EXHIBIT GG (a)

FORMER PRESIDENT

MR JACOB GEDLEYIHLEKISA

ZUMA

JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE, CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE

2nd floor, Hillside House
17 Empire Road,
Parktown
Johannesburg
2193
Tel: (010) 214 to 0651
Email:
inquiries@sastatecapture.org.za
Website: www.sastatecapture.org.za

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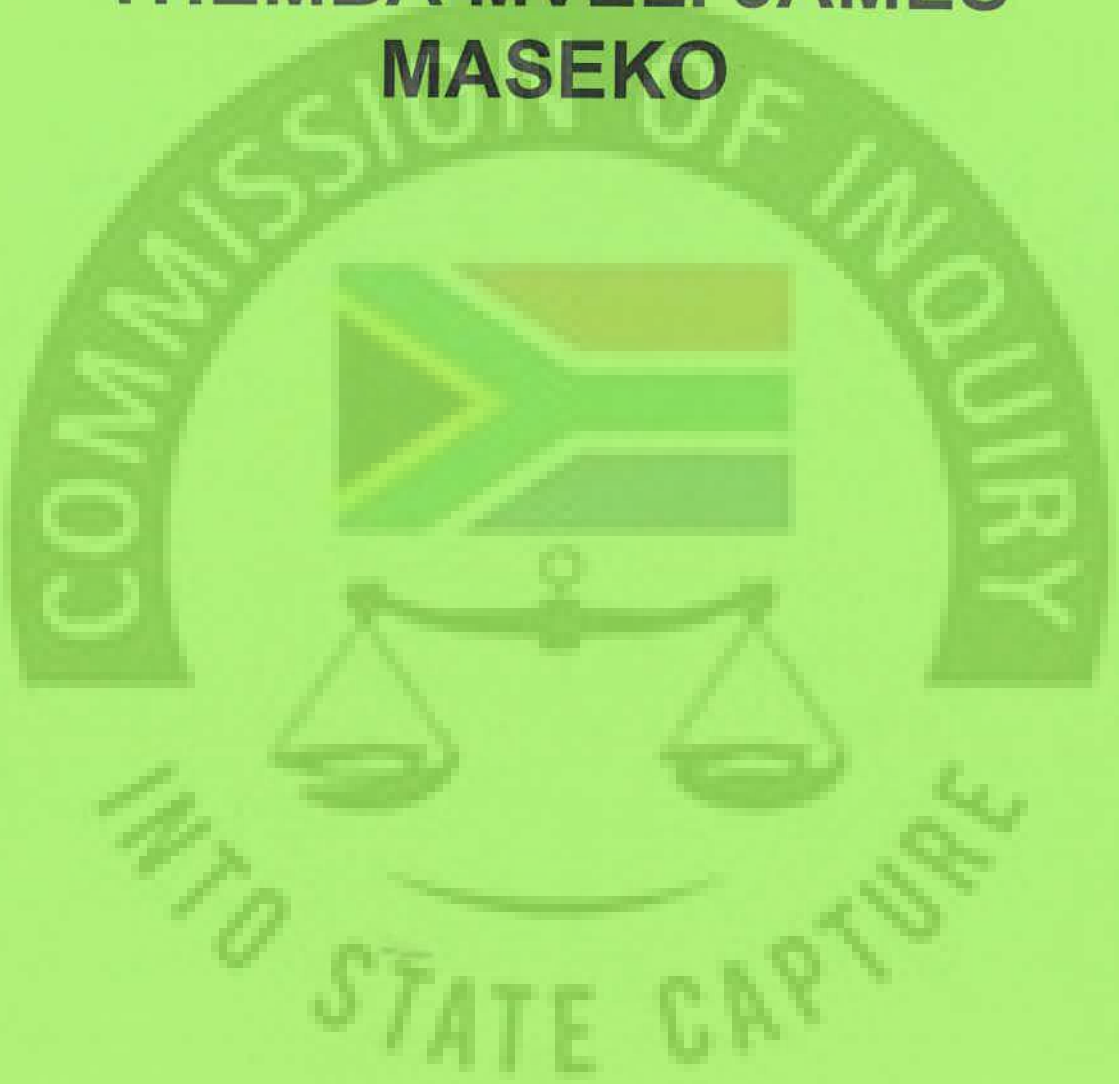
FP-JGZ-001

THEMBA MVELI JAMES MASEKO



"A"

Affidavit

I, **Themba Mvali James Maseko**, state under oath in English that:

1. I am an adult male with identity number: 6401275319089, residing at 109 Forest Athol, Sandton. My mobile number is 078 804 3620. I am the Director at Ricopart (Pty) Ltd, my offices are situated at Unit 2003, The Zone Rosebank, 2196. My office telephone number is 011 447 4895.

2. I have been requested to provide an affidavit relating to the report that I submitted to the Public Protector in relation to the so-called 'State Capture' investigation.

3. I first submitted the statement in response to the call by the Secretary General of the African National Congress, Mr Gwede Mantashe, which statement was subsequently submitted to the Public Protector's office

4 The statement provides details of my experience with the Gupta family during my tenure as Accounting Officer and Chief Executive Officer of the Government Communication and Information System GCIS).

5. I was approached by the Gupta Family during my tenure as the Accounting Officer and Chief Executive Officer (CEO) of the Government Communication and Information Service (GCIS), and Government Spokesperson.

My background in the public service

6. I have served in the public service from 1995 to 2011. My roles included the following:

   a. Member of Parliament

b. First Superintendent General (DG) in the Department of Gauteng Department of Education
c. Director General – Public Works
d. CEO of Government Communications and Information Services (GCIS) and
e. Government Spokesperson
f. Director General –Department of Public Service and Administration (DPSA)

My role at GCIS

7. GCIS is the communication service of the government of the republic of South Africa. It is responsible for communicating to the public on behalf of government. The GCIS was located in The Presidency. At the time in question, GCIS reported to the Minister in the Presidency, the late Minister Collins Chabane.

8. GCIS was also responsible for the media buying function on behalf of all national government departments. This entailed identifying and buying advertising space in all media platforms (Radio, print media and TV). The total government expenditure on advertising was valued at around R600 million per annum at the time.

9. The media buying function mentioned in paragraph 7 above was performed on an agency basis on behalf of other departments. The budget for this function was allocated to the various line departments and not to the GCIS budgets votes.

Meeting with the Guptas

10. Around September/October of 2010, I received a call from Mr Ajay Gupta on my mobile number: 083 645 0810, requesting a meeting to discuss what he said was a new project which he and his company were launching which he indicated required government support.

11. At the time of the call, I knew Mr Ajay Gupta whom I had met at meetings of the International Marketing Council (IMC), now called BrandSA. I was also aware at the time that there were talks of the Gupta family's plans to enter the media sector by establishing a newspaper and a television station. I, however, did not know any details in this regard at the time.

12. I was reluctant to accede to Mr Ajay Gupta's meeting request because I did not have any details of the 'project' that Mr Ajay Gupta was referring to. However, as he spoke more about the 'project' and explained that the project entailed the entry of a new player into the media sector, I thought I should give him a hearing in order understand more about the 'project'. In my view, meeting him would be in keeping with my general attitude towards all stakeholders in the media industry.

13 Consequently, our discussions ended on the note that we would meet. We arranged that I would meet Mr Ajay Gupta at the Gupta residence in Saxonwold. The exact date of that meeting can be obtained from my diary which is in possession of GCIS. I did not think it was unusual for the meeting to be held at that venue because Mr Ajay Gupta told me that the venue was appropriate for the meeting. Also, I often met with people either at my office or at venues suggested by them.

14. I had no reason to believe that the meeting would be anything other than one in which I would be provided with further details of the media 'project' which Mr Gupta had referred to during our telephone conversation.

15. On the date of the meeting, as I was driving out of the office parking lot, I received a call from Mahlambandlopfu, the President's official residence. I identified the incoming number as I had had dealings with the residence previously. A female caller said the President wanted to speak to me.

16. The call was then transferred to The President. After the pleasantries, the President then said the following: "*mfokababa. Kunalomadoda akwa Gupta. Ngifuna ukuthi uhlangane nabo futhi ubancede.*" The English translation is – 'my brother, there are these Gupta guys who need to meet with you and who need your help. Please help them.

17. I advised the President that the Guptas had already contacted me with a request for a meeting. Further, I advised the President that in fact I was on my way to the meeting with Mr Ajay Gupta at that very moment. The President thanked me for my cooperation and terminated the call.

18. I was taken aback at the call and wondered whether the Guptas had requested the President to call me to demonstrate their power and influence in the upper echelons of government. However, I avoided jumping to that conclusion and I decided to proceed to the meeting with an open mind. I was clear in mind that I would approach the discussions as I would with any other stakeholder in the media industry, namely, by considering the discussions as objectively as possible.

19. The above notwithstanding, and with some trepidation, I proceeded to the Saxonwold Gupta residence (or compound) for the meeting with Mr Ajay Gupta.

20. On arrival at the compound, I was greeted by security people who directed me to leave my car next to the door as they would park it for me.

21. I was welcomed into the house by a female who I assumed was a staff member who led me to the room which looked like a formal lounge. Mr Ajay Gupta entered the room and was followed by his brother Atul a few minutes later.

22. Mr Atul Gupta did not stay for the duration of the meeting.

Demand for advertisement budget

23. Mr Ajay Gupta then introduced the subject of the meeting as follo

24. The Gupta family was setting up a media company which needed government support in the form of advertising spend. The company would have interests in print media and a TV station.

25. He then went to tell me that he was aware that government was spending around R600 million on advertising in media platforms and he wanted all that expenditure to be transferred to his company, the would-be media company. In essence, he wanted the total budget to be utilised for advertising in the television and newspaper businesses the Gupta family was setting up.

26. I then proceeded to explain how the budget and procurement process worked and why it would not be possible to transfer the whole budget to his company. I told him that in any case, the budget didn't sit with us at GCIS and that we merely acted as an agency for the respective government departments.

27. He dismissed my explanation and proceeded to tell me that my job is to go and identify, collect and allocate all the communication budget amounts in the various departments to his company.

28. He then to told me that I should let him know if any department or Minister gives me any problems and he would deal with them directly. I asked him to elaborate and he told me that he will personally summon and deal with any Minister who doesn't cooperate in this regard. I then objected to the way he was talking about Ministers in such derogatory terms. He seemed oblivious to the point I was making and emphasised that he could deal with any Minister who didn't cooperate.

29. Matters such as the inappropriateness of what he saying and the impropriety of trying to obtain government business in this manner did not seem to matter to Mr Ajay Gupta.

30. The meeting concluded. He expected me to implement his instructions with a clear action plan. I on the other hand, was convinced that I would not be party to what I considered to be improper and potentially corrupt on his part to secure government business. In this regard, Mr Ajay Gupta did not offer me any personal benefit, he was clearly attempting to force my hand in a threatening manner.

31. I also reported the incident to Mr Frank Chikane, who was a former Director General in the Presidency.

The call

32. On or around the end of November 2010, I was driving to the North West province for a weekend getaway. I received a call from an unknown gentleman who said he worked for the Gupta Media Company (the term is used loosely herein to refer to the media company set up by the Guptas for their print and/or TV venture). The gentleman requested to meet me the following Monday at 08h00 in the morning to discuss government advertising in the soon to be launched New Age Newspaper.

33. I told him I would meet with him but that he should call me on Monday morning to set up an appointment as my diary was already packed. In this regard, I wished to ensure that whilst I would listen to any proposal, this had to follow proper procedures and had to be done on a proper basis.

34. He insisted that the meeting had to take place that following Monday as the launch of their newspaper was imminent. I proceeded to tell him that a Monday morning meeting was out of the question. The call ended unceremoniously.

35. About an hour later, my phone rang again. This time it was Mr Ajay Gupta. He sounded very agitated and he started the conversation with an aggressive tone.

36. He said his people told him that I was being difficult. I told him what happened in the conversation with his staff member.

37. He then responded by saying something to the effect that he will not tolerate any nonsense and that I didn't understand what was going on. He said the meeting must happen on Monday morning.

38. I was extremely offended by what was going on and the manner in which he spoke to me. I told him that he had no right to give me instructions as he was not my employer. His response was that the meeting must no longer take place on the Monday morning, as they had initially demanded, but should happen the following morning, which was a Saturday. I told him how ridiculous his demand was and that I was out of town for the weekend. He insisted that the meeting will take place on the Saturday morning.

39. I told him in no uncertain terms that I will not be spoken to in that manner nor dictated to as he was attempting to do. In the process and reflective of my annoyance at an attempt to improperly bully me as a government official, I also used an expletive.

40. At this point he told me that I was being uncooperative and that he was going to speak to my seniors in government who would sort me out and replace me with people who would cooperate with him. I can't recall whether he or I dropped the call. The call ended abruptly.

41. I attempted to reach Minister Chabane on the phone that evening to report this episode but was unable to reach him.

42. On my return to Johannesburg the following week, I briefed Minister Chabane about the developments.

Other Departments

43. This matter was of great concern to me especially when I started receiving complaints from heads of communication from other departments complaining that they were being harassed by people from the New Age Newspaper who were demanding either meetings or advertising budgets.

44. I was concerned by this development as whoever was making these demands was doing so under the pretext that I had given permission or authorisation for them to cooperate with the New Age Newspaper people. This was obviously not true as I had not made any undertaking to this effect to anyone.

45. All the telephone calls referred to in this statement were via my mobile phone.

46. During my tenure at GCIS, there were no dealings or contracts between GCIS and the Gupta family or any of their companies that I am aware of.

My exit from the Public Service

47. Towards the end of January 2011, I received a call from the Minister Chabane asking me to meet him at his office urgently. I met him at his office the following morning. At the meeting, he advised me that he had been instructed by the President to redeploy me or terminate my contract henceforth.

48. He told me that although he no choice but to implement the instruction from the President, he made a commitment not to throw me in the street because he knew that I was a committed civil servant who had not done anything wrong He told me he would make a plan to find another post for me in the public service.

49. A Cabinet meeting took place the following Wednesday. During the course of the Cabinet meeting, I was informed that ETV NEWS channel was running with the news story that I was fired.

50. During the tea break, I brought this to the attention of the Minister Chabane who was shocked that the matter of my imminent exit was somehow leaked to the media.

51. Minister Chabane, consulted with the President during the break and an impromptu announcement had to be made to Cabinet that I had been terminated as GCIS CEO and Government Spokesperson.

52. Minister Chabane advised me to report at the Department Of Public Service and Administration (DPSA) immediately because he was aware that the post of Director General at that department was vacant.

53. Unfortunately, Minister Baloyi was not at that Cabinet meeting at the time when this news broke. I had the task of informing him that I was his newly appointed Director General at the Department of Public Service and Administration.

54. In the afternoon of my dismissal from the GCIS/Government Spokesperson post, I received a call from Mr Ajay Gupta which I did not answer. The purpose of that call remains a mistry as we had not spoken since the telephone incident described in paragraph 33.

55. I served as the Director General of the Department of Public Service and Administration for a few months until my eventual resignation from the Public service.

Conclusion

56 I consider the approach by the Guptas and the manner in which they set to put pressure on me was inappropriate, uncalled for and irregular. The use of threats against me amounted to bullying and attempting to force me to break all government procurement processes and procedures. I refused to cooperate.

57. This approach by the Gupta Family was contrary to Section 217(1) of the Constitution and the Public Finance Management Act (PFMA).

I am willing to elaborate further on the above.

Before attesting to this statement, the deponent was asked the following questions and his answers were recorded hereon.

Do you know and understand the contents of this statement?

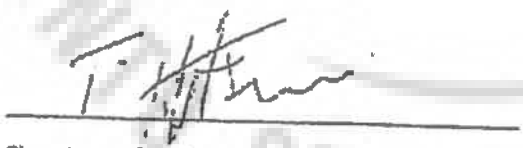
Answere: Yes

Do you have any objection in taking the prescribed oath?

Answer: No

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

Answer: YES



Signature of Deponent

I certify that the above statement was taken down in writing by myself and the Deponent has acknowledged that he knows and understands the contents thereof. This statements was sworn to and signed in my presence at Rosebank on this the 22nd Day of June 2017 at 13h45.

Commissioner of Oaths

Name: Pragasen M. Govender

Rank: Captain, SAPS, Directorate Priority Crime Investigation

Address: 83 Steve Biko Street, Arcadia, Pretoria

"B"

A3.

Themba Mvali James MASEKO, states under oath in English:

1

Further to my statement dated 22 June 2017, I wish to state the following: on the day in question and upon my arrival at the Gupta residence in Saxonwold, I was not requested to provide any form of identification when I arrived at the security check point. I also did not electronically sign in. I wish to state that I got the impression that the security guards were expecting my arrival. I do not recall seeing any security cameras at the entrance.

2

I wish to state that immediately after greeting me Mr Atul Gupta, he left the room. The discussion with Mr Ajay Gupta had not yet commenced.

3

I wish to state that no one else was present when Ajay Gupta mentioned to me that he was awaie that government was spending around R600 million on advertising in media platforms and that he wanted all the budget of Government Communications and Information Services (GCIS) which was around Six Hundred Million Rand (R600 million) be transferred to his company.

4

I reported what Ajay Gupta had discussed with me to Reverend Frank CHIKANE, he can be contacted on 083 200 1900.

5

With regards to the conversations mentioned in paragraph 32 and 40, my wife was present when both conversations took place.

6

In paragraph 40 of my affidavit, I mentioned that other Heads of Departments had complained to me but at this stage I do not recall any specific names. I will attempt to identify the persons and provide their details to the investigating officer.

T.J.

7

According to my knowledge regarding the process that is followed for the placement of advertisements or whenever a media campaign is launched the relevant National Department that requires the media campaign would contact GCIS and brief us as to what their requirements were. The relevant department would transfer the specific budget for the campaign to GCIS. GCIS would then contact Mercury Media, the company appointed to procure media services on behalf of GCIS. According to my knowledge Mercury Media would buy the advertising space from the relevant media companies on behalf of GCIS. GCIS would then pay Mercury Media for the media placement.

8

During the time that I was at GCIS, I do not recall using the services of ANN7 or THE NEW AGE since they were still new in the media space. I later noticed that a number of Provincial departments were making use of THE NEW AGE and ANN 7 for their media campaigns. I wish to state that GCIS were not responsible for the advertising campaigns that were procured by the Provincial Departments.

9

Before attesting to the above-mentioned affidavit, the deponent was asked the following questions and his answers were recorded hereon:

Do you know and understand the contents of this declaration?

Answer: __Yes____

Do you have any objection to taking the prescribed oath?

Answer: ___No___

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

Answer: _Yes_____

The deponent then uttered the following words "SO HELP ME GOD"

T. N.

SIGNATURE OF DEPONENT

I certify that the deponent has acknowledged that he knows and understands the contents of this statement which was sworn to before me and the deponent's signature was placed thereon in my presence at SANDTON on this the 24th day of AUGUST 2017.

CAPT PM GOVENDER ....CAPTAIN

GOVENDER PM

SIGNATURE OF COMMISSIONER OF OATHS

DESIGNATION. MEMBER OF THE SOUTH AFRICAN POLICE SERVICE

AREA REPUBLIC OF SOUTH AFRICA

FULL NAMES: PRAGASEN M GOVENDER

BUSINESS ADDRESS:

83 STEVE BIKO STREET, ARCADIA, PRETORIA,

SERIOUS ECONOMIC OFFENCES UNIT,

DIRECTORATE PRIORITY CRIME INVESTIGATION.

MABEL PATRONELLA
MENTOR

IN THE JUDICIAL COMMISSION OF INQUIRY TO INQUIRE INTO ALLEGATIONS OF STATE CAPTURE, CORRUPTION AND FRAUD IN THE PUBLIC SECTOR, INCLUDING ORGANS OF STATE

STATEMENT OF MS MABEL PATRONELLA ("VYTJIE") MENTOR

I, the undersigned,

MABEL PATRONELLA ("VYTJIE") MENTOR

do hereby state as follows:

1. I am an adult female residing in Cape Town.

2. Except where the contrary is expressly stated or clear from the context, the facts contained in this statement are within my personal knowledge. To the best of my knowledge, they are true and correct. Where I make legal representations, I do so on the advice of my legal representatives, which advice I believe to be correct.

THE PURPOSE OF THIS STATEMENT

3. I make this statement in order to assist the Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State (**the Commission**), which was established in terms of section 84(2)(f) of the Constitution of the Republic of South

Africa, 1996.

4. The Commission was appointed to conduct investigations into matters of public and national interest concerning allegations of state capture, corruption, and fraud. More specifically, I am advised that paragraph 1.1 of the Terms of Reference mandates the Commission to investigate allegations of impropriety and corruption in the appointment and removal of Cabinet Ministers.[1] This is a subject which I address in my statement.

5. I was the seventh respondent in the North Gauteng High Court proceedings brought by the former President Mr Jacob Gedleyihlekisa Zuma (Mr Zuma) to review and set aside certain paragraphs of the Public Protector's remedial action in her "*State of Capture*" Report (the review).

6. As will become evident below, I was interviewed and co-operated fully with the former Public Prosecutor's investigations into state capture. In my answering affidavit to Mr Zuma's founding affidavit in the review, I provided a synopsis of the facts to which I can directly attest regarding

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[1] Paragraph 1.1 of the Terms of Reference provides as follows: The Commission shall inquire into, make findings, report on and make recommendations concerning the following, guided by the Public Protector's state of capture report, the Constitution, relevant legislation, policies, and guidelines, as well as the order of the North Gauteng High Court of 14 December 2017 under case number 9139/2016:-

whether, and to what extent and by whom attempts were made through any form of inducement or for any gain of whatsoever nature to influence members of the National Executive (including Deputy Ministers), office bearers and/or functionaries employed by or office bearers of any state institution or organ of state or directors of the boards of SOE's. In particular, the commission must investigate the veracity of allegations that former Deputy Minister of Finance, Mr Mcebisi Jonas and Ms Mentor were offered Cabinet positions by the Gupta family"

'state capture', and which have now culminated in my providing this statement.

7. In what follows, I provide direct, first-hand evidence that members of the Gupta family were indeed involved in offering me a Ministerial position in exchange for favouring their commercial interests. In addition, that this was done with the knowledge and approval of Mr Zuma.

8. In what follows, I address the following in turn:

8.1 My history and involvement with the ANC/UDF;

My China visit in 2010;

8.2 The offer made to me by Ajay Gupta that I become Minister of Public Enterprises; and

8.3 My disclosure of the offer made to me by Ajay Gupta.

MY HISTORY AND INVOLVEMENT WITH THE ANC/UDF

9. At the beginning of my political career I was an active member of the African National Congress (the ANC) and the United Democratic Front (the UDF). In the 1980s, I held various positions in these organisations at local, regional and provincial levels. I served in the underground as well as political mass-mobilisation activities of both the ANC and UDF.

10. During the 1980s, I also served in the South African Federation of Transvaal Women (FEDTRAW), which was a formation of Women

within the ANC and UDF. I was also an active member of the South African Youth Congress (SAYCO). SAYCO was a South African youth congress, established on the instruction of the ANC, and which was affiliated to the UDF. I served in various leadership positions of SAYCO. This included being the leader at ground level in the Galeshewe Youth Congress (GAYCO) which was a branch of SAYCO. I was also an Executive member at regional/provincial level of the Northern Cape Youth Congress (NOCAYCO).

11. During the 1980s and 1990s I was also a representative of the Northern Cape in the Central Executive Committee (CEC) of the National Education Coordinating Committee (NECC). The mandate of this structure was to organise around matters of education in order to correct the adverse effects of the Apartheid Education system on those who were oppressed by the system.

12. I was also a member of the National Union of South African Students (NUSAS).

13. Shortly after the second democratic local government elections, I was appointed as a councillor at District Municipality level serving on the Mayoral Committee in the Diamandveld Region of the Northern Cape (situated in the Kimberly Region as it was then known). I was responsible for Social Development in the district.

14. In 1999 I became the Deputy Secretary of the ANC in the Francis-Baard Region (Kimberly region according to the ANC demarcation at the time). I led delegates of that region at the ANC Provincial Conference that year.

15. In 2000 I was also appointed to serve as a Public Representative in the South African Nursing Council (which is a Statutory Body) by President Nelson Mandela together with Hon. Manto Tshabalala-Msimang who was the Minister of Health at the time. My main role was to deal with the Professional Conduct of Nurses, to participate in the wholesale review and the re-pegging of all Health Qualifications in the country as well as to bench-mark all health qualifications in line with the South African Qualifications Authority (SAQA).

16. In 2002, I became a Member of Parliament for the ANC in the National Assembly.

17. In 2004, I was elected as Chairperson of the Portfolio Committee on Public Enterprises.

18. I was also made an ANC Whip for Discipline in 2004.

19. Very shortly thereafter, I was promoted to become the National Chairperson of the ANC Caucus in Parliament. I held that position from 2004 to 2008. By virtue of that position, I sat on the National Executive Committee (the NEC) of the ANC.

20. In approximately 2008, however, I was removed as National Chairperson of the ANC Caucus. I should mention that shortly after Mr Zuma's appointment as ANC President, I was told that I had to be removed because I was not officially an NEC member, which was allegedly required for the position. This is notwithstanding that I had been appointed to the post without having been elected as a NEC member, which was public knowledge at the time. I accordingly held the position

for just over four years from 2004 – 2008. By the time I was removed from the position I was the longest serving ANC Chair of Caucus in Parliament.

21. In around November 2010, I also ceased being the Chairperson of the Portfolio Committee on Public Enterprises. However, I remained a Member of Parliament. I believe I was removed because I refused to meet with Mr Zuma while in China on his state visit, which I deal with in detail below. I also believe I was removed from this position because I refused to assist in the closure of the SAA-Indian route, which I also address below; and I believe that the reason given for my removal – that it was because of the allegations around Transnet having paid for my visit to China – was simply a ruse and an attempt to discredit me.

22. In or around October 2014, towards the end of the Parliamentary term, I was unable to perform my duties as a Member of Parliament. This was because I was hospitalised due to gruesome injuries sustained under mysterious circumstances which incapacitated me and prevented me from performing my Parliamentary duties.

23. I however remained a Member of Parliament during that time, until the end of the 2014 term.

24. I was therefore a Member of Parliament for twelve years.

25. While serving as a Member of Parliament, I was a Member of various Portfolio Committees including:

25.1 The Portfolio Committee on Public Enterprises;

25.2 The Portfolio Committee on Education;

25.3 The Portfolio Committee on Public Service and Administration;

25.4 The Joint Standing Committee on Intelligence;

25.5 The Joint Rules Committee of Parliament;

25.6 The National Assembly Rules Committee;

25.7 The Private Members Legislative Proposals Committee. This Committee dealt with private member's legislative proposals. The ANC had never considered or accepted proposals that came from opposing parties. I championed for the right of opposition parties to be allowed to propose the review of legislation. This was instrumental in abolishing floor crossing. I supported these causes often in the face of opposition from my own party;

25.8 The Portfolio Committee on Justice;

25.9 The *ad hoc* Committee on Zuma/Ngcuka (which related to various allegations against former President Mr Zuma). I should add here that I was instrumental in ensuring that the outcome of the Committee's work was not pre-determined. This entailed going against the instructions from Luthuli House to vindicate Mr Zuma and apportion blame to Mr Ngcuka;

25.10 The *ad hoc* Committee on the Protection of State Information. It was public knowledge that I denounced the ANC's position of

protecting the State at the expense of citizens' rights to privacy; and

25.11 The Food Security for South Africa Caucus. This was not a Committee. However, I mention it because whilst I was a member of the caucus, I championed the issue of food security versus the use of Genetically Modified Organisms (GMO). I had placed the issue on the agenda of the Caucus rather than allowing it to be dealt with at a Committee level.

25.12 I would also like to mention that I used the Caucus platform to fight against sexual harassment of women, including women in Parliament, and was instrumental in instituting disciplinary proceedings against an ANC Chief Whip in Parliament for having sexually harassed a twenty-one-year old woman that was serving as an intern in Parliament at the time and I am happy to report that he lost his position as Chief Whip and his seat in Parliament as a result.

25.13 I also used my position as Chair of Caucus and Chair of various committees to advocate for other strategic and important causes such as changes to the Electoral Act, moving from an overly Proportional Representation position to one based more on constituency so that the electorate is more empowered to hold elected politicians accountable.

25.14 Another cause which I was involved in was the equitable restoration of pension benefits of the then Spoornet employees since their pension fund was ring-fenced and ceased to grow in

the democratic dispensation.

MY CHINA VISIT IN 2010

26. In or around August 2010, I undertook a trip to China as part of a Presidential State visit to that country. One of the purposes of the visit was to explore solutions to the issue of repeated electric power outages, which had been an ongoing issue for the South African government's power utility, Eskom Holdings SOC Limited (Eskom) since approximately 2008. Eskom reported to the Portfolio Committee of Public Enterprises, of which I was the chair. Thus, we naturally had a keen interest in trying to assist and work with Eskom in dealing with the matter. During our discussions with Eskom as a Committee, they had cited amongst other things the matter of coal and its transportation to them by Transnet as an impeding factor in dealing with electric power shortage. For that reason Transnet also became one of the SOEs that we engaged in dealing with the issues of power shortages.

27. At the time, the entire Portfolio Committee was looking for leads and partnerships, including internationally, that could work with Eskom to help solve the issue of power outages, which was reaching a point of crisis.

28. Around that time I received correspondence from representatives of the State-Owned Enterprises in China inviting me to China. I tabled those letters of invitation before the Portfolio Committee and I informed them that I would undertake a preliminary visit to China, which was to be followed by a visit of the entire Committee. We already had an application for all of us to go to China approved for the following

financial year of 2010/2011. My visit was agreed upon and I accordingly left for China alone as Chairperson of the Committee. I had been to China on a previous occasion, on invitation to deal with the very same issues.

29. Parliament was in recess for August as a result of Women's month and activities incidental thereto, and this created issues for me in terms of making arrangements for traveling to China.

30. Transnet paid for my travel bookings and accommodation. This was because the Eskom Executive leadership and its Board were abroad at that time, also trying to conclude partnerships to address the issues surrounding power outages. The intention was that Transnet would be reimbursed from my Parliamentary travel allocation before the end of that financial year.

31. I was required to fly via Dubai as I was a very late addition to the State visit. When I received my flight details from Transnet, I noticed that my ticket had been booked in First Class on Emirates Airline. When I enquired why this was so, I was informed that most flights were fully booked as there were many groupings from both business and government going to China. I was informed that Transnet was only able to secure me a First Class ticket on Emirates.

32. Once Transnet agreed to pay for my accommodation and travel I made enquiries from the Department of International Relations as to the details of joining the State visit as per my invitation from the Chinese. They explained the process to me and then directed me to seek accreditation with the Department of Trade and Industry as it was that department that

was the Lead-Department in relation to the State Visit.

33. The contact person I was directed to was Iqbal Sharma who was a Deputy Director General (DDG) at Trade and Industry Department at the time.

34. Whilst aboard the flight from South Africa to Dubai, I was approached by Duduzane Zuma ("Duduzane") who was also on the same flight. Duduzane is the son of former President Mr Zuma. He introduced himself to me. This was the first time that I had met him. When Duduzane approached me, he was with an Indian man. He asked if he could introduce me to the Indian man who accompanied him. He may have been accompanied by another Indian man, but I was only introduced to one of them. I said yes to Duduzane's request, and he introduced the Indian man as his "partner". I assumed Duduzane to mean a business partner. As I set out more clearly below, I now know that the Indian man was Mr Rajesh Gupta. I should note at this point that on the flight to Dubai, Rajesh Gupta mentioned to me that "his brother" was a member of the President's "*advance team*" (the significance of which will be explained below).

35. Duduzane then asked to introduce me to a black man who was seated elsewhere. He referred to this man as his "Chairman". I do not know what he meant by the reference to "Chairman". I assumed Dududzane to mean this in a business sense. The black man who Duduzane introduced me to was Mr Fana Hlongwane.

36. By the time I arrived in China it was already the first day of the State Visit. I was late as my bookings were made at the last minute. On my

arrival in China and on the first day of the State visit, the outdoor opening ceremony proceedings of the visit had begun. I had to skip this as I was required to register and get accredited for the Business meetings as well as for the State Banquet.

37. When I arrived at the Registration Hall, I looked for someone that could assist me as I was late because my booking had been made at the last minute. I spotted the Indian man that Duduzane had introduced me to on the flight.

38. I approached the Indian man to whom I was introduced on the flight (Rajesh Gupta). I requested his assistance with the accreditation process. He directed me to a table where another Indian man was seated, who assisted me with the general accreditation process. After I was assisted with that general accreditation, I was directed to another man, at another table. He told me that this man was responsible for Accreditation for the State Banquet. When I went over to the other man he promptly assisted me with the accreditation and handed me the special tag required for the State Banquet that was to take place later that evening.

39. I recall very distinctly that the Indian men (whom, as I have stated, I now know to be the Gupta brothers), played what appeared to be an oversight role at the meeting that day and they certainly appeared to be in charge of the logistics. The men were also very busy and constantly entered and exited the room in which the proceedings were taking place. I initially thought they were the security detail for the Presidential visit but after seeing how familiar they were with Ministers – talking freely and frequently with them – I became convinced they were not simply the security detail.

40. I began paying attention to the three Indian men in an attempt to place them and their respective roles. Whereas everyone else present wore only one tag around his or her neck, the three Indian men sported two tags each. One of their tags looked like the tag worn by everyone else but their other tag was different. I was unable to identify its purpose. They were also carrying two-way radios and they appeared to be in charge of the logistics for the South African contingent of the State visit.

41. As will become evident below, I subsequently came to learn that these three men were the Gupta brothers; namely Ajay, Atul and Rajesh.

42. After the ceremonial part, we all gathered into one large plenary hall where I spotted about twelve South African Ministers and saw many business people from South Africa. I felt that the Ministers who were present were cold towards me, which I found hurtful and puzzling.

43. At the end of the proceedings, I retreated to my hotel room. There was a State Banquet scheduled for later that evening. Upon my return to my hotel room, I decided against attending the State Banquet. Instead, I decided to stay in and order room service.

44. Whilst in my hotel room, I was contacted by the hotel reception desk, informing me that two Indian men were asking for my room number. I was advised that the men were claiming to be South African and they said they were part of the Presidential State visit.

45. I asked the receptionist to ask the men a few questions on my behalf. One of the Indian men was given the phone by the receptionist in order to speak to me. He introduced himself to me. I heard the word "Gupta".

I deduced that the man was from the Gupta family as those were the only Indian males whom I had encountered that day who appeared to be closely associated with Duduzane.

46. He told me that the President, Mr Jacob Zuma had sent him to my hotel to invite me to meet with him at the Chinese Presidential guesthouse, where he was staying. Since we were speaking on the telephone and not in person, I did not see the man and I am not sure which Gupta brother he was.

47. I asked the man if he worked for the Presidency. He replied that they were part of the "*Presidential delegation*", which he also referred to interchangeably as the President's "*advance team*". I did not understand what he meant by the term "*Presidential delegation*" as it is broad and would comprise many different officials. I therefore asked the man to provide further clarity. He then informed me that he was part of the "*Presidential entourage*".

48. When I asked the man on the telephone how I could possibly agree to be driven by complete strangers at night in a foreign country, he said that he took care of all President Zuma's state visits; that he lead the former President Zuma's "*advance team*" ahead of his State visits, which meant he went ahead of the President to check on security, logistics, etc. This also suggested to me that he was one of the Gupta brothers because Rajesh Gupta had told me on the flight to Dubai that his brother was a member of the President's "advance team".

49. I enquired how the man had come to know which hotel I was staying in. The man informed me that he had a background in security and that he

was well connected. I found it disturbing that he knew this because, as far as I was aware, I was staying at a different hotel to other persons that were part of the State Visit who I knew. Transnet had arranged accommodation for me at a different hotel, which was adjacent to the offices of the China Central Television building. I found this very disconcerting.

50. The man repeated that they were waiting to take me to the guesthouse where Mr Jacob Zuma was staying, for a private meeting. He said they would take me to the banquet afterwards. I was concerned for my safety because I did not know the man or how he had obtained my accommodation details. It also seemed strange to me that the former President Zuma would have requested to meet with me privately at night. Another of the reasons why I did not wish to go with the man was because I was wary of being alone at night with Mr Zuma, because I had heard stories about him and women. I consequently declined the meeting and the invitation to take me to the banquet.

51. After I declined to meet with Mr Zuma, the man said that they would contact the President and get back to me. A few minutes later, the man telephoned me again and informed me that Mr Zuma was waiting for me and that he would not leave to go to the banquet until he had met with me. I again declined. The man repeated that the President insisted that I go to meet him. I again declined. The man continued to phone me and his tone became threatening.

52. I asked the man how I could possibly lend myself to being driven by a stranger in a foreign country at night on the basis of what that man was telling me. I was also concerned because I thought it strange that I had

been trying for months to set up a meeting with the president but now suddenly, in a foreign land and at night, the president allegedly wished to see me. He became irritated and told me to stop wasting his time and the time of the President. I feared for my safety with this man trying to bully me into an alleged meeting with the President at night. Even if it was a legitimate invitation or instruction from the President to see him, I was also wary of being alone with the President at night in a foreign country. I had heard many stories about the President and women.

53. I was not prepared to risk my safety so I decided to tell the man for the very last time that I was going nowhere with him and that I was not going to attend the State Banquet.

54. Without saying so in as many words, he appeared to be questioning my refusal to meet with the President. . I eventually took the phone off the hook. I found the experience unnerving and troubling.

55. In a state of fright, I temporarily switched off my cell phone too, but after a while and after doing some thinking I switched it on again as I had decided to retrieve the number of the Chinese leader of the SOE's that I was going to meet with the next day on the margins of the State Visit. I told him that something had cropped up that was security related and that necessitated that we hold our meeting at the hotel instead of at the venue of the State Visit.

56. The following day we had a meeting which lasted the entire day at my hotel. By the end of the meeting, I was pleased that I had firm proposals that I could take back to Eskom and to my Committee.

57. I decided to bring forward my return to South Africa. To the best of my recollection I was meant to be in China for four days, but I had concluded my business with those I had to meet in China, and was assured that our agreement would become part of the Broad Agreements that were going to be signed between the hosting Chinese President and Mr Zuma. I was also feeling disheartened by the manner in which I had been treated by the other Ministers on the first day and I wished to go home. In addition, I was feeling particularly concerned for my safety after the call from the man who told me that he wanted to take me to meet with former President Zuma. After being unable to get hold of my secretary, I called the travel agency that Transnet had used to make my bookings and changed my booking to return home ahead of time.

58. Shortly after my return from China I was contacted by a certain journalist from the *Sunday Times*. He asked me questions pertaining to my visit to China as part of the State Visit. I was very surprised at this as I had just returned and I knew there was nothing untoward with my trip to China. I should mention in this regard that the Public Protector (Adv. Madonsela) and the Speaker of Parliament (Mr Max Sisulu) did not find me guilty of any wrongdoing.

THE OFFER MADE OF THE POSITION OF MINISTER OF PUBLIC ENTERPRISES

59. I had been trying for some time to meet with Mr Zuma regarding the Pebble Bed Modular Reactor[3] amongst other issues. I had been sending

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[3] The Pebble Bed-Modular-Reactor (PBMR) was a Nuclear Study project of Government. The project was overseen by two Departments and Ministries, one being the Energy Ministry and its Department (where policy for the project was regulated) and the Ministry as well as the Department of Public

numerous messages and requests through various channels.

60. I had communicated with Ms Lakela Kaunda (Ms Kaunda), who at the time I thought was Mr Zuma's personal assistant, in order to secure a meeting with Mr Zuma. On one Sunday evening in or around October 2010, about a week or so before the cabinet reshuffle, I received a telephone call from Ms Kaunda, to say that the President could see me the following day. I think Ms Kaunda was his PA although it could have been a different position but she definitely appeared to be from the president's office.

61. Ms Kaunda informed me that Mr Zuma would be available to meet with me the next day, being a Monday.

62. Ms Kaunda advised that a certain individual, would get in contact with me regarding the meeting. She further advised that if the individual failed to contact me, I should contact him on a number, which she provided to me. I do not recall if I asked for the person's number or if Ms Kaunda volunteered it to me.

Enterprises for Operational as well as Cost Allocation purposes. The PBMR was a Project of Eskom. Eskom was in partnership with an American Company by the name of Westinghouse.

When Mr Zuma became president of the ANC, even before he became president of the country, a political decision was taken by him and those that were in the leadership with him, to do away with the PBMR project. I found this decision to be highly irrational, as it did not make any political, financial or economic sense. I was still chairing the Portfolio Committee on the State-Owned Enterprises (S.O.E.s) when this irrational decision was taken. I was very worried and extremely uncomfortable with the decision to cancel that important and very strategic project.

63. I cannot recall whether I called the person or if he called me but we spoke later that evening. As far as a recall, I booked myself on a flight with South African Airways (SAA) from Cape Town to Johannesburg. The man offered me a ticket but I informed him that I needed to book it as I also had to make arrangements with the Passenger Assistance Unit as I was on crutches. I accordingly requested information regarding travel arrangements once I landed at the airport. In particular, I relayed to him my concerns regarding the short notice of the meeting and the fact that I used a wheelchair when I travel, as well as my concerns regarding transportation to take me to Mr Zuma since I was still recovering from an injury at the time and I was using crutches to walk.

64. The name of the man given to me by Ms Kaunda was Atul Gupta, together with his telephone number. The man reassured me that the logistics for travelling from OR Tambo International Airport had all been taken care of and that there would be someone waiting for me upon my arrival in order to take me to Former President Zuma.

65. I flew to Johannesburg on Monday morning and was met by two Indian men, one of whom was holding a placard with my name. They were Atul Gupta and Rajesh Gupta. The two men escorted me to their vehicle. I should mention that even though I had briefly encountered them on my visit to China, I believe that I only recognised one of them and even then I did not pay much attention or register that they were the Gupta brothers when they came to collect me at the airport. This is probably also because judging from their appearance; I initially thought that they were security or drivers for the President. I believed they were from the President's office as their attire and demeanour appeared very official. They wore dark suits, wore ear-pieces (for communicating) and

sunglasses. I do not recall the make of the vehicle save for the fact that it was a black twin cab "bakkie" with tinted windows and elevated wheels.

66. I found glossy magazines and newspapers in the vehicle. In order to keep myself occupied, I paged through them as we drove. I noticed that some of the magazines were about Sahara Computers and others about cricket. I was expecting to be taken to the Union Building to meet with the President. I was of the firm belief that one meets the President at either the Union Building or the Presidential home or possibly at Luthuli House on Mondays, which is where the President often is as the NEC of the ANC meets at Luthuli House on Mondays.

67. I was therefore surprised when, after driving for some time (but not long enough to have reached Pretoria), I noticed that we had come to a stop in a semi-industrial area. I enquired if this was the venue where I would be meeting with Mr Zuma. The two men informed me that we were still on our way to see Mr Zuma but that they first wanted me to meet someone else. They said it was their older brother whom they wanted to introduce me to. I asked why I would need to meet their brother, but I do not recall them answering.

68. We were parked in what appeared to be a parking lot similar to a parking lot at a shopping complex. I noticed that "*Sahara*" was written on the outside of the building at which we had stopped. I attach hereto marked "**MPM1**" a picture of the building. I was taken into the building and made to wait for a considerable amount of time for this person whom I had to meet.

69. I became irritated because it was unclear to me what was happening. At

the time, I only made the connection from advertisements that Sahara was a computer company but I did not know at that point that it was a Gupta company. I also recognised the name Sahara as it was touted as a major company playing a central role in a particular project in the Eastern Cape Economic Development Zone. That is what was on my mind as I climbed out of the car. I was led to the end of a L-shaped corridor, where I was shown to a well-worn chair and coffee table displaying many Sahara magazines and recent newspapers.

70. While waiting to be introduced to this person, I called my friend Daphne Mashile Nkosi (Ms Nkosi), who lives in Johannesburg, and informed her that I was in Johannesburg, on my way to see Mr Zuma in Pretoria at the Union Building. I told her I was scheduled to fly back to Cape Town later that day and I asked her if I could overnight at her home should I be delayed.

71. I was left sitting there as the men disappeared. I noticed that they had two-way radios. The one man, whom I later came to know as Atul Gupta, was constantly on the radio speaking in a foreign language. He informed me that the man I was to meet was still busy on a telephone call. I continued to wait and became increasingly annoyed and worried that I would be late for my meeting with Mr Zuma.

72. I was eventually taken into an office where an individual was introduced to me. I now know this man to be Ajay Gupta. Ajay Gupta remained seated when I entered the office. It was neither a posh nor a big office. He sat behind a desk.

73. After introducing himself to me as the eldest of the brothers who had met

me at the airport, he then proceeded to ask me questions about my family life. I should say that he greeted me by my surname before I could even tell him who I was. He said he was aware that I was a prominent Member of Parliament and that he had seen me on television and read of me in the media. He was very complimentary about my work. He appeared to know a lot about me.

74. It was initially difficult to strike up a conversation. He asked about my children. He seemed to show a particular interest in my son and wished to know where he went to school, how old he was, whether he played sport and so on. I mentioned that my son plays cricket for the Western Province junior team. He then told me all about his interest in cricket. Ajay Gupta then informed me that they had a suite at the Newlands cricket stadium in Cape Town and that he could get me tickets to the cricket whenever there was a game, in order for me to use their suite. I responded vaguely saying something like "Maybe my son would like that. I will ask him if he is interested". He also offered me a cricket bat for my son but I said I had bought him a new one recently. He said I should let him know when he needs another one and I said I will ask him.

75. As a matter of courtesy, I reciprocated and asked him about his family. He said that he had sent his youngest brother to study in the USA and that shortly thereafter, when the brother returned to India, they developed an interest in cricket and he sent the brother to South Africa ahead of him and he followed later. I also mentioned that I had noticed he was into computers because of "Sahara".

76. I noticed that Ajay Gupta was wearing a gold ring with a ruby stone on

his pointing finger. I asked about it and he informed me that it belonged to his father but that he (Ajay Gupta) had inherited it and now wears it as his father passed away and he was now the patriarch and in the Hindu culture it must be displayed on that finger to demonstrate his status and rank.

77. After the conversation about our families we sat in awkward silence. It is at this point that I expressed my concern regarding the time. I said it was getting late and that I had a meeting. To my surprise, Ajay Gupta knew that I was to be meeting with Mr Jacob Zuma. I had not disclosed this to him. He informed me that Mr Zuma had been delayed at Luthuli house as he said there had been a "COSATU strike" on that day. I was extremely perturbed by his intimate knowledge of the whereabouts of the President. When I left, Ajay Gupta informed me that we would meet again, which I took to mean as an exchange of pleasantries, wrapping up our conversation. He also said that the two men that had fetched me from the airport would take me to a place where I would wait for the President as he was running late. I assumed they would be taking me to Pretoria. At the time, I thought that the encounter was rather peculiar. In addition, it was unclear to me why I had been brought to meet with this man.

78. We (the other two Gupta brothers who had collected me from the airport and I) then drove from the Sahara building until we arrived at a huge residential home, which I did not recognise. The two brothers spoke to the security guards at the entrance, and then entered the premises. I now know that this is the Gupta home in Saxonwold which appears in the pictures attached hereto marked "MPM2".

79. I was unsure where we were. I asked why we still had to stop at yet

another place along the way to my meeting with Mr Zuma. I was under the impression that the meeting would be held at the Union Buildings. The two men said that I was to wait for Mr Zuma there.

80. The home was structured like a compound with a few mansion like houses. I was then taken into the biggest of the houses. The interior was very beautiful, with marble stairs at the entrance and expensive-looking artwork on the interior walls. We went up a few stairs, which led to what I would describe as a waiting room. It was an extremely spacious room even though it had only two sofas and a coffee table. I gathered it was still a work in progress.

81. Atul Gupta showed me the restrooms in the house. I used the facilities for ladies. The facilities were opulent and beautifully designed with gold details on the handles of the door and the toilet cistern handles. The bathrooms were not very spacious, but they also had very beautiful gold-plated mirrors that looked like they were of French design.

82. While waiting, Atul Gupta informed me that Ajay Gupta, whom I had met earlier at the Sahara building, would also be coming to meet with me. I was surprised as I had just met with him at the Sahara premises and was confused as to what was going on. Atul informed me further that Mr Zuma was delayed at Luthuli house. I was asked to be patient and to wait for him.

83. I sat on one of the couches in the waiting room. Atul Gupta asked if I would have anything to eat or drink. Out of politeness, I said yes. He informed me that he would go and fetch their Chef in order for me to be informed what was available. He then brought a young man who was

barefooted and wearing a vest. The young man went down on one knee (he almost bowed to me) and spoke to me in a foreign language that I was not familiar with. Atul Gupta informed me that the man was their chef and that they had brought him to South Africa from India. I was offered various lunch options. I chose mutton curry. I was uncomfortable with the man kneeling before us. I asked Atul Gupta to please inform him to stand up.

84. I was made to wait a long time, during which time I made another telephone call to Ms Nkosi. I told her that my meeting was running late and it was possible that I was not going to make my flight back to Cape Town. She assured me that I could stay at her house that evening if the need arose. The other reason that I called her was because I was feeling uneasy and wanted the comfort of someone knowing what was going on. As I did not know the place, I was unable to let her know the address and simply told her I was brought to a strange house to apparently wait for the President.

85. After waiting for a substantial amount of time – approximately two but maybe three hours – Ajay Gupta came into the room but through a different entrance from the one that I had entered through.

86. He greeted me once more and sat on the other couch. He then went on to ask about the uranium in the Northern Cape, saying that he knew I was from that province. He said that uranium was needed for nuclear energy and that they would soon be the main supplier of uranium to the Government's nuclear programme.

87. He referred to a legal problem that Denel had in India and stated that he

could solve it, as they were close to the Indian Government. This matter was top secret. I was accordingly surprised that he knew about it.

88. He then told me that he was aware that I was meeting with Mr Zuma in order to discuss, amongst other things, the Pebble Bed Modular Reactor. I was shocked that he knew this information. Ajay Gupta started talking about the Pebble Bed Modular Reactor and remarked that it should be closed because it was "burning money".

89. Ajay Gupta went on to talk about the turnaround strategy of SAA and that it was not yielding results. He commented that the SAA route to India was not profitable and it was costing the country a lot of money. He stated that he thought that SAA's India route should be stopped. I pointed to the bilateral relations between India and South Africa and the fact that passengers and goods are transported via the India route on a daily basis. I asked him what would happen to those passengers and goods if the airline route was cancelled. He told me not to worry as they were in a partnership with an airline that could take over this route.

90. Immediately after his statements about SAA's India route, Ajay Gupta then very casually, and much to my astonishment, proceeded to offer me the position of Minister of Public Enterprises if I would agree to facilitate the closure of SAA's India route when I became Minister. Ajay Gupta said there would be a cabinet reshuffle in the next week or so and he said he had an offer for me. He said that I could be the next Minister of Public Enterprises if I agreed to facilitate the closure of the route.

91. It is an understatement to say that I was shocked by the offer. I was stunned and wondered how Ajay Gupta had so much power. I responded,

firstly by informing him that the SAA statistics showed that the flight to India was doing very well. Secondly, I asked how he could be in a position to offer me a position as a minister. Ajay Gupta said he would put in a word with the President for me. After this statement there was silence in the room after which Ajay stated: "*We usually do*". I perceived his tone to be boastful. I then asked him who "*we*" was but he did not respond.

92. I was growing very agitated and angry and began to speak very loudly. I had become confrontational and began raising my voice. It was at that moment that Mr Zuma suddenly entered the room. He walked in from the same direction that Ajay Gupta had entered (as opposed to the entrance that I was brought through).

93. I immediately stood up to greet Mr Zuma, as is protocol. Ajay Gupta did not stand. Mr Zuma and Ajay Gupta did not greet each other.

94. I recall being struck at how swiftly Mr Zuma entered the room, at the very moment that I was telling Ajay Gupta that I would never take a position from a stranger (as those can only be offered by the President or Luthuli House), and at the moment that I was becoming increasingly agitated. I was very angry and voiced my concerns with Mr Zuma about the information that Ajay Gupta had and the offer which he had made to me.

95. Despite what I had just told him, Mr Zuma was very calm and kept telling me to calm down. Mr Zuma did not seem at all concerned or surprised when I informed him that Ajay Gupta had just offered me a ministerial position and I asked how he could possibly do that. Mr Zuma

simply repeated to me that I should not worry.

96. At the time, I felt more upset at the prospect that Mr Zuma was perhaps faulting me for my anger when he should actually have found fault in what I had just told him about Ajay Gupta. Mr Zuma did not negate or contradict anything I had just told him about what had passed between Ajay Gupta and I just moments before his arrival. When I realised that Mr Zuma was not taking it seriously, I decided it would be best to remove myself from the situation.

97. Still very angry and emotional at that point, I asked Mr Zuma to excuse me, indicating that I would miss my flight if I did not leave. I also apologised to Mr Zuma for not having agreed to see him in China. He simply kept on saying that all was fine and that I should keep calm.

98. Mr Zuma informed me that had he known that I was walking on crutches, he would not have had me travel from Cape Town to Johannesburg to meet with him. As Mr Zuma escorted me out he was offered food but declined, saying that he would be eating at his son Duduzane Zuma's house. Mr Zuma explained that his son lived "*next door*" to the house we were just in, in the same 'complex', and that his son often complained that he (Mr Jacob Zuma) was always eating at this house where the encounter had just occurred.

99. Mr Zuma walked me all the way to the twin cab "bakkie", carrying my handbag as I was walking with crutches. Ajay Gupta did not accompany us. He remained seated when Mr Zuma and I left the room, just as he had done when the President had entered the room. Mr Zuma then bid me farewell, saying: "*Hamba kahle Ntombazane, Kuzolunga. Zinakekele*".

meaning; "Go well young woman, everything will be OK. Look after yourself". He also said that we would see each other again. He helped me into the car, still trying to calm me down and apologised for making me come to Johannesburg when I was on crutches. He continually referred to me as a "*Ntombazane*".

100. As we drove off, I called Ms Nkosi once again and told her that the meeting did not take place but that I would brief her when I saw her in person. I was uncomfortable talking on the phone about the incident while in the car with the two Gupta brothers. I was then driven back to the airport.

101. Approximately one week or so later, and much to my surprise, Mr Zuma shuffled his cabinet as Ajay Gupta said he would. Indeed, Ms Hogan was removed from her position as Minister of Public Enterprises. As part of this reshuffle, Mr Zuma replaced Ms Hogan with Mr Gigaba as Minister of Public Enterprises.

102. It is my understanding that after the re-shuffle, SAA abandoned its SA-India route, and a Gupta-associated airline took over the route.

MY DISCLOSURE OF THE OFFER MADE TO ME BY AJAY GUPTA

First disclosures

103. I did not go public on the Saxonwold incident immediately. The Joint Standing Committee on Intelligence, of which I was a member, met on Wednesdays. Shortly after my encounter with Mr Zuma and the Guptas at their residence, I did disclose to a few members of the Committee

what had happened at my recent meeting with Mr Zuma. They were Hlengiwe Mgabadeli, Dennis Bloem and Siyabonga Cwele (the chair of the Committee). They all took an interest in my account.

104. At the Committee meeting one or two of the members informed the chairperson at the time (Cwele) that they thought we ought to discuss certain individuals known as the Guptas. Cwele, however, persuaded the Committee not to take the matter further as Cwele informed us that he would take the matter to Luthuli House for consideration. Thereafter, we never heard of the matter again.

105. I should mention that I had a meeting with Gwede Mantashe and Jessie Duarte for in order to discuss certain issues. This was the second meeting which I had with them. By the time I met with them at Luthuli House the incident in Saxonworld had already occurred with Former President Zuma and Ajay Gupta. We discussed the China trip and my unhappiness regarding the China trip and about being unjustly treated as a result of the trip and the increasing corruption in the SOEs, which I was overseeing. I went as far as asking them to remove me from my position in parliament as I was very hurt because of all of these things. I also mentioned the Saxonworld incident and Gwede Mantashe left and said that he had another meeting and that Jessie Duarte should continue with the meeting. Jessie appeared to not want to discuss the matter.

Media and social media

106. In or around February 2013, reports emerged in the media that members of the Gupta family had used the Waterkloof air force base to land chartered planes with guests arriving from India in order to attend a

wedding of Vega Gupta and Aakash Jahajgarrha. The bride to be was the daughter of Achla Gupta who is the only sister to the Gupta brothers. After seeing the reports I made various posts on Facebook regarding the Gupta family.. At the time, my posts did not receive any media attention.

107. It was at this point, and because of the ongoing reports relating to the Gupta family, and my own research which I was conducting, that I truly began to realise the real magnitude of the power they were wielding in South Africa. I began regularly posting about the Gupta family.

108. On 14 March 2016, Mr Johan Abrie, a Democratic Alliance Member of Parliament, and an acquaintance and "*Facebook friend*", posted a picture on Facebook in which the face of a Gupta family member had been superimposed onto the South African Government emblem.

109. I responded to the Facebook post and, in effect, stated that the Gupta family had offered me the position of Minister of Public Enterprises when Barbara Hogan was removed, on condition that I would drop the SAA route to India and give it to them. A copy of the picture that Mr Abrie posted and response are attached and marked "**MPM3**" and "**MPM4**".

110. I stated as follows:

> "But they hap previously asked me to become Minister of Public Enterprises when Barbara Hogan got the chop, provided that I would drop the SAA flight-route to India and give to them. I refused and so I was never made a Minister. The President was in another room when they offered me this in Saxonwold."

111. On 15 March 2016, the Presidency issued a statement in response to my comment, stating that "President Zuma has no recollection of Ms Mentor. He is therefore unable to comment on any alleged incident in her career". I attach the statement hereto marked "MPM5"

112. I then posted the following facebook post, a copy of which is attached marked "MPM6":

> "I chaired the ANC National Parliamentary Caucus when President Zuma was a Deputy President. He sat next to me and spoke through me and with me in Caucus each Thursday when Parliament was in session. I sat with him in the ANC's Political Committee each month too. He is the one whi was sent by the TOP 6 then to tell me that the ANCC has deploted me to be the Chair of Caucus then. He is the one who introduced me to the ANC Caucus then as a new Chair of Caucus. I had a bi-monthlty with him in his Tuynhuis Offices then. He knew me right from when we arrived from exile. He met me frequently on the ground in the Northern Cape on many occasions. I know President Mbeki and Kgalema Motlanthe will never ever say they have no recollection of me. As for the Guptas. I am not done yet, a lot still need to be told ... will leave this here for now. I will only talk to the media if necessary from Friday late. The scoundrels can continue to insult the bark. I anything happens to me or my family, you all know who to suspect. I am NOT scared thou. I know my Redeemer Lives!"

113. On 17 March 2016 I further posted:

> "President Zuma was in that Gupta house with me on that day. He came in after I rejected the offer. He accompanied me down the 4/5/6 marble (covered) wide stairs at the entrance of the Gupta house to their black twin-cab with heavily black-tainted windows which taking me back to the airport. I was on cruches. It was about 5 - 7 days or so before Barbara Hogan was reshuffled as a Minister of Public Enterprises. The rest I will reveal at the right time."

was with the Hawks. The SAPS Detective division said it was no longer with them. I was told that General Ntemeza of the Hawks had flown someone by jet to fetch my statement from SAPS Western Cape Detective division to take it to his offices.

120. A member of the Hawks, Advocate Mtolo along with another member of the Hawks whose name I do not recall, then came to my house with a typed version of the statement. Advocate Mtolo advised me that the reason for the delay was that I had complained about President Zuma and that their hands were consequently tied. They could not proceed with my complaint while the president was named in my complaint. After much deliberation, I agreed to remove Mr Zuma's name from the affidavit in the hopes that the Hawks would investigate my complaints. As far as I am aware, the Hawks do not seem to be actively investigating the matter and there does not seem to have been any progress in this regard.

121. At the time I made handwritten changes on the statement as it did not accurately capture what I had told Peterson and Van Wygaard and had various errors. Advocate Mtolo and I agreed that he would return to my home with a properly typed statement incorporating the changes and insertions which I had made, this however did not happen. I attach the statement hereto marked **"MPM8"**.

122. At some point I went to lay a charge against Mr Ntlemeza and Advocate Mtolo. I laid a charge of obstructing justice at the IPID office in Belville. I took pictures of myself outside of the police station and posted them on my Facebook page.

123. After I had made many enquiries on the progress of the charges I laid and

114. A copy of this post is "MPM7"

115. Journalists began approaching me for comments after this Facebook post. I made statements to a number of journalists regarding the circumstances under which members of the Gupta family had offered me a ministerial post. As a result, a number of articles were subsequently published in this regard.

116. On about 16 March 2016, Mr Mcebisi Jonas released a statement detailing his own encounters with the Gupta family and Mr Zuma. According to this statement, members of the Gupta family offered Mr Jonas the position of Minister of Finance prior to the removal of the erstwhile Minister of Finance, Mr Nhlanhla Nene.

117. There were reports that the ANC would be investigating the state capture matter. I suggested that there may be other people who were not ANC members that might also have some information on the matter and that the State should therefore investigate.

The Hawks

118. Shortly afterwards, on or about 26 May 2016 I went to lay charges against Mr Zuma and some Ministers of Cabinet and certain board members of certain state owned enterprises with the Durbanville South African Police Service (SAPS). My statement was handwritten in my house by a Captain Pieterson, from a Major General Veary's office, and who was accompanied by a Captain van Wyngaard.

119. I subsequently requested my statement from the police but I was told it

after I had demanded my original Statement from the Police and the Hawks on several occasions to no avail in or about in mid-December 2016, I received a telephone call from Advocate Mtolo and a certain Advocate Voggel of the NPA from Pretoria. They requested to meet with me on around the 14th of December of the same year.

The Public Protector

124. The DA, the Economic Freedom Fighters (EFF) and other organisations subsequently requested the Public Protector to open an investigation into my and Mr Jonas's allegations. In effect, the Public Protector was asked to investigate whether the president allowed members of the Gupta family to influence and play a role in appointing cabinet ministers in exchange for executive decisions favourable to the business interests of the Gupta family.

125. The Public Protector did indeed initiate such an investigation. In or around August 2016, the Public Protector interviewed me as part of her investigation into the issue of "*state capture*" by the Gupta family. This was hardly surprising given that my disclosures were partly the reason that the DA and others requested the Public Protector to investigate the issue.

126. In addition, as far as I am aware, I am the only person to have knowledge (and to have made a public statement to that effect) that this happened with Mr Zuma's knowledge and approval while he was President. I have willingly co-operated with the Public Protector throughout.

127. In October 2016, it was reported in the media that Mr Zuma, still the

President at the time, was requesting a list of witnesses from the Public Protector. I viewed this as an attempt by the President to intimidate those persons who had given evidence to the Public Protector against him. In order to show that I was not going to be intimidated and to stand up to what I perceived as threats of intimidation against me and others who had provided information to the Public Protector, I posted the following on Facebook (retrieved from a twitter account) (a screenshot of the post is attached and marked "MPM9"):

> "Dear Zuma. I spoke to the PP. I revealed things about. You and your folly relationship with the Guptas through your son. I can go one-on-one with you on a publicly televised hearing only AFTER the PP releases her Report, with or without you having responded to the questions she posed to you six months ago..I am NOT scared of you, of your lies, of your tricks, your delaying tactics, your attempted intimidation, your harassment, and what you normally do to people. You are a coward that hides behind State power all the time. Where ever have you heard a person that is being investigated by the PP making the silly demands you are making? Power has really ran to your head. I feel sorry for you"

128. A few days later, my Facebook account was hacked. It was also blocked. This had happened previously as well, subsequent to my disclosure made in March 2016. I found it more than a mere coincidence that my account was blocked after making the disclosures referred to.

129. Even today, I still suspect that my account was hacked because I posted adverse and damaging information about the president and his relationship with the Gupta family. My account has been hacked on more than one occasion thereafter.

130. I made the disclosures set out above and willingly co-operated with the Public Protector because I believe that the issue of *"state capture"* is the

single greatest threat to our constitutional democracy since the end of apartheid.

131. I understand that I will be asked to confirm the contents of this statement under oath at the Inquiry.

132. I reserve my rights to supplement this statement if necessary.

MABEL PATRONELLA MENTOR

25 July 2018

DATE


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zuma

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Vytjie Mentor updated her status
October 10 2010 at 8:31 PM

Dear Zuma I spoke to the PP I revealed things about You and about your fully relationship with the Guptas through your son I can go one-on-one with you on a public televised hearing only AFTER th

694

4.2k Comments 707 Shares

Vytjie Mentor
March 2 2.16

I chaired the ANC National Parliamentary Caucus when President Zuma was a Deputy President He sat next to me and spoke through me and met with me at Caucus each Thursday when Parliament was in session I sat with him in the ANC's Political Committee each month too He is the one who was sent by the TOP 6 then to tell me that the ANCChas deployed me to be the Chair of Caucus then . He is the one who introduced me to the ANC Caucus then as a new Chair of Caucus I had a bi-monthly with him in his Tuynhuis Offices then. He knew me right from when he arrived from exile He met me frequently on the ground in the Northern Cape on many occasions I know President Mbeki and Ngakoma Mathanthe will never ever say they have no recollection of me As for the Guptas, I am not done yet, a lot still need to be told . will leave this here for now. I will only talk to the media if necessary from Friday late. The scoundrels can continue to insult and bark If anything happens to me or my family, you all know who to suspect I am NOT scared thou I know my Redeemer Lives!

14

79 Comments 4K Shares

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Vytjie Mentor
August 0 2018 at 7:04 PM

Protest as Pres Zuma Speaks at IEC event

28

28 Comments 22 Shares

Vytjie Mentor
4 24 2018 at 12 31 PM

GET THIS ' President Zuma and the NPA have been BARRED from proceeding to the Supreme Court of Appeal to further Appeal their ' The Court has EFFECTIVELY reinstated the Charges against President Zuma

37

32 Comments 3

Vytjie Mentor updated her status
October 25 2018 at 2 45 PM

President Zuma has not contacted Mr Mosioha in the NCOP Mosioha claimed yesterday that Shaun Abrahams had tasked him and the President days before Pravin Gordh an was charged The President said

56

40 Comments 33 Shares

Vytjie Mentor
September 16 2015 at 5 17 PM

Zuma must shutup and stop stealing

33

Vytjie Mentor
July 22 21 at 9 23 PM

Me and my family will be voting for the ANC as usual The ANC is not President Zuma

8

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Vytjie Mentor
March 17 2018 Cape Town

President Zuma was in that Gupta house with me on that day He came in after I rejected the offer He accompanied me down the 4*5/8 marble (covered) wide stairs at the entrance of the Gupta house to that black two-cab with heavily black-tinted windows which took me back to the airport I was on crutches It was about 5-7 days or so before Barbara Hogan was reshuffled as a Minister of Public Enterprises The rest I will reveal at the right time

43 Comments 1.4K Shares

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Vytjie Mentor
November 8 2018 at 10:45 PM

In this way the depth of how the Gupta corrupted our political system is being protected from further exposure

43 12 Comments

Vytjie Mentor updated her status
October 30 2018 at 10:14 AM

He must tell us why he provided a Letter head and his own signature to facilitate the landing of the Gupta Jet at Waterkloof to validate it of landing as "Government Business" They must not play games

82 24 Comments 81 Shares

Vytjie Mentor
August 21 2018 at 2:4 PM

The ANCYL move on Gupta employees is very SUSPECT The ANCWL call for Government to start Banking with the Post Office Bank is also very SUSPECT The call was instantly supported by the Chairman

16 20 Comments 3 Shares

Vytjie Mentor
October 4 2018 at 5:58 PM

Today I cooked Indian cuisine Gupta style you know what?

77 28 Comments

Vytjie Mentor
May 30 2018 at 6:03 PM

The sheer arrogance of the Guptas, our President and Cabinet to strong-arm the banks into reopening the Gupta accounts smacks of abuse of power and is actually against international banking regulations

73 5 Comments

Vytjie Mentor
[illegible] PM

Unfortunately Minister Lynn Gupta-Brown of Public Gupta-Enterprises is the one who will appoint the new SAA Gupta Board

82 6 Comments

Vytjie Mentor
July 27 2018 at 4[illegible] PM

We all know that Ankie Mat[illegible] on the Gupta family payroll We know what his agenda entails

17 [illegible] 15 Shares

NHLANHLA MUSA NENE

STATEMENT OF NHLANHLA MUSA NENE

STATEMENT TO THE STATE CAPTURE COMMISSION OF INQUIRY

TABLE OF CONTENTS

I, the undersigned,

NHLANHLA MUSA NENE

state as follows:

INTRODUCTION

1. I provide this statement in order to assist the Inquiry into State of Capture (the Commission), which is chaired by Deputy Chief Justice Raymond Zondo.

2. I am the Minister of Finance appointed as such on 27 February 2017 by President Cyril Ramaphosa.

3. I have over 20 years of experience in the finance industry. I have an advanced Diploma in Economic Policy from the University of Western Cape, a Certificate in economics and Public Finance from the University of South Africa, B.Com Honours in Economics from the University of Western Cape, a Certificate in Micro Economic Theories and Applications and Macro Economic Principles and Issues from the University of London. I am extensively involved in the finance sector and have acquired vast knowledge on how it operates and how it is regulated. My further qualifications and expertise and positions I have held appear from my Curriculum Vitae.

4. On 8 November 2008 I was appointed as the Deputy Minister of Finance under the leadership of President Kgalema Motlanthe. The Minister of Finance at that time was Mr Trevor Manuel.

5. I served as Deputy Finance Minister under the leadership of former President Jacob Zuma ("the President" or "Mr Zuma"). The Minister of Finance was Mr Pravin Gordhan. President Zuma assumed office on 9 May 2009. Mr Gordhan was appointed as Minister of Finance on 11 May 2009. He served in this portfolio until 25 May 2014. He was reappointed on 13 December 2015 and served until 31 March 2017 when he was unceremoniously removed.

6. I served as the Minister of Finance from 25 May 2014 until I was removed from office by President Zuma on 9 December 2015.

7. I believe that I was removed from office because of my refusal to toe the line in relation to certain projects. In hindsight, it seems that those projects may have benefited the Gupta family and other close associates of the President. I shall describe the examples of the nuclear deal and the SAA strategy. These two issues, like other procurement processes within government and state-owned companies, were subject to intense scrutiny by National Treasury ("Treasury").

8. The Minister of Finance works under pressure, particularly when it comes to approving decisions that would have implications for the fiscus. Sometimes the Minister of Finance is referred to as "Mr No" when government departments are advised that their proposals must fall within the Cabinet-approved medium term policy, strategic and fiscal framework and/or comply with governance requirements and agreed policies. It is an unfortunate appellation because the role of the Minister of Finance is to be scrupulous in managing fiscal sustainability and the finances of the country in order to ensure economic

growth and the sound and transparent management of the public finances. Ultimately this is critical for the delivery of services to the public to transform people's lives and to comply with socio-economic obligations for which the government is responsible under the Constitution.

9. Because almost everything that government does has implications for fiscal policy, Treasury participates, or is consulted, on all government policy proposals or proposed major projects. Guided by the need to safeguard long-term fiscal sustainability and economic interests of the country, Treasury takes a critical view of these policy or project proposals. However, irrespective of Treasury's initial position, once Cabinet has deliberated and decided on the policy or project, it is Treasury's role and responsibility to find the funds for such a policy or project, taking into account the approved fiscal framework and the long-term fiscal sustainability and economic interest of the country.

10. It is important for me to first explain the role of Treasury in government so that the significance of the attacks on Treasury are understood.

THE MINISTER OF FINANCE AS HEAD OF TREASURY

11. The structure of the fiscal and public finance system of the country is set out in Chapter 13 of the Constitution, 1996. Chapter 13 deals with the National Revenue Fund, the division of revenue between national and provincial and local governments, establishment of the Treasury, procurement, borrowing,

treasury norms and standards.[1] Many of these provisions are then given effect in the Public Finance Management Act [2] and the Municipal Finance Management Act[3] and annual budget legislation.

12. The key finance institutions established in the Constitution are National Treasury[4], the Central Bank (the South African Reserve Bank)[5] and the Financial and Fiscal Commission.[6] Although the Reserve Bank is required to perform its primary function independently the Constitution requires regular consultation between the Bank and the Minister of Finance.[7]

13. The Treasury is required to ensure expenditure control in each sphere of government by ensuring compliance with legislated measures that regulate expenditure.[8] The Treasury is empowered by the Constitution to stop the transfer of funds to any organ of state if it has committed a serious breach of those measures.[9] The head of the Treasury is the Minister of Finance. The Minister bears unique obligations in law. The Minister is responsible for tax policy and is the executive authority for the South African Revenue Service, to oversee the collection of tax revenue and the management of the National Revenue Fund.

1 Sections 213 to 219 of the Constitution
2 Act, 1 of 1999
3 Act, 56 of 2003
4 Section 216
5 Sections 223 to 225
6 Sections 220 to 222
7 Section 224(2)
8 Section 216(1)
9 Section 216(2)

14. Only the Minister of Finance can introduce a money bill, which is either a tax or spending bill, in the National Assembly or the Division of Revenue Bill.[10] Hence only the Minister of Finance can introduce the tax and spending proposals in Parliament as part of the Budget.

15. It is also only the Minister of Finance who can introduce a bill before the National Assembly that determines the equitable division of revenue raised and each province's equitable share of that revenue (the Division of Revenue Bill).[11]

16. Draft legislation that amends the budget (tax, appropriation and Division of Revenue bills) may only be introduced in the National Assembly by the Minister of Finance.[12]

17. A loan by the national government may only be concluded by the Minister of Finance and only for the following purposes: To finance national budget deficits; to refinance maturing debt or a loan paid before the redemption date; to obtain foreign currency; to maintain credit balances on a bank account of the National Revenue Fund; to regulate internal monetary conditions should the necessity arise; or any other purpose approved by the National Assembly by specialresolution.[13]

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10 Section 73(2)(a)

11 Section 73(2)(b) read with s 214

12 Section 73(2)(a) reads with ss 77 and 214

13 Section 71 of the PFMA

18. Similar to loans are guarantees, indemnities or other securities, which bind the national government to a future financial commitment. Before guarantees, indemnities or other securities, that bind the national government to a future financial commitment, may be issued, the concurrence of the Minister of Finance must be sought. Conditions may be attached.[14]

19. The Chief Procurement Officer (CPO) falls within the ambit of the political responsibilities of Minister of Finance. Public sector procurement must be undertaken in a manner that is fair, equitable, transparent and cost-effective. The CPO is responsible for permitting deviations and exemptions under circumscribed conditions.[15]

20. The effect of this is that the Minister of Finance has weighty responsibilities and often has to make unpopular decisions taking into account the long-term fiscal sustainability and economic interests of the country. It is this office that drives the budget process, approves loans and guarantees, oversees compliance with financial management and procurement processes and is the final bulwark against corrupt dealings that jeopardise public finances. This is why the optimal relationship is for any Minister of Finance to have the full support of the President at all times. The complexity of the position of Minister of Finance is more fully explained in a document prepared by former Minister Trevor Manuel as a handover memorandum when he left the office in 2009. I attach this document as **NN1**.

14 Section 70 of the PFMA
15 Section 217

21. It makes sense, therefore, that those who wish to pursue a systematic strategy to raid the public coffers or those who are intent on taking decisions that have potential to undermine fiscal sustainability, would attack role or credibility of Treasury as a means of getting access to government funding allocations and guarantees or obtain permission (for exceptions or deviations) to conceal dubious and irregular procurement.

22. This is evident in the sinister document titled 'Project Spider Web' that suddenly surfaced in July 2015. Styled as an 'intelligence report' the document suggested that Treasury had been "captured" by apartheid-era intelligence operatives as well as "white monopoly capital" in order to control the country's finances. The document came to my attention on or just after 20 July 2015. It was forwarded to me by email from Anthony Julies who himself was mentioned in the document. The origin of the document and how it ended up in Treasury is still unknown to me. I annex the document as **NN2.**

23. When I read this document, it reminded me of a remark made by former President Zuma about a month earlier where he told me that there are "apartheid agents" within the Treasury. I recall conveying this remark to the Director-General at the time, Mr Lungisa Fuzile. I dismissed it as a conspiracy theory. However, it was clear to me that the Treasury did not enjoy the support and confidence of the President.

24. President Zuma made this comment at a meeting he had called me to around mid-2015. I recall that it was in the afternoon when my PA Mary Marumo came

into a meeting at our small boardroom in Pretoria to give me a note whilst I was having a meeting with the Director-General Lungisa Fuzile and other senior managers of the Treasury. She left me a note (which the Director-General saw, as he was sitting next to me) which read "the President would like to see you".

25. I scribbled a response on the note saying that I would do so as soon as I finished the meeting. My PA returned a few minutes later with another note, saying I needed to go "nowlll". I left the meeting immediately, murmuring that perhaps I was going to be fired.

26. On arrival, I found President Zuma with a senior Malaysian official from Engen/Petronas who I did not know. He explained that South Africa needed to own a refinery and that Petronas was prepared to sell its refinery to PetroSA. Further and most importantly, President Zuma stated that PetroSA would need a guarantee to be able to raise the funds and, as Minister of Finance, I would have to approve the guarantee.

27. I indicated that I was not aware of this transaction, but if I received an application from the entity via the relevant department, I would consider a guarantee subject to the normal evaluation process.

28. It was at that point that President Zuma, in the presence of the Malaysian official connected to PetroSA, raised the issue of spies within Treasury. This was about a month before the document "Project Spider Web" surfaced.

29. I briefed Mr Fuzile on President Zuma's request and a possible application that might come to Treasury for him to consider through the normal processes.

30. The Spiderweb document mentioned names of several officials of Treasury including Deputy Minister Mr Mcebisi Jonas, officials Mr Lungisa Fuzile, Mr Kenneth Brown, Mr Andrew Donaldson, Ms Avril Halstead, Mr Anthony Julies, Mr Ismail Momoniat, and employees of SOE's including Mr Daniel Matjila CEO of the Public Investment Corporation (PIC).

31. The key objectives of 'Project Spider Web' were alleged to be to:

31.1. influence the design and implementation of the economic and fiscal policy;

31.2. influence the appointment of key leaders in the Reserve Bank, Treasury, DTI and SOE's that fall under their Ministries;

31.3. manage the outcomes of these institutions;

31.4. defend the position of the Spider Web through media; and

31.5. attack and prosecute critics of Project Spider Web through SARS and other means.

32. The main allegations made in relation to me were:

32.1. that I am being handled by Ms Maria Ramos whom the document code names the "Queen of Leaves".

32.2. that during the recent World Economic Forum in Cape Town, I assembled all the DDG's and Chief Directors from Treasury at a Cape Town hotel for a brief meeting and the outcomes of the meeting were that:

32.2.1. Mr Lungisa Fuzile, the then DG for Treasury will not be extending his contract at the end of August 2015. He will be joining the faculty of economics at the University of Stellenbosch and his departure would be a catalyst for some big changes inside Treasury.

32.2.2. Ms Avril Halstead will be promoted to the position of DG at Treasury. She will be promoted to position of DDG very soon as a stepping stone for her to become the next DG.

32.2.3. Mr Michael Sachs, the then DDG will be transferred to one of the SOE's.

32.2.4. Mr Tumi Moleke, will be transferred to another ministry as a DDG that works with treasury.

32.3. that I stated that Treasury must play a key role in the management of SOE's and expect my officials to play a firm hand in managing the affairs of the SOE's. A number of changes will be happening at the SOE's. One of the key actions of Treasury is to facilitate the participation of the private sector in the SOE's.

32.4. that I stated that the Government Technical Advisory Centre (GTAC) will be given a huge task of identifying private sector companies to partner with the SOE's.

32.5. that I stated that the board of SAA must be terminated by September 2015 and I indicated that Ms Maria Ramos was helping me to identify the new board members for the board of SAA. The former CEO of Kulula.com has been identified as a replacement for Mr Nico Bezuidenhout at SAA and GTAC will be given the task of identifying a strategic equity partner for SAA.

32.6. that I stated that Treasury must support the appointment of Mr Brian Molefe and that Eskom will be creating a position of COO and that Mr Matshela Koko will be filling in that position. Further that Treasury is very close to sell the government stake in Vodacom and Eskom will be getting some cash injection.

32.7. that Ms Maria Ramos was also invited by the Minister to give a word of support to the staff at Treasury. She praised the staff for the wonderful

work they are doing. She stated that she will be assisting Minister Nene to identify skills for the key positions at Treasury. She has already assisted in placing the key Chief Investment Officer at the GEPF. She will be assisting in identifying the CEO of GTAC, since Andrew Donaldson will be the Chairman.

33. I deny each and everyone of the allegations. They are baseless and have no merit.

34. I was concerned that Treasury was now going to be targeted in an attempt to undermine its legitimate role and function. On 26 August 2015 I issued a media statement condemning the Project Spiderweb 'dossier' as follows:

"MEDIA STATEMENT: PROJECT SPIDER WEB DOCUMENT BASELESS

National Treasury has become aware of a document called "Project Spider Web" that has been circulated in the media and would like to condemn it in the strongest terms.

The faceless people behind it allege a conspiracy to influence economic policy and the work of the National Treasury.

The document is baseless and vexatious. It appears calculated to sow seeds of suspicion and may be motivated by an unexplainable desire to undermine and destabilise the institution. The contents neither warrant a response nor further comment.

The Treasury has passed it on to relevant authorities to investigate its source and will be transparent about the outcome of that process, once completed."

35. As indicated in my statement, I tasked the Director-General Mr Lungisa Fuzile to forward the report to the relevant authorities for further investigation regarding the genesis of the 'dossier'. I understand that Mr Fuzile sent it to Minister Mahlobo and Dr Bathandwa Siswana. Mr Fuzile indicated that they visited him twice to ask for access to the email system of the people who received the document and those who were named. I have never received any follow-up report on whether an investigation was actually initiated by the relevant authorities or the outcome of any investigation.

MY MEETING WITH DEPUTY MINISTER MCEBISI JONAS

36. I first heard that I may be removed from office when I met with the then Deputy Finance Minister, Mr Mcebisi Jonas (Mr Jonas) on the morning of Monday, 26 October 2015. I have read his statement dated 8 August 2018 to this Commission and I confirm paragraphs 31, 33, 39 and 41 to 43 of that statement.

37. Mr Jonas telephoned me on Friday, 23 October 2015 in the afternoon. I had earlier left a Nedlac meeting at Nedlac House, Rosebank. I got the impression that Mr Jonas was agitated. He told me that there was an urgent matter that he wanted to share with me. I was on my way to O R Tambo International Airport for a flight to KwaZulu-Natal. We agreed to meet on Sunday, 25 October 2015 when I came back to Johannesburg.

38. However, on Sunday 25 October 2015, I arrived in Gauteng later than planned. I called Mr Jonas and requested that we postpone our meeting to Monday morning.

39. We met on the Monday morning, 26 October 2015 around 8:15. We were supposed to meet in my office but we decided to go to his office as he had a good balcony. I could see that Mr Jonas was flustered. He informed me of an uncomfortable meeting he had had with Mr Ajay Gupta, Mr Fana Hlongwane and Mr Duduzane Zuma in Saxonwold. He told me that during that meeting, he was offered the position I was holding at the time, that of Minister of Finance. He also told me that Mr Ajay Gupta offered him R600 000.00 in cash immediately and a further R600 million to be deposited in a bank account offshore. Mr Jonas told me that he rejected the offer of the deposit and the cash that he was invited to take immediately.

40. At that stage, there were rumours circulating in the media about an imminent Cabinet reshuffle. My name was amongst the Ministers who were reported to be due for removal. I had paid these rumours no regard.

41. Mr Jonas informed me that the Guptas were aware of this intended reshuffle and that they had informed him that they were influential in the removal of certain Ministers from their positions. I recall saying to Mr Jonas "Who are they to offer you the job of Minister?"

42. I suggested to Mr Jonas that I should resign since I was to be fired anyway. Mr Jonas pointed out, and I agreed, that I should continue to hold the line at Treasury and not give in to the threats. I was already concerned about attacks on Treasury and the intentions of those behind the Project Spider Web 'dossier' that had been released a few months earlier.

43. Although I was perturbed by what Mr Jonas had conveyed to me, I immediately returned to the business of the day. I had a very busy day that Monday with many meetings scheduled including a meeting with the Executive Director and Alternate Executive Director of the World Bank, Preparatory Meeting on SAA and a briefing on Eskom and Independent Power Producers. I did not wish to be distracted from the tasks I had to perform. We were working under pressure at Treasury and, amidst the particular challenges of the nuclear procurement programme, the troubles with SAA and Eskom, the economy was underperforming and we were required to consider where we could reduce expenditure as government. We had just presented the Medium Term Budget Policy Statement five days before on 20 October 2015 which is followed by many investor and public briefings I was required to attend. This is a busy period in the Treasury schedule and it required my full attention.

MY OWN CONTACT WITH THE GUPTAS

44. I met members of the Gupta family, particularly Mr Ajay Gupta, at official government events. The Gupta family were regular attendees at government events. I did not discuss government business with them.

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45. The first time I met the Gupta family was at a Presidential dinner after the State of the Nation address in 2009. I was the Deputy Minister of Finance at the time.

46. I was later invited to tour the Guptas' Sahara Computers offices in Midrand. I did so on two occasions in 2010. They marketed themselves as good corporate citizens, that they do not do any business with the state, and they pay their taxes. They indicated that they were in the computer and mining industries. Mr Ajay Gupta, who had also served on the President's Investment International Marketing Council, indicated that he was an economist, and was also an advisor to the President. He invited me to tea to his house, to discuss the economy.

47. Whilst Deputy Minister, I visited their home in Saxonwold on four occasions, always taken by my protectors. I regarded the visits as one of my tasks as Deputy Minister to engage with different stakeholders in the economy. The visits were short, and initially was to discuss the economy, and to contribute an article to their magazine at the time "The Thinker". The later visits were related to a briefing on the impending launch of the New Age. I also visited their Midrand offices again in 2013 before the launch of their television channel ANN7. They indicated that they wanted to present a different perspective in their media, to shift it away from undue criticism of the ANC, to a more balanced perspective and to discuss the economy. They constantly indicated to me that he wanted to talk about the economy.

48. On all my visits, I and was driven to their home by my protectors. I recall seeing Mr Duduzane Zuma at the house in Saxonwold on most occasions but we did not speak.

49. I really first became suspicious of the family's intentions around 2013, after reports on the funding of the Estina Dairy farm. I had also been invited to the Gupta niece wedding in Sun City, but had declined the invitation, and did not attend it.

50. After becoming Minister of Finance in 2014, I went to their house on two occasions, around August and again in November 2014. On the first occasion Mr Ajay Gupta raised with me an issue that he was having with Mr Iqbal Surve of Independent Media. He wanted to know from me whether it could be correct that an agreement between Mr Surve and the PIC precluded Mr Surve from entering into a partnership with the Guptas to form an independent media group. On the second visit, I recall clarifying that this was not the case.

51. I was not requested to do anything to benefit the Gupta family or Mr Ajay Gupta nor was I offered any inducement.

52. I have also made my position clear, on 12 June 2018, in a response to a parliamentary question from MP Floyd Shivambu who insinuated that I facilitated the Guptas' access to the PIC during my tenure as Deputy Minister of Finance. I confirmed that *"I met some members of the Gupta family during government functions, specifically the dinner hosted by the Presidency after the*

presentation of the State of the Nation address. On one occasion, I was invited to tour the Midrand offices of Sahara Computer offices. … In both my role as Minister of Finance and my previous position as Deputy Minister of Finance, I have been approached by numerous individuals and companies asking for my assistance in securing finance, specifically from the PIC. In all instances, these individuals and companies were informed that they should approach the PIC directly through its formal channels." I attach the full response as **NN3.**

53. On 14 September 2018 I received another set of questions from Mr Shivambu again insinuating that I had meetings with the Gupta family when I was Deputy Minister of Finance to discuss business dealings and in particular in relation to PIC funding of the Gupta Family. He further insinuates that I was contacted by the Gupta family when I was Minister of Finance to secure promises that I made to them whilst I was Deputy Minister of Finance. I am yet to respond to these subsequent questions raised by Mr Shivambu. However, I wish to confirm that, other than what I have indicated above, I have never had any meetings with the Gupta family to discuss their business funding from the PIC when I was Deputy Minister of Finance or when I was Minister of Finance.

54. I would like to point out that I became chair of the PIC between 2009 to 2014, in my capacity as Deputy Minister. It was the practice that the Deputy Minister is appointed by Cabinet as a non-executive director and Chair of the Board of the PIC. As is the practice with this role, I was not involved in investment decision-

making, except where a specific transaction would have had to be approved by the Board (as per delegation of authority).

55. All investments approved by the PIC are made in terms of investment mandate and must fit the mandate. Approvals are done in terms of the Board-approved delegations of authority. If the transaction had served on the Board, I would have not been the one making the decision, but the collective Board.

56. I deny that I have ever acted inappropriately with regard to any investments made by the PIC. I deny any and every allegation that I knowingly acted to promote any funding from the PIC for any business involving my son. I reject with contempt fake whatsapp messages alleging my wife has received any foreign funds in any account belonging to her. My wife does not have any foreign accounts and did not receive any funds from any foreign sources.

57. Whenever I was confronted with making any final decision on any request made to me by any person, my practice is always to ensure that the Department first provides me with advice, and also that I approve requests that are within my legal and statutory powers.

THE RUSSIA SUMMIT AND NUCLEAR PROCUREMENT

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58. It is well known that the potential nuclear build programme has been contentious and controversial and the subject of media reports.

59. Preparations for the implementation of a nuclear build programme began in 2011 with the Cabinet approval and subsequent promulgation of the Integrated Resource Plan (IRP2010) which provided for nuclear power to contribute an additional 9.6GW to the energy mix by 2030, with the first new plant coming online in 2023.

60. In November 2011, Cabinet established the National Nuclear Energy Executive Committee (NNEECC) as the political structure that would oversee the nuclear programme.

61. At its inception the Committee was chaired by the then Deputy President Mr Kgalema Motlhanthe. Later on, President Zuma took over the chairing of this Committee. In 2014, this was transformed into the Energy Security Cabinet Sub-committee, which was led by the President, and included the then Minister of Energy Mr Ben Martins and other relevant Ministers.

62. The Energy Security Cabinet Sub-committee was supported by a Nuclear Energy Technical Committee which was headed by Department of Energy, but underneath it were various technical committees from different departments. For instance, the Corporate Finance and Procurement sub work group, where the Treasury officials participated, had Treasury and Department of Public Enterprises chairs.

63. The Department of Energy provided Treasury with a draft feasibility study for the nuclear programme in December 2013. Upon review of the Treasury's analysis of the draft feasibility study, it became apparent to me that regardless of the underlying policy rationale to develop nuclear energy capacity, the costs associated with it are astronomical. The envisaged 9.6GW nuclear new build programme would have constituted the largest public investment programme in South African history, and, relative to the size of the South African economy, would have been one of the largest public sector investments ever undertaken internationally. The total investment required would have had material consequences for Eskom's and the country's foreign and domestic debt, fiscal and financial position, the balance of payment and sovereign balance sheet for decades to come, as well as investment grading, which would have had implications for all South Africans.

64. I was also very concerned that the recovery of nuclear build cost through the tariff would have profound consequences for the economy and South African users of electricity. This point had become much clearer for me in the face of mounting resistance to electronic tolling in Gauteng. The "user pays principle" was being turned on its head. Construction costs that had originally been meant to be recovered through tariffs were being paid for from general tax revenue with deleterious consequences for public policy and fiscal management.

65. In addition, there would have been large risks associated with the nuclear build programme. Global experience has shown that the large upfront capital

investment, long construction period and the complexity of nuclear projects means that nuclear power projects are especially sensitive to construction risks arising from delays and disruptions, cost overruns or increases in financing costs. If these risks materialise the increased costs are locked into the cost of electricity for the lifetime of the project. Therefore, the proposed nuclear programme was not only scrutinised by the stakeholders involved but it was questioned by the public whose funds were going to be used to finance it.

66. This meant that it was critical that Treasury carefully study the feasibility and fiscal affordability of the proposed nuclear project. The funding model was central to the determination of affordability. In other words, key issues were the fiscal affordability of the funding or guarantees to secure borrowing that would be required to finance the project and the impact on the economy of the electricity tariff required to repay the debt used to finance the project. In the light of the legal obligations of my position, I would ultimately have to approve the funding model based on its viability.

67. On 22 September 2014 the new Minister of Energy, Ms Joemat-Pettersson announced that Russia and South Africa had signed an intergovernmental framework agreement. This agreement laid the foundation for nuclear programme procurement.

68. On 10 June 2015 the Minister of Energy tabled in Parliament five inter-governmental nuclear cooperation agreements that had been concluded with the Russian Federation, France and the People's Republic of China, the United

States of America (USA) and South Korea in Parliament for approval. These are annexed as **NN4.**

69. On the same day, Cabinet took a decision that, amongst others, required the Minister of Energy, in consultation with the Minister of Finance and the NNEECC, as a matter of urgency, to present a memorandum to Cabinet dealing with the financial implications, proposed funding model, risk mitigation strategies for the nuclear new build programme and the contributions by countries as contained in the Inter-Governmental Agreements.

70. Shortly thereafter, the annual diplomatic summit of heads of state or governments of the BRICS member states summit took place from 8 - 9 July 2015 in Ufa, Russia. I was a member of the South African government delegation that attended the meetings. I however first started in Moscow, Russia on 7 July 2015 where I attended the BRICS Finance Ministers' and Central Bank Governors' Meeting and the First Meeting of The Board of Governors of the New Development Bank (NDB). Accompanying me in Russia were the Director General, Mr Lungisa Fuzile who returned home after attending all the meetings that took place in Moscow where the founding documents of the BRICS bank were ratified and the Bank was formally established. I continued to Ufa with the DDG Ms Mmakgoshi Phetla-Lekhethe, who proceeded with the delegation to Ufa and Mr Marlon Geswint, the Chief of Staff.

71. In Ufa I, together with other Ministers, attended a briefing meeting with Mr Zuma on 8 July 2015. I intended to brief Mr Zuma on the summit and his forthcoming one-on-one meeting with President Putin of Russia. Mr Zuma proceeded to discuss the issue of nuclear procurement in South Africa. In essence Mr Zuma wanted to know what progress the Minister of Energy and I had made on the nuclear deal as Cabinet had directed us to prepare a memorandum on, amongst others, the financial implications and funding model of the nuclear programme. I indicated to Mr Zuma that the absence of details regarding the proposed financing of the project made it difficult to make progress with the memorandum. I was surprised that Treasury officials were not allowed in the meeting, even though the DG of DIRCO was present.

72. During this meeting, Mr Zuma criticised me for not finalising the financial aspects of the proposed nuclear deal with Russia. Mr Zuma said he was not happy that I was not doing what I was supposed to have done a long time ago so that he could have something to present when he meets President Putin for their one-on-one meeting.

73. The former Minister of Energy, Ms Joemat-Pettersson for her part, had a draft letter, a mere one page, ready for me to consider and sign. It was a letter addressed to Russian authorities. I cannot remember the exact detail of this letter, but I recall that it was essentially providing a form of guarantee to the Russian government on the nuclear programme if the Russian government were to finance it. Although it was couched in letter form, I was reluctant to sign as my signature would have resulted in a binding financial commitment by

the South African government. I said to Ms Joemat-Pettersson that I would not append my signature but if she wants to sign it, she must go ahead alone but I cautioned that whatever she ultimately signs should not have any financial commitments. She insisted that it had to be a joint decision of the both the Ministers of Energy and Finance. She was not satisfied with my response but agreed to revise the letter.

74. Immediately after the meeting, I had dinner with the officials I was travelling with and briefed them on the meeting and my refusal to sign the letter presented to me by Ms Joemat-Pettersson.

75. About an hour later Ms Joemat-Pettersson brought a revised letter to me. I recall reading it and concluding that the fiscal and financial implications remained. I rejected the letter again. She was quite concerned about what she should say to Mr Zuma given my stern refusal to sign. I told her that I don't know what she should say but I would not sign without seeing and approving the funding model as duly required by the Cabinet and without the necessary processes being followed for such a big project. She left and I was not presented with any further version of the letter.

76. As a result of my refusal to sign the letter, I was seen as the person standing in the way of the nuclear deal. I was accused of insubordination, not only by the President but by some of my colleagues. I recall that the attitude of my colleagues, particularly the Minister of International Relations Minister Maite Nkoana-Mashabane and the Minister of State Security Minister David Mahlobo

was hostile. They wanted me to sign and felt that it was not right that the issues on the nuclear deal had not been finalised.

77. My colleagues, with respect, failed to understand the implications of my signature on the document – that is, concurrence in my capacity as Minister of Finance to commitments which would have been binding on the South African government. As the Minister of Finance I was responsible for ensuring the secure, accountable, transparent, sound, effective and efficient management of the country's public finances, sovereign debt and the economy. Section 66 of the Public Finance Management Act (PFMA) provides that only the Minister of Finance may enter into a transaction that binds or may bind the National Revenue Fund (i.e. the fiscus) to any future financial commitment.

78. I told President Zuma in the meeting that I could not sign the letter without having first interrogated the financial and fiscal implications and proposed funding model. This was in line with my statutory mandate as well as the recent Cabinet decision of ensuring sound management not only of the government's finances but also those of the institutions governed by the PFMA.

79. Whilst still in Ufa, I asked my counterpart, the Russian Finance Minister Siluinov and his Deputy Mr Sergei Shatalov, whether they were aware of this 'nuclear deal' and what exactly our countries were talking about. The Deputy Minister responded that, although they had heard of such discussions, they had no real idea what it was about and were not involved in the discussions. This surprised me because, if I were to sign anything that had financial

commitments from the Russian government, I would have expected my counterparts to not only be aware but to play a role.

80. Following the tabling of the cooperation agreements in Parliament, I was repeatedly asked through parliamentary questions and the media whether the Treasury was consulted on the financing options for the nuclear build programme and its fiscal and financial feasibility prior to these agreements being concluded. Generally, I responded to such questions, by indicating that nuclear would be a substantial financial commitment and that government was undertaking a careful and thorough analysis of financing options and considering the costs, benefits and risks of building additional nuclear power stations to ensure the affordability and long-term sustainability of the fiscus and financial soundness of the state-owned entity tasked with undertaking such a programme.

81. I knew from Mr Zuma's treatment of me in Russia that he was very unhappy with my refusal to sign the draft letter. This was confirmed to me in a conversation with the Deputy Minister of Finance, Mr Mcebisi Jonas, after my return from Russia. I received a call from Mr Jonas about two weeks after returning from Russia. I remember that it was the day of an ANC lekgotla held towards the end of July 2015. He told me that he had been called to a meeting with Mr Zuma in which Mr Zuma expressed dissatisfaction with me, particularly the stance that I took on the nuclear procurement process in Ufa and my refusal to sign the draft letter presented by Ms Joemat-Pettersson. This confirmed what I already knew.

82. I thereafter convened the Director-General and a team of relevant senior Treasury officials and instructed them to establish a joint task team with officials from the Department of Energy. The joint task team was to be responsible for undertaking the required detailed technical work and preparing a technical report for submission to Cabinet on the financial implications, funding model and risk and mitigation strategies related to the proposed 9.6 GW nuclear new build programme, as had been instructed by Cabinet.

83. In September 2015 the team provided me with a preliminary report on the fiscal and financial implications, funding models and risk mitigation for the nuclear new build programme. The report set out the key considerations in respect of the programme; funding models and key risks; modelling of the fiscal implications and conclusions and recommendations. In essence the conclusion was that even under optimistic assumptions regarding the cost of the programme, that did not allow for the sorts of significant cost overruns seen on the Medupi and Kusile projects, and moderate economic growth assumptions of 2-3 percent, the government debt levels would grow exponentially. This would be absolutely fiscally unsustainable.

84. As a means of moderating the risks, the Treasury team recommended spreading the construction over a longer period of time, maintaining flexibility by not entering into any legally-binding commitments beyond two units of nuclear power stations upfront and making stop-go decisions based on an assessment of the progress in implementation, the economic environment, fiscal position and affordability.

85. I was advised that this approach was discussed between the officials of the Treasury and the Department of Energy and that while the latter were originally determined to motivate for the purchase of 9.6 GW, they were ultimately persuaded to accept the phased procurement.

86. I was also advised that even when there were changes at the level of the DG at Energy the Treasury DG and his colleagues took time to explain to each succeeding DG the rationale behind the phased procurement.

87. The Treasury team recommended the provision of R200 million for a feasibility study for preparatory work that would allow for a more thorough consideration of the costs, risks and benefits.

88. On 8 December 2015 Mr Zuma met with all the Cabinet members whose portfolios were relevant to the nuclear deal. We met at the presidential guest house, Mahlamba Ndlopfu, in Pretoria. The meeting was initially scheduled for 15h00 but I was later advised that the meeting would take place an hour later. When I arrived at the venue just before 16h00, I discovered that a consultation had taken place between Mr Zuma and my Cabinet colleagues, including State Security Minister David Mahlobo, International Relations Minister Maite Nkoana-Mashabane, Public Enterprises Minister Lynne Brown and Energy Minister Tina Joemat-Pettersson to the exclusion of me and my team from Treasury. I attended the meeting with Director-General Lungisa Fuzile, DDG Michael Sachs and then DDG Dondo Mogajane. We proceeded to gather in a boardroom for the nuclear committee meeting, which I had originally been requested to attend. Nothing was said about the consultation that had just

taken place. Initially I entered the meeting without my officials, as it was a Ministerial meeting, but when I noticed that the Minister of Energy had included officials from the Department of Energy, I requested the Treasury officials to participate in the meeting.

89. The officials who were present from the Department of Energy presented the proposed nuclear programme to the President and other Ministers. The presentation did not reflect the input from Treasury regarding the concerns with the feasibility of the programme and the possible scaled approach. Instead the Energy officials presented a procurement plan based on the production of 9.6 GW of nuclear energy. The Department's assumptions were extremely optimistic with respect to the assumed construction cost and exchange rate implications resulting in a much lower cost for the programme than was realistic. In addition, there was no consideration of the fiscal implications under different economic scenarios.

90. The presentation assumed an exchange rate of R10/$ (USD), whereas the exchange rate assumed by the Treasury was between R12 and R14 to the dollar. In fact, on that day the exchange rate was R14.57 to the dollar.

91. Put in simply, failing to show the Committee a scenario depicting the rate at which the rand was exchanged for the dollar on that day meant that the Committee was presented with a 40 per cent understatement of the cost of nuclear. So, if the price of 9.6 GW was US$100bn, the understatement was US$40bn (or some R560billion). This was a truly gross material

understatement of the project. While it could have been possible to argue that the rand could regain its strength, it is instructive that the rand is trading at around R14 this week.

92. After the presentation Mr Zuma asked me if I had anything to say in response. I pointed out that the concerns of Treasury were not included in the presentation. In particular I noted that the assumptions in relation to the exchange rate were optimistic and that there was still no funding model accompanying the presentation. I didn't really think that there was any point in saying more and resisting any further. I suggested that the officials from the Departments of Energy and Treasury finalise the presentation for the Cabinet meeting the next day. I requested my Director-General at the time, Mr Lungisa Fuzile, to give his input. Mr Fuzile expressed serious concerns, at length, regarding the cost implications of the proposal and the failure by the Department of Energy to phase the construction over a longer period of time.

93. The meeting concluded with a decision to proceed with the nuclear programme proposal by the Department of Energy despite the contrary views of the Treasury. In fact the President made an off-the-cuff remark that Treasury would not "*do to us what you did with PetroSA*". The following day was a Cabinet meeting and this proposal was to be placed before Cabinet for adoption.

94. That night, after the meeting with the President was concluded, my officials and I proceeded to the Sheraton Hotel for coffee. We were astounded at what had

taken place at Mahlamba-Ndlopfu, given the magnitude of the nuclear build programme. The proposed nuclear build programme would eclipse even the Strategic Defence Procurement Packages (the arms deal) in terms of its financial implications. The arms deal was initiated before the PFMA came into effect, yet even without its prescripts the Treasury played a central role in developing affordability reports, advising the Cabinet on economic, fiscal and financial impact and risks of the procurement, and monitoring and evaluating the budgetary implications of the envisaged procurement package.

95. Officials from Treasury served, and played a meaningful role, in several committees that were to advise Cabinet on the feasibility of the arms procurement, including the Finance Negotiation Working Group (which assisted in negotiating foreign exchange loan agreements with foreign banks and in negotiating financial aspects of the procurements with the suppliers and supplier-related parties) and the Financing Evaluation Team (which, amongst others, was to conduct a fiscal analysis of the affordability and budget-impact of the proposals).

96. Several key reports were produced with the assistance of the finance officials including the Availability of Funding Report, which was adopted by the Minister of Finance on 30 June 1998. The reports were presented to Cabinet and once the acquisition process began the Cabinet appointed a ministerial committee, which included the Minister of Finance to lead the process with a view to achieving affordable agreements with suppliers.

97. In short Treasury played an integral role on the financial aspects of the arms procurement process, including warning of the financial and fiscal risks and defining the most appropriate way of financing the procurement of the defence packages.

98. The details of the role of Treasury was fully set out before the Seriti Commission and it is not necessary for me to expand on that here. I simply wish to point out that, in relation to the arms deal, a rigorous procurement process was conducted with the support of Cabinet. Since then our laws have been revised to require even more rigour in both the procurement process and in the management of public finances. Yet, despite the nuclear procurement process being multiple times the cost of the arms deal this rigour was not observed.

99. While we were still at the Sheraton Hotel we saw a Business Day online report saying that I would be fired and Mr Des Van Rooyen would replace me. Again I did not pay much regard to the reports. I annex the printed newspaper report the following morning as NN5.

100. At the meeting with the President the following morning 9 December 2015, I informed him of the documents that would be tabled at the Cabinet meeting. Of particular importance was to apprise the President of the budget allocations for the next year. As this was the last Cabinet meeting of the year, Cabinet needed to adopt the Budget recommendations so that preparations could be

undertaken over the vacation period. The President did not raise with me his intention to remove me from office.

101. The Cabinet meeting began at 8:30am. I prefer not to speak publicly about the events at the meeting due to their confidentiality. I am however happy to speak about them if I should be ordered to do so. The outcome of the meeting, on the nuclear issue, was that Cabinet decided that the Department of Energy should issue a Request for Proposals for the nuclear build programme, with the final funding model to be informed by the responses received to the request.

SOUTH AFRICAN AIRWAYS

Introduction

102. SAA was brought under the administration of Treasury on 11 December 2014 (gazetted on 19 December 2014) due to poor governance and financial instability. At the time of the transfer, SAA's financial position was extremely weak. In the 2012/13 financial year, the airline suffered a loss of R1.2 billion. The loss increased to R2.6 billion in 2013/14 and the airline was on track to realise an even larger loss for the 2014/15 financial year, which eventually amounted to R5.6 billion. The company was technically insolvent, with its liabilities exceeding its assets by R3.5 billion as at March 2014 and was experiencing severe liquidity challenges. It was only able to raise funding with the support of government guarantees. A total of R7.906 billion in guarantees

had already been issued to airline to enable it to continue operating as a going concern.

103. It was incumbent upon me to ensure that decisions taken by SAA were responsible and consistent with a turnaround strategy to stabilise the entity.

Going concern guarantees

104. Prior to the transfer of the Executive Authority responsibilities, the former Minister of Public Enterprises (MPE) had written to me on 21 November 2014 requesting my concurrence to the issuance of a R6.488 billion perpetual going concern guarantee in favour of SAA. The guarantee was intended to enable SAA to finalise its financial statements on a going concern basis and secure the liquidity necessary to meet its commitments.

105. At the time, SAA's cash flow forecast showed that it would run out cash by mid-January 2015 unless additional guarantees were provided. This would have triggered a default by SAA on its guaranteed debt, requiring government to meet the obligations on SAA's behalf, as well as negative economic impact and loss of jobs.

106. Having reviewed the application, on 22 December 2014, in my new capacity as the Executive Authority for SAA, I issued the guarantee in favour of the airline, bringing the total guarantee facility to R14.4 billion. In reaching this decision I took into account the recommendations of the Fiscal Liability Committee

(comprising Deputy Directors-General and other officials of the relevant divisions in Treasury).

107. In August 2015, SAA submitted an application for additional guarantees totalling R5.0 billion. Like the previous year, this was required in order for the airline to be able to finalise its financial statements on a going concern basis and secure liquidity.

108. The Fiscal Liability Committee recommended that I do not approve the issuance of the requested guarantee, citing concerns that there was no financial case to support the issuance of the guarantees and that the governance challenges at SAA did not provide confidence that the airline would turn-around within the projected timeframes.

109. The Fiscal Liability Committee is a structure comprising of senior officials of the Treasury (mainly DDGs) which is chaired by the DDG who heads Assets and Liability Management. The Committee evaluates all applications for guarantees and makes recommendations to the Minister of Finance. In evaluating the applications the Committee seeks to determine the probability that a state guarantee might be called, namely that the national revenue fund might have to make good some or all of the amount guaranteed.

110. In terms of the PFMA, calls against a guarantee are a direct charge against the National Revenue Fund. So, if an SOC whose debt is guaranteed by the sovereign fails to pay it's debt when it falls due, then the creditors have

recourse against the National Revenue Fund. Such a payment supersedes even the payments for social security grants.

111. While the approval of a guarantee does not lead to an immediate outflow of cash from the National Revenue Fund, if the guarantee is extended to an entity whose balance sheet and cash flows are weak it can be a huge inconvenience to the country and the way guarantees work "cuts out" parliamentary scrutiny. It is for this reason that Treasury's approach to guarantees has always been circumspect.

112. With the above context and bearing in mind the advice I was given on the nuclear guarantee, I wrote to the chairperson, requiring that SAA finalise certain outstanding matters before 18 September 2015. Concluding these matters would assist in improving the financial performance of SAA. Amongst the outstanding matters to be finalised before the guarantee request would be reconsidered was the conclusion of the Airbus contract.

113. As no response was received from the airline, I wrote again to SAA on 28 September 2015 requiring that the outstanding matters be finalised by the following day. This would have allowed me to table the airline's annual financial statement in Parliament by 30 September 2015, as prescribed in the PFMA.

114. In her response dated 29 September 2015, the chairperson provided a high level overview and update on the outstanding matters I had raised. On 30

September 2015, I responded that I had referred SAA's response to the Fiscal Liability Committee for due consideration. At the same time, I stressed that the decision on A320/A330 swap transaction would have a material impact on the amount of support required and that delays in reaching finality on this matter could delay a decision on the going concern request.

The Airbus contract

115. The Airbus contract related to a purchase agreement that had been concluded between SAA and Airbus in 2002. Amongst other things in the agreement, SAA was to purchase fifteen (15) A320-200 aircraft (A320s). This agreement was amended in 2008 to increase the number of A320s to twenty (20). Of these, ten were delivered between 2013 and 2015. The remaining ten were due to be delivered between 2015 and 2017.

116. As a result of SAA's financial pressures and the pre-delivery payments falling due, the SAA management renegotiated the terms of the amended purchase agreement with Airbus in which the parties agreed that the purchase of the remaining 10 A320s would be cancelled and SAA would enter into operating leases of five long haul A330-300 carriers from Airbus. SAA would not be required to recognise impairments that they would otherwise have had to do. In addition Airbus would refund to SAA R1.3 billion of pre-delivery payments it had made on the ten A320s which would reduce pressure on the company's tight liquidity position. I approved this agreement on 30 July 2015 and later, in September 2015, confirmed my approval again.

117. Instead, after I had granted my approval, Ms Myeni proposed an alternative transaction in which SAA would purchase the A330s and enter into a sale and leaseback of the aircraft with a local leasing company.

118. I responded on 30 September 2015, requesting assurance that any such amendment would leave SAA in a better financial position than would otherwise have been the case had the swap transaction gone ahead and that steps must be taken to mitigate any risks that could arise from the original swap transaction not proceeding.

119. Furthermore, I notified the chairperson that, in the event that there was a material amendment to the transaction, SAA would be required to resubmit an application for approval in terms of Section 54(2) of the PFMA. I required that the rationale for reconsidering the application as well as a comprehensive business case and the financial implications of the alternatives that were being considered be provided for my consideration.

120. These requirements were reiterated several times in my subsequent correspondence to the SAA chairperson.

121. During October, I became aware that the persistent delays in reaching finality meant that Airbus was threatening to walk away from the swap transaction. This would have resulted in Airbus reverting to the original A320 purchase agreement, which was still in place, with the consequence that SAA would have

to pay the Pre Delivery Payments (PDPs) for which funds had not been secured as well as having to recognise impairments that would negatively impact the financial performance of the airline.

122. It also came to my attention that in the absence of SAA concluding the original swap transaction, Airbus was enforcing their rights under the A320 purchase agreement, and demanding payment of the PDPs. I had been informed that the most immediate payments, which were due at the end of November amounted to around $44 million. Payment of this amount would result in a cash shortfall and the significant risk of a default by SAA. Therefore, immediate and decisive action was required to conclude the transaction.

123. Following repeated entreaties, the airline submitted a "business case" on 9 November 2015. After reviewing the "business case", which revealed a number of gaps and flaws, I wrote to the chairperson on 12 November 2015 indicating that the business case provided little in the way of concrete information that would be required to make an informed decision and requested additional details.

124. Based on Treasury's review of the alternative proposal during November 2015, it was evident that SAA had not demonstrated that there was certainty that the proposed amendment to the transaction structure would leave the airline in a better financial position than under the original swap transaction structure. There was even a significant risk that it would leave SAA in a materially worse off financial position where it would be unable to meet its commitments as they

fall due. This meant that there was a high probability of SAA defaulting on its government guaranteed debt, which would have had severe consequences for the fiscus and the economy. On 2 December 2015 I decided not to approve the alternative transaction. I announced this decision publicly on 3 December 2015 in a press statement. The statement explained that

"SAA had not demonstrated that there was certainty that the proposed amendment to the transaction structure would leave the airline in a better financial position than it would otherwise have been had the airline implemented the original swap transaction structure. In fact, the information indicated that the proposed transaction structure would actually leave SAA in a materially worse off financial position where it is unable to meet its commitments as they fall due. Although possible benefits may be realised through allowing the airline to continue to pursue an alternative transaction these were far outweighed by the high probability of a default on the government guarantees and the severe consequences thereof."

125. I, and the Treasury, were concerned that should SAA not meet the terms of the PDPs and therefore default on its obligations it would have severe negative consequences for SAA and for the country as a whole. As with the nuclear build proposal, we were concerned about the impact of the deal on government's capacity to deliver on its social and developmental objectives.

Appointment of the SAA Board

126. I was extremely concerned by the leadership instability at the airline, and my concerned increased from August 2015 when several senior executives were either replaced or resigned citing a breakdown of trust with the Board. A stable executive management team was crucial to implementing the airline's turnaround strategy, so that the airline could return to financial sustainability. At the time, I requested the board to brief me on these developments and their impact on the operations of the airline.

127. Around November 2015, I was called to a meeting with the former President, Mr Jacob Zuma, and the then chairperson of SAA, Ms Dudu Myeni. This meeting took place shortly after an ANC Study Group meeting on 3 November 2015. Some of those present at the Study Group meeting that I can recall included Mr Yunus Carrim, Ms Makhosi Khoza, Mr Des Van Rooyen, Mr Pule Mabe, Ms Pinky Kekana, Ms Cindy August and Ms Dikeledi Mahlangu. I expressed in the Study Group meeting the view that "either Ms Myeni leaves or I leave." This was reported to Ms Myeni, who was not in the study group on the day.

128. At the meeting with the President and Ms Myeni, the President said that he was trying to get us to 'find each other'. I found this odd because Ms Myeni reported to me, yet the President was treating us like two errant school children. It was an awkward meeting. Ms Myeni complained about me. I realised that there was little to be achieved at this meeting as it seemed intended to allow Ms Myeni to complain. However, I stated the issues as I saw them; that I felt that Ms Myeni was obstructive and that she played the media. I

indicated that I was of the view that Ms Myeni should be removed from the Board: under her leadership, the airline had persistently been in crisis throughout the year, and reckless action by the Board had repeatedly exacerbated, rather than averted the crisis. On a number of occasions, this had meant that there was a material threat that the airline would default on its government guaranteed obligations, which would have had negative consequences for the fiscus and the economy. After expressing my views I requested to be released from the meeting.

129. On 9 December 2015, I made a submission for the appointment of a new SAA Board which was circulated to the Cabinet, but not tabled for discussion.

The Khartoum route

130. On 17June 2015 Ms Myeni wrote a letter to me informing me that "*In a phone call discussion with His Excellency President Zuma while in Sudan 3 months ago, a request was made for SAA to evaluate the potential for a new route to Khartoum*". The letter requested me to consider the outcome of a Business Case for SAA to open a new route from Johannesburg to Khartoum via Entebbe, Uganda. The Business case was said to provide a basis on which I can present the results to President Zuma. The letter came to me 3 days after the Sudanese President, Omar Al- Bashir, had left South Africa after having attended a summit of African heads of state. It was made in circumstances where the executive management of SAA did not agree with the proposal. A review of the letter and Business Case showed that SAA would incur losses of

approximately R30 million in the first two years of operation – money that the airline simply did not have. I attach a copy of the letter and Business Case as NN6.

131. I responded to Ms Myeni as follows:

"I understand from your letter that the evaluation for a potential new route for SAA to Khartoum arose as a result of a discussion you had with his excellency, President Zuma.

...

the business case evaluating the new route projected that the route would incur losses of approximately R30 million in the first two years of operation. Notwithstanding the projected losses, you have stated some alternative measures which could make the route financially viable. These include subsidisation of SAA services by the Government of Sudan or SAA undertaking operations on behalf of the Government of Sudan as a designated flag carrier. The costs and benefits of these alternatives have not been provided and implementation, if possible would require engagement of various stakeholders within both the Governments of the Republics of Sudan and South Africa before being considered. As part of the National Treasury's on-going weekly technical meetings with SAA, continuous feedback is being provided with regard to the progress of the implementation of the network and fleet plan. During these meetings, SAA indicated that the letter received from you is purely for information purposes and is not a PFMA Section 54 application.

In the events that SAA decides that it would be favourable to operate the route, a comprehensive PFMA Section 54 application would need to submitted for my consideration. Consequently, based on the current proposal, I am not in support of SAA commencing operations to Khartoum.

In conclusion, due to the loss- making nature of the proposed operations to Khartoum, I do not approve the commencement of operations on the envisaged route."

132. I attach a copy of my response and memo not approving the proposal as **NN7**.

133. This and other similar decisions frustrated Ms Myeni and the President and, I suspect, contributed to the decision to remove me.

MY REMOVAL FROM OFFICE

134. The Cabinet meeting of 9 December 2015 ended at about 17h30. I was on my way home from the meeting when I received a call from the President's office informing me that the President wished to see me. I immediately turned back to the Union Buildings.

135. I arrived at the Union Buildings at about 18.00 or 18.15. When I arrived I was required to wait in the waiting room for a short while. Ms Lakela Kaunda was in the waiting room. We greeted but nothing further passed between us. After a short while the President emerged and ushered me into his office. The first

thing the President said to me was "I had asked them to tell you that I wanted to see you after the meeting." He had asked Ms Kaunda to contact me but she hadn't. Nor did she mention anything about it in the waiting room. She was clearly aware of what was going on. I informed him that I did not receive that message.

136. The President then said "*You would remember that when we were discussing the establishment of the Africa Regional Centre I had said that we would have to deploy a senior, high-ranking individual to that position?*" I confirmed that I recalled the President saying that.

137. By Africa Regional Centre the President meant the African Regional Centre of the BRICS New Development Bank (the BRICS bank). The BRICS countries had signed an Agreement establishing the BRICS bank at the Sixth BRICS Summit in July 2014 in Brazil. The BRICS bank is to have regional offices, the first of which is the Africa Regional Centre in Johannesburg.

138. The President went on to say, speaking in isiZulu, "*[w]e discussed this matter with the top 6 and we agreed that we should put you there*". I asked when this decision was to take effect and he informed me that he would be making an announcement "*shortly*". I thanked the President for having provided me the opportunity to serve the country as Minister of Finance. We shook hands and I left. The entire meeting lasted two or three minutes.

139. The President made no mention of any other reason for my removal. I did not ask the President for reasons for this decision as I did not think it would be appropriate. That was the first and last time we ever spoke about the position at the BRICS bank.

140. It is obvious that the 'deployment' to the BRICS bank was a fabrication. I say so because the President had no authority to offer me a position or to deploy me to a position in the BRICS Bank, nor could such an appointment be considered at that stage, at least without due process, which also involves other member countries.

141. There is a formal process for appointments at the BRICS bank. Furthermore, there is a clear line of authority within the BRICS Bank. It is the Vice Presidents who are responsible for various functions within the Bank and the responsibility for the Regional Offices fell under and it would be his responsibility to lead the process of the appointment to the Africa Regional Centre of the Bank. The President has no authority to make any appointments at the Bank. As a head of state his role is limited to participation at summit meetings.

142. In any event, I already held the position of Governor at BRICS, a position more senior than that to which I was being 'deployed'

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143. Needless to say, the offer did not materialise and the position remained vacant until I returned as Minister of Finance and appointed the current holder of that position.

144. After my meeting with the President I made contact with several people via SMS and telephone calls regarding what had just happened.

145. Later on, I met the then DG at my official residence and I encouraged him to continue to keep the Treasury team together and to motivate it even in the face of what had happened. I repeated the same in the morning of the following day when I visited the Treasury to clear my office and to say my good byes to the rest of the Treasury staff.

CONCLUSION

146. I have prepared this statement in accordance with the request of the legal team of the State Capture Commission of Inquiry. It may not reflect all that I witnessed during my tenure as the Minister of Finance. During my brief tenure, the key events related to the 2015 Budget and the 2014 and 2015 Medium Term Budget Policy Statements. I also tabled the Financial Intelligent Centre Amendment Bill and the Financial Sector Regulation Bill (after their approval by Cabinet) which was subsequently adopted by Parliament. I reserve the right to supplement this statement at a later stage.

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DATED AND SIGNED AT PRETORIA ON THIS 1 DAY OF OCTOBER 2018.

MINISTER NHLANHLA MUSA NENE

NN2

National Treasury and the Project Spider Web

The National Treasury is responsible for managing South Africa's national government finances. Supporting efficient and sustainable public financial management is fundamental to the promotion of economic development, good governance, social progress and a rising standard of living for all South Africans. The Constitution of the Republic (Chapter 13) mandates the National Treasury to ensure transparency, accountability and sound financial controls in the management of public finances. The Ministry of Finance is at the heart of South Africa 's economic and fiscal policy development. The Minister of Finance and Deputy Minister of Finance are responsible for a range of state entities that aim to advance economic growth and development, and to strengthen South Africa 's democracy.

The white establishment through the private sector has a huge influence in the running of the National Treasury. The history of this influence dates back during the early 90's when the ANC and the National Party were negotiating the talks about talks. The white establishment felt it was too risky to leave the running of the government solely in the hands of the ANC. The white establishment came with the first project to influence the fiscal and monitory position of the country through a project known as "Project

Grapevine". The project's objective was to attract high level ANC officials to agree to hold economic transformation talks in Stellenbosch. When the ANC was winning the political war in Kempton Park, the ANC was also losing the economic war in Stellenbosch. Roeloef Meyer and Professor Andre Kriel of Stellenbosch were the key drivers of Project Grapevine.

Post 1994, Project Grapevine was handed to Professor Hugo Nel from the University of Stellenbosch. Professor Hugo changed the structure of Project Grapevine and renaming it Project Spider Web. Professor Hugo restructured the project with new objectives and a new structure. The new project also attracted funding from the Rupert, Oppenheimer and the Rothschild families. The Oppenheimers withdraw their funding for project Spider Web in 2010. The Ruperts are still the biggest funders of Project Spider Web. Professor Hugo Nel was instrumental in ensuring that Johan Rupert is appointed the vice chancellor of the University of Stellenbosch. Since Rupert's appointments, Project Spider Web has grown from strength to strength. The project has the following objectives:

- Influence the design and implementation of the economic, fiscal and economic policy

- Influence the appointment of key leaders in Reserve Bank, National Treasury, DTI and SOE's that fall under these three institutions.
- Manage the outcomes of these institutions
- Defend the position of the Spider Web through the media
- Attack and prosecute critics of project spider web through SARS and the other means

This paper focuses on how National Treasury is managed and influenced through project spider web. The project is responsible for coordinating macroeconomic policy and promoting the national fiscal policy framework. The project also coordinates intergovernmental financial relations, manages the budget preparation process and exercises control over the implementation of the annual national budget, including any adjustments budgets.

Project Spider Web has a codename membership system allocated to different members who play a key role in this project. Trevor Manuel is codenamed as the King of Leaves and Maria Ramos as the Queen of Leaves. Members of the project who work in different position in government are also coded through various names, for instance, Dr Dan Majila is coded as the Iron Master. There are different levels of disclosure for members. Most members of this project are not aware

that they are part of a covert project to influence fiscal and monitory policy since they are handled through various handlers. This paper will identify individuals who are key members of Project Spider Web. These Indivuduals are being handled through various means to achieve the objectives of Project Spider Web.

Members of the Project Spider Web inside National Treasury

Government Technical Advisory Centre (GTAC)

Andrew Donaldson
Spider Web Code Name: The Emperor

Andrew Donaldson studied at the University of Stellenbosch for a degree in economics, he studied together with Professor HugoNel. Andrew also studied in UNISA and Cambridge University. He taught Economics at the former University of Transkei, Rhodes University and the University of the Witwatersrand. Before 1991, He was also the strategic planner for the National Intelligence and Secret Services (NISS) for the Apartheid government.

He joined the then Department of Finance in 1992, and in 2001 was appointed Deputy Director-General with responsibility for the Budget Office and Public Finance in the National Treasury. His work covered spending

policy, social development and reform of the budget process and budget documentation.

He contributed to the work of the Katz Commission on tax policy, served on the Committee of Inquiry into a National Health Insurance System, was a member of the team that drafted the 1996 macroeconomic strategy and served on the Interdepartmental Task Team on Social Security and Retirement Reform.

In 2013 he was appointed Acting Head of the Government Technical Advisory Centre, an agency of the National Treasury which supports public finance management, public-private partnerships, employment facilitation and infrastructure investment.

He is chairperson of the Steering Committee of the Research Project on Employment, Income Distribution and Inclusive Growth located at the University of Stellenbosch. Andrew is the key player in Project Spider Web. Some of the people that find themselves at Treasury were once students of the Emperor at Rhodes university. The Fox and the Iron Master were once handled by the Emperor at Rhodes university when they were members of IESEC.

Asset and Liability Unit

Asset and Liability Management division manages government's asset and liability portfolio in order to ensure prudent cash management, asset restructuring, financial management and optimal management of government's domestic and foreign debt portfolio.

Ms. Avril Halstead

Spider Web Code Name: The Fog

Ms Halstead holds an MSC in Economic Policy from the University of London, an MBA from the University of Cape Town and an MA in Organisational Consulting from the City University, London she also holds a B Com honors and Scocial Science degrees.Ms Halstead is a Chief Director at the National Treasury in South Africa

where she has responsibility for overseeing approximately 40 of the largest state owned enterprises (SOEs).Prior to joining the National Treasury, Ms Halstead worked for McKinsey & Company, Old Mutual and Wipcapital, a subsidiary of Wiphold. She has also worked with a number of NGOs, notably the Nelson Mandela Foundation as well as the Family and Marriage Association of South Africa (FAMSA) and Ikageng, an organisation responsible for caring for HIV/AIDS orphans. She was nominated as a Young Global Leader and one of the Mail & Guardian's Top 200 Young South Africans in 2011.

Anthony Julies

Spider Web Code Name: The Jackal

The team is still searching for the CV. This is one member of the spider web who is the most secretive and extra careful.

Budget office

Coordinates the national budgeting process. This includes coordinating the allocation of resources to meet the political priorities set by government. While the standard of documentation produced with the budget is already impressive, the Budget Office constantly strives to improve the quality, usability and coverage of the publications produced. The division also provides fiscal policy advice, oversees expenditure planning and the national budget process, leads the budget reform programme, coordinates international technical assistance and donor finance, supports public-private partnerships (PPPs) and compiles public finance statistics.

Marissa Moore

Spider Web Code Name: The Hustler

University of Johannesburg

Johannesburg, South Africa | 1990 - 1993
Bachelor of Science (BSc) (Honorary) Cum Laude - Industrial Sociology

University of Witswatersrand
Johannesburg, South Africa | 1990 - 1993
Master of Science (M.Sc.) - Social Science

Corporate Services

The Corporate Services division is responsible for the department's governance framework, and aims to create a productive and creative working environment that enhances effectiveness.No presence of the spider web, it's not a strategic unit.

Economic Policy

The Economic Policy division plays a central role in formulating and coordinating appropriate growth-enhancing policies that strengthen employment creation. The key responsibility of the Economic Policy division is to provide policy advice on macroeconomic developments, international economic developments and microeconomic issues. The division does this through policy analysis, scenario testing and the production of macroeconomic forecasts, in particular on growth, the external account and inflation. The forecasts inform economic policy, the fiscal framework, tax forecasts and debt management strategy. Still

searching for the presence of the spider web.

Tax and Financial Sector Policy

The Tax Policy unit is responsible for advising the Minister of Finance on tax policy issues that arise in all three spheres of government.The Financial Sector Policy unit is responsible for the design and legislative framework of the financial sector as a whole, and works closely with regulatory agencies such as the Financial Services Board, Banking Supervision and Exchange Control (now to be called Financial Surveillance) departments of the Reserve Bank, and the Financial Intelligence Centre. The unit is responsible for liaison between the National Treasury and the Reserve Bank on matters related to bank supervision, financial stability and the national payments system.

Mr Ismail Momoniat

Spider Web Code Name: The Bull

International and Regional Economic Policy

The division comprises of two chief directorates: International Finance and Development and Africa Economic Integration.

South Africa aims to promote reform of the IMF and the World Bank. Policy is focused on exploring ways to reduce global financial market volatility and promote balanced global growth and development, including through government's participation in the G20, which South Africa chaired in 2008.

South Africa also plays an important role in encouraging these institutions to seek innovative solutions for poverty alleviation, and to promote regional and African growth and development with strategic alliances on the continent and with other emerging economies.

Intergovernmental Relations

This division is responsible for coordinating fiscal relations between national, provincial and local government as well as promoting sound provincial and municipal financial planning, reporting and management

Office of the Accountant General

The division seeks to achieve accountability to the general public by promoting transparency and effectiveness in the delivery of services. It sets new government accounting policies and practices, and improves on existing ones, to ensure compliance with the standards of Generally Recognised Accounting Practice. It also focuses on the preparation of consolidated financial statements and an improvement in the timeliness, accuracy and efficiency of financial reporting.

Public Finance

Public Finance is primarily responsible for assessing budget proposals and reviewing service delivery trends in national government depatments and their entities. The division alsc manages the National Treasury's relations with other national departments, provides budgetary support to departments, and advises the Minister and the National Treasury on departmental and government cluster matters.

Office of the Chief Procurement Officer(O-CPO)

The purpose of the O-CPO is to: Modernise the state procurement system to be fair, equitable, transparent, competitive and cost-effective; enable the efficient, economic, effective and transparent utilisation of financial and other resources; including state assets, for improved service delivery; and promote, support and enforce the transparent and effective management of state procurement and the sound stewardship of government assets and resources.

Kenneth Brown

Spider Web Code Name: The Tiger

Mr Kenneth Brown is deputy director general: Intergovernmental Relations, a position he has held since July 2009. He has a MSc in Public Policy from the University of Illinois in the United States (USA),

BA (Hons) in Economics from the University of the Western Cape, and a primary teacher's diploma. After a career in teaching, Mr Brown joined National Treasury in 1998 as a deputy director: Financial Planning. He then went to the USA to study for his Master's degree and returned to National Treasury in 2001 as director: Provincial Policy, a role that underpins national transfers to provinces. Mr Brown was later appointed the chief director: Intergovernmental Policy and Planning, a responsibility which involves sector policies that impact on provinces and local government. He was a Vula operative.

SOE's Under National Treasury and under the Influence of the spider web

The South African Revenue Service (SARS) is mandated by the South African Revenue Service Act (1997) to collect all tax revenues that are due, to provide a customs service, to protect national borders and to facilitate trade. SARS also works to expand the pool of tax contributors by promoting awareness of the obligation to voluntarily comply with tax and customs laws. SARS aims to conduct its activities in a way that enhances economic growth and social development. SARS reports to Deputy Minister of Finance. **At the present moment the Spider Web suffered a huge setback when their top members were suspended by the new commissioner. This unit was regarded as the enforcers of the spider web.**

The Public Investment Corporation (PIC)

PIC is a government-owned investment management company – and one of the largest investment managers in the country. Founded in 1911, it became a corporate entity in terms of the Public Investment Corporation Act (2004). The PIC invests funds on behalf of public-sector entities. Its largest client is the Government Employees Pension Fund.PIC is governed by a Board of Directors with 10 members, of whom 7 are non-executive directors, excluding the traditionally

non executiveChairman. The Board's overarching role is to maintain sound corporate governance within PIC. As such, its responsibilities include appointing executive management, developing and approving corporate strategies, ensuring an effective governance framework, overseeing risk management and ensuring that PIC's business is managed prudently and responsibly.

The Board is assisted by six Board committees, namely the Audit and Risk Committee, the Investment Committee, the Human Resources and Remuneration Committee, the Directors' Affairs Committee, the Social and Ethics Committee and the Property Committee. The Board has also established four Fund Investment Panels to assist the Board in discharging its statutory duties and responsibilities in relation to investment in South Africa and the rest of the African continent. Board members are appointed by the Minister of Finance, who represents PIC's shareholder, the South African government, on the grounds of their knowledge and experience, mainly in the financial services environment. No fewer than seven Directors on the current Board are chartered accountants, with the other six Directors holding advanced qualifications in fields such as financial economics, business leadership, applied mathematics and tax law. The

members of project spider web have been identified through codenames.

The spider web has huge influence in the PIC. This unit it's very important for the white establishment since the PIC owns 34% of the JSE. White asset management firms rely on the PIC for the mandates. PIC has placed more than R70 Billion with Investec alone. The spider web being controlled by the queen of Leaves, she has started making moves to ensure that ABSA benefits from the Asset Management mandates.

Spider Web Code Name: The Fox

MrMcebisi Jonas, Chairperson

- Chairperson of the PIC Board of Directors
- Chairperson of the Directors' Affairs Committee
- Bachelor of Arts in History & Sociology (Rhodes)
- Higher Diploma in Education
- Deputy Minister of Finance at National Executive (Executive)
- Member at National Assembly (Parliament)
- Member at African National Congress (ANC) Party

Spider Web Code Name: The Iron Master

Mr Daniel Matjila, Chief Executive Officer

- Member of the Investment Committee
- Member of the Property Committee
- Member of the Fund Investment Panels
- BSc (Hons) in Applied Mathematics (Fort Hare)
- MSc Applied Mathematics (Rhodes)
- PhD in Mathematics (WITS)
- Postgraduate Diploma in Mathematical Finance (Oxford)
- Senior Management Programme (University of Pretoria)
- Advanced Management Programme (Harvard)
- Member of the Board of Comprop
- Member of the Board of Ecobank Transnational Incorporated

Spider Web Code Name: The Mistress

MsMatshepo More, Chief Financial Officer

- Member of the Fund Investment Panels
- CA(SA)
- Bachelor of Business Science (Finance)
- Certificate in the Theory in Accounting (CTA)
- Member of the Board of CBS Property Management (Pty) Ltd
- Member of the Board of Pareto Limited
- Member of the Board of ADR International Airports Company South Africa
- Member of the Board of ABASA

Spider Web Code Name: The Countess

Ms Moira Moses, Independent Non-Executive Director

- Chairman of the Property Committee
- Member of the Directors' Affairs Committee
- Member of the Audit and Risk Committee

- Member of the Human Resources and Remuneration Committee
- Member of the Investment Committee
- BA
- Management Advancement Programme (Wits Business School)
- Member of the GEPF Board of Trustees
- Member of the Thusanang Trust, a non-profit organisation focused on Development Phase Education

The Government Employees Pension Fund (GEPF) was established in terms of the Government Employees Pension Law (YEAR) to manage and administer pension matters/schemes related to government employees. The GEPF is self-funded. With a membership of about 1,2 million and 225 000 pensioners, it is one of South Africa 's largest pension funds. This is one unit that the queen of leaves has placed an agent.

HemalNaran
Head of Investments and Actuarial

Spider Web Code Name: The Professor

- Bachelor of Commerce degree in Actuarial Science
- Insurance and Risk Management from the University of the Witwatersrand and CAIA Charter holder
- He serves on the Investment Committee of the Pan African Infrastructure Development Fund
- Member of the Social Finance and Impact Investing

Committee of the Institute of Actuaries (UK).
- Previously with ABSA Investments

Ms Adri van Niekerk
Head: Board Secretariat

Spider Web Code Name: The Fixer

- University of Pretoria: BAdmin Public Management
- University of Pretoria: Honours Degree in Public Management
- Member of the Integrated Reporting Committee of South Africa
- Previously with the University of Stellenbosch as the head of admissions

Key actions moving forward

The spider web has brought back the queen of leaves to restructure National Treasury moving forward. There are talks with the white establishment to position treasury as a strategic benchmark for most African Treasuries. Cyril Ramaphosa is seen as one of the most important events in the history of the Spider Web. There is a believe that once he is appointed the state president of South Africa, he will be able to achieve most objectives of the spider web that Thabo Mbeki failed to implement. Cyril has a long relationship with the King of leaves. They have worked together in many projects including the establishment of the NDP. Cyril's younger brother also worked with the Queen of leaves at ABSA bank for a brief period. Minister Nene is being handled by the Queen of Leaves.

During the recent World Economic Forum in Cape Town, Nene assembled all the DDG's and Chief Directors from National Treasury at a Cape Town hotel for a brief meeting. The Deputy Minister was not part of the meeting since he was travelling to Paris. These are the outcomes of the meeting:

The DG's position

LungisaFuzile, the current DG for National Treasury will not be extending his contract at the end of August 2015. He will be joining the faculty of economics at the University of Stellenbosch. His departure will be a catalyst for some big changes inside National Treasury. It is being heard through the grapevine that Avril Halstead will be promoted to the position of DG at treasury. She will be promoted to position of DDG very soon as a stepping stone for her to become the next DG. Michael Saks, the current DDG will be transferred to one of the SOE's. TumiMoleko, will be transferred to another ministry as a DDG that works with treasury.

State Owned Enterprises

Minister Nene stated that treasury must play a key role in the management of SOE's. He expects his officials to play a firm hand in managing the affairs of the SOE's. A number of changes will be happening at the SOE's. One the key actions that treasury must do, is to facilitate the participation of the private sector in the SOE's. Minister Nene stated that GTAC from treasury will be given a huge task of identifying private sector companies to partner with the SOE's.

SAA

Minister stated that the board of SAA must be terminated by September 2015. He also indicated that Maria Ramos was helping him to identify the new board members for the board of SAA.

The former CEO of Kulula.Kom has been identified as a replacement for Niko at SAA.

GTAC will be given the task of identifying a strategic equity partner for SAA.

Eskom

Treasury must support the appointment of Brian Molefe. Eskom will be creating a position of COO and Koko Matshele will be filling in that position. Treasury is very close to sell the government stake in Vodacom and Eskom will be getting some cash injection.

Maria Ramos

Maria Ramos was also invited by the Minister to give a word of support to the staff at National Treasury. Maria praised the staff for the wonderful work they are doing. She stated that she will be assisting Minister Nene to identify skills for the key positions at treasury. She has already assisted in placing the key Chief Investment Officer at the GEPF. She will be assisting in

identifying the CEO of GTAC, since Andrew Donaldson will be the Chairman.

MINISTRY: FINANCE
REPUBLIC OF SOUTH AFRICA
Private Bag X115, Pretoria, 0001. Tel: +27 12 323 8911 Fax: +27 (12) 323 3262
P O Box 29, Cape Town 8000. Tel +27 21 464 6100 Fax +27 21 461 2934

Ref: M4/1/6(951/18)

N.F Shivambu MP
EFF Deputy President and Chief Whip
Office M442, 4th floor
Marks Building
Parliament of South Africa
CAPE TOWN
8000

Minister's alleged involvement in the GUPTA capture and interference at the Public Investment Corporation (PIC):

Dear Honourable Shivambu

Your letter dated 22 May 2018 refers.

I would like to apologise that I am only responding to your letter now.

Before responding to the specific questions posed, it is important to clarify two important points, namely the role of the Deputy Minister in relation to the PIC and the delegations in terms of approvals of investment proposals at the PIC.

By virtue of being appointed as Deputy Minister of Finance, the incumbent serves as a Non-Executive Director and Chairperson of the Board of the PIC. The accompanying table provides clarity on the delegation of authority on investments.

Table1: PIC delegation of authority extracts – investments

Delegation of authority extracts – investments		
Approving Committee	**Listed investments**	**Unlisted investments**
Portfolio Management committee	Up to R10 billion (depending on exposure and structure)	Up to R500 million
Fund Investment Panel	N/A	> R500 million to R2 billion (Private Placement Memorandum PPMs)
Investment Committee	Above R10 billion	Up to R10 billion(including Unlisted debt and private placement)
Board	Above R10 billion (depending on the nature of the transaction)	Above R10 billion including Unlisted debt private placement
Client (GEPF)		Above R2 billion (PPM)
Social and Ethics Committee	Where there are some reputational Risk and Political Exposed Person (PEP) issues	Where there are some reputational Risk and PEP issues

In terms of the questions posed in your correspondence, my response is as follows:

1. ***During your tenure as Deputy Minister of Finance, did you meet with any member of the Gupta family?***

   Yes, I met some members of the Gupta family during government functions, specifically the dinner hosted by the Presidency after the presentation of the State of the Nation address. On one occasion, I was invited to tour the Midrand offices of Sahara Computer offices.

2. ***Did you discuss business dealing and particularly PIC funding with any member of the Gupta family?***

No. I was once approached regarding a transaction involving the Independent News media group that they were considering; I advised that they should contact the PIC directly in this regard.

3. ***Did you write a letter to the PIC instructing the Investment Committee to award a certain contract in favour of the Gupta business network?***

No. Table 1 sets out clearly the delegations in terms of investments decisions by the PIC.

4. ***As Minister of Finance, did members of the Gupta family contacted you to make follow up on the commitments you gave whilst Deputy Minister of Finance?***

No.

5. ***Have you ever been involved in negotiating business deals for people who needed funding from the PIC?***

In both my role as Minister of Finance and my previous position as Deputy Minister of Finance, I have been approached by numerous individuals and companies asking for my assistance in securing finance, specifically from the PIC. In all instances, these individuals and companies were informed that they should approach the PIC directly through its formal channels.

6. ***After being fired as Minister of Finance, which business dealings were you directly or indirectly involved in?***

Refer to response in 7.

7. ***Which boards did you sit in, and were you allocated any shares and, if yes, what is their worth and where?***

a) I served in the following capacities:

- Resident advisor at Thebe Investments;
- Non-Executive Director of Allan Gray;
- Non-Executive Chairperson of Arise; and
- Acting Head of the Wits Business School.

b) When one of the shareholders sold its shareholding in Thebe Investments, I formed part of Thebe's management team that bought a portion of Absa's shareholding. I was appointed Minister of Finance this year before the details of this arrangement were concluded and am therefore not in a position to provide further details.

I trust you will find the above in order.

Kind regards

NHLANHLA NENE, MP
MINISTER OF FINANCE
DATE: 12/6/2018

PRAVIN GORDHAN

IN THE JUDICIAL COMMISSION OF INQUIRY
INTO ALLEGATIONS OF STATE CAPTURE, CORRUPTION AND FRAUD
IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE

STATEMENT BY PRAVIN JAMNADAS GORDHAN
REGARDING TERMS OF REFERENCE 1.1 TO 1.3

11 OCTOBER 2018

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I INTRODUCTION AND SCOPE OF STATEMENT

1. This statement is submitted to the Judicial Commission of Inquiry ("Commission") in terms of Rule 6.2 of the Rules of the Commission. It is prepared at the request of the Commission's Legal Team (as defined in Rule 1.4), following an initial meeting held on 13 August 2018 and subsequent engagements between my legal representative and the Commission's Legal Team.

2. In order to assist the Commission in its current proceedings, this statement addresses primarily the Commission's Terms of Reference 1.1 to 1.3. Specifically, this statement sets out the circumstances surrounding my appointment as Minister of Finance on 14 December 2015 and my removal, announced in the early hours of 31 March 2017, by former President Jacob Zuma ("former President Zuma" or "Mr Zuma"). Further events and issues that may be relevant to both the appointment and dismissal are also set out below. The details of each of these events may require further investigation by the Commission and, I believe, should be the subject of further evidence by other witnesses before the Commission.

3. This account is based on my recollection, as well as contemporaneous correspondence and media reports, and the recollections of officials, primarily in the National Treasury, which refreshed my memory of some of these events. Relevant documents referred to below will be provided together with this statement.

Political context to statement

4. I am a life-long activist and member of the African National Congress ("ANC").

5. I believe in the principles of the Freedom Charter and in our Constitution. I am committed to contributing to the achievement of constitutional democracy and the establishment of a democratic government guided by the preamble of the Freedom Charter, that "*South Africa belongs to all who live in it, black and white, and that no government can justly claim authority unless it is based on the will of all the people.*"

6. The Preamble of our Constitution commits us to uplift the poor, as do the objectives of the ANC - to eliminate inequalities, promote economic development for the benefit of all and to create a society in which social justice and economic emancipation occur within a far-reaching transformation of our society.

7. This transformation is multi-dimensional: political, institutional, social, economic and cultural. But transformation and transitions also can unleash the forces of greed, corruption and new means of exploitation.

8. So participation in government as an ANC cadre is not just a technical or technocratic role, but one aimed at achieving the vision and goals of our leaders, such as Nelson Mandela, Walter Sisulu, Lillian Ngoyi, Bram Fischer and others.

9. In contrast, state capture and corruption are consequences of the unleashing of the worst human instincts – self-enrichment, neglect of the higher mission, placing one's self-interest before the community's interests.

10. Reflecting on the period 2009 to 2017 now, it would appear that I was witness to events, some of which are set out below, and it seems an unwitting member of an

Executive in the earlier part of this period, which was misled, lied to, manipulated and abused in order to:

10.1. Benefit a few families and individuals;

10.2. Release the worst forms of recklessness and corruption;

10.3. Rob ordinary people of schools, clinics, education;

10.4. Abuse and decimate key institutions of our democracy: including SARS, the Hawks, NPA, SOEs like Eskom, Denel, Transnet etc.; and

10.5. Damage the economy, increasing joblessness, forsaking the youth, and increasing the marginalisation of women.

11. State capture became a sophisticated scheme or racket that:

11.1. Advanced false narratives, including racist pejoratives;

11.2. Used external agencies, like Bell Pottinger, and the services of professional advisors, including management consulting firms, auditors and lawyers, to entrench itself;

11.3. Marginalized and dismissed honest public servants and replaced them with compromised or incompetent individuals; and

11.4. Allowed a climate of impunity in respect of crime and corruption.

12. The ANC at its most recent elective conference in December 2017 noted and resolved as follows:

"ANC CREDIBILITY AND INTEGRITY: DEALING WITH CORRUPTION

Noting

An increase in corruption, factionalism, dishonesty, and other negative practices that seriously threaten the goals and support of the ANC.

That these practices contradict and damage our mission to serve the people and use the country's resources to achieve development and transformation.

That corruption robs our people of billions that could be used for their benefit.

That the lack of integrity perceived by the public, has seriously damaged the ANC image, the people's trust in the ANC, our ability to occupy the moral high ground, and our position as leader of society.

That current leadership structures seem helpless to arrest these practices, either because they lack the means or the will, or are themselves held hostage by them.

At times we do things that are not according to ANC or government policy, or not legal or constitutional, and wait for courts to correct our actions.

Our association with, and the closeness of our leaders to, business people facing allegations of corruption.

That the ANC is endangered to the point of losing credibility in society and power in government.

That our leadership election processes are becoming corrupted by vote buying and gatekeeping

That the state investigative and prosecutorial authorities appear to be weakened and affected by factional battles, and unable to perform their functions effectively

RESOLVES

That the 2015 NGC resolutions plus other existing and new measures are implemented urgently by the NEC and PECs to:

1. Strengthen our understanding of our values, ethics and morality and the demands that the people, the constitution and the rule of laws place on us as the guardians of the state, and its resources

2. Demand that every cadre accused of, or reported to be involved in, corrupt practices accounts to the Integrity Committee immediately or faces DC pro- cesses. (Powers of IC under constitutional changes)

3. Summarily suspend people who fail to give an acceptable explanation or to voluntarily step down, while they face disciplinary, investigative or prosecutorial procedures.

4. We publicly disassociate ourselves from anyone, whether business donor, supporter or member, accused of corruption or reported to be involved in corruption

5. All ANC members and structures should cooperate with the law-enforcement agencies to criminally prosecute anyone guilty of corruption

6. The ANC should respect the Constitution of the country and the rule of law and ensure that we get the best possible legal advice in government to ensure our compliance wherever possible, rather than waiting to defend those who stray.

7. The ANC deployees to Cabinet, especially Finance, Police and Justice, should strengthen the state capacity to successfully investigate and prosecute corruption and account for any failure to do so

8. Secretaries at all levels will be held accountable for any failure to take action or refer matters of corruption or other negative conduct (in terms of ANC code of conduct) to the relevant structures.

9. Within the ANC nomination and election process: Ban all slates and enforce the ANC code of con- duct and disciplinary procedures. Investigate and prosecute all cases of vote or support buying, or membership or branch gatekeeping.

10. Implement the NEC resolution on state capture, including the expeditious establishment of a Judicial Commission of Enquiry."

13. Congruent with these resolutions, and with the dictates of my conscience, I provide this statement to the Commission in the hope that it assists the Commission in its important work to uncover the truth of state capture, and to ensure that it can never occur again.

14. I must emphasise that my knowledge and my understanding of state capture – like that of the rest of the country - evolved over time. What I know now to have been significant events did not appear to be so at the time. The significance and the

inter-relationship of such events were revealed progressively and often only in hindsight. Repeated changes to Cabinet, to the Boards of State-Owned Companies, and in the leadership of key institutions and organs of state, often without rational explanation, were done to take control of such institutions. This would be followed by the plunder of resources within those institutions, without the risk of prosecution.

15. It is in this context that the events I recount, between 2009 and 2017, should be viewed. Further, I hope to assist the Commission in some way by "connecting the dots" represented by:

15.1. Executive appointments and dismissals;

15.2. Persecution and campaigns of harassment and intimidation;

15.3. Major public procurement projects; and

15.4. Commandeering and neutralising key state law enforcement agencies.

16. A useful conceptual framework for understanding events and the phenomenon of state capture has been developed by the group of academics who published the *Betrayal of Promise* report and the recent book, *Shadow State: The politics of state capture*. It envisages various groupings that perform different roles in state capture and patronage networks. Briefly, as explained by these academics (see p 57 of the *Betrayal of Promise* report), it comprises of:

16.1. Controllers – strongmen who secure access to and maintain control over resources. They are the "patrons of resources (e.g. Zuma and the Guptas), sit at the apex and are . . . directly responsible for predation and exploitation";

16.2. Elites – who are in networks that can attract resources with controllers, and who establish and maintain patronage networks that facilitate the distribution of benefits;

16.3. Brokers – who have access to resources that can facilitate the trade of resources;

16.4. Mobility controllers – who have the ability to control the movement of and access to resources, working closely with Brokers; and

16.5. Dealers – who are responsible for managing and hiding financial transactions and laundering money.

17. This analytical framework is useful to keep in mind when evaluating the evidence before the Commission.

18. Similarly, the South African Council of Churches, released its *Unburdening* report in May 2017 which documents the accounts of corruption and state capture from members and whistle-blowers in their different congregations.

19. I hope that this statement will assist in exposing some elements of state capture and of the syndicates and sub-groupings that both engineered this sad period in our history, and benefitted enormously at the expense of the wellbeing of millions of poor, unemployed and underprivileged South Africans.

20. National Treasury is placed at the centre of the state by our Constitution and by the applicable legal framework that regulates the management of public finances, state procurement, revenue collection, tax administration, protection of the financial and banking system, and forensic analysis and input into decision-making

with significant financial and fiscal consequences. For this reason, I believe that the capture of National Treasury was an essential objective of state capture, along with the weakening of law enforcement and the capture of State Owned Enterprises.

21. Several key individuals within National Treasury leadership over the past decade displayed admirable determination and commitment to following the law. National Treasury was, however, placed under enormous pressure and was targeted in a vicious, personalised and relentless campaign that played out in the courts, the criminal justice system, through illegitimate intelligence reports, on social media and in some of the media.

22. The resolve and professionalism displayed by National Treasury officials during a difficult period is to be commended. Their commitment to follow the Constitution, comply fully with the applicable legal and regulatory frameworks, implement sound and sustainable policies and pursue the national interest ensured that there was at least some resistance to the state capture project.

23. In my six and a half years as Minister of Finance, I worked with the National Treasury, other institutions and colleagues towards realising the vision of the Constitution, recognising that South Africa needs transformation that opens a path to inclusive economic growth and development. Growth without transformation would only reinforce the inequitable patterns of wealth inherited from the past. Transformation without economic growth would be narrow and unsustainable.

24. Government's objective is not merely to transfer ownership of assets or opportunities to contract with the state to a small group of connected individuals: it is to change the structure of the economy. Broad-based transformation should

promote growth, mobilise investment, create jobs and empower citizens. It must create new resources to support social change, including assets and livelihoods for the majority, and strengthen South Africa's constitutional foundations.

25. This is the vision that was attacked by state capture, including by those at the highest levels of the executive.

II MY FIRST TERM AS MINISTER OF FINANCE

Introduction

26. I was a Member of Parliament in the first democratic Parliament from 1994 to 1997. I was then the Commissioner of the South African Revenue Service ("SARS") from 1999 and I first held the position of Minister of Finance from 10 May 2009 until 25 May 2014.

27. The statement and documents already provided to the Commission by former Minister Nhlanhla Nene ("Mr Nene") outlines the constitutional, legal and regulatory role and functions of the National Treasury.

28. In addition, there needs to be a close and functional relationship between the President and his or her Minister of Finance. It also is important that, whoever is appointed the Minister of Finance, that person must enjoy the trust of –

28.1. the public – that their funds are safe and will be spent efficiently and effectively;

28.2. taxpayers – who pay their taxes; and

28.3. investors (both domestic and foreign) – that the money that they lend to the Government every year will be paid back on time in the future. The more confidence this last group has that the Government will honour all of its financial commitments, the lower the cost of funding for Government, and hence the more resources it will have to deliver services to the people of this country.

Appointment of SARS Commissioner

29. When I became Minister of Finance, a top priority that I had to deal with was the continuing after-effects of the 2008 global financial crisis. This led to South Africa experiencing a recession in 2009, even though our financial sector proved to be safe and stable. As a result, Government had to stimulate the economy by running higher deficits, amongst other measures. Importantly, this crisis also affected our revenue collection by the SARS.

30. Following my appointment as Minister of Finance on 9 May 2009, Mr Oupa Magashula ("Mr Magashula"), was appointed as the Acting SARS Commissioner on 11 May 2009 (**see Annexure 1**), while the position for a SARS Commissioner was advertised soon thereafter.

31. As Minister of Finance, I initiated the process of receiving applications from candidates for this position, shortlisting these and convening a panel with other Cabinet colleagues to interview those on the shortlist.

32. After this process, a memorandum was submitted to Cabinet recommending that the President appoints Mr Magashula as the SARS Commissioner. Mr Magashula's appointment was announced on 30 June 2009 (**see Annexure 2**).

33. Mr Magashula resigned on or about 12 July 2013 (**see Annexure 3**). Mr Ivan Pillay was appointed as acting Commissioner from that date. The post of SARS Commissioner was advertised by the Ministry of Finance in the latter half of 2013 (**see Annexure 4**). The Ministry received more than 120 applicants.

34. I became aware that former President Zuma wished to exercise his powers to appoint the new Commissioner. I advised him that he may want to put his preferred

candidate through the usual process (i.e. the interview and Cabinet consultation process set out above). In the event, it would appear that he ignored this suggestion.

35. The issue remained unresolved by the time of the May 2014 elections, and I was appointed to a new Ministry. Mr Tom Moyane ("Moyane") was appointed as Commissioner of SARS by former President Zuma on or about 23 September 2014 **(see Annexure 5).**

The end of my first term as Minister of Finance

36. Whilst it is not possible to know what was in the former President's mind when appointing his Cabinet, I will point to a number of specific issues that were an early manifestation of the profound interest that the former President had in what should have been ordinary transactional matters subject to due diligence, affordability and feasibility studies.

37. To assist the Commission, I set out briefly events that preceded my deployment to the COGTA portfolio in May 2014 and which may also relate to the removal of Mr Nene in December 2015. The three projects identified below (nuclear procurement, PetroSA/Engen and Denel Asia) could be material to the Commission's inquiry.

37.1. I will outline relevant events during my tenure of which I was aware. The evidence of others who were more directly involved may be required before a complete picture of each of these projects is possible.

37.2. Suffice to state that at least two of these projects share similarities with respect to their size in monetary value and the level of personal interest showed by former President Zuma in them. They may be suggestive of a pattern that may be relevant to understanding the methodologies and aims of the state capture project.

"The Nuclear Deal" (Part I)

38. The Integrated Resource Plan (IRP2010) was promulgated in 2011. It projected that 9.6GW of nuclear power generating capacity would need to be added to the national grid between 2023 and 2030.

39. On 9 November 2011, Cabinet established the National Nuclear Energy Executive Coordinating Committee ("NNEECC") (**see Annexure 6**). The NNEECC was to provide oversight and make decisions regarding a nuclear energy policy and the new build programme, following investigations into costing, financing, technical and operational options.

40. Following the establishment of the NNEECC, it was evident that former President Zuma wished to procure the 9.6GW of nuclear power generating capacity for South Africa from Russia. Such a transaction has been estimated to cost in excess of R1 trillion, if not more. It became known as "the nuclear deal."

41. With regard to my interactions with the former President, expressly concerning the nuclear deal during my first term as Minister of Finance –

41.1. I attended one meeting with former President Zuma in the latter half of 2013 at the Presidential residence in Pretoria, Mahlamba Ndlopfu, in which he made it clear that he wished the nuclear deal to proceed.

41.2. The former Director-General of National Treasury, Mr Lungisa Fuzile ("Mr Fuzile") also was present at this meeting. I met him at Mahlamba Ndlopfu, following telephone calls asking us to urgently meet the former President. We were not advised by his office what the meeting was about. When we arrived, the former President was not yet there.

41.3. Present for that meeting was Mr Senti Thobejane, who I came to understand was a key advisor on energy matters to former President Zuma, on the proposal. He was also an advisor to then Minister of Energy, Mr Ben Martins ("Mr Martins"), and thereafter to his successor, Ms Joemat-Pettersson. It was reported in the media in mid-September 2015 that he had departed suddenly from this position (**see Annexure 7**).

41.4. While we waited for the former President's arrival, Mr Fuzile and I spoke with Mr Thobejane. Mr Thobejane's presence was the first inkling we had that the former President wished to discuss nuclear procurement with us that day. Mr Thobejane explained the technical details of the procurement of nuclear power generation capacity to Mr Fuzile and me. I asked him who the major players were in the field, and he explained that the United States, France, China, South Korea and Russia were all possible suppliers of the technology to South Africa.

41.5. I was struck by the fact that the then Minister of Energy (Mr Martins) and the then Director-General of the Department of Energy (Ms Nelisiwe Magubane) were not present at the meeting.

41.6. Eventually, the former President arrived and joined us. I explained to him that we had been talking to Mr Thobejane for some time, and that he had been explaining the nuclear technology and its possible suppliers to us. Mr Zuma indicated that South Africa needed nuclear power and that a process should be initiated to procure it.

41.7. I indicated to the former President that nuclear procurement was a complex issue, that there were lots of interested stakeholders, such as the various competing suppliers and environmentalists.

41.8. I indicated to Mr Zuma that the National Treasury could undertake an exercise to design a procurement process for such a significant project and to ensure that it complied with the applicable legal framework for public and energy procurement.

41.9. I made this undertaking after I indicated to the former President that it would be appropriate to follow lawful procurement procedures for such an expensive project to avoid becoming mired in scandal like the so-called "arms deal." I wanted to impress upon the former President that undertaking the nuclear procurement required careful consideration of its costs, the choice of supplier, due process and the likely challenges to any decision to proceed.

41.10. Finally, I indicated that Mr Fuzile and Mr Thobejane ought to exchange telephone numbers so that the former could explain procurement processes in

line with the Constitution and the applicable legal framework to the latter. To the best of my recollection, no further engagement regarding the nuclear deal occurred with Mr Thobejane and Mr Fuzile, nor between myself and former President Zuma.

42. To complete the chronology of work done by National Treasury on the nuclear procurement issue during my first term, I am advised by officials within National Treasury that, as part of its pre-procurement process and in preparation for the envisaged nuclear new build programme, the Department of Energy furnished officials at the National Treasury with an extensive set of documents in November 2013 (**see Annexure 8**). These included a draft feasibility study report, titled *Draft Feasibility for the Nuclear Programme of the Republic of South Africa*, together with a wide range of accompanying research papers and reports dealing, *inter alia*, with international experience in nuclear procurement, costing, licensing, localization, the fuel cycle, waste disposal, environmental impacts, skills development, international agreements and conventions and the power industry structure.

43. The so-called nuclear deal first came to the attention of officials at the National Treasury at some point in 2013 when a draft cooperation agreement, to be signed with Russia, was provided because it included a tax incentive structure. The Department of Energy approached National Treasury for input on this incentive structure and to consider and assess the implications under the Public Finance Management Act ("PFMA"). Officials within National Treasury raised concerns with this draft agreement and its clear objective of creating firm fiscal commitments to Russia by South Africa.

44. Officials at National Treasury strongly objected to the Department of Energy and undertook to prepare a commentary on the feasibility study and financing studies that were eventually received from the Department of Energy during 2014 and 2015. National Treasury also undertook a preliminary review of costing scenarios and financial aspects of a nuclear build programme. These reviews were continuously discussed with the Department of Energy.

45. In June 2014, the NNEECC was converted into the Energy Security Cabinet Subcommittee ("ESCS"), and was chaired from then on by former President Zuma in the place of then Deputy President Kgalema Motlanthe. The ESCS was responsible for oversight, coordination and direction of activities for the entire energy sector (see **Annexure 9**). The ESCS comprised the following members of the executive at that time:

45.1. Minister of Energy, Ms Tina Joemat-Pettersson ("Ms Joemat-Pettersson");

45.2. Minister of Public Enterprise, Ms Lynne Brown ("Ms Brown");

45.3. Minister of International Relations and Cooperation, Ms Maite Nkoana-Mashabane;

45.4. Minister of State Security, Mr David Mahlobo ("Mr Mahlobo");

45.5. Minister of Finance, Mr Nhlanhla Nene;

45.6. Minister of Trade and Industry, Dr Rob Davies;

45.7. Minister of Economic Development, Mr Ebrahim Patel;

45.8. Minister or Mineral Resource, Advocate Ngoako Ramatlhodi;

45.9. Minister of Defence and Military Veterans, Ms Nosiviwe Mapisa-Nqakula.

46. The Commission should investigate the rationale for these changes and the activities undertaken by the ESCS in advancing "the nuclear deal."

47. Once I was appointed as the Minister for COGTA, I was, in any event, no longer privy to the details of any further developments concerning nuclear procurement, though I was aware from media reports of litigation (that was ultimately successful in April 2017) which challenged the process that was followed to commence the procurement process. I also was aware of reports of the conclusion of an intergovernmental agreement with the Russian Federation relating to cooperation in the field of nuclear energy in or about September 2014, by the then Minister of Energy (see **Annexure 10**).

48. In sum, National Treasury, during my first term as Minister of Finance, insisted on sufficient and satisfactory evaluations of the true cost and attendant fiscal risks for the country of the proposed nuclear deal.

49. Details of the so-called nuclear deal was not sufficiently advanced at that time to require firm fiscal commitments from National Treasury.

PetroSA/Engen

50. Another contemplated transaction regarding which I interacted with former President Zuma during my first term as Minister of Finance related to the possible

purchase by PetroSA of the shareholding held by Malaysian oil company Petroliam Nasional Bhd ("Petronas") in Engen. I set out details regarding this contemplated transaction below **(see Annexure 11)**.

51. Since at least 2012, I understand that the Ministry of Energy had engaged with Petronas regarding the acquisition of its stake in Engen by PetroSA. During former President Zuma's visit to Malaysia in August 2013, I believe that the transaction was confirmed as a high strategic priority for the South African government. By the first quarter of 2014, I became aware that those negotiations, facilitated by the Department of Energy, were at an advanced stage.

52. At around mid-March 2014, the former Minister of Energy, Mr Martins, applied to National Treasury for (i) approval in terms of section 54 of the Public Finance Management Act, No 1 of 1999, for the acquisition of the Petronas shareholding by PetroSA and (ii) a government guarantee for the proposed value of the acquisition.

53. I understood from the Department of Energy that the value of the acquisition of all of Engen's issued share capital was R18.68 billion. It became clearer as the transaction evolved that its true value was closer to between R12 and R14 billion. This raised red flags for me as to why there was a possible difference of up to R6 billion in possible valuations of the Engen stake, and who may stand to benefit from that difference. SONANGOL, Angola's national oil company, had been selected as a strategic equity partner in the transaction, which would see it end up with 49% of Engen. The proposal was that PetroSA and SONANGOL would provide around 80% of the purchase price, with the balance funded privately. However, a

government guarantee of PetroSA's portion was required in order for the transaction to proceed.

54. With respect to former President Zuma's involvement in this proposed transaction:

54.1. I am reminded by former National Treasury officials that, on 31 March 2014, I was at the offices of SARS. Every year, on 1 April, SARS and National Treasury make a public announcement of the tax revenue collected in the preceding tax year.

54.2. While at the SARS offices, I received enquiries from former President Zuma about the status of the applications lodged by Mr Martins.

54.3. I indicated that various technical issues were being discussed by National Treasury with representatives of the Department of Energy and PetroSA. As set out below, those engagements continued into April 2014.

54.4. In response to Mr Zuma's telephone calls, a meeting was held the following day (1 April 2014) at the SARS offices with Mr Martins and myself. The meeting was relatively short in duration, and I recall explaining again the need for further information and the need to conduct a detailed due diligence on the transaction before any guarantee could be approved by National Treasury. A due diligence is a comprehensive appraisal of a business undertaken by a prospective buyer, especially to establish the value of its assets and liabilities, and in order to evaluate its future commercial potential. SONANGOL's participation in the transaction was conditional on the successful completion of a due diligence on Engen (**see Annexure 12**).

54.5. It remained curious that such a huge transaction would even be attempted without an appropriate due diligence being conducted. The reluctance and even avoidance of conducting a due diligence is suspicious in and of itself. I hope that the Commission will be able to investigate this transaction further.

55. I was informed that during late March and continuing into April 2014, technical teams at National Treasury met repeatedly with representatives of the Department of Energy and PetroSA. As a result of those engagements, National Treasury eventually provided a conditional guarantee for the transaction on 25 April 2014 of up to R9.5 billion, though the guarantee was subject to several onerous but necessary financing conditions being met, and the satisfactory completion of the necessary due diligence.

56. Ultimately, the transaction did not proceed because Petronas withdrew from the deal after PetroSA failed to fulfil the financing conditions and a due diligence was not performed. As a result, I understand that the guarantee was withdrawn by my successor, Mr Nene, on or about 9 March 2015.

My appointment to COGTA

57. In the evening of 24 May 2014, after the inauguration ceremony, I received a message to meet with former President Zuma at Mahlamba Ndlopfu, as is the tradition in making appointments to Cabinet following an election. I was informed of my appointment as Minister of Cooperative Governance and Traditional Affairs ("COGTA") by the former President.

58. I was told by the former President that I was being deployed to the COGTA portfolio due to my familiarity with local government matters and given the preparation for the upcoming local government elections in 2016. There was speculation in political and media circles that I would be moved from the post of Finance Minister.

59. Mr Nene was appointed Minister of Finance in the same Cabinet. Prior to that, he had held the position of Deputy Minister of Finance since November 2008.

III REMOVAL OF MIN NENE

60. I turn next to the dismissal of Mr Nene, and my eventual re-appointment for a second stint as Minister of Finance. Several issues relating thereto occurred within the confines of Cabinet that should be pursued by the Commission.

Denel Asia

61. While I am unaware of the reasons why the former President removed Mr Nene on 9 December 2015, media reports subsequently revealed that on or about 30 October 2015, a pre-notification was received from Denel alerting the Director-General of the National Treasury of its intent to establish a joint venture between Denel (led by a Board, largely appointed in July 2015 by Ms Brown), and a Gupta-affiliated entity, VR Laser Asia (**see Annexure 13**).

62. VR Laser Asia is a company owned by Mr Salim Essa ("Essa"), a Gupta business associate, as its sole shareholder, and which has a relationship with VR Laser RSA, owned by Duduzane Zuma and Rajesh Gupta. The joint venture was contemplated purportedly to exploit Denel's intellectual property and proprietary information in India. The joint venture was to be known as Denel Asia.

63. This pre-notification is not a formal requirement under the framework established under the PFMA, but has been developed by the Department of Public Enterprises as a procedure to facilitate considerations of applications by SOCs to undertake major transactions in terms of section 54 of the PFMA.

64. According to media reports on the information contained in the #Guptaleaks, one day after Denel submitted its PFMA application to National Treasury on 30 October 2015, the Denel Chair, Mr Daniel Mantsha ("Mr Mantsha"), forwarded the confidential document to Mr Ashu Chawla ("Mr Chawla"), a senior Gupta executive and the Chief Executive Officer of Sahara Computers, a company owned by the Gupta family.

65. On or about 23 November 2015, Ms Brown provisionally approved the initiative and set out various issues that needed to be covered in the formal PFMA application. As the pre-notification was not a formal PFMA application, there was no requirement for National Treasury to respond, nor did National Treasury usually respond to such pre-notifications.

66. Emails contained in and reported on by the media following the #Guptaleaks, show that on 7 December 2015, Mr Chawla emailed a copy of Ms Brown's in-principle approval, and a briefing document, directly to the personal assistant of Mr Nene.

67. Before Mr Nene was removed as Finance Minister, no formal PFMA application had been submitted seeking his approval of the establishment of Denel Asia. Therefore, Mr Nene had not approved the joint venture.

68. However, days later, Mr Nene was removed. On 10 December 2015, Mr David "Des" van Rooyen ("Mr Van Rooyen") was appointed Minister of Finance.

69. By 11 December 2015, the formal PFMA application seeking approval for the establishment of Denel Asia was submitted, addressed to the newly installed Minister. Mr Van Rooyen did not have the opportunity to approve the joint venture prior to him being removed as Minister of Finance on 13 December 2015.

70. Legal advice obtained by the National Treasury indicated that, based on the conditions attached to the government guarantees, the explicit approval of both the Ministers of Finance and of Public Enterprises in terms of Section 54(2) of the PFMA, in addition to a decision under Section 51(1)(g) of the PFMA by the Minister of Finance, were required prior to the formal establishment of Denel Asia. This information was communicated both verbally and in writing on several occasions to Denel as well as the then Minister of Public Enterprises, Ms Brown.

71. Extraordinarily belligerent attacks were made on me personally and Treasury more broadly by Mr Mantsha, the Chairperson of the Denel Board. He demanded that I retract, in writing to the Denel Board, comments and statements I had made regarding the lawfulness and desirability of the joint venture, and apologise to the Denel board. He also wanted me to acknowledge that National Treasury had failed to discharge its duties in a diligent and responsible manner, even though the reverse was actually the case. It is unheard of for a Chairperson of an SOC to attack a Minister of Finance in public, and for the Minister of Public Enterprises responsible for that SOC to take no steps to reign in such attacks, to the best of my knowledge (**see Annexure 14**).

72. In addition, litigation was launched by Denel against the Minister of Finance and National Treasury. Specifically, an application for a declaratory order was made by Denel on 24 March 2017, in the week before I was eventually dismissed as Finance Minister (**see Annexure 15**).

73. I turn next to address the extraordinary events that occurred between 9 and 13 December 2015.

Wednesday, 9 December 2015

74. Following a Cabinet meeting held on 9 December 2015, former President Zuma announced the removal of Mr Nene as Minister of Finance, and his replacement, Mr van Rooyen, in a media statement issued at approximately 20h00 that day (see **Annexure 16**).

75. I was unable to attend the Cabinet meeting held that day. I learnt later that the so-called nuclear deal had been approved by Cabinet.

Thursday, 10 December and Friday, 11 December 2015

76. On Thursday 10 December and Friday 11 December, the announcement of Mr Nene's removal caused economic and financial market turmoil and a sharp depreciation in the value of the Rand. Once markets closed for the weekend, there were ongoing fears that the situation would worsen when they re-opened on Monday, 14 December 2015.

Thursday, 10 December to Sunday, 13 December 2015

77. Over these four days, the removal of Mr Nene and his replacement by Mr van Rooyen also resulted in a widespread public outcry. Civil society, organised labour and organised business groups criticised the decision, and demanded urgent corrective action by former President Zuma (see **Annexure 17**).

78. Over this period, I engaged with Ms Lakela Kaunda ("Ms Kaunda"), the Chief Operations Officer in the Presidency at the time, regarding my concerns, in the national interest, about the economic turmoil and its adverse impact on the country and citizens that followed the removal of Mr Nene. I suggested that a team consisting of the Presidency, the South African Reserve Bank, Treasury and the private sector meet with investors to reassure them before the markets opened for trading on Monday, 14 December 2015. My primary concern was the need for urgent measures to address the economic and financial harm caused since the announcement of Mr Nene's removal, while at the same time remaining conscious that such matters related to Treasury and were not within the brief of COGTA.

79. The devastating impact of this unexpected announcement on the South African economy is estimated to be approximately R500 billion. As commentators and market analysts had described, over two days, the market value of the country's 17 biggest financial and property shares fell by R290 billion. This figure excludes the remainder of the equities market that also was hard hit by the decision. South African bonds lost 12% of their capital value (R216 billion). The Rand depreciated sharply from R13.40 to R15.40/USD overnight.

80. The decision also ushered in a period of close scrutiny of institutional stability and policy certainty by global ratings agencies.

Sunday, 13 December 2015

81. In the late afternoon of Sunday, 13 December 2015, I received a message from Ms Kaunda requesting my attendance at a meeting with former President Zuma to be held at Mahlamba Ndlopfu later that evening.

82. At around the same time, Ms Jessie Duarte, the Deputy Secretary-General of the African National Congress ("ANC"), contacted me explaining that I was going to be asked to do something by former President Zuma, and that I should not refuse the request.

83. I received a similar message from the Deputy President of the ANC and the country at the time, Mr Cyril Ramaphosa.

84. I believe Ms Duarte and then Deputy President Ramaphosa had met with former President Zuma over the weekend regarding his surprise removal of Mr Nene and the appointment of Mr van Rooyen.

85. I arrived at Mahlamba Ndlopfu at approximately 18h30 that evening and met with former President Zuma.

85.1. During that conversation, former President Zuma indicated that he was of the view that Mr van Rooyen was suitable for the Finance Minister position, but others felt that the turmoil when markets re-opened on Monday could be even more serious if Mr van Rooyen was retained, than that experienced on the previous Thursday and Friday.

85.2. Former President Zuma indicated that he wanted me to take up the position in order to calm the markets.

85.3. I responded that there were other qualified individuals that the former President could consider for the post, such as Messrs Mcebisi Jonas and Jabu Moleketi.

85.4. Former President Zuma indicated that neither of these suggestions were acceptable to him, and that he thought that I should accept the position.

86. I indicated that I needed to consult with my family and called my home to discuss these developments.

87. Following that conversation, I accepted my re-appointment as Minister of Finance, although I was enjoying my role at COGTA.

88. In agreeing to serve again as Minister of Finance, I indicated to the former President that there were three matters at that time which concerned me. I indicated that these must be discussed by us and resolved as soon as possible. The three matters were:

88.1. The ongoing dire financial predicament of SAA and, specifically, the role of the Chair of the Board, Ms Dudu Myeni ("Ms Myeni");

88.2. The proposed nuclear procurement deal; and

88.3. Mr Tom Moyane's role at the SARS as its Commissioner.

89. I then assisted with the drafting of a media statement that was issued by the Presidency later that evening, which announced my re-appointment to the position of Minister of Finance, and the appointment of Mr van Rooyen to the vacated post of Minister of COGTA (**see Annexure 18**).

90. The statement also sought to provide reassurances regarding fiscal discipline and prudence, financial sector stability and the ongoing prioritisation of strategies for economic growth and employment creation.

91. Given that I was already sworn in as a member of Cabinet, no further swearing-in formalities were required for me to take up the position of Minister of Finance for the second time.

Monday, 14 December and Tuesday, 15 December 2015

92. Upon my re-appointment, I urgently convened meetings on Monday, 14 December and Tuesday, 15 December 2015, with:

92.1. Deputy Minister of Finance, Mcebisi Jonas ("former Dep Min Jonas") to discuss the urgent and significant tasks we faced;

92.2. The National Treasury team, so that I could be briefed on the preparations for the 2016 Budget of the Republic;

92.3. Mr Moyane at SARS, regarding 10 issues that I considered important to immediately address the situation at SARS (**see Annexure 19**); and

92.4. Mr Van Rooyen to facilitate the handover of the COGTA portfolio.

IV RELEVANT EVENTS IN MY SECOND TERM AS MINISTER OF FINANCE

South African Airways

93. The financial and governance challenges experienced by SAA in recent years are no doubt well known to the Commission. At the time that I was re-appointed Minister of Finance, an immediate priority was dealing with the proposed restructuring of a deal that had been approved by Mr Nene and Airbus in terms of which SAA could swap the purchase of ten A320 aircraft for a lease of five A330-300 aircraft from Airbus.

94. Then Chairperson of SAA, Ms Myeni, however, wished to amend the swap transaction to allow SAA to purchase the aircraft and enter into a sale and lease back deal with local businesses. The proposed pre-delivery payments (of approximately USD40 million or approximately R603 million at the time) under that proposal would likely have triggered debt defaults by SAA due to the pressure these payments would have placed on SAA's cash resources. Cross-defaults on other leasing arrangements and the probable triggering of government-guaranteed debt obligations would likely have followed. This would have had severe consequences for SAA and the country as a whole.

95. In late December 2015, while driving on the N2 highway in Cape Town, I received a telephone call from former President Zuma enquiring whether we could do what Ms Myeni wanted with respect to the Airbus deal. I explained that we could not, since the fiscus could not afford the pre-delivery payments and penalties that would

follow if we undertook her proposal. It was clear to me that Ms Myeni had contacted the former President and that that had prompted his call to me.

96. I afforded SAA the opportunity to make further representations to National Treasury regarding Ms Myeni's proposal, following which I decided, in late December 2015, that the swap transaction should go ahead as had been approved by Mr Nene in July 2015.

97. Prior to my reappointment as Minister of Finance, the National Treasury had been working on the process for appointing a new SAA Board (as outlined in Mr Nene's statement to the Commission). Progress was slow, and I understand that eventually the engagements between officials from the Presidency and from National Treasury produced a list of individuals to be appointed to the Board. A compromise was reached that Ms Myeni would only continue as Chairperson of the Board for a further year.

2016

98. During January and February 2016, I was part of South Africa's delegation to the annual World Economic Forum meetings held in Davos, Switzerland ("WEF Davos") and worked on the finalisation of the Budget, which was presented to Parliament on 24 February 2016.

99. I was approached by South African business leaders at the WEF Davos for urgent discussions on how to avoid a sovereign credit rating downgrade and how to inspire confidence in the South African economy and government, after the drastic and damaging changes at the Treasury. This resulted in an urgent meeting

convened with business leaders upon my return to South Africa from the WEF Davos. The CEO Initiative was formed out of these engagements.

100. This was followed by an investment roadshow by labour, government and business representatives, to overseas investors who are invested in our economy and in particular in South Africa's debt, during March 2016.

101. In addition, the CEO Initiative launched a fund of R1,5 billion for supporting small business, particularly black-owned small businesses, as well as the Youth Employment Service (as proposed and championed by then Deputy President Ramaphosa), which will ensure that big business provide work and entrepreneurial opportunities to a million young people over a three-year period. Further possibilities for additional investment in the South African economy were explored during these various initiatives.

27 Questions

102. Shortly before my budget speech in Parliament, Major General Mthandazo Berning Ntlemeza ("Gen Ntlemeza"), head of the Directorate for Priority Crime Investigation, known as the "Hawks", requested and attended a brief meeting at the Treasury. Gen Ntlemeza advised me then that two investigations were ongoing: into SAA and SARS. No details as to the substance, scope or progress of either investigation was shared with me by Gen Ntlemeza in this short conversation.

103. I believe that the capture of the Hawks under Gen Ntlemeza was central to the state capture project. This capture enabled the Hawks to be abused for political

objectives through malicious law enforcement action and without regard for the impact that abuse of power would have on the integrity of the country, the economy or personally on the individuals, such as myself, who were targeted in this orchestrated campaign.

104. On or about 19 February 2016, in the week before my Budget speech, an envelope was hand-delivered to the Treasury at Gen Ntlemeza's insistence. This envelope contained 27 questions addressed to me from the Hawks, and demanding that they be answered by 2 March 2016. The questions related to the High Risk Investigations Unit within SARS, formed years earlier. Charges against me relating to that unit had been filed by Moyane on 15 May 2015 (SAPS Brooklyn Case No. 427/05/15).

105. I arranged to visit the then President later that day to present the correspondence and questions from the Hawks to him and to ask him whether he was aware of, and agreed with, this law enforcement action against me.

106. During that meeting, I objected strongly about this persecution and asked former President Zuma whether political activists like myself must now prepare to be eliminated during the democratic era even though we had survived the oppression of the Security Police in the apartheid era.

107. In response to my objection, he merely flipped through the pages of the letter. He said he would discuss the matter with the then Minister of Police, Mr Nkosinathi Nhleko ("Mr Nhleko").

108. I received no information from the former President in this regard subsequent to this meeting.

109. However, on Monday 22 February 2016, I was requested to attend a meeting with the Secretary General (Mr Gwede Mantashe) ("Mr Mantashe"), Deputy Secretary General (Ms Jessie Duarte) ("Ms Duarte") and Treasurer General (Mr Zweli Mkhize) of the ANC. I interrupted preparation for the Budget and flew to Johannesburg from Cape Town to meet them that afternoon. The 27 questions and this abuse of law enforcement powers for political objectives was discussed with them. I was assured that a political solution will be found to this political problem.

110. The 27 questions were leaked to the media the day after the Budget (**see Annexure 20**).

111. State Security Minister, Mr David Mahlobo, and Min Nhleko held a joint press conference on 2 March 2016, defending the investigation and the timing of the questions posed to me by the Hawks (**see Annexure 21**).

112. Following an extension on the deadline, I answered all 27 questions on legal advice and provided my responses to the Hawks (**see Annexure 22**).

113. This set of events, combined with what is set out below, was the beginning of what appeared to be a campaign to force me to resign as Minister of Finance and continue the efforts to capture the National Treasury thereafter. I believe that my re-appointment had thwarted these efforts and I believe Mr Nene was removed from the national executive for the same reason – to obtain full control of the Treasury.

114. In this regard,

114.1. I refer the Commission to the contents of subsequent media reports that revealed that shareholders in Gupta-linked consultancy group Trillian, allegedly were warned in advance that Mr Nene would be fired as Finance Minister, and that Trillian planned to exploit access to the Treasury under Mr Nene's replacement, Mr van Rooyen. Mr Eric Wood, Trillian's Chief Executive Officer at the time ("Wood"), denied the allegations, and suggestions that he, Trillian and other Gupta-connected individuals had profited from the market turmoil that followed Mr Nene's removal. Evidence provided by a Trillian whistleblower to the parliamentary inquiry into Eskom, established that Wood may have profited thanks to his prior knowledge of the removal of Mr Nene **(see Annexure 23).**

114.2. Upon returning to the Treasury, I learnt of a related controversy regarding the appointment of two individuals who accompanied Mr van Rooyen to the Finance Ministry following his appointment, namely Messrs Ian Whitley ("Whitley") (appointed as chief of staff) and Mohamad Bobat ("Bobat") (appointed as a special advisor) **(see Annexure 24).**

114.3. Messrs Whitley and Bobat also were reported to have been present with Mr van Rooyen at the Gupta family compound located in Saxonwold, in the days immediately preceding his appointment as Minister of Finance. A third individual, Malcolm Mabaso ("Mabaso") (said to be associated with the Guptas through former Minister of Mineral Resources, Mr Zwane) was also present with Mr Van Rooyen at Treasury, though his precise role was unclear.

114.4. Media reports also revealed that Whitley and Bobat shared a confidential Treasury document containing a Nine-Point Plan for South Africa's economic

recovery, growth and development, with Gupta associates and executives, including Messrs Essa, Wood and Mabaso, on or about 12 December 2015, prior to Mr Van Rooyen's removal. The email forwarding the Treasury document stated, "Gents, finally..." **(see Annexure 25)**

114.5. All of these reports may be relevant to explaining the removal of Mr Nene.

New Age Budget Breakfast Cancellation

115. Another decision which I believe may have contributed to my eventual removal as Minister of Finance in March 2017, was revealed on 21 February 2016, three days before the Budget was presented to Parliament, when the *Sunday Times* newspaper reported that the National Treasury had cancelled the Gupta-owned *The New Age* newspaper's sponsorship of, and participation in, the post-Budget breakfast briefing. This event was set to take place the morning following delivery of the Budget speech in Parliament (i.e. 25 February 2016). Ultimately, the broadcast rights for the breakfast briefing were allocated to two other media institutions, namely the SABC and ENCA, in an effort to rotate the opportunity to carry the broadcast.

Offer To Jonas

116. At around this time, on 16 March 2016, former Dep Min Jonas issued a statement confirming media reports that, in October 2015, he had been offered the

position of Minister of Finance to replace Mr Nene, prior to Mr Nene's removal in December 2015. Former Dep Min Jonas stated that the offer was made at a meeting at the Gupta family's Saxonwold compound by a member of the Gupta family, accompanied by Mr Duduzane Zuma, former President Zuma's son, and Mr Fana Hlongwane.

117. In this regard,

117.1. Mr Jonas contacted me on Friday, 23 October 2015, wishing to see me upon his return from the Eastern Cape that weekend. He seemed upset by something but did not discuss any details regarding why he wanted to see me.

117.2. I was visited by Mr Jonas on or about Sunday, 25 October 2015, at my Pretoria home. Mr Jonas appeared extremely distraught, upset and emotional. He seemed unable, or hesitant, to disclose specific detail about what had caused this (perhaps due to the presence of my wife), and said he found the situation intolerable and that he wanted to resign.

117.3. I tried to calm him down and to prevent him from making any drastic decisions given his state of mind. I dissuaded him from resigning, advising him that it would not be in the best interests of the country for him to leave his position.

117.4. I understood that he also was planning to discuss his situation with Mr Nene.

117.5. Following my re-appointment as Minister of Finance, I became aware of more details of the offer made to former Dep Min Jonas at the Gupta compound, as were later confirmed by him in his media statement, and

elaborated on further in his statement and evidence already provided to the Commission.

My interactions with Gupta family members

118. For the record, I have been asked by the Commission's legal team whether I ever met members of the Gupta family.

119. I have never been to the Gupta family compound located in Saxonwold.

120. I was invited to the infamous Gupta family wedding at Sun City, but declined the invitation.

121. I can recall the following further instances where I was in the same place as them.

121.1. I attended a cricket test match also in the 2009 to 2014 period (I cannot recall which year) and one of the Gupta brothers (I cannot recall which one) was present in the Presidential box. We greeted but did not speak to each other.

121.2. Ministers accompanied the former President to various functions, including breakfast briefings following the State of the Nation address. I recall that one or more of the Gupta brothers would be present at such events. I would see them, but not interact with them.

122. I can recall one meeting where the former President introduced me to Mr Ajay Gupta.

122.1. Early on in my first term as Minister of Finance, though I cannot recall precisely when, I went to the Presidential guest-house in Pretoria, Mahlamba Ndlopfu, for a meeting with former President Zuma. When I was called into the meeting room, former President Zuma introduced me to a man who I believe is Mr Ajay Gupta. Mr Zuma introduced him as "my friend" and told me that the man had expertise in regard to small business and finance. I recall us exchanging generalities for a couple of minutes, but I do not recall the details of what was a very cursory exchange. Mr Gupta then excused himself and left me and the former President to continue our meeting.

123. I had forgotten of another instance where one of the Gupta brothers may have been present at a meeting I had with billionaire Indian businessman Anil Ambani of the Reliance group of companies in or about June 2010. I stress that I do not recall the details set out below since it proved to be a meeting of little significance at the time, but have been assisted in this regard by my former Chief of Staff, Mr Dondo Mogajane.

123.1. I am told that the Presidency put Mr Rajesh "Tony" Gupta in touch with Mr Mogajane. Mr Gupta called Mr Mogajane repeatedly, asking for a meeting with me. However, he never advised Mr Mogajane who would be at such a meeting or what the agenda for the meeting was to be. We were even asked to attend the meeting at the Gupta family compound in Saxonwold. I refused to schedule a meeting with the Gupta family, whether at their residence or anywhere else.

123.2. Eventually, Mr Gupta told Mr Mogajane that one of the Ambani brothers, from the Reliance group of companies in India, wished to meet me and that it

was concerning a possible MTN transaction. Bharti Airtel had called off merger talks with MTN in 2008 and again in 2009, and Reliance Communications was reported also to have been interested in pursuing the acquisition of MTN during 2009. We were advised that Mr Ambani was in South Africa for the 2010 Soccer World Cup and that he would like to meet me regarding the possible MTN transaction **(see Annexure 26)**.

123.3. I agreed to a meeting with Mr Ambani, who had the potential to be a significant investor in South Africa.

123.4. The meeting was held at a hotel in Pretoria, Villa Sterne, on a Sunday morning.

123.5. I attended the meeting, together with Mr Mogajane, who advises me that:

123.5.1. The meeting lasted less than an hour;

123.5.2. Discussions in the meeting were between Mr Ambani and I;

123.5.3. It commenced with general conversation about the World Cup, the Ambani family's visits to the Kruger National Park, and Indian and global politics;

123.5.4. Eventually, Mr Ambani asked about the legal and regulatory processes that would be required to obtain approval for a transaction such as the purchase of MTN and we spoke in general terms of what processes would need to be followed, and the role of the National Treasury; and

123.5.5. The meeting ended inconclusively and we parted ways and left.

123.6. Mr Mogajane has advised me that he recollects that Mr Ajay Gupta was present at the meeting. I do not recall him being present.

123.7. I wish to refer the Commission to **Annexure 27**, which is my response to a Parliamentary question from the Democratic Alliance. It is apparent in my written response that I do not make mention of the 2010 meeting with Mr Ambani of the Reliance Group, which a Gupta brother may or may not have attended. This is simply because, at the time of submitting the written response, I had no recollection of the 2010 meeting with Mr Ambani.

Public attacks and Presidential inaction

124. Returning to the events of 2016, it was a year marked by ongoing harassment and attempted distraction of me by law enforcement agencies, some media houses and a persistent social media campaign of fake news and personal attacks that appeared antagonistic towards me and the work being done by Treasury. I was the target of an orchestrated campaign that appeared aimed at forcing me to resign as Minister of Finance. The role of the public relations agency Bell Pottinger was central to this orchestrated campaign and I am sure it is well known to the Commission.

125. This orchestrated campaign against me and National Treasury caused immense stress for myself, former Dep Min Jonas, senior officials and our families. In response, we were repeatedly advised by our comrades that we should not resign but that we should continue to serve the national interest and to "hang in there." Comrades would tell us that, ultimately, all one had was one's integrity and

that it was worth fighting for. The sentiment seemed to be that we should not "make it easy for them" to get rid of those of us who were seen as obstacles to the state capture project and the looting of our public resources.

126. It was a difficult and challenging period. Throughout, I tried to focus on the national interest and what was best for our country, and to do my work and fulfil my constitutional obligations with that as the guiding principle.

127. First to occur was the blatant refusal by Mr Moyane to account to me as Minister of Finance on material issues (such as the operating model of SARS). He even refused to acknowledge my authority on what may appear to be petty matters such as his applications for personal leave would not be submitted to the Ministry (although during Mr Nene's time as Minister they were). He would claim that he obtained permission for leave from the Presidency, which officials there would deny.

127.1. Mr Moyane made serious allegations against me and continued to refuse to accept that as Minister of Finance, he is accountable and answerable to me for the performance of SARS. However, the former President did nothing to intervene in this deteriorating relationship, to facilitate adjudication of the dispute, or to resolve it in any other less formal way. It festered for many months, with Mr Moyane writing further letters about me to the President.

127.2. I faced further ongoing personal and institutional attacks, antagonism and an evident lack of accountability from Mr Moyane, the Commissioner of SARS. Indeed, the Commission is respectfully referred to the affidavit filed in the ongoing disciplinary proceedings against Mr Moyane for further detail regarding the deterioration of my relationship with him (**see Annexure 28**).

127.3. declaration of an inter-governmental dispute in terms of section 41 of the Inter-governmental Relations Framework Act, 13 of 2005, by Mr Moyane at SARS against me as Minister of Finance on or about 14 April 2016 (**see Annexure 29**).

127.4. Michael Hulley attempted to mediate the dispute on behalf of former President Zuma. However, he (Mr Zuma) appeared reluctant to personally intervene and end the hostility and lack of accountability from Mr Moyane evident in our relationship.

128. Second, in or about 12 June 2016, then Minister of Social Development, Bathabile Dlamini ("Min Dlamini"), wrote a lengthy letter to Mr Zuma seeking his intervention with regard to National Treasury's scrutiny of, and objections raised regarding the various systems for the payment of social grants and the implementation of policy by the Social Development Department (**see Annexure 30 - CONFIDENTIAL**).

129. In addition, the important work that National Treasury was doing to amend the Financial Intelligence Centre Act caused acrimonious and personally insulting attacks on me and the officials of the Department from those opposed to the amendments.

129.1. These amendments related to the improvement and strengthening of various aspects of South Africa's financial intelligence capabilities. The Financial Intelligence Centre ("FIC") receives information from the banking sector, which it analyses and shares with domestic and international law enforcement agencies to identify the proceeds of crime, combat money laundering, terrorism funding and tax evasion, among other crimes. South

Africa is a member of the Financial Action Task Force, which is an intergovernmental organisation that develops standards for all countries to combat these illegal activities and facilitates international cooperation in these efforts. In order to enhance the integrity of the financial system and to comply with developing international standards its best practices, South Africa needed to amend its legislation regarding the FIC Act and the powers and functions of the FIC.

129.2. Most controversially, the amendments introduced additional scrutiny of the personal finances and transactions of so-called Politically Exposed Persons ("PEPs") (which in the Act are termed Prominent Influential Persons ("PIPs") (and their families and associates), as well as a requirement to record the Beneficial Owners (the natural persons) of bank accounts.

129.3. This amendment process saw a concerted effort by other members of the executive in the Security Cluster to undermine National Treasury's oversight of the FIC. There appeared to be an effort to move the FIC, and presumably access to its highly sensitive personal information, to the Security Cluster (**see Annexure 31**). This was concerning since the FIC plays such an important role in the fiscal and banking regulatory environment overseen by National Treasury.

129.4. Former President Zuma also delayed signing the amendments into law until litigation was commenced to force him to do so. No meaningful engagement occurred between the Presidency and National Treasury regarding any reservations that the former President may have had regarding the Bill. Media reports noted that he was lobbied to not sign it into law by critics

and those that seemed opposed to National Treasury at the time (**see Annexure 32**). Eventually it was referred back to Parliament by the President in November 2016.

129.5. Media outlets owned by the Gupta family (ANN7 in particular) launched several determined attacks on the amendments. Commentators such as Mr Mzwanele Manyi and Mr Tshepo Kgadima of the Progressive Professionals Forum and Ms Danisa Baloyi of the Black Business Council were vocal critics of the amendments, and the provisions relating to PEPs in particular.

129.6. At the Parliamentary hearings held in January 2017, these same critics objected to the Bill. My Cabinet colleagues in the Security Cluster also met with officials from National Treasury to raise their objections to the amendments as well.

129.7. The Amendment Bill was eventually passed in May 2017 under my successor.

130. In sum, the orchestrated campaign against me and other leaders of National Treasury raged within the Cabinet, the institutions of state and on certain media and social media platforms. It shifted to yet another front later in the year, when I became the target of malicious and seemingly politically-motivated criminal charges.

Charges

131. On 11 October 2016, the former National Director of Public Prosecutions, Adv Shaun Abrahams ("Adv Abrahams"), announced that charges were to be brought

against me, as well as former SARS Commissioner, Mr. Oupa Magashula and former deputy SARS Commissioner, Mr. Ivan Pillay. The charges alleged fraud, relating to Pillay's early retirement, which had been approved by myself and Magashula in 2010 (**see Annexure 33**).

132. Subsequent media reports revealed that Adv Abrahams had met President Jacob Zuma, Mr Mahlobo, Justice Minister Michael Masutha and Social Development Minister Bathabile Dlamini at Luthuli House the day before his announcement, 10 October 2016. Adv Abrahams explained the meeting as being held to discuss student protests with ANC leaders, but it is unusual that the ministers of higher education, finance and police were not present if that was the subject of the discussion (**see Annexure 34**).

133. Markets reacted to the announcement of Adv Abrahams as follows:

133.1. The Rand weakened by 3.9% against the US Dollar;

133.2. Yields on South African government bonds due rose to their highest level since 2 September 2016 ;

133.3. The cost of insuring against non-payment of debt for five years using credit-default swaps, rose to the highest since July 2016; and

133.4. Bank stocks fell, wiping off almost R34 billion in value on the FTSE/JSE Africa Banks Index.

134. On 26 October 2016, in the midst of facing these charges, I delivered the Medium Term Budget Policy Statement (MTBPS) in Parliament.

135. In an about-turn days later, Adv Abrahams announced the withdrawal of all of the charges on 31 October 2016, stating that he was then satisfied that the three accused did not have the intention to act unlawfully **(see Annexure 35)**. This was a few days before my first scheduled court appearance. Various civil society organisations had mobilised in protest against the charges and in support of me and my fellow accused.

136. Both announcements were made amid allegations in the public domain that political motives were at play in the decisions to question and charge me and my fellow accused, in what appeared to be yet another attempt to force me to resign, to create uncertainty and instability and ultimately, to enable the capture of the Treasury.

137. Following the withdrawal of the criminal charges, I then turned to preparation of the 2017 Budget, which I delivered to Parliament on 22 February 2017.

The closure of the Gupta bank accounts

138. In or about April 2016, Oakbay Investments (Pty) Ltd ("Oakbay"), controlled at that time by the Gupta family, announced that its bank accounts had been closed **(see Annexure 36)**.

138.1. At around the same time, Mr Nazeem Howa, the Chief Executive Officer of Oakbay, began to correspond with me seeking my intervention to reverse these account closures. I obtained legal advice that confirmed that it would be unlawful and improper for me to intervene in the private contractual relationship

between a bank and its client. I conveyed this advice to Mr Howa, but he appeared undeterred and continued to request a meeting with me.

138.2. Together with officials from National Treasury, I held a meeting with representatives of Oakbay (including Mr Howa and Ms Ronica Ragavan) on or about 24 May 2016 in which we explained the highly-regulated environment in which banks operate and the requirements that they closely monitor and report on suspicious transactions in order to combat money laundering. We also explained the legal impediments to me, or anyone else, intervening in the private contractual relationship between a bank and its clients. I urged him to approach the courts for relief. I knew his father as a highly principled person and asked him directly if he believed his father would be proud of his behaviour.

139. Following a Cabinet meeting on 13 April 2016, at which I was not present, a Ministerial task team (which should not be confused with an Inter-Ministerial Committee ("IMC")), was established to look into the issue of the closure of the Gupta bank account. Mr Zwane, Labour Minister Mildred Oliphant and myself were nominated for this task.

140. Following correspondence received from Mr Zwane purporting to schedule a meeting of the task team (seemingly expanded to include the then Minister of Communications, Faith Muthambi) with the banking institutions, I questioned the purpose and seeming aim of the task team with my colleagues who were nominated to it. I explained the extensive global and domestic legal and regulatory framework that governs the financial sector, and cautioned that this framework needed to be understood and considered prior to any engagements with the

banking institutions. My concerns were not addressed by the members of the task team **(see Annexure 37)**.

141. I chose not to attend the meetings of the task team nor to participate in its actions, because I was of the view, confirmed in legal advice, that members of the executive cannot interfere in the contractual relationships between banks and their customers.

142. I do recall further events in Cabinet that I cannot publicly disclose but which I have indicated to the Commission should be investigated, that indicated to me that Mr Zwane had the full backing and support of former President Zuma in pursuing the task team's objective of undermining and maligning the stance adopted by myself and National Treasury to the closure of the bank accounts, this included three reports from the task team, two of which were distributed in Cabinet.

143. On or about 1 September 2016, Mr Zwane issued a media statement, purportedly on behalf of the task team and, I believe, based on its first report, announcing that it, through Cabinet, would recommend to former President Zuma that a judicial inquiry be established into the closure of the bank accounts of several Gupta companies by the major commercial banks in South Africa. This statement was effectively abandoned in the days that followed, with a statement issued by the Presidency, to clarify that no such decision had been endorsed as a decision by Cabinet **(see Annexure 38)**.

144. On or around 14 October 2016, I launched a court application to seek declaratory relief regarding the limitations of my available powers to intervene in various decisions taken by several commercial banks to close the accounts held by Gupta-related firms **(see Annexure 39)**.

144.1. This application attracted further hostility towards me from supporters of the former President and the Guptas.

144.2. Attached to the application as an annexure was a certificate issued by the Financial Intelligence Centre certifying that it had received 72 Suspicious Transaction Reports from the various banks relating to suspicious account activity and transactions conducted using the bank accounts that had been closed. This was the first public acknowledgement of suspicions regarding the business affairs of the Gupta entities since the Public Protector's State of Capture report was only released to the public on 2 November 2016 (following litigation aimed at interdicting its release launched by former President Zuma, Mr Zwane and Mr van Rooyen.

145. I submit to the Commission that it should "follow the money" and request a full account of all transactions by any Gupta-related company and related individuals that has gone through bank accounts. By doing so it will be better placed to determine which activities were related to criminality and malfeasance. This will assist State Owned Enterprises and taxpayers to recover funds lost in this process.

"The Nuclear deal" (Part II)

146. Following Cabinet's decision on 9 December 2015 that the Department of Energy ("DoE") issue the Request for Proposal ("RFP") for the nuclear programme, the engagements between National Treasury and the DoE during 2016 largely centred on the procurement process to be followed.

147. The Office of the Chief Procurement Officer ("OCPO") sought two legal opinions. Initially the DoE intended to undertake a closed government-to-government procurement, but this would have violated the Constitution, which requires that state institutions procure goods or services using a system that is fair, equitable, transparent, competitive, and cost-effective. Having reached agreement that a competitive process must be followed, the DoE continued to insist that the "pre-engagement" activities they had already undertaken (relating to the signing of the cooperation agreements) served to prequalify those bidders. There were several other unresolved issues, including aspects that would have required exemption from the Preferential Procurement Policy Framework Act. Moreover, the RFP documentation that had been prepared had many flaws and gaps, identified not only by the National Treasury officials, but also in reports produced by the advisors working on behalf of the DoE.

148. In June 2014, Eskom had written to the DoE indicating that the Board had decided not to provide funding for any new build projects beyond Medupi, Kusile and Ingula power stations due to the funding constraints Eskom was facing. As a consequence, the DoE had sought Cabinet approval for the South African Nuclear Energy Corporation SOC ("NECSA") to replace Eskom as the implementing agent, i.e. the institution that would own and operate the nuclear power plants, with the DoE serving as the procuring agency.

149. Despite the fact that Eskom was experiencing severe financing challenges, warranting that government decide to appropriate R23 billion of funding to the company during the 2015/16 financial year, in September 2016, Eskom, through its then chief executive officer, Mr Brian Molefe, indicated its willingness and

commitment to participate in the nuclear build programme (**see Annexure 40**). The Commission will be familiar with the centrality of Eskom's capture to the state capture project. In November 2016, Cabinet approved that Eskom assume responsibility for procuring, owning and operating the nuclear power stations. In December 2016, Eskom issued a watered-down and non-binding general request for information ("RFI") instead of the originally intended RFP.

150. Around the same time, the non-governmental organisations Earthlife Africa and the Southern African Faith Communities' Environment Institute launched legal proceedings against the Minister of Energy, the President and Eskom (among others) challenging the determinations in terms of Section 34 of the Electricity Regulation Act that had been made by the Minister of Energy in 2013 and 2016, and the constitutionality of the tabling by the Minister before Parliament of three intergovernmental agreements during 2015. This stalled progress on the nuclear programme.

151. Shortly after my replacement as Minister of Finance, the Cape High Court ruled that the nuclear cooperation agreements with the USA, Russia and South Korea were unconstitutional and unlawful, and that the ministerial determination for a 9.6 GW nuclear new-build in South Africa was invalid (**see Annexure 41**).

Maseko and DGs response

152. I have been asked by the Commission's legal team to respond to the evidence of Mr Themba Maseko regarding a memorandum calling for a commission of inquiry into state capture that a group of former Directors-General addressed to

the President, Deputy President, other Cabinet members and myself. One of the signatories to that memorandum, Mr Dipak Patel, provided me with a copy of the document. We had a brief conversation about it, during which I encouraged the group to "do their bit" to resist state capture and ensure accountability for those implicated in it. At this time, civil society also was active regarding state capture and corruption. The former Directors-General's concerns regarding the circumventing and undermining of procurement processes, professionalism and integrity within the public service were all concerns that I shared. I understand that the group demobilized following the failure of the ANC's own initiative to deal with state capture that came about at around the same time. I understand that only Mr Maseko lodged a submission with the ANC following its call for information. Nothing further came of the initiative, as far as I am aware.

V MY REMOVAL AS MINISTER OF FINANCE

153. As is customary, I planned and led an investor roadshow to London and the USA in late March 2017, following the Budget. As also is the usual practice, the Presidency approved the roadshow and the participation of myself, former Dep Min Jonas and the Director-General of the Treasury, Mr Fuzile. This approval involves the preparation of a memorandum setting out our proposed itinerary, details of the meetings to be held on the roadshow and details of the South African business people accompanying us on the roadshow.

154. According to that itinerary, Mr Fuzile and I traveled to London overnight on Sunday, 26 March 2017. Former Dep Min Jonas was due to fly to New York overnight on Tuesday, 28 March 2017 and Mr Fuzile was to travel from London to New York to join him. I would then return to South Africa overnight on that Tuesday.

155. Once the airplane touched down at Heathrow Airport on the morning of Monday, 27 March 2017, I turned on my mobile phone and received an SMS from Dr Cassius Lubisi, the Director-General in the Presidency. The message requested that I, former Dep Min Jonas (who had not left South Africa yet) and Mr Fuzile return to South Africa immediately.

156. Mr Fuzile and I discussed the message, and decided to proceed with the meetings scheduled for that day, including with two of the global ratings agencies and to schedule a teleconference call for Monday afternoon with the ratings agency with which we were scheduled to meet on Tuesday. We made this decision so as to provide these important players with the same information on the same day. This was the most cost-effective option to return to South Africa. My office

investigated purchasing a one-way ticket to fly home during the day on Monday, 27 March 2017, but I considered it too costly.

157. Also on Monday 27 March 2017, former President Zuma reportedly informed senior leaders of the South African Communist Party ("SACP") that he intended to remove me and former Dep Min Jonas, and referenced a purported "intelligence report" accusing me and others of conspiring with foreign forces against him as President. Of course, I reject and deny these allegations. I never saw this "intelligence report".

158. Following a day of meetings that formed part of the planned investor roadshow, I flew back to South Africa that evening, arriving back on Tuesday morning, 28 March 2017.

159. Tuesday, 28 March 2017 was the day that the court application regarding the closure of the Gupta businesses' bank accounts in South Africa by several of the major banking institutions was set to commence argument in the Pretoria High Court. It is of course possible that had I been removed as Minister of Finance by that time my successor would have withdrawn the application.

160. It was also the day that revered anti-apartheid activist, Mr. Ahmed Kathrada, passed away.

161. Immediately after landing at O R Tambo, on Tuesday 28 March 2017, Mr Fuzile and I met with the former Secretary-General of the ANC, Mr Mantashe, at Luthuli House to obtain clarity about our positions. None was forthcoming. Mr Mantashe had contacted me while I was still in London and we had agreed to meet upon my return to South Africa.

161.1. During that meeting with Mr Mantashe, he informed me that former President Zuma had met with the ANC's Top 6 officials on the previous day, Monday, 27 March 2017. The same fake "intelligence report" had been presented to them, but it had been rejected by those in the meeting.

161.2. Mr Mantashe then told me that Mr Zuma told them that, regardless of the "intelligence report", his relationship with me had irretrievably broken down. Since this was not my impression of my relationship with former President Zuma, I asked Mr Mantashe if he had indicated why he felt that our relationship had irretrievably broken down. Mr Mantashe indicated that he did not.

161.3. Mr Mantashe recounted that Mr Zuma had indicated that it was unusual that the Minister, Deputy Minister and Director-General were all out of the country at the same time. I corrected him, saying that former Dep Min Jonas had not yet left South Africa. Mr Mantashe seemed shocked by this fact.

161.4. I believe that Mr Zuma had mentioned Brian Molefe as a possible replacement as Minister of Finance, but that this suggestion was rejected by the members of the Top 6 in the meeting.

161.5. As an aside, I note that, on 23 February 2017, Mr Brian Molefe, who had resigned as the Eskom CEO in November 2016, following the Public Protector's *State of Capture* report, was sworn in as a Member of Parliament for the ANC. Speculation at the time was that this was a precursor to his appointment as my replacement as Minister of Finance. Almost a year earlier, in April 2016, Mr Sifiso Buthelezi also, was sworn in as a Member of Parliament for the ANC. Speculation suggested that he was earmarked to be Mr Molefe's Deputy Minister.

161.6. Mr Mantashe indicated to me that Mr Zuma would prefer it if I would resign, rather than him having to fire me. He spoke to me about leaving with my integrity or honour intact. As explained above, I had no plans to resign but would continue to serve the national interest. My position was that the former President could fire me if he wanted to get rid of me.

161.7. I understood from Mr Mantashe that I was likely to be removed, but that the issue of my replacement was to be discussed again by Mr Zuma at the next Top 6 meeting the following week (Monday, 3 April 2017). Mr Fuzile was distraught at the turn of events and was himself considering resigning.

161.8. I returned to my office at National Treasury that afternoon.

162. The next day, Wednesday, 29 March 2017, a funeral was held for Ahmed Kathrada at West Park Cemetery in Johannesburg.

163. On Thursday, 30 March 2017, the SACP issued a media statement recording that it had been informed on Monday, 27 March 2017 by Mr Zuma that I was to be replaced as Minister of Finance (**see Annexure 42**). The statement recorded that the SACP objected to this intended reshuffle. It also noted that it had laid a complaint with the Inspector General of Intelligence and the Minister of State Security regarding "a rogue intelligence unit that in our view gathers data illegally, produces false reports and feeds them into the political and public domain to smear comrades." I do not know the status of that complaint.

164. That evening, former President Zuma announced that both myself and former Dep Min Jonas, and several others including Ministers Hanekom and Ramathlodi, were removed from our positions (**see Annexure 43**). We were replaced by

Messrs Malusi Gigaba and Buthelezi, respectively. I became aware of my removal when the President made his announcement of the reshuffle, which was broadcast on television while I watched.

165. I had no contact with the former President regarding his decision to remove me as Minister of Finance.

166. The global ratings agencies expressed their immediate concern at these developments. For example,

166.1. On Monday, 3 April 2017, Moody's Investors Services announced that it had placed the Baa2 long-term issuer and senior unsecured bond ratings of the government of South Africa on review for downgrade. That review was said to be prompted by "the abrupt change in leadership of key government institutions" and would "allow Moody's to assess these risks and if the changes in leadership signal a weakening in the country's institutional, economic and fiscal strength."

166.2. The same day, Standard & Poor's, downgraded South Africa's ratings to 'BB+' from 'BBB-' and the long-term local currency rating to 'BBB-' from 'BBB' in a reflection of their "view that the divisions in the ANC-led government that have led to changes in the executive leadership, including the finance minister, have put policy continuity at risk. This has increased the likelihood that economic growth and fiscal outcomes could suffer."

166.3. On 7 April 2017, Fitch Ratings also downgraded South Africa's Long-Term Foreign- and Local-Currency Issuer Default Ratings to 'BB+' from 'BBB'. These downgrades were made in light of its view that "the cabinet

reshuffle, which involved the replacement of the finance minister, Pravin Gordhan, and the deputy finance minister, Mcebisi Jonas, is likely to result in a change in the direction of economic policy. The reshuffle partly reflected efforts by the out-going finance minister to improve the governance of state-owned enterprises (SOEs). The reshuffle is likely to undermine, if not reverse, progress in SOE governance, raising the risk that SOE debt could migrate onto the government's balance sheet. Differences over the country's expensive nuclear programme preceded the dismissal of a previous finance minister, Nhlanhla Nene, in December 2015 and in Fitch's view may have also contributed to the decision for the recent reshuffle."

VI RETURN TO PARLIAMENT

167. Following my removal as Minister of Finance, I remained an ANC Member of Parliament. I was a member of the Portfolio Committee on Public Enterprises that held an inquiry into state capture at various SOCs, including Eskom, Transnet, PRASA and Denel. The disclosures and submissions made to the Committee will doubtlessly be relevant to this Commission's other terms of reference. I do not provide that detail in this statement.

168. My experience in the Portfolio Committee's inquiry into Eskom, in particular, revealed the extent of manipulation of the Boards of SOCs, their management, and the abuse of the contracts and procurement processes for corrupt and unlawful ends. This pillage was replicated and became prevalent in other SOCs as well. I believe that this hollowing out of the governance structures of SOCs was a direct consequence of the state capture project and was aimed at facilitating their plunder. One can observe how the methodology was perfected at one SOC and then replicated at others as the state capture project was rolled out.

VII RETURN TO CABINET

169. Following Mr Zuma's resignation on 14 February 2018, President Ramaphosa announced a cabinet reshuffle on 26 February 2018. I was appointed Minister of Public Enterprises.

170. In my current position, the investigation of the damage done in the past decade to South Africa's SOCs is ongoing. So too are efforts to restore good corporate governance, procurement framework compliance and accountability for implicated members of the Boards and management of SOCs. The details of the state of our SOCs and these "re-capturing" efforts also are relevant to this Commission's other terms of reference. The Department of Public Enterprises will be providing the Commission with information in this regard.

VIII CONCLUSION

171. The Commission's legal team has requested that I reflect on possible lessons and recommendations arising from my evidence relating to its Terms of Reference 1.1 to 1.3.

172. I believe that South Africa requires what I call a "whole of society transformation." By this I mean we need deep reflection on our chosen and shared values and priorities. On issues of integrity and corruption, South African business, and professionals or advisors in particular, need to reflect on their role in state capture. The Commission's investigation of these issues should lead to a genuine and deep transformation of business ethics and culture in our country.

173. I believe that meaningful reflection and transformation also is required in respect of the need for greater transparency and effective oversight with regard to major public procurement processes. New checks and balances on executive power – at all levels and in all spheres of government, not just the national executive or the Presidency – are required.

174. I believe that these lessons will promote unity and the national interest, and enhance development and inclusive growth.

175. The work currently being done with SOEs shows that they are and were seriously compromised in terms of the scale of financial losses, the undermining of good corporate governance, their operational capability, and the dearth of competent and courageous leadership in the face of serious fiscal risk.

176. The Commission should consider releasing interim reports or measures that could expose and help put a stop to ongoing malfeasance.

177. "Consequences management" is required: criminal charges should be pursued by our restored law enforcement agencies, individuals should have their services terminated, demoted, declared to be delinquent directors or ordered to pay back the money pillaged and looted from our state.

178. It must be recognised that those constituencies who would have liked the status quo to remain are engaged in a determined and vigorous fight back taking place across our state.

179. The real cost of state capture is the damage it has done to the institutional fabric of our state. Good people lost their jobs, families were put through trauma and vilification for standing up, and the lasting impact of the past decade weakened and hollowed out our state. A culture of malfeasance was legitimised and tolerated with increasing impunity and a lack of accountability. SOCs were distracted from their intended purpose of providing services, supporting economic development and creating inclusive growth in service of transformation.

180. People, including myself, who are appearing before the Commission continue to be subjected to harassment and racist abuse in frivolous and vexatious litigation, in the media and on social media. Decisions taken to clean up are stalled when they are challenged, whether internally or though litigation.

181. The misuse and abuse of public powers for suspicious objectives, including intimidation and harassment, also continues.

181.1. For example, recently on 1 October 2018, I was subpoened to appear before the Public Protector in regard to an investigation she is undertaking into the approval of an early retirement package offered to Mr Ivan Pillay. This was

the same issue regarding which I was charged criminally in 2016. The complaint was lodged on 18 November 2016 by Mr Lebogang Hoveka, who was then a speechwriter in the Presidency.

182. I believe that the fight back is aimed at countering the work done this year by public servants and political office bearers to "re-capture" the state and deliver on its constitutional mandate.

183. As I hope is clear from my statement, there were many who have resisted state capture at every opportunity, including activists, civil society, political leaders, journalists, businesspeople, labour, and lawyers. Our insistence on following the constitutional mandate given to the executive, and to follow the legal and regulatory frameworks over which we were responsible ensured that we could resist and oppose improper and unlawful schemes. Following the law and our consciences has been, and will continue to be, our chosen path. The cost of being honest is high for me personally, as well as for my family and my colleagues. It is a price paid to ensure that South Africa transforms from its apartheid past and its recently captured state into the nation for all South Africans promised in the Constitution.

PJ GORDHAN

11 October 2018

ANNEXURE 6

government communications

Department:
Government Communication and Information System
REPUBLIC OF SOUTH AFRICA

Statement on Cabinet meeting of 9 November 2011

10 November 2011

Cabinet held its ordinary meeting in Cape Town on 9 November 2011.

1. Current Affairs

1.1 International Agenda

Cabinet noted the President's upcoming two-leg visit to the Arabian/Persian Gulf Region, including the United Arab Emirates and Oman from 12 to 16 November 2011. South Africa's relations with the Gulf are primarily of an economic nature and are focussed on increasing trade and investment.

1.2 COP17

The President of the Republic of South Africa, Mr Jacob Zuma and his Cabinet call on all South Africans to "Play your Part" in welcoming the world as we approach theCOP17 conference and encourage South Africans to wear green to show support for the conference. The President further calls on media to partner with government to mobilise the nation in boosting its "green" economy and reducing the country's carbon footprint as we count down 18 days to the COP17 Conference in Durban.

1.3 Census 2011

The Cabinet expressed its appreciation to the entire nation who participated in the Big Count which officially ended on 31 October 2011 and commended Statistics South Africa for the success of the monumental undertaking of Census 2011. Cabinet urges individuals who have not been counted to call the Census toll free number 0800 110 248 immediately to make arrangements to be counted before Monday, 14 November 2011.

Cabinet further calls on all individuals in the country to cooperate with Census officials in the next step of Census 2011, where a Post Enumeration Survey will be undertaken from 15 November to 15 December 2011, to determine Census coverage and measure undercount.

1.4 Safety and Security related issues

Cabinet condemns the senseless and brutal acts of criminality that have been coined "corrective rape". The South African Police Service's and National Prosecuting Authority's respective sexual offences and community affairs units are investigating reported cases. Perpetrators who are found guilty will be met with the full might of the law. Victims continue to receive assistance and support from the Department of Justice and the Department of Social Development.

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1.5 Labour Force Survey

Cabinet noted the cause for some optimism from the latest Quarterly Labour Force Survey which indicates that during the recent economic recession there was an increase in employment. It is reported that this survey shows that unemployment declined to 25% from 25.7%. These findings point to the fact that our economy continues to remain resilient in the face of difficult conditions facing the domestic and world economy.

1.6 National Accords

Cabinet welcomes and supports the various accords that have been signed by business, labour and government on local procurement, basic education and skills development which reflect a national plan of action to meet the goal of creating 5 million jobs by 2020.

2 Key strategic decisions included the following:

2.1 National Waste Management Strategy (NWMS)

Cabinet approved the National Waste Management Strategy for implementation. The NWMS has eight key goals:

- Promoting waste minimisation, re-use, recycling and recovery of waste;
- Ensuring effective and efficient delivery of waste services;
- Growing the contribution of the waste sector to the green economy;
- Ensuring that people are aware of the impact of waste on their health, well-being and the environment;
- Achieving integrated waste management planning;
- Ensuring sound budgeting and financial management for waste services;
- Providing measures to rehabilitate contaminated land; and
- Establishing effective compliance with and enforcement of the Waste Act.

An action plan that sets out how to meet the goals and targets is part of the strategy, and the actions include roles and responsibilities for different spheres of government, industry and the civil society.

2.2 Turkey's proposal for a Free Trade Agreement (FTA)

Cabinet approved that South Africa advances a mutually beneficial, cooperative and balanced approach to building trade and investment relations with Turkey and avoid destructive competition that could result from ineffective management of a Free Trade Agreement (FTA).

The South African Government has carefully considered how best to build bilateral trade and investment relations with Turkey, which is an increasingly important partner in the global economy. Government recognises that both Turkey and South Africa as emerging economies have similar challenges and trajectories for economic growth and development. It also recognises that current levels of trade and investment are omparatively low, offering scope for growth. In view of this, a mutually beneficial relationship would best be served by collaboration that builds complementarities in our economies and our trade and investment links. These should be structured to support the priorities of our respective economic development strategies and objectives. An FTA

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does not allow for such a nuanced mutually beneficial approach to building economic relations and, instead, encourages destructive competition that will undermine our industrial and employment objectives.

2.3 Hosting of the Annual Meeting of the Global Forum on the Transparency and Exchange of Information for Tax Purposes in South Africa during the 2012/2013 financial year.

As part of the fight against corruption, money laundering and aggressive structuring, Cabinet approved the hosting of the Global Forum on Transparency and Exchange of Information for Tax Purposes in South Africa during the 2012/2013 financial year.

The benefits for South Africa in hosting a meeting of the Global Forum include:

- Providing South Africa with an opportunity to underscore the importance of tax compliance in support of economic and social development.
- An opportunity for South Africa and its counterparts to initial or sign Tax Information Exchange Agreements that have been negotiated but not signed as yet. The signing of these agreements would allow for the sharing of information for tax purposes and counter tax avoidance activities.
- With the exception of Africa, every geographic region in the world has had the opportunity to host an annual meeting of Global Forum. South Africa will become the first African country to host a meeting of the global Forum.
- Hosting may lead to the establishment of greater networks for the exchange of tax information between African countries and their international partners
- The South African economy will benefit from the presence of foreign visitors.

2.4 South Africa's chairing of the Southern African Development Community (SADC) organ on Politics, Defence and Security Cooperation

Cabinet approved the proposed strategy for South Africa's terms of chairship of the South African Development Community (SADC) Organ on Politics, Defence and Security Cooperation. South Africa will collectively be responsible for policy guidance and oversee the implementation of decisions between the Summits.

Cabinet noted that active South African leadership at Executive level is required at the SADC Election Observer Missions (Democratic Republic of Congo (DRC), Zambia, Lesotho and possibly Zimbabwe and Madagascar). Cabinet further noted that full engagement is required to improve management systems and procedures in the SADC Secretariat and supports the establishment of an interdepartmental core group under the leadership of the Department of International Relations and Cooperation (DIRCO).

2.5 Establishment of the South African Council on International Relations (SACOIR)

Cabinet noted the establishment of the South African Council on International Relations (SACOIR) and the terms of reference.

This forum will serve as a consultative forum for South African non-state actors and government experts to interact with DIRCO on development and implementation of South Africa's foreign policy. Its main objectives are:

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- To provide a platform for the generation of public debate on foreign policy;
- To provide a consultative forum for the regular review of South Africa's foreign policy. And;
- To advise the Minister of International Relation and Cooperation.

2.6 Feasibility study for the acquisition of new rolling stock for the commuter services of the Passenger Rail Agency of South Africa (PRASA)

Cabinet noted the conclusion of the feasibility study for the procurement, financing and maintenance of new rolling stock for the Metrorail services of the Passenger Rail Agency for South Africa (PRASA). The feasibility study has found that the acquisition of new rolling stock is an economically viable project.

Cabinet further noted that local industry will be stimulated through involvement in the manufacturing and/or assembly of the new rolling stock. This will be implemented to a progressively greater degree over the procurement period in line with the intention of the second Industrial Policy Action Plan (IPAP II) to ensure the greatest possible local content. This acquisition will require the development of local rail engineering skills and capacity to support the substantial number of job opportunities that will be created.

2.7 Transnet National Ports Authority (TNPA) for interim operations by Transnet Port Terminal (TPT) at the Port of Ngqurha container terminal

Cabinet approved the decision to direct the Transnet National Ports Authority (TNPA) to licence Transnet Port Terminal to operate the Port of Ngqura for a limited period of 3 years, subject to the TNPA beginning a competitive process for the licensing of the Port of Ngqura in accordance with section 56 of the National Ports Act, 2005.

2.8 Implementation plan for the approved Minerals Beneficiation Strategy

Cabinet approved the implementation plans for both the iron and steel value chains and energy commodities value chains. Cabinet further approved the interdepartmental structure that will manage the process.

2.9 Establishment of the National Nuclear Energy Executive Coordination Committee

Cabinet approved the establishment of the National Nuclear Energy Executive Coordination Committee (NNEECC) to implement a phased decision making approach to the nuclear programme. Cabinet further approved the establishment of the nuclear energy technical committee (NETC) to support the NNEECC.

3 Bill approved

3.1 National Environmental Management: Integrated Coastal Management Amendment Bill, 2012

Cabinet approved the National Environmental Management Integrated Coastal Management Amendment Bill, 2012 be published for public comment.

The amendment Bill seeks to:-

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- Ensure that coastal public property does not impact on assets and operations of other organs of State. It clarifies the protection of the sea and the sea-bed without limiting the functions of other organs of State in performing their duties, and supporting sustainable management of the coastal environment;
- Align certain sections of the Act with the provisions in the National Environmental Management Act, 1998.
- Close the gaps that were identified presented themselves during the implementation of the provisions of the Act and,
- Make textual corrections and tighten up the offences and penalty provisions.

4 Appointments

Cabinet approved the following appointments:

4.1 Prof. Anthony David Mbewu was appointed Chief Executive Officer (Director-General Level) of Government Printing Works.

4.2 Mr Nkosiyethu Henrick Thulani Mkhwanazi was appointed Deputy Director-General: Economic Development, Trade and Marketing in the Department of Agriculture, Forestry and Fisheries.

4.3 Mr Oupa Jacob Komane was appointed to serve as a member of the National Energy Regulator of South Africa (NERSA) replacing Mr Nkateko Nyoka.

4.4 Legal Aid Board: Ms Marcella Naidoo, Prof Yousuf Vawda and Ms Nonhlanhla Mgadza were reappointed to the Legal Aid Board for a period of three (3) years.

4.5 South African National Accreditation System (SANAS) Board: Mr Vernon Seymour and Mr Phakamisa Zonke were appointed as Non-Executive Directors to the South African National Accreditation System (SANAS) Board for a period of 3 years.

4.6 Adv Catherine Letele was appointed Non-Executive Director to the National Metrology Institute of South Africa (NMISA) Board for a period of three years.

4.7 South African National Biodiversity Institute (SANBI) Board: Mr Steven Thomas Cornelius, Dr Bernard Fanaroff , Mr Joseph Moemise Matjila, Ms Busisiwe Duduzile Ngidi, Mr Thamsanqa Sokutu, Mr Antony Frost, Mr Godfrey Mashamba and Ms Nana Magomola were appointed to serve on the Board of the South African National Biodiversity Institute (SANBI) for a term of three years.

4.8 iSimangaliso Wetland Park Authority (iSimangaliso) Board: Ms Karin Mathebula, Mr Allan Lax, Mr Paul Ndukuzempi Buyani Zwane, Ms Thobile Ethelfrida Mhlongo, Mr Zwelinzima Thwalizwe Gumede, Dr Antonia Thandi Nzama, Ms Poppy Senelisiwe Dlamini and Mr Mavuso Msimang were appointed to serve on the Board of iSimangaliso for a term of three years.

Cabinet congratulates the new appointees and wishes them well in their new responsibilities.

Enquiries

Jimmy Manyi (Cabinet Spokesperson)
Cell: 082 379 3454

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Issued by Government Communications (GCIS)

Cabinet statements
Year: 2011
Media Statement date: Thursday, November 10, 2011

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ANNEXURE 8

NATIONAL ASSEMBLY
QUESTION FOR WRITTEN REPLY
QUESTION NUMBER: 3192 [NW3790E]
DATE OF PUBLICATION: 29 AUGUST 2015

3192. Mr D J Maynier (DA) to ask the Minister of Finance:

(1) Whether any organ of state furnished the National Treasury with any document(s) relating to the (a) feasibility, (b) financing and/or (c) procurement of the nuclear build programme; if not, what is the position in this regard; if so, (i) what is the title of each specified document, (ii) when was each specified document furnished and (iii) which organ of state furnished the specified document in each specified case;

(2) Whether the National Treasury (a) conducted an assessment and/or (b) commented on any specified document; if so, (i) what is the title of each specified document produced by the National Treasury in this regard, (ii) when was each specified document produced by the National Treasury and (iii) (aa) to which organ(s) of state was each specified document provided and (bb) when was each specified document provided to the specified organ of state?

NW3790E

REPLY:

1) Yes, as part of its pre-procurement process and in preparation for the envisaged nuclear new build programme, the Department of Energy furnished the National Treasury with an extensive set of documents in November 2013. These included a draft feasibility study report, titled Draft Feasibility for the Nuclear Programme of the Republic of South Africa, together with a wide range of accompanying research papers and reports dealing inter alia with international experience in nuclear procurement, costing, licencing, localization, the fuel cycle, waste disposal, environmental impacts, skills development, international agreements and conventions and the power industry structure.

2) (a) National Treasury conducted a preliminary internal study titled Nuclear Costing Overview during 2012. (b) National Treasury has prepared a commentary on the feasibility study and financing studies received from the Department of Energy during 2014 and 2015, and has undertaken a preliminary review of costing scenarios and financial aspects of a nuclear build programme. These reviews are still in progress and are under discussion with the Department of Energy. These pieces of work, though very clearly related, are different from the more detailed work currently underway. The more detailed work is to inform the final decision on the estimated cost financing model and risk associated therewith, a matter which is currently under discussion between Department of Energy and the National Treasury.

ANNEXURE 9

President Jacob Zuma: Reply to parliamentary questions

27 Mar 2015

The Leader of the Opposition Mmusi Maimane (DA) to ask the President of the Republic:

(1). Whether, with reference to his reply to question 2251 on 24 November 2014, he can provide the (a) agendas and (b) minutes for the National Nuclear Energy Executive Coordination Committee (NNEECC) meetings held on (i) 10 October 2013, (ii) 20 May 2014, (iii) 22 July 2014, (iv) 30 July 2014 and (v) 5 September 2014;

(2). whether he can also provide the agendas and minutes for any of the NNEECC meetings that may have taken place since 5 September 2014?

REPLY:

The National Nuclear Energy Executive Coordination Committee (NNEECC) was established by Cabinet in November 2011. The NNEECC is tasked with providing oversight and decision making on the nuclear policy and new build programme.

In June 2014, the National Nuclear Energy Executive Coordination Committee (NNEECC) was converted into the Energy Security Cabinet Subcommittee (ESCS) responsible for oversight, coordination and direction for the activities for the entire energy sector.

I chair this committee and it is comprised of the following members:
1. Minister of Energy, Ms Tina Joemat-Pettersson;
2. Minister of Public Enterprise, Ms Lynne Brown;
3. Minister of International Relation and Cooperation, Ms Maite Nkoana-Mashabane;
4. Minister of State Security, Mr David Mahlobo;
5. Minister of Finance, Mr Nhlanhla Nene;
6. Minister of Trade and Industry, Dr Rob Davies;
7. Minister of Economic Development, Mr Ebrahim Patel;
8. Minister or Mineral Resource, Advocate Ngoako Ramatlhodi;
9. Minister of Environmental Affairs, Ms Edna Molewa;
10. Minister of Defence and Military Veterans, Ms Nosiviwe Mapisa-Nqakula.

This committee reports to Cabinet and its proceedings and documents are classified under the Minimum Information Security Standard Act (MISS Act) as TOP SECRET. As a result I am unable to share the agenda and minutes of the meetings held by the Energy Security Cabinet Subcommittee.

Mr J. S. Malema (EFF) to ask the President of the Republic:

In light of the fact that the country is on a verge of an economic collapse as a result of the electricity crisis, what exactly does he mean when he says the electricity crisis is caused by apartheid, even after Eskom pointed to scientific and technical challenges caused by the current government, including doubling the costs for the construction of the new power stations?

REPLY:

The end of apartheid and the election of a new democratic Government in 1994 provided the impetus for all policy and institutional shifts underpinning the electrification programme. These shifts were necessary to address the historical racially-based disparity in the provision of key infrastructure.
In 1994, only 34% of South Africans had access to electricity, the majority of which were white people and only 12% of that was rural electrification.
With the dawn of democracy came the added responsibility to connect every household which was denied access to the national grid under the Apartheid regime. This required that additional transmission and distribution infrastructure be made available to cater to the increased demand of connecting millions of households to the grid. This demand continued to increase without the requisite supply options being secured as the new democratic Government had to balance the cost of delivering many key priorities for a democratic South Africa including the provision of adequate health, education infrastructure and basic services to cater for the many millions of South Africans previously not catered for.

Since 1994, over 89% of households now have access to electricity, and universal access remains a key priority. The historic disparity in delivering key infrastructure projects to the majority of South Africans has a significant bearing on the energy challenges experienced today. During apartheid, Eskom's focus was in meeting the demand of only 5 million citizens. Post-apartheid, this number has grown considerably to over 12, 2 million citizens reducing the reserve margin levels that had been created. Eskom's technical challenges, in particular, failure to maintain its plants further constrained the power system.

I have not denied that there are challenges in the electricity industry and within Eskom. The Cabinet's Eskom financial support package of September 2014 attests to that. During the State of the Nation Address I further reiterated that resolving energy was the number one priority to enable economic growth. What I focussed on is that, under the democratic dispensation, Eskom has had to meet a demand which had deliberately not been met under Apartheid. Naturally, this led to an extraordinary increase in demand which the successive Democratic Administrations have done everything possible to meet.

Mr J.S. Malema (EFF) to ask the President of the Republic:

In the light of the fact that he has visited Angola a number of times since he assumed office in 2009,
(a) What was the purpose of these visits and
(b) What do ordinary South Africans stand to benefit from these visits?

REPLY:
(a) The Honourable Member is correct. I have visited the Republic of Angola several times since 2009. The main purpose of the visits was to discuss not only bilateral cooperation between South Africa and Angola but also and most importantly it was to discuss issues of peace, stability and security in the Region as well as in the Continent.

For instance, I paid a State Visit to Angola from 19 to 21 August 2009. A year later, President Dos Santos paid his first ever State Visit to South Africa from 13 to 16 December 2010. During these visits, several sectoral bilateral agreements and memoranda of understanding in the fields of trade, industry, energy, transport, culture, among others, were signed.

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A number of our visits to the Republic of Angola were also to attend regional meetings convened to discuss peace, stability and security issues in the Great Lakes Region.

(b) The people of South Africa benefit immensely from such visits. The signing of the legal instruments mentioned above, have ensured that there has been a noticeable increase in economic cooperation between South Africa and Angola to the extent that Angola has now become South Africa's top trading partner in the Continent. We are also pleased that there been an improved security situation in the Great Lakes Region.

Enquiries:
Mac Maharaj
Cell: 079 879 3203
E-mail: macmaharaj@icloud.com

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ANNEXURE 10

Media Release

Russia and South Africa sign agreement on Strategic Partnership in Nuclear Energy

Pretoria, 22 September 2014 - On September 22, 2014 in Vienna, on the margins of the 58th session of the International Atomic Energy Agency General Conference, the Russian Federation and the Republic of South Africa signed an Intergovernmental Agreement on Strategic Partnership and Cooperation in Nuclear Energy and Industry. On behalf of the Russian Government the document was signed by the Director General of State Corporation "Rosatom" Mr Sergey Kirienko, on behalf of the South-African Government – by the Minister of Energy Ms Tina Joemat-Pettersson.

The Agreement lays the foundation for the large-scale nuclear power plants (NPP) procurement and development programme of South Africa based on the construction in RSA of new nuclear power plants with Russian VVER reactors with total installed capacity of up to 9,6 GW (up to 8 NPP units). These will be the first NPPs based on the Russian technology to be built on the African continent. The signed Agreement, besides the actual joint construction of NPPs, provides for comprehensive collaboration in other areas of the nuclear power industry, including construction of a Russian-technology based multipurpose research reactor, assistance in the development of South-African nuclear infrastructure, education of South African nuclear specialists in Russian universities and other areas.

The joint implementation of this programme implies a broad localization of equipment for the new NPPs, which will provide for brand-new development of various areas of South-African high-tech industries, contribute to creation of a new highly skilled workforce and will allow South-African companies to further participate in Rosatom's projects in third countries.

"I am convinced in cooperation with Russia, South Africa will gain all necessary competencies for the implementation of this large-scale national nuclear energy

development programme. Rosatom seeks to create in South Africa a full-scale nuclear cluster of a world leader's level – from the front-end of nuclear fuel cycle up to engineering and power equipment manufacturing. In future this will allow to implement joint nuclear power projects in Africa and third countries. But from the very start this cooperation will be guided at providing the conditions for creation of thousands of new jobs and placing of a considerable order to local industrial enterprises worth at least 10 billion US dollars", Rosatom's Director General Mr. Sergey Kirienko noticed.

According to Ms Tina Joemat-Pettersson, "South Africa today, as never before, is interested in the massive development of nuclear power, which is an important driver for the national economy growth. I am sure that cooperation with Russia will allow us to implement our ambitious plans for the creation by 2030 of 9,6 GW of new nuclear capacities based on modern and safe technologies. This agreement opens up the door for South Africa to access Russian technologies, funding, infrastructure, and provides a proper and solid platform for future extensive collaboration."

Enquiries: Mr Zizamele Mbambo, DDG Nuclear Energy at +27 79 529 5646, Zizamele.mbambo@energy.gov.za

Mr Xolisa Mabhongo, Group Executive Corporate Services at +27 72 359 9025, Xolisa.mabhongo@necsa.co.za

ANNEXURE 11

MINISTER
ENERGY
REPUBLIC OF SOUTH AFRICA

Private Bag X96, Pretoria 0001, 7th Floor Matlaga House, Cnr Maggs & Paul Kruger Street, Pretoria 0001 Tel: (+27 12) 406 7612, Fax (+27 12) 323 5905
Private Bag X9111, Cape Town 8000, Parliamentary Building 7th Floor, 120 Plein Street, Cape Town Tel: (+2721) 469 5128, Fax (+27 21) 469 5980

Tan Sri Dato' Shamsul
Azhar Abbas
President and CEO
PETRONAS
Tower 1, PETRONAS Twin Towers
Kuala Lumpur
Malaysia

PetroSA'S BINDING PROPOSAL TO ACQUIRE ALL OF THE ORDINARY ISSUED SHARE CAPITAL OF ENGEN

Dear Mr Tan Sri Dato' Shamsul Azhar Abbas

Our various correspondence relating to the above mentioned transaction have refer

I, once again, wish to thank you for having granted PetroSA the opportunity to make a revised offer to acquire 100% of the issued share capital of Engen. Having reviewed and analysed the additional information provided, PetroSA is now in a better position to make a much improved offer with regard to the transaction. The price now being offered is R 17.39 billion, which amount is fully explained in the revised Binding Proposal letter from PetroSA. Further to this amount, the negotiating team has, if so required, been given further leverage to conclude this transaction.

As I have indicated previously, this transaction still remains one of strategic importance and national interest to South Africa. Therefore, the position of the South African Government with regard to its support for the transaction remains unchanged.

In line with our Government's position to allow private sector participation in the funding of transactions of this nature, we have secured both local and foreign funding. We are currently engaging with these parties to finalise the terms and conditions of the proposed funding. In addition to the debt funding, both PetroSA and the Public Investment Corporation the investment arm of the South African Government employees Pension Fund) will make an equity contribution

of no less than R 8.6 billion. The South African Government will, if necessary, provide the required guarantees and funding. We are still confident that PetroSA together with the South African Government will be able to fund this transaction.

In support of this transaction, I have given the required approvals in terms of section 54(2)(c) and (e) of the Public Finance Management Act, 1999.

Having regard to the tight schedule we have agreed for the conclusion of this transaction, we would appreciate a response to the Binding Proposal by 20 January 2014. This will allow PetroSA to select and conclude discussions with potential funders by 31 January 2014.

Sincerely,

DIKOBE BEN MARTINS, MP
MINISTER OF ENERGY

DATE: 07.01.2014

MINISTER
ENERGY
REPUBLIC OF SOUTH AFRICA

Mr Pravin Gordan

Minister of Finance

PO Box X115

Pretoria

0001

Dear Pravin

ACQUISITION OF ALL THE ORDINARY SHARES IN EGEN (PTY) LTD BY PETROSA

In 1996 PetroNAS, the Malaysian National Oil Company, acquired Engen SA (Pty) Ltd from Mobil. This was one of the first foreign direct investments in the post - Apartheid South Africa. It has always been the intention of PetroNAS (the vendor) to, at the appropriate time, dispose of ENGEN in favour of South Africa. Since 2012, PetroSA, with the support of the Department of Energy, has been engaged with PetroNAS with a view to acquiring all the ordinary shares in Engen. PetroSA has made the binding proposal and the vendor has accepted the offer. The purchase consideration for all the issued share capital of Engen is R 18.68 billion.

Since PetroNAS has accepted PetroSA's binding offer, negotiations on all the transaction related agreements have commenced. The negotiations in this regard have reached an advanced stage. This process must be concluded by no later than 31 March 2014.

In order to promote regional integration, lighten the financial burden of the transaction on PetroSA and based on its downstream experience and expertise, SONANGOL, the national oil company of Angola, has been selected as the Strategic Equity Partner.

It is expected that both PetroSA and Sonangol will provide funding for 80% of the purchase price, while the balance will be financed through debt and mezzanine funding from local and international banks that have already expressed their irrevocable interest to participate in the transaction. As such, at this stage, the acquisition of Engen by a consortium consisting of PetroSA and Sonangol will not require any direct financial assistance from the fiscus. The Department of Energy is in the process of seeking your concurrence with regards to a possible sovereign guarantee, if necessary.

However, in order for PetroSA to finalise this transaction, the vendor seeks a letter of comfort and support from the South African Government through the Ministers of Finance and of Energy, as proof that PetroSA has and enjoys the full support of the South African Government. In this regard I would appreciate if you could, please, address a letter to the vendor indicating National Treasury's support for the transaction.

I look forward to receiving your letter of support so that I can forward same to the Vendor.

Sincerely

DIKOBE BEN MARTINS

MINISTER OF ENERGY

DATE: 11.05.2014

SUPPORT FOR PETROSA's ACQUISTION OF ALL THE ORDINARY SHARES IN ENGEN

The Ministry of Finance of the Republic of South Africa takes note of the progress achieved in the negotiations for PetroSA to acquire all the ordinary shares in Engen SA (Pty) Ltd. The National Treasury is engaged with the Department of Energy with regards to the State Guarantee. A decision on this matter will be taken on the 26th of March 2014.

We support this transaction and express our desire that it be concluded successfully.

Sincerely

Pravin Gordhan

Minister of Finance

Mr Pravin Gordhan
Minister of Finance
National Treasury
120 Plein Street
Cape Town
South Africa

13 March 2014

Engen

Thank you for calling me yesterday for my perspectives regarding PetroSA's intended purchase of Engen, Petronas's wish to reinvest with PetroSA in a new South / Southern African lubricants venture and Petronas's offer of a two year transitional support services agreement.

Substantial progress has indeed been made since our meetings in February and September last year – the latter following your President's and members of his Government's official visit to Malaysia last August when:

- the acquisition of Engen by PetroSA was confirmed to be a high strategic priority for the SA government; and
- the Minister of Energy and Tan Sri Shamsul (President and CEO of Petronas) jointly agreed a process and timetable culminating in a completed and financed transaction by the end of March 2014.

On the strength of this, and written confirmation from the Minister of Energy that "the South African Government will, if necessary, provide the requisite guarantees and funding", a major amount of work has been undertaken to settle the price and other terms of the transaction. This has involved both principals and a host of advisors and the senior management and staff of Engen such that there is now reasonable confidence of being able to announce a transaction on the 31st March subject to the review and approval of the South African Competition Tribunal and certain more minor regulatory issues.

Throughout this process the management and staff of Engen have provided a significant amount of support (data room, management presentations, site visits and early stage post-merger integration analysis) as have the independent board members of Engen. However, it has always been a key concern of Petronas – and of their BEE partner, Pembani – that this process, which started almost two years ago, should be concluded by the end of March to avoid further uncertainty and damage to the business.

A critical part of this has naturally been confirmation of a fully financed transaction. A letter setting how this would be accomplished was awaited yesterday – indeed after our call. However, what has since emerged is sadly at odds with what had been anticipated not least in introducing for the first time another un-named national oil company as a partner for PetroSA which would make it impossible to conclude a transaction between now and the end of March.

While it is obviously not for Morgan Stanley to say how this issue should be managed what we had been anticipating was a combination of a cash payment from PetroSA's resources and a bridge loan of, say, twelve months guaranteed by the South African Government.

This would enable the transaction to be announced to the original timetable and give PetroSA sufficient time to assemble the optimal longer term financing based on the various expressions of interest and other ideas that they and their advisors have been developing.

I hope this is a helpful summary. It goes without saying that I and Petronas remain available to work with National Treasury and the Ministry of Energy / PetroSA and their advisors to work out a mutually acceptable solution.

Simon Parker
Vice Chairman

MINISTER: FINANCE
REPUBLIC OF SOUTH AFRICA

Private Bag X115, Pretoria, 0001, Tel: +27 12 323 8911, Fax: +27 12 323 3262
PO Box 29, Cape Town, 8000, Tel: +27 21 464 6100, Fax: +27 21 461 2934

Ref. M3/15/11 (391/14)

Mr DB Martins, MP
Minister of Energy
Private Bag X19
ARCADIA
0007

Dear Colleague

ACQUISITION OF 100% OF ENGEN BY PETROSA

I confirm that we have met this morning to discuss the above acquisition.

The National Treasury understands that the acquisition of Engen by PetroSA, appropriately structured, offers immense strategic potential to South Africa.

From our discussion at the meeting of 1 April 2014, I am now aware of the various steps that are being urgently taken to put together a financing package including equity participation, bank loans and a capital contribution from PetroSA. I am also aware that negotiations on some, if not all of the aspects of the financing package are at an advanced stage.

As it transpired at our meeting, it would assist us a great deal if all or some of these were to be concluded before we take a view on the actual support that PetroSA would need to conclude the transaction. In the meantime I am applying my mind to the application for a guarantee.

I would encourage continuous and intense engagement between our teams on all outstanding issues so that as the negotiations on each of the potential sources of funding are concluded, we can evaluate the implications of each for the support that PetroSA needs from government. The process will be assisted considerably if the National Treasury is kept fully informed of all relevant developments on the matter.

I assure you that the National Treasury is seized with this matter. Once the necessary governance processes have been concluded, I will get back to you.

Kind regards

PRAVIN J GORDHAN
MINISTER OF FINANCE
Date: 01 - 04 - 2014

MINISTER: FINANCE
REPUBLIC OF SOUTH AFRICA

Private Bag X115, Pretoria, 0001, Tel: +27 12 323 8911, Fax: +27 12 323 3262
PO Box 29, Cape Town, 8000, Tel: +27 21 464 6100, Fax: +27 21 461 2934

Ref. M3/16/11 (391/14)

Mr D B Martins, MP
Minister of Energy
Private Bag X 96
PRETORIA
0001

Dear colleague

RE: THE PROPOSED ACQUISITION OF 100% OF ENGEN SOUTH AFRICA (PTY) LTD (ENGEN) BY PETROSA.

I refer to your letter of 11 March 2014 wherein you requested a letter of comfort and support for the Engen acquisition on behalf of the South African Government through the Minister of Finance and of Energy.

Officials from the National Treasury met with representatives from PetroSA and the Department of Energy on 28 March 2014; 7 April 2014 and 22 April 2014 to discuss and clarify issues relating to the proposed transaction. Moreover, my department has reviewed all the supporting information that has been submitted relating to this transaction.

In terms of Sections 66 (2) (a) and 70 of the Public Finance Management Act of 1999 (PFMA), I am willing to concur to your issuance of a Government guarantee for the maximum sum of R9.5 billion subject to all of following conditions being fully met:

1. PetroSA pays R5.6 billion in respect of the Consideration and any Adjustment Amount as defined in the Sale Agreement by the due dates on which these amounts become payable;

2. Pembani Group (Pty) Ltd. provide an irrevocable commitment that their stake be converted into a loan equivalent to 20% of the Consideration with a tenor of at least 6 months after the Completion Date;

3. By the Completion Date as defined in the Sale Agreement, Strategic Equity Partner provide an irrevocable commitment to purchase a minority stake valued at least R5.4 billion without the support of a government guarantee;

4. By the Completion Date as defined in the Sale Agreement, lenders approved by the PetroSA board provide an irrevocable commitment to provide financing of at least R4.1 billion without the support of a government guarantee;

5. The guarantee remains in force until the Completion Date as defined in the Sale Agreement, if not all the suspensive conditions have been fulfilled or waived until the Long Stop Date as defined in the Sale Agreement; and

6. The guaranteed amount reduces as irrevocable financing commitments are received by the amount of the commitments received.

From the documentation, it is evident that the potential equity investors and financiers have indicated that, as a precondition to providing an irrevocable commitment, a comprehensive due diligence will need to be undertaken. It will be necessary for Petronas to make available the necessary documentation and provide access to key personnel as well as to allow adequate time for these investors and financiers to undertake the due diligence they require.

One of the issues where I would like to get a deeper understanding is the exclusion of the lubricants business from the purchase. Could you please provide me with some insight into the reasons for the exclusion.

In addition, PetroSA will be required to report monthly to the National Treasury and the Department of Energy and a Monitoring Task Team will be established to oversee the performance of PetroSA. Please note that PetroSA will be required to pay a guarantee fee on the full amount of the facility for the period whilst the guarantee is in force.

I will send you additional correspondence relating to how we can jointly facilitate this matter further.

I trust you will find the above to be in order.

Kind regards

PRAVIN J GORDHAN
MINISTER OF FINANCE
Date: 25-4-2014

Morgan Stanley

Mr Pravin Gordhan
Minister of Finance
National Treasury
120 Plein Street
Cape Town
South Africa

31 March 2014

Dear Minister,

Engen

Thank you for telephoning me this afternoon. I look forward to receiving your further reflections on the matter of financing when we speak tomorrow at about 3pm SA time.

Meanwhile, I attach for your ease of reference a copy of the letter I sent you on the 13th March 2014 and (in confidence) a letter sent by the Minister of Energy to the President and CEO of Petronas on the 9th January 2014 regarding the financing of the acquisition of Engen.

You also raised the matter of price. This was finally settled with Petronas in January following due diligence, management presentations and site visits over the past three months.

As I understand it, PetroSA were advised by Norton Rose, PwC, KBC Technical Consultants, Rothschild and four former Senior Executives of Engen (CEO, CFO, Head of Refining and Head of Marketing).

An abridged summary of my colleagues' perspectives on valuation are attached. As you will be aware Engen is a unique asset with a leading market share in South Africa and a strong brand. I understand it is also now one of the three largest refining and marketing companies in Africa.

I hope these perspectives are helpful. I also remain available for a fuller discussion on these and other issues when we speak to tomorrow if that would be helpful to you.

Yours sincerely,

Simon Parker
Vice Chairman

MINISTER: FINANCE
REPUBLIC OF SOUTH AFRICA

Private Bag X115, Pretoria, 0001, Tel: +27 12 323 8911, Fax: +27 12 323 3262
PO Box 29, Cape Town, 8000, Tel: +27 21 464 6100, Fax: +27 21 461 2934

Ref. M3/15/11 (591/14)

Ms Tina Joemat-Pettersson, MP
Minister of Energy
Private Bag X 96
PRETORIA
0001

Dear Minister Joemat-Pettersson

THE ACQUISITION OF ENGEN BY PETROSA

I refer to my predecessor's letter dated 25th April 2014 regarding the above mentioned matter.

The previous Minister of Energy, Mr DB Martins, requested in a letter dated 11 March 2014 that concurrence be considered for the issuance of a government guarantee of R13.42 billion to PetroSA to fund the acquisition of 100% of Engen (Pty) Ltd. After substantive consultation between our predecessors, the then Minister of Finance concurred with a government guarantee of R9.5 billion subject to various conditions. The quantum and conditions attached to the guarantee were very specific to the structure of the transaction that had been negotiated by PetroSA.

It has been reported to me that PETRONAS has subsequently withdrawn from the deal after PetroSA failed to raise the required funding. If this is indeed the case, the government guarantee issued by your predecessor should be withdrawn and I will recall the letter of concurrence issued by my predecessor. It is evident that it will not be possible for PetroSA to fulfil the conditions which were linked to the transaction. The withdrawal will assist in ensuring that redundant guarantees are not maintained as part of government's guarantee portfolio. Should a similar deal be contemplated in the future and a guarantee is required, reconsideration will given at that time.

I trust you will find the above to be in order.

Kind regards

NHLANHLA M NENE, MP
MINISTER OF FINANCE
Date: 9/3/2015

ANNEXURE 16

Statement by President Jacob Zuma on the appointment of new Finance Minister

9 December 2015

I would like to announce changes to the Finance portfolio in Cabinet.

I have decided to remove Mr Nhlanhla Nene as Minister of Finance, ahead of his deployment to another strategic position.

Mr Nene has done well since his appointment as Minister of Finance during a difficult economic climate.

Mr Nene enjoys a lot of respect in the sector locally and abroad, having also served as a Deputy Minister of Finance previously.

I have decided to appoint a Member of Parliament, Mr David Van Rooyen, as the new Minister of Finance. Mr Van Rooyen serves as a Whip of the Standing Committee on Finance and as Whip of the Economic Transformation Cluster.

He is a former Executive Mayor of Merafong Municipality and a former North West provincial chairperson of the South African Local Government Association.

I wish Mr Van Rooyen all the best in this new appointment.

The new deployment of Mr Nene will be announced in due course.

Enquiries: Bongani Majola on 082 339 1993 or bonganim@presidency.gov.za

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Statement by President Jacob Zuma on the appointment of new Finance Minister

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He is a former Executive Mayor of Merafong Municipality and a former North West provincial chairperson of the South African Local Government Association.

I wish Mr Van Rooyen all the best in this new appointment.

The new deployment of Mr Nene will be announced in due course.

Enquiries: Bongani Majola on 082 339 1993 or bonganim@presidency.gov.za

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ANNEXURE 17

Presidency rejects reshuffle rumours

11 December 2015

The Presidency rejects the ongoing reports in some media houses about an alleged pending cabinet reshuffle.

The reports also mention certain ministers.

Misguided speculation of this nature is mischievous and misleading. We urge that Cabinet be afforded the necessary respect and space to work.

Enquiries: Bongani Majola on 082 339 1993 or bonganim@presidency.gov.za

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Minister Nkosazana Dlamini Zuma (/profiles/minister-nkosazana-dlamini-zuma%3A-profile)
Director-General Dr Cassius Reginald Lubisi (/profiles/director-general-dr-cassius-reginald-lubisi%3A-profile)
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Cabinet would not have known about reshuffle

11 December 2015
The Presidency has noted media reports stating that Cabinet was not informed about the appointment of a new Minister of Finance.

There is no obligation on the part the President of the Republic to inform or consult other members of Cabinet or the National Executive prior to making any new appointments or changes. The only people who are informed are those affected by the changes.

The President exercises his prerogative in making the appointments and then issues a public announcement.

Enquiries: Bongani Majola on 082 339 1993 or bonganim@presidency.gov.za

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THE PRESIDENCY
REPUBLIC OF SOUTH AFRICA (/)

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THE PRESIDENCY
REPUBLIC OF SOUTH AFRICA (/)

Media statement by President Jacob Zuma: South Africa to maintain prudent fiscal position

11 December 2015

On Wednesday, 9 December, I appointed Mr David Douglas van Rooyen as the new Minister of Finance.

His appointment as Minister of Finance does not signal a change in the government's fiscal stance.

Government will not abandon the fiscal path that we have chosen in the last few years. Maintaining a prudent fiscal position remains one of government's top priorities.

The new Minister will strengthen the path and continue to support all efforts aimed at improving the lives of ordinary South Africans.

Minister van Rooyen is supported by Deputy Minister Mcebisi Jonas who carries many years of experience in the economic cluster.

They are supported by the hard-working and capable National Treasury team, led by the Director-General, Mr Lungisa Fuzile.

I would like to thank the former Minister of Finance, Mr Nhlanhla Nene for his sterling contribution to the National Executive and to taking forward the goals of building a better life for all our people.

The urgency of the changes in the leadership of the National Treasury was occasioned by the need to send nominations to Shanghai, of the head of the African Regional Centre of the New

Development Bank/BRICS Bank, to be based in Johannesburg. Mr Nene is our candidate for this position.

We are fully backing his candidature, knowing full well that he will excel and make the nation proud in his next assignment.

Government remains committed to adhering to the set expenditure ceiling while maintaining a stable trajectory of our debt portfolio, as set out in the February 2015 Budget.

Our commitment to diversifying our economy, reduce the cost of doing business and utilizing resources much more efficiently to enable a more inclusive economic growth remains important.

We will continue to improve the budget process in order to maintain our international reputation as a global leader in budget transparency.

South Africa continually seeks to enhance the expansive information it provides to its citizens on how public resources are generated and used with the aim of improving budget participation.

To support the economy, government is committed to sustaining public sector capital investment, by attracting private sector capital into public infrastructure projects.

Government also remains committed to provide support to State Owned Companies in a fiscally sustainable manner, including South African Airways.

We assure the nation that nothing will be done, in supporting state owned entities, that runs contrary to the fiscal prudence that our country is renowned for.

No state-owned entity will dictate to government how it should be assisted.

The implementation of the National Development Plan remains the cornerstone of our economy. We will continue our actions in alleviating the most binding constraints to growth and we have set out a series of urgent economic reforms to build a more competitive economy.

These, among others include:

- Continued investment in economic infrastructure
- Reforming the governance of the State Owned Companies,
- Rationalizing state holding and encouraging private-sector participation.
- Address our energy challenges.
- Encouraging affordable, reliable and accessible broadband access.
- Promoting black ownership of productive industrial assets.
- Reviewing business incentive programmes in all economic sectors to ensure that resources support growth.

The economic cluster will meet on Tuesday, 15 December as announced by Minister Jeff Radebe to prepare for a special cabinet meeting on the economy, which will take place on Friday 18 December.

This will enable us to focus specifically and exclusively on the current economic climate and on the country's response.

I thank you.

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Presidency corrects malicious rumours about SAA, National Treasury and Ministerial deployments

12 December 2015

The Presidency wishes to correct malicious rumours that have been circulating and which have been published by some media houses in relation to Ministerial deployments and the South African Airways Board chairperson Ms Dudu Myeni.

Rumour: Minister Gigaba did not finish his term as Minister of Public Enterprises at the request of the SAA Board Chair

A rumour has been circulated, and has also been published by some media products, that Mr Malusi Gigaba, now Minister of Home Affairs, was "removed" from his position a Minister of Public Enterprises due to an apparent fallout with Ms Myeni, and at her request to the President.

This is not true. Mr Gigaba served his full term as Minister of Public Enterprises until the elections in May 2014. All terms of office automatically lapse after elections. A newly-elected President appoints a brand new Cabinet immediately after being sworn in. The new President is under no obligation to re-appoint persons who had served before and there is also no requirement that he should re-appoint people to portfolios they had held before, should he or she decide to include them in his or her new Cabinet. In line with this principle, Mr Gigaba was appointed as Minister of Home Affairs in the fifth administration.

Rumour: SAA was transferred to the National Treasury because the SAA Board Chair demanded that it be so

Another rumour that has been doing the rounds and has been published as well by some media houses has it that the SAA was shifted from the Department of Public Enterprises to the National

Treasury because of a clash between Ms Myeni and the Minister of Public Enterprises, Ms Lynne Brown and that this was at the request or demand by Ms Myeni. This is grossly untrue. The SAA was moved to the National Treasury so that it can be intensively supported to get out of difficulties by the NT. That was the sole motivation.

As said by the President on 11 December, there is no state-owned entity that can dictate to government how it should be assisted. In addition, no chairperson of a board of a state owned company has the power to tell a government Department to which the entity reports, how to support or lead them. The President and government will be guided by the National Treasury on the response to the SAA challenges. Once the National Treasury advises that the SAA is on a better footing, it will be returned to the Department of Public Enterprises where it belongs.

Rumour: Mr Nene was redeployed because of the Airbus deal and Ms Myeni's displeasure

Media reports that Mr Nhlanhla Nene is being redeployed because the SAA Board chairperson was unhappy with the National Treasury directives to SAA with regards to the Airbus deal or any other matter is a malicious fabrication. Mr Nene as has been explained, is South Africa's candidate to head up the African Regional Centre of the New Development Bank/BRICS Bank.

The SAA receives directives from the Minister of Finance and works under the guidance of that Ministry. No member of the SAA Board is above the Minister of Finance or can operate outside of the mandate and direction provided by the Minister of Finance and the National Treasury.

Rumour: The President and the SAA Board Chair have a romantic relationship and have a son together

Ms Myeni is the chairperson of the Jacob Zuma Foundation. Her relationship with the President is purely professional, and is based on the running of the Foundation.

Rumours about a romance and a child are baseless and are designed to cast aspersions on the President.

Enquiries: Bongani Majola 082 339 1993 or bonganim@presidency.gov.za

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ANNEXURE 18

THE PRESIDENCY
REPUBLIC OF SOUTH AFRICA

Announcement of new Ministers of Finance and COGTA

13 December 2015

On the 9th of December 2015, I announced the appointment of a new Minister of Finance, Mr David van Rooyen.

I have received many representations to reconsider my decision.

As a democratic government, we emphasise the importance of listening to the people and to respond to their views.

In this regard, I have, after serious consideration and reflection, taken the following decision;

FINANCE

I have appointed Mr Pravin Gordhan, the current Minister of Cooperative Governance and Traditional Affairs as the new Minister of Finance.

Minister Gordhan will return to a portfolio that he had held proficiently during the fourth administration.

He will lead government again in the following;

- Ensuring an even stronger alignment between the Budget and the Medium Term Strategic Framework (MTSF) in the interest of stimulating more inclusive growth and accelerated job creation while continuing the work of ensuring that our debt is stabilised over the medium term.
- Promoting and strengthening the fiscal discipline and prudence that has characterised our management of public finances since the dawn of freedom.
- Working with the financial sector so that its stability is preserved under the broad umbrella of the Twin Peaks reform.
- Ensuring that the National Treasury is more acceptable to all sections of our society.

• Adherence to the set expenditure ceiling while maintaining a stable trajectory of our debt portfolio, as set out in the February 2015 Budget.

COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS

I have also decided to appoint the current Minister of Finance, Mr David van Rooyen, as the new Minister of Cooperative Governance and Traditional Affairs.

Mr Van Rooyen, a former Executive Mayor, will also be bringing to COGTA the finance and economic sector background gained in serving in the Finance Portfolio Committee and Economic Transformation Cluster as whip in National Assembly. He has been mandated to take forward the Back to Basics programme and further improve cooperation between the three spheres of government.

I wish both Ministers all the best in their new deployments.

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MINISTER
SOCIAL DEVELOPMENT
REPUBLIC OF SOUTH AFRICA

HE Jacob G. Zuma
President of the Republic of South Africa
Private Bag X1000
CAPE TOWN
8000

Delivered by Hand

Dear Mr President

REQUEST FOR YOUR INTERVENTION REGARDING CHALLENGES EXPERIENCED BY THE DEPARTMENT OF SOCIAL DEVELOPMENT IN ENGAGEMENTS WITH THE NATIONAL TREASURY

I write to seek your urgent attention and intervention on some of the challenges that the Department of Social Development continue to experience when engaging with the National Treasury on key matters relating to its mandate. Your Excellency, the reason for elevating this matter to you is that we have exhausted all avenues at our disposal to address the issues with the Minister(s) of Finance, and the differences have now degenerated into an impasse.

Mr President, I am concerned that the Department will not be able to deliver on its core mandate as outlined in my Performance Agreement unless there is an urgent intervention from your office to resolve these challenges, which I will briefly highlight below.

- After the appointment of the Cash Paymaster Services (CPS) for the payment of the social grants in 2012, SASSA embarked on a massive re-registration campaign which enabled it to clean up its social grant beneficiary database. This act resulted in approximately 800 million rand grants being suspended and

a saving of approximately R3.2 billion to Government. The Minister of Finance has on several occasions commended the Department of Social Development for these savings. Given the scale of this campaign, the project overshot its original budget, and SASSA requested condonation from the National Treasury for the additional expenditure, which was granted on 6 June 2016 (as per attached correspondence). Surprisingly, the condonation was withdrawn on 2 August 2016 without any substantive explanation and considering the huge political and administrative implications. This will result in SASSA getting a qualified audit opinion from the Auditor General. It completely nullifies the good outcome and undermine the benefits this project has brought. In addition, it gives the opposition parties and anti-government organisations the opportunity to attack SASSA, and consequently the ruling party.

Another challenge was that our reregistration problems were invoked by the South African Reserve Bank who refused to accept the use of biometrics as a form of authentication in the payment system; and only gave us an exemption to use biometrics for frail older persons and persons with disabilities. This meant that we could not use biometric authentication for everyone else and the whole process has taken us many steps back. There are areas where we have been hacked because our beneficiaries have been forced to use pins, instead of biometrics. We have literally gone back to square one.

- As soon as the date for the local government elections was proclaimed, the Department engaged the National Treasury to consider shifting the social grants payment date to an earlier date to protect the rights of grant recipients as the payment date for August was clashing with the date of the elections. The National Treasury simply turned down our request without due consideration of the huge political implications. This meant that social grants recipients have to choose between casting their votes on the day or visiting pay points to access their social grants. Although the Minister of Finance later acceded to our request, this goes to show that the officials of the National Treasury have very little, if any regard to important matters that have huge political implications for the ruling party.

- As a member of MINCOMBUD, I have noticed over the past few years that many of the pressing Social Development matters seem to be screened out even before they are tabled before the Committee. Officials of the National Treasury seem to have more power than MINCOMBUD itself in deciding on which Government priorities gets funded and which do not. This gives officials more power to drive, or stall, the transformation agenda in our country. A case in point is the embarrassing situation that the social sector finds itself, particularly the lack of sufficient funding to absorb social workers and generally for the Government to fulfil its role with regards to care and support services to vulnerable groups. I have written numerous times to the Minister of Finance in an effort to find a workable solution to this challenge to no avail. As a result, Government has spent millions of rands training young people who have qualified as social workers but are currently sitting at home with nothing to do. Currently, we have over two thousand qualified social workers throughout the country.

- Mr President, cooperatives are an important element of the South African business landscape and key to the radical socio-economic transformation agenda, particularly in revitalising local economic development. Government supports its citizens with social grant income; a large portion of this income goes back into the hands of large corporates and even foreign businesses that operate in the country. As a sector, we took a deliberate decision that promotes the establishment and support of cooperatives, particularly in rural communities, in order to boost development in these areas and multiply the effects of the social grant money. In this regard, we recognised the good work done by the University of KwaZulu-Natal with regards to providing training and support to cooperatives; and wanted to partner with them to expand this initiative on a broader scale.

The Department managed to identify some savings that could be used to support the University; however when requesting the National Treasury to approve the transfer, the Department was told to procure the services from another University. Government transfers a substantial amount of money every year to Universities to support their curricula and reduce the costs of education

and training to individuals. It is inconceivable why the National Treasury does not want the Department to support a University that is providing such important training for our poorer and less developed communities.

- Recently, it came to our attention that the National Treasury is trying to build policymaking capacity on social security and social development matters without any discussion with the Department of Social Development. I wrote to the Minister of Finance expressing our concerns about the recruitment of Long-Term Advisors in the Government Technical Advisory Centre (GTAC), an agency of the National Treasury. They are busy with the process to unilaterally recruit advisors who will be involved in developing social development policy on issues on social security as well as welfare services without any consultation with the Department that is charged with this responsibility.

  The level at which the posts are pitched suggests high level expertise. The National Treasury is blocking Departments from building internal capacity by restricting both consultancy and personnel budgets, while they are themselves doing so at a great cost to the Government. We have on numerous occasions indicated to them that this is very problematic and has serious implications for the policy making role of the Department of Social Development. Given the very recent experience with the social security process, we are very concerned that divergent policy positions could emerge, which often lead to protracted resolutions resulting in unnecessary delays in policy implementation, particularly on social development matters. Considering that the National Treasury is easily lobbied by various sectors in society through the consultants they appoint, this does not bode well for radical socio-economic transformation agenda envisioned by the ruling party.

- Mr President, another important matter that I need to bring to your attention relates to the finalisation of the long standing of the comprehensive social security which has been in the making for the last ten years owing much to the manner in which the National Treasury has conducted and continue to conduct itself and has deliberately paralysed this process. You will recall that Cabinet

appointed an Inter-Ministerial Committee (IMC) on Social Security Reform in 2006, and the Minister of Finance was assigned as the chair. The IMC appointed an Inter-Departmental Task Team (IDTT) comprising of officials from the relevant departments to provide technical support and make recommendations to the IMC.

From inception, differences of opinion on the policy proposals became quite obvious between the social sector departments (Labour and DSD in particular) and the National Treasury. The National Treasury used its position as the Chairperson of the Task Team to try and take over some of the policymaking responsibilities of our departments, by commissioning parallel and competing research on social security policy work that our department were doing in order to discredit our proposals.

The policy contestation spilled over into the public domain, and many stakeholders began clamouring for a single Consolidated Government Document on Social Security Reform. It was only in 2012 when the Task Team finally agreed on a compromise policy position, and finalised the Consolidated Government Document to table to Cabinet. We were however taken aback when the National Treasury introduced a consultant (a person with a bias to the financial sector) at the Cabinet meeting, who had not been part of the deliberations in the Task Team. This consultant was then given space to present a (misleading) view to Cabinet that effectively dismantled the work done by the Task Team and in essence confused Cabinet, undermining 5 years of negotiations and the reasonable compromise reached between our departments.

Since then the National Treasury has been driving their own retirement reform agenda, while ignoring the collective work of the Task Team. They have effectively tabled a number of papers at NEDLAC and in Parliament which were never agreed upon at the Task Team and some of which are contrary to the position adopted earlier. At the same time they attempted to either rewrite the Task Team paper or stall the release of the paper originally drafted and agreed on by the Task Team. Either way this supports the objectives of their consultant

– a reform that favours the financial sector or no reform at all. This has deeply caused a great divide amongst our social partners (both Labour and Community); who expressed on numerous occasions their dissatisfaction with the manner in which the Treasury is attempting to bring about these reforms; and ultimately culminated in the mass action of COSATU earlier this year to block the National Treasury from steam rolling their retirement reforms through the Tax Law Amendment Bill.

After the 2012 Cabinet meeting, the IMC process collapsed and there were no further meetings of the Task Team thereafter. However, Mr President, when you gave me the responsibility to lead Outcome 13 of the Medium Term Strategic Framework on Social Protection, I immediately tasked the Acting Director-General to expedite this work. We also held a meeting with the Minister of Finance where we agreed that we needed to revive the original work of the Task Team and that the document merely needed to be updated. During 2015 much progress has been made to reach agreement with the National Treasury and Labour and to update the original work of the Task Team and the Department of Social Development was even willing to make more compromises to get this paper out.

It has however become clear that the National Treasury wanted to re-write the entire paper based on the views of their consultant who holds the narrow interest of protecting the financial sector at the expense of the rest of our society. Initially, very little progress was made as the National Treasury only sent their consultant to the meetings; but this improved substantially when knowledgeable staff with public finance experience started to engage in the process. Once this happened, we managed to reach agreement and even agreed to capture a small element of their consultant's interests.

However, when we attempted to table the Discussion Paper in Cabinet in September 2015 the Minister of Finance asked me to withdraw it so that he can hold an IMC (which hasn't met since 2012). We then had an urgent meeting in Cape Town where he agreed that there was no substantive disagreement with the document and that he merely wanted to follow through with the IMC process

after which we could proceed to Cabinet the following week. We then agreed to this and arranged an IMC on his behalf, which he chaired.

The National Treasury saw this opportunity to sabotage the process again and tabled a 15 page amendment to the document which was produced by their consultant and included amendments that they knew we would not agree to. The Minister of Finance also did not stick to our agreement and used the IMC process to send the Task Team back to the drawing board. I must point out that we strongly objected to this. Nevertheless, the Task Team was instructed to refine the Discussion Paper and to report back to the IMC towards the end of September 2015. The working relations between our departments however have deteriorated further. Both the departments of Labour and Social Development have put a lot of work into revising the Discussion Paper with the National Treasury; but as in 2012, it is clear that the National Treasury will not allow any work to proceed unless they get what they want. Our teams feel that there is no value in debating and working out compromised positions on policy issues with the National Treasury if they merely cause upsets at decision time; thereby maintaining the status quo (which is their preferred position).

Since the beginning of 2015, officials from Social Development, Labour, Transport and National Treasury have been working together to update and revise the Discussion Paper. Social Development scheduled several workshops at which the Discussion Paper was discussed line by line, with the National Treasury providing inputs on proposed amendments. After this extensive process, our officials tabled the Discussion Paper to the Social Cluster, where it was supported by all the social sector Directors-General, and recommended for tabling to Cabinet.

After what the National Treasury did in 2012 and again in September last year, it is unreasonable to ask any of our officials to go back and work more on a document which the National Treasury does not seem committed to. Both the Minister of Finance and I have made public commitments to release the Discussion Paper for public comments and consultation by July 2015. As you know Mr President, the date has come and gone. We have done everything

possible to get the work done; only to be constantly held back by officials under Minister of Finance's oversight.

This year the Minister of Finance again promised to release the Discussion Paper by mid-year, however to date not even a single meeting between our officials or the Ministers have occurred to take this process forward. In my view, the National Treasury officials are doing everything in their power to prevent this work from moving forward, while they are pursuing an alternative agenda of reforming social security through the back door under the guise of improving regulation of the private retirement funds. In all their input to us, they continually raise fiscal concerns as a primary concern, while at the same time making alternative proposals which have the same fiscal implications. The only difference is that it benefits the financial industry as opposed to our society as a whole.

In our engagement with NEDLAC it is very clear that our social partners are nearing their tolerance limit with Government on this matter. In our engagements throughout 2015, labour unions threatened to pursue protest action given our Government's failure in dealing with this matter decisively. It was only due to our Acting Director-General's negotiating skills that we were able to maintain relations with the labour unions. However all of this was wasted when the National Treasury pushed the Tax Law Amendments Bill through Parliament earlier this year, forcing the untimely protest of COSATU.

I must also mention that the National Treasury has continuously undermined this process by delegating junior officials to the NEDLAC meetings. This shows how little they value social dialogue, something we hold with high regard, and is a value I have been instilling at all management levels in Social Development and its agencies. The finalisation of this comprehensive social security reform is one of the key deliverable of the ruling party's electoral mandate in the current administration. In October 2015, the National General Council (NGC) of the ruling party adopted a resolution that the Comprehensive Social Security document must be tabled in NEDLAC before the end of the year, a deadline we

have already missed. Furthermore, the NGC provided the following three points to guide Government's discussion with social partners:

- The establishment of a National Social Security Fund (NSSF) for mandated pension contributions remains a key policy objective of the ANC and must not be compromised

- Government has proven itself as a pension administrator; GEPF is the largest and best run pension fund in the country and a good example to base pension reforms on.

- The continued accumulation of pension savings in the hands of a few, untransformed, institutional investors will lead to a huge undemocratic shift in power from the current elected government to those in control of these pension resources. This needs to be curbed."

These are the very objectives that certain officials in the National Treasury seek to block. I have always made it very clear to the officials of Social Development that it does not matter who they voted for or which political party they support; for democracy to thrive, they need to respect the ruling party of the day and work towards implementing its policies and programmes. My officials however report to me that it is very difficult to work to this standard when dealing with the officials of the National Treasury.

This is quite evident in the Comprehensive Social Security reforms where the policy proposals of the National Treasury are contrary to those of the ruling party. This indicates that there is something essentially wrong with the principal-agency relationship between the ANC and Government. Resolutions with well-researched policy options agreed to by the ANC have been rejected in favour of under-researched policy options that are contrary to our policy positions as a ruling party. This raises serious questions as to just which forces have 'agency' through Government; and specifically, the National Treasury. In the end this comes back to bite the ANC as it compromises key deliverables of its mandate, including election mandates.

Mr President, it is for this reason that I have elaborated in such depth on this policy matter as it appears that some in the National Treasury are opposed to the radical socio-economic transformation which is the cornerstones of the second phase of our country's transition to meaningfully address poverty, unemployment and inequality. The Comprehensive Social Security reform has been in the making for over 10 years. At every attempt to bring it forward, the National Treasury has blocked it, in order to maintain the status quo. This however is not only for social security, but in almost every other key areas of the Department of Social Development, whether procurement that promotes local economic growth through co-operatives and other small businesses, or radical social transformation programmes that will improve the lives of our citizens.

There just seems to be no accountability within the National Treasury to supporting political mandates. In 2012, the Minister of Finance announced without consulting me that Government will phase out the means test for the Old Age Grant by 2016. Taking the Minister 's pronouncement in good faith, and considering that this has been one of the key mandates of the ruling party, I made similar proclamations and Social Development started preparing for implementation, which included engaging with various organisations throughout the country. In 2014, the National Treasury once again without any consultation deferred the universalisation of the Old Age Grant indefinitely without a proper explanation as to what informed this sudden policy change, leaving the Department to deal with the fallout from our key stakeholders who have initially welcomed this move . We have been called to task, both in Parliament and by various civil society organisations to account on this matter. This creates a very difficult situation where one Ministry makes unilateral decisions and another Ministry has to account for them.

Similarly last year, the Minister of Finance implemented below inflation increases for social grants despite the fact that I warned him that this would not be a wise decision politically, but he still went ahead with it anyway.

This was particular upsetting to pensioners, which led to a march to Parliament during the presentation of the Department's Budget Vote Speech last year. Even worse, this year, the opposition parties used this to make a public spectacle of me and the ruling party, and I have no doubt that this gained them many votes in the recent local government elections.

It is also not helpful that the National Treasury is leading public discussions on the so-called "fiscal cliff". This is the same rhetoric and scare mongering that laid the basis for the introduction of GEAR in 1996 and the closure of the RDP office. The talk of the fiscal cliff has been seized upon by the media and others to talk about reigning in government expenditure and especially social expenditure.

Our view is that the current political dynamics beg for the prioritisation of the issues raised in the NDP on the implementation of the social protection floor and also within the Comprehensive Social Security document. The evidence of the last 20 years is that it would be counter-productive to scale back on critical social expenditure to avoid a so-called fiscal cliff. It seems to me that the National Treasury is determined to pursue a neo-liberal agenda that is in direct opposition to the rather more expansive resolutions that have been consecutively agreed to by the ruling party since 2007.

Mr President, this correspondence, the first since assuming office in 2010 is therefore more than just 'complaining' but rather seek your intervention to address significant problems associated with a key government department that uses it's 'mandate' to undermine critical ANC resolutions, with significant negative social and political outcomes. I am pleased to inform you that we have secured a Cabinet directive for further work on the Social Security Discussion Paper which supports the 2012 version.

We are however concerned that as in previous years, the National Treasury will find a way to undermine Cabinet decision on this matter and it is for this reason that we seek your intervention to expedite this process.

I would like to take this opportunity to assure you of my continued committment to achieving all the targets as outlined in my Performance Agreement for the current electoral term.

Please accept my warmest regards and my assurance of my continued support for success in your work of leading this country.

Respectfully Yours,

MS BO DLAMINI, MP
MINISTER OF SOCIAL DEVELOPMENT
DATE: 12.06.16

sassa
SOUTH AFRICAN SOCIAL SECURITY AGENCY

Enquiries: Mr Tsakeriwa Chauke
Tel: (012) 400 2473
Date : 08 August 2016
TsakeriwaC@sassa.gov.za

The Chief Procurement Officer
Mr Kenneth Brown
National Treasury
Private Bag X 115
PRETORIA
0001
08 August 2016

Dear Sir

RE: APPLICATION FOR CONDONATION OF IRREGULAR EXPENDITURE: R316 447 361.41

Your letter ref: CIE 1/2/5/2(2) dated 02/08/2016 refers.

The Agency hereby acknowledge receipt of the letter referred to above. In our letter dated 12/08/2015 **(Annexure A)** requesting an advice on the treatment of this transaction clearly indicated that it was disclosed as a Possible Irregular expenditure in the financial year 2014/15; *"With the conclusion of the 2014/2015 audit, the above transaction has been disclosed as a possible irregular expenditure in the Annual Financial Statement. This is as a result of SASSA not agreeing with Auditor-General pronounces on the transaction as irregular expenditure as they allege there was no prior approval for the procurement of the service"*. Attached to the letter was:

- SASSA Supply Chain Management delegations;
- Payment batch with all available relevant supporting documents which included Bid Adjudication Committee decision slip;
- Auditor General of South Africa's factual findings; and
- Management response which include the CEO's representation on the matter.

It was SASSA's understanding that our letter and supporting documents were sufficient to inform and assist National Treasury to review and guide on the correct disclosure of the said transaction. Subsequent to this a response letter was received from National Treasury declaring the said expenditure as irregular **(Annexure B)**. In SASSA's view, this confirmed that the submitted documents were adequate for decision making. Attached is SASSA's 2014/15

annual report which confirms the disclosure as Possible Irregular expenditure as reflected on page 109.The annual report further states that SASSA will request National Treasury to evaluate the additional Re-registration of beneficiaries process cost to determine whether the expenditure is irregular. The Report of the Chief Executive Officer for the year ended indicated that Corruption Watch has made an application to court on this payment.

Your letter stated that the application for condonation was not accompanied by 2015/16 audit management letter and no update was given on the pending court case. The 2015/16 management letter was issued on 29 July 2016 and the letter of condonation was written on 20 March 2016. It was impossible that SASSA could have attached a management letter for the year ended 31 March 2016, notwithstanding that we are unaware that this is a requirement for condonation.

National Treasury has not requested any further information with regard to the requested condonation hence it is surprising to receive a letter of withdrawal of the condonation. One could understand if further information was requested and SASSA could not provide same. Does the communicated withdrawal mean that National Treasury did not have adequate information to make an informed decision?

The Annual Financial Statements for the year ended 31 March 2016 were approved by the accounting authority for issue to the Executive Authority (Minister of Social Development) and National Treasury on 29 July 2016. Therefore it is necessary to draw National Treasury's attention to GRAP 14 with regard to this withdrawal **(Annexure C)** and the impact this may have on 2016/17 financial year.

It is therefore recommended that National Treasury review this withdrawal as there seem to be no valid basis for such. Alternatively, an urgent meeting be held so that we can discuss an understand exactly what influenced the withdrawal of the granted condonation.

.....

Ms RAPHAAHLE RAMOKGOPA
CHIEF EXECUTIVE OFFICER (ACTING)

South African Social Security Agency
Head Office

SASSA House • 501 Prondisa Building Cnr Beatrix & Pretorius Street
Pretoria • Private Bag X55662 Arcadia • Pretoria 0083
Tel: +27 12 400 2000 • Fax: +27 12 400 2257
www.sassa.gov.za

ANNEXURE 32

National

Manuel and Manyi clash over bill that Zuma won't sign

19 September 2016 - 07:21 Genevieve Quintal

Trevor Manuel. Picture: TREVOR SAMSON

PRESIDENT Jacob Zuma has been accused of breaking his oath of office by not signing the Financial Intelligence Centre (FIC) Amendment Bill, with former finance minister Trevor Manuel saying that once Parliament has passed legislation, the president is required to assent to it unless there is a constitutional issue.

Parliament passed the FIC Amendment Bill in May, but it is now waiting for Zuma's signature. The bill requires banks to perform enhanced due diligence on the "politically exposed", in line with international obligations.

But it has aroused ire in some ANC quarters and the Presidency said earlier in August that the delay in signing the bill was because the Progressive Professionals Forum (PPF), a lobby group established by former government spokesman Mzwanele (Jimmy) Manyi, had lodged an objection over its constitutionality.

However, Manuel questioned how an individual such as Manyi could "trump the votes" of more than 400 people in Parliament, and said the failure to sign the bill into law spoke to the "unravelling of SA's democracy".

Manyi on Sunday said he had asked Zuma to refer the amendment bill to the Constitutional Court. "I have no problem with what this bill seeks to do; the only problem I have is the how," he said.

Manyi described Manuel's comments as "nonsense", saying that when there was an objection the president was "forced" to take it into account. "This is why it's not for the first time that a thing which has been sent to the president is returned to Parliament."

Asked whether he had received feedback from the president on his formal objection, Manyi said the fact that Zuma had not signed the bill was feedback enough.

Presidency spokesman Bongani Ngqulunga said Zuma was considering the petition by the PPF. The Presidency would not comment on Manuel's statement.

National

Zuma told to sign Financial Intelligence Centre bill into law or face court action

20 September 2016 - 15:30 Staff Writer

THE Council for the Advancement of the SA Constitution has asked President Jacob Zuma to sign the Financial Intelligence Centre (FIC) Amendment Bill, or refer it back to the National Assembly within 30 days.

The organisation warned Zuma in a letter sent on Monday that it would approach the courts if he did not carry out his constitutional obligation.

Council executive secretary Lawson Naidoo wrote that the legislation would "strengthen SA's capacity to fight corruption, specifically money laundering, trafficking and finance of terrorism".

"It will bring us into line with international standards on combating financial crime and in particular our obligations as a member of the Financial Action Task Force."

Parliament passed the bill in May, and it is awaiting Zuma's signature.

The legislation requires banks to perform enhanced due diligence on "politically exposed" people in line with international obligations.

This has aroused ire in some ANC quarters.

The Presidency said in August that the signing of the bill was delayed by a constitutional objection lodged by the Progressive Professionals Forum (PPF), a lobby group established by former government spokesman Mzwanele (Jimmy) Manyi.

Former finance minister Trevor Manuel has said that by not assenting to the bill Zuma was breaking his oath of office.

Once Parliament has passed legislation, the president is required to assent to it, unless there is a constitutional issue.

Manuel questioned how an individual such as Manyi could "trump the votes" of more than 400 MPs, and said failure to sign the bill into law indicated an "unravelling of SA's democracy".

In its letter, the council urged Zuma to "exercise your obligation" under the constitution. It reminded him that section 79(1) required him to sign the bill or refer it back to the National Assembly if he had reservations about its constitutionality.

"You have thus far chosen neither option," wrote Naidoo.

"Your attention is also drawn to section 237 of the constitution, which provides that 'all constitutional obligations must be performed diligently and without delay'."

The Presidency told Business Day on Sunday that Zuma was considering the PPF petition.

Zuma asked not to sign bill that will scrutinise bank deals - report

Sep 05 2018 10:28 Lisel Payper

Cape Town - President Jacob Zuma is considering objections to a piece of legislation that will allow the Financial Intelligence Centre (FIC) to monitor the transactions of politicians, their family members and other politically connected individuals in the private sector.

BDLive reported on Monday that the Progressive Professionals Forum (PPF), led by former government spokesperson Jimmy Manyi, petitioned Zuma to not sign the FIC Amendment Bill into law.

Zuma's spokesperson Bongani Ngzulunga confirmed to Bloomberg that Zuma is considering the merit of the objections, but pointed out there is "nothing unusual" about the process.

The PPF claimed the amendment bill had "constitutional defects" as it could violate the human rights of people who are employed by the government or family of state employees, because this makes them a prominent or influential person which immediately renders them a "suspect".

The bill, which has gone through the National Assembly and the National Council of Provinces, was fiercely debated earlier this year in the standing committee on finance (SCOF) where DA MP David Maynier insisted on knowing whether the Guptas were under investigation for their financial transactions.

MPs were specifically at odds over the definition of "politically influential individuals".

READ: Guptas in spotlight in debate on money-laundering bill

Finance Minister Pravin Gordhan said earlier this year the director of the FIC and the finance minister are prohibited by the legislation from indicating whether the FIC is investigating a particular individual.

Gordhan said if they named people being investigated, it could give the person time to hide assets.

BDLive also reported that a discussion document was submitted to Cabinet in which it was suggested that financial transactions above a certain threshold be moved out of National Treasury and fall under government's security cluster.

The suggestion reportedly came from Mineral Resources Minister Mosebenzi Zwane, who had earlier issued a media statement announcing that government would institute a judicial commission of inquiry into local banks' decision to withdraw services to the Guptas.

The presidency has since distanced itself from Zwane's statement about the so-called judicial inquiry.

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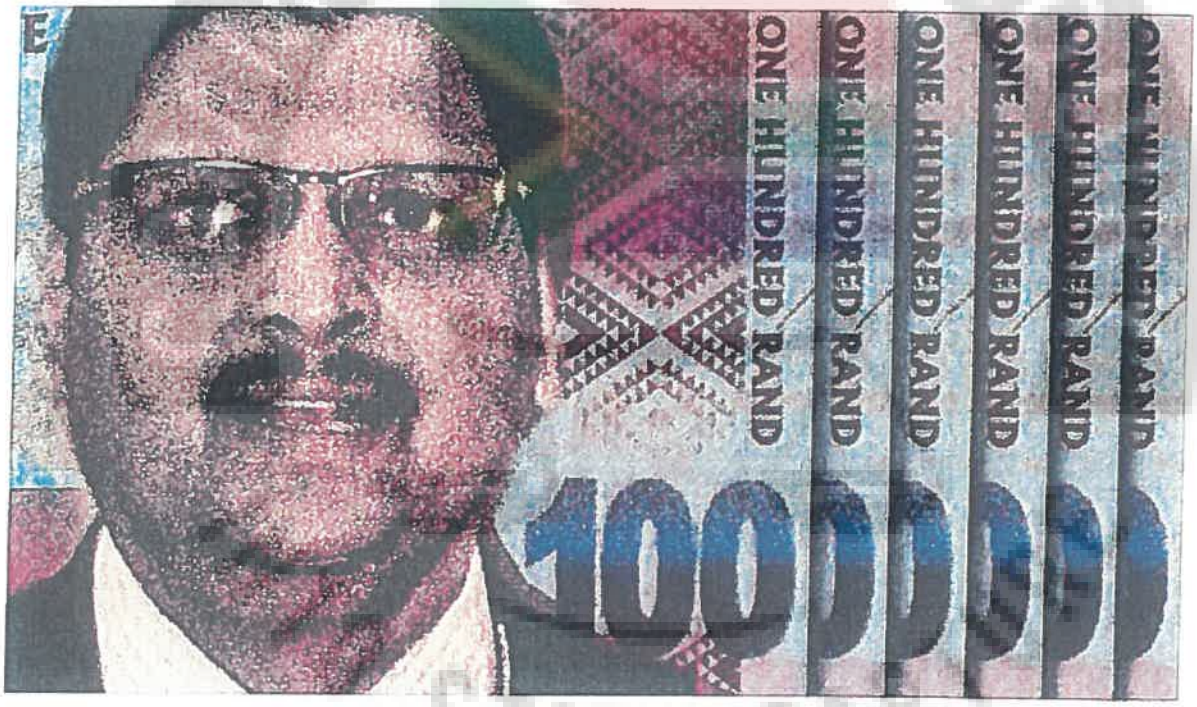
Analysis: FIC Amendment Bill goes down to the wire as political proxies hit brick wall of Parliament

By Marianne Thamm • 26 January 2017



195 Reactions

There are several battlegrounds in the current life-and-death standoff between the Gupta family and their political proxies on one side, and a growing number of opponents on the other. On Wednesday the fight moved to Parliament where members of the standing committee on finance lashed out at Mzwanele Manyi, president of the Progressive Professional Forum, for

lobbying President Jacob Zuma not to sign the bill passed by Parliament in May last year. By MARIANNE THAMM. 03

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The air was thick with desperation and thinly-veiled anger when the presidents of the Progressive Professional Forum (PPF) and the Black Business Council, Mzwanele Manyi and Danisa Baloyi, made submissions at a public hearing on the Financial Intelligence Centre Amendment Bill to Parliament's portfolio committee on finance on Wednesday.

It was the pro-Gupta Manyi, who at the weekend suggested that South Africa should "scrap" the Constitution in favour of majoritarianism, who lobbied President Jacob Zuma not to sign the bill. The bill is aimed at combatting corruption, money laundering and the financing of terrorism and brings South Africa in line with international standards set by the Financial Action Task Force.

President Zuma was due to sign the amendment by June but delayed after being lobbied by Manyi, prompting legal proceedings by the Council for the Advancement of the South African Constitution (CASAC) in November last year, forcing Zuma to comply with his constitutional obligations. Zuma in turn sent the bill back to Parliament, expressing concern with the constitutionality of a section relating to warrantless searches.

On Wednesday the fight was taken to Parliament where legal opinions by Treasury, CASAC, the Banking Association of South Africa as well as the Speaker of the National Assembly all concurred that the bill, in its current form, met constitutional requirements.

Meanwhile, on another battlefront, compromised head of the Hawks, Lieutenant-General Mthandazo Ntlemeza, wrote to the Gupta family's legal team on January 18 informing them that his office currently had "no evidence that implicates your clients".

Last year Ntlemeza refused to investigate allegations that SARS second-in-command, Jonas Makwakwa, had made "suspicious" cash deposits into his private bank account as well as that of his lover, Kelly-Ann Elskie. Ntlemeza suggested that possible criminality was a SARS "internal matter". The

Makwakwa scandal is currently being investigated, at the request of Commissioner Tom Moyane, by the private legal firm Hogan Lovells -- paid for by taxpayers of course.

On Wednesday a Business Day (https://www.businesslive.co.za/bd/national/2017-01-25-no-case-hawks-tell-guptas/) story headed "No case, Hawks Tell Guptas" claimed that Ntlemeza had written to the family's lawyer, Gert van der Merwe, to inform him that the family were not under investigation.

Asked to clarify matters, Hawks spokesperson, Brigadier Hlangwani Mulaudzi, on Wednesday told *Daily Maverick*, "That is their narrative. Investigations are proceeding, however there is no evidence linking them."

There we have it.

Mulaudzi was referring to the 72 suspicious transaction reports relating to Gupta-owned bank accounts and picked up by the Financial Intelligence Centre. The transactions were later revealed in an explosive affidavit by Minister of Finance, Pravin Gordhan, in his application in December 2016 seeking to affirm his decision not to intervene after several banks closed Gupta-owned company accounts.

Gordhan has had some room to breathe since he managed to shake Ntlemeza off his back when NPA head, Shaun Abrahams, dropped fraud charges in October last year.

Announcing the dropping of the charges Abrahams revealed that Ntlemeza had been instrumental in pushing for these to be pressed and accused Abrahams of withdrawing them because of public pressure.

"Rather, it seems to us that you make (sic) this decision based on the noise made by politicians, civil society lobby groups, and the media sympathetic to the accused. These groups have falsely accused the Hawks and the NPA in the public domain of pursuing the case against the accused persons for political purposes on instructions from the political masters, which is utter nonsense," Ntlemeza, clearly overstepping his mandate, wrote to Abrahams.

On Wednesday Manyi dramatically charged that the bill would "plunge" the country into a crisis while Baloyi suggested that the legislation gave authority to the banks to do as they pleased and suggested that the only thing preventing "radical economic transformation" in South Africa was the banks.

It should have come as no surprise then on Wednesday when the security cluster of government agencies, who are part of Zuma's praetorian guard, also submitted that the Financial Intelligence Act Amendment bill was unconstitutional. The submission went beyond the reservation with regard to the warantless searches subsection and argued that the Constitution assigned the role of crime fighting to the SAPS and that the bill would allow a "parallel system of investigation".

Baloyi said the bill was a "dangerous piece of legislation" that would have an adverse effect on the rule of law. She objected in particular to the increased scrutiny politically exposed persons (PEPS) would face due to the legislation.

"Before you know it you will all be PEPS," she warned MPS.

But Manyi and Baloyi both faced tongue lashings from ruling party and opposition party MPS, who said Manyi had circumvented and disrespected Parliament in approaching President Zuma directly.

The ANC's Dr Makhosi Khoza, who played a starring role in Parliament's ad hoc committee investigating the SABC, asked Manyi where he had been when the bill had made its way through Parliament, a lengthy process involving public comment and debate.

"Why did you not speak up earlier? Why did you go directly to the president? You compromised the president by doing so. Let us not be guilty of sharing collective stupidity," she lashed out, adding, "Corruption is undermining the developmental agenda in South Africa."

Baloyi's complaints that the bill gave banks the power to conduct inspections on behalf of the Financial Intelligence Centre were incorrect, said Banking Association of South Africa MD, Cas Coovadia, as was her suggestion that the bill gave banks the power to treat clients in any fashion. South African banks, added Coovadia, were heavily regulated.

Portfolio Committee chair Yunus Carrim said whatever the committee decided

"someone is going to go to the Constitutional Court".

Wednesday's hearing highlighted where the destructive factional battle in the ruling party is going to play out this year. Little wonder then that Manyi is keen to suspend the Constitution.

MPs in the ruling party seem to have located their backbones, and Parliament is set to become another public arena, along with the courts, where the country's democracy will be defended from the corrosive onslaught of State Capture. **DM**

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R2bn looted from 'corrupt & rotten' VBS Bank, says report

By Greg Nicolson

(https://www.dailymaverick.co.za/article/2018-10-10-r2bn-looted-from-corrupt-rotten-vbs-bank-says-report/?utm_source=homepagify)

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TRAIN CRIME

As another train burns in Cape Town,

Sune Payne 15 hours ago

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ANNEXURE 37

OMR 5

MINISTRY
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Private Bag X9111, Cape Town, 8000, 7th floor, 120 Plein Street, Cape Town. Tel: (+27 21) 462 2310, Fax: (+27 21) 461 0859

20 April 2016

The Honourable Minister of Finance: Mr Pravin Gordhan, MP
Ministry of Finance
40 Church Square
Old Reserve Building
PRETORIA
0001

Dear Honourable Minister

IN RE: INTER-MINISTERIAL COMMITTEE IN RESPECT OF ALLEGATIONS LEVELLED AGAINST FINANCIAL INSTITUTIONS

I refer to the decision taken by Cabinet on Wednesday, 16 April 2016 to appoint an Inter-Ministerial Committee ("IMC") to consider the impact of certain allegedly unilateral actions taken by specific financial institutions against certain of its clients, which actions may have the potential to negatively affect the economy of the Republic of South Africa with particular focus to be given to the impact of these actions on the already distressed mining and financial services sectors.

The IMC is to consist of the Ministers of Labour, Finance, Communications and Minister of Mineral Resources. Consultations with the financial institutions are being arranged for **Monday, 25 April 2016 from 09h00 to 17h00** in Pretoria. The venue for the day, agenda for the various consultations and Terms of Reference for the IMC will be circulated shortly.

Whilst I am aware that the timing of the meeting may not be suitable, I trust that the matter is sufficiently serious and urgent to receive your urgent attention and look forward to receiving a positive response from you of your attendance at the aforesaid consultations.

I look forward to your urgent response.

Sincerely

Mr Mosebenzi Zwane, MP
Minister of Mineral Resources

RE: Inter-Ministerial Committee in Respect of Allegations Levelled Against Financial Institutions

Nwabisa Jennings [Nwabisa.Jennings@dmr.gov.za]
Sent: Friday, April 22, 2016 12:39 PM
To: Busi Sokhulu [Busi.Sokhulu@treasury.gov.za]

Dear Blessing,

As per the email below, this serves to confirm that the Inter-Ministerial Committee will convene as per details below:

Date: **Monday, 25 April 2016**
Time: **09h00-17h00**
Venue: **Department of Mineral Resources, Minister's Boardroom, 70 Trevenna Campus, Building 2C 4th Floor, Cnr Meintjies & Francis Baard Street, Sunnyside, Pretoria**

Please note that the agenda as well as the Terms of Reference will be available on Monday at the meeting.

Please confirm the number of people that will be accompanying the Minister as well as the Minister's dietary requirements. Can you also forward us the car registration, model and colour of the cars.

Kind Regards,
Nwabisa Jennings
012 444 3947

From: Nwabisa Jennings
Sent: 22 April 2016 11:48 AM
To: 'blessing.sokhulu@treasury.gov.za'
Subject: Inter-Ministerial Committee in Respect of Allegations Levelled Against Financial Institutions

Dear Blessing,

I trust that you are well. Attached please find a letter for Minister Gordhan's attention from Minister Zwane. Our driver will hand deliver the original to your offices shortly.

Kind Regards,
Nwabisa
012 44 3947

Inter-Ministerial Committee in respect of allegations levelled against Financial Institutions

Joanne Scott
Sent: Friday, April 22, 2016 3:47 PM
To: Nwabisa.Jennings@dmr.gov.za
Cc: pamela.salusalu@labour.gov.za
Attachments: SKM8T_C554e16042215470.pdf (405 KB)

Dear Ms Jennings
Please find attached correspondence for Minister Zwane's attention.
Please could I request that you acknowledge receipt.

Dear Ms Salusalu
Please note that Minister Gordhan has copied Minister Oliphant into this correspondence, please find attached for her attention.
Please could I request that you acknowledge receipt.

Kind regards
Joanne Scott
Ministry of Finance
40 Church Square, Old Reserve Building, PRETORIA
Private Bag X115, PRETORIA, 0001
Tel: +27 12 315 5158
Fax: +27 12 323 3262
E-mail for official correspondence: minreg@treasury.gov.za

MINISTER: FINANCE
REPUBLIC OF SOUTH AFRICA

Private Bag X115, Pretoria, 0001, Tel: +27 12 323 8911, Fax: +27 12 323 3262
PO Box 29, Cape Town, 8000, Tel: +27 21 464 6100, Fax: +27 21 461 2934

Mr MJ Zwane
Minister of Mineral Resources
Private Bag X59
PRETORIA
0001

Dear Minister Zwane

INTER-MINISTERIAL COMMITTEE IN RESPECT OF ALLEGATIONS LEVELLED AGAINST FINANCIAL INSTITUTIONS

I refer to your letter dated 20 April 2016, emailed to my office at 11h48am on 22 April 2016.

As you are aware, I was not present at the Cabinet meeting you refer to but I have consulted the Cabinet Secretariat on the matter.

The following emerges:

1. The Cabinet meeting was on the 13th April 2016 – not 16th April 2016 which was a Saturday.
2. No Inter-Ministerial Committee was established.
3. Three Ministers were nominated: Finance, Labour and Mineral Resources.
4. No one Minister was designated as convenor.
5. The financial services sector is not "already distressed" as your letter indicates, and care must be taken not to compromise financial stability.

Whilst I appreciate the urgency of the matter for some, I must emphasise that the legal and regulatory environment has both global (BASEL III, Financial Action Task Force) and local (SA Reserve Bank; Financial Services Board; Financial Intelligence Centre; National Consumer Commission; etc) regulators and regulations.

I am currently seeking legal advice on what could be done in the present circumstances, given the intensive legislative framework we have governing the financial sector.

In the circumstances, it will be advisable for the three Ministers to first consult on the framework for any discussion with financial institutions. I prefer that this takes place on the

margins of the Cabinet meeting of the 26th April 2016. You might also be aware that discussions of the nature envisaged have already taken place elsewhere.

Accordingly, I look forward to discussing the way forward next Tuesday.

Kind regards

PRAVIN J GORDHAN, MP
MINISTER OF FINANCE
Date: 22 - 4 - 2016

cc. Ms MN Oliphant, MP
Minister of Labour

ANNEXURE 38

3 June 2016

717

Politics

Zwane rebukes banks for 'telling the government how to run the country'

03 June 2016 - 19:26 By Karl Genertzky

Mineral Resources Minister Mosebenzi Zwane, who is a member of the three-member Cabinet team tasked with engaging banks over their decision to cut ties with the Gupta-family-linked Oakbay Investments, says engagements will continue until "we find each other".

FROM LEFT FIELD: Mosebenzi Zwane, the new Minister of Mineral Resources, seems to have nothing going for him - except for his friendship with the Guptas
Image: DELWYN VERASAMY/MAIL & GUARDIAN

"We will never allow a situation where the private sector dictates to government how to run this country," he said on Friday, speaking on the sidelines of the National Union of Mineworkers' (NUM's) annual central committee meeting in Pretoria.

- **Transnet deals fall into Gupta man's lapA close Gupta associate is set to profit from lucrative mystery-shrouded Transnet contracts that are under investigation by the National Treasury.**

The broader concern centred on individuals waking up to find their accounts closed, without the government having recourse, said Zwane.

- **Why banks ditched the GuptasIn the current political environment of media leaks and vendettas, it is perhaps surprising that no one in the media has managed to find out exactly why it was that Barclays Africa decided to close the bank accounts of the Gupta-owned Oakbay Investments.**

The government would ensure a solution, even if it meant establishing a state bank, he said.

- **Mines minister Zwane says he is in talks with banks over Gupta firmMining minister Mosebenzi Zwane said on Wednesday he had spoken to local banks that have cut links with Oakbay Investments, a holding company owned by the Gupta family, to restore the ties in a bid to try and save jobs at the company.**

In May, ANC secretary-general Gwede Mantashe urged the government not to meddle in the relationship between the Guptas and their banks, saying the state must allow them to sort out their differences.

Mantashe's remarks pointed to the difference in thinking on the Gupta saga among senior leaders of the governing party. He said the government task team should instead approach the banking regulator — the South Africa Reserve Bank — for clarity on the matter.

Leading banks Absa, FNB, Nedbank and Standard Bank withdrew their services from the family, as did their auditors, KPMG, and JSE sponsor Sasfin.

In May it was also reported that Zwane and Deputy Mineral Resources Minister Godfrey Oliphant secured a meeting with at least one bank CEO — Standard Bank's Sim Tshabalala — but failed to persuade him to disclose any details around the closure of the Gupta family's Oakbay accounts.

Finance Minister Pravin Gordhan, who was also part of the team that the Cabinet tasked with "finding a lasting solution to the matter", was advised of the meeting, which took place at Zwane's office in Pretoria, but reportedly did not attend.

The controversial Gupta family came under pressure after Deputy Finance Minister Mcebisi Jonas disclosed that family members had offered him the finance minister position before the axing of former minister Nhlanhla Nene, in December last year.

Earlier in his address on Friday, Zwane said that as the South African mining industry shifted toward the exploitation of less accessible deposits, it must have a tough conversation with itself over future employment levels in the sector.

He said the "upskilling" of mineworkers needed to be accelerated, especially as the sector continued to face tough economic conditions and future mechanisation.

About 700 NUM delegates were in attendance on the first day of the two-day meeting in Pretoria. The union is expected to work to resolve difficult questions of finances and organisation, after haemorrhaging members in the mining sector since 2012. To date it has lost 36% of its members due to both inter-union rivalry and retrenchment.

"In the past three years we have granted 80 mining rights with a potential to create in excess of 22,000 much needed jobs," said Zwane.

However, although SA has more than R1-trillion worth of mineral reserves, much of these deposits are in areas that are difficult to reach, pointing to future mechanisation of the sector.

"This may not be a popular view, but we must question what this means for future workers prospects," said Zwane.

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National

Presidency denies government wants probe into banks

2 Sept 2016 21:04

02 September 2016 - 21:04 Genevieve Quintal

Mosebenzi Zwane. Picture: GCIS

THE Presidency on Friday distanced itself from a statement made by Mineral Resources Minister Mosebenzi Zwane that the Cabinet had resolved to request that a judicial inquiry established into the banks and their actions against the Guptas, as well as to review the legislation that governs the banking system.

Zwane headed an interministerial committee established by the Cabinet after the big four banks withdrew banking services to the Gupta family. He drew up a Cabinet memo on the banks, which he said in his statement on Thursday night had been adopted by the Cabinet.

According to the Presidency, Zwane's statement was issued in his personal capacity and did not reflect the position or views of Cabinet.

"He does not speak on behalf of Cabinet and the contents of his statement do not reflect the position or views of Cabinet, the Presidency or government," spokesman Bongani Ngqulunga said.

"The unfortunate contents of the statement and the inconvenience and confusion caused by the issuing thereof, are deeply regretted."

He said the Presidency wanted to assure the public, the banking sector as well as the domestic and international investors of Government's commitment to the letter and spirit of the country's Constitution as well as in the sound fiscal and economic fundamentals that underpin the economy.

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National

Did Mosebenzi Zwane lie about bank memo that Cabinet 'adopted'?

4 Sept 16 @17:25

04 September 2016 - 17:25 Staff writer

Mosebenzi Zwane. Picture: AFP PHOTO/RODGER BOSCH

MINISTER of Mineral Resources, Mosebenzi Zwane's head should be on the "chopping block", the DA says.

DA spokesman on finance David Maynier said the party welcomed the news that President Jacob Zuma has distanced himself from Zwane's statement recommending a Judicial Commission of Inquiry into the termination of banking relationships with the Gupta-controlled Oakbay Investments.

However, he said the statement did not go far enough.

READ THIS: Presidency denies government wants inquiry into banks' actions against the Guptas

". .it leaves the political door open for some of the bizarre recommendations, supposedly made by the Minister in his personal capacity, to be considered in the future," Maynier said.

Zwane claimed on Thursday that Cabinet had resolved to request that a judicial inquiry be established into the banks and their actions against the Guptas, as well as to review the legislation that governs the banking system.

Zwane headed an interministerial committee established by the Cabinet after the big four banks withdrew banking services to the Gupta family. He drew up a Cabinet memo on the banks which he said had been adopted by the Cabinet.

However, the Presidency said Zwane's statement was issued in his personal capacity and did not reflect the position or views of Cabinet.

Welcoming the Presidency's stance, Maynier said: "The fact is that the task team should never have been established and the Guptas should never have been allowed to effectively 'contract' the Executive to carry out a

The party said Zwane's comments "directly contradicted a public outcry and call to the President, including by the SACP, to establish a judicial commission of inquiry into corporate state capture not limited to but including allegations levelled against the Guptas".

"Minister Zwane's utterances effectively fed into the use of our Cabinet to advance the private business interests of the Guptas while ignoring public outcry and call for a judicial commission into corporate state capture.

"It also shows how an individual Cabinet Minister can use his position to serve private business interests, break policy coherence and cause the confusions such as the Presidency had to clarify regarding Zwane's utterances," the SACP said.

"Such wrongful things must come to an end. The President needs to consider further action to achieve the objective," the party added.

TMG Digital

07 Sept 2016 © 723

Mosebenzi Zwane faces parliamentary roasting

Parly

By Staff Reporter -

Democratic Alliance finance spokesperson David Maynier confirmed on Tuesday that the minister faces a roasting in parliament on Wednesday.

National Assembly Speaker Baleka Mbete has agreed to a request for an urgent question to Zwane. Maynier noted that, to his knowledge, this is the first time Mbete's agreed to an urgent question in this Parliament.

"I will, therefore, be putting the Minister in the political hot seat tomorrow by asking him an urgent question as follows: 'Whether, in the light of his controversial statement, dated 1 September 2016, concerning his recommendation that a Judicial Commission of Inquiry be established to investigate the termination of contractual relationships by certain financial institutions with Oakbay Investments (Pty) Ltd, the minister will resign; if so, when; if not, why not?'"

Maynier alleges that Zwane allowed the Guptas to "hijack" the Executive to carry out an investigation into financial institutions, the National Treasury and the South African Reserve Bank.

READ MORE: EFF wants Minister Mosebenzi Zwane out

"We can only hope that he saves himself the embarrassment by replying, 'yes, with immediate effect'", he said.

Zwane, who chaired an inter-ministerial committee set up by Cabinet to probe why South Africa's banks blacklisted Gupta-owned businesses, said in a statement last week that a judicial inquiry should be considered to look into:

– The current mandates of the Banking Tribunal and the Banking Ombudsman.
– The current Financial Intelligence Centre Act (Fica) and the Prevention of Combating of Corrupt Activities Act in relation to the banks' conduct,
– South Africa's clearing bank provisions to allow for new banking licences to be issued, and
– the establishment of a State Bank of South Africa with the possible corporatisation of the Post Bank being considered as an option.

Referring to the nation's four biggest lenders refusing to do business with the Gupta family, Zwane said evidence shows the banks' actions "were as a result of innuendo and potentially reckless media statements and, as a South African company, Oakbay had very little recourse to the law".

"Looking into these mandates and strengthening them would go a long way in ensuring that, should any other South African company find itself in a similar situation, it could enjoy equal protection of the law," he said.

READ MORE: ANC condemns Zwane for "reckless" statement

There was fear that Zwane's announcement would cause further market turmoil and currency weakness and lead to a sovereign ratings downgrade.

However, the Presidency said on Friday that Zwane's remarks were issued in his personal capacity and not on behalf of the task team or Cabinet.

"Minister Zwane is a member of the task team. He does not speak on behalf of Cabinet and the contents of his statement do not reflect the position or views of Cabinet," Presidency spokesperson Bongani Ngqulunga said. "The unfortunate contents of the statement and the inconvenience and confusion caused by the issuing thereof, are deeply regretted."

The Presidency also moved to quell public and investor fears: "The Presidency wishes to assure the public, the banking sector as well as domestic and international investors of Government's unwavering commitment to the letter and spirit of the country's Constitution as well as in the sound fiscal and economic fundamentals that underpin our economy."

-News24Wire

PQ to President 725
on MZwane
October 2016

THE PRESIDENCY: REPUBLIC OF SOUTH AFRICA
Private Bag X1000, Pretoria, 0001

NATIONAL ASSEMBLY

QUESTIONS FOR WRITTEN REPLY

QUESTION NO: 2138.

Date Published: October 2016

Mr D J Maynier (DA) to ask the President of the Republic:

(1) Whether the statement issued by the Minister of Mineral Resources on 1 September 2016 was issued in the Minister's personal capacity; if not, what are the relevant details; if so, why did the Minister state in a reply to written question 1892 on 22 September 2016 that he was not speaking in his personal capacity;

(2) whether the specified statement reflects Cabinet's position on the recommendations contained in the inter-ministerial committee's report; if not, why not; if so, why did the Minister claim in a reply to written question 1892 on 22 September 2016 that four of the specified recommendations were approved by Cabinet;

(3) whether any action has been taken against the specified minister for issuing the specified statement; if not, why not; if so, what are the relevant details?

NW2455E

Reply:

I had indicated in my previous reply that the statement issued by the Minister of Mineral Resources, Mr Mosebenzi Zwane on 1 September 2016, on the work of the task team established to consider the implications of the decisions of certain banks and audit firms to close down the accounts and withdraw audit services from the company named Oakbay Investments, was issued in his personal capacity and not on behalf of the task team or Cabinet. I am not in the position to answer why the Minister Zwane in his reply on 22 September 2016 said that he was not speaking in his personal capacity. The question in this regard must be directed to the Minister.

I reprimanded the Minister for the statement.

ANNEXURE 41

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REPORTABLE

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THE REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)

Case No: 19529/2015

Before the Hon. Mr Justice Bozalek and the Hon. Ms Justice Baartman

Hearing: 13 December 2016; 22 – 24 February 2017
Judgment Delivered: 26 April 2017

In the review application between:

EARTHLIFE AFRICA – JOHANNESBURG	**1st Applicant**
SOUTHERN AFRICAN FAITH COMMUNITIES' ENVIRONMENT INSTITUTE	**2nd Applicant**

and

THE MINISTER OF ENERGY	**1st Respondent**
THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	**2nd Respondent**
THE NATIONAL ENERGY REGULATOR OF SOUTH AFRICA	**3rd Respondent**
SPEAKER OF THE NATIONAL ASSEMBLY	**4th Respondent**
CHAIRPERSON OF THE NATIONAL COUNCIL OF PROVINCES	**5th Respondent**
ESKOM HOLDINGS (SOC) LIMITED	**6th Respondent**

JUDGMENT

BOZALEK J (BAARTMAN J concurring)

[1] This application concerns challenges to various steps taken by the State between 2013 and 2016 in furtherance of its nuclear power procurement programme. The steps

challenged are two separate determinations made by the Minister of Energy in 2013 and 2016, respectively, in terms of sec 34 of the Electricity Regulation Act, 4 of 2006 ('ERA'), whilst the second main focus of the challenge is the constitutionality of the tabling by the Minister before Parliament of three intergovernmental agreements (IGA's) during 2015.

THE PARTIES

[2] First applicant is Earthlife Africa – Johannesburg, a non-governmental non-profit voluntary association which mobilises civil society around environmental issues. The second applicant is the Southern African Faith Communities' Environmental Institute, a registered public benefit and non-profit organisation which also concerns itself with environmental and socio economic injustices.

[3] First respondent is the Minister of Energy ('the Minister') who issued the two sec 34 determinations in question and tabled the three IGA's relating to nuclear cooperation with other countries. The President of the Republic of South Africa ('the President') is cited as second respondent by reason of his decision in 2014 authorising the Minister's signature of an IGA concluded in 2014 with the Russian Federation. Third respondent is the National Energy Regulator of South Africa ('NERSA'), a statutory body set up in terms of the National Energy Regulator Act, 40 of 2004 ('NERA'), which body concurred in the sec 34 determinations made by the Minister. The Speaker of the National Assembly and the Chairperson of the National Council of Provinces are the fourth and fifth respondents, cited because of their interest in the question whether the IGA's were properly tabled before their respective houses. During the course of proceedings, Eskom Holdings (SOC) Limited ('Eskom') was joined as sixth respondent but it, as well as the fourth and fifth respondents, abide by the Court's decision. All the

relief sought is opposed by the Minister and the President to whom I shall refer as 'the respondents'.

BACKGROUND

[4] In late 2013, the Minister (with NERSA's concurrence), acting in terms of sec 34 of ERA determined that South Africa required 9.6GW ('gigawatts') of nuclear power and that this should be procured by the Department of Energy. The Minister purported to make the determination on or about 17 December 2013. It was, however, only gazetted on 21 December 2015 and delivered to the applicants as part of the record in this matter on or about 23 December 2015. The gazetting and production of this sec 34 determination was at least partly in response to the applicants' initial case in which, inter alia, a declarator was sought that, prior to the commencement of any procurement process for nuclear new generation capacity, the Minister and NERSA were both required in accordance with *'procedurally fair public participation processes'* to have determined that new generation capacity was required and must be generated from nuclear power in terms of sec 34(1)(a) and (b) of ERA.

[5] The applicants commenced their review application in October 2015. Prior thereto, on or about 10 June 2015, the Minister had tabled the three IGA's before Parliament which are the subject of the present constitutional challenge. In chronological order these were agreements between the Government of the Republic of South Africa and the United States of America, concluded in August 1995, the Government of the Republic of Korea, concluded in October 2010 and the Government of the Russian Federation, concluded in September 2014, all in regard to cooperation in the field of nuclear energy.

[6] On or about 8 December 2016, during these proceedings, the Minister issued a second sec 34 determination along similar lines to the previous sec 34 determination, but now identifying Eskom as the procurer of the nuclear power plants. The determination was made public at the commencement of the initial hearing in this matter on 13 December 2016, occasioning its postponement for several months, and was gazetted on 14 December 2016.

EVOLUTION OF THE LITIGATION

[7] The applicants' case has evolved through three stages. The relief initially sought was a review and setting aside of the Minister's decision to sign the Russian IGA, the President's decision authorising the Minister's signature, and the Minister's decision to table the Russian IGA before Parliament in terms of sec 231(3) of the Constitution. Certain declaratory relief was also sought in relation to how the nuclear procurement process should unfold in relation to the issuing of determinations under sec 34(1) of ERA and sec 217 of the Constitution which deals with the requirements for a fair procurement system for organs of state.

[8] After the respondents furnished the first sec 34 determination as part of the record, the applicants filed an amended notice of motion seeking the review and setting aside of that determination and any *'Request for Proposals'* issued by the Department of Energy pursuant thereto.

[9] Finally, after postponement of the proceedings in December 2016, the Minister filed a supplementary affidavit explaining the circumstances surrounding, and the rationale for, the second sec 34 determination. The applicants were afforded an opportunity to file answering affidavits to which they attached a draft order indicating

that further relief being sought was the review and setting aside of the Minister's sec 34(1) determination gazetted on 14 December 2016, and the setting aside of any Requests for Proposals or Requests for Information issued pursuant to either determination.

[10] The hearing resumed on 22 February 2017 when the matter was fully argued.

OUTLINE OF THE PARTIES' CASES

[11] In broad terms the applicants' challenge to the three IGA's is largely procedural in nature and based on the different procedures set out in sec 231(2) and 231(3) of the Constitution to render such agreements binding over the Republic. Section 231(2) provides that an IGA binds the Republic only after it has been approved by resolution in both the National Assembly ('the NA') and the National Council of Provinces ('the NCOP') *'unless it is an agreement referred to in subsection (3)'*. The latter subsection provides that IGA's of a *'technical, administrative or executive nature'* binds the Republic without the approval of the NA or the NCOP *'but must be tabled in the Assembly and the Council within a reasonable time'*. The applicants aver that inasmuch as the US IGA was entered into more than two decades before it was tabled in terms of sec 231(3), and nearly five years previously in the case of the Korean IGA, the delay in so tabling them rendered them non-compliant with sec 231(3) and therefore non-binding. The Russian IGA was also tabled in terms of sec 231(3) but in its case the applicants aver that it was not an international agreement as envisaged in sec 231(3) and thus should have been tabled before the two houses in terms of sec 231(2) with the result that it would only become binding after it had been approved by resolution of those houses.

[12] In regard to the challenge to all three IGA's the respondents raise various preliminary points, namely, that there has been a material non-joinder inasmuch as none

of the three countries have been joined as parties to the proceedings. In any event, the respondents contend that all three agreements, being international agreements, are not justiciable by a domestic court. As regards the Russian IGA the respondents contend in the alternative that upon a proper interpretation and construction thereof it is *'an international framework agreement for cooperation between sovereign states'* (and not a procurement contract) to cooperate on an executive level in the field of nuclear energy and nuclear industry; furthermore, the respondents contend, the decision of the Minister to table the Russian IGA in terms of sec 231(3) of the Constitution was beyond reproach inasmuch as it falls within the general category of a *'technical, administrative and executive agreement, not requiring ratification or accession'*. It is also contended by the respondents that, in any event, even if the Russian IGA was tabled in Parliament in terms of the incorrect procedure, the applicants have no standing to claim any relief in relation thereto, this being a matter for Parliament to take up with the Minister.

[13] In regard to the US and Korean IGA's the respondents, for the reasons given above, again assert that the applicants have no standing to claim any relief. They assert further that there was no unreasonable delay in tabling either IGA and that what is reasonable in any particular instance must depend on the facts and circumstances pertaining to each IGA. They contend further that, even if there was an unreasonable delay in the tablings, it is only the delay itself that is unconstitutional and this does not affect the validity or effectiveness of the tabling themselves nor render the two treaties without any binding effect.

[14] As regards to the sec 34 determinations, in broad outline, the applicants' case is that both the Minister's decision as contained in the determinations and NERSA's concurrence therein constituted administrative action but breached the requirements for

such action to be lawful, reasonable and procedurally fair. Amongst the grounds that they rely on in this regard are that neither the Minister's decision nor that of NERSA's was preceded by any public participation or consultation of any ground. Secondly, as regards the first sec 34 determination the applicants contend it was unlawful by reason of the two year delay in gazetting it; thirdly, they contend, both determinations were irrational, unreasonable and taken without regard to relevant considerations or with regard to irrelevant considerations.

[15] The applicants rely on certain additional grounds in relation to the 2016 determination, more specifically that NERSA's decision to concur therein was unlawful in that its key reason was that it believed that it would be *'mala fide for it not to concur in the Minister's proposed determination'* and was thus predicated on a material error of law or fact. It is also contended that NERSA failed to apply its mind to further relevant considerations, relating to the Minister's proposed determination, which arose after the 2015 determination.

[16] A further specific ground upon which the 2013 and 2016 determinations is challenged is the absence therein of any specific system for the procurement of nuclear new build capacity which is said to be in violation of sec 34 of ERA, read together with sec 217 of the Constitution.

[17] A further procedural ground of review is based on the applicants' contention that since the 2016 determination failed to withdraw or amend the 2013 sec 34 determination it resulted in the anomalous situation of two gazetted sec 34 determinations which are mutually inconsistent. As such the determinations violate the principle of legality and fall to be reviewed and set aside. The applicants contend, furthermore, that even if the

Minister's decisions as expressed in the sec 34 determination are not administrative but executive action they are nonetheless susceptible to review by virtue of the principle of legality and, even on this standard, fall to be set aside on the basis of irrationality.

[18] For their part the respondents contend that neither the decisions of the Minister nor those of NERSA in concurring with the sec 34 determinations constitute administrative action. Instead, they contend the determinations amount to *'encased policy directives'* and that a ministerial determination under sec 34 of ERA amounts to *'executive policy'*. They argue that no actual procurement decisions, nor a decision to grant a generation licence, were taken and the sec 34 determinations were in substance nothing more than policy decisions by the national executive binding only upon NERSA. The respondents dispute, furthermore, the specific grounds of the applicants' challenge to the sec 34 determinations and contend that there is no requirement that a determination must specify the procurement system for the nuclear new generation capacity. They contend further that neither the Minister's decision nor NERSA's decision was required to be made in accordance with a procedurally fair and public participation process. The respondents concede that the determinations are subject to review for rationality but contend that both determinations meet that standard.

[19] The respondents dispute, on various grounds, the specific bases upon which the applicants contend that NERSA's concurrence in the 2016 determination was unlawful, unreasonable or irrational. As regards the general ground advanced by the applicants that the 2013 and 2016 determinations are mutually inconsistent and stand to be struck down for this reason, the respondents' case is that, properly interpreted, the first determination was impliedly repealed by the second determination but that, in any event, even if both determinations stand separately from each other they are not mutually inconsistent.

THE ISSUES

[20] The following main issues fall to be determined:

1. Did the Minister and NERSA breach statutory and constitutional prescripts in making the 2013 and 2016 sec 34 determinations?

2. Did the President and the Minister breach the Constitution in deciding to sign the 2014 Russian IGA in relation to nuclear procurement and then in tabling it under sec 231(3) of the Constitution rather than sec 231(2)?

3. Did the Minister breach the Constitution in tabling the US IGA and South Korean IGA in relation to nuclear cooperation two decades and nearly five years, respectively after they had been signed?

CHRONOLOGY OF EVENTS

[21] Before dealing with the issues it is useful to set out a chronology of events as they relate to the sec 34 determinations and the various IGA's concluded by the respondents relating to nuclear issues.

1. In March 2011 the Minister gazetted the Integrated Resource Plan for Electricity 2010-2030 (IRP2010) which the Department of Energy itself stated should be revised every two years, but which, as at the date of hearing, had yet to be revised.

2. On 11 November 2013 the Minister signed a determination under sec 34(1) of ERA in relation to the requirement for and procurement of 9 600MW of electricity from nuclear energy which secured NERSA's concurrence on 17 December 2013.

3. On 20 September 2014 the President signed a minute approving the Russian IGA in relation to a strategic nuclear partnership and authorised the Minister to sign the agreement.

4. The following day, the Minister signed the agreement on behalf of the Government.

5. A day later, on 22 September 2014, the Department of Energy and Russia's atomic energy agency ('Rosatom'), released identical press statements confirming their joint understanding of what the two governments had agreed, and advising that on 22 September 2014 the Russian Federation and the Republic of South Africa had signed an Intergovernmental Agreement on Strategic Partnership and Cooperation in Nuclear Energy and Industry.[1]

6. The press releases recorded inter alia that:

'The Agreement lays the foundation for the large-scale nuclear power plants (NPP) procurement and development programme of South Africa based on the construction in RSA of new nuclear power plants with Russian VVER reactors with total installed capacity of up to 9.6 GW (up to 8 NPP units). These will be the first NPPs based on the Russian technology to be built on the African continent. The signed Agreement, besides the actual joint construction of NPPs, provides for comprehensive collaboration in other areas of the nuclear power industry, including construction of a Russian-technology based multipurpose research reactor, assistance in the development of South-African nuclear infrastructure, education of South African nuclear specialists in Russian universities and other areas.'

7. In a subsequent press release, however, the Department of Energy described the Russian IGA as initiating *'the preparatory phase for the procurement for the new nuclear build programme'* and stated that *'(s)imilar agreements are foreseen with other vendor countries that have expressed an interest in supporting South Africa in this massive programme'*.[2]

8. In further press releases in late 2014 and early 2015 the Department of Energy advised that it had conducted vendor parades in relation to nuclear procurement, first with Russia and then with China, France, South Korea and the United States.

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[1] Media Release "Russia and South Africa sign agreement on strategic partnership in nuclear energy" Pretoria, 22 September 2014 – record volume 1 p 131.

[2] Media Release "Minister Joemat-Petterson concludes her visit to Vienaa, Austria" 23 September 2014 – record volume 4 p 1293.

9. After entering into the Russian IGA, the Government also entered into IGA's with China and France in late 2014.

10. On 10 June 2015 the Minister authorised the submission for tabling in Parliament of various IGA's signed with various nuclear vendor countries in accordance with sec 231(3) of the Constitution.

11. The following IGA's were tabled:

11.1 Agreement for Cooperation between the Government of the Republic of South Africa and the United States of America concerning Peaceful Uses of Nuclear Energy ('the US IGA'), signed on 25 August 1995;

11.2 Agreement between the Government of the Republic of Korea and the Government of the Republic of South Africa regarding Cooperation in the Peaceful Uses of Nuclear Energy ('the South Korean IGA'), signed on 8 October 2010;

11.3 Agreement between the Government of the Republic of South Africa and the Government of the Russian Federation on Strategic Partnership and Cooperation in the fields of Nuclear Power and Industry ('the Russian IGA'), signed on 21 September 2014;

11.4 Agreement between the Government of the Republic of South Africa and the Government of the French Republic on Cooperation in the Development of Peaceful Uses of Nuclear Energy, dated 14 October 2014;

11.5 Agreement between the Government of the Republic of South Africa and the Government of the People's Republic of China on Cooperation in the field of Civil Nuclear Energy Projects, signed on 7 November 2014.

12. On 21 December 2015 the Minister's 2013 sec 34 determination was made public by publication in the government gazette.

13. On 8 December 2016 the Minister issued a further determination under sec 34(1) of ERA in relation to the requirement for and procurement of 9 600MW of electricity from nuclear energy with NERSA's concurrence, and published it in the government gazette on 14 December 2016.

THE SECTION 34 DETERMINATIONS

[22] Before setting out the terms of the 2013 sec 34 determination regard must be had to the relevant empowering legislation. The preamble to ERA records that its purposes were inter alia to establish a national regulation framework for the electricity supply industry and to make NERSA the custodian and enforcer of the national electricity regulatory framework. Section 2 provides that amongst the objects of ERA are to:

> *'(a) achieve the efficient, effective, sustainable and orderly development and operation of electricity supply infrastructure in South Africa;*
>
> *(b) ensure that the interests and needs of present and future electricity customers and end users are safeguarded and met, having regard to the governance, efficiency, effectiveness and long-term sustainability of the electricity supply industry within the broader context of economic energy regulation in the Republic;*
>
> ...
>
> *(g) facilitate a fair balance between the interests of customers and end users, licensees, investors in the electric supply industry and the public.'*

[23] Section 34 of ERA deals with the subject of new generation capacity and provides in part as follows:

> *'(1) The Minister may, in consultation with the Regulator –*
>
> *(a) determine that new generation capacity is needed to ensure the continued uninterrupted supply of electricity;*
>
> *(b) determine the types of energy sources from which electricity must be generated, and the percentages of electricity that must be generated from such sources;*

(c) determine that electricity thus produced may only be sold to the persons or in the manner set out in such notice;

(d) determine that electricity thus produced must be purchased by the persons set out in such notice;

(e) require that new generation capacity must:

(i) be established through a tendering procedure which is fair, equitable, transparent, competitive and cost-effective;

(ii) provide for private sector participation.

2. ...

3. The Regulator, in issuing a generation licence –

a) is bound by any determination made by the Minister in terms of subsection (1);

b) may facilitate the conclusion of an agreement to buy and sell power between a generator and a purchaser of that electricity.'

[24] Section 34(1) therefore operates as the legislative framework by which any decision that new electricity generation capacity is required and any decision taken by the Minister in that regard, has no force and effect unless and until NERSA agrees with the Minister's decision.

[25] Commenting on the role of administrative law in the field of electricity regulation Klees[3] states as follows:

> *'The significance of administrative law for environmental law is beyond dispute. Glazewski describes environmental law as "administrative law in action, as environmental conflicts frequently turn on the exercise of administrative decision-making powers". Something similar could be said of NERSA's decision-making powers under the ERA.'*

[3] A Klees *Electricity Law in South Africa* (2014) p 16 para 3.4.3.

[26] The Minister's 2013 determination read, insofar as it is relevant, as follows:

'The Minister of Energy ... in consultation with ... ("NERSA"), acting under section 34(1) of the Electricity Regulation Act 4 of 2006 ... has determined as follows:

1. *that energy generation capacity needs to be procured to contribute towards energy security and to facilitate achievement of the greenhouse gas emission targets for the Republic of South Africa, accordingly, 9 600 megawatts (MW) should be procured to be generated from nuclear energy ("nuclear programme"), which is in accordance with the capacity allocated under the Integrated Resource Plan for Electricity 2010-2030 ...;*

2. *electricity produced from the new generation capacity ("the electricity"), shall be procured through tendering procedures which are fair, equitable, transparent, competitive and cost-effective;*

3. *the nuclear programme shall target connection to the Grid as outlined in the IRP2010-2030 (or as updated), taking into account all relevant factors including the time required for procurement;*

4. *the electricity may only be sold to the entity designated as the buyer in paragraph 7 below, and only in accordance with the power purchase agreements and other project agreements to be concluded in the course of the procurement programmes;*

5. *the procurement agency in respect of the nuclear programme will be the Department of Energy;*

6. *the role of the procurement agency will be to conduct the procurement process, including preparing any requests for qualification, request for proposals and/or all related and associated documentation, negotiating the power purchase agreements, facilitating the conclusion of the other project agreements, and facilitating the satisfaction of any conditions precedent to financial closure which are within its control;*

7. *the electricity must be purchased by Eskom Holdings SOC Limited or by any successor entity to be designated by the Minister of Energy, as buyer (off-taker); and*

8. *the electricity must be purchased from the special purpose vehicle(s) set up for the purpose of developing the nuclear programme.'*

[27] On 11 November 2013 the Minister's predecessor wrote to the Chairperson of NERSA requesting its concurrence in the proposed determination as set out above. Some five weeks later, on 20 December 2013, the Chairperson advised the Minister's predecessor that NERSA had resolved to concur in the proposed determination. NERSA's decision was taken at a meeting of its board held on 26 November 2013, two weeks after receiving the Minister's proposed determination. Minutes of those meetings record its reasons for concurring with the Minister's proposed determination.

WERE THE SECTION 34 DETERMINATIONS ADMINISTRATIVE ACTION AND, IF SO, WERE THEY LAWFUL, REASONABLE AND PROCEDURALLY FAIR?

[28] The right to just administrative action is enshrined in sec 33 of the Constitution and provides that everyone has the right to *'administrative action that is lawful, reasonable and procedurally fair'* and that national legislation must be enacted to give effect to the right. Administrative action is then defined in section 1 of the Promotion of Administrative Justice Act, 3 of 2000 ('PAJA') in part as follows:

'...any decision taken, or any failure to take a decision, by -

(a) an organ of state, when -

(i) exercising a power in terms of the Constitution or a provincial constitution; or

(ii) exercising a public power or performing a public function in terms of any legislation; or

...

which adversely affects the rights of any person and which has a direct, external legal effect, but does not include -

(aa) the executive powers or functions of the National Executive, including the powers or functions referred to in ... '

[29] Amongst the excluded powers or functions is sec 85(2)(b) of the Constitution which provides that the President exercises the executive authority, together with other members of the Cabinet by,

'(b) developing and implementing national policy'.

[30] On behalf of the applicants it was contended that it was unnecessary to determine whether the 2013 sec 34 determination amounted to executive action or administrative action since even if it was the former it was subject to rationality review; therefore, the argument continued, the real question was whether the determination amounted to nothing more than policy (or as it was put on behalf of the respondents - *'an encased policy directive'*). In *SARFU*[4] the Constitutional Court declared that the distinction between executive and administrative action boils down to a distinction between the implementation of legislation, which is administrative action, and the formulation of policy, which is not. The Court stated that where the line is drawn will depend primarily upon the nature of the power and the factors relevant to this consideration which are in turn, the source of the power, the nature of the power, its subject matter, whether it involves the exercise of a public duty and whether it is related to policy matters or the implementation of legislation.

[31] *Woolman*[5] cautions against the over extension of executive policy decisions so as to exclude a large range of actions from the application of the right to just administrative action. The authors contend that it is important to distinguish between policy in the narrow sense and policy in the broad sense, of which only the latter should be excluded

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[4] President of the Republic of South Africa and Others v South African Rugby Football Union and Others 2000 (1) SA 1 (CC).

[5] S Woolman and M Bishop *Constitutional Law of South Africa* 2nd ed vol 4 [original service: 06-08] p 63-32.

from the ambit of administrative action. In *Ed-U-College*[6] O'Regan J stated on behalf of the Court:

> *'Policy may be formulated by the Executive outside of a legislative framework. For example, the Executive may determine a policy on road and rail transportation or on tertiary education. The formulation of such policy involves a political decision and will generally not constitute administrative action. However, policy may also be formulated in a narrower sense where a member of the Executive is implementing legislation. The formulation of policy in the exercise of such powers may often constitute administrative action.'*

[32] In the present matter the source of the power exercised by the Minister was sec 34(1) of ERA and the nature of the power was one which had far reaching consequences for the public as a whole and for specific role-players in the electricity generation field. The determination also had external binding legal effect in that, at the very least, it bound or authorised NERSA to grant generation licences for nuclear energy subject to an overall limit of 9 600MW. Specific affected parties in this case would be not only those engaged in the field of nuclear energy generation but other electricity generation providers such as oil, gas or renewable energy inasmuch as their potential to contribute to the need for extra capacity would be removed. These factors all point towards the sec 34 determination constituting administrative action.

[33] Given the critical role that NERSA has in the making of a ministerial determination in terms of sec 34 of ERA, regard must also be had to its powers and the manner in which it is required to exercise these. NERSA itself was established in terms of NERA which was promulgated to establish a single regulator to regulate the electricity, piped-gas and petroleum pipeline industries.

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[6] *Permanent Secretary, Department of Education and Welfare, Eastern Cape, and Another v Ed-U-College (PE) (Section 21) Inc* 2001 (2) SA 1 (CC) para 18.

[34] Section 9 of NERA sets out the duties of members of the energy regulator who must inter alia:

> *'(a) act in a justifiable and transparent manner whenever the exercise of their discretion is required;*
>
> *...*
>
> *(c) act independently of any undue influence or instruction;*
>
> *...*
>
> *(f) act in the public interest.'*

[35] Section 10 of NERA, which plays an important role in this matter, sets out the requirements for the validity of NERSA's decisions and provides as follows:

> *'1. Every decision of the Energy Regulator must be in writing and be –*
>
> *(a) consistent with the Constitution and all applicable laws;*
>
> *(b) in the public interest;*
>
> *(c) ...*
>
> *(d) taken within a procedurally fair process in which affected persons have the opportunity to submit their views and present relevant facts and evidence to the Energy Regulator;*
>
> *(e) based on reasons, facts and evidence that must be summarised and recorded; and*
>
> *(f) explained clearly as to its factual and legal basis and the reasons therefor.*
>
> *2. Any decision of the Energy Regulator and the reasons therefor must be available to the public except information that is protected in terms of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000).*
>
> *3. Any person may institute proceedings in the High Court for the judicial review of an administrative action by the Energy Regulator in accordance with the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000).*

4. a) *Any person affected by a decision of the Energy Regulator sitting as a tribunal may appeal to the High Court against such decision.*

...'

[36] There is nothing to suggest that the decision taken by NERSA to concur in the Minister's proposed 2013 sec 34 determination was one which fell outside the ambit of sec 10 of NERA. An independent requirement for a valid decision of this nature was thus that it be taken *'within a procedurally fair process in which affected persons have the opportunity to submit their views and present relevant facts and evidence to the Energy Regulator'*. Section 10(3) specifically provides for judicial review of administrative action by NERSA.

[37] Against this background, when regard is had to the definition of administrative action in PAJA it is clear that all its elements are satisfied at least as far as NERSA's role in the sec 34 determination. NERSA is undoubtedly an organ of state which, in taking the decision to concur with the Minister's proposed determination, was *'exercising a public power or performing a public function'* in terms of legislation, namely, sec 34 of ERA and sec 10 of NERA. That decision had a direct, external legal effect and, at the least, adversely affected the rights of energy producers outside the stable of nuclear power producers. None of the exemptions or qualifications referred to in sec 1(b)(aa) – (ii) of PAJA are met.

[38] In regard to the requirement that the action must *'adversely affect the rights of any person'* there is authority that this threshold must not be interpreted restrictively. In *Grey's Marine*[7] the Supreme Court of Appeal dealt with this requirement, Nugent JA stating as follows:

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[7] *Grey's Marine Hout Bay (Pty) Ltd and Others v Minister of Public Works and Others* 2005 (6) SA 313 (SCA).

'While PAJA's definition purports to restrict administrative action to decisions that, as a fact, "adversely affect the rights of any person", I do not think that a literal meaning could have been intended. For administrative action to be characterised by its effect in particular cases (either beneficial or adverse) seems to me to be paradoxical and also finds no support from the construction that has until now been placed on s 33 of the Constitution. Moreover, that literal construction would be inconsonant with s 3(1) [of PAJA], *which envisages that administrative action might or might not affect rights adversely. The qualification, particularly when seen in conjunction with the requirement that it must have a "direct and external legal effect", was probably intended rather to convey that administrative action is action that has the capacity to affect legal rights, the two qualifications in tandem serving to emphasise that administrative action impacts directly and immediately on individuals.'*[8]

[39] In *Steenkamp*[9] Moseneke DCJ held that a decision to award or refuse a tender constitutes administrative action because the decision *'materially and directly affects the legal interests or rights of tenderers concerned'* giving further weight to a non-restrictive interpretation of this requirement.

[40] The power exercised by the Minister in terms of sec 34(1) of ERA is unusual in that any decision on his part is inchoate until such time as NERSA concurs therein and the sec 34 determination is thereby made. It is, however, the sec 34 determination which is challenged as unfair, unlawful and unreasonable administrative action. Having concluded that NERSA's role in concurring in the proposed determination amounts to administrative action for the reasons furnished, it is conceptually difficult to view the sec 34 determination, as a whole, as anything other than administrative action. Moreover, if NERSA's action, as a vital link in the chain which makes up the sec 34 determination, does not meet the test for fair administrative action, little point is served in scrutinizing any decision by the Minister, prior to the sec 34 determination being made, for fair

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[8] *Grey's Marine* n 7 para 23.
[9] *Steenkamp NO v Provincial Tender Board, Eastern Cape* 2007 (3) SA 121 (CC) para 21.

administrative action. One link, namely NERSA's action having proved to be fatally flawed from an administrative law point of view, the chain, i.e. the sec 34 determination, is broken.

[41] On behalf of the respondents it was contended that the requirement that *'every decision'* of NERSA had to comply with the requirements of sec 10 of NERA could not be taken literally. Although internal decisions of NERSA which fall outside the requirements of sec 10 can readily be imagined, its decision to concur in the Minister's proposed determination can hardly be categorised as a rote, everyday decision. Indeed the decision to formally expand the nuclear procurement programme to 9 600MW must surely rank as one of the most important decisions taken by NERSA in the recent past.

[42] Section 3 of PAJA echoes sec 10 of NERA to the effect that administrative action which materially and adversely affects the rights or legitimate expectations of any person must be procedurally fair. It stipulates that a fair administrative procedure will depend on the circumstances of each case. Also pertinent is sec 4 of PAJA which deals with administrative action affecting the public and provides that the administrator:

> *'(I)n order to give effect to the right to procedurally fair administrative action, must decide whether -*
>
> *(a) to hold a public inquiry in terms of subsection (2);*
>
> *(b) to follow a notice and comment procedure in terms of subsection (3);*
>
> *(c) to follow the procedures in both subsections (2) and (3);*
>
> *(d) ... or;*
>
> *(e) to follow another appropriate procedure which gives effect to section 3.'*

[43] NERSA did not oppose the application and therefore offered no explanation as to what procedure, if any, it followed to give effect to the right to procedurally fair administrative action. The minutes of the meeting of NERSA at which the decision was

taken reveal no indication of any prior process whereby *'affected persons'* or the public had the opportunity to submit their views to NERSA. Nor is there any indication in the record of any such procedure having been followed. The short period of time between the Minister's request to NERSA to consider the proposed determination and its final decision, a matter of weeks, renders it most unlikely that a fair procedure could have been carried out even if NERSA had been minded to follow one.

[44] There is no serious dispute that the decision to procure 9.6GW of nuclear new generation capacity will have far reaching consequences for the South African public and will entail very substantial spending on a particular type and quantity of new infrastructure. The applicants estimated that the costs, which will ultimately be met by the public through taxes and increased electricity charges, could be approximately R1 000 000 000 000 (one trillion Rand) and this estimate was not disputed by the respondents. As the applicants point out, the allocation of such significant resources to the project will inevitably effect spending on other social programmes in the field of education, social assistance of health services and housing. They also point out that the decision embodied in the sec 34 determination has potentially far reaching implications for the environment.

[45] In my view, in light of these considerations, a rational and a fair decision-making process would have made provision for public input so as to allow both interested and potentially affected parties to submit their views and present relevant facts and evidence to NERSA before it took a decision on whether or not to concur in the Minister's proposed determination.

[46] For these reasons, I consider that NERSA's decision to concur in the Minister's proposed 2013 determination without even the most limited public participation process renders its decision procedurally unfair and in breach of the provisions of sec 10(1)(d) of NERA read together with sec 4 of PAJA.

[47] Even if I am wrong in concluding that NERSA's decision to concur (or the combined decision of the Minister and NERSA) amounted to administrative action, the decision/s still have to satisfy the test for rational decision-making, as part of the principle of legality. Applying this to the applicants' challenge on the basis of an unfair procedural process the question is whether the decision by either the Minister or NERSA (or the combined decision of the Minister and NERSA) fell short of constitutional legality for want of consultation with interested parties.

[48] Our courts have recognised that there are circumstances in which rational decision-making calls for interested persons to be heard. In *Albutt v Centre for the Study of Violence and Reconciliation, and Others*[10] the Court had to decide inter alia whether the President was required, before exercising a power to pardon offenders whose offences were committed with a political motive, to afford a hearing to victims of the offences. It was held that the decision to undertake the special dispensation process under which pardons were granted without affording the victims an opportunity to be heard had to be rationally related to the achievement of the objectives of the process.[11]

[49] In *Democratic Alliance v President of the Republic of South Africa and Others*[12] Yacoob ADCJ stated:

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[10] 2010 (3) SA 293 (CC).
[11] *Albutt* n 10 para 68-69.
[12] 2013 (1) SA 248 (CC) para 34.

'It follows that both the process by which the decision is made and the decision itself must be rational. Albutt is authority for the same proposition.'

He went on to state:

'The conclusion that the process must also be rational in that it must be rationally related to the achievement of the purpose for which the power is conferred, is inescapable and an inevitable consequence of the understanding that rationality review is an evaluation of the relationship between means and ends. The means for achieving the purpose for which the power was conferred must include everything that is done to achieve the purpose. Not only the decision employed to achieve the purpose, but also everything done in the process of taking that decision, constitutes means towards the attainment of the purpose for which the power was conferred.'[13]

[50] In the present matter NERSA must have been aware that there were sectors of the public with either special expertise or a special interest regarding the issue of whether it was appropriate for extra generation capacity to be set aside for procurement through nuclear power. In addition, in taking the decision, NERSA was under a statutory duty to act in the public interest and in a justifiable and transparent manner whenever the exercise of their discretion was required but also to utilise a procedurally fair process giving affected persons the opportunity to submit their views and present relevant facts and evidence. These requirements were clearly not met by NERSA in taking its far reaching decision to concur in the Minister's sec 34 determination. It has failed to explain, for one, how it acted in the public interest without taking any steps to ascertain the views of the public or any interested or affected party. For these reasons I consider that NERSA's decision fails to satisfy the test for rationality based on procedural grounds alone.

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[13] *Democratic Alliance* n 12 para 36.

A FURTHER PROCEDURAL CHALLENGE BASED ON DELAY

[51] There is another procedural challenge to the 2013 sec 34 determination which is based on the delay in gazetting the decision. The facts were that the Director-General in the Department of Energy submitted a decision memorandum to the Minister on 8 November 2013. The recommendation to the Minister was that she:

> *'7.1. approves the sec 34 determination in annexure A for promulgation in the government gazette, so that the Nuclear Procurement process can be launched; and*
>
> *7.2. signs the attached letter to NERSA seeking their concurrence'.* [14]

[52] The Minister approved and adopted the recommendation on 11 November 2013 whilst NERSA concurred in the decision, sending a letter to this effect to the Minister on 20 December 2013.

[53] There was no suggestion in either the decision memorandum, the Minister's approval of the recommendation or in NERSA's concurrence in the decision that it should not be gazetted. This last aspect is not surprising given that sec 9 of NERA provides that NERSA must act in a *'justifiable and transparent manner and in the public interest'*. More pointedly sec 10 of NERA requires that any decision of NERSA and the reasons therefor *'must be available to the public'*. It was, however, only on 21 December 2015, some two years after the sec 34 determination was made that it was gazetted. This was the first occasion on which the 2013 sec 34 determination was made public. The gazetting followed a further decision memorandum from the Director-General to the

[14] Memorandum – Department of Energy "Determination in respect of the Nuclear Programme" (11 November 2013) – record volume 2 p 488 para 8.6.

Minister dated 1 December 2015[15] which sought to explain why the determination had not been gazetted earlier as follows:

> *'3.4 Although the determination process was completed in 2014 with NERSA and signed by the previous Minister of Energy, Ben Martins, the determination was not gazetted due to change in the leadership in the Ministry and to further conduct some work prior to gazetting. As a result there has been progress on the nuclear build work done by the Department and relevant stakeholders, it is therefore deemed appropriate to publish it. The determination needs to be gazetted ... '*

There is, however, no indication what work had to be conducted prior to gazetting and no evidence thereof in the record.

[54] As the applicants point out, however, the sec 34 determination might never have been communicated had the present application not been launched and the record obtained from the respondents. This is borne out by the decision memorandum in which the Director-General explained to the Minister that the publishing of the determination had *'become urgent'* as the Department was facing the present litigation wherein the applicants claimed that *'the Minister has not published a Section 34 determination nor conducted a public participation process and therefore any decisions to facilitate, organise, commence or proceed with the procurement of nuclear new generation capacity is unlawful'*.[16] The memorandum proceeds:

> *'3.6 During the meeting of 27 November 2015 to brief the legal counsel defending the Department ... (t)he legal counsel requested to include the determination when filing the record for the court papers. The legal councel (sic) advised that the inclusion of the determination in the answering affidavit will weaken the case for the applicant as it will show that their application is based on false assumption.'*

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[15] Memorandum – Department of Energy "Determination under Section 34 (1) of the Electricity Regulation Act No. 4 of 2006 – Nuclear Procurement Programme" (1 December 2015) – record volume 7 p 108 document no. 19.2.
[16] *Memorandum* n 15 p 110 para 3.5.

[55] It requires mention that in July 2015 the applicants' attorney wrote to the Minister raising a number of questions regarding nuclear new generation capacity procurement and compliance with any related statutory or legal processes. One of the questions was whether the Minister had, in consultation with NERSA, made any determinations in terms of sec 34(1)(a) and (b) of ERA that new generation capacity was needed and must be generated from nuclear energy sources. No substantive reply was received from the Minister where after the present application was launched in October 2015.

[56] Various consequences flow from the Minister's failure to gazette the 2013 sec 34 determination after NERSA's concurrence therein. Firstly, until the gazetting in December 2015 the Minister was in breach of his/her own decision. Secondly, it is open to serious question whether the 2013 sec 34 determination could have had any legal effect until such time as it was gazetted. Although ERA does not require that a sec 34 determination be gazetted this is one of the recognised means for giving public notice of a decision. In *SARFU*[17] the Constitutional Court held in regard to the President's appointment of a commission of enquiry that:

> *'In law, the appointment of a commission only takes place when the President's decision is translated into an overt act, through public notification. [...] Section 84(2)(f) does not prescribe the mode of public notification in the case of the appointment of a commission of inquiry but the method usually employed, as in the present case, is by way of promulgation in the* Government Gazette. *The President would have been entitled to change his mind at any time prior to the promulgation of the notice and nothing which he might have said to the Minister could have deprived him of that power. Consequently, the question whether such appointment is valid, is to be adjudicated as at the time when the act takes place, namely at the time of promulgation.'*

[17] *SARFU* n 4 para 44.

[57] The inordinate delay in gazetting the 2013 sec 34 determination raises a further problem inasmuch as NERSA's consent to the gazetting in December 2015 was neither sought nor obtained. This raises the question of whether NERSA's concurrence in 2013 in the Minister's proposed determination necessarily constituted a valid concurrence in 2015. Developments in the intervening two years may well have afforded NERSA material reason to question whether nuclear new generation capacity was required, the amount required or other elements of the 2013 sec 34 determination. Furthermore, had NERSA's concurrence been sought afresh in December 2015, new factors which might have emerged from a fresh public participation process may have changed its initial views.

[58] In these circumstances the failure to gazette or otherwise make the determination public for two years not only breached the Minister's own decision, thus rendering it irrational and unlawful, but violated the requirements of open, transparent and accountable government. Furthermore, since the sec 34 determination was in effect only made on publication, the Minister's failure to consult NERSA anew in December 2015 on her decision to gazette the determination in unaltered form constituted a breach of sec 34 of ERA, a mandatory empowering section.

[59] These defects, in my view, rendered the Minister's 2013 sec 34 determination unconstitutional and unlawful, in the latter case by virtue of breaches of the principle of legality and thus liable to be set aside.

SUBSTANTIVE CHALLENGES TO THE 2013 SECTION 34 DETERMINATION

[60] Apart from the grounds relating to the procedural fairness of the 2013 sec 34 determination, the applicants raise several substantive grounds of review in challenging

the 2013 determination. They contend that the decision contained in the 2013 sec 34 determination was irrational, unreasonable and taken without regard to relevant considerations, or with regard to irrelevant considerations. Commencing with the Minister's decision, the applicants contend that he irrationally relied upon the outdated IRP2010. It would appear that at the time the Minister took the decision which led to the sec 34 determination, the IRP2010-had been updated although it was still in draft form and a further ground of review is that the Minister had failed to have regard to the contents of the draft update. A further ground is that the determination contained no specific procedure for the procurement of nuclear new build capacity, the applicants contending that this was in breach of sec 34 of ERA, read with sec 217 of the Constitution. As far as NERSA's role is concerned, the applicants' substantive challenges are firstly that NERSA erroneously viewed its role as no more than a rubber stamp for the Minister's initial decision and, secondly, that it too relied on the outdated IRP2010.

[61] Given the finding that the challenges based on the procedural fairness of the 2013 determination and its delayed publication must succeed, I consider that no point is served by considering the merits of the substantive challenges to the 2013 determination based on reasonableness or rationality.

THE 2016 DETERMINATION

[62] I turn now to deal with the challenge to the 2016 determination which was gazetted on 14 December 2016. The core of the 2016 sec 34 determination is the same as that of the 2013 determination, namely, *'that energy generation capacity needs to be procured to contribute towards energy security and to facilitate achievement'* of the country's *'greenhouse gas emission targets ... accordingly, 9 600 megawatts (MW) should be procured to be generated from nuclear energy'*; secondly, that the electricity so

produced is to be procured through *'fair, equitable, transparent, competitive and cost-effective'* tendering procedures. However, the 2016 determination provided *'that the procurer in respect of the nuclear programme shall be the Eskom Holdings (SOC) Limited or its subsidiaries'* as opposed to 2013 determination which appointed to the Department of Energy to this role.[18]

[63] The background to the 2016 determination appears from the Minister's supplementary affidavit and the documents that form the Minister's and NERSA's record of decision which were attached thereto. During September 2016 the Minister received legal advice with regard to the development of a procurement strategy for the nuclear programme. This advice *'resulted in revisiting of the appointment and role of the DOE (Department of Energy) as the designated procurement agency in respect of the nuclear procurement programme'*. Thereafter, on 29 September 2016, the Department's Director-

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[18] The 2016 sec 34 determination reads in full as follows:
'NUCLEAR PROGRAMME

DETERMINATION UNDER SECTION 34(1) OF THE ELECTRICITY REGULATION ACT 4 OF 2006

PART A

The Minister of Energy ("the Minister"), in consultation with the National Energy Regulator of South Africa ("NERSA"), acting under section 34(1) of the Electricity Regulation Act 4 of 2006 (as amended) (the "ERA") has determined as follows:

1. that energy generation capacity needs to be procured to contribute towards energy security and to facilitate achievement of the greenhouse gas emission targets for the Republic of South Africa, accordingly, 9 600 megawatts (MW) should be procured to be generated from nuclear energy ("nuclear programme"), which is in accordance with the capacity allocated under the Integrated Resource Plan for Electricity 2010-2030 (published as GN 400 of 06 May 2011 in *Government Gazette* No. 34263) ("IRP 2010-2030" or as updated);
2. that electricity produced from the new generation capacity ("the electricity"), shall be procured through tendering procedures which are fair, equitable, transparent, competitive and cost-effective and provide for private sector participation;
3. that the nuclear programme shall target connection to the Grid as outlined in the IRP2010-2030 (or as updated), taking into account all relevant factors including the time required for procurement;
4. that the procurer in respect of the nuclear programme shall be the Eskom Holdings (SOC) Limited or its subsidiaries.'

General provided the Minister with a decision memorandum, for approval, in relation to the proposed 2016 determination.[19]

[64] The rationale for the 2016 determination is contained in paras 3.1 – 3.4 of the decision memorandum and which read as follows:

> *'3.1 On 27 September 2016, the Minister of Energy informed the Department that it was her intention to have Eskom Holdings (SOC) Limited (hereinafter referred to as "Eskom") procure and be the owner operator of the new nuclear power plants.*
>
> *3.2 It appeared that one of the factors the Minister considered in her decision, was that it was indicated in a legal opinion sought from Adv Marius Oosthuizen that the Minister and/or the Department of Energy is not empowered by law to directly procure on behalf of other juristic entities, which are also organs of state (such as Eskom) unless their consent is obtained. It was indicated by an authorised representative from Eskom that Eskom would not provide consent for the Minister and/or the Department of Energy to procure on their behalf.*
>
> *3.3 In order effect (sic) the Minister's desired change(s) to the Determination, it is required that the existing Section 34(1) Determination be amended.*
>
> *3.4 Accordingly, the attached revised Section 34(1) Determination (Annexure A) makes provision for Eskom (or its subsidiaries – in the event that a special purpose vehicle will be created and utilised by Eskom to procure new generation capacity from nuclear power) to be the procurement agency and be the owner operator of the new nuclear build programme.'*

[65] The Minister duly approved the 2016 decision memorandum on 18 October 2016. On 5 December 2016 a letter was sent to the Chairperson of NERSA, attaching a draft of the proposed 2016 determination and seeking its concurrence therein. The board of NERSA took its decision by way of a round robin resolution on or about 8 December

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[19] Decision Memorandum – Department of Energy "Determination under Section 34(1) of the Electricity Regulation Act 4 of 2006 – Nuclear Procurement Programme" (29 September 2016) – record volume 5A p 1546.

2016.[20] The resolution was approved by the acting CEO of NERSA on 5 December 2016 (the same day as the Minister's letter requesting NERSA's concurrence was sent) and subsequently by the Chairperson on 8 December 2016. On 13 December 2016, at the initial hearing of this matter the applicants, together with the public, learnt for the first time that the 2016 determination had been made and it was published in the government gazette the following day. The applicants seek to review the 2016 determination on various procedural and substantive grounds.

[66] Again, relying on sec 3 and 4 of PAJA and sec 10(1)(d) of NERA, they contend that the 2016 sec 34 determination was procedurally unfair inasmuch as it was not preceded by any public participation process or consultation, whether by way of a notice and comment procedure or otherwise.

[67] From the record it appears that NERSA gave its concurrence to the 2016 sec 34 determination within three days of being asked by the Minister and there was therefore no question of any public participation process or any form of external consultation prior to NERSA's decision. Given the elapse of two years since NERSA's concurrence in the 2013 determination and the changed format of the determination, most particularly in its designation of Eskom Holdings (SOC) Limited or its subsidiaries as the procurer in respect of the nuclear programme it was, in my view, incumbent upon NERSA to afford members of the public and/or interested and affected persons (including the applicants) an opportunity to influence the decision. My reasons for reaching this conclusion are in principle the same as those underlying the same conclusion in respect of the 2013 sec 34 determination.

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[20] Round Robin Resolution – NERSA "Confirmation of the Approval of the Round Robin Resolution: Concurrence with the Proposed Amendment of Section 34(1) of the Electricity Regulation Act, 2006 (Act No. 4 of 2006) Determination." (8 December 2016) – record volume 5A p 1566.

CAN THE 2013 AND THE 2016 SECTION 34 DETERMINATIONS CO-EXIST?

[68] A further procedural challenge to the 2016 sec 34 determination arises from the fact that it fails to expressly withdraw or amend the 2013 determination. When the Minister wrote to NERSA requesting its concurrence in the 2016 determination she indicated that the 2013 determination had to be *'amended'*. According to its resolution, NERSA similarly took the view that it was concurring in an amendment to the 2013 sec 34 determination. The recommendation which it approved was that *'(c)oncurrence with the proposed amendment by the Minister ...'* and the *'amendment of the decision of the Energy Regulator of 26 November 2013'*.[21] However, the determination does not on its own terms amend, revise or withdraw the 2013 sec 34 determination and nor does it purport to do so. It makes no reference at all to the 2013 sec 34 determination which results in the anomalous situation of there being two gazetted sec 34 nuclear determinations which are mutually inconsistent. By way of example, the first designates the Department of Energy as the procuring agency in the nuclear power programme whilst the second designates Eskom.

[69] In these circumstances, contend the applicants, the 2016 determination is irrational or based on material errors of law or fact, thereby violating the principle of legality. In response, the respondents contend that this ground of review is based on no more than semantics since the 2016 determination was in substance an amendment and was intended and accepted as such by the Minister and NERSA respectively.

[70] This line of argument does not, however, take into account the consequences of this Court finding that the 2013 determination was unconstitutional and invalid. In that event, the earlier determination was valid *ab initio* i.e. a nullity from the outset and could

[21] Round Robin Resolution n 20 p 1570 para 6.1.

not be amended.[22] This principle was confirmed by the Constitutional Court in *Kruger v President of the Republic of South Africa*[23] which dealt with a proclamation issued by the President which the High Court had held to be null and void and of no force and effect. The President issued a second proclamation in substitution for the first in order to correct a bona fide and acknowledged error in the first and was worded as *'amending'* the first proclamation.

[71] The Court found that the first proclamation was objectively irrational and therefore regarded as a nullity from the outset. It found further that whilst the President could have withdrawn it before it came into force he did not have the power to amend it inasmuch as it was void from its commencement and thus could not be amended. In so finding the Court dismissed an argument that the second proclamation should be judged on its substance and not on its form, Skweyiya J stating in this regard:

> *'While I support in general the principle that substance should take precedence over form, that principle must yield in appropriate cases to the rule of law'.*[24]

Accordingly, if notwithstanding that the 2016 sec 34 determination does not purport to be an amendment of the 2013 determination, it in fact was, and given the finding that the 2013 determination was invalid and unconstitutional, the 2016 determination is also invalid as an impermissible attempt to amend a nullity.

[72] I understand the respondents to also advance the argument that the 2016 determination impliedly repealed the 2013 determination. However, as the applicants point out, it does not purport to repeal the 2013 determination and neither NERSA nor

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[22] C Hoexter *Administrative Law in South Africa* 2nd ed (2012) at p 547: 'An invalid act, being a nullity, cannot be ratified, "validated" or amended'.
[23] 2009 (1) SA 417 (CC) para 61- 64.
[24] *Kruger* n 23 para 62.

the Minister claim that they intended to repeal the 2013 determination, which remains gazetted.

[73] On the assumption that the 2013 and 2016 sec 34 determinations (or at least part thereof) remain valid, their co-existence is in my view, highly problematic. What is the reader or interested member of the public to make of them? Are there two procurement agencies i.e. both Eskom Holdings (SOC) Limited and the Department of Energy? To whom may the electricity generated from the 9.6 GW of nuclear energy be sold? Are there no constraints in this regard (as per the 2016 determination) or must it only be sold to Eskom Holdings (SOC) Limited (as per the 2013 determination)? What is the role of the procurer? Is it as set out in para 6 of the 2013 determination or does it remain unspecified, as per the 2016 determination?

[74] Possible answers to these questions can be advanced but the lack of certainty and the need for conjecture is inimical to the rule of law. Although vagueness is not specified in PAJA as a ground of review, under the common law such a ground appears to have been recognized under the new constitutional dispensation.[25] This ground requires administrative action to be reasonably capable of meaningful construction for it to be valid although absolute clarity is not required.[26] In any event the grounds of review set out in PAJA are not exhaustive, sec 6(2)(i) being a catch-all provision providing that administrative action may be reviewed on other than the listed grounds if it is *'otherwise unconstitutional or unlawful'*.

[75] Given the mutual inconsistency of the 2013 and 2016 sec 34 determinations, and the failure of the latter to expressly withdraw or amend the earlier determination, I

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[25] See in this regard *SARFU* n 4 para 227-231.
[26] *Durban Add-Ventures Ltd v Premier, KwaZulu-Natal, and Others (No 2)* 2001 (1) SA 389 (N) at 400C-D.

consider that the 2016 determination was irrational and must be set aside on this basis as an independent ground of review.

SUBSTANTIVE CHALLENGES TO THE 2016 SECTION 34 DETERMINATION

[76] The applicants also challenge the 2016 determination on various substantive grounds, contending that the Minister's decision was irrational and/or unreasonable and taken without regard to relevant considerations or with regard to irrelevant considerations. These attacks are largely based on what the applicants contend was the Minister's and NERSA's reliance on the outdated IRP2010 and the designation of Eskom as the procurer, apparently because it refused to give its consent to allow the Department of Energy to procure on its behalf. Given the finding that the 2016 determination falls to be reviewed and set aside both by reason of NERSA's failure to hold any public participation process and for its inherent irrationality, I consider it necessary to consider only one of these substantive grounds.

[77] The ground in question is directed at NERSA's role in concurring with the 2016 determination and the basis of the challenge is that the key reason for NERSA giving its concurrence was that it believed that it would be *'mala fides'* for it not to concur in the Minister's proposed determination. This contention was based on an extract from NERSA's round robin resolution approving its concurrence in the Minister's proposed determination by the acting CEO of NERSA on 8 December 2016 and reads in part as follows:[27]

> *'2.1 Background*
>
> *2.1.4 The Minister has proposed an amendment to the determination regarding the Department of Energy as the procuring agency and to be replaced by Eskom. The*

[27] Round Robin Resolution n 20 p 1568-1570.

amendment of the determination cannot be complete without the concurrence of the Energy Regulator therefore the Minister is requesting the Energy Regulator to concur.

2.2 Issues

2.2.1 Without a decision by the Energy Regulator on the proposed amendment, the determination will not be in compliance with the Act and can negatively impact on the nuclear procurement programme.

...

2.3 Problem Statement

2.3.1 Without the Energy Regulator decision to concur with the proposed amendment, the nuclear procurement programme can be negatively affected.

2.3.2 Considering that the proposed amendment is on a determination that the Energy Regulator has already concurred (sic), it can be viewed as mala fide for the Energy Regulator to delay or refuse to concur with the proposed amendment by the Minister.

2.4 Motivation

2.4.1 The proposed amendment is procedurally and legally valid at (sic) the Energy Regulator can concur and bring finality to the implementation of the nuclear procurement programme.

...

6 RECOMMENDATIONS

It is recommended that Electricity Subcommittee approve the:

6.1 Concurrence with the proposed amendment by the Minister in relation to clause 5 of the Energy Regulator decision of 26 November 2013.

6.2 The amendment of the decision of the Energy Regulator of 26 November 2013.'

[78] It was submitted on behalf of the applicants that the key reason for NERSA giving its concurrence was that it believed that it would be *'mala fides'* for it not to concur or, put differently, on the basis that since it had previously concurred some three years earlier in the 2013 sec 34 determination, it was under an obligation to approve the amendment or be seen to be acting *'mala fides'*. However, the applicants contend, there was no legal or factual basis for any understanding that it would be *'mala fides'* for NERSA not to concur. The 2016 sec 34 determination was, as was the 2013 determination, a culmination of the exercise of a discretionary statutory power vested in NERSA irrespective of whether it was an amendment of the prior sec 34 determination or not. In terms of sections 9 and 10 of NERA, NERSA was required, in exercising its discretion and its duty to decide whether to concur or not, to form an independent judgment and was not bound by its past concurrence in the 2013 determination. NERSA was not required to accept that the Minister's proposed determination was correct or appropriate particularly since three years had passed since it had concurred in the 2013 determination and thus underlying circumstances may well have changed. It bears repeating that sec 9(c) of NERA provides that the members of the Energy Regulator must *'act independently of any undue influence or instruction'*.

[79] In the absence of any further explanation by NERSA as to why it took its decision to concur, and bearing in mind that the terms of NERSA's resolution was clearly an attempt to comply with sec 10(1)(f) of NERA i.e. *'to explain clearly its factual and legal basis and the reasons'* for its concurrence, these expressed reasons must be accepted. On its own version, NERSA's concern was that it would be seen as acting *mala fides* if it did not concur with the Minister's proposed determination and this was one of its prime, if not the primary reason, for its decision. In these circumstances the applicants have, in my

view, established that NERSA's concurrence was predicated on a material error of law or fact and/or that it failed to act independently, as required by NERA.

THE IGA'S

[80] Two further issues to be determined in this matter are:

1. Whether the President and the Minister violated the Constitution when deciding to sign and then table the 2014 Russian IGA in relation to nuclear issues under sec 231(3) of the Constitution rather than sec 231(2)?
2. Whether the Minister violated the Constitution in tabling the US and South Korean IGA's in relation to nuclear cooperation 20 years and almost five years respectively after they had been signed?

[81] Against the factual background set out in para 21 above, I deal firstly with the question of whether the Russian IGA was properly tabled under sec 231(3) of the Constitution. In relation to this IGA the applicants seek an order declaring:

1. the President's decision to authorise the Minister's signature, and the Minister's decision to sign, and;
2. the Minister's decision to table the IGA under sec 231(3), (rather than sec 231(2)),

unconstitutional and invalid, and reviewing and setting aside these decisions.

[82] This relief is sought on the basis that the Russian IGA contains binding commitments in relation to nuclear procurement when no similar commitments were made in the IGA's concluded with other governments in relation to nuclear cooperation and it should therefore have been tabled under sec 231(2) in order to give Parliament an opportunity to consider whether to approve the agreement. The contents of the Russian IGA will be discussed below.

[83] As mentioned earlier in response to the applicants' case, the respondents raise a number of preliminary points, namely non-joinder of the foreign governments, the alleged non-justiciability of the IGA's and the applicants alleged lack of standing to challenge the manner of tabling the IGA's in terms of sec 231 of the Constitution. On the merits, the respondents contend that failing the upholding of any of these preliminary points the Russian IGA is, upon a proper interpretation, not a *'procurement contract'* with immediate financial application and falls within the category of a *'technical, administrative or executive agreement'* as envisaged by sec 231(3) of the Constitution, thus not requiring ratification or accession, and was therefore properly tabled.

[84] Section 231 of the Constitution deals with international agreements and provides, in part, as follows:

> *(1) The negotiating and signing of all international agreements is the responsibility of the national executive.*
>
> *(2) An international agreement binds the Republic only after it has been approved by resolution in both the National Assembly and the National Council of Provinces, unless it is an agreement referred to in subsection (3).*
>
> *(3) An international agreement of a technical, administrative or executive nature, or an agreement which does not require either ratification or accession, entered into by the national executive, binds the Republic without approval by the National Assembly and the National Council of Provinces, but must be tabled in the Assembly and the Council within a reasonable time.*
>
> *(4) Any international agreement becomes law in the Republic when it is enacted into law by national legislation; but a self-executing provision of an agreement that has been approved by Parliament is law in the Republic unless it is inconsistent with the Constitution or an Act of Parliament.*
>
> *(5) ...'*

NON-JOINDER

[85] The respondents maintain that the foreign contracting states – Russia, the United States of America and South Korea – are *'essential parties'* which have a direct and substantial interest in any orders which the Court might make and which thus cannot be made or carried into effect without prejudicing such parties. They contend further that the relief sought in relation to the Russian IGA is in substance an order to invalidate it by nullifying the conduct of the South African government in entering therein. As regards the US and South Korean IGA's, the respondents contend that the order sought by the applicants declaring the manner of their tabling unconstitutional and unlawful and reviewing and setting these tabling decisions aside, is also in substance an attempt to invalidate the two treaties and thus by the same token these two governments are also necessary parties.

[86] Our law recognises a limited right to object to non-joinder, the limits of which were defined as follows by Brand JA:[28]

> *'The right to demand joinder is limited to specified categories of parties such as joint owners, joint contractors and partners, and where the other party(ies) has (have) a direct and substantial interest in the issues involved and the order which the court might make.'*

[87] A full bench of this Court has held that:

> *'It is well established that the test whether there has been non-joinder is whether a party has a direct and substantial interest in the subject-matter of the litigation, that is, a legal interest in the subject-matter which may be prejudicially affected by the judgment or the order.'*[29]

[88] In the present matter, leaving aside the relief relating to the Minister's signature of the agreement, no order is sought against any foreign government, the Court being asked

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[28] *Burger v Rand Water Board and Another* 2007 (1) SA 30 (SCA) para 7.
[29] *Tlouamma and Others v Speaker of the National Assembly and Others* 2016 (1) SA 534 (WCC) para 159.

rather to determine whether the Minister's actions in terms of sec 231 of the Constitution were lawful, as a matter of domestic law. The Minister's obligations to act constitutionally and in accordance with sec 231 are owed to the citizens of this country and not to foreign governments. Seen from this perspective none of the foreign governments that are party to the IGA's have any direct and substantial legal interest, as a matter of South African domestic law, in the constitutionality of the Minister's actions. This view is borne out by recent decisions of our courts which have never required the joinder of foreign governments even where the judicial review of the executive's exercise of its domestic powers related to affairs with a foreign government.

[89] In *President of the Republic of South Africa and Others v Quagliani*,[30] the Constitutional Court was required to determine the validity of the government's actions in entering into an international agreement in relation to extradition with the USA in circumstances where it had been alleged that the agreement had not been validly entered into because the President had delegated his own responsibility in that regard to members of his cabinet. The Court ultimately held that the government had acted lawfully in entering into the international agreement but it was noteworthy that the United States government was not a party to the litigation and there was no suggestion that it should be, merely because the constitutional validity of the South African government's action in entering into the international agreement was to be determined.

[90] Furthermore, our courts have never required a joinder of foreign governments in cases involving challenges to the legality of executive conduct which directly implicated

[30] 2009 (2) A 466 (CC).

foreign governments.[31] In my view, it is a misnomer on the part of the respondents to state that the applicants seek orders to *'invalidate'* any international agreements. The relief sought by the applicants is, at its broadest, a declaration that the decisions by the Minister and the President in signing, approving and tabling the IGA's before Parliament were unconstitutional and invalid, this as a matter of domestic constitutional law. Section 172(1)(a) of the Constitution places an obligation on the courts to declare any law or conduct inconsistent with the Constitution invalid to the extent of its inconsistency. The Court has not been asked to determine whether the IGA's are valid as a matter of international law at the international level. In the circumstances the relevant foreign governments have, as a matter of South African law, no legal interest in the domestic constitutionality of the actions of the South African government. It is not surprising therefore that the respondents were unable to cite any direct authority for the proposition that a foreign government should be joined in a matter such as the present. Instead they rely only on the authorities relating to the validity of domestic contracts enforceable as a matter of South African law.

[91] In the circumstances of this matter I consider that there is no need to join the foreign states and therefore the joinder point has no merit.

DO THE APPLICANTS HAVE STANDING?

[92] The respondents contend that the applicants have no standing to claim any relief in relation to the tabling of the Russian IGA since, if the incorrect tabling procedure has

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[31] See in this regard *Mohamed and Another v President of the Republic of South Africa* and Others (Society for the Abolition of the Death Penalty in South Africa and Another Intervening) 2001 (3) SA 893 (CC); *Kaunda and Others v President of the Republic of South Africa and Others* 2005 (4) SA 235 (CC); *Geuking v President of the Republic of South Africa and Others* 2003 (3) SA 34 (CC); *National Commissioner of Police v Southern African Human Rights Litigation Centre and Another* 2015 (1) SA 315 (CC); *Krok and Another v Commissioner, South African Revenue Service* 2015 (6) SA 317 (SCA); and *Minister of Justice and Constitutional Development and Others v Southern African Litigation Centre and Others* 2016 (3) SA 317 (SCA).

been utilised, this is a matter for Parliament to take up with the Minister. By implication this contention extends also to the relief sought in relation to the US and South Korean IGA's. If this proposition were correct one might expect that the Speaker of the NA and the Chairperson of the NCOP would enter these proceedings and assert that point of view but instead neither opposes the relief sought in this regard.

[93] Whilst it is correct that in terms of sec 92 of the Constitution, members of the cabinet, which includes the President, are accountable collectively and individually to Parliament for the exercise of their powers and the performance of their functions, it does not follow that the applicants lack standing in relation to these issues, either acting in their own interests or in the public interest. The first applicant, Earthlife Africa-Johannesburg, is a non-governmental, non-profit voluntary association having the power to sue and be sued in its own name. The second applicant is a registered public benefit and non-profit organisation and both brought this application in terms of sec 38 of the Constitution in their own right and in the public interest as contemplated by sec 38(d).

[94] Section 38 deals with the enforcement of rights and, insofar as it is material, reads as follows:

> *'38 Enforcement of rights*
>
> *Anyone listed in this section has the right to approach a competent court, alleging that a right in the Bill of Rights has been infringed or threatened, and the court may grant appropriate relief, including a declaration of rights. The persons who may approach a court are –*
>
> *(a) anyone acting in their own interest;*
>
> *(b) ...*
>
> *(c) anyone acting as a member of, or in the interest of, a group or class of persons;*

(d) anyone acting in the public interest; and

(e) an association acting in the interest of its members.'

[95] It has been held that the provisions of sec 38 *'introduces a radical departure from the common law in relation to standing. It expands the list of persons who may approach a court in cases where there is an allegation that a right in the Bill of Rights has been infringed or threatened ...'*[32]

[96] Section 19 of the Bill of Rights guarantees every citizen certain political rights. Many of these rights find fulfilment in the representation of such citizens in Parliament which, in terms of sec 42(2) of the Constitution, consists of the NA and the NCOP. Section 42(3) provides that the NA *'is elected to represent the people to ensure government by the people under the Constitution'*. On these grounds alone, I consider that parties other than Parliament or members of Parliament have a legitimate interest in the question of whether IGA's have been properly tabled in Parliament in terms of the Constitution.

[97] In making their argument the respondents placed reliance on *Metal and Allied Workers Union and Another v State President of the Republic of South Africa and Others*[33] where the court dealt with a challenge to certain emergency regulations made in terms of sec 3 of the Public Safety Act, 3 of 1953 which had been promulgated in the government gazette but not tabled in Parliament within 14 days of promulgation as required by the Act. Didcott J, on behalf of the full bench, held that the purpose of tabling was to inform members of Parliament and therefore conceived for the benefit of, and enforceable by, no one but such members. However, apart from the fact that this

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[32] *Kruger* n 23 paras 20–23.
[33] 1986 (4) SA 358 (D).

judgment obviously predates the new constitutional dispensation, the court took this view *'with some hesitation'*, recognising the force of the argument to the contrary.[34]

[98] In any event the Constitutional Court has now repeatedly confirmed the broad grounds of standing in relation to constitutional challenges, including those relating to executive action.[35] Furthermore, the fact that the executive is accountable to Parliament in relation to the exercise of its power does not detract from the principle that the exercise of all public powers must be constitutional, comply with the principle of legality and that these powers are subject to judicial review at the instance of the public. This was well illustrated by *Economic Freedom Fighters v Speaker, National Assembly and Others*[36] where Parliament and the President's failure to fulfil a constitutional obligation was vindicated at the instance of a political party. As was contended on behalf of the applicants, any action by the President and the Minister in violation of the Constitution are matters of legal interest to the public and to applicants representing that interest and are not merely a concern of Parliament.

[99] Finally, as the Constitutional Court has held, it is the courts that must ultimately determine whether any branch of government has acted outside of its powers. This was made clear by the following dictum of Moseneke DCJ on behalf of the Constitutional Court in *International Trade Administration Commission v SCAW South Africa (Pty) Ltd*[37]:

> *'In our constitutional democracy all public power is subject to constitutional control. Each arm of the state must act within the boundaries set. However, in the end, courts must determine whether unauthorised trespassing by one arm of the state into the*

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[34] *Ibid* at 364C-D.
[35] *Kruger* n 23 paras 20 – 23.
[36] 2016 (3) SA 580 (CC) paras 22-24.
[37] 2012 (4) SA 618 (CC) para 92.

terrain of another has occurred. In that narrow sense, the courts are the ultimate guardians of the Constitution. They do not only have the right to intervene in order to prevent the violation of the Constitution, they also have the duty to do so.'

[100] In short, if the challenge to the constitutionality of the procedure whereby the relevant IGA's have been placed before Parliament has merit, such conduct must be declared unconstitutional irrespective of at whose behest this relief is sought. In the circumstances, I find that the applicants have standing both in their own right and in the public interest to challenge the constitutionality of the tabling of the relevant IGA's.

IS THE RUSSIAN IGA JUSTICIABLE?

[101] The respondents contend that the Russian IGA, being an international agreement, is not or should not be justiciable by a domestic court, which may not even interpret or construe such an agreement nor may it determine the legal consequences arising therefrom. In doing so they rely primarily on the authority of *Swissborough Diamond Mines (Pty) Ltd and Others v Government of the Republic of South Africa and Others*[38] where it was held that a domestic court may not interpret or construe an international agreement nor determine the true agreement allegedly concluded between South Africa and another sovereign state.

[102] The role of the international treaty in *Swissborough* appears to have been quite different to that in the present matter. The plaintiffs had instituted action against the defendants, the first of which was the South Africa government, arising out of an alleged interference with certain mining rights held by the plaintiffs in Lesotho. The alleged interference related to the implementation of a treaty between the South African government and Lesotho's government which provided for the Lesotho Highlands Water

[38] 1999 (2) SA 279 (T) at 329J-330C.

project. It became necessary for the court to decide whether the determination of the true agreement between the South Africa government and the Lesotho government, as an international law agreement between two sovereign states and not incorporated into South African municipal law, was a justiciable issue. The rationale for the court's approach was that it would have to be a very particular case, even if such a case could exist, that would justify a court interfering with a foreign Sovereign. However, the court did find that it could take cognisance of the agreements between the governments of the two countries as well as the contents thereof as facts. The court was unwilling, however, to take decisions in regard to the alleged unlawful conduct of the government of Lesotho, the control of the government of Lesotho, and its relationship with the South African government. It found, as far as the latter was concerned, that there could be little doubt that this was not an area for the judicial branch of government.

[103] The situation in the present matter is quite different inasmuch as the scope of the enquiry into the Russian IGA is limited to a determination of whether it should have been tabled in Parliament in terms of sec 231(2) or 231(3) of the Constitution. There are a number of reasons why, at least for this limited purpose, the Russian IGA cannot be regarded as non-justiciable. Firstly, the conclusion and tabling of an international agreement before Parliament in terms of either sec 231(2) or 233 of the Constitution is an exercise of public power and the Constitutional Court has made clear that all such exercises of public power are justiciable in that they must be lawful and rational. These include exercises of public power relating to foreign affairs.[39] Secondly, should an international agreement be tabled incorrectly under sec 231(3) rather than sec 231(2) the review of any such decision can be seen as upholding rather than undermining the

[39] See *Kaunda and Others v President of the Republic of South Africa and Others* 2005 (4) SA 235 (CC) para 78.

separation of powers. The separate but interrelated roles of the executive and the legislature in relation to international agreements were clarified by Ngcobo CJ in *Glenister v President of the Republic of South Africa and Others*[40] as follows:

> *'[89] The constitutional scheme of s 231 is deeply rooted in the separation of powers, in particular the checks and balances between the executive and the legislature. It contemplates three legal steps that may be taken in relation to an international agreement, with each step producing different legal consequences. First, it assigns to the national executive the authority to negotiate and sign international agreements. But an international agreement signed by the executive does not automatically bind the Republic, unless it is an agreement of a technical, administrative or executive nature. To produce that result, it requires, second, the approval by resolution of Parliament.*
>
> ...
>
> *[95] To summarise, in our constitutional system, the making of international agreements falls within the province of the executive, whereas the ratification and the incorporation of the international agreement into our domestic law fall within the province of Parliament. The approval of an international agreement by the resolution of Parliament does not amount to its incorporation into our domestic law. Under our Constitution, therefore, the actions of the executive in negotiating and signing an international agreement do not result in a binding agreement. Legislative action is required before an international agreement can bind the Republic.'*

[104] Accepting that the constitutionality and lawfulness of the exercise of powers under sec 231(2) or (3) of the Constitution by the President and the Minister is justiciable, then clearly a review of the lawfulness and rationality of the exercise of those powers may well require a court to consider the content of the relevant international agreement. It would not be possible for a court to determine whether or not a particular IGA should have been tabled under sec 231(2) or 231(3) of the Constitution without it having regard

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[40] 2011 (3) SA 347 (CC).

to the nature and contents of that agreement. If this Court were to be precluded from having regard to the contents of the Russian IGA for the limited purposes of determining whether it should have been tabled under sec 231(2) or 231(3) of the Constitution, this would render nugatory its power to subject the executive's conduct to constitutional scrutiny. An argument to the contrary was rejected by the Constitutional Court in *Mohamed v the President of the Republic of South Africa.*[41]

[105] For these reasons I consider that not only is it permissible for this Court to interpret the Russian IGA to determine its proper tabling procedure and whether the Minister acted unconstitutionally or not, but it is the Court's duty to do so. I find therefore that the respondents' contention that the Russian IGA is non-justiciable is without merit.

THE TERMS OF THE RUSSIAN IGA

[106] In broad outline the applicants' case is that the Russian IGA contains binding commitments in relation to nuclear procurement, including providing the Russian Federation with an indemnification, which takes the IGA well outside the category of those of a *'technical administrative or executive nature'* requiring only tabling in the NA and the NCOP within a reasonable time to bind the country. They contend further that the terms of the Russian IGA are much more far-reaching than those in any of the comparable IGA's relating to nuclear cooperation that were either tabled before Parliament at the same time or earlier. The applicants contend that as a result it was irrational for the President to approve the signature of the Russian IGA and for the Minister to sign it. They contend further that, at the very least, the Russian IGA should

[41] *Mohamed* n 32 paras 70 and 71.

have been tabled under sec 231(2) of the Constitution, thereby requiring Parliamentary approval.

[107] For their part the respondents contend that should the Court find that the Russian IGA is indeed justiciable or not, a subject for the exercise of judicial restraint, it is not a procurement contract of any sort but an *'international framework agreement for cooperation between sovereign states'*. They submit that the Russian IGA makes it clear that it is a bilateral international agreement providing for cooperation between two sovereign states and is not, nor was it ever intended to be, a binding agreement in relation to the procurement of new nuclear reactor plants from a particular country; the only purpose for such cooperation being the creation of conditions in which the establishment of a self-sufficient nuclear programme can be pursued.

[108] Turning to the contents of the Russian IGA certain key provisions stand out:

1. Both the overall description of the agreement and the preamble refer to the establishment of a *'strategic partnership'* in the field of nuclear power and industry between the two countries;

2. The preamble records by way of background, furthermore *'the intentions of the Government of the Republic of South Africa for the implementation of a large-scale national plan for the power sector development, involving the construction by 2030 of new nuclear power plant (hereinafter referred to as "NPP") units in the Republic of South Africa'*;

3. The preamble concludes with a reference to the *'legal fixation'* of the strategic partnership in the field of nuclear power before setting out the terms of the agreement.

4. Article 1 provides that the agreement '*creates the foundation for the strategic partnership in the fields of nuclear power and industry... aimed at the successful implementation of the national plan for the power sector*

development of the Republic of South Africa...'. It is noteworthy that none of the other IGA's make reference to the agreements creating a *'strategic partnership'*.

5. Article 3, using peremptory language, provides that:

'The Parties shall create the conditions for the development of strategic cooperation and partnership in the following areas:

i. *development of a comprehensive nuclear new build program for peaceful uses in the Republic of South Africa, including enhancement of key elements of nuclear energy infrastructure ...;*

ii. *design, construction, operation and decommissioning of NPP units based on the VVER reactor technology in the Republic of South Africa, with total installed capacity of about 9.6 GW;*

iii. *design, construction, operation and decommissioning of the multi-purpose research reactor in the Republic of South Africa. ...'*

It is common cause that the VVER reactor technology is unique to Russia.

6. Article 4 of the agreement is noteworthy for its specificity and detail, providing:

'1. The Parties collaborate in areas as outlined in Article 3 of this Agreement which are needed for the implementation of priority joint projects of construction of two new NPP units with VVER reactors with the total capacity of up to 2.4 GW at the site selected by the South African Party (either Koeberg NPP, Thyspunt or Bantamsklip) in the Republic of South Africa and other NPP units of total capacity up to 7,2GW at other identified sites in the Republic of South Africa and construction of a multi-purpose research reactor at the research centre located at Pelindaba, Republic of South Africa. The mechanism of implementation of these priority projects <u>will</u> be governed by separate intergovernmental agreements, in which the Parties <u>shall</u> agree on the sites, parameters and installed capacity of NPP units planned to be constructed in the Republic of South Africa.' [my underlining]

7. Article 6.1 provides for the establishment of a Joint Coordination Committee *'to provide guidance, to coordinate and to control the implementation of this Agreement'*.

8. Article 6.4 provides as follows:

'In three years of entry into force of this Agreement the co-chairs of the Joint Coordination Committee shall make comprehensive review of the progress in the implementation of this Agreement and provide appropriate recommendations to the Competent Authorities of the Parties regarding further implementation of this Agreement'.

9. Article 7 provides that:

'Cooperation in areas as outlined in Article 3 of this Agreement, will be governed by separate agreements between the Parties, the Competent Authorities' and goes on to state *'(t)he Competent Authorities of the Parties can, by mutual consent, involve third countries' organizations for the implementation of particular cooperation areas in the framework of this Agreement.'*

It was contended on behalf of the applicants that the latter part of this clause would appear to preclude, absent Russia's consent, a situation where at least some of the proposed nuclear power plants are constructed or operated by other countries in addition to Russia.

10. Article 9 provides as follows:

'For the purpose of implementation of this Agreement the South African Party will facilitate the provision of a special favourable regime in determining tax and non-tax payments, fees and compensations, which will be applied to the projects implemented in the Republic of South Africa within the areas of cooperation as outlined in Article 3 of this Agreement, subject to its domestic legislation'.

This commitment by the South African government to afford Russia a favourable tax regime in relation to the construction of new nuclear power plants is not to be found in any other IGA under consideration.

11. On behalf of the applicants it was contended that in terms of Article 15 the government of the Republic of South Africa agreed to incur liability arising out of any nuclear incident occurring in relation to any nuclear power plant to be constructed in terms of the agreement, or agreements arising therefrom, and also provides an indemnification to Russia and its entities from any ensuing liability. Insofar as it is relevant, Article 15 reads:

> *'1. The authorized organization of the South African Party at any time at all stages of the construction and operation of the NPP units and Multi-purpose Research Reactor shall be the Operator of NPP units and Multi-purpose Research Reactor in the Republic of South Africa and be fully responsible for any damage both within and outside the territory of the Republic of South Africa caused to any person and property as a result of a nuclear incident ... and also in relation with a nuclear incident during the transportation, handling or storage ... of nuclear fuel and any contaminated materials ... both within and outside the territory of the Republic of South Africa. The South African Party shall ensure that, under no circumstances shall the Russian Party or its authorized organization nor Russian organizations authorized and engaged by their suppliers be liable for such damages as to the South African Party and its Competent authorities, and in front of its authorized organizations and third parties.'*

It is unnecessary to analyse in detail the structure of liability indemnification which this Article provides. Its suffices to state that it clearly has potentially far-reaching financial implications for the South African government or state agencies, quite apart from any persons or instances which may be involved in a nuclear incident.

12. Article 16 provides for all disputes arising from the interpretation or implementation of the agreement to be settled *'amicably'* by *'consultations or negotiations through diplomatic channels'*. Significantly, it provides that *'(i)n*

case of any discrepancy between this Agreement and agreements (contracts), concluded under this Agreement, the provisions of this Agreement shall prevail'. This provision appears to make it clear that the Agreement is to take precedence over any subsequent agreement, underscoring the importance of its provisions.

13. Article 17 provides in part as follows:

'This Agreement shall enter into force on the date of the receipt through diplomatic channels of the final written notification of the completion by the Parties of internal government procedures necessary for its entry into force'.

14. It provides further that the agreement shall remain in force for a period of 20 years and thereafter be renewed automatically for a period of 10 years unless terminated by either party giving one year written notice thereof. Article 17.4 provides, significantly, *'(t)he termination of this Agreement shall not affect the rights and obligations of the Parties which have arisen as a result of the implementation of this Agreement before its termination, unless the Parties agree otherwise'* and further provides that its termination *'shall not affect the performance of any of the obligations under agreements (contracts) which arise during the validity period of this Agreement and are uncompleted at the moment of such termination, unless the Parties agree otherwise'*.

[109] Apart from the tone and content of these provisions, which speak for themselves, as a whole they illustrate that three hallmarks of the Agreement are its degree of specificity, the frequent use of peremptory language and the scope and importance of key elements which form the bedrock of the Agreement. All these factors combine to

suggest a firm legal commitment by the contracting parties to the *'strategic partnership'* which the Agreement establishes between the two countries, as well as in relation to the future, steps and developments which the far-reaching Agreement clearly foreshadows. Although it is clear that the Agreement could or will be followed by further agreements, the importance and permanence of many of its provisions are, in my view, unmistakeable.

[110] It may well be difficult to delineate the precise line between an agreement relating to the procurement of new nuclear reactor plant as distinct from one dealing with cooperation towards this end. In my view, however, seen as a whole, the Russian IGA stands well outside the category of a broad nuclear cooperation agreement and, at the very least, sets the parties well on their way to a binding, exclusive agreement in relation to the procurement of new reactor plants from that particular country.

[111] It would appear that the competent authorities under the agreement, the Department of Energy and Rosatom, laboured under a similar apprehension when, the day after the Agreement was concluded, they issued a joint press statement announcing that the *'Agreement lays the foundation for the large-scale nuclear power plants (NPP) procurement and development programme of South Africa based on the construction in RSA of new nuclear power plants with Russian VVER reactors with total installed capacity of up to 9,6 GW (up to 8 NPP units)'* which would be *'the first NPPs based on the Russian technology to be built on the African continent.'*[42] Be that as it may, whatever its true nature the Russian IGA is, in my view, clearly more than a mere *'framework'* or non-binding agreement as contended by the respondents.

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[42] Media Release n 1 p 131.

[112] The conclusion which I have reached in this regard is reinforced by a comparison of the 2014 Russian IGA with the 2004 Russian IGA and each of the other IGA's tabled in June 2015. The 2004 Russian IGA contains no liability or indemnification clause in relation to the construction and operation of nuclear power plants indemnifying the Russian government or its agencies from any damages and placing responsibility on the South African government both within and outside the country. Nor is there firm commitment, let alone any reference, to the construction of new nuclear plants based on Russian reactor technology. Likewise there is no prohibition, save with the consent of Russia, on involving third countries' organisations in the construction, operating or decommissioning of nuclear power plants. The 2004 IGA contains no undertaking by the South African government to facilitate a special tax regime applying to the construction and operation of new nuclear power plants in South Africa. Nor is there any provision envisaging the conclusion of further *'agreements (contracts)'* under the 2004 IGA or that its provisions would prevail over the terms of later contracts. The presence of the above-mentioned terms in the 2014 Russian IGA begs the question why it was concluded when a general nuclear cooperation agreement, concluded in 2004, already existed.

THE CORRECT PROCEDURE TO RENDER THE RUSSIAN IGA BINDING

[113] The structure of and rationale behind sec 231 of the Constitution has been addressed by academic writers. Professor Dugard has commented that *'the practice of the government law advisors is to treat agreements 'of a routine nature, flowing from daily activities of Government departments' as not requiring parliamentary approval. Where, however, there is any doubt the agreement is referred to Parliament'*.[43] Professor Botha,

[43] J Dugard *International Law – A South African Perspective* 4th ed (2011) p 417.

[44] noting that the Constitution is silent on the question of who makes the classification as to whether an IGA is to be tabled under sec 231(2) or (3), comments as follows:

> *'Current practice is that the determination of whether a treaty falls under section 231(3) and therefore does not require parliamentary approval, vests in the line-function minister within whose portfolio the subject matter of the treaty falls. This decision must be taken in conjunction with the law advisors of the Departments of Justice and Foreign Affairs..*[45]

However, Professor Botha expresses his reservations about the wisdom of this practice insofar as the party negotiating the treaty also decides upon its classification for tabling purposes.

[114] I agree with the argument made on behalf the applicants that sec 231 and, in particular, the interplay between sec 231(2) and 231(3), must be interpreted in order to give best effect to fundamental constitutional values and so as to be consistent with the constitutional scheme and structure.[46] The tabling of an IGA under sec 231(3) permits the executive to bind South Africa to an agreement without parliamentary approval or the public participation that often accompanies any such parliamentary approval process.

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[44] N Botha 'Treaty making in South Africa: A reassessment' (2000) 25 South African Yearbook of International Law 69 p 77-78.

[45] Professor Botha goes on to state at p 77 that: *'Ideally, this decision should lie outside of the party negotiating the treaty. Without in any way impugning the integrity of these decision-makers, one must question the wisdom of a process in terms of which the party who negotiated a treaty at the same time decides on its nature and therefore on the way in which it will be dealt with by parliament. There is, after all, a considerable difference between an agreement being subjected to parliamentary approval (with the possibility of rejection which this process holds) and the mere tabling of a provision in both houses which, although allowing an opportunity for debate and criticism, is in the final instance no more than a process of notification of a* fait accompli. *The provisions of sec 231(2) imply a democratisation of the treaty process unprecedented in South African law before 1993. In terms of this section, the individual citizen has, through parliamentary representation, at least as much say in what treaties will bind the Republic as he or she has in what laws will govern his or her life. It would appear that by failing to specify the instance which must decide on the nature of a treaty, section 231(3) holds the potential for the manipulation of the system and the undermining of this democratisation in a very real sense.'*

[46] See *Matatiele Municipality and Others v President of the RSAand Others (No 2)* 2007 (6) SA 477 (CC) para 36-37 where Ngcobo J stated, *'Our Constitution embodies the basic and fundamental objectives of our constitutional democracy. [...] Individual provisions of the Constitution cannot therefore be considered and construed in isolation. They must be construed in a manner that is compatible with those basic and fundamental principles of our democracy. Constitutional provisions must be construed purposively and in the light of the Constitution as a whole. [...] Any construction of a provision in a constitution must be consistent with the structure or scheme of the Constitution.'*

Limiting those international agreements which may be tabled under sec 231(3) to a limited subset of run of the mill agreements (or as Professor Dugard puts it, agreements *'of a routine nature, flowing from daily activities of government departments'*) which would not generally engage or warrant the focussed attention or interest of Parliament would give optimal effect to the fundamental constitutional principles of the separation of powers, open and accountable government, and participatory democracy. For the reasons given earlier the Russian IGA is, in my view, certainly not an agreement of a routine nature.

[115] The treatment of the Russian IGA by the State Law Advisor (International Law) (and presumably the drafter or co-drafter of the IGA) also casts light on the issue of the correct procedure to be followed in laying it before Parliament. In an explanatory memorandum which served before the Minister and the President, the senior State Law Advisor concluded: *'The Agreement falls within the scope of section 231(2) of the Constitution and Parliamentary approval is required'*. The Minister's decision not to act in accordance with this view but rather to table the Russian IGA under sec 231(3) of the Constitution is explained on behalf of the respondents on the basis that the State Law Advisor's view *'was and is wrong'*. There is no indication in the record however that the Minister sought or obtained any alternative legal advice and her decision to proceed in terms of sec 231(3) is not explained in any documents forming part of the record.

[116] Having regard to all these factors I consider that the Russian IGA cannot be classified as falling within that category of international agreements which become binding by merely tabling them before Parliament. I am unable to accept that the Russian IGA can notionally be considered a routine agreement. The Agreement's detail and ramifications are such that it clearly required to be scrutinised and debated by the

legislature in terms of sec 231(2) of the Constitution. It follows that the Minister's decision to table the agreement in terms of sec 231(3) was, at the very least, irrational. At best the Minister appears to have either failed to apply her mind to the requirements of sec 231(2) in relation to the contents of the Russian IGA or at worst to have deliberately bypassed its provisions for an ulterior and unlawful purpose.

THE ALLEGED UNLAWFUL AUTHORISATION BY THE PRESIDENT AND SIGNATURE, BY THE MINISTER, OF THE RUSSIAN IGA

[117] The relief sought by the applicants in relation to the Russian IGA is not confined to its review and setting aside on the basis that the Minister employed the incorrect procedure in placing it before Parliament. They seek also a declaration that the Minister's decision to sign the agreement and the President's decision to authorise the Minister's signature were unconstitutional and unlawful, as well as the reviewing and setting aside of these decisions.

[118] The applicants' case in this regard is based on the argument that the Agreement violates sec 217 of the Constitution which requires that when the national sphere of government *'contracts for goods or services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost effective'*. The applicants contend that, viewed as a whole the Russian IGA contains sufficient particularity and commitment as to fall within the ambit of a contract *'for goods and services'* under sec 217 although, at the time the Minister signed and the President authorised her signature, there was no procurement system in place that complied with sec 217 in relation to the procurement of nuclear new generation capacity. It will be recalled that the 2013 sec 34 determination (and the 2016 determination) merely repeated the key wording of sec 217(1) of the Constitution without specifying the tendering procedures. In the alternative,

the applicants contend that even if the Russian IGA did not fall within the meaning of a contract under sec 217, at the very least it expressly formed part of the first steps of a procurement process.

[119] In my view it is neither necessary nor desirable to address this ground of review in these proceedings. Doing so at this stage could well offend against the doctrine of the separation of powers and could be an instance of the court interpreting an international agreement when it would be appropriate for it to exercise judicial restraint. In this regard it will be recalled that the findings in relation to the nature of the Russian IGA were made solely for the purposes of determining whether the Agreement was one which should have been put before the legislature in terms of sec 231(2) or 231(3) of the Constitution.

[120] The underlying reason why the applicants' argument in this respect should not be entertained at this stage arises from the nature of the further relief they seek in relation to the Russian IGA, namely, that the decision to table it under sec 231(3) be reviewed and set aside. If such relief is granted the effect thereof will be that the Agreement will have no binding effect in domestic law. Should the executive then choose to table the Agreement before Parliament in terms of sec 231(2), a parliamentary/political process will follow in which the Agreement will be debated in both the NA and the NCOP with a view to its approval or disapproval by Parliament. It may very well also be the subject of a process of public participation conducted through Parliament. The outcome of this process cannot be foreseen nor should it be anticipated. In these circumstances it would be invidious if the Court were, at this stage, to declare that certain of its provisions are inconsistent with the Constitution and, more specifically, sec 217 thereof. This is not to suggest, however, that the Court will lack jurisdiction to deal with such a question in future if the need should arise.

[121] For these reasons I consider that the principle of separation of powers calls for the Court to exercise judicial restraint at this stage and to decline to consider the further relief sought by the applicants in relation to the Russian IGA.

WERE THE US AND SOUTH KOREAN AGREEMENTS PROPERLY TABLED IN TERMS OF SEC 231(3)?

[122] The final issue to be addressed is whether the IGA's concluded with the United States of America and South Korea relating to nuclear cooperation were properly tabled in Parliament in terms of sec 231(3) of the Constitution.

[123] The parties appeared to be in agreement that in the ordinary course the two IGA's would properly fall to be tabled in Parliament in terms of sec 231(3) in that they were treaties or agreements of a *'technical, administrative or executive nature'* or not requiring either ratification or accession. Where they differed was on the consequences of the delay in tabling the agreements. It will be recalled that on or about 10 June 2015 the Minister decided to table five separate IGA's relating to nuclear matters before Parliament in accordance with sec 231(3) of the Constitution. Three of these IGA's, the Chinese, the French and the Russian, were signed or concluded in late 2014 but the remaining two, the US and the South Korean IGA's were signed on 25 August 1995 and 8 October 2010, respectively. They were, therefore, as at the date of tabling, concluded more than two decades previously and just more than four years and eight months, respectively.

[124] The applicants' challenge to the constitutionality of the tabling of the US and South Korean IGA's is based upon what they consider to be the unlawful and unconstitutional delay in tabling those agreements before Parliament. They contend that the only reasonable inference to be drawn from these delays is that the two IGA's in

question were tabled as *'mere window dressing'* and to minimise the damage caused by the revelations regarding the Russian IGA and the joint press statement portraying it as a *fait accompli* that Russia would construct nuclear power plants in South Africa. The applicants contend that this ulterior purpose rendered the Minister's decision unlawful and unconstitutional since it was not rationally connected to the purpose for which the power was conferred and was therefore in breach of the principle of legality. In the view that I take of this matter, however, it is not necessary to determine whether the Minister acted with an ulterior motive in tabling the US and South Korean IGA's under sec 231(3) of the Constitution.

[125] The second leg of the applicants' challenge is simply that the length of the delay could not constitute a *'reasonable'* period and therefore the tablings violate sec 231(3). For their part the respondents seek to justify the delays on the basis that the reasonableness thereof must be determined with regard to the relevant surrounding circumstances and, secondly, contend that the purpose of tabling under sec 231(3) is simply to notify or inform Parliament of a treaty that binds the Republic and that, at worst, it is only the delay itself that is unconstitutional.

[126] I cannot agree with this latter interpretation which seeks to remove the obvious linkage in sec 231(3) between the tabling of the agreement in Parliament, and thus it being rendered binding, and the requirement that this be done within a reasonable time. As was stated by Ngcobo CJ in *Glenister*, *'The constitutional scheme of s 231 is deeply rooted in the separation of powers, in particular the checks and balances between the executive and the legislature'*[47]. Section 231(3) establishes a procedure whereby the State is bound by a particular class of international agreements without the formal approval of

[47] *Glenister* n 41 para 89.

Parliament. The requirement that the tabling takes place *'within a reasonable time'* and the use of the word *'must'* clearly indicates that this is a prerequisite for the lawful invocation of sec 231(3) or, put differently, a jurisdictional requirement of the procedure. The interpretation contended for on behalf of the respondents would result in a situation where the executive can, as one arm of government, bind the State on the international plane whilst at the same time keeping another arm of government, the legislature, in the dark about such international agreements. Such an interpretation pays scant respect to the principles of openness and accountability which are enshrined in the Constitution. Section 41(1) requires all spheres of government and all organs of state within each sphere to *'provide effective, transparent, accountable and coherent government for the Republic as a whole'* whilst sec 1 of the Constitution sets out these attributes as founding values in a multi-party system of democratic government.

[127] Seen in this light it is clear that where the national executive utilizes sec 231(3) to render the Republic bound under an international agreement, its exercise of the power is subject to the requirement that it makes such agreement public and tables it before Parliament within a reasonable time. In this sense it is a composite requirement, the power not being properly exercised unless the agreement is tabled before Parliament within a reasonable time.

[128] On behalf of the respondents the delays were explained on the basis that although the two IGA's were signed much earlier there was no need to rely on them as binding agreements until 2015 since prior thereto there was *'no practical or immediate need for nuclear cooperation'*. This explanation fails to explain why, in the first place, if there was no need for nuclear cooperation at those times, the IGA's were concluded in 1995 and 2010. Nor does it offer an adequate explanation as to why, having gone to the trouble of

signing the two IGA's, they were then not simply tabled in Parliament and thereby rendered binding, against the eventuality that the *'practical need'* for cooperation might arise in due course. However, even if one accepts at face value the respondents' explanation for the delays, they are in my view of such magnitude that they could never qualify as reasonable, not least because accepting such delays would render the time requirement in sec 231(3) meaningless.

[129] The respondents also contend that any alleged unreasonable delay in the tabling of the US and South Korean IGA's in Parliament is a matter for that body to deal with. However, as was pointed out on behalf of the applicants, the Speaker of the NA and the Chairperson of the NCOP are also respondents in this matter and have neither opposed the relief sought nor made any submissions regarding Parliament's disagreement with the interpretation of sec 231(3) contended for by the applicants. In any event, as stated earlier, it is the duty of the courts to determine whether the executive has failed to comply with the Constitution and declare such failure invalid and/or unconstitutional to that extent. For these reasons I conclude that the tabling of the US and South Korean agreements violated the provisions of the Constitution and fall to be set aside.

THE APPROPRIATE RELIEF

[130] Largely as a result of the introduction by the respondents of the two sec 34 determinations well after the commencement of the litigation, the applicants amended the relief initially sought. For the sake of convenience the applicants put up a draft order in which they set out the range of relief sought.

[131] In considering the appropriate relief to be granted the Court is guided firstly by sec 172 of the Constitution which provides that:

'(1) When deciding a constitutional matter within its power, a court -

(a) must declare that any law or conduct that is inconsistent with the Constitution is invalid to the extent of its inconsistency; and

(b) may make any order that is just and equitable, including –

....

(ii) an order suspending the declaration of invalidity for any period and on any conditions, to allow the competent authority to correct the defect.'

[132] The respondents have not suggested that any declarations of invalidity sought in this matter should be suspended or offered a justification as to why any such suspension would be just and equitable. The Constitutional Court has emphasised, moreover, that *'the Constitution, and the binding authority of this court all point to a default position that requires the consequences of invalidity to be corrected or reversed where they can no longer be prevented. It is an approach that accords with the rule of law and the principle of legality.*[48]

[133] In the applicants' draft order there are four sections dealing respectively with the Russian IGA, the tabling of the US and South Korean IGA's, the processes to be followed by the Minister in regard to a procedurally fair public participation process prior to the commencement of any procurement process for nuclear new generation capacity and, finally, the sec 34 determinations. I shall deal with them in that order.

THE RUSSIAN IGA

[134] The applicants seek an order declaring unlawful and unconstitutional, and reviewing and setting aside, the Minister's decision to sign the Russian IGA, the President's decision to authorise the Minister's signature thereof, and the Minister's

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[48] *Allpay Consolidated Investment Holdings (Pty) Ltd and Others v Chief Executive Officer, South African Social Security Agency and Others* 2014 (4) SA 179 (CC) para 30.

decision to table the Russian IGA before Parliament in terms of sec 231(3) of the Constitution.

[135] As concluded earlier, the Minister's decision to table the Russian IGA before Parliament in terms of sec 231(3) of the Constitution must be declared unlawful and unconstitutional and reviewed and set aside. However, for the reasons given relating to the separation of powers and the Court's reluctance to consider at this stage whether the Russian IGA in its present form is unconstitutional for lack of compliance with sec 217, the balance of the relief is refused.

THE TABLING OF THE US AND SOUTH KOREAN IGA'S

[136] The applicants seek a declaration that the tabling of the US and South Korean IGA's in terms of sec 231(3) was unlawful and unconstitutional and reviewing and setting aside the Minister's decision to so table them. In this regard the respondents submitted that, on its interpretation of sec 231(3), namely that tabling within a reasonable time is not a jurisdictional requirement, the Court should, at worst for the respondents, merely declare that the Minister's delay in the tabling of the IGA's was unconstitutional. No such order is competent, however, given the finding which this Court has made, namely that tabling within the reasonable period is a jurisdictional requirement for compliance with sec 231(3).

[137] The question of what steps the respondents should or might take in consequence of our holding the Minister's tabling decision invalid is not a matter which we have been asked to consider, leaving the Minister free to take whatever steps, including steps on the international plane, may be considered necessary in the light of the Court's order. A consequence of such a finding is that the US and South Korean IGA's in their present

form cannot be tabled under sec 231(3). It is apposite to point out, however, that it may well be open to the executive to utilise the more onerous procedure set out in sec 231(2) of the Constitution with a view to rendering the US and South Korean IGA's binding. In my view that procedure is non-exclusive in the sense that the executive is not precluded from utilising its provisions in relation to treaties which fall within the ambit of sec 231(3). If I am correct in this view it serves to emphasise that the executive will not be stultified by the Court's order.

[138] In the result the applicants are entitled to the declarator which they seek and the review and setting aside of the Ministers' decisions to table the US and South Korean IGA's under sec 231(3) of the Constitution.

THE 2013 AND 2016 SEC 34 DETERMINATIONS

[139] The applicants seek a declaration that the 2013 and 2016 sec 34 determinations are unlawful and unconstitutional and reviewing and setting them aside. For the reasons given the basis for such relief has been established and in my view it would be just and equitable to grant such relief.

[140] The applicants seek an order setting aside any *'Requests for Proposals'* or *'Requests for Information'* issued pursuant to the aforesaid determinations. There is limited information in the papers on the extent to which such Requests have been issued and the consequences thereof. However the 2013 sec 34 determination makes it clear that part of the procuring agency's role is to prepare, and presumably issue, Requests for Proposals. Since both sec 34 determinations fall to be set aside as unlawful and unconstitutional, it follows that identifiable steps taken pursuant to those determinations

must suffer the same fate and thus relief sought in this regard is appropriate and must be granted.

FUTURE PUBLIC PARTICIPATION PROCESSES

[141] The applicants seek a declarator that, prior to the commencement of any procurement process for nuclear new generation capacity, which stage they define, the Minister and NERSA:

> *'are required in consultation, and in accordance with procedurally fair public participation processes, to have determined that:*
>
> *(a) new generation capacity is required and that the electricity must be generated from nuclear power and the percentage thereof;*
>
> *(b) the procurement of such nuclear new generation capacity must take place in terms of a procurement system which must be specified and which must be fair, equitable, transparent, competitive and cost effective.'*

[142] This Court has not dealt specifically with the question of whether the Minister must follow a procedurally fair public participation process before exercising his/her powers under sec 34(1) of ERA and accordingly it would be inappropriate to make any order in this regard. It has, however, considered the question of whether NERSA, before concurring in any such decision, must follow a public participation process. The finding that it is under such a duty is central to this judgment and does not require restatement in a declarator and to that extent the declaratory relief sought in this regard is unnecessary and superfluous.

[143] Similarly, the Court has not found it necessary to address to the question of whether any sec 34 determination must specify the terms of the procurement system which must apply to nuclear new generation capacity. Given that the 2013 and 2016 sec

34 determinations fall to be set aside and that the Minister must, so to speak, start with a clean slate it would in our view be inappropriate for the court to prescribe to the Minister the form of any procurement process to be adopted. In any event it is self-evident that any large scale procurement process initiated by the state or its agencies must comply with sec 217 of the Constitution and other relevant legislative enactments and that it be specified before any procurement process commences. In my view it would be unnecessary to restate these obvious requirements and indeed, both sec 34 determinations provided that the electricity produced from such new generation capacity should be procured through a tendering procedure with the aforementioned attributes although the procedure was not specified. For these reasons the declaratory relief sought in this section is refused.

COSTS

[144] The applicants have achieved substantial success in the application and therefore it is appropriate that they are awarded their costs. The applicants sought the costs of three counsel. Given the complexity, novelty and importance of the matter there can be no quarrel with an order on such terms. Although the applicants sought a costs order against both the President and the Minister, jointly and severally, and the application was opposed by the President, no specific relief was granted against him or in relation to any conduct on his part. In the circumstances any costs order should be against the Minister alone.

[145] The applicants sought also a special order of costs in relation to that aspect of the relief in which it sought a declarator on the assumption of there being no relevant sec 34 determination in place. The Minister only revealed in the Rule 53 record that such a determination was in place, despite having been pertinently asked about the existence of

any such determination prior to the commencement of the litigation. For these reasons the applicants contend that the Minister should be held responsible for the wasted costs associated with them having to amend their relief and the delays created by having to supplement their challenge. The circumstances in which the 2013 sec 34 determination was only revealed at a comparatively advanced stage in this litigation, and apparently in order to gain some advantage, have been set out earlier. In my view it is appropriate that the Minister should have to pay the extra costs on the scale of attorney and client as a mark of this Court's displeasure at the manner in which this issue was handled on her behalf.

[146] In the result the following order is made:

1. It is declared that:

1.1 The first respondent's (the Minister's) decision on or about 10 June 2015 to table the Russian IGA before Parliament in terms of sec 231(3) of the Constitution is unconstitutional and unlawful and it is reviewed and set aside;

1.2. The first respondent's decisions on or about 10 June 2015 to table the following agreements before Parliament in terms of sec 231(3) of the Constitution:

1.2.1 The Agreement for Cooperation between the Government of the Republic of South Africa and the United States of America concerning Peaceful Uses of Nuclear Energy; and

1.2.2 the Agreement between the Government of the Republic of Korea and the Government of the Republic of South Africa regarding Cooperation in the Peaceful Uses of Nuclear Energy;

are unlawful and unconstitutional, and are reviewed and set aside.

1.3. the determination under sec 34(1) of the Electricity Regulation Act, gazetted on 21 December 2015 (GN 1268, GG 39541) in relation to the requirement and procurement of nuclear new generation capacity, made by the first respondent on 11 November 2013, with the concurrence of NERSA given on 17 December 2013, is unlawful and unconstitutional, and it is reviewed and set aside;

1.4. the determination under sec 34(1) of Electricity Regulation Act gazetted on 14 December 2016 (GNR 1557, GG 40494) in relation to the requirement and procurement of nuclear new generation capacity, signed by the first respondent on 5 December 2016, with the concurrence of NERSA given on 8 December 2016, is unlawful and unconstitutional, and it is reviewed and set aside;

2. Any Request for Proposals or Request for Information issued pursuant to the determinations referred to in paras 1.3 and 1.4 above are set aside;

3. The first respondent is to pay the costs of this application;

4. The first respondent is to pay those costs incurred by the applicants as a result of the late disclosure of the 2013 sec 34 determination, on an attorney and client scale.

BOZALEK J

BAARTMAN J

APPEARANCES

For the Applicants	:	*Adv D Unterhalter (SC)* *Adv M Du Plessis* *Adv A Coutsoudis* *Adv S Magardie*
As Instructed by	:	*Adrian Pole Attorneys* *Ref: A Pole*
For the 1st & 2nd Respondents	:	*Adv MM Oosthuizen (SC)* *Adv K Warner* *Adv RM Molea*
As Instructed	:	*State Attorney: Pretoria* *Ref: E Snyman*

ANNEXURE 42

SACP statement on discussions with ANC

2017-03-30 11:04

news24

The Augmented Central Committee last year mandated the SACP to convene a National Imbizo as part of our ongoing process to interact with motive forces for the National Democratic Revolution to deeply appreciate the challenges confronting our revolution.

We wish to announce that we will be convening the National Imbizo 22nd to 24th April, in Gauteng. We extend an invite to all progressive organisations, both political and non-political, with a vested interested in the successful execution of the second most radical phase of our National Democratic Revolution.

Affiance partners, civil society organisations like the SACC and other MDM forces have already issued with an invite to participate in the National Imbizo, including veterans of the movement, the MK MVA. We invite organisations with an interest to serve in the steering committee to make contact with our offices for necessary discussion and consideration.

Political Discussion between the SACP

The SACP and the ANC have been engaged in political discussion in a bilateral sessions aimed at addressing the challenges facing out revolution broadly and our movements specifically.

Since last year we have held three official bilateral discussions in various forms

This last Monday our discussions continued.

At the core of our discussions are the strategic questions facing our revolution, the revitalisation of the National Democratic Revolution, rebuilding our connection with the key motives forces of the revolution and dealing with subjective organisational challenges impeding our leadership role in society It is this context that the SACP is calling the broader National Imbizo.

Whilst we are committed to creating an enabling climate for our discussions, certain unfortunate events have taken place placing the SACP in an untenable situation wherein it is called on publicly to set the record straight regarding confidential discussions

There has been selective and factional leaking of our discussions breaching the confidentiality that usually accompanies such.

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WATCH: SACP confirms Zuma wants to fire Gordhan

2017-03-30 10:26

The SACP is addressing the media on a possible cabinet reshuffle with particular focus on Finance Minister Pravin Gordhan WATCH

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Zuma faces a Cabinet reshuffle conundrum

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The SACP wishes to state that as the news the President informed us of his intention to effect the Cabinet reshuffle, replacing both the Minister and Deputy Minister of Finance

We recorded our objection to the intended reshuffle.

However after the meeting an unfortunate selective leak to various media houses has distorted the facts, sought to create a public impression the SACP is firstly responsible for the leaks but secondly has agreed to the intention.

The constitution of the country accords the President of the country a responsibility to appoint Cabinet.

The President of the country however is a deployee of the ANC and has to implement ANC mandate.

The ANC is in alliance with the SACP, COSATU and SANCO and therefore has an obligation to consult its alliance partners in exercising political power collectively struggled for.

The SACP rejects this emerging paradigm on presidential prerogative devoid of collective oversight.

The collective oversight demand of us to be frank with each other since we required to discharge out responsibilities not merely as friends and acquaintances, but as revolutionaries with a purpose to serve and change the live of our people for the better.

Abuse of state security organs

The SACP is gravely concerned by the growing abuse of state security organs and their meddling in daily political life of the country.

We are aware of a rogue intelligence unit that in our view gathers data illegally, produces false reports and leads them into the political and public domain to smear comrades.

We have laid a complaint with the Inspector General and the Minister of Intelligence who thus far have treated our complaint flippantly.

In this regard we have noted a rising apartheid era style intimidation and harassment of activists, SACP members and other ANC members.

A series of suspicious events have been taking place with the latest being a reported harassment of Cde Makhosi Khoza. It appears those with other motives than that detailed in our revolutionary won't stop at anything.

We have a responsibility not to allow ourselves to be run by gangsters nor degenerate into a gangster state wherein our public office bearers and officials cannot discharge their responsibilities without fear or favour.

Issued by the SACP

2707

(https://citizen.co.za)

south africa (https://citizen.co.za/category/news/south-africa/) 31.3.2017 09:20 pm

FULL STATEMENT: SACP calls for Zuma's resignation

Citizen reporter

SACP 2nd General Secretary, Solly Mapaila (L) and SACP 1st Deputy General Secretary, Jeremy Cronin briefs media at University of Johannesburg, Soweto, 10 July 2015. Picture: Nigel Sibanda

The party said Zuma's reckless decision to reshuffle his Cabinet has plunged the country into crisis.

The Political Bureau of the SACP met in Gauteng today in the context of the deep crisis into which the reckless actions of President Zuma have once more plunged our ANC-led movement, our hard-won democratic institutions, and our country in general.

The recall from an overseas trip of comrades Pravin Gordhan and Mcebisi Jonas while on a promotional tour in South Africa's interests, and now the firing of these comrades and other well-performing ministers is more than regrettable.

It is frankly outrageous, particularly while the worst performers in cabinet continue to enjoy presidential protection and even, in some cases, promotion.

This recklessness has provoked widespread concern and anger within the ANC itself, and across all sectors of our society. We have reached a decisive moment in which, in the considered view of the SACP leadership, Zuma must now resign.

The coincidence of the dramatic cabinet events with the desperate application this week in the Pretoria High Court by the Gupta-linked Vardospan company should not be missed.

Vardospan brought an urgent application to force the Reserve Bank, the Registrar of Banks, and the Minister of Finance to allow it to take over ownership of the obscure Habib Bank.

The current owners had given them a deadline of today, 31 March, to settle the matter. Vardospan's desperation is clearly linked to the closure of Gupta-related bank accounts by the major South African banks, the Bank of China, and now reportedly by their last remaining banking facility, the Indian headquartered Baroda Bank.

The Reserve Bank opposed the Vardospan application on the grounds that it has a responsibility to ensure the financial sustainability of the proposed deal.

According to the Reserve Bank, Vardospan has failed to provide clarity on the source of their funding and to provide transparency on other Gupta-related companies, including the notorious Tegeta mining company involved in a dodgy deal with former Eskom CEO Brian Molefe.

The timing of Zuma's cabinet reshuffling and the deepening banking troubles faced by the Guptas is not, therefore, fortuitous. Once more it lays bare a disturbing reality.

Increasingly our country is being ruled not from the Union Buildings, but from the Gupta family compound. More and more, critical ANC decisions are being decided not by elected and collective structures in Luthuli House but in Saxonwold.

2709

In the coming days the SACP will be meeting with our provincial structures, all our alliance partners and a wide range of social movements and formations

It is imperative that popular anger is mobilised and organised in constructive ways that unite South Africans of all persuasions and backgrounds in the defence of our country's interests.

This is not a struggle against an individual. This is not a factional struggle. It is a struggle against a network of parasitism and patronage in defence of our hard-won democratic sovereignty.

Let us roll back corporate capture of the state! Let us call for the South African passports and residential rights of the Guptas to be revoked immediately!

Let us call for the sacking of General Nitiemeza, an ex-Transkei security policeman, who many allege tortured our own comrades. Let us demand progress on the numerous stalled prosecutions and investigations.

What has happened to the civil and criminal prosecutions recommended in regard to the Nkandla scandal? Let us ensure that the dodgy Tegeta deal is exposed.

Let us insist that those involved in the whole-sale ripping off of the public broadcaster, the SABC, and of key State Owned Corporations, including PRASA, Eskom, DENEL, and SAA are brought to book. Mainstream corporate outfits like Allan Gray and the Ruperts' Remgro must own up to their profit-driven collusion with Cash Pay Master Services, Net1, and Grindrod in the exploitation of vulnerable social grant beneficiaries.

Politicians and officials who have benefited from back-handers in all of this must be exposed.

Inevitably, SACP members who serve in executive positions in government are now being asked if they will resign. The PB's instruction to these comrades is: Remain at your posts.

This is not because there is any individual entitlement. You are serving in various capacities because of the support you enjoy across the ANC movement, because of your struggle credentials, and because of your performance in government.

You have a responsibility to serve a massive constituency and the country at large – now more than ever. If you are fired at the behest of the Gupta network because of the SACP's stand on these matters – so be it.

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ANNEXURE 43

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EYEWITNESS NEWS

#CABINETRESHUFFLE: PRESIDENT JACOB ZUMA'S STATEMENT OF CHANGE

President Jacob Zuma has announced changes to the National Executive in a late night statement

President Jacob Zuma. Picture: Supplied

President Jacob Zuma (https://ewn.co.za/Topic/President-Jacob-Zuma) Jacob Zuma (https://ewn.co.za/Topic/Jacob-Zuma)
Eyewitness News (//ewn.co.za/Contributors/eyewitness-news) | 2 years ago (539 days ago)

PRETORIA - In a late-night move on Thursday, President Jacob Zuma released a statement saying that he had decided to make changes to the National Executive in order to improve efficiency and effectiveness.

Here is that statement in the President's words:

PRESIDENT ZUMA APPOINTS NEW MINISTERS AND DEPUTY MINISTERS

I have decided to make changes to the National Executive in order to improve efficiency and effectiveness.

The changes bring some younger MPs and women into the National Executive in order to benefit from their energy, experience and expertise.

I have directed the new Ministers and Deputy Ministers to work tirelessly with their colleagues to bring about radical socio-economic transformation and to ensure that the promise of a better life for the poor and the working class becomes a reality.

The new members are the following:

MINISTERS

1. Minister of Energy, Ms Mmamoloko "Nkhensani" Kubayi
2. Minister of Transport, Mr Joe Maswanganyi
3. Minister of Finance, Mr Malusi Gigaba
4. Minister of Police, Mr Fikile Mbalula
5. Minister of Public Works, Mr Nathi Nhleko
6. Minister of Sports and Recreation, Mr Thembelani Nxesi
7. Minister of Tourism, Ms Tokozile Xasa
8. Minister of Public Service and Administration, Ms Faith Muthambi
9. Minister of Home Affairs, Prof Hlengiwe Mkhize
10. Minister of Communications, Ms Ayanda Dlodlo

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DEPUTY MINISTERS

1. Deputy Minister of Public Service and Administration, Ms Dipuo Letsatsi-Duba
2. Deputy Minister of Finance, Mr Sifiso Buthelezi
3. Deputy Minister of Public Enterprises, Mr Ben Martins
4. Deputy Minister of Arts and Culture, Ms Maggie Sotyu
5. Deputy Minister of Trade and Industry, Mr Gratitude Magwanishe
6. Deputy Minister of Communications, Ms Thandi Mahambehlala
7. Deputy Minister of Tourism, Ms Elizabeth Thabethe
8. Deputy Minister of Police, Mr Bongani Mkongi
9. Deputy Minister of Telecommunications and Postal Services, Ms Stella Ndabeni-Abrahams
10. Deputy Minister of Small Business Development, Ms Nomathemba November.

I wish to extend his gratitude to the outgoing ministers and deputy ministers for their service to the country. I also wish the new Ministers and Deputy Ministers the best in their new responsibilities.