

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

26 OCTOBER 2020

DAY 291



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TRANSCRIBERS:

B KLINE; Y KLIEM; V FAASEN; D STANIFORTH



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PROCEEDINGS RESUME ON 26 OCTOBER 2020

CHAIRPERSON: Good morning Mr Kennedy, good morning everybody.

ADV KENNEDY SC: Good morning Chair.

CHAIRPERSON: Is everybody ready?

ADV KENNEDY SC: Yes thank you.

CHAIRPERSON: Yes.

ADV KENNEDY SC: I am here with the rest of my team, Ms Carol Sibiya and Ms Refilwe Molefe.

10 **CHAIRPERSON:** It looks like with the mask on I might not hear you very well – unless you raise your voice.

ADV KENNEDY SC: I am sorry if I was faint. I am appearing together with the rest of the legal team.

CHAIRPERSON: Yes.

ADV KENNEDY SC: For the Denel stream – Ms Carole Sibiya.

CHAIRPERSON: Yes.

ADV KENNEDY SC: And Ms Refilwe Molefe.

CHAIRPERSON: Yes. No that – that is fine.

20 **ADV KENNEDY SC:** Thank you Chair.

CHAIRPERSON: Yes.

ADV KENNEDY SC: May we proceed?

CHAIRPERSON: Do – do you want to give me and the public a little bit of context and background to this week's evidence?

ADV KENNEDY SC: Yes thank you Chair. Chair you will recall that this commission heard various evidence to a differently composed legal team some considerable time ago – I believe it was the end of 2018 and early 2019 when you heard evidence from various other witnesses.

CHAIRPERSON: Yes.

ADV KENNEDY SC: And they raised issues which need to be taken further in the evidence that we will lead for the whole of this week and the few days in November that have
10 also been allocated this stream of the commission's work.

Some of the issues that were raised particularly in the evidence of Mr Saloojee on the previous occasion are the subject of various affidavits that have been obtained from other witnesses some of which casts some blame on Mr Saloojee or put a different perspective.

So some of the witnesses that we will seek to – with your – with your leave in due course to – we will deal with issues that Mr Saloojee raised. And because some of them make allegations that implicate or criticise him he has been
20 scheduled to respond to those aspects at the end of the session in November.

Now Chair you will recall that some of the issues that were raised in evidence previously related to the suspension of Mr Saloojee as the then Group CEO of Denel and two of his colleagues the Chief Financial Officer and

the Company Secretary Ms Africa.

And some of our witnesses will deal with that aspect. In fact the first witness that we propose with your leave to call will be Ms Mandindi who was then a member of the board of Denel which took the decision to – to deal with Mr Saloojee and his colleagues as well as other matters that came before the board when she was a member of that board.

Chair the second witness that we have provisionally
10 lined up for your approval is Ms Hlahla who is the current board Chairperson and she will deal briefly in her evidence with steps that have been taken by the current board to deal with allegations of impropriety and corruption. Some steps that have taken in relation to disciplining of staff, steps to deal with the operational and financial difficulties that Denel has been and is still facing.

Chair other witness whom we propose to call will take forward issues that were raised on the previous occasion as well as others which may not have been raised
20 previously but appear to be relevant to the work of the commission and its Terms of Reference particularly relating to procurement issues and whether compliance – there was compliance with procurement processes. But which also have been alleged to involve individuals who have been implicated in relation to allegations of state capture

including Mr Salim Essa in particular and the Gupta brothers and others.

And you will hear evidence relating to some disagreements between members of management within Denel and its operating divisions as to the wisdom of various business ventures such as contracts that were awarded – three contracts that were awarded to the company VR Laser and whether that followed proper processes – whether those were lawfully done – whether
10 they were done for good business reason – the financial implications that flowed from them and whether they have any bearing on state capture allegations.

Then too there will be other transactions that will be the subject of some of the witnesses such as the Asian venture where there was a Joint Venture again with VR Laser to develop business in Asia and particularly India. And again whether that was done for good reason; done through good process and whether state capture issues and personalities are implicated in that evidence.

20 Chair I believe that – that is obviously a very board outline overview of where we propose to go.

CHAIRPERSON: Yes.

ADV KENNEDY SC: But with your leave may we then unless you wish to raise anything for clarity – may we then proceed to call our first witness?

CHAIRPERSON: Yes, no let us proceed.

ADV KENNEDY SC: Thank you Chair.

CHAIRPERSON: Yes.

ADV KENNEDY SC: So...

CHAIRPERSON: It is Ms Mandindi he?

ADV KENNEDY SC: Yes.

CHAIRPERSON: Yes. Please stand up Ms Mandindi. Do you take an oath or do you do an affirmation?

MS MANDINDI: I take an oath Chair.

10 **CHAIRPERSON:** You take an oath. Okay – do you have – or rather let us start with you placing your full names on record.

MS MANDINDI: Nonyameko Mandindi.

CHAIRPERSON: Yes. Do you have any objection to taking the prescribed oath?

MS MANDINDI: No Chairman.

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

MS MANDINDI: Yes.

20 **CHAIRPERSON:** If so please raise your right hand and say, no, no, no I think I am getting this wrong. I have not done it in a long time. Let us start afresh. Do you have any objection to taking the prescribed oath?

MS MANDINDI: No Chairman.

CHAIRPERSON: Do you consider the oath binding on your

conscience?

MS MANDINDI: Yes Chair.

CHAIRPERSON: Do you swear that you are going to speak the truth; the whole truth and nothing else but the truth?

MS MANDINDI: Yes.

CHAIRPERSON: Please raise your right hand and say, so help me God.

MS MANDINDI: So help me God.

CHAIRPERSON: Thank you. You may sit down.

10 Somebody else normally does this so I have to do it from my head. But I think I – ultimately I got it right. Thank you. Mr Kennedy.

ADV KENNEDY SC: Thank you Chair. Morning Ms Mandindi.

MS MANDINDI: Good morning Mr Kennedy.

ADV KENNEDY SC: Ms Mandindi you have provided an affidavit to the commission, is that correct?

MS MANDINDI: Yes I have.

ADV KENNEDY SC: Chair the affidavit is to be found in
20 the Denel Bundle 01 as Exhibit W8.

CHAIRPERSON: Yes. I have got it. Thank you.

ADV KENNEDY SC: Thank you. And the affidavit for the record appears from page number Denel 01003. Ms Mandindi when I – when I ask you questions and refer you to page numbers or you give me page numbers of your

affidavit can we please look at the black letters on the top left rather than the red letters on the top right.

MS MANDINDI: Yes it is okay.

CHAIRPERSON: Yes and Ms Mandindi he will just say page 3 for example not 003 but then you would know 3, 4, 5, 6, 12 and so on.

MS MANDINDI: Yes Chair.

CHAIRPERSON: Yes okay.

ADV KENNEDY SC: Ms Mandindi is it correct you have
10 had a consultation with us as the legal team as well and we have been through your statement and ask you for clarification of certain issues?

MS MANDINDI: That is correct.

ADV KENNEDY SC: And do you confirm that you are satisfied with the correctness of what is set out in your affidavit?

MS MANDINDI: Yes I am satisfied.

ADV KENNEDY SC: Right may we now have regard to only the particular areas that we will want to focus on today.
20 Just to look at your background. You were a non...

CHAIRPERSON: I am sorry Mr Kennedy does she confirm that that is her signature at page 9?

ADV KENNEDY SC: Thank you. I beg your pardon Chair.

CHAIRPERSON: Is that your signature at page 9 Ms Mandindi of your affidavit?

MS MANDINDI: Yes it is.

CHAIRPERSON: It is. And you confirm the content of this affidavit to be true and correct to the best of your knowledge and belief?

MS MANDINDI: Yes.

CHAIRPERSON: Okay. Would you like me to admit it Mr Kennedy as Exhibit W8?

ADV KENNEDY SC: Yes please Chair.

CHAIRPERSON: The affidavit of Ms Nonyameko Mandindi
10 will be admitted as Exhibit W8. Thank you.

ADV KENNEDY SC: Thank you Chair. Ms Mandindi you describe yourself as a quantity surveyor by profession and qualification? Is that correct?

MS MANDINDI: That is correct, that is my profession.

ADV KENNEDY SC: But you – it appears that you have had experience also in managerial positions; executives positions?

MS MANDINDI: Yes over time I have progressed more into management and leadership roles.

20 **ADV KENNEDY SC:** Right.

CHAIRPERSON: Okay. May I ask you to just raise your voice.

MS MANDINDI: Okay.

CHAIRPERSON: And maybe do not speak too far from the microphone.

MS MANDINDI: That will be good?

CHAIRPERSON: Ja. Okay.

MS MANDINDI: Thank you.

ADV KENNEDY SC: And you have – is it correct that you have served on various boards?

MS MANDINDI: Yes that is correct I have.

ADV KENNEDY SC: Could you give a few examples? Whose board do you currently serve on?

MS MANDINDI: I am currently serving on the – on two
10 private sector boards – listed boards Hyprop and Hudaco – Hudaco Industries.

ADV KENNEDY SC: And have you served previously on other boards apart from those entities and Denel

MS MANDINDI: I have served on public sector boards PRASA, when it was still SARCC. I served on Propnet which is a subsidiary of Transnet. I have served on Inter Sight board. So I have in the public sector as well.

ADV KENNEDY SC: And you mention in paragraph 4 on page 2 of your affidavit that you have also had involvement
20 working on various infrastructure projects such as Gautrain, Monte Casino, Sandton and Durban convention centres etcetera.

MS MANDINDI: Ja that is correct Chair.

ADV KENNEDY SC: What sort of work did that involve very briefly?

MS MANDINDI: Predominantly project management and quantity surveying involvements Chair.

ADV KENNEDY SC: Now let us get to Denel is it correct that you were a non-executive director for a period of Denel SOC Limited?

MS MANDINDI: That is correct non-executive.

ADV KENNEDY SC: Who appointed you Ms Mandindi?

MS MANDINDI: It was Minister Lynne Brown; the Minister of Public Enterprises at the time.

10 **ADV KENNEDY SC:** And when did your appointment take effect?

MS MANDINDI: The appointed was in May 2015 and the induction was around July 2015.

ADV KENNEDY SC: So your induction was in July 2015?

MS MANDINDI: That is correct.

ADV KENNEDY SC: Can you recall when the first board meeting was when you attended – which you attended after going through the induction process?

20 **MS MANDINDI:** It was shortly after the induction Chair. I would need to verify the exact date. So it would have been towards the end of July or early August 2015.

ADV KENNEDY SC: Right. Are you still a member of the board?

MS MANDINDI: No Chair I resigned in July 2016.

ADV KENNEDY SC: 2016 so you were there basically for a

year?

MS MANDINDI: Just about.

ADV KENNEDY SC: Right. Now you deal with the circumstances relating to her appointment that I am not going to go through here in oral evidence. They are before the commission – Chair now that he has submitted the – the entire statement. I would like to get to two particular aspects relating to decisions of the board and your knowledge of the relative facts in that regard. Who was
10 the Chairperson of the board to which you were appointed by Minister Brown?

MS MANDINDI: It was Mr Daniel Mantsha – Lugisani Mantsha.

ADV KENNEDY SC: Now the first of the topics that we would like to draw to the attention of the Chair today is the actions of the board including yourself in relation to the suspension of the executive such as Mr Riaz Saloojee. Now in your paragraph 15 you refer to a second board meeting where you were asked to have your cell phones
20 stored etcetera and can you recall roughly when that second board meeting took place?

MS MANDINDI: Chair I would have to confirm that. I do not have the exact date of [talking over one another].

ADV KENNEDY SC: Just give a rough estimate?

MS MANDINDI: Roughly it would have been....

CHAIRPERSON: Maybe the month?

MS MANDINDI: Towards the end of August/September.

CHAIRPERSON: Towards the end of August early September?

MS MANDINDI: Early September.

ADV KENNEDY SC: And you indicate that Mr Mantsha asked that all the board members explained that they hand in their cell phones to be stored during the meeting.

MS MANDINDI: That is correct Chair.

10 **ADV KENNEDY SC:** And then you refer in paragraph 16 two issues being raised in the meeting of the board that had not been part of the board pack did you raise those issues or did your colleagues?

MS MANDINDI: One of the colleagues raised a question around property in a meeting where there was nothing relating to the property portfolio in the board pack so that sort of took me aback because there was nothing tabled about that. And you sort of wonder how did they know the details on the property side of the business. But of course
20 you also recognise that some board members may be more informed than others. So – but it was something that took me aback a little bit.

ADV KENNEDY SC: Now that issue seems to have arisen...

CHAIRPERSON: I am sorry Mr Kennedy.

ADV KENNEDY SC: Yes Chair.

CHAIRPERSON: When you talk about the second board meeting where this happened is that a second meeting – the first board meeting after the induction or there was an induction then another board meeting which would have been the first and then the second?

MS MANDINDI: Ja. It was – actually my statement says around the second board meeting. It could have been the second or the third. It was after the induction Chair
10 specifically [Chair talking over Ms Mandindi].

CHAIRPERSON: But the induction you do not refer to it as a board meeting?

MS MANDINDI: No.

CHAIRPERSON: It is just an induction.

MS MANDINDI: It was just an induction session.

CHAIRPERSON: Okay. Alright. Okay. Thank you Mr Kennedy.

ADV KENNEDY SC: Thank you Chair. Ms Mandindi you then deal in paragraph 17 with another meeting that
20 followed either the third or fourth board meeting and again are you – can you be sure now as to whether it was the third or the fourth or give us a date or is it still approximate?

MS MANDINDI: It is still approximate. Chair let me just mention that we were handed tablets and most of the board

information went to the tablets to the company tablets. So when I resigned those tablets were handed back to – to the company. So when I do not have exact information it is because it did not come through my channels in which case I would have the ability to go back and verify the information. So I do apologise if I am approximating some of the information.

CHAIRPERSON: Okay. I assume Mr Kennedy that the reason why there is not much about the first board meeting
10 is maybe because there is nothing relative to us that happened in that meeting?

ADV KENNEDY SC: Correct Chair.

CHAIRPERSON: Yes okay alright.

ADV KENNEDY SC: Its relevance was only to indicate a background to concerns about items being presented.

CHAIRPERSON: Yes.

ADV KENNEDY SC: To board members for discussion.

CHAIRPERSON: Yes.

ADV KENNEDY SC: In those meetings without it being
20 part of the pack.

CHAIRPERSON: Yes.

ADV KENNEDY SC: And as it would be taken by surprise.

CHAIRPERSON: Okay.

ADV KENNEDY SC: Let us get to the third or fourth board meeting. In fact I see in your affidavit you do give a date

for that. That is the 23 September 2015 and that was – that was scheduled to discuss the – it was a special board meeting and the purpose was to discuss the LSSA deal.

MS MANDINDI: Hm.

ADV KENNEDY SC: Now just in a sentence or two if you would please Ms Mandindi was that the only purpose for the special board meeting as you recall?

MS MANDINDI: Yes Chair the proposed – because in that meeting it was proposed that we would have a special
10 board meeting around the 23rd and to discuss that – that specific transaction. And the reason was it was fairly urgent that it be concluded and discussed. So hence it had to fall in between the board meeting – scheduled board meeting dates.

CHAIRPERSON: Does – does this mean that with regard to the second meeting your suggestion and maybe the suggestion of other board members that the issue that was sought to be discussed that had not been part of the board pack your suggestion the it should not be discussed was
20 accepted?

MS MANDINDI: Which paragraph are you referring to Chair?

CHAIRPERSON: You see at paragraph 16 you say:

“During this board meeting questions were raised by certain board members on issues

which were not part of the board pack. As someone who reads board packs meticulously I pointed out that such issues cannot be discussed because it was not in the board pack.”

And then after that you go to the third or fourth board meeting.

MS MANDINDI: Yes.

CHAIRPERSON: So I am just saying does it mean that
10 that was accepted so issues which were not part of the pack was – were not discussed?

MS MANDINDI: It was noted Chair.

CHAIRPERSON: Okay alright.

MS MANDINDI: It was noted.

CHAIRPERSON: Thank you – Mr Kennedy.

ADV KENNEDY SC: Thank you Chair. Ms Mandindi it then appears from your affidavit that you did not go straight into the board meeting at the – at the due time because there was a meeting in progress of the ARC Committee – the
20 Audit and Risk Committee and you had to wait.

MS MANDINDI: Yes we did. Yes we did have to wait for the meeting to start because the – the Audit and Risk Committee session was still in progress when we arrived.

ADV KENNEDY SC: And then it refers to a discussion between you and Mr Mantsha the Chair that happened in

his office. Was that before the board meeting actually convened?

MS MANDINDI: Yes it was Chair. The – the Audit and Risk Committee meeting delayed so we were waiting outside for over an hour. So the chairman called me into his office to just give me a briefing of why there was a delay effectively.

ADV KENNEDY SC: And did he indicate to you why – what the ARC was having to discuss before the board meeting could convene?

10 **MS MANDINDI:** He just mentioned that there were some issues and concerns with the CEO that the ARC meeting was discussing before we start with the board meeting. But he did not specify what those concerns would have been.

CHAIRPERSON: Well at the time that he was speaking to you did he limit the concerns to the CEO and CFO or were there other people that he said they were concerned about?

MS MANDINDI: No he just mentioned the CEO according
20 to my recollection Chair.

CHAIRPERSON: Yes.

MS MANDINDI: He was just explaining why the meeting was delayed. He was not pre-briefing me.

CHAIRPERSON: Yes.

MS MANDINDI: Yes.

CHAIRPERSON: Okay.

ADV KENNEDY SC: And then your statement says that:

“The concerns that he said were being discussed related to assertions by the Audit Committee that there was misinformation and inadequate detail in information provided.”

Did you know what that related to?

MS MANDINDI: No not the misinformation and inadequate
10 information recall the LSA SAA transaction had come to the board. I am just trying to see because I think I have mentioned it in my statement or in the attached referenced NM1 attachment. That that had come to the board but because we were not all informed to the same level as board members we requested that that – that transaction we get more information so that we can adequately participate as the other board members were not part of the Audit Committee at that time. So that was the addressing that concern.

20 **ADV KENNEDY SC:** Okay now your affidavit in paragraph records that you raised a concern with Mr Mantsha – you expressed surprise because you believed the 2015 board tenure was too short in office to sufficiently and fairly assess the CEO. Was he indicating in fact that the board meeting would – would called upon to assess the CEO?

MS MANDINDI: No – no Chair not necessarily. It – my statement there was relating to the concern about the CEO. Because my assertion was we were appointed in May. We started sitting in July and in September we already have opinions or at least judgments around the – the competency or lack therefor – thereof by the management team and we also are insinuating issues of misinformation and inadequate information. So I just felt that was a bit too soon to have judgments around the management team
10 and how they were conducting themselves at the time.

CHAIRPERSON: Do you recall who the CEO and the CFO were at the time?

MS MANDINDI: The CEO was Mr Saloojee, the CFO was Mr Mhlonto. Yes.

CHAIRPERSON: Okay thank you.

ADV KENNEDY SC: And the company secretary?

MS MANDINDI: Was a Ms – Ms Elizabeth Africa.

ADV KENNEDY SC: Right. Now you para – same paragraph 2 expresses another concern on your part and
20 that is that you were confused because according to the agenda for the special board meeting we were supposed to consider the LSSA deal and it transpired that the company secretary Ms Africa's competence was also being questioned as well as the – that of the CEO and CFO.

MS MANDINDI: That is correct Chair because the – the

notice to that meeting was to discuss the LSSA deal as we had also dealt with it previously. So when the agenda seemed to have shifted now we were focussing on discussing the executives. I was a bit confused because that was not the purpose of the meeting actually.

CHAIRPERSON: So was the LSSA deal the only issue really that had been agreed would be on the agenda for this board meeting?

MS MANDINDI: That is correct Chair.

10 **CHAIRPERSON:** So now other issues were being brought up for discussion?

MS MANDINDI: Yes.

CHAIRPERSON: Yes.

MS MANDINDI: Yes and were taking priority over the exact issue we had come for.

CHAIRPERSON: Yes. Now that the company secretary's competence was also being questioned is that what you got from Mr Mantsha or is that something that you understood later after your meeting with Mr Mantsha?

20 **MS MANDINDI:** I understood in the process of the discussions in the meeting.

CHAIRPERSON: In the meeting?

MS MANDINDI: Yes.

CHAIRPERSON: Okay alright. So Mr Mantsha only talked about the CEO and the CFO?

MS MANDINDI: Yes Mr Mantsha just explained that there was a bit of a delay. The Audit Committee had concerns about the CEO and there was some sort of misinformation and inadequate information hence the delay.

CHAIRPERSON: Okay.

ADV KENNEDY SC: So once you had the one on one meeting in his office with Mr Mantsha did you then proceed to join your colleagues and have the – the full board meeting?

10 **MS MANDINDI:** Yes we proceeded to have the board meeting Chair.

ADV KENNEDY SC: And that was after the ARC – the Audit and Risk Committee's meeting had concluded?

MS MANDINDI: That is correct Chair.

ADV KENNEDY SC: Right. Now what was discussed during your board meeting? Did you discuss the LSSA deal?

20 **MS MANDINDI:** We did not get to it Chair. Whether that was the – we did not get to it as I have alluded later on in the pack. I left that meeting earlier. But we did not get to it in that – during my presence in that meeting.

ADV KENNEDY SC: Yes you say later in paragraph 22 that you left the meeting early. We will deal with – with that in a moment. But during the time that you were present in the board meeting there was no discussion of LSSA deal.

MS MANDINDI: No Chair.

ADV KENNEDY SC: What – what was the discussion about?

MS MANDINDI: The discussion was really around the unhappiness with the – with the CEO and the CFO and the company secretary came in the midst of that. So it was really around the executives' performance and behaviour along those lines. It was not about the deal – the transaction at all.

10 **CHAIRPERSON:** Was there an agreement by the board to change its agenda? Was there a formal agreement to say, we know we had called this meeting for the LSSA deal but let us deal with that later. There are other matters that are urgent that we need to deal with? Or – and was that justification given as to why the LSAA – LSSA deal was not being discussed?

MS MANDINDI: I do not recall having that acknowledgement Chair. I do not recall that acknowledgement because the meeting started and the
20 Audit Committee gave the report and the report just centred around the three executives.

CHAIRPERSON: Yes. Okay alright.

ADV KENNEDY SC: Thank you Chair. And Ms Mandindi did you raise with your board colleagues during that meeting concerned that it was not part of the pack and it

was not on the agenda and you had been unable to prepare and consider in advance?

MS MANDINDI: Yes I did Chair raise that – the concerns around the discussion and the concerns around the – what seemed to be hasty judgment on the – on the executives and I followed that up with a letter to the Chairman.

CHAIRPERSON: Who at the meeting was expressing unhappiness or concerns about the CEO, CFO and the company secretary? Was it members of the ARC?

10 **MS MANDINDI:** Yes. Yes Chair.

CHAIRPERSON: Committee.

MS MANDINDI: Yes predominantly.

CHAIRPERSON: Yes. And who was the Chairperson of the ARC Committee if you are able to remember? If you do not remember, that is fine.

MS MANDINDI: That was Ms Mpho.

CHAIRPERSON: Okay.

MS MANDINDI: Ja.

CHAIRPERSON: You can tell me later ...[intervenes]

20 **MS MANDINDI:** ...proper(?) law firm.

CHAIRPERSON: Yes, okay alright. So and was there a particular person who was reporting on behalf of the AFC Committee, like a chairperson or different members of the RC Committee was speaking on the unhappiness with these executives?

MS MANDINDI: Hmm...

CHAIRPERSON: That is something you cannot remember.

MS MANDINDI: Chair, I am sorry. I just cannot recall that specifically who was talking but it was a collective report back by the Audit Committee in terms of their proceedings ...[indistinct]

CHAIRPERSON: Okay alright.

MS MANDINDI: ...board meeting.

CHAIRPERSON: Mr Kennedy.

10 **ADV KENNEDY SC:** Thank you, Chair. Now the other concern that we have touched on earlier related to your feeling as new and recently board members. It might be inappropriate for you to assess qualities of senior executives. Did... was that because you had only recently come into office?

MS MANDINDI: Yes, Chair it was on that basis. The board that came in... According to my knowledge, all of were new except for one person who was coming from the previous board who had been carried over. So we were fairly new and
20 my sense was, we would have been finding our feet around the business of Denel at that stage.

CHAIRPERSON: The previous evidence that I heard was that the board member who came from the previous board was a very quiet member during board members.

MS MANDINDI: Yes, he was not... I mean, he is not a

talkative(?) ...[intervenes]

CHAIRPERSON: Ja.

MS MANDINDI: ...really.

CHAIRPERSON: Ja, okay alright.

ADV KENNEDY SC: Alright. And what about the Chair, Mr Mantsha of the board that you served on? Had he served on the previous board or was he also knew?

MS MANDINDI: Not to my knowledge. I understood that he was also new.

10 **CHAIRPERSON:** Ja, he was also knew.

ADV KENNEDY SC: Right.

MS MANDINDI: H'm.

ADV KENNEDY SC: So did you raise with your colleagues concern that it may be inappropriate for yourselves as board members to proceed with a discussion relating to the competence and performance of senior executives, such as the CEO and the CFO?

MS MANDINDI: Yes, I raised my concerns and I raised my objections because I felt that if we are to be getting into a
20 discussion, especially if it is that advanced that you are talking of suspending senior people in the organisation, we should be receiving a report back from the Audit Committee so that all of us as board members are present in that sitting.

And also, we would have applied our minds as to the

facts that were considered by the Audit Committee. So I just felt it was a bit odd and rather unfair, not only to the executives but also to us that you should be thrown into such a drastic decision without prior preparation.

And also, my feel that was that, by that time, we had inter-reacted with the executives and we have had the briefings by the executives in terms of the various businesses within Denel.

And there was nothing within me that gave me any
10 suspicion that they were incompetent or misinforming us. So I could not make a valued judgment with regards to the misinformation or inadequacy of misinformation or even incompetence claims.

ADV KENNEDY SC: You mentioned... I am sorry, Chair.

CHAIRPERSON: [No audible reply]

ADV KENNEDY SC: You mentioned suspension. Was that possibility raised by anybody in particular?

MS MANDINDI: Yes, that is how the discussion was going
Chair. I am trying to recall if there was a specific mention
20 but at the fact that I left the meeting and wrote a letter afterwards and referred to it, suggests that it would have been mentioned specifically in that meeting.

ADV KENNEDY SC: Do you recall by whom? Was it the AR... sorry, the... Yes, the IRC chairperson or the board chairperson?

MS MANDINDI: I do not recall who specifically.

ADV KENNEDY SC: Okay.

MS MANDINDI: H'm.

ADV KENNEDY SC: And was that suspension being proposed for the board members to decide on there and then?

MS MANDINDI: Yes, Chair.

ADV KENNEDY SC: And was that the proposed... was the suspension proposed in respect of the CEO and the CFO and
10 the company secretary?

MS MANDINDI: Yes, the company secretary also, her name came in the mix and her behaviour was being questioned. So she was also being considered for that.

ADV KENNEDY SC: Apart from suspension, was it proposed that there would be a disciplinary process against them? In other words, it was suspension pending a disciplinary process?

MS MANDINDI: It would have been Chair. Ja.

ADV KENNEDY SC: H'm.

20 **MS MANDINDI:** There was not a... I mean, that process, you start with the suspensions. So it did not follow. It follows that there would have to be some level of disciplinary investigation and sittings necessary to conclude.

CHAIRPERSON: Do you recall whether the basis for the suspensions of these executives that was being proposed,

that were being proposed, was allegations of misconduct or simple that they were not competent or both? Or is that something you cannot remember? What is your recollection of ...[intervenes]

MS MANDINDI: My recollection ...[intervenes]

CHAIRPERSON: ...what was being said against them at this meeting that was thought justified suspending them?

MS MANDINDI: My recollection Chair was around misinformation. There was a sense in which the Audit
10 Committee felt that some of the facts around the LSSA deal... transaction, were being... were not as clear or as truthful as we thought they were.

And also, there was inadequate detail around some of the nuances(?) of that transaction. So that was mostly the feeling. And of course, Ms Africa's issue came into the question as well.

CHAIRPERSON: So the complaint was that the CEO and the CFO had not provided correct or truthful or accurate information to the ARC Committee or to the board with
20 regard to the LSSA deal?

MS MANDINDI: Yes, Chair.

CHAIRPERSON: That is what it was about?

MS MANDINDI: That was the feeling, yes. H'm.

CHAIRPERSON: Now the company secretary, did that apply to the company secretary or was there something, a separate

issue with the company secretary?

MS MANDINDI: I did not understand how... You know, things just deteriorate fast in some of these meetings Chair.

CHAIRPERSON: Yes, yes. And of course, you will have to ...[intervenes]

MS MANDINDI: I do not remember how she just ended up as part of this.

CHAIRPERSON: Yes.

MS MANDINDI: And I think it had to do again with the
10 misinformation because remember, the company secretary handles the distribution and the quality of information ...[intervenes]

CHAIRPERSON: Yes.

MS MANDINDI: ...that gets distributed to the board members. So she may have come into the debate and the questioning of her abilities in that sense.

CHAIRPERSON: But is your recollection that when the meetings started maybe the focus was the on the CEO and CFO but somewhere during the meeting, the company
20 secretary's name also was brought in or is that something you cannot remember?

MS MANDINDI: No, it sounded like she was already ...[intervenes]

CHAIRPERSON: She was included from the beginning?

MS MANDINDI: She was included in the questioning.

CHAIRPERSON: Yes.

MS MANDINDI: In the questionable behaviour or whatever.

CHAIRPERSON: Okay alright.

MS MANDINDI: Yes, Chair.

CHAIRPERSON: Yes, Mr Kennedy.

ADV KENNEDY SC: Thank you, Chair.

MS MANDINDI: Ms Mandindi, you in fact deals specifically with your concerns about the company secretary, as well as the other two executives in your letter.

10 **MS MANDINDI:** Yes.

ADV KENNEDY SC: We will come back to that if we may.

MS MANDINDI: H'm.

ADV KENNEDY SC: In a moment. If we can just complete what your evidence is on the meeting itself. You expressed your concerns that it was no appropriate for board members to assess these executives and decide on such important issues as suspension and disciplinary action for executives. Firstly, where you had not been forewarned about that. It was not on the agenda.

20 **MS MANDINDI:** H'm.

ADV KENNEDY SC: It was not in the pack. And secondly, where you did not... where you were so new to the job as board members.

MS MANDINDI: H'm.

ADV KENNEDY SC: And were not that familiar with the

corporation or its executives. When you raised those concerns, what was the reaction of the other board members overall? I am not wanting you to get, at this stage, specifically as to what each member said. But were your concerns taken seriously and did they agree to abandon the efforts as you were seem to be suggesting? What was done?

MS MANDINDI: No, they were not addressed, specifically Chair. So it is... you say something and then it moves to the
10 next person saying something else. So they were not specifically acknowledged. Not dealt with specifically at that time because it was a broad discussion by the board. So, yes.

CHAIRPERSON: Was Mr Mantsha chairing that board meeting?

MS MANDINDI: That is... Yes, Chair.

CHAIRPERSON: Yes. Now the executives... The CEO and the CFO, I would have imagined... Well, I guess they would ordinarily be part of any board meeting. Is that correct?

20 **MS MANDINDI:** They were recused at that stage.

CHAIRPERSON: They ...[intervenes]

MS MANDINDI: But they were in the building. They were in the building.

CHAIRPERSON: For that meeting, they were asked to leave?

MS MANDINDI: Yes.

CHAIRPERSON: Okay alright.

ADV KENNEDY SC: Now... Thank you, Chair. Now Ms Mandindi, you then say in your affidavit in paragraph 21 the following:

“Tau Mahumapelo was nominated to act as Company Secretary if the then incumbent company secretary would be suspended and Zwelakhe Ntshepe as acting CEO if the CEO would be suspended.”

10 Was there a discussion in your presence of what would happen to the positions of the CEO and Company Secretary if those individuals were suspended and who might then take their places in an acting position while they were suspended?

MS MANDINDI: Chair, as indicated in that paragraph. The proposal was that Mr Tau Mahumapelo, would be the company active, the Company Secretary and then, indeed, Mr Ntshepe would act as the CEO as it happened.

CHAIRPERSON: Was Mr Tau Mahumapelo a member of the
20 board or an official of the company?

MS MANDINDI: He was a member of the board, Chair.

CHAIRPERSON: A member of the board?

MS MANDINDI: H'm.

CHAIRPERSON: Okay.

ADV KENNEDY SC: And Mr Ntshepe, what was his

position?

MS MANDINDI: Mr Ntshepe at that time, he was the Executive responsible for Business Development.

ADV KENNEDY SC: Right.

MS MANDINDI: H'm.

ADV KENNEDY SC: And what, did he sit on the board?

MS MANDINDI: No, Chair not in that capacity.

MS MANDINDI: Right.

CHAIRPERSON: Did anybody at the meeting say why it was
10 so urgent that you deal with this matter as the board?

MS MANDINDI: That was my concern, Chair. That was my concern because if you read later in my letter, I talk about haste. That it sounded like it was a hasty decision to do so because we have not fully evaluated the facts in hand as a board. So we were merely taking a decision on the basis of the recommendation by the Audit Committee and we had not brought the whole board's confidence in that regard.

CHAIRPERSON: And did anybody give you a response to this? An answer to why this was so urgent? Why this could
20 not wait until you had been properly briefed by the ARC Committee and you were ready to deal with this?

MS MANDINDI: No. No, there were no specific response to that question, Chair.

CHAIRPERSON: Yes. Because one would have expected and I think you made the point that the ARC Committee

being a committee of the board, if it had certain concerns, it would first shared them with the board.

MS MANDINDI: H'm.

CHAIRPERSON: And everybody gets enough chance to apply their mind to those issues. And then the board could take a decision ...[intervenes]

MS MANDINDI: Take...

CHAIRPERSON: ...whether to... on the way forward. And whether there should be a contemplation of suspension and
10 so on.

MS MANDINDI: Indeed Chair.

CHAIRPERSON: Yes, okay.

MS MANDINDI: Indeed Chair.

CHAIRPERSON: Mr Kennedy.

ADV KENNEDY SC: Thank you, Chair. In paragraph 22 you say you left that board meeting early around nine o'clock before its conclusion.

20 "I was extremely concerned at the manner in which the meeting was unfolding and concerned that there was a possible action being taken against three senior people, the CEO, the CFO and the Company Secretary."

Now at the stage that you left, had the board taken a resolution to suspend or discipline the three executives concerned?

MS MANDINDI: No, Chair it had been discussed. The names had been put on the table with regards to the acting people but the final decision had not been concluded in the... on that particular sitting Chair.

CHAIRPERSON: Do you recall roundabout what time that meeting had taken... had started? I see you had left at about nine o'clock.

MS MANDINDI: Nine o'clock Chair.

CHAIRPERSON: When had it started, the meeting?

10 **MS MANDINDI:** I think the meeting was scheduled to start around... If I may recall, it would be a five o'clock or something like that Chair.

CHAIRPERSON: Ja, okay alright.

MS MANDINDI: But that would need to verified.

CHAIRPERSON: Yes.

MS MANDINDI: But it was an evening meeting.

CHAIRPERSON: Yes.

MS MANDINDI: Yes, Chair.

CHAIRPERSON: Okay.

20 **MS MANDINDI:** H'm.

CHAIRPERSON: Alright.

ADV KENNEDY SC: And then how long it was scheduled to start around five but you then had... you were delayed. The board meeting was delayed in starting because the ARC meeting was still in progress.

MS MANDINDI: That is correct.

ADV KENNEDY SC: Roughly, how long was the delay period?

MS MANDINDI: It was long Chair.

CHAIRPERSON: I think you said about an hour, earlier on.

ADV KENNEDY SC: About an hour?

MS MANDINDI: I would need to confirm the five o'clock start time but it was an evening meeting. It could have been scheduled for six o'clock or whatever the case may be.

10 **CHAIRPERSON:** H'm.

MS MANDINDI: But we waited for more than an hour before the meeting started.

CHAIRPERSON: Okay.

MS MANDINDI: It was quite a long wait.

ADV KENNEDY SC: Thank you. And ...[intervenes]

CHAIRPERSON: When you left... I am sorry, Mr Kennedy. When you left at nine o'clock, did you have a sense of where the meeting was heading in terms of the suspension or it was not clear yet?

20 **MS MANDINDI:** I was getting a feeling Chair that that is what was going to happen.

CHAIRPERSON: The suspension of the executives?

MS MANDINDI: Yes, yes. Because that is where the whole discussion was headed towards.

CHAIRPERSON: Yes. Where there people, maybe other

than yourself, were there people, members of the board who were speaking against this haste and was speaking, maybe was speaking against the suspension at that stage? Or saying: Let us delay this. We need more information. Or anything along those lines?

MS MANDINDI: To start off with Chair. It was not a full sitting, a full board sitting because some of the members were not there.

CHAIRPERSON: Oh. H'm. But was there a quorum, do you
10 know?

MS MANDINDI: It is curated, Chair.

CHAIRPERSON: Okay alright.

MS MANDINDI: It is absolutely curated but it was not a full sitting at all.

CHAIRPERSON: Yes.

MS MANDINDI: I do not recall... Well, I was vocal but I cannot say I was the only opposed to the decision.

CHAIRPERSON: H'm.

MS MANDINDI: And so ...[intervenes]

20 **CHAIRPERSON:** It might have been two or three people who were ...[intervenes]

MS MANDINDI: I cannot recall Chair.

CHAIRPERSON: You cannot recall?

MS MANDINDI: Specifically.

CHAIRPERSON: Yes.

MS MANDINDI: Because remember, at this point, people are still discussing whether there are strong positions for or against the discussion, around the board.

CHAIRPERSON: Yes.

MS MANDINDI: The progressing of a discussion. So I would not know who else was part.

CHAIRPERSON: Ja. But when you left, your impression was that the majority seemed to be moving towards ...[intervenes]

10 **MS MANDINDI:** The ...[intervenes]

CHAIRPERSON: ...the decision to suspend the executives.

MS MANDINDI: Yes, Chair.

CHAIRPERSON: Okay alright.

MS MANDINDI: H'm.

ADV KENNEDY SC: So was that discussion moving in that direction still happening when you left the meeting early?

MS MANDINDI: Yes, Chair.

ADV KENNEDY SC: Now can you explain to the Chair briefly why you left the meeting at that stage?

20 **MS MANDINDI:** I did not like the discussion Chair and I did not come prepared to have a discussion like that. I was prepared to discuss the LSSA transaction which is the pack that was circulated and the notice of the meeting.

So I felt ill-equipped to engage further with that discussion and I made my concerns known to the meeting. I

raised them very clearly.

So I just did not feel I was going to add any more value because I had stated my concerns and the fact that I would have had a feeling that the matter should have been delayed and the board apprised of the developments within the company before we proceed.

ADV KENNEDY SC: Now, do you know what the outcome of the meeting's discussion about the possible suspension of the three executives was?

10 **MS MANDINDI:** Yes, Chair. I mean, we were informed the following day that the members had been suspended, the three members.

ADV KENNEDY SC: Right. Then you mention a letter that you wrote. Is that the letter you told the Chair about earlier that you sent after the meeting?

MS MANDINDI: Yes, Chair.

ADV KENNEDY SC: So the meeting was in the evening of the 23rd of September. You then sent a letter. If I can ask you, in this bundle again. Look at the top left numbers.

20 **MS MANDINDI:** H'm?

ADV KENNEDY SC: Is the letter that you have referred us to. Is that the letter that we find at page 12?

MS MANDINDI: That is correct, Chair. That is the Annexure MM1.

ADV KENNEDY SC: Yes. And that runs for three pages.

And you deal with various issues that you right. Procedural issues, modus operandi and the company secretary.

MS MANDINDI: Yes, Chair.

ADV KENNEDY SC: It was addressed to Mr Mantsha. Is that right?

MS MANDINDI: That is the chairman, Chair.

ADV KENNEDY SC: Right. Why did you sent this letter? What was your overall objective?

MS MANDINDI: Chair, as I indicated. I was greatly
10 troubled and concerned when the events unfolded in the meeting the way they did because I felt that suspending or releasing senior members of the organisation has to have had very serious allegations levelled against them. And these things are very disruptive to these entities.

And I just felt totally troubled that we did not even have something, a report, that is written as the board that we could apply our minds to with regards to the allegations levelled against the three senior executives.

And yes Chair. And it just happened to fast. From July
20 to September. I just felt that was a bit too much.

ADV KENNEDY SC: Now your affidavit sets out a summary of what you raised in the letter. Paragraph 25 of your affidavit. Sorry, 23. Refers to the letter and to discuss the issues raised during the meeting to which you did not receive any response. Did you not receive a response to the

letter itself?

MS MANDINDI: No, Chair.

ADV KENNEDY SC: And the summary sets out the main points. 23.1 refers to the fact that:

“The agenda for that meeting related to the LSSA transaction, not the suspension of the directors.”

We have dealt with that.

MS MANDINDI: Yes, Chair.

ADV KENNEDY SC: Secondly. Point 2.

10 “That such a decision to suspend is serious, would have necessitated a full board meeting sitting with ample notice time, not the short notice.”

And then he says:

“not all the board members were present because of the short notice.”

We have dealt with that.

MS MANDINDI: Yes, Chair.

ADV KENNEDY SC: Then you say in point 3:

20 “The ARC report was not circulated with the meeting notification. It was not circulated before the meeting. It was only handed to board members during the meeting and therefore no opportunity was provided to you as board members to apply your minds to the facts to contribute wisely and constructively.”

How serious do you feel that that concern was?

MS MANDINDI: You said how serious?

ADV KENNEDY SC: Yes. Was it a serious concern for you?

MS MANDINDI: It is a serious concern Chair. I mean, you do not suspend senior executives on the basis of documentation you have just received at the meeting without applying your mind. So when you get to have received that information so that we can also objectively evaluate if it is a good... it is a wise decision or not.

10 **ADV KENNEDY SC:** Then in point 4, you say:

“The intended decision to suspend them was only communicated to the board members during the meeting. The finding of the ARC report was not discussed rigorously by the board with reference to the merits and demerits of the LSSA transaction.”

MS MANDINDI: That is correct Chair.

ADV KENNEDY SC: And then:

20 “The ARC report did not analyse the various aspects of the LSSA transaction. No conclusion were reached on the basis of the analyses.”

Oh, sorry.

“That on the basis of the analyses there is a need to act against these directives.”

MS MANDINDI: That is correct Chair.

ADV KENNEDY SC: And then:

“The structure of the ARC report, it looks like they approached the documentation with a purpose of formulating a charge sheet and there was some inaccuracies that could open the board to challenges.”

Can you recall any detail in that regard?

MS MANDINDI: I cannot recall specific detail. I just pulled that basically on my letter but the fact that there was not any... Remember, the fall off between the Audit Committee
10 and the executives was centred around the LSSA transaction, according to our knowledge.

So then you would have had to analyse the LSSA transaction to evaluate or form or come to an opinion or a judgment that the executives were either misinforming us or had put in inaccurate details. So the fact that that report had not been put before the board, for me was not right.

ADV KENNEDY SC: If I might ask you to move, just for a moment, to the letter itself at page 13?

MS MANDINDI: It is correct Chair.

20 **ADV KENNEDY SC:** Line 3. That is the section above the heading *modus operandi*. Do you see that?

MS MANDINDI: Yes, Chair.

ADV KENNEDY SC: And line 3 on the top of the page, you say:

“Based on the foregoing, one would have expected a

report analysing the various aspects of the transaction.”

Is that the LSSA transaction?

MS MANDINDI: [No audible reply]

ADV KENNEDY SC: Are you with me?

MS MANDINDI: No, I am not with you.

ADV KENNEDY SC: Can you... if you look at the top page 13.

MS MANDINDI: I have got page 13.

10 **ADV KENNEDY SC:** Line 3.

MS MANDINDI: Oh, I went to number 3. Sorry.

ADV KENNEDY SC: No, no. Line 3.

MS MANDINDI: Okay.

ADV KENNEDY SC: The third line. “Based on the foregoing...” Are you with me?

MS MANDINDI: That is correct.

ADV KENNEDY SC: You say then:

“...one would have expected a report analysing the various aspects of the transaction.”

20 Is that the LSSA transaction?

MS MANDINDI: That is correct Chair.

ADV KENNEDY SC: And then:

“On the basis of that analyses concluding that there is a need to act against the executives directives.”

MS MANDINDI: Yes, correct. Yes, that is correct Chair.

ADV KENNEDY SC: Yes, that is what you say also in your affidavit.

MS MANDINDI: Indeed.

ADV KENNEDY SC: But you carry on. You say. In fact, this is also in your affidavit.

10 “The structure of the report to the Audit and Risk Committee tabled on 23 September, looks like they approached the documentation with the purpose of formulating a charge sheet. There is some inaccuracies which could open the board to challenge.”

It is the next few lines that I just want to take you to.

MS MANDINDI: H’m?

ADV KENNEDY SC: Yes.

“There is no reference to the merits and demerits of the transaction. There is no reference to the decisions that the board might need to make to bring the transaction back on track or recommendations to strengthen controls and other mitigations.”

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

ADV KENNEDY SC: Did you think that these issues that I have just read out were just in the interest of good governance in general or did they also have any relevance to the decision to suspend the executives?

MS MANDINDI: Effectively, if we were to suspend the

executives on the basis of what they have put on the table in the context of the transaction, then we would need to analyse as I have said before. We would need to analyse the transaction and see where the gaps are.

And that analyses of the transaction would need to bring us back to board because the business is not the business of releasing of executives. It is the business of running the business of Denel.

So we would need the recommendations as to how do we
10 bring the transaction back on track. So that is what I was alluding to in that paragraph. That the report did not seem to give us any information regarding the transaction.

It dealt with the shortcomings or whatever allegations were levelled against the executives, basically. That was the concern.

ADV KENNEDY SC: Thank you. May I take you Ms Mandindi on the same page of your letter to... Near the end, you have got a heading, Company Secretary. Do you see that?

20 **MS MANDINDI:** Yes, that is correct Chair.

ADV KENNEDY SC: And then your paragraph 1 under that heading says:

“I did not note to what extent the HR has been involved in this process but I find it harsh that what looks like a lack of report(?) between the Audit and

Risk chair and the company secretary, ends up constituting a dismissible offence. I would have thought a warning would suffice and then we all work on creating positive relationships going forward.”

MS MANDINDI: Yes, that sentiment I still hold Chair.

ADV KENNEDY SC: Yes.

MS MANDINDI: Yes.

ADV KENNEDY SC: Had you raised that sentiment during
10 the meeting itself or is it only raised after the meeting in
your letter of the 25th?

MS MANDINDI: I do not know if that specific point was
raised at the meeting but it was a matter of concern that I
ended up putting.

Because I got a feeling that there were personal lack of,
you know, personal relations or whatever the case may be.
There was just fall off. The personalities did not come
together.

But then again, back to my point. In three months’ time.
20 You work on personal or personal relationships within
creating a working environment, a positive working
environment where the executives do their job.

The board can do their job. So I will not have thought
that such conflicts should result into dismissible offenses.

ADV KENNEDY SC: And then again, on the same page. If

we go up under the heading modus operandi.

MS MANDINDI: Yes, Chair.

ADV KENNEDY SC: You deal with your concerns that you have already discussed.

“That there had not been much opportunity to deliberate, yet there were some urgency.”

This is paragraph 2.

MS MANDINDI: Yes, Chair.

ADV KENNEDY SC: There was some urgency. So although
10 you did not have much opportunity to deliberate, there was this urgency for them to leave immediately.

MS MANDINDI: H’m.

ADV KENNEDY SC: Yes.

“Why? This tendency not to afford proper handover processes for senior executives. Rob entities of continuity and sustainability. We cannot build a strong democracy on the basis of weak... on the back of weak institutions.”

In paragraph 3...

20 “...recommendations for the CEO and CFO have been tabled an unfortunately I have no prior knowledge of the individuals.”

When you see that those recommendations were tabled, tabled in what way? Was that during the course of a meeting or not before the meeting?

MS MANDINDI: No before the meeting.

ADV KENNEDY SC: Yes.

MS MANDINDI: In the course of the meeting.

ADV KENNEDY SC: And:

“...unfortunately I have no prior knowledge of the individuals nor am I able to pose an opinion on their capabilities over this brief time on the board. In this regard one has to trust the judgment of the audit and risk committee.”

10 And then you make a different point in 4:

“The recommendation for Mr Tau to act...”

That is the same Mr Tau Mahumapelo, is that right?

MS MANDINDI: Yes, that is correct, Chair.

ADV KENNEDY SC: “...to act I believe is bad judgment,

could lead to the board being discredited. I would advise that the board does not get involved in whatever capacity in operational matters to ensure we maintain our objectivity and oversight role. Further, Mr Tau is part of the audit and risk
20 committee which is making the recommendations, so his acting role constitutes a conflict of interest.”

The acting role, would that be as company secretary in the place of Ms Afrika?

MS MANDINDI: That is correct, Chair. That is correct, Chair.

ADV KENNEDY SC: Alright, thank you. May I now take you back to your affidavit?

CHAIRPERSON: Maybe before you do that, Mr Kennedy. Ms Mandindi, you say in paragraph 3 of that page of that letter, page 13, that one has to trust the judgment of the audit and risk committee. Do you know how often the audit and risk committee had met by then because except for one member of the board everybody was new on the board but now they have reached a point where they say
10 executives must be suspended. Do you know by any chance how much – how often they had already met? How much interactions they had already had with the executives within this short space of time?

MS MANDINDI: No, Chair, I will not say how much but ordinarily audit committees are more involved and more immersed in the business.

CHAIRPERSON: Yes.

MS MANDINDI: Than the other board members.

CHAIRPERSON: Than the other board members.

20 **MS MANDINDI:** So they would have had a lot more interaction than us.

CHAIRPERSON: Yes.

MS MANDINDI: Which is why when they were putting the commendations on the LSSA transaction beforehand, we requested that the balance of the board be brought on

track.

CHAIRPERSON: Yes.

MS MANDINDI: With regards to the information because we did not have the same level of knowledge and information on the transactions than they did.

CHAIRPERSON: Yes.

MS MANDINDI: So, Chair, they would have had a lot more interaction but still I still believe that not to be able to formulate such harsh judgment against management.

10 **CHAIRPERSON:** Okay. Mr Kennedy?

ADV KENNEDY SC: Thank you. And in fact still on page 13, below the section headed Company Secretary, the last four lines of this page 13, what you say is:

20 “Finally, Chair, I do understand it may be necessary to change the executive directors. What I am challenging is the manner in which these things get done. It is possible to part in amicable ways leaving the dignity, reputation of both parties intact. As it is, we have a lack of black talent in our country, we cannot continuously send a message of malice and reputational damage towards this talent especially by state entities. How we going to implement the critical transformation as prioritised by our government if we are not able to nurture our professionals? How is it that we get so intolerant of

our own and end up creating unnecessary anarchy?”

Am I right in understanding this paragraph firstly to make the point that you recognise that it is possible that there may be a case to take action against the executives but it is the manner in which it was being done that you objected to, correct?

MS MANDINDI: I think my – that is correct but my concern also cantered – was based on that, on that fact, and also if you look at my – under *modus operandi* number
10 two, reference 2, the issue is, there may be a lot of challenges that happens in public institutions but the lack of continuity and the malicious manner in which professionals are let go or victimised is a big concern and it is a concern that does not only relate to opportunities for corruption and maladministration but it is a loss value to the nation.

So, for me, I was raising a broader issue there, that not only centres around these individuals but centres around the victimisation and unfair treatment of
20 professionals, especially black professionals who happen to sit in those organisations and doing good work and serving the country and now they have to be victimised in that matter. That is the principle I was raising in those two paragraphs, Chair, if I may just clarify.

And also, if you let people go, supposed there is a

need to let them go, but we have to do it in a way where their dignity is maintained, you know, it remains intact. It happens even in the private sector. You know, a new shareholder comes in and they are not comfortable with the currency or they want to drive a different strategic agenda. So the manner in which you let people go also can destroy them because a lot of black professionals – I mean, Mr Mhlontlo is a chartered accountant and if his name is dragged into controversial issues like – as in the manner in
 10 which we are doing then his career, it is really heavily impacted. So I was basically raising an issue that we need to be sensitive. Whilst we may be exercising the oversight that is necessary as a board, we need to also be fair and just in the manner in which we do that.

ADV KENNEDY SC: Right, thank you, Ms Mandindi, may we now go back to your affidavit, take you to page 7, paragraph 24. You set out above that a summary of the letter and you have indicated that there was no response from the Chairperson, correct?

20 **MS MANDINDI:** No, Chair.

ADV KENNEDY SC: Then you deal in paragraph 24 with his obligation to inform Minister Lynne Brown as the shareholder for the government about the intent to suspend the executive directors but you are not aware of any feedback from Ms Brown as to that suspension, is that

correct?

MS MANDINDI: Yes, Chair, that is correct.

ADV KENNEDY SC: Okay. Now the next few paragraphs deal with another decision that appears to have been taken by the board and you refer to a round robin resolution on the 7 October, so that was a couple of weeks after the board meeting that we have just dealt with of the 23 September and the round robin resolution related to appointing a law firm called Dentons to conduct an
10 investigation into the LSSA deal. Now as that appointment of Dentons not discussed in the board meeting that you had attended on the 23 September?

MS MANDINDI: No, Chair, that was to discuss an appointment of a legal entity for that. No, it was not.

CHAIRPERSON: Does that include after you had left that meeting? In other words did you see minutes – did you subsequently see the minutes of the full meeting and they did not refer to any discussion about that?

MS MANDINDI: My recollection, Chair, no.

20 **CHAIRPERSON:** Okay and the 7th – or after the meeting of the 23 September between that date and the 7 October was there another meeting of the board that you were invited to or you cannot remember?

MS MANDINDI: You are referring to 27, Chair?

CHAIRPERSON: I see on paragraph 25 you say:

“On 7 October 2015 I signed a round robin resolution.”

So I am asking whether between the 23 September when there was that meeting which you left at nine o'clock.

MS MANDINDI: Yes, Chair?

CHAIRPERSON: And the 7 October there was no board meeting that took place?

MS MANDINDI: There was another a board meeting.

CHAIRPERSON: There was another, okay, alright.

10 **ADV KENNEDY SC:** So when you – I am sorry, Chair, may I proceed?

CHAIRPERSON: Ja.

ADV KENNEDY SC: When you were presented with the round robin resolution you had not participated in any discussion with the board as to what this related to, the appointment of Dentons.

MS MANDINDI: No, we had discussed it, Chair, that there would need to be an appointment of a law firm to – it had been discussed in a subsequent board meeting, the
20 appointment of a legal firm to investigate the LSSA transaction and I think in one of my annexures deals with a concern around that appointment because if we are dealing with the LSSA transaction it is not purely a legal matter so my recommendation was to appoint a transaction advisory firm or that sort of entity that would be able to evaluate the

merits and demerits of the actual transaction and go into the legalities, not just look at the legalities of the transaction.

CHAIRPERSON: I may have I misunderstood you, I thought you said there was no board meeting between 23 September and 7 October.

MS MANDINDI: There was, Chair.

CHAIRPERSON: There was?

MS MANDINDI: Ja.

10 **CHAIRPERSON:** Oh.

MS MANDINDI: There should have been a board meeting to discuss that because I do recall there was a meeting but I would not know the dates.

CHAIRPERSON: Oh, you do not recall the dates.

MS MANDINDI: No, Chair, I would not know.

CHAIRPERSON: Okay. So it was at that meeting of the board that the possible appointment of a law firm was discussed.

MS MANDINDI: Yes, Chair.

20 **CHAIRPERSON:** Okay, alright. Mr Kennedy?

ADV KENNEDY SC: Thank you, Chair. Ms Mandindi, if I can take you in your bundle to page 16, is that the round robin resolution that you were asked to sign?

MS MANDINDI: Yes.

ADV KENNEDY SC: And if I can just take you to

paragraph A under the heading ...[intervenes]

CHAIRPERSON: Maybe – I am sorry, Mr Kennedy, maybe if before we talk about the round robin. Ms Mandindi, if you able to, can you tell me more about the meeting that happened between the 23 September and the 7 October where the issue of Dentons or the appointment of a law firm was discussed? That is if you are able to remember, what was the purpose of that meeting?

MS MANDINDI: Chair, I will try now to [inaudible –
10 speaking simultaneously] from my recollection.

CHAIRPERSON: As you recall obviously.

MS MANDINDI: It could have been an HR committee meeting, maybe not a full board meeting.

CHAIRPERSON: Okay.

MS MANDINDI: But we were discussing the whole process that needed to take place because remember, the executives were suspended, now we needed to get into the process of the suspension so that there is a disciplinary hearing. So that meeting would have discussed that.

20 **CHAIRPERSON:** Oh, it might not have been a full board meeting, it might have been an HR committee.

MS MANDINDI: Might not have been, yes, it might have not.

CHAIRPERSON: Okay. And that committee had concluded – what had it concluded, if anything, about the

appointment of a law firm and/or ...[intervenes]

MS MANDINDI: There was a need to appoint someone to look at the transaction and formulate the charges of course, so ...[intervenes].

CHAIRPERSON: Yes and you were a member of that committee.

MS MANDINDI: And I decided to sit as member of that committee. I was a member of that committee, Chair.

CHAIRPERSON: Okay, alright. And so there was a
10 decision that a law firm and maybe forensics of other people be appointed to look at the LSSA deal?

MS MANDINDI: Yes, Chair.

CHAIRPERSON: Yes. And it was arranged that a round robin resolution would be circulated in due course or something like that?

MS MANDINDI: To enable the management to – the executives to appoint the legal firm, Chair.

CHAIRPERSON: Okay, alright. Mr Kennedy?

ADV KENNEDY SC: Thank you, Chair. If I can take you
20 at page 16 to the text of the round robin resolution. About half down you will a heading Whereas... You see that?

MS MANDINDI: [indistinct – dropping voice]

ADV KENNEDY SC: Page 16.

MS MANDINDI: Page 16.

ADV KENNEDY SC: There is paragraph numbered A.

MS MANDINDI: Yes, Whereas, yes, Chair.

ADV KENNEDY SC: If I can just read out:

“As a result of the finding of the audit and risk report dated 23 September 2015 regarding the conduct of the executive directors of the company and the Group Company Secretary in respect of the purchase of Land Systems South Africa by the company...”

Land Systems South Africa is LSSA, is that right?

10 **MS MANDINDI:** That is correct, Chair.

ADV KENNEDY SC: “...by the company, the transaction, it is necessary to appoint a law firm to investigate the transaction and any alleged irregularities and provide a report and recommendations to the board in respect thereof.”

And then there was a resolution at the foot of the page:

“It is resolved that...”

And then there is a reference to the Acting Group CEO.

MS MANDINDI: Yes.

20 **ADV KENNEDY SC:** Inviting bids from at least three law firms. Did you – is that your signature that appears on page 17 where you were asked to put your vote as to whether you agreed or disagreed?

MS MANDINDI: That is my signature, Chair.

ADV KENNEDY SC: Right, on the 7 October 2015.

MS MANDINDI: That is correct.

ADV KENNEDY SC: And you indicated there that you disagreed with the resolution.

MS MANDINDI: Yes, Chair, I disagreed on the basis that I have indicated to you, Chair, that my contention was that we should be appointing someone who is more able not – better placed, let me not say able, better placed as skills-wise to evaluate the transaction holistically rather than only the legal aspects of the transaction.

10 **CHAIRPERSON:** So you were saying a law firm alone without certain skills, non-legal skills that you considered important was not good enough?

MS MANDINDI: Yes, Chair.

CHAIRPERSON: Ja.

MS MANDINDI: Because we would not have had the evaluation or opinion on the financial aspects of the transaction.

CHAIRPERSON: Yes.

20 **MS MANDINDI:** The risky elements for instance related to IP and so forth, so would not have had more information or ability to evaluate those other aspects of the transaction.

CHAIRPERSON: Yes, so your view that an evaluation by lawyers only of this transaction would be inadequate to enable the board to make any decisions.

MS MANDINDI: Correct, Chair.

CHAIRPERSON: Okay.

ADV KENNEDY SC: Chair, may I ask you for guidance? Are you proposing to take a short adjournment before we conclude this witness's evidence or do you want me to proceed?

CHAIRPERSON: We can try and conclude because I suspect it is not going to take long before she is done.

ADV KENNEDY SC: Yes, I think so. Thank you, Chair.

CHAIRPERSON: Ja, let us continue. Ja, we can take the
10 tea adjournment after she has concluded.

ADV KENNEDY SC: Thank you, Chair. Ms Mandindi, the point about your feeling that a law firm alone would be inadequate because of needing other skills such as from an investment company or an audit firm, you refer to in your affidavit paragraph 26 and – is that correct?

MS MANDINDI: That is correct, Chair.

ADV KENNEDY SC: And then if I can take you to page 19, is this the email that you referred to?

MS MANDINDI: Yes, correct, Chair.

20 **ADV KENNEDY SC:** In which you made the same point.

MS MANDINDI: Yes [inaudible – speaking simultaneously]

ADV KENNEDY SC: In fact your first bullet point said it needs...

“The LSSA transaction needs analysis on whether it was a sound investment decision or not and what

remedial actions we should be taking to ensure that Denel is not in a worse position. This requires an investment company or an audit firm with transaction and analysis expertise. A legal firm will be focusing on the legalities of a transaction which may not be sound anyway.”

MS MANDINDI: True.

ADV KENNEDY SC: Then your second bullet point says:

10 “We have not discussed this transaction as a board, its merits and demerits. I believe we still need to do that objectively, come to a common understanding.”

And then your next bullet point:

“Propose that the board considers having an investment committee whose role and expertise is different.”

Now did you receive a response to your email and the concerns that you raised here?

MS MANDINDI: No, Chair.

20 **ADV KENNEDY SC:** Now to go back to your ...[intervenes]

CHAIRPERSON: Did you ever receive any response to any of the letters or emails that you sent to the Chairperson?

MS MANDINDI: No, Chair, not – no, I could not find any record or any of those, Chair. I do not recall receiving

direct responses.

CHAIRPERSON: Yes, okay.

ADV KENNEDY SC: Then to go back to your affidavit page 8, paragraph 27, it says:

“Despite your disagreement and your views and sentiments, a firm of attorneys, Dentons, was appointed to investigate the Executive Director Claims with the intention of formulating a charge sheet.”

- 10 What happened to your suggestion that the board should appoint a – rather a committee to take the matter forward before such a decision were taken and to have discussion at board level. You did not receive a response but who took the decision to appoint Dentons, do you know?

MS MANDINDI: I think Dentons followed this resolution to a point out of three legal firms.

ADV KENNEDY SC: Right.

MS MANDINDI: The resolution that we had already signed, Dentons was appointed subsequent to that.

- 20 **ADV KENNEDY SC:** And in fact the resolution that we looked at earlier provided for the procedure to be followed by the Acting Group CEO to ...[intervenes]

MS MANDINDI: That is correct, Chair.

ADV KENNEDY SC: To solicit bids and then to make an award. In your affidavit, page 8, paragraph 28, you say

you were part of a committee that looked at the investigative work.

“I was consciously part of this committee to ensure that there was justice and fairness in the process.”

Now what committee was that?

MS MANDINDI: Chair, it was subcommittee of the board to look at the investigations, what is coming out of whatever legal work that would then form of the disciplinary action.

10 **CHAIRPERSON:** From Dentons?

MS MANDINDI: That is the committee that was supposed to formulate the whole process.

CHAIRPERSON: So it was a committee that was going to evaluate whatever reports were coming from the Dentons investigation?

MS MANDINDI: That is true, Chair.

CHAIRPERSON: Okay. I see that at paragraph 27 of your affidavit you say:

20 “Despite my disagreement, view and sentiment expressed, Dentons Attorneys were appointed to investigate the Executive Director Claims.”

I guess those are the claims against – or allegations against the executive directors. And then in brackets you say:

“With the intention of formulating a charge sheet.”

MS MANDINDI: That is true, Chair.

CHAIRPERSON: Now when you appoint somebody to investigate, normally you are expected to say they must investigate and they can come back with yes, it looks like there is something wrong, or we have found something wrong or they might come back and say there is nothing wrong.

MS MANDINDI: Yes, Chair.

CHAIRPERSON: But when you put it like this:

10 “..with intention of formulating a charge sheet”

It gives the impression and I want to check with you whether that is the impression you had. It gives the impression as if the investigation was meant to come out with a finding that there was a proper case for charging the executives.

MS MANDINDI: Yes, Chair.

CHAIRPERSON: Is that your – what your impression was?

MS MANDINDI: That was my impression at that time.

CHAIRPERSON: Yes.

20 **MS MANDINDI:** And also remember, Chair, by that time the executives had already been suspended.

CHAIRPERSON: Suspended, yes. Yes.

MS MANDINDI: So there needed to be a follow-up process.

CHAIRPERSON: Yes, yes. Okay, you told us that the

CEO – Acting CEO was Mr Ntshepe and the company secretary was Mr Mahumapelo. Who was the – or the Acting Company Secretary was Mr Mahumapelo. Who was the Acting CFO? Do you remember?

MS MANDINDI: I do not recall if by this time – I am forgetting his name.

CHAIRPERSON: If you do not remember, it is fine. Probably we have got it in Mr Saloojee's affidavit, probably, but we do not have to look for it.

10 **MS MANDINDI:** Yes, there was someone subsequently appointed to act as CFO, Chair.

CHAIRPERSON: Yes. Okay, alright.

MS MANDINDI: I am not sure if at the time this was all happening he had already appointed.

CHAIRPERSON: Yes.

MS MANDINDI: Because he did not get appointed at the same time as Mr Ntshepe.

CHAIRPERSON: Okay, alright.

20 **ADV KENNEDY SC:** Alright. Then in paragraph 29 of your affidavit you say you saw the Dentons report and in your view they struggled to find sticky points against the executive directors and Mantsha – sorry, against the directors and Mantsha became increasingly impatient with Dentons. Where do you get that knowledge from? In what way did he show or express impatience?

MS MANDINDI: He was getting impatient in the interactions with Dentons when they were presenting their first round of findings, their first report. And also remember, Chair, his impatience could have also been related to the time because now the investigation was taking longer than we had anticipated so we had executive directors who were on suspension without a clear timeline on process that the board was going to follow, so it may have been twofold.

10 **CHAIRPERSON:** Okay.

ADV KENNEDY SC: Could you give please to the Chair your overall impression of how the board and the ARC acted in this process of suspending and then later starting the disciplinary process against Mr Saloojee and his colleagues?

MS MANDINDI: In conclusion, Chair, I just felt that the process was unfair, unjust, hasty and in many ways unjustifiable against the executives. We could have handled things differently. We could have taken time to
20 observe and also build the relationship between the board and the executives. So I just felt that the process was hasty and in the hastiness of the process we were standing to disrupt the organisation because once you lose a CEO, a CFO, definitely the organisation is disrupted, there is uncertainty, there is fear, there is, you know, a lot of

disillusionment within the staff, the morale issues. So it always impacts the organisation and those were the concerns that were there at the time.

ADV KENNEDY SC: And these concerns were concerns that you raised both in the meeting itself and in a letter after the meeting of the 23 September.

MS MANDINDI: That is correct, Chair.

ADV KENNEDY SC: And then you raised - when you were presented with a round robin resolution you raised your
10 concerns in your email.

MS MANDINDI: Yes, Chair.

ADV KENNEDY SC: How do you feel your concerns – to what extent, if any, your concerns were taken seriously by Mr Mantsha?

MS MANDINDI: It is difficult to pose an opinion with regards to that matter because within a board you have got many voices speaking, you know, there is a number of other people who may have a different opinion to what I was raising but I felt strongly enough about the matters
20 that I was raising that I put them in writing.

So I would not say or blame the Chairman for not having taken or heeded some of those because there is seven or eight other people who are speaking something to the Chairman and influencing the events differently.

So I cannot say he was unfair or whatever the case

may be and at the time there was a lot happening so maybe it was still his intention to respond to the matter specifically.

CHAIRPERSON: I guess also if you are chairing a meeting and there is a certain issue that is being discussed, sometimes you just want to hear as many views possible ...[intervenes]

MS MANDINDI: Absolutely, Chair.

CHAIRPERSON: ...without taking a particular view or
10 without responding to a particular view and engage the views of the people in the meeting.

MS MANDINDI: That is correct. That is correct, Chair.

ADV KENNEDY SC: Then you say, Ms Mandindi, in paragraph 30 by the time when you left the matter had not been finalised. Was that leaving the board?

MS MANDINDI: Yes, the finality of the disciplinary process against the executives.

ADV KENNEDY SC: Yes, right.

MS MANDINDI: Yes, that is at the time.

20 **CHAIRPERSON:** Do you know whether by the time you left the board the investigations that Dentons was conducting were showing any different picture in terms of any probable guilt on the part of the executives or there was nothing as yet that you were aware of that they were putting on the table?

MS MANDINDI: By the time I left, Chair, there was not anything strong enough to justify, so to say, the action that we had already taken.

CHAIRPERSON: Yes.

MS MANDINDI: And secondly, I recall the one meeting where they were briefing the committee about their findings. So by the time I left it had not quite solidified in terms of process.

CHAIRPERSON: Yes, okay. Well, I just want to mention,
10 you do not have to comment on this, that having heard in recent weeks evidence relating to the suspension of executives at Eskom and how that process happened, and hearing from you how this process of the suspension of executives at Denel happened, there seems to be certain common features. At Eskom it was also a Board that was appointed in 2015, it was a new Board, when they suspended four executives there, the CEO, the Financial Director, and somebody else, and two others, also under circumstances that were quite questionable, but one or
20 more of the board members at the time who was giving evidence here has already said that he thinks that they should not have suspended the executives, he thinks there was not a proper basis and so the CEO there was suspended and the Financial Director. The board members were fairly new and wouldn't have known much about the

abilities of the executives, new people or officials that were also put in, board members being new would not have known a lot about the abilities of people to be appointed at, but like in your case at Denel it may be that there might have been a committee that might have had more interactions with some executives within the short space of time than the rest of the Board members, and Dentons is a common feature in Eskom, Dentons was brought in to do an investigation as well and here at Denel Dentons was
10 brought in as well, ja so there may be other features so I just mention that.

Are you done? Yes. Maybe let's take the short adjournment, yes because I see it is twenty five to twelve, and then when we come back we can just finish her evidence.

We will take the short adjournment and we will resume at ten to twelve. We adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS

20 **INQUIRY RESUMES**

CHAIRPERSON: Okay, let's continue. Your mic, you may switch on your mic as well Ms Mandindi.

ADV KENNEDY SC: Thank you Chair, there is a reference to the Denton's report, if I can just for your assistance Chair indicate that the Denton's draft report is to be found

in an exhibit bundle that I believe may have been made available to you Chair, it's called Exhibit WAT, and it is a bundle of various reports.

CHAIRPERSON: Okay

ADV KENNEDY SC: And there's a draft report from Denton's to be found at page 06-03.

CHAIRPERSON: You said Bundle 06?

ADV KENNEDY SC: Yes, it is WAT – sorry I beg your pardon, it is Bundle 06 correct, and it is Exhibit WAT, at
10 page 3, if I can just indicate I have shown Ms Mandindi the report now but she would need more time to familiarise herself, to confirm that that is in fact her report, so I am not – I don't propose to lead her on that.

CHAIRPERSON: Yes, okay, alright.

ADV KENNEDY SC: And the current Chair will deal in her evidence with a later report that was received very recently from Denton's.

CHAIRPERSON: Okay.

ADV KENNEDY SC: So I propose Chair to leave that
20 topic, which was the main topic to be dealt with, with this witness. May I now deal with another topic Ms Mandindi and that is the establishment of Denel Asia, may I take you again to your affidavit and you will find that at page 8, paragraph 31 and 33.

Now you indicate that during October 2015, this is

paragraph 31, if my memory serves me correctly I read the board pack pertaining to the establishment of Denel Asia by way of a joint venture between Denel and Malaysia, Asia, so was this an example of where the Board got it right that you were given a board pack that contained the material necessary to prepare on before the board meeting would discuss it?

MS MANDINDI: Yes Chair that was the agenda of a particular meeting, part of the agenda of a board meeting.

10 **ADV KENNEDY SC:** Yes, and what did you understand was being proposed for your consideration at the level of the Board, a joint venture, and what was this joint venture for?

MS MANDINDI: The joint venture was the establishment of an entity which would be Denel Asia, to enable Denel to pursue business opportunities in Asia in all that region effectively.

ADV KENNEDY SC: Now you took a view about what was being proposed, was the Board being asked to give a
20 decision to approve this venture?

MS MANDINDI: There were two aspects, one it was the aspect of approving the establishment of the entity Denel Asia, and then there was also the aspect of approving the association with VR Laser who would be our JV partner at that time.

ADV KENNEDY SC: Right and you indicate in paragraph 32 that you were of a particular view that the Denel Asia deal was a set aside of government processes and I was concerned about the sovereign IP of our defence innovations not being sufficiently protected. Let's just unpack that, was this a view that you had raised with your Board colleagues at the Board meeting?

MS MANDINDI: Yes Chair, yes Chair, I did raise the concern at our board meeting when we discussed this, that
10 there didn't seem to have been a process to secure VR Laser as our partner to start off with, so VR Laser was then enjoying an exclusive arrangement with Denel which would enable them also to access the Asia market and then the second aspect of my concern centred around the benefit flow to VR Laser as a result of that agreement, because then any other entity, South African entity that would have been interested to do some work for Denel couldn't access those opportunities because they were ring-fenced, they seemed to be ring-fenced, that was my interpretation of the
20 deal as structured Chair.

CHAIRPERSON: What do mean when you say you thought it was a set-aside of government the deal, Denel Asia deal, what does it mean?

MS MANDINDI: Set aside would mean that nothing related to that business and the flow of the benefits would then be

open to tender.

CHAIRPERSON: Oh, so that it would be the transaction would not be open to going through open tender?

MS MANDINDI: No Chair, if that transaction then was with VR Laser then the flow of the benefits would accrue to VR Laser, it wouldn't go back to a process of tendering within Denel and open it up to other service providers or manufacturers.

CHAIRPERSON: Okay, that is what you mean when you
10 say you thought it was a set aside.

MS MANDINDI: It sounded like that, the whole structure felt like that.

CHAIRPERSON: Okay.

ADV KENNEDY SC: So am I right in understanding Mr Mandindi that what you're really saying is that you were concerned that the process being followed would conflict with government procurement process requirements?

MS MANDINDI: It will Chair, the governance aspects of it were concerning.

20 **ADV KENNEDY SC:** And then you also had concerns about the sovereign IP of our defence innovations, it is Denel's intellectual property?

MS MANDINDI: Yes, yes Chair

ADV KENNEDY SC: And that wasn't being sufficiently protected and then in paragraph 33 you say effectively all

manufacturing would have gone to VR Laser so effectively that would have given them an exclusive right to do the manufacturing for the Denel Asia project, is that correct?

MS MANDINDI: That was my interpretation of the transaction Chair, and again there I am beginning to deal with a broader issue where government has spent on research and development of IP and innovation aspects and it applies to a whole lot of other entities, and then when those entities partner with other private sector
 10 individuals that IP is not protected and accrue value back to government, so I was concerned about that principle that there should be value that is ring-fenced to government, especially this one, it is defence IP and it deals with the issues of the sovereignty of our defence IP as a nation so I was concerned that we didn't seem to be paying much attention to the protection of the IP and just partnering with someone, obviously they will have access to those aspects of our business without protection of Denel so they can reproduce it whatever the case may be,
 20 so those are the issues I was raising at that point.

ADV KENNEDY SC: Thank you. Maybe then turn to the last page of your affidavit, page 9, and you deal in various paragraphs with the adverse publicity, the negative media that was circulating at around the time of 2016 and you were concerned about reputational damage and then you

refer to your resignation in paragraph 37, I am going to come back to paragraph 36 in a moment, and then in paragraph 38 you deal with your understanding that your initial appointment had followed correct meeting processes, and just confirm on the last point you were answering there a question posed by the investigators of this Commission, is that right?

MS MANDINDI: Yes Chair.

ADV KENNEDY SC: And is that how you came to give the
10 affidavit, you were invited as an ex Board member to answer various questions?

MS MANDINDI: Yes Chair.

ADV KENNEDY SC: Do you know whether the other Board members have provided similar cooperation to the Commission?

MS MANDINDI: I am not aware, I am not in touch with the Board members Chair so I cannot confirm that.

ADV KENNEDY SC: Alright, thank you. Now I just want to go back to something you raised earlier about the AR,
20 the Audit & Risk Committee and a report that they had produced. The Chairperson of the ARC, that committee, you couldn't remember her name, may I just ask you if the name is Ms Mpo Ramogwe[?].

MS MANDINDI: Yes that is correct.

ADV KENNEDY SC: Is that correct name, thank you. And

do you have a copy of the ARC

MS MANDINDI: No Chair.

ADV KENNEDY SC: Chair may I just indicate that we have been informed by Denel that they have been unable to track down a copy of that report.

CHAIRPERSON: Okay.

ADV KENNEDY SC: The current Chairperson will address in her evidence shortly the fact that some records have been difficult and in some cases impossible to trace.

10 **CHAIRPERSON:** Okay.

MS MANDINDI: And again Chair it deals with what I raised earlier around the company tablets that we had because all the information and Board packs were circulated through those gadgets so unfortunately when you resign you hand it over, so it is difficult to keep track of the records in a way that you would ordinarily have access to.

CHAIRPERSON: Okay.

ADV KENNEDY SC: Now the final issue if I may, that I
20 would like to raise with Ms Mandindi is in your affidavit paragraph 36. May I read it out?

“I had my reservations as to the expertise and experience of the other Board members and in particular was not convinced that the Chairperson of the ARC [that we have established is Ms

Ramogwe] was strong enough for the portfolio and recommended to Mr Mantsha, Chairperson, that a chartered accountant should be considered for the portfolio of Chairperson of the ARC to ensure that there is adequate oversight by the Committee.”

Could you confirm that that was your view and whether you conveyed that to Mr Mantsha or the rest of the Board.

MS MANDINDI: To the Chairman I did, in a conversation thought it was never reduced in writing and again it is just
10 sharing my insights on the Board and maybe areas we can improve in, so it was in that spirit, it wasn't ...[intervenes]

CHAIRPERSON: It was not formal?

MS MANDINDI: Yes, it wasn't instructive. I just felt that Denel is a huge organisation, it is a big business, and we needed a stronger experienced Chairman of the Audit Committee, the Audit Committee carries a lot of responsibility and we needed someone more experienced in chairing an audit committee to ensure that adequate oversight is exercised and also someone who would be
20 able to just look out for the governance issues that may be lacking or not lacking Chair.

CHAIRPERSON: Well there was evidence last year in regard to Denel and I think an official of the Department of Public Enterprises who analysed the qualifications and skills and abilities of the Board members who testified that

there was no balance in terms of skills and expertise that would be required. I seem to remember that there seemed to be a lot of lawyers and there might not have been a chartered accountant or there might have been one, I can't remember, but I seem to think there wasn't any in that Board, because there was a document that was presented which showed who had what qualifications, who had what skills and what experiences they had, so when you mentioned the point that you suggested to Mr Mantsha that
10 the Chair of the ARC Committee or of the ARC should be a chartered accountant that reminds me that there was criticism of that Board in terms of the skills.

MS MANDINDI: Yes Chair.

ADV KENNEDY SC: Thank you Chair, those are questions for this witness, thank you very much.

CHAIRPERSON: Okay thank you very much Ms Mandindi for coming to assist the Commission, we appreciate it very much, you are now excused.

MS MANDINDI: Thank you Chair.

20 **CHAIRPERSON:** Okay. Are you going to be able to call the next witness immediately or do you need to move files?

ADV KENNEDY SC: No we are ready, I am ready to start with her and she is immediately available, if we can then ask your leave to call Ms Hlahla.

CHAIRPERSON: Yes, okay, she may come forward.

Somebody must show here where to sit. I see Ms Hlahla they have called you to give evidence but they forget to help you to show you where to sit. Yes Mr Kennedy.

ADV KENNEDY SC: Chair before the witness is sworn in may I just ask you to please give an opportunity to my learned friend Ms Sissi Baloyi who is counsel advising Ms Hlahla who wants to put herself on record.

CHAIRPERSON: Yes, she can place herself on record from where she is, you can just switch on the mic Ms
10 Baloyi.

ADV BALOYI: Good morning Chair.

CHAIRPERSON: Good morning Ms Baloyi.

ADV BALOYI: My name is Sissi Baloyi, I am a member of the Johannesburg Bar and I am here to assist Ms Hlahla.

CHAIRPERSON: Okay, thank you.

ADV KENNEDY SC: May I then ask for the witness to be sworn Chair?

CHAIRPERSON: Yes, please swear in the witness, you see I had to do this when you were not there and I had
20 forgotten how to do it.

REGISTRAR: Please state your full names for the record?

MS HLAHLA: My name is Monhla Hlahla.

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

MS HLAHLA: No I don't.

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

MS HLAHLA: It will be binding on my conscience.

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

MS HLAHLA: So help me God.

MONHLA HLAHLA: [duly sworn, states]

10 **CHAIRPERSON:** Thank you, you may be seated.

ADV KENNEDY SC: Thank you Chair. Good morning Ms Hlahla.

MS HLAHLA: Good morning.

ADV KENNEDY SC: Is it correct that you have provided the Commission, at its request, with an affidavit?

MS HLAHLA: Yes sir.

ADV KENNEDY SC: And may I ask you in the file in front of you to look at Exhibit W9, that is file Denel Bundle 01, Exhibit W9 and if I can ask you please to look at the first
20 page of the affidavit at page 42, if you would look at the numbers on the top, printed on the top left, not the top right, the top left, the black, that's correct, Denel 0142, do you see that?

MS HLAHLA: 0142. I am on page 0142.

ADV KENNEDY SC: And is this the first page of the

affidavit that you have signed?

MS HLAHLA: That is correct.

ADV KENNEDY SC: And may I ask you ...[intervenes]

CHAIRPERSON: You just have to raise your voice Ms Hlahla.

MS HLAHLA: Yes that is the first page of my affidavit.

ADV KENNEDY SC: Thank you, and can I ask you to turn in the same bundle, using again the pages on the top left, page 86.

10 **MS HLAHLA:** Yes. I am on page 86.

ADV KENNEDY SC: Is that your signature?

MS HLAHLA: Correct so it is my signature.

ADV KENNEDY SC: Right, alright thank you. Ms Hlahla you are currently he Chairperson of the Board of Directors of Denel?

MS HLAHLA: Correct.

ADV KENNEDY SC: When did ...[intervenes]

CHAIRPERSON: Sorry, do you want me to admit it?

ADV KENNEDY SC: Yes I beg your pardon Chair.

20 **CHAIRPERSON:** Yes, Ms Hlahla do you confirm that the contents of your affidavit are true and correct?

MS HLAHLA: They are correct Chair.

CHAIRPERSON: Yes, you would like me Mr Kennedy to admit her affidavit as exhibit?

ADV KENNEDY SC: Yes please Chair.

CHAIRPERSON: As Exhibit what, W9?

ADV KENNEDY SC: Yes it will be W9.

CHAIRPERSON: The affidavit of Monhla Wilma Hlahla, starting at page 42 will be admitted as Exhibit W9.

ADV KENNEDY SC: Thank you Chair.

CHAIRPERSON: Yes, okay.

ADV KENNEDY SC: I propose to focus only on certain aspects of the affidavits today Ms Hlahla because it's very detailed and clear, your involvement as Chair of the Board
10 of Directors, you're appointed by the Minister of Public Enterprises, Mr Gordhan, is that correct?

MS HLAHLA: Correct Counsel.

ADV KENNEDY SC: And you say that that appointment was on the 9th of April 2018, did you take up the appointment on that day or any other day can you recall?

MS HLAHLA: We started on the 8th of April as an Acting Board yes.

ADV KENNEDY SC: Right, and what is your own background, very briefly in a sentence or two?

20 **MS HLAHLA:** My technical training I have a Masters in Urban Planning from UCLA School of Architecture and Planning, I have got my junior degree from ...[indistinct]

CHAIRPERSON: I am sorry Ms Hlahla I think your voice is probably by nature very soft, so please just raise it and maybe speak closer to the mic, I cannot hear you. Can you

just start afresh on answering the question of your background, just start again.

ADV KENNEDY SC: May I just make a suggestion Chair, apropos your comment, can I suggest, I know the human inclination is to look at the person who is asking the question but then you tend to look away from the Chair and the microphone, so can I just ask your ears to listen to the question and not to look at me, rather look in the direction of the Chair and you will find that that will be easier for
10 him as well as the microphone.

MS HLAHLA: Correct.

ADV KENNEDY SC: Thank you, so can you just repeat what you said.

MS HLAHLA: I have a Master's degree in Urban Regional Planning from UCLA School of Architecture and Planning and over the years I have acquired vast experience in infrastructure development, planning and finance and I got several certificates in governance as well as management and the like, but I want to say that I am one of the few
20 people that grew out of SOE's, and have learnt vastly to appreciate the role they can play in different circumstances.

ADV KENNEDY SC: Now if I can take you please to page 46 in your affidavit you deal with the composition of the current Board, in paragraph 3 your name and your

background, not the qualifications but the experience the work that you have been involved in is set out in 321, is that right?

MS HLAHLA: Correct.

ADV KENNEDY SC: And then you set out the other directors, there are twelve non-executive and two executive directors, is that correct?

MS HLAHLA: That is correct.

ADV KENNEDY SC: And you were all appointed at around
10 the same time, April/May 2018 for a three year period?

MS HLAHLA: That is correct.

ADV KENNEDY SC: And you refer at page 48 paragraph 32.14 as I understand it two individuals who at one stage served on the Board which you chair that have since left, Mr Zwelakhe Ntshepe was Group Chief Executive.

MS HLAHLA: Correct.

ADV KENNEDY SC: Would he have sat on the Board in that capacity as an executive director?

MS HLAHLA: Yes sir.

20 **ADV KENNEDY SC:** And Madododwa Mhlwana who is he?

MS HLAHLA: The Chief Financial Officer or Finance Director of Denel.

ADV KENNEDY SC: Now you then continue to say in your affidavit Mr Ntshepe resigned and Mr Mhlwana was disciplined and dismissed, was that during the period of

the Board under your chairmanship chairpersonship?

MS HLAHLA: Correct sir.

ADV KENNEDY SC: Right and then Ntshepe was replaced after his resignation by Mr du Toit, is Mr du Toit still with Denel?

MS HLAHLA: No he resigned recently to pursue other interests.

ADV KENNEDY SC: And then you refer to Mr Sadick, is it Mr or Ms Sadick who is acting Group Chief Executive
10 currently?

MS HLAHLA: Mr Taliep Sadick is the Acting Group CEO of Denel currently.

ADV KENNEDY SC: Right, thank you, and then Mr Mhlwana after he was dismissed after a disciplinary process was succeeded by Le Grange and is that still the case?

MS HLAHLA: It is still the case.

ADV KENNEDY SC: As CFO?

MS HLAHLA: Yes sir.

20 **ADV KENNEDY SC:** Right thank you. If I can just take you back to paragraph 3.2.3 there's a reference to one of the other directors Ms Manso Kabelo Lehloenya, a chartered accountant, is she still on the Board?

MS HLAHLA: The process to accept a resignation is underway between Denel and the Minister, she has

subsequently resigned.

ADV KENNEDY SC: Please speak clearly please?

MS HLAHLA: Ms Lehloenya has resigned as a director, non-executive director of Denel and the process is underway with the shareholder to process that.

ADV KENNEDY SC: Right. And what was her normal post to which she was appointed apart – at the time of her resignation from the Denel Board, did she have any other capacity in government?

10 **MS HLAHLA:** Yes sir, Ms Lehloenya was the Chief Financial Officer for the Department of Health of Gauteng.

ADV KENNEDY SC: And so she has stepped aside from the Denel Board now.

MS HLAHLA: Correct sir.

ADV KENNEDY SC: Right. Of the current members of the Board whose names and details are set out in this paragraph were any on the previous Board?

MS HLAHLA: Yes sir, we are unusually enriched with people with experiences of Denel in the past, and I would
20 like to recognise the – and may his soul rest in peace – we also had Lekhurleni as a member of this Board and he passed away recently, may his soul rest in peace. In addition to that Mr Taliep Sadick who is now Acting Group CEO for Denel had actually been an Executive of Denel in the past and then in addition to that we have had Dr

Sibusisi Sasibisi he had been Chair of Denel in the past. I think that would complete the three individuals who were part of this Board that had also served in one form or the other if not on the Board of Denel in the past.

CHAIRPERSON: Those that you say were members of the Board in the past is it people who were members of the Board of Denel at some stage or another or is it people who were part of the Board that was before your Board?

MS HLAHLA: They were members of the Board way in the
10 past, not the most recent Board that we took from.

CHAIRPERSON: And the Board that you took from was the Board that was chaired by Mr Mantsha?

MS HLAHLA: It was the Board that was chaired by Mr Mantsha and I can confirm that it continued into our board.

CHAIRPERSON: Okay alright.

ADV KENNEDY SC: Alright thank you. And then if I can ask you please to move ahead in your affidavit to page 50, 50 paragraph 4 you then refer to the next governance structure being the executive committee comprising the
20 Group CEO, the Group CFO, the Group COO and Group Human Resources and Transformation Officer. Is that correct?

MS HLAHLA: That is correct Chair.

ADV KENNEDY SC: And that executive committee does that then report to the board?

MS HLAHLA: That executive committee would then report to the board. The would represent all of management's work and fill into the board.

ADV KENNEDY SC: Thank you.

CHAIRPERSON: The – the Group COO and the Transformation Officer are they two different people or is it one person?

MS HLAHLA: Two different people Sir.

CHAIRPERSON: Okay.

10 **ADV KENNEDY SC:** Thank you. Ms Hlahla you then deal
ion paragraph 5 with the state in which the board found
Denel. Now I am not going to ask you to go into all of the
detail that you have set out in – in this paragraph but can
you just sum up in a couple of sentences why you refer in
your affidavit in paragraph 5.1 to your being appointed at a
time when Denel was in what you refer to as a crisis mode?
Why was there a crisis at Denel – what respects when you
took over as the new – newly appointed board in mid-2018?

MS HLAHLA: Denel sadly was in a deep liquidity crisis
20 whereby the company did not know whether they would be
able to cover costs of staff. We have suppliers that needed
to be paid as well. But the shortage of cash was so dire that
you were aware that the company was unusually unbusy
because they were not producing stuff because of lack of
money and there was just general confusion. The company

looked headless as if there was no leadership. And obviously the staff and management would then look up to this new board as if it would – it would have a magic wand when in fact we are – all going to be part of the same solution to figure out what caused it and how to get out of it. But it was almost a hopeless scenario in the company.

CHAIRPERSON: Are you able to say for how long it appeared that Denel was in that situation at the time you came in or are you not able to say? In other words this
10 liquidity crisis that you talking about that I understand you to say you found Denel in when your board came in. Did it – was it something that had been there for quite some time or is that something you are not able to tell me?

MS HLAHLA: Sir for a situation like that to arise it must have started a while ago.

CHAIRPERSON: You do not know how long?

MS HLAHLA: It is almost impossible that you only find out today when you cannot pay month to month that there is a crisis. It means that the indicators of shortages of cash
20 must have started somewhere in the past but maybe you managed to survive for a while but now the chickens have come home to roost and the very people that are important and critical to your business are looking at you – your suppliers, your customers. And importantly Denel itself to be able to produce the goods and services that they serve

globally in the name of South Africa you are not investing in it. A crisis of that nature starts for a while. The indicators are that we came at the heart of it – the end of it almost.

CHAIRPERSON: Well for what it is worth I just mention that I heard evidence from I think – I do not know if it was Professor Van Rensburg or Ms Van Rensburg who was chairperson of the board that was before the board that was chaired by Mr Mantsha who gave evidence that when they left Denel was if I recall correctly in a very good position
10 financially and they had a plan and everything was going quite well in terms of what the board had in place to make sure that it continued to do quite well. So I thought I would just mention that there was that evidence that was given from. Yes Mr Kennedy.

ADV KENNEDY SC: Thank you Chair. Ms Hlahla then you refer in paragraph 5.1 was what your focus as the new board has been on addressing this crisis mode. You refer there to going into the business decline and liquidity crisis, investigating allegations of fraud and mis-management. We
20 are going to deal with that in a little detail later. Taking control of the business environment to address issues with leadership and then looking at governance 514 to ensure compliance with the PFMA and related legislation. And 5.2 you deal with some PFMA related deliverables can you just tell the Chair please the external audit process. There has

been a change of external auditors and it is – am I correct in understanding the current external auditor is now the Auditor General?

MS HLAHLA: Correct Sir.

ADV KENNEDY SC: And then secondly revising the corporate plan and shareholder compact. Has that been completed?

MS HLAHLA: Yes Sir.

ADV KENNEDY SC: And then you say:

10 “Determining immediate liquidity relief to
 resume payment of salaries.”

 What is – have you resolved that currently or is that still a problem?

MS HLAHLA: That is still a problem and it is become even more because we have to also catch up on the payment of historical liabilities that eat up the available cash for Denel to reinvest in its business.

ADV KENNEDY SC: Alright now if we can turn to your heading Key Learnings and Observations again I am just
20 going to focus on some of the – some of the points. You set out here in summary form the findings of yourselves as the board and its chairperson. 5.4 sets out the foot of this page 51 going over to the next few pages a number of findings that you - that you made including poor governance structures and financial management. Is that correct?

MS HLAHLA: Correct Sir.

ADV KENNEDY SC: Then you refer to a lack of enforcement of framework or governance being sufficiently robust manifesting in such issues as irregular expenditure and in the – in the previous financial year 2017 to 2018 and there was no record of consequential management. Now without delving into the detail just as a bird's eye view can you just indicate to the Chair what you found?

MS HLAHLA: So the lack of – the general lack of
10 appreciation of the need to comply was very glaring and we were not sure whether it is because everyone is stressed they do not know if they are going to get paid or is it just the way things are at Denel. Things you would assume that every SOE would be well acquainted with that their finance teams will meet with the Treasury monthly to look at how to provide numbers and to comply. There was simply a general – almost a general lack of awareness and therefore accountability. That is how I would summarise it.

ADV KENNEDY SC: Alright thank you. And then 543 you
20 talk of a lack of compliance with the relevant regulatory and governance framework and policies and you give us an example Denel Asia. Denel Asia of course was a venture that – that has been the subject of evidence already and will be the evidence of – of further witnesses later. And then in 544 Ms Hlahla you deal with some issue relating to minutes

of meetings for governance structures such as the board and its committees and general company records. That these were not captured or they were inadequate or were not retained. Just explain to the Chair please what you – what you were able find or not find?

MS HLAHLA: Chair one of the biggest risks for boards of SOE's today is the ability of the company secretariat function to deliver on its mandate. Meaning that they take your minutes – meaning they recording it on some instrument –
 10 they write them down – they get approved – they get stored so that any time you need to find out what happened historically you are able to find it. The lack of information management around minutes in the case of Denel makes it impossible for you to even learn from the past because you are always looking. But also the – exacerbated by the fact that the company secretary who came from the previous era also resigned. So you were really left without a person with a memory and on the files where you expected to find anything the logic that you would otherwise expect is not
 20 there.

ADV KENNEDY SC: And is it correct that the legal team as well as the team of investigators from the commission has a number of time being asking Denel witnesses such as yourself and management to assist with minutes some of which have been found but others cannot be traced.

MS HLAHLA: It is correct Sir and I was worried that it would end up making us lose credibility when in fact we are all digging up in a hole trying to assist. The reality is we should all remember that information management of such critical information is a heart of a business. When you do not have it no-one is going to trust you.

CHAIRPERSON: Well you might or might not have known about this but the reports I received last year and early this year in terms of attempts by the legal team and the
10 investigators to obtain various documents from Denel particularly through whoever was the company secretary where to the effect that there was not proper cooperation. And at a certain stage I had instructed that compulsion be used. I do not know how far that went but there seemed to be no cooperation at all certainly from whoever was the company secretary towards the end of last year and early this year.

MS HLAHLA: I can promise you Sir the team of the commission raised the issue directly with the board Chair
20 and then we could make a concerted effort to also find out where the gaps are and report accordingly.

CHAIRPERSON: Okay.

MS HLAHLA: It was unfortunate.

CHAIRPERSON: Okay.

ADV KENNEDY SC: Sorry. Who provide the function of

company secretary now Ms Hlahla?

MS HLAHLA: On taking over as a board the easiest thing to do was to contract out the company secretariat role and the company Fluid Rock has been able to provide us a consistent number of very senior people and it has been very helpful to bring our board minutes up to date as well as those of EXCO. Because what we share with you in terms of gaps of information you can duplicate it every structure of the governance structure of Denel.

- 10 **ADV KENNEDY SC:** If I may now proceed to paragraph 5.5 of your affidavit. That is at page 54. You refer to the financial status the fact that you found Denel had cash flow challenges and was in liquidity crisis, banks and the note holders were withholding support and there was very poor representation of the financial status of the company. Now you have indicated to the Chair that that is – that there is still a serious financial issue in relation to Denel. I would just like you to explain to the Chair please in 552 what you referring to when you state there was very poor
20 representation of the financial status of the company when you took over as chair?

MS HLAHLA: Within the first week of engaging the treasury our shareholder finance division in the DPE, the banks, the statement or the biggest ask to the board and the chair were that your financial data, your numbers are so unreliable that

if there was one thing you can do for us is to get Denel help to give us credible numbers, we cannot go on like this. And unfortunately with the Auditor General taking over now as our external auditor between the AG and ourselves it has been a journey to now get that credibility right because now the AG has forced us to go backwards in years to correct a lot of the mistakes in the financial statements and I am pleased to say that the AG has also identified already areas of improvement that have been made. But a lot is still to be
 10 done to give the full credibility of Denel's financial statements.

CHAIRPERSON: So must I read or do I read that – or understand that paragraph or sentence correctly. If I think it means that the financial statements did not correctly reflect the financial status of the company?

MS HLAHLA: According to the Auditor General every year they would highlight. That is why our statements were qualified it is because there were always major areas around historical contracts, how we interrupted what is revenue that
 20 we have to go back without people that had been in the business to find all contracts and interpret them correctly in the financial statements. And for an old company like Denel it is a lot of work but I am pleased that the AG and – and the extra teams that we have had to hire when we do not have enough money have made some good improvements. But it

will take Denel a little while to actually say we are there.

CHAIRPERSON: Do you know whether that – the impression is that that may have come about as a result of misrepresentation or – or incompetence or both? Or is that something that you do not know and whether also what the AG's opinion is as to what brought that about?

MS HLAHLA: The AG does pronounce a lot on it. But because it is our second year we are now two and a half years in their comments on the financial statements each
10 year become more and more clearer of what they see. But I am hoping that from them, ourselves we will get to a stage where we understand what really caused it because some of it is incompetency but some of it is simply confusing.

CHAIRPERSON: It is just that when one hears this kind of – these kinds of stories about an SOE like Denel which I think I was told in evidence last year that at some stage being I think the envy of such entities internationally was highly regarded just like I was told Eskom once upon a time was really highly regarded internationally. When you hear what
20 they seemed to have become it is – even just as a citizen it is kind of distressing.

MS HLAHLA: Very distressing.

CHAIRPERSON: To say how do we take an entity that is highly regarded internationally as an entity that is well run – professionally run that it envied internationally. Whose

personnel are respected because of this to a point where one hears the kinds of things that one is – hears about Denel and Eskom. It is distressing. But of course it will not help us to just feel distressed we must play a part to try and bring back the days of glory in those entities and there are enough men and women in South Africa who would be committed to do that and would work hard to bring that about. So maybe one day we will feel that we are back in those days.

MS HLAHLA: I cannot wait Sir.

10 **CHAIRPERSON**: Yes. Mr Kennedy.

ADV KENNEDY SC: [Not speaking into the microphone].

MS HLAHLA: Correct Sir.

ADV KENNEDY SC: Thank you my microphone was not on. I beg your pardon.

CHAIRPERSON: Oh okay.

ADV KENNEDY SC: May I just – may I just put the question again – I apologise for being remiss.

CHAIRPERSON: Yes yes ja.

ADV KENNEDY SC: Paragraph 5.7 refers to investigations
20 by Dentons 571 and by Ngidi Business Advisory 572. Am I correct in understanding that those investigations were commissioned prior to your taking up office as the new chairperson of the new board?

MS HLAHLA: Correct Sir we in fact inherited draft reports from those investigations.

ADV KENNEDY SC: Yes and you refer to the draft report from Dentons which dealt with the acquisition of Denel vehicle systems and the draft report Chair is the one that was referred to earlier in the previous witness you will find that Chair I am not going to take the witness to it to Bundle 06 Denel Bundle 06 Exhibit W18. Now your affidavit then goes on Mr Hlahla to talk of the updated report and that is – that was dated the 18 October just a – just over a week ago. So was that recently received by you?

10 **MS HLAHLA:** Yes Sir and I think thanks to the process that you have undertaken. I think we can now say that Denton has provided a final report. It is sitting with our Audit Committee and I am hoping to at least receive it at the board level once they have engaged it.

ADV KENNEDY SC: Sorry it needs to be processed by the Audit Committee. They will then report on that to you as the board.

MS HLAHLA: Yes Sir.

ADV KENNEDY SC: And you will then have to consider it
20 and take action if you feel it appropriate. We have not been as a legal team been given a copy of that – of that final updated report. Is it possible to make arrangements to have that made available to the commission?

MS HLAHLA: Certainly Sir I will request the Audit Committee and I hope that the commission will remember

that it has not as yet served on the board for consideration but I am sure that we can request my counsel and make sure that it is made available.

CHAIRPERSON: Yes I – hoping that the board would deal with it ...

MS HLAHLA: Urgently.

CHAIRPERSON: Soon.

MS HLAHLA: Okay.

CHAIRPERSON: The legal team will reflect on whether we
10 need to see it before the board sees it if at all possible we can see it after the board has seen it. But if there are reasons that require that we see it before I am sure there will be discussions to see how that can be agreed.

MS HLAHLA: We will try and see if the – the Audit Committee and the board cannot meet you halfway Sir.

CHAIRPERSON: Okay. But am I right to say they seem to have taken quite long Dentons from 2016 to 2020 or do I misunderstand something to investigate this LSSA issue?

MS HLAHLA: My understanding is that at some point the
20 position they took was to refuse to go any further in dealings with Denel. It would appear that between our management which is our executives trying to get a final report issued there was just a misunderstanding or lack of cooperation. But I am just pleased that they have actually issued it final.

CHAIRPERSON: So there may have been a period when

nothing was happening because of whatever.

MS HLAHLA: Absolutely.

CHAIRPERSON: Misunderstandings?

MS HLAHLA: Yes Sir.

CHAIRPERSON: Okay alright.

ADV KENNEDY SC: Thank you. Ms Hlahla then you deal with the other draft report received from the other investigators Ngidi 572 of your affidavit. And as I understand it there has only been a draft report.

10 **MS HLAHLA**: Yes Sir.

ADV KENNEDY SC: Is that correct?

MS HLAHLA: Correct Sir.

ADV KENNEDY SC: It has never been finalised?

MS HLAHLA: Correct Sir.

ADV KENNEDY SC: And do you know whether it is going to be finalised?

MS HLAHLA: The confirmation from management and the Audit Committee is that Ngidi have flatly refused to take that study further. And you will recognise that the board then did
20 the next reports because we had to do an investigation regardless of whether they wanted to proceed or not. That is as far as I know sitting here today.

ADV KENNEDY SC: Right. May we then turn to your next section paragraph 6 which is the work done by the board to date and I am not going to Chair unless you would like me to

go in any detail through this.

CHAIRPERSON: Yes no it is not necessary.

ADV KENNEDY SC: Thank you Chair. It is before you in considerable detail and it is very clearly set out.

CHAIRPERSON: Yes.

ADV KENNEDY SC: They have been numerous steps taken by you as Chair and your colleagues as board members to try and improve things within Denel and its management and with other stakeholders such as employees, unions, banks,
10 the attorney – the Auditor General looking at instilling an ethical culture and trust, improving morale and the like. Correct?

MS HLAHLA: Correct Sir. There are still good people in Denel.

CHAIRPERSON: Sorry.

MS HLAHLA: There are still good people in the middle of the kills.

CHAIRPERSON: Yes.

MS HLAHLA: That will take a mound like this and save their
20 own company.

CHAIRPERSON: Hm.

ADV KENNEDY SC: Then for those who were not good people if I could take you to 610 where there were allegations of misconduct and irregularity against executives. Disciplinary proceedings have been instituted,

correct?

MS HLAHLA: Correct Sir.

ADV KENNEDY SC: And that resulted in the dismissals of the previous GCFO, - just give me the name of that person?

MS HLAHLA: This is our former Group Finance Director it is..

CHAIRPERSON: Mhlwana.

MS HLAHLA: Mhlwana – Mr Mhlwana.

ADV KENNEDY SC: Right and also the previous GE
10 strategy who is that?

MS HLAHLA: I have given you the name somewhere and I cannot remember the name now Sir.

ADV KENNEDY SC: Okay. And then you have also referred to invest – internal investigation of Supply Chain Processes and a review of the SCM Policy. Has that been completed – the SCM Policy review?

MS HLAHLA: A lot of work it is actually an understatement because we had just given you excerpts of what we have done in a big attempt to overall procurement. At the heart of
20 the weaknesses in SOE's today is tightening that area so it is – it is an on-going set of works – work streams.

ADV KENNEDY SC: And then in 6.1.14 one of the steps that you have indicated as being taken by the board involves a review of the company's delegation authority. As I understand it to tighten up what may have been too – too

much latitude given to specific members of management and that is now tightened up, is that correct?

MS HLAHLA: Correct Sir. In particular we inherited an odd situation where between the board and management's executive committee a new structure was placed in between without minutes, without proper delegation but with enough power to make recommendations to the board. And we had to immediately restore the powers of an executive committee which is the normal governance framework that we are used
10 to and to remove that layer in between.

ADV KENNEDY SC: Now I would like to skip through pretty quickly the next few sections. 6.2 gives further details in relation to issues raised by the auditor general and strengthening of the financial function.

Then 6.3 on page 60 deals with progress that you have made as a result of those interventions that have been itemised before.

Both financial and regulatory governance controls as well as other steps in relation to the business. At 6.3.3 you
20 referred to exiting certain contracts. Why did you exit contracts?

MS HLAHLA: In the termination of our managers and supported by us, the reasons would include our conditions being onerous.

In some instances, because we had used the money,

what happens in Denel programmes because of their size.

The common practise in project management is that the project owners would give you an advance payment so that you can start analyses the designs and preparing for the project.

So those advanced payments for the programmes, Denel had used for working capital instead of using them on the project.

And we just had to settle the liabilities associated with those so that the challenge does not grow bigger year-on-year. And some of them were terminated because of those reasons.

And it is not because Denel does not think those countries were important. Yes, they are. But the liabilities associated with those programmes were just too big for Denel to continue with.

ADV KENNEDY SC: And you have indicated that contract which have now been exited because of the onerous nature of those contracts. Instances are contracts with the DCR, Chad and Venezuela. Correct?

MS HLAHLA: Correct, sir.

ADV KENNEDY SC: On a more optimistic note. You refer in 6.3.4 to pursue in a winnable pipeline which you hope will provide a solid base for the continued implementation of the turnaround plan and grow the business.

And in 6.3.5 you refer to Denel maintaining its strong brand within the global defence sectors. So despite its problems, financial regulatory and otherwise, does Denel still have in general a positive image and reputation in the international marketplace?

MS HLAHLA: Correct, sir. Although, we must not underestimate how much Denel has been damaged. The reality is that, because of its unique specialisations amongst some of their products, Denel continues to have people
10 knocking on its doors, wanting their services.

It is finding the right way to see those green shoots to provide a good base for Denel going forward. It is quite unique. It does not dried(?) up a hundred percent.

ADV KENNEDY SC: Right. Thank you. You refer then to some improvements noted by the auditor general in 6.4 and then 6.5, that is certain areas on which the board remains focussed to ensure that Denel achieves objectives, such as ethical leadership, corporate governance, et cetera.

MS HLAHLA: Yes, sir.

20 **ADV KENNEDY SC:** Can we... and then you also deal with strategic objectives for stabilising particular aspects of the business in 6.6. Now Ms Hlahla, your affidavit then proceeds to raise from page 64 in paragraph 7 a number of investigations commissioned by the board.

Now as I understand it, what then follows, starting with

the BDOPS Advisory Report. It follows investigations commissioned by the board of which you were chair at the time and still are, correct?

MS HLAHLA: Correct, sir.

ADV KENNEDY SC: So this is not the two reports of the Dentons and Engedi(?) that were referred to earlier that were commissioned by the previous board under Mr Mantsha?

MS HLAHLA: These are our investigations as a board.

10 **ADV KENNEDY SC**: Right. And they relates specifically to matters where corruption and mismanagement was suspected or alleged. And they have been conducted under the instructions of the Audit Committee, paragraph 7.2. Is that correct?

MS HLAHLA: Correct, sir.

ADV KENNEDY SC: And am I correct in understanding that the Audit Committee then considers the report of the investigators in each instance.

And then the reports to the board for your to take any
20 final decisions on whether you accept the report, whether you accept recommendations and whether you give instructions and approvals for steps to be taken pursuant to what comes out of those reports?

MS HLAHLA: Correct, sir. Our Audit Committee is an independent and senior committee of the board. We give

them the space and the latitude to investigate to the extent that they can and then to let us know what their recommendations are in terms of an election.

ADV KENNEDY SC: Now again, I am going to go through this fairly quickly because you summarise in some detail the report of the first lot of investigators that you set out in 7.4 and that is BDOPS advisors. And they were appointed to investigate non-adherence to policies procedures and legislation by corporate office of Denel employees.

10 DLS, that is Denel Land Systems. LMT, that is Land Mobility Technology and Denel Vehicle Systems, DVS. And that included... their scope included investigating the establishment of Denel Asia.

And you refer in 7.4.2 to the BDO Report dated 9 May 2019 having been provided to the Commission with the affidavit of Mr Taliep Sadick. Now that has already come before the Commission, correct?

MS HLAHLA: Correct, sir.

ADV KENNEDY SC: Then you deal, and this is where you
20 deal in some detail with the findings of the BDO investigation and its report. And it is correct – the Chair obviously has that available to him – but is it correct that various irregularities were found to have been committed by the investigators, BDOPS Advisory?

MS HLAHLA: Correct, sir.

ADV KENNEDY SC: And you analyse the various aspects that were investigated where such findings were made. From 7.5.3 you deal with procurement contracts between Denel and VR Laser.

And you refer to three contracts that were then considered. You stated elsewhere in your affidavit that VR Laser had in fact been a good supplier of various items to Denel over many years prior to these three contracts. Is that correct?

10 **MS HLAHLA:** Correct, sir.

ADV KENNEDY SC: But what was investigated, because there were allegations of irregularity with these contracts that you refer to in 7.5.3, long-term contracts with VC Laser in November 2014. Sorry, a long-term contract that is seven years.

The one awarded in November 2014 for specific holds(?) relating to the Badger(?) Programme. And then 2, single source memoranda of agreements concurred in May and December 2015.

20 The one was DLS and the other was DVS and each of those was for a period of ten years. Correct?

MS HLAHLA: Correct, sir.

ADV KENNEDY SC: And then also investigated... Paragraph 7.6 with Denel Asia and there is reference again. I am not going into the detail but investigation of allegations

relating to the possible relationship or actual relationship between Mr Mantsha, Mr Ntshepe, Mr Essa and Mr Seleke.

MS HLAHLA: Correct, sir.

ADV KENNEDY SC: And allegations of a corrupt relationship involving various individuals including Mr Mantsha. Travels overseas by him with the Gupta family linked members. Payments for travels, et cetera. All of that is set out in their report, correct?

MS HLAHLA: Correct, sir.

- 10 **ADV KENNEDY SC**: And then your summary continues. Transgressions in the process followed in relation to the incorporation of Denel Asia. And again, the links with Mr Essa, various Gupta brothers.

You refer to that in 7.6.3.6. That you will find at page 70 of your affidavit. May I just ask, while we are looking at your evidence relating to Denel Asia.

From your perspective as the current board chairperson where you have had these aspects investigated and you are also aware of the implications and consequences for Denel.

- 20 Can you sum-up for the Chair in a sentence or two what the upshot of the Denel Asia Project has been for Denel, its business, its reputation, its finances?

MS HLAHLA: I want to make sure I understand your correctly. You, in fact, wanting to know what the impact of it is?

ADV KENNEDY SC: Correct.

MS HLAHLA: Okay.

ADV KENNEDY SC: Has it been positive or negative?

CHAIRPERSON: On Denel's reputation.

MS HLAHLA: It has been damning on Denel's reputation and even worse on the moral(?) side.

One of the key features of why, when we arrived, it looked like we had taken over a headless, a leaderless business is, because the staff, the managers, the technical
10 people that you allow in a business of this nature, had no confidence in management anymore.

Denel which used to be very, very strong is suddenly being looked with suspect because where South African would use the Department of Defence and Armscor to sell Denel's products to the world, suddenly Denel came up with this entity that was supposed to be now the new way that Denel engages.

Unfortunately, the defence industry has got its own way of doing things and culture. When you change like that, you
20 can destroy relationships that have been built over a very long time. And I think we are still feeling the impact of that today.

CHAIRPERSON: Tell me. I know that in your affidavit you deal extensively with some of the challenges that your board found when it came into Denel.

Is there a single document that exists somewhere that gives one the state of Denel as at the time your board took over? Or does one piece that together by reading different documents?

In other words, is there a document that I can go to and if I want to see what was wrong with Denel when your board came in? You know, 1,2, 3, 4 – whatever the list is. To say this was the state of Denel or the state of affairs at Denel when this board came in?

10 **MS HLAHLA**: I wish it existed because when you deal with non-executive directors, we tend to... I think this was the most focussed attempt to put it together. While it is not impossible ...[intervenes]

CHAIRPERSON: Because I would like such a document, you know. I... with a number of SOE's, I would like a document that tells me that, particularly when you get... I mean, Denel.

When the board comes in after a board against which there were all kinds of allegations of wrongdoing. When a
20 board that comes in that is credible, I would like a document that says this is the state in which we found this entity.

A complete, you know, document, you know, which would then show what damage may have been caused to the entity before the particular board. Obviously, such a document would be important, also to assess the size of the job that

the new board has to do.

But also, such a document would be helpful to say, by the time that the new board came, to be able to say having arrived and found this entity in this situation when we left, this is how much we have put in place to try and rectify things.

So much, we could not reach everything. We could not do everything. But we did so much.

So that the board that comes afterwards, can then
10 continue on that journey. If it does not exist but it can be put together, that kind of document would be very helpful.

MS HLAHLA: It would be an excellent handover report. Even for the shareholder minister.

CHAIRPERSON: Yes.

MS HLAHLA: I am sure with my counsel, we can think about and the management team and the board.

CHAIRPERSON: Yes.

MS HLAHLA: How we can look at that.

CHAIRPERSON: Yes, yes.

20 **MS HLAHLA**: I am just fearful to overpromise.

CHAIRPERSON: Ja.

MS HLAHLA: Given that we have got time pressures, sir.

CHAIRPERSON: Ja, okay alright. Thank you. Mr Kennedy.

ADV KENNEDY SC: Thank you, Chair. Ms Hlahla, you have at a very broad level dealt with some of the outline in

your affidavit from page 50 to 64 in paragraphs 5 and 6. But perhaps you can assist the Commission by fleshing out the bones, as it were, in that regard in the report that the Chairperson has asked you to provide.

MS HLAHLA: [No audible reply]

ADV KENNEDY SC: Thank you. May I just have a moment, Chair?

CHAIRPERSON: [No audible reply]

10 **ADV KENNEDY SC:** Now if we can turn to... back to page 72.

CHAIRPERSON: Mr Kennedy, I think let us just acknowledge that... we have just gone past one, I think. On my watch seven minutes past one.

ADV KENNEDY SC: Indeed.

CHAIRPERSON: If we might be able to finish by half-past one, I think we could possibly agree that let us continue so that when we adjourn we are done.

ADV KENNEDY SC: Thank you, Chair.

CHAIRPERSON: She is done.

20 **ADV KENNEDY SC:** But I think there is a fair chance. I cannot give you a guarantee of that.

CHAIRPERSON: Yes, yes.

ADV KENNEDY SC: But there is a fair chance that we will be finished by then.

CHAIRPERSON: Yes, okay. Is that fine with everybody if

we do not take lunch now?

MS HLAHLA: I am smiling, sir.

CHAIRPERSON: You are fine with that. Counsel?

COUNSEL: [No audible reply]

CHAIRPERSON: Okay alright.

ADV KENNEDY SC: Thank you, Chair.

CHAIRPERSON: Let us try, okay.

ADV KENNEDY SC: Thank you. May I take you to 7.6.4, page 72 of your affidavit?

10 **MS HLAHLA**: [No audible reply]

ADV KENNEDY SC: This is a summary of the recommendations in the BDO Report in particular relating to Denel Asia opening criminal investigations against Messrs Ntshepe, Mantsha and Burger.

Possible action against board members for the election of their fiduciary duties. And your affidavit records that you as Denel have referred the BDO Report to the SAPS and also sought legal advice.

20 From that, does one infer that... should one infer that you as the board have accepted the reports, the findings and the recommendations of BDO?

MS HLAHLA: We have accepted the report and accepted the elections and have required our management to start acting that way immediately after that report served on the board.

ADV KENNEDY SC: And you... that includes taking legal advice for possible action against the individuals mentioned?

MS HLAHLA: Yes. And I mean, in that case, it is going to take another investigation, figuring out what happened in the board meetings.

Just to make sure that you do not judging your luck probably(?) or act against even very good people unknowingly.

It would require an additional action with the Audit
10 Committee, guiding that process, taking the minutes to make sure that we do it right and not put the company under disrepute.

ADV KENNEDY SC: Then in paragraph 7.7 you refer to court papers having already been lodged to review the three contracts between Denel and VR Laser.

MS HLAHLA: Correct, sir.

ADV KENNEDY SC: Has that litigation been concluded or is it still ongoing?

MS HLAHLA: It is still ongoing, sir.

20 **ADV KENNEDY SC:** Then 7.8 refers to disciplinary proceedings and the fact that BDP recommended that these be brought against the relevant individuals but you say that all of them have left the employee of Denel.

MS HLAHLA: Correct. And then other actions are being looked at regardless of the fact that they are no longer in the

business.

ADV KENNEDY SC: And then steps have been made to deregister Denel Asia. Are you receiving any cooperation from any other state entity in that regard?

MS HLAHLA: I think the SIU had been helpful on this one because we were dealing with a different jurisdiction and I am pleased that the liquidation processes are on the way.

One of the difficulties was that our management could not even tell us who the shareholders were of Denel Asia.

10 And some of those details create a lot of problems.

But I am pleased that the latest update I have received from my management and the Audit Committee is that as far as grounds is almost done. Almost completed.

ADV KENNEDY SC: And then in 7.10 you refer to the Anti-corruption Unit of the Police Service. At their request, Denel has submitted a statement to the police relating to the relationship between Denel and VR Laser based on the findings and recommendations of the BDO Report. Is that process relating to the criminal investigation concluded or is

20 it still ongoing?

MS HLAHLA: It is still ongoing with SAPS, continuing to question some of our manages for further data. What we have become quite aware of early is the national interest in issues around state capture that citizens, if not political parties, also do and go and lay their own charges.

But fundamentally, the main report that was put together by the Denel Board, the video report is substantially it. And we have made it available to the Anti-corruption Unit.

ADV KENNEDY SC: Now if we can go through the reference to PWC. They were appointed to review something else and that is a request for loan financing by Denel to LNT(?) and how the funds were utilised.

And 7.12 refers to - that is at the top of page 74 - refers to the report currently being considered by the Audit
10 Committee. Is that still the case now?

MS HLAHLA: That is still the case, sir. One of the things that they found is the fact that also we have now appointed an acting Group CEO and we have a new chair of Audit.

But I am sure that she will be getting through this work speedily to make sure that it is completed and it serves in front of the board.

But the main thing to note is that the issues of cash that we could be utilising for the development of our core business and paying for our staff who works hard, we are
20 using the money to pay everyone else than to grow Denel and this is why the Audit Committee is investigating this issue.

ADV KENNEDY SC: Alright. Now we come the next investigation by EMS Africa Forensics. The law firm's forensic unit.

And that looked at specifically at allegations regarding bursary irregularities outside the framework of the Denel Bursary Policy where there were three students including the son of the former North West Provincial Premier, who were awarded bursaries and it was alleged that this was done irregularly.

Is it correct that PWC... Oh, sorry. EMS did in fact submit a report and made findings and recommendations?

MS HLAHLA: Correct. It did serve on our board and we
10 accepted it.

ADV KENNEDY SC: And this implicated in 7.15 for Denel's former executives. They were members and what was called the Central Executive Committee.

Now you have given evidence earlier Ms Hlahla to the Chair that there was an Executive Committee comprising the Group CEO and some other members of top management.

Is that the same as the Central Executive Committee or are the two committees different?

MS HLAHLA: It is exactly the same committee. It is the
20 committee that sat between Exco and the Board. It was a powerful body of management.

ADV KENNEDY SC: And you have acted on the findings. You set out on page 75 a number of actions you have taken. You started disciplinary action against the executives but you indicated they resigned before the hearings started.

MS HLAHLA: Yes, sir.

ADV KENNEDY SC: 7.16.

MS HLAHLA: Yes, the CEO had resigned by the time that we instituted the disciplinary hearings.

ADV KENNEDY SC: Yes. Yes, I am sorry. I skipped over the reference to the former GCFO.

MS HLAHLA: Correct, sir.

ADV KENNEDY SC: And the Group Executive Strategy. But the others implicated is the CEO and the COO had resigned.

10 **MS HLAHLA:** Correct, sir.

ADV KENNEDY SC: Okay. And the board has instituted civil proceedings against the Denel executives. Are those civil proceedings completed or are they still ongoing? Do you know?

MS HLAHLA: They are ongoing in the sense that the... they are ongoing sir and then the issue of settlement comes out later which will have an impact on it.

ADV KENNEDY SC: Yes. Then you refer in 7.18 to the fact that the police are apparently investigating the matter and
20 had been requesting statements from some Denel employees. Is Denel cooperating with that process?

MS HLAHLA: Correct, sir. One of the sensitive issues and said issues about this investigations is that it almost makes you forget that bursaries are dealing with young people. And that actually they fall in between the cracks and you just

hope that as our information gets in other hands, that everybody is sensitive to the children that are involved in it.

ADV KENNEDY SC: Yes. 7.19 refers to, apart from the police, the SIU also conducting investigations. And you referred to a settlement proposal that has been received from Mr Mahumapelo to reimburse Denel for the payments.

And then you set out how that would be paid in equal instalments over 36-months. Your statement does not indicate but are you able to tell the Chair, has the settlement
10 happened? Has there been an agreement? What status is there of that?

MS HLAHLA: The status, as at today, is that our Audit Committee has considered it and not accepted the settlement offer but they are engaged now to look at the best way to conclude.

ADV KENNEDY SC: Right. Then we get to the next investigation by the attorneys firm, Bowmans. You deal with that on page 76 and following.

MS HLAHLA: Yes, sir.

20 **ADV KENNEDY SC:** And that also submitted a report. Is that correct?

MS HLAHLA: Yes, sir.

ADV KENNEDY SC: And has that report been accepted and acted upon by the board?

MS HLAHLA: Correct, sir. We have received it and

accepted the recommendations and the remedial actions.

ADV KENNEDY SC: Yes. And you referred 7.23 to Mr Ntshepe and Mr Mhlwana being solely responsible for the conclusion of the contract in September 2017 and prejudice that resulted and it was recommended that they personally be held liable for the losses and that this be pursued through court action in the civil courts and other steps.

7.24 you refer to a statement arising from that
10 recommendation that has been filed with the police requesting further investigation. Was that request submitted by Denel to the police?

MS HLAHLA: Correct, it was submitted by our management to the police.

ADV KENNEDY SC: And then you refer in 7.25 to disciplinary proceedings against four employees implicated in these irregular payments who were still in the employ of Denel, that they have been subjected to disciplinary proceedings. Are you able to tell the Chair what the status
20 is of those proceedings? Completed? Still pending?

MS HLAHLA: Those have been completed with two individuals, I think, who were not found guilty and then two found guilty and you will recognise that there is now additional work being done for those that are not in the company and have been found guilty for us to recover the

money from them.

ADV KENNEDY SC: And you refer in 7.25 to Mr Ntshepe ...[intervenes]

MS HLAHLA: And the Group CEO.

ADV KENNEDY SC: The Group CEO at the time, who was implicated but of course he left Denel and so there has been no disciplinary action possible against him.

MS HLAHLA: Correct, Chair.

ADV KENNEDY SC: That your paragraph 7.26 refers to
10 instructions having been given to attorneys to institute civil proceedings. Is that process underway?

MS HLAHLA: It is under way, Chair, and I was made aware of the fact that one of the challenging issues for management implementing some of the recommendations has been the fact that any of the external parties who are not members of Denel staff, i.e. the technical assistant that got paid out, they are in a different jurisdiction with bank accounts in another – between Denel and the SIU they have been trying to figure out, the cost related to it, how to
20 effect the decision and there have been some difficulties, Chair.

ADV KENNEDY SC: Thank you and then the foot of page 77 and the following pages deal with a section devoted to an investigation by Fundudzi Forensic Services. That related specifically to the appointment and payment of an

entity known as ENNE7 to provide certain services relating to the supply of Casspir Chassis vehicles to Denel and is it correct that that investigation has submitted a report which made findings and recommendations?

MS HLAHLA: Correct, Chair, and it was [indistinct – dropping voice]

ADV KENNEDY SC: In 7.29 you refer to some of the findings and then in 7.30 that the amount of R69.6-odd million, R69.6 million was paid to ENN7 which constituted
10 irregular and fruitless and wasteful expenditure.

MS HLAHLA: Correct, Chair.

ADV KENNEDY SC: Then it made certain recommendations. The first in 7.31.1 is that disciplinary action be taken against four employees, criminal action against eleven people including employees for collusion and/or corruption and that Denel considers a civil claim to recover financial loss. Has that been acted upon?

MS HLAHLA: With regard to the Fundudzi forensic report, it is still coming to the board and it is one of those that will
20 try and accelerate but the actions will be taken upon in full by the board.

ADV KENNEDY SC: Right. So this paragraph 7 that we have just been through has set out in some detail various investigations commissioned by the board under your chairship that have in fact been completed where reports

have been furnished findings made and recommendations made by the investigating teams or firms where – and you have indicated the extent to which the board has acted or is currently acting based on those findings and recommendations.

MS HLAHLA: Correct.

ADV KENNEDY SC: If I understand it, paragraph 8 of your affidavit deals with a number of further investigations that are being initiated or have started but are not yet
10 complete. Again, under your – the board which you currently chair.

MS HLAHLA: Correct, Chair, and they are underway, they are [indistinct] 05.35.

ADV KENNEDY SC: Right. So that – and they had been overseen by the audit committee.

MS HLAHLA: Correct, Chair.

ADV KENNEDY SC: And they involve various entities including Regiments Capital and Fireblade Aviation.

MS HLAHLA: Correct, Chair.

20 **ADV KENNEDY SC**: Who is doing the Regiments Capital Investigation?

MS HLAHLA: I have provided you additional data that gives you the firms that are working with the audit committee on it. I cannot personally remember it offhand, Chair.

ADV KENNEDY SC: Right. And then you say in 8.3 that:

“The audit committee intends to initiate more investigations to deal with supply chain management processes, irregular expenditure and the like.”

And then 8.5 you refer to requesting a high level lifestyle audit of Denel employees and if there are any red flags that may result in further investigations. Has that – you say there it is not yet been done, process is underway to
10 appoint a service provider, but has the board decided to pursue this as one of the interventions?

MS HLAHLA: The board has long decided that it would undertake a lifestyle audit. It is just a matter of, with our limited budget, the audit committee being able to prioritise between the investigations into allegations of corruption and this one at the same time. But we also lost a lot time during Covid, I think, maybe a lot of work would have been done by now.

ADV KENNEDY SC: Right. Then in paragraph 9 you deal
20 with the SIU again. You touched on that in a different context earlier and you have indicated that the issues with the SIU have been delegated by the board to be handled by the audit committee.

MS HLAHLA: Correct.

ADV KENNEDY SC: And that, as you pointed earlier,

there is cooperation with the SIU in that regard.

MS HLAHLA: Correct.

ADV KENNEDY SC: There is a proclamation that the President has issued dealing with the SIU scope of reference specific to Denel.

MS HLAHLA: Correct.

ADV KENNEDY SC: And you have set out in 9.3.1 to 9.3.4 the specific items, IT security assessment services, legal services, steel fabrication acquired from VR Laser
10 and the awarding of bursaries by Denel and ...[intervenes]

MS HLAHLA: These are areas, ja, of those SIU interests, Chair.

ADV KENNEDY SC: Yes and then 9.4 appears to indicate that the President proclamation has been amended to cover further a wider scope of matters to be investigated by the SIU.

MS HLAHLA: Correct, Chair.

ADV KENNEDY SC: Then you respond to certain questions in paragraph 10.1 that the Commission has,
20 through its investigator, posed to you about what you know about the Hoefyster project based on reports that you have received as the board and you refer to the classification of the DOD, Department of Defence strategic project and you indicate that certain aspects you cannot deal with in detail in this affidavit which is going into the public domain

because of that confidentiality.

Then you refer to in 10.4 to what the project involves, a new generation armoured vehicle contracted in 2007 to be developed and then you deal with the development contract phase 1 and phase 2, the production contract.

10.5 you say that the objective was that the development contract would be completed in 2012, eight years ago, it has been delayed. Has the development contract in fact been completed now in 2020 or is it still at a stage of being delayed?

MS HLAHLA: It is during the phase of being delayed, Chair.

ADV KENNEDY SC: And then you refer to the reasons, the liquidity challenges, the state capture related issues. Why have state capture related issues delayed or complicated the completion of the development phase?

20 **MS HLAHLA:** The entire investigations around now related to state capture issues have to do with this programme. Whether people leave, whether they are still there, whether anything that – the loss of knowledge, this is the heart of it. So sometimes you are delayed, sometimes you are successful but the heart of it is this Hoefyster.

ADV KENNEDY SC: And has the delay of phase 1 meant

that phase 2 is likewise delayed?

MS HLAHLA: Correct and some of the technical issues that have got to be completed between Denel and Armscor have got to do with the transition between the two phases.

ADV KENNEDY SC: And there are complications, you indicate in your paragraph 10.6, relating to the financial aspects arising from guarantees, advance payments made by Armscor, etcetera, and your difficulty in generating funds from the programme to reduce the obligation or to
10 return the money to the ring fenced account. And you are ongoing discussions with Armscor/Denel to look at the possibility of restructuring that financial obligation, is that correct?

MS HLAHLA: Correct, Chair, but merely understanding a programme which should have been completed eight years ago and we have not for one or more reasons. What it basically means for the Denel employees and managers of today is that they are likely to either receive penalties or – because it has gone way over schedule and those critical
20 issues of can they proceed on what terms are really critical for this programme which remains the single biggest contract in Denel's books.

ADV KENNEDY SC: Right. Then you deal in 10.7 with VR Laser Services having been appointed to provide cutting and bending services for armoured steel for the hulls and

turrets and that was deemed to have been irregularly contracted and a legal process has been followed for the termination of those contracts and the review of those contracts, is that right?

MS HLAHLA: Correct, Chair.

ADV KENNEDY SC: Now you make a comment in 10.8 about LMT and DVS having both been acquired by Denel to bolster its landward capabilities and mitigate against the disturbances. Was that not able to resolve the problem?

10 **MS HLAHLA:** It is very odd because we bought LMT and DVS to give us the capacity to do work but instead of using them we then hired – passed the job on to VR Laser and they do the work and then we are sitting with all these gaps. That is just to pose the challenge for this board that you have now taken a liability onto yourselves and you are sharing income if not give it all over to somebody else.

ADV KENNEDY SC: The final point that I would like to raise in this concluding section of your affidavit relates to your section paragraph 11, what still needs to be done and
20 the negative impact that has happened in relation to Denel's finances as well as its reputation and you refer to the ongoing situation of losses due to significant declines in revenue, deepening liquidity crisis, impacts on productivity that Covid is having. But, of course, seen against the background, as your earlier paragraphs

indicate, the problems relating to the relevant transactions, governance issues, financial and operational implications, can you indicate in relation specifically to the Hoefyster project and the transactions with VR Laser, what in the bigger picture of Denel's finances, its operations, its reputation, its strengths as a business, what are those problems relating to Hoefyster and VR Laser? To what extent did they have an impact?

MS HLAHLA: Generally speaking, Chair, it is impossible
 10 that these issues that we have investigated or these contractual agreements that we have investigated, could not have impacted the situation of Denel today. The best example being that the huge debt that current Denel has to service is largely around this programme. The amounts of monies that we had to divert from projects towards working capital have only meant that you are delaying paying and the current Denel has got to try and pay off that liability.

In summary, Chair, when people see the men and women who work for Denel being unhappy or disgruntled
 20 because they cannot get paid, part of it has been these issues of corruption as well as mismanagement because the resources that the need as engineers to do their work, we are busy paying for a past that has been unproductive in a sense.

The impact is dire and some of the markets would

not do business with us again until these issues are concluded and they know that they do not have to deal with any corrupt tendencies within Denel.

But I want to - you know, to assure everyone that Denel's people, management and board are working very hard to try and restore whatever Denel is left of into a productive entity for this country.

ADV KENNEDY SC: Chair, thank you, those are the questions from the legal team, thank you.

10 **CHAIRPERSON:** Yes.

MS HLAHLA: Thank you.

CHAIRPERSON: Thank you very much, Ms Halle for coming to share with the Commission what the board has been doing.

MS HLAHLA: Thank you, Chair.

CHAIRPERSON: And some of the challenges that had found at Denel. You do have the homework that we spoke about that you and your team will work on. If it is possible to get us such a document that would really be
20 appreciated.

MS HLAHLA: Thank you.

CHAIRPERSON: But thank you very much for coming, we appreciate it, but you are now excused. Thank you.

MS HLAHLA: Thank you, Chair.

ADV KENNEDY SC: Chair, thank you that completes the

witnesses that we have scheduled for today. We have more witnesses scheduled tomorrow that will be present.

CHAIRPERSON: Yes. Who are scheduled for tomorrow?

Is it one witness?

ADV KENNEDY SC: Chair, the next witness will be Ms Celia Malahlela.

CHAIRPERSON: Yes.

ADV KENNEDY SC: If I can just indicate we have prioritised her tomorrow. She is in the country presently
10 but will be flying out I think it is tomorrow night.

CHAIRPERSON: Oh.

ADV KENNEDY SC: Overseas.

CHAIRPERSON: Yes.

ADV KENNEDY SC: And initially it appeared that she was not available to us at all because she was overseas but fortunately it happened that she is in the country at the moment so we have grabbed the opportunity to have her give evidence tomorrow.

CHAIRPERSON: Yes.

20 **ADV KENNEDY SC:** Mr Fikile Mhlontlo, who was originally scheduled is not available but the other witness we have lined up tomorrow is Mr Dennis Mlambo, his evidence will take a bit of time, it is a very lengthy affidavit but we will be as productive and efficient as we can be.

CHAIRPERSON: Yes.

ADV KENNEDY SC: He is the Group Supply Chain Management executive at Denel.

CHAIRPERSON: Okay, so tomorrow you have two lined up?

ADV KENNEDY SC: Two lined up, correct.

CHAIRPERSON: Two lined up, okay.

ADV KENNEDY SC: We had three but the one has unfortunately dropped out.

CHAIRPERSON: Okay, is there a need for us to start
10 earlier than normal, like nine o'clock, half past nine?

ADV KENNEDY SC: I do not think so, Chair.

CHAIRPERSON: It might be necessary.

ADV KENNEDY SC: Chair, the only reason why my colleagues - learned colleagues are suggesting nine is because of concern about Ms Malahlela's commitment to fly tomorrow night and we are just concerned that there might be some problem. We should easily complete her evidence in the morning but they are suggesting perhaps we start at nine o'clock just to make ...[intervenes]

20 **CHAIRPERSON:** Yes but if we are starting with her and she should finish during the morning.

ADV KENNEDY SC: Yes, we really should, I do not believe that there is any danger ...[intervenes]

CHAIRPERSON: That should not be a concern. I would understand if the concern was about Mlambo.

ADV KENNEDY SC: Yes.

CHAIRPERSON: For later because – or if the concern-
there will be a concern if she was the second to come, but
if she is the first one...

ADV KENNEDY SC: May I just confirm something?

CHAIRPERSON: Ja.

ADV KENNEDY SC: It has just occurred to me, I was told
that she may be travelling during the afternoon, not the
evening.

10 **CHAIRPERSON:** Oh, okay.

ADV KENNEDY SC: May I just confirm that?

CHAIRPERSON: Okay.

ADV KENNEDY SC: No, in fact, I am told apparently now
her travel arrangements are not Tuesday but in fact
Wednesday.

CHAIRPERSON: Oh, okay.

ADV KENNEDY SC: So there should not be a problem so
ten o'clock if that will suit you, Chair.

CHAIRPERSON: Okay, so ten o'clock will be fine.

20 **ADV KENNEDY SC:** Yes.

CHAIRPERSON: But where there is a need we can start
at nine, we can start at half past nine.

ADV KENNEDY SC: If we can ...[intervenes]

CHAIRPERSON: It is just that it does not help much to
start early if we are not going to use the rest of business

hours.

ADV KENNEDY SC: Indeed.

CHAIRPERSON: So it is useful to start at nine if we know that we – the normal business hours are not going to be enough and we might have to go into the evening, that is fine.

ADV KENNEDY SC: Yes, Chair.

CHAIRPERSON: Ja.

ADV KENNEDY SC: I think we are going to need that
10 from Wednesday.

CHAIRPERSON: From Wednesday?

ADV KENNEDY SC: From Wednesday because Wednesday we have a full programme of three witnesses who are available to us. Thursday the same.

CHAIRPERSON: Yes.

ADV KENNEDY SC: Friday we apparently have only one witness who has been allocated for Friday. So that you may want to start early so that we do not run into a late stage of the afternoon, Chair.

20 **CHAIRPERSON:** Ja. No, that is fine, we could start early on Wednesday when there is good reason for it. With regard to Thursday maybe somebody in the legal team could speak to Adv Seleka because I was in discussion with him and I said we could have an evening session on Thursday for him to bring a certain Eskom witness to finish

his evidence but that was on the assumption that the normal business hours would be enough for you. If you will need the evening then we might have to change that plan. So maybe if somebody can speak to him and maybe you can speak to him.

ADV KENNEDY SC: I will.

CHAIRPERSON: And one of you can come back to me.

ADV KENNEDY SC: I will do so, Chair. Certainly our view, based on the consultations we have had with all
10 three witnesses already, scheduled for Thursday, suggests to me that we should be able to finish their evidence if we start at nine, within the normal hours.

CHAIRPERSON: Oh, okay, okay.

ADV KENNEDY SC: So if you and Mr Seleka need some time in the evening I do not believe there should be a major – unless something unforeseen happens.

CHAIRPERSON: No, no, if that is your assessment then you might need even to talk to him because the plan is that I would finish at four, take a break of about an hour, then
20 start the evening session at five with his witness up to a certain point.

ADV KENNEDY SC: Yes.

CHAIRPERSON: Ja. Okay, alright.

ADV KENNEDY SC: Alright. Thank you, Chair.

CHAIRPERSON: We will then adjourn for the day and

tomorrow we will start at ten. We adjourn.

INQUIRY ADJOURNS TO 27 OCTOBER 2020

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