlight civil action taken by Transnet in order to recover monetary losses. Could you deal with those please?

**MR POPO SIMON MOLEFE:** The monetary losses were to juristic persons and natural persons. And who were found to have been paid monies – who were paid monies that they did not deserve or they had cost the company to lose money. And that is what we are dealing with and dealing with the juristic persons we state that we had instituted civil action to recover these losses and the civil actions relate to at  
10 11.8.1 I do not know now in the – what it is – Regiments we are Regiments Capital PTY LTD arises. That little part that we are dealing with might have cost a bit of disturbance.

**CHAIRPERSON:** Oh I think what...

**ADV PAUL JOSEPH PRETORIUS SC:** No we still at 11.8.1 so we are on the same ...

**MR POPO SIMON MOLEFE:** Oh we are on the same okay.

**ADV PAUL JOSEPH PRETORIUS SC:** Paragraph if not the same page.

**CHAIRPERSON:** Okay.

**MR POPO SIMON MOLEFE:** Okay that is fine. So 11.8.1 we instituted  
20 action – two actions against Regiments. Their claims are for the amount of R189 240 000.00 and R79 230 000,00 respectively and both claims relates to unjustified payments. But I hasten to say that in respect of Regiments there have been engagement, negotiations with a view to getting them to agree to pay back these monies to Transnet. And we do so Chairperson because you see you can rely on litigations

and win a litigation but it will be a hollow victory if at the end of that litigation the money is finished and the assets have been dissipated. So these matters are the subject of negotiations and the – we believe they will be resolved in due course. And then in respect of Trillian Asset Management the amounts claimed is R145 920 000,00 and the second one – amount is – okay it is computed or it is broken down as follows. R93 480 000,00 for monies paid without just cause for work purportedly executed by Triallian as lead arranger of the 1 billion, 1 billion US dollars in SRA equivalent club loans. Club loans as I  
10 understand is equivalent of syndicates of lenders who club together to provide the loan.

**ADV PAUL JOSEPH PRETORIUS SC:** Historically within Transnet are you aware of the role of Transnet Treasury? Its capabilities, its reputation and its ability to arrange financing?

**MR POPO SIMON MOLEFE:** I know I should not do this. Chairperson may I ask counsel to allow me just to finish the amounts.

**ADV PAUL JOSEPH PRETORIUS SC:** Sure.

**CHAIRPERSON:** Okay yes, yes,

**MR POPO SIMON MOLEFE:** And then I will come back.

20 **CHAIRPERSON:** Yes.

**MR POPO SIMON MOLEFE:** To that question.

**CHAIRPERSON:** No that is fine.

**MR POPO SIMON MOLEFE:** Ja.

**CHAIRPERSON:** That is fine.

**MR POPO SIMON MOLEFE:** The next figure which is part of that

computation that I referred to is R41 040 000,00 paid without just cause for work which was not done. Then the – and this we are informed that it was for the optimisation structure – the property structure. Basically they went to Transnet and said look you have got lots of properties we can unlock value out of your properties so we are going to advise you and for that they got 41 – they got R41 040 000,00 when they had not done any work. And then the next one is R11 400 000,00 for monies paid when work was not done in relation to a proposal for financial structuring advisory services. What is quite clear here Chairperson is

10 that people would just come and say look we will do work for you and even before anything is approved the terms agreed on Transnet would just start paying them and so these monies went to them. And this is the kind of the horror show that we talk about in our statement because nowhere does one find a properly run business just pay monies out like that as if these monies are plucked from the trees. But that is what we have. Now I may return Chairperson to the question raised by counsel.

**CHAIRPERSON:** Yes.

**MR POPO SIMON MOLEFE:** In the course of our discussion we said Transnet had world class treasury. Highly qualified, highly experienced

20 financial people and for years they have been the ones from the deal room that they had created at Transnet who were doing capital raising for Transnet they never needed any external entity to assist them to do that work for them. If anything the Transnet employees in treasury were heads and shoulders above a whole lot of financial managers who are in – and transactional advisors who are in consultancies. So they

did not need Trillian or Regiments to do their work for them. Even that club loan they would have done it on their own. But in order to advance the agenda of the capture of Transnet those in senior positions particularly Ms Anoj Singh and Ramos – well Ramosebudi was not there when it started simply brought in these consultants and instructed treasury that these consultants are the ones who are going to do work for Transnet. So these people were paid huge salaries every month were made redundant by Transnet. And I am advised that I mean globally Transnet treasury received recognition that placed them in the

10 top 3 – top 3 treasuries in the world.

**ADV PAUL JOSEPH PRETORIUS SC:** Yes. You then deal with summonses issued against Mr Siyabonga Gama in paragraph 11.8.4. Would you relate those circumstances to the Chair please?

**MR POPO SIMON MOLEFE:** The – Chair the full amount claim – that is being claimed from Mr Gama is R323 760 000,00 that too is computed in the following manner. R93 480 000,00 for monies paid without just cause for work purportedly executed by Trillian as lead arranger of the club loan of 1 billion US dollars. But it will be translated into South African Rand. The next one is R41 040 000,00 paid without cause for

20 work that was not done by Trillian in relation to the property optimisation structure and thirdly that R187 240 000 – R189 240 000,00 for monies paid to Regiments without just cause as a result of purported funding and financial advisory services rendered. We insist Chairperson that – maybe let me make that summary at the end. Let counsel lead me.

**ADV PAUL JOSEPH PRETORIUS SC:** Mr Molefe has then dealt with in the next paragraph?

**MR POPO SIMON MOLEFE:** In the next paragraph summons were issued to recover R79 230 000,00 and that is under the case number 443 4 – 44359/2018 and that is against Mr Molefe. The claim relates to the unjustified payments made to Regiments for advisory work done during post tender negotiations.

**ADV PAUL JOSEPH PRETORIUS SC:** The claim then against Mr Anoj Singh.

10 **MR POPO SIMON MOLEFE:** A claim...

**ADV PAUL JOSEPH PRETORIUS SC:** Or claims against Mr Singh.

**MR POPO SIMON MOLEFE:** The claims are for varying amounts totally the sum of R303 510 000,00 computed as follows; R41 040 000,00 paid without cause when work was not done by Trillian in relation to property optimisation. Then there is R189 240 000,00 for monies paid to Regiments without just cause as a result of purported funding and financial advisory services rendered. In addition there is the amount of R79 230 000,00 paid to Regiments. The claim relates to unjustified overpayments.

20 **ADV PAUL JOSEPH PRETORIUS SC:** You deal then with Mr Gary Peter.

**MR POPO SIMON MOLEFE:** The summons issued to Mr Gary Peter total claims of R335 160 000,00 computed as follows: R93 408 – R93 million sorry – R93 480 000,00 for monies paid without just cause for work purportedly executed by Trillian as lead arranger of the US 1

billion club loan. The next amount is R41 040 000,00 paid without cause for work that was not done by Trillian in relation to the property optimisation. The third one is R11 400 000,00 for monies paid when work was not done in relation to a proposal from Trillian for financial structuring advisory services. The fourth amount is R189 240 000,00 for monies paid to Regiments without just cause as a result of purported funding and financial advisory services.

**ADV PAUL JOSEPH PRETORIUS SC:** Transnet has also instituted civil claims against Mr Ramosebudi. You detail those in the next paragraph.

10 **MR POPO SIMON MOLEFE:** The – there is – the claims in respect of Mr Ramosebudi is a total sum of R282 720 000,00 and this has been computed as follows: R93 480 000,00 for monies paid without just cause for work purportedly executed by Trillian as lead arranger for the R1 billion dollar club loan. The second amount is R189 240 000,00 for monies paid to Regiments without just cause as a result of purported funding and financial advisory services.

**ADV PAUL JOSEPH PRETORIUS SC:** And then finally against Mr Edward Thomas.

20 **MR POPO SIMON MOLEFE:** Claims against Mr Edward Thomas total R11 400 000,00. And the amounts relate to monies paid to Trillian when work was not done. At the time Trillian had merely presented a proposal for financial structuring advisory services.

**ADV PAUL JOSEPH PRETORIUS SC:** Right.

**MR POPO SIMON MOLEFE:** So now the – the underlying reason Chairperson for all these claims in respect of managers of Transnet is

that it cannot be that managers deliberately ignore their fiduciary duties or they breach their fiduciary duties and they get away with it. That it is proper that South Africans see that there is an effort being made by Transnet to recover monies that they have lost which had those managers not made the kinds of decisions they made would not have been lost to the company. And I think some of these employees I would believe that especially those where the asset for future unit and the Hawks are investigating their accounts would have been freezed.

**ADV PAUL JOSEPH PRETORIUS SC:** Right. You have dealt already in  
 10 your evidence Mr Molefe with the money recovered from China South Rail the R618 million that is dealt with again in your statement at paragraph 11.9. We need not revisit that unless you wish to add anything?

**MR POPO SIMON MOLEFE:** No we do not need to revisit it. I only dealt with it earlier because a question was directed to me which did not arise from that section of the statement.

**ADV PAUL JOSEPH PRETORIUS SC:** So I take full responsibility for that.

**MR POPO SIMON MOLEFE:** But because I had to show respect to  
 20 counsel I had to answer.

**ADV PAUL JOSEPH PRETORIUS SC:** It is late in the day I will be more cautious now Mr Molefe. And then you have also dealt and I presume I deserve similar comment with the negotiations with the suppliers of the 1064 locomotives?

**MR POPO SIMON MOLEFE:** That is correct Chairperson save to add

that Transnet has secured legal opinion in this regard. That legal opinion would be the subject of discussion in the next board meeting and because of the urgency of the matter we might not even wait for the scheduled meeting we can convene a special meeting just for purposes of considering that submission and recommendations from our legal division in Transnet supported by MNS.

**ADV PAUL JOSEPH PRETORIUS SC:** Alright. Then in paragraph 12 you deal with the consequences that could have ensued had matters not been arrested for want of a better word under the watch of the  
10 current board and what the consequence would have been of a Transnet collapse which was not as I understand our discussions an unrealistic prospect. You have also asked whether you could read paragraph 12 because of the nature of what is stated there and the fact that it has been carefully crafted. May the witness read paragraph 12  
Chair?

**CHAIRPERSON:** That is fine. That is fine.

**MR POPO SIMON MOLEFE:** May I add a further request Chairperson?

**CHAIRPERSON:** Yes.

**MR POPO SIMON MOLEFE:** That I do so in respect of paragraph 13 as  
20 well?

**CHAIRPERSON:** That is fine ja.

**MR POPO SIMON MOLEFE:** I think I have been denied to read my statement throughout my evidence that it be the first time that I say things as I have recorded them. Thank you very much Chairperson.

**CHAIRPERSON:** Yes.



**MR POPO SIMON MOLEFE:** The – the – it does emphasise some of the points we made earlier on.

“We saying that Transnet is the largest and most crucial part of the freight logistics chain that delivers goods to each and every South African and to other parts of the continent. Every day Transnet delivers thousands of tonnes of goods around South Africa and across the continent. Through its pipelines and both to and from its ports it moves cargo onto ships for export whilst it unloads goods from the – that comes from overseas. Transnet is made up of five operating divisions namely Transnet Freight Rail which is known as TFR, Transnet Rail Engineering called TE, Transnet National Ports Authorities acronym TNPA, Transnet Port Terminals acronym TPT and Transnet Pipelines acronym TPL. These are the core operating divisions of Transnet. Although Transnet is fully owned by the South African Government it operates as a corporate entity which supports and contributes to the countries freight logistics network. It aims at developing South African industry reducing the costs of doing business while at the same time operating efficiently and profitably. Given the centrality of Transnet in the economy of South Africa in the region we believe that

its collapse would have had devastating effect not only on the country but on the Southern African development region called SADAC and the continent. We talk about it – it would have done this because we believe that we came in just as Transnet was on the precipice or the edge of the cliff waiting to collapse. It is for these reasons that the board made every effort in its first three months in office to ensure that the lenders do not recall loans. This was

10 equally to protect the sovereignty of the country's ratings which is necessary for the overall economic sustainability of the country.”

I may have to come back to that paragraph 12.5 to elaborate more.

“The significance of Transnet infrastructure is unmatched in the region and the continent at large. Transnet Pipelines consist of fuel and gas pipeline business which – well and other I mean petrol, chemical products and it pumps and manages the storage of petroleum and gas products through its

20 network of high pressure, long distance pipelines in particular Transnet's national multipurpose pipeline acronym NMPP plays a significant role in the transportation of petroleum all over the country. If Transnet had collapsed inadequate fuel would have been delivered to parts of the country and in the

entire continent. The aircrafts which move domestically in the country to transport people and abroad would not have had jet fuel to move people.”

So Transnet is very important. But Transnet is also important to various logistics businesses of various companies. If you think of companies like Imperial Logistic, Barloworld and so on they use huge amounts of petrol and diesel. It would ground itself, Transnet if it did not have diesel. So would PRASA which removes – which moves millions of passengers. I think it moves about 7 million passengers per

10 day. So the importance of Transnet Freight business in the transportation of goods in South Africa and many parts of the African continent is further indicated – is further indication of Transnet’s centrality in the economy. It was apparent that Transnet’s operations are to the economy and this is what I thought I would say that when one imagines how a human body functions Transnet would be equated to the heart and the lungs of a body, would be equated to that vital organ that makes the economy function. So it is like the lung and the heart to a human body and we do know that the body dies when these two organs - so vital - become dysfunctional. They become dysfunctional

20 the body cannot function itself and that is how serious Transnet – how important it is to the economy. A dysfunctional Transnet leads to a dysfunctional economy. A great proportion of that economy. If one has regard to the precarious financial situation in which State Entities such as Denel and Eskom find themselves in it is implicit that consequences would have been disastrous had Transnet collapsed and having regard

to the aforesaid it is clear that the task of cleaning up, of ending corruption, of ensuring that we build without any further delay cannot be overemphasised. I said I would want to return to – to the 12 – paragraph 12 - 12.5.

**ADV PAUL JOSEPH PRETORIUS SC:** 12.5, sorry.

**CHAIRPERSON:** But before you do so please do not forget the point you want to make about 12.5.

**MR POPO SIMON MOLEFE:** That is the one I want to make.

**CHAIRPERSON:** *Ja*, do not forget to make it. I just want to say ...

10 **MR POPO SIMON MOLEFE:** Okay.

**CHAIRPERSON:** If your – if your comparison is correct Transnet to the economy - the heart and lungs to the human being - and then it seems if your Board had delayed coming in at the time that it came in it seems from your evidence then there was to be quite catastrophe to the economy of the country.

**MR POPO SIMON MOLEFE:** It certainly is...

**CHAIRPERSON:** You said – it was on the precipice you say – you said?

**MR POPO SIMON MOLEFE:** Yes it certainly seems so Chairperson.

20 **CHAIRPERSON:** Hm.

**MR POPO SIMON MOLEFE:** When one looks at the alacrity the speed at which ...

**CHAIRPERSON:** Hm.

**MR POPO SIMON MOLEFE:** Those who were siphoning off the money out of ...

**CHAIRPERSON:** Hm.

**MR POPO SIMON MOLEFE:** Transnet ...

**CHAIRPERSON:** Hm.

**MR POPO SIMON MOLEFE:** Were moving.

**CHAIRPERSON:** Hm.

**MR POPO SIMON MOLEFE:** I mean it is clear they were not stopping.

**CHAIRPERSON:** Hm.

**MR POPO SIMON MOLEFE:** They were just taking – taking – taking ...

**CHAIRPERSON:** Hm.

10 **MR POPO SIMON MOLEFE:** And that was beginning to impact on the moral of the employees as well.

**CHAIRPERSON:** Hm.

**MR POPO SIMON MOLEFE:** So it was just a matter of time for Transnet to be like Eskom.

**CHAIRPERSON:** Hm.

**MR POPO SIMON MOLEFE:** Not that we like where Eskom is...

**CHAIRPERSON:** Hm.

**MR POPO SIMON MOLEFE:** But it is in serious trouble ...

**CHAIRPERSON:** *Ja.*

20 **MR POPO SIMON MOLEFE:** And because it is in trouble the economy is in trouble.

**CHAIRPERSON:** Hm. Yes, so you say ...

**MR POPO SIMON MOLEFE:** So ...

**CHAIRPERSON:** Transnet was on the verge of collapse as well?

**MR POPO SIMON MOLEFE:** Yes.

**CHAIRPERSON:** *Ja.*

**MR POPO SIMON MOLEFE:** Was on the verge of collapse Chairperson

...

**CHAIRPERSON:** Yes, thank you.

**MR POPO SIMON MOLEFE:** And this is what people must understand and – and Chairperson the point is that we listen to all kinds of stories. Sometimes I might use the language that is not nice but I am going to reserve that word that I was going to use. I am not going to use it. People like engaging in chit talk which they use to manipulate people  
10 they think are ignorant. When we deal with these maleficent – this corruption – we have demonstrated here what people who have qualifications, who are senior executives in the organisation have done to the company but out there will be people who say what Molefe - Popo Molefe. I must distinguish myself from Brian – what Popo Molefe is doing is to destroy Black excellence as if Black excellence is synonymous with corruption, synonymous with negligence, synonymous with – with recklessness. They say they are Black therefore do nothing about them and then they say *ja* if it is a Black person they say you are corrupt. If it is a White man they say they are not corrupt. We are  
20 dealing here at Transnet with everyone regardless of the colour of their skin. Edward Thomas is not a Black person. We are not interested in the colour of the skin. We are interested how the actions of the individual are causing damage to the company. A company that serves a South Africa in which all races belong. A South Africa that the Constitution says to us it belongs to all of us. So I need to make that

point ...

**CHAIRPERSON:** Yes.

**MR POPO SIMON MOLEFE:** Because it is important that people who keep ...

**CHAIRPERSON:** *Ja.*

**MR POPO SIMON MOLEFE:** Making these statements ...

**CHAIRPERSON:** Hm.

**MR POPO SIMON MOLEFE:** They must realise just how reckless they are.

10 **CHAIRPERSON:** And the fact is if something is wrong it is wrong whether it is a White person who does it, a Black person who does it, a female or a male if it is wrong it is wrong.

**MR POPO SIMON MOLEFE:** Yes Chairperson many years ago when I was still a very serious political activist I was inspired by the writings of president – the President of Frelimo, Samora Machel – even before the independence of Mozambique which came in 1974 I think. Finally he concluded probably 1975. He made a very important point similar to what the Chairperson says. He said when you have lies in your blanket you do not wait to determine whether they are white or black. You just  
20 take – and you put them in boiling water to bend these lies so that you can use that blanket to sleep peacefully after that. It is a very – I found that a very amazing analogy by this revolutionary philosopher of front for the liberation of Mozambique. So again people must understand that is what we are doing but it also says Chairperson and I am not a politician but it says they only way – well amongst the many

ways that Transnet can give lie to these prophets of doom and if you like charlatans – is the word I was trying to avoid – is by ensuring that Transnet plays its developmental role that results in the inclusiveness in the economy. It has to deal with that question with regards to our national ports, the land around those ports, at our terminals, gas terminals and so on more and more. Companies of emerging - Black people's companies must also have access. The youth of our country who get education Transnet Asset create jobs and accelerate implementation of programs must be having them in mind for

10 incorporation in the economy but also through its enterprise development program to make sure that companies owned by the youth, women and the disabled people are supported in a focused way. I think in the coming period the Board of Transnet is going to have to create that mechanism because we are responding to the frustration of millions of South Africans there and we have this very important instrument which in one of my communique to management and stuff I said it is the family silver and we are privileged to have been the chosen few amongst millions of South Africans to be the ones who are asked to look after this family silver and we must make it work for the

20 rest of our people. I am not done. I have to go to paragraph 13 and read it.

**CHAIRPERSON:** (Laughing).

**ADV PAUL JOSEPH PRETORIUS SC:** 10.5 first.

**MR POPO SIMON MOLEFE:** Oh 12.5.

**ADV PAUL JOSEPH PRETORIUS SC:** 12.5 rather.



**MR POPO SIMON MOLEFE:** Now ...

**CHAIRPERSON:** Yes.

**MR POPO SIMON MOLEFE:** 12.5 Chairperson – we – we spoke about how hard the Board of Transnet engaged the lenders in order to avoid a precipitous action of pulling of the loans that they had given to Transnet asking them to pay that. Transnet has liabilities - loans – amounting to R125 billion. There might be a little comma something there but R125 billion.

**ADV PAUL JOSEPH PRETORIUS SC:** Mr Molefe may I – may I just and  
10 I am sorry to interrupt you. Chair we have about 10/15 minutes to go but I know you have a flight to catch.

**CHAIRPERSON:** Now I think we can – we can finish.

**ADV PAUL JOSEPH PRETORIUS SC:** Thank you.

**CHAIRPERSON:** *Ja.*

**ADV PAUL JOSEPH PRETORIUS SC:** My apologies.

**MR POPO SIMON MOLEFE:** Okay. So I am going to try and be quick.  
So ...

**CHAIRPERSON:** No, no we will – we will have enough time.

**MR POPO SIMON MOLEFE:** Okay.

20 **CHAIRPERSON:** *Ja.*

**MR POPO SIMON MOLEFE:** So it has that – R125 billion. I think 25.2 billion. Of that Transnet – 115.8 billion was with lenders with who Transnet had signed loan covenants where it undertook that it would not have a qualified audit opinion and that had meant that when it gets a qualified audit opinion it triggers a default and which means these

lenders could immediately say give us our hundred and – give us our 15.8 billion. We want it now but if that had happened it would also trigger a cross default because the balance of the 125 billion would also say Transnet is no longer a safe place for us. South Africa is not safe. You the fiscus of South Africa - you the Sovereign come to the party. We know you had not given a guarantee to Transnet but we want our money. It is your company. It is a State owned company. So it was a very serious matter but it would have also impacted on Denel, South Africa Airways, Eskom and many others. So the Board then had

10 to work hard to talk to these lenders to say please do not pull the trigger on us. We are going to do something about the wrong that happened. It was a very serious matter here and outside the country and we are continuing to do that work. One time I met with the African Development Bank during the Africa Investment Forum. Even before I said anything to them they said to me do not come and ask for money from us. You will not get it because we will no convince our Board that we should put money into Transnet. I had to explain what the Board is doing to deal with the situation. Fortunately we got letters of comfort from all these lenders saying okay we know there is a problem we will

20 no pull the plug on you. So this is what we mean when we say this company was on the edge of the cliff. People do not know out there because these things are not immediately apparent to them, but Transnet notwithstanding all that Chairperson is a very good business. Is a cash generative business. It generates revenue of R72 billion. It still makes profits. It may not be as good as they should be but it does

make profits. Transnet does not go to Government to ask for guarantees. The only guarantee it has is an old one which happened many years ago and it - I think it as I am told - it relates to something like 35 – I think 35 billion. That is the only one. So Transnet is able to service its loans. I think I am done on that one. I just wanted to emphasise that and then we can quickly ...

**ADV PAUL JOSEPH PRETORIUS SC:** Before you go to paragraph 13 may I just ask two questions Mr Molefe. The first is obviously the necessity to deal with the maleficent which you have referred to and  
 10 which perhaps you have yet to discover has taken up a lot of the time, energy and capacity of Transnet and in particular its Board and Executives. Has that been done at the expense of the business of Transnet or have you made special arrangements in that regard?

**MR POPO SIMON MOLEFE:** Chair I was going to deal with that last point when I conclude but I can deal with it now because there has been asked. We have – this question has been exercising our minds for a while. We have been worried about that that very soon people will say this Board of Transnet is not interested in the business of Transnet. They are in the business of looking for thieves and looters. They are  
 20 looking behind every nook and cranny to find thieves. Meanwhile the business is going to die. We have been very much aware of that and we have decided that we will emphasise the operations of Transnet in that regard ensure efficiencies, ensure that there is proper accountability management but also to define the performance targets for Transnet. TFG must say to us as South Africans that we want zero

derailments of our trains. We want our trains to be on time. We want the allocation of trains to the customers to be done in a manner that is systematic and efficiently managed. That is what we are dealing with. Our ports must make sure that when cargo arrives there - when the containers arrive – they immediately are moved to – they are loaded on the trains to go where they are supposed to go. That you do not have people waiting there forever. A ship landing there unload it as quickly as possible. So these will be some of the performance indicators that we are going to have to build into the – the performance agreements of

10 our managers but we have also Chairperson as the Board said well we are in a period of transition. We have got on this Board very professional people some of them are engineers. One of them was here. I think he is still here in this room – he is here. We say we are going to set up a task team of the Board on operations. They must move close to the Group Chief Executive to make sure that we agree to do in our corporate contracts and strategic plan is implement that they keep close to the key operating divisions of Transnet including monitoring Transnet International Holdings. So we are aware of that. The investigations will happen there but they will not take the time of

20 the Board. We will in and out of bases keep asking for report and leave most of them to the Board Risk Committee of Transnet. So that we are not seen as a Board that is merely interested in investigations.

**ADV PAUL JOSEPH PRETORIUS SC:** Thank you Mr Molefe and your concluding remarks.

**MR POPO SIMON MOLEFE:** Chairperson we believe that our approach

- as I indicated earlier on – has rescued Transnet from its perilous state and it is gradually getting it back on – on the road to recovery. I must just say and one of the Directors sent me a message earlier on saying tell the Judge that notwithstanding all these negative news we have received Transnet is a good business and in April Transnet exceeded its volume – the target – Transnet – TFR Freight Engineering and I saw that report also from the Acting Group CEO. He has also advised that there is the motivation that has never been seen in that Operating Division. They reported so at my meeting with management  
10 last week as well. So we are moving Chairperson. We think that this process we must emphasise that this process has neither been cheap nor easy. We have teams of forensic investigators working on cases. We have regular meetings with Law Enforcement Agencies such as the Special Investigations Unit and the Hawks. May I add the FFAU as well to identify and prosecute all implicated persons immediately without having to wait for the end of the work of the Commission because we – where we have enough evidence to act we will do so and as I said also we have legal advisors who are preparing to institute – they have instituted several claims and continue to do so as new evidence arises  
20 as we go forward. I am surprised that this document is still so long. In the period following our appointment Chairperson - as we indicated earlier on - we began seeing certain achievements getting some monies back and we have frozen accounts of people so that there is no money flight but what we need to say having said all the many things that we – we have said Chairperson I have no doubt that we would probably all

agree that the corruption in our society and in our company is endemic. It has very long claws and it has very wide tentacles. It is just spanning the entire landscape of our business. It has roots that are very deep which will require hard work to pull them out but also I think what is important if we look at society and the many instances of corruption reported. When you look at how many Ministers suddenly and officials in Government have had to come before this Commission or who were implicated by the Commission you realise that this corruption has got no holy ghost. It – it takes on the Ministers. It

10 takes on the officials but it says to us that it has become a culture or is a threatening to become a culture and if it is threatening to become a culture it means Chairperson that there is a need for a deliberate program of re-education of society. It must happen in schools. It must happen in churches. Everywhere where South African gather. It suggests that we should return to the message of Archbishop Tutu, Emeritus that we needed a moral regeneration of our society but that moral regeneration is not going to happen simply because we pontificate about it. We may – the Commission might want to consider whether it should not ask Parliament and/or Government to actually

20 deliberately establish a mechanism whose business is to promote this program of moral regeneration of society. Also understand that to deal with this problem I am referring to is not a thing that will be done by Law Enforcement Agencies because Law Enforcement Agencies cannot end culture. It requires an all-round mobilisation of South Africans - various institutions, civil society all of them to work together to do this

work but if Government sets up a mechanism to do so if it recognises it as a very important mechanism it must appropriate funds from the fiscus to finance it. It would be the subject of review probably every five years to see how it is performing and it could be held accountable like all other institutions that get appropriation from Parliament. It might sound like it is a small thing Chairperson but this problem we are facing is a very serious one that we need to – to deal with but from our side we think that notwithstanding the fact that we see those who embrace looters and fraudsters and businesses which give them bribes  
10 are organising and they have networks that are fighting those people who are seeking to correct the wrongs of the past. We – we remain resolved and very strengthened to continue with our work and fortunately we have the President and the Minister to whom we report who have the political will and the determination to lead the country. What we do is really a little contribution we can make to strengthen the work that our President and the Minister of Public Enterprises and many other Ministers, Mayor and Premiers who have committed to ending the scourge of corruption at will. So we believe that as we do all of those things there is a discernible move in the company that says  
20 we are no moving away from chaos and we are going towards the stabilisation of the business – stability of the business and I think from that stability we should be able therefore to move towards a sustainable build of the economy and of Transnet. So we putting all the procedures and structures in place to ensure that our work is done properly. I should have dealt with the organisational design and the

operating model. I have not done so but I think the Acting Group CEO will deal with that matter. We remain equal to the challenge before us and we believe that we shall constantly uphold the correct values of the Constitution of the Republic of South Africa and also insist on ethical leadership. In the next three months we will be advertising, shortlisting and interviewing applicants for approximately nine strategic positions in Transnet and that will send a message that we are stabilising the organisation. We are creating permanency in the organisation. Chairperson I end on the note of thank you heartedly for inviting

10 Transnet to present its views, what it has found – the Board - exactly what it has found there, what it is doing about what we found and to send a message that I think small as it is should add to the efforts to build public confidence in this particular institution. Thank you very much Chair.

**CHAIRPERSON:** Do you have anything further?

**ADV PAUL JOSEPH PRETORIUS SC:** No further questions. Thank you Chair.

**CHAIRPERSON:** No further questions. Well thank you very much Mr Molefe. I must also take this opportunity to thank you for coming to

20 share your observations and experiences in regard to the matters that fall within the terms of reference of the Commission with special reference to Transnet and the experiences that your Board has gained since it was appointed to Transnet. We will hear more evidence as we go forward but I think that it is a very important that we have been able to get your observations as Chairperson of the Board of Transnet and



as I indicated earlier on I does look like you may have to come back quite apart from whether or not there may be anybody who may apply for leave to cross-examine you. It may be that you might come back to share your experiences with regard to other parastatals or SOEs in regard to certain aspects about for example the oversight of Parliament in regard to certain matters but there may be other matters as well that you may feel would be important to the Commission and you would be in touch with the Commission with the legal team so that we can have the benefit of our experiences in those SOEs and interactions with  
10 certain committees of Parliament. Thank you very much for having come forward. Thank you.

**MR POPO SIMON MOLEFE**: Thank you Chairperson.

**CHAIRPERSON**: So you are excused for now and that brings us to the end of today's proceedings. Is that right?

**ADV PAUL JOSEPH PRETORIUS SC**: Yes Chair.

**CHAIRPERSON**: Yes.

**ADV PAUL JOSEPH PRETORIUS SC**: The only remaining question is the start time on Thursday.

**CHAIRPERSON**: On Thursday yes. We have to look - are we likely to  
20 deal with one witness who could cover both Thursday and Friday or it will be different witnesses?

**ADV PAUL JOSEPH PRETORIUS SC**: My – my information from Mr Mokoena who is dealing with the next witness Chair is that the next witness may well cover two days.

**CHAIRPERSON**: Yes. Then maybe we should start a 9 o' clock on

Thursday.

**ADV PAUL JOSEPH PRETORIUS SC:** You have a very willing nod from Mr Mokoena.

**CHAIRPERSON:** Okay, alright then. We will adjourn then for today and on Thursday we will start at 9 o' clock. We adjourn.

**ADV PAUL JOSEPH PRETORIUS SC:** Thank you Chair.

**REGISTRAR:** All rise.

**ENQUIRY ADJOURNS TO 9 MAY 2019**