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20

PROCEEDINGS HELD ON 21 NOVEMBER 2018

CHAIRPERSON: Good morning Mr Pretorius, good morning everybody. Good morning Minister.

MINISTER PRAVIN GORDHAN: Good morning Chair.

CHAIRPERSON: Yes Mr Pretorius.

ADV PAUL PRETORIUS SC: Thank you. Morning Mr Gordhan.

MINISTER PRAVIN GORDHAN: Good morning sir.

ADV PAUL PRETORIUS SC: The next topic you deal with in your statement is the issue of the closure of the Gupta bank accounts, which is an issue covered directly by the Commission's terms of reference. You deal with that at paragraph 138 of your statement and you deal in particular with your personal participation in the issues surrounding the closure of the banks accounts, or the bank accounts.

Would you deal with then what happened in April 2016 when Oakbay Investments announced that its bank accounts had been closed?

MINISTER PRAVIN GORDHAN: Thank you Chair and good morning again. In essence there are three issues in this section. The first was a verse in relation to the pressure both from Oakbay Investments in the form of Nazeem Howa and repeated letters and I think we had two meetings with him, to try to explain to him in a gentle way that we could – we will not and we cannot intervene in this matter of the bank accounts. Similar pressure coming from within our ranks in Government. So the essence of that would be that neither I nor any Treasury official would meet the banks, so to speak, or intervene in this matter.

The second Chairperson is that the so-called subcommittee which Mr Zwane chaired, which I will refer to in a moment and other comments that were being made both inside and outside of Cabinet, required that on the basis of legal advice that I had that

we do something illegal, i.e. tell the banks to act otherwise and we refuse to do that.

When we could not get sufficient understanding of the legal position, we decided to approach the Court to get the clarity on this particular matter. Although it came a bit late.

So in paragraph 138 we describe the interactions with Mr Howa and the explanations that we have offered him on the matter of intervening in this particular case.

138.2 is ...[intervenes]

ADV PAUL PRETORIUS SC: Sorry if I could interrupt you there Minister. Prior to meeting with the representatives of Oakbay, did you consider the legal position and take legal advice?

MINISTER PRAVIN GORDHAN: Well we had our own internal legal advice in the first instance that we cannot intervene and our own understanding of the Bank's Act and the way in which we would be required to interact with the bank, or banks in this particular regard. Then we obtained external opinions as well.

ADV PAUL PRETORIUS SC: Did you meet with representatives of Oakbay, as you describe in paragraph 138.2?

MINISTER PRAVIN GORDHAN: Yes. As I indicated there was both correspondence and one or maybe two meetings to explain to them that we will not intervene, we cannot intervene. In addition, we actually said that they should go to Court. If they feel they have a case, go to Court. If I am right, I recollect a letter from them Chair which said, they do not think they have a good prospect in Court, which is quite an admission on their part. So that is the essence of 138.2.

ADV PAUL PRETORIUS SC: Then in paragraph 138 you deal with the Ministerial Task Team and you contrast that with an Inter-Ministerial Committee. Would you explain the difference please?

MINISTER PRAVIN GORDHAN: The one has a longer life span, that is the IMC, the Inter-Ministerial Committee. As I explained earlier, it also involves different interested parties who have different aspects to contribute to a common subject, or objective that has been defined. Whereas the Task Team was an *ad hoc* structure, created on the spur of the moment to deal with the question of intervention in this matter.

CHAIRPERSON: Just to take you back to paragraph 138.2. Are you quite clear in your own mind that what you were being requested by these entities was effectively to intervene and stop the banks from what they were doing, in terms of closing their accounts?

MINISTER PRAVIN GORDHAN: Yes.

CHAIRPERSON: In other words, there can be no doubt that that was the request?

MINISTER PRAVIN GORDHAN: Yes very explicitly.

CHAIRPERSON: Thank you.

ADV PAUL PRETORIUS SC: Would you relate to the Commission please your interactions or otherwise with the Task Team as you describe in paragraph 140 of your statement?

MINISTER PRAVIN GORDHAN: Well as I said, the Task Team was established on the 13th April, I was again not at that meeting. I think I was at the IMF meetings in Washington at the time. The members that were initially assigned to that Task Team was Mr Zwane, Ms Oliphant and myself. As I indicated in 140, later the Minister of Communications was added and at a subsequent occasion when I saw some of the minutes or notes of a discussion that they had, or a meeting that they had, for some reason SARS and many others were invited to that meeting as well. I do not actually have access to that right now.

So, in my view this was a political crowding in of likeminded people who would

share a common view and who would act contrary to the legal advice that we had. I would get very short notice of one or two meetings and I would refuse to accept that. Firstly because, the structure began to call itself an IMC and I asked the Cabinet Secretary whether in fact this was an IMC and he concurred that it was not. Secondly, who chaired this structure. Mr Zwane appeared to declare himself the Chair. So we had a subsequent Cabinet meeting. The President indicated that, well he is the Chair. So that was the case. But I did not attend any of its meetings. Understanding politically where it was coming from, what its object was and I refused to be part of that process.

ADV PAUL PRETORIUS SC: The invitation from the Minister of Mineral Resources Mr Zwane to participate in the affairs of that Committee, appears at page 711 of Bundle N1 "B". Page 711 Chair.

CHAIRPERSON: Yes.

ADV PAUL PRETORIUS SC: In that letter dated the 20th April 2016, Minister Zwane says:

"I refer to the decision taken by Cabinet on Wednesday 16 April 2016 to appoint an Inter-Ministerial Committee, to consider the impact of certain allegedly unilateral actions taken by specific financial institutions against certain of its clients, which actions may have the potential to negatively affect the economy of the Republic of South Africa with particular focus to be given to the impact of these actions on the already distressed mining and financial services sectors."

Is that as you understand the mandate of that Committee?

MINISTER PRAVIN GORDHAN: Well that is the mandate that is included in this letter.

ADV PAUL PRETORIUS SC: Your response to Minister Zwane appears at page 714 of

the same bundle, where you make the point amongst others that no Inter-Ministerial Committee was established and that no one Minister was designated as convener.

You also take issues with other contents of Minister Zwane's letter. Do you have any comment to clarify your response?

MINISTER PRAVIN GORDHAN: Well this is a written proof of what I have just said Chairperson in respect of the structure, its standing, its Chairpersonship and the fact that we were obtaining legal advice.

CHAIRPERSON: I ...[intervenes]

ADV PAUL PRETORIUS SC: In paragraph 142 ...[intervenes]

CHAIRPERSON: I am sorry Mr Pretorius. I may have missed something earlier on which I would like to have clarification on now. I think at some stage either today or in the past two days you may have sought to make a distinction between an Inter-Ministerial Committee and I think some other structure. If there is, please would you just repeat that distinction and I just want to understand whether it is of any significance here?

MINISTER PRAVIN GORDHAN: I am not about the significance. But as I said earlier Chair the IMC and there are many of them. I think recently the Presidency was taking stock of which ones are still needed and which are not.

So by its nature – for example you will have an IMC on mining towns, it is chaired by Minister Radebe and this is post the Marikana situation to actually ensure that housing and other facilities are actually provided in mining towns. But also look at the rehabilitation of mines and in particular if you like Developer Social Plan for those communities that are affected in those areas.

Now clearly a structure like that would require the Human Settlements Department, Water & Sanitation Department, the Local Government or COGTA Department and so on, to become involved. So you can see there are many departments,

one objective and they all contribute to the objective and the programme that emerges from that.

The Task Team is in this case saying, intervene in this particular event, i.e. the closure of accounts.

CHAIRPERSON: So an Inter-Ministerial Committee could it be compared, for example if one talks about Parliament to a standing Committee, for example as opposed to an *ad hoc* Committee or maybe not ...[intervenes]

MINISTER PRAVIN GORDHAN: Not quite. A standing Committee has a level of permanence. An Inter-Ministerial Committee could finish its work in a year.

CHAIRPERSON: Oh okay.

MINISTER PRAVIN GORDHAN: Then we shut down.

CHAIRPERSON: Okay. But it might be longer than ...[intervenes]

MINISTER PRAVIN GORDHAN: It is on more medium terms.

CHAIRPERSON: It might be longer than a Ministerial Task Team?

MINISTER PRAVIN GORDHAN: That is right yes.

CHAIRPERSON: Okay thank you. So it is not as literal as one might think?

MINISTER PRAVIN GORDHAN: No.

CHAIRPERSON: To say, Inter-Ministerial means it is a committee of a number of Ministers.

MINISTER PRAVIN GORDHAN: Yes.

CHAIRPERSON: Okay.

ADV PAUL PRETORIUS SC: Thank you Chair. Minister Gordhan in any event, in paragraph 141 your evidence as I understand it, is that you chose not to attend meetings of the Task Team, or of the Committee because of your view which you have already expressed to the Chair?

MINISTER PRAVIN GORDHAN: Yes.

CHAIRPERSON: Can I also ask, I think you make the point in your letter to Mr Zwane that no person had been designated as Chairperson. I do recall and I am sure Mr Pretorius will deal with this in due course at a later stage. There seem to be some repudiation of either the statement or the committee by the then President. So maybe one must come back and simply say, as a matter of fact, was a committee established by Cabinet to do more or less what Mr Zwane was talking about in his letter?

MINISTER PRAVIN GORDHAN: Yes a committee was established at the meeting of the 13th April. No Chairperson was declared explicitly. At the following Cabinet meeting he was nominated by the President at the Chairperson.

CHAIRPERSON: Oh okay thank you.

MINISTER PRAVIN GORDHAN: But in-between the two meetings he assumed the Chair.

CHAIRPERSON: Ja okay thank you.

ADV PAUL PRETORIUS SC: The issue you are referring to Chair may relate to the outcome of the meeting and whether the President repudiated, or accepted the outcome of that meeting to which Minister Gordhan is referring. But we come to that now.

You say in paragraph 142 Minister Gordhan and I am not going to ask you questions about that paragraph, relating to events in Cabinet. Those proceedings in Cabinet have not been obtained and declassified by our investigators. But that is work still to be done. We will do so and raise issues relating thereto when appropriate.

If you could deal then with the matter raised in paragraph 143 and that is the media statement issued by Mr Zwane or Minister Zwane on the 1st September 2016.

MINISTER PRAVIN GORDHAN: Ja if I may just elaborate on what you said Mr Pretorius and Chairperson. What the significance on 142 is that Mr Zwane had just produced two

or three reports from the Task Team allegedly. It is advisable for the Commission to get hold of those, just to give you a view of what happened.

Now it is on the basis of those meetings or interactions that were held – and of course the banks themselves can also inform the Commission about the nature of their interactions as well.

But at 143 what we are talking about is that – because the unilateral statement made by Mr Zwane in which he says all sorts of things, including rebuking the banks for telling Government, as this article says, "How to Run the Country" and various other factors as well. His statement is then repudiated by Cabinet as being not a true reflection of what Cabinet's views are. I believe that is at 179, yes.

CHAIRPERSON: So the repudiation was not just by the former President, it was by the Cabinet? I am just asking.

MINISTER PRAVIN GORDHAN: Ja, no it is the Presidency, I beg your pardon.

CHAIRPERSON: I am just asking because from the media at the time I seem to remember or the impression was, was that it was the President.

ADV PAUL PRETORIUS SC: Well, may I refer to two reports that apparently clarify the situation?

CHAIRPERSON: That is fine.

ADV PAUL PRETORIUS SC: Minister Gordhan would you go to page 171 of Bundle N1 "B"? There is a report there of Minister Zwane's statement made at a meeting of the National Union of Mine Workers during June 2016 where he has reported as rebuking the banks for telling the Government how to run the country. A statement to which you have just referred.

MINISTER PRAVIN GORDHAN: Yes.

ADV PAUL PRETORIUS SC: At the bottom of that report on page 717 is a reported

statement by the ANC Secretary General at the time Mr Mantashe, who urged the Government not to meddle in relationship between Guptas and their banks saying that the State must allow them to sort out their differences. The article points out the differences of opinion within the governing party.

But the statement to which I think the Chair may be referring appears at page 719 which says under the photograph of Minister Zwane:

"The Presidency on Friday distanced itself from a statement made by Mineral Resources Minister Mosebenzi Zwane that the Cabinet had resolved to a request that a judicial inquiry be established into the banks and their actions against the Guptas, as well as to review the legislation that governs the banking system."

Is that the record of statements as you recall it?

MINISTER PRAVIN GORDHAN: Yes. I think what 719 reveals Chair is, the sheer recklessness of the kind of statements that are made as in 717. If you look at the last paragraph of 719, then after the recklessness has occurred, then suddenly we realise we have investors, we have a banking system that we need to secure and then we will offer reassurances that everything is fine.

ADV PAUL PRETORIUS SC: That reassurances given in the last paragraph on page 719?

MINISTER PRAVIN GORDHAN: That is right.

CHAIRPERSON: I see in one of the paragraphs in the body of the statement that there is the then Presidential State, a spokesperson Mr Bongani Xhlonga it is quoted as having said – I just speaking about Minister Zwane, he does not speak on behalf of Cabinet and the contents of his statement do not reflect the position of use of the Cabinet, the Presidency or Government.

So that might indicate that not only the President, but also the Cabinet distanced itself from his statement. Would that be your understanding?

MINISTER PRAVIN GORDHAN: Because it was not a true reflection.

CHAIRPERSON: Oh it was not a true reflection of Cabinet's position?

MINISTER PRAVIN GORDHAN: Whatever is ...[intervenes]

CHAIRPERSON: Ja they might not have done something to distance themselves.

MINISTER PRAVIN GORDHAN: Yes.

CHAIRPERSON: But what it was saying was that Mr Zwane's statement did not reflect the true position of Cabinet and President and Government on the issue?

MINISTER PRAVIN GORDHAN: That is right.

CHAIRPERSON: Thank you.

ADV PAUL PRETORIUS SC: The outcome of that as I understand it Minister Gordhan was that a dispute arose subsequently as to whether the statement of Minister Zwane was made in his personal capacity or not and that was the subject of a Parliamentary question which appears at page 725 of the bundle. Would you place that on record please and the reply which is on the following page 726?

MINISTER PRAVIN GORDHAN: This is a Parliamentary question to the President from Mr Manyi of the DA and the response to that question was the following:

"I had indicated in my previous reply that the statement issued by the Minister of Mineral Resources, Mr Zwane on 1 September 2016 on the work of the Task Team established to consider the implications of the decisions of certain banks and audit firms to close down their accounts and withdraw audit services from the company and Oakbay Investments, was issued in his personal capacity and not on behalf of the Task Team or Cabinet. I am not in the position to answer why

Mr Zwane in his reply on 22 September 2016, said that he was not speaking in his personal capacity. The question in this regard must be directed to the Minister. I reprimanded the Minister for the statement."

ADV PAUL PRETORIUS SC: Then in paragraph 144 you refer to the Court application launched by yourself for declaratory relief regarding what powers you might or might not have had to intervene in decisions taken by commercial banks. That application appears at page 728 and following and is responsible for a large volume of paper on your bench Chair. It is not necessary for us to go into any detail on that application for the reason that it has been thoroughly dealt with in evidence before this Commission already. But I invite you to raise any issue in relation to the application that you wish to.

MINISTER PRAVIN GORDHAN: Just to record Chair that there was the application, as I indicated earlier that in 144.2, I indicate that the Financial Intelligence Centre, as I have pointed out yesterday, indicated as part of the application that 72 suspicious transaction reports had been provided, or had – they had been provided those reports from various banks, relating to suspicious account activity and transactions conducted, using the bank accounts that have been closed. That this matter then goes on, as I say 144.2:

"This was the first public acknowledgment of suspicions regarding the business affairs of the Gupta entities, since the Public Protector State of Capture of what was only released to the public on 2 November 2016."

ADV PAUL PRETORIUS SC: Those reports for the record Minister appear in the Bundle N1 "B" at page 830 to 833. They are listed in full there. We need not go there, but they may be the subject to further investigation and evidence before the Commission.

MINISTER PRAVIN GORDHAN: We will come back to this application in a different way under the section on my dismissal. Because on the Tuesday of that week was the hearing

in relation to this application in the North Gauteng High Court. Then the Monday is when we were instructed to come back immediately. But we will come back to that.

ADV PAUL PRETORIUS SC: Then you make a submission to the Commission in paragraph 145. I have certain questions I would like to ask, if I may, in relation to the suggestion that the Commission should follow the money. Would you place that on record please?

MINISTER PRAVIN GORDHAN: Yes, follow the money, apart from paying back the money is a popular rethought when one speaks to, particularly Forensic Experts. If you ask, what kind of malfeasance took place and where did the money go and how do you catch the culprits, he says, "follow the money".

So let me read into the record 145 Chair:

"I submit to the Commission that it should follow the money and request the full account of all transactions by any Gupta related company and related individuals that has gone through bank accounts. By doing so, it will be better placed to determine which activities were related to criminality and malfeasance. This will assist the State and Enterprises and taxpayers to recover funds lost in this process as well."

ADV PAUL PRETORIUS SC: Dealing briefly with the recovery of funds, we know Minister that there are two categories of our law which can be utilised to recover funds lost through malfeasance. The first is the criminal system, justice system. There will be evidence before the Commission in relation to the criminal justice system and its duty to recover funds and what has been done in that regard.

My question relates to civil recovery of funds. Would you inform the Commission please in your present position as Minister of Public Enterprises whether civil methods are being considered will be used in relation to State Owned Entities loss of finances?

MINISTER PRAVIN GORDHAN: Certain Chair, the Boards of the various SOEs, as I said earlier, looking into the forensic reports that are currently available, or those that they have initiated. Secondly, there is one example of the Transnet Board claiming, I think R166 million from the former CEO for money paid to, I think it regiments for work basically not done at that particular point in time. So there will be those sort of procedures.

There are also huge opportunities available to us through the Financial Intelligence Centre Network across the globe and tax authorities also have similar reach in different jurisdictions depending on the kind of double taxation treaties and so on that they have. And mutual assistance agreements that they have in place as well.

But if I may recommend, the one avenue that needs to be exercised a lot more, even now in relation to any malfeasance that is in the public domain, is the Asset Forfeiture process. So I think there is – there are a number of opportunities for the State to ensure that those who engage in these sorts of activities feel the first signs of pain by freezing their assets, which might include 5 Lamborghinis or 10 Ferraris or whatever the case might be, and that will then send the right message that maleficence is not to be tolerated.

ADV PAUL PRETORIUS SC: Just for the reassurance of the public Minister, is there a coordinated campaign whether at ministerial departmental level or at an SOE level, to investigate all civil means of recovery and to act on all investigations in that regard?

MINISTER PRAVIN GORDHAN: I indicated, I think on the first day of my testimony that the department is currently going through that process of bringing together information, including all the forensic reports available across the SOEs we are responsible for, so that we get some kind of overview of what is going on.

ADV PAUL PRETORIUS SC: And certainly that will form part of the activities of the

Commission going forward. Would you then please deal with the nuclear deal in this latter period of your office as Minister of Finance?

MINISTER PRAVIN GORDHAN: Chair the best way to deal with this, if I may submit, is to look at a declassified memo and minutes of the – I think we have minutes here, I am just going to check, or I think it might be in the file, on this particular matter that went before Cabinet. And so I think these are – ja these are the minutes. So at 712 of a meeting on 9 December 2015, the day on which Minister Nene was dismissed, it reads as follows.

ADV PAUL PRETORIUS SC: I am sorry Minister before you go on, may I ask what page are you referring to?

MINISTER PRAVIN GORDHAN: No I just pulled this out, it is numbered 445 but I am not sure which of your bundles.

ADV PAUL PRETORIUS SC: May I ask you, just for the sake of order to look at page 39 of the supplementary bundle.

MINISTER PRAVIN GORDHAN: Thank you, that is helpful.

ADV PAUL PRETORIUS SC: Yes, would you ...[intervenes].

MINISTER PRAVIN GORDHAN: So I will just read that.

ADV PAUL PRETORIUS SC: This document has been declassified.

CHAIRPERSON: Yes.

MINISTER PRAVIN GORDHAN: So at 712 Chairperson, of that page:

"The Cabinet (a) requested that the last sentence in the first paragraph under paragraph 9 be deleted.

That is with reference to the Cabinet memorandum:

"(b) Approved that the department of energy issue the request for proposal or RFP for a nuclear new build programme of 9 600

megawatts of nuclear power.

(c) Approved that the final funding model be informed by the response of the market to the RFP and thereafter be submitted to Cabinet for final consideration; and

(d) Requested that where relevant the exchange rates referred to in the memorandum be adjusted to current values."

So you will recall that I made this point elaborately, I think sometime yesterday or the day before, that if exchange rates are wrongly quoted it then affects the whole cost structure and the final result that you obtain about the cost of a project. So clearly there was a misestimate or the wrong number was put in for whatever reason, to arrive at the costs. And what we learnt from here Chair is that whilst there was an approval for the RFP the funding model had still to be defined and determined.

ADV PAUL PRETORIUS SC: For those not familiar with the tender process Minister, the RFP would stand for request for proposals, which is an initiation of the acquisition and procurement process.

MINISTER PRAVIN GORDHAN: Process yes.

ADV PAUL PRETORIUS SC: May I ask just for clarification Minister, the status of the nuclear build programme prior to this in relation to Cabinet approval, what was it? Had Cabinet approved the programme prior to this date in any form or other or was it a matter of investigation and consideration? What was the position?

MINISTER PRAVIN GORDHAN: I think, again I am not sure what is classified and what is not so I suggest Chair, that you approach the Cabinet secretary to inform you of that.

CHAIRPERSON: Yes, I think just feel free where you are not sure, to indicate that you are not sure, you may be giving information that has not been declassified and then

give, and then indicate only that which are comfortable is not – will not breach any secrecy of Cabinet ja.

MINISTER PRAVIN GORDHAN: Sure.

ADV PAUL PRETORIUS SC: We could go back Chair, to the evidence of Mr Nene, which dealt in some detail with the interactions between the Department of Energy on the one hand and Treasury on the other, at a level below Cabinet, but that evidence is there. May I just put one more question then to you Minister Gordhan, in relation to the nature of the approval here, there has been evidence that as at this stage Treasury had not yet considered or advised on a final funding model for the nuclear build programme am I correct?

MINISTER PRAVIN GORDHAN: Yes you are and it is reflected in some ways in paragraph 147, that the Chief Procurement Officer was still seeking legal opinions, and four lines down it says that:

"It requires that State institutions procure goods or services using a system that is fair, equitable, transparent, competitive and cost effective."

And that is what results in the RFP being the instrument through which we actually work. And the latter part of this section says:

"Moreover the RFP documentation that had been prepared had many flaws and gaps, identified not only by the National Treasury officials but also in reports produced by advisors working on behalf of the Department of Energy."

And the department of energy Chair, would be in the best position to provide you with those documents and the work that that the advisors had done for them.

CHAIRPERSON: So this approval by Cabinet as reflected in these minutes, was it an

approval that occurred before the full course of the project was known to Cabinet or the full course were known already, it was just the funding model that was still to be determined?

MINISTER PRAVIN GORDHAN: I think Chair, the Minister Nene would probably have indicated to you that there were two sets of calculations if you like, and all of them would be estimates; one from the Treasury, one from the Department of Energy. What an RFP does, and which is what the resolution suggests as well, once you ask the marketplace, if you say I require X then, and there are five or ten different providers that are interested in providing you with X, they will also provide you with the costs and how they arrive at those costs as well. It then gives you a basis for comparison on the one hand but also an indication of what the market is saying about the cost of the commodity that you actually want to acquire. So the RFP or RFI sometimes is used to test the market to see what is it that is actually available, who are the vendors that are available and what could be the cost consequences. That is why I think the resolution says the funding model. So if the funding is let us say 200 billion instead of a trillion Rand then the funding model will take a different shape and direction. If it is two trillion Rand instead of one trillion Rand then equally it will take a different direction as well. So testing the market is an important part.

Of course in this process what is often hidden is what is the specifications that you are putting out in the RFP. You cannot just say I want to buy X without defining what is X. So am I buying a six cylinder car or a four cylinder car or an old car or a new car or whatever the case might be. So you have got to define what is it that you want and what are, if you like the additional conveniences that you might want in your car as well, and specific them in explicit terms. So then you can compare apple for apple.

Now in tender malfeasance what you often have, well you sometimes have, are instances where the provider actually influences the specs or specifications. So you influence me as an official to put in these specifications, I do so, and then you bid because you have had full knowledge of the specifications that are going to be required or you might be one of the few people, your company might be one of the few that actually have the capability to provide a particular kind of specification that is indicated in the RFP itself.

So you might get a procurement expert at some stage to come in, go through the whole value chain and explain how malfeasance can intervene in the course of that value chain.

CHAIRPERSON: So would it be – it probably would be right to say although this was approval it was whether this says so expressly or not but it was subject to certain things happening?

MINISTER PRAVIN GORDHAN: Yes.

CHAIRPERSON: Ja okay.

ADV PAUL PRETORIUS SC: So in summary then Minister, is it fair to say that as at the date of this Cabinet resolution on 9 December 2018 the market had not yet been tested, would be tested through the issuing of a request for proposals and responses thereto, and once that had been done the funding model would be developed to meet that information?

MINISTER PRAVIN GORDHAN: That is right.

ADV PAUL PRETORIUS SC: Then in paragraph 148 and following you deal with the relationship between Eskom as a State owned entity on the one hand and the nuclear project on the other. Would you detail that please for the Commission?

MINISTER PRAVIN GORDHAN: If I may cover 148, 149 and the rest of the

paragraphs in this section very quickly for you, given the time constraints that we have, in 148 and 149 what is made reference to is that at an earlier stage, I think Eskom was designated as the owner of this nuclear project, and once you speak to the Cabinet Secretariat you might be able to get more clarity on that.

I think what 148 is indicating is that Eskom was now involved in the new build projects of Medupi, Kusile and Ngula, and it would have funding constraints, although the PR at that time from Mr Molefe, the then CEO varied on this particular question and what 148 and 149 is then saying is that since Eskom has funding constraints and will not be able to provide funding the Cabinet should approve that NECSA, the South African National Energy Corporation should replace Eskom as the implementing agent. And by implementing, it is more than just implementing agent because it will also be, if you like, the owner and operator of the power stations that emerge from this particular process.

I think 149 just gives you some indications of the financial difficulties that Eskom found itself in at that point in time, and Eskom itself was the subject of capture during this particular period as well, and we will come back to that in a moment.

At 150 we indicate, and 151, that there were a number of civil society organisations that then launched legal proceedings against the Minister of Energy, the President and Eskom among others, and that as indicated in 151 finally the Cape High Court ruled that the nuclear cooperation agreements with the USA, Russia, South Korea were unconstitutional and unlawful and that the ministerial determination for a 9.6 gigawatt nuclear new build for South Africa was invalid. So this saga or stage of the nuclear issue ends with that court action.

ADV PAUL PRETORIUS SC: That order is at page 2700 of Bundle N1F Chair. We need not go there. It is quite detailed and technical application and for the sake of

time it will probably be dealt with in due course. But in fairness both to Mr Molefe and yourself Minister, may I ask you to turn to page 2626 of Bundle N1F, which is the last bundle, N1F.

CHAIRPERSON: What is the page number?

ADV PAUL PRETORIUS SC: 2626.

CHAIRPERSON: Yes.

ADV PAUL PRETORIUS SC: In that article published by Engineering News, Mr Molefe sets out a different view about funding for the nuclear build programme and says, perhaps I am not doing justice to the proposition by attempting to summarise it because it is obviously quite technical, but says that the nuclear build programme could be self-financing and in fact would repay its cost in 15 to 20 years even if it did cost one trillion Rand, and pointing out that a nuclear plant has a life of 80 years. Do you have any comment in that regard?

MINISTER PRAVIN GORDHAN: Well Mr Molefe has scales that he has learnt at the Treasury, where he was nurtured, as I said, by Ms Ramos and Mr Manuel for many years in this particular area of financing. So clearly he had something on his mind. It is not explicit here save to say that the fiscus does not have to be the funder. But the fiscus could be called on as a guarantor, not the funder. So without the detail it is hard to comment on this matter any further.

ADV PAUL PRETORIUS SC: So it is a technical matter it seems. Then if you would go to the issue raised by Mr Maseko in evidence before the Commission, in relation to the memorandum signed by himself and other former Directors General, and addressed to the President, the Deputy President, other Cabinet members and yourself, he gave evidence, which is a matter of record, that the memorandum was presented to yourself and that there was very little response I think, in summary, from

anyone there save the ANC's own initiative; if you could just deal with that please.

MINISTER PRAVIN GORDHAN: Well this was a context when there was heightened concern both about corruption but also about diminishing the capacity of State institutions and the public service more generally. In that context former Directors General decided to meet and to establish whether having shared this concern they would like to express it in in some way. That resulted in this document called the memorandum that Mr Maseko referred to, and it was in a context where there was a lot of activism from civil society organisations on this and other related matters as well. I did respond to Mr Maseko's plea if you like, but also the fact that the memorandum had been delivered to me, by having a chat on the phone but on the understanding that that kind of activism needs to keep itself going, and it did not actually in the ultimate instance, but it is an important part of civil society, and importantly senior former civil servants being part of the process of alerting the public to what was going on in the State at that time.

So I do not think there was any other expectation from our side because we were all, if you like part of the struggle against the kind of undermining of public service institutions that was happening at the time.

ADV PAUL PRETORIUS SC: Was there any discussion in relation to any possible response between the recipients of the memorandum?

MINISTER PRAVIN GORDHAN: Not that I am aware of, no.

ADV PAUL PRETORIUS SC: Did you discuss it with the President or with the Deputy President?

MINISTER PRAVIN GORDHAN: No.

ADV PAUL PRETORIUS SC: I understand though that following this memorandum the governing party established its own initiative to deal with State capture, what

happened to that?

MINISTER PRAVIN GORDHAN: Well I think the governing party appears before you next week and they are in the best position to answer but it did not receive much of a response. I believe Mr Maseko did respond but there many others who considered responding but did not, and they were probably waiting for processes like yours Chair, where they could make their case known. And of course a reliable integrity committee would then be the governing party as well, which we now have.

ADV PAUL PRETORIUS SC: You say here in paragraph 152 that it was only Mr Maseko that lodged a submission with the ANC, following its call for information. Is that correct as far as you are concerned?

MINISTER PRAVIN GORDHAN: As far as I know yes.

ADV PAUL PRETORIUS SC: And that nothing further came of the initiative as far as you are aware.

MINISTER PRAVIN GORDHAN: That is right.

ADV PAUL PRETORIUS SC: The fact that these issues of State capture had been raised, and had been raised with the executive by people who one would presume had knowledge of malfeasance within various departments, and the response both of the recipients of the memorandum and the own initiative of the ruling party, with hindsight are you of the view that that was sufficient or acceptable?

MINISTER PRAVIN GORDHAN: As I said I think there were a multitude of activities taking place both within the governing party, within the State, including the executive and outside of the state through various formations. There were any number of court actions at the time if recall Chair, and other forms of activism depending on the issue they had obtained at a particular point in time. And you are talking about Chair, a context in which the executive itself was beginning to be compromised, and a difficult

terrain in which to operate.

So we are not talking about honest brokers sitting around a table where one can, in a collegial way say you know Mr Maseko is very concerned, as our DGS, about what is happening to the public service, can we work out what arrangement we could have to respond to their concerns. Life did not work that way in that particular context, and it is this overall milieu that you need to take into account Chair, of opposition to the wrong things but also they insist on carrying on, the insistence on carrying on with the wrong things as well at that time. So it is that contestation that we have and which continued and which continues in a different form today.

ADV PAUL PRETORIUS SC: Thank you.

CHAIRPERSON: I wonder whether – or maybe I should put the question this way, is the lack of response to the invitation by the governing party to its members to come forward, is the lack of response, because it seems that it was maybe one or two people who responded to – as far as the public knows, obviously one does not know what went on inside, could it in any way be said to be a reflection of the extent to which maybe some of its own members, that is the governing party, might not have had confidence that it could handle these kinds of issues properly or the way they would expect?

MINISTER PRAVIN GORDHAN: That is one possibility Chair, the other is the reality that there was a climate of fear, fear for one's life, fear for one's family, fear of losing one's job, fear of being compromised in terms of maybe future career prospects. But that climate of fear in the more former sense should not be underestimated because we already had, as Mr Nene himself pointed out, all sorts of so called intelligence reports which we are going to come to in this context as well, and conspiracy theories but also conspiratorial acts being performed at that time, and that does create a climate

that is not conducive to easily reaching confidence in some of these processes. But I suppose difficult colleagues in the governing party or in the executive might have different perspectives on this, and as they appear before you, you might want to explore that.

CHAIRPERSON: Thank you.

ADV PAUL PRETORIUS SC: Yes certainly Minister, the issue will be considered in relation to leading evidence before the Commission as to how State capture, if it is proven to exist, occurred, how it could flourish and what needs to be done to prevent it happening again but that is an on-going process and we can assure the public and the Commission that it will be investigated fully on an on-going basis.

At paragraph 153 Minister, you deal with your removal as Minister of Finance, and that occurred in March 2017. Would you detail the prior travel that you undertook to the United Kingdom and the intended travel to the United States, the purpose of that travel and in particular whether it was authorised travel or not.

MINISTER PRAVIN GORDHAN: Again to assist your time Chair, if I can quickly summarise the response to Mr Pretorius' question, as I indicated to you this is a normal process that follows both the medium term budget policy statement and the budget itself, and it is a long held tradition established in the Treasury, that the Treasury and the Reserve Bank would undertake these roadshows as they are called. Some of them what we call information roadshows, this is what the budget is about, this is where we are heading. Some of them are combined with funding, raising funding as well. So in the course of the roadshow colleagues in the Treasury would test the market and see whether there are investors in the right mode, meaning going to offer you money at the right price and interest rate, and if that is the case, either when we come back or during the course of the visit a bond will be raised, one billion Dollars, one and a half

billion Dollars, and often those are oversubscribed given the good rates of return that people receive.

Secondly these visits can only take, or these roadshows can only take place as far as Ministers are concerned, because officials get their consent from Ministers but Ministers get their consent from the presidency. So we submit an itinerary, give a rationale for the travel and obtain approval before travel arrangements are finalised, and that was the case as indicated in paragraph 153. 154, we indicate that on this particular occasion Mr Fuzile, the Director General and I would be travelling to London overnight on Sunday the 26th of March. Former Deputy Minister Jonas was due to fly to New York on the Tuesday, so he was not going to join us in London, he was going to go directly to New York. Once Mr Fuzile and I had completed a two day set of interactions in London, Mr Fuzile will then join Mr Jonas in New York, and they would continue with the US leg of the roadshow. This was also an occasion on which business had joined us in London and I think labour joined later on the US leg of the visit.

155 indicates that as literally the tyre hit the tarmac at Heathrow airport. I put my phone on and there was a message from the Director General in the presidency instructing both, well all of us, the Minister, the Deputy Minister and the Director General to return immediately. Immediately means get onto the next flight available. The next flight was not five minutes away it was in the evening. So the question was what do we do with our time, but also the Deputy Minister was not with us. The approval would have been granted for him to travel to New York. So nobody bothered to check that clearly before that message was sent.

Mr Fuzile and I at 156 then discussed the message and said that we owe a responsibility to the meetings that had been scheduled which included two meetings with

ratings agencies and then with a range of investors. I think Mr Jabu Mabuza and Ms Nicky Newton King were already in London and were part of our team. So for the rest of the day we said let us meet the investors and interact with the ratings agencies. There was one ratings agency that we were going to meet the next day, but obviously we were not going to be there the next day any longer and we then scheduled a telephone conference with them if I can recall and we then had our flights rescheduled for later that evening to return to South Africa as 156 indicates. If I may continue Mr Pretorius, is that okay?

ADV PAUL PRETORIUS SC: Yes please.

MINISTER PRAVIN GORDHAN: At 157 Chair on the same day that is on Monday former President Zuma reportedly informed senior leaders of the SACP, that is the Communist Party that he intended to remove me and former Deputy Minister Jonas and referenced a purported intelligence report accusing me and others of conspiring with foreign forces against him as President. Of course I reject and deny these allegations and I never saw the report as a whole. However...[intervenes]

ADV PAUL PRETORIUS SC: If you would go...[intervenes]

MINISTER PRAVIN GORDHAN: Commission has got a nice photograph of me waving this report so I will wave it again, but it is not the report it is only two pages.

ADV PAUL PRETORIUS SC: Let us take it step by step Minister if you...[intervenes]

MINISTER PRAVIN GORDHAN: So that is the two pages there.

ADV PAUL PRETORIUS SC: The pages one and two of the supplementary bundle.

MINISTER PRAVIN GORDHAN: That is for the Chair.

ADV PAUL PRETORIUS SC: Contain a document headed part one text. It is a two page document and despite our own investigative efforts we had not been able to find anything else that purports to be an intelligence report. When you say you never saw this

intelligence report just explain please to the Chair what you mean by that?

MINISTER PRAVIN GORDHAN: Well if this is alleged to be two pages of a report then we have not seen the report we have seen the two pages. Secondly this was circulating by the time we got back on Twitter and Whatsapp and so on. So it was easy to get hold of this once we heard from either the public domain or from the Communist Party that there was this so-called intelligence report. Of course the President is in the best position to answer whether there is a report or whether there is just these two pages and of course this has got some ludicrous suggestions that very prominent bankers and others have set up meetings with banks and investment bankers in the UK and the USA to have official meetings to discuss South Africa's financial markets. They have also set up secret meetings to start with what is called Operation Checkmate. Now not all of us are fans of chess I might say but anyway. It is interesting terminology that these people that operate in the conspiratorial terrain come up with. It then indicates all three of us were going to be fired and that there will be some proof of what they are selling of the corruption of the Guptas and how the investment banks need to stand to fight the President and so on. So that is the report Chair. At 158...[intervenes]

CHAIRPERSON: I am sorry let me just make sure I understand the position. So this document that we are referring to now would it be the same document that you may have been shown, have it in your hand and some TV...[intervenes]

MINISTER PRAVIN GORDHAN: Yes. We compared the photograph with this.

CHAIRPERSON: Okay, all right. Now you say you got it from just social media...[intervenes]

MINISTER PRAVIN GORDHAN: Digital media.

CHAIRPERSON: Social media, okay. So you do not know whether it is or it is not the report that the President may reportedly have told leaders, senior leaders of the

Communist Party about?

MINISTER PRAVIN GORDHAN: It would appear so, but the Communist Party would be able to confirm with you Chair.

CHAIRPERSON: Yes. Yes, okay thank you.

ADV PAUL PRETORIUS SC: What is clear it seems from your evidence that apart from this document no document purporting to be an official document of any intelligence agency in South Africa was ever seen by you.

MINISTER PRAVIN GORDHAN: Yes.

ADV PAUL PRETORIUS SC: You deal again with the report and how it was dealt with and its potential use by the former President according to reports on the next page, but in the meanwhile would you just talk of your return to South Africa as you set out in paragraph 158 please?

MINISTER PRAVIN GORDHAN: As I indicated Chair we then had a whole day of meetings and made our way back to Heathrow airport and returned to South Africa. At 159 I hinted earlier on at this point is a note which says on Tuesday 28 March, so it is a day after our arrival, sorry the day of our arrival was the day that the court application regarding the closure of the Gupta business bank accounts in South Africa by several of the major banking institutions were said to commence argument in the Pretoria High Court. It is of course possible that had I been removed as Minister of Finance by the time, by that time my successor would have withdrawn the application. So one can surmise Chair that the intention was to get rid of us by Monday or Tuesday morning, put in a new Minister and withdraw the application that was made to the Pretoria High Court.

CHAIRPERSON: To your knowledge prior to the hearing of that application were there colleagues of yours within Cabinet including the President maybe who may have expressed opposition to your launching that application?

MINISTER PRAVIN GORDHAN: Not that I was aware of.

CHAIRPERSON: Okay. It is just that I, I was following up on your statement that your successor may have withdrawn the application because if that had happened it would, it may have been something quite uppermost in somebody's mind that it should be withdrawn.

MINISTER PRAVIN GORDHAN: No it is fair point Chair. So there is a question whether there was opposition to the application as opposed to whether there was supposed for intervention with the banks that they should not close the accounts. So the latter there is lots of evidence of, right, and the application is just one part of that whole saga. So one can quite imagine that one of the intentions would be that no such court application should take place.

ADV PAUL PRETORIUS SC: Chair we are, I hope, half an hour and not more away from concluding the evidence. It is 11:15 do you want to take a short adjournment?

CHAIRPERSON: Should we maybe go up to half past if that will help us to finish or would you suggest that we take the tea break?

ADV PAUL PRETORIUS SC: Well we will not finish by half past.

CHAIRPERSON: You will not finish by half past? Okay, so...[intervenes]

ADV PAUL PRETORIUS SC: I know that I am pressing against time limits.

CHAIRPERSON: Yes. Okay how much more time do you think we...[intervenes]

ADV PAUL PRETORIUS SC: Half an hour.

CHAIRPERSON: About half an hour?

ADV PAUL PRETORIUS SC: We will do our best for half an hour.

CHAIRPERSON: Yes, okay all right. Then maybe let us take the short break until half past so maybe if we resume at half past we can finish at 12:00 with the Minister. Thank you we adjourn.

HEARING ADJOURNS

HEARING RESUMES

MINISTER PRAVIN GORDHAN: Apologies Chair.

CHAIRPERSON: Thank you Minister. You may proceed Mr Pretorius.

ADV PAUL PRETORIUS SC: Thank you Chair. Mr Gordhan you are dealing with the circumstances that prevailed on your return to South Africa in March 2017 shortly before or immediately before you were dismissed. You had dealt with paragraph 159 by referring to the court application in relation to the closure of bank accounts and perhaps you should deal with events upon your landing at O R Tambo Airport which you do at Paragraph 161.

MINISTER PRAVIN GORDHAN: So Chair I indicate in 161 that immediately after Mr Fuzile and I land at O R Tambo Airport we make our way to Luthuli House to meet the then Secretary General of the ANC Mr Mantashe to obtain clarity about what was going on. At 161.1 we say that during that meeting with Mr Mantashe he informed me that the former President Zuma had met with the ANC's top six officials the previous day. That some fake intelligence report has been presented to them and that it was rejected by those in the meeting. 161.2 Mr Mantashe then told me that Mr Zuma told them that regardless of the intelligence report his relationship with me had irretrievably broken down. Since this was not my impression of my relationship with the former President I asked Mr Mantashe if he had indicated why he felt our relationship had irretrievably broken down. Mr Mantashe indicated that he did not. Mr Mantashe recounted that Mr Zuma had indicated that it was unusual that the Minister, Deputy Minister and Director General were all out of the country. I have indicated to you Chair that the Deputy Minister was still in the country. I corrected him that Jonas had not left South Africa and Mr Mantashe seemed to be shocked by this fact. At 161.4 I said I believe...[intervenes]

ADV PAUL PRETORIUS SC: And then Mr Molefe arrives in that discussion.

MINISTER PRAVIN GORDHAN: I believe that Mr Zuma had mentioned Brian Molefe as a possible replacement as Minister of Finance, but that the suggestion was rejected by members of the top six at that meeting. At 161.5 as an aside note that Mr Molefe who had resigned from Eskom following the Public Protector's state capture report was sworn in as a member of Parliament for the ANC. Speculation at the time was that he was, this was a precursor or event leading up to his replacing me as Minister of finance. Almost a year earlier in April 2016 Mr Buthelezi also were sworn in as a member of Parliament for the ANC and speculations suggested that he was earmarked to be Mr Molefe's Deputy Minister. At 161.6 if I may continue...[intervenes]

ADV PAUL PRETORIUS SC: You were to summarise briefly the discussion between yourself and Mr Mantashe regarding your status or contemplated status as Minister.

MINISTER PRAVIN GORDHAN: The important point here Chair is Mr Mantashe indicated to me that Mr Zuma would prefer if I were to resign rather than him having to fire me and we had covered this issue previously of firing and dismissal and rather resignation and that of course it would suit everybody if we had just resigned and as I indicated earlier many comrades and colleagues were saying that it is important to stay on that if Mr Zuma chooses to fire us then so be it and that would actually draw a line in the sand so to speak and expose to the public what was really going on in terms of the state capture agenda and how appointments and dismissals of Ministers was related to that. At 161.7...[intervenes]

ADV PAUL PRETORIUS SC: Sorry, before you go on. Did you consider the alternative of resigning in the interest of the finances of the country?

MINISTER PRAVIN GORDHAN: As we say here we have always tried to put the national interest first. I mean we could have in London said we are taking the day off, cancelled all the meetings and waited at Heathrow Airport until the flight was ready.

Rather we did that which was in the national interest which is almost pretend as if nothing had happened and at some of those meetings we were even asked as I had told you before, Chair how long are you going to be in that chair which is not a very nice thing for any human being to be subjected to but that is fine.

In the national interest we have had to bear that burden and carry on. So if I can just cover 161.7 so in sum we refused to resign and we were ready to be fired. I understand that Mr Mantashe, from Mr Mantashe that I was likely to be removed and that the issue of my replacement was to be discussed again the following Monday. Mr Fuzile was of course very distraught and he can speak for himself a little later and was also himself considering resigning however he is...[intervenes]

CHAIRPERSON: I am sorry. In terms of the discussion between yourself and Mr Mantashe was the – was the discussion or was Mr Mantashe saying that you and your then deputy Mr Jonas were both – there was a risk that you could both be asked to resign or be dismissed or he was just talking about you?

MINISTER PRAVIN GORDHAN: No it applied to both of us.

CHAIRPERSON: Oh, okay and the Director General then was not being mentioned?

MINISTER PRAVIN GORDHAN: No.

CHAIRPERSON: Okay.

MINISTER PRAVIN GORDHAN: That would be the job of the incoming Minister.

CHAIRPERSON: Okay.

MINISTER PRAVIN GORDHAN: And so coming to Mr Fuzile here Chair that notwithstanding his frustrations at all of these developments he continued to serve the country as Director General of the Treasury until very recently and he has been at the Treasury for 20 years.

So I returned to my office at the National Treasury that afternoon. The next

day was the funeral of the late Mr Ahmed Kathrada at the Wespark Cemetery and on Thursday the SACP issued a media statement recording that it had been informed on Monday the 27 March by Mr Zuma that I was to be replaced as Minister of Finance.

The statement recorded that the SACP objected to this intended reshuffle.

ADV PAUL PRETORIUS SC: Before you go on Minister the statement that you are referring to appears at page 2705 of Bundle N1F. Yes please continue. You may do so with reference to the statement if you wish. I just wanted to place that on record.

MINISTER PRAVIN GORDHAN: No, it is fine. It was also noted that it had laid a complaint with the Inspector General of Intelligence and the Minister of State Security regarding what we call the Rogue Intelligence Unit that in our view gathers data illegally, produces false reports and feeds them into the political and public domain to smere comrades and that seems to become a national sport in South Africa more recently if I may comment on that? I do not know the status of that complaint.

ADV PAUL PRETORIUS SC: You say in your statement I do not know the status of that complaint but it is a matter that may be the subject of further investigation on the part of the commission. The fact that the Inspector General of Intelligence and the Minister of State Security were asked to investigate what might well have been a report or a rogue report of some influence would you have expected some response from the Inspector General and Minister of State Security concerned generally apart from your personal interest in the matter?

MINISTER PRAVIN GORDHAN: Well Inspector or Minister of State Security certainly as a Cabinet colleague if there is an issue that is raised he should be responding but if...[intervenes]

ADV PAUL PRETORIUS SC: Were you ever asked about the contents of the report by any official law enforcement agency?

MINISTER PRAVIN GORDHAN: No.

ADV PAUL PRETORIUS SC: Investigative entity?

MINISTER PRAVIN GORDHAN: No but, Chair I was interviewed much later, I do not have a date in front of me, by the Inspector General on the question of this report so I am not sure whether he has completed his investigations and so on.

ADV PAUL PRETORIUS SC: Were you – had you ever been given any feedback as to the authenticity of the report?

MINISTER PRAVIN GORDHAN: No.

ADV PAUL PRETORIUS SC: Then would you...[intervenens]

CHAIRPERSON: Well maybe you might not have the date in front of you of when you were interviewed but are you able to give an idea? We are talking about sometime last year, we talk about sometime this year?

MINISTER PRAVIN GORDHAN: No, probably last year.

CHAIRPERSON: Okay, thank you.

ADV PAUL PRETORIUS SC: Yes the evening of 30 March 2017 you record that an announcement was made. Would you deal with that briefly please as it was a brief announcement I understand?

MINISTER PRAVIN GORDHAN: Well by Thursday as a result of the Communist Party's statement rumours were rife as to when these changes would be announced and it seems that on Thursday evening there were meetings taking place at Mahlangu and Ndlovu and many of us were watching the TV screens to establish what was actually going on and finally it was just past midnight if I recall correctly on 30 March when we heard the announcement that a number of us Mr Hanekom, Mr Ramathlodi amongst others and including Deputy Minister Jonas had been dismissed and various replacements were announced by the President as well.

In 165 I indicate that I had no contact with the former President regarding his decision to remove me as Minister of Finance. In other words in anticipation of any question there was no courtesy granted at all of a telephone call, a meeting or any explanation and that is where it stands as we sit today.

CHAIRPERSON: But during your second term as Minister of Finance had the former President ever raised with you any issues of concern that he may have had about the relationship between the two of you?

MINISTER PRAVIN GORDHAN: None. None whatsoever.

CHAIRPERSON: Seeing that Mr Mantashe was saying that he said there was a breakdown of the relationship?

MINISTER PRAVIN GORDHAN: Not at all. I know Mr Zuma, Chairperson I forgot to mention on the first day from 1974 when he was released with I think about eight or nine others from Robben Island and they were the first batch of Robben Islanders to be released in KwaZulu-Natal as we know it today and my comrades and I actually "serviced" him meaning transported him to various places and assisted him in minor ways at that time as a kind of underground activity and I also financially assisted him to leave the country. It was 1976 or 1977. We did not earn much in those days but and then I met him when I crossed the borders of South Africa and Swaziland illegally with another comrade and met him in Swaziland for a whole weekend before I returned to South Africa as well.

So as far as relationships are concerned at that sort of level there has never been a problem so I do not know and it is a normal employer/employee kind of relationship or situation that one talks about irretrievable breakdowns not in a political context.

But he is the President and as we always say we serve at his pleasure so if

he decides to part ways that is his choice.

CHAIRPERSON: When former Minister Nene was giving evidence before the Commission there were maybe one or two, I do not know if more instances of interaction either between him and the former President or with people who report back to him that one could see may have made the relationship difficult but and Mr Nene testified about that and one is not talking about what was right, what was not right. It is simply objectively that they were there – those situations were for example I think the issues that happened when there was a meeting in Russia about the nuclear deal and the former Minister of Energy Ms Joemat Pettersson.

MINISTER PRAVIN GORDHAN: Pettersson.

CHAIRPERSON: Yes but in terms of the evidence that you have given yourself I cannot remember hearing any encounters where there could have been maybe – that may have shown very clearly any serious issues.

I know that there was the one where you went to him after you were served with the 27 questions and you I do not know if protested is the right word but you expressed certain views about it and you did say he did not say much other than flipping through the letter and saying he would talk to the Minister of Police.

Am I missing anything that one could really say did happen that could be said to reflect a breakdown in the relationship between the two of you other than maybe just differences of opinion on certain issues relating to work?

MINISTER PRAVIN GORDHAN: Chair, what I would say is that if one accepts as a hypothesis the betrayal of the Promise notion of state capture then yes there would be a number of developments. Denel Asia, the Gupta bank accounts, the nuclear issue and so on all of which the Petro SA issue and all of those that are the ones we highlight here, the changes to the SAA Board the Airbus deal and the swap between myself and Minister

Nene at different stages, we had decisions to make each of those would have constituted interference in the project if you like and distractions which probably were not acceptable by both him and those working with him like the Guptas and others that we have named before.

So this is I would imagine not about the cordiality that issue. This is about if the hypothesis is right and I will come back to that in my closing remarks then the Treasury was standing in the way by saying can we test the numbers?

Can we check the viability? Can we understand the business case? Have you followed the right procedure as opposed to signing off on whatever it is that is actually requested which might have been the expectation but we do have laws in this country and we do have procedures to follow in this country as well and a public servant is required to as you would I am sure say to work within the confines of the Constitution and the law which is what they do by and large.

CHAIRPERSON: Yes because you know as I see it you know it seems to me that a breakdown of a relationship you know it is like maybe there has been confrontation, you know confrontation on certain issues but from what you have said I mean even with those things where you maybe said on your evidence to have stood in the way of what he may have wanted to happen am I understanding from your evidence is that you simply took certain principled decisions or stance, positions based on your understanding of the legal requirements and of how things should be done, but nothing more than simply insisting on what you believed what was right?

MINISTER PRAVIN GORDHAN: That is a fair summary Chair.

CHAIRPERSON: Thank you.

ADV PAUL PRETORIUS SC: Thank you Chair. At paragraph 166 Minister you deal with the reaction and the expressions of concern at the hands of global ratings agencies. You

dealt yesterday and the day before about the role that ratings agencies played and you did express or you have expressed here a desire to place on record what their responses are. Do you still wish to do so?

MINISTER PRAVIN GORDHAN: If I can just point you to a few phrases if I may very quickly. So 166.1 Moody's says the abrupt change in the fourth line in leadership of key government institutions would allow Moody's to assess these risks and if the changes in leadership signal a weakening in the country's institutional, economic and fiscal strength. So you can see how the institutional factor begins to enter the equation. 166.2 Standard and Poor essentially say the same thing that their view that the divisions in the ANC led government that have led to changes in executive leadership including the Finance Minister put policy continuity at risk. This has increased the likelihood that economic growth and fiscal outcomes could suffer. So again the economic and fiscal consequences and Fitch essentially says the same things as well in the next paragraph. So I will not go into the detail there just to save time.

ADV PAUL PRETORIUS SC: Yes. Minister following your removal as Minister of Finance you then returned to Parliament. You obviously remained a member of parliament. Would you deal briefly with that period?

MINISTER PRAVIN GORDHAN: So I chose to remain a member of Parliament and give that experience once again an opportunity to settle until we as a family could decide what I needed to do and it was a good choice because being on the public, the portfolio committee on public enterprises and particular a part of the investigation or what shall we call it? Let us call it investigation that the committee undertook into Eskom and state capture was quite revealing and an extremely good experience and holds me in good stead now in relation to the state owned entities and in that regard Chair I want to refer you to Bundle N2 page 142 where you have this diagram.

CHAIRPERSON: Mr Pretorius?

MINISTER PRAVIN GORDHAN: You might not want to, essentially...[intervenenes]

CHAIRPERSON: It might not be necessary to look at it now.

MINISTER PRAVIN GORDHAN: You do not have to look at it now.

CHAIRPERSON: Yes.

MINISTER PRAVIN GORDHAN: I will sum up what it indicates and we are going to try and make copies available for the media as well, but it is from the Eskom booklet I referred to earlier on which was provided by some academics to the Parliamentary committee, but it gives you a fascinating relationship between timelines on the one hand and governance processes, coal purchases, the nuclear project, IT deals and other media deals and the relationship between changes in the executive and changes in management over a period of time and if you take this and plant it if you like onto the hypothesis of state capture you can see that the fit is quite precise.

CHAIRPERSON: Thank you.

MINISTER PRAVIN GORDHAN: So that is to help the Commission get a concrete example of state capture in a particular institution which you will see as the lawyers would say *mutatis mutandis* in different instances as well.

ADV PAUL PRETORIUS SC: Chair there will be evidence in relation to each state owned entity that is relevant to the terms of reference of this Commission in detail which will deal amongst other things with matters such as those raised on that document.

CHAIRPERSON: Well thank you, thank you. I think that is very important.

MINISTER PRAVIN GORDHAN: So 168 Chair just to end off that part that inquiry which is the right word into Eskom revealed the extent of manipulation of the boards of the SOEs as I indicated, their management, the abuse of contracts and procurement processes for corrupt and unlawful ends and there is any number of examples Chair that

can be used from the Eskom experience to lend credibility to the argument that changes in Ministers, boards, management and contracting and vendors if you like were all part of a fairly organised scheme to defraud big institutions like Eskom.

ADV PAUL PRETORIUS SC: That is a question which will be further dealt with in evidence and in his report interim or final the Chair will be asked to draw conclusions in that regard particularly in regard to the concept of state capture in relation to the concept of corruption. You then, Minister if we may go to your return to Cabinet and your current role as Minister of Public Enterprises briefly.

MINISTER PRAVIN GORDHAN: All I want to say there Chair is that the new President, President Ramaphosa reshuffled Cabinet on the 26th of February 2018 and I was then appointed Minister of Public Enterprises and as I have indicated we have about seven SOCs or SOEs that actually report to us and also as I indicated to you that the department itself is trying to collect as much information as we have access to so that we can provide it to the Commission and its investigators and there is an on-going dialogue and interaction between the department and yourselves and that in many of the institutions now we are engaged in the process of if you like recapturing them or rearranging boards and management and procurement and other systems in order that they execute the kind of mission that they were designed to actually do and there is a fair amount of success on the one hand, but also not, insignificant pushback and so much of the public outcry that we see and the noise that we heard yesterday for example arises from the fact that there are many parties who would not like this Commission to go too deeply into say the issues of Eskom for example and understand who were the key players involved in the state capture process itself.

ADV PAUL PRETORIUS SC: Before you take the opportunity to make your closing remarks as contained in the last few pages of your statement may I ask a few

unconnected questions of you Minister? The first is that on the 27th of April 2017 you gave an interview to Christiane Amanpour of CNN and in that interview you were asked do you have any information that might implicate former President Zuma in any acts of corruption and your answer was "I do not have any personal information but as I said there are all sorts of suggestions not just about the former President but about people in the private sector and the people in the public sector and that information needs to be tested." That was in April 27th. Has the status of your knowledge changed since then?

MINISTER PRAVIN GORDHAN: I think the knowledge of South Africans Chair generally has changed from about June 2017 when the Gupta leaks emerged and enabled us to both see many more dots and connect many more dots and have far deeper information as well and then secondly as we get into the SOEs now you can see the level of malfeasance on the one hand but institutional damage on the other hand as well and recovering from this is going to take quite some time. So yes certainly one has a better grasp of what has been going on now than then.

ADV PAUL PRETORIUS SC: Then Minister in the supplementary bundle particular at page 109 that is bundle N2 there is some documentation that the legal team provided you with regarding South African Airways and if I may just ask you a question in relation to that documentation. Do you have any recollection of your interactions with Minister Gigaba at that time prior to 26 September 2012? I know it is five years ago but the guarantee that you were asked to provide was provided some time after it was requested and the question is whether you had any communications with Minister Gigaba about the provision of the guarantee or your intentions in that regard?

MINISTER PRAVIN GORDHAN: No I do not have any firm recollections, but as I indicated Chair you recall how the guarantee or applications for guarantee are dealt with. So just to refresh your memories an institution or a ministry or department would come

apply to the Treasury and say can we have a guarantee of X for Y purpose? That is then put before a fiscal liability committee made up of senior officials in the Treasury who will both look at documentation and interview people or discuss with people from the relevant institution the nature of the project that they are looking for the finances for or the guarantee for and guarantees are often related to borrowing. So if you have a guarantee from the State most financial institutions will then lend you money although that is not the case right now. There is a lot of hesitancy because of the nature of damage that has been done to SOEs. So even salaries are difficult to find or the money for salaries at this point in time. The FLC will then make a recommendation to the Director General and that will then come as a recommendation to myself and either, if there is any area of disagreement, there is further dialogue between the DG and the financial, Fiscal Liability Committee. Mr Fuzile is probably here by now so he can help you with a lot more details because he goes through that stuff and then we decided whether a guarantee is given or not. So usually we are not in the business of saying in advance you will get a guarantee, because we have got to wait for this process to be completed.

ADV PAUL PRETORIUS SC: Right. Minister Gigaba may well come to the Commission to give evidence in regard to these events. It has been dealt with separately under the South African Airways banner and will be dealt with in due course. I have no prior knowledge of what Mr Gigaba will say, but if he were to say that there was a delay between 9 September when the request was given and 26 September 2012 when the request was finally approved is there any explanation for that delay and I think you have given it now.

MINISTER PRAVIN GORDHAN: I have given you an indication of the process.

ADV PAUL PRETORIUS SC: Then Minister just one question in relation to page 25 of your statement. My apologies at paragraph 25 of your statement on page 12. In

paragraph 24 you talk about a vision which constitutes government objective as you say and the general objectives of the governing party's goals and objects and you say in paragraph 25 "this is the vision that was attacked by state capture including by those at the highest levels of the executive." To whom are you referring there?

MINISTER PRAVIN GORDHAN: Well those who participated in the processes depending on the conclusion you arrive as a Commission of changing boards, changing managers, allowing malfeasance to actually occur in terms of the hypothesis of state capture that I put forward to you.

ADV PAUL PRETORIUS SC: And in the executive?

MINISTER PRAVIN GORDHAN: The executive could mean a Minister, the President or Deputy President or whoever.

ADV PAUL PRETORIUS SC: Any particular members of the executive that you wish to name?

MINISTER PRAVIN GORDHAN: No, it is not for me to indicate who they are. I think as you go through diagrams like this one in Eskom it tells you very clearly who was in office when what happened. I would not like to do the job of the Commission.

ADV PAUL PRETORIUS SC: Then Minister you spoke about your acceptance of a position as the GCEO, General Chief Executive Officer of Transnet at a stage and you spoke of your acceptance of that position and then it seems you were dissuaded from accepting the position and later you were appointed as Minister.

Do you have any knowledge of firstly who would have sought to dissuade you from accepting the position and the reasons there for and I do not necessarily ask you to speculate but the – there are various reasons that might spring to mind and might become more obvious once the evidence before this Commission is complete.

I just need to close the gap now that you are in the witness box as it were to

know if you have any knowledge of the circumstances surrounding those events?

MINISTER PRAVIN GORDHAN: No, clearly Chair at that time we are talking about a period just before elections. So some members of the top six of the ANC would probably already begin to look at issues of how do they design a new administration? How many departments would they have and who are possible candidates for particular positions as well and they had probable come to some conclusion about whether they wanted me for a particular position or a range of positions or possibilities and on that basis gave me a message which says hold on, do not accept this job and you do not ask for details when those things happen. That is the discipline we have grown up with and await the final decision that they make.

So if one was not appointed as a Minister then one goes and looks for another job.

ADV PAUL PRETORIUS SC: Yes. Minister, finally just one particular issue and one general issue. One of the topics that the legal team is investigating in relation to the various state owned entities is the issue of governance and in particular the manner in which senior personnel and executives, members of boards are appointed and in particular vetted for appointment, what checks and balances are put in place and it is relevant to the recommendations that the Chair may be asked to make or may decide to make in relation to governance issues, appointments and dismissals of senior executives and board members.

Just one example that has been brought to the attention of the legal team is that of Mr George Sebulela for example. Now I know that he was not appointed. I am informed that he was not appointed under your watch as it were but he did resign because of a conflict of interest.

Are you satisfied with the steps taken by SOEs prior to appointments in order

to vet candidates for positions and thereafter the checks and balances that are put in place thereafter to ensure for example that there are no conflicts of interest.

MINISTER PRAVIN GORDHAN: I do not think one can ever be satisfied about those sorts of issues but what you have in South Africa is these various codes like the King [indistinct] code which says follow these procedures.

You also have protocols if you like at a board meeting which says declare your interest and it is up to the individual to exercise their ethical beliefs if you like and foundations and indicate the conflict of interest in one way or the other.

In that particular case, Chairperson, the conflict of interest was brought to my attention by Mr Mabuza who is the Chair of the Eskom Board and the Eskom Board dealt with that matter and made me aware of the fact that Mr Sebulela finally decided to resign having understood that there was this fairly serious conflict of interest that required him to get off the board. I think we can always improve.

ADV PAUL PRETORIUS SC: Then in paragraph 170 of your statement you record that the Department of Public Enterprises will be providing the Commission with information particularly in regard to corporate governance, procurement and accountability and I trust that offer still stands?

MINISTER PRAVIN GORDHAN: As long as I am there yes.

ADV PAUL PRETORIUS SC: Yes. You wished to make closing remarks?

MINISTER PRAVIN GORDHAN: If I may, Chair?

CHAIRPERSON: Well maybe before you do so let me ask some questions.

MINISTER PRAVIN GORDHAN: Sure.

CHAIRPERSON: So your closing remarks can be closing remarks. In your statement I had the relevant page, oh here, in paragraph 10 of your statement you say:

"Reflecting on the period 2009 to 2017 now it would appear that

I was witness to events some of which are set out below and it seems an unwitting member of an executive in the earlier part of this period which was misled, lied to, manipulated and abused in order to benefit a few families and individuals in order to release the worst forms of recklessness and corruption, in order to rob ordinary people of schools, clinics, education, in order to abuse and decimate key institutions of our democracy including SARS and you mention others and in order to damage the economy increasing joblessness, forsaking the youth and increasing the marginalisation of women."

Are you able to specify who lied to this executive and misled this executive and manipulated it if I understand this correctly?

MINISTER PRAVIN GORDHAN: No, I think in the first instance the President did. So putting – asking us to look at intervention into the relationship between banks and their clients for example, pushing the nuclear deal as was indicated already and if one again comes back to the hypothesis of state capture allowing for particular types of boards in SOEs to be established, putting in place particular Ministers or others who might be cooperative in this venture as well.

All that if you look at it retrospectively now if one accepts then the hypothesis it means that there was a scheme at play designed by somebody and I think I hope that by the time you complete your work, Chair, you will tell South Africa who is this somebody.

I mean we have heard various anecdotal accounts of diagrams and walls at certain compounds and so on saying we finished this target. Who is the next target? That is what we are actually aiming for the timing of appointments and dismissals and how they coincide with some of the projects at play.

Once the other projects come under your purview as well I think you will be able to put those pieces of the puzzle together in the way that I suggest.

CHAIRPERSON: No, thanks. My other question is this. If at the end of this process I come to the conclusion that definitely there was state capture and I keep on reminding everybody that the terms of reference say it is allegation so we are looking into the allegations, if I come to the conclusion that there was state capture I obviously need to establish who were the players in the state capture.

I also need to look at how did state capture come about. I need to look at what are the things that facilitated the happening of state capture. What – is there any environment that provided fertile ground for state capture to happen the way in which it has happened.

I have got to also look at who or what institutions ought to have done something and if they had done that which maybe they should have done maybe state capture would not have gone the extent I might find it will have gone and so I would have to look at all of those things and obviously one looks also at what measures should be put in place to make sure it does not happen again or at least to minimise the chances that it could happen again.

Now the governing party and I am making sure I am saying governing party, the governing party I do not know what position it will take. I know that it has encouraged people and I assume including its members to come forward and if they have got information and assist the Commission and you are here, excuse me, you are here to give the Commission evidence that you have knowledge of.

But one of the questions that probably I would have to ask if I find that there was state capture would be is there something that the governing party ought to have done itself and I go back to the question I mentioned earlier that is the electorate that

gave during this relevant period the governing party the power to govern when did it realise that there was something wrong going on here?

When did it realise that it looks like the state was being captured? What did it do about it? Now there is or there may be a risk. I should not say there is. There may be a risk that the governing party and maybe some of its members or maybe some of its leaders might feel that its members should not say anything negative about whatever role it ought to have played and did not play and so on.

If that happens it would be a pity because then this process would be all the poorer. For this process to be enriched it is very important that everybody who has – who knows something be encouraged to come forward and say what they want to say without fearing that they may be marginalised by whoever including by their own party even if they say something that the leadership of the party might not be happy about.

But we need to get to the bottom of this and we need to know who should have done what, did they do it and if they did not do it why not? So I ask the question whether in your view there is anything that the governing party. I know that they will come and talk but you are a senior member of the governing party and you certainly have views on issues and those views may be beneficial to the Commission. Is there anything that you have looked at and said look the governing party probably should have done A, B, C, D? It might not be exhaustive what you, but certain things if it had done this or that or that by that time maybe state capture could have been arrested at a certain time. That is the one question. The other question I want to ask is whether within the governing party the environment and when I say environment I include the practices of the party, the Constitution and everything, the traditions are such or were such during the relevant period that members of the party would have been encouraged, would have felt encouraged that if they thought the ruling party should do something about something like

this they would be able to stand up within the party and say no, but this must be sorted out, the party must do this, the leaders must do this and they would be able to do, to say that without fear of any repercussions whether of not being promoted to some position, of not being put in a list to go to parliament or fear of losing some job. In other words I would like to see that because obviously a party such as a political party can be influenced in a serious way to take certain decisions if its members think it should take a certain direction.

MINISTER PRAVIN GORDHAN: It is a complex set of issues Chair.

CHAIRPERSON: Yes.

MINISTER PRAVIN GORDHAN: Let me see what I can do to...[intervenes]

CHAIRPERSON: Yes...[intervenes]

MINISTER PRAVIN GORDHAN: Address it. I think, I do not claim to be an expert but politics, governance and patronage go together. The question is how do you use the powers and authority that you have to dispense patronage in the least malicious way and with the least harm to people concerned as your best bet. I do not think there is a country in the world or a stage in history, I am guessing, where patronage was not a feature of governance. The second is that it is very important to have a well informed and active citizenry and we do not do enough of that in democracies. Certainly not in ours. So we operate today very much on sound bites of one kind or another and depending on the preferences of the intermediaries or interlocutors that we have who have their own world views and their own biases and perhaps their own intonations as well in terms of what needs to be communicated and what needs to be supported or not, but informed citizens who understand what budgeting means, where public resources are located, what the role of state owned entities are or is and what is the responsibility of public representatives who fill the shoes in those particular institutions can then hold those

people to account. What the world is going through and indeed South Africa is going through is a period in which there is a raging populism from certain quarters which in a sense manipulates public opinion and manipulates people at the end of the day based on lies, slogans, fake news and other kinds of suggestions hoping that that would on the one hand promote then politically into office or into so-called kingmaker roles and on the other hand mask as you said the efforts and there is a lot of, part of this whole fight by campaign from all, it is not just one party in this equation but part of this fight back campaign is about taking every possible measure to mask the malfeasance that is going on and obfuscate it as much as possible and that is where if you remember I used a term the politics of distraction. Distract people away from where the actual activity is occurring. So it is in that context that every governing party or every political party for that matter has to ask itself in seeking public office and the support of citizens to win elections on the one hand you have manifestos, on the other hand you have principles and on the third hand you have actual human beings who want to build careers out of this. So once you have politics as your career and your sole source of income then you become captive to that particular project as well and begin to serve a particular purpose and that purpose is often self-serving rather than public serving at the end of the day and so I think what I indicated at the outset was the various resolutions and reports that the then Secretary General prepared and presented the diagnostic report, the final resolution at the Nasrec conference and so on to indicate that in policy terms and philosophy terms we do say the right things. We have the right kind of focus. The question is what is a relationship between the principle if you like and the outlook that we adopt and that you practice and what would it take for people to have that gap between practice and principle as small as possible if at all that is possible. I think you have identified that there are a number of factors as you put it that might intervene in people deciding whether to stand up for certain

things or not. So I think principles are one thing and the other I might have pointed out in the earlier part of my testimony that you see in boards of SOEs as well and that is that do you have the courage to do it? So courage means you are going to take some risks as well and taking the risks means you are sticking your neck out either in a, and it now appears sticking your neck out in a literal sense not just a figurative sense with the kinds of threats that we see having been made in the public domain.

So I think each of us will have to excruciate on this issue and say could I have done better, could I have done differently and President Ramaphosa is attempting to steer us in a way in which we begin to find if you like a moral centre of gravity again and moral focus again and part of the renewal project in the ANC is to get that right. Whether we succeed or not we will know in two or three years' time, but there will also be different interests in any human organisation and some would be very short term and self-focused and others will actually focus on the national interest and the broader objectives that the movement like the ANC stands for and one not just hopes, but the activists who are driven by the broader objectives hopefully are the ones who can drive the organisation in the right kind of direction, but if you have an informed citizenry they will hold us to account. They at least have either the elections or other public fora in which they can say we do not like what you are doing and we do not like the way you are spending our money. We do not think you are giving the service that we actually require and that is not just about politicians it is also about public servants as well and I think it is that mix that we need to get right as we go forward, but you raised very important questions.

CHAIRPERSON: No thank you very much. Before you do your closing then I just want to say I did mention at the end of Ms Barbara Hogan's evidence that in due course we will ask, you know, many stakeholders in the country including civic organisation, maybe churches, political parties to start thinking about giving suggestions of possible

recommendations to deal with certain issues that fall within the, within the terms of reference of the Commission giving them enough time that to ensure that those who want to do research before they prepare their submissions they have enough time before the Commission finishes its work, because in the end we want to be able to, you know, involve the public to the extent that we can in resolving some of these national problems. So I take this opportunity to say I think the Department of Public Enterprises as the department that is fully involved with the public enterprises and that may have a lot of information as to what is happening or what happened should consider that it will also be most welcome for it at some stage to give suggestions, you know, of where, how they think some of the problems relating to SOEs can be and should be resolved. What measures this Commission should consider recommending in order to make sure that what happened does not happen again. You know the department would have people who are fully involved on the ground on some of the issues and one can get lots of benefit from people who have that kind of involvement in any matter. So I extend the same invitation to you as well.

MINISTER PRAVIN GORDHAN: Thank you very much.

CHAIRPERSON: Thank you. You subject to whether Mr Pretorius still has any questions I am happy that you can give your closing remarks.

ADV PAUL PRETORIUS SC: One brief issue Minister in answer to the question from the Chair in relation to the contents of your paragraph 10 you were asked to identify parties who had misled or lied to or manipulated Cabinet and others and your answer was the President. I presume you meant the former President.

MINISTER PRAVIN GORDHAN: Yes. Thank you for clarifying that.

ADV PAUL PRETORIUS SC: Your closing remarks please.

MINISTER PRAVIN GORDHAN: Thank you Chair. I will try to be as quick as possible.

Let me thank the Chair and the legal team for the assistance they have offered in enabling me and my colleagues to put forward the statement that I did and I must indicate that I did so voluntarily although the Commission went through certain processes of its own and under oath as well and I hope that what we have exchanged with you enables the Commission to succeed in the endeavours that you have set out Chair. The second point I want to make is that as far as the governing party is concerned I have set out the various documents at the outset and made reference to them again a moment ago. The third is we are all working under the mandate in some ways that the President and the governing party has defined that we have to work on unity within the organisation, but then unity as you correctly pointed out needs to be based on firm principles and unanimity or sufficient consensus on those principles as well.

There is agreement as the President has articulated that state capture must be fought, it must be ended and that everything possible must be done to uncover what has happened and that there must be consequences for those of course this immense damage to our economy and to our country and the consequences for people on the ground at the end of the day and what this involves as you correctly pointed out and the President did in the State of the Nation Address as well is that we have now got to rebuild a whole range of institutions with the right kind of leadership and management and integrity that will ensure that they actually serve the country as they are supposed to.

As opposed to the kind of new dawn that the President speaks of and which we support and which was beginning to gain traction and create a level of hope and confidence in our country. We also regrettably are seeing this fight back phenomenon which I have described repeatedly, which is now becoming I would suggest Chair dangerous, because it is now attacking the Commission. It is now attacking people appearing before the Commission. It is now attacking families of people appearing before

the Commission. A point that I will come to and what we are seeing is not just the politics of distraction we are also seeing a very practical manifestation of something I was taught in the early 1970's by a much older political leader and that phenomena is my enemy's enemy is my friend and so all sorts of new alliances are being drawn partly in order to attack this process and stop the revelations that would uncover what individuals are up to, but also significantly so that it would assist in the elections that are coming in 2019 as well. Some amongst the people who are engaged in this of course have aspirations that they will become the President or the Deputy President and when you have a very loose political foundation and probably no principles at all to back up what one is engaged in then anything goes in the politics and one I think needs to be careful about their attempts to obstruct the clean-up process, to allow the looting to actually continue and allow for uncontrolled access to resources and for their personal ambitions to actually be materialised and I am sure that the Commission will look into the kind of attacks that officials of the Commission are being subjected to as well and government I am sure will share your concerns in that particular regard.

I make reference to the fact that the people appearing before you, Chair but before I get there we also pointed out the key features of state capture as per the hypothesis painted in the Betrayal of the Promise document and I want to suggest that even in our presentation there is sufficient evidence to begin to put a picture together.

Certain if you look at the Eskom instance in a more concrete sense to fill those boxes that were appearing in the diagram in the attachment that we had to indicate who was in control and command of this project, what were the roles played by members of the executive or boards or officials in departments or executive managers particularly those who had positions like CEOs and CFOs within that kind of set of institutions.

The kind of activity they engaged in which focused on identifying what kind of

procurement did each of these institutions undertake? What did the supply chain look like and how could they intervene in that environment but more importantly where did the pools of money lie? Where were the pools of cash in the state and as I indicated to you they lie in procurement, they also lie in the treasuries of the big institutions and in advisory services that are offered.

In a recent international conference there was an interesting slogan that emerged. Capture is the name. Procurement is the game and it tells a lot about even the global experience in this particular regard as well.

There is an area that we did not look at specifically in this context which is the role of legal departments within SOEs who legitimise contracts and overlook certain things that they are supposed to look at a lot more carefully which as the Commission proceeds it could look at as well.

The other boxes were about advisors, facilitators and enablers and again the roles of Bell Pottinger, KPMG, Trillian amongst many others you will see fit very easily into those boxes in terms of enabling the processes of state capture and particular the transmission of money out of institutions as well. So I would suggest that the key features of state capture already appear fairly clearly in the evidence that you have before you but I am sure you have a lot more that would assist you in this particular regard.

I just want to end on two notes. The first is to make reference to the fact that witnesses appearing before the Commission like myself are quite willing to be attacked politically, quite willing to be criticised politically, quite willing to be corrected if we presented wrong evidence but it would be very nice if our critics come forward under oath and present themselves before this Commission.

What I am sure you would agree, Chair is unacceptable is attacks on families. So yesterday while we were here but even before yesterday there were a whole lot of

wrong information about my daughter that was put out in the public domain and I want to put forward the following for the record.

1. This information about my daughter is for the public to understand that she has not engaged in any malfeasance of any kind.
2. She joined Investec Bank Limited the private equity division in 2007 and resigned in late 2017.
3. Most financial service institutions as many in this room would know invest capital either their own money or third party investor money in emerging privately owned businesses.
4. The private equity division at Investec invested in privately held companies on behalf of Investec Bank Limited not on her own behalf.
5. Investec that is the bank concerned and it could be any other name therefore is the owner of the shares that they buy not my daughter. It is the bank that owns that share of these private businesses. She was an employee in this division and part of a team of 12 private equity professionals who were appointed as non-executive directors to the boards of these companies as a representative of Investec as the owner of the shares.
6. Private equity professionals from this team represented Investec on the boards of each company. It is not her money. Their job is to look after the money of the bank and

the investors. In other words employees of the bank like employees of the public investment corporation who invest in companies, what shall we call it, nominated onto boards of those companies to ensure that the governance is right and the money is actually secure. That is the same practice that I am describing here as well. This then – this investing process then helps smaller businesses to grow and create jobs. So private equity is an important contributor if it is done the right kind of way.

7. She did not benefit financially in any way. That is her own, she did not own any shares in these businesses directly and did not benefit from any directive fees. The fees go to the bank not to her or the employee or other financial compensation from these companies. The benefits went to the bank and its investors.
8. She was not a member of the management or executive teams of these businesses.
9. None of the directorships of my daughter held were in her personal capacity and were always on behalf of her employer as I indicated.
10. The allegations of using the relationship with myself to get access to government tenders to benefit these companies is a blatant lie and these dangerous and unfounded allegations have been made to intimidate and harass my family and myself.

11. She does not have any bank accounts in Canada and for the record nor do I and has not had any financial interest in Canada either. She went there to do a banking course at some stage.

12. My daughter has not done any business with the state.

So I want to repeat the fact that let us not play the man as they say play the ball. If there are political objectives that anybody wants to achieve well come to me and direct your attention to me and I will answer for whatever I have to answer for.

Do not choose vulnerable targets because that means, Chair that the witnesses are going to be extremely hesitant to appear before you if we allow these processes to continue without any opposition.

The last point is two quotations and one other, Chair from President Mandela because part of what is going on is the dissent to racism that we are seeing unfolding in this country as a cheap political mechanism to launch attacks and I quote President Mandela when he says:

"I detest racialism because I regard it as a barbaric thing whether it comes from a black man and I imagine woman or a white man or woman."

The second quotation:

"There is no easy walk to freedom anywhere and many of us will have to pass through the valley of the shadow of death again and again before we reach the mountaintops of our desires."

So these are timely I think reminders to us that the challenges that we face as a country are quite formidable and not going to be easily overcome. There is one very well-known poem that I end on, Chair which is following on what you said to others to

come forward and take the stand so to speak and make a contribution to your project that you have been assigned which I am sure many of you might be familiar with.

"First they came for the socialists and I did not speak out because I was not a socialist. Then they came for the trade unionists and I did not speak out because I was not a trade unionist. Then they came for the Jews and I did not speak out because I was not a Jew. Then they came for me and there was no one left to speak for me."

And hopefully we do not get there. Thank you.

CHAIRPERSON: Thank you very much. Thank you very much, Minister. I think what remains is for me to say one is looking at some of the things that are happening and some of the things that have been said and one is looking into that in order to decide what should be done.

It is – there can be no doubt that within the country one can find certain people who would not like this Commission to be there, who would not like this Commission to continue, who would not like this Commission to succeed and then one will find also many people who want this Commission, who want this Commission to succeed and who want this Commission to be given enough space to do its job for the nation properly and indeed as I have said in the past my own experience through interaction with ordinary people in our country is that a very large section of our society has full support for this Commission and the work that people involved with this Commission are doing.

They have an appreciation of the sacrifices that are being made. They speak about – they express concerns about our safety and they are very concerned but we are – we are quite clear that there is a job to be done for the country and we will do it.

We accept that in doing so there are certain risks but we will do the job and

we will not be deterred. I hope that really nothing that is done or said by anybody will be allowed to deter people who want to come forward and assist this Commission and of course the Commission will look at what itself can do to make sure that people continue to feel free to come forward but thank you very much.

We may ask you to come back at some stage if – because I understand that there are implicated parties who wish to be granted leave to cross-examine you. I have not been given any complete application in that regard so I will make a decision in regard to each application once it is before me but then proper arrangements would be made for you to make yourself available again but thank you very much.

MINISTER PRAVIN GORDHAN: Thank you, Chair. My apologies to the legal team and Mr Fuzile. I have been keeping him waiting from 10:00 this morning.

CHAIRPERSON: Okay but thank you for your time and you referred – I just mentioned this and maybe the legal team may or may not have talked to you about it. You referred to having come here voluntarily and referring to certain processes.

I just want to indicate that there is no doubt about you having come here voluntarily and whatever processes might have happened they should not detract from that. Thank you very much. You are excused.

MINISTER PRAVIN GORDHAN EXCUSED

CHAIRPERSON: I see Mr Pretorius that we are at nine minutes to one o'clock.

ADV PAUL PRETORIUS SC: Yes Chair. There remains one matter that should not take a vast amount of time and in the interest of the witnesses and the evidence leaders who are going to lead them this afternoon perhaps we could deal very briefly with the condonation application. You have it before you. The notice of motion sets out the relief required and that is at index page one, but the content is at page two.

CHAIRPERSON: Yes.

ADV PAUL PRETORIUS SC: And it asks you to condone the late issue of rule 33 notices to the persons listed in subparagraphs 2.1 to 2.8 there has been service albeit by e-mail but acknowledged to all those persons or their legal representatives and there is no opposition. We have had discussions with legal representatives not with all, but with some and the application for condonation is not opposed. I do not know if you want me to go into any detail further than that seeing that the matter is not opposed, but at page...[intervenes]

CHAIRPERSON: No, I, well I read the papers last night. You might just emphasise if there is anything you want to emphasise, but if all relevant persons were served and they are not opposing then subject to whatever else you might say I would be inclined to grant condonation.

ADV PAUL PRETORIUS SC: Thank you. If I may just point out that the parties were entitled to 14 days' notice. Five of them received 12 days' notice and three of them 11 days. They have recourse to the rules in relation to any prejudice they may have suffered. They do not intend to seek that recourse. So in that respect subject to one matter which I would like to raise before you I ask for the relief set out in the notice of motion on behalf of the legal team. Present today Chair is Advocate Sibisa Mogale who is led by Advocate Mpofo to represent Mr Moyane. Also present is Phillip Mahlatsi who is led by Advocate Semanya who is here to represent Shaun Abrahams. Their position is similar. They say to the legal team that they intend once fully informed to apply for cross-examination. Amongst other things they require time to study the transcript of evidence, which went understandably far wider than the text of the statement with which they have been served and although they do not oppose the application for condonation they will in due course seek rights to cross-examine before you and to the extent necessary apply for condonation.

CHAIRPERSON: Okay thank you.

ADV PAUL PRETORIUS SC: They may want to confirm that Chair.

CHAIRPERSON: Yes okay.

SPEAKER: Chairperson...[intervenes]

CHAIRPERSON: Yes?

SPEAKER: Thank you very much. Chairperson we do indeed confirm the contents of what has been said by Pretorius SC. In fullness of time they will then be in a position to come back and say this is our position. I am not certain at this stage subject obviously to proper consultation with my client will then be able to make an election as I have stated on Monday, but as matters stand, thank you Chairperson.

CHAIRPERSON: Thank you very much.

ADV SIBISA MOGALE: Chairperson my name is Sibisa Mogale. As Mr Pretorius confirmed I with my leader Mr Mpfu for Commissioner Tom Moyane. I indeed confirm that that is the case. It will be seek in an application to cross-examine Minister Gordhan and that we will be seeking condonation given the fact that we will be late in filing our application.

CHAIRPERSON: Okay, no that is fine. Thank you very much. You have nothing further to say on the condonation application Mr Pretorius?

ADV PAUL PRETORIUS SC: No Chair. At page two is the order that is sought.

CHAIRPERSON: Sorry?

ADV PAUL PRETORIUS SC: The order that is sought is at page two of the paginated papers.

CHAIRPERSON: Well it starts at page one is it not? On mine it starts on page one and goes on to two.

ADV PAUL PRETORIUS SC: Your microphone Chair.

CHAIRPERSON: It starts at page one and goes on to two. Do we have the same thing?

ADV PAUL PRETORIUS SC: Perhaps not Chair, but perhaps we should refer to paragraphs then.

CHAIRPERSON: Well maybe let me tell you what I have. Page one is the following order that is asked for is one, granting condonation for the failure to timeously issue notices in terms of Commission rule 3.3. Two, persons implicated by the evidence of Mr Nhlanhla Nene.

ADV PAUL PRETORIUS SC: Gordhan, yes.

CHAIRPERSON: This one...[intervenes]

ADV PAUL PRETORIUS SC: That order in itself would be sufficient. It is just in more detail in paragraph two.

CHAIRPERSON: But am I having the right one then?

ADV PAUL PRETORIUS SC: Well that is exactly the one that I am looking at. Perhaps on a different page.

CHAIRPERSON: This one I am reading says Nhlanhla Nene.

ADV PAUL PRETORIUS SC: No, no but then you have the wrong one.

CHAIRPERSON: But has that one, has that one been granted?

ADV PAUL PRETORIUS SC: That is to be granted at a later stage.

CHAIRPERSON: Okay.

ADV PAUL PRETORIUS SC: That is a different application with different considerations.

CHAIRPERSON: Okay. Well there are some files here which are not marked on the spine. This is the only one that is marked on the spine that says condonation application bundle. Are there two in the same bundle? Two condonation applications in the same bundle?

ADV PAUL PRETORIUS SC: They should not be they should be separate bundles. May

I hand you this up?

CHAIRPERSON: Yes please. Well I have now found one of the affidavit, one of the lever arch files that is not marked on the spine what it is for looks similar to the one that I have just been handed.

ADV PAUL PRETORIUS SC: Yes.

CHAIRPERSON: But the one that I have been handed from you is written on the spine application for condonation Minister Pravin Gordhan.

MINISTER PRAVIN GORDHAN: Yes.

CHAIRPERSON: Or the implicated persons, but this one does not have any writing on the spine at all.

ADV PAUL PRETORIUS SC: My apologies for that.

CHAIRPERSON: And I think there is one other lever arch file that is not written. So I think somebody needs to make sure that they are properly written or marked so that I can...[intervenes]

ADV PAUL PRETORIUS SC: We will make sure in future Chair.

CHAIRPERSON: Yes.

ADV PAUL PRETORIUS SC: My apologies. The index is a little intimidating but a little further on you will find page one notice of motion.

CHAIRPERSON: Yes, but basically the non-compliance or the delay in serving the notices was a matter of two, three or five days.

ADV PAUL PRETORIUS SC: Two to three days.

CHAIRPERSON: But nothing more than that. Nothing more than that.

ADV PAUL PRETORIUS SC: Nothing more than that.

CHAIRPERSON: Yes.

ADV PAUL PRETORIUS SC: And no opposition nor any recourse to rule 3.5 by

implicated parties.

CHAIRPERSON: Okay, all right. No, thank you.

ADV PAUL PRETORIUS SC: As I say Chair the index is reasonably intimidating...[intervenes]

CHAIRPERSON: Yes...[intervenes]

ADV PAUL PRETORIUS SC: But after the index you will find the notice of motion and may I refer you to page two?

CHAIRPERSON: Yes. No, I am ready to grant the order.

ADV PAUL PRETORIUS SC: Thank you Chair.

ORDER

I grant paragraphs 1 and 2 of the prayers in the notice of motion at page two thereof.

ADV PAUL PRETORIUS SC: Thank you Chair.

CHAIRPERSON: So we will take the lunch adjournment now and resume at two.

ADV PAUL PRETORIUS SC: Yes.

CHAIRPERSON: We...[intervenes]

ADV PAUL PRETORIUS SC: Advocate Maleka will lead Mr Fuzile.

CHAIRPERSON: Okay thank you.

ADV PAUL PRETORIUS SC: Thank you Chair.

CHAIRPERSON: So we will now take the lunch adjournment and we will resume at 14:00. We adjourn.

HEARING ADJOURNS

HEARING RESUMES

CHAIRPERSON: Miss Norman?

ADV THANDI NORMAN SC: Thank you Mr Chairman. Mr Chairman might I before the witness is sworn in, the next witness Mr Lungisa Fuzile, might I bring the application for condonation for the late filing of the notice, 3.3 notices.

CHAIRPERSON: In respect of?

ADV THANDI NORMAN SC: It is in respect of the four implicated persons Mr Bobat, Mr Whitley, Mr Des Van Rooyen and Mr Mabaso. Might I also mention Mr Chairman that they are represented. My learned friend Mr Masuku and Mr Denga they are present.

CHAIRPERSON: But I have not read those.

ADV THANDI NORMAN SC: I delivered the bundle.

CHAIRPERSON: No arrangement was made that the application would be brought or moved now at this time that I know of.

ADV THANDI NORMAN SC: As the Chairperson pleases.

CHAIRPERSON: Have I misunderstood anything?

ADV THANDI NORMAN SC: I...[intervenes]

CHAIRPERSON: We normally arrange to say when will the application be moved then I give approval then I am expecting it to be moved at that time so I know that I have to look at the papers before that time.

ADV THANDI NORMAN SC: Maybe that was then not communicated properly when the bundle was delivered to the Chairperson yesterday.

CHAIRPERSON: I certainly have, I certainly have seen a bundle.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: But as you may have heard earlier on when Mr Pretorius was moving the application for condonation in respect of implicated persons who are implicated in Mr Gordhan's statement. As you heard I had here another condonation application

relating to Mr Nene which has not been moved yet.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: But it is there.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: So he told me that and you would have heard that...[intervenes]

ADV THANDI NORMAN SC: Yes...[intervenes]

CHAIRPERSON: It is separated.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: It will be dealt with.

ADV THANDI NORMAN SC: Separately.

CHAIRPERSON: Separately.

ADV THANDI NORMAN SC: Yes. If the Chairman...[intervenes]

CHAIRPERSON: So I certainly did receive some papers, but in terms of when that will be moved...[intervenes]

ADV THANDI NORMAN SC: [Indistinct].

CHAIRPERSON: That I have not, I am not aware that it was to come now.

ADV THANDI NORMAN SC: May it then stand down then we arrange a date for that application?

CHAIRPERSON: Yes. Is it unopposed?

ADV THANDI NORMAN SC: It is unopposed. All the parties, the implicated persons they are represented and they are not opposing the application.

CHAIRPERSON: Yes, okay no let us deal with it tomorrow.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: Let me read those papers, because I have not read those papers.

ADV THANDI NORMAN SC: As you please.

CHAIRPERSON: Thank you.

ADV THANDI NORMAN SC: Thank you.

CHAIRPERSON: Mr Maleka?

ADV VINCENT MALEKA SC: Chair good afternoon.

CHAIRPERSON: How are you?

ADV VINCENT MALEKA SC: I am well Chair, but not as well as I could after the captivating closing remarks of Minister Gordhan.

CHAIRPERSON: Yes.

ADV VINCENT MALEKA SC: And Chair I hope that the next round of witness evidence we are going to present to you in the next two days would not be anticlimactic and forceless in the light of Minister Gordhan's captivating evidence particularly his reference to the well-known work and poem of Professor Nimola the famous German Theologian and activist of the time who opposed the Nazi regime and chose to speak when many felt it was appropriate to remain silent.

It is a task that we [indistinct] before you to encourage so many others of our people to do right by speaking and not repeat the mistake Professor Nimola warned his compatriots at the time. Chair, we would prefer to present the evidence of three National Treasury witnesses with reference to the terms of reference paragraph 1.8 which centres their evidence.

You would recall that it is that part of the terms of reference that deals with the arrival of then Minister Van Rooyen at National Treasury together with certain individuals who sought to strong arm officials of National Treasury by imposing or purporting to issue instructions to them when they had not yet been properly and lawfully appointed as directors in terms of the relevant provisions of section 12 (a) of the Public Service Act read together with a special dispensation prescribed by Cabinet that Mr Fuzile will deal

with.

So although all of them will deal with that part of the terms of reference some of their evidence especially that of Mr Fuzile might well traverse to the terms of reference in paragraph 1.1 to 1.3 that you are currently dealing with in this phase one of the proceedings especially insofar as that evidence deals with the various Ministers of Finance who came in and out at the door of National Treasury about which he will testify and Chair we would prefer to present that evidence by identifying the data set that we will canvas with the witnesses and that we would ask you to have ready at hand so that there is not some miscommunication or confusion about what that data set A is.

So if I may indicate to you what the data set is, Chair and I am aware that your Registrar conveyed to us that you do not want clutter on your desk as we present the evidence.

CHAIRPERSON: Yes. I mean some references you might make – may require that I have a look at the relevant pages.

ADV VINCENT MALEKA SC: Yes.

CHAIRPERSON: Others we can do without me having had to have a look.

ADV VINCENT MALEKA SC: Yes.

CHAIRPERSON: But you would know which ones are really important for me to have a look at.

ADV VINCENT MALEKA SC: Indeed, Chair.

CHAIRPERSON: Yes.

ADV VINCENT MALEKA SC: As best as I can I will indicate when it is important for you to turn to the relevant page of the data set and I will do so of course by also inviting Mr Fuzile to do so because he will be speaking from first-hand knowledge in regard to the cross section of the documents in the different files.

So just to identify them, Chair and also for Mr Fuzile the first will be EXHIBIT A which we now know it is the Public Protector's report that is the basis of the term of reference which is paragraph 1.8. You need not go there at the moment, Chair. I simply identify...[intervenes]

CHAIRPERSON: I am just making sure that I have the right file in front of me that should be in front of me right now. Earlier on I had a bundle with Ms Phumla Williams' evidence which you might refer to in due course really is not of immediate importance.

ADV VINCENT MALEKA SC: Yes.

CHAIRPERSON: The one that I now have is EXHIBIT P.

ADV VINCENT MALEKA SC: EXHIBIT B.

CHAIRPERSON: No, P for Patrick.

ADV VINCENT MALEKA SC: Yes we will get to P in a moment, Chair.

CHAIRPERSON: Yes but yes it is not the one that I should have immediately?

ADV VINCENT MALEKA SC: Not yet but really the point of reference...[intervenes]

CHAIRPERSON: The one that I should have I assume would have Mr Fuzile's statement and so on. Where is it?

ADV VINCENT MALEKA SC: That is EXHIBIT P.

CHAIRPERSON: Is that EXHIBIT P?

ADV VINCENT MALEKA SC: Yes we will get to it in a moment.

CHAIRPERSON: Oh okay. All right.

ADV VINCENT MALEKA SC: For now it can be on your desk.

CHAIRPERSON: Okay.

ADV VINCENT MALEKA SC: And you do not have to it at the moment.

CHAIRPERSON: Yes. All right.

ADV VINCENT MALEKA SC: I have identified EXHIBIT A. In fact it should be EXHIBIT

B which is the Public Protector's Report because you will recall, Chair that in her report she said time and resources did not permit her to engage in that complaint that was unanimously lodged before her but found some level of *prima facie* course of investigation in the light of various media reports and then the next data set, Chair that we would ask you to have in mind is EXHIBIT F which is Ms Williams' statement and bundle of evidence that was usefully canvassed by our learned colleague Ms Hofmeyr when she led Ms Williams.

The importance of that bundle, Chair is that it comprises legislative instruments that govern how public officials and advisory individuals to Ministers are appointed and that bundle also contains regulations that deal with the specimen contracts that are executed by persons employed in the public service.

One of the references in that bundle will be section 12 (a). Although Mr Fuzile in his statement quotes that section we would prefer to refer you to the official version of it to make sure that we are not criticised for following blindly possible typos in his quotation.

Chair, the next bundle will be EXHIBIT N and we would refer to EXHIBIT N1 and its accompanying bundles that Mr Pretorius has identified as A to F. We would recall that is a set of documents that Minister Gordhan canvassed.

You would recall that at different stages of his evidence Minister Gordhan indicated that Mr Fuzile might well give you more evidence on aspects that he foreshadowed. I doubt that Mr Fuzile would do so fully now because he indicates quite clearly in his statement that for the present purposes he is here to assist you on term of reference in paragraph 1.8.

But of course he is free to indicate whether or not he will be able to help you now or later on matters that Minister Gordhan has identified and then, Chair there will be

reference to N2 which is the supplementary bundle prepared for the purposes of Minister Gordhan.

It is important, Chair, because in it he references two most important items. The one is the statement of a whistleblower. I will not mention her name but with reference to that evidence you enquired from Mr Pretorius whether or not the legal team and or the investigators of the Commission have sought to obtain a statement of some sort from the whistleblower.

Chair, we can confirm now that indeed the investigators have in the light of the crucial information volunteered by the whistleblower. We present that statement to you together with its annexures as EXHIBIT R. To the extent possible, Chair I will canvas elements of EXHIBIT T with Mr Fuzile to establish firstly whether or not National Treasury for as long as he was there had become aware of the information volunteered by the whistleblower?

If so what did they do about that information? Did they conduct any investigation and if so what is the result of that investigation? Chair, Minister Gordhan also referenced other matters in relation to the possible abuse of the South African currency market by individuals who may have gained prior confidential information about the possible dismissal of Minister Nene and there is some reference in the bundle that was presented SN2 of one individual who may have made money as a result of being armed confidentially with that information.

In the financial markets, Chair you would recall that that type of secret information will be identified and regarded as insider trading open to prosecution. The evidence of Mr Gordhan in that regard was that the Commission must begin about the process of recovering those illicit gains.

I will refer to part and parcel of EXHIBIT N to test with Mr Fuzile whether or

not there is any semblance of truth insofar as he is concerned about those allegations. Again it is a matter that Minister Gordhan left for him to educate us to the extent possible.

Against the background of that data set, Chair may I ask your Registrar to administer the oath for Mr Fuzile?

CHAIRPERSON: Thank you.

REGISTRAR: Please state your full names for the record.

MR LUNGISA FUZILE: I am Lungisa Fuzile.

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

MR LUNGISA FUZILE: No.

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

MR LUNGISA FUZILE: Yes.

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

MR LUNGISA FUZILE: So help me God.

MR LUNGISA FUZILE (duly sworn, states)

CHAIRPERSON: Thank you.

ADV VINCENT MALEKA SC: Chair, now is the time to ask you to admit the bundle which has been marked as EXHIBIT R as an exhibit before you. Sorry, EXHIBIT P.

CHAIRPERSON: The bundle – well before we do that should this bundle not be starting with Mr Fuzile's statement? Why do we need the condonation application to be there as well? Is it not just going to be increasing a lot of paper unnecessary because the condonation application something we deal with now and we put aside and we may never have to go back to it but the witness's statements and annexures to those statements will need to be read from time to time but...[intervenes]

ADV VINCENT MALEKA SC: Chair, if I may...[intervenes]

CHAIRPERSON: I think condonation applications should really be separated because after they have been dealt with they will hardly need to be looked at after this.

ADV VINCENT MALEKA SC: Yes. Chair, if I may provide some explanation on behalf of those who packaged this bundle and suggest a middle ground. The condonation application was put up front and indexed from page one because it relates to the witness statements which follow thereafter and then you will see that at the end of the bundle there is reference to the notices that have been served on several implicated parties.

It has been packaged in this perhaps complex form to ensure that it will be the only bundle that relates to the witnesses from National Treasury, the implicated persons from their statements as well as their applications for condonation.

That is why it has been sequentially paginated from one to the end and you will see that each of the statements is accompanied by an index of its own. So for instance if you are at page one of the bundle you will see that there is an index of the application for condonation from page one to the end.

CHAIRPERSON: Yes.

ADV VINCENT MALEKA SC: And then the next you will see that is the statement of Ms Phumza Macanda.

CHAIRPERSON: Yes?

ADV VINCENT MALEKA SC: Which begins at page 20.

CHAIRPERSON: Probably what I said or I should have said should the bundle not have started with that statement of Ms Macanda because I see it is there and there is the...[intervenes]

ADV VINCENT MALEKA SC: Index.

CHAIRPERSON: There is the other statement of...[intervenes]

ADV VINCENT MALEKA SC: Yes.

CHAIRPERSON: Mogajane as well.

ADV VINCENT MALEKA SC: It starts at page 44.

CHAIRPERSON: Excuse me. So I guess that I expected, excuse me, I expected Mr Fuzile's statement him being the first of the three to give evidence to be at the top.

ADV VINCENT MALEKA SC: Indeed.

CHAIRPERSON: Yes.

ADV VINCENT MALEKA SC: Indeed and you will find in the bundle as we have it the statement of Mr Fuzile from page 54.

CHAIRPERSON: Yes. Yes.

ADV VINCENT MALEKA SC: So that those who packaged it worked in reverse.

CHAIRPERSON: Yes.

ADV VINCENT MALEKA SC: And let me apologise for them.

CHAIRPERSON: Yes.

ADV VINCENT MALEKA SC: But may I proceed on the basis of the bundle as prepared, Chair?

CHAIRPERSON: No, no that is fine. You may proceed. So it is only about what 19 pages or so that relate to the condonation application.

ADV VINCENT MALEKA SC: Yes.

CHAIRPERSON: Yes okay. All right. You may proceed.

ADV VINCENT MALEKA SC: Thank you, Chair. Mr Fuzile I hope that you followed some of the introductory remarks that I have made. I have made them not *in terrorum* but simply to try and place context to a number of questions that I am going to put to you and let me place on record that although you may have consulted of course through your legal representatives with some of my colleagues I certainly have not consulted with you, is that correct?

MR LUNGISA FUZILE: That is true.

ADV VINCENT MALEKA SC: So that the first time you are going to hear questions from me about your testimony will be today, am I right?

MR LUNGISA FUZILE: Yes. That is true.

ADV VINCENT MALEKA SC: You have several bundles before you. Can I ask you to place the bundle before you especially on your right because it will be the bundle that I will refer to from time to time, the one which is marked EXHIBIT P.

It contains your statement together with those of your ex colleagues. Can I ask you to turn to page 55 of the bundle?

CHAIRPERSON: While Mr Fuzile is doing that Mr Maleka we did not complete what we needed to do or I needed to do because of the query about the inclusion of the condonation application here.

ADV VINCENT MALEKA SC: Yes.

CHAIRPERSON: So the bundle that contains among others the statement of Mr Lungisa Fuzile and Ms Phumza Macanda will be marked EXHIBIT P.

ADV VINCENT MALEKA SC: Thank you, Chair.

CHAIRPERSON: Thank you.

ADV VINCENT MALEKA SC: Mr Fuzile, I had asked you to go to your statement which begins at page 55. Are you there?

MR LUNGISA FUZILE: Yes, sir.

ADV VINCENT MALEKA SC: That is the table of your statement which begins at page 56 and runs up to page 75. Can I ask you to immediately turn to page 75?

MR LUNGISA FUZILE: I am there.

ADV VINCENT MALEKA SC: You will see that there is almost in the end of the top half of that page your name and above it there is some signature. Whose signature is that?

MR LUNGISA FUZILE: It is my signature.

ADV VINCENT MALEKA SC: And there is a date below. Can I ask you to identify that date?

MR LUNGISA FUZILE: The date is 16 November this year.

ADV VINCENT MALEKA SC: Do you confirm that that is the date on which you signed that statement?

MR LUNGISA FUZILE: Yes.

ADV VINCENT MALEKA SC: In reverse can you go back to page 56?

MR LUNGISA FUZILE: I am there.

ADV VINCENT MALEKA SC: Can I clear some few elementary issues about your statement beginning from page 56. You have had an occasion to read this statement before you took the witness box this afternoon, correct?

MR LUNGISA FUZILE: Yes.

CHAIRPERSON: Do you confirm that the contents of the statement which you have read before are correct or is there any aspect of it that you would wish to correct before we get to the contents of it?

MR LUNGISA FUZILE: Chair, there is only one thing on the next page.

CHAIRPERSON: Is that page 57?

MR LUNGISA FUZILE: Page 57.

CHAIRPERSON: Yes?

MR LUNGISA FUZILE: Paragraph 11 should be deleted.

CHAIRPERSON: Paragraph 11?

MR LUNGISA FUZILE: 11.

CHAIRPERSON: The whole of it?

MR LUNGISA FUZILE: The whole of it. It is a very short one line paragraph.

CHAIRPERSON: Oh, okay. Thank you. I am sorry so 11 is one sentence actually.

MR LUNGISA FUZILE: Yes.

CHAIRPERSON: Yes okay.

MR LUNGISA FUZILE: Now subject to that deletion do you confirm that the statement as read is correct to the best of your knowledge and belief?

MR LUNGISA FUZILE: Yes, Chairman.

ADV VINCENT MALEKA SC: The next elementary thing that I would like to raise with you although you deal with it in the first three paragraphs of your statement is your background. I understand from your statement that you have been invited by the commission to prepare this statement and that you have a long story to tell about your involvement in National Treasury and allegations of state capture that are presently being investigated by the Chairperson, correct?

MR LUNGISA FUZILE: That is correct.

CHAIRPERSON: But for now and for the purposes of your present statement and testimony you have elected to confine yourself to paragraph 1.8 of the terms of reference at the request of the Commission's legal team, correct?

MR LUNGISA FUZILE: That is true. I have confined myself to 1.8.

CHAIRPERSON: Before you proceed Mr Maleka maybe I should just say Mr Fuzile that thank you for coming forward. As you would definitely know we have been asking more people particularly the executive past and present and former DG's and current DG's who have information about what we are investigating to come forward and such matters as you might which to tell the Commissioner about which you might not be able to tell the Commission about.

At this stage we certainly are interested in those if they fall within the terms of reference of the Commission and in due course we will be very happy to have your

evidence in regard to all those other matters.

ADV VINCENT MALEKA SC: And Mr Fuzile you heard a number of times the Commission making an appeal to a number of witnesses who have testified that they should make themselves available even though they may have completed the current phase of their testimony and I know now that you are now in the private sector employment.

That it would not be too inconvenient for you when the Commission request you to come back to complete your story about your involvement in National Treasury and allegations of state capture to the extent that you will be able to contribute. Is that fair?

MR LUNGISA FUZILE: Chair, it might be inconvenient but if it has to be done I will do it. I say this on the presumption that there would be reasonableness in terms of time allowed to prepare a proper detailed statement on whatever matters that I would like to ventilate with the Commission and of course – of course allowing me also reasonable time in terms of the date that is set bearing in mind that the Commission does not have a century to do its work.

ADV VINCENT MALEKA SC: Indeed and we keep on learning as we march along and we will avoid previous inconveniences that it may have caused you for which I frankly would apologise to you.

MR LUNGISA FUZILE: I accept your apology and may I say on three – paragraph three of the statement I do signal the willingness to avail myself should the Commission invite me to come and tell the story on other aspects beyond paragraph 1.8 of the terms of reference.

ADV VINCENT MALEKA SC: Thank you, Mr Fuzile. The next elementary matter of background that you deal with and by the way let me interrupt myself. I am not going to

ask you to read each and every paragraph of your statement.

I will identify various paragraphs simply as a signal to tell you where I am but if you choose to read either as a matter of emphasise or as a matter of public record any aspect or paragraph of your statement please do so. Feel free to do so.

The next elementary matter of background that you deal with begin from paragraph four of your statement at page 56 and you start by indicating your employment in Treasury but before we get there can I ask you your formal qualifications? What formal qualifications if any do you have?

MR LUNGISA FUZILE: I studied Commerce. I majored in economics and industrial psychology, proceeded to study a qualification in education as a teacher before I went on to study economics at a post graduate level graduating with a Master of Commerce degree in economics at the University of Natal. I think it was 1997 and of course beyond that I have done courses in management, in finance, some with certificates, others without certificates. I also consider myself to be qualified in farming actually.

ADV VINCENT MALEKA SC: In farming?

MR LUNGISA FUZILE: Yes.

ADV VINCENT MALEKA SC: Are you a farmer at the moment?

MR LUNGISA FUZILE: I am learning and I am getting better every day.

ADV VINCENT MALEKA SC: Yes.

ADV VINCENT MALEKA SC: Chair you and I have a hard road to follow.

CHAIRPERSON: Well just for the sake of completeness Mr Fuzile what you have said suggest maybe that your first degree was BCom?

MR LUNGISA FUZILE: Yes Chair

CHAIRPERSON: Yes and after the BCom you did M.Com.

MR LUNGISA FUZILE: Higher diploma in education to be precise Chairman.

CHAIRPERSON: Yes, yes.

MR LUNGISA FUZILE: And then I did honours in economics and then Masters in economics.

CHAIRPERSON: Okay, thank you and do you intend getting any formal qualification farming?

MR LUNGISA FUZILE: I have paid my tuition fees in the practical work that I have been doing since I was a little boy.

CHAIRPERSON: Okay.

MR LUNGISA FUZILE: At my father's feet.

CHAIRPERSON: Okay. Hopefully that will make you relax and you can give your evidence properly. Thank you.

MR LUNGISA FUZILE: Thank you Chair.

CHAIRPERSON: Mr Maleka?

ADV VINCENT MALEKA SC: Thank you Chair and then you indicate in paragraph nine of your statement at page 57 that you left National Treasury in 2017. Do you recall which month of 2017 did you leave National Treasury?

MR LUNGISA FUZILE: Yes Chairman my last day was the 17th of May if I remember correctly a Monday. In March this year. Last year pardon me.

ADV VINCENT MALEKA SC: Yes and you say before you left in May 2017 you had been in National Treasury for a full 19 years.

MR LUNGISA FUZILE: That is correct.

ADV VINCENT MALEKA SC: On my elementary mathematical calculation it means that you ought to have joined National Treasury about 1998.

MR LUNGISA FUZILE: That is correct Chairman.

ADV VINCENT MALEKA SC: You have been there for almost a generation and some

people would define you as part and parcel of the furniture of National Treasury before you left.

MR LUNGISA FUZILE: I would hope good quality furniture Mr Chairman.

ADV VINCENT MALEKA SC: Mr Fuzile it is up to you and I know that you have deleted paragraph 11 of your statement. Are you able and do you feel comfortable in disclosing reasons to the Chairperson why you left National Treasury having been there as part and parcel of the good furniture?

MR LUNGISA FUZILE: Certainly.

ADV VINCENT MALEKA SC: Could you please tell us why you left?

MR LUNGISA FUZILE: Perhaps the place to start Mr Chairman would be just the period before May 2011 I had been a Deputy Director General in a division of the Treasury called Assets and Liability Management. That is a division whose responsibility in summary is or entails raising money. In other words borrowing which had been described very eloquently here by my former boss Mr Gordhan which entails short-term borrowing for just cash management purposes to breach cash flow shortfalls that might occur between the inflows and revenues that people and businesses pay and of course the outflows insofar as the expenditure of government relating to for an example salaries transfers to provinces and local government in terms of their grants and so on and so forth. We borrow for the purpose or we would borrow for that purpose in that division, but also of course borrow just to finance the long-term, the annual shortfall between revenue and expenditure which is to finance the deficit so to speak in technical terms. That is the one leg of what that division was responsible for the other leg was the asset management which is oversight over state owned entities, but at the same time taking care of government's assets such as the cash that would be in the bank at any given time. Being in that role my predecessor getting promoted in Mr Lesetja Kganyago who

is the governor now, but he was promoted to become the Deputy Governor. So someone had to take over the role of DG. I start here because I was very reluctant actually to take the job. It is important for context to say this. So I, because I knew what the job entailed that it is a very heavy job, difficult job and takes a lot of travelling, but at the same time because it is a job that entails telling people stuff that they do not quite like to hear, which is that there is no money to do sometimes good things that they would like to do. Of course other times not so good things that people would want to do. So I was reluctant and then I actually did not apply for the job and the due date for the submission of the applications came and passed and I suppose when the people were looking through the applications they were hoping to find mine there as well so that I would contest or compete for the job like others, but I had not applied. So there was an extension of reopening of this and some persuasion that was done by several people. I need not mention their names and ultimately I yielded, took the job. Five years on my contract was close to expiration. In fact it was not even five years on. 2015 December happened which is the removal of Mr Nene and my contract was supposed to expire in May of the following year and then one of the things that happened, I want to cut the long story short, was that when Minister Gordhan was returned to Treasury one of the first things he said I suspect he did not even greet me was that my return has got implications for your career plans and I said to him...[intervenes]

CHAIRPERSON: I am sorry just repeat that?

MR LUNGISA FUZILE: He said my returning to Treasury as Finance Minister, as Minister Gordhan has got implications for your career plans and I knew what that meant. Of course we did not talk about that at the time. We joked and I said look we will talk about it. Again to cut a long story short he then persuaded me to extend my contract and I said look, I can only do two years at most, but I can guarantee giving you one year of my time.

I said of course given the high turnover of Ministers of Finance I suspect that you will most likely be my last Minister. So when we then returned from that road show to London end of March in 2017 the writing was on the wall for me that Minister Gordhan's time as Minister of Finance was up and I decided of course as I had indicated to him and the team at Treasury, my colleagues, who had also been part of persuading me to stay a little longer that my time at Treasury was up.

ADV VINCENT MALEKA SC: Yes. Mr Fuzile I can assure you that we will deal with the ministerial revolving door of Treasury through which a number of Ministers came in and out in detail because you expressed some strong views around it, but let me just clear the record in relation to the evidence you have given relating to your appointment as the Director General of National Treasury. You have now confirmed that you were recruited to apply. Can I ask you when precisely were you appointed as the Director General of National Treasury?

MR LUNGISA FUZILE: My career as DG commenced I think on the 16th of May 2011. I might be off by a day or just hours.

ADV VINCENT MALEKA SC: Yes. Let us work with the period of May 2011. Who was the Minister of Finance at the time?

MR LUNGISA FUZILE: The Minister of Finance at the time was Minister Gordhan.

ADV VINCENT MALEKA SC: And his Deputy?

MR LUNGISA FUZILE: His Deputy at the time was Mr Nene.

ADV VINCENT MALEKA SC: All right and then Minister Gordhan has explained to us the complex structure of National Treasury and the number of state institutions which are subject to the oversight of National Treasury and monitoring of and the progress that is being made of that strategy, down to the point of performance management insofar as ensuring that my direct reports as the DG are up to speed and are appeased with the

targets that we have promised to parliament and the nation for that matter through the state plan, making sure that, that is in place.

So the issues for instance directing the department issuing instructions in the department disciplining people, dealing with appeals to the extent that elements of that disciplining may be delegated to lower levels, but the DG would still be one level of appealing in the department and then of course it would be the Minister.

Financial management in the department making sure that at all times the departments, the department, excuse me has got the resources that it needs to operate, pay salaries, pay rent and all things relating to the operation to the department and of course making sure that whenever there is a commitment that the department makes there are resources to pay for that commitment.

And of course of relevance to today's conversation I do not know if I will be jumping the gun...[intervenes]

ADV MALEKA SC: Yes, you will be jumping the gun, we will get there. Then pause there, you deal with that specifically in your statement that I will canvas in some reasonable detail, but for now I have a picture of what the main responsibility of the Director General of National Treasury uniquely is.

Now can I ask you to go to paragraph 12 of your statement and I do so in the context of the fact that like any Director General of the National Department you will be supported by Deputy Directors who will be part and parcel of your executive management. Now in paragraph 12 you mention some names and I would like to canvas some of them with you for this simple reason, towards the concluding part of your statement you talk about the conversation with the then Deputy Minister Jonas relating to the conversation about who was targeted for exclusion from National Treasury, around which you make some observation to state capture.

It is in that context that I would like to canvas some of the names that you reference in paragraph 12. Are you at paragraph 12?

MR LUNGISA FUZILE: Yes, I am, I am.

ADV MALEKA SC: Let us start with the name of Mr Ndondo Andrew Magayane. Can I show you that we are going to call him tomorrow and he has agreed to testify. When you were the Director General, at the point when the controversy around Mr Nene took place what was his position at the time?

MR LUNGISA FUZILE: At that time, Chairman, Mr Magayana was the DDG for Public Finance.

ADV MALEKA SC: Alright, and you mentioned the name of Mr Michael Sacks, who is he and what was he at the time of National Treasury?

MR LUNGISA FUZILE: Mr Michael Sacks was the head of a division that deals with the budget and it is called the budget office and I remember walking past the television at work and I saw Mr Gordhan explaining the role of this office as you were saying Mr Maleka, he did it quite well and I might just add at this point by the way that I think it will be correct to say that one of the important jobs of the Treasury is to prepare a budget for the country.

ADV MALEKA SC: Yes, you know we talk about this budget as some sophisticated animal and I would like you to decode it for us in elementary terms that I and the Chairperson, as lawyers, and maybe ordinary South Africans can understand. What is a budget?

CHAIRPERSON: Before Mr Fuzile responds, can I confirm at the back that everybody can hear Mr Maleka? Yes, okay thank you.

ADV MALEKA SC: Chair I will speak up.

CHAIRPERSON: Sometimes I am struggling to hear you, and I am very close to you, okay.

ADV MALEKA SC: I will speak louder and I hope that next time they put a speaker next to you.

CHAIRPERSON: Thank you, you may proceed.

ADV MALEKA SC: This is the recommendation of improvement around the sitting that we will make to you ahead of the many other important recommendations we will make on the work of the Commission. But, I invited you to explain to us in lay terms so that we too can understand the importance and significance of this complex animal called the budget.

MR LUNGISA FUZILE: At the very highest level what a budget is, is an expression in numbers of the aspirations and wishes of a nation as processed by the political leadership that has been elected. What do I mean by this? When parties run to be elected by make promises. We will do this in education, we will do this withheld, we will do this for security and so on and so forth until that gets expressed through the allocation of resources that the nation is able to mobilise and I will come back to what is involved in that mobilisation. The promises are just up in the air.

They are statements of intent. It is only when there is then appropriation and then of course the other laws that will go with it the division of revenue for example between the threshold of government and that appropriation that I am referring to would then say to give effect to the promise of security we will allocate these resources so that more police men and women can be hired so that cars can be bought, petrol can be filled in them, guns can be bought and of course the rest of the stuff that goes with law enforcement can be done.

That is what a budget does in the simplest terms. Of course if you start at the highest level it is clear then that there must be policy priorities that a government sets for itself and it is those policy priorities that must then guide the resource allocation process that must be used to weigh one priority against the other, because if everything is a priority then there is no priority in very simple terms.

Of course as it happens within a household, every household would wish to have the best of everything, but most households can only afford so much, so again even the national budget, once you have come from the highest level of policy intents and priorities that a governing party wishes to deliver on then it must assess how much resources it will be able to mobilise and there are in the main two resources of revenue for government, in fact it is only one, but we confuse each other by saying two. It is taxes and of course other revenues.

When you finance spending today through debt it is taxes of tomorrow, because you have to pay back the tax. So budgeting then is about balancing, finding the right balance between the wishes and aspirations and what you can actually afford. Of course the ability to raise revenue in taxes is a function of the size of your economy, your GDP and every component of it.

So the budgeting exercise is about that. If there is a specific think that you wish to hold me on, I can do so quickly.

ADV MALEKA SC: Yes, I mean I understand now that a budget is an executive authority's promise to the nation about the expected expenditure given policy priorities as against the expected income and of course it is debated publicly, there is no secrecy about it and we follow now, and then the debates in parliament, but ultimately it is adopted, but the point in that exercise is this and I want you to reflect on it and help us understand why that is the case?

The product of a budget exercise and adoption involves National Treasury and ultimately it is debated with the office of the President, correct?

MR LUNGISA FUZILE: Yes.

ADV MALEKA SC: And therefore there cannot be any debate or confusion in any budget cycle about what the nation can afford given the budget, is that correct?

MR LUNGISA FUZILE: That is correct.

ADV MALEKA SC: I assume from your answer that every...[intervenes]

MR LUNGISA FUZILE: Pardon me, pardon me, Chair. There ought not to be any debate about what the nation can afford.

ADV MALEKA SC: Yes.

MR LUNGISA FUZILE: But...[intervenes]

ADV MALEKA SC: Yes, thank you.

CHAIRPERSON: Sometimes there is you mean?

MR LUNGISA FUZILE: Precisely.

ADV MALEKA SC: Yes, can I explore that with you that, and I accept your qualification there ought not to be, but where the executive is part and parcel of the debate and it has taken, it has participated in national, in that national debate, in at least the national assembly why should there be a debate on its part about what the nation can or cannot afford?

MR LUNGISA FUZILE: A number of things account for that. Perhaps, let me just make this broad point first, the South African budgeting process is one of the most advanced in the world. I say it with humility, because it could sound like I am gloating here, because I was part of it, but it has been assessed independently by people who have not been paid money to come to that conclusion.

And several times they have made that conclusion after testing it a few times, comparing how we run the process to other nations and I am not talking by the way other emerging market economies or developing nations, including many advanced nations. So we run one of the most transparent well developed processes, with very serious and deep political involvement in that process.

Very rigorous technical analysis that goes with it. It will not bore this Commission with that, but I could if I am asked to, but, however, the nature of budgeting, especially at a time like the reference period that we are talking about when the economy is not growing fast enough, in fact if anything when the rate at which GDP expands is decelerating year after year where there is disappointment year after year in terms of revenue collection, in other words revenue falls short of target every year, then budgeting becomes a very difficult exercise in terms of trade-offs.

It means to do more of one thing for an example give zero increase, which is something that we had to grapple with at one point in time in fees for higher education. It means that you must give up something. And it is usually in the giving up on something that the difficulty arises.

Most people are used to joke about it to my bosses. I have had many over the recent past in that role that most of them prefer that the budget must only have plusses. So they would prefer to say we have given higher education for free, we have given grant increases that are higher than inflation, we have given this. Once you say to them let us then talk about how we are going to pay for it, they wish they could just disappear, because it is an inconvenient part, whichever way you think about it, because you either have to explain why you are borrowing a lot, and if you are borrowing for consumption it is hard to justify.

But all – or you got to tax more and again taxation is not a thing that is very popular with people who apply the trade of politics. So that is then what raises the contention, because it is about coming out, Chairman, in saying, I wish I could give you this thing, but our country cannot afford it.

ADV MALEKA SC: Yes, Chair, I have got two more questions on the question on the budget and with your leave I suggest that they are important, because they provide a context to this revolving door that we will canvas with Mr Fuzile.

Minister Gordhan presented some of the numbers in relation to our historic budgets over the years, and one of the indicators he presented was that at some point in our budget cycle South Africa enjoyed a budget surplus and I think he mentioned it was during the course of then President Mbeki. Are you able to help us with regards to additional information in that regard?

Do you recall when was it that South Africa enjoyed the last budget surplus?

MR LUNGISA FUZILE: It was the years around 2007/2008. The first of those were not really planned, in fact we did characterised it as such. What had happened is that in the years of President Mbeki the economy used to grow faster than the year that the projection at the time of tabling the budget.

So when we table a budget in February we would project for a year and two ahead what the GDP growth rate is likely to be, because that is the base that you tax and what often happened was that the economy would then, the actual growth would be higher than what would be projected.

That was the first reason we had the surplus, but the second reason we were embarrassed by SARS, because it was getting to efficient in bringing all those who were supposed to pay taxes into the net and making most people pay their fair share of the taxes.

So we would project that the taxes would be X and the actual tax take at the end would be X plus one.

ADV MALEKA SC: Yes.

MR LUNGISA FUZILE: Some bigger number. So as a consequence of those it did not matter that in fact expenditure was growing in double digits in real terms. By that I mean that it would grow in excess of 10% in real terms, but the growth in revenue driven by these two factors that I have talked about was of such a nature that every year then there would be more money available than the money that was planned to be spent.

Of course we would bank it and it happened year after year and until in 2007/2008 we realised or around that time first an unplanned surplus. But of course there was a deep realisation that the good years were not going to obtain forever. I was not DG at the time, the procedure was Mr Manuel was the Minister and Minister Gordhan was a Commissioner at SARS, but essentially the coming together of all of these things, then it was obvious that it was not going to be there forever, because part of the growth in GDP was aided by a commodity boom, prices of gold and other minerals rising and staying high for a protected period of time which then meant that the revenues that came from mining. But not only mining was the driver of the growth during that time.

So that then meant that our country was in a very, very good position. So then there was a plan to make sure that when the cycle turns we must have planned surpluses for a series of years, keep that money so that when bad years come we would be able to set the budget in a counter significant way meaning that when the economy would be slowing down we would draw on those savings and spend them, so that we do not have to cut spending on social programs, investment and so on and so forth.

ADV MALEKA SC: Yes. Well just to decode some of the complex micro economic terminology you used. You explain two indicators as the drivers of the budget surplus

around 2007. The first was the economic growth given what you call the GDP, Gross Domestic Product.

In my limited understanding that is one of the indicators of economic growth, is that correct?

MR LUNGISA FUZILE: That is correct.

ADV MALEKA SC: And as against the economic indicator of the growth that South Africa enjoyed, of course many other countries in 2007 you are able to make conservative budget estimates? I take it in terms of ensuring that you are not going to go into an over estimation of expenditure, is that correct?

MR LUNGISA FUZILE: That is correct, save for just one word which were used, we used to call it a swear word "conservative".

ADV MALEKA SC: Yes.

MR LUNGISA FUZILE: They were prudent.

ADV MALEKA SC: Prudent.

MR LUNGISA FUZILE: We tended to prefer that word, because the one carries a little bit, in fact not a little bit, carries – conservative carries negative connotations.

ADV MALEKA SC: Okay, let us work with the word prudent. Is it prudent enough? And as we know the good economic times were not there to last forever and we know that various analysts mark the year 2008 as the beginning of the global economic meltdown and there were no longer tailwinds of economic growth and that many economies had to face the headwinds and ours were not an exception.

Can I ask you to take that mark of 2008 and explain to us quite quickly what happened to our budget insofar as surplus or deficit is concerned?

MR LUNGISA FUZILE: We started the year, if we completed 2009, I think it was 2008 with the global financial crises beginning for instance Lumin Brothers, all those kind of

banks folding. What that then did was just to send negative signals, you can call it sentiment across the globe, which eroded confidence in the financial systems or sectors of many countries, which then meant that most economies essentially had to not only downgrade their focus for growth, but many countries including our own in 2009 got into recession.

The first budget that Minister Gordhan inherited from his predecessor Mr Manuel was projecting, now on the back of that – against the backdrop of that global development a deficit, and I am using memory here, if it can get me into trouble, but maybe I should not talk numbers, but if you will allow me to just talk ball park figures, it will be fine.

ADV MALEKA SC: Yes, I would like to get to 2015.

MR LUNGISA FUZILE: 2015, okay. So we started there, we were looking at a growth, at a deficit of around 3% in 2009. That was in February. By July when Minister Gordhan had to table the budget vote for the Treasury we had to announce that revenues were going to fall short by no less than 60 billion that year.

That was just four months or so on. Which meant that the deficit had to...[indistinct 23:50] up to about 6% projected at the time. Of course if you just talk debt numbers by 2008/9 our debt was sitting at around 426 or so billion or about 24% of GDP, which is the kind of measure that economies use to just get a relative sense of how big and affordable is your debt.

Fast forward to 2015 we had had to borrow overtime and of course sensibly so if I may say, it was an appropriate approach to physical policy, in other words to act counter cyclically avoid the bloodbath in terms of jobs, although one occurred it could have been worse if this was not done.

So there was investment and other things and the spending that went with that, so as to accumulating debt at quite a fast pace so that by 2015 our debt was just slightly under 2 trillion if it had not reached that. Of course there were several things that were done to make sure that we stay on track for an example we introduced under Minister Gordhan something we call an expenditure ceiling, which I will not bore you about it, but it was just a measure of discipline, in fiscal management.

ADV MALEKA SC: I can assure you that Minister Gordhan did talk about...[intervenies]

MR LUNGISA FUZILE: Yes.

ADV MALEKA SC: About the expenditure ceiling and gave us some percentages on that.

MR LUNGISA FUZILE: Exactly so most of it was responsible stuff. Let me just characterise it this way, a lot of the time I would explain and I would do this even to rating agencies and investors and say look we have the propensity as a country to take the right decisions, but more often than not it seemed to me towards the end of my tenor that people would take the right decision, but angry with it afterwards, because it restrains them.

I do not know if I am making sense.

ADV MALEKA SC: Yes. You do, as far as I understand your evidence and I would like to conclude on the budgets, because that takes us to paragraph 14 of your statement where you referenced the last cabinet meeting, you and Minister Nene attended on the I think it was 9 December 2015, but just to conclude on the budget, as at 2015 we were running at a budget deficit of some sort, correct?

MR LUNGISA FUZILE: Yes.

ADV MALEKA SC: I would like you to indicate to the Chairperson precisely for that budget cycle year what was the indicated revenue side of the budget as against the

expenditure side of the budget? So as to bring some figure to the extent of the deficit of the time and finally tell the Chairperson how you fund that deficit and what will be the cost of funding with reference to any micro economic financial ratio that you can put up?

MR LUNGISA FUZILE: I know that I have been ringing these numbers as though I am reading them from somewhere. I remember the ballpark figures, but not the exact numbers.

ADV MALEKA SC: Yes.

MR LUNGISA FUZILE: Our budget at that time were running into a trillion plus, 1,2 or 1,4 trillion.

ADV MALEKA SC: My recollection it was 1,4 trillion.

MR LUNGISA FUZILE: 1.3, 1.4 trillion, so I am close.

ADV MALEKA SC: Yes.

MR LUNGISA FUZILE: And of course the revenues were marginally less than that with 1.2 something, so we would end up with a deficit of about 170, 160/170 billion or so. That translates to somewhere around 3.5 to about 4% deficit as a percentage of GDP.

ADV MALEKA SC: Yes.

MR LUNGISA FUZILE: We would then fund that deficit of about 160/170 billion through short term debt, your Treasury bills. They used to run about 20 billion or so and of course long term debt which is your bonds which is – they are of two kinds, inflation linked bonds and of course what we called fixed interest or fixed income bonds.

The ones on which a fixed coupon is paid in a year at two points normally and of course the importance of this point of running a deficit for purposes of micro economic policy, both from the point of view of what the Central Bank does with inflation, what Treasury does, the Minister of Finance, in terms of fiscal policy, is in relation to the fact that if a government and of course the Central Bank act in ways that can suggest that

inflation can run away or debt can rise exponentially is that people get scared of a country like that, because an investment you make today is worth nothing a year later, because it is valued as eroded by inflation and also of course if you are a foreign investor gets eroded by the impact of the bad policies on your currency, because if the Rand gets weak every day the Rand depreciates the value of an investment that a person who comes from abroad has put here falls.

And we can go through the simple arithmetic if it is necessary, but I do not know.

ADV MALEKA SC: It is not necessary, but the point is this Mr Fuzile, where I would like you to help us, is if you do not have income of your own to fund your budget expenditure, you will have to go out to the market and then raise that for which you will pay interest, correct?

MR LUNGISA FUZILE: That is correct.

ADV MALEKA SC: And the extent of the interest you will pay varies according to the ratings that you as a country would enjoy, is that correct?

MR LUNGISA FUZILE: Most definitely.

ADV MALEKA SC: Yes, Chair, where I come from people who borrow you money they are called "mashunasa" and they determine the extent of interest. You will have to pay, given the risk you pose.

CHAIRPERSON: And they demand other items from you as well.

ADV MALEKA SC: Indeed.

CHAIRPERSON: Yes, okay.

ADV MALEKA SC: So in that context, I begin to go to matters of fact now and they begin from paragraph 14 of your statement at page 57. You talk about a cabinet meeting following the removal of Minister Nene or relating to the removal of Minister Nene. Can

I stop you there and ask you this about then Minister Nene, that from what I read of your statement when you refer to him it suggest that you must have had some close fond relationship with him? Is that a fair perspective?

MR LUNGISA FUZILE: That is correct.

ADV MALEKA SC: Of the relationship that you had?

MR LUNGISA FUZILE: That is correct.

ADV MALEKA SC: Because at some point you talk about how you were moved, touched and disaffected when he went to his office in his final days to collect his belongings.

MR LUNGISA FUZILE: Yes, he is a very personable character. I have been lucky, because perhaps the most elegant way to say this I have had a good relationship with most of the Ministers I have worked with or for.

ADV MALEKA SC: Yes, now from paragraph 15 of your statement you talk about how you gained knowledge of his dismissal from cabinet. I take it that you are at paragraph 15?

MR LUNGISA FUZILE: Yes, I am.

ADV MALEKA SC: Because I would like to ask you about certain things. You recall at that point in time you have been to cabinet with him and you had made some presentation around budget typical matters at that point in time including the so called nuclear deal, remember that?

MR LUNGISA FUZILE: Yes.

ADV MALEKA SC: And in paragraph 16 you say that...[intervenes]

CHAIRPERSON: Sorry, sorry, you might wish to articulate your answer yes or no so that it will be recorded.

MR LUNGISA FUZILE: Oh, okay.

CHAIRPERSON: When you nod it does not record it.

MR LUNGISA FUZILE: Yes.

ADV MALEKA SC: I am not going to ask you repeat that detail, because it is now before the Chairperson, Minister Nene testified about it.

MR LUNGISA FUZILE: Yes.

ADV MALEKA SC: Minister Gordhan testified about it and there have been some tangential reference by Minister or Deputy Minister Jonas then.

MR LUNGISA FUZILE: Yes.

ADV MALEKA SC: Unless you want to canvas that detail, but I for my purposes would not want to canvas that detail.

MR LUNGISA FUZILE: No, not now.

ADV MALEKA SC: What I want to reflect on though is what you say in paragraph 15. You say around 18:30 on that day he sent you a message, telephonic data message SMS and he said in that message:

"The axe has fallen."

Do you confirm that, that was the text nature of the message?

MR LUNGISA FUZILE: Yes, that is true, Chairman, that is the text message I received from Mr Nene around that time that evening.

ADV MALEKA SC: Yes, we will talk about what you did thereafter, but let me ask you this. What did you understand him to mean when he said the axe has fallen?

MR LUNGISA FUZILE: I understood it to mean only one thing, Chairman, that he had been fired.

ADV MALEKA SC: That phrase suggest that there must have been some contemplation or anxiety on his part about the prospects that he could be fired at some point. What was your knowledge of the speculation around his office at the time?

MR LUNGISA FUZILE: A day earlier Minister Nene and I and the same colleagues I mentioned, Mr Nondo Mgasha and Mr Michael Sacks had gone to a meeting that discussed nuclear, but as I said it is not something that I want to canvas today, and the meeting was not pleasant.

Things that happened around it even before the meeting had suggested a treatment of the Treasury, the Minister of Finance as not being fully part of the rest of government. That is the one marker that I could curtail, the conversation had not gone well.

Prior to that in a very informal and I would even say an even awkward way a while back Minister Nene had walked into my office, without saying much, and said these are tough times, if I leave this place I would rather leave it with my integrity in tact.

So, and I did not ask him, when people normally talk along those terms with me, although I am generally talkative with stuff like that I leave them to say as much as they feel comfortable to say, but he did not elaborate. So when he said this I was not surprised. Needless to add as the last point that if not on that day it may have been the day before, one of the daily newspapers carried an article that was predicting a cabinet reshuffle and I think that it got most of the facts on what happened in relation to Mr Nene and the Treasury spot on.

ADV MALEKA SC: Yes.

MR LUNGISA FUZILE: About him going to be removed, going to be replaced. I am not sure if it mentioned Mr van Rooyen by name, but it did make reference to a back bencher, it may have been him, I am not sure if they were correct about back bencher, because he was a chief weep, but in any way, it did make a reference about him being replaced by someone of less...[intervenes]

ADV MALEKA SC: Calibre?

MR LUNGISA FUZILE: Any word that is less offensive, along those lines, but at the same time it also said quite instructively that he would be sent to one of the international finance institutions. It may not have said the Brics Bank, it may have said such as the IMF or such as the Brics Bank, but it was not definitive on that.

So when he said this there was no surprise to me at all.

ADV MALEKA SC: Alright.

CHAIRPERSON: Before you proceed Mr Maleka, we normally do not take any break after lunch, but I would like to take about ten minutes break and then we will resume. We will adjourn for ten minutes.

ADV MALEKA SC: Thank you.

CHAIRPERSON: Thank you.

MEETING ADJOURNS

MEETING RESUMES

CHAIRPERSON: Yes Mr Maleka?

ADV MALEKA SC: Thank you, Chairperson. Mr Fuzile we were talking about the news that you have heard about the dismissal of Minister Nene from cabinet...[intervenes]

CHAIRPERSON: Well something has been done temporarily, I can hear you very well now.

ADV MALEKA SC: Thank you, Chair.

CHAIRPERSON: Thank you.

ADV MALEKA SC: You then say immediately after you received his message that is the text message you changed course and you went to his official residence in Tshwane, correct?

MR LUNGISA FUZILE: That is correct, Chair.

ADV MALEKA SC: And I suppose when you arrived there you found him and you talked about the news, correct?

MR LUNGISA FUZILE: Yes.

ADV MALEKA SC: What did he say to you?

MR LUNGISA FUZILE: The first line was "I do not have a job" and...[intervenes]

CHAIRPERSON: I am sorry the first was?

MR LUNGISA FUZILE: "I do not have a job" and the next one was about what had transpired, which the Commission is aware of that he got called back and the rest of that story and then he encouraged us to continue to do the work of the Treasury and make sure that the institution remains strong in the face of the challenges that we were facing.

ADV MALEKA SC: From paragraph 15 to paragraph 16 of your statement you transitioned to a different topic, and before we get there can I ask you something about this? Were you given any official notification by the office of the presidency about the forthcoming dismissal of Minister Nene?

MR LUNGISA FUZILE: None whatsoever.

ADV MALEKA SC: Are you aware that some highly connected individuals are reported to have had prior knowledge of Minister Nene's dismissal?

MR LUNGISA FUZILE: Yes, I have picked that up.

ADV MALEKA SC: Can you share with us your knowledge in that regard?

MR LUNGISA FUZILE: It is, I mean, Chair, yes, I can share this, but this is one bit I am uncomfortable with, it is too much hearsay, but I will put it this way, I have since known that – in fact let me go back. It was around November that at a breakfast gathering of the bank CEO's, this was when I was DG, and on the occasion of a visit by the President of the Brics Bank, Dr Kamaff I think, if I am remembering his name correctly that one of

the persons in attendance at that meeting pulled me apart, pulled me aside and said you might have a new Minister soon.

And I asked the President, I said, but where do you get that from it is November now, the budget is in February. Surely is your soon after February? He said "I think it will be sooner as that". I was a bit dismissive of it, but as we were walking to our cars at the end of the meeting the person said I am actually serious, because I have heard from friends that certain people has been asked about the possibility of replacing your Minister.

But to be honest with you, as I say I am reluctant to talk about that stuff.

ADV MALEKA SC: Yes.

MR LUNGISA FUZILE: Because it is just...[intervenes]

ADV MALEKA SC: Hearsay.

MR LUNGISA FUZILE: If you hear all of that stuff you would run away from your own shadow.

ADV MALEKA SC: Yes.

MR LUNGISA FUZILE: So I dismissed it, but I had heard it and I remember it.

ADV MALEKA SC: Alright. Tomorrow I will refer to a Sunday Times publication on that issue.

MR LUNGISA FUZILE: Yes.

ADV MALEKA SC: And ask you whether as the official of Treasury at that point in time you picked up that news and if you did what you did about it, but it will be a subject matter that we will debate tomorrow.

MR LUNGISA FUZILE: Okay.

ADV MALEKA SC: For now you have anticipated a topic that you raise in paragraph 17 perhaps in a different context, and there you say:

"After there was an announcement of Minister Nene's dismissal officially by the office of the presidency through a media statement around 20:00..."

On the same evening you received a telephonic call from Mr Enoch Godongwana. You confirm that you did?

MR LUNGISA FUZILE: That is correct, Chairman.

ADV MALEKA SC: And you say in the course of that conversation he said something which is not only traumatic but worrisome and I quote in paragraph 17 of your statement. You say he said the following:

"You are now going to get a Gupta Minister who will arrive with his advisors."

Facts first. Was that what Mr Godongwana conveyed to you as far as you recall on that evening after you spoke to Minister Nene?

MR LUNGISA FUZILE: That is correct, Chairman.

ADV MALEKA SC: Chair, you will no doubt receive the evidence of Mr Godongwana in due course and we would like to test whether or not he corroborates or repudiates this part of the evidence, but for now it is on record before you.

Second, what did you understand him to say when he said you will now receive a Gupta Minister?

MR LUNGISA FUZILE: Bearing in mind, Chairman, that at that stage I did not know what I know now and we will come back to it, which was the approach to Mr Jonas by a Gupta person. I kind of did not kind of understand what he was saying and I asked him, I asked Mr Godongwana what he meant exactly by this, and he said to me, you mean you guys do not talk to one another as DG's?

I asked what do you mean we do not talk? We do talk, but not about what you are talking about. It is a bit strange to me. He said no I would suggest that you perhaps have a conversation with your colleague Dr Tebedi Ramuntsha who at the time was a Director General at Mineral Resources.

ADV MALEKA SC: In context by 2015 reference to the Gupta name or Gupta family had already taken widespread public reporting by the media. What I want to establish from you is that at that point in time what did you know about the Guptas or the Gupta family?

MR LUNGISA FUZILE: There had been stories about their proximity to President Zuma, relationship that they had with – business relationship, friendship that they had with his son. Their ability it would seem to interact with people in positions of authority, influence and stuff like that. A lot of stuff was floating in the news.

Like I said some of it, it is to take it at face value, because you can connect with it, but some of it you sometimes dismiss it partially, until of course a few other things happen and then when you look back you start to connect that no, what you actually saw and half believed or sometimes tried to dismiss in fact had a lot more to it than meets the eye.

ADV MALEKA SC: Yes, I would like to test your knowledge on that topic, with reference to credible evidence, which has now been placed before the Chairperson around the Gupta family or components of its members. By this time it had become public knowledge that there was the famous landing of an aircraft at Waterkloof Military Base, what was your knowledge in that regard?

MR LUNGISA FUZILE: Sorry, I missed just the last part, I could not hear the last part?

ADV MALEKA SC: There was the republic widespread report of the famous landing or infamous landing at the Waterkloof Military Base of an aircraft carrying guests of the

Gupta family for a wedding in Sun City. What was your knowledge of that fact in that regard?

MR LUNGISA FUZILE: Clearly, I mean in fact I will say, Chairman, I mean the statement that Mr Godongwana made, I mean at the moment when he made it, if connected with that, I suspect that part of why I registered it and almost forgot it quickly actually was the fact that I was overwhelmed. Remember this was a short while after Minister Nene has just said to me I have been removed.

So there was a sense of bewilderment I must say. But at the same time on reflection, not even long afterwards it was clear to me that there is something big happening around this removal of Mr Nene and the appointment of a new Minister and of course some of the staff that I presume we will get to now.

ADV MALEKA SC: Indeed, and that is what I want to suggest to you, that this reference to a Gupta Minister being conveyed to you in a context of a traumatic moment to you, when a close Minister you have worked with had just been fired, summarily and without any prior notification to you, must have meant something serious to you when you are told that you are going to get a Gupta Minister?

MR LUNGISA FUZILE: It definitely did, but of course bearing in mind, of course as I say it definitely did, without a doubt, but I qualify it as it becomes evident in the statement that for an example, to illustrate, by the time I get to Mr Nene my preoccupation was with how was to comfort him and deal with him rather than face up to this reality that in fact in a matter of hours I am going to be meeting a new Minister and of course all that manned.

Of course after the conversation with Mr Nene a whole lot of these things then came together to me and as I referred to this, to some of this in the statement, it was a matter of hours that afterwards I started to borrow from my former bosses a phrase, connect the dots, and I say in a matter of hours, because as I get to the statement, I do

not want to run ahead of myself. When I then met one of these gentlemen as one of the advisors, it immediately struck me like a big rock between my eyes that so there was something that Mr Godongwana was saying.

Not that I dismissed it as an untruth when he said it, but I am saying in the context of things, and of course I must say given if I am normally – it is, I almost used a very inappropriate word, but – I almost want to ask for forgiveness, because when I actually did not utter it, but if you just think about it...[intervenes]

CHAIRPERSON: Mr Fuzile, you have said two things that I have not heard and of all the people here I must be the one to hear the evidence. Was it deliberate intended that I should not hear that part of the evidence?

MR LUNGISA FUZILE: Yes, pardon me, Chair, but essentially if, just for purposes of reflection think about this. And I will not be long with this. You start the week with trying to make a budget for the country. There is an announcement that fees for higher education are going to be frozen for a year. No one knew the amount before the decision was taken and I did not know about it until it was on TV and I was the Director General of Treasury, I was not that important, but at least I would have expected the Minister of Finance to know about it, he did not actually.

So, if you have that context which is so complex then your Tuesday is about this big thing, nuclear and it happened in a way that Mr Nene and Mr Gordhan have told I will have my chance to tell about it, but it is not – it is inappropriate, it is inconsistent with what I have known the civil service to be about, how government used to work.

And then in essence we had reached that day of Mr Nene's removal without having national allocations approved. Essentially we did not have a division of revenue, which is the basis on which all...[indistinct 25:38] of government plan, right?

ADV MALEKA SC: Yes.

MR LUNGISA FUZILE: So in the evening when I am overwhelmed by this I hear that the Minister has been fired, replaced by another person. And then someone sort of phones me and say look by the way the person you will be getting has been sent to you by the Guptas. I just could not – I was honestly, I can say I was bewildered, because appointing a Minister is a very serious job regardless of which portfolio and what time of the year it is.

But appointing a Minister of Finance at a time when the situation is as I have characterised to be told that by the way the person is sent by the Guptas, just did not make sense to me at all at the point it happened.

ADV MALEKA SC: Yes.

CHAIRPERSON: When Mr Godongwana called you was the issue of Minister Nene's removal already in the public domain or was the situation that he had been told and he had told a few people close to him, but it was not yet official in the public domain?

MR LUNGISA FUZILE: It had been in the public domain, Chairman.

CHAIRPERSON: Oh, okay.

MR LUNGISA FUZILE: So I really assumed, and I may be wrong on this, that – or let me say this, there is no reason for me to think that it would be incorrect to think that he had heard it from the media, because the story had broken in the media by that time, just, just.

CHAIRPERSON: Well I am just asking you, because I know that there – I know from the evidence of both former Minister Nene and Minister Gordhan that there are times or there have been times when a Minister hears on TV for the first time that he is no longer Minister, but I now from former Mr Nene's evidence that I think on that occasion he was called and he was told. So that was why I was wondering whether by the time – and he did say in his evidence after he had been told he kind of shared the information with

people who were close to him, so I was wondering whether, when Mr Godongwana phoned you it was already in the public domain or not?

MR LUNGISA FUZILE: I think it was already in the public domain, Chairman, but I would not take it – I would not dismiss it totally that he might have known before the time, but I am glad to know that he will be coming, because he can explain at what point he got to know about it.

The times are so close in my case that it would be hard for me to discern, especially given that every time things happen, which is a difficulty with these processes, one does not always check what time is it when I get this call, because you never know that you will be asked rather to specify the time, but it was close to the time.

I have got reason to believe that he knew from the media.

CHAIRPERSON: Yes, but also I think it is common knowledge that usually the announcement of the removal of one Minister and the appointment of another usually happens at the same time, but sometimes it does there is some gap, but I think most of the time it seems to happen at the same time, or sometimes an announcement happens of who the new Ministers are and then you can just see who, which are no longer included who was there before.

MR LUNGISA FUZILE: More often than not, when Ministers are announced this I can say having been closer to the system, the process has been underway for some time actually, because...[intervenes]

CHAIRPERSON: Yes.

MR LUNGISA FUZILE: Because people have to be called and told and once that happens, leaks happen. You know by the time it is announced – but of course except for this one incident that I know also that happened during that time of Mr Gordhan who land

with all of us on television and Mr Jonas when the replacement was announced. Generally it comes out in the media first.

But in my case I got to know about it before it was in the media, because Minister Nene as he got out of the presidency sent me that SMS, that I know for sure, because it must have been between 18:30 and around 19:00. Then the story – my recollection is that broke in the media closer to 20:00.

And Mr Godongwana's call is somewhere around that time, so I am – I presume that he had heard about it from the media, but he can confirm this.

CHAIRPERSON: Okay thank you.

ADV MALEKA SC: Chair, I see that it is just slightly past 16:00, but I would like to explore a conclusion topic with your leave, but we are available to remain here for as long as you want us, subject to the convenience of Mr Fuzile.

CHAIRPERSON: Well if it is convenient to everybody including Mr Fuzile, maybe we could go on until 16:30, is that fine with you or will that inconvenience you in terms of whatever you might have planned?

MR LUNGISA FUZILE: The honest truth the later for me the better.

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

ADV MALEKA SC: Alright, Mr Fuzile of course the content of your conversation with Mr Godongwana extent far beyond what we have just covered. In your statement you also indicate that he said additionally the following that when a Gupta Minister arrives, he/she will arrive with advisors who are appointed by the Guptas?

MR LUNGISA FUZILE: That is true.

ADV MALEKA SC: You went even further from your statement, because you say that he said:

"Even that Gupta Minister who arrives with advisors appointed by the Guptas or given to him by the Guptas he would not know who those advisors are."

Is that correct?

MR LUNGISA FUZILE: That is correct.

ADV MALEKA SC: Alright. That is...[intervenes]

CHAIRPERSON: Mr Maleka is that part which you have mentioned to him now which you say comes from – came from Mr Godongwana is that outside of his statement?

ADV MALEKA SC: No, it is in the statement, Chair.

CHAIRPERSON: Oh, I read it and I do not seem to remember that part.

ADV MALEKA SC: Can I take you through it? Just to be clear and to be factual, perhaps I should read with you Mr Fuzile and Chair, from...[intervenes]

CHAIRPERSON: Even better, let him read it.

ADV MALEKA SC: I am grateful to you, Chair. Can I ask you to...[intervenes]

MR LUNGISA FUZILE: If you just, let me read 17 perhaps just for emphasis.

ADV MALEKA SC: Yes.

MR LUNGISA FUZILE: Yes.

"That evening I received a call from Mr Godongwana who said "you are now going to get a Gupta Minister who will arrive with advisors."

18 goes on to say:

"I asked him to elaborate what he meant, he said I should watch it, my new Minister is likely to come with advisors he does not know, they would be given to him."

I put given, because that is his word, and I think it is a powerful word in this context, to him by the Guptas. And as I say, I have used the word here bewildered, I was perplexed. It is – you hear it, you believe it, but you do not believe it.

ADV MALEKA SC: Of course we will test that with Mr Godongwana, but from what he has conveyed to you, I mean this is a serious, serious violation of the constitution. It is almost what I call a...[indistinct] cabinet.

MR LUNGISA FUZILE: Yes at the risk of getting into trouble...[intervenes]

CHAIRPERSON: Well Mr Fuzile...[intervenes]

MR LUNGISA FUZILE: I would use a stronger word to describe this situation.

ADV MALEKA SC: Yes.

MR LUNGISA FUZILE: But it is as you characterise it.

ADV MALEKA SC: Yes, well, Chair, we will reserve that characterisation until Mr Godongwana testifies, but this goes to the heart of paragraphs 1.1. to 1.3 of your terms of reference that someone somewhere outside the provisions of Section 85 and 86 of the Constitution would be known at this stage – so the allegation goes – to appoint a Minister and to appoint for that Minister advisors for that Minister.

And appoint advisors which that Minister does not even know.
Anyway...[intervenes]

CHAIRPERSON: Well, before you proceed Mr Fuzile you did say earlier on that Minister Nene told you what had happened, that is now when you met him after he had sent you a SMS, told you what had happened. Mr Jonas has given evidence before this Commission and I cannot remember whether in your statement you deal with any meeting you might have had with him in October 2015 after according to his evidence he had been at the Gupta residence. But even if you do not deal with it, I find out whether you did have a discussion with him when he may have told you what had happened?

MR LUNGISA FUZILE: Mr...[intervenes]

ADV MALEKA SC: Mr Fuzile can I ask you in that regard to go to page 72?

MR LUNGISA FUZILE: Yes.

ADV MALEKA SC: Just to give you context as you answer fully.

MR LUNGISA FUZILE: Thank you, yes.

ADV MALEKA SC: The question pointedly put to you by the, Chairperson.

MR LUNGISA FUZILE: Yes.

ADV MALEKA SC: Can you please go to page 72 of EXHIBIT P and reflect on what you say from paragraph 77?

MR LUNGISA FUZILE: Yes, thank you for that.

ADV MALEKA SC: 71 I mean.

MR LUNGISA FUZILE: Chairman, thank you very much for that guidance Mr Maleka. You are right, you are remembering the statement.

CHAIRPERSON: Yes, okay.

MR LUNGISA FUZILE: Yes.

CHAIRPERSON: You might not need to deal with it and Mr Maleka will indicate if he would want you to deal with it at some length. The question that I want to ask you is whether in that conversation that you had with Mr Jonas about the meeting that he said that he had had at this Gupta residence, whether he – whether you remember whether he mentioned that he apart from being offered the position of Minister of Finance, which at the time was held by Mr Nene, whether you have any recollection whether he also said he had been told that if he wanted advisors he would be given advisors?

MR LUNGISA FUZILE: I remember it, Chairman, vividly, that when I met Mr Jonas and we will talk about it when we get to it Mr Maleka, he told me that one of the things that the Gupta person he met said to him was that among the tasks, first tasks that they would

expect of him in return for being given this senior position and of course the money that went with it, the immediate amount and the huge sum to be paid later, he was asked that he should remove four of us and we will get to the details of who those people were.

In addition to that he was then told that he would be given replacements for us, so in other words for the four of us who were going to be removed, but he was also be given advisors, which actually dovetails with this story of Mr Godongwana which I did not solicit, just came from a call from someone who had got great familiarity with me, in fact I call him a big brother friend who just said look this is going to happen now.

So when you connect then this story, one point and the other story from Mr Jonas they just fit like a glove in a hand that it has been designed around.

CHAIRPERSON: I wanted to ask you about that, because of course there is a denial on the part of the members of the Gupta family as well as Mr Duduzani Zuma, I think, Mr Hlongwana as well, the latter two having been present at a meeting with Mr Jonas. There is a denial that any offer was made to him at that meeting and that – or by any of the Gupta brothers, so but I just wanted to check, because he certainly made, gave this evidence that he was told that if you wanted advisors, I may be wrong about how I am phrasing it, but he could get advisors or he would get advisors and then now you have given evidence that Mr Godongwana said to you before you might not have known who the new Minister was at that time, I do not know the time of Mr Godongwana's call, but certainly you did not know any advisors that he might have been planning to bring.

So you get a call from Mr Godongwana who says you will get a Gupta Minister who will come with advisors given to him by the Guptas and then of course we do know that we understand from the documentation that when the new Minister came there were certain people that came with it and I think the statements of some of the people from

Treasury gives names of people and one said he was an advisor and another one was Chief of Staff that the new Minister came with.

Okay thank you.

ADV MALEKA SC: Chair, can I, the question you raise is very, very important and with your leave I would like to jump to it.

CHAIRPERSON: Okay, alright.

ADV MALEKA SC: And skip a lot of things that we will discuss tomorrow with Mr Fuzile.

CHAIRPERSON: Okay.

ADV MALEKA SC: Because it connects to use the famous phrase the dots and Mr Fuzile if you do not mind I am going to jump at least 40 paragraphs of your statement and ask you to go to paragraph 71 on page 72. In paragraph 71 you reference a meeting which took place as a result of a telephonic call from Mr Jonas on 11 December 2015. That in context is two days after you had received the call from Mr Godongwana, do you recall that?

MR LUNGISA FUZILE: That is correct, I recall.

ADV MALEKA SC: And on 11 December he asked you to meet with him and ultimately after some conversation you choose a hotel somewhere in Garsfontein and you meet with him, correct?

MR LUNGISA FUZILE: Yes, that is true.

ADV MALEKA SC: And then over the page in paragraph 73 you talk about how the conversation between you and him went. For now I would like to focus on his side of the conversation which is what he conveyed to you. And the first is at paragraph 75. Can I ask you to read for us your record of what he said to you at that point in time?

MR LUNGISA FUZILE: At paragraph 75 at page 73 of the bundle I said:

"The Deputy Minister also said Mr Gupta said that he should remove or dismiss four of us. Mr Ishmael Mamoniati who were the DG responsible for tax policy and financial regulation..."

It is important to underline this financial regulation is the section that then assist the Minister with the development of policies for anti-money laundering and stuff like that, you can see the relevance of the importance of that role.

"...Mr Kenneth Brown who was the first Chief Procurement Officer which is the section that helps with writing rules relating to procurement and also oversees compliance with the procurement rules..."

So when for instance people would ask for procurement in a way that is irregular this is the section that would have to stop us.

ADV MALEKA SC: Can I interrupt you there?

MR LUNGISA FUZILE: Yes.

ADV MALEKA SC: Chair, when we begin to deal with the SOEs hopefully beginning with Eskom the name of Mr Brown as a Chief Procurement Officer within National Treasury will feature quite a lot, because there was some staring and stress that he caused in that regard. So that was the context that, I am sorry to interrupt you.

MR LUNGISA FUZILE: No, no that is fine.

ADV MALEKA SC: Go ahead.

MR LUNGISA FUZILE: I am perfectly fine with that. And then Mr Andrew Donaldson who was running the Government Technical Advisory Centre and of course myself. So those were the three people, ag sorry four people that he told me that he had been asked to remove at that time.

And of course it was in that context immediately that he said, which is something I do not capture here, but I captured it earlier if you remember from that other bundle, in the way which I reference what Mr Gordhan said, Minister Gordhan said, pardon me.

ADV MALEKA SC: Yes.

MR LUNGISA FUZILE: He said at that point that in fact this guy, he says he will give me replacements for you guys and advisors.

ADV MALEKA SC: Yes, and then can you then read the conclusion you draw from what Minister Jonas said to you in paragraph 77, you can skip paragraph 76 for now.

MR LUNGISA FUZILE: I say that:

"The conversation with Mr Jonas helped me form a good picture about the *modes operandi* involving ministerial appointments and advisors."

If I may elaborate then? When you see this and you connect it to the phone call of Mr Godongwana and you connect it to his reference of Department of Mineral Resources and we will talk about this later on, because the advisors that Mr van Rooyen showed up with, one of them was an advisor at Mineral Resources.

So the comment that Mr Godongwana made was not an off the cuff ill-considered comment, actually. There was really something in it.

ADV MALEKA SC: Alright, then I ask you to read paragraph 80 to reinforce the very conclusion you have expressed in paragraph 77?

MR LUNGISA FUZILE: I say there, Mr Chairman:

"I was starting to get a picture that there was a connection between what the Guptas wanted and what the President of the country wanted and was doing."

And the part by was doing which is the removal of people and their replacement with people who in this case it would seem the evidence suggest would have either been suggested by the Guptas or connected to the Guptas and would come with advisors given to them by the Guptas and would become evident as we talk about this, that in fact Mr van Rooyen's familiarity with the people he brought as advisors were very limited if at all.

ADV MALEKA SC: Yes. Chair, we will canvas that issue quite at length tomorrow, but for now may I ask for your permission to deal with two more matters before 16:30, unless you have some questions to put to Mr Fuzile.

CHAIRPERSON: Well I want to find out your estimate of how much time may be needed to finish him evidence.

ADV MALEKA SC: Yes. Chair, I hope that...[intervenes]

CHAIRPERSON: Now that I know that from his part the later he leaves the better.

ADV MALEKA SC: Yes, Chair, what we have done is that we have arranged for the Treasury witnesses on the time table to be here for two days and I can assure you without any fear of contradictions from my colleagues that we will certainly finish the evidence of those two witnesses tomorrow.

CHAIRPERSON: Oh, okay.

ADV MALEKA SC: Because one of them is going to be fairly short and that is Mr Mahayana.

CHAIRPERSON: Oh, okay.

ADV MALEKA SC: And the other is going to corroborate without repeating aspects of Mr Fuzile's evidence.

CHAIRPERSON: Oh, okay.

ADV MALEKA SC: Yes.

CHAIRPERSON: So we do not need to necessarily take – delay the adjournment this afternoon?

ADV MALEKA SC: Not at all, Chair.

CHAIRPERSON: There is enough time tomorrow?

ADV MALEKA SC: Not at all I feel comfortable in suggesting that we will finish all of them tomorrow.

CHAIRPERSON: Yes, okay.

ADV MALEKA SC: Yes, but before we adjourn today...[intervenes]

CHAIRPERSON: So you can wrap up for today?

ADV MALEKA SC: Mr Fuzile I am going to take you back to where we were and that is the conversation that you had with Mr Godongwana and I would want to ask you some conclusive questions on that conversation. The first is this. Did he tell you who those advisors would be that would be accompanying your new Minister?

MR LUNGISA FUZILE: No, he did not.

ADV MALEKA SC: Did you ask him?

MR LUNGISA FUZILE: No, I did not.

ADV MALEKA SC: Did he indicate the role of those advisors who would come with the new Minister?

MR LUNGISA FUZILE: He said two other things, one of them were uncomfortable in writing it down, because he said, and one can soften it, which...[intervenes]

ADV MALEKA SC: Let me just indicate this to you that in this Commission we would prefer witnesses to tell the truth to the best of their recollection, without softening anything, because the Chairperson is called upon to pursue the truth wherever it leads him to.

MR LUNGISA FUZILE: For instance...[intervenes]

CHAIRPERSON: So maybe just to add I want to see the full and true picture of whatever was happening, whatever the attitudes may have been, whatever was being pursued.

MR LUNGISA FUZILE: In fact, let me just be upfront with this – he said something to the effect that they would be of Indian descent.

CHAIRPERSON: They would?

MR LUNGISA FUZILE: They would be mostly likely be of Indian descent. And then he also said something to the effect that they are likely to control the Minister.

ADV MALEKA SC: And that is the truth as best you recollect it?

MR LUNGISA FUZILE: Yes.

ADV MALEKA SC: And then he suggested that you should call Dr Tebedi Ramuntsha who at the time was the Director General for the Department of Mineral Resources. I take it that you recall his name and office at the time?

MR LUNGISA FUZILE: Yes sir, I remember it, Chairman.

ADV MALEKA SC: Yes, I mean he was your counterpart in national government?

MR LUNGISA FUZILE: Yes.

ADV MALEKA SC: I assume that you have had some prior discussions with him, you are familiar with him and collegially you would have been very comfortable in talking to him?

MR LUNGISA FUZILE: Yes.

ADV MALEKA SC: Did you ever manage to call Dr Ramuntsha?

MR LUNGISA FUZILE: No, I did not, but I did bump into him at some point.

ADV MALEKA SC: Why did you not call him?

MR LUNGISA FUZILE: I was a bit concerned, because it is a lot of inferences, in fact I think that after what happened Friday I had my picture. I did not need anyone to help me

form the picture as I say in my statement and I still hold that, that picture actually is correct.

ADV MALEKA SC: And I assume that from that answer that you did not require any further corroboration from anyone?

MR LUNGISA FUZILE: No, that is correct, Mr Chairperson.

ADV MALEKA SC: The picture was clear to you just as night follows day or visa versa?

MR LUNGISA FUZILE: It was clear to me that what essentially Mr Godongwana was saying I could infer that what is about to happen or is happening in your department is what has happened at DMR.

ADV MALEKA SC: Yes.

MR LUNGISA FUZILE: And if you want to understand it with this beats that I have talked about.

ADV MALEKA SC: Yes.

MR LUNGISA FUZILE: You will find them.

ADV MALEKA SC: Yes.

MR LUNGISA FUZILE: And if you go through – as we go through this evidence...[intervenes]

ADV MALEKA SC: Yes?

MR LUNGISA FUZILE: You will see the similarities.

ADV MALEKA SC: Yes. Chair, I wonder if this is an appropriate moment to adjourn for tomorrow and if we could resume the normal time at 10:00.

CHAIRPERSON: No, that is fine, thank you. Mr Fuzile we are going to adjourn now and resume tomorrow at 10:00 so if you could be back tomorrow at 10:00. We adjourn until tomorrow at 10:00.

MEETING ADJOURNS

