

COMMISSION OF INQUIRY OF THE PUBLIC INVESTMENT CORPORATION

HELD AT

TSHWANE, PRETORIA

10

25 FEBRUARY 2019

DAY 7

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PROCEEDINGS HELD ON 25 FEBRUARY 2019

CHAIRPERSON: Good morning everybody. This is a continuation of the hearings of the commission into the allegations of impropriety in the Public Investment Corporation after a almost three weeks break, this is the resumption of those hearings. Yes Mr Lubbe? May I just before you start Adv Lubbe, repeat our call or invitation to those who might or may have information relevant to our terms of reference to please come forward there is still time and to contact either the secretary of the Commission or the evidence leader, Adv Lubbe, we are extending that invitation again. Thank you Mr Lubbe?

- 10 **ADV JANNIE LUBBE SC:** Good morning Mr Commissioner and members, welcome back. We are ready to proceed with the evidence and the next witness is the Deputy Minister of Finance who will be testifying in this capacity as the chairperson of the PIC board.

CHAIRPERSON: Your full names please?

MR MONDLI GUNGUBELE: Mondli Gungubele.

CHAIRPERSON: And have you got any objection to taking the prescribed oath?

MR MONDLI GUNGUBELE: No.

CHAIRPERSON: If not, do you consider the oath to be binding on your conscience?

MR MONDLI GUNGUBELE: Yes.

- 20 **CHAIRPERSON:** Yes, do you then swear that the evidence you are about to give will be the truth, the whole truth and nothing but the truth, raise your right hand and say so help me God.

MR MONDLI GUNGUBELE: So help me God.

CHAIRPERSON: Thank you.

ADV JANNIE LUBBE SC: Thank you Mr Commissioner can we have the same

arrangement as last time that I can be seated?

CHAIRPERSON: Yes you may be seated.

ADV JANNIE LUBBE SC: Just for the record Mr Commissioner, the Deputy Minister I will address him during these proceedings as Chair, it makes it easier. He has volunteered to come to the Commission to testify it was not necessary to issue a subpoena and I can start his evidence by asking him Mr Gungubele will you please start by telling the Commission who Mondli Gungubele is?

MR MONDLI GUNGUBELE: Thank you Adv Lubbe, thanks Mr Commissioner. May I start by saying on the 26th February, before I go there my name is Mondli Gungubele
10 born on the 1st February 1957 from the district of Ngcobo in the Eastern Cape, hereby having being appointed on the 26th February 2018 by the President to be a Deputy Minister in the Republic of South Africa. Prior to that, I have been a member of the National Assembly since 2016; I had been one before 2009 until I had to go to become a mayor in Ekurhuleni having served in the Public Enterprises and Communication Portfolio Committees. I have also served as a mayor of Ekurhuleni Municipality and a member of the Executive for different portfolios in the Gauteng Province. I hold a BCom Law Degree and a National Diploma in Nursing.

CHAIRPERSON: Which degree did you say?

MR MONDLI GUNGUBELE: BCom Law Sir.

20 **ADV JANNIE LUBBE SC:** Mr Commissioner, members may I just interrupt here, during the late hours of last night there was a statement prepared dealing with the questions that I asked the Chair to deal with it will be made available to the Commission after the evidence so it is not necessary to make detailed notes it will be covered in the statement.

CHAIRPERSON: Yes.

ADV JANNIE LUBBE SC: Okay can you remember when you were appointed as the Chair of the PIC?

MR MONDLI GUNGUBELE: Yes I remember it was June, it was May, my apology.

ADV JANNIE LUBBE SC: May 2018?

MR MONDLI GUNGUBELE: Yes May 2018.

ADV JANNIE LUBBE SC: And can you in general just tell the Commission your experience arriving at this institution the Public Investment Corporation as the new Chair, what was your experience in general?

MR MONDLI GUNGUBELE: I consider it dramatic in the sense that my first day of
10 arrival it's when we had to carry a responsibility in other words I had no opportunity to introduce myself to the members who am I, what's my attitude to life, the first meeting we had to implement the Minister's directive of the letter of the 18th where he was asking the board to give him a report regarding the article that came out of the City Press with regard to the allegations against the former CEO Dr Matjila. This my first meeting was specifically for that item nothing else, I consider it dramatic in that fashion.

ADV JANNIE LUBBE SC: Now can you just deal with what happened after this letter?

MR MONDLI GUNGUBELE: Thank you Sir, what happened after this letter is that we had to compile, because the Minister wanted to know the entire background with regard to how the board dealt with the allegations which came from an e-mail of the unknown
20 around September 2017 and how the board dealt with that and the Minister asking the backup documents regarding all the activities that were carried. I sat with the board those were compiled and were submitted to the Minister.

ADV JANNIE LUBBE SC: Just for the record ... (intervention)

CHAIRPERSON: Can I just ask who was the Minister at the time?

MR MONDLI GUNGUBELE: It was Minister Nhlanhla Nene Mr Commissioner.

ADV JANNIE LUBBE SC: Thank you Mr Commissioner that was the question I was intending to ask. Yes can you proceed please?

MR MONDLI GUNGUBELE: When we submitted that report to the Minister already there were a series of public calls in particular by Minister Holomisa on the removal of the, on the suspension of the CEO for the investigations around the said allegation. At the same time I was called, I think it was on the 5th June by the Portfolio Committee to explain regarding what the board was doing in as far as those allegations were concerned. It is at that meeting where we informed the committee that we had submitted the report regarding this matter to the Minister and we were awaiting the next
10 directive by the Minister.

ADV JANNIE LUBBE SC: Just to assist the meeting you referred to is that the Special Committee on Finance and the meeting was on the 5th June 2018?

MR MONDLI GUNGUBELE: Thank you Sir that's true.

CHAIRPERSON: Can you just give us that date again please?

ADV JANNIE LUBBE SC: 5 June 2018 Mr Commissioner.

CHAIRPERSON: 5 June 2018 thank you.

ADV JANNIE LUBBE SC: Yes, please proceed, what happened thereafter?

MR MONDLI GUNGUBELE: In the Portfolio Committee the Portfolio Committee wanted to know where we were with regard to these allegations. It is at that point that
20 we briefed them about the processes which had taken off starting from the letter of the minister which was received on the 14th May to the day we compiled the report to the Minister and how we were awaiting the Minister's directive. But in the same meeting there were a series of other controversial allegations which the board, which the Committee wanted to know and we took a view that the management had to respond to those. One of those for instance was the Ayo which the management responded on

that day to say as far as they were concerned procedures were followed with regard to Ayo.

ADV JANNIE LUBBE SC: And I understand correctly that the information from management was what happened with the Ayo investment was all above board?

MR MONDLI GUNGUBELE: That is correct Sir.

ADV JANNIE LUBBE SC: Can you continue, what happened after that?

MR MONDLI GUNGUBELE: Thereafter I after having gone through, Mr Commissioner I after having gone through the documentation which was submitted to the Minister I got attracted to the records of the meeting of the 15th where the board for the first time took
10 a decision to deal with the allegation 2017 15 September. What attracted to me or attracted me to these records was the manner in which the board opted to deal with this matter where the board would have tabled the allegation from an unknown source on an e-mail and asked the internal auditor to advise on how that matter would be dealt with. The internal auditor advised the board that the matter was heavy; the institution didn't have capacity to do it, it was advisable that a forensic exercise need to be undergone. It is at that point in the same meeting of the 15th that the board called the CEO and the CFO against whom the allegations were made to brief them about the intention of board to conduct the forensic investigations.

The response of the CEO and the CFO in that meeting was what I would call
20 disparaging attacks on the e-mail and questionable credibility of the e-mail and probably put the board allowing itself to be drawn around on these allegations with ulterior motives that could not be explained. Other aspect of my articulation are paraphrased from what they were actually saying. IT is at that point that they were allowed to leave the meeting. It is in the same meeting Mr Commissioner that the internal auditor was called by the same board to say to the internal auditor they were no

longer going ahead with the real investigations what needed to be done was to review the allegations and check the accuracy of facts and then in that task the internal auditor was not expected to deal with the issue of the allegation of R300 000,00 and the relationship of the CEO with Ms Louw. It is in that meeting when the internal auditor left that the same board decided to express confidence in the CEO and even issued a statement in that effect and at that point they had not got the report yet from the internal auditor, it was the same meeting. It was one of the reasons that I said I landed in a dramatic way. But maybe based on that, sorry Mr Commissioner I decided to call a special board meeting just to get an understanding what informed the board to deal with

10 the matter in the manner they dealt with it.

ADV JANNIE LUBBE SC: Can you perhaps for the record just state the date of that special board meeting?

MR MONDLI GUNGUBELE: It was the 22nd June 2018. It is in that board meeting where I sought clarity from the board what was in their mind which led them to deal with the matter in the manner they did because my question was if you advised to do the forensic investigation how did you then reach a determination that you have got a confidence in the CEO without in the same meeting having not got even the verification findings on the accuracy of facts. It was a very difficult meeting and I don't think we found each other, we were able to resonate on my concerns.

20 **ADV JANNIE LUBBE SC:** What was the duration of that meeting Sir?

MR MONDLI GUNGUBELE: It was a minimum of five hours.

ADV JANNIE LUBBE SC: And do I understand correctly no consensus could be reached at that meeting?

MR MONDLI GUNGUBELE: It is true Mr Advocate no consensus could be reached in that meeting because one of the suggestions, one of them asked what do you think, I

think it was Dr Manning, Chair what do you think we should do. If I remember very well I said I think is this not possible relook at the matter and the board felt that they were happy with the decisions they took in the manner they took and that's how the meeting ended. And then later on the 29th September I looked in the same meeting ... (intervention)

MR EMMANUEL LEDIGA: Question, the one question I wanted to check is some of the people who have talked here they had to back the CEO because they were worried about State capture of sorts you know, do you think there was that kind of a worry you know among the board members?

10 **MR MONDLI GUNGUBELE:** When I was interrogating their decision of the 15th that statement I don't remember it coming across unless I'm missing something in my memory to you Mr Commissioner. In the same meeting I had to draw the attention of the board to the meeting of the 29th September where now the internal auditor was giving a report with regard to the review process. Again they saw nothing wrong except what came out in that report was that what was left out on the 15th like the 300 000 and whether there was a relationship between Ms Louw and the CEO they decided to attend to it in that meeting not the romantic relationship but the issue of 300 000. The records will show that the internal auditor was asked to call a certain Mr Mulaudzi who actually agreed that indeed 300 000 was what you call was given to Mrs Louw as per
20 the request of Dr Matjila. And then it took I think roughly an hour that communication it could be less, and then the internal auditor came to report to the board in the same meeting.

It is in that meeting where the board expressed displeasure on that occurrence that's how far the board could go and it is at that instance where I said to the board didn't they find this very, very serious and again the nature of my concern

couldn't find resonance with the board. And having said that again in the report of the internal auditor he said there was a 21 million issue by the way because in the Noko e-mail it was a 300 000 issue and a 21 million issue. The 21 million issue the records of the internal auditor demonstrated that it was given to a MST company and then the report shows that there was a principal agents relationship between the company and Ms Louw. Now my question was to the board didn't it actually left an enquiring mind that if the 300 000 which in my view was controversially handled even yourself expressed displeasure didn't it actually worry you that 21 million was given to a company which had a principal agent relationship with Ms Louw. I didn't win there,
10 again my concern did not find resonance.

But I do want to say there is, you will find it Mr Commissioner in records that on the 15th September one of the board members Ms Zulu actually had a dissenting voice and she also wrote, she put that in writing for the purpose of record. She if my memory was the one who was actually who put that clearly and in clear terms so I thought it was important to say that. Now over and above the question I had about MST and the 300 000 how it has been dealt with and the board not finding resonance with my concern again the 6th October meeting where they said, because it was not just one allegation there were a series of other allegations and the board took a decision there on the 6th October that all investigations around the CEO must come to a stop,
20 they are baseless and that's how the whole thing ended and I raised my question on the 22nd with regard to all those issues. In a nutshell my concerns did not find resonance with the board.

MR EMMANUEL LEDIGA: A question, as you were doing this things were you backed by other board people there, the members or were you alone in this thing?

MR MONDLI GUNGUBELE: Logically Ms Zulu was consistent in line with the facts of

her dissention and the deputy chair also saw this as an opportunity to probably for the board to re-cleanse itself. In other words I want to say maybe I must correct that to say, because I must have mentioned the deputy chair for that matter. The deputy chair thought this was an opportunity to re-cleanse, sorry for actually omitting that, that it was an opportunity to re-cleanse for the board to re-cleanse itself yes. And there's also Ms Mokoka who in terms of the record it appears she was not part of the meeting of the 15th and I suspect the meeting of the 29th but I need to be corrected in terms of records, I'll ask for her to check that.

MR EMMANUEL LEDIGA: So you had two backers is that correct or is that
10 ... (intervention)

MR MONDLI GUNGUBELE: In that context that's what it appears yes.

MR EMMANUEL LEDIGA: You had two backers ... (intervention)

MR MONDLI GUNGUBELE: That's how it appears yes.

MR EMMANUEL LEDIGA: Which was Ms Zulu and Ms?

MR MONDLI GUNGUBELE: And the deputy chair.

MR EMMANUEL LEDIGA: The deputy chair.

MR MONDLI GUNGUBELE: And Ms Zulu is the one who in writing put her dissenting voice on the 15th September.

MR EMMANUEL LEDIGA: Okay.

20 **ADV JANNIE LUBBE SC:** There was, you mentioned in consultation also, another matter that worried you was a payment Ms Pretty Louw as an agent of MST?

MR MONDLI GUNGUBELE: Thank you Mr Lubbe. Having read the report of Mr Budlender that Ms Louw was given a payment of, I'm just forgetting the figure, I don't know if it was 400 and something thousand ... (intervention)

ADV JANNIE LUBBE SC: 438 000.

MR MONDLI GUNGUBELE: 438 000 where it is said there were no invoices. It really worried me because I thought maybe further investigation could have been done on that matter because it actually to me added a new controversy on the relationship of Ms Louw and MST first is that Ms Louw got 300 000 in a controversial way through a company where she has got this relationship, 21 million from PIC goes to her, thirdly working for this company she gets this 438 000 and there are no invoices. These are all in my view issues that required deeper interrogation.

MS GILL MARCUS: Chairperson are you aware of the status, given the controversy and the amount of time that was spent on this particular transaction and the allegations
10 that arose, are you aware of whether MST is now servicing the loan or not?

MR MONDLI GUNGUBELE: With respect I don't think I've gone to those details currently. I will have to investigate and find out. I might be able to answer you before the end of this.

ADV JANNIE LUBBE SC: Mr Commissioner the Chair is assisted by two officials the acting secretary and Mr Botha head of corporate affairs, we will get that information for you it will be answered during this session.

CHAIRPERSON: I didn't get you Adv Lubbe did you say acting?

ADV JANNIE LUBBE SC: The acting secretary of the PIC Mrs Louw.

CHAIRPERSON: Yes?

20 **ADV JANNIE LUBBE SC:** And Mr Deon Botha who's the head corporate affairs.

CHAIRPERSON: I see, yes.

ADV JANNIE LUBBE SC: While on that note, and I apologise I was rude when we started, the legal representatives of the PIC are also in the room, can they just have the opportunity to introduce themselves Mr Commissioner, sorry guys. Thank you Mr Commissioner. Can we then deal with the Budlender report, have you had sight of that

report?

MR MONDLI GUNGUBELE: Thank you Mr Lubbe I had a sight of the report of Mr Budlender which in general did not find anything wrong from my reading on the side of the CEO but what worried me are the two things, is one thing I've already spoken about I thought that that investigation I'm not sure whether it was our terms of reference, I thought that that investigation would have found it curious to actually do the forensic on the 21 million of MST. I would have expected that that investigation to deal with the 438 000 more deeper. The other thing that worried me in that report, unless my judgment is corrected, it appears to recognise and because I've got a lot respect for Mr
10 Budlender, I've known him for many years, it appeared to recognise, my judgment will be forgiven, that there could be an understanding if the CEO paid 300 000 being pressurised by a politician and he didn't make in my view make the CEO to account in his capacity as a CEO that independently he had a fiduciary duty irrespective of who pressurises him, he doesn't appear to actually put that responsibility on the doorsteps of the CEO. If I'm wrong my judgment will be forgiven on that.

ADV JANNIE LUBBE SC: You also mentioned that you would have expected a more detailed forensic type of investigation into the MST investment?

MR MONDLI GUNGUBELE: It's true, based on the background that I've already explained that Ms Louw's name is the source of controversy in the institution and again
20 the same company gives 21 million to MST. My view is that details of what happened to that money inside MST were supposed to be found. Why no one found a reason to do so it boggles my mind.

CHAIRPERSON: Well to be fair Adv Budlender I think his difficulty it seems to me was getting people to come forward to testify in respect of this alleged relationship between the CEO and Ms Louw I think that's where his difficulty was mainly.

ADV JANNIE LUBBE SC: Perhaps just for the record Mr Commissioner and to assist the Chair the Budlender report was a report mandated by National Treasury and the terms of reference were also set by National Treasury is that correct?

MR MONDLI GUNGUBELE: That is correct. Maybe Mr Commissioner to say I just want to put it on record, there is no reason here to me to question Mr Budlender's integrity but I'm just having his enquiring mind enquiring mind around this exercise which I suspect Mr Budlender would be better placed to explain, I still have a lot of respect for him based on the knowledge and experience I have.

MR EMMANUEL LEDIGA: Question, do you know who did those terms of reference
10 for the report for the Budlender report?

MR MONDLI GUNGUBELE: They were done by us yes.

MR EMMANUEL LEDIGA: And did the board agree on them?

MR MONDLI GUNGUBELE: The board did agree on them. The approach of the board through you Mr Commissioner was that the nature of the allegations was of such, the allegations were of such a nature that a lot of questions naturally emerged from the allegations and the board restrained itself from going overboard in terms of creating a lot of terms of reference. It could be with hindsight we might realise maybe we could have done better but that's how we handled it at time.

ADV JANNIE LUBBE SC: Chair the Budlender report has never been made public is
20 that correct?

MR MONDLI GUNGUBELE: Yes Mr Lubbe it was not.

ADV JANNIE LUBBE SC: For the record Mr Commissioner we have now handed in as part of the pack of this morning for the Commission the Budlender report.

CHAIRPERSON: Yes it ... (intervention)

ADV JANNIE LUBBE SC: It is now a public document, I have discussed it with

National Treasury they have no problem that it can be handed in and be a public document. If you then can deal next and it seems to be still clouded in some controversy, the departure of Dr Mantilla.

MR MONDLI GUNGUBELA: I am to elaborate my answer. I am not sure if I can read it.

ADV JANNIE LUBBE SC: Yes please.

MR MONDLI GUNGUBELA: To you Mr Commissioner. Thank you. In August 2018 at our PIC Directors affairs committee meeting, Dr Goba, the Chairman of Human Resources and Remuneration Committee reported to the Board that Dr Matjila had
10 approached him to tell him that he intended to tender his resignation. He had cited the fact that the PIC environment was no longer conducive for him and that he could no longer work with a divided Board.

After getting this feedback the Committee resolved that Dr Matjila be approached by a delegation of three non-executive Directors, led by the Deputy Chair Mr Mkhwanazi. They would then give a report to the DAC and the matter could be deliberated further and for a way forward to be determined. Nothing became of this. When I enquired from the Deputy Chair, he indicated to me that this formal meeting had not taken place.

A few weeks later [Intervenes].

20 **ADV JANNIE LUBBE SC:** Sorry, did he provide a reason why it did not take place?

MR MONDLI GUNGUBELA: He could not give me a reason that... I guess I did not interrogate. [Laughs]. Let me put it that way.

A few weeks later, Dr Mkhwanazi contacted me to advise me that he had had a meeting with Dr Matjila. At that meeting Dr Matjila expressed his intention to resign. Dr Mkhwanazi then requested that I rather meet with Dr Matjila as he communicate...

So he communicates this with me directly as the Chairman of the Board. Dr Mkhwanazi also indicated that Dr Matjila had some condition to his resignation and that he preferred that those be discussed with me as the Chairman of the Board. Indeed, a meeting was arranged for the following day and Dr Matjila flew all the way to Cape Town to meet with me. At our meeting Dr Matjila spoke to me about various issues, such as the PIC strategy. A few key projects that they were working on as PIC management.

As I also made my input and shared my thoughts on these important [Indistinct] matters. Dr Matjila then enquired from me if I would be open to exploring option of his peaceful departure from the PIC. I said to me, it will depend on what is placed before the Board, then we consider it. Our meeting ended on that note. He never shared with me I would have expected him to share. I also opted not to ask him those questions.

On 7 May 2018, November Dr Matjila raised this matter of resignation with me again. I requested him to put it in writing as I held a view that it need to be properly considered and deliberated on by the Board of Directors. I then received Dr Matjila's letter expressing his intention to resign on 8 November. I requested for the letter to be circulated to the Board and for us to deal with its contents at our scheduled Board meeting, which took place on 23 November 2018. It was after every director in the Boardroom expressed their view on the content of the CEO's letter that the Board resolve that it was in the interest of the PIC and we believed in his interest for us to accept his resignation with immediate effect and not require Dr Matjila to serve a notice period.

I must mention that Dr Matjila's letter had various terms but the Board unanimously resolved not to accept the terms. This decision of Board was

communicated to the Minister of Finance as a shoulder and he granted the Board the final approval to relieve the CEO with immediate effect and appoint an acting CEO.

ADV JANNIE LUBBE SC: Can you disclose to The Commission the terms of the departure of Dr Matjila.

MR MONDLI GUNGUBELA: ... refer to a letter. Sorry Mr Commissioner.

ADV JANNIE LUBBE SC: No problem. Take your time.

COMMISSIONER: I assume it was not a confidential communication.

MR MONDLI GUNGUBELA: My apology Mr Commissioner.

ADV JANNIE LUBBE SC: We can perhaps come back to that later Mr Commissioner.

10 We can deal with another topic.

MR MONDLI GUNGUBELA: I think I have found it.

ADV JANNIE LUBBE SC: Alright. Thank you.

MR MONDLI GUNGUBELA: Thank you. Sorry about that. The letter reads as follows:
[Intervenues].

ADV JANNIE LUBBE SC: What is the date of the letter?

MR MONDLI GUNGUBELA: The date of the letter is 8 November 2018 and with the opening words:

“Without prejudice.

Dear Sir,

20 RE: Notice of Intention to resign my position with effect from
30 April 2019

This letter serves to inform you of my intention to resign from my office as the Chief Executive Officer of the Public Investment Corporation. At the outset I record and you are required to note that this is not a notice of resignation. As

such, does not commence the notice period provided for in my employment contract.

I have not come to this decision lightly. I have carefully considered the previous and current nature of my employment relationship with the company and the prospects of that relationship bearing fruit for all concerned.

Most importantly the Republic Of South Africa whom the PIC exist to benefit. Taking into account the importance of the role of the CEO and having taken legal advice, I have taken a decision to resign from my post as follows:

10

You are hereby informed that I intend to resign from my post as CEO with effective date of my resignation being 30 April 2019.

I shall provide you with my formal notice of resignation on 31 January 2019, following which the three months' notice period as set out in my contract of employment shall commence.

In the intervening period 8 November 2018 to 30 April or such earlier date, the parties shall engage by neutral corporation in a hand over process to ensure the following:

That operation is administration in a manner that the company continues without hindrance or delays normally associated with the resignation of this nature.

20

The appropriate candidates to fill the post of CEO are identified assessed and interviewed timeously in accordance with the company's policy, legislation and regulation and that the successful candidate is properly orientated, capacitated and

informed in order to enable them to [Indistinct] the transition into the role with the benefit of my assistance and more importantly in view of the further enquiry announce why the President of the Republic, I commit to avail myself and provide all necessary assistance and support required from me to the extent that such is necessary.

Upon the completion of this process the company shall pay me out for the period ending April 2019 including leave pay, pension and bonus payment due to me.

10 The above, if implemented properly shall benefit the company immensely and will assist it in avoiding the issues which normally accompany resignations of this nature.

Further, it will enable all concerned to avoid the media scrutiny which follows sudden changes of leadership in state owned entities.

In coming to this decision, I have taken account of the following:

20 Since 2017 on an almost continuous basis, I face a series of investigation which in my view and that of my legal advisors are not disciplinary or performance related, but seemingly politically motivated or inspired but other ulterior motive to which I am not privy and clearly targeted at me either at worst to brand me as corrupt and pliable to undue influence or at best to force me out of the company.

Given that these investigations have revealed no sustainable

evidence of wrongful conduct but rather express confidence in my role, the above conclusion is unavoidable. This is even more so when it is considered that under my tenure the business of the company has grown manifold. The appraisal of my performance has been largely positive and at no stage has it instituted any form of disciplinary hearing against me.

Under the circumstances, my work situation is untenable, intolerable, with strong *prima facie* grounds of constructive dismissal.

10 The organisation as in the past month endured unnecessary negative publicity and for its own sake, I would like to avoid being part to further action that will further tarnish its reputation and mine.

Wherefore I am of the view that a protected dispute in the CCMA or the Labour Court would be prejudicial to the reputation of all concerned.

20 Over and above the aforesaid, it is apparent that there is fundamental breakdown of trust between myself and the company and I hasten to add not as a result of any conduct on my part.

Without this trust relationship, it is impossible with the employer/employee relationship to function in a manner required. Hence, I invite all of us to act in the best interest of the company.

Kindly note that the above is not a full exposition of the

background of the circumstances. Should it be deemed necessary to do so, I will be too keen to provide same at an appropriate time and appropriate forum.

In the circumstances, I believe that my proposal will be in the interest of all parties concerned. In particular the pension beneficiaries on behalf of whom we are enjoined to work in trust. This submission is made without prejudice to my rights which are strictly reserved but with a view to amicable resolution of this matter. Without further unnecessary waste of resources and negative impact on the company and the professional character.

10

I await to hear from you at your earliest convenience in any event without 14 days from the date hereof, failing which, I will accept that my proposal is not acceptable and therefore will proceed in terms of my existing rights which I repeat that are strictly reserved. Thank you.

ADV JANNIE LUBBE SC: Was there a formal reply to that letter by the PIC?

MR MONDLI GUNGUBELA: All that was done was the acknowledgment of the receipt and promising him that a Board meeting will deal with the matter. A Board meeting which subsequently sat on 23 November to deal with the matter.

20

ADV JANNIE LUBBE SC: And what was the outcome of that Board meeting?

MR MONDLI GUNGUBELA: Having looked at the letter, the Board debated at length and bottom line that the Board... Where the Board unanimously agree was on the release, but where the Board was not unanimous was whether... Was on whether immediate or in terms of his request, but the majority was for immediate release, which

became a Board decision and the Board's view was that paragraph 4.4 which say 'over and above the aforesaid, it is apparent that there is a fundamental breakdown of trust between myself and the company and I hasten to add, not as a result of any conduct on my part. Without this trust relationship, it is impossible for the employer/employee relation to function. Hence, I invite all of us to act in the best interest of the company.'

Here the strong view of the Board was that the CEO was declaring a relationship that had ceased to exist between himself and the company and the strong view of the Board was that it was in the interest of the Board to release him with immediate effect, because the Board could not justify the next minute, how do you
10 continue that relationship against this background.

ADV JANNIE LUBBE SC: Has Dr Matjila been formerly informed of the Board decision.

MR MONDLI GUNGUBELA: On the same meeting, Dr Matjila was called and he was briefed on the decision of the Board and of course he expressed his dismay but he got the decision. He will see what to do and the rest is history because he opted to ask us to discuss the items that deal with what is due to him when we part in that fashion with him and that has been dealt with and [Indistinct] and in communication with them, I have been advised this morning that on the records of the Board, all what was due to him has been actually given to him.

20 **ADV JANNIE LUBBE SC:** So the financial implications [Indistinct] his departure and his proposal in that regard has all been settled.

MR MONDLI GUNGUBELA: The financial implication as legally understood by the Board, regarding his departure, in terms of the Board have been fulfilled. I would not want to speak on what does he think as a person affected.

ADV JANNIE LUBBE SC: Thank you Chair.

COMMISSIONER: I am assuming that it would be better that we will be given copies of that letter.

ADV JANNIE LUBBE SC: Yes it will be. It will be part of the statement prepared by The Chair, Mr Commissioner. If we can now deal with another topic [Intervenues].

COMMISSIONER: Sorry there is another question here.

MS GILL MARCUS: So I did not quite get you... Get the answer Chairperson. The matter, you said the full settlement has been made to Dr Matjila as per what was outstanding to him and can we be advised what that is?

MR MONDLI GUNGUBELA: Sorry Mr Commissioner, I do not think I can hear what Ms
10 Gill Marcus said.

MS GILL MARCUS: I am saying that... I think the sound is a little difficult. I am also having a bit of difficulty, but what I... What I am asking is that I was not sure if I had heard you correctly that the outstanding financial matters that the CEO raised have all been resolved and that it has been settled with him and whether we can be advised what that total package of financials that he was paid is?

MR MONDLI GUNGUBELA: Truly Mr Commissioner, I think that information can be easily forwarded to the Board. The records... in terms of records, as I stand, the advise I am getting from the institution is that all what was due to him was given and I think the last figure that was given is R486 000 plus something, but... Which was the last figure
20 being preceded by a number of other payments, but the record of that in full, can be forwarded to The Commission.

ADV JANNIE LUBBE SC: Mr Commissioner, we undertake to provide you with that today.

COMMISSIONER: Thank you.

MS GILL MARCUS: Sorry, just to be clear that that would be full final settlement that is

outstanding, bonus payments, pension, everything else.

MR MONDLI GUNGUBELA: That is the position Mr Commissioner.

MS GILL MARCUS: Okay. Thank you.

MR EMMANUEL LEDIGA: I just wanted to check, will these financial terms be public?

ADV JANNIE LUBBE SC: It should not be made public Mr Commissioner, it will be for the information of The Commission, but it is not a matter that should be in the public.

The personal settlement with Dr Matjila. Before we move to the next topic, you have been informed now on the question of one of the members of The Commission of MST, what the present situation is, is the loan serviced, have you been given that

10 information?

MR MONDLI GUNGUBELA: Yes, I am being told it has been serviced.

UNKNOWN FEMALE SPEAKER: [Indistinct]. The loan is not being served. They are in default.

MR MONDLI GUNGUBELA: I beg your pardon on that. That is a fact I did not have at my disposal. If I can withdraw that.

ADV JANNIE LUBBE SC: So will give you full information of that Mr Commissioner during the tea adjournment. We will just have the full facts to present after the tea adjournment. If we can move now to another controversial topic and that is the application of the UDM to the High Court. If you can please deal with that.

20 **MR MONDLI GUNGUBELA**: Thank you Mr Lubbe. I said to you Mr Commissioner that Mr Holomisa would have been an applicant with regard to the need to investigate guys, in particular around the allegation to the extent that they were affecting the conduct the CEO Dr Matjila. We at a certain point as a Board were required to respond to that and the Board indeed sat with an intention to deal with that matter and we sought legal advice on how to deal with the matter and indeed after getting that legal advice, the

Board sought to respond in the manner written in the affidavit of the Board. A resolution which was taken in a meeting that I was chairing.

ADV JANNIE LUBBE SC: If I can assist you here Mr Chair. The application was brought in the Gauteng Division of the High Court in July 2018. The respondent cited in that application was Dr Matjila as the first respondent, the PIC as the second respondent, Minister of Finance as the third respondent and you were also cited as Chairperson of the Board as the fourth respondent. Is that correct?

MR MONDLI GUNGUBELA: That is correct.

ADV JANNIE LUBBE SC: Okay. Now look as you have testified, the Board
10 deliberated on what to do with this application.

MR MONDLI GUNGUBELA: Indeed the Board did and the Board therefore resolved that whereas the PIC has been cited as a respondent in an urgent application, the application brought by the leader of the United Democratic Movement, the Board had its meeting held its meeting on Friday 22 June, resolved to appoint a senior counsel to advise the Board on the matter pertaining to the court application and then the Board resolved that the Board will oppose on the prayer two of the application of UDM. Norton Rose is the Attorney who acted for the Board in obtaining a legal opinion in this matter. Will continue to act for the Board and secure the services of a senior counsel for the Board. That the Board will abide by the court's decision release already sought
20 by the applicants in prayer one, three, four and five. The Board further acknowledged the Minister's prerogative and power to deal with this matter as it deems fit. That the Board acknowledges that the CEO and the Chairman of the Board are separately cited as responded in this application. The Board therefore resolved that should they be desirous, should that... The Board therefore resolves that, should they be desirous to respond to this application, they are permitted to obtain independent legal

representation which we will include services of senior counsel and the PIC will bear the cost.

That due to the emergency and sensitivity of the investigation, the waiver of the requirement of the treasury supply chains number 3/2016/17 and PIC's Corporate Procurement Policy and a deviation from National Treasury Supply Chain Management instruction No. 3/.2016/17 in PIC's Corporate Procurement Policy in the appointment of legal representation be and is hereby approved.

ADV JANNIE LUBBE SC: Alright, to assist you, as I understand the situation, there was a formal resolution by the Board to oppose this application.

10 **MR MONDLI GUNGUBELA**: Yes.

ADV JANNIE LUBBE SC: Alright to assist you, as I understand the situation there was a formal resolution by the Board to oppose this application.

MR MONDLI GUNGUBELA: Yes.

ADV JANNIE LUBBE SC: You had a different view.

MR MONDLI GUNGUBELA: I had a different view. Thank you. [Indistinct]

ADV JANNIE LUBBE SC: Did you express that different view during the Board Meeting.

MR MONDLI GUNGUBELA: Indeed I did.

ADV JANNIE LUBBE SC: And what was your view?

20 **MR MONDLI GUNGUBELA**: My view was having met the Board on 22 June 2018, I held a view that the Board did not carry its fiduciary responsibility and I was not finding that in the Affidavit of the Board and it became clear to me, if I were to be part of that affidavit, I would be aligning with the spirit of that affidavit and then I took a view that for me to respond, in a manner that I will view as good faith, I needed to respond separately, express my independent view in the manner I have experienced the matter

through its record and interaction with the affected people.

ADV JANNIE LUBBE SC: In fact, you filed a separate, what you would call and explanatory affidavit.

MR MONDLI GUNGUBELA: That is correct.

ADV JANNIE LUBBE SC: Mr Commissioner, it will be part of the written statement that will be handed up to the Commission, so I am not going to ask the witness to read it out, but the gist of the matter is that in that explanatory affidavit, you had a different view. Now there was testimony before The Commission and I just like you to put your side [Intervenues].

10 **MS GILL MARCUS**: Sorry, sorry Advocate, I just wanted to see if I have understood this correctly. The Board excluding the Chair took a decision to oppose the application by the UDM and the Chair independently submitted an affidavit saying he did not oppose.

ADV JANNIE LUBBE SC: The... It will be clear to you now Mr Commissioner through... The situation which the Chair will explain is, he was part of a Board resolution to oppose it, but as a fourth respondent and Chair, he later filed an explanatory affidavit contrary to the resolution to oppose and he will explain it now.

MR MONDLI GUNGUBELA: I know there has been... Through you Mr Commissioner. There has been a question of how did I append my signature in the resolution of the
20 Board. My... What informed me appending that signature is that I was part of the Board meeting that took that resolution and it was the resolution of the Board and I found it correct that I endorsed it as a true resolution of the Board through my signature, but not necessarily an expression of my views which I articulated in the Board,.

ADV JANNIE LUBBE SC: Now, there was evidence before The Commission that this

action of yours was in fact a motion of no confidence in your fellow Board members as you have signed the resolution, but the you went back to your political office, put on your political cap and said, I am not siding with this resolution. I am now filing a different affidavit. Can you just comment on that?

MR MONDLI GUNGUBELA: Through you Mr Commissioner that I was responding first in my capacity as Chair of the Board based on my experience of the situation and I want to express a view that says, if it was an express of lack of confidence in the Board, I would not have done a lot of other things, which I did with the Board, outside that, because there is a lot of other decisions I took with the Board. It was purely a
10 disagreement on the issue at hand at that moment.

ADV JANNIE LUBBE SC: Thank you.

COMMISSIONER: But if I understand you correctly, you were bound as it were by the majority decision of the Board to oppose the application. Am I correct?

MR MONDLI GUNGUBELA: My understanding... The Board's decision was to oppose and that is the meeting I was chairing. I did not agree with that resolution, but as a resolution of the Board, it stood, but I told the Board and the Board by the way allowed this that those who want to actually articulate their view in as far as this submission is concerned, were allowed to. In other words, this resolution was taken in that context. I am not sure if I am answer Mr Commissioner.

20 **COMMISSIONER**: I understand.

ADV JANNIE LUBBE SC: Thank you. What was the outcome of this application?

MR MONDLI GUNGUBELA: I do not think the court finally sat. I guess it must be overtaken by a series of other developments. Probably including the CEO. I am not sure, leaving the institution. I cannot be sure about that.

ADV JANNIE LUBBE SC: Chair, I notice it is 11 o' clock. Is it convenience to take the

tea adjournment?

MR EMMANUEL LEDIGA: Chair, so it appears that you know, given what you have just said that you were sort of one person against the bulk of the Board. Does it appear so. I mean do you feel that there was sort of two factions where it was you and probably with one or two supporters and there was just this constant fighting, you know, among the two groups.

MR MONDLI GUNGUBELA: Through you Mr Commissioner, the evidence on record will show sir that at any point in time on issues affecting Dr Matjila, what you have just explained now, found characterisation, but on all other issues, that did not find
10 expression. Maybe it is useful to respond in that fashion.

MS GILL MARCUS: Just going back to the previous point about the UDM application, what is the UDM's view on this? I mean, how does... If we say the court has not sat and there has been no decision, is this an outstanding matter or a closed matter?

MR MONDLI GUNGUBELA: I am very careful through you Commissioner, Ms Marcus to speak on behalf of UDM but having listened to them, it appears that the departure of the CEO resolved their concerns because their strong view was always, this matter cannot be settled with the CEO around. That is my general view on the matter, whether it represents the opposition or not, I would not vouch.

MR EMMANUEL LEDIGA: Follow-up question. So your answer, you said that you
20 know, there was a lot of angst on things that concerned Dr Matjila. Why do you think that there were people who were pro the Dr and you know why do you think so? Some reasons.

MR MONDLI GUNGUBELA: Through you Mr Commissioner. It is a very, very difficult... it has been stressing me and I have been having a lot of questions. I have been asking, is there any relationship they have outside the relationship they have in

their capacity as role players in the institution, but because I did not have evidence with regard to that, I would not reach that conclusion, but I felt that the people, whenever the issues affecting Dr Matjila, I would have taken a risk before the meeting and say on this matter, I know one, two, three, four, people are going to oppose this view as long as it is actually against Dr Matjila. I would tell you before the meeting that the following people will disagree with the view.

MR EMMANUEL LEDIGA: Can you please give us those following people? If you can please.

MR MONDLI GUNGUBELA: I would request if I am not forced, not to do it here.

10 [Laughter]. It does not undermine the process.

ADV JANNIE LUBBE SC: Chair, if I can assist. Mr Commissioner, the minutes of those Board meetings, will be presented to The Commission. It will be clear from those minutes who is who in the zoo if I may call it that.

COMMISSIONER: I think that is the best way of bringing it before us. Thank you.

Alright. We will take the tea break and resume at 11:20

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Yes Mr Lubbe.

20 **ADV JANNIE LUBBE SC**: Thank you chair if you can just remind the witness that he is still under oath.

CHAIRPERSON: You are still under oath Mr Gungubele.

MR MONDLI GUNGUBELE: Thank you Mr Commissioner.

ADV JANNIE LUBBE SC: Chair with regard to the settlement – financial settlement with Dr Matjila, we have discussed it – we need to check first of all if there is any confidential agreement. If not the settlement will be disclosed by way of an affidavit to

be filed by the Chair where the full particulars will be provided. It will thereafter be a public document. There is no problem to disclose it then. Now Chair if you can deal now please with the appointment of the acting CEO after the departure of Dr Matjila.

MR MONDLI GUNGUBELE: Thank you Mr Lubbe. Through you Mr Commissioner. Having agreed on the 23rd on the departure of the CEO who would not spare even a minute – would not even waste a minute because from that point it had to – we had to ensure that the institution is being run.

So the board deliberated on the acting CEO because when you submit to the Minister the decision of the departure of the CEO you had to also make a
10 recommendation who should act and then the board deliberated on the matter and agreed on the current CFO that she should in the interim act as a CEO. Ms More.

ADV JANNIE LUBBE SC: My information is that it was not an easy decision.

MR MONDLI GUNGUBELE: It was a very difficult decision. But the board if I'm – if my memory tracks me correctly we – the board was split. I had to give a casting vote and that casting vote lead to the appointment of Ms More.

ADV JANNIE LUBBE SC: So if I understand it correctly there was a 50/50 split and you had to take the final decision?

MR MONDLI GUNGUBELE: That is true.

ADV JANNIE LUBBE SC: Now it is now nearly the end of February 2019. Has any
20 steps been taken by the board to appoint a permanent new CEO? To advertise the position?

MR MONDLI GUNGUBELE: Thank you Mr Lubbe. In my capacity as Deputy Minister also as a Chair it's a matter we engaging on with the Minister and of course with the board to the extent that the principal in the board is as long as this Commission is taking place and is going to finish very early it is being viewed currently prudent that

probably we leave that matter until we have got an understanding of what the challenges of the institutions are.

Probably even what kind of a CEO they require – the institutions requires.

ADV JANNIE LUBBE SC: Thank you I understand that and while on that topic and I'm going out of sequence now of the discussion we had previously. Can we deal with the bill presently before Parliament regarding the restructuring of the PIC.

If you can start by explaining to the Commission is this a private bill? What type of bill is it?

MR MONDLI GUNGUBELE: Thank you sir. This bill at the beginning was in two
10 fashions. It was a private members bill from the DA. I think its Mr Mainer and was a portfolio committee bill which is taken collectively by the committee.

What seems to have prevailed is the committee – is the Portfolio Committee Bill. As we speak now it is at a stage where the Committee has taken a decision and if my ...(indistinct) has not yet gone to Parliament but the Minister took initiative to actually engage because their discussions whether it's a bill that - in the manner it is we should continue with it or not. As a result there seems to be an understanding that for now it can pause, probably can be attended to after elections.

ADV JANNIE LUBBE SC: My question is wouldn't it be prudent and if I read the terms of the bill correctly it directly impacts also on the work this Commission is doing to make
20 recommendations to the President regarding the future of the PIC.

MR MONDLI GUNGUBELE: Those are some of the considerations the Minister is having as he is engaging with regard to whether the bill should proceed or not.

ADV JANNIE LUBBE SC: Thank you. Then we can go back to the topics I've raised with you ...(intervention).

MS GILL MARCUS: Sorry Chair can I just ask a question?

CHAIRPERSON: (No audible answer).

MS GILL MARCUS: You've mentioned here the matter that the CEO of the acting – looking for a new CEO would be something that you would wait because of the work of the Commission. I would want to ask how you view the status of the board at the moment.

Are you for quorum? What is the decision making authority? Given that are you resigned, not resigned? I think that the circumstances of that whole matter should be tabled before the commission. I think it does come up a little bit later in the secretary's answers but I just think coming from yourself as the Chair because the
10 question for me is if you are not quorum what validity does – any of your decisions have and have you considered as the board what your roles are?

Because I understand from the work being done is that you need to have between ten and fifteen member and you don't. So perhaps if you could just elaborate on that before we take matters forward?

MR MONDLI GUNGUBELE: Through you Mr Commissioner. Thanks ...(indistinct). It's correct the minimum is ten. Maximum is fifteen. Literally speaking after the resignation of Ms Toyi we – that term got lost but what we have done it appeared that from the legal advice that we did not submit to the Minister. The acting CFO who as per the advice if the Minister so deem helps us to secure that time and something – the letter - a letter
20 which has been written to the Minister awaiting response.

But what is happening now is sub-committees to the extent that they ...(indistinct).

MS GILL MARCUS: Sorry are you saying sub-committees are quorum therefore they continue to meet but the board is not quorum and therefore it does not function? I'm not quite sure what you saying there.

MR MONDLI GUNGUBELE: If I understood the question before the full board sits we need to get an answer from the Minister with regard to the status of the acting CFO.

CHAIRPERSON: But ordinarily the CFO and CEO are members of the board, am I correct?

MR MONDLI GUNGUBELE: Ordinarily they are. The point – through you Commissioner. The point is that we advise the Minister about the acting CFO which automatically makes the member of the what you call? But we do not advise the Minister on the acting CEO.

10 Because the law requires that if there is one cap vacant in the board the Minister can take a decision with regard to that matter. We've submitted a letter to the Minister on the status of - the what you call – of the acting CFO. Would you believe if the Minister so concur it automatically makes the CFO the acting CFO. A full member of the board.

CHAIRPERSON: But I think the ...(intervention).

ADV JANNIE LUBBE SC: If you were then to take the remaining members of the board without this acting CEO or CFO together with that one cap of the acting CEO or CFO will the board then quorum?

MR MONDLI GUNGUBELE: Commissioner he does make turn from our calculation.

20 **ADV JANNIE LUBBE SC:** But you can only quorum if the Minister okay the acting CFO?

MR MONDLI GUNGUBELE: Yes.

ADV JANNIE LUBBE SC: The point raised by one of the members of the commission and it's a very important point. Is it not prudent to take legal advice from senior counsel what exactly is the situation with the board at the moment.

Because if the board is dysfunctional because of lack of a quorum then there

is a serious challenge at the PIC. You follow what I'm asking?

MR MONDLI GUNGUBELE: I think we would easily take that advice but with what - before we took this decision to write to the Minister we asked that we get a legal advice but I want to check how were we advised.

Because I got from the team – remember there is a team. There is risk committee and so on. We get advised by those people who actually attend to those risk issues. But if the commission can allow me to follow up that matter with regard to when we wrote the letter to the Minister how were we advised.

MS GILL MARCUS: But perhaps just in the interim from the time of the resignation
10 that took you below ten until you get a response from the Minister the board is technically not quorum.

MR MONDLI GUNGUBELE: Yes the board yes.

MS GILL MARCUS: And therefore if your board is not cored I'm not sure of the status and that's what your legal opinion needs to find out. The status of any decisions of sub-committees to that board must also be looked at in that period of time.

Should the Minister concur and make that happen you've got a period in between where which it is questionable. I would really urge you to get a legal opinion on your current prevailing status of the work that is continuing in relation to board that has not got clarity from the time of that resignation until such time.

20 Now the Minister either concurs or does not concur and what that means in terms of the legality of the decision of the PIC.

MR MONDLI GUNGUBELE: I think we'll make that follow up through you Mr Commissioner.

MS GILL MARCUS: Perhaps just one other question. Is that given that the board has resigned and you then saying we are staying in position until such time as the Minister

appoints a new board and we don't know how long that will take.

Should the board anyway even if it was cored take any decisions and I think they should form part of the legal opinion that you obtained because you're a board in limbo in essence. You're a holding position and therefore you take decisions in which in the future are you held accountable to because you're in that limbo position.

I would really ask that that's part of the legal opinion that you get.

MR MONDLI GUNGUBELE: Through your Mr Commissioner can I take the board into – call it confidence. I don't know what's the right word.

MS GILL MARCUS: Not into confidence because this is all public.

- 10 **MR MONDLI GUNGUBELE:** This is public ja. With regard to that situation when we were worried when is the Minister going to either appoint an interim board the Minister said he is so preoccupied with the budget. He decided to write a letter to the board to say I have received your letter of intention to what you call – to resign.

I accept it but however I call upon you to do your normal duties up until such time a new board is appointed. That letter is on record from the Minister. I thought it's important just to ...(indistinct). But it doesn't actually change the fact that legal clarity around all those matters needs to be sorted.

ADV JANNIE LUBBE SC: Just for the record before we move on. This decision to resign was it a decision taken by the board or were you pushed to resign?

- 20 **MR MONDLI GUNGUBELE:** We sat as a board and had a discussion. I guess I do want to put it upfront one of the issues – remember I have this challenge of acting as CEO sometimes acting as a Minister. The Minister's view was if you know him he's an upright chap.

So ...(indistinct) you guys still makes sense and so on. Have you ever discussed that and at that point I asked the board to look at this thing on the first of

February. The board was seized with the matter and the board analysed the entire situation and look as the email – unknown email from unknown source after email and a lot of other allegations. The board said we are in a situation where the decisions we take the quality will be questioned.

Is it not right then to whilst we are clear with our conscience this is no acceptance of any guilt but for public perception point of view and the size of the asset who's decision – our decisions have got implications for. Is it not prudent to just stay aside? But we said – we are clear there this is not an indication of acceptance of any guilt. It is at that instance that the board thought let's what you call - let us resign.

10 Of course the big question that has been asked Mr Commissioner has been the Deputy Minister is not there in the normal appointment of the board. Does not enter through the normal appointment of the board. He is there in his capacity as a – in his capacity by verge of being a Deputy Minister he is a member of the board.

That matter was not discussed by the board. I was one of those who has this drive that the sooner the interim board or whatever kind of a board is appointed the better. But those discussions only emerged after the resignation.

ADV JANNIE LUBBE SC: Thank you.

CHAIRPERSON: You know and I don't know how true these are but there was talk about the Minister actually having put pressure on the board to resign. Are you
20 prepared to comment on that?

MR MONDLI GUNGUBELE: The Minister's point in my view are not beyond what I've just said. The Minister did ask questions. What do you think about yourself as a board under the current circumstances?

I said to the Minister we will discuss that and we discussed it. It depends on how different people view it. Others could view it as a pressure but to me it didn't come

as asking us to resign. I saw a man seized with the requirement to deal with a difficult situation that was at his disposal. In the process these are some of the questions. I think he was thinking aloud as far as I'm concerned. But somebody can view it differently.

ADV JANNIE LUBBE SC: So to put it bluntly it was not a question of if you don't resign I'm going to fire you? Not that?

MR MONDLI GUNGUBELE: (No audible answer).

ADV JANNIE LUBBE SC: If we can now move to another topic.

MR MONDLI GUNGUBELE: But I do want to say whether it was humane the board's
10 discussion. The word – number of time ...(indistinct) guys maybe it is better before we are told to walk the path we walk it ourselves.

It will look very bad. So such comments during the discussions would have come from one or two good members.

ADV JANNIE LUBBE SC: Thank you. Now the next topic is the departure of the former head of IT. It was before your time but it also became a matter of interest to you. Can you deal with that?

MR MONDLI GUNGUBELE: Thank you Mr Lubbe. Through your Mr Commissioner. The issue of Ms Menye is something first we read about in the papers and until it was reported to us there was a settlement which content we never knew.

20 Then it was herself, Mr Mayisela who was the chief security if the IT and Ms Mathebula who was a ...(indistinct). Those are the three staff members who actually – who the incident or the allegations against the CEO lead to their – what you call – to them being in the situations they are. Ms Mathebula is still going through a ...(indistinct). Ms Menye has settled and Mr Mayisela was fired.

But if I'm to talk on Ms Menye. When the CEO circulated a report on the

state of the ...(intervention).

CHAIRPERSON: Just give me a moment. Thank you.

MR MONDLI GUNGUBELE: When the CEO circulated a report on the state of HR one the things that came out was the Ms Menye issue. A settlement, Ms Mathebula was on DC. Mr Mayisela - as a Chair I took a view that now that this is on the table – this is on my table as a chair. It's a matter that the board needs to understand more.

The reason being simple is that one read a lot about them being pushed and them being fired through a lot of allegations. I said maybe it's one of the issues. Now that is officially on my table that we actually deal with it as a board. It is at that point I
10 asked the CEO to give me the contents of the settlement which found their way to the board meeting in January.

The board deliberated on the matter. Of course there was a view of shock with regard to the fact that Ms Menye was suspended for possible IT problems for which she was in charge of. But the charge ended up being the charge of her having not informed the CEO about the fact that a charge of corruption was laid against the CEO.

You know then she ended up being charged for something which was not the original content which lead to what you call – to the allegations. But the first strange things is the nature of the settlement because if that is the issue we – some of the
20 board members tried to track where then is the charge?

Where then would you derive the charge of Ms Menye. You could not actually derive it from anywhere. But interestingly whilst that question is not answered you have a settlement of about 7,4 million. With also a commitment to do recommendation in case she gets employed. She get a job somewhere else.

The board deliberated until the board agreed. It was a very robust debate

until the board agreed a legal opinion needs to be sought on the validity of that decision. That occurs against the background that her lawyers would have written a letter to us imploring us – if that's the proper word to use. Not to fill that what you call – that vacancy. I advised to the CEO that maybe it is safer to stay ...(indistinct) until you get clarities around the entire situation.

ADV JANNIE LUBBE SC: I must apologise. I promised during the course of the proceedings to alert you to what terms of reference – certain evidence. This is regarding 1.1.2 and 1.1.3 of the terms of reference of the Commission on which I present this evidence. I want you to finish with Menye but I also want you to deal with
10 the acting secretary. But let's first deal with and conclude on the executive head IT and the settlement.

It's on record that for a very brief period she was the executive head and there was a settlement agreement to the tune of R7,4-million with this executive head IT. You alerted the Commission also to the fact that her lawyers wrote a letter to say don't fill that position because I want to come back and I will repay the settlement figure is that correct?

MR MONDLI GUNGUBELE: But there is no – if I remember the letter it does not commit to repayment. But it does commit to make a submission to actually deal with that matter and to us it came across as challenging the whole situation as it pertains at
20 the moment.

ADV JANNIE LUBBE SC: And this present situation still is that that position has not been filled?

MR MONDLI GUNGUBELE: It's true.

ADV JANNIE LUBBE SC: For the record Commissioner the former executive head IT will come and testify voluntary before the Commission soon.

MS GILL MARCUS: Sorry just on your statement there that the board requested a legal opinion about whether this could be reversed and what it stated. Have you had that legal opinion?

MR MONDLI GUNGUBELE: Not yet ma'am.

MS GILL MARCUS: When would it be due?

MR MONDLI GUNGUBELE: I'm careful of giving that as I may give that ...(indistinct) in due course. Probably not later than tomorrow through you Mr Commissioner. I've not checked ...(indistinct).

ADV JANNIE LUBBE SC: But the instruction here has been given for the legal advice.

10 **MR MONDLI GUNGUBELE:** I have not even checked that.

MS GILL MARCUS: (Indistinct).

MR MONDLI GUNGUBELE: Yes I'm advised it has been given.

ADV JANNIE LUBBE SC: Just to make it clear your evidence was if I understood correctly that Vuyikazi Menye, the secretary Mathebula and the other gentleman in IT they were all – if I can call it casualties of the mails sent regarding the position of Dr Matjila.

MR MONDLI GUNGUBELE: Simply put it come across like that. if you look at the findings by Advocate – is it Simms who was representing – Simm?

MS GILL MARCUS: Cassiem.

20 **MR MONDLI GUNGUBELE:** Cassiem yes. If you look at the findings – not the judgment his findings. He is very castigating on the role played by on the role played by the CEO because the view of advocate of Advocate Cassiem is if the allegations against this officials came as a result of the allegations against the CEO the big question that he is putting, was the CEO the proper person to actually deal with the disciplinary situation of these three officials.

The board tried to – the first issues ...(indistinct) the board I don't think we have been able to find resonance amongst one another on that.

MR EMMANUEL LEDIGA: A question. I just want to be clear. You seem to be saying that Ms Menye shouldn't have left the company. You know there are many statements you are mentioning here. But I'm trying to understand are you sort of indicating that maybe she shouldn't have left or she was – there was a witch hunt you know around her?

MR MONDLI GUNGUBELE: At the risk of and I don't prefer because I always avoid to express my individual view in a board's meeting. Because the board finally took a view
10 that we must seek legal advice.

But I can dare say there was a strong view in the board that as I've already said myself here in this Commission I'm one of those who in trying to locate the basis of a charge – personal as I sit here I can't find it.

But the board's view is let's seek legal advice so that we are properly advised with regard to what the true situation is.

MR EMMANUEL LEDIGA: Okay alright I get it ja no thanks. Thank you.

ADV JANNIE LUBBE SC: Mr Commissioner you will find the precautionary suspension letters issued to these individuals in the documentation pack I've handed to you during the tea adjournment. Where it's clear that the suspension was a result of
20 these emails implicating the CEO at the time.

CHAIRPERSON: I think we understand that these individuals Mayisela, Ms Menye and I think you've given us another name ...(intervention).

MS GILL MARCUS: Mathebula.

CHAIRPERSON: Mathebula. Faced disciplinary action on failure to disclose whatever they were supposedly to have disclosed. But what was the initial intent? Was the initial

intent to investigate the allegations in the James Nogu email and how did it happen that it now turned to be an investigation of these individuals?

ADV JANNIE LUBBE SC: Can you answer please?

MR MONDLI GUNGUBELE: Thank you Mr Commissioner. If I can follow the chronology of events as I understand. The board having discussed how to deal with the allegations of the CEO. The CEO came to express concern about the possible – what do you call it - leakage in the IT system.

Then the board leaving it in the hands of the CEO to investigate how this could have happened. This step emerges incidental upon the allegations of the - what
10 you call – of the CEO. The CEO then moves to do – to actually deal with what he believes were leakage in the system. That was the principal.

Now if I flow the chronology of the events the first thing they wanted to was to find the source of the emails. They tried in one police station which said the information doesn't qualify for assistance until another police station where the police would have said what they see is an allegation of corruption against the – the what you call – the CEO. They were not comfortable to investigate what appears to the whistle blower.

They were more – it was more convenient for them to deal with the content of – the what you call – of the allegation. At that point if you look at the exchange of
20 emails it comes out that Mr Mayisela did not inform the CEO that this is the status of the record in the police station.

That is when then the CEO took issue that – I don't know whether to use the word betrayal or whatever that Mayisela by not disclosing that this is a charge against the CEO did not act in good faith. As a result the relationship between the institution and Mayisela being found wanting.

It is in that context that things went. But at the end of the day the charge that stood was that of not disclosing. It had nothing to do about the IT. Because for instance even if you go to Ms Mathebula – Ms Mathebula who very careful in dealing with the case.

The investigation of Ms Mathebula is about her having distributed the minutes of the board and using the IT infrastructure to check that. The investigation says they cannot be able to conclude who could have actually leaked that information.

One of the issues I raised was – very curious question in me was if you were board members together with the company secretary why would you make a conclusion
10 that the one who leaked those minutes is the company secretary.

Because if all of you were in that meeting - ...(indistinct) a very tricky type of exercise but we took a view as a board not to interfere with that and it is up to Ms Mathebula to really defend herself. But I dare say that the board did deliberate on that matter January this year.

ADV JANNIE LUBBE SC: Just to sum it up perhaps, Commissioner. The status of these things. Mr Mayisela; there was a full disciplinary hearing. He was dismissed and that was a decision by Mr Cassiem SC. That will be placed before the commission. Mrs Mathebula; disciplinary hearing is still continuing. It has not been finalised. And Mrs Menjes's disciplinary hearing ended in a settlement agreement.

20 That is where we stand with those, but it all resulted after the appointment by a forensic firm which testified before the Commissioner Naledi and as result of their appointment by the CEO, these people were then provisionally suspended.

CHAIRPERSON: Questions?

MS GILL MARCUS: Just if... Yes. Sorry. If I could just ask, Chairperson. Given this whole instance of an allegation against a CEO and perhaps a staff member who have

been dismissed, should there be an allegation against the CEO? What alternate route has the board provided for people to report it? It would be quite clear that... It is very difficult for an employee to go to a CEO and say that these allegations against you. What... ?

Has the board considered an alternative that the staff are aware of and the whole company is aware of? That should there be something that you are aware of, of an allegation against, for instance, it could be the CEO or the C... Is there alternate route to the chair? Do people know that they have an alternate route?

MR MONDI GUNGUBELE: Thank you, Ms Marcus through your Commissioner. This
10 is one matter that the board has been engaging on. Remember, on my arrival immediately on – when we dealt with this matter on the 22nd, one ask: Do you have a whistle blower you want to call system here? Yes.

The more you engage in the institution, the more it seems that policy does not enjoy the confidence of, what you call, of the staff because of the number of the past, what you call, , incidents. Therefore, there is a view that says: Let us review it. Let us check how best we can put in place a system that can enjoy the confidence of the entire staff.

ADV JANNIE LUBBE SC: Perhaps I can assist the – Mr Commissioner. That I will
20 very soon present evidence on the whistle blowing policy and what happened during the time with whistle blowers.

CHAIRPERSON: Yes. Question. When the senior staff are being dismissed, does this issue go to the board or it ends up at the human resources committees and all of that?

MR MONDI GUNGUBELE: You know, I have never found myself in such a legal paralysis in as far as what you are saying, is concerned. For instance, I would have been one of those who felt... Actually, even Advocate Budlender advised that, is it

prudent to continue the DC process of Ms Mathebula? No.

Taking into account that her activities, a part of the elements of the work that she was doing. The strong view was that, that is an exclusive vote of the executives and I still quietly content that position, because it is a matter that we need to strictly be advised, legally, that if the board is the ultimate accounting authority of the institution and the board is convinced that this what the staff member does has a detrimental effect to the institution.

How far do you take the principle of exclusive vote to the executive? And it is a matter that we have not been able to agree upon. A matter – one of the areas were
10 in dealing with the governor's issues and so. It is a matter that will have to clarified in the institution.

I am not being direct in your answer, but I am just giving you the background. That was a huge challenge because you get the report for instance about these officials. That – in the media, there is that they have been ...(indistinct) and all these kind of things. And it is actually allege in a very intense and a repeated way.

You want to enter this space and the both of you will agree that there is a terrain of the exclusive. And I do want to say, I, by the way, I did express my view in a board meeting that I concur fully with Kassiem. That if there is no position of these three individuals were incidental upon the allegations of the CEO. I still am of the view,
20 it was not correct that the CEO preside over their disciplinary process. I still hold that view.

ADV JANNIE LUBBE SC: Thank you. We are now going to move to a new topic and that is the matter of AYO Investments. Can we start by asking you, when did you for the first time as chair of the POC became aware of the – what could I call it – the problem and the audit query relating to this investment?

MR MONDI GUNGUBELE: There is an elaborate answer which is very long. If you do not mind, I will try to answer just to nest the commission's time. The first time I heard about it, it was in the media. Just read it in the media.

And then whilst – while I was still thinking about that, on the 5th June we were summoned by the Portfolio Committee of Finance, to explain the process that is dealing with the allegations of the CEO.

Whilst we were in there, it was myself, Dr Makona, who was the deputy chair and Ms Tutu Chlatwa, who is a member of the board. We were accompanied by the CEO, Dr Matjila and she had an entourage of the officials.

10 I had discovered that when we were in the portfolio committee that there were also other questions which I was not prepared for and I advised the committee that I would only deal with the question I had gone there to present. The process of dealing with the allegations, but I said, the management is allowed to deal with other questions, because that is their vote.

When the issue of Ayo was raised there, the management said – something they said several times. That as far as they are concerned, it was above board and ...(indistinct) was stopped and even going to say, if anyone has got information, contrary, that one is free to present that information. And the second time ... (intervention).

20 **ADV JANNIE LUBBE SC:** Sorry, can I just interrupt? The basis of the answer was. All due processes were followed. The investments are above board. There is no problem. Is that how I understand it?

MR MONDI GUNGUBELE: That is true. Until Scopa summoned us, if I am correct on the date, the 6th December, to appear before Scopa. It was at night. Where there was an elaborate interrogation of a number controversial issues around the PIC and the Ayo

issue came out and one of the officials, after a long interrogation, did concede that processes could have been messed up in Ayo and then ... (intervention).

ADV JANNIE LUBBE SC: Sorry, can I interrupt? Who was that official?

MR MONDI GUNGUBELE: If my memory serve, it is Mr Fidelix. Mr Madavo. So, as a board... After that... It was late at night, reflecting on the whole situation, we thought it is something... Some other issues need follow up. It is at that point, I think around the 15th, if I am correct, I wrote a letter to... The date cannot be correct, but it happened in December. To the acting CEO. To actually ask the internal audit to go deeper into this matter.

10 **ADV JANNIE LUBBE SC:** All right. Can I interrupt you there? I take it for granted that between management and the board, there must be a situation of complete trust.

MR MONDI GUNGUBELE: Up to now, generally with the management, I have no reason to say that there is no trust.

ADV JANNIE LUBBE SC: My question is. Did anybody, the CEO, the CFO, the Executive Head, listed investments before the Scopa meeting in December, did any of those people disclose to you as the chair of the board, this transaction was completed before the meeting of the PMC on the 20th December 2017?

MR MONDI GUNGUBELE: I only got that information in the Scopa.

ADV JANNIE LUBBE SC: Thank you. Please proceed.

20 **MR MONDI GUNGUBELE:** Thank you. Now around, beginning of January the Head of Internal Audit, Mr... He always laugh at me when I am going to pronounce the surname. Nmagovhani. But the words, when you compare them to Xhosa they mean something else.

ADV JANNIE LUBBE SC: I think we all refer to him in this commission as Lufuno.

MR MONDI GUNGUBELE: Lufuno is the simpler one. He drew my attention to the fact

that the acting CEO recused herself from the process, because her name is, what you call, , is affected. Something which ...(indistinct) supported and then said the interim report is available and he thinks that it is ready for consideration by the board before the next is taken.

Indeed, I think it is the 15th January. If the date is correct. We met for no less than eight hours. Looking at the report which was circulated amongst the board members. Having looked at the report, it was so clear that the breach of procedures was so huge.

10 Actually, it was brazenly, if I use that English word. They were brazenly breached. In analysing that, we took a view that two officials who consistently in that report appeared really not be assisting the investigations. And yet, they were so key in the activities that took place, should be suspended and those two officials being Mr Madavo and Victor Seanie.

ADV JANNIE LUBBE SC: Now, there will be evidence tendered later by some of the board members and I want to give you the opportunity now to respond to that, is that, when the meeting started they were not in possession of the draft report. After which, they requested copies. Copies were made. Distributed. The Internal Audit, Lufuno took the board through his report and when finished, you asked the board members to sign their copies. Hand it back, because of your fear of leakage of documentation.
20 Some of them were extremely unhappy about this because they said they need more time. They want to read it at home, before they want to make a final decision. Can...? That is something I want you to respond to, because that is evidence that will come tomorrow.

MR MONDI GUNGUBELE: I want to submit that if I look down my memory, I do not remember any single board member saying he cannot proceed, because the

documentation was given and the Internal Auditor present it and state there to answer any clarity seeking, what you call, questions.

And we deliberated on this matter for not less than eight hours and at the end when we took decisions to suspend, it was unanimous, what you call, decision. I am very careful. I do not remember anyone saying, because I – all I remember the subsequent meeting which I think is the meeting of the 1st, if I am correct.

People started complaining about not having that information at their disposal and then that matter was debated and I think we finally agreed that there must be a way in which it is availed to them, after going deeper into those discussions.

10 But the first time the debate occurred was not in that meeting of the 5th January. It was not in the subsequent, what you call, meeting.

ADV JANNIE LUBBE SC: The other issued raised was that the suspension letters were drafted that same evening without the assistance of the Executive Head of HR. Is that correct or is it not correct?

MR MONDI GUNGUBELE: My understand, that was done jointly with the Executive of HR. The person who was supposed to carry the matter was the Executive of HR.

ADV JANNIE LUBBE SC: After this meeting, there was a statement issued, a media statement by the PIC, referring to the findings of this Internal Auditor as a blatant flouting of the procedures of the PIC. Is that correct?

20 **MR MONDI GUNGUBELE:** No, it is correct. Yes.

ADV JANNIE LUBBE SC: And again I want to ask you. This was never disclosed to the PIC by the executive and you only learned for the first time of this irregularities after the Scopa meeting.

MR MONDI GUNGUBELE: That is correct.

ADV JANNIE LUBBE SC: So, would it be correct to say that when you met with the

special ... (intervention).

CHAIRPERSON: No. Sorry.

MR MONDI GUNGUBELE: Clarify as a chair, I had read the report by the time I was going, but officially, that is the first time when I read the internal report, but I got it before the board. So, someone says, you said you got it for the first time. I as the chair, it was submitted to me, because I was actually heading the process at the policing level.

ADV JANNIE LUBBE SC: But until then the Special Committee of Finance in June 2018 and Scopa were advised, no problem with Ayo. Everything above board.

10 **MR MONDI GUNGUBELE:** Oh, that is ...(indistinct) you were advised until Scopa went deeper in questions. When one or two concessions were made.

ADV JANNIE LUBBE SC: Would that also have been the report to the Board of Trustees of the GEPF?

MR MONDI GUNGUBELE: No. The Board of Trustees, in as far as my records are concerned were not informed of it. The Board of the GEPF.

MR EMMANUEL LEDIGA: I just want to check your version. Your version versus the version that was given by Mr Madavo and Mr Seanie. Mr Madavo said he was not at the meeting where this thing was decided. Your transaction. And Mr Seanie said that you know he does not see, you know, he did not do anything wrong and he laid out
20 some three points about that. I mean, what...? How do you contradict their versions, those two parties?

MR MONDI GUNGUBELE: Thanks to you Mr Commissioner. Let me put the record straight. Suspension was not a verdict of guilty on their side by the board, but the board was worried by their conduct during the investigations and the board failed to protect the investigation. This should not be in the system.

For instance, Mr Madavo continued to say – I guess the commission does have the record of the report – continued to say he was not part of the process. He was on leave, but as a clear call log that demonstrate beyond a doubt that there was a serious of communications he had with the people who were dealing with the matter and the two...

Mr Madavo, when he was asked about some of those calls he would have said he cannot remember exactly what he said in that call. That kind of conduct and those articulations, the board frowned upon it.

10 Taking into account that is a senior executive in that area that the board felt he was not one of the people who are going to help us. When it comes to Victor Seanie. Victor Seanie – if you follow the interviews, you will find that at times he plead ignorance of the procedures and the man has been there for a long time. That cannot be accepted.

He has been evasive in a number of questions that were being asked. Shocking more... Although, that was not the basis of our decision. That some of the things he revealed here, he never actually revealed those things in, what you call, , during the investigation.

20 Those two, when they were suspended it was not a verdict of their guilt but the view of the board was that they were not helping the process of investigation and it was felt, it has broadened their interest and that appears ...(indistinct) that they be asked to be precautionarily suspended.

MS GILL MARCUS: Sorry. Chairperson, can I ask just so that everyone is on the same page, if you could read the first paragraph of your document on page 4? Read it into the record.

MR MONDI GUNGUBELE: On page 4?

MS GILL MARCUS: Ja, the first paragraph is the one that I am looking at here.

MR MONDI GUNGUBELE: It starts with: I was asked. I was asked.

MS GILL MARCUS: That is correct. Thank you.

MR MONDI GUNGUBELE: I was asked to also clarify whether the pays are reported these matter properly by disclosing all facts to the GBF. The response is no. The investigation has shown that management submission and presentation relating to Ayo which were given to the Investment Committee of PIC, the GBF and Scopa, failed to disclose the critical information. That proves irregularity like the signing of subscription agreement.

10 **MS GILL MARCUS:** Given that, that was a failure of disclosure. The question asked is what... I mean and obviously, that has come a little later than the events. In what interaction did you as the board have in relation to that with the CEO, the previous CEO who was involved and took those decisions? Because the suspension is of two different – much to very different levels of people. Madavo and Seanie. Compared with the CEO who actually dealt with this matter and authorised different things to be done.

MR MONDI GUNGUBELE: I do not understand your questions, Ms Marcus.

MS GILL MARCUS: The question I am asking is, what steps or interactions did the board take in relation to the former CEO, given that the steps taken against Fidelix
20 Madavo and Victor Seanie are at different...? Victor Seanie is a much lower level around this and gives a very different version as you are aware to the commission, but the signing off was done by the CEO in relation to this. How does that – how – what steps did the board, if any, in relation to that?

MR MONDI GUNGUBELE: Maybe let me start by saying through Mr Commissioner. That the ...(indistinct) owed by the time we were commissioning this investigation he

was no longer there. So, he would have dealt with the situation differently, but the current acting CEO would have also signed in these processes.

A question has come, for instance, to us. Why not suspend him, the current acting CEO? What our emphasis is to could prove that we acted wrongly but that is what informed our decision to suspend people.

Was to...? To what extent we will be assisting to, what you call, the investigation? And we felt all those who appeared to be cooperating with the, what you call, the investigation. Although, a number of them at face value there were clear allegations against them.

10 We need to allow them to continue until we finished the investigations but these two guys, it was so clear and so crystal that they were really conducting themselves in a manner that was undermining the investigation.

So, in our view, the current acting CEO was very candid in accepting what ...(indistinct). Somebody else could say, because a senior could have suspended. With hindsight, somebody could have that view, but that was not the view of the board. That is not the view of the board thought about at that moment.

CHAIRPERSON: Are the two still under suspension?

MR MONDI GUNGUBELE: Yes, Mr Commissioner. The people... Let me explain this. Remember there was a public outcry. Not only from the public, but also from the
20 commission that, how did it happen that we deal with that matter, whilst it is also the item in the commission?

ADV JANNIE LUBBE SC: Can I interrupt the witness there? Not to protect the commission, but to put the facts straight. The outcry was from me. Not from the commission.

MR MONDI GUNGUBELE: Well, Mr Lubbe is the face of the commission, but I will

accept that. Where there was this outcry that why are we doing this? Are we connecting...? Are we doing an inquiry parallel to that of the commission? With... If you check our records Mr Commissioner, there was a directive that this commission must be informed at about 02:00 a.m.

And when we got this report in the morning, it appeared to us that, that instruction was not to call – was not carry - because upfront we knew that we were supposed to inform the commission. The commission is not supposed to fight in the street.

10 Maybe with hindsight, one of the things we could have done, by the way, would actually - even before that, before that meeting, probably as a chair but I would need to get that mandate from the board, was to say to the commission: We got this, what you call, this report we are proceeding.

There could be different, better ways of dealing with it, but however, incidental upon those developments, the interaction between us and the commission occurred and having appointed senior legal counsel to liaise between us, the commission - we were advised that it may not be wise to continue the processes around those who had not started doing this. There is no purpose.

20 Until this commission has completed its work, but we can continue with the two who have already been suspended, because those two cannot be suspended indefinitely for a number of legal, what you call, reasons and it has been clarified again, because there was an impression that we are being directed by the commission.

And it was clarified by the Evidence Leader that it is an advise after a number of consideration and the board considered it positively and felt it is good to act in a manner consistent with that advise. As a result with of that, we are not dealing with any of those and we have let the report at that stage.

ADV JANNIE LUBBE SC: I will now deal with the term of reference specifically. You have seen that and I am starting with 1.1. and if you can just briefly comment on what I am going to ask you about these terms of reference.

The first is. Were there any alleged in proprietary regarding investment decisions by the PIC in media reports in 2017 and 2018 contravened any legislation, PIC policy or contractual obligation and resulted in any undue benefit for any director, employee or any associate or family member of any PIC director of employer at the time?

10 It is a very wide... You were not there in 2017. You only took office in 2018, but it seems, apart from the Ayo thing that we have already discussed. Do you know of any other investment decisions flying in breach of legislation policy or contractual obligations?

MR MONDI GUNGUBELE: Other than Ayo wish officially at our disposal and a series of public controversies being it Mozambique and in Nigeria and a number of others which are, I am advised, are in your – in the series of – are in the sight of issues that I know none. Probably until Lelungo recently came.

ADV JANNIE LUBBE SC: Well, I was preparing to ask you at the end of this inquiry – of your testimony but let us deal with it now. You are also now implicated in one of these emails that – improper conduct, receiving benefits. Can you deal with that now,
20 please, Chair?

MR MONDI GUNGUBELE: You asked that by this reading what I wrote. You know, when we became aware of Nogus's email, I convened a special board meeting in order to allow the board to deliberate on the way forward. So, that this matter do not linger. Going on for a long period without being attended to. This was also after one of the directors implicated in that email had sent the board a request that allegations against

her be independently investigated.

At the meeting I opened the meeting and then asked for all directors implicated, including myself to recuse themselves from the meeting, so that the board could resolve independently.

The board accordingly resolved that these allegations be investigated. Although the allegations against me are unfounded and in fact, I dare say laughable, I invite any member of the public with any evidence of corruption and in proprietary against me, to urgently bring it to this commission, so that it can be investigated.

If I can further... If what I am about to say is proper, Mr Commissioner.
10 When I was looking at this, I usually feel when people are making allegations against anybody there must be an event. Maybe the allegations is misunderstand in the event.

I am looking for the event that could have led to these allegations being made against me. I remember saying to another journalist, to me it is like a story of a jilted lover who maybe at night would have dreamt getting married to Naomi and then the following day believe he is her husband to Naomi. Having never met and they do not know each other.

This is the sense of these allegations, because I cannot believe where do they come from. Maybe somebody would say I had a meeting somewhere or that is his records. So, this is how, in my view, this – I find to be such wild allegations to a point
20 that I cannot be able to explain.

ADV JANNIE LUBBE SC: Can I then just for the record, Mr Commissioner state that the Chair has signed consent for the imaging of his laptop to – for the conduct of the forensic lifestyle audit regarding these allegations. He has done so voluntarily and the process, which hopefully be finished in a week or two.

And as I understand your, sir. You invite whoever made these allegations to

come forward and present the Commissioner of that evidence. And it can be done with the protection of the identity of that person, if he or she is a whistle blower and there is also provision in the rules of this commission that they can testify *in camera*.

MR MONDI GUNGUBELE: Thank you through Mr Commissioner. There are two issues I want to raise around this matter. Probably one is a general statement that it is my appeal for instance that I wish the role of whistle blowing can be protected in the sense that when you whistle blow, is because genuinely there is an information which needs to be attended to, but because of – you are uncertain about your safety, you cannot go public.

10 That at least when further inquiry you are available where you are protected, because my view is that if you do not avail yourself, it undermines the credibility of the whistle blowing exercise, because I always believe that whistle blowers must be protected.

I would never charge somebody for whistle blowing against me. And then the last issue which I thought true Mr Evidence Leader that, maybe I must draw the attention of the commission.

On the 7th February, on the date of the State of ... (intervention)

ADV JANNIE LUBBE SC: The nation.

MR MONDI GUNGUBELE: The Nation Address. In the morning, my PA called me.
20 Met me to say, there was a call that came to somebody who calls himself Kleintjie. Allegedly coming from the Hawks. Wanting to talk to me around these developments and I asked to give me the numbers.

I tried to phone. There was no response. Until somebody who calls himself Kleintjie called on the 8th in the morning. As I was sitting there, he felt he could not use both my phones, because he believes that my phones are... What is this?

ADV JANNIE LUBBE SC: Tapped.

MR MONDI GUNGUBELE: Tapped and so on. I just could not understand that what he said. Then what do you want to do? He says: Is your wife around? I said: Yes, my wife is around. Can we use her phone? And I gave him a miss call through my wife's phone.

And he called and he said on the 8th he would finish this matter the following day. He would have this matter of allegations against me, even including other board members, over and over with the following day.

I said: That would be good, because I am just irritated. Because I do not
10 know where this thing comes from. So, anyone who ...(indistinct) should do, but he asked: What are you going to do for me? I said – I deliberately said: What do you...? I deliberately did not ask him. Because I wanted him to actually continue talking with me.

I said: Is the quickest way the only way? Is there no other way? He said: There is another way. We should take it long. I said: Why do you not allow it to go the long way? That is how we parted.

ADV JANNIE LUBBE SC: For the record, Mr Commissioner. This has also been reported to the law enforcement agencies and it is under investigation at the moment. If we can do then 1.3? Were there any ... (intervention)?

20 **CHAIRPERSON:** Sorry, Advocate Lubbe. Can I just go back a bit to let's say the Ayo transaction and other transactions, how does the board get to know about transactions that have gone only as far as the, lower than the investment committee what is it, is it portfolio management listed and so on, how do you know about decisions taken at that level if any at all?

MR MONDLI GUNGUBELE: I want to be honest Mr Commissioner I don't know a regular established way proactively other than you being an anxious leader say can I have access which you're allowed to have but I don't know of any established regular way to now this is a flow of decisions taken but it's a matter that I understand in that fashion and I dare say it is one of the issues that in governance are issues that need to be dealt with. At a risk of going ahead of myself because one of the challenges of the board is processes is the consistency and the openness on the processes of dealing with deals. For instance if an ordinary person makes an application I have not come across a, because I asked about it, that if you are not happy with the way your deal has
10 been handled is there an established process, I have not found that process to be in existence. Those are some of the weaknesses in the governance of what you call of the institution. But on this one that is how far my answer could go.

MS GILL MARCUS: Perhaps just a follow up question on that Chair, are you satisfied because this relates directly in my view to the delegation of authority and the board determines the delegations of authority, from what I've seen there I would ask whether you would be satisfied with the levels of delegation and what comes to the board and whether you are reviewing that?

MR MONDLI GUNGUBELE: If the board allowed something like up to 10 billion moving up to the PMC not going above that, from my own personal view I find that to be
20 a huge allowance in as far as the board's responsibility to protect the institution is what you call, is concerned. And it is this and a number of other issues and some I've already said that a general governance of the board is being what you call, being reviewed. It's similar but at a higher level here, you know if you go to Government I'm sure Marcus will, through you Commissioner, will remember that how people abuse the three quotation system if it says 100 000 you have 100 three quotations making that

and then if there are 10 three quotations already you make a million but you would have followed the ... But this one is huge it's about 10 billion. So we said we need, we say we need to put together a system that sustains transparency of such a nature that the board would not have an excuse of not intervening when things go wrong.

CHAIRPERSON: But what do you think should happen or maybe I should start by asking have you got any idea as to how many deals are concluded between one, let's say your first meeting to the next one, have you got any idea as to how many deals would be concluded?

MR MONDLI GUNGUBELE: No Commissioner, no.

10 **CHAIRPERSON:** And is it practicable to say when you, let's say you've got now a new system where you say we need to know what has been concluded, what deals have been concluded how far back would you say could you go as a board in checking the steps that were taken up to the final signing off of a deal or would that be too much work for the board?

MR MONDLI GUNGUBELE: My view, this is a personal view Mr Commissioner, is that sustainability in any society is primarily through strong institutions and reliable systems. Systems, it's possible to have systems and make them capable of being, of containing information that is accessible to those who are on top even if it's not a reporting what you call, a reporting time. What I am trying to say is that if you could have a portal so
20 that any board member, for instance what you can have you can say every two months we need to get an update on the key deals and then having being given a document in advance but not to wait for that two months having a portal where you keep on opening as a board member so that if there's an alarm you are able to escalate quickly and so on. To me there's a way in which systems can be organised in a manner that they ensure complimentary between the warm bodies and the nature of the system itself.

ADV JANNIE LUBBE SC: Following that question my concern is the following; we have established so far in this Commission that there was an audit query raised on the Ayo transaction in February 2018, that query was reported to the audit and Risk Committee, it was dealt with by the Investment Committee and during that same period it was all over the news about the Ayo transaction and investment. Why wasn't this issue elevated to the board level by the Audit and Risk Committee or the Investment Committee, why was it that the chair of this institution was kept in the dark for so long?

MR MONDLI GUNGUBELE: That was a big, through you Mr Commissioner, that was a big question colleagues will remember I posed that question to the Investment
10 Committee, I said if you engage this thing in May 2018 how did it take an investigation in December the same year to come across such a major flaw. The view, the position of the Investment Committee was that when they had this in front of themselves all they were told was that there is a need to rectify certain processes but they were never told that a subscription or what you call agreement had been signed and they were able to demonstrate factually why that is not there but somebody could see it differently but I would advise the Commission because I've been advised that some of the key people were even chairing those meetings who will actually appear and they are better to explain that but I did try to find out how did it happen if these committees had to deal with this matter. But the Audit Committee reported these matters upfront as far as I'm
20 concerned from the beginning.

ADV JANNIE LUBBE SC: Did, I want to understand that, did the Audit and Risk Committee file a report to the board about the Ayo transaction before the 5th June 2018?

MR MONDLI GUNGUBELE: Not as far as I remember.

ADV JANNIE LUBBE SC: Then can we deal with 1.3 do you know whether any PIC

director or employee used his or her position or privileges or confidential information for personal gain or to improperly benefit another person?

MR MONDLI GUNGUBELE: Not as far as I know except the Noko allegation and I don't think that you read ... (intervention)

ADV JANNIE LUBBE SC: That is still under investigation?

MR MONDLI GUNGUBELE: Yes.

ADV JANNIE LUBBE SC: Were there any legislation, 1.4 Commissioner, were there any legislation or PIP policies concerning the reporting of alleged corrupt activities and the protection of whistleblowers who were not complied with in respect of alleged
10 impropriety referred to in 1.1. You have already expressed your concern about the policy, the execution of this policy with regard to the investigations in the Noko matter.

MR MONDLI GUNGUBELE: Through Mr Lubbe that my point is that – my point is that my experience in running any institution complimentary between the minimum integrity of the warm bodies and the quality of the system goes hand in hand. When the other is work the other one can go a wrong way so that principle remains important. The question is you might find that that system is not work but authorities did not implement it and if they don't implement it, it comes across as a weak system so that's why I'm saying for credible institution you need minimum integrity of the warm bodies and a good quality of the systems at any institution's disposal.

20 **ADV JANNIE LUBBE SC:** Thank you. If we can deal with 1.5 it's an important matter because some people made these allegations that board minutes were tampered with and are not a true reflection of what happened at board meetings that's in 1.5. Now Mrs Louw already testified regarding the preparation and editing of board meetings what is your view on this?

MR MONDLI GUNGUBELE: The response I got on this was people vehemently said

they were, they cannot recollect any tampering of the board minutes other than the fact that not everything they said in that meeting in camera was put on the what you call, on the minutes and that's how far they could go but they denied tampering what you call, with the minutes and I still believe that this view doesn't stop it continues to be insisted maybe some of your steps in actually interrogating this might come with the better information, remember I wasn't there when that meeting took place.

CHAIRPERSON: But just as a follow up, you as chair of the board have you or have you never come across a set of minutes where you were dissatisfied that decisions of the last meeting are not properly recorded in the minutes?

10 **MR MONDLI GUNGUBELE:** No that occurs now and again. That occurs now and again but when the minutes are adopted that's the time we correct them even here it has occurred.

CHAIRPERSON: So as far as you are concerned whatever may have been altered or amended was in the process of correcting minutes?

MR MONDLI GUNGUBELE: That is a possibility Mr Commissioner I don't know but I cannot vouch for this one because I wasn't there, I could not even attest to that the minutes are a true reflection or not because the people who were there, but those minutes were, all the minutes I have seen were signed by the relevant chairperson but now as an outsider I view them as authentic what you call, authentic minutes.

20 **ADV JANNIE LUBBE SC:** I think the question of the Commissioner is during your term, during the term you're the chair do you know of any improper altering of minutes not to reflect the true position?

MR MONDLI GUNGUBELE: No, oh no maybe I'm not sure why am I answering this question, there is a recording that cannot be the true reflection of the meeting that took place. In a number of times when we confirm the minutes of the board in some board

minutes it doesn't occur in some you would correct either grammar or a particular point that does occur. I was trying to answer the question understanding it in that fashion unless there's a different way in which I was supposed to understand it.

ADV JANNIE LUBBE SC: In fact, sorry.

CHAIRPERSON: No I suppose what is really important is the decisions of the board whether the decisions of the board had ever been altered, have you come across any such instance where you looked at the minutes and you say, no, no, no this is not what the board decided?

MR MONDLI GUNGUBELE: There has been instances where the minutes are
10 corrected not being a true reflection of the meeting but I cannot come now to a specific particular meeting. At this point if we go back maybe that can be shown in the minutes that this was being corrected and again I'm still not sure if I'm correct. I cannot, maybe let me say during my tenure I have not come across what I would refer to as a fraudulent reflection of minutes of the board, I haven't come across that.

ADV JANNIE LUBBE SC: Thank you Mr Commissioner. If I can take you to 1.10 oh no 1.9 first whether the PIC has adequate measures in place to ensure that confidential information is not disclosed and if not to advise on measures that should be introduced. We know by now that confidential information is disclosed. Can you comment, do you have adequate measures in place or not?

MR MONDLI GUNGUBELE: At this point we have asked the management to assist us
20 until systems have been overhauled to do the best they can with the measures at their disposal but I do want to say one of the reasons for instance on the 15th January the reports were taken back is because in the past there have been leakages of our meetings.

ADV JANNIE LUBBE SC: Thank you. 1.10 is an important one where the measures

that the PIC has in place are adequate to ensure that investments do not unduly favour or discriminate against a domestic prominent influential person as defined in section 1 of the Financial Intelligence Centre Act, any immediate family member as contemplated in Financial Intelligence Centre Act of a domestic prominent influential person and a known close associates of domestic prominent influential persons. Do you know, can you comment are there adequate measures in place to prevent this unduly favouring of these people?

MR MONDLI GUNGUBELE: I think in the PIC we do have of the what you call it, politically there's a way in which – oh it's called politically exposed persons.

10 **ADV JANNIE LUBBE SC:** Yes.

MR MONDLI GUNGUBELE: Why I remember it there's one transaction which was appealed to the board we had to discuss our common understanding of that but I think there is a view that a continuous engagement on this matter so that it is commonly understood across the board should continue but as I speak there is, there are measures in the PIC whether they are adhered to or not that's a different question.

MR EMMANUEL LEDIGA: Just as a follow up in terms of PEP's are there times when a transaction was declined because there was this PEP risk that's the first question. The second question is that is it possible to get a list of transactions where PEP's were looked at and then those transactions were declined or approved?

20 **MR MONDLI GUNGUBELE:** I think in the PIC it is possible, it has happened more than once.

MR EMMANUEL LEDIGA: Ja so what are we going to get a list of that or what?

MR MONDLI GUNGUBELE: Through you Commissioner I think that's doable I think we can do it if the Commission so require.

ADV JANNIE LUBBE SC: If it will help there will be evidence tendered on that topic Mr

Commissioner. The legal team has received many complaints and people will come and testify about discriminatory practice with regard to remuneration, bonuses and performance awards in general of PIC employees. Do you know anything about it?

MR MONDLI GUNGUBELE: It's not a matter I had to deal with at any point in time except I remember what I had to deal with was a delay in payment of bonuses not the discrimination. Maybe the other issue at the risk of failing not to put this, I know that there's a contentment in the PIC that the PIC top executives and leadership view the PIC as a very unique institution to the extent that they believe that their bonus system should not be similar to that of what you call, to that of Government and they are of the
10 view that it stifles the ability of PIC to actually make more returns than it is doing currently, that debate is, it's a matter we said an appropriate time we need to engage the State.

ADV JANNIE LUBBE SC: The last topic I want you to address is 1.15 and 1.16 of the terms of the reference and it has to deal, it has to do with the current governance and operating model of the PIC including the composition of the board. Is it the most effective and efficient model, whether it is necessary to make changes to the Act, the PIC memorandum of Incorporation *etcetera*. I think if I can make it easier for you let's start with the first issue, in your view as having spent some time now in this, especially in these turbulent times at the PIC, is it proper for a politician to be the chair of this
20 institution?

MR MONDLI GUNGUBELE: This is a matter that ... (intervention)

CHAIRPERSON: Maybe I can substitute advisable rather than is it proper. Is it advisable that that be the case?

MR MONDLI GUNGUBELE: That is more considerate (laughs). Thanks Mr Commissioner. I wish I can believe that I'm dealing with this matter dispassionately.

This debate is ongoing and I want to express my, what informs my views on this matter is that a number of times what I've come to realise, I'll repeat what I've just said here that proper appointments and proper systems for strong institutions are primary in any situation because even if the chair of this committee was not a politician the 100% shareholder of this institution is political. So there is no way you would actually divorce this institution from an ultimate political what you all influence. Now the question that must be answered is the matter being a non-politician or a politician I don't think so. The matter to me is the integrity of the people and the quality of the institutions.

10 I just want to share some few views Mr Commissioner, I'll give you an example for instance that I have seen, I want to take this situation at a distance in Government, boards which I believe are efficient and competent being dissolved and there is no politician in those boards but they are dissolved because a politician doesn't like the board but the politician is not a member of the board but there's an ultimate authority of the State which gives the politician authority over the board. Now that to me cannot be corrected by whether a politician is deployed or not. A true system, if I am to give example, one of the criticisms I said in one of the meetings is that my view is that increasingly over time in South Africa the problems of the board are not as a result of lack of skills or even their ability to appoint skilled people. It is the uncertainty of the institutional power relations.

20 How do I explain this? That if I'm a board chair I must know and be sure that as long as I act within this parameter even the President cannot fire me. That is an institutional measure not an individual measure and to me the societies that have survived depended mainly on institutions not strong individuals. So generally to me I want to argue, this is my last point that what is my view, here PIC is a highly contested asset where Government is 100% shareholder. If you read Adv Budlender's report one

of the things he speaks about is a pressure by a politician applied to an executive. My view is that if the systems of this institution are strong both within and in the manner they relate to the State and you appoint credible politicians to chair they can be a psychological leverage for the officials to take decisions knowing that a politician will deal with other politicians who are trying to predate on the institution.

I'm trying to express my view that because of what I've said it seems as if to have a politician chairing the committee would be advisable but I'm not married to any other approach, I'm not prepared to die for anyone.

CHAIRPERSON: So if I understand you correctly and tell me if I'm wrong in
10 paraphrasing what you have just said, it wouldn't matter to you whether or not it is a politician what matters is whether that is a strong person, do I understand you correctly?

MR MONDLI GUNGUBELE: Thanks, it's a strong person and the systems to fall back on. Sometimes you can be strong and the systems won't protect you. I've seen strongest managers in South Africa falling on the way side because systems could not come to their rescue.

MR EMMANUEL LEDIGA: Just as a follow up so basically you are saying that there should be some security of tenure for the boards you know that a new minister cannot just come and say hey you know I want to change the board to my liking, so you are
20 saying maybe board people should be given three years or so and if they are doing their job well then there's no need to change the board?

MR MONDLI GUNGUBELE: That is enough, through you Mr Commissioner, a mere security of tenure is not enough because it's got its own disadvantages. Inefficient managers hide behind the permanence of the tenure. It should be the security of tenure together with the principles that govern parting of ways that it must be known

that it doesn't matter how a politician feels if the following principles have not been breached you have got no right to fire a board. That's my strong view and my attitude is that in matured in advanced democracy that may not be necessary but in young democracies my argument is that you need that. When a democracy, I usually say for instance the manner in which you are non-racialism in South Africa is more a script of the law than a strong society believing in it. We need a stage where in sustaining these laws they impose on us an attitude of non-racialism so that even if a dictator would come and actually remove these laws we would actually have a non-racial attitude. So I'm saying at this stage of our democracy that's how strong I feel about the matter.

10 **CHAIRPERSON:** I'm tempted to ask and maybe you have mentioned it but I didn't hear, what is absent in the PIC because that's where we must concentrate, what is absent in the PIC that makes you say what you have just said? What's absent in the system because you are talking about a system and what is absent in that system in the PIC?

MR MONDLI GUNGUBELE: Where I'm sitting the risk, you will challenge me to quote a particular policy which I'm not ready to do, where I'm sitting similar to the whistle blowing issue we discussed, remember the whistle blowing is to the extent is good as its consistent application because its consistent application makes it reliable, makes it dependable. Now I think systems, I want to leave it at that way Mr Commissioner

20 because at the risk of saying I think if so and so would have done A, B, C because law allows him to do because I've said it in the meetings they can say I've told officials any day you meet any politician trying to put pressure to you transfer that problem to me so that that official must know, that politician must know that he did not get the deal because of me, I'm prepared to live with that, don't make it your problem. The question is I repeat it's both the systems and the personalities but I know I'm not answering your

question in a more satisfactory way.

ADV JANNIE LUBBE SC: Isn't it, if I can follow up on that, isn't it an inherent weakness in the present system where there's a change of the Minister of Finance which happened now frequently unfortunately over the past couple of years, there's immediately a change in the chairperson of the PIC?

MR MONDLI GUNGUBELE: Sir it's a point I never thought of it's also a very important point that one of the problems not just in PIC even in Government broadly and I think the President has spoken about it several times, is the institutional memory, how DG's move with the minister, how it affects the institution in its consistency and all those, I
10 want to concede that would be the issue but there's also to make this question even more, to throw more spanner on the works, I was looking at the SARS, I want to take this risk. I'm looking at SARS you will see in SARS that processes, institutions were deliberately broken. Mismanagement is an understatement. Deliberately because when you mismanage you will remove a good thing, you put your of which you think works. If you remove things and you leave nothing you are deliberately breaking an institution.

My view is that our legal system it's either because I don't understand it, if I don't understand it this must be done because to me somebody who does that thing debating on whether he should be fired or not is an understatement. That person is
20 supposed to be criminally judged in my little understanding otherwise this country is not protected if people can go and dismantle something like SARS in the manner it was done and cause that haemorrhage, you remove the enforcements you need and you are no illicit flows to happen, no less than 15 experts leave the institution but all what we have with you is the fact that you are entitled to a job, labour relations, yet the fundamental issue that you are answer for is not there. I'm trying to make this point of

our systems.

MR EMMANUEL LEDIGA: Question.

ADV JANNIE LUBBE SC: Chair, sorry.

MR EMMANUEL LEDIGA: You mentioned that it might be better to have a politician you know as a chairperson of the PIC but many boards don't have that, I mean the Eskom Board, Transnet Board as a first point. The second point is if a politician is a chairperson don't you think there is some risk that other politicians you know will put pressure as friends you know politicians have got friends they meet at the MEC meetings, wouldn't it be better for the chairperson to be a non-politician and they can
10 sort of repair any political pressure you know from these guys?

MR MONDLI GUNGUBELE: Mr Commissioner I think the problem is that how does things get worked out if you say no politician there's an appointment of a weak structure that will be vulnerable to politicians. You see for instance I was sitting in the Public Enterprise Inquiry where in Government in general there's a lot of acting positions, something you end up being tempted to conclude that this is deliberately meant to curb to keep a vulnerable system for abuse so all I'm saying is that it should be a continuous trial and error of building a society that easily frowns upon issues of poor morality and then because of the society collective influence you stand a lack of producing more people of that similarity and the power of the systems. I continue to respond in that,
20 there's no magic wand you need both of them to be good.

ADV JANNIE LUBBE SC: Mr Commissioner I promised the Chair that I'll do my level best to finish at lunchtime with him, can I ask your indulgence I should be finished within the next 10 minutes?

CHAIRPERSON: That's fine we're not in a rush.

ADV JANNIE LUBBE SC: Thank you.

MR EMMANUEL LEDIGA: Anyway we do have further questions also.

ADV JANNIE LUBBE SC: The alternative to that is having the politician and the Chairperson to have the politician as the Deputy Chair or the Board member to protect the interest of the only Shareholder. Isn't that a more acceptable proposition?

MR MONDLI GUNGUBELA: Under the circumstances, I find it very attractive, but I already expressed my view about it, because it seeks to say, how do you avoid changing of what you call, of the Boards. I think one of the key things is, I have realised in other countries there is a lot of continuity and long term service by a particular individual. In our country there has been a lot of change of bureaucrats and
10 you see it has become some kind of culture. As long as that goes hand in hand, with protecting and ensuring that Boards finish their... What you call, their term. That then leaves us a minimum [Indistinct] that can be given and only discontinue when particular principles are broken.

ADV JANNIE LUBBE SC: My last question is the following. When you came to the PIC, you found the position that the PIC is operating, not in terms of the Memorandum of Incorporation. The Memorandum of Incorporation of the PIC refers to a CEO, CIO, COO and that has been changed. The position of the COO has been removed, The CIO and the CEO has been merged into one position and I am not saying it is comparable to your remarks about SARS, but is it not dangerous in an organisation like
20 the PIC to have this powerhouse situation where the CIO and the CEO is in one position?

MR MONDLI GUNGUBELA: I think this is a good example where systems are working to the advantages of scrupulous people. When systems are organised like that, because if the CIO is separate and you have a COO you do not make easy the abuse of the what you call... Not that it cannot of the institution. That is a good example of

working in systems so that scrupulous individuals or is it unscrupulous... I do not know which is the right word. Unscrupulous individuals can prey on the system.

ADV JANNIE LUBBE SC: Thank you Chair. Mr Commissioner that is my last question.

MS GILL MARCUS: Perhaps just a specific point, because you have dealt with the question of the PIC legislation that the Minister of Finance is looking at how to... Whether this should proceed, given the conflict of the terms of reference that we have and the question that I would like to just ask your information on is... Sorry, one second here. Is, why does the PIC pay dividends to Government?

10 **MR MONDLI GUNGUBELA:** The Government is a Shareholder [Laughs].

MS GILL MARCUS: That is not the question. You do not automatically... I mean this is Government Employee Pension Fund. It is not a for profit for the Government. It is supposed to look at how to ensure your sustainability. If you were going to pay an dividend, I would have assumed that there is certain clear rules and that is why I am asking you. Are there clear rules? To what level there your actuarial evaluations determine that if your fund is twice funded, because you have got an on-going liability that you could pay a dividend, surely if you were looking at paying a dividend, it should be something that... Because in essence you are taking money from pensioners into the fund, back to Government. What are the rules that set out the terms or grounds on
20 which you pay a dividend to Government? There cannot be profitability giving the on-going liability that something like the PIC has to the GEPPF and to other investors. I mean what are your actuarial evaluations and your assessments make about your on-going liability and conditions under which you could do that. It cannot be because you are paying dividends to a Shareholder.

MR MONDLI GUNGUBELA: I must apologise. I think my answer was too abrupt.

MS GILL MARCUS: I think you were being light hearted.

MR MONDLI GUNGUBELA: [Laughs]

MS GILL MARCUS: But I am being very serious.

MR MONDLI GUNGUBELA: Yes. I do not think I am competent to answer that question, but I think it is a very important question. I do not think I applied my mind strongly in a manner as dealing with the questions you have raised now. I would be making a mistake if I think I have got ready answers. Actually your questions, have actually forced me to think big about it.

MS GILL MARCUS: Can I ask that the matter be looked at and see in a reply in writing
10 to The Commission as to what... Under what terms do you pay a dividend? You paid, what? R80 million over the last year. I think R140 million over the last two years. It is not big in relation to the PIC's investments, but it is a matter. It is material in terms of that and it must be done under proper circumstances, so I would like to know exactly what those circumstances are that enable payment of dividends to a Shareholder, whatever the amount is, is a separate question.

MR MONDLI GUNGUBELA: My last point through you Mr Commissioner, is that I think terms do exist, but I do not think I am competent to be the one articulating even the mere existence, the specific nature and to the extent of the adequacy and so on. We will do as directed.

20 **MR EMMANUEL LEDIGA**: Just couple of questions. I mean since you are here Chair, so I thought rather let us look at the terms of reference to deal with some of the issues, yes, to get some views. Let us go back to the bonuses. The bonuses. You know it looks like it is a huge problem at the PIC where people are getting declining bonuses and if you look at the vacancies, so that it appears that there is a lot of vacancies within the PIC. So, can you just give me some view about the bonus issue first and secondly

about the vacancies there? Could maybe this bonus issue be contributing to the vacancies?

MS GILL MARCUS: Can I add to that question just slightly if you do not mind Chief. The question for me would be the bonus pool seems to be determined by the National Treasury and it is a declining pool. On what basis does the National Treasury determine the bonus pool and its declining in relation to the work of the PIC and the decisions and agreements reached between the PIC and its staff members and contracts?

MR EMMANUEL LEDIGA: To add is that as you know to, I mean, there are contracts
10 which the PIC sort of enters with the employees and one would worry that you know, if they are not honoured, the PIC might not get the required skill to manage the money properly.

MR MONDLI GUNGUBELA: Thank you. Through you Mr Commissioner. This is not a simple matter, but from my experience I think I said it up front here that there is a debate in the PIC whether it is proper to pay the PIC bonuses in the manner in which the broader State owned enterprise bonuses are being paid. One of the argument that had been advanced in those meetings is as a result of that, PIC struggles lately to attract highly competent people because of the competition that is there by your Investec, your Allan Gray and other institutions and the view has been that if you want
20 to keep the credibility of this institution, because it is one of the great performing institutions, you need to find your way of retaining good people. To what extent the vacancies are related to that, I would need more facts, but I would not be surprised if you talk about top managers, how related it is to that?

Towards workers the issue of Treasury is almost answered in a way in what I was trying to explain it. The Treasury follows. There is a protocol on how State owned

enterprises are paid bonuses. PIC is simply locked in there to be paid in the same way. Then the Treasury becomes the institution that whenever bonus payment are proposed for the Executives to analyse if they are proposed in line with the broader State protocol. That is why Treasury comes in, because Treasury does that, even for other State owned enterprises. Not only for PIC.

Whether it is an adequate system, it is a big question that needs to be interrogated. I am tempted where I am sitting that it is a matter that needs to be looked at very closely.

MR EMMANUEL LEDIGA: Next question. In terms of the testimony we had here, is
10 that you know, you look at the PIC. It is quite a centralised structure you know. The operating model is quite a centralised one whereby you have risk serving various divisions like private equity, listed sections and all that. That model lends itself to conflict of interests with the Competition Commission, so somebody who is in private equity, should not be seeing a listed sight transaction for instance, because there are no Chinese halls there. What is your view on the model and the centralised structures of the PIC that you know, if you look at various companies like Sanlam Investments, they operate differently. You know sometimes, most times. Do you have views about the model and centralised structure and the CEO taking the final decisions on some of these things, but various PMC's or various Boards actually seeing what other divisions
20 are doing within the PIC. I hope I am clear.

MR MONDLI GUNGUBELA: You are raising an area which I am not confidently competent to deal with, so as a result I would not give you enough information other than saying that my own observation of the PIC, you need to improve safety valves. Safety valves from the point of ensuring that power is not abused from the point of ensuring that, wrongdoings are easily exposed and when they are exposed there are

powers to intervene independent. One of the things I was... I had already raised in the meeting, Ms Louw will remember was that is in the time for instance that PIC has an ombudsman. Its own ombudsman who is independent because remember at the beginning I said, I have not come across a process of appeal in the PIC.

A number of young people have come to me to say, when we got to IDC, when our applications are not approved, we are told why. There is a process. If we are not happy, we are able to appeal at IDC. I have not come across such a process because what you are saying is more a fear of the abuse of power than the nature of the structure, but to me, I am saying whichever structure you have, it must ensure
10 enough safety valves from the point of exposure and then the existence of power to correct the wrong exposure, but it is a matter that I want to conceded that I am not fully competent to deal with but you have raised a question I would spend a lot of time grappling with, because I think it is a very, very important question.

MR EMMANUEL LEDIGA: Next question. The bulk of the PIC money is like invested in listed securities. You know it could be the bonds and shares and all that. Do you not think that pension funds like... Sorry, the PIC and other pension funds actually, should be putting money in what we call real economy, you know stuff like infrastructure and the other things.

MR MONDLI GUNGUBELA: It takes us back again to what we were discussing. Until
20 in the unlisted area, systems can demonstrate a lot of improvement without even going to any document, if you go and check through you Mr Commissioner that the ratio of corruption, I have no doubt there is high proportion in the unlisted area than it compared to the what you call, to the listing. Not amount, but I am saying... I am not talking about the amount, but the number of what you call... of instances.

The biggest challenge we face is that we have to improve in dealing with

issues of risk management and due diligence and all those kind of things. When I arrived, I was angry when I was told GEPF only allows us 5% to be invested in the area of unlisted that we want this agriculture, there is whatever, there is all those kind of things and so on. There is a lot that can be done in that area. There is a lot of improvement with regard to the systems in that area, but I daresay in an ideal environment, I would support your idea.

MR EMMANUEL LEDIGA: Right, next one. Last two. The next one is that, you know typically Boards... Boards of companies, you know, they would do an annual or whatever or every three years or so. A benchmarking study on the Board, how it is
 10 functioning. Maybe compared to listed company Boards, like the Sasol's or [Indistinct] and all that. Does the PIC do that. You know, to check how they are functioning broadly. Keeping up with the trends and also within the committees like the Investment Committee, what kind of skills they need. Are they... Do they have those kind of skill? So the benchmarking issue.

MR MONDLI GUNGUBELA: Yes, it does do benchmarking. I think I came across it when the new proposed model was being dealt with, but it was compared to what? Ghana. The number of countries in Africa and with some other institutions internal, but the challenge why we could not... The challenge why we could not deal with it at that point, there were unanswered questions like as we change the model within the
 20 institution, what problem were we responding to. That is what we were trying to deal with at the moment. The promise was that, that is going to be presented. The other issue of course we raised, because competitiveness in the financial sector is intensifying. It was to deal with the question you raised at the beginning is to audit. One of the things we must quickly attend to is to audit the skills in what you call... in the PIC general and check if the kind of skills we have to compare with our peers.

MR EMMANUEL LEDIGA: The final question then is, as Chair you know, of the PIC, who is James Nogu? You know. Who is James Nogu? What is your views? I mean is this person within the PIC, outside of the PIC, disgruntled employee. I mean, what is your view about this, if you have any? Who is James Nogu?

MR MONDLI GUNGUBELA: You know at the risk of being misunderstood, you see Klenji I spoke about who called me to ask what do we do if this thing goes very quick. Klenji said, Nogu is within the Board. That is what Klenji said, but Klenji did not take me further. Says, within the Board, but my temptation is that if I were to... If I was allowed to reason without thinking, I strongly believe it is within the institution, because
10 the manner in which it is couched, it must be somebody who understand the dynamics in the institution. I will give an example. For instance without delving into the details of my situation, in any situation where you work, you work closer with so and so, closer with so and so and so on and most of the time, you tend to agree with... Even in a situation where there are no negative issues, there is a... How do I put this? There are people who easily, you are in the same space in terms of your attitude to life or you end up even drinking together and so on, but in this instance of PIC, whoever is actually Nogu, understand closely what is happening in the place. When I said to you, every time the Board is divided, 99% of the time, it is around when we deal with the issue of Dr Matjila, but on other issues of governance, we have always [Indistinct].
20 look at the content of those emails, it is somebody who has got a close understanding of that. I doubt it could be somebody who is confidently speculative from outside, but of course history could show it otherwise.

MS GILL MARCUS: Perhaps just going back to something you referred to a minute ago, which is the various looks at the models and the approaches that should be taken or could be taken, by the PIC, what is the status of that at the moment. Is that work in

progress. Is it on hold? Is it something that will be submitted as evidence before The Commission?

MR EMMANUEL LEDIGA: It is a work in progress. Through Mr Commissioner, it is work in progress, but personally, I would not see anything wrong if The Commission would want to have a look. As long as it is legally correct to do so, because we view The Commission as our extra thinking space as PIC. It will assist us as we go on to actually look better. So it is a work in progress as far as I can say.

MR EMMANUEL LEDIGA: *Ja*, during these issues, you know that the PIC has tackled and you know, faced. What is your view about the reaction of the GEPF. You know, do
10 you have any thoughts about that. Do you know how have they sort of reacted to these things?

MR MONDLI GUNGUBELA: We have session with GEPF. I am just forgetting the day. It is not long ago. Full Board of the GEPF to brief them about the current developments. The GEPF is not happy. If my memory serves me well, they have already sent some restrictions on which asset we can take decisions without consulting them. Cannot give the details now. It is a matter that we have to look at. There is general unhappiness. Remember, the facts we have about Ayo, compared to the submissions they got, it is another legitimate source of angst to that, because they failed so grossly misled, but I that meeting, they really enjoyed, because the Board of
20 PIC was very candid and open and not evasive.

If I am correct to observe, we left with their consent slightly better, because we were very candid in the manner we dealt with issues. We did not try to be evasive about anything, but that those are the few remarks I can make about that.

MR EMMANUEL LEDIGA: And then just the final one Mr... So the dropping of the COO, the CIO has been done but do you know... I mean it was before your time

probably. Why was that allowed by the Board, you know, the collapse those divisions or those structures?

MR MONDLI GUNGUBELA: I hope history will prove me wrong in what I am going to say. My assessment of PIC is that the Board has been at the mercy of the Executives. Without mentioning specific people. That is my assessment, because the manner in which this thing has been done, it empowers the Executives and to bordering on [Indistinct] the Board, a very meek element of the PIC, but that is my assessment personally.

MR EMMANUEL LEDIGA: *Ja* thank you. Thanks on that.

10 **COMMISSIONER**: Well my closing question. I think you were asked by my colleague on my left I think about the positions in the employ of the PIC. There are... We have express concern I think to the Minister about the number of people in acting positions in the PIC. Does the Board have any say or is that just an Executive responsibility with regard to the filling for instance of those positions?

MR MONDLI GUNGUBELA: From my memory, there is a general concern in the PIC about that. Now, during this period, the discussions about maybe if I am not going in a tangent. The discussions about even the reconfiguration of the institutions, all those issues and model and whatever are dealt with in a manner that looks at saying at the end of the Commission of Inquiry, we hope to learn a lot, but we said, the positions that
20 are dire and are critical, should not wait but the second issue is that the other view would be to look at the institution and which a decision, I do not think we took that one, was to look at the institution because this matter is coming very strongly now. It is to look at the institution besides mere conditions of service, to what extent is the current state of uncertainty in the institutions are affected they were to call workers. To what is our competitiveness with our peers is actually led to all those issues that need to be

examined. I think I want to make this concession, it is not the matter that we lifted to deal with it as a matter of urgency, but because of these questions, it is actually asserting its weight in my mind.

ADV JANNIE LUBBE SC: Chair, before we adjourn, can I just put the following on record? Initially when we started this investigation as the legal and forensic team, we were not on the same page as the Chair, but after discussion in December, he sent me the following SMS. Sir, you have nothing to worry about. I know it is in the interest of this country to cooperate with you. Not only reaction to your requests, also proactively as an execution of our obligations. Since then there was absolutely no problem and as
10 you know the legal and forensic teams did not have the benefit of office accommodation. It has been provided by the PIC, however boardroom to the teams and all requests for information, documentation *et cetera* were dealt with immediately and we only had the best cooperation from the PIC and I want to place that on record.

COMMISSIONER: Yes. Thank you Advocate Lubbe and thank you very much Deputy Minister for that kind gesture of cooperating with the work of The Commission insofar as you being the Chair of the PIC is concerned. The PIC board is concerned and thank you so much for that and thank you for availing yourself to come and testify before us. Thank you so much.

MR MONDLI GUNGUBELA: Thank you Mr Commissioner.

20 **MS GILL MARCUS**: It has not been signed.

COMMISSIONER: I think it has been signed. Advocate Lubbe the statement of the Deputy Minister has been signed. Is it not so?

ADV JANNIE LUBBE SC: It has been signed.

COMMISSIONER: Yes. I think it is signed.

ADV JANNIE LUBBE SC: The original is signed. I think the two... the two other

copies are not signed, but the original is signed.

COMMISSIONER: I think I have seen the signature in one of these documents that re before me. Yes. Thank you then, we shall adjourn for lunch until 14:30.

REGISTRAR: All rise.

INQUIRY ADJOURNS

INQUIRY RESUMES

ADV JANNIE LUBBE SC: May it please. Mr Commissioner you will recall that certain issues were raised during our session in January by the Commission. It has all been collated into a report by the acting secretary Ms Louw who is going to present the
10 report and she is ready to take the oath.

CHAIRPERSON: If I remember correct its Willemina?

MS WILLEMINA LOUW: That's correct.

CHAIRPERSON: What's the second one?

MS WILLEMINA LOUW: Johanna.

CHAIRPERSON: Johanna Louw.

MS WILLEMINA LOUW: Redrieka Louw yes.

CHAIRPERSON: And you are going to testify again so maybe we should let you take the oath again. No objection – you didn't have any objection to taking the oath the first time. I suppose the position is still the same?

20 **MS WILLEMINA LOUW:** (Indistinct).

CHAIRPERSON: And do you swear that the evidence your about to give will be the truth, the whole truth and nothing but the truth raise your right hand and say so help me God.

MS WILLEMINA LOUW: So help me God.

CHAIRPERSON: Thank you. You may be seated.

ADV JANNIE LUBBE SC: Thank you Commissioner. Can I then deal with the first page of your report? It has to do with the certificate of incorporation for the PIC dated earlier than 1 April 2005 and the PIC Act, is this correct and if so why?

MS WILLEMINA LOUW: The observation is correct.

10 “The discrepancy in the dates is a technicality that was not avoidable. The PIC Act 2004 was published in the Gazette on the 15th December 2004. Section 12 of the Act has transitional provisions. Some of which could be acted on before the date on which the date would come into operation. Then on the 7th February 2005 the President of South Africa proclaimed the commencement date of the act as 1st April 2005. On the 29th March 2005 the Minister of Finance by virtue of the powers vested in him in terms of Section 12(1)a of the act determined the date on which the Public Investment Commissioners were to cease to exist as such and the term of office of each Commissioner was to terminate.

20 This date was determined as 31st March 2005. In terms of Section 12(1)b of the PIC Act all the assets, liabilities, rights and obligations of the Commissioners had to be transferred to the corporation. This meant that the company had to have been incorporated and have to commence business on the 31st March 2005 for the provisions of Section 12(1)b to be implemented. Further in terms of Section 12(1)c the board must ensure that the necessary formalities to give effect to Section 12(1)b are complied with. This also meant that there must have been a Board of Directors of the PIC in existence by the 31st March 2005.

It was for the reasons stated in the previous paragraphs that the company had to be incorporated on the 30th March and then on the 1st April

the act and the corporation came into operation as contemplated in Section 2 and Section 18 of the act.”

ADV JANNIE LUBBE SC: Thank you. The second question or the second matter raised. Was there any instance where the Cabinet made changes or did not appoint the Canon that’s put forward by the PIC to the board?

MS WILLEMINA LOUW: Yes this happens on a regular basis. Basically every time that the PIC submitted candidates to Cabinet through the office of the Minister of Finance as the shareholder representative the Minister of Finance as the shareholder representative also proposed names at the directors are appointed in consultation with
10 Cabinet.

Cabinet members then also have an opportunity to propose names. The PIC does not have sight of the final submission to Cabinets so we don’t know who the final nominated directors are and the Cabinet is not obliged in any way to appoint the names proposed by the PIC.

MR EMMANUEL LEDIGA: Just a question.

CHAIRPERSON: (Indistinct).

MR EMMANUEL LEDIGA: Do you submit if you are looking to fill three seats do you submit three names or do you submit more names?

MS WILLEMINA LOUW: We submit more names but with the recommendation of
20 three names.

MR EMMANUEL LEDIGA: Of three if there are three seats to be made ...(intervention)

MS WILLEMINA LOUW: Yes.

MR EMMANUEL LEDIGA: Okay so you do recommend and you say if you don’t like these three there is another three which you can take for ...(indistinct).

MS WILLEMINA LOUW: Ja.

MR EMMANUEL LEDIGA: Ja okay.

CHAIRPERSON: (Indistinct) make you unhappy? Didn't that make you unhappy when every time you propose as the PIC you rejected?

MS WILLEMINA LOUW: Sir at the end of day it's the shareholder who is responsible for the appointment of the board. So it's in his prerogative.

ADV JANNIE LUBBE SC: Thank you Mr Commissioner. Point 3 ...(intervention).

MR EMMANUEL LEDIGA: Just another question. So broadly if you recommended people do they get appointed or half of them or a third of them generally?

MS WILLEMINA LOUW: Generally I would say a third of our nominations definitely.

10 Sometimes there is only one that's not appointed from our nominations.

MR EMMANUEL LEDIGA: Okay but broadly the Minister will have their own say. Two thirds and then the PIC would have the one third?

MS WILLEMINA LOUW: Yes.

MR EMMANUEL LEDIGA: Is that correct?

MS WILLEMINA LOUW: Ja.

MR EMMANUEL LEDIGA: Lovely okay.

ADV JANNIE LUBBE SC: Thank you. Point 3 taking into account the complexities, why the directors served only two years. That was a question posed by Ms Marcus. I think you've responded to that.

20 **MS WILLEMINA LOUW:** Yes.

ADV JANNIE LUBBE SC: Thank you. In which policy of the PIC is there a referral to whistle blowing?

MS WILLEMINA LOUW: That is the PIC Fraud Corruption and Nepotism Policy.

ADV JANNIE LUBBE SC: Five. Questions regarding the minutes of ...(indistinct) – approved minutes and draft minutes. I think the Deputy Minister has dealt with it but

you can briefly respond to that.

MS WILLEMINA LOUW: “In summary it is that the minutes are drafted by the board secretary and the company secretary who are attending the board meetings and then the minutes are drafted by the board secretary. In this specific instance it was in an in camera discussion and the board secretary was not part of the discussions.

10 The company secretary then gave the notes to the assistant company secretary to type after which they refined it. These minutes were then distributed to the board members for their input and they have requested them to show the changes.”

But at the end the final minutes were adopted by the board as the true reflection.

ADV JANNIE LUBBE SC: Is it also now a common practice to have the in camera meetings recorded?

MS WILLEMINA LOUW: Yes from now on all the in camera meetings are recorded.

ADV JANNIE LUBBE SC: Then the point 6 explain what ...(indistinct) and HI Portfolio systems are?

20 **MS WILLEMINA LOUW**: “Okay the HI Portfolio system is the PIC’s investment accounting system which is generally referred to as the back office system. The system boasts listed and unlisted instruments that PIC has invested in. This includes information from external asset managers which some through an automated interface.

Hi Portfolio forms the PIC’s primary book of records for the PIC’s investments. The key functionality in HI Portfolio includes investment accounting, fund administration, cash management, reconciliation and post

trade compliance as well as related post trade activities.

ADV JANNIE LUBBE SC: Can I perhaps just for me as a layperson I understand that is it a bit of a database?

MS WILLEMINA LOUW: Yes it's a database of all the trading stock and their ...(intervention).

ADV JANNIE LUBBE SC: Okay can you explain the Charles River?

MS WILLEMINA LOUW: "The Charles River system is the investment management solution used at the PIC to automate front and middle office investment management functions across the listed asset classes.

10 This includes listed equities, capital markets and money markets. PIC uses Charles River to optimize investment portfolio, reduce investment risk and improve reliability and consistency of the portfolio data. The system is used for portfolio analyses and construction, asset allocation and rebalancing and broker and commission management."

CHAIRPERSON: Can I just take you back to the HI Portfolio system. Who has access to that system?

MS WILLEMINA LOUW: It is the deal teams, the transaction teams as well as the accounting people, the finance department.

CHAIRPERSON: So not everybody has access thereto?

20 **MS WILLEMINA LOUW:** No it's only those departments.

ADV JANNIE LUBBE SC: Thank you. Number 7 is management fees.

MS WILLEMINA LOUW: "Sir the management fees are paid by the client to the PIC in executing its duties as an asset manager as agreed in the client mandate and are negotiated and agreed on when the client mandates are signed. Management fees are generally based on the PIC standard fees rate per

asset class for instance equities bonds. Management fees are calculated on the market value of the portfolio. This is the value of the investment accrued on a daily basis and paid from the funds at month end.

For properties the fees are calculated based on the market value of the property. They accrue at the end of the month and are paid in the following month. Then the management fee rates for listed investments for the money market portfolio it's between 1 and 2.5 basis points. For the bonds portfolio it ranged between two and three basis points and for equities between 3 and 5 basis points. For unlisted investments it ranged between 25 and 100 basis points and for the properties between 25 and 350 basis points.”

MR EMMANUEL LEDIGA: Question. These fees the management generally happy with these fees in terms of you know the amounts and all that broadly or are they quibbling about them?

MS WILLEMINA LOUW: Sir to be honest they are not very happy because it is much lower than market related fees. Whilst we have to compete with the market and the market is paid much higher fees but this is on the basis that we know we are not going out to look for clients.

We have a captive client base so. This is how it is agreed with the client.

20 **MR EMMANUEL LEDIGA:** But these fees don't they constrain the PIC in terms of the structure. You know the operating costs and everything?

MS WILLEMINA LOUW: Sir if we – this question can be better answered by our finance department but from what I know is there is constraints especially if PIC have to employ a full ...(indistinct) structure then we will definitely have serious constraints in sustainability.

ADV JANNIE LUBBE SC: Point 8 dividends paid. Also a matter raised with the Chair this morning. You have made list of dividends paid 2910 to 1890.

MS WILLEMINA LOUW: That's correct.

ADV JANNIE LUBBE SC: You confirm that amounts in the last column?

MS WILLEMINA LOUW: Yes I confirm.

ADV JANNIE LUBBE SC: Point 9.

MS GILL MARCUS: But Chair just in relation to that to reiterate the question of obtaining the terms and conditions under which dividends are paid.

10 **MS WILLEMINA LOUW:** Yes we will submit a copy of the dividend policy to that regard.

ADV JANNIE LUBBE SC: Point 9.

MS WILLEMINA LOUW: "Point 9 relates to bench marking for the impact investing team. Impacting investing is a relatively new sphere of investments with no standardised measurement of impact. Presently PIC sets it own targets against which it is measured. This is refined based on experience. PIC clients have in place policies for example the GEPF has published its developmental investment policy statement whilst the UIF has the unemployment insurance fund has issued its social responsible investment policy which is used as basis for investing by PIC.

20 PIC intends collaborating with likeminded institutions to reach a stage of measurement against a global standard. The global impact investing network and international organisation has started a process to harmonise impact measurements through the development of global impact investing reporting standards."

So at this stage we don't have a company where we benchmark ourselves

against.

ADV JANNIE LUBBE SC: Just as a matter of interest we all know it's public that there is a publication by Edcon to be assisted by the PIC.

MS WILLEMINA LOUW: That's correct.

ADV JANNIE LUBBE SC: And that will fall under the UIF social responsibility investment policy.

MS WILLEMINA LOUW: Ja that's correct ja.

ADV JANNIE LUBBE SC: Then we deal with point 10, that is evidence by Mr Roy Rajar which also explains some of the answers given by point 10.

- 10 **MS WILLEMINA LOUW:** "Mr Rajar was requested what is the average time for transactions in the unlisted space and that typically takes between 3 to 6 months now it may take longer such is the case in renewable energy projects where PIC is not the only finance here.

This usually would entail detail negotiations with other funders and sometimes there will be conditions precedent including obtaining approval from regulatory authorities such as the Competition Commission."

ADV JANNIE LUBBE SC: Okay paragraph 11.

MS WILLEMINA LOUW: "Deals with the distressed investments. There is a framework

- 20 for monitoring of investments within PIC. PIC has a separate internal team which does the monitoring of the transactions in terms of compliance and performance. PIC does not rely on directors appointed on the boards ...(indistinct) companies to protect their investments as PIC is aware that these directors own their fiduciary responsibility to that ...(indistinct) company and not to the PIC.

They are not obliged to share information regarding the ...(indistinct) company with the PIC and are not allowed to share certain of the information with the PIC. The post investment monitoring is done internally however where companies are put into workout and recovery the internal team usually through an external service provider to assist with the turnaround of a company.”

ADV JANNIE LUBBE SC: Point 12.

10 **MS WILLEMINA LOUW:** “The PIC has been involved in transactions which were put under liquidation and in business rescue. On business rescue type situations it is still early to say whether it is successful or not. However there are several instances where the PIC has implemented interventions which have turned around companies in distress.

There are presently 20 companies varying degree of distress. Of this 20 companies three investments and a R8-billion specifically in the poultry industry, logistics and healthcare industry have been successfully turn around. 13 Companies are currently being worked on to restore to profitability and the remaining three companies will in all likelihood end up in liquidation.”

20 **CHAIRPERSON:** Just tell me what happens here? Is there a request that come to the PIC that a company is in distress or a business is in distress and it needs some financing?

MS WILLEMINA LOUW: Sir it can. It depends on company to company, case by case. In some instances the company will come to PIC, admit that they are in distress looking for additional funding or the PIC will pick up through the monitoring unit that this company is not honouring their debt and that they have financial disability and then the

PIC would step in and start working with management of that company.

CHAIRPERSON: What consideration is there from the PIC side? What do you consider in order to get to the decision that this company should be assisted?

MS WILLEMINA LOUW: That the company should be – sorry?

CHAIRPERSON: Assisted.

MS WILLEMINA LOUW: Assisted?

CHAIRPERSON: Ja.

MS WILLEMINA LOUW: Well they look basically at the financial statements and how they are servicing the PIC loans. Then we either put management in the company or
10 we put extra board members in the company to look after the company.

CHAIRPERSON: And you say that some or all of these interventions have been successful?

MS WILLEMINA LOUW: At this stage there is three companies that looks as if they will not be able to turnaround – that will go into liquidation.

ADV JANNIE LUBBE SC: Thank you Commissioner. What percentage of unlisted transactions ...(indistinct) on the client and what is the success rate?

MS WILLEMINA LOUW: Typically PIC does between 10 and 20 transactions per annum between private equity and impact investing. More than 90% of the applications received are declined. If success is the find as the impairment rate it would be below
20 10%.

MR EMMANUEL LEDIGA: Question. In terms of success - sort of the definition of success one would like maybe to get more there because really it's about returns. You know what percentage deals sort of meet original sort of returns which were you know modelled and all that.

So I think it would help if we can get that kind of information saying one third

say of the deals have made this returns which were budgeted for and say another two thirds or another third was trading water and say another percentage is below returns.

I think it would probably be a better way to look at those – sort of 140 transactions or so in the unlisted space.

MS WILLEMINA LOUW: Sure we will bring this information back.

MR EMMANUEL LEDIGA: Ja make sense?

MS WILLEMINA LOUW: Yes sir.

ADV JANNIE LUBBE SC: Thank you. Point 14 Mr Dolamas' evidence.

MS WILLEMINA LOUW: "From the fund of funds team has committed capital to 24
10 funds. 16 of these funds are in South Africa and 7 is in the rest of Africa and then there is one global fund. In the previous response he says they were stated 24 and not 23. Oh previously he said there was 23 funds – sorry just correct it. It is so there is 24 funds.

Then racial classification of fund managers is done for South African fund managers in the terms of the BBBEE Act. In the rest of Africa PIC determine if individuals in the fund manager are born in Africa or not. PIC have confined the response to the South African fund managers and 10 out of the 16 South African fund managers are black fund managers constituting 62% of total committed capital in South Africa fund managers."

20 **ADV JANNIE LUBBE SC**: Thank you can we deal with the day 2 of the evidence of Mr Fidelis Matavo.

MS WILLEMINA LOUW: Where the Commission requested an extract from the minutes of the meeting held on 20 December 2014 where the AO transaction was presented and we've included a list there of the members that were present as well as the invitees to the company.

ADV JANNIE LUBBE SC: Thank you can we look at 16, provide a breakdown of equities.

MS WILLEMINA LOUW: We've provided this breakdown in terms of the total value of the equity portfolio, the percentage of the value following the benchmark, percentage and value externally managed and the percentage and value enhanced ...(indistinct).

ADV JANNIE LUBBE SC: Mr Commissioner can we take the figures as read. I don't think it's necessary to read it out.

CHAIRPERSON: (No audible answer).

ADV JANNIE LUBBE SC: Thank you. Then the executive head listed ...(indistinct)
10 point 15, no we've done that. 17.

MR EMMANUEL LEDIGA: Just a question. Can I ask that you know you did this thing for the listed side can you please do the same for the unlisted side.

MS WILLEMINA LOUW: For the unlisted?

MR EMMANUEL LEDIGA: Ja ...(indistinct) the GPF, UIF ...(indistinct).

MS WILLEMINA LOUW: (Indistinct).

MR EMMANUEL LEDIGA: (Indistinct). Which will cover only assets I guess now.

MS WILLEMINA LOUW: Ja.

MR EMMANUEL LEDIGA: Because here is just the listed ones.

MS WILLEMINA LOUW: This is just the listed.

20 **MR EMMANUEL LEDIGA:** Ja, yes. Same table different ja ...(intervention).

MS WILLEMINA LOUW: Yes.

MR EMMANUEL LEDIGA: Okay thanks.

ADV JANNIE LUBBE SC: Point 17.

MS WILLEMINA LOUW: Point 17 deals with the externally managed funds.

"The PIC externally managed fund team allocates capital to

managers in accordance with the client mandates which detail the strategies that may be externalised including target risk and return objectives. As of 31st December 2018 PIC has externalised assets to 22 domestic asset management firms managing assets on behalf of the GEPF and the UIF across various asset classes.

10 Furthermore the PIC has externalised assets to eight foreign asset management firms who manage non domestic mandates on behalf of the GPF and the UIF. The external manager program was launched in 2009 with an initial focus on domestically listed equity managers. Capital managed by the appointed domestic asset managers, a total of approximately a R167-billion as of 31st December 2018 constitutes 8% of PIC's total assets under management and is allocated as per asset class. Then we've got the listed equities R143-billion, listed fixed income is R17-billion, listed property R4,2-billion and Africa equity is R22,2-billion.

Of the 22 domestic managers 14 are predominantly black owned with more than 50% black ownership while 4 of the managers do not have black ownership levels greater than 51%. The split of assets between these two groups is currently approximately 60% to BBEE managers with 40% allocated to non BBEE managers."

20 **ADV JANNIE LUBBE SC:** Thank you. Mr Commissioner can we take the figures stated on 14 as read?

CHAIRPERSON: Yes we will.

ADV JANNIE LUBBE SC: And we deal on page 15 then.

MS WILLEMINA LOUW: Page 15 deals with the investment process relating to the reallocation and termination of mandates of the externally managed fund managers.

“The externally managed fund team aims to construct solutions on behalf of clients that consistently deliver return in excess of the client benchmark over the long-term and in line with client expectations. The portfolio construction process employed by the team involves the optimization of client solutions to ensure that the allocation of strategies and managers is optimal in achieving client objectives.

The process is highly cognisant of the prevalent strategies in the market. The managers’ exposure to those strategies and the contribution for each manager to the risk and return of the solution. The reallocation of capital to fund manager is a result of the monitoring of these factors with cognisance of the client mandate. The
10 team typically adds new managers to the portfolio based on the strategic requirement of the solution and appoints domestic managers through a request for proposal process which is designed to create a database of approved managers.

The request for proposal process is typically run every two to three years. The team has a detailed and consistent approach to monitor managers and the courses of action should irregularities occur. The process is irrational and disciplined framework for managing the existing investment manager relationships. The decision making process is systematic and aims to approve the quality and timelines of its manager retention and termination decisions.

The objective of the monitoring program is to identify on a timely basis any
20 adverse changes in the investment managers organisation, investment process or performance results. Daily and monthly monitoring of positions relative to benchmarks is followed by quarterly contact sessions with managers for engagement on performance, risk management, portfolio construction and quality of business updates.

The teams also visit the investment managers’ primary place of business on an annual basis to validate the details obtained about the team organisation and the

systems they have in place.

ADV JANNIE LUBBE SC: Mr Commissioner can we take 16 as read? It's just a further explanation of this process?

CHAIRPERSON: Yes.

ADV JANNIE LUBBE SC: Thank you. Then on point 18 organogram of listed investment team. You've added annexure A to this document, is that your response?

MS WILLEMINA LOUW: That's correct.

ADV JANNIE LUBBE SC: What other SRP investments were done except for Steinhoff and Vodacom?

10 **MS WILLEMINA LOUW:** Baretto, Bayport, Textan Properties, Grit and Growth Point were the other structured investment products.

ADV JANNIE LUBBE SC: Thank you. Then Mr Pulwane's evidence. There were questions asked about his department. Give an overview of the number of resignations versus the number of suspensions and dismissals at PIC, there is a table on page 17 and 18. Mr Commissioner, can we take it as read? It is just the statistical set out of the questions.

CHAIRPERSON: (No audible reply).

ADV JANNIE LUBBE SC: Thank you.

MR EMMANUEL LEDIGA: Just a question. Just...

20 **CHAIRPERSON:** (Indistinct).

MR EMMANUEL LEDIGA: The external managers. Do they – the people who manage the external managers, do they have a link with the people who manage the internal portfolio by any chance?

WILLEMINA LOUW: So, they are both reporting the external manager's team are reporting to the Executive Head Listed Investments, Mr Fidelix Madavo and the

internally managed team is also reporting to Mr Madavo. So, there is a link between them.

MR EMMANUEL LEDIGA: And do they not appear within say the PMC listed, whenever questions had to be taken?

WILLEMINA LOUW: Yes, both of them are there.

MR EMMANUEL LEDIGA: So, it might well mean that the people who serve on the PMC do know what the external managers are doing and the internal ones?

WILLEMINA LOUW: Sir, I am not... I cannot answer that question very – hundred percent sure. I have to confirm that with my colleagues, because I know PIC does not
10 know exactly what the managers are doing. They are just monitoring performance. So, PIC does not know the trades that they are doing, but I can come back on that question. That will be the safest.

ADV JANNIE LUBBE SC: Thank you. Then on day 3, Mr Nemagovhani, the internal auditor testified... We have already dealt with 2001. Twelve cases were reported via the whistle blowing. The loan to MST is correct. We have dealt with it this morning and it is clear that the January 2019 instalment were not paid.

WILLEMINA LOUW: That is correct.

ADV JANNIE LUBBE SC: And the members present at the IO transaction on the
20 20th December. That has already been dealt with, but there is again columns setting out who were present. Is that correct? On page 20.

WILLEMINA LOUW: That is correct, sir.

ADV JANNIE LUBBE SC: Then if we can deal with day 4, point 24. There is a – provide PIC's full exposure to state owned entities. There in his – in terms of Annexure B attached. Is that correct?

WILLEMINA LOUW: That is correct.

ADV JANNIE LUBBE SC: Then an important matter that was raised by Ms Marcus, one of the members is the shareholding in Mowana Properties. What is the response?

WILLEMINA LOUW: The PIC on behalf of the GBF held 76% of Barreto Limited. Barreto held 100% of Mowana Properties. The share holders in Barreto are thus the GBF. PIC on behalf on behalf the GBF 76% and the other shareholder is Belelani at 24% and then Barreto that holds 100% of Mowana.

MS GILL MARCUS: Sorry. Can I just ask a follow up question there? As you have got on your list there, the list of directors of Barreto include a non-executive board member. Is that person there at the behest of PIC or was she there in her own right.

10 **WILLEMINA LOUW:** No, at the behest of PIC.

ADV JANNIE LUBBE SC: If we can deal with the last point, 28. How many jobs were lost as a result of the James Nogu email?

WILLEMINA LOUW: The loss of jobs in relation to the James Nogu email is a disciplinary outcome where the employee was found guilty of accessing confidential information, but there was no other job losses at this stage.

ADV JANNIE LUBBE SC: Thank you, Mr Commissioner. That is the evidence of Mrs Louw. She will deal with the other two issues raised by the commission and we will again present her report in this form.

20 **MR EMMANUEL LEDIGA:** Is the employee who was dismissed for being guilty of accessing confidential information, is that Mr Mayisela?

WILLEMINA LOUW: That is correct, sir.

ADV JANNIE LUBBE SC: Perhaps just to clear this point, Mr Commissioner. The Chair also testified that as a direct fall out of this Nogu email, it led to the separation agreement with the Head Executive IT, as well as the disciplinary hearing of the Company Secretary.

WILLEMINA LOUW: That is correct, sir.

MR EMMANUEL LEDIGA: Sorry, what is the confidential information that Mr Mayisela accessed?

ADV JANNIE LUBBE SC: What is the confidential...?

MR EMMANUEL LEDIGA: Because I thought he was disciplined for not reporting that he had laid a criminal charge?

WILLEMINA LOUW: Sir, I do not have the information on that. I do have the documents which I can make available to the commission, but I do not have the detail on that.

10 **ADV JANNIE LUBBE SC**: Thank you. That is the evidence of Ms Louw. Can she be excused, Chair?

CHAIRPERSON: She can be excused. You are excused, Ms Louw. Thank you very much.

ADV JANNIE LUBBE SC: The next witness is Mr Nemaqovhani. Chair, can I just get an indication? Are we sitting until four o'clock?

CHAIRPERSON: (Indistinct).

ADV JANNIE LUBBE SC: Thank you. I have placed the final report of the Internal Audit Department before the commission, Mr Commissioner. I need you to stand and take the oath.

20 **CHAIRPERSON**: Your full names again, please.

MR LUFONO NEMAGOVHANI: Lufono Funo Immanuel Nemaqovhani.

CHAIRPERSON: You have been here before?

MR LUFONO NEMAGOVHANI: Yes, I have been here before.

CHAIRPERSON: Yes, and you took the oath to tell the truth.

MR LUFONO NEMAGOVHANI: Yes.

CHAIRPERSON: So, you do not have any objection to repeating it?

MR LUFONO NEMAGOVHANI: No.

CHAIRPERSON: Right. Do you swear the evidence you are about to give, will be the truth, the whole truth and nothing but the truth? Raise your right hand and say, so help me God.

MR LUFONO NEMAGOVHANI: So help me God.

CHAIRPERSON: Thank you. You may be seated.

ADV JANNIE LUBBE SC: Mr Nemagovhani for the record, you have completed your preliminary review that was tabled at the board meeting in December 2018. Is that
10 correct?

MR LUFONO NEMAGOVHANI: Yes, it is correct. It was tabled on the... If I may just correct the date? It was tabled on the 21st if not the 20th January.

ADV JANNIE LUBBE SC: Excuse me. My apology. You are absolutely correct. You were instructed in December to do this investigation.

MR LUFONO NEMAGOVHANI: Yes, I got instruction in December.

ADV JANNIE LUBBE SC: Thank you. Now the final report you filed, which is now before the commission is identical to the preliminary report, except for some cosmetic or grammatical changes, but the findings and everything are exactly the same.

MR LUFONO NEMAGOVHANI: Yes, the findings are exactly the same with the draft
20 report. So, in the previous appearance when I was here, we indicated that there will be further work that we needed to do. But then there were, you know, we agreed with the commission's investigation that those elements, they will actually carry them forward.

ADV JANNIE LUBBE SC: Now if I can briefly take you back to the first engagement with the board when you presented your preliminary report in January. I understand that before the board meeting you had a meeting with the Chair.

MR LUFONO NEMAGOVHANI: Yes, I did. I took him through the report, because when we were busy with this work, we were requested actually by the CEO in December to conduct this work after she received a letter from the chairman, raising his concerns emanating from the meeting that they had... PIC had with Scopa. So, then we issued our first draft of the work that we were requested to do to the CEO. And when she realised that she was also mentioned or implicated in the report, she requested to be recused. Therefore, I was requested to deal directly with the chairman.

CHAIRPERSON: When you referred to the CEO, I suppose you are referring to the acting CEO.

10 **MR LUFONO NEMAGOVHANI:** The acting... Yes, Chairman.

ADV JANNIE LUBBE SC: Thank you. Then, just briefly. Can you tell the commission what happened at the board meeting? And the reason for this question is, that evidence will be led that when you arrived at the board meeting, there was only the one copy available and there were no copies for the board members. Is that correct?

MR LUFONO NEMAGOVHANI: Yes. So, when we arrived at the board meeting the only copy that was available, it was the copy that was printed by the chairman, because I had submitted this report to him via email. So, that was the only copy. Then the board members in that meeting requested that I present copies to them. Then we organised hard copies, because we did not want this report to be circulated via email.

20 Given that as it was presented in previous presentation that I gave that this was still work in progress and it was just to update the board. I think we were at the stage where we could update the board in terms of the progress of this work.

ADV JANNIE LUBBE SC: Good. Now, again briefly. Did you take the board, Chair and the members through this report that evening ?

MR LUFONO NEMAGOVHANI: That evening, yes. Given that the board members, I

mean, the majority of them except for the chairman was seeing the report for the first time. So, on that evening I took, I mean, sufficient time. I think I took about five hours, taking you know the board through the report and explaining everything. So, that every board member will be informed in terms of the contents of this report.

ADV JANNIE LUBBE SC: Thank you. And the findings in this preliminary report as confirmed by your final report is that there was non-compliance of procedures of the PIC and that the people involved in this, especially those in attendance on the 20th December 2017, that action should be taken against them.

MR LUFONO NEMAGOVHANI: Yes. So, that is what basically the report is saying.

10 **CHAIRPERSON:** That in dealing with this transaction the PIC processes were not followed. I think it is safe to say from the beginning I think up to the end of the transaction there were a lots of breaches of PIC processes. And so people – all the key people who are involved throughout the process were recommended that action may be taken against them.

ADV JANNIE LUBBE SC: You did not ...(intervention).

CHAIRPERSON: Sorry.

ADV JANNIE LUBBE SC: Sorry.

CHAIRPERSON: But when you are talking about this transaction, you mean the IO transaction?

MR LUFONO NEMAGOVHANI: IO transaction.

20 **CHAIRPERSON:** State for the record that we are dealing with the IO transaction.

MR LUFONO NEMAGOVHANI: My apologies.

ADV JANNIE LUBBE SC: Thank you.

CHAIRPERSON: Question. When you say all, did the people... Sort of, how many people are we talking about here, roughly? All the people that who were in that transaction?

MR LUFONO NEMAGOVHANI: We are talking about, I mean, the deal team. That will involve Mr Victor Seanie. It will involve Suneel. It will involve Lebogang. It will involve Fidelix. So, that is the team that would have worked on this transaction. It will also involve, I mean, other people who played other roles in this transaction.

MS GILL MARCUS: The question that I think that raises is. If we take the evidence of Mr Seanie. He says that his role was not – or he presented a different view of what should be done and that was not taken into account. So, the question is not whether you were involved but whether you were involved violating the decision making processes or not just whether you were involved in the deal. I mean, there must be a
10 distinction between the two, surely.

MR LUFONO NEMAGOVHANI: Yes, I agree with that. And when I say people who were involved, I mean people who were involved in breaching the PIC processes and Mr Victor Seanie is one of them.

MR EMMANUEL LEDIGA: Just took us further there. So, you are saying within the deal team you mentioned four people and then the other areas were they in risk or ESG or where? Where would the other people be? Just give me a rough ideas about it.

MR LUFONO NEMAGOVHANI: So, the other people, I mean yes, there is people who had been involved. They played a role in this transaction, but in our assessment we did not find that, you know, they have breached the processes. So, their involvement,
20 actually or the work that they have done, it was based on the instruction that was against PIC process. That was given by Mr Victor Seanie.

MR EMMANUEL LEDIGA: So, meaning you are saying...? When you say all the people, you are talking about the four people in the deal team? There are no other people outside of the deal team.

MR LUFONO NEMAGOVHANI: I can maybe just give mention the names of other

people and also their roles. If I may?

MR EMMANUEL LEDIGA: Ja.

MR LUFONO NEMAGOVHANI: So, within the deal team I have already mentioned the four people and then ...(intervention).

CHAIRPERSON: (Indistinct).

MR LUFONO NEMAGOVHANI: Mr Seanie. Victor Seanie.

CHAIRPERSON: (Indistinct).

MR LUFONO NEMAGOVHANI: Mr Suneel. I also indicated Mr Lebogang.

CHAIRPERSON: Indistinct).

10 **MR LUFONO NEMAGOVHANI:** Milovachi, yes.

MR EMMANUEL LEDIGA: And Fidelix Madavo.

MR LUFONO NEMAGOVHANI: Fidelix Madavo. And then there are also other people who are involved in... Or who contributed in breaching the payment processes and then that is the acting CEO currently, but at the time it was the CFO, Mr Matshepo More. And then Fidelix... My apology. Then you have got Brian Mavuka, the GM of Finance. You have got Winnie. At the time she was acting as Executive Head of Legal. And you also have the former CEO, Dr Dan Matjila.

MR EMMANUEL LEDIGA: Sorry. Winnie, is it number 10. Winnie Sesedi?

MR LUFONO NEMAGOVHANI: Yes, Chair.

20 **MR EMMANUEL LEDIGA:** And the then CEO?

MR LUFONO NEMAGOVHANI: The current acting CEO, but then she was the CFO.

MR EMMANUEL LEDIGA: So, that is quite a number. That is quite a large number.

MR LUFONO NEMAGOVHANI: It is a large number and this is due to you know how transactions are done within PIC, because you will have the transaction team and also have support divisions. You know, like your divisions that provide insurance, as far as

the due diligence are concerned. Risk, legal and ESG. But in this case, obviously, you know we do not have them as people who breached the processes.

Only the people that I have mentioned. So, the main processes were around you know the transaction team. That is where most of the processes were breached or majority of people come from. And maybe more than one offence come from and also the finance part. You know, where now the authorisation or the approval of the payment was coming from.

So, that process also was breached. But also, in the middle you have, I mean, the main issue which was that the subscription was signed before, you know, the
10 due processes could be complied with.

MR EMMANUEL LEDIGA: Ja, let me just come in. That was already up towards the last stages where the C... Well, then CEO is alleged to have signed before there was approval.

MR LUFONO NEMAGOVHANI: Yes, so ...(intervention).

MR EMMANUEL LEDIGA: By the PMC.

MR LUFONO NEMAGOVHANI: Yes. So, this is how, you know, these breaches actually occurred. So, after Mr Victor Seanie received the prelisting statement and the non-disclosure agreements, instead of waiting for the PMC meeting, the first PMC meeting to take place, he issued instructions to the Risk Team, Legal and also ESG.

20 And how it happened. Instead of issuing these instructions to the heads of these divisions, he actually issued them to the people that I think he thought are the ones who are supposed to do the deeds.

And then they went ahead with the process and before PMC 1 or PMC 2 could sit, the subscription was signed. And then ...(intervention)

CHAIRPERSON: (Indistinct).

MR LUFONO NEMAGOVHANI: And then before PMC 1 or 2 could sit, the payment...

I mean, the memo, which was authorising that payment, you know, should be done on this transaction was also signed and approved. And PMC sat on the following day which was the 20th December.

MR EMMANUEL LEDIGA: If I remember correctly, it is the PMC that gives authorisation for the Risk Committee to do the risk analysis.

MR LUFONO NEMAGOVHANI: So, it is PMC that will approve that the team or the relevant divisions which is ESG, Legal and also Risk, can go and perform the due diligences.

10 **MR EMMANUEL LEDIGA:** I get you.

ADV JANNIE LUBBE SC: What I have difficulty to understand is that Victor Seanie, if I go through the list, he was the most junior member in that team on the 20th. Is that correct?

MR LUFONO NEMAGOVHANI: That is correct.

ADV JANNIE LUBBE SC: Did he tell you during your investigation that he was instructed to do what he did?

MR LUFONO NEMAGOVHANI: The only thing he told us it was that he was delegated to work on this deal. But when we asked him who instructed him to instruct the other team to conduct their due diligence. He said, no one instructed him. This he did out of
20 his own discretion. Because that is what the understood the process to be.

ADV JANNIE LUBBE SC: He testified under oath before this commission what happened. Did you take that evidence into account before compiling your final report?

MR LUFONO NEMAGOVHANI: We listened... I mean, to what he presented to the commission. Obviously, there are things that he said to the commission. That he never disclosed to us. Things such as, you know, he was put under pressure. To us he never

disclosed those kind of things.

So, but the evidence that he presented here, did not change. I mean, the facts that we have before us. As much as there are things that he presented to the commission that based on the information that we have, we cannot support, I mean, based on the hard core evidence that we have.

ADV JANNIE LUBBE SC: The other troubling for me is the most senior people at this meeting were the acting CEO. The present acting CEO and the then CEO. And they were well aware on the 20th December when this meeting was held that what they did before the meeting was absolutely contrary to the policies and procedures of the PIC.

10 Is that not correct?

MR LUFONO NEMAGOVHANI: So, the CEO was well aware. I mean, the former CEO was well aware. But maybe... I must also disclose before this commission that based on the records from HR the former CEO was supposed to be on leave on that day. So, but he attended the meeting and the CFO was the acting chair in that meeting.

But when we asked her about the subscription. Whether she was aware that the irrevocable subscription was signed before that meeting, she indicate to us that she was not aware. However, in our interview with her, we asked her: Then why were you signing the payment memo before the 20th, before PMC could see and approve this?

20 And she gave us the explanation, but she could not really justify, you know, why she signed the memo.

ADV JANNIE LUBBE SC: Thank you. Then we heard the evidence of the Chair this morning, about the disclosure of the true facts of this transaction. The IO transaction to the Audit and Risk Committee, to the Investment Committee, to parliament on two occasions. That the true facts were not disclosed by the PIC on these four occasions I am mentioning. Are you in agreement with that?

MR LUFONO NEMAGOVHANI: There is information that in our assessment, we thought it would have been critical to be disclosed at various forums from PMC. I mean, which is the committee that was approving this – supposed to approve this transaction.

You know, there were key factors that were not disclosed. Such as the subscription has already been signed on the 14th before the committee sits. And also at the Investment Committee, there is information that in our assessment we have noted or identified that it should have been disclosed, but it was not.

For example, on the 20th December 2017 PMC, one of the conditions of approval was that ESG and Legal, they need to complete or to... Ja, to finalise their DD's. Meaning that the due diligence reports or reports coming from these two divisions were not complete at the time PMC said.

And but these – when management reported to IC, this one conditions of the approval they kept captured all the other resolutions, but this one, in fact, it was not reported to IC. And also the same applied, you know, when they reported to GBF.

When they reported to parliament and which we thought, it was important, because in our assessment we have identified or we have obtained evidence which shows that the ESG and Legal due diligence reports conditions up to date has never been satisfied. It's critical isn't it?

20 **MR LUFONO NEMAGOVHANI:** It is critical yes.

MS GILL MARCUS: I would just like to take you back to this question of Victor Seanie and obviously I might, I am remembering is evidence, I don't have it directly in front of me but I recall him saying that he valued the share price at a very different value to what was paid and there were a whole lot of areas in which he indicated the recommendations that he had made that were changed. Why would you have not

given him the opportunity to engage with you as you finalised your report, not simply about whether he violated the procedures by commissioning the risk and the people to start doing the work, he indicated that was because of the pressure of time to have the deal completed and therefore he began work but I would have thought he would want to check on some of the other things as to what his evidence said in contradiction to what occurred, or in contract what occurred. I'm just a little surprised that you didn't think it was necessary given the amount of differentiation.

MR LUFONO NEMAGOVHANI: Commissioner through you at the time I think this report the way it was compiled, you will see that there are elements of that we did not
10 cover in eight, and as I indicated this will be covered by the Commission Forensic Team, for example the areas where we when we prepared this report we indicated that these elements will require forensic expertise, and at the time Mr Victor Seanie I mean this is information he disclosed to the Commission and he did not disclose to us and we thought that you know all the other information together with anything that contradicts this report all that will be carried you know or be performed by the forensic time so that those loose ends can be disclosed, because Mr Victor Seanie at the time we completed our work he was on suspension you know but the main reason here is that we had an understanding with the forensic, I mean the Commission's Forensic Team that the elements that we cannot close they will be covered there.

20 **MS GILL MARCUS:** Thank you.

ADV JANNIE LUBBE SC: My last question – I'm sorry?

CHAIRPERSON: Can I just – I'm looking at Mr Seanie's statement which is actually his evidence before the Commission, he says at paragraph 67:

"The ESG risk and legal emails there completed due diligence reports to me on 14 December 2017 at 17h21 and 15 December 2017 at 08h21, that's

legal and then risk at 11h00”

Your evidence just now was that up to this day I think you mentioned two of them, have still not been completed.

MR LUFONO NEMAGOVHANI: So Chair if I may the risk report as was submitted on the 15th at 11h00 based on the information that we have, I'm on page 11 of the report, the legal report was submitted on the 15th at 8h25, the ESG report was submitted on the 14th. So there were reports that were submitted to the committee and I think also on the report we highlighted in our discussions with the legal department and also the ESG department they indicated that these are not due diligence reports, this is a desk
10 analysis of the work that they have done because there was still other work that they needed to do and I think that's what they presented to the committee and the committee approved subject to them going to finalise their work.

CHAIRPERSON: That's correct. I am assuming Advocate Lubbe, I'm assuming that there will be further evidence with regard to this because there is now contradictory statements or evidence as it were which I interpret to mean what Mr Seanie is saying here is not the full version as it were, because these were not full risk reports but rather desk, what is that term that you used?

MR LUFONO NEMAGOVHANI: They call it desk top analysis reports.

CHAIRPERSON: So I am assuming that there will be other evidence that will be
20 placed before us or in the end we will have to get to a conclusion or a decision as to which version is the correct version.

MR LUFONO NEMAGOVHANI: So based on, if I may, based on our understanding and the evidence that gathered and we discussed with the people who are responsible for preparing these reports, that's why they said these are desktop analysis because there was still work that was outstanding and they – we asked them if that work is

completed today and they indicated that it is not completed yet.

ADV JANNIE LUBBE SC: Thank you Mr Commissioner. The last question I want to ask this audit query about the AO transaction was raised in February 2018, is that correct?

MR LUFONO NEMAGOVHANI: It was raised in – from our side I mean we picked up the issue in – we reported it I think in May, yes we reported in May, we reported in Ray's committee.

ADV JANNIE LUBBE SC: But it was already picked up in February.

MR LUFONO NEMAGOVHANI: No in April.

10 **ADV JANNIE LUBBE SC:** In April.

MR LUFONO NEMAGOVHANI: Yes.

ADV JANNIE LUBBE SC: Now it's a serious audit query as far as I'm concerned.

MR LUFONO NEMAGOVHANI: Yes.

ADV JANNIE LUBBE SC: And in the governance framework of companies especially a place like the PIC, this was reported to the Audit & Risk Committee.

20 **MR LUFONO NEMAGOVHANI:** Yes, we tabled it in the (indistinct) of the Audit and Risk Committee but as I highlighted previously I discussed this as part of my you know normal preparation with the Chairman of the Audit before the meeting where I tabled this because I considered it to be a serious issue so I did not submit it like to – through the normal channels where you know it will be made available to everyone because whatever we submit through the normal channels is made available to everyone including you know management and so forth, so then we decided that this one I will discuss it with the Chairman of the Audit Committee and then we will take it into the *in camera* meeting and then which we did and then in that meeting the committee resolved that this matter must be referred to the investment committee.

ADV JANNIE LUBBE SC: But my concern is it is so serious that it is not reported through the normal channels, it is reported *in camera*, but why was it never elevated to the Board level because of the seriousness of this whole transaction and the non-compliance with procedures.

MR LUFONO NEMAGOVHANI: So how committees report I mean to Board like for example the Audit and Risk Committee will do its work and then after that it will prepare a report that comes now from the Audit and Risk Committee to report you know on all the issues and the resolutions that they have made in that particular meeting and the same applies with the investment committee, they will also prepare summary of you
10 know all the issues, including the decisions and issues that needs to be referred to the Committee and they will go as part of its report, so I think that's what I can say about it.

ADV JANNIE LUBBE SC: If the Audit and Risk Committee reports to the Board are you present?

MR LUFONO NEMAGOVHANI: I am present I mean in the normal session of that meeting yes.

ADV JANNIE LUBBE SC: And you have never been present in 2018 at a Board meeting where this matter was raised?

MR LUFONO NEMAGOVHANI: I don't remember, I don't remember this issue being covered in the report of the Audit and Risk committee that was presented to the Board.
20 I stand to be corrected from the IC side on how did they report on this.

ADV JANNIE LUBBE SC: Thank you Mr Commissioner, that concludes the evidence unless there is further questions by the Commission.

MS GILL MARCUS: Can you just remind me who the Chair of the Audit Committee was at the time, Audit & Risk Committee?

MR LUFONO NEMAGOVHANI: It was Ms Thandaswa (indistinct)

MS GILL MARCUS: Okay.

ADV JANNIE LUBBE SC: Mr Commissioner that is the evidence, I have a further witness that I don't think will take more than – sorry.

MR EMMANUEL LEDIGA: The one question is just to understand with this report where do we go from here, is that going to be completed by the Commission and they will say whatever they say in terms of who breached what and you know and all the issues, is that correct?

ADV JANNIE LUBBE SC: The Commission will have to deal with this report and as the witness correctly pointed out the forensic team of the Commission is also dealing
10 with this, and hopefully we will have a final report on this report later during the proceedings.

MR EMMANUEL LEDIGA: Which will be presented here.

ADV JANNIE LUBBE SC: Yes.

MR EMMANUEL LEDIGA: Thanks.

ADV JANNIE LUBBE SC: Can the witness then be excused?

CHAIRPERSON: Yes, you are excused Mr Nemagovhani, thank you very much.

MR LUFONO NEMAGOVHANI: Thank you.

ADV JANNIE LUBBE SC: My next witness is Mr Deon Botha Commissioner, he is the Head Corporate Affairs of the PIC, you have a statement in front of you which he will
20 deal with in his evidence and I trust that I will be in a position to finish before four o'clock. Can you just take the oath.

CHAIRPERSON: Your full names please?

MR DEON BOTHA: Deon Botha.

CHAIRPERSON: Mr Botha have you got any objection to taking the prescribed oath?

MR DEON BOTHA: No Commissioner.

CHAIRPERSON: Do you swear that the evidence you will give will be the truth, the whole truth and nothing but the truth, raise your right hand and say so help me God.

MR DEON BOTHA: So help me God.

CHAIRPERSON: Thank you, you may be seated.

ADV JANNIE LUBBE SC: Mr Botha you have prepared a statement, it is not necessary to read everything into the record, can you just for the record deal with paragraph 2 of your statement?

MR DEON BOTHA: Thank you Commissioner, thank you Advocate Lubbe.

10 “I am employed by the Public Investment Corporation as the Head of
Corporate Affairs. I have been with the Public Investment Corporation since
2004 having been seconded there by the National Treasury. I was then
appointed as Senior Manager of Special Projects with one of my key projects
as the corporatisation of the PIC. I assisted with the legislation in that
regard. Following the corporatisation of the PIC I was appointed as Senior
Corporate Governance Specialist to establish the environmental social and
governance monitoring function at the PIC that monitors corporate
governance compliance in companies where the PIC is invested in. Since
November 2015 I am the Head of Corporate Affairs, responsible for
stakeholder and client relations and communication, both internally and
20 externally including the media.”

ADV JANNIE LUBBE SC: Now deal with paragraph 3 please.

MR DEON BOTHA: “I have been requested by the Evidence Leader of the Commission of Inquiry into allegations of impropriety regarding the Public Investment Corporation, Advocate Lubbe SC, to submit a statement on the process followed when responding to media queries at the PIC in general, as well as specifically in the case of

the investment in Ayo technologies. This is due to the fact that some of the media statements of the PIC on the Ayo matter are contrary to the evidence that was placed before this Commission.”

ADV JANNIE LUBBE SC: Alright, you have set out in detail in your statement the processes. Can we summarise it by assisting the Commission to say you receive a media query, briefly what do you do then?

MR DEON BOTHA: When we receive a media query we normally prefer that it be in writing, we then have a look at the query as a team in Corporate Affairs. We then send it to the relevant team within the PIC who deals with that specific query and they then
10 draft a response to us, or what we sometimes do is we meet with that team and then we draft a response but even our response is then sent back to the team, so that they can ensure that they are happy with the contents, the factual contents of that response.

We then look at it from a media perspective to make sure it is correct for public dissemination and we cover all those aspects, language aspects etcetera, etcetera and then it's submitted to the Chief Executive Officer for his approval, his or her approval before it is sent out to the media.

ADV JANNIE LUBBE SC: So to summarise although the statement goes out under your name it follows a process where you rely on the factual correctness of the information supplied by the team, and it is then finally checked by the CEO of the
20 Institution who signs it off and then the statement is – will be issued through your office?

MR DEON BOTHA: That's correct.

ADV JANNIE LUBBE SC: Now can we turn to paragraph – you will notice in your statement there are two paragraphs 11, but it's the 11 dealing with media responses with regard to Ayo Technologies, can you deal with that please.

MR DEON BOTHA: I can deal with that. With regards to the media responses dealing with the PIC investment in Ayo Technology the process outlined earlier has been followed, media responses were drafted by or in consultation with a listed investment division and approved by the Executive Head for Listed Investments as well as the Chief Executive Officer. In retrospect following testimony at this Commission by the Head of Internal Audit, Mr Lufuno Nemagovhani, as well as the Assistant Portfolio Manager in Listed Equities, Mr Victor Seanie, it seems as if media statements issued by the PIC and attributed to me might have contained incorrect information. These media statements indicated that the correct investment processes has been followed when the

10 Ayo Technologies transaction was approved. I can also state that following this morning's session with the Chairman of the PIC Board he also testified to this effect that the processes weren't followed correctly.

In line with the processes outlined in paragraph 6, 7 and 8 above all media responses regarding Ayo Technologies followed the correct approval processes and I can deal with these media responses below where I quoted some examples, 13.1 to 13.4 and I have also attached Annexures A to Annexures D for examples that was followed. I don't know Commissioner if you want me to read it out specifically or ...

CHAIRPERSON: Well Advocate Lubbe I just wondered you know if we are going to use a statement and we dump certain paragraphs and they are not read into the record,

20 when somebody in future takes the Commission on review and the record is incomplete what will the position be. I don't know, it just struck my mind that ...(intervention)

ADV JANNIE LUBBE SC: No with respect Mr Commissioner I take that point that's why I hand in the written statement it's confirmed to be correct, it's not necessary to deal with and to read out all the figures and explanations because it's been confirmed as being correct, but in this instance I would prefer the witness to deal with these press

statements as set out in his statement.

MR DEON BOTHA: Sure, I will do that. On Saturday the 17th of March 2018 we received a response from City Press, the response to City Press was we will deal with the specific questions you are raising as soon as possible, however for now it is enough to point out to all the investments that the Public Investment Corporation, PIC, undertake follow a thorough investment process. Ayo Technology is not any different. This response was drafted in consultation with and approved by the Chief Executive Officer of the PIC and that's attachment Annexure A.

On Wednesday 21 March 2018 in response to a Business Day and City
10 Press query we have received your query and respond as follows. At the outset it is necessary to state that the investment was done in line with the client mandate, followed the required investment processes and was approved within the PIC's delegation of authority framework.

Below we provide answers to the specific questions you are raising:

Question – Did Ayo provide historic financial statement to BT as the PIC requested BT – BT is British Telecommunications, apologies Commissioner as the PIC requested on three occasions between 16 November and 14th of December. The Portfolio Management Committee flagged that they had not provided those on 14 December which was mere days before the placement.

20 The response by the PIC, figures that were presented by Ayo in its prelisting statement which was subject to scrutiny by the Johannesburg Stock Exchange, JSE, were enough to enable the PIC to prepare assumptions and a make a decision to invest in the company.

Question – on the 15th December the PIC Credit Risk Committee still said that the 2017 financials were outstanding. Is this true and if so how can the PIC invest

R4.3billion in an entity with such elementary requests not being timeously met.

Response – the financial statements of 2017, 2016 and 2015 were included in the prelisting statement with an assurance report provided by a reputable professional services and advisory company, Grant Thornton Cape Incorporated.

Question – why was the due diligence requirement waived for Ayo Investment on 15 December, days before the listing of the company.

Response – the PIC followed the due diligence process that is applicable to listed investments in terms of its delegation of authority as well as all relevant policies. No due diligence requirements were waived. In fact as far back as November 2017 we
10 already had concluded due diligence reports that covered Risk, Legal and Environmental Social and Governance aspects.

CHAIRPERSON: Was that correct?

MR DEON BOTHA: It seems that it was not correct sir.

ADV JANNIE LUBBE SC: If I can put it otherwise it is not factually correct, it is in fact a lie?

MR DEON BOTHA: You can put it that way I guess.

The next question – on following up on the City Press article about the PIC's investment in Ayo and concerns that the proceeds would be used by Sekunjalo to repay the independent loan and also that due processes weren't followed in making the
20 investment.

Response – the proceeds of the IPO will not be used for any other purpose except for acquisitions as stated in the prelisting statement. The allegations that part of the money will be used to repay the loan that the PIC advanced to Sekunjalo Consortium when it acquired Independent News and Media South Africa are false. The Public Investment Corporation, PIC is in line with its clients mandates, committed to

make investments that drive social and economic transformation, supporting black companies that list on the Stock Exchange is just one of the many ways by which we support transformation of several sectors of our economy. The investment in Ayo Technology Property Limited is in line with this objective. Recently we have supported other similar transactions such as RH Bupelo Hospital Services, Africa Energy Partners, Clean Energy Provider, Sea Harvest Fishing and African Rainbow Capital Financial Services.

All of these responses were drafted by the Listed Investment Team responsible for the transaction and approved by both the Executive Head for Listed
10 Investments as well as the Chief Executive Officer, and I attach that as Annexure B.

ADV JANNIE LUBBE SC: I'm sorry – sorry to interrupt you. As we analyse these questions put to the PIC it is apparent to me that these are all leaked information to the press?

MR DEON BOTHA: That's correct. Wednesday 18 April 2018 there was another query, this time from Amos Bungani, and the response was we have received the list of questions regarding our investment in Ayo Technology Solutions and to some extent those relating to Sagarmatha. It is common knowledge that the PIC has not invested in Sagarmatha and this decision was communicated last week. Ayo Technologies solutions is a listed entity and the PIC wishes not to make comments or to put into the
20 public domain information that may affect the stock. It is however sufficient to point out that the investment in Ayo Technology Solutions as with all the investments followed the necessary internal investment approval processes. It is clear from the list of your questions that you are insinuating wrongdoing on the side of the PIC and that the PIC Chief Executive Officer, Dr Daniel Matjila is behind these transactions. This is unfortunate. The PIC processes are such that no one individual takes investment

decisions. All investments are taken by specific investment committees in line with approved delegation of authority and due diligence is a key component of the investment process. Investment in Ayo is no different. We also note that you keep on referring to PIC documents in your possession which according to our knowledge were never officially given to you.

The only conclusion we can draw from this is that the documents were obtained fraudulently and are part of a concerted effort to undermine and cast aspersions on the PIC.

10 This response was drafted in consultation with the Listed Investment team responsible for the transaction but also approved by the Chief Executive Officer as is evident from Annexure C.

On Monday the 23rd of April 2018 in response to a query from Bloomberg we responded Public Investment Corporation, PIC's investment decisions are based on client mandates. Every investment made has to pass the mandate fit test. Ayo was no different. The question you are raising encroaches on aspects of the PIC's investment strategy and tactics. However at the high level we can say that the outcome of our diligence indicated that Ayo Technology Solutions was an attractive catalytic investment with good prospects and that it could assist in stimulating significant transformation in the information and communications technology ICT sector.

20 The share price performance is no different from most special acquisition companies and investment holding companies in the asset acquisition phase, the so-called J-curve. Regarding Chevron note that the PIC has been approached to consider a proposed transaction involving acquisition of Chevron South African assets the decision will be made once all the necessary internal processes have been completed, so that was a different transaction referred to in the same enquiry, in the same media

query.

This response was also approved by the Executive Head for Listed Investments as well as the Chief Executive Officer and that is attached as Annexure D to my statement Commissioner.

ADV JANNIE LUBBE SC: Mr Commissioner that's the evidence. That is it for today, I promised to be finished at four, I think I made it with a minute to spare.

CHAIRPERSON: Yes thank you Mr Botha, you want him to be excused?

ADV JANNIE LUBBE SC: Yes please.

CHAIRPERSON: You are excused Mr Botha.

10 **MR DEON BOTHA:** Thank you.

CHAIRPERSON: We will adjourn until ten tomorrow morning.

INQUIRY ADJOURNS TO 26 FEBRUARY 2019