

**COMMISSION OF INQUIRY INTO STATE CAPTURE**

**HELD AT**

**PARKTOWN, JOHANNESBURG**

10

**19 NOVEMBER 2018**

**DAY 25**

20

**PROCEEDINGS HELD ON 19 NOVEMBER 2018**

**CHAIRPERSON:** Good morning Mr Pretorius?

**ADV PAUL PRETORIUS SC:** Good morning Chair.

**CHAIRPERSON:** Good morning everybody. Good morning Mr Gordhan.

**MINISTER PRAVIN GORDHAN:** Good morning Chair.

**CHAIRPERSON:** Thank you. Mr Pretorius.

**ADV PAUL PRETORIUS SC:** Before we begin with the evidence of Minister Gordhan Chair, may we just place on record that there is an application for condonation before you. That application deals with the late service by 2 and 3 days respectively on certain persons who were issued 3.3 notices in terms of the rules on the assumption that they might be implicated by the evidence of Minister Gordhan.

The application has been served on the various parties, there is no opposition to the application, but there may be applications to cross-examine forthcoming nevertheless.

Unfortunately due to logistical issues, the hospitalisation of the person making copies, last night of the application we only have a copy of the application for you, which is not indexed and paginated and you have not had an opportunity to read it. So, subject to what any of the parties present may say, we ask that that application be deferred until tomorrow morning.

**CHAIRPERSON:** I think that would be in order, unless there is any affected party that has an objection to that application being heard tomorrow.

**ADV PAUL PRETORIUS SC:** It may – I am sorry Chair, it may be apposite to mention that there is no opposition, but parties are present, they may wish to place themselves on record and tell you of their attitude.

**CHAIRPERSON:** Well firstly, with regard to the application, if there is no opposition then

I would imagine that as far as it being heard tomorrow, there should be no problem. But to the extent that there are counsel who would like to place themselves on record, let us deal with that now.

**ADV PAUL PRETORIUS SC:** As you please Chair.

**ADV DALI MPOFU:** Good morning Chairperson.

**CHAIRPERSON:** Good morning Mr Mpofu.

**ADV DALI MPOFU:** Thank you. Yes Chairperson, I am here placing myself on record as representing one of the implicated persons in the application that Mr Pretorius referred to, namely Mr Thomas Moyane who is listed as the 7<sup>th</sup> such person.

**CHAIRPERSON:** Mr Thomas?

**MR DALI MPOFU:** Thomas Moyane M-o-y-a-n-e [spelt].

**CHAIRPERSON:** Okay thank you.

**ADV DALI MPOFU:** I am instructed by Mabusa Attorneys. I would just like to indicate Chair that tomorrow morning I personally might not be here, but my junior will be here. But seeing that the application, the condonation application is not opposed by us, it should make no difference.

**CHAIRPERSON:** Yes.

**ADV DALI MPOFU:** What we do want to place on record is that we would like to exercise our rights to apply for cross-examination subject to that application.

**CHAIRPERSON:** Yes.

**ADV DALI MPOFU:** As the court pleases.

**CHAIRPERSON:** Okay no thank you. In that regard is there already an application that you have lodged, or not yet for leave to cross-examine?

**ADV DALI MPOFU:** We have not lodged a DCJ, we have got an application that is incomplete. Unfortunately our client is indisposed today. So I am discussing with

Mr Pretorius that we serve it within the 14 days, which would be by Wednesday.

**CHAIRPERSON:** Okay alright.

**ADV DALI MPOFU:** Thank you.

**CHAIRPERSON:** Thank you.

**MR PHILLIP MAHLATSE:** Good morning Chairperson.

**CHAIRPERSON:** Good morning.

**MR PHILLIP MAHLATSE:** Morning. My name is Phillip Mahlatse.

**CHAIRPERSON:** Yes.

**MR PHILLIP MAHLATSE:** I hold my rooms at Peter Chambers in Central Johannesburg.

**CHAIRPERSON:** Yes.

**MR PHILLIP MAHLATSE:** In these proceedings I would be led by IM Simanye SC who is unfortunately not present today. We align ourselves with the position held by Mpofu. In fact there was a confusion over the weekend as to whether or not our client Mr Shaun Abrahams was in fact served with the Rule 3.3. I have liaised with my colleagues and they have given me in fact proof to the effect that that was done on the 7<sup>th</sup>. Effectively mean that the deed's would then expire on Wednesday this week.

Our position is that we want to participate to the extent obviously based on the evidence that would be led by Mr Gordhan and we also then reserve our right at a later stage to launch an application, or to in fact come through to put our version to this Commission. Thank you Chair.

**CHAIRPERSON:** Thank you very much. It looks like that is everybody that needed to place themselves on record. Yes Mr Pretorius.

**ADV PAUL PRETORIUS SC:** It appears so thank you Chair. The second housekeeping matter that must be dealt with Chair is the issue of the bundles. You have before you bundles which form part of the statement made by Minister Gordhan with annexures

compiled by the legal team of Minister Gordhan. There are six of them. May they be marked M1 "A" to "F"? They are probably already marked on the spine of your bundles.

**CHAIRPERSON:** The lever-arch files?

**ADV PAUL PRETORIUS SC:** Ja I am instructed by the majority of the legal team Chair that it should be "N" for Nelly.

**CHAIRPERSON:** Okay. And the majority ...[intervenes]

**ADV PAUL PRETORIUS SC:** So it will N1 "A" to "F".

**CHAIRPERSON:** And the majority buys the minority?

**ADV PAUL PRETORIUS SC:** I am sorry Chair?

**CHAIRPERSON:** And the majority buys the minority?

**ADV PAUL PRETORIUS SC:** Yes it does.

**CHAIRPERSON:** Okay.

**ADV PAUL PRETORIUS SC:** Certainly in this case.

**CHAIRPERSON:** You say it should be "N" you said?

**ADV PAUL PRETORIUS SC:** "N".

**CHAIRPERSON:** "N" for Nelly?

**ADV PAUL PRETORIUS SC:** N1 "A" to "F".

**CHAIRPERSON:** Ja "N" for Nelly?

**ADV PAUL PRETORIUS SC:** "N" for Nelly.

**CHAIRPERSON:** Okay the lever-arch files submitted by Minister Gordhan will be marked as EXHIBIT N and they will be from N-A to F, "A" being the lever-arch file that has got his statement. How do I identify the other ones Mr Pretorius?

**ADV PAUL PRETORIUS:** That is in N1 "A".

**CHAIRPERSON:** Oh Exhibit N.

**ADV PAUL PRETORIUS:** N1 "A" contains the statement.

**CHAIRPERSON:** 1 "A" has the statement and then how do we know the next one?

**ADV PAUL PRETORIUS:** Are they – may I ask Chair have they been marked on the spine?

**CHAIRPERSON:** Oh they have been marked. But they have not been marked Exhibit N, they have been marked Exhibit M. I see Exhibit M1, the two of them have got Exhibit M1, it looks like all of them have got Exhibit M1. Is "M" correct or should it be "N"?

**ADV PAUL PRETORIUS:** It should be "N" I am informed. There is already Exhibit M, I am told.

**CHAIRPERSON:** Okay. Can we then – will you arrange that maybe during the break, they be corrected?

**ADV PAUL PRETORIUS:** I will do so Chair.

**CHAIRPERSON:** So that they will be Exhibit N1 and then there will be N1 "A" up to "F".

**ADV PAUL PRETORIUS:** Yes.

**CHAIRPERSON:** Okay.

**ADV PAUL PRETORIUS:** There is an additional bundle, which I am instructed that you have which is a supplementary bundle prepared over the weekend and that is N2. That will be that bundle Chair.

**CHAIRPERSON:** Ja well I think this is the one, the handwriting is so beautiful I struggle to see whether this is supplementary, but it is, I have got it.

**ADV PAUL PRETORIUS:** That will be referred to during the course of evidence as well as the supplementary bundle.

**CHAIRPERSON:** Yes. The ones that the witness have been appropriately marked?

**ADV PAUL PRETORIUS:** Yes.

**CHAIRPERSON:** Okay.

**ADV PAUL PRETORIUS:** The witness is aware, he has his own bundles from the

original compilation.

**CHAIRPERSON:** Ja.

**ADV PAUL PRETORIUS:** The copies that were made for you Chair and the copies that have been made for the legal team were made subject to the logistical difficulties that I have mentioned.

**CHAIRPERSON:** Okay alright.

**ADV PAUL PRETORIUS:** Thank you. By your leave then Chair, we call Minister Gordhan who will make an affirmation.

**CHAIRPERSON:** Before we do that, there was the other matter that needed to be mentioned.

**ADV PAUL PRETORIUS:** As you please Chair.

**CHAIRPERSON:** Do you want to say anything?

**ADV PAUL PRETORIUS:** I do not want Chair.

**CHAIRPERSON:** Yes. I just want to announce that Mr Paul Pretorius brought to my attention over the weekend certain allegations that were in the media relating to him and I request or demand that he should consider recusing himself from the Commission because of a matter in which he represented a certain Mr Lackay and an allegation that he is close to Minister Gordhan and that he should recuse himself for that reason. Within the time available, Mr Pretorius has given me a clarification in regard to the matter. But I think that those who may wish to request that he should recuse himself should write to the Commission with a substantiation of the allegations, so that they can then be looked into properly. But from what Mr Pretorius has told me so far within the time available to him, I am satisfied that there is no problem with him continuing.

If and when at a later stage there are other facts that are put before the Commission that are not known to me at this stage, the matter would be looked into again

at that stage. But the party concerned, if they send written – a written complaint to the Commission with substantiation of facts, their appeal or request will be looked into properly. Thank you.

I think the registrar will then administer an affirmation to Minister Gordhan.

**REGISTRAR:** Please state your full names for the record?

**MINISTER PRAVIN GORDHAN:** Pravin Jamnadas Gordhan.

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

**MINISTER PRAVIN GORDHAN:** No.

**REGISTRAR:** Do you solemnly affirm that the evidence you will give will be the truth, the whole truth and nothing but the truth?

**MINISTER PRAVIN GORDHAN:** I affirm.

**REGISTRAR:** If so, please raise your right hand and say, I truly affirm.

**MINISTER PRAVIN GORDHAN:** I affirm and I truly affirm.

**CHAIRPERSON:** Thank you, you may be seated, thank you very much. Before Mr Pretorius begins, I just want to thank you Minister Gordhan for coming forward to assist the Commission. We have been making a call to all South Africans who may have information about the matters that we are investigating, to come forward and we have made a call to President past Ministers, Deputy Ministers, Directors General and so on to please come forward with regard to any knowledge or information that they have on matters that fall under what we are investigating and some have come forward and we are grateful for that and we are grateful that you also have come forward. Thank you very much.

**MINISTER PRAVIN GORDHAN:** Thank you Chair. You see that is our responsibility.

**CHAIRPERSON:** Thank you.

**ADV PAUL PRETORIUS:** Good morning Minister.



**MINISTER PRAVIN GORDHAN:** Good morning.

**ADV PAUL PRETORIUS:** Minister you have before you in Bundle N1 "A" a statement of some 60 odd pages and your signature appears on page 68, is that correct? Before we ask you to confirm your statement, I am told that there is a correction you wish to bring at paragraph 79?

**MINISTER PRAVIN GORDHAN:** Thank you Mr Pretorius and Chairperson, I thought we will do the correction when we get there, but Mr Pretorius is right.

**CHAIRPERSON:** I am sorry Minister Gordhan. Maybe you might wish to raise your voice, I am struggling to hear you from here. I must check at the back whether they can hear you. Can you hear the witness from there? There are indications of yes and no.

**MINISTER PRAVIN GORDHAN:** Well good morning to everyone.

**CHAIRPERSON:** So I think with a raised voice it should be fine, thank you.

**MINISTER PRAVIN GORDHAN:** So at paragraph 79 Chairperson, sorry I am not sure whether the protocol is Chairman or Chairperson?

**CHAIRPERSON:** No that is okay.

**MINISTER PRAVIN GORDHAN:** Particularly with reference to the last sentence, where it says:

"Rand depreciated sharply from 13.40 to 15.40 in relation to the  
US Dollar overnight."

We obtained more accurate numbers from Bloomberg yesterday.

**CHAIRPERSON:** I am sorry. Did you say paragraph 89?

**MINISTER PRAVIN GORDHAN:** 79.

**CHAIRPERSON:** 79.

**ADV PAUL PRETORIUS:** May I interject Minister Gordhan? For the present page ...[intervenes]

**CHAIRPERSON:** Oh I have got it now.

**ADV PAUL PRETORIUS:** ... you need to just delete the sentence.

**MINISTER PRAVIN GORDHAN:** We can delete the sentence and we will give you the numbers later, if that is okay.

**CHAIRPERSON:** Which sentence must we delete?

**MINISTER PRAVIN GORDHAN:** The last sentence.

**CHAIRPERSON:** Oh.

**ADV PAUL PRETORIUS:** Paragraph 79 the last sentence.

**CHAIRPERSON:** Is that the only correction on that paragraph?

**MINISTER PRAVIN GORDHAN:** Yes.

**ADV PAUL PRETORIUS:** Yes Chair.

**CHAIRPERSON:** Okay.

**ADV PAUL PRETORIUS:** Then Minister Gordhan the signature on page 68 that is your signature I understand?

**MINISTER PRAVIN GORDHAN:** Yes.

**ADV PAUL PRETORIUS:** Are the contents of the statement true and correct?

**MINISTER PRAVIN GORDHAN:** Yes.

**ADV PAUL PRETORIUS:** If I may just by way of introduction tell the Chair that your intention is to give your evidence in your own words. But there are portions of the statement that you wish to read and we will come to them in due course. They are mainly quotations from other sources.

**MINISTER PRAVIN GORDHAN:** That is correct.

**ADV PAUL PRETORIUS:** Right. Just to deal with the scope of your statement Minister Gordhan, by way of introduction we are dealing with terms of reference 1.1 to 1.3 which deal principally with the appointment and dismissals of Ministers of State. Your

evidence, as I understand it, is intended to deal with the circumstances prevalent at the time of the appointment and dismissals of Ministers, some who have already testified and about which witnesses have testified?

**MINISTER PRAVIN GORDHAN:** That is correct.

**ADV PAUL PRETORIUS:** You will also deal to a certain extent with issues of Governance and particularly in relation to State Owned Enterprises I understand?

**MINISTER PRAVIN GORDHAN:** That is part of the statement yes.

**ADV PAUL PRETORIUS:** But there are aspects of the terms of reference which you may wish to deal with at a later stage, or your Department, the Department of Public Enterprises may wish to deal with at a later stage?

**MINISTER PRAVIN GORDHAN:** That is with particular reference to State Owned Enterprises and what we are beginning, and we are only beginning to discover in terms of both Governance issues and malfeasance Chairperson in these enterprises. We are in the process as a Department of identifying as many documents as possible. Representatives from the Department have been in touch with the investigating team of the Commission, they had many exchanges to-date and we have a possible document or copies thereof had been handed to the Commission. Obviously some documents may well have been destroyed already, but when we come to that we will keep you informed.

**ADV PAUL PRETORIUS:** Right. There are also, I understand, matters in relation to Treasury and your portfolio previously as Minister of Finance that may have to be dealt with at a later stage.

**MINISTER PRAVIN GORDHAN:** Some of them Chairperson I actually dealt with in this statement by way of illustration of some of the requirements of 1.1 to 1.3. But there are also – which I am sure Mr Pretorius will come to, certain questions that your team has asked me to cover, which is also contained in the statement.

**ADV PAUL PRETORIUS:** Yes. Before I invite you Minister Gordhan to make any opening comments that you wish to, may I just place on record with your assistance the history of the statement which is before the Commission at present.

A draft statement, not an affidavit, was presented to the legal team on the 30<sup>th</sup> September, you recall that?

**MINISTER PRAVIN GORDHAN:** Yes.

**ADV PAUL PRETORIUS:** Certain additions were made to that statement, as a result of requests from the legal team of the Commission asking you to address specific issues that they wished you to deal with?

**MINISTER PRAVIN GORDHAN:** That is correct.

**ADV PAUL PRETORIUS:** A further statement was then produced and together with a bundle was delivered on the 13<sup>th</sup> October received, I understand on the 15<sup>th</sup> October by the legal team?

**MINISTER PRAVIN GORDHAN:** Yes.

**ADV PAUL PRETORIUS:** And that is the statement before you?

**MINISTER PRAVIN GORDHAN:** That is correct. May I with your permission Chair at this stage ask your permission to following that particular question for the benefit of the Commission's investigation into the so-called "leak" of this document?

**CHAIRPERSON:** Yes.

**MINISTER PRAVIN GORDHAN:** Indicate that the draft statement with which – or on which both I and my legal team had interactions with Mr Pretorius and company. It was only sent to Mr Pretorius and the team and yet there are tweets which seem to draw comparisons between the draft and the final statement. So this is for the record. It is a matter for the Commission to look into. If there is a very limited circulation of the first draft as compared to the final version, it is quite intriguing to say the least that certain

parties seem to have access and are able to comment in that particular regard.

**CHAIRPERSON:** Yes.

**MINISTER PRAVIN GORDHAN:** But that is just for the record.

**CHAIRPERSON:** No, no thank you. The investigation into the lexis is continuing and we issued – I caused the sector of the Commission to issue a media statement on Friday, which I understand was circulated, asking for those who have indicated in the media that they know who was responsible for the leaks to bring evidence. So but investigation is continuing.

**ADV PAUL PRETORIUS:** Thank you Chair. Minister at paragraph 1 of your statement you refer to the submission of your statement to this Commission. Just again to place on record for clarity sake, the statement and the bundles annexed were prepared by your legal team?

**MINISTER PRAVIN GORDHAN:** Correct.

**ADV PAUL PRETORIUS:** In paragraph 2 you deal with the scope of the statement, which I have already mentioned in opening. Do you have any comment?

**MINISTER PRAVIN GORDHAN:** No as I said earlier Chairperson the statement clearly refers to the appointment and dismissal of Ministers. I am not sure if I hold the record in that regard, but we will come back to that. Related matters which illustrate, what were the issues that might have had a bearing on the events that unfolded as far as appointments and dismissals are concerned. Thirdly, the additional issues that I was asked to address.

**ADV PAUL PRETORIUS:** Before we proceed into the content of your statement, do you wish to make any further opening comments?

**MINISTER PRAVIN GORDHAN:** No as soon as you allow me to, I will go to paragraph 4 and present my opening statement.

**ADV PAUL PRETORIUS:** In paragraph 3 you mention that the account is based on your own recollection, but that your memory has been refreshed by certain officials working with you. Do you have any comment there?

**MINISTER PRAVIN GORDHAN:** No just to make the point that, particularly with reference to Chairperson, the job of a Minister of Finance, it requires that there are many different events about the internationally and locally and many different types of meetings and that not all of the events or meetings are fresh in one's mind. I did rely on checking, for example my diary of the Treasury, or checking with my former Chief of Staff or officials at the treasury where it was appropriate and possible for them to recollect what really happened. So some I have been trying caricature, the memory factor, but you know we are getting a bit on in the age as well, one must confess that and that is the basis upon which the statement is drafted.

**ADV PAUL PRETORIUS:** Thank you. At paragraph 4 you deal with your own personal background and the approach that you have taken historically in your political career. Before we go into those paragraphs, you said that you wish to make some opening remarks. Could you also inform the Commission of your history in Ministerial positions and as a member of Parliament?

**MINISTER PRAVIN GORDHAN:** Well if I may state and amplification of paragraph 4 as I get into your question Mr Pretorius. Having an activist from the late 1960's and we might recall that at that time the ANC was banned, but one of the arms of the Congress Alliance says it was known then, was not, and that is an Italian then Congress. An older generation of Congress activists in early 1970's decided to reactivate the Italian then Congress. An older generation of Congress activists on early 1970's decided to reactivate the Italian then Congress as a flight bureau of the Freedom Charter within the country at the time. That was the organisation that began to politicise a lot of us who

were on campuses at the time, as did the Black Consciousness Movement of the time as well.

Secondly, we did not see politics as a career, it was a commitment to changing this country for the betterment of all the people of this country. We had an instinctive, if you like, belief that whatever happens at which ever stage in our history the benefits of those events and transformation processes that unfold must be benefits that accrue to the majority and not to a small minority. An issue that is not irrelevant to the evidence that we are going to give here today.

Thirdly the process leading up to becoming a Minister started firstly in the negotiations, in the early 1990's at CODESA and the multi-party negotiations which I had the privilege of participating in. Secondly, then becoming a member of parliament in 1994 until 1998, when I became the Deputy Commissioner of South African Revenue Service.

Then between 1999 and 2009, April, I was the Commissioner of the South African Revenue Service, and in early 2009, Chairperson, I was in fact interviewed for the job of CEO of Transnet, interestingly, and was even offered the job, and I had accepted the job, but the ANC requested that I hang on and after the elections in 2009 I was asked by the President to serve as the Minister of Finance between 2009 to 2014.

After the 2014 elections I was designated or assigned to the COGTA Portfolio Cooperative Governance and Traditional Affairs...[intervenes]

**CHAIRPERSON:** I am sorry...[intervenes]

**MINISTER PRAVIN GORDHAN:** Where I served until 13 December 2015.

**CHAIRPERSON:** Okay, I am sorry, let me interrupt you. If you could just go back to how you said the ANC, I think, said something when you had accepted the job for, I think it is for the Group CEO for Transnet I think it was.

**MINISTER PRAVIN GORDHAN:** That is right.

**CHAIRPERSON**: What did the ANC say and why did it say what it said?

**MINISTER PRAVIN GORDHAN**: No, just that I should wait until after the elections, no promises.

**CHAIRPERSON**: Okay.

**MINISTER PRAVIN GORDHAN**: And no intrigue either.

**CHAIRPERSON**: Oh, okay, alright, thank you.

**MINISTER PRAVIN GORDHAN**: So that takes us, Chair, to 13 December 2015 on the evening of which I was requested to go over to Mahlamba Ndlovu, the residence of the then President Zuma, had a meeting with them and I am sure we will come to that in the rest of the statement, and at which meeting he asked that I take the portfolio of finance again.

I was reluctant to do so. I actually suggested two other names of people who would be very appropriate for that position given their experience. One was Mr Jonas, who has already appeared before you, and the second Mr Jabu Moleketi who was previously Deputy Minister of Finance and was under or with Mr Manuel at the time.

Notwithstanding those two suggestions I was requested to take up the job and the context of course was the turmoil in the financial markets after the dismissal of Minister Nene and the appointment of Mr van Rooyen as Minister of Finance, and a lot of concern and panic over that Thursday, Friday and Saturday about what would happen in the markets on the Monday, i.e. 14 December 2015.

Eventually after consulting my family I did take the position and served in that position until just past midnight on 30 March when watching television and the intrigue that was unfolding at the time, and learned from the TV screen that a number of us were in fact dismissed. That included Minister Hanekom, Minister Ramatlhodi, amongst many others.



**CHAIRPERSON:** So you were not informed ahead of the TV announcement that you were no longer going to continue in the position?

**MINISTER PRAVIN GORDHAN:** No, regrettably I was not extended that courtesy. I then remained as a member of parliament, which I was from the 2014<sup>th</sup> elections and remained as a member, serving on the Public Enterprises Committee and had an interesting year, during which we, under the leadership of Ms Rantho, who was the Chair of the Enquiry into Eskom.

At the time we learned a lot about the malfeasants and corruption and state capture of that institution. We then have the events of the governing party in December 2017 which led to Mr Cyril Ramaphosa becoming President and then subsequently February 2018 when Mr Ramaphosa becomes the President of the country and thereafter another cabinet reshuffle and I was asked to serve in my present capacity as the Minister of Public Enterprises.

**CHAIRPERSON:** Thank you.

**ADV PAUL PRETORIUS SC:** Minister you were a member of parliament, or you remained a member of parliament rather, commencing May 2014, I understand?

**MINISTER PRAVIN GORDHAN:** That is correct.

**ADV PAUL PRETORIUS SC:** And during the period March 2017 or April 2017 to February 2018 you occupied no ministerial position, you were a member of parliament only?

**MR PRAVIN GORDHAN:** That is right.

**ADV PAUL PRETORIUS SC:** And during that time what position did you hold in parliament, in relation to portfolio committees?

**MINISTER PRAVIN GORDHAN:** Just a member of Public Enterprises and one other portfolio committee.

**ADV PAUL PRETORIUS SC:** And you will testify about that period in due course. In paragraph 6 of your statement you refer to the preamble to our Constitution and you have made brief reference to it already. Now do you have any further comment?

**MINISTER PRAVIN GORDHAN:** If I may, Mr Pretorius and Chairperson, read into the record some of the paragraphs from 6 onwards.

**CHAIRPERSON:** Ja.

**MINISTER PRAVIN GORDHAN:** So that will make it easier...[intervenes]

**CHAIRPERSON:** Yes.

**MINISTER PRAVIN GORDHAN:** For yourselves as well.

**CHAIRPERSON:** That is fine.

**MINISTER PRAVIN GORDHAN:** If I may?

**CHAIRPERSON:** That is fine, ja.

**MINISTER PRAVIN GORDHAN:** So, I take us back to paragraph 4 with your permission?

"I am a lifelong activist and a member of the African National Congress. I believe in the principles of the freedom charter and in our Constitution. I am committed to contributing to the achievement of a constitutional democracy and the establishment of a democratic government guided by the preamble of the freedom charter that "South African 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". The preamble of our Constitution commits us to uplift the poor as do the objectives of the ANC Constitution. To eliminate any 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. This transformation is multi-dimensional being political, institutional, social, economic and cultural."

And I am sure there are many other dimensions as well.

"But transformation and transitions also can unleash the forces of greed, corruption and new means of exploitation. So participation in government as an ANC cadre is not just a technical or technocratic role, but one aim of achieving the vision and goals of our leaders such as Nelson Mandela, Walter Sisulu, Lilian Ngoyi, Braam Fisher and many others. In contrast state capture and corruption are consequences of the unleashing of the worst human instincts. Self-enrichment, neglect of the higher mission, placing oneself interest and one might add one's pocket before the community's interest. Reflecting on the period 2009 to 2017 now, it would appear that I was witness to the 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..."

And these are parts of Section 10, paragraph 10.

"...benefit a few families and individuals..."

And this, Chairperson, is a theme that you will find throughout this statements and the pivotal question, if I may say so respectfully for the Commission as well, who benefits from all of these activities? Is it the masses of South Africa that we all proclaim to serve? Or is it the few who have now probably stolen hundreds of billions of Rands of

our own resources.

"Released the worst forms of recklessness and corruption, rob ordinary people of schools, clinics and education. Abuse and decimate key institutions of our democracy including SARS, the HAWKS, the NPA, SOEs, the State Owned Enterprises like Eskom, Denel, Transnet and others. And of course damage the economy, increasing joblessness, forsaking the youth and increasing the marginalisation of women. State capture became a sophisticated scheme or racket that advanced false narratives, including racist pejoratives. Used external agencies like Bell Pottinger and the services of professional advisors, including management consulting firms, auditors, lawyers, one might add a whole list of other professional to entrench itself. Marginalised and dismissed honest public servants and replaced them with compromised or incompetent individuals."

Again if I may pause here, Chair? One of the things that we need to look at perhaps as the Commission, but generally as a society, is the kind of damage that we have done to the lives of individuals and their families and the communities that they actually come from. People were left jobless. They were maligned. Their reputations were tarnished, all through a project which said it is important to do that in order to, in a sense, engage in, what I will call later the politics of destruction.

So you – in any war as you know, or even a robbery a familiar tactic is you create a decoy in one place so that something else can happen elsewhere and we see that the human cost of what we are up to is quite a formidable one. We allowed a climate of impunity in respect of crime and corruption to emerge. A question that I am sure will

come up is, where does the governing party fall in all of this?

**CHAIRPERSON**: Certainly that will have to come up.

**MINISTER PRAVIN GORDHAN**: You see I am anticipating. So if I may, Mr Pretorius, also continue.

"The ANC at its most recent elective conference in December 2017 noted and resolved as follows: And the resolution is headed ANC credibility and integrity dealing with corruption."

The resolution reads as follows, Chair:

"Noting an increase in corruption, factualism, dishonesty and other negative practices that seriously threatened 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 high moral ground and our position as leader of society. That current leadership structure seem helpless to arrest these practices, either because they lack the means or the will or are themselves held hostage by them."

**ADV PAUL PRETORIUS SC**: Before you continue may I just ask you whether you have your own views in relation to the contents of that particular paragraph? Do you know what...[intervenes]

**MINISTER PRAVIN GORDHAN**: First of all the test for all of us, Chairperson, is when you see or observe or become a marginal part of any malfeasants what do you do? Do

you turn and look the other way? Do you try to find ways of resisting, that which is occurring? Do you actually bring to the attention of people that you are interacting with that what is going on is not in the best interest of the country or the government, and I will read into the record later extracts from my first medium term budget policy statement speech in 2009, October, where I raised the question of corruption and its potential damaging effect.

Of course we did not understand state capture at that point in time. The next extract that I will read into the record would be from the budget speech of 2010 where similar observations are made as well, but I will also in a moment come to what the Secretary General of the ANC at that point in time Mr Mantashe had to say at various forums of the ANC, raising the same concern.

So the challenge I think, Mr Pretorius is raising, is how do you resist malfeasants when you see it? An observation that I made to him and others as well – well some of us watch rugby, do not play it, others are familiar with soccer or other sport, but when you are the sportsperson on the field and are asked to apply your mind very quickly whether you do A or B in order to advance your team's cause, you work at that particular moment in time. But the spectators sitting on the stand or the sports critic has all the time in the world to say that there were E, F and G as options as well.

And so the structure and the limitations of one's position needs to be taken into account in terms of the kind of possibilities that are open and the tactics if you like of resistance to malfeasants and corruption as well. So there can always be the argument one could have done more as well, but, you know, we have many advocates of the anticorruption drive who suddenly find themselves on the other side of the line defending corruption in one form or another as well.

So one must ask, what drives people to do these sort of things in this kind of

context? May I continue?

**ADV PAUL PRETORIUS SC:** We will come back to that during the course of your evidence.

**MINISTER PRAVIN GORDHAN:** Should I continue with the resolution, Chairperson?

**CHAIRPERSON:** Yes, I am sorry. I also want to ask one or two questions in relation to the preamble, but I prefer you finish quoting the preamble then I can ask, so yes.

**MINISTER PRAVIN GORDHAN:** Alright.

**CHAIRPERSON:** Thank you.

**MINISTER PRAVIN GORDHAN:**

"At times we do things that are not according to the ANC or government policy and/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."

This is still part of the noting section.

"That the ANC is in danger to the point of losing credibility in society and power in government. That our leadership election processes are becoming corrupted by vote buying and gate keeping. 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 resolution plus other existing and new measures are implemented urgency by the NEC and the provincial executives to one, 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. Two, demand that every cadre accused of or reported to be involved in corrupt practices accounts to the integrity committee immediately or faces DCP (Disciplinary Committee Processes)."

And it continues, just one second, Chair. To say:

"Three, summarily suspend people who failed to give an acceptable explanation or to voluntarily step down while they face disciplinary, investigative or prosecutorial procedures. Four, we publicly disassociate ourselves from anyone, whether business donor, supporter or member accused of corruption or reported to be involved in corruption. Five, all the ANC members and structures should cooperate with the law enforcement agencies to criminally prosecute anyone guilty of corruption. Six, 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. Seven, the ANC deploys to cabinet, especially finance, police injustice, should strengthen the state capacity to successfully investigate and prosecute corruption and account for any failures to do so. Eight, 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 the ANC's code of conduct to the relevant structures. Nine, within the ANC nomination and



election process ban all slates and enforce the ANC code of conduct and disciplinary procedures, investigate and prosecute all cases or support of vote..."

I am sorry, I beg your pardon.

"...investigate or prosecute all cases of voter support buying or membership of branch gate keeping. And finally, ten, implement the NEC resolution on state capture including the expeditious establishment as requested or demanded by the public protector's report, the establishment of a judicial commission of enquiry which of course is this one."

I said earlier on that I would make reference to the medium term budget policy statement speech in October 2009, and I want to place that quotation...[intervenes]

**CHAIRPERSON:** I am sorry, maybe before you do that, now that you have finished quoting the resolution I just want to ask one or two questions.

**MINISTER PRAVIN GORDHAN:** Sure.

**CHAIRPERSON:** I think that there may be a lot of – a lot more questions that may be asked arising out of the resolution, but maybe that might belong to a little later when you have dealt in your evidence with a number of things that we are going to hear about. But I just want to ask this question in relation to paragraph 1, 2, 3, 4, 5 of the resolution, on the page that starts with noting. Then paragraph 5 it starts with "the current leadership, structures seem helpless to arrest these practices" and those practices are of course – are those that are mentioned in the first paragraph, that is corruption, factionalism, dishonesty and other negative practices that seriously threatened the goals and support of the ANC. I think that is the one that they are talking about, am I correct?

**MINISTER PRAVIN GORDHAN:** Yes.

**CHAIRPERSON**: Am I correct that the practices, is it your understanding too that the practices referred to in that paragraph starting with the current leadership would be the practices referred to in the first paragraph?

**MINISTER PRAVIN GORDHAN**: Yes.

**CHAIRPERSON**: Yes, okay. Now that paragraph says the current leadership structure seem helpless to arrest these practices. I assume, and you must tell me whether your understanding is different. I assume that those leadership structures that the paragraph is talking about would have been the leadership structures that existed before the conference at which this resolution was made? Because obviously they could not have talked about the ones to be elected, they may have just been elected?

**MINISTER PRAVIN GORDHAN**: That is correct.

**CHAIRPERSON**: Okay. That paragraph appears to me and you must tell me if your understand is different, appears to be an acknowledgement by the ruling party that the leadership structures that it had up to that stage were failing to arrest corruption and these other practices that are mentioned there. Is that your understanding of the paragraph as well?

**MINISTER PRAVIN GORDHAN**: That either they are failing or they are inadequately managing.

**CHAIRPERSON**: Just repeat that please?

**MINISTER PRAVIN GORDHAN**: So either they are failing.

**CHAIRPERSON**: Yes.

**MINISTER PRAVIN GORDHAN**: Or they are inadequately managing.

**CHAIRPERSON**: Oh, you may...[intervenes]

**MINISTER PRAVIN GORDHAN**: To deal with those issues.

**CHAIRPERSON**: Be right, because they say they are helpless?

**MINISTER PRAVIN GORDHAN**: Yes.

**CHAIRPERSON**: To arrest these practices.

**MINISTER PRAVIN GORDHAN**: The word seems, Chairperson, appears before helpless. So somebody is perceptive.

**CHAIRPERSON**: I agree. It says seems helpless, but of course I would imagine that a resolution such as this would have been taken after quite some deliberation?

**MINISTER PRAVIN GORDHAN**: Yes.

**CHAIRPERSON**: Ja, okay thank you. We may proceed. I think we will deal with some, these and other aspects of the resolution when we maybe deal with the role of the governing party.

**ADV PAUL PRETORIUS SC**: Yes, I would just like to ask one or two questions in relation to the resolution...[intervenes]

**CHAIRPERSON**: Thank you.

**ADV PAUL PRETORIUS SC**: If I may.

**CHAIRPERSON**: Ja.

**ADV PAUL PRETORIUS SC**: The last paragraph under noting, Minister, refers to investigative and prosecutorial authorities. At the stage the resolution was taken what was the position in your view? That is just before the word "resolves", the reference to state investigative and prosecutorial authorities?

**MINISTER PRAVIN GORDHAN**: That was, Chair, again a conclusion that many people in our country had come to, and when we come to the issues around what constitutes state capture and what constitutes effective state capture? Then we will come to the conclusion that the first object is to control some elements of political authority. The second is to then use that political authority to control key institutions which give out big tenders or engage in big procurement practices, and the third is then to ensure that

nobody will properly investigate that malfeasants and the fourth is if there is no proper investigation or even if there is some investigation then no effective prosecution takes place.

And I think in the public domain what I am often struck by is the question that members of the public would put to myself and I am sure to many of you as well, why is it that no real big figure finds themselves in orange uniforms yet? In other words why are they not being prosecuted effectively? And there are all sorts of narratives which other people can come to the Commission with, but how many files are waiting on the desk of the National Prosecuting Authority where investigations have been done, charges have been formulated, but prosecutions have not been either initiated or completed.

And the lesson that one can draw from my tax experience and this is a lesson that we learned from Australia, Sweden, Canada and many other countries that a tax authority does not work effectively unless it combines two things, and in our context a third thing. The two are providing good service to honest tax payers. The second is a variety of forms of enforcement to dishonest tax papers. If you make a mistake on your tax form you should not be sent to jail, but if you are fraudulent in not declaring all of your income as I am sure is fairly common practice today, because the rate of stealing that is going on I am sure it does not find itself on the tax returns that people actually submit to the tax authority.

And if there is no effective enforcement then why bother? Because you know that you can get away with it. Which was the situation in South Africa pre the 2000's when more effective capability was developed. The third elements to that, that we added in our own context was education. The vast majority of our people were excluded from meaningful economic activity and the importance of paying tax or the importance of paying any dues is quite a crucial civic responsibility and we find it today in the form of

payments for electricity or water, even if people cannot afford to actually pay, and that results in the kind of debt that accumulates in the hands of water boards and indeed of Eskom as well, load shedding notwithstanding.

So we must apologise for the country for that.

**ADV PAUL PRETORIUS SC:** The intention at least, Minister Gordhan, is stated in paragraph 7 over the page, but at the instance of the, Chair, we will defer any further questions about implementation of the resolution for later consideration in your evidence, if we may.

**CHAIRPERSON:** Sorry, I did not quite get the point?

**ADV PAUL PRETORIUS SC:** Paragraph 7.

**CHAIRPERSON:** Yes?

**ADV PAUL PRETORIUS SC:** Records the resolution in relation to investigation...[intervenes]

**MINISTER PRAVIN GORDHAN:** Yes.

**ADV PAUL PRETORIUS SC:** And prosecution of corruption and accounting for failure to do so, but I wanted to just mention that to note it for this stage there will be further evidence that you will give later on and perhaps further questions from the Chair in that regard in due course.

**MINISTER PRAVIN GORDHAN:** And if I may say so Chair the comments made by the many candidates that were interviewed by the panel looking into a new Director of National Prosecutions over the past week or so might be quite relevant here in relation to the state of the NPA and what – it sounded like politicians canvassing a little bit, but what they would do if they were actually appointed to that position.

**CHAIRPERSON:** Yes.

**ADV PAUL PRETORIUS SC:** The comments you make, unless you want to read

paragraph 13 onto the record I wanted to...[intervenes]

**MINISTER PRAVIN GORDHAN**: There is two extracts here that I want to read if I may.

**CHAIRPERSON**: Yes?

**MINISTER PRAVIN GORDHAN**: Into, onto the record. As I said earlier on the first is an extract from the October 2009 medium term budget policy statement where we say the following as Treasury.

"For us to succeed we need a shared compact across all the divides in this house and indeed across the nation. We will not tolerate corruption. We will act forcefully against wastage and we will resist or we will insist on value for money for the billions that we spend."

The second is from the 2010 budget of February 2010 and I quote;

"Measures to combat fraud and corruption. A major site of both wastage and inefficiency is in our procurement system. Through a combination of corrupt practices, inefficient procurement, poor planning and in some instances collusion by the private sector we are not getting the kind of value from our purchases that our people deserve. Even where there is absolutely no corruption we sometimes give contracts to people who cannot implement them and so houses are left without roofs, roads crumble when it rains, water schemes break down and school books fail to get delivered. Mr Speaker, corruption is an ever present threat to our ambitions. All South Africans must constantly and consciously work to root out this cancer. If we are to address this scourge we need improved management capability,

governance, enforcement and oversight in government and in the business sector."

So we go back at that period with the context here Chair is also relevant. This was the period when South African began to experience the aftershocks of the financial crisis that started in the United States and in Wall Street in particular in 2007/2008. You will recall that as Minister, Mr Zuma's first administration came into office one of the announcements that had to be made by June or July that year is that tax revenue would fall by R50 billion as a result of growth falling and so started the whole process of what we today call fiscal consolidation. In other words trying to manage your expenditure in line with the revenue base that you actually have, but secondly taking a closer look at procurement practices where savings could actually be derived whether that be at a municipal level, which is quite important for us today as well. We had all sorts of malfeasance going on there or at a provincial level or national government sphere level and that is the context for this emphasis and each six month period both Treasury and other departments would produce lists of achievements on the one hand or new ideas. So we tried to manage the ceiling if you like for the cost of cars or the number of overseas trips that could be made and so on, which was part of the context that we found ourselves in.

The second part Chairperson is as I said earlier on a few extracts from the reports that the General Secretary, it is actually Secretary General Mr Mantashe placed before various structures of the ANC and this particular one was a diagnostic organisational report prepared by him and his office and I make this available to yourselves, but at one paragraph he says the following and I quote;

"Stories of corruption in our government make weekly newspaper headlines. There is no effort to rebut them thus

creating space for them to take root. An emerging narrative is that we must not talk about corruption unless we have evidence, because it hurts the ANC. Society on the other front expects the ANC to take a stand against corruption. By taking serious action or being seen to do so it expects our movement to deal with – and he uses the quotation – both tigers and flies when it comes to corruption. In other words big corruption and small corruption. They expect to see arrests, prosecution and conviction of both the small fries and important individuals. With more of half of the MEC members having been to China on a political exchange program the ANC leadership should be able to understand the concept of - and the quotation - dealing with both tigers and flies."

So that is the first extract. The second extract was part of his organisational report presented at the December 2017 conference and I quote;

"Many in our movement are in denial that state capture is a reality facing our country. There is a strong view that state capture is a narrative mainly developed by the media and beneficiaries of the apartheid state in which case the state cannot be regarded as captured if not all of its three arms are not captured. The debate is raging on with society having strong views on the matter. The ANC therefore cannot afford to be perceived as confused or defensive in the face of this debate. This conference must provide concrete guidance to the leadership not only on the position the ANC must take but also



how it should engage this debate. At this point in time the ANC is divided in this debate to a point of seeing our disagreements as boxes of enemy camps."

And I am sure when the ANC appears before you Chairperson they will be able to elaborate on this as well.

**CHAIRPERSON:** Yes.

**MINISTER PRAVIN GORDHAN:** This was followed by the last extract that I want to place before you during the January eight statement delivered by the President and I quote;

"We shall confront corruption and state capture in all the forms and manifestations that these scourges assume. This includes the immediate establishment of a commission of inquiry into state capture. The investigation and prosecution of those responsible will be given top priority. Mechanisms for the appointment of individuals to senior government positions, state owned entities and law enforcement agencies will be strengthened to improve transparency, prevent undue influence and ensure adequate vetting of candidates. We must work to restore the credibility of public institutions including state enterprises and law enforcement agencies by addressing excessive turnover in senior positions, undue political interference, poor coordination and corruption."

And in some I think what the Secretary General is saying is that we as the ANC and I am sure he will be in a better position to articulate this when he appears before you cannot be in a denialist mode that it is in the interest of the organisation, which has long served this country to enable it to confront this cancer so that it can indeed stick to and

accomplish what is intended in its slogan i.e. unity and renewal and renew the ANC so that it could continue to serve South Africa on the basis of the kind of principles that it was built and if you put this in simple terms Chair when one has a cancer and goes to a surgeon you cannot say to the surgeon take a little bit of the cancer out. You either take it all out or if you leave some it is going to kill you eventually and I think that is the message that we are trying to understand and also propagate as extensively as possible.

**ADV PAUL PRETORIUS SC:** Before, thank you Minister. Before you continue that perhaps will form a background to your evidence in paragraph 14 and certain questions that the legal team would like to put to you in regard to the contents of that statement, but Chair it is past 11:15. May we take the short adjournment?

**CHAIRPERSON:** Okay no that is all right. Before we do that let me check again people at the back here Mr Pretorius well, as well. Okay they say they do. Thank you. We will take the short adjournment and we will return not at half past but at 25 to. Thank you.

**ADV PAUL PRETORIUS SC:** Thank you Chair.

**CHAIRPERSON:** We adjourn.

**HEARING ADJOURNS**

**HEARING RESUMES**

**CHAIRPERSON:** Before you proceed Mr Pretorius, Minister Gordhan the extracts which you read from your own budget speech as well as the then Secretary General's speech about more or less ten years ago was that, were they both around 2009?

**MINISTER PRAVIN GORDHAN:** The budget extracts from 2009 the Secretary General's points go back from December 2017 to I think midyear 2017 and some are further back. They are much more recent.

**CHAIRPERSON:** Okay all right, but I seem to remember that even before the time of President Zuma his predecessor President Mbeki had in his speech also been talking

quite strongly on issues of corruption. Is that your recollection as well or not really?

**MINISTER PRAVIN GORDHAN:** That might well be the case, but we can check that Chairperson.

**CHAIRPERSON:** Yes. Now I consider myself reasonably informed in terms of what is in the public domain but I struggle to remember any instances I may have heard of or read of in the media over a very long time of the ruling party taking disciplinary action against its own members in regard to issues of corruption. Is your recollection different?

**MINISTER PRAVIN GORDHAN:** There might be...[intervenes]

**CHAIRPERSON:** That is, maybe I must qualify that without waiting for state institutions in other words without waiting for criminal prosecution just taking disciplinary action in those matters where there may be allegations of corruption.

**MINISTER PRAVIN GORDHAN:** The first qualifier Chair that I wish to put forward in response to your point is I am not representing the ANC and that...[intervenes]

**CHAIRPERSON:** No, no I accept that.

**MINISTER PRAVIN GORDHAN:** So when officials of the ANC appear before you they must answer that, but to assist you I think the narrative has emerged in different forms. So probably earlier in the 2000's there was a debate about whether you, one, a member should recuse himself or herself from active ANC programs if one, the person is merely charged or must that person first go through a trial then a court decides and thereafter the person then has to do the necessary, but usually it would appear from the one or two instances that I seem to remember that that applies to the constitutional provisions about whether you can be a member of parliament or not because if you have a criminal record as you know you cannot. So I think what the Secretary General is saying in other documentation also is that he is saying is that we need to do better and do more in that regard not just as the ANC, but as the constitutional structures of the state as well.

**CHAIRPERSON**: Now maybe I must just mention for what it is worth why I am asking this question and I am sure that you understand.

**MINISTER PRAVIN GORDHAN**: Yes.

**CHAIRPERSON**: And a lot of people would understand. The ANC was given power by the Electorate and the Electorate would expect it to govern in accordance with certain values and principles and one can imagine that people in the Electorate - the Electorate or sections of the Electorate would keep an eye and watch what is happening and they may be saying to the extent that there has been or may have been state capture what did the ANC do once it realised there were certain practices and so on and so on and it may well be that, probably will be that the Commission must look at everything to see what may have constituted fertile ground for state capture to happen or to happen the way it may have happened and what is it that an important player such as the ruling party should have done or did or did not do which may have assisted to get state capture to where it is and as I always mention I proceed on the basis that my terms of reference says allegations of state capture and I have got to look at the matter in that way until the findings are made. So that is the context in which I was asking that question.

**MINISTER PRAVIN GORDHAN**: No it will be fair to say that Chairperson. As you say that firstly as and if I may say so I would rather call the ANC a governing party. There are many in South Africa who would like to be rulers.

**CHAIRPERSON**: Yes.

**MINISTER PRAVIN GORDHAN**: So we do not want to be a ruling party but as a governing party and the statements that I have read out indicate that already our first accountability is to the South African public. It is to ensure in terms of our core mission articulated in the Constitution of the ANC that we serve the South African people, all of them.

But secondly we have got to correct the historical wrongs that the majority of our people have been subjected to over time and thirdly as the Constitution eventually says as well we have got to both transform this country and arrive at a situation where we say that we are advancing social justice every single day if that is actually possible.

Have we fallen short of that mission? Probably but I think it would be wrong to leave an impression that the ANC equals everybody because like any other voluntary organisation there would be differences in terms of how one interprets principles and values but more importantly how one practices – puts into practice the principles and values as well.

But secondly as we will come to later in the statement there is the phenomenon of the fight back. There is the phenomenon which says that those who have engaged let alone engaging in but those who have engaged in malfeasance as I said earlier engage in the politics of destructions.

So find as many distractions as possible using modern technology which has become quite a feature of the Bell Pottinger and do whatever you can so that the spotlight does not fall on you. The spotlight must constantly be moved to others for one or other reason.

As you know, Chair, and you might want to get an expert on this throughout the world including our own situation fake news is a reality. So academics are talking about fake news, post factual news and so on and so on. I am sure there is some expert sitting here that can help us in that particular regard but all of that is to ensure that elites or small groups of people become beneficiaries of extractive processes and enjoy their status as elites whilst the people that they nominally indicate that they are serving fall by the wayside and that is in fact one of the big causes of a) the inequality we see across the world and in South Africa and secondly, the disenchantment with elites be they

political, business and other elites in societies and thirdly there is a lot of literature available which would indicate how populism becomes a fact in many societies, largely rightwing populism and sometimes disguised in leftwing rhetoric and that again serves the purpose of particular groups and that then gives rise to particular political outcomes as well.

So people will defend their largess or access to their largess in some way or the other and you will see a lot of it. In my short experience in the Public Enterprises Portfolio as soon as one identifies a senior executive who has quite evidently participated in a number – over a number of years in one or other kind of malfeasance and their transactions after transactions do actually prove it and forensic evidence to prove it the pattern that is emerging is one where if you like clients would have been developed over the years and these are what you might call sub capture processes.

So there is big capture if I may suggest that but there is also small capture where as a CEO or as a CFO or as a Senior Manager you develop your own client base. You supply them with money so when you get into trouble they are there to defend you in one form or another and we have seen that in real life as well and that then becomes part of the phenomenon that I described earlier on.

You then get this masking effect but also the fight back or counter attacks in one form or another as well. So coming back to the core of your point there will be those of us who fervently still believe that the core principles of the ANC Constitution and our own Constitution as the country the key principles that must drive our conduct we are human so we are fallible.

It does not mean we do not make mistakes but as best as we can we try to achieve those objectives in the day to day practices we actually engage in and one hopes that the kind of reflection that the new President of the ANC is trying to induce within the

ANC itself as part of the renewal project will begin to set the governing party right on the right course and there is some evidence that we are moving in that direction.

**CHAIRPERSON**: No, thank you very much. I am sure we might revisit later on but I am happy that you proceed subject to what Mr Pretorius has.

**ADV PAUL PRETORIUS SC**: Thank you, Chair. Well perhaps Minister Gordhan a good place to start now is paragraph 14 of your evidence where you state that your own knowledge and understanding of state capture like that of the rest of the country evolved over time it is a partial answer to the questions being raised by the Chair.

The first point I would like to emphasise in paragraph 14 is you talk of state capture rather than corruption and you will later give evidence about how you understand the distinction between those two concepts but if you would like to deal, please, with the issues in paragraph 14 and allow me if I may to ask you one or two questions about what you say in paragraph 14.

**MINISTER PRAVIN GORDHAN**: Sure. With reference to both 13 and 14, Chair if I may the one important qualifier that one must and I must put before you is that this is just one contribution if you like to contributing or providing a piece of a jigsaw puzzle.

So the jigsaw puzzle will eventually give you the state capture as we know it. I am not claiming that I have full knowledge of everything but within my experience and the experience of colleagues that I have worked with here is a piece of that puzzle and one hopes that the commission itself having collected the pieces in various ways will be able to pull it together.

The second point as Mr Pretorius points out is that state capture as one of the distinctions that one could draw between corruption as a fragmented *ad hoc* activity so to speak unconnected to what in law you probably would call racketeering or an organised crime and the organised crime here is the systematic takeover of key institutions in order

either to loot or to protect the looting process in some way and by protection of the looting process it means also acting against those who want to fight against the looting process be they in the governing party, other political parties, civil society formations and even in the courts for that matter as well.

So if one chooses the latter as the paradigm within which to actually work then I thought it is useful to ask the Commission to look into the Betrayal of the Promise Report done by or prepared by a number of academics which provides as I indicate in paragraph 16 a useful conceptual framework and what I would suggest is that this is a hypothesis you work with when the pieces of the puzzle are available.

You can work out whether the hypothesis has relevance or not but the framework certainly provides one and yourselves with an opportunity and indeed the public as to what is this picture called state capture? What are the key components of it? Who or what could be the key actors within it? What roles do they actually perform and how do those roles all contribute to the process of extracting funds and locating them in whatever place they simply get located.

**ADV PAUL PRETORIUS SC:** Minister, you have asked for a certain document to be included in the bundle.

**MINISTER PRAVIN GORDHAN:** Yes.

**ADV PAUL PRETORIUS SC:** Which we have included in the supplementary bundle but before we go there may I take you back to paragraph 14 of your statement? In that paragraph you say that your knowledge and understanding of state capture evolved over time and you say in relation to state capture I emphasise as opposed to corruption the interrelationship of such events were revealed progressively and often only in hindsight.

May I just ask the question has been raised indirectly I think by the Chair, perhaps even directly that the evidence of state capture must have been known or ought



to have been known to the executive and as you refer to it the governing party and the response thereto was somewhat delayed. What do you say to that?

**MINISTER PRAVIN GORDHAN:** Well if you go back to your first point which is that the, I will try and look for an analogy but again let us use the jigsaw puzzle as an analogy. Once you empty the box of the 100 or 500 or 5000 pieces they do not all suddenly appear as a picture in front of you. They are merely pieces.

So the picture actually evolves as the pieces begin to fit in the right place you put in the wrong place of course you get the wrong picture or it will not fit at all. I am sure all of us has had experience with jigsaw puzzles at one stage or another and so the point I am making here is that what we – what might have been seen as fragmented *ad hoc* corrupt activities did not give rise to the notion of state capture certainly in our understanding at a particular point in time.

Again I draw reference to the comments made in the 2009 – you have made reference Chair to President Mbeki's remarks possibly prior to that as well and all that suggests is that you have a build-up of evidence which says there is something a lot more sinister than just individual acts of corruption that is actually going on and that then gives rise to the notion that once enough dots appear and the dots themselves are clear enough then one might have the ability or to opportunity to connect those dots and then see the beginnings of a picture and as we go through this process and go through each forensic report that we are now either conducting or looking at having been conducted earlier on more dots are appearing and they appear at different levels of detail if you like and connecting those dots then gives us the opportunity particularly after the release of the Gupta e-mails, which the Commission has access to I believe, a more complete picture of who was involved, what role were they involved in and in a moment when we refer to that particular annexure there is a suggestion from the authors of the Betrayal of

the Promise report about how one could look at this particular picture.

So the notion, the second point was about delayed action. If a matter is evolving over time and evolving in the fragmented way I am suggesting then one must ask whether specific acts of corruption were dealt with or not dealt with and I am sure if one goes into a detailed study there would be some evidence to suggest that there was action taken or there were steps taken from the Treasury and from other entities as well to stop those acts of corruption to ensure that the regulatory frameworks created around procurement and constantly improve were beginning to have some kind of impact and would act either as a limitation to what people wanted to do. So we will give you later on the case of Denel Asia where provisions of section 54 and section 51 of the PFMA required certain things to be done and certain approvals to be obtained before any state entity can just go ahead and create another entity and that is the check in balance within government that allowed some pre-emptive steps to be taken to stop different forms of corruption and other stages I am sure and I have not, I must say, undertaken any study in this regard although I see in the audience Mr Brown who is the former head of the Procurement Office in the Treasury who might when they come to you and give you some interesting evidence as well in terms of his experience.

So was there resistance to the fragmented instance of corruption? I bet there are instances in that regard. Some of them pre-emptive, some of them *post facto*. Was there resistance in relation to state capture as it began to be evident in a more wholistic way, definitely, otherwise we would not have seen some of the activities around Mr Nene's dismissal and the events that have followed since then and the various changes that now *post facto* or in retrospect we can see in boards of SOEs, management of SOEs as well and the extraordinary efforts that different parties undertook to become part of this process.

So one of the documents that the Commission might want to look at is this one. It is an Eskom inquiry reference book that we used in parliament which is very clear illustrative both of the timelines, in other words changes at the level of the executive, changes in management and the various procurement projects that were undertaken at different stages from 2010 onwards and it is a classic case, it is well researched, which is illustrative of the state capture narrative. So I want to suggest that many people inside and outside of government who A, began to understand state capture for what it was. B, did offer resistance. C, themselves who then became victims of harassment and attacks of all sorts and D, continue to be the subjects of such attacks as well. That means those who are attacking us have something to hide, something to protect, something to distract the public with. The question is what? I suppose that will come at some stage or the other and the setting up of the Commission and the work of the Public Protector must be applauded, because that then gives rise to where we are today and the opportunity to canvas all of these issues on a much more exhaustive way.

**ADV PAUL PRETORIUS SC:** Perhaps Minister we can deal with questions of timing of all the approaches and the extent of knowledge to which you have referred when we deal with matters in more detail later, but you have made the distinction between acts of corruption however widespread those acts might be on the one hand and organised project or the state capture project as you might have referred to it on the other and you deal with that in paragraph 15 of your statement. If you would just deal with that please and allow me to ask you one or two questions about those issues you raise in that paragraph.

**MINISTER PRAVIN GORDHAN:** So I can best illustrate that Chairperson in relation to 15.1 which makes reference to executive appointments and dismissals which is within the purview of 1.3 to 1.1 and I just try to remember changes in executive positions over

the last six or seven years. So if one looks at the following departments and traces a number of changes that they went through, but also in parallel what were, what were those departments looking at either in procurement terms or other financial transactions. The one will be the Department of Energy. Two will be Public Enterprises. Three is the National Treasury. Four is Transport. Five is Minister Resources. Six, possibly is Communications particularly the digital migration process and seven, COGTA particular in relation to a small agency it has called MISA which was set up some years ago for the purposes of infrastructure development in municipalities. So it has a budget of about R300-R350 million.

**CHAIRPERSON:** What is it called?

**MINISTER PRAVIN GORDHAN:** MISA, Municipal Infrastructure – something, sorry I forget the other two letters.

**ADV PAUL PRETORIUS SC:** And of course Minister executive appointments and dismissals may also be relevant and certainly will be dealt with in evidence in due course at the level of state owned enterprises as well.

**MINISTER PRAVIN GORDHAN:** Yes.

**ADV PAUL PRETORIUS SC:** May I ask you one of the legal team has asked me to raise with you the relationship between what you say in paragraph 15.1 about appointments and dismissals at any level of government including the executive and the ANC policy of deployment. Do you have any comment about that?

**MINISTER PRAVIN GORDHAN:** Yes must has been made of the word deployment, but I thought it might be useful for the Commission Chairperson to look at the United States as an interesting example and not because of the current incumbent but the practice that they have there. When a presidential election takes place in November and the new president is inducted in January 6 000 people walk out of the halls and corridors of

government. 6 000 people are supposed to walk in "the next day" and of course between November and January a transition team is created. There is a new book by Michael Lewis who actually wrote about the financial crises in the post 2009 period about this particular transition after the current president became, was elected as president. So essentially the party that wins and the president who wins has a choice to deploy 6 000 people in essence and the transition team is supposed to prepare that, but this book is about how it worked and did not work I believe. I have not read it. The second is that deployment is a practice that you would see in most political organisations that one you, the political organisations and parties are there as you pointed out earlier Chair to win elections. Once they win elections they need to have people in place for the right reason or the wrong reason in order to prosecute whatever are their programs for which the electorate has actually supported them and so after the municipal elections of 2016 for example if the Commission just undertakes a short study you will find some very interesting examples of deployment as well. Thirdly to come to my own organisation the ANC it follows the same pattern that it will look at certain areas of government and the first line of deployment is Cabinet. So immediately after, as you know the President is inaugurated virtually within 24 hours the president announces his choices in terms of who occupies which ministerial or deputy ministerial position. So that is the first level of deployment. The second would be in various institutions and here again there is a practice that you consult with the Head of State if there are vital issues in relation to a board or a critical position, which does not means taking instructions but has been consulting to ensure that one is doing the right thing or moving in the right direction or one is aware of all the facts surrounding either a position or an individual and in that particular regard for example in appointing boards of SOEs we go through a process either advertising en masse to say anybody interested in X, Y, Z please apply, which is

what we did when we came into office or apply advertising in relation to a particular institution. So if you are interested in forestry or SAFCO you can indicate your interest there and then you make some choices after checking the candidates that are available and invariably many of the choices that come out of that process are accepted, but there might be suggestions about entertaining other ideas as well or other people. I am not sure that adequately addresses...[intervenes]

**ADV PAUL PRETORIUS SC:** You deal later in your evidence Minister with appointments at the level of SOEs and perhaps we can revisit the topic at that stage. You refer to the work by the group of academics entitled Betrayal of the Promise. The extract you requested to be placed in the supplementary bundle is at page 82. In paragraph 16.1 and following you refer to various categories of actors. Perhaps for the less informed such as myself you could give examples of the persons or the offices that you are referring to in paragraph 16.1 and following to allow us to understand your contention a little more clearly.

**CHAIRPERSON:** I am sorry Mr Pretorius did you refer us to the supplementary bundle or not yet?

**ADV PAUL PRETORIUS SC:** Yes supplementary bundle page 82.

**MINISTER PRAVIN GORDHAN:** 82?

**CHAIRPERSON:** So, thank you.

**ADV PAUL PRETORIUS SC:** May I ask are you able to hear? Put it this way am I speaking loudly enough, let me put it differently Chair.

**CHAIRPERSON:** No I think I did hear the question then, but having to look for this page has made me forget.

**ADV PAUL PRETORIUS SC:** Okay.

**CHAIRPERSON:** So you might wish to repeat that question.

**ADV PAUL PRETORIUS SC:** Yes it deals with...[intervenes]

**CHAIRPERSON:** I have got the page now...[intervenes]

**ADV PAUL PRETORIUS SC:** The persons referred to in paragraph 16.1 and 16.5 in the...[intervenes]

**CHAIRPERSON:** In the statement.

**ADV PAUL PRETORIUS SC:** In the statement that you made in relation to the analysis by the group of academics that you referred to.

**MINISTER PRAVIN GORDHAN:** So the summary I offer is based on page, your reference 82, but page 56 of the Betrayal of the Promise report and two or three pages after that where there are two illustrations Chairperson that they offer. It is not me that has done this. So on page 85 there is a schema or a schematic diagram which reflects what I am going to say and the more generic form of that appears on page 82 of the annexure. So what the Betrayal of the Promise report suggests is that there is a hierarchy of operatives who are involved in a state capture project. The first is the people they call the controllers. These are very senior political people often through the research that they have done who are strong men who secure access to and maintain control over resources and they are the patrons if you like of resources and on page 85 of the annexure they put in the names of Mister Zuma at the head of that but the Guptas could also be referenced as playing such a role because of the access they appear to have to influences.

The second category in the hierarchy is described as the elites and these are people who are in the networks that can attract resources with the controllers and who establish and maintain patronage networks that facilitate the distribution of benefits and these could be Ministers in our terms as well as Senior Managers for example in state owned enterprises who could play that role and on page 85 of your annexure you will see

some names that they have attached there.

The next category is brokers and these are people who have access to resources that can facilitate the trade of resources and these are people usually on the outside. The names that appear in some of the documents not necessarily this one is the kind of role Iqbal Sharma would have played as Head of what was then called Assets and Something Structure within the Transnet Board, the kind of role Issar Essa would have played in the Denel Asia case in the 1064 locomotive case in relation to Transnet and I am sure there are many others.

So these are the people who as the word correctly suggests broker the deals and have a sense of how the mechanics of that would actually work.

The fourth and fifth categories in this hierarchy will be what are called mobility controllers and dealers and these are people who have the ability to control the movement and access to resources working closely with the brokers and the dealers are the people who are responsible for managing and hiding financial transactions and laundering money and the financial institutions often play a key role because of the kind of infrastructure they have both within a country and between countries so at a global level as well and as you know in today's terms depending on how exchange controls are managed by the South African Reserve Bank on behalf of the National Treasury with the click of a button billions of Rands in one form or another can find their way out.

So at a click of a button a thousand transactions can take place of a R100 million each for example and you can have that kind of massive transfer. The latter becomes quite important, Chair when we start looking at the question how much was stolen appropriated by these people and projects and secondly where did the money go to and thirdly how do we track that money down and fourthly how do we reclaim that money through the various agencies and again if we do not have law enforcement



agencies working well then whatever bilateral agreements you have between justice departments and enforcement agencies those will not be put into action because of obvious reasons and you will not be able to serve South Africa by getting all of those hundreds of billions of Rands back.

**ADV PAUL PRETORIUS SC:** Yes. Thank you.

**MINISTER PRAVIN GORDHAN:** So that is the analytical framework.

**ADV PAUL PRETORIUS SC:** Yes. From the point of view of the Commission obviously Minister you introduce the Betrayal of the Promise Report as a conceptual framework or an analytical framework according to which you suggest the Commission might analyse the evidence before it.

Of course much of the evidence still is not before the Commission and before we get to the stage of making conclusions that evidence will have to be presented and analysed. So by asking the questions in the manner we do we do not intend to forestall or foreshadow any factual findings that we have to make as a result of our investigations.

May I just ask you briefly to go back Minister to paragraph 15? You mention there four features of the state capture project that you described which would distinguish state capture from individual acts of corruption. Would you just mention please for the sake of the Commission the items in 15.1 to 15.4 which would constitute that distinction?

**MINISTER PRAVIN GORDHAN:** Well 15.1 makes reference as I have indicated to Chairperson the executive appointments and dismissals. 15.2 To persecution and campaigns of harassment and intimidation. 15.3 Major public procurements projects and 15.4 commandeering and neutralising key state law enforcement agencies.

I am sure many others can be added but I have just highlighted those four.

**ADV PAUL PRETORIUS SC:** Yes. May we then go to paragraph 18 of your statement and ask you to comment on paragraphs 18 and 19 before we get to the role of National

Treasury at paragraph 20.

**MINISTER PRAVIN GORDHAN:** Chairperson in the context of having connected the dots so to speak and the various reports being in the public domain the South African Council of Churches as an important component of civil society initiated a process of unburdening.

Basically anybody involved in malfeasance would you like to come to us as religious figures and unburden yourself? Tell us what happened. How did you do it etcetera, etcetera and the outcome of that was the release of a report in May 2017 which documents the accounts of corruption and state capture from members and whistleblowers in different – in their different congregations and I wish to read into the record the following extract from the report if I may.

**CHAIRPERSON:** You may.

**MINISTER PRAVIN GORDHAN:** And I quote:

"It now seems that the problem is far greater than corruption but organised chaos. We have now come to learn that what appears to be chaos and instability in government may well be a systemic design of the madness that ails our governmental environment, a chaotic design. A careful analysis makes the case for the following observable trends of inappropriate control of state systems through a power elite that is pivoted around the President of the Republic that is systematically siphoning the assets of the state. They do this by:

- 1) Securing control over state wealth through the capture of state owned companies by chronically weakening their governance and operational structures.

- 2) Securing control over the public service by weeding our skilled professionals.
- 3) Securing access to rent seeking opportunities by shaking down regulations to their advantage and to the disadvantage of South Africans.
- 4) Securing control over the country's fiscal sovereignty.
- 5) Securing control over strategic procurement opportunities by intentionally weakening key technical institutions and formal executive processes.
- 6) Securing a loyal intelligence and security apparatus.
- 7) Securing parallel governance and decision making structures that undermine the executive."

So that sums up pretty much what I have been saying and what the Betrayal of the Promise Report says but this is an excellent example of our demographic balances if you like in our society, Chairperson where the religious community also saw it as their responsibility to both analyse and bring to the awareness of the South African public what was going on and how do you paint a picture of what was going on so that we both – we all understand this phenomenon called state capture.

**ADV PAUL PRETORIUS SC:** Then we get Minister to your evidence in paragraph 20 where you deal with National Treasury. There has been much evidence about the role of National Treasury in the issues or matters that we will cover in our terms of reference and have covered in our terms of reference and from a public interest point of view I would ask you to explain to the Commission and to the public what you know through your experience of the role of National Treasury and in particular the role of the Minister of Finance.

In that regard we have referred you to a document prepared by a former Minister of Finance Trevor Manuel and that document appears at page 86 of the supplementary bundle and perhaps I can ask you to comment on the contents of that document.

At paragraph 86 in the first paragraph former Minister Manuel refers to the roles and responsibilities of the Minister of Finance. You could take a moment to look to that or if you wish to read it onto the record.

**MINISTER PRAVIN GORDHAN**: Let me read that for the benefit of both the people here and people sitting at home and elsewhere watching if I may, Chair?

**CHAIRPERSON**: Yes you may.

**MINISTER PRAVIN GORDHAN**: The first paragraph says:

"The roles and responsibilities of the Ministry of Finance are distinctly different from all others. Firstly the functions are performed through a number of discreet departments and a series of agencies. Secondly, there is a reality that even the tasks of the National Treasury alone are sufficiently diverse for the department to be considered an amalgam of different but interrelated functions. Unfortunately the official handover report follows a set template for departments that does not adequately capture the complexity of tasks."

**ADV PAUL PRETORIUS SC**: We can go on then, Minister to the next page, page 87 where the work of the Ministry of Finance as described in more detail under the head The Job Description of the Minister of Finance.

**MINISTER PRAVIN GORDHAN**: Again I quote Chair.

"Even in the best of economic times and these are not the best of times, and he is referring to that period when the financial

crisis had just hit South Africa, being the Minister of Finance means playing a role in government that will not always lead to unqualified popularity. This is partly a result of the role of the Minister of Finance in the budget process and all the expenditure management tasks that go with that. In this role the Minister of Finance must advise cabinet about what is affordable and just as controversially must recommend which of the contending priorities needs immediately resourcing and which might have to wait. Inevitably this means that the Minister of Finance is sometimes cast in the role of an obstructionist or scrooge and becomes the obvious target for blame if and when delivery agencies appear to fall short of their aims and objectives."

The next paragraph says:

"Another reason for the unpopularity has to do with the fact that the policy role of the Ministry abuts those of a number of other Ministries. This means that there may sometimes be contestation between the Minister of Finance and other members of Cabinet about the appropriateness of particular policies which fall outside the formal domain of the Minister of Finance."

**ADV PAUL PRETORIUS SC:** May we then ask you to go to the next page, Minister under the head The Core Responsibilities of the Minister of Finance now.

**MINISTER PRAVIN GORDHAN:** Again I quote, Chairperson.

"The most significant entities for which the Minister of Finance is politically responsible are the two national departments for which

the Minister is the executive authority the National Treasury and the South African Revenue Services and three regulatory entities the Financial Services Board, The Financial Intelligence Centre and most recently establish the Co-operative Banks Development Agency. He or she is responsible for two state owned entities the Development Bank of Southern Africa and the Landbank. The Minister is also responsible for Statistics South Africa."

Some of this has since changed, Chairperson.

**ADV PAUL PRETORIUS SC:** If you could just pause there a moment, I believe there is a request for the supplementary bundle so that the legal representatives of interested parties can follow it. Perhaps I will make sure ... [intervenes]

**MINISTER PRAVIN GORDHAN:** Ja.

**ADV PAUL PRETORIUS SC:** Perhaps I will make sure they are distributed and then come back to this.

**CHAIRPERSON:** Okay, no that is fine and I guess the areas or passages that have been read by the witness can be marked for purposes of helping the legal teams to see which paragraphs were quoted.

**ADV PAUL PRETORIUS SC:** I only have one more extract to deal with and that appears at page 91.

**CHAIRPERSON:** Yes.

**ADV PAUL PRETORIUS SC:** And deals with the functions of National Treasury but we can do that in due course.

**CHAIRPERSON:** Thank you.

**MINISTER PRAVIN GORDHAN:** If I may just comment on one phrase that I made

reference to and that is Fiscal Sovereignty Chairperson. It is a term that I think Minister Manual coined at the time, but an important one for South Africans to understand. Then after we dealt with the effects of the burden that the apartheid state left for the first democratically elected President and his administration, Mr Mandela, and overcame the issues of debt and so on, South Africa can proudly say that most of its expenditure came from taxes that itself collected from its own citizens. Secondly that South Africa has not subjected itself to acquiring loans or assistance in the form of finances from bodies like the International Monetary Fund. Therefore South Africa is very different from a majority of developing countries where the IMF for example, particular in its old mode, is not able to come to South Africa and give instructions to its government on what to spend its money on and how to spend its money on the different projects that it actually intends to. And when we see, look into further the effects of state capture and the kind of destruction or undermining of key institutions, is that the ultimate effect could well be that we begin to impact on economic growth. We begin to impact therefore on revenue, both for the reason that economic growth is lower but also the revenue collection agency is not in the state that it should be in, and ultimately that impacts upon the expenditure framework that you can afford at any particular point in time. And you go through then, a period of constraining expenditure rather than being not necessarily expansive but certainly supportive of both economic growth and social transformation as well. So protecting Fiscal Sovereignty in our case is as important as protecting our democracy in terms of the constitution.

**ADV PAUL PRETORIUS SC:** Minister would you then please go to paragraph 20. I am not going to ask you to comment on another former minister's views but just to place your own views on record in relation to the role of National Treasury and what you have brought before the Commissioner in the paragraphs which follow on page 11

and 12 of your statement.

**MINISTER PRAVIN GORDHAN:** The paragraph 20 then takes us back to the role of the Treasury, and it is to repeat the point that Minister Nene I think has already presented to you, which is that the Finance Minister is in effect [indistinct] to the CFO of a big corporate. Of course there is no big corporate as big as the South African State, and the relationship between the CFO and the CEO, in this case the President, has to be a harmonious one in order for the two key players within an enterprise to do that which is necessary in the interests of the enterprise itself and of society more generally.

National Treasury is one of the key institutions, as I read through the extract, and it has many, many roles actually. In the first instance it has the role of formulating macroeconomic policy. So monetary policy is executed by the Reserve Bank at its own discretion and in its own independent right but the inflation target for example is set and were set many years ago by government via the advice of National Treasury.

The second component of macroeconomic policy is fiscal policy. In other words how will we spend our money, where will we get our revenue from, how much will we borrow, how much of interest on debt can we afford, how close to 60%, which is the nominal sort ceiling that ratings agencies and the world will place on borrowings, that is your debt to GDP ratio. So how far would you allow that to creep towards 60%, the responsibility that the Minister of Finance Mr Mboweni has today. And so that is a function that constantly monitors what happens in the economy, which are the growth drivers in the economy, which sectors of the economy, for example manufacturing or agriculture or mining as the case might be, at different stages is either at on the plus side or on the minus side, and how do they each contribute to what we nominally call GDP, the Gross Domestic Product.



And that advice then takes the form of a macroeconomic framework, which is the basis upon which cabinet ultimately decides the budget process and the budget content in numbers terms each year, both prior to the October MTVPS and finally before the budget in February each year.

The second is the budgeting process, and there is a budget office within the treasury, and that budget office in a sense brings together and coordinates a number of sub-functions. So the first is the macroeconomic analysis, so what will growth look like and what are the growth projections for the next three years, because we work on a three year cycle, called the medium term expenditure framework.

The second is what is the anticipated revenue? It used to be a fairly *ad hoc* process in the past. More recently there is a formal structure which involves the Reserve Bank, Stats South Africa, Treasury and SARS, which emerges with some level of consensus on the estimates of the revenue that is expected.

The third is to anticipate, and not just anticipate but in the more recent years set an expenditure ceiling. We can only afford to spend this percentage, and you will find that in the numbers and the budget review that is about 30% of our GDP that we are – or of total expenditure, no sorry of GDP. So that is the expenditure parcel within which I described in Minister Manuel's text is the allocation process that actually occurs. Then of course the allocations themselves in terms of their expenditure framework, in other words which department receives how much of money.

So what does the court receive versus the defence department or basic education, and those priorities emerged usually from the manifesto of the governing party, translated into a medium term strategic framework and yet again translated together with the aspirations that we set to the national development plan into priorities that government would support any particular stage. So that is the expenditure

framework.

There is an important task that the Treasury performs in terms of what it calls assets and liabilities. It is a complex function which most big corporates would have, and in many of the bigger state owned enterprises this is where institutions like Trulling and Regumens entered the terrain and "earned fees" for functions that the people employed there should actually perform. And essentially that function is, at the most basic level, each day of the week and each week of a month there must be X amount of cash available. So that is where it starts.

The next is how much of that cash will come from revenue collected, which ultimately goes into an account held in the South African Reserve Bank, and that account is "swept" every night so that we – or the banks are swept so that we know how much is available. Then this section then decides on what are called short term borrowing instruments, for a week, for a month or sometimes a few months, called treasury bills. And so if you are running short of R3 billion this year they will issue you a treasury bill, just get that R3 billion in so that the expenditure side can actually work and the money flows where it is supposed to actually flow.

But much more important, which comes up later in the statement is the longer term borrowing. Borrowing for ten years, 20 years, 30 years. It is a complex function and that is when we have these investment roadshows, after the budget and after the MTDPS, because it is largely foreign investors and local investors that buy the bonds of government, and they basically say to government we will buy your ten year bond at a particular rate, but you can get one of the technical experts here to come and explain to you how all of that works. But the process involved here is to inspire sufficient confidence in those, let us call them portfolio investors or bond investors, that we are running out of finance as well. That medium to long term future

is in good hands and that they can be – I mean their bottom line requirement, are you going to pay back the money. It is a popular phrase to say these days of course, another context pay back the money. But – and there is a lot of people who need to pay back the money.

But coming back to this particular instance are you able to and are you willing to pay, and are you running your economy well. Are you going to undertake, and you will see these in reports, particularly of the credit ratings agencies, are you undertaking the reforms that your economy requires to function at its optimum. And ever economy in the world cannot remain static, it needs to constantly change in order to both overcome weaknesses in the economy but also seize opportunities that might avail themselves at a particular point in time.

So we have internal roadshows within South Africa because assets managers in South Africa would also invest in our bonds. So I spoke to a group of investors last Friday, telling them about SOE transformation processes and what are we doing to stabilise them. Because many of them would have invested an Eskom bond or a Transnet bond or whatever the case is.

But externally much of our money comes from Europe, Frankfurt is the centre for that, London, I suppose there is not going to be much part of Europe for longer after Brackset but London is an important asset base. And then Boston, New York and sometimes both San Francisco and Los Angeles is where the big money lies and these are the people you need to convince to buy the bonds.

I think the number at the moment is that we have, as our total debt parcel just over R2 trillion, which would have maturity levels [indistinct] payment dates stretching from now into the next 20 or 30 years over this particular period. So that is an important – the assets and liability function, I can go on talking about that.

In addition to that you have a public finance function, and that is the function related to the expenditure side, and here you have a number of officials who in essence are allocated to a particular set of departments, who follow the expenditure patterns, understand their programmes, understand some of the policy changes that they want to make or have made already, and are able to interrogate the department's numbers, and whether they have actually spent the money in the right way or whether the promised outcomes have actually been achieved or the rate of expenditure is being kept with in terms of the promises that they have actually made. And it is the final outcome of those discourses that happen between Treasury officials, and there are others who come from other departments as well, because this is a technical process which is called MTEC, that the officials go through. It involves the presidency, I think the Department of Planning [indistinct] and Evaluation and a few others as well, they collectively decide what is to be allocated or what is to be cut or what is to be cut in one place and diverted to another at the end of the day.

There is also a set of regulatory functions, the Accountant General accounts to the Minister as well, and the Accountant General sets accounting standards for the public sector. And there are then also institutions like IRBA, I just forget the – but it is responsible for – it is for the Independent Regulatory Board for the audit profession, which accounts to the treasury as well.

There are also IT systems that the Treasury runs either with other departments or in its own right. I do not know what they are called these days but there used to be a system on the expenditure side, which then tracks the expenditure of different departments. And then there was a system on the personnel side called Persal. So once one becomes an employee of a particular department one's details are put onto Persal and the Persal is the system that pays out your salary at the end

of each month as well.

So those would be your main functions. There are regulatory functions as we have indicated, in respect of financial sector of the Bank's Act is assigned to the Treasury as well, and the Minister of Finance, and this is the Act that regulates our financial system. More recently, after the impact of the great recession of 2007, 9, 10, globally there was a major shift in the way in which regulation would occur, of financial institutions, and that resulted in a policy document called the Twin Peaks regulatory framework, which today assigns new and bigger functions of the South African Reserve Bank as I understand it, for what I call prudential regulation of insurance companies and banks and so on, and market conduct regulation is assigned to a new body which is a successor to what I referred to earlier on as the Financial Services Board. So that is another key function.

There is an additional piece of legislation in relation to exchange control. The legislation is the responsibility of the Treasury but the function is executed on behalf not the Treasury by the South African Reserve Bank, and so they are able to actually monitor the flow of funds into and out of the country, which does worry some people in an interesting way because is the ability to actually follow the money so to speak as well.

Maybe the last thing I want to mention Chair, is the procurement function. After the kind of lessons that we have learnt about the maleficence in the procurement area, the procurement legislation has been crafted in the Treasury. There is another version of it; I think they are working on currently or about to complete. And so in terms of the current requirement a few things that you might want to note, I must update my information on this, the first is some years ago we introduced let us call it national procurement across different entities, meaning that instead of each

department or each entity or each Province buying ECG machines for example, but in this case the first, I think experiment was with antiretroviral drugs. So in the past it was a very fragmented procurement process, which means that you did not get economies of scale and the benefits of buying large quantities. When Mr Brown and others actually put the system into place I think there was a benefit of R2 billion to R3 billion per year in lower costs in terms of procuring those drugs. There are a whole lot of other items that have entered that category of procurement.

The second is that where there is major procurement items like the PRASA locomotives or the Transnet locomotives or the coal procurement in Eskom, after the Tegeta Saga and so on, is a particular set of approvals if you like, that are required.

What I forgot to mention is an important component in the Treasury called intergovernmental fiscal relations. So Treasury also monitors what is currently an allocation of about 44% of noninterest expenditure. So if you are expending a trillion Rands collectively outside of paying interest, then 44% of that, that means R440 billion goes to the provinces and about 9% goes to local government. And treasury has various mechanisms in place to monitor what each Province does with its particular allocation.

In terms of the constitution they get a bulk allocation and the Province then decides what does health get, what does basic education get, etcetera. So there is a function within treasury that monitors provinces and a certain category of municipalities. Only the top 20 of them and the rest are assigned to provinces themselves to actually monitor. So that gives you some idea of this ... [intervenes].

CHAIRMAN: Thank you very much.

ADV PAUL PRETORIUS SC: Perhaps as a background, which will excuse us from returning to former Minister Manuel's document, and if we could go there to paragraph

21 of your statement where you talk about the pressure or conflict in which Treasury found itself, which is the theme which will carry through in the factual portion of your evidence later on, if you want to assist the Commission then with the allegations on page 11 and 12 of your statement.

**MINISTER PRAVIN GORDHAN:** So in relation to paragraph 21, by way of example Chair, is – I think what Mr Jonas was told by the Guptas, that if he accepted the finance position one of his priorities would be to get rid of four officials and they were named as the Director General Fuzile, Mr Momoniat, Mr Donaldson and Mr Brown amongst others.

Now in an institution like Treasury, but indeed SARS as well, and I am sure many others, institutional wisdom and knowledge is quite crucial. If you lose 20 years of experience, and Mr Fuzile for example was at the Treasury for 20 years before he left for his current position, and that 20 years cannot be taught in two years. So that is a classic example.

The more recent attacks that Mr Momoniat and others have been facing in Parliament, and elsewhere, is yet another illustration. The electronic media or digital media has been another mechanism through the various pots and how they work, to also put the Treasury under pressure. And then from time to time there would be this narrative, which needs to be read in the context of what Mr Manuel was saying. In fact a former Finance Minister of Chile said to me on one occasion the most frequent word a Finance Minister uses is no. So as Mr Manuel says that is what you become unpopular for, using the word no too frequently.

And so – ja so as an institution there have been occasions when the allocations expected in one direction went in another direction and there would be criticisms about not enough money being made available. But if you look at the context, in other words

here is where the economy is, this is what the revenue picture is, these are the constraints and boundaries within which we need to work in terms of debt levels, interest payments and so on, and credibility, then this is all that we can afford, and now we will have to learn how to share it in the first instance, but also we will have to determine what our priorities are as well.

Now we cannot all be priority and we do have some difficulty in setting priorities sometimes, as I am sure all of us do as individuals.

**ADV PAUL PRETORIUS SC:** Yes. Minister ... [intervenes]

**MINISTER PRAVIN GORDHAN:** So you have those sorts of narratives which says National Treasury is bigger, too big for its boots or whatever the case might be, because of the kind of function an invidious function that it needs to actually perform.

**ADV PAUL PRETORIUS SC:** Minister, you have referred then in your evidence, to the institutional or interest based roots of tensions between Treasury and other departments, given their different functions and roles, whether there is more to it than that in relation to the conflict that Treasury found itself in, in past years, will emerge perhaps from your later evidence. We need not deal with it now in general terms.

But I want to ask you in relation to paragraph 23, you say in your six and half years as Minister of Finance, we understand that to be during the period 2009 to 2014, and then from 2015 to 2017. May I ask when in that period did you become aware of the distinction between state capture on the one hand and corruption on the other hand? In other words when did the picture of state capture, as you have testified to, emerge for you or on what event did it emerge for you?

**MINISTER PRAVIN GORDHAN:** Well corruption, as you can see from the quotation that I gave the budget statements Chair, is a phenomenon and I think you might well be right that there were prior references to this phenomenon earlier than 2009 as well.



So the individual acts of corruption were known. I mean the most popular reference point if you like, we had, was these bottle of water. So if you walk into a retailer you pay R3 to R4 for a bottle of water, there will be any number of institutions that would be paying R30 to R40 for each bottle of water, and similar price escalations would occur on other items as well.

Later, I cannot remember but probably closer to 2014 but maybe even prior to that, across to the current period, a new phenomenon began to arise which the Department of Trade and Industry will call fronting but this is a peculiar form Chair, that we began to discover when we started looking at state owned entities, and it seemed to spike quite phenomenally in many of them in 2015. It is a strange thing that there is a peak in these activities in 2015 in so many institutions all at the same time, and that is that where you have complex pieces of equipment and spares that need to be bought, for example for an aircraft, a policy position was taken by a board for example, which says that you shall not buy directly from the original equipment manufacturer, what is referred to as the OEM, but if you bought it directly from there, for example you could pay 40 Dollars or 40 million Dollars for it, you are now required to go through a company in the East Rand which has no relationship or capacity to actually produce that part, but to that East Rand company you will pay 60 million Dollars for the same piece of equipment, let us call it that. Had you bought it directly you would have paid 40. So there is a 50% premium for doing nothing.

Now we find this ... [intervenes]

**ADV PAUL PRETORIUS SC:** Sorry may I interrupt?

**MINISTER PRAVIN GORDHAN:** Sure.

**ADV PAUL PRETORIUS SC:** As I – perhaps my question was not put clearly enough. It is not the corruption or forms of corruption that is the subject matter of the question,

it is rather when or on what event you came to understand, as you have stated in your evidence, that state capture was at play as opposed to just different forms of corruption? My apologies for interrupting you.

**MINISTER PRAVIN GORDHAN**: No, no, but this is just to illustrate for people here and elsewhere, the level at which it starts and then how it – because in order to instruct somebody to purchase in this particular way, through an intermediary, for example SAA Technical has a budget of R3.4 billion this year. You could probably save 50% of it if you buy those parts directly. That is what the CEO tells me, and that is a waste of R1 billion, plus minus.

**CHAIRPERSON**: I know you are still going to ... [intervenes].

**MINISTER PRAVIN GORDHAN**: I am going to come back to the question.

**CHAIRPERSON**: To deal with it but I just want to say I have struggled to understand most of the time, that kind of thing, because it seems to be quite common in government departments where sometimes things that you know, can just walk to a shop and buy and get them at a certain price, they want to go through or they go through somebody else who then adds some percentage and then they pay a lot of money and it is taxpayers' money.

**MINISTER PRAVIN GORDHAN**: Yes.

**CHAIRPERSON**: It may well be that there may be, and you might know better, that there may be certain cases where it is things that are difficult to find that maybe you might have to do that, but for many things I do not see why it should happen, but it seems to be quite common.

**MINISTER PRAVIN GORDHAN**: Well I hope Chair someday somebody interrogates that, but a popular example in that first period was laptops for instance. If you walk into a retailer laptop A would cost you R10 000, but go through SITA and you pay R20 000 for

it. So there are many such examples. So to come back to Mr Pretorius' question – and somebody benefits. So the constant question perhaps that would help the Commission is who benefits? From each of these events who benefits, where does the money go, who designs these processes and for whose benefit at the end of the day? So those are a set of questions that would be perennial if you like across many of these instances.

**CHAIRPERSON**: But as far as you know - and you have been in government for many years – as far as you know generally this would not have been an official government policy or would it have been just individual officials deciding to do or individual departments just deciding to do things in a certain way?

**MINISTER PRAVIN GORDHAN**: No individual institutions. So it would not be government policy in terms of procurement policy.

**CHAIRPERSON**: In general, yes.

**MINISTER PRAVIN GORDHAN**: But the way it is implemented, because nobody monitors has the effect that we have just described.

**CHAIRPERSON**: Thank you.

**MINISTER PRAVIN GORDHAN**: So to come back to Mr Pretorius' question using these illustrations as an example when did we notice what, when the first boards were being changed after Ms Hogan was dismissed from Cabinet for example it looked like an ordinary set of events. One, X number of people coming in and Y a number of people leaving and then it still was not clear until more of these changes were being made, but the picture was still I would think fairly hazy and then the kind of events that took place at the Treasury in late 2015 the manner in which the nuclear issue was dealt with for example all began to suggest that there was more to it than an individual act of what we today call corruption that there is a wider set of intentions and scheme if you like that underpins it in some way.

So I suppose late 2014 but mainly in 2015 these issues become clearer but the final penny and the connecting of the dots began late 2016. After the kind of harassment that we were subjected to during 2016 I mean the logical question must be why? I mean if you want, if a principal does not want somebody he or she has appointed to a particular position you dismiss the person or find grounds to dismiss the person. In this instance you do not need grounds as you know you just do not have to like the person or like what they are doing and that is the end of your career or your holding of that particular position. So when you begin to see a campaign being run, which we describe later then one has to ask the question why and that is some interesting answers that one can actually give to that.

So I think spanning that period 2015 to early 2017 that picture and the haze becomes clearer and the final penny drops if you like once the Gupta e-mails come into the public domain. That then provides us with the evidence that so and so suggested such and such to a person of authority or even as early as which we now discover as early as the four day period during which Minister Nene's replacement was in office documents that the DG then have prepared around the economic outlook and what our options were as a country. Now the e-mails show were distributed by it would appear the advisors to the then Minister in office. So clearly the intentions were there during that time and there was a particular interest momentarily during that, it was actually two working days not four days, but in the two working days there was a peculiar interest in SAA for example, because that was the time as we illustrate later when the Airbus so-called deal was being undertaken, which also involved a fair amount of money if you went in one direction. Interestingly it involves \$40 million as well compared to another direction that we finally took.

**ADV PAUL PRETORIUS SC:** Thank you Minister. The need is pressing to continue with

your statement at paragraph 13 but may we do so with the leave of the DCJ after the long adjournment?

**CHAIRPERSON**: Okay thank you. We will take the lunch adjournment now and we will resume at 14:00. We adjourn.

**HEARING ADJOURNS**

**HEARING RESUMES**

**CHAIRPERSON**: Yes Mr Pretorius?

**ADV PAUL PRETORIUS SC**: Thank you Chair. Minister Gordhan if we could take your statement at paragraph 28 and go from there. You deal there with the relationship that needs to be in place in your opinion between the President and his or her Minister of Finance.

**MINISTER PRAVIN GORDHAN**: Thank you, good afternoon Chair.

**CHAIRPERSON**: Good Afternoon Minister.

**MINISTER PRAVIN GORDHAN**: It is a point I have made earlier on Chair, which is that this is analogous to the relationship between CEO and a CFO in a corporate environment and most experienced Minister of Finance that I have interacted with over the years from other parts of the world will tell you the same and that is that there needs to be a relationship of trust and sufficient confidence, which in the early years I think did exist because we had to advise the President as a Treasury on, excuse me, how best to deal with the financial crisis. What kind of fiscal policy stances must we take. How do we make the choice between what the UK has done in relation to austerity measures versus a much more careful fiscal consolidation to which we must give credit to Mr Mbeki and Mr Manual because what we inherited in 2009 was a situation where compared to today where we have debt to GDP close to just below 60 percent. Then it was about 23 percent. What you are paying as interest on debt that time was a few tens of billions of Rands

compared to two years ago it was R70-odd billion. There was a budget surplus compared to a deficit of about a R150 billion and a deficit means that you do not have the money. You must go and borrow that money as well.

So it was not an easy period. The world was not at one. They were at one in terms of saving the banks globally. It did not affect South Africa. We were one of the few countries in the world together with Australia, Canada and India where our regulatory environment protected our banks from the worst of the crisis, but for the rest that relationship of trust is absolutely crucial.

**ADV PAUL PRETORIUS SC:** And then to go to the next point you make in paragraph 28 Minister is the need for a relationship of trust between the Minister of Finance and various other categories of person.

**MINISTER PRAVIN GORDHAN:** So here we are talking about the taxpayer in the first instance, which I refer to in 28.2 and essentially a taxpayer would be willing to pay taxes in most environments if there is a legitimacy that the authorities enjoy among citizens. Secondly, they would have some understanding of how their money is spent. So if you go back into the earlier years of SARS you will see we did not just talk about people paying their taxes we also said to the public how are your taxes used, for clinics, for hospitals, for schools, for social grants for example. It is only the kind of good economic climate plus revenue collection in the 2000's which enabled government to introduce social grants and the child support grant for example, because we had the fiscal latitude to actually do so. So that is the relationship with taxpayers. Then with the public I mean here we are saying to the public you can be assured that the money that we control on your behalf is used for your benefit and so we are saying to people living in informal settlements that sooner rather than later you will have decent housing. You will have decent transport. For the younger people we are not just making claims and slogans that

there is going to be a job, but you have got to grow the economy, support entrepreneurs amongst many other things in order to make sure - including education and training - that young people have either self-created job opportunities or job opportunities in the commercial sector, but essentially most of our people are in the lower income brackets if any income bracket at all and what do we say to them about the use of resources and how do we create confidence, because the public, you know, can be bluffed some of the time, but not at all the time as the saying goes and we have to show proof that we are using money in the right kind of way. Then thirdly investors. I have mentioned this earlier on that it is quite crucial to constantly communicate with investors both domestic and global and that is why we have the road shows that we have as I indicated earlier. A, to keep them informed on where we are going economically speaking, but today attention has also shifted to areas of governance stability in the governing party, the state owned entities which have appeared on the screen you will see later in the statement a few years ago as an area of concern and the area of concern arises from the fact that the so-called bailouts are often requested of the state and the bigger the casualty and SOE would be of malfeasance then the bigger the reliance on the state to fill whatever gap there is and then you have a fiscally constrained environment that becomes an extremely difficult exercise. So that is the point being made in 2003.

**ADV PAUL PRETORIUS SC:** Before you move on Minister the duty to communicate appropriately with investors domestic and foreign is that a duty which falls on the Minister of Finance himself or herself?

**MINISTER PRAVIN GORDHAN:** Primarily, particularly in relation to investors in our bonds. That is the key responsibility that the Minister of Finance would have, but they are of course fixed investments in the economy so if you want people to invest in the mining industry then the Minister of Mineral Resources is the person they would direct

themselves to and the President and ask whether you are creating a consistent, reliable and foreseeable policy framework because mining involves investments of 20 and 30 years. So you make a big decision today to start investing R20 billion or \$10 billion you want to know how would it pan out in the next eight, ten years and is the policy framework something that you would be certain about. Similarly other Ministers would have other roles as well.

**ADV PAUL PRETORIUS SC:** Thank you. If we can then move on Minister to paragraph 29 in the period during which you were SARS Commissioner. You deal with that in paragraph 29. If I may correct it...[intervenes]

**MINISTER PRAVIN GORDHAN:** 29 is on the after effects of the 2008 global crisis.

**ADV PAUL PRETORIUS SC:** Yes that is of course after you...[intervenes]

**MINISTER PRAVIN GORDHAN:** And...[intervenes]

**ADV PAUL PRETORIUS SC:** You were Commissioner.

**MINISTER PRAVIN GORDHAN:** Yes.

**ADV PAUL PRETORIUS SC:** Now to deal with the appointment of the Commissioner in the period...[intervenes]

**MINISTER PRAVIN GORDHAN:** So what we have put in place Chair is if you like a transitional mechanism where Mr Oupa Magashula has in paragraph 30 was appointed as Acting SARS Commissioner to bridge the pre-election and post-election gap and then once I became Minister of Finance we had to then address the question of a permanent appointment as the SARS Commissioner then as – if I may continue to paragraph 32 where we are all linked?

**ADV PAUL PRETORIUS SC:** Yes if I may just ask you to pause there a moment at page 119 of the supplementary bundle? You will see there...[intervenes]

**CHAIRPERSON:** Do we – Mr Pretorius...[intervenes]



**ADV PAUL PRETORIUS SC:** Where the relevant provisions of the South African Revenue Service Act that deals with...[intervenes]

**CHAIRPERSON:** Do we now have – have they now been marked these bundles appropriately?

**ADV PAUL PRETORIUS SC:** I believe labels are being printed.

**CHAIRPERSON:** I guess that answer says...[intervenes]

**ADV PAUL PRETORIUS SC:** I am not sure if that commentary was necessary and I apologise.

**CHAIRPERSON:** I guess that answer says they have not been marked.

**ADV PAUL PRETORIUS SC:** Yes and my apologies. Handwriting would have done.

**CHAIRPERSON:** All right. No that is fine. Okay you – what page did you refer to in the supplementary...[intervenes]

**ADV PAUL PRETORIUS SC:** 119.

**CHAIRPERSON:** Okay. All right 119 of your supplementary bundle.

**ADV PAUL PRETORIUS SC:** Just to clarify where the powers of appointment lie in respective Acting Commissioners and Commissioners of the Revenue Service. You have before you paragraph – clause 6 of the Act which says that the President appoints a person as the Commissioner for the South African Revenue Service and that amendment was introduced in 2002.

I understand before that it was the Minister of Finance that did so, is that correct?

**MINISTER PRAVIN GORDHAN:** That is correct.

**ADV PAUL PRETORIUS SC:** And then the Acting Commissioner on the other hand in terms of Section 7 is designated to act by the Minister of Finance.

**MINISTER PRAVIN GORDHAN:** That is correct.

**ADV PAUL PRETORIUS SC:** And that amendment also came in, in 2002?

**MINISTER PRAVIN GORDHAN:** Correct.

**ADV PAUL PRETORIUS SC:** Thank you. Yes I am sorry I interrupted you Minister. You were – wanted to move to paragraph 32.

**MINISTER PRAVIN GORDHAN:** So the point I made, Chair, here is the appointment of let us call it a permanent SARS Commissioner. At Annexure 2 page 72 of the – I must get used to your terminology of bundles, of the annexures we show you the advert, advertisement for that particular position.

So there was an advertisement and then the appointment process for Directors General and Deputy Directors General is normally that you advertise. You receive a list of applicants. There is a short listing process and then depending on the level of the post one or more Ministers is involved, one or more Deputy Ministers involved and external Director General might be involved and then a candidate is chosen, a Cabinet memo is crafted, the necessary documentation is then prepared, handed over to Department of Public Service and Administration and that department normally in some instances presents the candidate to Cabinet for approval.

Alternatively in certain instances the Minister concerned can do the same as well either via a Cabinet Committee or directly to Cabinet. So that is the procedure that was pursued to appoint Mr Magashula as the Commissioner.

He then subsequently in terms of paragraph 33 resigned for various reasons and that is in page 74 of the annexures and Mr Ivan Pillay was appointed as Acting Commissioner from that date and the position of SARS Commissioner was then advertised in the latter half of 2013 but we were now close to the 2014 elections and what we eventually did was to extend Mr Pillay's contract, ensure that it had a provision which would allow the incoming Minister of Finance post the 2014 elections to make his own

choices either about the acting position or by re-advertising or choosing a candidate from the 120 applicants or outside of that if he wanted to headhunt for a candidate as well. So that is the procedure up to that point in time.

**ADV PAUL PRETORIUS SC:** And then how did the final appointment occur and what was that appointment?

**MINISTER PRAVIN GORDHAN:** Sorry?

**ADV PAUL PRETORIUS SC:** The appointment of Mr Moyane was that during your period of Ministry?

**MINISTER PRAVIN GORDHAN:** No it was during Minister Nene's period.

**ADV PAUL PRETORIUS SC:** Can we deal then with paragraph 36 and the end of your first term as Minister of Finance.

**CHAIRPERSON:** I am sorry before you deal with that question as I understand your statement before the 2014 general elections your department had advertised the position of Commissioner.

**MINISTER PRAVIN GORDHAN:** Commissioner yes.

**CHAIRPERSON:** And a committee had been put together which then interviewed candidates, is that right and that is how you – then there was 120?

**MINISTER PRAVIN GORDHAN:** No.

**CHAIRPERSON:** Is he talking about...[intervenues]

**MINISTER PRAVIN GORDHAN:** The number is the number of applicants.

**CHAIRPERSON:** Number of applicants.

**MINISTER PRAVIN GORDHAN:** Applicants to that position. We did not get to as far as I can recall the interview stage.

**CHAIRPERSON:** Oh, okay. So it was not a short listed?

**MINISTER PRAVIN GORDHAN:** Yes.

**CHAIRPERSON:** Yes?

**MINISTER PRAVIN GORDHAN:** So then that is where we made the point between 34 and 35 about what does section 6 (1) of the SARS Act mean? Does it mean that that power or authority is exercised as the President would exercise his or her power to appoint a commission of enquiry, I forget the section of the Constitution or is this power exercised in the way I have just described which is you follow a normal transparent process, make a nomination and the final appointment is made by the President and I think what I had explained and what might be useful for you, Chair, if you intend to go into this further is that there was prior to 2002 if I remember correctly Ministers were appointing Directors General and that its own set of issues.

Arising from those issues the President was made the authority and that still remains the position today.

**CHAIRPERSON:** I guess it too has its own issues?

**MINISTER PRAVIN GORDHAN:** That has its own issues as well.

**CHAIRPERSON:** Yes.

**MINISTER PRAVIN GORDHAN:** You are correct and so the President then appoints but the Minister is the one, let us call it the accountable executive authority. So if you want to apply for leave, your terms and conditions of employment whatever else, what your basic job is and your accountability at an operational level for what you do all that accountability is with the executive authority and not with the President and the question that arose across this pre and post-election process was what does the power of the President as implied in 6 (1) mean?

Unilateral decision to put somebody in place or a decision made after a process? So that is an important distinction and one of the issues that has often been brought to my attention is that I might have been seen to be "interfering" by suggesting

that the President follow the process I described for the appointment of any other Director General or Head of Institution and so that is the issue that arose there and that flows into 36, Chair.

**CHAIRPERSON**: Well actually that is where my question was going.

**MINISTER PRAVIN GORDHAN**: Yes.

**CHAIRPERSON**: Because when I read the statement it seemed that prior to the elections a certain process had been initiated which was a transparent process and certain – a great number of people had applied.

**MINISTER PRAVIN GORDHAN**: Yes.

**CHAIRPERSON**: But then after the elections an appointment was made and I did not get the impression that the person who was appointed came from the 120 but he might have come from the 120. I was not sure what happened to that process.

Was it just abandoned or was it – what was the position and I thought I would ask you. Maybe you might be able to say more because you may or may not have been involved in any discussions. You may have been involved in discussions that might explain what happened.

Were those who had applied just told I am sorry that process is no longer going to be followed? Were they not told anything? What happened?

**MINISTER PRAVIN GORDHAN**: Well that happened. That process happened, Chair after the 2014 elections as you point out and in paragraph 35 we say that the date on which that appointment took place was the 23 September.

So that was quite an extensive period that had flowed. I think Mr Nene is in the best position to explain the intricacies of what happened in that period.

**CHAIRPERSON**: Okay, thank you.

**ADV PAUL PRETORIUS SC**: In relation – may I proceed?

**CHAIRPERSON:** Yes thank you.

**ADV PAUL PRETORIUS SC:** In relation to the appointment process and it was perhaps appropriate to deal with it later but as the issue has been raised now may I ask you what is the status of the process you described?

It may be a question that is one for legal advisors as to whether the President exercises the power as part of the executive in Cabinet or whether the President exercises the power individually under section 74 of the Constitution. Do you have any comment on that?

**MINISTER PRAVIN GORDHAN:** I think one always assume that it was the former and not the latter in this particular instance but you have a lot of lawyers there. They can tell you...[intervenes]

**ADV PAUL PRETORIUS SC:** Yes.

**MINISTER PRAVIN GORDHAN:** Whether I am right or wrong. So the point we make in paragraph 36 pursuant on Mr Pretorius' question, Chair is that and perhaps the appointment of the SARS commissioner is one of the first illustrations of it. There might be others as well that we might come back to is this extraordinary interest in what happens in some of these appointment processes. So that is the point that we make in point 36 – paragraph 36.

**ADV PAUL PRETORIUS SC:** So in certain instances the statutes would oblige him to not only take an interest but to actually make the appointment albeit subject to Cabinet consultation or unilaterally. So there are clearly occasions where the Minister does have a profound interest and responsibility.

**MINISTER PRAVIN GORDHAN:** The President.

**ADV PAUL PRETORIUS SC:** Sorry, the President.

**MINISTER PRAVIN GORDHAN:** Yes.

**ADV PAUL PRETORIUS SC:** And...[intervenes]

**MINISTER PRAVIN GORDHAN:** I think there are some offices for example the National Commissioner of Police which does not necessarily require this process but as President Ramaphosa has done he is not obliged to put in place the process that he just has for the Head of the Prosecuting Authority but he did and that shows a level of transparency about these appointment processes. So you can compare chalk and cheese if you like.

**ADV PAUL PRETORIUS SC:** Yes. As to the legalities and the processes and the status of processes we will take it upon ourselves ...[intervenes]

**MINISTER PRAVIN GORDHAN:** We leave that to your wisdom.

**ADV PAUL PRETORIUS SC:** Yes. Then if you would tell the Commission please about the events preceding your deployment to the Cooperative Governance and Traditional Affairs Portfolio in May 2014. You deal with that in paragraph 37.

**MINISTER PRAVIN GORDHAN:** The purpose of that, Chair, is to use a few examples of key let us call them projects which happened prior to the elections in 2014 and then flowed into periods subsequent to 2014 as well and the experience that my colleagues and I had at that particular point in time.

The caution that I wish to submit to the Commission is that these projects run across terms. So each of the Ministers who were there will have a particular segment of the project that takes place in terms of time and events during his or her term of office and with respect it is the Commission that will have to patch it together or the officials in the relevant department can help the Commission to actually do that.

**ADV PAUL PRETORIUS SC:** In paragraph 37.2 you say that these projects or the features of these projects may be suggestive of a pattern that may be relevant to understanding the methodologies and aims of the state capture project. That sentence may suggest two things. One, that you have a subjective doubt about the statement

made there or that you on the other hand defer to the findings of the Commission in that regard. Which is it or both?

**MINISTER PRAVIN GORDHAN**: No, no I said we do not have any doubt. All I am saying is I accept the limitations of the places I was at in government at various stages and a personal conclusion about that is quite different from the commission having a vantage point of looking at all the pieces of the puzzle and then being able to say here it the total picture. So what I am respectfully submitting is that all of us who appear before you can supply you with pieces of evidence and we leave you to connect the dots and come to the conclusions you wish to.

**ADV PAUL PRETORIUS SC**: May I take you back to paragraph 34? I have been asked to ask you in turn to expand upon the second sentence where you say I advised and you are referring to former President Zuma that he may want to put his preferred candidate through the usual process. Would you expand in particular who was the candidate and what was the content of your exchange with President Zuma in this regard?

**MINISTER PRAVIN GORDHAN**: Well in reference to what I have said already. A, this is how we have made appointments in the past. As illustrated, excuse me, in relation to Mr Magashula and his appointment. B, we have already advertised the position and had 120 applicants. C, one could sense a bit of hesitation about allowing that process to continue. Mr Moyane's name might have appeared in a conversation. I cannot quite, I will not, you know die by that, but I seem to remember it vaguely and four, one was trying to be helpful to the President to say, you know, test your candidate against the others and allow for the process to go through as one normally would and then look at the outcome, but this was getting closer to the election process.

**ADV PAUL PRETORIUS SC**: Do I understand from your answer there that it was not certain at that stage that Mr Moyane was indeed the preferred candidate or your



recollection is not clear on the point?

**MINISTER PRAVIN GORDHAN**: Let us say his name was floating around, but you had the other 120 as well.

**ADV PAUL PRETORIUS SC**: Understood.

**CHAIRPERSON**: I take it from what you say in paragraph 34 last sentence in the event it would appear that he ignored this suggestion. I take it that the former President did not articulate his views in regard to the suggestion you made about what process you were thinking should be followed?

**MINISTER PRAVIN GORDHAN**: Well in the event it was ignored. I think. Well at that stage and then Mr Nene needs to tell you what followed after the elections.

**CHAIRPERSON**: Yes. Yes, no what I am saying is I am assuming, I think you are saying I became aware that former – okay in 34 you say you advised him which I think is the President Zuma that he may want to put his preferred candidate through the usual process. What I am saying is I take it that he did not articulate to you any views about your suggestion at that time. We know that later on he did not follow that process or you cannot...[intervenes]

**MINISTER PRAVIN GORDHAN**: Not in an explicit way.

**CHAIRPERSON**: Yes okay.

**ADV PAUL PRETORIUS SC**: May we then proceed to paragraph 38 where you deal with the nuclear deal as you put it?

**MINISTER PRAVIN GORDHAN**: What I describe Chair in paragraph 38 and what follows in subsequent paragraphs is firstly that nuclear power both in reality and in terms of the integrated resource plan was part of the energy mix in South Africa and, so you had coal power, nuclear power, we get a bit of hydro power from Mozambique and more recently you have renewables making their appearance as a reasonably significant contributor to

the grid. So that is the point we make in paragraph 38 and the second important point in 38 is the 9,6 kilowatts because that is consistent with what it appeared the so-called Russian/South African nuclear deal would have amounted to in the amount of electricity that would be supplied over the period indicated 2023 to 2030. In 39 we are drawing your attention to the two, to a particular structure that existed and I think it was changed later. So this is the structure established on 9 November 2011 and it was supposed to provide oversight and make decisions regarding nuclear energy policy, the new build program, following investigations into costing, financing, technical and other operational options some of which I elaborated in subsequent paragraphs.

**ADV PAUL PRETORIUS SC:** Yes then...[intervenes]

**MINISTER PRAVIN GORDHAN:** If I may continue.

**ADV PAUL PRETORIUS SC:** If I may just interrupt that appointment or establishment of the National Nuclear Energy Accepted Coordination Committee was announced by Cabinet on the 10<sup>th</sup> of November 2011 and appears at page 83 of the bundle. It is not necessary to go there, but just to say at this stage at that stage in 2011 whose responsibility was it to investigate costing and financing?

**MINISTER PRAVIN GORDHAN:** Department of Energy.

**ADV PAUL PRETORIUS SC:** We will come to the persons who populated that committee in a moment. If you could just continue then from paragraph 40.

**MINISTER PRAVIN GORDHAN:** So paragraph 40 came after the structure was created. It was evident that the President and the Department of Energy were pursuing the procurement of 9,6 kilowatts of power from Russia and that it might amount to a cost of about a trillion Rand. I have just done a little bit of homework to illustrate what does a trillion Rands mean in relation to that particular fiscal year. Let me offer you some numbers. So and remember that in big projects your initial cost is never your eventual

cost. So that is a trillion to start with. You take Medupi and other such projects as an example, the fuel pipeline from Durban to Gauteng is yet another example of that where costs escalate and sometimes even scope escalates or changes as well, but let us compare the trillion Rand expenditure to what the budget framework looked like in the fiscal year 2011/2012. So the anticipated revenue in that year was R824 billion plus minus. R824 billion total revenue. You can add to that borrowing of a R154 billion. The total expenditure would have been about R979 billion. So your total budget for that fiscal year was less than a trillion Rands. You are talking about one project that is equal to your entire expenditure budget for that year. Just to give you some sense of proportion the nett debt at that time – and you will find all of these numbers in the budget review of February 2011 – was at a trillion Rands. In other words that is the total amount of collected, collective debt that the State was owing as a sovereign and the debt service cost that is the interest that you pay on debt each year which is estimated in that year as R76 billion.

So to repeat R979 billion of which a R154 billion would have been borrowed and R824 billion would have come from the tax revenue base of the country. Just to give you a sense of proportion by way of illustration.

**ADV PAUL PRETORIUS SC:** Before you go on...[intervenes]

**CHAIRPERSON:** So it was, it was just something completely out of our financial liabilities?

**MINISTER PRAVIN GORDHAN:** Yes and that is why in the subsequent discourse even after my reappointment in the first press conference that we had the Deputy Minister and I on the 14<sup>th</sup> of December I think 2015 one of the issues that arose is the nuclear issue and the language we have always used is at a pace and scale that we can afford. In other words you can set your ambition wherever you wish to, but what you do in each

year or each three year cycle depends on what you have before you as resources that are available.

Now you have a variety of statements coming from various sources which say for example the State will not have to pay anything. This will be sub financing. Leave that for now, but this project became quite central for whatever reason and if you like come what may and the cost implications if it was not managed in a physically responsible way for South Africans as a whole and our social programs, our housing programs and so on could have been quite serious and that then creates what Minister Manuel refers to as this tension between managing the fiscus in a responsible kind of way whilst having whatever ambitions one has in respect of particular projects.

**CHAIRPERSON**: But just to go back to the statement that you say you and your then deputy Mr Jonas made in December 2015 that whatever was done it would have to be done at a pace that at which it could be afforded.

**MINISTER PRAVIN GORDHAN**: Yes.

**CHAIRPERSON**: Even at a pace at which it could afforded it would have taken many-many years, is it not, for it to be completed in terms of – it would have to be done in very...[intervenes]

**MINISTER PRAVIN GORDHAN**: Yes...[intervenes]

**CHAIRPERSON**: In bits and pieces.

**MINISTER PRAVIN GORDHAN**: Bite size.

**CHAIRPERSON**: Over a long time.

**MINISTER PRAVIN GORDHAN**: Yes.

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

**MINISTER PRAVIN GORDHAN**: But I mean there might be other experts who might give you another view. So I concede that.

**CHAIRPERSON**: Okay, all right thank you.

**ADV PAUL PRETORIUS SC**: May I ask you to turn to page 141 of the supplementary bundle? You have spoken about the establishment of the NNEECC that is the National Nuclear Energy Executive Coordinating Committee. On that page 141 appears according to our information at least the membership of that committee in August 2013. Is that correct as far as you recall?

**MINISTER PRAVIN GORDHAN**: As far as I can ascertain yes.

**ADV PAUL PRETORIUS SC**: So that would be the then President Mr Jacob Zuma the Minister of Energy Mr Ben Martins, the Minister of Public Enterprises Mr Malusi Gigaba, the Minister of Finance yourself, the Minister of State Security Siabonga Cwele it should be, the Minister of Defence Ms Nosiviwe Mapisa-Nqakula, the Minister of International Relations and Cooperation Ms Maite Nkoana-Mashabane.

**CHAIRPERSON**: I thought, I thought Mr Gordhan when I read your statement I thought that this body was called by this name when it was chaired by the then Deputy President Motlanthe, but I see that here they have put former President Zuma as the chairperson, but the name has not changed and I thought he chaired it in terms of your statement when its name was changed into something else?

**MINISTER PRAVIN GORDHAN**: There was a prior structure and that was chaired by the Deputy President at the time Mr Motlanthe and it was called slightly differently. The name was different.

**CHAIRPERSON**: Yes.

**MINISTER PRAVIN GORDHAN**: So this was a new structure established with the President...[intervenes]

**CHAIRPERSON**: Not the other way around?

**MINISTER PRAVIN GORDHAN**: As far as I recall it Chair. So I will...[intervenes]

**CHAIRPERSON**: Security, security cabinet some committee, committee, I thought from your statement.

**MINISTER PRAVIN GORDHAN**: Yes.

**CHAIRPERSON**: I may have misunderstood. I thought initially this was the initial name for the body.

**MINISTER PRAVIN GORDHAN**: No.

**CHAIRPERSON**: And then I thought it was changed to Security Cabinet something-something and then it was chaired by the President then.

**MINISTER PRAVIN GORDHAN**: So the sequence I remember Chair is that there was an initial structure established under the chair of the Deputy President Mr Motlanthe and then there was a subsequent structure chaired by the President.

**ADV PAUL PRETORIUS SC**: If you go to page...[intervenes]

**MINISTER PRAVIN GORDHAN**: We will try and clarify the names for you.

**CHAIRPERSON**: Okay. I may have misunderstood.

**ADV PAUL PRETORIUS SC**: Go to paragraph 45 that may assist you and indeed our instructions may be incorrect and we will clarify that.

**CHAIRPERSON**: Okay.

**ADV PAUL PRETORIUS SC**: Because it seems that the NNEECC may have been chaired by someone else, but...[intervenes]

**CHAIRPERSON**: Okay...[intervenes]

**ADV PAUL PRETORIUS SC**: If you give us an opportunity...[intervenes]

**CHAIRPERSON**: Yes we will check later...[intervenes]

**ADV PAUL PRETORIUS SC**: We will clarify our instructions may be wrong.

**MINISTER PRAVIN GORDHAN**: Yes you are right I think 45 clarifies.

**CHAIRPERSON**: Okay, all right.

**MINISTER PRAVIN GORDHAN:** Thank you Mr Pretorius.

**ADV PAUL PRETORIUS SC:** Then if you could continue please at paragraph 40.

**MINISTER PRAVIN GORDHAN:** So I have explained the numbers as they apply to 40. Then 41 onwards I describe some introductions with the President on this particular matter. Then 41.1 I describe a meeting with the former President at his residence in the latter half of 2013. At that meeting as I describe in 41.2 where President Mr Fuzile the then Director General of the National Treasury and when we get there we also see that and I described in 41.3 that Mr Thobejane was also part of the conversation and he was the advisor to the then Minister of Energy Mr Martins and in the latter part of that paragraph I indicate that as in Annexure 7 Mr Thobejane is then dismissed from his position as advisor by Ms Joemat-Pettersson who succeeded Mr Martins as the Minister of Energy.

**ADV PAUL PRETORIUS SC:** Just in regard to that, Minister the circumstances surrounding that dismissal and what you refer to as his sudden departure from his position. I understand you do not wish to comment on the merits of what appears in the annexures. That is a matter that is perhaps for other persons to testify to.

**MINISTER PRAVIN GORDHAN:** Well the then Minister is the best person to inform you of that.

**ADV PAUL PRETORIUS SC:** And then may I ask whilst you go through this chronology, Minister to inform the Chair and the Commission as to the sequence of the involvement of the Russian Federation and other countries in the process.

**MINISTER PRAVIN GORDHAN:** If I could conclude paragraph 41 and then I come back to that question. So Chair in 41.4 we describe there let us call it a preliminary discussion while we were waiting for the President with Mr Thobejane and we being Mr Fuzile and myself.

In 41.5 as I remarked Mr Martins was not president nor his Director General.

41.6...[intervenes]

**ADV PAUL PRETORIUS SC:** And they were from the Department of Energy.

**MINISTER PRAVIN GORDHAN:** That is right. The President then joins us in this discussion and explains the importance of obtaining more nuclear power.

I indicated to the President as in 41.7 that nuclear procurement would be a complex issue and there were lots of interested stakeholders meaning that there are countries like China, Korea, France, the United States amongst others that would have an interest as suppliers if we were interested in entering the market and yes such as that on the one hand the suppliers on the other hand environmentalists and other civil society organisations.

41.8 I indicated to Mr Zuma that the National Treasury would 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 both public procurement and energy procurement.

So that was an offer to say how do we in terms of existing legislation designer process whether it involves a request for information, request for proposal, the bid processes and whatever else that follows.

41.9 I made this an undertaking. I am going to read this, Chair.

**CHAIRPERSON:** Yes.

**MINISTER PRAVIN GORDHAN:** After I indicated to the former President that it would be appropriate to follow lawful procurement processes for such an expensive project to avoid becoming mired in scandals or a 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.

I mean it will be quite easy for example a bidder from the United States or another country to contest whomsoever new contract to deal with in the final instance and one could be mired in that for many years if one is not careful.

In 41.10 I say that I indicated to Mr Vusile and Mr Thobejane ought to exchange telephone numbers so that the former could explain procurement processes in line with the Constitution and applicable legal framework the one explaining to the other.

To the best of my recollection no further engagement regarding the nuclear deal occurred with Mr Thobejane and Mr Fuzile nor between myself and the then President and this is what Ministers by the way if I may confess normally do, Chair which is once you arrive at an in principle decision on a matter you say to the officials work out the details.

So that is why you see this actually happening but when Mr Fuzile appears before you he can – his shall I say involvement to the extent he was allowed to be involved then spans this period right up to the time he leaves.

**CHAIRPERSON:** Okay.

**MINISTER PRAVIN GORDHAN:** So he has a good picture.

**CHAIRPERSON:** Okay.

**MINISTER PRAVIN GORDHAN:** In terms of the completeness of the overview of this project.

**ADV PAUL PRETORIUS SC:** So although what you testify to in paragraph 42 and following is not your personal or not within your personal knowledge you are doing it just to complete the chronology I understand?

**MINISTER PRAVIN GORDHAN:** Yes and I indicate that in the latter part of the first sentence when I indicate that 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 the Department of Energy furnished officials at the National Treasury with an extensive set of documents and these included a draft feasibility study report titled Draft Feasibility for the Nuclear Program of the Republic of South Africa together with a wide ranging accompanying research papers, costing, licensing, localisation, fuel cycle, waste disposal which is an important part of any nuclear project, environmental impact which is equally important, skills development, international agreements and conventions and the power industry structure if you like.

**ADV PAUL PRETORIUS SC:** I have to formally get the permission in terms of the rules from the DCJ to lead hearsay evidence but I trust Chair it is in order that it is done for the purpose of completing the chronology.

**CHAIRPERSON:** Yes I think it is fine just for the sake of that but before you proceed I wanted to go back to that meeting between yourself, Mr Fuzile, the President and Mr Thobejane. You made certain suggestions in terms of procurement processes and Mr Thobejane and Mr Fuzile exchanging their cell numbers or phone numbers.

What was the outcome of the meeting and what was the reaction if any of the former President to your suggestion about procurement processes? The statement does not make it clear.

**MINISTER PRAVIN GORDHAN:** It was a short meeting but the outcome was that the two officials will deal with the detail meaning as I indicated the Treasury would advise on the procurement process, Mr Thobejane being the Energy expert will indicate what direction the Energy Department wanted to take in this particular matter and then obviously come back to some structure to report on the work that they have done and that then follows after my departure.

**CHAIRPERSON:** So there was at least at that meeting there seemed to be no problem

with the suggestion you made in terms of procurement processes to be followed?

**MINISTER PRAVIN GORDHAN**: Well I did not go into any detail, Chair.

**CHAIRPERSON**: Into details yes.

**MINISTER PRAVIN GORDHAN**: But the principle that the two gentlemen start working on the detail.

**CHAIRPERSON**: Yes.

**MINISTER PRAVIN GORDHAN**: At a fairly high level I would imagine.

**CHAIRPERSON**: Yes.

**MINISTER PRAVIN GORDHAN**: It was accepted.

**CHAIRPERSON**: Okay thank you.

**ADV PAUL PRETORIUS SC**: At the stage referred to in paragraph 42 Minister Gordhan had the Treasury Department at that stage become involved in examining costing and financing? Do you know? Can you recall?

**MINISTER PRAVIN GORDHAN**: Well I am aware when I returned to the Treasury that what did happen is that and this is preceding Mr Nene's dismissal, Chair on 9 December 2015. Again the details Mr Fuzile and Mr Nene can provide you with but the Energy Department did its costing and other technical work and the Treasury had to look at costing but also in relation to the point you made earlier on, Chair where does this fit into the fiscal framework and fiscal affordability and how would they manage that and the idea was that both these reports would then merge somewhere along the line process wise and that then leads us to the meeting of the Cabinet on 9 December 2015 and we will come to that in a moment where Cabinet made a decision to continue with the project but subject to costing and other factors being taken into account and reverting to Cabinet once those details were available.

**ADV PAUL PRETORIUS SC**: Yes we will get there in due course, Minister. If you would

deal with the evidence you have put forward at paragraph 43 please?

**MINISTER PRAVIN GORDHAN**: That is what I have just described and it indicates here Energy's approach to National Treasury for input on this. Oh, I think the main point here is firstly the point the Chair referred to earlier on or you might have, I forget, about the so-called deal or agreement signed with Russia which is the first part of 43 and the second part is how awareness of this agreement appeared on the screen and it appeared because the Department of Energy approached Treasury to comment on a tax incentive which the Russians required as part of this deal and the tax expertise obviously they were then or lies in the National Treasury in this particular regard and that is when the officials became aware of that fact and secondly as the statement says is assess the implications under the Public Finance Management Act.

So that again would follow whether you are following process properly or not and officials who in Treasury raised concerns with the draft agreement and its clear objective of creating firm fiscal commitments to Russia.

So I mean we sign many memoranda of understanding with different countries, Chair on different matters or between different agencies but a memorandum of understanding is precisely that. It cannot constitute a firm fiscal commitment and this is where the timing and the scaling and so on of this project becomes quite material.

So I think the key point being made in 43 is how did the Treasury colleagues become aware that there was this agreement and that is what it actually describes.

**ADV PAUL PRETORIUS SC**: Then if you could move to paragraph 44 please where you deal with the attitude of the National Treasury to the proposals of the Department of Energy and the undertaking to prepare a feasibility study or a commentary on Energy's feasibility study.

**MINISTER PRAVIN GORDHAN**: I think you have described it. I accept your description

that the Treasury...[intervenes]

**ADV PAUL PRETORIUS SC:** Well...[intervenes]

**MINISTER PRAVIN GORDHAN:** Objected, objected to the crafting within the agreement on the one hand and on the other hand undertook to prepare a commentary on the feasibility study and financing studies that the Energy Department had actually done.

**ADV PAUL PRETORIUS SC:** Did National Treasury follow up on that undertaking?

**MINISTER PRAVIN GORDHAN:** So that, that would have happened post 2014, but before the 9<sup>th</sup> of December 2015.

**ADV PAUL PRETORIUS SC:** And you refer to a continual interaction between Treasury and the Department of Energy in regard to costing and financial aspects.

**MINISTER PRAVIN GORDHAN:** That is what I am advised by the officials.

**ADV PAUL PRETORIUS SC:** Proposed billed program.

**MINISTER PRAVIN GORDHAN:** That is what I am advised by the officials.

**ADV PAUL PRETORIUS SC:** Then what happened in June 2014 to the NNEECC?

**MINISTER PRAVIN GORDHAN:** So look this is where the...[intervenes]

**CHAIRPERSON:** [Indistinct].

**MINISTER PRAVIN GORDHAN:** Chair's point comes in that in June 2014 that is after the elections the NNEECC was converted into the Energy Security Cabinet Subcommittee and was chaired from then on by the former President in place of the Deputy President Mr Motlanthe. So earlier references might have to be corrected and the ESCS as it is now called was responsible for oversight, coordination and direction of activities for the entire energy sector, but clearly the focus was on the nuclear part of it at that point in time and we then list under 45 the Ministers who constituted that committee.

**ADV PAUL PRETORIUS SC:** And they were? Would you mention their names please?

**MINISTER PRAVIN GORDHAN:** Minister of Energy, Minister of, well Ms Joemat-Pettersson, Ms Lynn Brown, Ms Maite Nkoana-Mashabane, Mr David Mahlobo, Mr Nene, Doctor Davies, Mr Patel, Advocate Ramatlhodi and Ms Mapisa-Nqakula.

**ADV PAUL PRETORIUS SC:** You invite the Commission at paragraph 46 to investigate the rationale for these changes. I understand there were at least two changes. The one in the scope of the committee and two the membership of the committee. Do you have any particular issue in mind and perhaps suggestion to the Commission?

**MINISTER PRAVIN GORDHAN:** And three the chair of the committee.

**ADV PAUL PRETORIUS SC:** Chair of the committee.

**MINISTER PRAVIN GORDHAN:** As well. So...[intervenes]

**ADV PAUL PRETORIUS SC:** I understand ...[indistinct].

**MINISTER PRAVIN GORDHAN:** I think I have heard, sorry, I have heard anecdotally chair that this was quite material to the eventual outcome of this process culminating in the memorandum to the Cabinet on the 9<sup>th</sup> of December 2015 from the officials of the Treasury and Mr Nene would be able to add more light to this as well, but my perception from the outside was that this committee was constituted in a way to ensure that a majority decision in favour of whatever proposal was put forward would not be too difficult to obtain.

**CHAIRPERSON:** Well I was about to ask you whether to your knowledge there was any significant reason for the change in terms of who was chairing it. There was a change of, I do not know if chairmanship is the right word, there was a change in terms of who was the chair. To your knowledge do you know whether there was any specific reason for that particular change?

**MINISTER PRAVIN GORDHAN:** I can only surmise that a new sense of urgency was entering the equation.

**ADV PAUL PRETORIUS SC:** The Energy Security Cabinet Subcommittee is I understand one of many subcommittees that would have operated within the jurisdiction of Cabinet, am I correct?

**MINISTER PRAVIN GORDHAN:** Yes they are called by different names Chair so you can have inter-ministerial committees, you can have task teams which we will come to or you could have structures of this sort as well.

**ADV PAUL PRETORIUS SC:** And I have been requested to ask you do you know how many cabinet subcommittees or committees the former President chaired or as general practice a President would chair generally speaking?

**MINISTER PRAVIN GORDHAN:** Not too frequently is all I can say, but I am sure the Presidency can assist you with that.

**ADV PAUL PRETORIUS SC:** And do you know by what standards participation in a cabinet committee or subcommittee is established?

**MINISTER PRAVIN GORDHAN:** Normally the criterion would be you have a material interest in the matter under discussion or task that is given to for example an IMC, an inter-ministerial committee.

**ADV PAUL PRETORIUS SC:** Thank you. If we may then move on to just mention in passing the litigation that you became aware of. That application is complex and to an extent quite technical and it is not necessary to go, not necessary to go into it at this stage, but you became aware of two things whilst you were Minister of COGTA. Firstly, the litigation that ultimately succeeded at the hands of the applicants to set aside certain memoranda and certain basic decisions. The reasons we can leave for another occasion and then the inter-governmental agreement with the Russian Federation. Do you have any comment there and maybe this is the time to deal with the sequencing of the involvement of the Russian Federation and then other countries as well.

**MINISTER PRAVIN GORDHAN**: Well once it became known publicly that there was this agreement Chair with the Russian Federation then it appeared that the Department of Energy and the Minister concerned had similar agreements entered into with a range of other countries that have the capacity to supply nuclear power stations and...[intervenes]

**CHAIRPERSON**: The agreements, I am sorry, the agreements being a reference or the reference to agreements being reference to memoranda of understanding?

**MINISTER PRAVIN GORDHAN**: I am using my language.

**CHAIRPERSON**: Yes, okay.

**MINISTER PRAVIN GORDHAN**: Let us use the word agreement. Sorry about that.

**CHAIRPERSON**: I just want to make sure when one reads the transcript one knows if it is a reference to the same thing.

**MINISTER PRAVIN GORDHAN**: Yes.

**CHAIRPERSON**: Okay thank you.

**MINISTER PRAVIN GORDHAN**: So, I am not sure what they officially were titled.

**CHAIRPERSON**: Yes.

**MINISTER PRAVIN GORDHAN**: But here we refer to inter-governmental agreement. So that is what we are talking about and there was also the issue about whether within the kind of procurement legislation we have government to government procurement was actually permitted or not permitted or what process would be required as opposed to government procuring from a private sector. So that was one of the confounding factors that needed to be clarified as well.

**ADV PAUL PRETORIUS SC**: At the stage your evidence is that in relation to the nuclear deal here at paragraph 49 had any final Cabinet decision been made to proceed with a particular class of procurement?

**MINISTER PRAVIN GORDHAN**: Not at that time as I remember it.



**ADV PAUL PRETORIUS SC:** And at that stage what was the attitude of National Treasury? You deal with that in paragraph 48.

**MINISTER PRAVIN GORDHAN:** That as I have said on several occasions now Chair that there had to be a proper evaluation of the costs. Now let me give you an illustration. Often in many of the let us call it international procurement agreements that entities or governments enters into the exchange rate is an important factor. So you could start a whole calculation based on an exchange rate of say R8 to the Dollar, but by the time you conclude the agreement or move ahead in any firm sense the Rand to the Dollar exchange rate could be R12 to the Dollar. That means your entire cost structure is miscalculated and sometimes you have deliberate misstatement of the Rand Dollar exchange rate and that then begins to impact on all of the other numbers and then you do not – that is why reference is made to the true cost. So you need to check all of the assumptions that underlie. So in some of the transactions for example the estimated cost of oil would be a factor. Remember at some stage a few years ago and it is not too long in the past we thought oil would fall to \$10 a barrel. Today it is somewhere between \$60 and \$70 to the barrel. It was only three, four weeks ago when it was heading towards \$80 a barrel. Now if oil is a key factor in this, in a particular transaction and you calculate it at \$25 to the barrel and again your whole calculation goes completely off track. So I am just trying to illustrate the importance of assumptions and costs arrived at and what might actually be the true cost if the assumptions are based correctly.

**ADV PAUL PRETORIUS SC:** May we then proceed to your evidence in relation to the Petro SA/Engen Petronas acquisition or proposed acquisition? It is at paragraph 50...[intervenes]

**MINISTER PRAVIN GORDHAN:** 50, yes.

**ADV PAUL PRETORIUS SC:** Of the statement.

**MINISTER PRAVIN GORDHAN:** So this was a transaction that came to the Treasury and my attention in, I cannot remember exactly how, but it involved Chair the assets of Petronas in South Africa which is what we know as Engen and they are the retail fuel stations that we are familiar with but there were other businesses like the lubricant business and others that were attached to the assets that Petronas had in South Africa and it appeared that there were discussions between Petro SA which accounts to the Department of Energy and Engen to purchase the assets in particular the fuel stations of Engen which was, had quite a footprint both in South Africa and I believe in other parts of Southern Africa as well.

**ADV PAUL PRETORIUS SC:** Minister there are a number of issues of concern that you have raised under this head. The first was the apparent difference between the market value of the business to be purchased and the asking price. The second was the request to give guarantees and the third the request to Treasury to give guarantees and the third was that due diligence and the performance of the due diligence became an issue. Would you care to deal with those issues?

**MINISTER PRAVIN GORDHAN:** And this is pursuant Chair on paragraph 53 of the statement. So Mr Pretorius is right the asking price shifted somewhere between R17 billion and eventually R18,68 billion for these assets and in various interactions with people familiar with the industry including a leading black business person that I had interactions with and I thought this could be a very interesting black empowerment transaction entering this market space with this kind of infrastructure and footprint. He said "I will not touch it." I said "why" and he said "no, the market price is between R12 billion and R14 billion." So here is 12 to 14 billion and there is 18,68 billion. So here is this difference between asking price so to speak and what appeared to be market value. So that is the first concern as Mr Pretorius points out. The second is that as when

you go through the documentation there were some agreement struck and again Mr Martins is in a best position to give you some of the details. We had a more distant view, but the idea was that Petro SA would enter into some kind of partnership with Sonangol which is the Angolan oil company and that Sonangol will provide some of the cash or other financial instruments that are actually necessary for this transaction. Now for that to happen in most instances nobody is going to put in this amount of cash or part thereof if there is not what is commercially known as due diligence. Some of the lawyers here might be familiar with that, that is undertaken. I think in the Sonangol letter that you see in the annexures at Annexure 11 they also talk about firstly one of the top 20 banks in the world not 20 banks in Africa should be involved in this transaction.

But they also make reference to the necessity for a due diligence and for some reason what was being asked of the South African side of the transaction is to accept the due diligence that Petronas had undertaken and you will find that in the documentation as well but I think normal commercial practice would be if I am going to invest I want my own investment advisors and so on to undertake the due diligence. So there was a gap here which needs to be explained.

The third was a request from Minister Martins to the Treasury to provide a guarantee for the sum of R9.5 billion.

**ADV PAUL PRETORIUS SC:** Now Minister there may be some confusion or lack of understanding as to how that R9.5 billion guarantee request relates to the R18 billion or the 12 to R14 billion. If you would turn to page 139 your legal team did some work overnight on the calculations, 139 of the supplementary bundle.

**MINISTER PRAVIN GORDHAN:** So this is some arithmetic that will help everyone. So the value claimed by the Energy Department R18.68 billion as I indicated to a market value between 12 and R14 billion. Sonangol gets...[intervenes]

**ADV PAUL PRETORIUS SC:** Perhaps we just better introduce Sonangol into the evidence. They were to be a partner in the deal.

**MINISTER PRAVIN GORDHAN:** I indicated that.

**ADV PAUL PRETORIUS SC:** Yes.

**MINISTER PRAVIN GORDHAN:** And they get 49 percent and they indicate in their letter, Chair that they will take 49 percent now but eventually sell off different percentages in the marketplace and possibly to Black Empowerment partners over a period of time. Petro SA gets 51 percent.

Together they pay 80 percent of the purchase price which amounts to 14.4 and the guarantee as Mr Pretorius indicates of 9.5 is to cover Petro SA which is required to find 4.6 billion.

**ADV PAUL PRETORIUS SC:** 5.6.

**MINISTER PRAVIN GORDHAN:** 5.6 I beg your pardon and Sonangol 5.4 although that does not add up to 9.5 but it is to actually look at the lenders who would come up with 4.1 billion. So it is that that gives you your 9.5.

In the event and there was my former DG informs me or reminds me that whilst we were concluding the year end revenue numbers at the Revenue Service which was a tradition at the time which is indicated in paragraph 54 that there was a telephone call from the President that I took who was enquiring about whether we had concluded the provision of the guarantee and I want to come back to that in a moment.

There was also a meeting between myself and Minister Martins on 1 April which is indicated in 54.2. That is the first enquiry rather and 54.4 indicates the 1 April meeting with Mr Martins where after Treasury does give a letter of guarantee but which is conditional upon a number of factors being met including the completion of a due diligence exercise. Finally of course this deal fell through at the end of the day.

The issue of guarantees being provided by the Treasury might pop up a few times. I thought it might be useful to explain how this works. In the Treasury over the years what has been set up is what is called a Fiscal Liabilities Committee.

It is made up of a few senior officials within the Treasury who if you like act as an objective team and if another official or an entity wants to have a guarantee of say in this instance R9.5 billion you provide the paperwork.

If need be you make yourself available to answer questions to them and then they decide having a look at both the credibility of the business case that has been provided and the fiscal environment at that point in time whether and the viability of what is being proposed.

They decide whether a guarantee will be issued or not. Now guarantees constitute in both legal and financial terms contingent liabilities. So I can give you a guarantee that Paul Pretorius will pay you R2 million tomorrow but if he does not then I have to pay it. So I have not paid it yet so it is contingent.

Some ratings agencies when you start approaching debt to GDP over 50 percent then begin to look at not only the actual debt that you are committed to but also add the contingent element to see what level of risk do you constitute as a sovereign, as a country and that is why there is a lot of importance placed on process and objective and viable business [indistinct] being provided and then the FLC, the Financial Liability Committee makes a recommendation to the Director General and that finally gets to the Minister.

**CHAIRPERSON:** And looking at that –those contingencies by those rating agencies would be quite legitimate because what if the risk materialises or not.

**MINISTER PRAVIN GORDHAN:** That is the point.

**CHAIRPERSON:** Yes.

**MINISTER PRAVIN GORDHAN:** So that is the point, Chair. So for example Eskom has a guarantee standing at the moment of R350 billion, of which I forget the immediate number but it probably used up between R220 and R240 billion of that guarantee.

In other words it has actually borrowed against the guarantee and its total debt is R400 billion. So there are some non-guaranteed debt and there is some guaranteed debt. In some instances lenders also have I hope I get the technical term right but a cost default clause which means that if one of your state entities does not pay up on the due date it could have a domino effect on others as well.

So not only will they ask you to pay what that entity was supposed to pay R5 billion for example, a cost default clause will involve the others as well and then you place the whole country at risk. So one of the things that we – that Treasury applies its mind to and government as a whole is not to ever get into that position where there is a default on debt by its entities but guarantees are not automatic.

It does not mean if you request one you will get one and that contestation and that pushback from the Treasury is very useful as part of the check and balance process within government itself.

**CHAIRPERSON:** Thanks.

**ADV PAUL PRETORIUS SC:** The exchange between yourself and the former President and between yourself and Mr Martins on these topics at this time are dealt with in your evidence at paragraph 54.2 to 54.4. Is there anything you wish to add?

**MINISTER PRAVIN GORDHAN:** No the only points to emphasise is that there was the request, there was the deficiency in relation to the price differential, there was the issue of due diligence being allowed and why the hesitancy by some parties to entertain what is normal commercial practice and again that an unqualified guarantee was not going to be forthcoming but that would be irresponsible of the treasury to do and so you have the

qualified guarantee and I suppose in some instances people would be upset because they do not understand or appreciate or have regard for the kind of concerns as Mr Manuel pointed out in his document the guardianship role if you like that the Treasury is assigned over the fiscus and the kind of check and balance role that it actually has to play on behalf of government.

**ADV PAUL PRETORIUS SC:** As I understand your evidence Minister Gordhan it was Treasury's insistence that there be a due diligence and an agreement to issue a guarantee subject to conditions. I will get back to your comment in paragraph 54.5 in a moment but would you go to page 110 please?

**MINISTER PRAVIN GORDHAN:** Of?

**ADV PAUL PRETORIUS SC:** Of the bundle in front of you in which your statement appears. It is 110. It is Bundle M1A. It is the bundle in which the statement appears. The first bundle at page 110.

**CHAIRPERSON:** What page must I look at?

**ADV PAUL PRETORIUS SC:** 110.

**CHAIRPERSON:** 110. Yes Mr Pretorius?

**ADV PAUL PRETORIUS SC:** What document is that? You will see on page 111 it appears to be signed by yourself. Is this the guarantee?

**MINISTER PRAVIN GORDHAN:** That is a fraudulent signature. No, I am joking. No that is signed by myself, Mr Chair and that is the guarantee document that I referred to earlier on and the first paragraph after number six in the third line makes reference to a comprehensive due diligence that I indicated earlier on as well.

**ADV PAUL PRETORIUS SC:** So it appears from this document that a guarantee of R9.5 billion was afforded or issued subject to the conditions in paragraphs one to six but also subject to a comprehensive due diligence being undertaken.

**MINISTER PRAVIN GORDHAN:** That is right.

**ADV PAUL PRETORIUS SC:** Now the origins of this document appear to be highlighted in your evidence at paragraph 54.4 arising out of a conversation you had with Mr Martins. Would you relate the contents of that conversation or that exchange if it was more than a conversation to the Chair please?

**MINISTER PRAVIN GORDHAN:** Well what 54.4 indicates, Chair is that in that conversation pursuant on the call from Mr Zuma I indicated to Mr Martins on 1 April that it is quite important to have a) further information, b) the detailed due diligence on the transaction before any guarantee could be provided. A due diligence is a as we point out in the paragraph 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 as I indicated earlier was conditional on the successful completion of a due diligence exercise. I think if one had to explain it for the public in simple terms it is like buying a second hand car without examining it right and somebody says you know if you buy a new one it is going to cost you R500 000. I am offering you this for R400 000 but you do not know what is below the bonnet.

Due diligence could well be if you are a good mechanic you can check the car yourself or ask a trader or some car shop to check it for you or the AA and once you are satisfied that it is worth R400 000 then you will be willing to pay the R400 000.

So I think we will all understand that we would not part with R400 000 without understanding what we are buying. The same applies here except there is one additional factor, the commercial viability and essentially what that means I imagine is that am I buying something that is going to last for a long time and that is going to make me money



because I am investing in it at the end of the day and that is a simple proposition that in a day to day exercise each one of us might have to encounter.

**ADV PAUL PRETORIUS SC:** You then make a comment in paragraph 54.5 regarding a possible view that existed that the due diligence or a due diligence should not be conducted. Was that factually correct? Was there resistance to a due diligence?

**MINISTER PRAVIN GORDHAN:** That is what it appeared like from the various interactions that I had yes. Otherwise if you wanted to sell Sonangol as a serious partner and they make explicit in their letter they want to conduct a due diligence before they could part – before firstly they agree to a partnership and secondly before they part with any money and if you are serious about the partnership then I imagine Chair that you agree to a due diligence exercise and wait for the two week or three week period for that exercise to be completed.

**CHAIRPERSON:** In other words if you are selling somebody a second hand car and they want to bring a mechanic to have a look at it.

**MINISTER PRAVIN GORDHAN:** Yes.

**CHAIRPERSON:** If you resist that you may be chasing them away.

**MINISTER PRAVIN GORDHAN:** Ja.

**ADV PAUL PRETORIUS SC:** If I may ask you to go back? A query has been raised in relation to page 110 of the bundle, the first bundle, M1A.

**CHAIRPERSON:** You have to be consistent now with what you call them.

**ADV PAUL PRETORIUS SC:** Yes.

**CHAIRPERSON:** Which one now?

**ADV PAUL PRETORIUS SC:** I am sorry, did I say M? I meant N, firstly, N1A.

**CHAIRPERSON:** The one with the statement?

**ADV PAUL PRETORIUS SC:** That first one.

**CHAIRPERSON**: Okay, what page must we look at?

**ADV PAUL PRETORIUS SC**: 110, we need to go back to page 110, we have just been there.

**CHAIRPERSON**: Oh, okay.

**ADV PAUL PRETORIUS SC**: I am asked to ask you to explain if you would, Minister, how Phembani Group Pty Ltd came to be involved?

**MINISTER PRAVIN GORDHAN**: It appear that they were partners with Engen in the Petronas stable.

**ADV PAUL PRETORIUS SC**: Right, and there was to be private equity as part of the...[intervenes]

**MINISTER PRAVIN GORDHAN**: I cannot remember the full details of all of that.

**ADV PAUL PRETORIUS SC**: How did you conclude, Minister, that there was indeed and it may be my fault, because I put words in your mouth. That there was a resistance to a due diligence, what led you to conclude that this idea of a detailed due diligence was not well received?

**MINISTER PRAVIN GORDHAN**: Well firstly, as I said earlier on, Chair, in the conversations that took place around this transaction. Secondly as I also indicated a moment ago, you are saying or PetroSA is saying Sonangol is our 49% partner. That is a big stake, that is not 5% and if Sonangol says I want a due diligence exercise to be done, amongst other conditions it puts it in its letter by the way. Like the top 20 banks in the world being involved in this transaction. Then if you are serious about the deal you say yes, go ahead I will wait.

Now that wait could either be from the Petronas side, because there was some deadline agreed upon between Mr Martins and themselves, about 31 March being a critical date. So you can see phone calls on the 31<sup>st</sup>, meetings on the 1<sup>st</sup> and so on. So

those are the two things, or two elements that lead one to the conclusion.

And again when Mr Fuzile appears before you, because he dealt with the technical part of the details together with the other officials he could elaborate on this.

**ADV PAUL PRETORIUS SC:** But there is no suggestions that Mr Martins resisted the performance of a due diligence is there?

**MINISTER PRAVIN GORDHAN:** I cannot say that with any conviction no, but I imagine that if you are overseeing this transaction and you understand the importance of the partnership and the kind of contribution that Sonangol is going to make and that due diligence exercise are part of these big commercial transactions, then you provide the space for it.

**ADV PAUL PRETORIUS SC:** Right. Can we just then conclude this chapter by telling the, Chair, what happened ultimately to the potential transaction?

**MINISTER PRAVIN GORDHAN:** Yes, in paragraph 56 I indicate that the transaction did not proceed, because Petronas withdrew from the deal after PetroSA failed to fulfil the financing conditions and a due diligence exercise was not performed. As a result I understand that – the last sentence is in relation to the post 2014 process.

"As a result I understand that the guarantee was withdrawn by  
my successor Mr Nene on or about 9 March 2015."

And at page 113 I think, yes, after bundle N1.

**ADV PAUL PRETORIUS SC:** N1A?

**MINISTER PRAVIN GORDHAN:** N1A, I beg your pardon, I got something wrong. Mr Nene's withdrawal of the guarantee letter appears.

**CHAIRPERSON:** Did – was it ever revealed what the reason was for there to be such a big gap between the market value and the asking price or that never got revealed?

**MINISTER PRAVIN GORDHAN:** No, there was no explanation and that is why we put

this before the Commission that this is a potential – what could have turned out to be an area of malfeasants.

**ADV PAUL PRETORIUS SC:** Minister you were the Minister of Finance in May 2014 and then shortly after that you were asked to occupy a different ministry. You deal with that under the heading my appointment to COGTA, would you deal with that please?

**CHAIRPERSON:** Actually he was Minister of one department of part of May 2014 and Minister of another department for the latter part of 2014, May 2014.

**ADV PAUL PRETORIUS SC:** Yes.

**MINISTER PRAVIN GORDHAN:** As you know in the transaction process after an election you remain a Minister until the next Minister is appointed. So yes, our term of office as Minister of Finance extends into May 2014 and then as I indicate in paragraph 57 on the evening of 24 May it was more like the morning of 25 May, because these processes that I am describing can sometimes last until 06:00 or 07:00 the following morning.

After the inauguration ceremony I received a message to meet with the former President and as is the tradition in making appointments to cabinet following an election, I was then informed by the former President of my appointment of the Minister responsible for COGTA.

**ADV PAUL PRETORIUS SC:** And your position as Minister of Finance was taken up by Minister Nene at that stage?

**MINISTER PRAVIN GORDHAN:** That is right.

**ADV PAUL PRETORIUS SC:** Until then he had been your Deputy?

**MINISTER PRAVIN GORDHAN:** Yes.

**ADV PAUL PRETORIUS SC:** Then at paragraph 60...[intervenes]

**CHAIRPERSON:** Before that Mr Pretorius, in paragraph 58 you say there was speculation in political and media circles that you would be moved from post of Minister

of Finance. Was there any indication as to who would follow or not really? Who would succeed you?

**MINISTER PRAVIN GORDHAN**: There might have been that speculation as well.

**CHAIRPERSON**: Thank you.

**MINISTER PRAVIN GORDHAN**: In any pre and post-election process that is the sport that the first two roles plays.

**CHAIRPERSON**: I see.

**ADV PAUL PRETORIUS SC**: Was there – or let me ask you, Minister, was there any – especially informed speculation in regard to your potential removal?

**MINISTER PRAVIN GORDHAN**: No, I cannot recollect any. There might well have been.

**ADV PAUL PRETORIUS SC**: May we then go to paragraph 60 and deal with the circumstances that existed which you have highlighted in your statement on page 26 and following, at the time of the dismissal of Minister Nene as he then was. And you deal first with Denel Asia. As I understand it you do not claim to know the exact reasons for the removal, but you suggest to the Commission that there may be circumstances relevant to that, about which you can testify, am I correct?

**MINISTER PRAVIN GORDHAN**: Ja, this is anecdotal material if you like. In relation to Minister Nene, I think it is well known now and I think in his own testimony before you he indicated that he refused to sign a particular document and the Russian Federation. And the period some weeks before, not even weeks, perhaps two months before 9 December there were very odd occurrences within cabinet itself and where – maybe in the public domain I cannot recall now, where the Treasury came under constant attack and criticism.

And some had the very simplistic view, Chair, that as the Treasurer the job – your job is just to find the money. In other words somebody decides how much is needed go and find the money, because this is different from give back the money.

And in the context of what I explained earlier on in relation to managing the fiscus is not as simple as that. So, ja, one cannot – obviously there was something that needed to happen in Minister Nene's term, I think he might have made reference to issues around SAA, which goes post the 2014 elections, SAA was transferred to the Treasury from the Department of Public Enterprises as well.

And we will come to that as well in the statement. So he had to deal with some contentious issues there also and in that sense I suppose he began to share our collective reputation as Finance Ministers for being stubborn, and not just conceding to whatever might be needed at a particular point in time without raising potentially difficult questions.

So that is the issue around Minister Nene. The rest of 61 then deals with the creation of an entity called Denel Asia. I indicated to you previously and earlier on that no government department or entity can create another commercial company without prior consent, both from the relevant executive authority, that, that entity or department falls under and further notification and approval in terms of Section 54 and 51 of the PFMA. And this is one of those instances.

And, ja, there is this so-called pre-notification exercise that was engaged in by Denel and we today know from the Gupta emails and so on that the Denel board was "captured" so were some of the managers at some point in time and part of the cleaning up processes involved some of those elements.

But on 30 October 2015 a so called pre-notification was received from Denel by the Directive General of the National Treasury, so again Mr Fuzile when he appears before you he can give you more detail into that and the – what that pre-notification indicated is that a new structure between, as a result of a partnership agreement between V R Laser a Gupta affiliated entity and Denel itself is going to be created called Denel

Asia and the idea was that as we indicate on 62 that, and I will read the sentence from this paragraph:

"The joint venture was contemplated purportedly to exploit Denel's intellectual property and propriety information in India. The joint venture was to be known as Denel Asia."

Now Denel, Chairperson, over the years has developed quite remarkable technical capability and a lot of innovation capability. So this intellectual property is the property of the state. So it is all collective property so to speak and it is much sort after then and now. In fact there are lots of funny if I may use that terminology rumours going around about how that intellectual property might be escaping our country at this point in time. But we will come back to that at a later stage.

So what 62 indicates, Chair, is that V R Laser Asia, is a company owned by Mr Salim Essa, I made reference to him earlier on. He is, I think in self-declared exile. He is a Gupta, well known Gupta associate and he would be one of the brokers as we described under a previous hypothesis and as a sole-shareholder and who has a relationship with V R Laser RSA, that is South Africa, owned by Mr Duduzani Zuma and Rajesh Gupta.

The joint venture was contemplated as I said to exploit Denel's intellectual property and propriety information. They do not even say that they are going to act as an agent to sell the products of Denel. It is to exploit the intellectual property. So they were going to actually sell intellectual property, that is in fact the valued asset of the state, it would appear.

**ADV PAUL PRETORIUS SC:** The allegations that were in the public domain, you have included in the bundle N1A at page s118 to 119, I do not necessarily want us or need us to go there, but simply to ask you, as I have been asked to ask you, you said in your

evidence that the Denel board at that stage had been captured. On the basis of what do you conclude that?

**MINISTER PRAVIN GORDHAN**: Well if you look at this page 18 and subsequent reports, which cover the investigative journalism an excellent one at that as well, undertaken by Amabongane and Scorpio, Chair, you will see how different personalities within the Denel enterprise were regular visitors to Dubai, have their household bills paid for in terms of the emails that were disclosed and featured in different ways as this article also indicates in relation to the creation of Denel Asia.

And what followed in particular in terms of the behaviour of the then Chair, of the Denel board, Mr Manshe, I think justifies a conclusion that there was serious collaboration with this Gupta enterprise in this process.

**ADV PAUL PRETORIUS SC**: Your conclusions then, were they drawn to the analysis of Amabongane or have you had sight of the emails themselves?

**MINISTER PRAVIN GORDHAN**: Well the rest of the statement covers the various stages of this configuration that we had between the Treasury and Mr Manshe, so perhaps if I take you through that some of the answers to the question, Chair, might appear more clear.

**ADV PAUL PRETORIUS SC**: Thank you, if you would.

**MINISTER PRAVIN GORDHAN**: Alright, 64, Chair, we indicate that according to media reports on the information contained in the Gupta leaks and your own investigators, Chair, we have access to the emails, which can confirm this as well for you. One day after Denel submitted its PFMA application to National Treasury on 30 October the Denel Chair, Mr Manshe, forwarded the confidential document – this is a confidential government document to Mr Ashu Chawla, a senior Gupta executive and CEO of Sahara Computers, a company owned by the Gupta family.



At 65 we indicate that on or about 23 November 2015 Ms Brown the then Minister of Public Enterprises provisionally approved the initiative and set out the various issues that needed to be covered in the former PFMA application.

As the pre-notification was not a formal PFMA process there was no requirement for the Treasury to respond, nor did the Treasury usually respond to such pre-notifications. At 66 emails contained in and reported on by the media following the Gupta leak show that on 7 December 2015 interestingly it is two days before Mr Nene's dismissal 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...[intervenes]

**ADV PAUL PRETORIUS SC:** According to your evidence it is a requirement of the law?

**MINISTER PRAVIN GORDHAN:** That is in terms of the requirement of the law. Of the establishment of Denel Asia, therefore Mr Nene had not approved the joint venture. Now here is the coincidence, if you can call it that.

68, however, it is not even days later, or a day later after Mr Nene was removed on 10 December 2015 when Mr – sorry Mr van Rooyen was appointed as Finance Minister, that is on 10 December 2015.

In terms of 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. So this was just a day after his installation. Mr van Rooyen did not have the opportunity to approve the joint venture prior to him being removed as Finance Minister.

So if you remember I said that he had just two working days, I think, in office.

**ADV PAUL PRETORIUS SC:** Just before you proceed again, I need to ask you, we know

that at the time Minister Mansha, Daniel Mansha was the Denel Chair. Do you recall from your own memory any other members of the Denel board at that time?

**MINISTER PRAVIN GORDHAN**: Several of them had resigned over a period. That time we took over that responsibility earlier this year, in fact two board members remained. And a completely new board was then appointed. But in my other capacity as member of the Public Enterprises Committee, Chair, I did have vocation to be in a meeting of the committee when Denel came along to present its, I think it is financials, and had some interactions with both the senior management of Denel and Mr Mansha himself on that occasion.

May I continue?

**ADV PAUL PRETORIUS SC**: What legal advice, as you refer to in paragraph 70 did you obtain or did National Treasury obtain in regard to the necessity for approval?

**MINISTER PRAVIN GORDHAN**: This the officials would have done.

**CHAIRPERSON**: I am sorry. I am not sure whether when you asked whether you could continue, you wanted to continue in terms of the meeting of the portfolio committee?

**MINISTER PRAVIN GORDHAN**: No, no, sorry.

**CHAIRPERSON**: Or you wanted to continue here?

**MINISTER PRAVIN GORDHAN**: Yes.

**CHAIRPERSON**: Oh, okay, yes, thank you.

**ADV PAUL PRETORIUS SC**: Alright you refer to legal advice in paragraph 70 and the question is then what was the content of that advice? As asked was this received by you and National Treasury once you had become Minister?

**MINISTER PRAVIN GORDHAN**: That is right, yes, because the application was now on my desk so to speak, having been appointed to that position on 13 December 2015 and as we indicate five lines, I think, down, into paragraph 70, the legal advice that was given

was prior approval was required for the formal establishment of Denel Asia.

**ADV PAUL PRETORIUS SC:** And that was...[intervenes]

**MINISTER PRAVIN GORDHAN:** The information was communicated both verbally and in writing on several occasions to Denel as well as to the then Minister of Public Enterprises Ms Brown.

**ADV PAUL PRETORIUS SC:** Alright, and that approval was required in terms of the several sections of the Public Finance Management Act and the approval was required of the Minister of Finance?

**MINISTER PRAVIN GORDHAN:** That is correct.

**ADV PAUL PRETORIUS SC:** You mentioned the sections in paragraph 70. Then would you continue with the fallout as it may be termed, that occurred.

**MINISTER PRAVIN GORDHAN:** So at paragraph 71, Chair, we make reference to the following, that extraordinary diligent attacks were made on me personally and the National Treasury, more broadly by Mr Mansha as 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. Furthermore...[intervenes]

**ADV PAUL PRETORIUS SC:** Just before you go on, these exchanges between yourself and Mr Mansha were they personal exchanges? Were they written exchanges? Were they exchanges between legal representatives...[intervenes]

**MINISTER PRAVIN GORDHAN:** They were media exchanges.

**ADV PAUL PRETORIUS SC:** Legal representatives?

**MINISTER PRAVIN GORDHAN**: Media exchanges.

**ADV PAUL PRETORIUS SC**: Media exchanges.

**MINISTER PRAVIN GORDHAN**: I emphasise later in 71 that it is unheard of for a Chairperson of a state owned company to attack a Minister of Finance in public and for the Minister of Public Enterprises responsible for that SOE to take no steps to reign in such attacks to the best of my knowledge.

You also see at page 148 of N1A, I got it right this time.

**ADV PAUL PRETORIUS SC**: Yes. If you would go there please, that is a Treasury statement.

**MINISTER PRAVIN GORDHAN**: That is a Treasury media statement.

**ADV PAUL PRETORIUS SC**: Issued by Treasury.

**MINISTER PRAVIN GORDHAN**: Yes.

**ADV PAUL PRETORIUS SC**: By National Treasury.

**MINISTER PRAVIN GORDHAN**: That is right.

**CHAIRPERSON**: Mr Pretorius?

**ADV PAUL PRETORIUS SC**: Would you read that onto the record please?

**MINISTER PRAVIN GORDHAN**: The whole statement?

**ADV PAUL PRETORIUS SC**: Insofar as...[intervenes]

**CHAIRPERSON**: Do you want him to read it into the record or do you want him to read it quietly?

**ADV PAUL PRETORIUS SC**: No, onto the record please. Well, perhaps we should just deal with the first paragraph, if you could read the first paragraph onto the record?

**MINISTER PRAVIN GORDHAN**: Alright.

"The National Treasury has noted media reports that Denel may have ventured into a joint venture to form a company that will

operate from a jurisdiction in Asia."

So this company, Chair, is actually registered in Hong Kong and it is a formidable task to deregister the company, because it had Mr Essa as a 50% partner and Denel as a 50% partner I think, if I got the numbers right and to disestablish it in Hong Kong requires both parties to agree and we cannot find the mysterious Mr Essa.

So the Denel – the current Denel board is having to enter into all sort of legal gymnastics to ensure that the company is deregistered in Hong Kong, just as an update. So the paragraph further says:

"National Treasury is currently engaging directly with Denel on the matter. The statements seek to clarify facts relating to the transaction."

And I may, Chair, the next paragraph indicates what the President said on 11 December 2015, that is President Zuma.

**ADV PAUL PRETORIUS SC:** 2015?

**MINISTER PRAVIN GORDHAN:** 2015.

"There is no state owned entity that can dictate to government how it should be assisted."

And then it goes on. And then the third paragraph:

"The board of a public entity commits an act of financial misconduct whereto wilfully or negligently, whether wilfully or negligently fails to comply with the PFMA."

Then it says:

"The Treasury regulations specified that such allegations must be investigated by the executive authority and if confirmed appropriate disciplinary proceedings must be initiated."

**ADV PAUL PRETORIUS SC:** Okay. Can we pause there, Minister? The statement then goes on to quote sections of the Public Finance Management Act, which you have referred to. We need not go there, but if you would go over the page please? And just read onto the record the contents of the statement on the second page?

**MINISTER PRAVIN GORDHAN:**

"In terms of the conditions attached to the 1.85 Billion in guarantees that have been provided by government to Denel any significant transactions that Denel enters into requires the approval of both the Minister of Finance and the Minister of Public Enterprises."

So these are the conditionality's that I have referred to earlier, Chair, that accompany guarantees.

"Section 54(3) allows for an entity to assume that approval has been given if it receives no response from the executive authority within 30 days or within a longer period as may be agreed to between itself and the executive authority."

**ADV PAUL PRETORIUS SC:** That clause was subject to litigation which we will deal with perhaps tomorrow, Minister.

**MINISTER PRAVIN GORDHAN:** Ja.

**ADV PAUL PRETORIUS SC:** If you could just deal with the next paragraph.

**MINISTER PRAVIN GORDHAN:** The litigation took place after my dismissal.

**ADV PAUL PRETORIUS SC:** Yes.

**MINISTER PRAVIN GORDHAN:** So again Mr Fuzile and his affidavit is of very – is very material here. But an interesting point, just for the public to understand as well. You submit an application on 10 December and the Christmas break and the New Year break

is upon us. The 30 day period ends approximately on the 9<sup>th</sup> or 10 January when most people are still on leave.

Common sense, if not anything else dictates that you wait until people are back at work. You enquire whether the application has been attended to and if there is any further information required that you supplied the necessary information. Now Mr Fuzile will describe other meetings that took place amongst the officials, between Denel and the National Treasury, if you ask him to.

And that showed that, that is the kind of conversation that needed to actually take place, rather than the assumption that once the 30 day period is over that is the end of the story and you can go ahead and do what you like.

So one must ask the question why the urgency? If you waited another three weeks or four weeks, what would not have happened? And what would the cost have been to whom? And of course the flip side of that coin is who benefits by all of this, by rushing it through?

So people who are involved in this, Chair, might want to then enlighten you on those questions when they appear before you.

**ADV PAUL PRETORIUS SC:** Just to summarise then, Minister, in the third paragraph no page 149 it is recorded by Treasury that Denel had submitted its application on 10 December 2015, but prior to that application being submitted National Treasury had outlined the information that would be required comprehensively to assess the application that the Minister of Finance was still considering the application and that further information had been requested from Denel.

And then finally the last three lines indicate that on 13 April 2016 that is the date of the media statement made on behalf of Treasury the application was still under consideration and no decision had yet been made?

**MINISTER PRAVIN GORDHAN**: And if I may add, Chair, Mr Pretorius, the first three lines of the last paragraph is also very material. More significantly Denel is also required to comply with Section 51(1)(g) which is unequivocal in its requirement that the board of Denel obtain approval before establishing a company.

**ADV PAUL PRETORIUS SC**: Thank you. If I may just before the adjournment, just relay one more question to you from the legal team. Do you know at all, Minister, why Salim Essa who you have referred to earlier left South Africa? Do you have any knowledge?

**CHAIRPERSON**: Will you just repeat the question, I did not hear? Why, bla-bla-bla-bla?

**ADV PAUL PRETORIUS SC**: I am not sure if it is a fair question, whether you are...[intervenes]

**MINISTER PRAVIN GORDHAN**: It is a very unfair question, Chair, with respect.

**ADV PAUL PRETORIUS SC**: Let me ask it...[intervenes]

**MINISTER PRAVIN GORDHAN**: I met Mr Salim Essa, he is not a drinking partner and I only drink water, either, so I think some of his family might be around and you might want to call them and ask them the question, where is your family member and why is he ducking the authorities in South Africa?

**ADV PAUL PRETORIUS SC**: We will leave it there. Chair, is this a convenient time?

**CHAIRPERSON**: Okay, okay the time is 16:00. We will take the adjournment and it is the understanding that you are still available tomorrow to continue?

**MINISTER PRAVIN GORDHAN**: At your service sir.

**CHAIRPERSON**: Thank you very much. We will adjourn until 10:00 tomorrow. Adjourn.

**MEETING ADJOURNS TO 20 NOVEMBER 2018**



