

STATE CAPTURE INQUIRY
PARKTOWN, JOHANNESBURG

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CHAIRPERSON: Good morning everybody, good morning Ms Hofmeyer.

ADV KATE HOFMEYER: Morning Chair.

CHAIRPERSON: Thank you.

ADV KATE HOFMEYER: Chair, if I may begin. Today we have the evidence of Ms Williams. There are a few housekeeping matters I would like to deal with if I may with your leave before we swear the witness in.

The first is just in relation to the bundle of Ms Williams's evidence. With your leave Chair I propose that we number it F1 in the sequence.

10 **CHAIRPERSON**: It will be marked F1.

ADV KATE HOFMEYER: Ms Williams, as I make reference to the bundle, I will on occasion call it F1 for the purposes of the record and so you know that is the bundle in front of you that you should make reference to.

Chair, the second housekeeping matter is that there is one document which has been omitted from the bundle, which I have taken the bold move of pagination for the Chair in the interest of efficiency. I propose that we paginate at 39.1 and 39.2 because that will ensure that it inserts in the correct place in the chronology. If I may beg leave to hand that up.

CHAIRPERSON: Thank you.

20 **ADV KATE HOFMEYER**: My learned colleague should have copies of the bundle themselves and then that additional document which will be inserted between the existing pages 39 and 40 of the bundle.

CHAIRPERSON: Has that been done to the witness's bundle?

ADV KATE HOFMEYER: It has indeed Chairperson:.

CHAIRPERSON: Thank you. It will come after page 40?

ADV KATE HOFMEYER: After page 39 Chair.

CHAIRPERSON: Well, the page letter has got page 39 has something on both sides so the one side is page 39, the other one is page 40.

ADV KATE HOFMEYER: Chair, there were two copies of the bundle prepared. The copy that went to you yesterday should have been not double-sided and so it could have been inserted between the two. The one that is subsequently been prepared for this morning is
10 double-sided. Maybe I can make an arrangement with your Registrar to give you the copy that is not double-sided as it will aid your movements through the papers today.

CHAIRPERSON: Okay, for now I will keep this, I won't put this in, this 39.1 and 39.2 but when you refer me to it, I will have regard to it.

ADV KATE HOFMEYER: Thank you Chair, I expect won't get to it before tea and so maybe at tea we can make the arrangement for you. Thank you Chair.

The second housekeeping matter is just in relation to the notices to implicate persons arising from Ms Williams's evidence. Chair, I can confirm to you that those notices were sent timeously and that as matters currently stand, there have been no applications received in relation to Ms Williams's evidence, I mean from those notices. The only thing
20 that we have received was a request from Mr Manyi who was one of the implicated persons to attend today and be accredited and that was facilitated yesterday.

CHAIRPERSON: Well, I don't know what it means to be accredited. You know that he or anybody else may attend and that might be of no significance for now.

ADV KATE HOFMEYER: No indeed Chair.

CHAIRPERSON: Okay.

ADV KATE HOFMEYER: Just something to keep you up to date on where that process is. Chair, those are the housekeeping matters. If I may then request the witness to be sworn in.

CHAIRPERSON: Please swear the witness in?

REGISTRAR: Morning. Please state your full names for the record?

MS PHUMLA WILLIAMS: I am Miriam Phumla Williams.

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

10 **MS PHUMLA WILLIAMS:** I have no objection.

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

MS PHUMLA WILLIAMS: Certainly.

REGISTRAR: If so, and if you swear that the evidence you shall give today shall be the truth, the whole truth and nothing but the truth, please raise your right hand and say, I do.

MS PHUMLA WILLIAMS: I do.

CHAIRPERSON: I am not sure that that oath was properly said. Please just say it again, have you got the written thing? I am sorry Ms Williams, the Registrar will just administer the oath afresh to you.

20 **REGISTRAR:** Do you swear that the evidence you shall give today, shall be the truth, the whole truth and nothing but the truth, so help you God?

MS PHUMLA WILLIAMS: Yes, I swear.

REGISTRAR: Thank you.

CHAIRPERSON: Thank you.

ADV KATE HOFMEYER: Thank you Chair. Ms Williams, I made reference to the bundle in front of you which will be referred to as Exhibit F1 in the course of the proceedings. May I ask you to turn up page 1 of that document? The first two pages are simply an index and then following that are paginated pages of the bundle. Ms Williams, you will see at page 1 is a document entitled, "Witness Statement for Ms Phumla Williams" and it runs from page 1 to page 11. Can you confirm that that is your witness statement?

MS PHUMLA WILLIAMS: Yes Chair I can confirm.

10 **ADV KATE HOFMEYER:** And can you confirm that the contents of that statement are true?

MS PHUMLA WILLIAMS: Yes, I can confirm.

ADV KATE HOFMEYER: Thank you. Ms Williams what I propose to do is to follow the sequence of your statement in the course of your evidence this morning. I don't propose to ask you to read from it, on occasion I might, where there is some significance but in general we would like you to tell us your story, not based on the written word but on the events as you recount them. If I may then begin, what is your current position?

MS PHUMLA WILLIAMS: I am currently the Acting Director General of GCIS.

ADV KATE HOFMEYER: And when did you first enter Government?

20 **MS PHUMLA WILLIAMS:** I joined Government in 1994 in the Provincial Office in Gauteng.

ADV KATE HOFMEYER: And thereafter, can you give us a sense of your passage through Government since that date of 1994?

MS PHUMLA WILLIAMS: In 1994, I joined Government as an administrator and subsequently I got promoted to an Assistant Director and I was then later on promoted to Deputy Director which all those ranks I did whilst I was in Gauteng Province and subsequently I got a post as a Director of Finance in the GCIS, that was in 1998 and subsequently I was promoted to a Chief Financial Officer in the GCIS and in 2009 I was then appointed as a Deputy Director General at the time. It was called, the Deputy CEO.

ADV KATE HOFMEYER: Was that also of GCIS?

10 **MS PHUMLA WILLIAMS:** Of GCIS, yes Chair.

ADV KATE HOFMEYER: Ms Williams, could we just pause a moment about GCIS? We heard testimony yesterday from Mr Maseko who was there as the CEO until early 2011, can you tell the Chair about GCIS, what is it as an institution in the State?

MS PHUMLA WILLIAMS: Thank you very much Chair. The Government Communication Information Systems, I will start with the Information part because it draws its mandate from the report that was done by a group of experts which were commissioned by the President and one of the first area of the GCIS's information and I remember when I joined, one of the first things that we have had to do is to address the information deficits particularly to the vulnerable communities. I remember Chair that one of the first things
20 that we did was to employ what we called GIEC, which is Government Information Officers. With that mandate we were able to unearth others who never had birth certificates, we were able to unearth others who didn't even see a need to have an ID and with our information officers in the rural areas, we were traversing throughout the rural areas trying to uncover some of those South Africans and in particular kids that were

even looking after cattles because the parents didn't see a need for school and we have had to do that and we drove the multi purpose centres because we have had to do this job together with the relevant departments, I think the credit goes also to Home Affairs who had those mobile trucks and were able to go to those communities and try and educate them the need to register. In fact, not only to educate but to also make sure that they do benefit from registering birth certificate and also having ID. We were able to uncover people who have ended up in rural areas who were injured whilst they were working in the big cities and they didn't know what exactly is expected when you are injured at work and that is some of the work that we were doing and I think if I can maybe

10 summarise, I think it will appropriate if I move on to the other, Chair, one of the things that we have had to do with the Government information officers is to begin to demystify what is the purpose of a budget vote, what is the purpose of the State of the nation, we have had to hire big screens in those rural areas and at those days I think, the State of the nation was during the day we have had to do that. If I move Chairperson to the communication, I think maybe the last parting point on interfacing with communities, the Cabinet, I think in 2004, gave us the mandate to do a publication, a newspaper if I may say, a newspaper called Vuku Zinzele in all the languages because we had uncovered that there was a need to also have that kind of a product that is meant for communities in those areas. To this day that publication is the one we started it Chairperson. It was once

20 every two months and it was also coming up in the format of a braille also to accommodate the disabled, those who were not able to process the print word and we were able to do that and it started as a two months but now it is fortnightly. What is pleasing Chairperson is that it is produced by journalists within those communities and they then talk that whole product that interfaces also with Government and that's what GCIS still does today.

The second area Chairperson of the GCIS is around communication. My understanding of GCIS a Director General, the Director General serves as the face of Government, he or she sits in cabinet, communicates the decisions that come from Cabinet, the Director General in GCIS also manages the messaging of Government and co-ordinates because I think the GCIS is a system that co-ordinates the messaging of Government. The GCIS Director General ensures that there is that coherence of the messaging. The view that the context was having in mind is that when you are working as a Government communicator, irrespective of whether you are in health or what, members of the public would expect you to know and I think what we stick to do with the co-ordination is that, even if you work and asked, at least you should know what Government's position is on health matters. So that co-ordination and getting all those communicators in those departments, they have to have a sense, yes, there is an acknowledgement that the half other expects, they keep the content but on a high level GCIS's role is to co-ordinate and make sure that that messaging is happening.

And the last of the Director General is also around communicating the issues that cut across. If it is a matter that involves more than one or two departments, Government voice is driven from the GCIS. And Chairperson, if I may also say the production side of the GCIS, the GCIS is responsible for the corporate identity, the look and feel of Government. If I can then remember that the current code of arms of Government was commissioned through the GCIS, the current look and feel of all the Government departments, they were commissioned from the GCIS and lastly Chair, we are responsible for archiving and most probably even some of the staff that is coming here will end up being archived through the GCIS. We are archive the video footages, we archive the photographic material, we archive any material that is of historic significance, particularly for Government. We collaborate with the national archives to package and

keep it and we have the material dating far back as even before our time because we inherited it from the South African Communication Service and lastly Chairperson, we are responsible for the media buying on behalf of other departments.

ADV KATE HOFMEYER: Thank you Ms Williams. Ms Williams, at paragraph 2 of your statement, at page 1, in the second sentence you refer to, well, what's reference to the first, that you were later appointed in 2002 as the GCIS Chief Financial Officer and then you stated, the accounting officer at the time was Mr Joel Netshitenzhe and later Mr Themba Maseko. I think it is uncontentious but I would like you confirmation on this that the accounting officer is the Director General position that you have been referring to in
10 your evidence to the Chair?

MS PHUMLA WILLIAMS: Certainly Chair, the Directors General that I have served under at that time was Mr Joel Netshitenzhe who was the first Director General of the GCIS and subsequently Mr Themba Maseko who was the Director General at that time.

ADV KATE HOFMEYER: Ms Williams, can you tell us about the leadership of GCIS and what it was like serving under them?

MS PHUMLA WILLIAMS: Chairperson, these are the Directors General that I would credit my knowledge of what it is about. Mr Netshitenzhe was the most ethical and credible Director General because at that time I was a CFO. Mr Themba Maseko was already a DG but I have memories when I got to GCIS there were no systems. We had to
20 put together the systems, we had to struggle along and Mr Netshitenzhe was incredibly useful in saying how we should deal with some of the issues and I think in this case I would like to also give credit to the Auditor General. I think the Auditor General has held our hand, I think as I recall when I joined GCIS, there was no clean audit but with the

leadership that we received from those two Directors General, together with the Auditor General, we have enabled to get a clean audit as a department.

ADV KATE HOFMEYER: Ms Williams, in paragraph 4 of your statement, also at page 1, you are referencing the GCIS and in light of the description you have just given to the Chair, you conclude with the statement, it was to be a communication system that was to give effect to the constitutional right of access to information. Can you explain to us how it was supposed to achieve that?

MS PHUMLA WILLIAMS: Chair, what they indicated in my opening remarks is having the poor in the most rural of areas because I think we did realise, the most important and vulnerable people where we have found that there is an information deficit, is in the very poor and that to us talked to the constitutional mandate that we have that we need to ensure that South Africans have access to information. Yes, the urban areas we were servicing them through the mainstream media which I didn't mention that we have a full division of the mainstream media but I think the areas that we have had to service, are in rural areas and we have 9 provincial offices but not only that, we have got districts where our communicators, and I think Chairperson, I should also indicate, one of the things that was key to us is that when we hired this information officers, they must come from those communities. We invested in training them and to make sure that they understand the dynamics and we educated them about the policies of Government and that's how we were then tackling the issue of information that should empower those communities.

ADV KATE HOFMEYER: Ms Williams, you ended your original discussion of the role of GCIS with reference to media buying. I would like to focus on that in a bit more detail with you because it's key to some of the remainder of your testimony. What is media bulk buying for Government? Can you explain that concept to us?

MS PHUMLA WILLIAMS: Chairperson, the media bulk buying also emanates from the Comtas Report. One of the first tasks that we have had to do is to pull together all the Government media spending, consolidate it, so that we can derive the economies of scale and when we started with that, that was in 1998 because we didn't have an internal capacity, we outsourced that service and we were doing that through the bid process and I remember, those days the bid process was still done at National Treasury. We were advising on the tender and we were appointing companies which were then doing the media buying on behalf but departments essentially would brief us and then in turn we would brief the company that we have commissioned through the bid process and later
10 we then had to do it in-house, that is 2010.

ADV KATE HOFMEYER: Ms Williams, if I may take you to that place in your statement, it is over the page at page 2. As I understand your evidence, up to the period of 2010 there was a bid process in respect of a media agency would be appointed and that agency would make the selection from the various media platforms of where to place the Government advertisements, is that correct?

MS PHUMLA WILLIAMS: That's correct.

ADV KATE HOFMEYER: And then, if you go to paragraph 7 on page 2. You say there, in August 2010 when the last agency contract expired, GCIS moved the function in-house so that media buying would now be run from capacity within GCIS. Can you give us
20 insight as to the reason for that change?

MS PHUMLA WILLIAMS: Chairperson, the system that we had in the GCIS, any contract when it expires, we review it. In fact, we review it 6 months before and one of the things that we had picked up at that point was that we were not living to the mandate that was given to us deriving the economies of scale, i.e. when we were doing it with the agencies,

we would have to pay the handling fees from the agency which was I think at the time, 16%. They were charging, sharing with us the discount which they were deriving and at that point we felt that it's a saving that we could be ploughing back to the State. We rather invest in doing it in-house and we then worked towards when it expires, we will not renew it, we will do it in-house and that would have enabled the State to save that 16.5% handling fees from agencies, it would then have ensured that the negotiated discounts with the media houses is ploughed back into the State and that was the main reason for us to bring it back in-house.

ADV KATE HOFMEYER: Ms Williams, could you give us a sense of how the
10 procurement process of media buying worked after the change in August 2010 when you moved the media buying function in-house. Take us step by step if you will, for the edification of the Chair, how that media buying worked from that point onwards?

MS PHUMLA WILLIAMS: Chairperson, one of the things that we have had to manage because the procurement as it's defined in the National Treasury, did not have provision for media buying e.g. if you want to place an advert in Sowetan, the three quotation was not going to work for us so we have had to engage with National Treasury to say we are going to save the State the tool that exists, it doesn't allow us to do that and we were then given the permission to use a special delegation, 16.4, which was the basis of what we were doing. How we were then performing Chairperson is that we would receive a written
20 request from the department, it then comes to GCIS, we had invested in the software which media agencies were using anyway themselves, we then invested in buying it, that software Chairperson allows you to know which is the best platform to use to place that advert so what we were then doing, we would take the brief from the client, we will then populate it into the system, the software which was called Telmar and on the basis of that, we will then derive what exactly are the best platforms to be used and we then cost

them and we send it back to the client and the client signs it off and then they transfer the money and we then had to deal with the compliance of National Treasury. One of the important things were the delegations that we were using, which, if I can just summarise it, it's an emergency delegation. The requirement is that the section has to write a motivation why they have chosen that particular platform and why they think it is a cost effective platform and on the basis of that, the Supplier Chain would then effect the transaction.

ADV KATE HOFMEYER: Ms Williams, you made reference to the choice of the best platform to answer the brief that you received from the department. I would like to ask two
10 questions in relation to that. First of all, the departments, which are those departments? Were they national, provincial or were they confined?

MS PHUMLA WILLIAMS: Chairperson, I think at the beginning, in fact up to now, we still confine ourselves to national for a simple reason that our view is that we can create capacity within the provinces so that the economy of those provinces can so that when we then do the procurement, we don't do it on behalf of the provinces. There will be exceptions there and there but in the main, we service all the national departments/

ADV KATE HOFMEYER: And then the second question, what informs the choice of the best platform to meet the needs of the brief that you receive from the National Department?

20 **MS PHUMLA WILLIAMS:** Chairperson I did indicate that the brief normally directs the media buyers to populate in the software and the software would then say if you want the audience that is in Nongoma, this is the publication that you should use. If you need a community in Soweto, this what we would propose. It proposes a whole suite of platforms

that you need to use and we then send it back to the clients and I should indicate the client signs it off. At times it might not but I think most of the time they would sign it off.

ADV KATE HOFMEYER: Ms Williams, we heard evidence from Mr Maseko that key to this selection of the appropriate media platform was the consideration of the message that the National Department wanted to convey and then the target audience that they wanted to reach. Would you agree with that summary?

MS PHUMLA WILLIAMS: Certainly I would agree with that, that's why I was been saying that in Nongoma, the software will tell us, this is the audience and this is there kind of publication you would use.

10 **ADV KATE HOFMEYER:** Ms Williams, at paragraph 8 on page 2, you move to another aspect of the procurement processes within GCIS. What you say there that as Head of Corporate Services, you were appointed as the Chairperson of the Bid Adjudication Committee. Can you tell us about the function of the Bid Adjudication Committee within GCIS?

MS PHUMLA WILLIAMS: Chairperson, the process I think I should also take a step back that previously all departments were depending on National Treasury, what we used to call State Tender Board and they then decided to devolve that function. They provided what we call a circular that guides how a bid committee should be put together and what it should be doing. The composition of the GCIS bid committee at the time was guided by
20 the circular from National Treasurer but firstly, it must have a CFO for starters, it must have senior people within the organisation, it must have a cross functional representation of the department. The bid committee, that's how it was formed, the one that I am talking to is the one that was formed at aligning to how National Treasury wanted it. What it was doing, firstly, we were processing the submissions for the bid that had gone out and then

processed through the evaluation committee and we would receive submissions from the Chair of the evaluation committee, that's one function. The second function we were responsible for is to deal with any material deviation, maybe a compliance issue, a section didn't get three quotation or whatever, we insisted that we wanted them to be tabled in the bid committee and that function Chair, is we would receive reports on the progress of the contracts that we have already awarded and I think if I have to say, when we took the decision that we need to bring it in-house because the sections and supply chain will come, brief us on the process of what the contract was. In some cases they would tell us that no, the company is not delivering what it had said to deliver, then we
10 would give instructions to say, go and engage them, write to them and whatever and lastly, I think we would also receive reports even on those thresholds that do not strictly fall within the bid committee, for instance, transactions that happened within R30,000 to R500,000, they don't necessarily belong to the bid committee but we would insist that once a month we are given that kind of a transaction for a simple reason that we wanted to have a sense of where the budget is going in terms of small upcoming companies we wanted to have a handle of that. So that's basically what the bid committee was doing.

ADV KATE HOFMEYER: Thank you, if I may then ask you to refer to page 3 of your statement. Page 3 of the statement begins from paragraph 9 and the following paragraphs deal with an event in or about January 2011 which for convenience purposes
20 I will refer to as the removal of Mr Maseko as the CEO of GCIS at the time. Can we begin at paragraph 9? You say, in or about January 2011, now Ms Williams, you wouldn't have had the benefit of Mr Maseko's evidence yesterday but in the course of his evidence, he indicated to the Chair that he was able with reference to some of his diaries, to establish that his removal had actually taken place in February 2011. You talk about on or about January 2011, are you satisfied with the date of February 2011 for Mr Maseko's removal?

MS PHUMLA WILLIAMS: Sorry Chair, I missed the question.

CHAIRPERSON: The question is that is whether you are comfortable to talk on the basis that Mr Maseko's removal happened in February, Counsel is asking you that in the context of the fact that in your statement you say on or about January 2011 is when he was removed so she is asking you whether she says Mr Maseko said it happened in February, after looking I think at his diary and Counsel wants to find out whether you would be comfortable to say it happened in February or whether you would say it was on January.

MS PHUMLA WILLIAMS: Chairperson, the reason I said it was around January is
10 because I remember very clearly that Mr Maseko came in that morning and he was meant to go to the World Economic Forum which was meant to be around the 25th, it was towards the end of the, and he said to me, I am no longer going. That was after she had briefed the staff and she says, Phumla, can you take over and attend that World Economic Forum so I know I did attend the World Economic Forum on behalf of Mr Maseko.

CHAIRPERSON: Maybe I can just say Ms Hofmeyer that I also may be wrong but my recollection was that Mr Maseko spoke about him having been removed in January, I think towards the end of January but he did say at some stage during his evidence that he wished he could have access to I think his diaries which would help him. I don't know
20 whether it was in regard to that or in regard to other dates but if he did say February, I might have missed that part as well.

ADV KATE HOFMEYER: Indeed Chair. With the Chair's leave, we will confirm the record of the transcript over the break. As I have it, there were references to a conversation with

Minister Chabane that took place on the 30th and the 31st January but we will confirm that for the purposes of a follow-up question with Ms Williams.

CHAIRPERSON: Well, I do seem also to remember the 31st January being mentioned but that is fine, you will check and then you will let us know.

ADV KATE HOFMEYER: Indeed, we will check the transcript, absolutely. Let's move to those events Ms Williams early in 2011. You mentioned Mr Maseko coming to you with an announcement about his removal. Can you tell us how that happened?

MS PHUMLA WILLIAMS: Chairperson, I recall it because Mr Maseko's office was next to mine and I remember him coming into my office and saying that could you please
10 facilitate the Management Meeting and he didn't say what it was, he just simply says, can you quickly arrange the Management Meeting which I did and he said that they should come to my Board Room and we all went into his Board Room and in that meeting, it was a very brief meeting, only to tell us that he was leaving and obviously, all of us were shocked because I think we didn't see it coming and we said, but why, and she said but I am being transferred to the DPSA. You know, she couldn't offer anymore explanation despite all of us in the Board Room almost shocked and then she was just saying, thank you very much and she was dismissed. So we all dismissed but because I was next to his office, I just thought, let me go and find out because it just didn't make sense and I remember, when I got into his office and I found him bending the head on the desk and I
20 could see that he is not going to speak to me and I left and I came back to the office because I could see that and the next she then came out and on his way out because I think what then transpired is that his staff started packing his stuff in the office and then on his way out, he came into my office and he said that I am going to call off that process of buying a house because I was responsible for the Human Resources and obviously

when you are buying a house as a public servant, there are some forms that you complete and he had already started that process and he said, Phumla, I am going to call it off, it's not going to happen and he left and that was the last we saw Mr Maseko on that day.

ADV KATE HOFMEYER: Were there any advertisements to fill his post that preceded his removal?

MS PHUMLA WILLIAMS: Chairperson, I don't remember an advert, in fact, on the same day that Mr Maseko left, Mr Zwanele or Jimmy, that time we called Jimmy, Mr Zwanele Manyi came and arrived and I remember him asking me to call a staff meeting because
10 he is now the new Director General and we then organised that staff meeting.

ADV KATE HOFMEYER: Ms Williams, do you know what Mr Manyi was doing before he joined GCIS?

CHAIRPERSON: I am sorry Ms Hofmeyer, I am sorry. Just before that question, around what time was it do you think when Mr Maseko left the building or left the Department?

MS PHUMLA WILLIAMS: Chairperson, it was on that same day. He arrived in the morning, I would have to check the exact date because I think we can check that. It was on that same day when he called the staff meeting, packed, the staff assisted to pack the things, left. The moment he left we then got to be told that Mr Manyi was at the basement in our building and he came up and then she requested to say, she actually introduced
20 himself which is something that is unusual because we generally are used to people being, we are told well in advance but she came on that same day and he said to us, we must call a staff meeting, she wants to introduce himself as the new Director General of GCIS.

CHAIRPERSON: Well, you have almost answered the next question. I wanted to see how much time lapsed between Mr Maseko's departure and Mr Manyi's arrival but from what you are saying, it's like quite immediate. Within an hour maybe? Within two hours?

MS PHUMLA WILLIAMS: I think I would be lying but I think the spacing was so short because the meeting did not even take long and the packing, if I recall, I don't even think everything of Mr Maseko was taken, it was almost like the few personal things that were taken and that same day, I think I would even say, two hours or so but I would have to verify that.

CHAIRPERSON: Okay thank you.

10 **ADV KATE HOFMEYER:** Ms Williams, I asked you about Mr Manyi and whether you had any knowledge from whence he came when he arrived at GCSI at the beginning of 2011. Do you know whether he was serving in Government at the time, what his position was?

MS PHUMLA WILLIAMS: Chairperson, when Mr Manyi came, he was a transfer, I believe he was a Director General of the Department of Labour.

ADV KATE HOFMEYER: Do you know whether he was serving in that capacity at the time?

MS PHUMLA WILLIAMS: He was serving as a Director General of the Department of Labour.

20 **ADV KATE HOFMEYER:** Ms Williams, at the bottom of page 3, paragraph 13, you say that Mr Manyi arrived and introduced a number of changes in the organisation and then if you turn over the page, those changes begin to be referenced from paragraph 14. Before we move to those changes, I would like you to move to page 75 of your bundle because the speed with which this change between Mr Maseko and Mr Manyi took place appears

not to be in compliance with the relevant regulatory requirements that exist within the Act and the Regulations and so I would like to take you to some of those sections for the purposes of placing this event in its proper context. If we begin at page 75, Ms Williams that is a section of the Public Services Act which begins at page 62 of the bundle, just to orientate you and at page 75 of the bundle, you will see the issue of appointments of heads of department and career incidents is dealt with. What the section does in summary and then I will go to the text, is it identifies who is responsible for appointing the heads of department of the various State departments and just to clarify that GCIS is one such State department, if you would turn to page 86 of the bundle, you will see two-thirds

10 down the page a heading, Schedule 1, National Departments and offices of Premier and heads thereof, and if you turn over the page to page 87, you will see almost four-fifths of the way down, the Government Communication and Information System is listed as a National Department under Schedule 1 in the left-hand column and in the right-hand column, the head of that department is signified as the Director General of what we are now colloquially referring to as GCIS, do you see that?

MS PHUMLA WILLIAMS: Yes.

ADV KATE HOFMEYER: So if we can go back to Section 12, that was just to confirm for us that when Section 12 is talking about heads of department, it is indeed referring within its domain to GCIS. Now 12 (1) says: *“Notwithstanding anything to the contrary contained*

20 *in this Act, but subject to two sections that aren’t pertinent for present purposes, the appointment and other career incidents of the Heads of Department and Government component shall be dealt with in the case of (a) a Head of a National Department or National Government Component by the President.”* Is that consistent with your understanding of how the GD of GCIS is appointed?

MS PHUMLA WILLIAMS: Certainly, the appointment of the Directors General is done by the President of the country.

ADV KATE HOFMEYER: Thank you.

CHAIRPERSON: I am sorry Ms Hofmeyer. Do you know whether that was the position as well as around 2010, 2011? In other words, was that the position at the time as well. I am just asking that question because the evidence given by Mr Maseko, I leave out the question of appointment, was that the contract that would be signed by the DG would be a contract, the DG, that person who will be DG and the Minister responsible for the department if I recall correctly. So I just want you to be able to say whether your
10 understanding is that this position also obtained at that time or not?

MS PHUMLA WILLIAMS: Chairperson, yes my understanding is that the appointment of Directors General is the President. The performance contract is signed by the Director General together with the relevant Minister.

CHAIRPERSON: So the contract that is signed is called the Performance Contract?

MS PHUMLA WILLIAMS: Yes.

CHAIRPERSON: And do you know whether it would contain essentially all or most of the terms and conditions that one would expect in a normal contract of employment?

MS PHUMLA WILLIAMS: I would imagine Chairperson but what I can confirm is that the performance contract does spell out the areas that should be the focus of the Director
20 General but the letter that should have the contract itself, I will not be able to ascertain exactly what it says.

CHAIRPERSON: And normally would the performance contract be concluded after the appointment of the person by the President?

MS PHUMLA WILLIAMS: Certainly Chairperson.

CHAIRPERSON: So you could be appointed by the President and for a certain period you don't have a performance contract until one has been concluded between your Minister and yourself as a DG.

MS PHUMLA WILLIAMS: My understanding Chairperson, in fact it goes with almost all the public servants. When you are appointed you will get your letter which indicates of the Director General, they will get that letter from the President. Within three months they must have completed that performance contract. They are normally given three months.

CHAIRPERSON: Okay, thank you.

- 10 **ADV KATE HOFMEYER**: Chair, if I may just in the light of your questions, direct you to a few further sections of the bundle. Chair, your question about whether the same position applied in 2011, we can be answered with reference, we are dealing with the Public Service Act, you would have seen on page 62 which is an amended version from about 2014. In anticipation of today, I have searched the Government Gazettes which I want to do and established for the Chair, that the operative Section 12 to which we have made reference, was introduced in an amendment Act at 30 of 2007 so it preceded the dates that are pertinent and that was the amendment that introduced this very Section 12 that we are making reference to.

CHAIRPERSON: Thank you very much, that is very helpful.

- 20 **ADV KATE HOFMEYER**: Chair, and then in addition, this question about the contract. Attached as an annexure to the Public Service Act is actually the standard form agreement that will be executed between heads of department, appointed under Section 12 but it anticipates that the contract is signed, notwithstanding the appointment by the President with the Executive authority who is the Minister and if I can just draw the

Chair's attention to that contract, the standard form contract appears at page 202 of the bundle. What you will see at page 202 is that it is a contract prescribed in terms of Section 12 of the Public Service Act 1994 for heads of department. That was the section that we were looking at moments ago and it specifies that it is entered into by the Government of the Republic of South Africa herein represented by, a space is left in the brackets appears full name of executive authority or his or her delegate. Chair, to avoid the cumbersome backwards and forwards in the papers, I can confirm for you that at page 65 of the bundle, Executive Authority is defined and it is defined as the relevant Minister. So that should tie up the regulatory scheme in which these appointments take

10 place. Ms Williams, we were at page 75 and we were dealing with what Section 12 of the Public Service Act says about the appointments of heads of department. That was in sub-section 1 but I would like us also to look, if we may, at sub-section 3(a), that is also on page 75. You will see there that the legislation provides that, *"the President may transfer the head of a National Department or National Government component before or at the expiry of his term or extended term to perform functions in a similar or any other capacity in a National Department or National Government component in a post of equal, higher or lower grading or additional to the establishment as the President considers appropriate"*. So Section 12, sub 3 is dealing with transfers of heads of department. What I have read there is sub-section 3(a). If we turn over the page to 76, you will see that the manner in

20 which that transfer must take place is also prescribed. At (d) on page 76, it says, *"a transfer in terms of this sub-section may only occur if one of two things happen. The first is that the relevant head of department consents to the transfer or secondly, after due consideration of any representations by the head, the transfer is in the public interest."* Is that consistent with your experience of transfers in the Government service?

MS PHUMLA WILLIAMS: I will speak with the lower ranks. It's very consistent, the transfers there's got to be some kind of engagement with the officials who generally would not just transfer, you wake up one morning and we say to the staff normally there is an engagement and I would imagine Chair, it should have been the case also with the Directors General.

ADV KATE HOFMEYER: In your experience, are you aware of any such rapid replacement previously in the history of GCIS that a DG would be removed on the morning of one day and replaced by someone the same day?

MS PHUMLA WILLIAMS: Chairperson, I have never seen it, I was in Public Service from
10 1994, it was the first time I saw it.

ADV KATE HOFMEYER: And what was the impact of the repitidy of that change on GCIS?

MS PHUMLA WILLIAMS: Chairperson, it was massive. The level of demoralisation in the organisation that had a Director General who was accessible to the lowest of an organisation, a cleaner was accessible, a Deputy Director was accessible and it was completely a culture shock within a day and we find ourselves heads spinning trying to make sense and nobody was willing to give us an explanation of what this was all about. It did impact on the moral of the staff.

ADV KATE HOFMEYER: Are you aware whether there was any change over that took
20 place between Mr Maseko and Mr Manyi?

MS PHUMLA WILLIAMS: Chairperson, I think there were quite a number of changes that were also not consistent with the culture of our organisation.

CHAIRPERSON: I am sorry, did you mean handover?

ADV KATE HOFMEYER: I meant handover indeed, I was running ahead of myself for the changes that Mr Manyi introduced. Ms Williams, the force of my question was, were you aware of any handover to ensure consistency in the transition between Mr Maseko and Mr Manyi?

MS PHUMLA WILLIAMS: Chairperson I am not aware of any. They might have had it as one on one over a cup of coffee but we are not aware of that kind of a handover that could have happened in the department.

ADV KATE HOFMEYER: I would then like to move to the topic of changes if I may and those commence Ms Williams at page 4 of your statement. Ms Williams from paragraph
10 14 on that page to paragraph 16 at the bottom, you talk about a series of changes that were introduced after Mr Manyi took up the position of DG of GCIS. Rather than have you read, I propose to you that they are grouped into two topics. The first of those relate to the Bid Adjudication Committee and the changes he implemented there. Would you please take the Chair through what those changes involved?

MS PHUMLA WILLIAMS: Chairperson, the first change, particularly as it affect my area, I was the Chairperson and I think I should also indicate, I had been appointed by him, Mr Manyi, I think in my letter I am stating that it was June 2011 which is consistent with how we normally do it on an annual basis we review and we re-appoint and I was being re-appointed basically and at the time she was already in the Department, appointed me as
20 the Chairperson of the Bid Committee and obviously with all the members as they existed at the time. I think it was three, four months later, she then completely woke up one morning and we were told that she has changed the Bid Committee and appointed a completely new people with no CFO which is what National Treasury recommends and she appointed if I may say, it was Mr Michael Currin...

ADV KATE HOFMEYER: Ms Williams, sorry to interrupt, if I may, we will go to that part in the statement in a moment but you did make reference to your letter of appointment. Could we go there just in the sequence. You will see it appears at page 12 of the bundle. As I understand the testimony you have just give, you confirm that in June 2011 Mr Manyi appointed you or re-appointed you in the position of Chair of the Bid Adjudication Committee. If you look at page 12 of the bundle and over the page it's 13, you will see that that a letter signed by Mr Manyi as the Chief Executive Officer as I understand he was referred to at the time and the date there is the 3rd. The second two digits on the printed copy Chair and Ms Williams, looks like it might be a 01 but I can assure you from

10 the electronic copy which is clearer it is the 6th June and it must be because Mr Manyi was not in GCIS on the 3rd January, nor do I think people would have been doing such matters on the 3rd January in 2011, nonetheless, if we turn back over the page, what this is if you read under paragraph 1 is your formal appointment as the Bid Adjudication Committee Chairperson in terms of the PFMA as well as the Treasury Regulations. If you go down to paragraph 3 could you please read into the record that first paragraph under 3.

MS PHUMLA WILLIAMS: *"In pursuit of the vision of Government communication (GCIS) in becoming a leading organisation in financial management in public finance, it is imperative that competent and committed officers are appointed."*

20 **ADV KATE HOFMEYER:** And then if you move over the page at page 13, there are a list of functions of the Bid Adjudication Committee listed there. Would you please take us through those functions.

MS PHUMLA WILLIAMS: I think the first one, should I read as written or should I just talk to them?

ADV KATE HOFMEYER: Talk to them indeed.

MS PHUMLA WILLIAMS: The bid committees functions Chairperson, in the main is to process submissions of bids that had been processed through the Evaluation Committee. They then get presented to the Bid Adjudication Committee, we deliberate on them, we check whether they have been consistent with the terms of reference whether the scoring is correct, whether the company will address what we are trying to cure with procuring those services and it's basically what the Bid Adjudication Committee does and I should indicate that the Bid Committee gets the full bundle of the submissions a week before so that we familiarise ourself so that we can engage and that's what's in the main we do.

10 **ADV KATE HOFMEYER:** And is there training of the Bid Committee members to perform those functions?

MS PHUMLA WILLIAMS: Chairperson, all of us at that time when the process we went through a five days training from National Treasury which it took us through what's the procurement regulations of Government are all about, what the PFMA is all about, how to process a bid submission, how to even calculate the scores because I think there was that 80/20 and 90/20 for functionality and the waiting, we had to be taken through that whole process that even when they submit the score, then we should be able to also double check it ourself so we did go through that training for five days.

ADV KATE HOFMEYER: If I may then take you back to your statement at page 4 when I
20 interrupted just so that we could look at that letter of appointment. You were about to tell us about the new members who were appointed to the committee when your committee was disbanded. With reference to paragraph 15, please can you tell us who those new members were and what your knowledge is about what they were doing prior to their appointment to the Bid Adjudication Committee?

MS PHUMLA WILLIAMS: Chairperson, the first one was Mr Michael Currin who at the time was the Chief Director responsible for the Provincial Chapter of the Department liaising with the communicators in the provinces. He was appointed as a chairperson. Then there was a Ms Penelope Mtuli who had more or less joined around the same time with Mr Manyi, she also was from the Department of Labour and moved in with Mr Manyi to the GCIS. Then there was Ms Matupe Thusi who had just been appointed to GCIS as a Human Resource Director. The last one was Ms Zuki Zwapotywe who was in the GCIS as a Chief Director, Strategy Planning and those were the officials that were appointed by Mr Manyi.

- 10 **CHAIRPERSON**: I am sorry, maybe Counsel was going to ask you this but I want to ask you, did that represent a complete replacement of the previous Committee which you chaired or were there some members of the previous Committee who remained?

MS PHUMLA WILLIAMS: Thanks Chair, I think all of them were new.

ADV KATE HOFMEYER: And you mentioned previously the requirement that there not only be the CFO that sits on the Bid Adjudication Committee but that there be a representivity across the organisation. Did the new Bid Adjudication Committee satisfy those requirements?

- 20 **MS PHUMLA WILLIAMS**: Chairperson, as I look at the names, there was one section that was not represented. In our bid we had a representative from the Division of Research, Writing in that whole programme we had a representation from the Provincial stakeholder, Ms Lebo Legwabe, we also had a representation from Corporate Services and importantly we had a representation of the CFO which was how the National Treasury suggested.

ADV KATE HOFMEYER: And are you aware whether any of these new members went through that training that your previous committee had received?

MS PHUMLA WILLIAMS: Chairperson I am not aware of any training.

CHAIRPERSON: How many of those new members of the committee as far as you know, came from outside GCIS?

MS PHUMLA WILLIAMS: Ms Matupe was from another department, Ms Ntuli came with Mr Manyi from the Department of Labour but I think also I should indicate that they had been working together at Tiger Brand so when Mr Manyi went to Department of Labour, Ms Ntuli moved there when Mr Manyi moved to GCIS she moved also with Mr Manyi.

10 **ADV KATE HOFMEYER:** If we move to paragraph 16 on page 4. This is where you talk about another change that Mr Manyi introduced. Just to orientate you, paragraphs 14 and 15 deal with the change to the Bid Adjudication Committee that we have been discussing and then at paragraph 16, you reference a further change that Mr Manyi introduced, can you tell about that second change?

MS PHUMLA WILLIAMS: Yes Chairperson, during the period of Mr Maseko and during Joe Netshitenzhe, the processing of tenders got completed at a Chairperson of the Bid Adjudication Committee. When Mr Manyi came, that changed. It had to be completed by Mr Manyi.

20 **ADV KATE HOFMEYER:** And Ms Williams, any further changes that you are aware of that Mr Manyi introduced over and above the reconstitution of the Bid Adjudication Committee and that processing of submissions going directly to him. Were there any changes that you would like to tell the Chair about after his entry to GCIS?

MS PHUMLA WILLIAMS: Chairperson, additional to this, Mr Manyi facilitated that the media buying unit must directly report to him. Prior to that the media buying was at a Directorate level reporting to a Chief Director. He then moved that unit and suggested that it must report to him directly. Secondly, Mr Manyi removed the internal audit which was reporting in my division and suggested that the internal audit must report to him directly.

ADV KATE HOFMEYER: Who held the position of Chief Director of Media Buying at that time?

10 **MS PHUMLA WILLIAMS**: Chairperson, I should indicate that in 2010 when we decided to bring it in-house, that division was headed at a Director level by a lady who subsequently resigned and Mr Manyi then, we advertised the post as we normally do after she resigned and Mr Manyi then participated, wanted to Chair the interviews, we didn't get a suitable candidate and she then decided that he will headhunt himself and yes, he did headhunt Mr Donald Diphoko whom we interviewed and was then appointed at a Chief Director level to report directly to Mr Manyi.

ADV KATE HOFMEYER: At this point, I would like to spend a moment about the hierarchy within GCIS because it is going to become relevant in relation to questions I will address to you later. Can you tell us about the hierarchy within GCIS of the positions of Chief Director, Deputy Director General and Director General. How did they stack up in
20 terms of hierarchy?

MS PHUMLA WILLIAMS: In GCIS which I probably it's the same with most of the Government departments unless it's a specialised post, the Directors generally report to the Chief Director, the Chief Director reports to the DDG which is a Deputy Director General and the Directors General report to the DG.

ADV KATE HOFMEYER: Thank you. If we can then move over page 5 of your statement.

CHAIRPERSON: I am sorry Ms Hofmeyer. What you have just said now understood together with what you said earlier in regard to media bulk buying namely you said Mr Manyi introduced a change in terms of which media bulk buying would be dealt with by people who would report directly to him so does this mean that the people who dealt with media bulk buying would have to actually jump over a Deputy Director General that otherwise they were supposed to report directly to the DG.

MS PHUMLA WILLIAMS: Chairperson, that's how he had packaged it but under normal
10 circumstances, that whole process was done through the Chief Director and the DDG of the branch.

ADV KATE HOFMEYER: Chair, I see that we are just before the tea break and I am going to move onto a new topic. I am happy to take the break now with your leave or proceed and then we can come back, what would be more suitable?

CHAIRPERSON: Maybe we should try and use the 5 minutes thank you.

ADV KATE HOFMEYER: Certainly. On page 5, Ms Williams, you begin at paragraph 17 with a reference to the TNA SABC Breakfast sessions and I would like to explore those in some detail with you but to begin with, can you explain to us what those Breakfast sessions were?

MS PHUMLA WILLIAMS: My understanding Chair was that the SABC together with the
20 New Age, they were doing this breakfast and ja, that's how much I can say.

ADV KATE HOFMEYER: And what happened at the breakfast.

MS PHUMLA WILLIAMS: I think Chairperson, there were various experts normally that were invited. Some Ministers were invited but I remember some of the sports fraternity where they then have this breakfast and round table and they discuss what their policies or their issues were and I think that's my understanding that there was just that kind of exchange and sharing of what the matter was and ja, in the breakfast.

ADV KATE HOFMEYER: At paragraph 17 you say, during my 10 year as Acting DG, I was never involved in any procurements of the TNA, SABC Breakfast Sessions. You go on and see, it has since come to my attention that the Supply Management section, this I assume is of GCIS may have had dealings with TNA SABC Breakfasts. There are a few
10 questions that flow from that statement. Ms Williams, how did that come to your attention?

MS PHUMLA WILLIAMS: Chairperson, it came to my attention after I had been interviewed by the Hawks and genuinely because of our delegation, I said there has never been a TNA Breakfast in GCIS that we process because our delegations are very clear, they don't have TNA Breakfasts and I said to them there has never been and they insisted and they were adamant and they were saying that we know that GCIS did do it. Now when they left, I then took the trouble of going to call the head of Procurement and she confirmed that yes, that happened and they were bullied into doing it.

ADV KATE HOFMEYER: Let us unpack that to some extent. The first thing you said in
20 your answer for the Chair was that TNA Breakfasts were not within the delegations of GCIS. Can you explain what that means?

MS PHUMLA WILLIAMS: Chairperson, the delegations that we had agreed on, was for broadcasting, was for print, nowhere in our delegation did we have breakfast and I think that has been the issue by the Supplier Chain to say this does not find into the Telmar

software which we were using, It falls with any other roundtable breakfast meetings that are done and it must follow the normal procurement process and that's why it never really occurred to me that it would have been because the procurement guidelines of our print and broadcasting were very clear/ It didn't have breakfasts.

CHAIRPERSON: Ms Hofmeyer, I don't know if I have missed this somewhere, I know what SABC stands for, I don't know TNA, what does it stand for? Maybe the witness can help us?

MS PHUMLA WILLIAMS: TNA means, The New Age, that's the newspaper that was owned by the Guptas.

10 **CHAIRPERSON**: I would ask you NA would be New Age and T? Do you know what T is?

MS PHUMLA WILLIAMS: The New Age.

CHAIRPERSON: Oh, The New Age, oh okay so it wasn't New Age, it was The New Age, thank you.

ADV KATE HOFMEYER: Thank you Chair. You have explained to us that media bulk buying didn't have a delegation to deal with breakfasts. Are you aware of advertising that took place in relation to those breakfasts.

MS PHUMLA WILLIAMS: I am not with you? Just say that again?

20 **ADV KATE HOFMEYER**: Let me rephrase it. As I understand media bulk buying within GCIS as your testimony has explained. You would receive a brief from a department with a message to go out and a target audience to reach and your software, the reference you made to Telmar a moment ago, can you confirm is that the software that is used to identify the media platform to communicate that strategy for that department, is that correct?

MS PHUMLA WILLIAMS: That's correct Chair.

ADV KATE HOFMEYER: Now if I understand your testimony, Telmar is identifying advertising space in order to communicate that message from the National Department, is that correct.

MS PHUMLA WILLIAMS: That's correct Chair.

ADV KATE HOFMEYER: As I understand it therefore, media buying is about identifying advertising space for the communication of these messages from National Departments, is that accurate?

MS PHUMLA WILLIAMS: That's accurate Chair.

10 **ADV KATE HOFMEYER**: My question then is, are breakfasts an obvious place where the communication strategies of departments can be advertised?

MS PHUMLA WILLIAMS: Chairperson I think as I am told by the Supplier Chain that was their point of difference is that their understanding it doesn't fall within the delegated authority. Their view was that it should go through the normal procurement so that any other media that wants to also pitch in and say, we want to do this round table, they should be afforded to that opportunity. It was not a sole service provider as I had indicated earlier that they so attended you can't get another but the point of Supplier Chain was that that particular service should have been put to the market and complete with all others who want to run the thing and that's where the issue was that they were
20 refusing to do that advertising because Supplier Chain was saying, take it out to the market and let everybody else pitch who want to pitch if you think it is such an effective tool for marketing advertising.

CHAIRPERSON: And what was the purpose of this breakfast, do you know?

MS PHUMLA WILLIAMS: Well the paperwork that I have seen when they were trying to convince the Supplier Chain was that it is advertising and the officials were then saying but how is breakfast and advertising and it is at that point that they were told you are not experts, you are supposed to do it.

CHAIRPERSON: So the advertising on the side of TNA I guess and SABC, because they were party to it, was it that the advertising that was being done was for the benefit of Government departments, was that what they were saying?

MS PHUMLA WILLIAMS: The explanation we were given was that it was meant to advertise and our argument or rather the Supplier Chains argument is that if it is TNA, it
10 competes in the software like everybody else, we put the proposal. If the department wants to promote its policies, let's follow the normal processes in the same way that SABC, SABC if it wants to promote and it wants to come with that proposal, let them pitch like everybody else but I don't think we did have a package that was like TNA and SABC, there wasn't something like that and it's at that point when they were told that it will happen.

CHAIRPERSON: And for that kind of advertising to happen, who would normally have been expected to make the decision whether it should happen or not?

MS PHUMLA WILLIAMS: Well, according to the Supplier Chain they were told by the CFO that it will happen of the GCIS.

20 **CHAIRPERSON**: And the CFO at the time was who?

MS PHUMLA WILLIAMS: Mr Zwele Momeko.

CHAIRPERSON: So your understanding is that he made the decision or he made this in regard to some of them.

MS PHUMLA WILLIAMS: Yes and because the correspondence that I have seen that is from him, it's the one where she uses words like, you are ahead of yourself, you are not experts and this has to happen.

CHAIRPERSON: Okay thank you.

ADV KATE HOFMEYER: Chair, I see we are at the tea time, I do have a number of follow up questions but with your leave Chair, I propose dealing with them after the tea break.

CHAIRPERSON: Ja, that's fine. We will take the tea adjournment now and we will resume at 25 to 12.

Session 2

CHAIRPERSON: Thank you Ms Hofmeyr.

ADV KATE HOFMEYER: Chair before I continue with my questions, I've learned that over the break

CHAIRPERSON: Thank you.

MS PHUMLA WILLIAMS: Chairperson I got a test message from Mr Manyi who is saying, that I must

CHAIRPERSON: Thank you Ms Williams for sharing that with us. The legal team and the investigators must just apply their mind to what the implications are of that text message to the witness and do the necessary.

ADV PAUL PRETORIUS SC: We will do Chair.

10 **CHAIRPERSON:** Thank you. Thank you, it's something very serious.

ADV KATE HOFMEYER: Indeed Chair.

CHAIRPERSON: Thank you. Thank you Ms Williams for sharing that information with us; it will be followed up by the legal team and the investigators. It is something very serious.

ADV KATE HOFMEYER: Thank you Chairperson. Ms Williams before the adjournment, we were de

MS PHUMLA WILLIAMS: Yes, yes.

ADV KATE HOFMEYER: Ms Williams when did this occur?

MS PHUMLA WILLIAMS: Chairperson, sorry the text email that I saw, it's dated the 7th August 2014.

ADV KATE HOFMEYER: And who did the bullying?

20 **MS PHUMLA WILLIAMS:** It's the CFO which is Mr Swelli Momeko(?)

MS PHUMLA WILLIAMS: Thank you. I would like just unpack how that bullying occurred in the opera

understand internal workings of GCIS, and it is very important that the extent of the bullying, and its nature becomes clear for the evidence before the Commission.

CHAIRPERSON: I sorry Ms Hofmeyr it may be prudent if it has not already been done, that Ms Williams makes or sends that text message that she has told me about, to somebody within the legal team or the investigators so that, even if her cellphone, even if something were to happen to her cellphone, there would be somebody who has the text message.

ADV KATE HOFMEYER: Indeed Chair.

CHAIRPERSON: Thank you.

10 **ADV KATE HOFMEYER:** We will make sure that that takes place. I understand it might have already but we would clarify over lunch.

CHAIRPERSON: Thank you.

ADV KATE HOFMEYER: So to understand the context in which this occurred Ms Williams, you make reference to the Telmar System which relates to media buying. Can you tell us a bit more about how that system works?

MS PHUMLA WILLIAMS: Chairperson can I have some water, I think my throat...?
Chairperson I indicated earlier, that when we agreed with National Treasury that we would like to bring it in-house, there was an acknowledgement that we can use A delegation 16(a) 6 4, which essentially, it's a delegation that is given to departments if it's
20 something that is beyond your control which you need to do.

However, the issue there is that you can use it but, you must write a motivation why you think this medium is the correct one, whether it is cost effective and whether it

will get to those audiences that you want. Now our understanding is that the Telmar was assisting us do to that. It would, we would a briefing from the client, load that in the briefing into the system and the system would then say this is the most cost effective and effective in terms of the audience that you want. And the media buying people had to write that down and submit it to us. Now in the case of the TNA, we battled with how do you load that and that's when we... and I should say Chair that it became... the supply chain became aware of it after one of the submissions said TNA breakfast.

They immediately raised an alarm to say what exactly is this and that when the issue....because it was saying TNA breakfast and the Telmar would not actually respond
 10 to something like that. It's either it's printed or broadcasting. So they had to then deal with it from that perspective. It was not fitting into the procedure that was agreed upon with National Treasury because remember, that's what we were trying to do whilst we trying to development a process; a procedure that will fit the media buying system.

ADV KATE HOFMEYER: And so just to clarify: Supply chain management received the recommendation from media buying as I understand your testify, that included the TNA, SABC breakfast. Is that correct?

MS PHUMLA WILLIAMS: That's correct.

ADV KATE HOFMEYER: And what was supply chain management's response to Receiving that proposal from media buying?

20 **MS PHUMLA WILLIAMS:** Chairperson they declined it and they said that it doesn't fit into our understanding of media buying and they it sent it back. It's at that point when it the media buying people then raised it with the CFO, who is the overall head of that section and that's when she wrote to them to say, why are you refusing, because this is

media buying and you are not experts.

This fits in and this is addressing the audience and the supply chain was saying, how, you need to assist us, what is unique about it because a media briefing... anybody can pitch and they were not even saying that are not going to do it. They were saying let's do it properly and allow the other media houses that want to do it, to also pitch, because basically that's what it was.

That it can't be a unique service because you need to prove that it is unique. And they were arguing that it's not unique. Allow other media houses that want to pitch to pitch and that's where the dispute was all about.

10 **ADV KATE HOFMEYER:** And what was the response from the CFO?

MS PHUMLA WILLIAMS: The CFO said you are getting ahead of yourself, you have to do it and people are getting irritated with your rigidity in this organisation, and I think he himself was getting impatient with them and they have to do it.

ADV KATE HOFMEYER: Chair there will be evidence in the course of next week in relation to the payments that went from GCIS in particular to TNA media and Infinity. There will be a representative from National Treasury who will address that for the Commission, but in anticipation of that I can record for the Chair at the moment that between the period 2011 and 2018, R55 million were paid from GCIS to TNA media and Infinity, that will clarified by our witness next week.

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

ADV KATE HOFMEYER: Ms Williams if we can then proceed at page 5. We have dealt with the question of this bullying the CFO against the processes that the supply

chain management section of GCIS were trying to hold faithful to. And we move from that to paragraph 18, where in the chronology, you are dealing with Mr Manyi's exist from GCIS which you record at paragraph 18 happened in August 2012, can you confirm that?

MS PHUMLA WILLIAMS: Yes, Chairperson I can confirm that.

ADV KATE HOFMEYER: And what happened after his departure? What position did you then hold?

MS PHUMLA WILLIAMS: Chairperson after Mr Manyi left the then Minister Chabane appointed me to be the Acting Director General of the GCIS.

ADV KATE HOFMEYER: Ms Williams for how did you occupy that position as Acting
10 DG from August 2012?

MS PHUMLA WILLIAMS: Chairperson I've been Acting DG from 2012, 13 and 14 and in October 2014.

ADV KATE HOFMEYER: Thank you. In relation to that period of acting, you say...
(intervenes)

CHAIRPERSON: I am sorry Ms Hofmeyr, did you say ending October 2014 or 2015.

MS PHUMLA WILLIAMS: 2014.

CHAIRPERSON: 2014, okay thank you.

ADV KATE HOFMEYER: Ms Williams if we can just go to paragraph 18, your second
20 line there in relation to this lengthy period of acting, states:

‘My acting role was renewed every six months...’

and on the third renewal Minister Chabane raised a question with you. Can you tell the Chair about that?

MS PHUMLA WILLIAMS: Yes, Chairperson on the third renewal, I think the first six months he renewed it to the second six months, on the third one. He then said to me now what will happen if I just go ahead and appoint you and confirm you, and I indicated that it would be irregular, why doesn't he follow the process and advertise, I mean I can apply and like the process should be fair. And he said to me he has been told not to appoint me.

10 **ADV KATE HOFMEYER:** Do you know more about that instruction?

MS PHUMLA WILLIAMS: Unfortunately, Chairperson he didn't tell me who, he just simply said I have been told not to appoint you.

ADV KATE HOFMEYER: Ms Williams you then move in paragraph 19 to what happened after the general election in May 2014, and you make the point there that Ms Faith Muthambi was appointed as Minister responsible for GCIS, and you thereafter make reference to the proclamation by the President that facilitated that.

I would like to take to that proclamation for your confirmation. It's at page 235. You will see the proclamation begins at page 235 and you will see that it records that it is in terms of Section 97 of the Constitution, that there is a transfer of the administration of
20 various powers and if you go over, to page 242 you will see the relevant change that was made in respect of GCIS.

MS PHUMLA WILLIAMS: You said 242?

ADV KATE HOFMEYER: Yes.

MS PHUMLA WILLIAMS: Okay.

ADV KATE HOFMEYER: You will see under paragraph 3.1 there is a heading before the table: Government Communication and Information System and you will see that column 1 designates what was transferred and that all powers and functions of the executive authority of the department and you will see that column 2, references from whence it was transferred and then column 3, to whom it was transferred. Can you read for us from where it went and to whom it went?

MS PHUMLA WILLIAMS: It moved from the Minister in the Presidency to the Minister
10 of Communication.

ADV KATE HOFMEYER: And who was the Minister of Communications after the general election in May 2014?

MS PHUMLA WILLIAMS: It was Minister Faith Muthambi.

ADV KATE HOFMEYER: If we can then turn page 5 of your statement.

CHAIRPERSON: I am sorry Ms Hofmeyr, all along the minister responsible for GCIS was the Minister in the Presidency, is that right?

MS PHUMLA WILLIAMS: That's correct.

CHAIRPERSON: And at this time was Minister Faith Muthambi as Minister of Communications, Minister responsible for GCIS, or was it just a question of moving
20 some function that had belonged to GCIS and moving it away from the Minister in the Presidency and moving it to a minister responsible for another department?

MS PHUMLA WILLIAMS: It was moved to a new minister because it was a completely

new portfolio. It moved out of the Presidency and it was moved to Minister Muthambi who was new in the executive.

CHAIRPERSON: Yes, but what I am trying to find out which I might have missed earlier on, is whether the minister responsible for GCIS, remained the minister in the Presidency or whether GCIS was moved to being under another minister, when Minister Muthambi came into the picture.

MS PHUMLA WILLIAMS: Okay. In that executive change, Minister Chambane who was the Minister in the Presidency, was moved to the DPSA and the new minister became Minister Jeff Radebe, Minister in the Presidency.

10 **CHAIRPERSON:** Yes.

MS PHUMLA WILLIAMS: Yes.

CHAIRPERSON: And Minister Muthambi was Minister of Communications.

MS PHUMLA WILLIAMS: Minister of Communications.

CHAIRPERSON: So is the position therefore that something was moved that used to be under the Minister in the Presidency, was moved to another minister responsible for something else. Is that correct?

MS PHUMLA WILLIAMS: The Minister Muthambi was completely a new portfolio.

CHAIRPERSON: Yes, okay.

MS PHUMLA WILLIAMS: But it was a combination of a number of entities, it was the
20 GCIS, it was the Fillerman(?) Application, it was MDDA. They were belonging in different ministries, but it was all brought into one which is the Minister of Communication.

CHAIRPERSON: Thank you very much.

ADV KATE HOFMEYER: Thank you Chair and just to clarify, after that change GCIS no longer fell under the Minister in the Presidency, is that correct.

MS PHUMLA WILLIAMS: That's correct Chair.

ADV KATE HOFMEYER: Thank you. You then go on back at page 5, Ms Williams about what happened immediately after Ms Muthambi's appointment as Minister of Communications and you reference there in paragraph 19, that she told you she wanted to finalise the recruitment process within GCIS, for the Director General. Can you tell us about what happened after that?

MS PHUMLA WILLIAMS: Chairperson indeed she did confirm that I had been acting
10 for too long, she wants to finalise, she wants to advertise the post and indeed, I think it was hardly a week or so, I did get a call from the Head of Human Resources, indicating that they are arranging the interviews for the post, and I have been shortlisted. And I then prepared because my understanding was that I was going to be called for the date of the interviews.

CHAIRPERSON: Okay.

ADV KATE HOFMEYER: What happened with those interviews?

MS PHUMLA WILLIAMS: Chairperson I think in my testimony, I didn't put the date but I have since been able to locate. It was on the 17th June in the evening of 2014 that I received the same call from the head of HR who indicated that I am sorry, Ms Williams
20 the interviews have been cancelled indefinitely. There was no reason give.

CHAIRPERSON: Just give the date in June 2014 again?

MS PHUMLA WILLIAMS: It was 17th because I was in Cape Town, 17th June 2014.

CHAIRPERSON: Thank you.

ADV KATE HOFMEYER: You then reference that at the top of page 6 of your statement and you go on at paragraph 21, to say after these cancellations my relationship with the minister became strained for reasons unknown to you. And you make reference then to a letter of the 18th June 2014. I would like to take you to that letter. It's at page 14 of the papers. In the chronology, just to confirm, this is the day after the day that your interview was cancelled, is that correct?

MS PHUMLA WILLIAMS: That's correct Chair.

ADV KATE HOFMEYER: This is a letter addressed... if you turn to page... addressed
10 to yourself at page 16, from the Honourable Faith Muthambi is that correct?

MS PHUMLA WILLIAMS: That's correct Chair.

MS HOFMEYER: And can you confirm that you received this letter from the minister?

MS PHUMLA WILLIAMS: I can confirm that I did receive it.

ADV KATE HOFMEYER: Please can you read into the record the first sentence of the letter?

MS PHUMLA WILLIAMS: *'This letter serves to bring to your attention my unhappiness with regards to the service you are providing to my office.'*

20 **ADV KATE HOFMEYER:** And if you move to page 16, the concluding part of that letter. Will you also please read into the record the penultimate paragraph which begins... in various other correspondences...

MS PHUMLA WILLIAMS:

The last two lines?

ADV KATE HOFMEYER:

That whole paragraph that begins... in various other correspondences...

MS PHUMLA WILLIAMS:

Okay all right.

'In various other correspondences, I have made inputs in, it seems you have no capacity to implement changes I require or the desire to take my input seriously, a situation that has become untenable. I would want to know in writing, how you intend to remedy the situation on an urgent basis, in order for me to take appropriate action in this regard.'

10

ADV KATE HOFMEYER:

Ms Williams would you say it is fair that this is a letter that records a serious dissatisfaction with your performance in your work?

MS PHUMLA WILLIAMS:

Chairperson I think, for me genuinely it was a shock, because Minister Muthambi was inaugurated on the 26th May and on the 17th around that... two weeks, three weeks she was full of praises of my professionalism. She was so keen such that she wanted to fast track the interviewing of my, the post and filling the post. So on the 18th I receive a letter of an aggrieved minister, complaining about unprofessionalism, complaining about things that were just completely new to me. I think I was shocked.

20

ADV KATE HOFMEYER:

Well lets go if we can, to some of the complaints that she levelled against you in this letter, appearing at 14. The first heading is: Unprofessional Conduct and Correspondence. She says in the first paragraph under that heading:

'As a basic courtesy, I expect you to make time to brief me on numerous matters that relate to our work to get my portfolio going. I found it impossible to correspondent and keep in touch with you, you have chosen corresponding through memoranda, your preferred way of conducting business.'

She goes on and says:

10 *'Having said that, I have sent an inordinate amount of time correcting various memoranda sent to my office from you including the incorrect and interchangeable use of the letterheads of the Ministry and GCIS, as well as documents that have not been cross-checked for spelling and grammatical errors, amongst others. At your level of seniority this is an unacceptable state of affairs.'*

Can we go back to the letterheads? What was the issue with the letterheads?

MS PHUMLA WILLIAMS: Chairperson we were dealing with a new department, didn't exist, three weeks into the minister's portfolio, necessarily there would have been a change because people were still trying... we still had letterheads of GCIS, there was no way we could've thrown them away and she had prioritised creating letterheads for herself, and the point of dispute there, was that we should've moved very fast in making
20 sure that the staff uses those letterheads and that's what the point of her unhappiness and that I was not using letterheads that she prefers.

ADV KATE HOFMEYER: Thank you if we can then go to her second complaint, on page 15, under the heading two: Improper and Inconsistent salutation in letters: The minister records there:

'Please familiarise yourself with how a minister ought to be addressed, in both internal and external memoranda and apply this consistently in all letters addressed to me in future. It is clear to me that you delegate this task to junior staff resulting in your signing off and passing on purely structured memoranda to my office.'

Well let's talk about the salutation, what was Minister Muthambi concerned about in relation to how she was addressed?

MS PHUMLA WILLIAMS: Chairperson the issue is Minister Muthambi, wanted to

10 be addressed as Honourable, Honourable Muthambi addressed in writing, Honourable Muthambi in any circumstances, I needed to address her as Honourable Minister.

ADV KATE HOFMEYER: And then if we move to paragraph 3 on that page 15, there is a heading: Correspondence regarding the structuring of the Department of Communications. I don't want to go through... it's quite a lengthy section of the page to 15, but I would like to pick up one particular complaint, that she makes there, because we will soon move to your response to these concerns raised by the minister. At paragraph 3.2, the minister refers to a specific instruction that was given to you and I quote:

'I have given you a specific instruction to include Ms Gift Buthelezi, who is a DDG seconded from the erstwhile DOC. Your correspondence makes no reference to his involvement. This is in direct defiance of my instruction, giving an impression that you do not want to represent my interests in that inter-governmental interaction.'

20

Ms Williams, can you explain what you understood that complaint to relate to?

MS PHUMLA WILLIAMS: Chairperson Mr Gift Buthelezi was appointed, she was working as a deputy director general in the previous Department of Communication. Minister Muthambi wanted me to involve Mr Gift Buthelezi in the work of GCIS, with no paper trail whatsoever. And I had done what I normally know is done in terms of governance.

I had written to the Director General of the DOC, requesting that Mr Gift Buthelezi be transferred or sent on secondment because that is how it works, and I was still awaiting that response. That's how fast things were moving, I was still awaiting for that response because you cannot second a person without any paper trail.

ADV KATE HOFMEYER: Thank you. And then if we move to your response to that letter which you see... (intervenes)

CHAIRPERSON: I am sorry Ms Hofmeyr...

ADV KATE HOFMEYER: Apologies Chair.

CHAIRPERSON: At that stage of this letter from the minister you were still acting DG for GCIS.

MS PHUMLA WILLIAMS: That's correct Chair.

CHAIRPERSON: And that made you acting DDG of Ms Muthambi department.

20 **MS PHUMLA WILLIAMS:** That's correct Chair.

CHAIRPERSON: And as Acting DG you were the accounting officer, is that right or not?

MS PHUMLA WILLIAMS: That's correct Chair.

CHAIRPERSON: And if anything went wrong, you would have to account?

MS PHUMLA WILLIAMS: Certainly Chairperson.

CHAIRPERSONS: Thank you.

ADV KATE HOFMEYER: Thank you Chair. If we then move to page 17 which is the first page of your response to Ms Muthambi's letter. Your will... if you move to page 19 you will see that that was dated 23rd June 2014, can you confirm that that was the letter you sent on that day?

MS PHUMLA WILLIAMS: That's correct Chair.

10 **ADV KATE HOFMEYER:** I would like to take you back to page 17, and I would like to ask that you read into the record the second paragraph of that letter. It begins... I should start...

MS PHUMLA WILLIAMS: Okay.

CHAIRPERSON: Well before the witness does I just note that in this letter she did address her as Honourable.

ADV KATE HOFMEYER: Yes (laughter). Chair you will see there is an explanation for that in letter.

CHAIRPERSON: Thank you.

20 **MS PHUMLA WILLIAMS:** *'I should start by indicating that I was shocked when I read the letter given that you have always be commending us on the support we were giving you to your*

office. Also, it has always been my belief that from the time you were sworn in on the 26th May 2014, my office together with the whole staff of GCIS, has sought to make your coming into your office as comfortable as possible. In fact, I can go so far as to say, both yourself and the Deputy Minister were our number one priority.'

ADV KATE HOFMEYER:

Thank you Ms Williams. And then if we move to your response to the allegation of unprofessional conduct and correspondence. Rather than read your response, can you tell us what you said in relation to the charge that you were using the wrong letterheads as evidence of unprofessional conduct?

MS PHUMLA WILLIAMS:

Chairperson I think what I responded to is that, there was never any intention of undermining the fact that she wants to use her own letterheads and I will go on to explain that we have made arrangements that her office is able to give us those letterheads and I subsequently told the whole staff, because some of the correspondence, generally comes from different sections and I alerted to them that they need to use the letterheads that the minister will prefer.

ADV KATE HOFMEYER:

You also addressed the question of grammatical errors in your correspondence. You will see that in the last paragraph, after the heading number 1, feel free to refresh your memory about what your response was there, but could you summarise for the Chair what you said in relation to the allegations of typographical and other errors in your correspondence?

MS PHUMLA WILLIAMS:

I trying to look for that paragraph.

ADV KATE HOFMEYER:

It's just before the bold paragraph 2 and if it's convenient

you can just read that paragraph into the record. I will follow up with my office... it begins.

MS PHUMLA WILLIAMS: Okay, okay. I then addressed that and say:

'I will follow up with my office and yours to manage and better coordinate to the dates in the correspondence sent to your office. In the attached sample correspondence in the letter, I could not any circled grammatical mistake, I therefore assume it might have been in other documents. I will continue as I always try to quality control my language.'

10 **ADV KATE HOFMEYER:** Thank you Ms Williams. You then address under the heading 2 on that page, the improper and inconsistent salutations in letters. Ms Williams what did you say in response to Ms Muthambi, in relation to that allegation that you were using the incorrect salutation?

MS PHUMLA WILLIAMS: Should I read or should I just say.

ADV KATE HOFMEYER: Whatever is preferable to you.

MS PHUMLA WILLIAMS: Okay. Chairperson Minister Muthambi is correct that she did say she wants to be addressed as Honourable, and I took the trouble to check what the protocol was from the Presidency. I was then assured that ministers cannot expect to be called Honourable if they are outside of parliament. That terminology is only used
20 when they are inside parliament. So there was nothing wrong that I was doing to address her as Minister Muthambi.

ADV KATE HOFMEYER: Thank you and then if you go over the page to 18, just to

follow up on the point made by the Chair in relation to how you address the letter. You will see you record before paragraph 3, the undertaking that and I quote:

'In the meantime we will adhere to your request in respect of your salutation'

Does that explain why you address the letter to the Honourable Minister Muthambi?

MS PHUMLA WILLIAMS: Yes, yes Chairperson that's reason.

ADV KATE HOFMEYER: Thank you. And then under 3, you deal with the questions of the communication with the minister and you particularly deal with the question of Mr Buthelezi. And you have already given us in anticipation of your response, what the
10 essence of your reply to the minister was in relation to that question.

If you go 3.4 on page 18, you will see that you reference the fact that you wrote a letter to the Department of Communications, now referred to as the Department of Communication and Postal Services, to request his secondment. You did that on the 4th June 2014 and then you record what you have already indicated to the Chair. Is that you could not continue the involvement of Gift Buthelezi, pending the approval from his department.

Should I have formerly involved him in the work of the department without the formal letter from his department; it would have constituted an irregularity by his department. Is that consistent with what you indicated to the Chair earlier was your
20 response?

MS PHUMLA WILLIAMS: That's correct Chairperson.

ADV KATE HOFMEYER: And Ms Williams I would like you finally to go to the

conclusion of this letter. And if you go over the page, to page 19, you say in the first... you say in the first paragraph of that page, for the benefit of the record, I will read it in. You say and I quote:

'I may make mistakes in my journey but I want you to be assured that there is no disrespect on my part. It is in my interest to ensure you manage a clean administration as necessarily it becomes a clean and effective government to serve our people'.

Ms Williams why did you emphasis the need for a clean administration to Minister Muthambi?

10 **MS PHUMLA WILLIAMS:** Chairperson I had to raise, I had to put that paragraph for a simple reason that the minister wanted me to do an illegal thing. You can't take an official from other department without any paperwork and I had to remind the minister that it is my job, as an accounting officer, to make sure that we run a clean administration.

ADV KATE HOFMEYER: Thank you Ms Williams. If we can then return to your statement; Before we do so, can I just ask, you reference a clean administration in relation to serving our people, what do you see as that link?

MS PHUMLA WILLIAMS: Chairperson I want to believe when we are public servants and public representatives, we are not here in personal capacity, we are here to serve the people of South Africa and that is why I had to remind the minister that we are not here in
20 our personal capacity, we are here to serve the people of South Africa.

ADV KATE HOFMEYER: Thank you Ms Williams. If we then go back to page 6 of your statement, we were ad paragraph 21, where you reference the shock that you

experienced when you received this letter of the 18th June, a matter of weeks after Minister Muthambi took up her position. And then in paragraph 22, you reference an approach to the President arising from this interaction with Minister Muthambi. Can you please tell the Chair about that interaction?

MS PHUMLA WILLIAMS: Chairperson I think I should indicate that after that letter, the behaviour of Minister Muthambi got worse. I then took the liberty of contacting the President to request that he intervenes on my behalf, because for the life of me, I couldn't understand what is it that is wrong that I've done. And yes, with fairness she gave an opportunity to talk to him.

10 And I explained and I remember even mentioning the issue of the honourable, that it's not a matter that warrants a person to be charged and given a letter and I remember him laughing about it himself. And he then said no, no Phumla I will attend to it, and that's how we left and I left with real confidence that the President is going to address the matter.

ADV KATE HOFMEYER: And when did that meeting occur?

MS PHUMLA WILLIAMS: Chairperson I may not know the date, but I do remember that one of the cabinet meeting, because I still attending, I went to him and I said I would like to meet and I remember getting a call to say yes, the President says you can come and I went to Mshlambanlovu(?) to go and meet with the President and I don't remember
20 the date, but I know that I did meet the President at his official guest house.

ADV KATE HOFMEYER: Even if you can't remember the exact date, was is a matter of months after the letter, weeks after the letter. Remember the letter you received was the 18th June 2014, your response was on the 23rd June 2014. Can you just give is a

sense of the amount of time thereafter that you raised it with the President?

MS PHUMLA WILLIAMS: Chairperson to be honest I raised it almost immediately.

However I think I was called probably three weeks or four weeks later, I think it must have been around July, but I did raise it personally with him in one of the cabinet meetings. But I think the exact call to say come, I think it must have been around July.

ADV KATE HOFMEYER: And Ms Williams if we then go to paragraph 23, on page 6, that paragraph begins with the following and I quote:

'By October 2014, the relation have got to a point where I received another letter informing me of the withdrawal of my acting responsibility.'

10

Please can you tell Chair how you were informed of the withdrawal of acting position?

MS PHUMLA WILLIAMS: Chairperson from June I should say up till October the situation had got so bad that Minister Muthambi was interacting with the staff directly, without even involving me and I had already become quite stressed about it. I then requested to take leave which was on the 6th October, and I then applied to take leave. In my application I attached the proposed person to do... to act whilst I was away which was Mr Gitto Menzakani(?) who was the most senior in the organisation.

In fact, even myself, I joined GCIS, I found him there. He was the most senior chief director and she was acting DDG in my position. I then attached that proposed acting person. She approved it, and I left. And ja, and when I left she then started making changes and removing the person that I had proposed and she then appointed Mr Donald Lepoko(?) as the acting Director General of GCIS, who was a chief director in the department.

20

ADV KATE HOFMEYER: I would like to go back for a moment to your leave, but you have referenced Mr Lepoko, so it's pertinent for me to ask how did Mr Lepoko come to GCIS originally?

MS PHUMLA WILLIAMS: Chairperson I did indicate that Mr Lepoko was head hunted by Mr Manyi. When he came into GCIS he was brought in as a media buyer. As I recall he from the private sector in the media buying space, so it's made sense for us to get somebody who has experience in that area. So she was brought in as a media buyer and she was a chief director of media buying.

ADV KATE HOFMEYER: And I made reference earlier to the hierarchy within the
10 system of GCIS. Can you confirm at that time as you reference at paragraph 23, that when Mr Lepoko was appointed as acting director general, notwithstanding your recommendation, that that position be given to Mr Semekane who was the deputy director general at the time. He held the position of chief director, is that correct?

MS PHUMLA WILLIAMS: That's correct Chair.

ADV KATE HOFMEYER: And chief director of media buying.

MS PHUMLA WILLIAMS: Media buying, yes.

ADV KATE HOFMEYER: And that jump from chief director to acting director general is that usual?

MS PHUMLA WILLIAMS: Chairperson also my understanding is that when the deputy
20 director general, the normal thing for DG is to appoint amongst the three DDG's because at that time there were three DDG's, Ms Nable Mgwape(?), Mr Herold Maluka and myself, but at that time in my position Mr Sitko Metsamekani(?) was acting. So it was really

unusual that the three DDG's were overlooked and they went to take the new person who didn't even... was not part of the institution, so it was unusual.

ADV KATE HOFMEYER: Thank you I said I would return to your leave. How were you notified of this demotion from your position, as acting DG when you were on holiday?

MS PHUMLA WILLIAMS: Chairperson I remember getting a letter which was dated the 18th, remember Chair I was on leave up until the 26th – 27th October. The letter was sent to me which I even saw when I was at home because they managed to get it scanned and sent while I was at home.

ADV KATE HOFMEYER: Thank you. Let us go to that letter if we may, it's at page 20
10 of the bundle. Can you confirm that this is the letter that you received from Minister Muthambi on the 17th October 2014?

MS PHUMLA WILLIAMS: That's correct Chair.

ADV KATE HOFMEYER: I would like us to turn over the page to page 21. The second paragraph records and I quote:

*'You are also aware that with the abolishment of the GCIS
and in line with the proclamation...*

Just to pause there, what proclamation is that?

MS PHUMLA WILLIAMS: I think she was referring to the proclamation that was signed by the President of creating the new department.

20 **ADV KATE HOFMEYER:** She goes and she says:

'The position of Deputy Chief Executive Officer of GCIS now

becomes Deputy Director General for the new Department of Communications.'

and then she goes on in the second paragraph thereafter to say and I quote:

'In line with the proclamation, you are hereby informed to revert to your position as the Deputy Director General, Corporate Services with effect from the 17th October 2014.'

Ms Williams what does that mean, in line with the proclamation you must be demoted?

MS PHUMLA WILLIAMS: Chairperson it may sound funny, but that's how painful it was.

10 You are on leave and you come back and you find your salary has been adjusted, you are then told you owing... I remember it was R35 000.00 that had been paid to you, whilst you are on leave and you have to pay it back. One would have expected that there should have been a bit of a discussion, especially because the proclamation was a process and had to painfully look for that R35 000.00.

ADV KATE HOFMEYER: Ms Williams can I just understand though, did the proclamation say anything about your demotion?

MS PHUMLA WILLIAMS: Chairperson the proclamation as I understand it, there was no indication that it has to almost like now, and as I know proclamations as they work, there has to be a process, because there is a lot that has been put in place. There is the question of the assets of the department, there is the question of the budget that has
20 been voted for by the treasury. You certainly cannot just midstream deal with abolishing the budget that's appropriated through parliament. You can't deal with... in the midstream deal with the issues of changing assets.

There has to be some kind of a transition and as I know, generally in government there is transition, there was absolutely no basis whatsoever for Minister Muthambi to do that.

CHAIRPERSON: Sorry Ms Hofmeyr, I see that this letter from Minister Muthambi was dated 17 October 2014, on the front page and that she also signed it on the same date. And earlier on your attention was drawn to the fact that it was saying that this change in your status in the department was happening with immediately effect. When did you get the letter? Did you get it on the same day, did you get a few days later or...?

10 **MS PHUMLA WILLIAMS:** Chairperson as I indicated that I was on leave and the pay day in government is on the 15th. I was on leave and obviously my salary had gone through and that's why it went through, because the understanding was that I am still the acting director general. And I found myself, when I came back on the 27th with salary saying I must pay back R35 000.00, because it has been paid erroneously because they had not seen the letter of Minister Muthambi. They hadn't even had the decency to send it to salaries. It was just scanned and sent to me.

CHAIRPERSON: But when did you receive it?

MS PHUMLA WILLIAMS: I can't remember the date because the only that I can confirm Chair, is that I remember that, I think it was on the 18th or 19th. I did respond and
20 acknowledged receipt which I think I hadn't, but acknowledged receipt but I also responded to the last paragraph Chair.

CHAIRPERSON: And the demotion that we are talking about here, is that of being removed from the position of acting DDG of the department.

MS PHUMLA WILLIAMS: Certainly.

CHAIRPERSON: Yes but before that acting appointment, you were at the level of deputy director general.

MS PHUMLA WILLIAMS: Certainly.

CHAIRPERSON: Okay thank you.

ADV KATE HOFMEYER: Thank you Chair and just to clarify on that date issue, if you go over the page to page 22, Ms Williams. That as I understand is, your response to Minister Muthambi dated the 18th October 2014, is that correct?

MS PHUMLA WILLIAMS: That's correct.

10 **ADV KATE HOFMEYER:** I would like to go back to page 21 and you will forgive incredulity,

I was posing with you the explanation that Minister Muthambi gives for removing you from the position of acting director general. You will recall that in the second paragraph on that page, she references the proclamation and she explains in fairness to her, consistent with that proclamation, that pursuant to the proclamation, and I am paraphrasing now, but I would like your confirmation as to whether you agree with the paraphrase. What had previously been the position of deputy chief executive officer of GCIS, was now becoming deputy director general for the new Communication Department. Is that right?

MS PHUMLA WILLIAMS: Chairperson the deputy CEO in GCIS was a deputy director general, the only reference that she is making here, is that you are no longer the deputy
20 director general of GCIS, you are now the deputy director general of the new department.

ADV KATE HOFMEYER: And the person who replaced you, spring boarding from the position of chief director, to now your superior as acting director general was Mr Lepoko,

is that correct?

MS PHUMLA WILLIAMS:

That's correct Chair.

ADV KATE HOFMEYER:

I would like then to go to the last paragraph of that letter. And before we do so, I would like you to explain for the benefit of the Chair, what the role of the cabinet spokesperson was, insofar as the director general position within GCIS was concerned.

MS PHUMLA WILLIAMS:

Chairperson the position of the director general of GCIS includes being a cabinet spokesperson, and that's how it has been from its early days up till now, it is still that.

10 **ADV KATE HOFMEYER:**

But you will see in paragraph, on page 21 in the last paragraph, Minister Muthambi proposes a variation of that consistent position. Can you explain for the Chair's benefit what she was proposing in that last paragraph?

MS PHUMLA WILLIAMS:

Chairperson, I have no idea what Minister Muthambi was having in mind because my understanding... we've always been a department that leads cabinet decision. Minister in the Presidency has never been a spokesperson. It may be reading there in the statement, but she has been a spokesperson of the... and which is what I was trying to point to her, that the minister in the Presidency is not the spokesperson. He is a minister responsible for the GCIS, but the DG of GCIS is expected to communicate the decisions of cabinet.

20 **CHAIRPERSON:**

Umh (affirmative).

ADV KATE HOFMEYER:

To be clear Ms Williams, as I understand the last paragraph of page 21 and you will confirm if this is an accurate description. What Minister Muthambi

was in essence saying, was that you would no longer hold the role of acting director general, you would revert to your position as deputy director general, but that you would continue to provide support to the minister in the Presidency on secondment basis as cabinet spokesperson. Is that accurate?

MS PHUMLA WILLIAMS: That's what she was suggesting.

ADV KATE HOFMEYER: And what your attitude to that?

MS PHUMLA WILLIAMS: Chairperson I have been consistent in saying that what I did for cabinet, I did it as an acting director general of the GCIS. It was therefore not correct that you could second a job that resides in that department. It was completely incorrect.

10 **ADV KATE HOFMEYER:** And if we can go to page 22, because that your response to Minister Muthambi where you take up this issue. And if I may just direct you to the last sentence of the penultimate paragraph on that page, you will see there and I quote. You've raised this issue with her in the proceeding parts and then you say:

'As such the newly appointed acting director general by virtue of holding that office, automatically becomes the government and cabinet spokesperson.'

And then you go on and record:

20 *'In view of the above and in line with your directive that I revert back to my substantive position as deputy director general, I will not be able to provide support to the minister in the Presidency on a secondment basis, because my position is a full time position, which entails the governance oversight, which require my full attention.'*

Can you confirm that Minister Muthambi received this letter?

MS PHUMLA WILLIAMS: I certainly delivered it in her office.

ADV KATE HOFMEYER: And as I read your response there, it was in effect a refusal to take up that position because you were now going to be consumed with your deputy director functions, is that accurate?

MS PHUMLA WILLIAMS: That's correct Chair.

ADV KATE HOFMEYER: Thank you. If we can then return to page 7 of your statement:

Your statement has now progressed to February 2015, so just orientate ourselves in time. Your demotion occurs in October 2014, Minister Muthambi requests that despite the fact
10 that you are now only going to be deputy director general, you should continue as cabinet spokesperson and you have refused that, is that correct?

MS PHUMLA WILLIAMS: That's correct Chair.

ADV KATE HOFMEYER: So what happens if you can elucidate for the Chair in February
2015?

MS PHUMLA WILLIAMS: Chairperson in February 2015, I then received a phone call from the secretary cabinet, Secretary Dr Lumbesi, and he was asking where I was because on that day it was cabinet Lekgotla. And he asked me where I was and I said no. no, no I am on my way to the office because it was in the morning. And he said no, no, no you are expected to be here in cabinet and I then had to remind him that I have
20 been removed and Mr Lepoko is the one who is supposed to be joining the cabinet as the acting director general. And he insisted that it would be me, I should come. I then insisted that it should be put in writing because I was not going to do it.

ADV KATE HOFMEYER: And can I then refer you to page 25. Is this the writing so to speak that you demanded be provided?

MS PHUMLA WILLIAMS: That's correct Chair.

ADV KATE HOFMEYER: And can you tell us pages 24 and 25 contain insofar as your request for a written delegation of this responsibility to yourself.

MS PHUMLA WILLIAMS: Chairperson this was the letter that appoints me to be the acting cabinet spokesman with all the functions that relate to cabinet, sitting in cabinet committees, sitting in cabinet. Drafting the statement of cabinet and also speaking on the issues of the cabinet, so that's the letter I received.

10 **ADV KATE HOFMEYER:** Why were you concerned to get this letter?

MS PHUMLA WILLIAMS: Chairperson I am governance person, it wouldn't have made sense to be told verbally that I must go and execute a job that cannot be tracked. So I insisted that it has to be given to me in writing, in the same was that I was given in writing October, that I must revert back to my job.

ADV KATE HOFMEYER: Ms Williams may I suggest that your fidelity to governance went further, because if you turn over to page 26, you will see there a agreement that was prepared between you and Minister Radebe, who I understand was Minister in the Presidency at the time, is that correct?

MS PHUMLA WILLIAMS: That's correct Chair.

20 **ADV KATE HOFMEYER:** And it relates to you under your name of that page (*Acting Cabinet Spokesperson position*). Is that correct?

MS PHUMLA WILLIAMS:

That's correct Chair.

ADV KATE HOFMEYER:

Who drew up this agreement?

MS PHUMLA WILLIAMS:

Chairperson I should indicate that after I have received the letter from Minister Muthambi, I wrote an acceptance and I drew her attention that I would request that she appoints somebody in my position so that I can be able to focus on the job, and I then subsequently drafted the performance agreement. Also in consultation with herself, I then tried to establish how ... where the lines of authority... because I think that whole period was really confusing.

10 The cabinet work and the GCIS, the new ministry: She then suggested that because I will not be doing cabinet, I suggest we do a performance agreement that will be signed by the two of us, the minister in the Presidency and herself. And I need to also remind the commission that at that point, which was 2015, they had already reserved the abolishing of which she says, which was in November 2014. So she then suggested that the performance agreement will have to be signed by two people, that's herself and the minister in the Presidency.

ADV KATE HOFMEYER:

If I can take you page 30 just to confirm those two signatories to your performance agreement. Can you please identify for the Chair who signed your performance agreement as acting cabinet spokesperson?

MS PHUMLA WILLIAMS:

20 It was Minister Jeff Radebe, Jeffrey Radebe and it was also signed by Minister Faith Muthambi.

ADV KATE HOFMEYER:

Thank you. If we return to page 7 of your statement, Ms Williams.... Ad paragraph 26 on that page, you commence with the following. You

say:

'The public service regulations, prescribes that when a public servant acts on a higher portfolio, that is funded and vacate, he or she needs to be compensated after six weeks.'

Can you explain for us what the relevant of that is? So you know taking up the acting cabinet spokesperson position, when your official title, prior to that was deputy director general?

MS PHUMLA WILLIAMS: Chairperson position as a deputy director general, which was a level 15. Cabinet spokesperson is at level 16 which is a director general and
10 necessarily, when you are acting in that position the Public Service Regulation stipulates that if you have worked for six weeks, you are then entitled to be paid that difference of the acting role in senior position.

ADV KATE HOFMEYER: And what did Minister Muthambi say to your request that you be paid at the level 16 level, because you had assumed that position?

MS PHUMLA WILLIAMS: Chairperson she refused and said that I was helping and therefore I don't deserve to be paid.

CHAIRPERSON: Umh (affirmative).

ADV KATE HOFMEYER: And what did you in response?

MS PHUMLA WILLIAMS: Chairperson, I escalated the matter to the HR and the HR that wrote to her

20 **ADV KATE HOFMEYER:** I would like to take you to the ruling that you received from the Public Service

MS PHUMLA WILLIAMS: That's correct Chair.

ADV KATE HOFMEYER: And it was received on the 1st, well dated the 1st February 2016, can you co

MS PHUMLA WILLIAMS:

That's the date I received it Chair.

ADV KATE HOFMEYER:

It is a fairly lengthy document and I don't propose to deal with all of its Commission that resulted in this ruling?

MS PHUMLA WILLIAMS:

Chairperson my grievance was them to intervene that I be compensated, b

ADV KATE HOFMEYER:

Thank you. At page 47 in this section of the ruling, the Public Service Commission general, from the 1st April 2015 and that is a reference to his replacement of your occupying that position.

If you go to the final paragraph under 8, before the new paragraph starts, number 9, the Public Service Commission makes a comment that the reference in that letter to Section... this is the letter that Minister Muthambi wrote in relation to Mr Lepoko's elevation. The Public Service Commission as I read it there, says that the referral to Section 42 of the Act is incorrect; they say that it's a Section 32 matter and then they go on, and if I may ask you just to read into the record, what is recorded there from the second sentence, which starts...it should....

MS PHUMLA WILLIAMS:

'It should be noted that there are three positions of the deputy director general in the GCIS but none of them was appointed to act as a director general, which created a lot of challenges in terms of executing duties in that a Chief Director would be appointed to act in Mr Lepoko's position, while he will have to double up and perform the functions of the deputy director general, corporate services, over and above the functions of the director general.'

ADV KATE HOFMEYER:

Thank you and then if you will read the next sentence as well.

MS PHUMLA WILLIAMS: *'The appointment of Mr Lepoko further created challenges in the reporting lines as the deputy director generals in the GCIS now had to report to the chief director.'*

ADV KATE HOFMEYER: Okay and then the next sentence.

MS PHUMLA WILLIAMS: *'Potential instability and dissatisfaction amongst the members of the senior management, management service is created through this arrangement. The arrangement also creates challenges in that a person appointed to act in the post of the chief director, could not be paid an acting allowance because the position is not vacate. If paid, the payment would've been irregular.'*

10

ADV KATE HOFMEYER: Ms Williams this is the recordal of the Public Service Commission. Does it

MS PHUMLA WILLIAMS: Certainly Chairperson.

ADV KATE HOFMEYER: What was it like in GCIS after he was elevated over the three DDG's to the

MS PHUMLA WILLIAMS: Chairperson I think the situation got quite bad in the GCIS. You will note in general despondency in the organisation and as such that some people we lost quite good people, because of the situation that was existing at the time.

ADV KATE HOFMEYER: Thank you. And then I would like to ask you to go page 52, which is further

20 Because there the Public Service Commission makes reference to that reversal. I would like to read to you what they record there and then you to explain your understanding of that reversal.

Midway through that bullet point the Public Service Commission records the

following:

'The President reserved the decision in November 2014 and re-established the GCIS in its original form. Minister Muthambi was also advised by the DPSA to advertise the post of DG and cabinet spokesperson.'

Can you explain to us happened in November 2014?

MS PHUMLA WILLIAMS: We were advised that the Presidency has reversed the decision and re-issued instruction to the Minister Muthambi, to act on a decision and advertise the post. And if I recall they even gave a deadline that by the 1st April 2014, the post should have been filled.

ADV KATE HOFMEYER: Would that have been April 2014 or 2015?

MS PHUMLA WILLIAMS: 2015.

ADV KATE HOFMEYER: Thank you. What happened, did Minister Muthambi advertise and then fill the post?

MS PHUMLA WILLIAMS: What I remember Chairperson is the post was advertised but nothing happened.

ADV KATE HOFMEYER: Who remained in the position?

MS PHUMLA WILLIAMS: Mr Lepoko remained in the position.

ADV KATE HOFMEYER: And for how long did he remain in the position?

MS PHUMLA WILLIAMS: Mr Lepoko has been in that position until 2017, April.

ADV KATE HOFMEYER: And what changed in April 2017?

MS PHUMLA WILLIAMS: In 2017 there was change of guard and we got a new minister, Minister Ayanda Dlodlo.

ADV KATE HOFMEYER: And who did Minister Ayanda Dlodlo appoint in that position?

MS PHUMLA WILLIAMS: She then appointed me on the 8th May 2017 and appointed me to be the a

ADV KATE HOFMEYER: So just for clarification, despite this instruction from the DPSA, that the pos replaced him in May 2017?

MS PHUMLA WILLIAMS: Certainly Chairperson because I think Mr Lepoko was appointed if you reca

ADV KATE HOFMEYER: I would then like to take you to paragraph 2 on that page 52. You will see t

‘That several attempts to obtain a response from the Minister of Communications and to meet with her were unsuccessful.’

Ms Williams can you tell us, do you know did Ms Williams participate... did Ms Williams, did Minister Muthambi participate in this process at all?

10 **MS PHUMLA WILLIAMS:** Chairperson what I do know, is that they did struggle to get her response and at some point the Public Service Commission was of the view that there are guided by their own procedures. If Minister Muthambi is not responding they will proceed and finalise the report and I know that at some point, she finally gave them an appointment.

ADV KATE HOFMEYER: Ms Williams if I could take you to page 58 because I would like your comment on my sense from reading this ruling, that the Public Service Commission was concerned by Minister Muthambi’s failure to respond at all in the process. If you look at the first paragraph on that page, almost half of the way down, this is in concluding section of the PSC’s ruling. They record, and I quote:

20 *‘The failure by the minister to respond to the Public Service Commission is in contravention of Section 196(3) of the Constitution, the Public Service Commission therefore, has*

no alternative but to report the minister's failure to cooperate with the commission to the relevant delegated authority in the Presidency.'

Do you regard it as accurate to say they took it seriously, that Minister Muthambi failed to engage with them at all in the process?

MS PHUMLA WILLIAMS:

I agree Chairperson.

ADV KATE HOFMEYER:

Do you know what happened with that report to the Presidency about her breach of Section 196(3) of the Constitution?

MS PHUMLA WILLIAMS:

My understanding is that nothing was done because Chairperson even the ruling that I should be compensated, my acting, she never implemented it. So I don't think she was ever reprimanded, save to say that I also made another attempt of engaging the President on this report.

CHAIRPERSON:

Umh (affirmative).

ADV KATE HOFMEYER:

Indeed and we will deal with that in your further testimony. Chair I see that we are just before 1, and I am aware that there might need to be arrangements made for the continuation of Ms Williams' evidence, given the need to see the experts evidence this afternoon. May I hand over to my learned friend Mr Pretorius about those arrangements?

CHAIRPERSON:

Maybe before you do that, let me just ask one question to Ms Williams because I don't want to forget it. Did you sense that for some reason there was some reluctance in making Mr... is it called Lepoko or Depoko.

MS PHUMLA WILLIAMS:

Depoko.

CHAIRPERSON: Depoko, a spokesperson, government spokesperson. I am asking that because I think what I understood from your evidence and Mr Maseko's evidence, is that Mr Maseko in his position as DG of GCIS, was government spokesperson and that Mr Mentensa(?)...

MS PHUMLA WILLIAMS: Yes.

CHAIRPERSON: ...had also been government spokesperson in the position of DG of GCIS when you were acting as DG of GCIS where you were also acting spokesperson for government and now there was a new acting DG for this communication department, but he was not being made acting, a government
10 spokesperson as well, that they wanted you to be acting government spokesperson. Do you know why he wouldn't have been made acting government person, Mr Depoko?

MS PHUMLA WILLIAMS: Chairperson I wouldn't know al, expect that the cabinet secretary called me and insisted that they want me and my view was that it's the minister who can instruct me and he assured me that they have told the minister, that they want me.

CHAIRPERSON: Okay thank you.

ADV KATE HOFMEYER: Thank you Chair.

CHAIRPERSON: Okay, you may hand over to Mr Pretorius.

ADV KATE HOFMEYER: Thank you Chair.

20 **MR PAUL PRETORIUS SC:** Thank you Chair. May I address you on one matter before we talk about the change in the program this afternoon, or the slight change in the program? You gave instructions earlier that the matter raised shortly after the short adjournment be investigated.

CHAIRPERSON: Yes.

MR PAUL PRETORIUS SC: I have spoken to one of the Commissions investigators, the several communications of Mr Manyi to an official or officials of the Commission will be collated and provided to you in due course. With regard to communications to the witness, during the course of her testimony, these will be preserved and also provided to you. But maybe draw your attention to Regulation 12(1) and Regulation 10(6).

Regulation 12(1) makes it clear that it is an offence to prejudice the enquiry or it's proceedings.

CHAIRPERSON: Yes.

10 **MR PAUL PRETORIUS SC:** And regulation 10(6) as you will know Chair, entitles you or empowers you to call people to appear before you.

CHAIRPERSON: Yes.

MR PAUL PRETORIUS SC: So to the extent that you may find, after investigation that it is appropriate to do so, you may consider summoning Mr Manyi to appear before you...

CHAIRPERSON: Yes.

MR PAUL PRETORIUS SC: ... to explain such conduct as you might find unlawful or appropriate.

CHAIRPERSON: Yes.

20 **MR PAUL PRETORIUS SC:** Possibly unlawful or appropriate. For the legal team's part, Chair we think it is, or we believe it is very important to take every step to protect witnesses who come to testify and to ensure that they feel free to do so without fear.

CHAIRPERSON: Yes. Maybe I should just say something about that. I would ask the legal team to prepare documentation for me that would enable me to take a decision on this, or authorise the taking of some action, whether it is summoning Mr Manyi or whatever... documentation that will include the text message that was sent because obviously I haven't seen it. So that in due course then a decision can be made.

You are right, that the protection of witnesses who come before this Commission is very important. I have on a number of occasions called upon members of the public and people within government service, including ministers, members of executive in general and former directors general, to please come forward, if they have got
10 information that is relevant to what the Commission is investigating. And if those who heed this call, are going to be intimidated or interfered with, I think the Commission needs to look into that very seriously.

So I would request the legal team to, in due course, prepare some documentation that would place before me all information that I may need in order to make a decision.

MR PAUL PRETORIUS SC: We will do so Chair.

CHAIRPERSON: Thank you.

MR PAUL PRETORIUS SC: In relation to this afternoon's proceedings, the video conference has been brought forward to half past two. It is necessary to set up the
20 communication protocol and equipment, and for that reason, may we adjourn now and then resume at half past two?

CHAIRPERSON: Yes. Okay thank you. Ms Williams we are going to adjourn now. We are not going to be able to continue with your evidence this afternoon. You have not finished giving evidence, that is simply because there is an arrangement

that has been made for certain expert witnesses to give evidence via video link this afternoon. We will adjourn and you must please come back on Monday, at 10 o'clock when we will then try and finish with your evidence. Is that all right with you?

MS PHUMLA WILLIAMS:

It's okay, thank you.

CHAIRPERSON:

Thank you. Mr Pretorius did you want to remind me about the other announcement?

MR PAUL PRETORIUS SC:

Yes, I was intending to do so.

CHAIRPERSON:

10 Okay thank you. With regard to Monday, I just want to confirm that all counsel or lawyers who saw earlier this week here in my temporary chambers about applications that have been submitted, for permission to cross-examine witnesses, that is applications from or by implicated persons. I arranged with them that they should be back here on Monday morning so that, at that stage, I could give directions as to what should happen to those applications and when those applications would be heard.

So I am repeating this so that everybody is reminded that that is what will happen on Monday. So those counsel or lawyers representing those parties, should be here in the morning on Monday. We will then adjourn until half past two for the hearing of the evidence of expert witnesses. We adjourn.

HEARING ADJOURNS

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**Session 3**

**ADV THANDI NORMAN SC**: Mr Chairman we apologise for the delay, there was a slight technical issue that we had which we overlooked, we didn't realise that this small camera doesn't zoom in, so it only picked up my face and was not able to pick up the Chairperson's face, but the witnesses that we have who are reflected on the screen, they are Dr Kaufmann and Dr Hellman, they are in Washington DC, they are experts that have written extensively on state capture. They are aware that they will be sworn in for the purposes of this hearing. May they be sworn in one at a time?

**CHAIRPERSON**: Yes.

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

**REGISTRAR**: Dr Hellman, please state your full names for the record?

**DR JOEL HELLMAN**: My name is Joel Stark Hellman.

**REGISTRAR**: Do you have any objection in making the prescribed oath?

**DR JOEL HELLMAN**: No I do not.

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

**DR JOEL HELLMAN**: Yes I do.

**REGISTRAR**: Do you swear that the evidence you shall give to today, shall be the truth, the whole truth and nothing but the truth, so help you God?

**DR JOEL HELLMAN**: I do.

20 **REGISTRAR**: Dr Kaufmann, please state your full names for the record?

**DR DANIEL KAUFMANN**: Daniel Kaufmann.

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

**DR DANIEL KAUFMANN**: No.

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

**DR DANIEL KAUFMANN**: Yes.

**REGISTRAR**: Do you swear that the evidence you shall give today shall be the truth, the whole truth and nothing but the truth, so help you God?

**DR DANIEL KAUFMANN**: Yes.

**REGISTRAR**: Thank you.

**CHAIRPERSON**: Thank you very much Registrar, good afternoon Doctors Hellman and  
10 Kaufmann. I just want to welcome you to this hearing and to express the Commission's  
gratitude for making yourselves available to assist the Commission with regard to matters  
relating to state capture. I understand that the two of you have done extensive research  
and have a lot of experience in different countries with the phenomenon of state capture.  
We appreciate the fact that you have made yourselves available, thank you very much.

**DR JOEL HELLMAN**: Thank you, it is our privilege to be here.

**CHAIRPERSON**: Thank you.

**ADV THANDI NORMAN SC**: A copy of the statement of both the experts which they had  
compiled jointly was made available to the Chairperson, but that copy was not paginated  
and indexed. I beg leave to hand up the copy that is properly paginated and indexed and  
20 that will be marked Exhibit G1. I had sent the index to the witnesses as well so they  
would have regard to the same pagination and same indexing.

**CHAIRPERSON**: Thank you.



**ADV THANDI NORMAN SC:** Chairperson before I start, I need to relate the evidence of these witnesses to the terms of reference and whether their evidence is relevant, because I am required to do so in terms of the rules. The two witnesses are actually the witnesses that came up with the whole concept of state capture and they have written extensively and they deal with the issue of state capture, they deal with corruption in their articles which are many as I will demonstrate later and in our view, the fact that they have dealt with these matters extensively, their evidence will be relevant to Paragraphs 1.1 to 1.9 of the terms of reference and if the answer at the end of the day after all the evidence has been received by the Commission, is yes to all the questions that are asked in those  
10 terms of reference, then it would mean that their evidence would become even more relevant.

Then the question is, the terms of reference, the regulations and all the documents or the instruments we are working on, do not describe what state capture is and Mr Chairperson, I have taken the liberty of downloading a You Tube clip, a video clip which ENCA published a while ago, where various South Africans were asked as to what does state capture mean and it is just one minute long, before I lead the evidence of these witnesses, I would like to play that clip.

**CHAIRPERSON:** Thank you.

[YOU TUBE VIDEO CLIP IS PLAYED]

20 **ADV THANDI NORMAN SC:** Thank you Mr Chairperson, we had agreed with Dr Kaufmann last night that Dr Hellman will handle the first session of the proceedings. They have a joint statement, but because they do not really implicate anyone in their evidence, then when it is convenient for Dr Kaufmann to take over, then he will take over.

**CHAIRPERSON:** Thank you.

**ADV THANDI NORMAN SC:** Dr Hellman could you please for the record, so that I can qualify you as an expert in the field in which you are testifying to, would you please just state your qualifications please, your academic qualifications?

**DR JOEL HELLMAN:** I am currently Dean and distinguished Professor at the School of Foreign Service at Georgetown University. For the last 25 years, I have been a researcher on governments and political economy issues, first as a professor at Columbia and Harvard Universities and then as a researcher and staff member at the European Bank for Reconstruction and Development and then at the World Bank and my last position at the World Bank, was Chief Institutional Economist.

10 **ADV THANDI NORMAN SC:** Thank you, where are you currently based and as what?

**DR JOEL HELLMAN:** I am currently based in Washington DC and I am the Dean of the School of Foreign Service at Georgetown University.

**ADV THANDI NORMAN SC:** Dr Kaufmann I would like to do the same with you so that when the time comes for you to switch in terms of the content of your statement, then we don't have to start afresh and try and place your academic qualifications on record. Could you please do that?

**DR DANIEL KAUFMANN:** I am currently the President and CEO of a natural research government institute and international policy IFPA in the extractive governance area. We deal also with matters of corruption. I am also right now, a non-resident senior fellow at  
20 the Brookings Institution where I used to also work as a full staff and senior fellow and I am also in the International Board of Extractive Industry Transparency Initiative currently. I worked also for a long time at the World Bank where I was in many positions, including management as well as research and lead economist and I have also been a visiting

lecturer and researcher at places like Harvard University and lectured also in many other places, including at Oxford.

**ADV THANDI NORMAN SC**: Thank you, back to you Dr Hellman, I sent you the paginated documents, I believe you have them, that is those that came from us with numbering on the top right hand side corner, do you have those documents?

**DR JOEL HELLMAN**: Yes.

**ADV THANDI NORMAN SC**: Thank you, we will be working from those. If you turn that document, you will find that your CV appears from Pages 1 up to Page 3 and then up to Page 5 has your qualifications, do you confirm that?

10 **DR JOEL HELLMAN**: Yes.

**ADV THANDI NORMAN SC**: Thank you. With you Dr Kaufmann, your CV appears from Pages 6 and then from Page 7 up to Page 30, those are all your publications, am I correct?

**DR DANIEL KAUFMANN**: Yes.

**ADV THANDI NORMAN SC**: Thank you, back to you Dr Hellman, I am now going to start leading you on your statement that you have prepared, but can you just confirm, if you go to Page 4, I have counted between Page 4 and Page 5, that you have written about 22 articles on the issue of state capture, on the issue of corruption, on economics and all that, but out of those, I have counted that at least 5 of those you co-authored together  
20 with Dr Kaufmann, is that correct?

**DR JOEL HELLMAN**: That's correct.

**ADV THANDI NORMAN SC**: Thank you, now can we then go to the statement or maybe before we do that, maybe let me just do the same exercise with Dr Kaufmann so that we

don't come back to the publications. Dr Kaufmann, as indicated your bibliography as you have termed it, begins from Page 7 up to Page 30 and all these publications, they also relate to corruption, state capture, economics and various other issues that affect various countries on foreign policies and all those matters, is that correct?

**DR DANIEL KAUFMANN**: That's correct.

**ADV THANDI NORMAN SC**: Thank you, now if you could please turn to Page 31, you have both prepared this statement that is entitled State Capture in Transition. Do you believe that you are both qualified to express an opinion on this issue?

**DR JOEL HELLMAN**: Yes.

10 **ADV THANDI NORMAN SC**: Have you ever testified in any court on the issue of state capture?

**DR JOEL HELLMAN**: No I have not.

**ADV THANDI NORMAN SC**: Thank you, I would like you to read the preamble because I know it is very important to you from the telephonic conversations we have heard, could you just read the preamble to your statement into the record?

**DR JOEL HELLMAN**: Yes. *"We would like to begin our statement by commending the Commission for undertaking this comprehensive investigation of the phenomenon of state capture as it relates to South Africa. Though state capture is a significant challenge across both the develop and developing world, we know of no other country that has*  
 20 *taken such a systematic approach to understanding the routes, forms and implications of state capture. We believe that this is a critical foundation for developing effective strategies to combat state capture. We look forward to the conclusions and recommendations of those Commission which we hope will have residence well beyond*

*the South African context. At the outset it is important to emphasise that our statement and testimony here will not comment upon the nature or extent of state capture in South Africa. Neither of us have studied in our experience the phenomenon of state capture in the South African context, We acknowledge the work of many highly qualified South African authors including individual scholars, prosecutors and public affairs institutes where expertly acquired our conceptual framework to the complex realities of South Africa. We appear before the Commission as authors of the initial analytical studies of state capture and observers of the phenomenon of state capture across many countries over nearly twenty years of research and policy engagement. Thank you.”*

10 **ADV THANDI NORMAN SC**: Thank you. I am going to ask you to start off by defining for the Commission the whole concept. What does state capture mean in your own words?

**DR JOEL HELLMAN**: Thank you very much. So we define state capture very specifically as the efforts of individuals or firms to shape the formation of laws, policies, rules and regulations of the state to their own advantage by providing illicit private benefits for public officials. That’s the definition of state capture that we advanced now nearly twenty years ago in our initial research on this issue. If I may I would like to give some background to how we came to that concept and that definition and how it distinguishes itself from other forms of corruption.

20 So the concept of how it was rooted in our research on the transition from communism to market economies and democratic systems in the former Soviet block including the breakup in the Soviet Union and the fall of the Berlin wall that created a transition process in that region which was a critical political and economic phenomenon globally beginning in the late eighties. The analysis and investigation of those political and economic transitions, we understood that the concept of corruption which played an important role

in those transitions and was a great concern in those transitions had enormous variation across the 27 different countries that were created from the downfall of the Soviet Union and the Soviet block and we tried to develop a better understanding of corruption by trying to unpack the concept of corruption into a more sophisticated, more subtle and more useful set of definitions that would be a guide to policy recommendations to combat corruption more broadly. In that spirit we identified two forms of corruption and state capture was one of them. I want to differentiate state capture from a more common form of corruption that would be very well known to most people who think about the problem of corruption which we termed, administrative corruption. We defined administrative

10 corruption as the attempts by individuals and firms, the author, the implementation of laws, policies, rules and regulations to their benefit through the provisions of illicit private benefits to public officials. What we mean by that of course is that there is a law, there is a rule, there is a regulation of that sets a policy, a standard or principle that everyone must uphold and people and individuals or firms might use bribes or the provisions or the provision of other benefits to public officials in order to get an exception to those laws, rules and regulations to have the implementation of those laws and rules and regulations implemented to them differently than it would be to everyone else.

In contrast, we saw a different form of corruption, one that did not focus on the implementation of laws and rules and regulations but that affected the very formation of

20 the laws, rules and regulations themselves so that the laws, rules and regulations were shaped to the advantage of individuals or firms and they were using their close relationship to politicians and public officials in order to actually shape the legal system and indeed the very nature of the state to their advantage. We saw that as a fundamentally different form of corruption. We believe that that form of corruption had much greater capacity to instill harm on the broader public good than classic forms of

administrative corruption and we saw significant variation in the extent of state capture across the countries of the former Soviet Union and the former Soviet block and we tried to development measurements of those forms of corruption so that we can actually compare and contrast across different countries the nature of state capture and use that as a basis for developing strategies to combat corruption and state capture.

**ADV THANDI NORMAN SC**: Yes, thank you, I like the fact that in paragraph 7 of your statement, you make reference to petty corruption and you make an example about a bribe to a public official, a traffic officer. If you look at state capture in a broader sense, how does that petty corruption contribute to that?

- 10 **DR JOEL HELLMAN**: Well, to the extent that corruption was differentiated in the past before the work that Dr Kaufmann and I did, it was often differentiated into two categories, petty corruption and grand corruption. Those are two terms you might be familiar with and the broader public might be familiar with. Those two terms usually refer to the size of the bribe so petty corruption is small corruption, everyday for someone once referred to it as everyday forms of corruption. The things that the common man and woman might face in their daily lives and might pay small bribes to whomever it is impacting them in order to have some rule changed to their benefit or to avoid some penalty and grand corruption was just seen as much higher levels of bribes at higher levels of the political system so the key distinction was low levels of the political system,
- 20 small bribes versus high levels of the political system and high bribes. We felt that that distinction was not really helping us understand some of the complex realities of corruption and how they work in systems and what the implications of that were. So for us the relevance is not the size of the bribe or where it is catering the political system, for us, the distinguishing feature is whether or not the bribe is paid at any part of the political

system in order to avoid an existing law or regulation and how it is implemented to you or whether it something that's done to shape that law in your advantage.

Now, having said that, these small forms of corruption, petty forms of corruption, administrative forms of corruption, we do feel that that creates a broader canvas of which the public begins to see corruption as a normal part of the political and economic system and to the extent that that administrative corruption or petty corruption is widespread, we feel that it does create a foundation which essentially creates an openness or even an acceptance of forms of corruption as that is how business is done in our country and I think that creates a very pernicious atmosphere for all forms of corruption to take place so  
10 there is a link between these forms of corruption that I think is important to understand.

**DR DANIEL KAUFMANN:** If I can compliment, Ms Norman, just very briefly. These are important comments and two aspects just mentioned by Dr Hellman. One is the fact in heavy corruption as was just said, [indistinct] in general, it's usual one aspect of administrative corruption, however, administrative corruption can also be not petty at all and large bribes can be associated with the implementation of the law or contracts and basically the corruption that happens while this is being implemented as opposed to shaping the laws, the policies and the regulations which is we are labelling state capture. Second, in as just summarised and as now our statement in the earlier part of our statement, the focus was earlier on in the source of the game in terms of the law  
20 responses in relation how they were captured, how they were shaved by this so-called at the time, it was called [indistinct] but that ought not rule out and we expand it a bit later that this shaping and effecting and their rules of the game also implies weighing in into the control and allocation over public finance and over public assets so take for instance the case of procurement and contracts. It could be that in some cases the whole system has been capture, has been shaped to benefit the few or it could be that they are bribed



and could be large, they just relate to the implementation of their contracts. So just to clarify that the shaping of the rules of the game while we mention all the time laws, policies and regulation, it can also be extended the concept over the control and allocation of public assets and public finance, that's including the tax system, our expenditures are allocated and so on and it varies from country to country which one is more prevalent.

**ADV THANDI NORMAN SC**: Yes, and that's what you deal with from paragraphs 9 up to 13 which you regard as regulatory state capture, am I correct?

**DR DANIEL KAUFMANN**: Yes.

10 **ADV THANDI NORMAN SC**: And then, in paragraph 14 of your statement, you categorise state capture as a form of corruption because of the nature of the distortion of the state's assets or the state itself, the laws and everything else, so I want to understand, I guess it is easier for one to identify state capture when you are dealing with implementation as Dr Kaufmann has mentioned procurement, because you are looking whether or not policies were followed. But how do you then identify state capture where the laws, the regulations, the policies, are being shaped to the advantage of the corruptor?

**DR JOEL HELLMAN**: Yeah, that is a very good question and we look at a few different aspects of this question. So first of all, state capture is really about violating the laws by  
20 which groups try to influence the policymaking process so every country has laws related to what enables groups to provide influence, to try to influence the political process and state capture at root is a violence of any country's existing legal framework that regulates how actors try to influence the political process. So one could imagine for example, explicit bribes to law makers to break laws in the advantage of particular individuals, firms

or groups. One could imagine a violation of political party financing rules in order to influence how the political party supports particular rules, laws and regulations to the advantage of groups. One could also imagine for example even more subtle forms in which not a direct bribe is paid but an implicit offer of when the public official steps down from office, they will have a position in a firm that gains from their influence on laws, rules or regulations what is known as a revolving door between the public and the private sector. So there are many forms in which individuals and group try to influence the policy process. There are laws in place in each country that shape how that process should work and we see violations of those laws and principles to that the advantage of

10 particular firms, groups or individuals that have an impact on how those rules and regulations are form. We also want to emphasis that the implications of state capture versus other forms of corruption are qualitatively different because if you think about a bribe that is paid just to alter the implementation of a law, that now actually creates a certain number of pressures or problems but it is really about an exception to an existing law. Much more serious is if those advantages to particular firms, groups or individuals are essentially built into the very structure or formation of that law which we believe has the potential to cause much greater harm to the overall public good because, of course as you know, laws are generated to try to achieve the best results for the broadest common good. If those laws are shaped to the benefit of individual firms or individual

20 groups, they could have significant pernicious influence on the public at large and actually we collected evidence to that case to show that in the former Soviet Union, in those countries where state capture was significant, we found that there were firms engaging in state capture that had extraordinary financial advantages while all other firms were growing at much lower rates. We also found that there were significant consequences for the overall success of their economic reform programmes from state capture that

benefitted individual firms but hurt every or other firms in the country that were not enabled to have the some kind of influences these powerful firms that were able to engage in state capture.

**DR DANIEL KAUFMANN**: If I can complement again, this was the case of course in those countries in transition, the former Soviet Union which were labelled as highly captured versus quite a number of particularly from Eastern Europe that are now part of the new Europe which were not subjected to such high capture or were low captured, you know, terminology and in fact they transited to market well and they are these firms captured by the captured firms, they had bad benefits so they only benefit privately in the  
10 high capturing environment at a huge cost to their whole economy. As you know Ms Norman, the rest may not know, in preparing for this we have agreed that they will also have the opportunity and honour of being before you in person in mid September to follow up and do things. I would be prepared to discussing some detail in this interest, the emblematic case nowadays in Latin America of the scandal “colabagato” or car wash related to Brazilian’s largest state on company in all and the constraints of a conglomerate of Odebrecht which had implications for all of Latin America, not just for Brazil but in short and related to your first question regarding contracts, sub-contracting and procurement, that’s an emblematic case study of how their whole system of procurements are contracted was rigged from the very beginning and the rules of  
20 application of all those contracts were rigged in the benefit of the few potentates in the construction industry and I can go into much more detail. It is something that has been labelled and you showed a video earlier on, perhaps when I am South Africa with you, we can show snippets of an excellent series that has been issued from Brazil that has created a lot of interest in Latin America and others which is called “O mecanismo” in Portuguese or “the mechanism” in English where they show how this mechanism which is

essentially a mechanism of state capture has worked out. So there are cases in other places that could be of interest. Brazil is one and the other countries which I will be prepared to discuss in more detail.

**ADV THANDI NORMAN SC**: Yes, maybe whilst you are mentioning the countries Dr Kaufmann, maybe you could just give us just an example of what happened in Peru because this question was put to one of the witnesses yesterday about the Peruvian state capture where it started with the head of state and then the media. So have you also investigated some of cases that would have experienced state capture in that format?

**DR DANIEL KAUFMANN**: Are we prepared of course to discuss that in detail also when  
10 we follow up and where there in Peru has been a very interesting case. It's another country that has had its very important transitions and that's something we had stressed from the very beginning with the work with Joel Hellman about the particular vulnerabilities and aspects of countries in transition. Of course we started the work with the former Soviet Union countries which was an remarkable historic transition for the world from the late 80's onward but that's not unique to only the former Soviet Union. Other countries have been in transition. It's for you to decide the case of South Africa, of course apartheid and so on but in the Latin American cases which of course I come from that part of the world, being from Chilli, there have been a number of very important transitions and in that transition in Peru, the whole different form of state capture have  
20 evolved significantly as well. From a very collusive type of state capture during the late 90's when President Fujimori with his Chief of Intelligence, Montesinos, engaged on a very particular form of corruption with part of the media and not only the enterprise sector, there was also many other important sectors involved, there has been involvement also of different Mafias and so on to more subtle forms of capture over time. The fact is that virtually every President, even before Fujimori and subsequently, had been subject to

legal processes in one for or another and one recently had to leave his post, President Kuczynski, due to the scandal that was related to the Brazil Odebrecht scandal “colabagato” which I just mentioned and related to that and that’s the type of thing that I can provide much more detail that happened and that illustrate that these countries on transition and their fragility and ability regarding to state capture is there, not only in the former Soviet Union but in other parts of the world and it does change over time to take different forms, different characteristics but to finish with that and related to the point made that we did do that research in the former Soviet Union about the cost, the enormity of the cost of state capture, by now and recently, I mean part due to these cases in Latin

10 America and Brazil, large international organisations like the International Monetary Fund or we may have in the past have been very careful of not weighing in on those issues. Nowadays, these issues of capture and corruption and part and parcel of the work because they consider it as I call it, macro critical in the sense that it has a huge cost from a macro economic standpoint aside from the social and other cost where discussed which is different than traditional administrative corruption that we were discussing before which is also costly and can effect the issue of state capture but it was never regarded by any of these organisations as macro critical.

**ADV THANDI NORMAN SC:** Thank you and then you deal in paragraph 21 going forward with some of the empirical evidence that you had in relation to some of the

20 countries where you had conducted research but what I find interesting is in paragraph 21, at the bottom of that paragraph where you believe that in order for any country to try and at least minimise state capture, that country must boost competitiveness in its economy. Can you just elaborate on that?

**DR DANIEL KAUFMANN:** I just started abated them to Joel because it is also related to the latter section of our statement which is what to do about which is what to do about

that so we are getting into the concrete aspects and of course experts and their corruption on governments typically and historically who have always liked to have hundreds of measures with [indistinct] and so on but it is also critical to prioritise and after ourselves what are, excuse me for the expression, the elephants in the room, the most important aspect and we found in our own research when we asked the data which we collated. What does this relate to? Countries that have high capture, what characteristics are they related to in the social economic political literature and the data that we have from other sources as opposed to countries which are not subject to high capture, low capture and we found very potent link between those countries that had very low  
10 competition or by contestability in the political sense it was both autocratic and not only autocratic countries but those that had few political parties and without competition and so on as well as no levels of economic competition without the ability of having a level planned shield for a medium and high level enterpriser without sufficient liberalisation and openness of the economy. Those two factors and political openness and the economic openness were absolutely critical. Within the political openness it is not only about the formal political sense, the extent of voice and democratic accountability in a country and when we relate to it a variable that totally separately we have developed regarding both and democratic accountability was seen as affecting very significantly the level of capture or lack thereof and there I would like to mention the very important aspect which place in  
20 those variables, in that research but also in our experience independent media as part of thriving civic space, voice and demographically accountability of those country that places where there is a thriving media, there is civic space and uncivil liberties, not only political competition but civil policy having much better chance of being able to address over time the challenge of state capture so in essence it is a political and civil liberties contestability and openness as well as on the economic realm.

**DR JOEL HELLMAN**: If I could just add to that. I put it even in very simple terms. I think that there is not a single firm in any country in the world that wouldn't want to try to influence the rules of the economic game they invented. That is not a surprising thing and it's a motivation that most firm have. If you are able to shape the rules of the game and the plans to advantage your firm, you are going to try to do it. What prevents that from happening? Well, first there are laws, rules and regulations that countries have that try to influence and limit the impact of any individual firm or individual person or group and prevent them from using illegal forms to shape those rules but also there is a lot of competition across the many firms in any individual country that limits the ability or tries

10 [indistinct] the ability of politicians to favour one firm or one group over others and the more contestability there is in the political system, the more avenues there are for groups and firm and individuals, the more opportunities there are, not only for firms but for NGO's and for the media and for other groups to influence the political process of shaping laws and rules and regulations. It will limit the ability of any one firm or any one group on to shape those laws in their advantage so our thinking is essentially, the more contestability there is in the system, the more opportunities there are for different individuals, firms and groups to give inputs into the political process, the more regulation there is to ensure that whatever inputs are given or done transparently and through proper public channels and the more transparency and openness there is in the whole process, the more difficult, if

20 not impossible it is for any single individual firm or group to shape a law or rule or regulation that impacts the entire country to thereon advantage at the expense of the whole country.

**ADV THANDI NORMAN SC**: Thank you, and then in paragraph 31 of the statement.

**CHAIRPERSON**: Just before you proceed, from your definition of state capture, it seems that it is essential that the captors or potential captors should be seeking to change the laws and policies of government to suit them. Am I correct?

**DR JOEL HELLMAN**: Yes you are Deputy Chief Justice.

**CHAIRPERSON**: With the result that if they succeed in having the laws and policies changed, then their conduct which otherwise would have been in breach of the law, had the law not been changed, would somehow be seen to be lawful but there is underneath it a motive that has nothing to do with public interest and has everything to do with illegality, is that right?

- 10 **DR JOEL HELLMAN**: Yes, and you raise I think a very important issue because we are talking about the efforts to change laws and rules and regulations and as you say, if you are successful in changing the laws and rules and regulations to your benefit, then you may create a legal environment that makes legal the activities that you are trying to do to your particular benefit. So I think that is an important point that they can ultimately then be entirely legal forms of influence that have been shaped by these, you know, pernicious intents to reshape the rules and laws and regulations of the state to the advantage. We do think and we raise the fact that underlying the initial sin if you will, the original sin is often based on some form of illegal activity in the sense that it is using illicit means of some form of insolence that process, it's often in contrast or contravention to the
- 20 country's existing laws on how political influence should be channelled. Most countries have laws about campaign finance, most countries have laws about the provision of individual benefits deprived of politicians, most countries have laws about conflict of interest between politicians and private sector and often the capture transaction will violate those existing laws or principles but I will say that in the case of the transition in



the former Soviet Union, many of those laws themselves were not formulated because they were in the early stages of the transition so precisely your point, they were creating laws, rules and regulations that advantaged them and then made their activities legal when they were ultimately about trying to distort the shape of the state to their advantage.

**DR DANIEL KAUFMANN:** In fact, if I can add, this is such an important point and it is then elaborated a bit more in our statement but also we will be prepared to follow up when in front of you in person. In fact, as a follow up in the extinction of the work of state capture in the former Soviet Union and having recognised the very aspect you just mentioned Mr Deputy Chief Justice, we worked somewhat but we laboured and in fact it's

10 part of the record and it is in a paper called Legal Corruption and that's obviously a complexed notion which may seem us countering intuitive for the legal profession but is exactly in the vein you are discussing. It was just by Professor Hellman, it's really important to recognise that even the so-called legal corruption may have gotten there to be legal because of extra legal or illegal activities in bribing or shaping those laws so it may have been legal. Conversely, on the outside, on the constructive side, there are very important implications for what to do in the future in where that has taken place because if one recognises that one maybe consider as legal or cause a legal in a common context in one country, that is in itself meaning ethical, that doesn't necessarily mean indeed they lead us and it can become illegal. In some sense, what happened after the capture,

20 the state capture of Tastad in the United States of a Wall Street crisis, initiative crisis ten years ago that was this whole set of irregulating under the Obama administration in the United States which I can discuss also further before you in September that led to the stock hold Dodd-Frank a set of reforms of financial [indistinct] reform which essentially in a number of them made illegal what before was illegal and because of that many of the arguments of the defence and so well that was not illegal but then it become illegal so

what is legal at the moment in time in any country as well as it means it is ethical and doesn't necessarily mean it has to stay that way. You would know much better than this since you are the expert in a legal profession but there is also the grey area of extra legality. They do the legal and they are legal and is taking advantage and specially in countries of transition or weak institutions like we experience Russia, Ukraine and other places where one takes advantage of loopholes combined with discretion at that place. The difference between tax evasion and tax avoidance for instance in many cases they have breached that so there is a whole much more deeper and complex discussion we can go into it but it's backstop the very important point that you have asked about.

10 **ADV THANDI NORMAN SC**: Thank you. Dr Kaufmann, you have dealt with the issue of certain firms been favoured in all these state capture system that certain firms would be favoured over other firms, you dealt with that but the head of legal, Mr Paul Pretorius would like you to explain further as to the impact of that over the small and medium economies or enterprises that would be in that particular country. I know you had mentioned the issue that it becomes a very costly, at the end of the day becomes costly to the economy of the country but he would like you to just specify on what does it do to small and medium size enterprises.

**DR DANIEL KAUFMANN**: Okay in brief and backstopping but in the state manner and what was said earlier, I am very focused on our research that we did to [indistinct]  
 20 Professor Hellman. I have already hinted in the statement and we found that in countries where there was a subject of high capture. Yes, the captor firms benefitted significantly as what said however, those captors by definition so they lead and it's very much a minority. The rest majority are not firms that are able or have the financial political clout to capture. So the vast majority was 90, 95 or 98% when [indistinct]. Those countries we found that the private sector grew at only half their way though their firms who only at half

the rate that they grew in a more robust market economy that was not subject to capture so that begins to suggest the enormity cost for those firms that happened in a variety of forms, essentially they don't have the same access obviously in a [indistinct] to cultures, they don't have the same access to resources, to state subsidies, they are given to only the very well connected firms and so on and through that mechanism then they are however we also found as we also hinted but not only they suffer significantly in terms of our ability to have revenue profits and grow but also in their protection of their own property rights. Their captor firms were able to in some sense [indistinct] facts, they are a protection of property through their own property rights and secure them through

10 essentially through capture at the expense of the security or property right for everybody else, for the medium and small firms the one's that were not captured. There was a difference of 5/1 interns of the extent of the protection of property rights between the captor from a [indistinct] so that's another very significant implication for the medium and small scale. Now what has become also quite evident in the cases in Latin-America which I have been able to discuss further with you is what I mentioned earlier, is the macro economic implications and macro criticality. Some of these countries and Brazil is a emblematic case but others in Latin-America are now in a recession as a result of this state capture events that have taken place. The cost for the smaller entrepreneurs and in view of the economy [indistinct] is enormous and their ability to bear that brunt is much

20 less and obviously and that elite that has been able to capture so there are a number of dimensions by which this becomes American economists, we call it a capture has become an enormous tax on the medium and smaller entrepreneurs, it's enormous in tax and their ability to innovate enter the market.

**DR JOEL HELLMAN**: If I can just add to that, what originally prompted this research as we mentioned earlier in our statement was the transition process in the former Soviet

Union and the former Soviet block and it is interesting to look at that process now with 20 years of hindsight. 27 Countries started at a very similar point in time to try to transform their economies and their political systems from a Soviet style planned economy to a market economy and move towards a more open and competitive political system. There has been tremendous variation and the success of those countries that has had tremendous implications for the wellbeing of their population and our argument and the empirical analysis that we have done suggest that the extent of state capture in those countries played a very significant role in determining the ultimate success of their transition process. Countries that engage heavily in state capture often got stuck kind of

10 in the middle of their transitions with the very deformed set of economic property rights and principles on regulating the market economy that produce enormous advantages, staggering gains to individual firms but harmed all other firms in the economy and harm their overall progress in their transition to a market economy which affected employment rates, growth rates and security of property rights. So the harm that came from state capture was very evident in these trajectories of these 27 countries over the last 20 years or so and we think understanding the full implications of the harm and the way it shaped their economies and political systems is really key to understanding of the costs they capture.

**ADV THANDI NORMAN SC**: You are identifying paragraph 31 that as far as you

20 concerned, state capture is a product of systemic failure of governance but you don't regard it as a criminal issue but I must tell you that my learned friend, Ms Gcabashe is not happy with that because she says well, as far as she is concerned everybody must be criminally prosecuted who is involved in state capture. What is your comment to that?

**DR JOEL HELLMAN**: Well, let me start and I would hope that that is not an interpretation that one would take from our statement in paragraph 31. As we said, first of all, that the

very nature of the state capture transaction begins with some illicit provision of benefits to public officials which is based on, depending upon the laws of the country, an illegal transaction of some sort that violates either the country's code of their interest laws, financing laws, provision of private benefits of public officials of other forms that regulate the way in which individuals or firms out engage with public officials so there are at root of the state capture transaction, there are acts that depending upon the existing laws of the country are one's that could be considered criminal and of course that's for each country to examine based on its laws regulating the process of political influence to there is first of all something that could potentially be prosecuted depending on what the [indistinct] laws are. The other thing that we talk very much about and is relevant to what we were just discussing that the harm created by state capture and in a legal process one often looks at both the illegality of the act and then the consequences and the harm produced from that act, the harm produced from state capture is almost fundamentally different from the harm that we normally see in administrative corruption transactions which gives certain advantages to individual firms and may have some implications for the economy at large, but we feel that in state capture, the potential harm to the public at large, is much much more sustainable of the harm created from this illegal action, is very very substantial.

**DR DANIEL KAUFMANN:** If I can complement because that is a very important clarification. The fact that we did mention in our statement in that we do not necessarily treat this as a criminal issue. First the focus should be on the notion of treatment because our approach is to start first and foremost looking at the systemic and institutional weaknesses in a country and recognise that it is paramount to address those as well but that doesn't mean in the act related to the shaping of its laws, regulations and policies, illegal acts may not have been committed. That's for you to determine. The other aspect that is important to underscore, we don't go into that in detail in our statement because it

is much more in your realm of expertise but we would be happy to follow up in a couple of weeks, is a distinction between, one distinction is legal and illegal which we have just discussed thanks to the very good question of the Deputy Chief Minister but the other is a distinction between what is illegal and what is considered criminal. We use a word of criminality in a very strict sense but some of these may be illegal but nonetheless it is a [indistinct] subject to criminal proceedings but certain proceedings still being considered illegal and there may be various and immediate consequences as well. That's for you to determine the distinction. We just wanted to ensure that this is nothing purely as a criminal issue but only that is not being ruled out and it depends on each case and that's

10 for you to determine in which case it is criminal, in which case it may be illegal in the civil sense but not in the criminal liable in which case it may have been legal and the loss of that time but unethical I mean proper for other reasons, that's what we are trying to say.

**ADV THANDI NORMAN SC:** Thank you for that Dr Kaufmann. You provide some solutions starting with what I have already dealt with now in paragraph 31 and then you move on which you have covered everything that you have said in paragraphs 31 and 32 and you did touch of course on the political and economic contestability because you dealt with the issue of competitiveness and the economy but could you just deal briefly with political finance as to how does that contribute to state capture and how can it be addressed?

20 **DR JOEL HELLMAN:** I am happy to take that on. I just want to make one last comment regarding the previous interaction and then go on to the political finance, I think it is important. One of the reasons why in our statement we consistently talk about the institutional and governance issues that create the vulnerability of the state capture is that we want to emphasise that one may prosecute individuals that are engaged in state capture and hold them accountable on both without tackling the institutional deficiencies

that create the opportunities to engage in state capture, there will be more who will come after that individual firm or groups that you prosecute. So it is not just a prosecution issue, it is about underlying institutional and governance deficiencies that create the opportunities to engage in state capture which we think are critical to understanding and that's why we made the emphasis in our statement.

Now, underlying the entire we believe, state capture phenomenon is the critical issue of political financing because we recognise that politicians need to raise funds to finance their political campaigns and to build support networks. This is common in every country around the world, in all countries, politicians raise money in order to build their campaign  
10 platforms, to strengthen their networks, to strengthen their parties. This is normal phenomenon of political life in every country around the world. There are laws that shape that process and we feel that paying serious attention to the laws that regulate how politics are financed, is absolutely critical to prevent then state capture to reducing the vulnerabilities of state capture. Some countries have very very restrictive rules on how firms can participate in the political process, how much money firms can contribute, what the disclosure rules are for contributing those funds, what types of benefits can be provided or not provided to politicians and public officials in making decisions. Every country has a legal corbies that regulates that interaction between public officials and private actors who seem to lobby or influence their actions and therefore we feel that in  
20 thinking on how to prevent state capture, in trying to tackle the institutional and governance deficiencies that create opportunities to engage in state capture, a critical component is looking seriously and deeply at the way in which political financing is regulated. Some countries provide public financing of elections. Some countries create and restrict the extent to which private individuals can engage in political financing. Other countries just place an enormous aspect on transparency and disclosure so you can

easily trace those donations even if they don't regulate how much those donations are so there are many different ways that countries have chosen to regulate this and we feel that this a really critical set of issues that has not really been looked at as closely as deserves in understanding how to reduce the vulnerability of the state capture.

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

**DR DANIEL KAUFMANN**: And I will be able to elaborate if there is interest on cases from other countries.

**ADV THANDI NORMAN SC**: Yes, when you come back in September, when you come to South Africa rather in September.

10 **DR DANIEL KAUFMANN**: Including my own country that has undergone very interesting reforms in that regard as a result of a Commission that had to do work under recommendations because of a corruption scandal so that is a very interesting paralyse that I have got.

**ADV THANDI NORMAN SC**: Thank you. You have already touched on public procurement and could you just deal briefly with state owned enterprise reform. Maybe before you answer, Mr Chairperson, I realise it is two minutes to four o'clock, will you please allow me to continue beyond four o'clock.

**CHAIRPERSON**: Yes, I think at least the legal team is prepared to stay up to five or thereabout. I am prepared to do so, I am sure my Registrar is prepared to do so.

20 **ADV THANDI NORMAN SC**: I am indebted to you, thank you very much. Could you please then deal briefly with state owned enterprise reform as part of matters that need to be looked into in order to address the whole issue of state capture?



**DR DANIEL KAUFMANN**: I am definitely briefly, that is a complex topic which can elaborate further later but it's incredibly important to recognise the unfortunately their all that state owned enterprises have to perform in the context of transition places capture and it varies from country to country in what role that has taken place. To what extent it essentially has been a [indistinct] for the allocation of resources and enabling essentially the captor in the private sector and the politician to access what some have considered an automatic teller machine and it's considered [indistinct] context sees the state owned enterprise of Venezuela this can ensure that but in other cases it has been given a vehicle for the President to enable certain things. There is a distinction between the type

10 of reforms that appear to be necessary in many many countries that apply generally and then the one's that have gone have to be much more specific depending on the context of each country and depending on the sector. A general recommendation do include the corporate governance, the extent to which there should be an independent board, the democratic the heads of state on enterprises are appointed through either committees that are independently appointed, they do respond also to Parliament and not necessarily with excessive inground from the executive and so on. Then the extent of commercialisation of state owned enterprises mimicking the market and how it operates in terms of operations is very important. The distinction that's led state all on the mining sector between being an operator or a regulator, very often that roads are [indistinct]

20 within the same enterprise and that creates distortions and inefficiency. There is set of issues around that that are required. These are incredibly important macro critical actors in an economy often and the case of Brazil with Petrobras illustrates that when it gets to these particular sectoral issues where they can be all sectors, their mining, they extracted the mining sector, the energies is sector. Each enterprise and sectoral issue has to be looked in that particular context and their commendations and [indistinct] comes in, we

have in the statement later on that the sectoral context and understanding what's needed in terms of reforms in the financial sector, they will vary from those that are needed in they extract themselves in mining or in the energy sector just like we have that very clear that the country context, political institution and vary and that's why are not here as experts on South Africa, saying what South Africa needs to do and I will be able to elaborate further on some examples from other countries that have embarked on interesting reforms vis a vis state owned enterprises like in Columbia Eco Petrol and so, those are very interesting reforms in Moammar, Dorma or more insipid ones in Indonesia and so on and then there is an unpragmatic case which in our recent report we just  
10 produced and I say with some pride of our own largest state owned enterprise in Chile which is Codelco in copper mining which comes out rated at the top in terms of its quality of a governance transparency and accountability. Even I had some of the industrialists country state owned enterprises like Statol which now remain as you may know which also comes out highly but there case is that they also [indistinct] and so on which we could showcase from.

**DR JOEL HELLMAN**: Can I also mention one other thing with regards to state owned enterprises which is that the process of privatisation of state owned enterprises is often one of the most significant arenas for state capture to take place and if you go back to the work that we did 20 years on the former Soviet Union, the real prize that the captors were  
20 seeking was the prize of privatisation because of course if you can structure the property rights of significant assets of the state and you could influence how those property rights were distributed, well, you are essentially baking into the very structure of the private market economy advantages so I think one has to not only look at state owned enterprises as they function but importantly the privatisation of state owned enterprise can become this remarkable arena for state capture which will have tremendous

implications for the way the market economy will be structured for the distribution of assets for the unlevelled playing field for the unequal distribution of benefits of the state which can have tremendous implications for a very long period.

**DR DANIEL KAUFMANN**: Sorry to add and interrupt because it is such an important issue worth just mentioned yet. We are not necessarily ensure or interpret that privatisation at all cost are to be avoided. Well we found in our work at the time is that in many cases the cause of the whole game for privatisation were distorted and Russia is a [indistinct] with their own regard it ended up being very capture with the High Court. However and we did the homework throughout the former Soviet Union there were many  
10 cases where it was done right particularly with small enterprises and so on where the mass privatisation did indeed work out. It's the way its done and it's the method and how to avoid capture that matters. Let's face it, from our review and experience from around the world there are some settings where the continuation of existent system of state owned enterprises is unattainable and it is incredibly costly and considering very importantly then non-marginal actions including divestiture and some forms of privatisations on venture marketisation and so is incredibly important but as Dr Hellman said it is really important going to be how this is done rather than interpreting what we are saying is avoiding privatisation altogether from our lessons of experience.

**ADV THANDI NORMAN SC**: You have just dealt with the issue of the extractive factors. I  
20 think in South Africa it's quite important. Those are the sectors that are important in terms of implementing transformative measures. I just want to understand whether you could perhaps just deal with how these transformative measures can in essence or sometimes be exploited to result into state capture instead of actually achieving the very goals that they were intended for?

**DR DANIEL KAUFMANN**: Well that's another very important question Ms Norman that I know that neither you don't have until midnight and even though your [indistinct] you have allowed for rather a few minutes which is very long but this is a critical issue because as to the core of the work that we have done and the message in our statement and beyond that essentially there is no escape to begin to tackle state capture but to address first very honestly in terms of a diagnostic which has to be done within the country with the experts of the country as to what are the main governance and institutional weaknesses in which sectors and in which areas are most weak. Usually when in transition these capture effects, many of these sectors and dimensions and whether it's procurement, it's public  
10 finance, it's a tax system and the judiciary but there are some differences some manage to remain more independent are stronger than others, it's like that in the case of South Africa the judiciary system is a window of opportunity where to that can help in the next stage to mitigate state capture. In other countries well the judiciary has been totally captured, that's not the place to start, it will work now because is a context in transition, this evolution, this so-called policy and governance reforms can go in different directions and it can go in the negative and also capture directions so one has to be very clear in terms of what constitutes progress in addressing and trithing state capture versus what would only perpetuate and in that context the issue that was discussed earlier, it's critical. Institutional deficiencies are the core of fighting corruption. Sorry quite in capture, in state  
20 capture and one has to address the institution's deficiency because the focus that we would have given is a loss on preventative measures, prevention. That doesn't mean and I know how much importance some of you give to the enforcement and persecutorial issues. Let's face it, having a legal system that is not captured and therefore it does not suffer from impunity, it's crucial also for prevention. Just having transparency alone or having some reforms of the procurement roles and having some more accountability, civil

society and the media is absolutely crucial but in a system there would be full of impunity, that also should be considered as part of an institutionalised overall aspect so we ought not be construed as suggesting that there is such a total divide between the legal and judiciary issues regarding prosecution thus is the preventative issue because it has to be system where there is an assumption on an anarchy of having been engaged on these undue influence on state capture.

**ADV THANDI NORMAN SC:** Thank you, you have just dealt slightly with conflicts of interest and transparency but I like your quotation in paragraph 49 where you say sunlight is the best disinfectant. Could you just briefly in a few minutes just tell us how you view  
10 transparency in all of this on everything actually?

**DR DANIEL KAUFMANN:** In brief, transparency is absolute crucial, it's absolutely necessary but I will say more about the fact that in itself is not sufficient for the reason that I just started mentioning as was mentioned before in a system where everything is disclosed, everything that really matter is disclosed regarding contrast, enforcements of laws, how the judiciary is making the decisions. I mean it is very much appreciated that by now we understand hearings are happening in a totally transparent form so there can be full accountability. The citizens and the media civil society play and actually key role being able to use these disclosures. So disclosures have to be mandated and are crucial on the financial aspects, on political transparency and disclosure aspects like all kinds of  
20 issues regarding where there are conflicts of interest, assets in ownership, in enterprises and so on and that's why this whole movement recently around the world following the Panama papers and their disclosure towards beneficiary ownership disclosures an example of the type of initiative that make eminent sense on guard because one marries and the media and fin times and academics can look essentially as to what's happening in terms of the links between politicians and their enterprise sector how are roads been

made in Parliament, those that vote in Parliament, what kind of political finance, how investigating company finances and from whom, total disclosure on that and that seems our countries are very very transparent and then figure out who are the real owners of these enterprises and if these are conflicts of interest in that context is crucial. Now having said that, transparency doesn't work in settings where there is insufficient accountability in that civil society and endures in the media are not able to operate totally freely. We have recently had to deal in the case of EIPI and certainly the difference policy initiative we suspended the country of Azerbaijan for those reasons, there is no accountability so they disclose reports but if a journalist tries to use it in a critical fashion  
 10 their [indistinct] so accountability with civic space being enforced is critical as well as a working judiciary as mentioned where there cannot be impunity and sanction that state place. So transparency is absolutely critical, it's necessary but in itself and alone would not suffice.

**ADV THANDI NORMAN SC**: So in other words, from what you have told us today, you can have where there are no proper safeguards, checks and balances, you can actually have a state capture system existing within a constitutional state?

**DR JOEL HELLMAN**: That's correct.

**ADV THANDI NORMAN SC**: Yes, could you then just.

**DR DANIEL KAUFMANN**: We can tell of the other case of the Emirates States for  
 20 instance and what has happened with their campaign finance laws and how the CAT system was reformed overnight in a non transparent fashion at the end of 2017 so there are case studies in very advanced economies in their context that we can go further.

**ADV THANDI NORMAN SC**: I have not taken you through your statement, it is quite long and I did that for a reason. As we all know, Dr Kaufmann, you would be coming back for

more questioning on your statements because we cannot do that now on video conferencing, it has to be done with you currently here present at the hearing. So for that reason then, whatever questions that the Chairperson may allow in future, those persons would want to put questions to you would have to be present in one room with you. So for that reason then I am going to ask you to just deal with your concluding remarks in your statement.

**DR DANIEL KAUFMANN**: Dr Hellman.

**DR JOEL HELLMAN**: Sure, once again, thank you very much. We appreciate this opportunity to meet with the Commission. As I said earlier in the preamble, we do  
10 recognise how important the work of the Commission is, obviously not only for South Africa but in setting a model for other countries to seriously investigate the phenomenon of state capture and how it relates and impacts the countries overall, growth and development so we really do feel this is an important milestone. The work of this Commission is an important milestone. We have emphasised in both our statements here to this audience as well as in our written statement. We have tried to recognise that though obviously there are corrupt individuals that engage in state capture and I know that your job is to try to determine the extent of the activities of any individuals or particular individuals. We have been emphasising the institutional and governance deficiencies that create the vulnerability to state capture and we feel that adequately  
20 addressing those vulnerabilities, undertaking serious institutional and governance reforms, is really the best set of actions that will combat state capture, prevent state capture and overall improve economic environment for the largest number of people possible. So we have tried to list out the experience of countries around the world that have engaged in reforms to reduce the vulnerabilities to state capture and tried to give a menu for you to consider as you think through those deeper institutional issues that have

to be addressed. So that was the purpose of our statement. We hope that by engaging in the experience of other countries around the world, South Africa recognises that this a problem that every country faces at every level of development. You know in the course of our conversation here, we have talked about the United States, we have talked about Peru, we have talked about Azerbaijan, Russia, Brazil, this is a problem that countries all over the world are facing and yet few of them are investigating it as systematically as you are so that's why we are so pleased to be part of your thinking, your analysis and your deliberations.

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

- 10 **DR DANIEL KAUFMANN**: Can I just add Deputy Minister briefly. It's because I want to commend what you all doing and that's what we do in the statement too because this is likely to be an historical opportunity not to just looking at the past and I will reading between the lines that we were doing and we appreciate that we have been invited but what can be done about it and can something be done and to address such a difficult issue. Yes, this is very difficult however as famously said, "yes, it can be done" and of course it's hard work and what I loved of leadership and audacity in the words of the same President but yes, this can be done and this is one of the reasons we focused so much on the institutional and governance and to see there are some aspects of that because they are critical in looking ahead in a country that has a resolve to do something
- 20 about it. As Dr Hellman said and from my side it's absolutely the case of many other country cases but you are unique in having already frankly recognised that this is not normal corruption, this is a very different type and it's a state capture and we appreciate that we have been invited to contribute to that. In other countries, it's very sensitive still to recognise it the way that you are doing it and because of that, the likelihood of progress is different because implications of what needs to be done in the next stage as we have



mentioned are very different if one recognises this is state capture, it's a different type of the typically administrating corruption and there are for where we may need to do something different than more audacious a typical case of bribery. Thank you.

**CHAIRPERSON**: Thank you very much Dr Hellman and Dr Kaufmann. It is clear from what you have told us that you have done very extensive research indeed in regard to issues of corruption and state capture. I have a number of questions but I think that since Dr Kaufmann or Dr Hellman would be coming, one of you will be coming soon to testify here. I think that would be the time to engage further and ask questions but I have no doubt that we are going to benefit immensely from your experiences and research. Thank  
10 you very much.

**ADV THANDI NORMAN SC**: Thank you very much Mr Chairman. Then that concludes the evidence from my side. I don't know if Mr Pretorius has something to say?

**CHAIRPERSON**: I think I already announced earlier arrangements of plans for Monday. We thank the legal team for making arrangements for these two experts to talk to us about corruption and state capture in the context of the research that they have done over a long period of time. They will come back or one of them will come and we will have a chance to ask questions so we are going to adjourn now until 10.00 am on Monday and I did indicate earlier on what will happen on Monday. One, I will deal with the issue  
20 directions or give indications as to what will happen to applications that have been filed by lawyers representing implicating persons who wish to have permission to cross-examine the witnesses and we will then continue with the evidence of Ms Williams so that we can finish it. We adjourn.