

COMMISSION OF INQUIRY INTO STATE CAPTURE

HELD AT

PARKTOWN, JOHANNESBURG

10

10 OCTOBER 2018

DAY 20

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**PROCEEDINGS HELD ON 10 OCTOBER 2018**

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

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

**CHAIRPERSON:** Yes.

**ADV PAUL PRETORIUS SC:** As you will see, Chair, the witness who came for today, Ms Barbara Hogan, is present. She is represented by Peter Harris and Lethabele Mahletha[?] of Harris Nupen Molebatsi. The legal team at a meeting yesterday determined however that it would be appropriate today to make an  
10 application before you for postponement of the evidence of the current witness as well as a witness due to be called on Friday, Minister Gordhan. That application will be brought by Advocate Thandi Norman.

**CHAIRPERSON:** Okay, thank you.

**ADV THANDI NORMAN SC:** Thank you, Mr Chairman.

**CHAIRPERSON:** Yes.

**ADV THANDI NORMAN SC:** A copy of the application and the notice was made available to the chairperson's registrar this morning. Has that been placed before you?

**CHAIRPERSON:** Yes, I have got it.

20 **ADV THANDI NORMAN SC:** Yes, thank you. Mr Chairman, this is an application for a postponement of today's hearing. The chairperson would observe that Ms Barbara Hogan is present today as she is due to testify today but the reasons why the legal team felt that it would be prudent to appear before you today and ask for an adjournment are the following: The final statement of Ms Hogan was received on Monday this week and in terms of Rule 3 of the Rules of this commission that statement has to be given to persons that are implicated therein and those persons

must be given two weeks within which to either put up a version or decide to ignore the statement and take whatever steps they deem appropriate and because then the statement was only received on Monday it was not possible to adhere to those rules.

And then the statement of Minister Pravin Gordhan, the only statement that the commission is in possession of is a draft statement from him which cannot be acted upon in terms of the Rules of this commission. We are expecting that maybe his final statement would come to hand tomorrow and even if it does come to hand tomorrow it means that it will not be possible for the implicated persons, even if they are implicated certainly or may be implicated or – it would not be possible for  
10 them then to make the choices that they are entitled to make in terms of the Rules before Friday.

It is for those reasons that we felt that not only must we approach the chairperson this morning and seek a postponement on those bases but also to ensure that the public at large respects the way the commission operates and that we as a legal team also adhere to the Rules in order not to undermine the integrity of the commission. There was service of the application on Mr Harris and on the State Attorney, Ms Mbatha, who represents Mr Pravin Gordhan, by e-mail. They were served by e-mail, alerted to the fact that there will be an application for a postponement today.

20 Mr Chairman, the regulations themselves, Regulation 6 in particular, makes provision and gives people the rights for them to make a choice when they want to present evidence before the commission that they may be represented by their own legal representatives and when they do that then they prepare their own statements with their lawyers and once they have done that those statements then are brought to the commission and after they have given those statements to the

commission the members of the legal team and the investigators must interrogate those facts that are placed in those statements to make sure that whatever information is placed before the commission is reliable and also if there is any corroborative evidence that could be obtained in the meantime that be obtained before a witness testifies.

Now having given the timelines that I have placed before the chairperson of Monday and Friday, it is totally impossible then to adhere to those Rules and we believe that not only will those that are implicated be prejudiced if the witnesses continue to testify in their absence but also that the commission's work will be done  
10 piecemeal because if that evidence is received today and on Friday the implicated – notices will only go after these witnesses have testified and the implicated persons will take two weeks and they will exercise their right whether they want to cross-examine or not and then it means that the same very witnesses must come back again for them to be cross-examined and we believe that the approach that we have taken will obviate the need for the witnesses having to come twice before the commission unless of course there are other areas that they had not covered.

**CHAIRPERSON**: Of course witnesses coming to the commission twice might not be completely avoided in – if one has regard to the various topics that have to be covered.

20 **ADV THANDI NORMAN SC**: Indeed.

**CHAIRPERSON**: So that factor might not carry a lot of weight because by the very nature of how the commission is going to deal with these matters, different parts of the terms of reference, it may happen that some witnesses have to come to the commission twice.

**ADV THANDI NORMAN SC**: Indeed, Mr Chairperson.

**CHAIRPERSON:** Yes.

**ADV THANDI NORMAN SC:** Yes, indeed. But what we are seeking to avoid is a situation where not maybe by design that a witness has – finds herself or himself having to come twice simply because the implicated person did not have an opportunity at the time to either put questions at the same time as they were testifying and on the same topic and not on new topics that they may be called upon to come and deal with.

**CHAIRPERSON:** Yes.

**ADV THANDI NORMAN SC:** Yes. Thank you. Mr Chairperson, it would then be – it  
10 will be our submissions to you, we have to base them on what the applicable legal principles are when one applies for a postponement and we have made some submissions that indirectly I would simply just like to refer the chairperson to the popular decision of the [indistinct] where the constitutional court confirmed the principles that were enunciated in the judgment of Mahomed AJA as he then was in the matter of *Myburgh Transport v Botha* where he had verbalised the principles and listed them that the granting of a postponement lies squarely within the discretion of a chairperson although these matters were dealt with in a court setting but they equally apply in these proceedings.

But what is important also is that the application could not have been  
20 made earlier than today because of the circumstances that we have articulated in Mr Mabunda's affidavit that because the main affidavit was only received on Monday and now we are still awaiting the affidavit of Minister Gordhan it could not have been brought earlier than today.

**CHAIRPERSON:** When was Ms Hogan's statement supposed to have reached the commission's legal team in terms of whatever arrangements had been made

between the commission's legal team and her or her legal team?

**ADV THANDI NORMAN SC:** The very first statement was received, a draft statement, if I may put it that way and as we deal with it, although the date is not furnished in the affidavit but there was a statement that was received from her but that statement dealt with a very narrow issue and then consultations thereafter were held and it was decided that a broader statement ought to have been prepared but the first one was received over a month ago but then it was anticipated that a final one would also come quickly and would be received in time by the commission but it was only unfortunately received on Monday.

10 **CHAIRPERSON:** Okay. And in terms of the statement from Minister Gordhan?

**ADV THANDI NORMAN SC:** That one is also ... [intervenes]

**CHAIRPERSON:** When was it supposed to have reached the commission's legal team or is tomorrow the day that was arranged as the day by when it was supposed to reach the legal team?

**ADV THANDI NORMAN SC:** Yes. I am advised by my learned friend, Mr Pretorius, that there were various dates that were agreed on and then the draft statement was presented and there were various dates within which the final statement had to be submitted but due to some of the minister's commitments then those deadlines could not be met.

20 **CHAIRPERSON:** Yes. Thank you.

**ADV THANDI NORMAN SC:** Thank you, Mr Chairman. The application, there is no indication on the papers and at least none of the parties have tried and indicated that this application is not being made *bona fide* and it is made not with the purpose of frustrating the work of the commission but ... [intervenes]

**CHAIRPERSON:** Well, we did not get much notice in terms of this application.

**ADV THANDI NORMAN SC:** Yes.

**CHAIRPERSON:** Other than that because Ms Barbara Hogan I assume has been in touch with the legal team, the legal team might know where she or her legal team stands with regard to it and same would apply to Minister Gordhan. He is not here now because he is not supposed to be here now but he or his legal team or office might have indicated something to you. From what you are telling me it does appear that the real reason which makes it necessary to have a postponement is that Ms Hogan's statement was received late.

**ADV THANDI NORMAN SC:** Yes.

10 **CHAIRPERSON:** That is a day or two ago.

**ADV THANDI NORMAN SC:** Yes.

**CHAIRPERSON:** Which did not give the legal team of the commission enough time to give proper notice to any people implicated in the statement or it might have given them notice but it did not –the notice would not give them the amount of time contemplated in the Rules to enable them to put up their version with regard to the allegations implicating them.

**ADV THANDI NORMAN SC:** Yes, that is correct.

**CHAIRPERSON:** And the point has to be that there is a purpose for that Rule.

**ADV THANDI NORMAN SC:** Yes.

20 **CHAIRPERSON:** And the purpose is that by the time that a witness gives evidence before the commission anyone who is implicated in that witness statement should be aware that he or she is implicated in the statement of that witness and should have had an opportunity to put or to furnish the commission's legal team with his or her version in regard to the allegations against them and the commission's legal team should have had an opportunity to interrogate his or her version against the version

of the witness and to investigate if need be any allegations or any aspects of his or her version so that when the witness gives evidence the commission's legal team is able to ask questions that are informed by both versions.

**ADV THANDI NORMAN SC**: Yes.

**CHAIRPERSON**: That basically is ... [intervenes]

**ADV THANDI NORMAN SC**: That is correct and that is what is contained in the affidavit, Mr Chairman. Yes. I am advised that Mr Harris does not wish to oppose the application and as the chairperson has indicated the State Attorney might not have had enough opportunity to deal or to submit any objection but if there is any  
10 maybe that would have to be dealt with in due course.

**CHAIRPERSON**: Yes.

**ADV THANDI NORMAN SC**: But there was service on the State Attorney by way of e-mail.

**CHAIRPERSON**: Yes.

**ADV THANDI NORMAN SC**: Yes. And I am advised by Mr Pretorius that he did speak to Mr Gordhan's counsel who has no objections to the postponement.

**CHAIRPERSON**: Yes.

**ADV THANDI NORMAN SC**: That is being sought.

**CHAIRPERSON**: Yes.

20 **ADV THANDI NORMAN SC**: Then, Mr Chairman, you would observe that on the notice of application itself there are no dates that has been included therein but after the papers had been prepared then we sat down with the secretariat of the commission to ascertain whether what are the dates available because the venue that the commission sits in is not available the week of 23 to 26 October.

**CHAIRPERSON**: Yes.

**ADV THANDI NORMAN SC:** And it is also not available again the week of 6 to 9 November. Now given then the timelines and compliance issues with the notices that have to be put up we are suggesting to the chairperson that the ideal date for receiving the evidence of Ms Barbara Hogan which date has been canvassed with her lawyers, it is suitable to her, would be 12 November and the date that we would suggest for Minister Gordhan would be 15 November given the fact that Wednesday they have cabinet meetings and then we would accommodate him on 15 November.

**CHAIRPERSON:** The date of the 15<sup>th</sup> on which you propose should be the date for the hearing of evidence of Mr Gordhan.

10 **ADV THANDI NORMAN SC:** Yes.

**CHAIRPERSON:** Is the date that he or his lawyers have been consulted on? Do we know whether ... [intervenes]

**ADV THANDI NORMAN SC:** No, unfortunately they have not been consulted on.

**CHAIRPERSON:** Yes.

**ADV THANDI NORMAN SC:** What we plan to do is after the hearings and in the event that they say the date is not suitable we will make an application to move that date to another date but we believe that because he is also... In fact we have been – I think all the witnesses, they want to get this thing over and done with. He might make himself available that week but unfortunately we did not want a situation we  
20 leave it open-ended because once we do that because in any event every witness must make himself or herself available when called upon to come to the commission, unless of course there are reasons that are beyond his or her control.

**CHAIRPERSON:** Yes.

**ADV THANDI NORMAN SC:** So the date of the 15<sup>th</sup> is the date that we are suggesting tentatively in respect of Minister Gordhan.

**CHAIRPERSON:** What is the day of the week on 12 November?

**ADV THANDI NORMAN SC:** The 12<sup>th</sup> is a Monday.

**CHAIRPERSON:** Yes.

**ADV THANDI NORMAN SC:** And then the 15<sup>th</sup>, Mr Chairman, is a Thursday.

**CHAIRPERSON:** Yes. Okay. You are leaving room that in case there are implicated persons ... [intervenes]

**ADV THANDI NORMAN SC:** Who wish to proceed ... [intervenes]

**CHAIRPERSON:** Who apply for leave to cross-examine Ms Hogan ... [intervenes]

**ADV THANDI NORMAN SC:** Ms Hogan, that is correct.

10 **CHAIRPERSON:** Then Tuesday the 13<sup>th</sup> could still be used for that.

**ADV THANDI NORMAN SC:** It could still be used and in fact even Wednesday.

**CHAIRPERSON:** Even Wednesday.

**ADV THANDI NORMAN SC:** If it rolls over. That is correct.

**CHAIRPERSON:** Yes. Okay. Yes.

**ADV THANDI NORMAN SC:** Yes.

**CHAIRPERSON:** Anything else?

**ADV THANDI NORMAN SC:** Thank you, Mr Chairman. We therefore apply for the order sought in the notice of application with the amendment by inserted the suggested dates in the respective paragraphs.

20 **CHAIRPERSON:** Yes.

**ADV THANDI NORMAN SC:** As asked for in paragraphs (a) to (c) of the notice of application.

**CHAIRPERSON:** Yes.

**ADV THANDI NORMAN SC:** Thank you. Those are our submissions. Mr Chairperson, that was Mr Mantsho who was whispering indicating that he would like

to say something about this application because he is one of the implicated – he represents one of the implicated persons. Could he be allowed then to address the commission?

**MR MANTSHO**: Thank you, Chairperson.

**CHAIRPERSON**: Yes, Mr Mantsho?

**MR MANTSHO**: We have been invited as per the notice in terms of the Rules of the commission that the former president is implicated in the evidence which the witness before you is going to give.

**CHAIRPERSON**: Yes.

10 **MR MANTSHO**: That notice was received by the former president through his attorneys on 24 August.

**CHAIRPERSON**: Yes.

**MR MANTSHO**: With a statement signed allegedly by the witness before you on 30 July. We were then informed that the date upon which the witness before you is going to give evidence was 12 September. 12 September came, we never got any further written notification as to when the witness before you is going to give evidence. The reasons which are presented to you for seeking a postponement of the evidence of this witness it is in short she has provided a statement Monday this week and therefore in terms of the Rules of your commission the implicated parties  
20 like ourselves we will not have enough time to elect whatever we have to elect in terms of the rules.

The notice in terms of Rule 3.3 has been already given to us with certain grounds set out in the notice allegedly the instances of evidence which implicates us and of course we have reacted to that notice. We have requested particulars in terms of letters asking certain questions of which those questions were never

answered and when the former president made an election as it was conveyed to you on the statements given to him allegedly implicating him it included the statement of the witness. So the submission made before you, there is no indication of the legal standing of the notice already given in terms of the statement dated 30 July.

But coming to the reasons for postponement it is in short there is a statement received on Monday. We have been informed on 8 October that the witness before you she is going to give evidence today, the 10<sup>th</sup>. I think you can make the 8<sup>th</sup> according to my counting, it takes me to Monday. That this witness will  
10 give statement today – will give evidence today, 10:00. In fact the letter of 8 October did not even have time so of course we acknowledged the letter and then we said okay, what time she is going to give evidence and we were then informed she was going to give evidence at 10:00. We received the letter on 9 September – no, sorry. We received the letter on 8 October with the invite for today and our letter which was a follow-up letter was on 9 October which is Tuesday, I think, wherein we sought a time for the evidence and we were told that evidence will be given at 10:00.

So that communication that we have and the reasons which are being presented to you, in my understanding there is contradiction that the commission as early as the 8<sup>th</sup> and the 9<sup>th</sup>, they were still inviting us to come for this evidence  
20 without informing us that in fact there is a new statement that this witness has and this statement is dated Monday and there is the copy of the statement. So I am saying this, Chairperson, because the underlining word by my learned friend has been the integrity of the commission and what I am submitting to you has everything to do with the integrity of the commission.

So what are the real reasons? If it was that the statement was submitted

on Monday what really stopped the commission to circulate the statement? As far as we know maybe you can enlighten us. It appears we are only implicated – allegedly implicated by this witness. I do not see any difficulties of on Monday upon the receipt of that statement that we should have been furnished with that statement and that we should have been properly informed in terms of the Rules of the commission. So in short I find it very difficult to understand what are the real reasons upon which the postponement is being sought because as late as 9 October which is yesterday we were told that the evidence will be given at 10:00. There was no any indication of anything to the contrary. That is all I am making, Chairperson.

10 **CHAIRPERSON**: Yes.

**MR MANTSHO**: For the purposes of the integrity of the commission.

**CHAIRPERSON**: Yes. No, before you sit down, Mr Mantsho, from what you say I expect you – I do not expect you not to understand the reasons for the postponement but I do expect you to not to understand why you were not furnished with this witness' latest statement on or after Monday, which is one of the points you make. You say on the 9<sup>th</sup> you were still being invited here but you were not given the new statement. The reasons for the postponement as I understand them is the Rules require a certain level of fairness to implicated persons. The statements, if they are received too close to the date when the witness is going to give evidence  
20 makes it difficult to afford implicated persons enough time to look at the statement and make whatever decisions they wish to make and it is important that the commission should not only have regard to the rights of implicated persons but it should be seen to have regard to those rights as well.

So, but the point which seems to me is one that legal team of the commission should really deal with is if they were in touch with the former

president's legal team after receiving this witness' statement why did they not furnish it to yourself? Is my understanding more or less okay?

**MR MANTSHO**: Chairperson, I am with you but fairness will also require that there are no statements one after the other being given to so-called implicated parties. So when you receive a statement that is the case you are meeting so the number of statements, of course it also raises another question. It raises a question because the statement we are given, we are told that on the basis of that statement we are implicated. Then there is another statement coming so if the commission in terms of its preparation on 30 July had a statement of this witness and from 30 July there was  
10 a period of 23 days that the commission had – well, this is my assumption.

The commission had the statement of this witness because we were finished with that statement on the 24<sup>th</sup>, so which obviously one would assume that for the commission to actually draft a notice and circulate and elect who in terms of that statement according to them is implicated, so they familiarise themselves with the content of the statement. So when you are being told then there is another statement, does it mean the statement that we received is incorrect? Does it mean the notices that we have received in terms of Rule 3 is incorrect? So we are not being told it is a supplementary statement. So it appears it is a replacement of the statement that we have been received – that we have received already. So I am  
20 saying this, Chairperson, for the word you used, fairness and this is in terms of fairness. That is all.

**CHAIRPERSON**: Thank you. Thank you, Mr Mantsho. Thank you.

**ADV THANDI NORMAN SC**: Thank you.

**CHAIRPERSON**: Ms Norman?

**ADV THANDI NORMAN SC**: Yes, thank you. Mr Chairman, may I just put some

things into – in their proper context? Mr Mantsho's complaint is that the initial statement was delivered, was served, proper notice was served in respect of that statement but what he has not told the commission is what version did they put in response to that first statement that was given because the version is critical as is the notice because in order for the commission to be able to look and to investigate further it must have a version and he has not indicated even today, he does not tell the commission – the chairperson as to when is he going to put up a version to the initial statement that he received? We have not received that. That is the first thing.

10 And then the second thing is a letter was written to him on the 8<sup>th</sup>. He seems – he wants to create some doubt whether this statement was received before that. Mr Chairperson, this statement of Ms Hogan is signed 8 October 2018 and when that statement was received there is a letter that was written to him dated the 8<sup>th</sup> from Mr Mabunda of the commission. It says:

20 "Notice in terms of Rule 3.3 by Ms Barbara Hogan.  
We refer to the above matter. Kindly be advised that Ms Barbara Hogan will be appearing before the commission on Wednesday 10 October 2018. We confirm that your client was through you served a notice in terms of Rule 3.3 dated 22 August 2018 in which he was implicated by Ms Hogan. Please expect to receive a formal notice in terms of Rule 3.3 based on this statement on Tuesday 9 October 2018. Should you have any queries regarding the above please do not hesitate to contact us."

Now the statement that we are talking about is a statement that expanded

on the initial statement and it is this big. This is all the work that Ms Barbara Hogan and his legal team submitted to the commission on Monday. It is this lever arch file and it is for that reason that then the legal team decided that in the light of all of this one cannot say we rely on the old notice and on the old statements. Parties that are implicated, not just the former president, but there are various persons whose names appear on the statement and it was felt that because of that proper notices would have to be issued to all the parties and then those parties would be given an opportunity to deal with those statements.

10 So there is no – there is nothing unfair about that process save to say that it is – actually what is not fair is for Mr Mantsho not to indicate to the chairperson as to what is it that they are doing about the initial statement and when, if he gets this statement when are we going to get a version because he has not indicated what prejudice is he suffering and we cannot have a situation where there has been compliance with his initial notices by the commission but there has been no version forthcoming from his client. So I ... [intervenes]

**CHAIRPERSON:** But of course as of today.

**ADV THANDI NORMAN SC:** Yes.

20 **CHAIRPERSON:** He asks the question what is the status of that initial – first statement because he implies he has not been told what that – what the status of that first statement is and he says he has not been told whether this statement that was received on the 8<sup>th</sup> by the commission's legal team replaces or supplements the earlier statement.

**ADV THANDI NORMAN SC:** Yes. Well, the initial statement is still valid. It is evidence before the commission. It stands. This statement, as I indicated in my submissions when I made the application, this goes further than the initial

statements. It deals with other aspects which are not covered in that statement so he must not – he is not going to discard that statement. These statements are all before the commission but the ... [intervenes]

**CHAIRPERSON**: Yes, but it is all very well to say what the position is now.

**ADV THANDI NORMAN SC**: Yes.

**CHAIRPERSON**: His complaint is prior to today he had not been told about what the status of the previous statement is.

**ADV THANDI NORMAN SC**: Yes. Without really defending Mr Mabunda of the commission but in all fairness to him he did indicate in the letter that he wrote to him  
10 that here is another statement now and please, if you have any queries please let me know and ... [intervenes]

**CHAIRPERSON**: But that does not say – does it take the place of the first one?

**ADV THANDI NORMAN SC**: Yes.

**CHAIRPERSON**: Or does it supplement it?

**ADV THANDI NORMAN SC**: Yes. Maybe that is an omission on the part of the commission.

**CHAIRPERSON**: Yes.

**ADV THANDI NORMAN SC**: But my understanding is that that statement was dealing with very narrow – with a very narrow and limited issue [indistinct]  
20 ... [intervenes]

**CHAIRPERSON**: There may be very good reasons why ... [intervenes]

**ADV THANDI NORMAN SC**: Yes.

**CHAIRPERSON**: There should have been a second statement.

**ADV THANDI NORMAN SC**: Yes.

**CHAIRPERSON**: But we are just dealing with his complaint to say ... [intervenes]

**ADV THANDI NORMAN SC:** That is correct.

**CHAIRPERSON:** To say we are told on the 8<sup>th</sup> or 9<sup>th</sup> that this witness will give evidence on the 10<sup>th</sup> and yet, one, we are not furnished with the second statement. Two, we are not told whether the second statement replaces the first statement or whether it supplements it.

**ADV THANDI NORMAN SC:** Yes.

**CHAIRPERSON:** That is part of his complaint.

**ADV THANDI NORMAN SC:** And that complaint is a valid complaint, Chair, but it will be addressed by the notice because the notice that is going to be issued in  
10 respect of this statement is going to identify the areas where his client is actually implicated in this statement and those portions of the statement that are relevant to his client will be furnished to him but it is for that reason that it is necessary to actually issue proper notices and deal with the matters in terms of the Rules properly. His complaint is valid because really it would not have taken too much of the commission's time to say to him, Mr Mantsho, this statement that we are putting you is over 300 pages with annexures thereto. It either replaces the one or it supplements the other one, so that is a fair comment and we take that complaint and we receive it. It is a valid complaint but to suggest either indirectly or otherwise that that was intended to frustrate the process, that certainly was not the case. Yes. Or  
20 cause prejudice.

**CHAIRPERSON:** Yes. I do not think he went that far.

**ADV THANDI NORMAN SC:** Yes.

**CHAIRPERSON:** I do not think he went that far. My understanding is that he was just registering his concerns.

**ADV THANDI NORMAN SC:** His concern. Yes, yes. Thank you, Chair.

**CHAIRPERSON**: About how things have happened.

**ADV THANDI NORMAN SC**: Yes, thank you.

**CHAIRPERSON**: But he also made another – he also registered another complaint.

He says that the commission's legal team furnished him with the first statement of this witness and indicated that this witness was going to give evidence on a certain date.

**ADV THANDI NORMAN SC**: Yes.

**CHAIRPERSON**: But he says he was not informed of anything and that date came and went and in fact he is saying the commission's legal team did not bother to say  
10 to him this witness is no longer going to give evidence on the date that we have given because of A, B, C, D.

**ADV THANDI NORMAN SC**: Yes. This is the date of 12 September that he mentioned. Unfortunately, Chair, I do not have details relating to as to exactly what happened on that date and why it was decided that her evidence not be received on that date.

**CHAIRPERSON**: Well, the reason would have been I think, from what I have read ... [intervenes]

**ADV THANDI NORMAN SC**: Yes.

**CHAIRPERSON**: Is that the witness ... [intervenes]

20 **ADV THANDI NORMAN SC**: We needed to expand ... [intervenes]

**CHAIRPERSON**: Indicated that there are other matters.

**ADV THANDI NORMAN SC**: Yes.

**CHAIRPERSON**: Which were not covered in her ... [intervenes]

**ADV THANDI NORMAN SC**: Initial statement ... [intervenes]

**CHAIRPERSON**: Initial statement ... [intervenes]

**ADV THANDI NORMAN SC:** That is correct.

**CHAIRPERSON:** Which are relevant to the investigation of the commission.

**ADV THANDI NORMAN SC:** Yes.

**CHAIRPERSON:** That she wanted to cover and therefore she wanted to give the commission as much information as possible on a variety of issues falling under its terms of reference.

**ADV THANDI NORMAN SC:** That is correct. Yes, Chair, that was the reason but there is definitely – his complaint would be valid to the extent that he was not advised that the witness is no longer going to come and testify on the 12<sup>th</sup> for these  
10 reasons. He was entitled to that explanation and if he did not receive it that would have been an omission on the part of the commission and going forward that will certainly be rectified.

**CHAIRPERSON:** Okay. All right. Thank you.

**ADV THANDI NORMAN SC:** Thank you, Mr Chairman. And maybe just to finalise, I did not get a sense from Mr Mantsho that he was opposed to the granting of the application that – for that reason.

**CHAIRPERSON:** No he did not say he was opposed. He was registering his concerns.

**ADV THANDI NORMAN SC:** He was registering his concerns.

20 **CHAIRPERSON:** As I understand it he was registering his concerns and obviously it would not be in his interest that the witness gives evidence on the basis of the new statement in circumstances where he and his client have not seen the statement and so on.

**ADV THANDI NORMAN SC:** He has not seen it. Yes.

**CHAIRPERSON:** But he was registering as I understand, his concerns.

**ADV THANDI NORMAN SC:** Yes. Thank you, Mr Chairman.

**CHAIRPERSON:** This commission was going to hear today the evidence of Ms Barbara Hogan and on Friday it was going to hear the evidence of Minister Pravin Gordhan. An application has now been brought by the commission's legal team for the postponement of the hearing of Ms Hogan's evidence today as well as the postponement of the hearing of the evidence of Minister Pravin Gordhan on Friday.

The reasons given for this application is that, one, the statement on the basis of which Ms Hogan is going to give evidence was only received by the commission's legal team on Monday 8 October and that Minister Pravin Gordhan's  
10 statement has not yet been received by the commission's legal team and it is expected to be received by the commission's legal team only tomorrow and in both cases it will not be possible for the commission's legal team to afford implicated persons the time contemplated in Rule 3 of the Rules of this commission which requires that if they are – that is the commission's legal team, in possession of a statement from a witness which implicates any person they should furnish the implicated person or persons with the statement or portions or relevant portions of that statement to enable that person to furnish his or her response or version to the allegations implicating him or her and also in due course and also to decide whether he or she would like to apply to the commission for leave to cross-examine the  
20 witness.

Part of the reason for that Rule is that, one, implicated persons must know in advance what the allegations are against them if they are implicated by any witness so that if at all possible they can attend the hearing when that witness gives evidence, but also part of the purpose of that Rule is that the implicated persons should furnish the commission's legal team with their version of the events in which

they are implicated in the witness statement. That enables the commission's legal team to conduct further investigation and to explore the various issues and look at both the witness statement as well as the version of the implicated persons with the result that when the witness gives evidence the commission's legal team is able to ask questions that cover both what the witness says as well as the version put up by the implicated persons. This Rule seeks to ensure that there is fairness afforded to implicated persons in the process of this commission.

Indeed the – if the statements of Ms Barbara Hogan was received on 8 October and it is signed on that date then definitely there is not enough time for  
10 implicated persons to read the statement and respond to it before she can give evidence so it is necessary that more time be available to them so that they can deal with the allegations prior to her giving evidence.

With regard to Minister Pravin Gordhan's statement, if it has not been received as of today and will only be received tomorrow it is quite clear that there simply will not be enough time for implicated persons to be given notice and for them to give their version and to consider the allegations that will be made in that statement against them before Minister Gordhan gives evidence before this commission.

This commission is committed to ensuring that implicated persons are  
20 dealt with fairly and that they have a fair opportunity to put their versions before the commission and to explain their conduct where they accepted that they may have acted in a manner that is not acceptable. This is quite important because it will ensure that the final findings and recommendations made by this commission after all the evidence has been led are findings that deserve credibility because as far as possible all persons will have been given an opportunity to put their cases before the

commission, to put their versions and to be heard.

The Rules make provision for this commission to condone non-compliance with the Rules and in an appropriate case the commission will condone non-compliance however the commission's legal team must do everything they can to make sure that as far as possible implicated persons receive notices timeously and have an opportunity to put up their version prior to witnesses giving evidence. In the circumstances it seems to me that indeed it is appropriate that there should be an adjournment.

Mr Mantsho, who appeared on behalf of former president Jacob Zuma  
10 registered certain concerns in regard to the first statement of Ms Barbara Hogan that had been furnished to his client as well as the interactions between him and the commission's legal team over the past two days. This has been dealt with already in the exchange that I have had with him and with the commission's legal team and I just wish to emphasise again that the commission and its legal team must make sure that all implicated persons are treated fairly and are afforded a fair opportunity to put their case before the commission.

I have emphasised this previously and continue to emphasise it because there should be nobody who has any reservations to placing their version and their evidence before this commission. When I speak about fairness that I emphasise  
20 must be afforded implicated persons I wish to emphasise that that fairness must not be confused with the fairness that is subject to the rules and practices of courts of law, it must be fairness as understood in the context of a commission of inquiry and in this regard many aspects of the rules of fairness applicable in a court of law will apply to a commission such as this one but there will be certain differences and at all times all concerned must bear this distinction in mind.

It is important to also point out that this commission would like to try and finish its job within a reasonable time and therefore all concerned should give co-operation to make sure that it is not unduly delayed in doing its job and in finalising the investigation and the hearings that must happen. In this regard I want to emphasise that implicated persons who get notices informing them that they are or may be implicated by certain witness statements are required to put up their version so that when the witnesses give evidence the commission is aware of their version and can approach the questioning of witnesses with a full understanding of different versions and in this regard I hope that all concerned will co-operate with the  
10 commission in order to make sure that its functioning is as smooth as possible.

In the circumstances I am prepared to grant the postponement asked for and we will then adjourn these proceedings to 12 November 2018 when Ms Barbara Hogan will appear before the commission and give her evidence. It is unfortunate that we are not able to proceed today but I am sure that Ms Barbara Hogan sitting in the proceedings understands the reasons together with her team. The commission is grateful for her having come forward to give evidence and her evidence like the evidence of all witnesses will be evaluated at the end and such findings as may be necessary will be made at that time but at this stage already the commission is able to say that it appreciates her taking the decision to come forward and assist the  
20 commission.

With regard to Minister Pravin Gordhan, I am going to fix the date on 15 November because I really do want to make sure that we are not delayed for too long before we finalise the evidence that relates to appointments and dismissals of ministers which fall under a certain part of the commission's terms of reference and I hope that it will only be if there is really no other way that he can be here on 15

November that he would apply for that date for to be changed. So I will fix that date.

There is room for him to apply for that date to be changed but I hope that it will only be if there are really exceptional circumstances. I hope that he will do everything he can to be available on that date.

The hearing is therefore adjourned to 12 November and it will continue after that with regard to any other witnesses that may be available at that stage but on 15 November it will hear the evidence of Minister of Pravin Gordhan unless prior to that he applies for that date to be changed. That is the decision on the adjournment.

10 **ADV THANDI NORMAN SC**: Thank you. As the chairperson pleases. Thank you, Mr Chair.

**CHAIRPERSON**: We will then adjourn and obviously Ms Barbara Hogan will come back on 12 November. We adjourn.

**HEARING ADJOURNS**

**TRANSCRIBER'S CERTIFICATE FOR COMMISSION OF INQUIRY**

**INTO STATE CAPTURE**

**HELD AT**

**PARKTOWN, JOHANNESBURG**

DATE HELD : 2018-10-10

DAY: : 20

TRANSCRIBERS : J CONNOUR

**Audio's are typed verbatim, as far as audible/possible**



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