

**STATE CAPTURE INQUIRY**  
**PARKTOWN, JOHANNESBURG**

**3 SEPTEMBER 2018**

**DAY 9**

**SESSION 1 – 3**

**FINAL**

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**Session 1**

**CHAIRPERSON**: Good morning Mr Pretorius.

**ADV PAUL PRETORIUS SC**: Chair the Commission has over the past week and as late as yesterday, received a number of applications made on behalf of implicated persons, to place versions before the Commission and to apply for the right to cross-examine. These applications are, I understand, before you Chair.

This is also an opportunity to deal with some even later applications, at least one and it may be appropriate before you give directions in relation to these applications, Chair for you to allow the implicated party legal representatives to place themselves on record, for  
10 the purpose of this session where you will give directions.

**CHAIRPERSON**: That's fine but before that, I need to be sure that I have all the applications with me that are supposed to be with me. I have a file here which I have had for the past week, Exhibit D3 applications in terms of the Rules of Commission. Now as of last week, there were four applications in that file one was by Mr Hlongwane another one was by Major General Mnonopi. I think there was, one by Mr Mtolo, if I am not mistaken and another one.

I know that in terms of arrangements that were made last week, there were papers that were, to be filed yesterday. I have seen, I think one or two, I've seen I think an application by Mr Ajay Gupta. I've seen correspondence from the attorney for the former  
20 President, indicating a certain position. I've seen, I think an affidavit or maybe a supplementary affidavit, by Mr Hlongwane, but I don't know whether those have been put into this file already or not, because if they haven't, we would need to have this file, maybe updated, so that when I deal them, I know that I've got everything with me.

**ADV PAUL PRETORIUS SC**: We were under the impression Chair that the attorney for

the Commission would in fact provide you with a properly ordered set of applications, yesterday. If that hasn't been done, then it must be done in order, but perhaps to avoid any further delays, I should just place on record, that there is a draft application in addition to the ones you have, made on behalf of Ms Lynn Brown and two others. Perhaps for the present at least, those that are present and wish to make application, should just place themselves on record and you can decide how you wish to deal with it from there. There is an anxiety amongst both the legal team and amongst the representatives, of the implicated parties, that the applications be heard this week and perhaps even tomorrow if possible.

10 **CHAIRPERSON:** Yes, one, the Commission's attorney was in touch with me yesterday and he did offer to bring papers to my residence at a certain stage in the afternoon. And I said if he sent them to- email them to my secretary for purposes of yesterday, that would be fine, but he undertook that he would make sure that there are hard copies available this morning. But he was not going to be available himself, because he has some personal matter to attend to, but he indicated that one of his, an attorney from his firm would be here.

So he did mention that, so I am quite happy that we do the following. One as you suggest, counsel are representing parties that have filed such applications, place themselves on record and two, I think I can then discuss the way forward in regard to the  
 20 applications, particularly as to when they can be dealt with and if we are able to dispose of that, then I can hear Ms Williams, the balance of Ms William's evidence.

**ADV PAUL PRETORIUS SC:** If that is the plan.

**CHAIRPERSON:** Yes. Okay.

**ADV PAUL PRETORIUS SC:** May I also place on record that as you know, Advocate

Maleka will deal with the applications on behalf of the legal team.

**CHAIRPERSON:** Thank you. So, maybe then counsel representing parties that have filed applications may just come up and place themselves on record. Mr Hellens?

**ADV MIKE HELLENS SC:** May it please you Mr Commissioner. I confirm that in accordance with the arrangements made last week, with the evidence leaders and indeed yourself, Mr Ajay Gupta has filed an application in terms of the rules of this Commission to cross-examine Ms Mentor and Mr Maseko. He has also filed an affidavit in respect of both those parties, setting out his version of the events and from which he clearly emerges the areas of dispute between the parties.

10 There is a small typographical error which I won't bother you with in paragraph 5 of the application, which is obviously separate from the affidavit. The wisdom of the computer changed the word 'precognised' into 'recognised' and makes the sentence unfathomably obscure. The word is precognised.

**CHAIRPERSON:** Yes.

**ADV MIKE HELLENS SC:** I do not intend to argue it now, I'll just give you a glimpse that in the applications to cross-examine, we will want to take on boldly, the methodology of the preparation of witnesses, for cross-examination; The issue of the limitation, either in time or subject matter of cross-examination, and the linked apparent suggestion.

20 But we see this in the press, we don't see if yet from our learned friends that the right to cross-examine is linked to an undertaking to actually give evidence here. But I don't argue any of those points, they are foreshadowed in the applications and I merely confirm that on behalf of Mr Ajay Gupta, the evidence of Mr Maseko and Ms Mentor is sought to be cross-examined.

**CHAIRPERSON:** Yes, maybe let me raise with you Mr Hellens issues relating to the way forward, so that other counsel representing other parties, will also know what I have in mind and they can begin to consider whether they will be happy with that. One, I assume that the Commission's legal team does not intend to file any affidavit in response to the affidavit by Mr Ajay Gupta and any other implicated person who has applied. But if they do, that is the Commission's legal team, if they do wish to file some affidavit that will obviously affect the issue of the date when the hearing can be heard.

But assuming they don't intend to file such an affidavit what is your assessment? Is it that you would like to file any heads or you are, you don't really feel that you need to file  
10 any heads? From my side it not necessary because I want heads, but if counsel thinks that it's necessary and they would like to have time, obviously I would like to give consideration to that, so that's another matter that may affect the question of when the hearing can happen.

**ADV MIKE HELLENS SC:** In response to that let me say that I am fully in favour of, I think this is an obvious point by the way, of you being as assisted as possible by the arguments.

**CHAIRPERSON:** Yes.

**ADV MIKE HELLENS SC:** So if heads of argument, if an argument by myself were to be put forward and my learned friends would have to deal with it on their feet so to speak,  
20 you may be less served by their answer to mine. Equally the other way round...

**CHAIRPERSON:** Yes.

**ADV MIKE HELLENS SC:** I do not seek a delay if it were up to me, I would argue the entire question right now.

**CHAIRPERSON:** Yes.

**ADV MIKE HELLENS SC:** And at cross-examine, if I am allowed, Mr Maseko later in the week, there is just a little bit of work I have to do.

**CHAIRPERSON:** Yes.

**ADV MIKE HELLENS SC:** But we have provisionally suggested Thursday, but no one bound by that at all.

**CHAIRPERSON:** Yes.

**ADV MIKE HELLENS SC:** Including yourself. So in the interest of you Sir, I would suggest that heads be filed by both parties, so that no one is caught unawares, but I don't  
10 make that submission in order to delay in any way. I can do right now.

**CHAIRPERSON:** Yes okay no that's fine. I think what I suggest that what we should do is the following, one, allow each counsel who represents an implicated party, who has applied to place themselves on record and indicate their position, in regard to the two issues I have raised with you. But I am wondering whether, once they have done that, we shouldn't do one of two things?

Either we resume the evidence of Ms Williams, while counsel for the implicated persons and the relevant member, or members of the Commission's legal team, get time to try and work out what they might all suggest I should make directions in terms of, if there is to be heads of argument to be filed, when should they be filed, and that any suggestion  
20 made on possible dates for hearing and then I can look at either that date or those dates.

So when we have a break or when we are done with her, depending how long her evidence will be, then I can be informed of any agreement that the parties might have reached. I can look at the terms, if I am happy I can make that my directions. If I am not

happy, I can adjust here and there. What do you think? We would either do that on the basis that we resume Ms William's evidence and continue and maybe at tea break, or when she finishes, whichever happens first.

And then we will then look at what the product of your discussions would have been, or if you think that it won't take long, I could stand down for 10 minutes without resuming her evidence and allow the parties to talk and then you come back. So, but it may well be that we should - I don't know whether, I don't know how long Ms Hofmeyer expects Ms Williams to take?

**ADV KATE HOFMEYER:** Chair I don't envisage more than an hour.

- 10 **CHAIRPERSON:** Okay, all right. So maybe in that event, we should, I should resume, we should resume her evidence, hearing her evidence while that time is used by counsel on all sides, to discuss with the Commission's legal team, possible terms of the direction that I could consider issuing.

**ADV MIKE HELLENS SC:** As it pleases you Mr Commissioner, should I, or should I not in those discussions, include the topic of the right to cross-examine being linked to an undertaking to, in presence in South Africa to give evidence? Mr Maleka suggests I should with a vigorous nod of his head.

**CHAIRPERSON:** I think that you should feel free to raise any issue that you think you would like to know in advance, if it might affect anything.

- 20 **ADV MIKE HELLENS SC:** So be it.

**CHAIRPERSON:** Thank you let's get counsel for other implicated persons to come forward, place themselves on record and confirm that they are happy with the arrangement that we have just made.

**ADV DAWIE JOUBERT SC:** Thank you Mr Chairman. As you know my surname is Joubert, I've been instructed by van der Merwe Attorneys in respect of the evidence lead by Mr Jonas. We filed an application on behalf of Mr Ajay Gupta, Mr Rajesh Gupta and Mr Duduzane Zuma to cross-examine. I also equally would favour the opportunity to rather file heads of argument before we argue, and we will take up all the other issues with their representatives.

**CHAIRPERSON:** Yes. Okay. Thank you and you are happy with the arrangement that we have just provisionally made?

**ADV DAWIE JOUBERT SC:** Indeed Sir.

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

**ADV JAAP CILLIERS SC:** I am Jaap Cilliers from the Pretoria Bar, instructed by Mrs Stockenstrom Fouche for Mr Fana Hlongwane.

**CHAIRPERSON:** Yes.

**ADV JAAP CILLIERS SC:** As you said an application has already been filed on behalf of Mr Hlongwane.

**CHAIRPERSON:** Yes.

**ADV JAAP CILLIERS SC:** I don't want to repeat, we will abide your ruling and we think it's a good arrangement that we meet with the legal team in order to try and sort out the time.

20 **CHAIRPERSON:** Yes.

**ADV JAAP CILLIERS SC:** The time aspects of an application.

**CHAIRPERSON:** Okay thank you Mr Cilliers.

**ADV SIMMY LEBALA SC:** Esteemed Chairperson, I am Simmy Lebala from the Pretoria Bar, Senior Counsel. I appear with my colleague Mr Lusanga who has already placed us on record.

**CHAIRPERSON:** Yes.

**ADV SIMMY LEBALA SC:** We appear for the former Executive Political Head of the Department of Public Enterprises, Mrs Lynne Brown. We stand before you as Applicants, because we have an unsigned application. Our client is based in Cape Town. A signed copy is going to be made available this afternoon.

We have taken the liberty to provide a copy to our esteemed evidence leaders, colleagues and they have no objection to the copy. We anchor on the heel of our  
10 colleagues approaching and accepting that, we will draw heads to assist the work of the Commission to enquire into and to report on, or to make findings and eventually make recommendations.

The only issue that bewails us that is likely to happen, is there might be a debate on the interpretation of implicating. It appears as if our learned friends on behalf of the evidence leaders are likely to say Ms Brown has not been implicated, which becomes a subjective argument or an objective argument. We will join the issue if need be, if we are called upon to do.

**CHAIRPERSON:** Oka no that's fine, I must confess that at least in terms of evidence,  
20 that has been raised that we have heard, obviously, I might not know any statements that the Commission's legal team might have in their possession that might not have reached me. But in terms of evidence that has been lead in the past, over the past two weeks, I don't remember Ms Brown's name being mentioned by any witness.

But at this stage, I am not going to say anything I will wait to see what your discussions

with the Commission's legal team produces. It may well be from what you have said, it may well be that your client takes the view that she has been implicated in one way or another, even though her name might not have been mentioned by way witness. Or it may well be that she knows something that along the lines that she will be implicated in due course and therefore, she would like to make the application already.

So I would leave that to be discussed between yourself and the Commission's legal team, but it may well be that if she is not implicated as yet, the application might not be properly, considered until she is implicated, but we won't have a debate about that at this stage. It may well be that in the discussions that you will have with the Commission's legal team  
 10 you may persuade one another, one way or another. So I will look at the issue only when I have to.

**ADV SIMMY LEBALA SC:** May I interpose?

**CHAIRPERSON:** Yes.

**ADV SIMMY LEBALA SC:** Esteemed Chair, please do not agonise much, the facts which are stubborn before this Commission will demonstrate that.

**CHAIRPERSON:** Yes.

**ADV SIMMY LEBALA SC:** There are clips and there is a record to that effect. We haven't set our teeth on it to say, rain or shine we will demonstrate it, if it's in the abstract, it, is there, standing before the Commission. But to assure you also, term of reference  
 20 1.4, 1.5, 1.6 relates directly to our client, who is the former political head of the Department of Public Enterprises.

**CHAIRPERSON:** Yes.

**ADV SIMMY LEBALA SC:** Now a witness comes before the Commission and say,

the Guptas says we worked with her and the terms of reference brings her to the fore, in line with those specific paragraphs that we have mentioned in terms of the Commission's terms of reference.

**CHAIRPERSON:** Yes.

**ADV SIMMY LEBALA SC:** It leaves us warm and cold as to whether could it be interpreted as a direct implication as viewed objectively, or as viewed by the evidence leaders. Hence, we say do not, agonise much Commissioner, we will demonstrate it

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

**ADV PAUL PRETORIUS SC:** With your leave Mr Chair, it is necessary to... (intervenes)

10 **CHAIRPERSON:** I think there is still counsel, for implicated persons... (intervenes)

**ADV PAUL PRETORIUS SC:** Yes just before that, in relation to the address that you've just heard.

**CHAIRPERSON:** Yes.

**ADV PAUL PRETORIUS SC:** It is correct that we received the unsigned statement this morning, but it's necessary to place on record that despite my learned friend's statement, that there was no objection. Obviously the rights of the Commission's legal team are reserved in relation both to the procedure adopted, as well as to the substance of the application.

**CHAIRPERSON:** Thank you.

20 **ADV HENRY COWLEY SC:** Thank you Mr Chairman. I am Henry Cowley, counsel from Johannesburg Bar, I am instructed by MVB Attorneys. We represent Ms Kaunda as you know, we have an application for cross-examination, we also support the notion to

file heads of argument and we also support the discussion.

**CHAIRPERSON:** Yes. Thank you very much. Oh, there is still one more, thank you?

**ADV VINCENT SIWELA SC:** A pleasant morning Chair.

**CHAIRPERSON:** Thank you.

**ADV VINCENT SIWELA SC:** Its Swella and I concur that I still represent both officers from the Hawks, Advocate Mtolo and the Major General Mnonopi. I place it on record Chair, that we also have a desire to cross-examine, both Ms Vytjie Mentor and the Honourable Mr Jonas. The reason being the evidence, they accused before the  
10 Honourable Commission has somehow detrimentally implicated both our clients and the analogy of such evidence, necessitates that cross-examination... (intervenes)

**CHAIRPERSON:** Don't move the application yet.

**ADV VINCENT SIWELA SC:** I won't.

**CHAIRPERSON:** I accept that they are implicated.

**ADV VINCENT SIWELA SC:** And further we are happy with your benevolent guidance and the current arrangements.

**CHAIRPERSON:** Yes. Thank you. The one thing that I want to raise with you following the discussion I had with you here in the Commission when you placed yourself on record last week, is just to clarify one thing. I had mentioned in regard to, I  
20 don't know whether - I think only one of your clients. I don't know hether it was Major General or was it Brigadier General Mnonopi?

But in regard to one of them, I had said, I gained the impression, when I read the affidavit

that it might not be the full version, in relation to the incidents and I had asked you to reflect and take instructions, whether it's a full version because that's important that in regard to the incidents or allegations, implicating the persons, we have the full version. What is the position, is what we have a full version?

**ADV VINCENT SIWELA SC:** Indeed that's extremely crucial and we ventilated those issues by filing a supplementary affidavit, where we have comprehensively replied to each and every allegation and to set out those issues which are in dispute.

**CHAIRPERSON:** Yes.

10 **ADV VINCENT SIWELA SC:** We have done so, as we undertook on our last appearance on Friday.

**CHAIRPERSON:** Okay.

**ADV VINCENT SIWELA SC:** Ja so the papers were filed with the attorney for the Commission.

**CHAIRPERSON:** Yes.

**ADV VINCENT SIWELA SC:** To answer you Chair, yes we have supplemented our affidavit not only of Major General Mnonopi, but also of Advocate Mtolo.

**CHAIRPERSON:** Okay, no thank you very much. Thank you.

**ADV VINCENT SIWELA SC:** Thank you.

20 **CHAIRPERSON:** Thank you, from what I have just said now and part of what I said last week, then all counsel and attorneys for implicated persons will have gathered that I require a full version in regard to allegations implicating third persons, that's important. Part of the reason why it's important is, it will give me an idea of how much time, if I grant

permission to cross-examine I should grant, but also it is important to give me an idea of what the cross-examination will cover. So I know that Mr Hellens very properly took note of this last week and announced that he was to make sure that there was a full version from his client.

I am hoping that all counsel have taken note and that if their instructions are that what has been put up is not a full version, when they discuss with the Commission's legal team allowance can be made for them to file whatever supplementary affidavit to ensure a full version, but that will be the subject of discussion between all parties and subject to my approval. Mr Pretorius you want to say something?

- 10 **ADV PAUL PRETORIUS SC:** Yes Chair, may I ask you to reconsider your direction, in relation to whether the legal team should meet with the counsel for implicated parties before Ms Williams resumes her evidence. The position is that both Mr Maleka and Mr Makwena, who are assisting in the presentation of the evidence of Ms Williams, would prefer to be present when her evidence continues so that they can render the assistance that they have been rendering to Ms Hofmeyer.

**CHAIRPERSON:** Okay.

**ADV PAUL PRETORIUS SC:** So the preference from the legal team would be by your leave, if you would consider, just allowing the break to take place now, a short break before the evidence resumes.

- 20 **CHAIRPERSON:** Okay. How much time do you think would be necessary Mr Maleka?

**ADV VINCENT MALEKA SC:** Chair can I suggest that Ms Williams continues with her evidence immediately and that during tea break, we will discuss such matters as you have directed. We will do so together with our learned friends during the tea break.

**CHAIRPERSON:** Oh okay. That's rather different, okay.

**ADV PAUL PRETORIUS SC:** I am receiving instructions obviously overruled by Mr Maleka

**ADV VINCENT MALEKA SC:** Chair we would prefer that the evidence of Ms Williams be concluded without further delay, and thereafter in the course of tea break, we will discuss matters that you have suggested that we do.

**CHAIRPERSON:** Well we are at 10:30. If we just took a thirty minutes break up to 11:00 would that not be enough to finalise the issue and then when we come back, then maybe we might have to do without the tea break and then continue. Ms Williams would you be fine with that?

**MS PHUMLA WILLIAMS:** Yes.

**CHAIRPERSON:** Thank you. Okay all right. I think lets rather take the break now, until 11:00 and then we resume. We adjourn.

**ALL RISE**

**HEARING ADJOURNS**

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## Session 2

**CHAIRPERSON:** Following a meeting between myself, the Commission's legal team, and various Counsel representing parties who have filed applications for permission to cross-examine certain witnesses, I give the following directions in relation to those applications as agreed to among Counsel for all concerned who were present at the meeting. The directions are the following:

1. Counsel on all sides, will file their written submissions with the Secretary of the Commission tomorrow at 10.00 am. I just emphasise that they are to be filed with the Secretary of the Commission.
- 10 2. Subject to 3 below, the applications which have been filed will be heard on Wednesday this week at 10.00 am.
3. The date for the hearing of these applications is likely to remain Wednesday at 10.00 am but may be moved to Thursday this week depending on what transpires in communications between the Commission's legal team and Counsel for Mr Jonas and for Ms Mentor with regard to whether or not, they wish to be or they want to be present when the applications are heard.
4. The Commission's legal team will inform me by 12.00 noon tomorrow as to what will have transpired in their discussions with Counsel for the two witnesses so as to enable me to indicate whether the date of Wednesday remains for the hearing of the  
20 applications or whether the hearing is moved to Thursday. Those, therefore, are the arrangements unless Counsel thinks there is something I have left out that I should have included. Mr Maleka?

**ADV VINCENT MALEKA SC:** Chair, can we mention the directions in 3 and 4 also accommodate the legal representatives of Mr Maseko?

**CHAIRPERSON**: Oh, okay. The directions in 3 and 4 will include the legal representatives of Mr Maseko, thank you. Have I covered everything, Mr Hellens?

**ADV MIKE HELLENS SC**: Yes, we were going to make the Maseko comment, but now it's complete.

**CHAIRPERSON**: Okay thank you. That then is how we dispose of the applications or matters relating to the applications for now. I am then ready that we resume the evidence of Ms Williams, thank you.

**ADV KATE HOFMEYER SC**: Thank you Chair.

**CHAIRPERSON**: Yes, thank you. One sec. Yes Ms Hofmeyer?

10 **ADV KATE HOFMEYER SC**: Thank you Chair. Chair, before we continue with the evidence of Ms Williams, there is one matter of housekeeping that I require to update the Chair on. Chair, that relates to the SMS correspondence that Ms Williams received in the course of the evidence on Friday. We would like to inform the Chair that we have received an affidavit from Mr Manye. It came in in the latter part of yesterday that was the 2<sup>nd</sup> of September. There is ongoing investigation by the Commission's investigators and I understand that a report is being prepared by the investigators and so it is our proposal that that report be completed, that Mr Manye's affidavit be included within that report and that that be furnished in due course to the Chair as soon as it is ready in order for the implications of the SMS correspondence for the processes of the Commission to be dealt  
20 with.

**CHAIRPERSON**: Okay, that is in order thank you.

**ADV KATE HOFMEYER SC**: Thank you Chair. If I may then return to Ms Williams's evidence, Ms Williams, just to pick up on an aspect that we addressed on Friday which

related to a potential difference between your evidence and that of Mr Maseko regarding the date on which he was removed from GCIS. Chair, you will recall that in the course of that engagement with Ms Williams, I undertook to go back to the transcript to clarify precisely what Mr Maseko had said in relation to those dates and for your benefit and that of Ms Williams, I would just like to give you the reference.

Chair, the relevant part of the transcript is in the transcript of the 30<sup>th</sup> of August, 2018 and it appears at page 40 of that transcript and it runs at various points on that page and rather than read it, what I will do is just summarise the nub of the evidence. What Mr Maseko testified to, was that he had received the call initially from Minister Chabani on  
10 the 30<sup>th</sup> of January which was a Sunday. He had then met with him on the Monday which was the 31<sup>st</sup> of January and his actual removal and its notification to the public happened at a Cabinet Meeting and thereafter media statement by Minister Chabani on Wednesday the 2<sup>nd</sup> of February.

Ms Williams, you will recall it was his reference to February that I raised with you in your evidence because your statement had said that the removal happened on or about January 2011. Do you have a comment on that date in relation to the clarity that we now have from Mr Maseko's evidence?

**MS PHUMLA WILLIAMS**: Chairperson, I did go and verify the fact. It's true that the  
20 address by Mr Maseko and Mr Manye subsequently was on the 2<sup>nd</sup> February and I would concur with that.

**ADV KATE HOFMEYER SC**: Thank you Ms Williams.

**CHAIRPERSON**: I am sorry, she says the address?

**MS PHUMLA WILLIAMS**: The addressing of the Management Meeting.

**CHAIRPERSON**: Oh.

**MS PHUMLA WILLIAMS**: Remember, I indicated that Mr Maseko came that mid-morning which I wasn't certain of the time, however, my affidavit was indicating that it was around January, now what I have since established that it did take place, but it was on the 2<sup>nd</sup> and also the subsequent arrival of Mr Manye, it was on the 2<sup>nd</sup> later in the day.

**CHAIRPERSON**: Okay, I think what confused me is the reference to the address. I think when we were talking about the departure of Mr Maseko from the department and Mr Manye's arrival. That's what we were talking about I think. You say that day when Mr Maseko departed from the department and when Mr Manye arrived, you now say that  
10 date is in terms of the version given by Mr Maseko?

**MS PHUMLA WILLIAMS**: Certainly Chairperson.

**CHAIRPERSON**: Thank you.

**ADV KATE HOFMEYER SC**: Thank you Chair. Ms Williams, if I may then ask you in Exhibit F1 to go to your statement at page 7, as that is where we left off on Friday. Ms Williams, you will recall that when we left off on Friday, we were discussing the ruling that you had received from the Public Service Commission. That is referenced at paragraph 26 on page 7 but at the time that we adjourned on Friday, we were dealing with the actual content of that ruling and so if I may ask you to go to page 56 of the papers which is the 12<sup>th</sup> page of that ruling from the Public Service Commission. And just to orientate  
20 ourselves in your evidence Ms Williams. As I understand the position, the ruling from the Public Service Commission, was a product of a grievance that you raised with them in relation to the fact that you had in your acting position as Cabinet spokesperson, been in a position on a Level 16 for more than six weeks and as a consequence of that had sought remuneration commensurate with that position, is that correct?

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

**ADV KATE HOFMEYER SC**: And you took up the issue with the Public Service Commission as I understand your evidence when Minister Muthambi refused to remunerate you on Level 16, is that correct?

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

**ADV KATE HOFMEYER SC**: We dealt with some of the findings of the Public Service Commission on Friday, but what appeared at page 56 is really the conclusion of their finding in relation to your grievance in relation to Level 16. If you go two-thirds of the way down in that paragraph 29.8, you will see that the ruling records, "taking into  
10 consideration that Ms Williams had been performing the role of Cabinet spokesperson which should be performed by the Director General of GCIS, it is accepted that she performed on Level 16. Furthermore, both Ministers Radebe and Muthambi signed a performance agreement of Ms Williams reflecting the salary level as 16 thereby contracting to her performance on that salary level". Ms Williams, what did the Public Service Commission conclude therefore in relation to that finding?

**MS PHUMLA WILLIAMS**: Chairperson, the conclusion was that indeed, whilst working as an acting Cabinet spokesperson, I was on Level 16 and therefore should be compensated accordingly.

**CHAIRPERSON**: Ms Hofmeyer, unless the idea is that some of these details show that  
20 for example, certain people did certain things because of anything connected with either state capture or corruption and fraud, it would seem to me that some of these might be quite important to a particular witness, but might not really be relevant or significant for purposes of the Commission, so I just want to make sure that you keep an eye on that. Obviously if in the end the argument is going to be that the failure for example by Ms

Muthambi or whoever, to make sure that she was paid at the correct rate, shows a certain motive that's relevant for our terms of reference, the detail would not be relevant.

**ADV KATE HOFMEYER SC**: Indeed Chair, if I may address that pertinently because there has been aspects of Ms Williams's evidence which on their face, do not directly relate to the questions that the Chair has posed, but I would like to address it if I may because you will recall that my learned leader, Mr Maleke, explained at the beginning of his introduction to the term of reference 1.6, that we were going to receive evidence first from Mr Maseko who was going to speak directly to his removal from the Head from the position of Head of GCIS and then to be followed by the evidence of Ms Williams, who  
 10 was going to speak as the person who has been in that institution, I would suspect for the longest time, of how that institution was carried forward after Mr Maseko's departure and particularly how that institution thereafter facilitated payments of advertising spend for national departments to the Gupta linked media entities of TNA Media, etcetera. So that is where Ms Williams in the chronology is placed in her evidence but Chair, we submit that the details of the management of GCIS, is more generally relevant to the terms of reference of this Commission and if I may just direct the Chair to some of the evidence that we received from the experts on Friday afternoon. Ms Williams, I am not sure that you remained for that evidence, did you stay?

**MS PHUMLA WILLIAMS**: No.

20 **ADV KATE HOFMEYER SC**: It will be relevant because I would obviously ask for you to comment on this in due course in your evidence, but one of the important points that were made by those experts, Dr Hellman and Dr Kaufmann, is that one of the ways in which in their research over the better part of twenty years into the phenomenon of state capture, that it takes place in a society is when institutions are denuded of their efficiency and

where the governance of those institutions is undermined. It is in the context of that damage to the institutions of a state that the ground for state capture is made available and becomes fertile and Chair, in due course, not through Ms Williams but in due course, we will address the Chair on precisely the institutional deficiencies that have occurred across the board of the institutions in our state and the governance that has been undermined provided we can show that that links to the state capture, corruption and fraud which are the main focus of the Commission.

So Chair, with your leave at this point, we are seeking simply to get the detail of what happened to the institution of GCIS after Mr Maseko left, after Mr Manye came in, after  
10 he was replaced by Mr Diphoko and under the stewardship of Minister Muthambi. We will glean those facts as we have from Ms Williams and we will look at the question of whether the governance of that institution was undermined in a manner that facilitated payments to Gupta linked entities that were otherwise untoward.

**CHAIRPERSON**: Okay, no that's fine, as long as you keep an eye on relevance and significance.

**ADV KATE HOFMEYER SC**: Indeed Chair, we intend to do so.

**CHAIRPERSON**: Thank you.

**ADV KATE HOFMEYER SC**: So Ms Williams, there is a ruling that you should be paid at Level 16, what happened? Were you paid at that level?

20 **MS PHUMLA WILLIAMS**: Chairperson, I was not paid.

**ADV KATE HOFMEYER SC**: And then, if you go to page 57, there is furthermore a ruling from the Public Service Commission at paragraph 31.4 that the filling of the post of Director General of GCIS must receive priority and the Public Service Commission must

be informed of the finalisation thereof and they make reference earlier to the period of six months in terms of which their circular required that position to be filled. Did that take place?

**MS PHUMLA WILLIAMS**: No, Chairperson the post was not filled.

**ADV KATE HOFMEYER SC**: If we can then return to your statement Ms Williams at page 8.

**CHAIRPERSON**: I am sorry Ms Hofmeyer, that letter from the Commission is dated 1 February 2016.

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

10 **CHAIRPERSON**: Now, that post wasn't filled up to the time that you were appointed, or are you still acting, I can't remember anymore now? Are you still acting?

**MS PHUMLA WILLIAMS**: I am still acting Chairperson.

**CHAIRPERSON**: So that post remains unfilled?

**MS PHUMLA WILLIAMS**: Yes Chairperson.

**CHAIRPERSON**: Thank you.

**ADV KATE HOFMEYER SC**: Chair, if we may just assist. We are now in February 2016. At that stage Ms Williams, what position did you hold in GCIS?

**MS PHUMLA WILLIAMS**: 2016, I would have to check.

20 **ADV KATE HOFMEYER SC**: If you go back and I may be of assistance, I don't regard this as being contentious. As I have it, you were acting Cabinet spokesperson, but you were no longer acting DG, you had returned to your position as Deputy Director General, is that correct?

**MS PHUMLA WILLIAMS**: That's correct Chairperson, I was still the acting Cabinet spokesperson at that time.

**ADV KATE HOFMEYER SC**: And who was holding the position of acting DG of GCIS at that time?

**MS PHUMLA WILLIAMS**: It was Mr Donald Diphoko.

**ADV KATE HOFMEYER SC**: Thank you. In so far as the failure on the part of Minister Muthambi to follow the recommendation of the Public Service Commission to pay you at Level 16, do you know why that recommendation was not implemented by the Minister?

**MS PHUMLA WILLIAMS**: Chairperson, I have no idea because my understanding was  
10 that the Public Service Commission is an institution that actually would give a ruling and a political principle should actually adhere to that recommendation.

**ADV KATE HOFMEYER SC**: And the further recommendation that the post of Director General of GCIS finally be filled because on the chronology as I have it, until this point, since Mr Maseko left in February 2011, there had been no appointment of a Director General of GCIS. Do you have insight as to why no steps were taken on the part of the Minister to advertise and fill that position finally?

**MS PHUMLA WILLIAMS**: Just to correct. I think the post became vacant when Mr Manye left which was August, 2012, but I have no idea why it has not been filled.

**CHAIRPERSON**: So that post has remained vacant for about six years, that's very  
20 strange. That's very strange. For six years?

**ADV KATE HOFMEYER SC**: Ms Williams, what does that do to an institution such as GCIS to have that failure to fill a position at the head of the institution?

**MS PHUMLA WILLIAMS**: Chairperson, my understanding is that the Public Finance Management Act does provide that a department must have an accounting officer and the implication indeed is that you have an institution that has an acting person who has not been appointed and necessarily, you don't have a full time accounting officer as prescribed by the PFMA, so it does have an impact in terms of the leadership of that institution.

**CHAIRPERSON**: Well, you have acted in the position and you have been Deputy Director General for a number of years at GCIS. Does the post of Director General of GCIS require any skills or expertise that is difficult to find in the country?

10 **MS PHUMLA WILLIAMS**: Chairperson, my understanding is that I don't think it's a specialised - it's a post that you require a person with good governance and the communication skills and an understanding of the policies of the Department, so in my view, it is not a scarce skill. I think Chairperson, if I may say, I think what was even particularly frustrating, is the fact that even when you are acting, you then get bullied throughout the process, almost rendering even with you having the capacity to perform, you then continuously get bullied that you are almost finding it difficult to perform.

**CHAIRPERSON**: Well, you have been DG for some time and you have been within government for many years and you have acted as DG as well. Would the President be unaware that for example, there is a department that has had no DG for many years? Is  
20 that something you are able to say or that is something you are not able to say?

**MS PHUMLA WILLIAMS**: Chairperson, I am able to say it for the simple reason that year in and year out, the Auditor General has been raising concerns about it and it was continuously raised with the relevant Minister who was in place at that time. It was raised

with Minister Muthambi, it was raised with the previous Minister so I am aware that it is something that was continuously raised by the Auditor General.

**CHAIRPERSON**: But you don't know to what extent a President would be unaware of a vacant position of a DG if it continues for a long time?

**MS PHUMLA WILLIAMS**: Chairperson, my understanding is that the President of the country should be aware for a simple reason that as a Cabinet spokesperson, you sit in Cabinet, you continuously addressed, as an Acting so my understanding is that the President was very much aware that there was no Director General of the GCIS.

**CHAIRPERSON**: Thank you.

10 **ADV KATE HOFMEYER SC**: Thank you Chair. If I may just pick up this point in relation to the regulations that govern GCIS, because it is again a feature of what happened after Mr Maseko's departure from GCIS and the manner in which it was managed for a period of six or so years thereafter. Could I ask you to go the page 163 of the papers? Chair and Ms Williams, this is a portion of the Public Service Commission regulations...[intervenes]

**CHAIRPERSON**: I'm sorry what page is that?

**ADV KATE HOFMEYER SC**: 103

20 Just to orientate you Ms Williams, the Public Service Regulations of 2016 begin at page 94 of the papers and I have directed you to a particular page within those regulations, page 163. If you flip back a page, at page 162, you will see that that is the regulation dealing with advertising of posts within the Public Service. And if you go over the page to regulation 50, sorry 65, sub 7, you will see there the stipulation that a funded vacant post shall be advertised within six months after becoming vacant and shall be filled within 12 months after becoming vacant. Now Ms Williams, before I ask for your comment on that

Chair, just to satisfy you, the preceding regulations which were in place prior to 2016 had a similar provision. They are published in Government Gazette 70322, in Notice R111 of the 8<sup>th</sup> February of 2018, but the equivalent provision can be found there. So it operated throughout the period that we are concerned with. Ms Williams, is, that, your understanding of the position of the Public Service that these positions must be advertised within six months and must be filled within 12?

**MS PHUMLA WILLIAMS**: That's my understanding Chairperson I think that's why I was saying that the Auditor General has been consistently raising a finding around this matter.

**CHAIRPERSON**: Has the Auditor General's report raising this matter been simply  
10 ignored as far as you know?

**MS PHUMLA WILLIAMS**: What I know is that the post has not been filled Chairperson.

**CHAIRPERSON**: Yes.

**MS PHUMLA WILLIAMS**: And the political principles that were responsible at the time, they are aware of the report that was raised by the Auditor General.

**CHAIRPERSON**: Yes. Now you are acting in the position, are you privy to any reasons or explanations why as of today, the post has not been advertised?

**MS PHUMLA WILLIAMS**: I am not privy Chair.

**CHAIRPERSON**: And as far as you know and you ought to know being the acting DG, are there any plans in place to have the post advertised anytime soon?

20 **MS PHUMLA WILLIAMS**: Chairperson, I wouldn't really speak on that. I am not aware of it.

**CHAIRPERSON**: Ja okay. Thank you.

**ADV KATE HOFMEYER SC**: Thank you Chair. Ms Williams, before we move to the next topic of your evidence, I would like to ask for your comment on page 70...[intervenes]

**CHAIRPERSON**: I am sorry Ms Hofmeyer to interrupt, let me just finish something that's connected with my last question. During your acting period as DG now, what happens to your position of Deputy Director General. Is there somebody else acting in that position and is it somebody who is within GCIS or is it somebody from outside, in other words, what is the impact on the functioning of the department, of the fact that this post has not been filled and you have to act in that post and then maybe somebody else must act in your position. I don't know whether somebody else must act in that other person's position and somebody else must act in that other person's position. What is the position?

10

**MS PHUMLA WILLIAMS**: Chairperson, if I can just take a step back. When I was moved back to be the acting Cabinet spokesperson, one of my letters to the Minister in accepting, I had indicated that if she could appoint somebody in the Corporate Services as a DDG. Now for that duration, nobody was giving leadership in that branch up until my acting was stopped. Currently the current Minister has appointed me as an acting Director General, but she has also appointed an acting DDG in that however, the Chief Director for the Human Resources is doubling up, there is no-one who has been appointed because he has moved, Mr Semakane has moved to the position that I had but then we can't appoint a person because it is a funded Chief Director post so the person is doubling up in that area.

20

**CHAIRPERSON**: Thank you.

**ADV KATE HOFMEYER SC**: Ms Williams, in relation to that last answer, what is the impact on the morale of the institution of GCIS with this moving and doubling up and uncertainty as to the filling of formal positions?

**MS PHUMLA WILLIAMS**: Chairperson, if I may just say that the damage that was done by the Minister Muthambi for a very long time GCIS was called a Hollywood place because a lot of people when they resigned and I should indicate that one of the other things that Minister Muthambi did, took over the powers of appointing people. When the post becomes vacant, it has to be at her whims whether she fills the post or not, so from Directors we had a lot of Directors that were vacant, we had a lot of Chief Directors that were vacant, all the DDG's that were there, had left and basically the institution was becoming completely dysfunctional. The next Minister who took over, Minister Dlodlo, with credit to her, she managed to fill those posts because most of the Directors that had  
10 left, she just didn't fill them so the Minister Dlodlo who then came, fast-tracked filling those posts but up till now we still don't have the DDG's but the Chief Directors and the Directors were then filled by the next Minister which was Minister Ayanda Dlodlo.

**ADV KATE HOFMEYER SC**: And just to get our chronology clear Ms Williams, can I clarify, you were demoted as I have it from the chronology, from the position of acting DG in October 2014 and that is the date on which Mr Diphoko took over from you as acting DG, is that correct.

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

**ADV KATE HOFMEYER SC**: And that position persisted as I have it from your chronology until April 2017 where you were placed back in the acting position by the  
20 current Minister Dlodlo, is that correct?

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

**ADV KATE HOFMEYER SC**: So from the period October 2014 to April 2017, Mr Diphoko was in that position as acting Head of GCIS and you were in a Deputy Director General position, is that correct?

**MS PHUMLA WILLIAMS**: At some point I was a Deputy Director General then I was appointed as an acting Cabinet spokesperson.

**ADV KATE HOFMEYER SC**: Indeed but without ever reassuming the position of Director General of GCIS, is that correct?

**MS PHUMLA WILLIAMS**: That's correct Chairperson.

**ADV KATE HOFMEYER SC**: Thank you. I then ask Ms Williams that you turn to page 70 of the papers of Exhibit F1 which is your bundle. It's, part of the theme that we are exploring at the moment with you Ms Williams, what the role of the head of an institution like GCIS, entails and how the failure to fill that position impacted on the institution. Page 10 70 is a section of the Public Service Act and you will see in the middle of the page under subsection 7(3)(b), the roles of the head of department of a national department, are set out there. I would like to go through them with you and with reference to them, invite your comment on the impact of this period, where there was no formal head of GCIS in the position. You will see that Section 7(3)(b) says: "Subject to the provisions of paragraph (c) and (d) which are not pertinent for present purposes, a head of a department shall be responsible for the efficient management and administration of his or her department, including the effective utilisation and training of staff, the maintenance of discipline, the promotion of sound labour relations and the proper use and care of State property, and he or she shall perform the functions that may be prescribed." Can you tell us with 20 comment on those sections, what the impact was on the GCIS?

**MS PHUMLA WILLIAMS**: Chairperson, if I may describe the situation at the time. I think the organisation was working on auto, precisely because we were fortunate that we have an organisation of very, very, dedicated public servants. They knew their work and they were actually doing the work as committed public servants. If you were asking me

whether were they getting any strategic direction from the head, I would say no, there was no strategic leadership at all whatsoever.

**ADV KATE HOFMEYER SC**: Thank you, if we may then return to page 8 of the Exhibit F1. You will see at the top of that page, at paragraph 27. You record the fact that Minister Muthambi never implemented the Public Service Commission's recommendations and you go on to say instead, she reversed my responsibilities as Cabinet Spokesperson in April 2016 and she directed that you revert back to your previous portfolio. What portfolio was that?

10 **MS PHUMLA WILLIAMS**: Chairperson, that portfolio is the portfolio that I left to be the acting Cabinet spokesperson and in April, she then wrote me a letter to say revert back to your role as the Deputy Director General of Corporate Services.

**ADV KATE HOFMEYER SC**: Ms Williams, you take up at paragraph 28 on that page, steps that you took in the face of that conduct by Minister Muthambi. Please could you tell the Chair about those steps?

20 **MS PHUMLA WILLIAMS**: Chairperson, at that point, because clearly I think Minister Muthambi, that was in April and the letter from the Public Service Commission had been given to us as early as February and she was not interested in implementing the recommendations. I then took up the matter with the President because the report I was made to believe by the Public Service Commission, has also been sent to the President because the Minister was accountable to the President. I then made an effort to communicate with the President with the view of requesting his intervention that I be compensated for the period that I was acting.

**ADV KATE HOFMEYER SC**: And what was the President's response?

**MS PHUMLA WILLIAMS**: In this second round he never gave me the appointment.

**ADV KATE HOFMEYER SC**: And just to go back to a question that the Chair asked you earlier. The Chair queried whether to your knowledge Minister Muthambi's failure to fill the vacant post of Head of GCIS was brought to the President's attention, or her requirement in terms of the Public Service Commission ruling to do so within six months of February 2016. To your knowledge, did the ruling of the Public Service Commission go to the President for his consideration?

**MS PHUMLA WILLIAMS**: I was advised by the Public Service Commission that a copy was sent to me, another copy was sent, to the, Minister and another copy was sent to the President.

10 **ADV KATE HOFMEYER SC**: Thank you, if we can then return to paragraph 29 on page 8. Ms Williams in paragraphs 29 and 30, you talk about the next change that occurred to your responsibilities within GCIS after you were instructed by Minister Muthambi to resume the position of Deputy Director General. Please can you tell us about that further change that occurred in August 2016?

**MS PHUMLA WILLIAMS**: Chairperson, when I went back to my portfolio that I was hired to do and that was in April and one morning I got to the office and I found another letter and this time, it was a letter that was informing me that the Minister has directed Mr Diphoko to take most of my functions as the Deputy Director General. Ja.

**ADV KATE HOFMEYER SC**: Where were they taken?

20 **MS PHUMLA WILLIAMS**: The functions were taken to the Director General who was acting at the time.

**ADV KATE HOFMEYER SC**: That would be Mr Diphoko?

**MS PHUMLA WILLIAMS**: Mr Diphoko yes.

**ADV KATE HOFMEYER SC**: If we could go to that letter, it's at page 39 of Exhibit F1.

Can you confirm that this is an internal memo from Mr Diphoko to yourself dated the 1<sup>st</sup>

August, 2016? Apologies, it's, page three nine, 39. Is that correct?

**MS PHUMLA WILLIAMS**: Yes, that's correct.

**ADV KATE HOFMEYER SC**: And you received this?

**MS PHUMLA WILLIAMS**: I received this Chairperson.

**ADV KATE HOFMEYER SC**: If we can go to paragraph 1, Mr Diphoko records that in line with the Treasury Regulations, clauses 2.1.2 and 3.2.9 issued in terms of the PFMA, he records: "The Minister directed the Acting Director General that the below mentioned functions must report directly to the office of the accounting officer. I would like to look at that in some detail. Let's begin with who occupied the office of accounting officer at that  
10 time in GCIS.

**MS PHUMLA WILLIAMS**: The accounting officer at the time was Mr Diphoko.

**ADV KATE HOFMEYER SC**: Then I would like us to focus on his recordal that the Minister has directed as I understand it, him, Mr Diphoko to do certain things. What do you make of the Minister's direction to Mr Diphoko, that there must be some rearrangement within the functions of GCIS?

**MS PHUMLA WILLIAMS**: Chairperson, my understanding of the PFMA, the Minister doesn't get involved in the running of the department. That in itself was odd to me. For the accounting officer to say he is acting on an instruction on something that should have belonged to him but he then says that the Minister is saying, this is what I should instruct  
20 you to do was a bit irregular, was almost wrong Chairperson.

**ADV KATE HOFMEYER SC**: And then if we go on to understand the content of that instruction, the instruction was that and I quote: "The below mentioned functions must

report directly to the office of the accounting officer and then listed first in the sub paragraph is the Chief Financial Officer. Who was that at the time in GCIS?

**MS PHUMLA WILLIAMS**: The Chief Financial Officer Chairperson was Mr Zwele Momeko.

**ADV KATE HOFMEYER SC**: And can I ask about the processes in place in August 2016 when you received this internal memorandum. What was the process for the Chief Financial Officer to report to the acting Director General in the period prior to this memo being received by yourself. Were they engaging, weren't they? If they were, what was the relevant regularity of that engagement?

10 **MS PHUMLA WILLIAMS**: My understanding Chairperson of the role of the CFO as provided for in the Public Financial Management Act, is that the CFO should be accountable to the accounting officer which is the DG, not report necessarily and what used to happen in our case, was that the accounting officer at all time had a line of sight of the CFO through a monthly budget committee meeting which he chairs, the DG chairs, this is what was happening during Mr Joel Netshitenzhe, this is how it was happening during Themba Maseko and this is how it was happening also with Mr Manye. The DG is receiving reports on a monthly basis in a sitting of the budget committee from the Chief Financial Officer so there was never at any stage where the Chief Financial Officer is not reporting the expenditure of the department to the accounting officer.

20 **CHAIRPERSON**: So, at a practical level, what change would this direction of the Minister bring about then?

**MS PHUMLA WILLIAMS**: Chairperson, what it meant and I will list them, I hope I remember all of them. It meant, the cleaners report to the Director General, it meant the Security...[intervenes]

**CHAIRPERSON**: I am sorry?

**MS PHUMLA WILLIAMS**: The cleaners were reporting directly to the Director General because that whole portfolio was reporting under a CFO because we were a small department so when they took that function, it therefore meant the cleaners were reporting to the Director General, the Registrar was reporting to the Director General, the Supply Chain which was in procurement, was reporting to, the salaries were reporting to the DG, the transport services was reporting to the DG, the auxiliary services, the asset managements, all of that was just directly reporting to the Director General, which is why I was saying that the bulk of the work of the Deputy Director General was removed under  
10 the guise of this Treasury regulation.

**CHAIRPERSON**: So the Chief Financial Officer's office if that's what one can call it, has a number of components, is that right, or sections?

**MS PHUMLA WILLIAMS**: Certainly Chair.

**CHAIRPERSON**: And those are the ones you were mentioning?

**MS PHUMLA WILLIAMS**: Yes Chair.

**CHAIRPERSON**: You are saying that this direction recorded in Mr Diphoko's internal memo at page 39, meant what you have just said as far as you understood it?

**MS PHUMLA WILLIAMS**: That is correct.

**CHAIRPERSON**: Okay thank you.

20 **ADV KATE HOFMEYER SC**: And Ms Williams, if I may just clarify, prior to this internal memo, who was overseeing those functions?

**MS PHUMLA WILLIAMS**: It was myself Chairperson.

**ADV KATE HOFMEYER SC:** For want of a better description, a middle management level.

**MS PHUMLA WILLIAMS:** I was middle management I was a Deputy Director General, responsible for that whole corporate services portfolio which included the CFO.

**ADV KATE HOFMEYER SC:** And just to clarify further, before this internal memo, there was I think, in your words, a line of sight consistently between the Chief Financial Officer and the Director General, is that correct?

**MS PHUMLA WILLIAMS:** That's correct Chairperson.

**ADV KATE HOFMEYER SC:** That happened consistently and despite that, in August  
10 2016 there was an instruction from Minister Muthambi that those aspects which you had formerly been responsible for as Deputy Director General, now excludes you and report directly to the then Acting Director General, Mr Diphoko, is that correct?

**MS PHUMLA WILLIAMS:** That's correct Chairperson.

**ADV KATE HOFMEYER SC:** If we can then return to page 8 of your statement.

**CHAIRPERSON:** I am sorry Ms Hofmeyer, before you received this internal memo from Mr Diphoko, was there any process in terms of which you were engaged either by the Minister or Mr Diphoko to say it was felt there was a need to effect this change and what was your view and so on?

**MS PHUMLA WILLIAMS:** Chairperson, I did raise precisely those issues because in my  
20 understanding you don't just wake up one morning and you change and you don't engage the people who are concerned. I was never consulted the sections that were moving, they just woke up one morning and were told that they are no longer, so there was no consultation hence my elevating my grievance on this matter.

**CHAIRPERSON**: And this was not at the time when you were acting spokesperson, acting Government spokesperson and you had asked that somebody else should take care of your position?

**MS PHUMLA WILLIAMS**: That's correct Chairperson, I was back in my position as the Deputy Director General.

**CHAIRPERSON**: And what were you left with after the implementation of this direction from Minister Muthambi in terms of your responsibilities?

**MS PHUMLA WILLIAMS**: I was left with Human Resources and Administration and I was left with Human Resource Development, Strategy Planning, and the IT.

10 **CHAIRPERSON**: You must have asked for a reason why this change was made. If you did ask, what reason were you given?

**MS PHUMLA WILLIAMS**: I wrote a letter Chairperson to the Minister to try and raise those issues to say I mean there should have been a process, as I recall, the starting line was that I thought you have left, I am surprised you are still there because I was told you have left and in any case, it is my right, I have instructed and it is my right as a Minister.

**CHAIRPERSON**: Oh I guess, maybe that is something you are still going to come to?

**ADV KATE HOFMEYER SC**: Indeed Chair, if I may take us to that correspondence because I think it will assist with the ...[intervenes]

20 **CHAIRPERSON**: Just before you do that, Ms Williams, I see that internal memo from Mr Diphoko is dated 19 August, 2016, but paragraph 4 of the memo says that the implementation of the directive he calls it, was to be with effect from 1 August 2016. Do you know whether the reason why on the 19<sup>th</sup> August, 2016, Mr Diphoko said, this change would occur with effect from 1 August, 2016 about close to three weeks

previously, retrospectively. Do you know why that was, or whether that was connected with the fact that already the change had been implemented before the memo was written?

**MS PHUMLA WILLIAMS**: Chairperson that is exactly what I had also noted that the letter was dated the 1<sup>st</sup> August and then signed on the 19<sup>th</sup>. It was signed on the 19<sup>th</sup> but it looks like it had been written a while back and kept and maybe waiting for the right time and then it was given to me on the 19<sup>th</sup> but it was saying retrospectively.

**CHAIRPERSON**: Yes.

**MS PHUMLA WILLIAMS**: I didn't know what it means because I had been managing that  
10 section from the 1<sup>st</sup> to the 19<sup>th</sup>. I didn't know what the status of the things that I have signed between the time whether they are irregular or I will be charged for signing things, I didn't know, I didn't quite understand it.

**CHAIRPERSON**: Or maybe what happened was it was prepared on the 1<sup>st</sup> August but didn't get ready for signing until much later, or he might not have got time to sign it until much later.

**MS PHUMLA WILLIAMS**: I think that's the thing, in fact, one of the things was an internal communication also was moved to his office.

**CHAIRPERSON**: Okay thank you, Ms Hofmeyer.

**ADV KATE HOFMEYER SC**: Ms Williams, just to clarify then, when did the change  
20 occur, when were these 70% out of your functions and we will come back to that percentage in a moment. As I understand your statement, you said, with effect from this memo and this instruction from Minister Muthambi, effectively 70% of your portfolio was

taken away from you. As a matter of fact, when did that occur, did it happen at the 1<sup>st</sup> August, or did it happen after the 19<sup>th</sup> August when this internal memo is dated?

**MS PHUMLA WILLIAMS**: Chairperson, ideally it should have taken effect from the 19<sup>th</sup> but I want to mention the fact that the situation, or rather, my situation was so bad, such that people were being managed individually on their own. They were called to the DG's office, so even if you were to ask me when they probably were already interacting with my division as they please.

**ADV KATE HOFMEYER SC**: Thank you Ms Williams, if we can then go to the correspondence that bears out the evidence that you have given to the Chair about you  
10 raising concern with this internal memo. Your letter appears at page 39.1. That is the document which Chair I asked on Friday be inserted to the bundle because it had been erroneously omitted. Ms Williams as I see it, this is a letter dated the 27<sup>th</sup> of September, 2016. I note addressed to the Honourable Minister Muthambi and it is a letter as I have it that you sent her, is that correct?

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

**ADV KATE HOFMEYER SC**: If you go to the bottom of page 39.1, the last paragraph there. In the preceding paragraphs, you have recorded the internal memo that you received and you have referenced the instruction that is apparent from that internal memo that Mr Diphoko received from the Minister and you go on in the last paragraph and I  
20 quote, to say the following: "Whilst I appreciate that the prerogative of rearranging the Department's functions resides with the Minister, I expect to be treated in fairly in conveying the Minister's decision. It is my understanding that when the conditions of employment change, the employee should be consulted", and then you say, "I was never consulted." Do you confirm that?

**MS PHUMLA WILLIAMS**: Yes I confirm that.

**ADV KATE HOFMEYER SC**: You go on over the page Ms Williams at page 39.2 to talk about these 72% of your functions that were removed from you. Can you please give the Chair a sense of what that meant for your position and I note later on in the letter you talk about having rendered it redundant. Please take us through that?

**MS PHUMLA WILLIAMS**: Chairperson, what it meant. I hope I'll get it right, I'll say it correctly. I was being paid as a Deputy Director General for doing all these functions that were not happening to me and yes, I think Chairperson, if you allow me to say what I want to say, I think if you indulge me because I think at this point I was I think Minister  
10 Muthambi or rather this woman, I am really being sorry to say what I want to say, Minister Muthambi had ripped my scars of torture completely, completely. I think when I was writing this letter, the effects of my torture were back. Chairperson, I was no longer sleeping, I had nightmares. I was reliving my situation. My facial twitches were back. I had panic attacks I saw torture going through my body again. I never thought in this Government people can do such things. I was tortured for weeks and Muthambi did the same thing to my body and that's why I wrote this letter as a way of trying to get her to understand what she was doing.

One, she was cheating the State, because basically, I was being paid because she wanted that procurement at all costs, she wanted to steal at all costs that removing of all  
20 those functions, it was a ploy to remove the finance and procurement away from me. They knew that they have removed me from doing Cabinet work. I was going to be a nuisance and they decided that the procurement and the finances must be removed from this woman and that's basically what they did. I had to contend with those scars back in my system, I couldn't say to anyone what I was going through. I had to be assisted by

colleagues at work Mr Semakane and Zukiswa who made it their problem that every morning they come and check on me. My sister had to move in in my house because at that point I was scared of going to bed because I thought the nightmares will come back. I started hearing those keys of my torture.

**CHAIRPERSON:** Ms Williams, if you need a break.

**MS PHUMLA WILLIAMS:** Please.

**CHAIRPERSON:** Yes, we will take a break, will 10 minutes be enough?

**MS PHUMLA WILLIAMS:** That's fine okay.

**CHAIRPERSON:** We will take a 10 minutes break, the time is 6 minutes past 12, okay, I  
10 will just say we will come back at 12:20. We adjourn.

**ADV KATE HOFMEYER SC:** Thank you Chair.

**CHAIRPERSON:** We adjourn

**CLERK:** All rise

**Session 3**

**CHAIRPERSON**: Ms Williams, are you okay?

**MS PHUMLA WILLIAMS**: Yes, Chairperson.

**CHAIRPERSON**: Thank you very much. You may proceed.

**ADV KATE HOFMEYR SC**: Thank you Chair. Ms Williams you have described for us how difficult it was to receive this treatment from Minister Muthambi. May I take you to page 59 of Exhibit F1?

**MS PHUMLA WILLIAMS**: Okay.

**ADV KATE HOFMEYR SC**: This page as I understand it is a notice from yourself to Mr  
10 Diphoko of your early retirement and it is dated 31 August 2016. Can you please tell us about this letter and how it relates to the news you got in the middle of August, or thereabout that these functions were going to be taken away from you?

**MS PHUMLA WILLIAMS**: Chairperson, indeed I had actually filed this report, because my health was failing me and I was not coping and with all the support that I was getting. I did not go to the doctor, because my fear was that I would have to relate my pain – so I then opted to say I wanted to take the early retirement so that I can make my whole situation get better.

**ADV KATE HOFMEYR SC**: But if you go over the page, Ms Williams, to page 16, there is a letter dated, only a matter of days later 5<sup>th</sup> of September, in which, as I read it you  
20 withdraw your notice of early retirement. Why would you do that?

**MS PHUMLA WILLIAMS**: Chairperson, if I may say that after I had filed my notice I had to dig deep in my inner soul that whether am I now doing the right thing or not. I had to dig deep to establish what made me strong in these tortures that I went through when

they wanted me to be an ascari. I then realised that I am selling my country and let alone failing my children who look up to me, except for music, they don't look up to me. I had to get myself out of the system that I am dealing with a minister here. I had to get out in my system that I am dealing with an ANC cadre. I had to accept that I am dealing with the enemy that is coming to steal in our country and I walked back. I woke up in the middle of the night and I drafted my withdrawal and I said I am not going back. I am going back to work to do what I had been passionate about and that is why I filed my reversal.

**CHAIRPERSON**: Ms Hoffmeyer, I am sorry I think you have touched on something that you might wish to give us an idea about, or just explain in one or two lines and it is really  
 10 a matter that I would leave in your own judgment, because when you spoke earlier on before the break, about your torture, I got the impression that you had been tortured physically at some stage in the past and you were viewing what, you were saying minister Muthambi was doing to you as another torture. So, I was not sure, before the break, whether to ask you more, but you have now referred to something about being required to turn into an ascari, or whatever. I do not know if there is anything you would like to say about that?

**MS PHUMLA WILLIAMS**: Chairperson, I was an ANC activist. I was arrested in 1998 and that was ...[intervenes]

**CHAIRPERSON**: 1998?

20 **MS PHUMLA WILLIAMS**: 1988, sorry.

**CHAIRPERSON**: 1988?

**MS PHUMLA WILLIAMS**: 1988.

**CHAIRPERSON**: Okay.

**MS PHUMLA WILLIAMS:** And I had to go through weeks of torture, because they wanted me to turn against my comrades, at the time and I should say that I was arrested by a former ANC MK cadre, called September. I was arrested in Soweto, but I was tortured in Piet Retief. Chairperson, throughout my life I have never ever thought I would have to relive that situation, because it was never a nice experience. But I think the effects of my torture which I had thought would never ever have to come back. I found myself having those facial twitches which came as a result of torture. I found myself having to go through those panic attacks at night, where you wake up shivering, thinking your heard the cell being opened and you then do not fall asleep immediately after that,  
10 you think they are coming, they are coming, they are coming and they do not come and in the morning you then wake up and you have to go to work and you get to the office you cannot tell anyone that this what you are going through.

I had those panic attacks which, even a car in the street where you know a hoot would just trigger it and all those symptoms, Chairperson they had already gone, because I had to go through medication and everything, but I found myself slipping through to that situation where I had to get the medication again and that is the experience that I had thought was sealed in my heart. It would never have to be re-opened, but little did I realise that it will be opened by the very same people who called themselves "comrade". The same people who claim to be from the ANC that I was from, also and they are the  
20 ones who did this to me. I think I was almost shattered, but Chairperson as I said that the reason I withdrew my retirement, I had to ask myself a question: how did I manage the torture and not to sell and ended up being sentenced to seven years. What is it? And I think Chairperson I came with one conclusion that the reason I could not be a sell-out is because I was so passionate with what I was struggling for and I was also accepting the fact that these are not my friends. These are the boers that are coming to torture me. But

in the case of Public Service I had to accept that this is not a minister this is an enemy. That is what really helped me. I do not think that woman was interested in serving the people of South Africa. I do not think that woman was interested in preserving the resources of this county and that is why I then said that I will be failing the people of South Africa if I allow the thief to get away with it.

**CHAIRPERSON:** Thank you.

**ADV KATE HOFMEYR SC:** Thank you Chair. Ms Williams you gave notice of the withdrawal of your early retirement as I have it at page 60, on the 5<sup>th</sup> of September and then if you go over the page to page 61 that appears to be an acknowledgement of receipt of the withdrawal of your retirement, from Mr Diphoko. Is that correct?

**MS PHUMLA WILLIAMS:** That is correct Chairperson.

**ADV KATE HOFMEYR SC:** And could you please read into the record what he says at paragraph 2 of that acknowledgement of receipt of the withdrawal of your retirement.

**MS PHUMLA WILLIAMS:** The last line says:

“Your continued dedication to the work of GCIS is appreciated.”

**ADV KATE HOFMEYR SC:** If I may then go back to your correspondence with the Minister, because as I have it, in the chronology, you put in the notice of early retirement. You then withdraw it a matter of days later and that is acknowledged on the 5<sup>th</sup> of September 2016 by Mr Diphoko. Is that correct?

**MS PHUMLA WILLIAMS:** That is correct, Chair.

**ADV KATE HOFMEYR SC:** Your letter of grievance to the Minister, which we looked at a moment ago, which is at page 39.1, is then dated later in September. It is the 27<sup>th</sup> of September 2016

**MS PHUMLA WILLIAMS:** Yes?

**ADV KATE HOFMEYR SC:** Is that correct?

**MS PHUMLA WILLIAMS:** The one that is dated – it is 40, page 40?

**ADV KATE HOFMEYR SC:** No, it is 39.1 it should be two pages back and that is as I have it is your letter to the Minister?

**MS PHUMLA WILLIAMS:** That is correct.

10 **ADV KATE HOFMEYR SC:** After the early retirement and withdrawal?

**MS PHUMLA WILLIAMS:** Yes.

**ADV KATE HOFMEYR SC:** Is that correct?

**MS PHUMLA WILLIAMS:** That is right.

**ADV KATE HOFMEYR SC:** And this is the one we were looking at before the adjournment, where you take up the issue of redundancy, 71% odd of your functions have been removed and it was done so without consultation. Is that correct?

**MS PHUMLA WILLIAMS:** That is correct.

**ADV KATE HOFMEYR SC:** And then if you go over the page to page to 40. You have Minister Muthambi's, as I read this document response to your letter. Is that correct?

20 **MS PHUMLA WILLIAMS:** Yes, that is correct.

**ADV KATE HOFMEYR SC:** Could you tell us over the page at page 41 the date of that document from Minister Muthambi?

**MS PHUMLA WILLIAMS:** It is on the 5<sup>th</sup> of October 2016.

**ADV KATE HOFMEYR SC:** At paragraph 1 on page 40 she deals with what she thought was your departure from GCIS. Can you take us through what she says there?

**MS PHUMLA WILLIAMS:**

10 “I have noted the contents of your letter dated 27 September 2016 on the above subject. I am surprised to receive your grievance after having considered your letter of termination of services with GCIS dated 31 August which I directed to the acting DG to accept.”

**ADV KATE HOFMEYR SC:** That appears not to have happened?

**MS PHUMLA WILLIAMS:** It did not.

**ADV KATE HOFMEYR SC:** Do you know why?

**MS PHUMLA WILLIAMS:** Chairperson I had already withdrawn my early retirement. In fact I did not even resign as she seems to understand, because my notice was a notice to apply for the early retirement. I did not resign. I do not know what she was talking about.

**ADV KATE HOFMEYR SC:** Ms Williams ...[intervenes]

20 **CHAIRPERSON:** I am sorry. So, she may have understood your notice of early retirement as meaning that you were resigning?

**MS PHUMLA WILLIAMS:** Yes, Chairperson and probably she even bought a champagne.

**CHAIRPERSON**: Thank you.

**ADV KATE HOFMEYR SC**: Ms Williams at paragraph 2 of the minister's letter...[intervenes]

**CHAIRPERSON**: I am sorry again, Ms Hofmeyr. If you resign and if you occupy the position of Deputy Director General and you resign, who is supposed to accept your resignation to the extent that one makes you talk about an acceptance of resignation? Is it the DG? Is it the minister? Is it the president? Who is it?

**MS PHUMLA WILLIAMS**: It is supposed to be the Director General, not her.

**CHAIRPERSON**: Thank you.

10 **ADV KATE HOFMEYR SC**: Thank you, Chair at paragraph 2 on page 40, the Minister deals with her reasons for stripping you of 70% of your functions and ensuring that you were in essence, and these are my words excommunicated from the reporting line between the CFO and the then acting DG at the time. Who was the CFO at the time that these functions were removed from you?

**MS PHUMLA WILLIAMS**: It was Mr Zweli Momeko

**ADV KATE HOFMEYR SC**: Is he the same Mr Momeko whom you testified about on Friday, having bullied the supply chain management representatives within GCIS in August 2014 about the payment to TNA Media for the SABC Breakfast.

**MS PHUMLA WILLIAMS**: Yes, Chairperson, it is the same person.

20 **ADV KATE HOFMEYR SC**: And as I read paragraph 2 and you will tell me if I am incorrect, the Minister is grounding her decision to take these functions from you in treasury regulations 2.1.1, 2.1.2 and 2.1.3. Is that correct?

**MS PHUMLA WILLIAMS**: That is correct Chair.

**ADV KATE HOFMEYR SC**: What did you make of her explanation, based on these regulations for taking 70% of your functions away?

**MS PHUMLA WILLIAMS**: Chairperson, I think the Minister does not even seem to understand that those Treasury regulations have got a subsequent documentation that Treasury provided which is called a CFO Handbook. It goes to explain the essence of what the Treasury regulation is saying that it seeks to ensure that the accounting officer of an department has a line of sight, with a budget that he or she has been entrusted with and in our case we had that line of sight as prescribed by National Treasury and it was in  
10 the form of a budget committee. The Director General, on a monthly basis, without fail, he would convene a CFO together with the three DDG's and engage. It was not even a separate part of the management meeting, but it was a separate meeting dedicated to discuss the finances. So there was a line of sight as expected by the PFMA

**ADV KATE HOFMEYR SC**: Ms Williams I note from paragraph 2, of the Minister's letter, that she does not refer to clause 3.2.9 of the Treasury Regulations. If you go back to page 39, you will see that at page 39, when Mr Diphoko advised you of this rearrangement of your functions, he said that he had been directed by the Minister in terms of clauses 2.1.2 and 3.2.9 to require this direct engagement between himself and the CFO. Do you know why the Minister omitted clause 3.2.9 from her letter at page 40?

20 **MS PHUMLA WILLIAMS**: I do not know Chair.

**ADV KATE HOFMEYR SC**: Do you know what clause 3.2.9 of the Treasury Regulations says?

**MS PHUMLA WILLIAMS**: I would have to be reminded.

**ADV KATE HOFMEYR SC:** Indeed and maybe if you will permit me I will do so.

Regulation 3.2.9 says

“An internal audit must be independent with no limitation  
on its access to information.”

Ms Williams on what basis could that have been a reason to remove your functions from you?

**MS PHUMLA WILLIAMS:** Chairperson, maybe I should even have said that – I think yesterday, the other day when I was presenting the chief internal auditor had been removed by Mr Manye. It is one of the first functions that he decided to take and be  
10 responsible for the media buying and the internal audit. So, at this point, the internal audit was no longer reporting to me it was reporting to Mr Manye. So, I would imagine that probably they picked up that they made mistake and that is why they did not make reference to it.

**ADV KATE HOFMEYR SC:** Thank you, if you go over the page to page 41, this is the second page of the Minister’s letter. At paragraph 4 she deals with your concern about the redundancy that had now resulted, pursuant to her instruction that all of these functions be removed from you and she records there and I quote at paragraph 4

20 “On the part of redundancy it cannot be correct that the changes have resulted in the redundancy of your position, because your conditions of service have not been negatively affected. However you will agree with me that financial management and supply chain management are core functions of the chief financial officer.”

Could we break that up into two parts? That section before the “however”, what do you make of the Minister’s contention that this was not an issue of redundancy, because your conditions of service had not been negatively affected?

**MS PHUMLA WILLIAMS**: Chairperson, the response by the minister actually shocked me, because it has no regard, whatsoever of the taxpayers’ money. To her it is not a problem to continue to pay me for doing, almost like 30% of the work that I was being paid and to her it is okay. It does not matter. We have not tampered with your salary, but you can continue doing less with, because it is not her money. It is the taxpayers’ money and that is what shocked me.

10 **ADV KATE HOFMEYR SC**: And then she goes on in the second part of that sentence to solicit an agreement from you, that the financial management and supply chain management are core functions of the chief financial officer. Do you agree with her and did you agree with her, that those functions should no longer appropriately be reporting to you?

**MS PHUMLA WILLIAMS**: Chairperson I do not agree, because I do not think the Minister together with her Acting DG, took the trouble to understand how the organisation is structured. It was not about the CFO. It was not about supply chain. It was the whole suite, which is how we were structured and if they had bothered themselves to consult me, I would probably have explained it to them that that those functions do not strictly fall  
20 within the regulations that they are quoting and secondly it is not possible, it is not correct that the CFO is not accountable to the accounting officer, because at the time from 1998, the CFO has been accounting to the DG. So, the whole thing, you could see that it is just an attempt to get this supply chain and the finances to be in the hands of somebody that they can manipulate.

**CHAIRPERSON:** Ms Hofmeyr, just one more clarification, you were asked Ms Williams for your comment on Minister Muthambi's paragraph 4 where she said that the changes had not affected your conditions of service and your response was limited to the fact that you said she seemed not to have any concern that you were being paid a full salary for doing 30% of the duties attached to your post. What do you say about her assertion that the changes did not affect your conditions of service?

**MS PHUMLA WILLIAMS:** Thank you very much, Chair for bringing me back. I think I did say, attach my letter of appointment, which I did point out that it changes my conditions of employment, because my letter dated the 8<sup>th</sup> of May 2009 had the whole  
10 suite of these things. So, necessarily it was changing my conditions of employment. Thank you.

**ADV KATE HOFMEYR SC:** Ms Williams if we can return to your statement then at page 9 of Exhibit F1, Ms Williams at paragraph 32 on that page, you talk about an event in July 2016, where you were invited to an interview by Minister Muthambi in her office, on the 14<sup>th</sup> of July. Please can you take the Chair through those events?

**MS PHUMLA WILLIAMS:** Chairperson, I received correspondence from the Minister's office where they were inviting for an interview of the post of the Director General. Ja.

**ADV KATE HOFMEYR SC:** And if you go to page 42 of Exhibit F1, is that the invitation you received?

20 **MS PHUMLA WILLIAMS:** Yes, Chairperson, that is the one.

**ADV KATE HOFMEYR SC:** And what was your response to that invitation?

**MS PHUMLA WILLIAMS:** Chairperson what I indicated is that firstly, I had not applied for the post, at that point I had not applied. Secondly, I have never been invited for an

interview by a Chief of Staff. The way I understand Human Resources in the GCIS, the head of Human Resources is the one that will invite you. So, necessarily I then responded to say I have not applied and I am not interested in the invitation.

**ADV KATE HOFMEYR SC:** And to your knowledge, was that interview process ever concluded and an appointment made?

**MS PHUMLA WILLIAMS:** I do not know. All I know is that the post is still vacant and the GCIS Human Resources, for which I was responsible for Human Resources, was never ever contacted. So, nobody knew about this whole attempt for these interviews, Human Resources was not responsible. I do not know what happened to that interview process.

10 **CHAIRPERSON:** Did you get to know whether there were any other candidates who were invited to interviews at the same time, or more or less around that time for the same position?

**MS PHUMLA WILLIAMS:** In fact Chairperson, I can even say when I – before I even resounded I did phone HR and they were blank, they were not aware of anything. So, I do not even know who was, who applied, who was shortlisted, who the candidate was and I do not know anything about that, but all I know is that the post is still vacant now.

**CHAIRPERSON:** How was your relationship with Minister Muthambi around the time of this invitation?

20 **MS PHUMLA WILLIAMS:** It was strained. She was not interacting with me at all. She was interacting with the Acting Director General.

**CHAIRPERSON:** Well Ms Hofmeyr will tell me if it is something she is still coming to. I just find it strange if you have a situation where you have a strained relationship, she invites you for an interview for a, promotion and nobody else is invited, is shortlisted, or

will be interviewed for the position. On the face of it, leave out the question of whether proper procedures are followed, it appears that you are being offered an opportunity to be the only candidate. Do you understand what I mean? I do not know whether you want to comment on this line of thinking that I am having, at the moment?

**MS PHUMLA WILLIAMS:** Chairperson that is precisely why I did not apply, because I had strained relations. I was not quite sure how she proposes to work with me. At that time she was not even interacting with me, so I think that is basically what my view was, that I do not see why I should be applying for this post.

**CHAIRPERSON:** And you never got to know what the reason behind was for you being  
10 the only person being invited to an interview and no one else?

**MS PHUMLA WILLIAMS:** Chairperson, I do not know whether there were other people. All I know is that I got a letter. It may be that they did have other people. I do not know, but Human Resources also did not know.

**CHAIRPERSON:** Oh, but did you say that the normal procedure would be that the Human Resources Department would know of other candidates?

**MS PHUMLA WILLIAMS:** Yes, Chairperson.

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

**ADV KATE HOFMEYR SC:** Thank you, in relation to that process for advertising, Ms Williams. I referred you earlier to the regulations. The Public Service Regulations that  
20 talk about advertisements for posts within the Public Administration. Do you understand that those advertisements have to take place in an open and transparent manner and do you have details about what must happen must happen in the advertising process that you can enlighten us on?

**MS PHUMLA WILLIAMS:** Chairperson I will explain it the way we do it currently in the GCIS. When a post becomes vacant, we advertise it in the main newspapers which is prescribed and when the advert closes, we then appoint a selection committee which then processes all the applications and try and shortlist the ones that are close enough to the requirements and on the basis of that, the Chairperson of the evaluation committee will then decide who are the three that will then be interviewed. But there is generally a prior setting up of these structures. Once the advert is out the valuation committee is appointed in writing and the panel that will interview is also signed off. It is a panel that gets signed off. So that whole process, I was not aware of it and even at a Director

10 General level, the Human Recourses in GCIS or in the department participates in that shortlist – it ensures that the Minister sets up an evaluation committee, because even there, at the DG level there should be an evaluation committee. Even if is the same committee that ends up interviewing, it has to be appointed formally and then they agree on the shortlisted candidates and then they invite. That whole secretariat process is done by the head of HR and also on the day of the interviews in terms of the procedure, the head of HR sits and become a scribe, for those interviews and in this particular case, it was not done that way.

**CHAIRPERSON:** I do not know whether you, one can speak of headhunting somebody within a department. Is it not that you were being headhunted? If you are headhunted, do

20 those procedures, that you have just said, do they apply?

**MS PHUMLA WILLIAMS:** Chairperson, even if you are headhunted, as the processes I know it, you cannot be headhunted alone, there should be some kind of a process and Human Resources normally drives that process. It will headhunt, maybe three or four candidates and then put them into a shortlisted, but the committee still should exist and

the committee that interviews should still exist and the head of HR should form part of the secretariat of that process.

**CHAIRPERSON**: Oh I thought that the concept of headhunting, where it does apply, it is where a Minister or whoever is the appointing authority or DG is allowed to just look for somebody and identify that person and dispense with the various procedural issues requirements because maybe that person is very suitable and maybe there is no one else that seems available to meet the requirements of the post or something like that, but you are saying even if you headhunt, those procedures must still be complied with?

**MS PHUMLA WILLIAMS**: Yes, Chairperson if I may say also the condition for you to do  
10 the headhunting, you must have started with the normal advertising, open it up to the market, shortlist, and if you are not getting a suitable candidate and you can then – which is what happened with Mr Diphoko. You must have completed that process and then you can then headhunt. You can headhunt one or two, but still there should be a panel that interviews.

**CHAIRPERSON**: Thank you.

**ADV KATE HOFMEYR SC**: Chair, just to be of assistance, to close off this aspect. At page 162 of Exhibit F1 is the relevant regulation 65 of the Public Service Regulations that deals with advertising and consistent with the testimony that we have heard from Ms Williams and I will just highlight a few examples:

20 Regulation 65(1) says:

“An executive authority shall ensure that vacant posts in the department are advertised as efficiently and effectively as possible to reach the entire pool of potential applicants including designated groups.”

It then goes on over the page at 162(4) of regulation 65 to record that:

“An executive authority shall advertise any other vacant post as a minimum within the department, but may also advertise such post in the public service locally or nationwide. “

Ms Williams is that consistent with your understanding of the process?

**MS PHUMLA WILLIAMS**: That is correct.

**ADV KATE HOFMEYR SC**: Thank you. If we can then return to page 9 of your statement and Ms Williams I am happy to announce that we are basically at the end and  
10 just in advance of the lunch break. Ms Williams you record at paragraph 33 the change in the ministers in April 2017 and you have already given evidence that after the appointment of Ms Dlodlo in the position of Minister of Communications you were reinstated, is that correct?

**MS PHUMLA WILLIAMS**: That is correct.

**ADV KATE HOFMEYR SC**: What did minister Dlodlo do in relation to your outstanding requirement to be compensated at level 16 for the period that you were acting cabinet spokesperson?

**MS PHUMLA WILLIAMS**: Chairperson, one of the first things that I did was to also raise that there were these matters that were outstanding and she approved and then I was  
20 compensated according to the Public Service Commission.

**ADV KATE HOFMEYR SC**: At paragraph 34 you refer to a request that you received from Minister Dlodlo in relation to Mr Diphoko and Mr Momeko. Could you tell us about that request?

**MS PHUMLA WILLIAMS:** When Mister Muthambi was transferred to the DPSA she then wrote to the new minister, Minister Dlodlo requesting that the two officials be transferred, Mr Donald Diphoko and also Mr Zweli Momeko made a request that they be transferred, in fact one was to be transferred and the other one was to be seconded with immediate effect, which I did the paper work to get them to be transferred to the DPSA.

**ADV KATE HOFMEYR SC:** Ms Williams what I envisaged to be – well my penultimate and then my final question. At the bottom of page 9, you talk about the period of time for which you have acted as DG of GCIS. How long has that been?

**MS PHUMLA WILLIAMS:** I think when I was calculating I even shocked myself, also. It  
10 came to about 58 months acting. That was subtracting the period of Donald Diphoko. In total in the six years, I have been acting for 58 months

**CHAIRPERSON:** And 58 months is six years or what is it in terms of years?

**ADV KATE HOFMEYR SC:** Just over four years as I have it. 4½?

**CHAIRPERSON:** Yes my arithmetic is bad.

**ADV KATE HOFMEYR SC:** Mine is very bad too, so I am asking for confirmation from my learned colleagues. I think it is about 4½ years.

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

**ADV KATE HOFMEYR SC:** Ms Williams, over the page at page 10, you offer some concluding remarks in your statement and you talk and you will correct me if I am wrong,  
20 about your commitment to Public Service, but you end at paragraph 39, in the last sentence, with the following and I quote:

“As a result of the Minister Muthambi’s behaviour and essential government institution, that was built from 1998 was rendered dysfunctional.”

Ms Williams you will recall in an engagement that I had with the Chair earlier, I spoke about the insights that the experts who gave testimony on Friday, provided to the Commission, about the governance that is undermined within key institutions when state capture takes hold in a society. Could you please, with reference to that comment, give us a sense of the dysfunction that you believe occurred within GCIS during the period that you have testified about?

10 **MS PHUMLA WILLIAMS**: Chairperson, I indicated that we lost a lot of senior people and she refused to fill those posts, resulting in people doubling up, people not doing certain things, because they are short staffed and basically everybody was doing the bare minimum, because if a section was meant to have four people and three are gone, virtually that one who is remaining will try wherever it is possible – it is just not going to work and that is basically what was happening. If I can cite the example of the DDG, the DDG of the section of media buying left. Mr Diphoko who was the media buyer was elevated to the being a DG and the remaining person was a director of media buying, who at the time was even, new and that whole section was almost dysfunctional.

20 I should even mention that minister Muthambi was quite even generous in giving people out to other sections, there was a chief director who was responsible for editing the [indistinct] that I spoke about. She almost like removed the person and then says no go and help in another department and when we tried to say Minister, this person is responsible for editing and she says well it will happen, see how you manage and that is basically what she was doing and completely rendering our Provincial Office in the North

West there was a vacancy for a very long time. She never approved that the post be filled. That office also became dysfunctional and I am just citing a few, but there were quite a lot of them that just completely could not function because there were no people.

**CHAIRPERSON**: You say she refused to fill posts. That does not make sense to me if there was funding for those posts. Are you able to say anything to me, I would understand if you were saying she wanted to fill the post, maybe with certain people, but to refuse to fill posts at all, if there was funding for the post. It does not make sense. I do not understand it. Do you understand it? Is there anything you can tell me that can make me understand it?

- 10 **MS PHUMLA WILLIAMS**: Chairperson, I was saying that for me, she was almost like working against the State. There was no reason why you do not want to fill the posts. It is in your interest that the institution should function correctly. There is funding. However they had this narrative of wanting to prove that these GCIS people, who are there, are useless, we need to find other people who can come and deliver. Phumla is not delivering, because she is not effective. So, they were almost like wanting to render the institution completely dysfunctional and find reasons to say you know what, this acting of Phumla is not doing it for us, let us find somebody so that she can then crack and make the difference in the organisation, because there is absolutely no reason, there was funding. There was an established post, but she just preferred that it must disintegrate
- 20 until they then say this institution is dysfunctional. We need to get other people to come in and that is my interpretation. She might be having a different one, but my view is that they were trying to push the narrative that the institution needs fresh people.

**CHAIRPERSON**: Well it would be helpful if you were to make available information that shows what posts were vacant during her time and were not filled and how long they remained vacant. Is that information that would be easy to get?

**MS PHUMLA WILLIAMS**: Certainly it is easy. I will arrange it and we will hand it in.

**CHAIRPERSON**: Thank you.

**ADV KATE HOFMEYR SC**: Chair, forgive me, just a few matters. I would like to follow up on one question in relation to your testimony and then Chair I would like to address you in relation to notices to implicated persons.

**CHAIR**: Yes.

10 **ADV KATE HOFMEYER SC**: Following from the evidence of Ms Williams. I do note that we are at the lunch break time. Would it be convenient to break now and return?

**CHAIRPERSON**: Well it depends what is going to happen after lunch. If there is no witness lined up for after lunch, I think it would be more convenient to finish her evidence. You talk to me about the notices to implicated persons and we adjourn for lunch and then not come back, but if there is a witness lined up for after lunch then we can take the lunch break and then come back.

**ADV KATE HOFMEYR SC**: Chair as I have it there is no witness lined up for after lunch and so with your leave I will proceed.

**CHAIRPERSON**: Yes no that is fine and in the meantime Mr Pretorius is excused.

20 **MR PAUL PRETORIUS SC**: Thank you, Chair.

**CHAIRPERSON**: Thank you.

**ADV KATE HOFMEYR SC:** Chair if I may just take a moment to confer with my colleague?

**CHAIRPERSON:** Thank you.

**ADV KATE HOFMEYR SC:** Chair I have been advised by my learned leader that the next witness is only scheduled for Thursday. He will be the witness that I foreshadowed in some of my questioning of Ms Williams, from National Treasury. He will look at the payments from GCIS and other departments to TNA Media and Infinity. So as matters stand and in the light of your directions, this morning, there will be no witnesses until Thursday at this point.

10 **CHAIRPERSON:** Okay okay.

**ADV KATE HOFMEYR SC:** Then Ms Williams just a follow-up on your testimony just before this interaction about the dysfunction within GCIS as a consequence of what happened after you were removed from the Acting Director General post 14. You have made some references to media buying, you have testified about Mr Diphoko who came from that department, brought into GCIS, as I have your testimony, by Mr Manye and then elevated from the Chief Director position to Acting Director General in your position. But can you comment on what happened to media buying, as an institution within GCIS, during this period of turmoil in relation to its governance, as I understand your evidence?

20 **MS PHUMLA WILLIAMS:** Chairperson, during that time the media buying was operating outside, remember, I said that it was removed from the branch that was called CSA Communications Service Agency. It was a stand alone. So, what was happening at that time, because during Mr Manye's time, this unit was reporting directly to the DG, so, what happened is that a lot of activities that was happening in media buying, they were doing it directly with the Acting Director General, Mr Diphoko.

**ADV KATE HOFMEYR SC:** Thank you. Chair those conclude my questions for Ms Williams. In so far as notices to implicated persons are concerned, Ms Williams's evidence has – well her initial statement resulted in three notices to implicated persons being sent out by the Commission's legal team. Her evidence today has gone, in some respects broader than her statement and so as a legal team, we will give consideration to whether further notices, whether supplementary notices to those who already received notices or notices to new individuals, need to be sent out in accordance with the rules. We just wanted to place it on record that that consideration will be given and where the legal team deems it appropriate, those notices will be sent out.

10 **CHAIRPERSON:** I think that is important to make that announcement, because I was going to mention that to the extent that any persons may find that a witness who is giving evidence, before this Commission, implicates them in circumstances where prior to that they have not been served with any notices, they must know that in due course, they will be served with notices. So, people must not think that we are allowing witnesses to come before the Commission and just make all kinds of allegations against them without us notifying them. So, what is happening is that where the Commission's legal team is aware, from a statement given by a witness, that certain people are implicated, they make sure that those people are given notices thereof, are given notices thereof ahead of that witness giving evidence. But what may happen is that when a witness is asked  
20 questions, during his or her evidence, he or she may implicate other people who were not implicated in terms of the statement and in that case, the Commission's legal team would take steps as soon as possible to notify those persons that they have been implicated. That is what you have just explained.

**ADV KATE HOFMEYR SC:** Indeed Chair.

**CHAIRPERSON:** No, thank you very much. Ms Williams you said you are done with your questions?

**ADV KATE HOFMEYR SC:** I am indeed Chair. Ms Williams, thank you very much for having availed yourself to come and assist the Commission with information and evidence that you have. For now you are done but the legal team, of the Commission will be in touch with you, at some stage, with a view to you coming back, because there are various persons who are implicated in terms of your evidence will be wanting to be given permission to cross-examine you, but arrangements will be made and you will then come back, is that alright?

10 **MS PHUMLA WILLIAMS:** Thank you.

**CHAIRPERSON:** Thank you very much. We are going to then adjourn from what I have been told the next witness will be on Thursday, but on Wednesday at 10:00, we may be here in order to deal with applications by implicated persons who seek permission to cross-examine various witnesses. But that may or may not be moved to Thursday 10:00, depending on what will happen tomorrow, but those who might ultimately want to know whether Wednesday has been moved, or will be moved, must just be in touch with the legal team or the Commission sometime in the course of tomorrow afternoon. So we will then adjourn.

**CLERK:** All rise. **HEARING ADJOURNED**

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