

COMMISSION OF INQUIRY INTO STATE CAPTURE

HELD AT

PARKTOWN, JOHANNESBURG

10

03 OCTOBER 2018

DAY18

PROCEEDINGS HELD ON 03 OCTOBER 2018

CHAIRPERSON: Good morning Mr Pretorius. Good morning everybody. Good morning Minister Nene. Thank you.

ADV PAUL PRETORIUS SC: Thank you Chair. The witness who is now ready to give evidence is Minister Nene. May he be sworn?

CHAIRPERSON: Thank you, just swear in Ms Registrar.

REGISTRAR: Please state your full names for the record.

MINISTER NHLANHLA MUSA NENE: Nhlanhla Musa Nene.

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

10 MINISTER NHLANHLA MUSA NENE: No

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

MINISTER NHLANHLA MUSA NENE: Yes.

REGISTRAR: Do you swear that the evidence you will give today 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.

MINISTER NHLANHLA MUSA NENE: So help me God.

CHAIRPERSON: Thank you.

ADV PAUL PRETORIUS SC: Thank you minister. In front of you there is a microphone which you need to switch on, please.

20 CHAIRPERSON: Mr Pretorius, do you need somebody to assist him with the microphone?

ADV PAUL PRETORIUS SC: The microphone is on, but they do not seem to be working very well.

CHAIRPERSON: Do you want a technician to do something?

MINISTER NHLANHLA MUSA NENE: It is – it is on I am not sure whether I am  
...[indistinct]

CHAIRPERSON: Okay.

ADV PAUL PRETORIUS SC: Thank you Chair. Minister Nene this statement that  
we are about to hand I understand was prepared your legal representatives in  
consultation with the legal team of the Commission.

MINISTER NHLANHLA MUSA NENE: That is correct.

ADV PAUL PRETORIUS SC: May mark the statement and the bundle, Chair as K1?

CHAIRPERSON: The statement will be marked EXHIBIT K1.

10 ADV PAUL PRETORIUS SC: Statement comprise... [intervenes]

CHAIRPERSON: And the bundle.

ADV PAUL PRETORIUS SC: Yes, comprises two lever arch files.

CHAIRPERSON: Should we make it K1A and K1B or just K1?

ADV PAUL PRETORIUS SC: K1A and K1B perhaps.

CHAIRPERSON: It might be convenient. The thicker one K1A.

ADV PAUL PRETORIUS SC: Yes. The first one K1A.

CHAIRPERSON: Yes.

ADV PAUL PRETORIUS SC: The second one K1B, Chair.

CHAIRPERSON: Okay. The thicker bundle will be marked EXHIBIT K1A and the  
20 other one they may be of the same size but the contents of the one are thicker than  
the contents of the other and the other one starting at page 318 will be K1 - EXHIBIT  
K1B. Thank you.

ADV PAUL PRETORIUS SC: Minister Nene you have had an opportunity  
I understand to peruse the statement and in particular to check it for any corrections  
that might be necessary.

MINISTER NHLANHLA MUSA NENE: Indeed I have and I have picked up a few – I am not sure whether that be exhaustive but there are a few that I picked up.

ADV PAUL PRETORIUS SC: Do you wish to deal with them now?

MINISTER NHLANHLA MUSA NENE: I would replay if with your permission. Yes.

ADV PAUL PRETORIUS SC: Please if you would.

MINISTER NHLANHLA MUSA NENE: The first is on paragraph 2 which is the date of my appointment which should read “the 27<sup>th</sup> February 2018” and not 2017,

CHAIRPERSON: Thank you.

MINISTER NHLANHLA MUSA NENE: The second is on paragraph 48 which talks  
10 to “I recall seeing Mr Duduzane Zuma at the house in Saxonwold on most occasions but did not speak further than greeting.” I think is an omission of “greeting” there.

CHAIRPERSON: I am sorry, minister.

MINISTER NHLANHLA MUSA NENE: Yes.

CHAIRPERSON: Mr Pretorius, there may be something with the mics. I do not know whether it is his voice, but there maybe something with the mics it is not ...[intervenes]

MINISTER NHLANHLA MUSA NENE: I will try and speak a bit louder.

CHAIRPERSON: Okay, thank you.

MINISTER NHLANHLA MUSA NENE: Deputy Chief Justice.

20 CHAIRPERSON: Thank you. Thank you. Sometimes these microphones have given us problems before. So, it might not have been your voice, but if you raise it it will help.

MINISTER NHLANHLA MUSA NENE: Well I ...

CHAIRPERSON: We hope that I am sufficiently audible myself. Okay.

ADV PAUL PRETORIUS SC: They do not seem to be working in the manner in which they worked in the past – that is the first thing and the second thing is that as soon as the volume is turned up we are getting an echo. So, it is not ideal, but perhaps they can work on it as we speak.

CHAIRPERSON: Ja.

ADV PAUL PRETORIUS SC: But in the meanwhile we will attempt to speak closer to the microphone.

MINISTER NHLANHLA MUSA NENE: I will try and do that.

CHAIRPERSON: I think then minister if you can go back to paragraph 48, because  
10 I did not hear.

MINISTER NHLANHLA MUSA NENE: Paragraph 48, I said it should say “on most occasions but we did not speak other than greeting.”

MALE SPEAKER 1: That is all?

CHAIRPERSON: Is that all it should say or is that an addition or a replacement of one sentence. Does that replace both sentences in paragraph 48?

MINISTER NHLANHLA MUSA NENE: No, it is an addition just saying that...  
[intervenes]

CHAIRPERSON: O, it is an addition?

MINISTER NHLANHLA MUSA NENE: Ja we did not speak further than greeting. It  
20 would just be greeting.

CHAIRPERSON: Okay. I am sorry. Can you just dictate that addition then “on most occasions” you said.

MINISTER NHLANHLA MUSA NENE: “we did not speak other than greeting.”

CHAIRPERSON: Okay.

MINISTER NHLANHLA MUSA NENE: Which means we did not have a conversation, between – beyond greeting and if you allow me, Chair.

CHAIRPERSON: Yes.

MINISTER NHLANHLA MUSA NENE: The next one is on paragraph 52.

CHAIRPERSON: Yes.

MINISTER NHLANHLA MUSA NENE: Paragraph 52 refers to a parliamentary question. It is a letter.

CHAIRPERSON: O.

MINISTER NHLANHLA MUSA NENE: It should be a “letter”

10 CHAIRPERSON: On my paragraph 52. O, okay in a response to... [intervenes]

MINISTER NHLANHLA MUSA NENE: “In a response to a letter.”

CHAIRPERSON: O. Okay. So, we take out “a parliamentary question” and say “letter”.

MINISTER NHLANHLA MUSA NENE: Correct.

CHAIRPERSON: Okay. Thank you.

MINISTER NHLANHLA MUSA NENE: And then next is on paragraph 60 which a typo I think it also appears in a paragraph prior to that one. Yes, paragraph 60 it refers to the committee as the National Nuclear Energy Executive Co-ordinating Committee, the word missing is “co-ordinating” and then the last one on my list is  
20 paragraph 105 which is a minor omission which says “at the time SAA’s cash flow focus showed that it would run out of ‘cash’ by mid January.”

CHAIRPERSON: Thank you very much. Was that the last one?

MINISTER NHLANHLA MUSA NENE: That was the last one ...

CHAIRPERSON: Thank you very much.

MINISTER NHLANHLA MUSA NENE: Deputy Chief Justice.

ADV PAUL PRETORIUS SC: Thank you Minister. Would you turn to page 50 of the statement, please.

MINISTER NHLANHLA MUSA NENE: 50?

ADV PAUL PRETORIUS SC: Five O. Fifty, five zero. Is that your signature?

MINISTER NHLANHLA MUSA NENE: That is correct, Chair.

ADV PAUL PRETORIUS SC: And I see that the statement was signed on the 1<sup>st</sup> of October 2018. That is Monday, previous.

MINISTER NHLANHLA MUSA NENE: Correct, Chair.

ADV PAUL PRETORIUS SC: Apart from the corrections that you have just made to  
10 the statement – are the contents of the statement true and correct?

MINISTER NHLANHLA MUSA NENE: That is true.

CHAIRPERSON: I suspect Mr Pretorius you mean with the corrections that have been made, is the statement correct? You say apart from... [intervenes]

ADV PAUL PRETORIUS SC: Yes, well I am referring the ...

[Indistinct – speaking simultaneously]

CHAIRPERSON: The corrections are not correct.

[Laughing]

ADV PAUL PRETORIUS SC: I am referring to – well again a semantic engagement, Chair.

20 [Laughing]

CHAIRPERSON: Ja.

ADV PAUL PRETORIUS SC: But I am referring to the typed statement.

CHAIRPERSON: Ja. Okay. All right.

[Laughing]

ADV PAUL PRETORIUS SC: We will correct and put up a proper statement in due course.

CHAIRPERSON: Okay.

ADV PAUL PRETORIUS SC: Minister Nene, Since the signing of the statement there was a leaked press report in the Business Day alluding to some of the contents of this

statement or at least alluding to matter to which you would testify. Are you aware of that?

10 MINISTER NHLANHLA MUSA NENE: I did see that.

ADV PAUL PRETORIUS SC: Certain allegations are made or have been made in the public domain since that article and I will refer you very briefly to an aspect of one of those statements in due course, but not at this stage. I just wish to place on record that we as a Commission would have to investigate all allegations made and will do so in due course, but it would be unfair to ambush you with them at this stage, as you obviously have not had an opportunity to deal with them, not have we had an opportunity to investigate. I need also to place on record Chair, that despite these statements being made in the public domain no one has approached the Commission with any evidence to substantiate the allegations or even with the  
20 allegations themselves they are in the public domain and they require investigation before they can fairly be put to the witness.

CHAIRPERSON: And that is despite the fact that on numerous occasions I have been saying publicly people who have evidence or knowledge of any allegations of misconduct or conduct that falls within the terms of reference of the Commission must please come forward whereof - I have been saying that. I am sure the public

and the media are getting tired of hearing me saying that and you say nothing has been brought forward in regard to these allegations?

ADV PAUL PRETORIUS SC: Yes. No, no evidence.

CHAIRPERSON: Yes. Thank you.

ADV PAUL PRETORIUS SC: And from the legal team's point of view may we place on record in that regard, Chair that once evidence is placed before us we will of course

investigate and we will of course deal with it, because we are involved here as we have said again on numerous occasions in an investigation.

- 10 CHAIRPERSON: Yes. Well just now that I have had to make reference to the fact that I have been making this call, I just want to repeat. That there must be a number of ministers in the current cabinet and in the previous cabinets – who must have some knowledge of somethings that happened and I have been saying people must come out and contact the Commission and assist the Commission. There must be a lot of senior officials in Government Departments, there must be people in the National Assembly, in the NCOP. Who know things that fall within the terms of reference of this Commission, they are not coming forward – we asked them to come forward, but I just need everybody to know that just because we have been inviting them to come forward does not mean that if they do not come forward this
- 20 Commission will not get to know what some of them know. The Commission will investigate and there will be people who appreciate the importance of this Commission and its importance to the nation and the country who will come forward and tell the Commission what they know and in the process who will be honest and tell us about what other colleagues of theirs know which they are not coming forward to say and this Commission will do its work and I just hope that people will realise

that it will be better if they come forward on their own and come and assist the Commission, rather than tracked screaming and kicking to come and give evidence to the Commission. This is a very serious issue in our country the whole nation wants to know what happened. Who knew what? Who did what? and if public representative, especially, are going to withhold information and we find out this Commission will do what it has to do. So, a time is going to come when we will find out by ourselves what people did. What they knew, but are not coming forward to assist the Commission.

We appreciate all of those who are coming forward to assist the  
10 Commissions, including minister Nene, being the first minister to, sitting minister, to appear before the Commission to give evidence. We appreciate that very much. He will give evidence and at some stage if I grant permission he may be cross-examined and at the end of everything I will make findings about his evidence and other peoples evidence, but for now I just want to say we appreciate minister your coming forward to assist the Commission. I know that – at least I think he is one or so minister that will also be coming there maybe some former ministers. I just hope that more people who know what happened or have information come forward on their own and assist the Commission. Thank you.

ADV PAUL PRETORIUS SC: Thank you, Chair. In that regard minister Nene, as I  
20 say the further allegations that have surfaced have surfaced in the last day or so in that regard once the Commission has had an opportunity either to receive or obtain evidence and investigate that evidence I trust that you would be willing to come to the Commission and deal with those.

MINISTER NHLANHLA MUSA NENE: Indeed. I will be available.

ADV PAUL PRETORIUS SC: Thank you. Minister you are currently the Minister of Finance and as the statement says in paragraph 2 you were appointed as such on 27 February 2018 by the current president. Is that correct?

MINISTER NHLANHLA MUSA NENE: That is correct. Yes..

ADV PAUL PRETORIUS SC: Right. Would you please briefly tell the Chair of your background and qualifications.

MINISTER NHLANHLA MUSA NENE: Thank you. I will just go through it as reflected in the statement. So that I do not weir off. I have over 20 years of experience in the finance industry and I have an Advanced Diploma in Economic Policy from the  
10 University of Western Cape, a Certificate in Economics and Public Finance from the University of South Africa, BCom Honours in Economics from the University of Western Cape, a Certificate in Micro Economic Theories and Applications and Micro Economic Principles and Issues from the University of London, I am extensively involved in the finance sector and have acquired vast knowledge in how it operates and how it is regulated. My further qualifications and expertise and positions that I have held appear on my Curriculum Vitae.

ADV PAUL PRETORIUS SC: And is it correct, minister Nene, that on the 8<sup>th</sup> of November 2008 you were appointed as the Deputy Minister of Finance under the leadership of the then president Mathlanthe.

20 MINISTER NHLANHLA MUSA NENE: That is correct.

ADV PAUL PRETORIUS SC: Until when did you serve in that position?

MINISTER NHLANHLA MUSA NENE: I served in that position until the elections in 2000 in May 2009. I may not have not the exact date.

ADV PAUL PRETORIUS SC: May 2014 perhaps.

MINISTER NHLANHLA MUSA NENE: No there were elections in 2009.

ADV PAUL PRETORIUS SC: Now 2009?

MINISTER NHLANHLA MUSA NENE: Yes, so I served just between November and the elections in 2000, in Mei 2009 and I was then appointed again as Deputy Minister in May 2009.

ADV PAUL PRETORIUS SC: All right. When you were first appointed as Deputy Minister of Finance who was the Minister of Finance?

MINISTER NHLANHLA MUSA NENE: It was minister Trevor Manuel.

ADV PAUL PRETORIUS SC: And did you serve as Deputy Finance Minister under the leadership of former president Jacob Zuma?

10 MINISTER NHLANHLA MUSA NENE: That is correct from – in May 2000, from May 2009. The president was... [intervenues]

ADV PAUL PRETORIUS SC: Until?

MINISTER NHLANHLA MUSA NENE: I served as Deputy Minister until in May 2014 and as Deputy Minister.

ADV PAUL PRETORIUS SC: Right and who was the Minister of Finance during that period?

MINISTER NHLANHLA MUSA NENE: The Minister of Finance then was Mr Pravin Gordhan.

20 ADV PAUL PRETORIUS SC: Just to get the time periods correct. President Zuma assumed office in May 2009

MINISTER NHLANHLA MUSA NENE: That is correct.

ADV PAUL PRETORIUS SC: And minister Gordhan was appointed as Minister of Finance also in May 2009.

MINISTER NHLANHLA MUSA NENE: That is correct.

ADV PAUL PRETORIUS SC: And he served in this portfolio until 25 May 2014.

MINISTER NHLANHLA MUSA NENE: Correct.

ADV PAUL PRETORIUS SC: He was re-appointed on 13 December 2015 and we will hear more about that in due course.

MINISTER NHLANHLA MUSA NENE: Yes.

ADV PAUL PRETORIUS SC: And then served until 31 March 2017.

MINISTER NHLANHLA MUSA NENE: That is correct.

ADV PAUL PRETORIUS SC: You served as the Minister of Finance, I understand for 25 May 2014.

MINISTER NHLANHLA MUSA NENE: That is correct, sir.

10 ADV PAUL PRETORIUS SC: Until what date did you serve in that office?

MINISTER NHLANHLA MUSA NENE: Until 9 December 2015.

ADV PAUL PRETORIUS SC: Now, do you have any belief in regard to the reasons for your removal from office on 9 December 2015.

MINISTER NHLANHLA MUSA NENE: Indeed, I do believe that I was removed from office because of my refusal to tow the line in relation to certain projects and in hindsight and having also heard from the – from a deputy minister's saga, it seems that those projects may have benefitted the Gupta family and other close associates of the then president. I will in, if allowed to, describe some of these examples of for instance the Nuclear Deal and the SAA strategy, because these issues like other  
20 procurement processes within government and state owned companies were subject of intense scrutiny by the National Treasury.

ADV PAUL PRETORIUS SC: Minister when you say the Gupta family may have benefitted. Could you be a bit more specific?

MINISTER NHLANHLA MUSA NENE: I as I said in hindsight, because as I said this are based on the former Deputy Minister's situation who was offered my position

because of my refusal to tow the line with regards to the Nuclear Deal in particular.

So it is apparent from that saga that they stood to benefit in whatever form.

ADV PAUL PRETORIUS SC: And we are talking about financial benefit.

MINISTER NHLANHLA MUSA NENE: I would imagine so. Yes.

ADV PAUL PRETORIUS SC: In order to understand the context of your evidence minister and particularly its significance for the terms of reference of the Commission, would you assist the Commission by describing the role and functions of the Minister of Finance and the particularly the role that Treasury as an institution plays within our Constitution, democracy.

10 MINISTER NHLANHLA MUSA NENE: It is a two folded question and if you indulge me I will – I have just a few paragraphs that describe this, to start with:

The Minister of Finance works under pressure particularly when it comes to approving decisions that would have implications for the fiscus. Sometimes the Minister of Finance is referred to as Mr No, if we had a female one she would also be a Ms No.

When government departments are advised that their proposals must fall within the Cabinet approved medium term policy. Strategic and fiscal framework and/or comply with government's requirements as agreed and agreed policies.

20 It is an unfortunate appellation, because the role of the Minister of Finance is to be scrupulous in managing fiscal sustainability and the finances of the country in order to ensure economic growth and a sound and transparent management of the public finances. Ultimately this is critical for the delivery of services to the public to transform our people's lives and to comply with

socio economic obligations for which the government is responsible under the Constitution.

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

10

It is therefore important for me to first to try and explain the role of Treasury in government so that the significance of the attacks on National Treasury are understood. The structure of the fiscal and public finance system of our country is set out in chapter 13 of the Constitution of 1996. Chapter 13 deals with the National Revenue funds, the division of revenue between National and Provincial and Local Governments, the establishment of the Treasury, procurement, borrowing and treasury norms and standards. Many of these provisions are then given effect in the Public Finance Management Act and the

20

Municipal Finance Management Act and the Annual Budget Legislation.

That the key financial institutions established in the Constitution are the National Treasury, the Central Bank which is the South African Reserve Bank in South Africa and the Financial and Fiscal Commission . Although the Reserve Bank is required to perform its primary function independently, the Constitution requires regular consultation between the bank and the Minister of Finance. The Treasury is required to ensure expenditure control in each sphere of government by ensuring compliance with legislated measures that regulate expenditure. The Treasury is empowered by the Constitution to stop the transfer of funds to any organ of state if it has committed a serious breach of those measures.

10

The head of the Treasury is the Minister of Finance. The minister bears unique obligations in law. He is responsible for tax policy and is the executive authority for the South African Revenue Service to oversee the collection of tax revenue and the management of the National Revenue Fund.

Only the Minister of Finance can introduce a money bill which is either a tax or spending bill and the National Assembly or the Division of Revenue Bill. Hence only the Minister of Finance can introduce the tax and spending proposals in parliament as part of the budget. It is also only the Minister of Finance who can introduce a bill before the National Assembly that

20

determines the equitable division of revenue raised and each province's equitable share of that revenue which is called the Division of Revenue Bill.

Draft Legislation that amends the budget which would be taxed, appropriation and Division of Revenue Bills may only be introduced in the National Assembly by the Minister of Finance.

A loan by the National Government may only be concluded by the Minister of Finance on behalf of government and only for the following purposes:

- 10
- To finance national budget deficits;
  - To refinance maturing debts or a loan paid before redemption date;
  - To obtain foreign currency;
  - To maintain credit balances on a bank account of the National Revenue fund;
  - To regulate internal monetary conditions should the necessity arise or any other purpose approved by the National Assembly by special resolution;

20

Similar to loans are guarantees, indemnities and other securities which bind the National Government to a future financial commitment, before guarantees, indemnities or other securities that bind the National Government to a future financial commitment may be issued. The concurrence of the Minister of Finance must be sought and obtained – conditions may be attached.

The chief procurement officer also falls within the ambit of the political responsibilities of the Minister of Finance.

Public sector procurement must be undertaken in a manner that is fair, equitable, transparent and cost effective. The chief procurement officer is responsible for permitting deviations and exceptions under circumscribed conditions may be issued.

The concurrence of the Minister of Finance must be sought and obtained. Conditions may be attached. The Chief Procurement Officer also falls within the ambit of the political responsibilities of the Minister of Finance. Public sector procurement must be undertaken in a manner that is fair, equitable, transparent and cost effective. The

10 Chief Procurement Officer is responsible for permitting deviations and exemptions under circumscribed conditions. The effect of this is that the Minister of Finance has weighty responsibilities and often has to make unpopular decisions, taking into account the long-term fiscal sustainability and economic interest of the country. It is this office that drives the budget process, approves loans and guarantees, oversee compliance with financial management and procurement processes and is the final bulwark against corrupt dealings that jeopardise public finances. This is why the optimal relationship for any Minister of Finance to have the full support of the President at all times. The complexity of the position of Minister of Finance is more fully explained in a document prepared by former Minister Trevor Manuel as a

20 handover memorandum when he left the office in 2009 and that document is attached as NM1. It is part of the thicker document which we referred to as K1A.

CHAIRPERSON: Thank you.

ADV PAUL PRETORIUS SC: It's in the bundle Chair. It's a lengthy document Minister Nene. You have obviously had the opportunity to look at the document, do you agree with its contents?

MINISTER NHLANHLA MUSA NENE: Absolutely, though it is now a bit dated because it does refer to some of the institutions that no longer exist but it provides for very very useful and instructive context.

ADV PAUL PRETORIUS SC: Would you continue then please?

MINISTER NHLANHLA MUSA NENE: Therefore makes sense that those who wish to pursue a systematic strategy to raid the public coffers or those who are intent on taking decisions that have the potential to undermine fiscal sustainability would attack the role or credibility of National Treasury as a means of getting access to Government funding allocations and guarantees or obtain permission for exceptions  
10 or deviations to conceal dubious and irregular procurement.

ADV PAUL PRETORIUS SC: This one of the attacks then on Treasury that you referred to earlier and that is the Project Spider Web.

MINISTER NHLANHLA MUSA NENE: Correct. Indeed, this is evidence in that sinister document titled, "Project Spider Web". That is also in the thicker document as it's entitled NN2.

ADV PAUL PRETORIUS SC: Let's just go there briefly if we can Minister? It's at page 291 of Exhibit K1A.

CHAIRPERSON: Did you say 291?

ADV PAUL PRETORIUS SC: 291.

20 CHAIRPERSON: Okay.

ADV PAUL PRETORIUS SC: Annexure NN2. Do you have it there Minister?

MINISTER NHLANHLA MUSA NENE: Correct.

ADV PAUL PRETORIUS SC: Is that the document you are referring to?

MINISTER NHLANHLA MUSA NENE: It is the document.

ADV PAUL PRETORIUS SC: Would you very briefly just describe what this document is and in your view, what it attempts to achieve.

MINISTER NHLANHLA MUSA NENE: This document suddenly surfaced in July 2015 styled as an Intelligence Report which suggested that Treasury had been captured by the apartheid era intelligence operatives as well as white monopoly capital in order to control the country's finances. The document came to my attention on or just after 20 July 2015. It was forwarded to me by email from Anthony Julius who himself was mentioned in the document.

ADV PAUL PRETORIUS SC: What post did he occupy?

10 MINISTER NHLANHLA MUSA NENE: He is the Deputy Director General in Assets and Liabilities. The original document and how it ended up in Treasury, is still unknown to me. It was circulated to a lot of us but the original didn't come to me, I got it from the secondary source.

ADV PAUL PRETORIUS SC: Yes.

MINISTER NHLANHLA MUSA NENE: When I read this document, it reminded me of a remark, if I were to say, that was made by former President Zuma about a month earlier where he told me that there are apartheid agents within the Treasury. I recall conveying this remark to the Director General at the time, Mr Lungisa Fuzile. I dismissed this as conspiracy theory; however, it was clear to me that the Treasury  
20 did not enjoy the support of the President.

ADV PAUL PRETORIUS SC: Before you continue with your statement, may I ask you Minister Nene, do you know of any investigation in relation to the origins of this report?

MINISTER NHLANHLA MUSA NENE: Yes, because on after getting this report, I requested the Director General to inform the relevant authorities to investigate the matter.

ADV PAUL PRETORIUS SC: We'll deal in more detail with those issues in due course where you deal in more detail with the report.

MINISTER NHLANHLA MUSA NENE: With the report, yes.

ADV PAUL PRETORIUS SC: But just at this stage, do you know whether there was indeed an official investigation pursuant to that request and if so, whether there have been any fruits in a report of any sort?

10 MINISTER NHLANHLA MUSA NENE: We never got any feedback from the relevant authorities. All I know was that it was given to the Head of who was in our State Security and we then expected that we would be favoured with the outcome of the investigation, we never got any.

ADV PAUL PRETORIUS SC: My apologies Minister, I have taken you out of the sequence of your statement.

MINISTER NHLANHLA MUSA NENE: Ja, absolutely.

ADV PAUL PRETORIUS SC: You were...

CHAIRPERSON: He was at paragraph 22, I think, 20?

ADV PAUL PRETORIUS SC: Paragraph 24.

20 CHAIRPERSON: Oh, okay.

MINISTER NHLANHLA MUSA NENE: Yes. That comment that I referred to in paragraph 23 was made by former President Zuma at a meeting that he had called me around May 2015, as I said, about a month before this surfaced. I recall that it was in the afternoon when my PA, Ms Marumo, came into a meeting at our small boardroom in Pretoria to give me a note whilst I was having a meeting with the

Director General Lungisa Fuzile and other senior managers of the Treasury, where she left me a note where actually the Director General also had sight of as he was sitting right next to me which read, “the President would like to see you.” I scribbled a response on the note saying that I would do so as soon as I finished the meeting. My PA returned a few minutes later with another note saying that I needed to go now. I left the meeting immediately mimicking to the DG that maybe I was going to be fired if you are summoned in such haste. On arrival, I found President Zuma with the Senior Malaysian official from Engen or Petronas, the company that owned Engen then whom I did not know but was introduced as an official from Petronas. He explained, the President, explained that South Africa needed to own a refinery and that Petrona was prepared to sell its refinery to PetroSA. Further and most importantly, he stated that PetroSA would need a guarantee to be able to raise the funds and as Minister of Finance I would have to approve the guarantee. I then indicated that I was not aware of the transaction but if I received the application from the entity via the relevant department, I would consider a guarantee subject to the normal evaluation process. It was at that point that President Zuma in the presence of the Malaysian official who is connected to PetroSA, raised the issued of spies within the Treasury. This was about a month before the document Spider Web surfaced. I briefed Mr Fuzile on President Zuma’s request and a possible application that might come to Treasury for him to consider through the normal processes. Now the Spider Web document mentioned names of several officials of the National Treasury including Deputy Minister, Mr Mcebisi Jonas. Officials, Mr Lungisa Fuzile, Mr Kenneth Brown, Mr Andrew Donaldson, Ms Avril Halstead, Mr Anthony Julius, Mr Ismail Momoniat and employees of State Owned Companies, including Mr Daniel Matjila, Chief Executive of the Public Investment Corporation. The key objectives of

the project, Spider Web, were alleged to be as you will see on the document, because it's not addressed to anyone but it is titled, National Treasury and the project Spider Web. Now, those were the allegations that is was alleged, the objectives were alleged to influence the design and implementation of the economic and fiscal policy, it was alleged that it will influence the appointment of key leaders in the Reserve Bank, Treasury, DTI and SOE's that fall under their ministries, to manage the outcomes of these institutions, defend the position of the Spider Web through media and attack and prosecute critics of project Spider Web through SARS and other means.

- 10 ADV PAUL PRETORIUS SC: Were allegations made in relation to you in project Spider Web?

MINISTER NHLANHLA MUSA NENE: Indeed, the main allegations made in relation to me, were that I am being handled by Ms Maria Ramos whom the document code names as the "Queen of leaves". That during the recent world economic forum in Cape Town I had assembled all the DDG's and Chief Directors from the Treasury at a Cape Town hotel for a brief meeting and the outcomes of the meeting were that Mr Lungisa Fuzile, that's the first one.

- ADV PAUL PRETORIUS SC: Before you go on, I am sorry Minister Nene, would you just tell the Commission who Ms Maria Ramos is and what position she occupied at  
20 the time the project Spider Web document was released.

MINISTER NHLANHLA MUSA NENE: She is Group Chief Executive, I think that's the correct title, at ABSA Bank, I think Barclays at the time because of their association but she worked for the bank. Well, these are now the outcomes of the meeting. The outcomes of the alleged meeting was that Mr Lungisa Fuzile, the then Director General for Treasury will not be extending his contract at the end of August, 2015,

that he will be joining the faculty of Economics at the University of Stellenbosch and his departure would be a catalyst for some big changes inside Treasury.

ADV PAUL PRETORIUS SC: Did that occur in fact or did it not occur?

MINISTER NHLANHLA MUSA NENE: It did not but also that Ms Avril Halstead will be promoted to the position of DG at Treasury, that she would be promoted to position to DDG very soon as a stepping stone for her to become the next DG. That also didn't happen. That Mr Michael Sachs, the then DDG, will be transferred to one of the SOE's and that Mr Tumi Moleke will be transferred to another Ministry as a DDG that works with the Treasury.

10 ADV PAUL PRETORIUS SC: Did those two events occur?

MINISTER NHLANHLA MUSA NENE: They also didn't. That I stated that the Treasury must play a key role in the management of State Owned Entities and expect my officials to play a firm hand in managing the affairs of the SOE's. A number of changes will be happening there so is one of the key actions of Treasury is to facilitate the participation of private sector in the SOE's. It was also alleged that I stated that the Government Technical Advisory Centre, our GTAC, will be given a huge task of identifying private sector companies to partner with our State Owned Companies or SOE's. It was alleged also that I stated that the Board of SAA must be terminated by September 2015 and I indicated that Ms Maria Ramos was helping me  
20 to identify the new board members for the Board of SAA. That the former CEO of Kulula.com had been identified as a replacement for Mr Nico Bezuidenhout at SAA and GTAC will be given the task of identifying a strategic equity partner for SAA. It was also alleged that I stated that Treasury must support the appointment of Mr Brian Molefe and that Eskom will be creating a position of COO and that Mr Matshela Koko will be filling in that position. It was alleged further that Treasury is

very close to sell the Government stake in Vodacom and Eskom will be getting some cash injections. It also alleged that Ms Maria Ramos was also invited by the Minister to give a word of support to the staff at Treasury who then praised the staff for the wonderful work they are doing and she is alleged to have stated that she will be assisting Minister Nene to identify skills for the key positions at the Treasury. That she has already assisted in placing the key Chief Investment Officer at the GPF and she will be assisting and identifying the CEO at GTAC which is our Technical Advisory since Andrew Donaldson who will be the Chairman.

ADV PAUL PRETORIUS SC: Just to put these allegations in their context, the  
10 allegations that you have just recited to the Chair, are all allegations made in the document, Spider Web.

MINISTER NHLANHLA MUSA NENE: Correct.

ADV PAUL PRETORIUS SC: And what is your observation about the correctness of these allegations?

MINISTER NHLANHLA MUSA NENE: I will strongly deny each and every one of the allegations as baseless and have no merit.

ADV PAUL PRETORIUS SC: Before we move on in your statement, the allegations appear to be quite detailed. They appear at one level at least to exhibit some knowledge, detailed knowledge of the workings of the Treasury and detail individuals  
20 in their positions within Treasury and detailed functions of Treasury. Do you have any idea of where this information or this disinformation as you put it, could have come from?

MINISTER NHLANHLA MUSA NENE: It is not clear because, I mean, some of it actually didn't entirely make sense because if you talk about the people that were

going to be moving from what department to what department, but indeed, it showed somebody who had actually started a bit of National Treasury.

ADV PAUL PRETORIUS SC: Yes, and given the import of all these allegations and the level of knowledge purported to be held by the author or authors of the document, what was your expectation of the need for a proper investigation?

MINISTER NHLANHLA MUSA NENE: Well, we wanted to establish the origins of the document so that we could then establish what the intent of the document was.

ADV PAUL PRETORIUS SC: Yes, you detail that a little later on.

MINISTER NHLANHLA MUSA NENE: Correct, yes.

10 ADV PAUL PRETORIUS SC: I am sorry, what concern was raised in your mind on reading this document?

MINISTER NHLANHLA MUSA NENE: Indeed, I was concerned that the Treasury was, it seemed like the Treasury was now going to be the targeted in an attempt to undermine its legitimate role and function and it's for that reason that we also issued a statement on the 26<sup>th</sup> August, 2015 condemning the project Spider Web dossier and the statement, if you allow me I will just go quickly on what the statement says.

ADV PAUL PRETORIUS SC: Yes please.

CHAIRPERSON: I am sorry, before you read the statement Minister, may I just ask with regard to paragraph 31.5. That's one of the objectives of the document that you  
20 have articulated as having, as one of the objectives that were alleged of the document. It says, "the key objectives of project Spider Web were alleged to be 3 and 31.5, attack and prosecute critics of project Spider Web through SARS and other means". Did you understand at that time what that objective meant and if you didn't understand then, is there anything that has happened which may have made you to understand what that may have meant or not?

MINISTER NHLANHLA MUSA NENE: Indeed, I did not at the time but as I outlined them here in the report, I take them directly from the document itself on page 293 that those were the objectives, 292 up to 293, but indeed, you know, judging by developments at the Revenue Services today on hindsight, indeed there is a link between this document.

CHAIRPERSON: Thank you. Yes Mr Pretorius.

ADV PAUL PRETORIUS SC: If you would bear with me a minute Chair. Perhaps in relation to that allegations in the paragraph you have just referred to, are you able to specify the link in relation to the more general theme that you have stated in your  
10 statement about attacks on Treasury and the integrity of the institution and events at SARS, at the Revenue Services, do you have any further explanation of that link?

MINISTER NHLANHLA MUSA NENE: Look, it is public knowledge that we had a situation at SARS where the institution actually started moving in a direction that sought to undermine its strength and as we have seen there were people through SARS or within SARS that ended up having to be either removed or the institutions that were disbanded within SARS that were actually responsible for holding together the Revenue Services.

ADV PAUL PRETORIUS SC: Yes, those issues are in the public domain obsolescent. Minister, you were about to read to the Chair the media statement that  
20 you issued following the release of the project Spider Web dossier.

MINISTER NHLANHLA MUSA NENE: "National Treasury has become aware of a document called 'Project Spider Web' that has been circulated in the media and would like to condemn it in the strongest terms. The faceless people behind it allege a conspiracy to influence economic policy and the work of the National Treasury. The document is baseless and vexatious. It appears calculated to sow seeds of suspicion

and may be motivated by an unexplainable desire to undermine and destabilise the institution. The contents neither warrant a response nor further comment. The Treasury has passed it on to relevant authorities to investigate its source and will be transparent about the outcome of that process, once completed.”

And as indicated in my statement and in response to your question earlier Chair, I tasked the Director General, Mr Lungisa Fuzile, to forward the report to the relevant authorities for further investigation regarding the genesis of the dossier. I understand that Mr Fuzile sent it to Minister Mahlobo and Dr Batandwa Siswana.

ADV PAUL PRETORIUS SC: Before you go on, what positions or offices did they  
10 occupy at the time?

MINISTER NHLANHLA MUSA NENE: Mr Mahlobo was the Minister responsible for State Security and Dr Batandwa Siswana was the Head of that department. Mr Fuzile indicated that they visited him twice to ask for the access to the email system of the people who received the document and those who were named. I have never received any follow-up report on whether an investigation was actually initiated by the relevant authorities or the outcome of any investigation.

ADV PAUL PRETORIUS SC: From your point of view having testified as to the importance of Treasury as an institution and the vulnerability that Treasury has to attacks and the consequences of that, was this a satisfactory outcome for you?

20 MINISTER NHLANHLA MUSA NENE: It was not. We were concerned but we felt that we do need to focus our attention to making sure that now that we know that the Treasury is under attack we focus our attention on being vigilant and to our work and gone forward.

ADV PAUL PRETORIUS SC: Would you then move onto a new topic please Minister and that's to deal with your meeting with Deputy Minister Jonas.

MINISTER NHLANHLA MUSA NENE: Indeed. My meeting with Mr Jonas, I must preface it that's the first time that I heard that I may be removed from office when I met with him on the morning of Monday, the 26<sup>th</sup> October, 2015. I have read his statement which is dated the 8<sup>th</sup> August, 2018, which is submitted to this Commission and I confirm paragraphs 31, 33, 39, 41 up to 43 of the statement.

ADV PAUL PRETORIUS SC: When you say you confirm those paragraphs, do you mean that you confirm the correctness of those paragraphs?

MINISTER NHLANHLA MUSA NENE: The correctness of the paragraphs yes.

ADV PAUL PRETORIUS SC: Do go on please?

- 10 CHAIRPERSON: I am sorry Mr Pretorius, you might be planning to deal with it at a later stage but it will be convenient to refresh our memory as to what those paragraphs in Mr Jonas' statement say which he is confirming?

ADV PAUL PRETORIUS SC: Am I correct Minister Nene that your recollection of what is contained in those paragraphs and your recollection of the inter-exchanges between yourself and Deputy Minister Jonas is contained in the following paragraphs from 37 onwards?

MINISTER NHLANHLA MUSA NENE: Correct.

CHAIRPERSON: Okay, so we don't need to go and look?

MINISTER NHLANHLA MUSA NENE: Okay.

- 20 ADV PAUL PRETORIUS SC: We may as well just check that there is nothing we leave out thank you Chair.

CHAIRPERSON: Okay, alright, thank you.

ADV PAUL PRETORIUS SC: Yes, would you deal with the exchange, it's at paragraph 37 of your statement please?

MINISTER NHLANHLA MUSA NENE: Mr Jonas telephoned me on Friday, the 23<sup>rd</sup> October, 2015, in the afternoon. I had earlier left a meeting at Nedlac at Nedlac House in Rosebank. I got the impression that he was indeed agitated, you know, from the tone of his voice. He told me that there was an urgent matter that he wanted to share with me. At that time I was on my way to OR Tambo International Airport to catch a flight to KwaZulu-Natal. We agreed to meet on Sunday, the 25<sup>th</sup> October when I returned to Joburg. However, on Sunday the 25<sup>th</sup> October, 2015, I arrived in Gauteng later than planned. I then called Mr Jonas and requested that we postpone our meeting to Monday morning. We indeed met on Monday morning, the 10 26<sup>th</sup> October, 2015, at around quarter past eight in the morning. We were supposed to meet in my office but we decided to go to his office as he had a good balcony which would be outside and perhaps which we also thought would be safer. I could see that he was flustered, he informed me of an uncomfortable meeting he had had with Mr Ajay Gupta, Mr Fana Hlongwane and Mr Duduzane Zuma in Saxonwold.

ADV PAUL PRETORIUS SC: Before you proceed Minister, we might as well be frank about it. When you say it had a good balcony which would be safer, could you be a bit more specifically?

MINISTER NHLANHLA MUSA NENE: Well, you know in the environment where Project Spider Web and all of those things, you would actually even when you look at 20 a flower pot you are not too sure whether it has something so you think perhaps the balcony outside might be a safe place to discuss a matter of confidentiality.

ADV PAUL PRETORIUS SC: Thank you.

MINISTER NHLANHLA MUSA NENE: He then told me that during that meeting he was offered the position that I was holding at the time, that of Minister of Finance. He also told me that Mr Ajay Gupta offered him R600,000 in cash immediately and a

further R600 million to be deposited in a bank account offshore. Mr Jonas told me that he rejected the offer of the deposit and cash that he was invited to take immediately. At that stage there were already rumours circulating in the media about an imminent Cabinet reshuffle. My name was amongst the Ministers who were reported to be due for removal. I had paid these rumours no regard. Mr Jonas then informed me that the Guptas were aware of this intended reshuffle and that they had informed him that they were influential in the removal of certain Ministers from their positions and I recall saying to him, who are they to offer you the job of Minister? I suggest to him that I should resign perhaps since I was to be fired anyway but Mr

10 Jonas pointed out and I agreed with him that I should continue to hold the line at the Treasury and not give in to these threats. I was already concerned about attacks on the Treasury and the intentions of those behind Project Spider Web dossier that had been released a few months earlier.

ADV PAUL PRETORIUS SC: Before you continue please Minister Nene, apart from issues that were at that time in the public domain, you have given direct evidence about the Project Spider Web dossier which you have described in the context of attacks and potential attacks on Treasury and you have given evidence directly about what Mr Jonas reported to you in the context of rumours about your own removal. Did you not think to raise this with the President?

20 MINISTER NHLANHLA MUSA NENE: Certainly not. You know, I always say that you know, our appointments and our removals are just as easy, it's an announcement so you are in the job for 24 hours actually, not for 5 years as always made out because you serve at the pleasure.

ADV PAUL PRETORIUS SC: Did you not think to raise this with the president?

MINISTER NHLANHLA MUSA NENE: Certainly not. You know, I always say that, you know, the – our appointments are – and our removals are just as easy. It is just an – it is an announcement. So you are in the job for 24 hours actually, not for five years as is always made out because you serve at the pleasure of the president.

ADV PAUL PRETORIUS SC: But you give some explanation for your subsequent conduct in paragraph 43.

MINISTER NHLANHLA MUSA NENE: Indeed. Say that I – I must say I was perturbed by what Mr Jonas had conveyed to me and even though I at some point thought maybe I should resign but I immediately returned to the business of the day.

10 I had a very busy day on that Monday with many meetings scheduled with the executive director and alternate executive director of the World Bank, that is now according to my diary for the day. Preparatory meeting with – I mean on SAA and a briefing on Eskom and independent power producers. I did not wish to be distracted from the tasks I had to perform. We were working under tremendous pressure at National Treasury and amidst the particular challenges of the nuclear procurement program, the troubles with SAA and Eskom, the economy under-performing and we were required to consider where we could reduce expenditure as government so we had just presented the medium-term budget policy statement five days before on 20 October 2015 which is followed by many investor and public briefings which I was  
20 required to attend. This is usually a very busy period in the Treasury schedule as it requires the minister's full attention.

ADV PAUL PRETORIUS SC: Minister, may I return to the question once more? In evidence that has been given before this commission and certainly in our own investigations it appears as appears from your own evidence today that there were a number of direct and indirect, explained and unexplained attacks on important

institutions in the country, particularly Treasury, but what is noteworthy and perhaps this should be subject to further investigation is that there appears to have been a silence in so far as there was any accountability to the public in regard to these events. Do you agree with that observation and if so do you have any explanation for it?

MINISTER NHLANHLA MUSA NENE: Maybe I do not understand the question well.

ADV PAUL PRETORIUS SC: The Project Spiderweb dossier.

MINISTER NHLANHLA MUSA NENE: Yes.

ADV PAUL PRETORIUS SC: The "attack" in relation to Mr Jonas being informed  
10 that he might be offered by a completely outside third party a ministerial position. Why was more not said about this at the time in the public eye?

MINISTER NHLANHLA MUSA NENE: I think from our side the only time we went public was when we went on Project Spiderweb because we issued a statement because we were concerned and also that document was not only circulating within the treasury, it also was circulating outside because we were beginning to get questions about it so we did issue a statement just to dispel whatever it is so that there is anything else people know that as the National Treasury we remain focused on what we are supposed to do rather than...

ADV PAUL PRETORIUS SC: And within the ruling party and within Cabinet or other  
20 State institutions were the issues relating to the Jonas matter raised?

MINISTER NHLANHLA MUSA NENE: Not at that time that I could remember.

ADV PAUL PRETORIUS SC: Do you have any explanation for that?

MINISTER NHLANHLA MUSA NENE: I really would not. I think at times we take some of those things for granted and take, you know, for instance if there is an attack on Treasury, Treasury deals with its matters and, you know, without

necessarily elevating the matter to a platform that begins to look at what is happening in government and the country in general.

CHAIRPERSON: All right. But the – what had transpired according to Mr Jonas' version when he was at a meeting with, according to him Mr AJ Gupta, Mr Duduzane Zuma and Mr Fana Hlongwane. At that stage, the time that Mr Pretorius is referring to, at that stage was it public knowledge or was it known within government or generally?

MINISTER NHLANHLA MUSA NENE: It was not public knowledge but as I understand it in Minister Jonas' statement, he then went on a little later to report the  
10 matter also to the relevant authorities.

CHAIRPERSON: Thank you.

ADV PAUL PRETORIUS SC: You then go on in your statement at paragraph 44, Minister, to deal with your own contact with members of the Gupta family.

MINISTER NHLANHLA MUSA NENE: Indeed. In my own contact to the Guptas I did meet the Gupta family, particularly Mr AJ Gupta in a number of occasions, government events. They were regular attendees at government events at that time but not to discuss government business because that is generally what normally comes up, but the first time I met ... [intervenes]

ADV PAUL PRETORIUS SC: Before you go on, Minister, what type of government  
20 events were these? Can you recall?

MINISTER NHLANHLA MUSA NENE: I think the first one actually spells out what this one was. It was after – there is a dinner that takes place after the State of the Nation address. That was my first encounter in 2009 and I was Deputy Minister of Finance at that time.

ADV PAUL PRETORIUS SC: Right.

MINISTER NHLANHLA MUSA NENE: But then later invited, there would also be other functions which I mean I cannot remember properly but I was later invited to the Sahara Computers offices in Midrand and they marketed themselves as good corporate citizens that employ a number of young people in the technology space and... But the key point that they used to, Mr AJ used to make is that they do not do any business with government and, you know, they are as I say good corporate citizens, pay their taxes and indicated that they were in the computer and mining industry and he had also served – himself had served on the president’s investment international marketing council and he was an economist also by qualification and an  
10 advisor to the president. He then invited me to tea at his house to discuss the economy because of his understanding.

ADV PAUL PRETORIUS SC: Before you go on, Minister, perhaps, Chair, this is an appropriate time for the short adjournment?

CHAIRPERSON: Yes, thank you. We will take the short adjournment and we will resume at 11:30. We adjourn.

HEARING ADJOURNS

HEARING RESUMES

CHAIRPERSON: Yes Mr Pretorius. Your mike Mr Pretorius your mike.

ADV PAUL PRETORIUS SC: My apologies Chair. We were at paragraph 46 of your  
20 statement Minister Nene and you had described to the Chair that you had been invited to tour the Guptas Sahara Computer offices in Midrand on two occasions in 2010. What did you know of the Guptas at that stage?

MINISTER NHLANHLA MUSA NENE: Not much as I said, except that you know having met them at a presidential event and, you know sitting at the high table that

they were close to the President. But other than that very little, until they introduced themselves and introduced me to their business as well.

ADV PAUL PRETORIUS SC: Right. Is it normal for a Deputy Minister to visit businesses at the request of individual citizens, or non-citizens such as the Guptas?

MINISTER NHLANHLA MUSA NENE: Indeed, I saw nothing wrong with it. I still see nothing wrong also in engaging with people who are in any form of business.

ADV PAUL PRETORIUS SC: Yes. During these visits – let me take a step back Minister. We have heard evidence from more than one witness in regard to the conduct of the Guptas, the observation maybe made that they were not exactly shy, or reluctant to place demands to express interests and to – in a nutshell, try to obtain favours in their interests where they desired to do so. Did anything of that sort occur on your visit to Sahara Computers?

MINISTER NHLANHLA MUSA NENE: Not really and as I said earlier, mine was a completely different one, because I am not too sure what the plan was. But they marketed – it was almost like a PR exercise. There were two things that stood out for me, was that they would actually continuously repeat the issue that they do business with Government. Two, you know showing themselves what their contribution is to the economy in terms of, when we visited the Sahara, you know youth employment, they are in their computer space, they are good corporate citizens and I think that was the key message that they would be driving home most of the time, but ...[intervenes]

ADV PAUL PRETORIUS SC: In retrospect how would you describe their conduct then in those meetings, which seems to be at least to a degree out of sync with other evidence that we have heard?

MINISTER NHLANHLA MUSA NENE: Indeed, the only time I got suspicious was then, it was proven when around 2013 it turned out there was an investigation that the Treasury was doing on one of their – on a Dairy in the Free State where they were directly involved. That is when I actually, you know got suspicious of this ongoing narrative of them not doing business with the State, because that seemed to contradict what they had said before ...[intervenes]

MINISTER NHLANHLA MUSA NENE: Who in particular – I am sorry.

CHAIRPERSON: I am sorry Mr Pretorius, I am sorry before you proceed. You have emphasised quite a few times that on those occasions, or at least some of them  
10 when you met with them, they liked emphasising that they did not do business with the State. What was your understanding of the context or the need for them to make that statement so repeatedly?

MINISTER NHLANHLA MUSA NENE: It was in response to what they were saying, people say they have – they benefiting from the State because of their relationship with the President and they actually wanted to clarify that that they actually do not do business with the State.

CHAIRPERSON: Oh already at that time there were those allegations that they were benefiting from?

MINISTER NHLANHLA MUSA NENE: It was coming from them yes that people  
20 accused them of that.

CHAIRPERSON: Oh okay.

MINISTER NHLANHLA MUSA NENE: But I did not know of such.

CHAIRPERSON: Oh.

MINISTER NHLANHLA MUSA NENE: It was for that reason that it was a bit strange that they are responding to a question that I have not asked.

CHAIRPERSON: And you say from your recollection in terms of what you knew then, or what was known publically, you cannot remember whether publically there were those allegations about them?

MINISTER NHLANHLA MUSA NENE: Not that I knew of.

CHAIRPERSON: Yes okay thank you.

ADV PAUL PRETORIUS SC: Right. Perhaps with hindsight Minister, we know that at that time you were a person of influence and we know with hindsight, or certainly there has been evidence and will be more evidence that the Gupta brothers took steps to influence, or exploit relationships with persons of influence within  
10 Government. You deal later with a briefing in relation to the launch of New Age, but for the present, it may be surprising in the context – and again I emphasise with hindsight of all the evidence that we have heard to-date and what has been in the public domain that they gave you no hint at all – and if they did give you a hint, would you tell the Chair of anything untoward in their relationship with – in particular you, during those visits to Sahara Computers in Midrand?

MINISTER NHLANHLA MUSA NENE: Indeed there was no hint then, but it is only when one looks back that you realise that, you know, perhaps the PR exercise might have been an exercise of trying to conceal something.

ADV PAUL PRETORIUS SC: Who in particular invited you to visit at Sahara  
20 Computers?

MINISTER NHLANHLA MUSA NENE: Mr Ajay Gupta.

ADV PAUL PRETORIUS SC: Were there any other persons present during those visits?

MINISTER NHLANHLA MUSA NENE: Well there might have been staff at the Sahara Computers whose identity I would not know.

ADV PAUL PRETORIUS SC: Right and the other Gupta brothers?

MINISTER NHLANHLA MUSA NENE: No at that meeting.

ADV PAUL PRETORIUS SC: And then who invited you to – as you put it, tea at his house?

MINISTER NHLANHLA MUSA NENE: It was Ajay Gupta again.

ADV PAUL PRETORIUS SC: To discuss the economy, can you go into a little more detail? What was the purpose of that visit, or that invitation insofar as you could keep?

MINISTER NHLANHLA MUSA NENE: Well they seemed casual, but at the same  
10 time when somebody says, can you pop in for tea. And I must also say that at that  
time I had no reason also to think that that might have an adverse impact. Because  
like I said when we – one of the request was also for me to contribute to a magazine  
that was published by former Minister Essop Pahad which was called "The Thinker"  
and I actually most of the time I would leave the home with my own magazine,  
because that was been promoted. But also then when one was briefed on the  
impending launch of the New Age, so discussion was about the contribution they  
making also in that space. Also that the media in South Africa was hostile to  
Government and the ANC. So it is important that there is a much more objective  
view which is what they were purporting to be putting across. As such also,  
20 requesting us that when they launch these media houses that we as Government  
should support. The briefing to me was purported as a briefing that is also given to  
my other colleagues.

ADV PAUL PRETORIUS SC: Yes. During what period did you visit their home in Saxonwold on the four occasions you mentioned in paragraph 47?

MINISTER NHLANHLA MUSA NENE: It was a – I think it was during around 2010 as Deputy Minister.

ADV PAUL PRETORIUS SC: Right.

MINISTER NHLANHLA MUSA NENE: And perhaps again in Midrand I think in 2013. But just between that time around 2010 and 2013. It is not very easy to attach actual dates to those visits, because it was normally not planned visits. You get a call when you get invited and if you do have time you pop in, if you do not have the time again, there are a number of those where I would actually say I am not available. But when available I would then pop in.

10 ADV PAUL PRETORIUS SC: I understand. At that time, or during that period, besides been Deputy Minister, what official positions did you hold?

MINISTER NHLANHLA MUSA NENE: Besides been the Deputy Minister, it is a position that is by virtue of being Deputy Minister that you are appointed as a nonexecutive director of the Public Investment Corporation and a Chairperson of the PIC.

ADV PAUL PRETORIUS SC: What is the role of the Public Investment Corporation?

MINISTER NHLANHLA MUSA NENE: The Public Investment Corporation is a Fund Manager for the Government employees' Pension Fund.

ADV PAUL PRETORIUS SC: Right.

20 MINISTER NHLANHLA MUSA NENE: And other Government Funds like the Compensation Commission and the UIF.

ADV PAUL PRETORIUS SC: And does it give loans to businesses and institutions?

MINISTER NHLANHLA MUSA NENE: It does give loans to businesses and to institutions, but it also, you know co-finances of – it buys equity into some businesses with other partners.

ADV PAUL PRETORIUS SC: Again in relation to the interests of the Guptas and their related companies and their communications with persons in influence. Are you aware of any loans that the Public Investment Corporation made to the Guptas, or Gupta related entities?

MINISTER NHLANHLA MUSA NENE: No not that I am aware of. Except the inquiry that I referred to in paragraph 50, where Mr Ajay Gupta when I was Minister of Finance where he wanted to – he raised an issue that he was having with Mr Iqbal Survé, of Independent Media, where he wanted to know from me whether it could be correct that the agreement that Mr Survé has with the PIC precluded him  
10 from entering into a partnership with the Guptas to form an Independent Media Group.

ADV PAUL PRETORIUS SC: I will come to that in a moment.

MINISTER NHLANHLA MUSA NENE: Ja.

ADV PAUL PRETORIUS SC: But at a more general level, given the evidence so far to the extent that that evidence is correct that the Guptas were not shy in pursuing their interests in relation to persons of influence and given your positions as Deputy Minister and Chair of the PIC. The question, may I, it seems be asked, is it not strange that they would not have approached you directly as was, they will not during that time to attempt to ask you to exercise your influence in their favour?

20 MINISTER NHLANHLA MUSA NENE: I would have found it strange if they did, after having been so clear that they do not do business with the State.

ADV PAUL PRETORIUS SC: Right, you talk about later visits being related to the impending launch of New Age. Would you just expand on that a bit please?

MINISTER NHLANHLA MUSA NENE: It was just a briefing that they are in the process of launching a newspaper and as they did also with the launch with the TV

Station that it is going to be presenting an alternative perspective to the public, rather than what we have currently in South Africa where most of the media houses are actually hostile to the State and to the Governing party.

ADV PAUL PRETORIUS SC: During these visits was there any request for, or assumption that there would be support for the New Age venture?

MINISTER NHLANHLA MUSA NENE: Well it was clear that the intention is that, because we make use of the other media houses, they are introducing an alternative and it would, you know make sense that we support the media houses.

ADV PAUL PRETORIUS SC: Did they ask for support directly?

10 MINISTER NHLANHLA MUSA NENE: Not directly, but they introduced themselves as going to be the alternative ones.

ADV PAUL PRETORIUS SC: Was that request for support an assumption, underlying assumption in their approach?

MINISTER NHLANHLA MUSA NENE: Indeed ja.

ADV PAUL PRETORIUS SC: In paragraph 48 you refer again to the visits to the Saxonwold home and you refer to Mr Duduzane Zuma being present. Do you see that in paragraph 48?

MINISTER NHLANHLA MUSA NENE: Correct.

20 ADV PAUL PRETORIUS SC: What did you think about his presence at the house in Saxonwold?

MINISTER NHLANHLA MUSA NENE: It just confirmed their relationship that the family had with the President's family.

ADV PAUL PRETORIUS SC: What did you know at that time of that relationship?

MINISTER NHLANHLA MUSA NENE: Well I just knew that they were very close to the President, as I said earlier, even when I saw them for the first time, it was

because they were in the President – sitting with the President at the main table.

ADV PAUL PRETORIUS SC: Right. Within the Treasury, I presume that you are assisted by advisors who would keep an eye on matters relevant to Treasury functions as to what is reported in the media and in other sources of information, is that correct?

MINISTER NHLANHLA MUSA NENE: Yes that is true.

ADV PAUL PRETORIUS SC: Did you have any warning before 2013 from what existed in the public domain concerning the Guptas and their role in South Africa?

MINISTER NHLANHLA MUSA NENE: Not necessarily, but I mean 2013 on the Dairy  
10 Farm was actually for me, you know the first flashing light.

ADV PAUL PRETORIUS SC: What did you learn about the family's intentions at that time?

MINISTER NHLANHLA MUSA NENE: There was an investigation that the Treasury was embarking on, which showed that their relationship with that community and the project itself was not done in accordance with the regulations.

ADV PAUL PRETORIUS SC: Did you take any steps in Treasury to deal with that issue?

MINISTER NHLANHLA MUSA NENE: Yes there was an investigation, an ongoing investigation which was concluded and given to the law enforcement authorities  
20 once concluded.

ADV PAUL PRETORIUS SC: Yes is that the ENS investigation?

MINISTER NHLANHLA MUSA NENE: Correct.

ADV PAUL PRETORIUS SC: Edwin Nathan Sonnenberg's investigation?

MINISTER NHLANHLA MUSA NENE: Correct.

ADV PAUL PRETORIUS SC: We know subsequent to that there were further

investigations.

MINISTER NHLANHLA MUSA NENE: Correct.

ADV PAUL PRETORIUS SC: Were you satisfied with the contents of the ENS investigation?

MINISTER NHLANHLA MUSA NENE: Look we thought because it actually meant that there should be further investigations that it had run its course and it had completed what it was supposed to do. But that was purely a matter also that was dealt with more at an official's level than at the Ministry level.

ADV PAUL PRETORIUS SC: In 2014 you say in paragraph 50 that you went to their  
10 house on two occasions in the latter half of 2014.

MINISTER NHLANHLA MUSA NENE: Yes.

ADV PAUL PRETORIUS SC: By this time, presumably you had formed an attitude in regard to the family and its intentions?

MINISTER NHLANHLA MUSA NENE: Correct.

ADV PAUL PRETORIUS SC: So much so that there were official investigations at the instance of Treasury in regard to their conduct?

MINISTER NHLANHLA MUSA NENE: Indeed.

ADV PAUL PRETORIUS SC: Why did you accept the invitation at this stage?

MINISTER NHLANHLA MUSA NENE: Look I thought I should not be influenced by  
20 just an investigation, which had not been concluded, but at the same time managing a relationship means, you are now going to be more careful and circumspect in dealing with people. But it does not necessarily mean all of a sudden you say, I cannot talk to you because I am told you are being investigated.

ADV PAUL PRETORIUS SC: Who invited you?

MINISTER NHLANHLA MUSA NENE: It was Ajay again.

ADV PAUL PRETORIUS SC: Presumably you felt reasonably assured and comfortable that you should go to the Gupta household rather than to summon them if they wanted to speak to your officers?

MINISTER NHLANHLA MUSA NENE: Well the invitation had come in the manner that the previous invitations had come and I thought it would do no harm to honour the invitation and hear him out, which I did. He then indicated that he had this problem and ja on my return also I was able to come back to him and say, we have nothing to do with the agreements you have with Mr Iqbal Survé.

ADV PAUL PRETORIUS SC: Right. So since your first visit to Sahara Computers in  
10 Midrand, it is now 2014. The approach to you regarding the relationship between the Guptas and Mr Iqbal Survé of Independent Mediator, was this the first time that any request to intervene had been made to you?

MINISTER NHLANHLA MUSA NENE: It was yes.

ADV PAUL PRETORIUS SC: Again, the question may be asked that given evidence it would be unusual that it would take 4 years for this tentative request to be made to you, given your relationship with the Guptas, your frequent visits to their premises. Do you have any comment in regard to that?

MINISTER NHLANHLA MUSA NENE: I would not ...[intervenes]

ADV PAUL PRETORIUS SC: Just again if I may put it bluntly, it is out of sync with  
20 the evidence we know.

MINISTER NHLANHLA MUSA NENE: Look, I would not know what the history was. Because what they were saying is that they had an agreement with him that they would go together and he was – and then at that time Mr Ajay Gupta told me that they are having a court case with him, where he is now refusing to honour his commitment to them and he says the reason why he cannot it is because in the

agreement between himself and the PIC, he cannot accommodate them.

ADV PAUL PRETORIUS SC: Right. We know now that at this time you are in fact Minister of Finance.

MINISTER NHLANHLA MUSA NENE: Correct.

ADV PAUL PRETORIUS SC: And Mr Ajay Gupta you say raised an issue with you concerning his relationship with Mr Iqbal Survé of Independent Media. Is it correct that Mr Survé had obtained a loan from the PIC, Public Investment Corporation?

MINISTER NHLANHLA MUSA NENE: I understand so yes.

ADV PAUL PRETORIUS SC: A substantial loan?

10 MINISTER NHLANHLA MUSA NENE: We are including the co-investment yes with the PIC.

ADV PAUL PRETORIUS SC: Yes. In the region of a billion rand according to the ...[intervenes]

MINISTER NHLANHLA MUSA NENE: I cannot remember the actual numbers, but it is substantial yes.

ADV PAUL PRETORIUS SC: Did Mr Gupta want a part of that finance?

MINISTER NHLANHLA MUSA NENE: Well it meant that they had an – he says they had an agreement that they would be part of that one. But Mr Iqbal Survé was renegeing on that agreement. So the inquiry was, because he says it cannot be done  
20 because of the PIC agreement, how it was – is that correct. I said, in terms of the agreement between the PIC and whoever else is in funding with, that would not be the PIC's matter to interfere in the agreements of the other part ...[intervenes]

ADV PAUL PRETORIUS SC: I see and that is the clarification that you say you gave him?

MINISTER NHLANHLA MUSA NENE: Correct. Beyond that, my humble request

also was that if he has further queries, he must raise them directly with the PIC.

ADV PAUL PRETORIUS SC: Right and we have learnt in the short time in which we have been able to examine the issues in your statement that there was a prospect at least of litigation between Gupta, perhaps Oakbay Investments on the one hand and Independent Media with Mr Survé on the other. Do you know of that litigation?

MINISTER NHLANHLA MUSA NENE: He alluded – Mr Ajay Gupta alluded to that, he said there was a court case.

ADV PAUL PRETORIUS SC: Right. Over the period of at least 4 years from 2010 to 2014, apart from the request in relation to Mr Survé and Independent Media, on the  
10 one hand and the Guptas, and we presume Oakbay Investments on the other, was any other request made to you during that period?

MINISTER NHLANHLA MUSA NENE: No not that I can remember.

ADV PAUL PRETORIUS SC: Was any offer or any form of inducement made to you?

MINISTER NHLANHLA MUSA NENE: None whatsoever.

ADV PAUL PRETORIUS SC: Let us move onto a slightly different topic please Minister. On 12 June 2018 you had occasion to address a letter to Mr Floyd Shivambu, Minister of Parliament and a member of the Economic Freedom Fighters. You deal with that in paragraph 52.

20 MINISTER NHLANHLA MUSA NENE: Indeed.

ADV PAUL PRETORIUS SC: May I refer you to the bundle at page 318? Do you recognise this document?

CHAIRPERSON: What page do you say Mr Pretorius?

ADV PAUL PRETORIUS SC: 318 Annexure NN3.

CHAIRPERSON: 318?

ADV PAUL PRETORIUS SC: 318, probably in your second bundle, K1B.

CHAIRPERSON: Okay thank you.

MINISTER NHLANHLA MUSA NENE: Yes I do recognise the document.

ADV PAUL PRETORIUS SC: On page 321, it appears that this letter is dated 12 June 2018, is that your signature there?

MINISTER NHLANHLA MUSA NENE: That is correct.

ADV PAUL PRETORIUS SC: What was the context that required this letter to be written by yourself?

MINISTER NHLANHLA MUSA NENE: It was in response to a letter that I had  
10 received from Mr Shivambu.

ADV PAUL PRETORIUS SC: What was the date of that letter?

MINISTER NHLANHLA MUSA NENE: It was sometime in May.

ADV PAUL PRETORIUS SC: Does that appear on page 318?

MINISTER NHLANHLA MUSA NENE: Yes it was dated the 22<sup>nd</sup> May.

ADV PAUL PRETORIUS SC: Would you briefly relate to the Chair what you stated to Mr Shivambu in response to his letter of 22 May 2018?

MINISTER NHLANHLA MUSA NENE: In his letter he had insinuated that I have facilitated the Guptas access to the PIC during my tenure as Deputy Minister of Finance. I confirmed that I had met some members of the Gupta family during  
20 Government functions, especially hosted by the President and the presentation of the State – after the presentation of the State of the Nation address and that on of these occasions I was invited to 12 Midrand Offices, because that was the content of his question as well. That in both my role as Minister of Finance and my position as Deputy Minister of Finance, I have been approached by numerous individuals and companies asking for my assistance in securing finance, especially from the PIC. In

all instances, these individuals with no exceptions and companies, were informed that they should approach the PIC directly through its formal channels.

ADV PAUL PRETORIUS SC: Is that the letter that we have just referred to at page 318?

MINISTER NHLANHLA MUSA NENE: That is the letter that you were referring to. Because there were quite a number of questions and some questions as well.

ADV PAUL PRETORIUS SC: Right. Before you go on, at the outset of your evidence, we referred to a certain public statement issued on behalf of the Economic Freedom Front in relation to your evidence today, or the prospect of your evidence  
10 today. I am not going to place that document on record until both the Commission and your own legal representatives has had a chance to interrogate that document and to deal with the rather general allegations contained therein. To emphasise once more, that we have no direct evidence from the EFF in regard to the contents. Safe to say that in paragraph 2 of that document it states that the EFF wrote a letter to Nhlanhla Nene on 22 May 2018 asking him about his relationship with the Guptas and the many instances he negotiated business dealings with them. There is a further statement following that saying that you refused to respond to those questions. Is that statement correct?

MINISTER NHLANHLA MUSA NENE: That statement is incorrect, because the letter  
20 included – which was written on the 12<sup>th</sup> June was a response to the letter that they wrote on the 22<sup>nd</sup>. So the letter was responded to, I can confirm that. We followed it up when also we – so in the public space that they were saying that I had not responded. We actually followed up with our parliamentary office ...[intervenes]

ADV PAUL PRETORIUS SC: We will come to the further evidence in a moment. Safe to highlight at this stage that certainly notwithstanding the absence of any

evidence given to us. The Commission will look at the allegations, investigate them and you have expressed your willingness to respond.

MINISTER NHLANHLA MUSA NENE: Absolutely.

ADV PAUL PRETORIUS SC: At the appropriate time.

MINISTER NHLANHLA MUSA NENE: That is correct.

ADV PAUL PRETORIUS SC: Okay. On 14 September 2018, did you receive another set of questions from Mr Shivambu?

MINISTER NHLANHLA MUSA NENE: Indeed I did, which is now in the form of the parliamentary question, insinuating again that I had meetings with the Gupta family  
10 when I was Deputy Minister of Finance to discuss business dealings and in particular in relation to PIC funding of the Gupta family.

MR PAUL PRETORIUS SC: On 14 September 2018 did you receive another set of questions from Mr Shivambo?

MINISTER NM NENE: Indeed I did which now in the form of a parliamentary question, insinuating again that I had meetings with the Gupta family when I was Deputy Minister, to discuss business dealings and in particular, in relation to PIC ('The Public Investment Corporation') funding of the Gupta family. He further insinuates that I... that I was contacted by the Gupta family when I was Minister of Finance, to secure promises that I had made to them whilst I was Deputy Minister of  
20 Finance.

I need as to these subsequent questions raised by Mr Shivambo, however I wish to confirm that other than what I have indicated above, I have never had any meetings with them to discuss their business funding from the PAC when I was Deputy Minister of Finance or when I was Minister of Finance. Other than what I have stated above on....

MR PAUL PRETORIUS SC: We have dealt briefly with your official position as Chair of PIC, again what period did you... during what period did you occupy the position of chair of The Public Investment Corporation?

MINISTER NM NENE: Well I would like to point out that I became chair of PIC between 2009 to 2014, in my capacity as Deputy Minister, and it was practice that a Deputy Minister is appointed by cabinet as a non-executive director and chair of the board of the PIC. And it is the practice with this role, I was not involved in decision making, except where a specific transaction would have had to be approved by the board.

10 MR PAUL PRETORIUS SC: And that would be as per the Delegation of Authority transactions over a certain value.

MINISTER NM NENE: True.

MR PAUL PRETORIUS SC: Do you ever recall approving a transaction in favour of the Gupta's or a Gupta related entity?

MINISTER NM NENE: No. But I must also just state that all investments approved by the PIC as stated in paragraph 55, are made in terms of an investment mandate and must fit the mandate. Approvals are also done in terms of the board approved Delegations of Authority. And if the transaction had served on the board, I would've not been the one making a decision, if it did, but the collective board.

20 MR PAUL PRETORIUS SC: And in relation to any allegation that might be made that you acted inappropriately with regard to any investments made by the PIC, what is your response?

MINISTER NM NENE: Again, I deny that I've ever acted inappropriately with regard to any investments made by the PIC. I deny any and every allegation also that I

knowingly action to promote any from the PIC, for any business involving my son, as the EFF has also alleged in the social media.

MR PAUL PRETORIUS SC: What was that allegation?

MINISTER NM NENE: The allegation was that my son's old company benefited from the PIC whilst I was chair of the...

MR PAUL PRETORIUS SC: And what do you say about that particular allegation?

MINISTER NM NENE: I indeed do deny any and every allegation that I acted to promote any funding the PIC, for any business involving my son and it is a matter that we are also pursuing with the PIC to obtain any evidence, if there is anything of  
10 that nature.

MR PAUL PRETORIUS SC: And they may be the subject of further....

MINISTER NM NENE: Investigations.

MR PAUL PRETORIUS SC: ...investigations and then...

MINISTER NM NENE: But we are convinced that again, this one is also baseless, but as you correctly pointed out, that these developments will have to be dealt with at the right time.

MR PAUL PRETORIUS SC: You also referred to what you describe as fake WhatsApp messages. What can we understand from those?

MINISTER NM NENE: Absolutely it is in the same WhatsApp message where the  
20 EFF also alleges that my wife received foreign funds into her off-shore account; again I reject with the contempt that it deserves, that fake WhatsApp messages alleging my wife has received any foreign funds in any account belonging to her. She does not have any foreign account and did not receive any funds from any foreign sources.

MR PAUL PRETORIUS SC: Right. You have given general evidence in relation to treasury, its integrity, attacks on its integrity and personnel. In relation to these particulars incidents, were they in your view, simply random attacks on yourself and your integrity, or do you place any more import on them than that?

MINISTER NM NENE: Well whenever I was confronted with making any final decision on any request made to me by anybody, my practice is always to ensure that the department first provides me with advice, and also that I approve requests that are within my legal and statutory powers.

MR PAUL PRETORIUS SC: Yes, we understand that, my question and perhaps it  
10 wasn't clear, do you have any comment to make about the origins of these accusations, why they should be made?

MINISTER NM NENE: I have absolutely no idea where they are coming from, I only just... I find it interesting. What I find interesting is the timing of these allegations and the manner in which they are raised in the social media and not through the appropriate channels, when we know that they are such.

MR PAUL PRETORIUS SC: And in relation to the timing, what is significant?

MINISTER NM NENE: Well the timing was... it was just a few days before my  
20 appearance before the Commission, and I just found it very interesting and strange that immediately, just a few days before my appearance, then they are beginning surface.

MR PAUL PRETORIUS SC: Yes. When the document from the Economic Freedom Front comes before the Commission in due course, certain motives do appear apparent, but let's deal with that in due course.

MINISTER NM NENE: In due course, ja.

MR PAUL PRETORIUS SC: Let me move on then to the nuclear procurement issue and in particular the summit that took place in Russia. And just by way of introduction, I understand that although you have your own views of what happened to you at the hands of the President, and your position as Minister, you wish to describe to the Chair the circumstances which prevailed at the time, and whatever inferences can be drawn from that, maybe done at a later stage.

MINISTER NM NENE: Correct. Chair it is well known that the potential nuclear build program has been contentious and controversial and has been the subject of media reports. Preparations for the implementation of the nuclear build program  
10 began in 2011, with the cabinet approval and subsequent promulgation of the integrated resource plan, the RP2010 which provided for nuclear power to contribute an additional line point 6 gigawatts to the energy mix by 2013, with the first new plant coming online in 2023.

MR PAUL PRETORIUS SC: What was origins of the integrated resource plan, or what are the origins of such a plan, under whose auspices is that plan developed?

MINISTER NM NENE: The plan is intended to map out how government is going to implement its energy resources of the country.

MR PAUL PRETORIUS SC: And who is responsible for the preparation of that plan?

20 MINISTER NM NENE: It is the Department of Energy.

MR PAUL PRETORIUS SC: Then you described the establishment of that particular committee in November 2011, what is that committee?

MINISTER NM NENE: That committee that was established 2011 is the National Nuclear Energy Executive Co-ordinating Committee, which was a political structure that would oversee the nuclear program.

MR PAUL PRETORIUS SC: Was that a standing committee or was it a special purposes committee?

MINISTER NM NENE: It was special purpose committee. At its inception it was chaired by the then Deputy President Kgalema Motlanthe, and later on by former President Zuma who took over the chairing of this committee. In 2014 it was transformed into the Energy Security Cabinet sub-committee, which was lead by the President and included the then Minister of Energy, Mr Ben Martins and other eleven ministers.

10 MR PAUL PRETORIUS SC: Were there sub-committees that were relevant to this exercise?

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

20 MR PAUL PRETORIUS SC: What was the relationship between the Department of Energy and Treasury in relation to the nuclear program, and I ask this question particularly because of what transpired later at a cabinet meeting on the 9<sup>th</sup> December 2015.

MINISTER NM NENE: The two departments were supposed to consult each other especially, with regards to National Treasury's responsibility on the affordability and feasibility of the implementation of the... (intervenes)

MR PAUL PRETORIUS SC: We will say a little more about that in due course, but did the Department of Energy provide Treasury with a feasibility study?

MINISTER NM NENE: Indeed in December 2013 the Department of Energy provided Treasury with a draft feasibility study for the nuclear program... (intervenes)

MR PAUL PRETORIUS SC: Treasury's response?

MINISTER NM NENE: ...and upon review of the Treasury's analysis of the draft feasibility study, it became apparent to me that regardless of the underlining policy rationale, to develop nuclear energy capacity, the costs associated with it, were astronomical. The envisaged 9.6 gigawatt, a nuclear new built program would have constituted the largest public investment program in South Africa's history, and relative to the size of the South African economy, it would have been one of the  
10 largest public sector investments ever undertaken internationally.

MR PAUL PRETORIUS SC: By that you mean undertaken by any other country.

MINISTER NM NENE: Absolutely. The total investment required would have had material consequences for Eskom and the country's foreign and domestic debt, fiscal and financial position, the balance of payment and sovereign balance sheet for decades to come, as well as investment grading, which would have had implications for all South Africans.

MR PAUL PRETORIUS SC: Before you go on Minister Nene, obviously it would be unfair to ask you to give precise figures or amounts, but could you give the chair an idea of the size of the financial investment that would be required in relation to the  
20 budget?

MINISTER NM NENE: Look in the absence of a study, because we spoke earlier here about a feasibility study which was a draft and the costings, taking into account a number of factors and a number of scenarios that the National Treasury started running, but there wasn't a proper funding model also on the table. So we hadn't

arrived at a figure, but we, it's for that reason that we looked at it with the different scenarios.

I remember I just don't have the figures with me but I remember one of them actually where we had said, if we had to breakdown, break it down into sizable chunks where at least 2.4 gigawatts were to be, you know, the initial phase, it would come to... taking into account the exchange rate at that time it would've perhaps come to something like half a billion, no I mean half a trillion, a quarter of a trillion, R250 billion.

MR PAUL PRETORIUS SC: Right. That's just for a phased approach.

10 MINISTER NM NENE: For a phased approach that was just about... (intervenes)

MR PAUL PRETORIUS SC: Would that mean, and I don't want to be superficial here, but that if one tried to cost, in the most general terms, the project as a whole, it might exceed R1 trillion rand.

MINISTER NM NENE: It could have. Given the exchange rate at that time but going forward, but it was one of those that you couldn't conclusively say that was the figure, because it needed more work to be done in order to be able to arrive at a real number.

MR PAUL PRETORIUS SC: But given the size of the cost of the exercise you say that, well it is clear that it couldn't be paid for in cash but what would the  
20 consequences or implications be for the future generations?

MINISTER NM NENE: Well our concern was that the recovery of the nuclear build cost through tariff, through the tariff would have profound consequences for the economy and the South African users of electricity. This plane had become much clearer for me in the face of mounting resistance to the electronic tolling in Gauteng, where the user paid principle was being turned on its head. Construction cost that

had originally been meant to be recovered through tariffs, were being paid for from general tax revenue with deleterious consequences for public policy and fiscal management.

MR PAUL PRETORIUS SC: And you refer to consequences being there for decades.

MINISTER NM NENE: Correct. There would've been large risks associated with the nuclear build program, the level of experience also, if I were to mention that one. It is showed that the large upfront capital investment long construction period and the complexity of nuclear projects, means that nuclear power projects are especially  
10 sensitive to construction risks arising from delays and disruptions, cost overruns and the increases in financing costs.

If these risks materialise, the increased costs are locked into the cost of electricity for the lifetime of the project. Therefore the proposed nuclear program was not only scrutinized by the stakeholders involved, but it was questioned by the public whose funds were going to be used to finance it.

MR PAUL PRETORIUS SC: These implications do they place any burden on Treasury?

MINISTER NM NENE: Indeed which meant that Treasury needed to careful study the feasibility and fiscal affordability of the proposed nuclear project. The funding  
20 model was central to the determination of affordability. In other words, key issues where the fiscal affordability of the funding or guarantees to secure borrowing that would be required to finance the project and the impact on the economy of the electricity tariff required, to repay the debt used to finance the project.

In the light of legal obligations or my position, I would ultimately have to approve on behalf of government, the funding model, based on its viability.

MR PAUL PRETORIUS SC: Just to pause there, we may assume, without leading that the implementation of a project of this size would require substantial borrowings. You mentioned that that would have implications for the fiscus for decades. What would the funding of the project have meant for other government functions and responsibilities?

MINISTER NM NENE: Well it would have implications without a doubt, because when have a major project of this nature, the impact actually does filter to other departments as well, it terms of either crowding out some of the expenditure that otherwise would have gone to other government expenditure.

10 MR PAUL PRETORIUS SC: And as you have testified to the experience of relying on self-funding models has not turned out to be a reliable method of funding.

MINISTER NM NENE: Absolutely, I make an example of the Gauteng freeway improvement project with E-tolls, where there was a revolt and the public not being keen to pay the roads that had already been constructed with major risks to the fiscus.

MR PAUL PRETORIUS SC: Right, and your evidence thus far as I understand it, is that insofar as the project or proposal was in the hands of the Ministry of Energy, the financial funding model had not been adequately or properly investigated.

MINISTER NM NENE: Indeed.

20 MR PAUL PRETORIUS SC: What happened then on the 22<sup>nd</sup> September 2014?

MINISTER NM NENE: Well on the 22<sup>nd</sup> September 2014 we were informed that the minister, the new Minister of Energy, because remember the previous was Minister Ben Martins, Minister of Energy was now Ms Joemat-Pettersson who announced that Russia and South Africa had signed an inter-governmental framework

agreement. This agreement laid the foundation for nuclear build program or procurement.

MR PAUL PRETORIUS SC: And then in June 2015?

MINISTER NM NENE: The minister tabled in parliament, the Minister of Energy, tabled in parliament, five inter-governmental nuclear corporation agreements that had been concluded with a number of countries, the Russian Federation, France and the People's Republic of China, the United States of America and South Korea for approval.

MR PAUL PRETORIUS SC: All right.

- 10 MINISTER NM NENE: These are attached as and annexed NN4, I just want to make sure of the page number. The page 3-2-2, it's 322 through to I think 420.

MR PAUL PRETORIUS SC: We know and I presume you are aware of litigation in respect of these agreements in the Cape Provincial Division.

MINISTER NM NENE: Yes, I do.

MR PAUL PRETORIUS SC: And the result was, I understand that at to an extent, the agreements were set aside.

MINISTER NM NENE: Absolutely.

MR PAUL PRETORIUS SC: Yes. We needn't go into that for the moment, but you refer in paragraph 69 to a cabinet decision, what was that decision?

- 20 MINISTER NM NENE: Cabinet took a decision that amongst others, required the Minister of Energy in consultation with the Minister of Finance and the co-ordinating committee I spoke about of the National Nuclear Energy co-ordinating committee, as a matter of urgency, to present a Memorandum to Cabinet, dealing with the financial implications, proposed funding model, risk mitigation strategies for the nuclear new

build program and the contributions by countries as contained in the inter-governmental agreements.

MR PAUL PRETORIUS SC: We now get to the BRICS ('Brazil, Russia, India, China and South Africa') summit which took place in Russia during July 2015. Would you describe your participation in the summit as you do in paragraph 70?

MINISTER NM NENE: Well shortly after this incident we were supposed to this with the Department of Energy, the annual diplomatic summit of heads of State or governments of the BRICS member States summit was scheduled to take place from the 8<sup>th</sup> to the 9<sup>th</sup> July 2015 in Ufa, Russia. I was a member of the South African  
10 government delegation that attended these meetings.

MR PAUL PRETORIUS SC: Ufa is spelt U-F-A.

MINISTER NM NENE: U-F-A yes.

MR PAUL PRETORIUS SC: Yes.

MINISTER NM NENE: UFA yes. I however first had to start in Moscow, Russian on the 7<sup>th</sup> July where I attended the BRICS finances ministers and central bank governors meeting. And the first meeting of the board of governors of the New Development Bank which is known as the BRICS Bank. Accompanying me in Russia were the Director General of National Treasury, Mr Lungisa Fuzile who returned home after attending all the meetings that took place in Moscow, where the  
20 founding documents of the BRICS Bank were ratified, and the bank was formally established.

I continued to confer with the Deputy Director General Ms Magosha Mapetla Lageta(?) who proceeded with the delegation to Ufa and Mr Malang Gswente(?) who is the Chief of Staff in my office. In Ufa, I together with other

ministers attended a briefing meeting with former President Zuma on the 8<sup>th</sup> July 2015.

The intention was to brief Mr Zuma on the summit and his forthcoming one and one meeting with President Putin of Russia.

MR PAUL PRETORIUS SC: What was the practice in relation to your role at such a summit and the need to brief the President?

MINISTER NM NENE: Well the President has to be briefed on a number of things, including agreements, for instance in this instance I had... we had just concluded the establishment of the bank, all of that information needed to be given to the President  
10 so that President is aware of those things, because the heads of State summit is mainly for heads of State. Our contribution is a supportive role.

MR PAUL PRETORIUS SC: Matters of some importance, I presume?

MINISTER NM NENE: Absolutely.

MR PAUL PRETORIUS SC: Rather than deal with these matters, the former President chose to deal with the issue of nuclear procurement.

MINISTER NM NENE: Indeed President Zuma proceeded to discuss the issue of nuclear procurement in South Africa, in a sense, he wanted to know what progress the Minister Energy as I said, that we were tasked by cabinet to consult and finalise the matter. As to what progress the Minister of Energy and I had made on the  
20 nuclear deal, as cabinet had directed us to prepare a memorandum on among others, the financial implications and funding model of the nuclear program. (Excuse me).

MR PAUL PRETORIUS SC: How did you respond?

MINISTER NM NENE: I indicated to the President that the absence of details regarding the proposed financing of the project made it difficult to make progress

with the memorandum. I was also surprised that the treasury officials were not allowed in the meeting, even though the Director General of the Department of International Relations and Co-operation was... (intervenes)

MR PAUL PRETORIUS SC: What was the tone of the meeting?

MINISTER NM NENE: The tone of the meeting was indeed... I felt very tense and hostile towards me. The President criticised me for not finalising the financial aspects of the proposed nuclear deal with Russia, and he also said he was not happy that I was doing what I supposed to have a long time ago, so that he could have something to present when he meets with his counterpart, President Putin for  
10 their one on one meeting.

MR PAUL PRETORIUS SC: What is your understanding or what was the understanding at that stage of Mr... of the former President's expectations in regard to what he would be discussing regarding to this deal with President Putin?

MINISTER NM NENE: The expectation was that we must have reached some form of... I mean we must have made enough progress so that in his conversation with his counterpart, he is able to present a case.

MR PAUL PRETORIUS SC: All right. And you then refer in the next paragraph to the Minister of Energy, Ms Joemat-Pettersson... (intervenes)

MINISTER NM NENE: Yes the Minister of... the former Minister of Energy Ms  
20 Joemat-Pettersson for her part had a draft letter, a mere one pager, ready for me to consider and sign. In the letter that was addressed to the Russian authorities, I cannot remember the exact detail of the letter, but a recall that it was essentially providing a form of a guarantee to the Russian government on the nuclear program, if the Russian government were to finance it.

Although it was couched in a letter form, I was reluctant to sign as my signature, as I said what my role is in government, would've resulted in a binding financial commitment by the South Africa government.

MR PAUL PRETORIUS SC: All right let's just pause there if we may, for a moment. The financial implications of the project you said, although not yet examined in detail, were enormous, the consequence for the country would've been fast. You have given that evidence.

CHAIRPERSON: Minister please articulate your answers so that the record can... it can be contained in the record.

10 MINISTER NM NENE: Okay.

MR PAUL PRETORIUS SC: The record doesn't pick up a nod.

MINISTER NM NENE: Oh I am sorry [laughter]. Yes, I agree with you, I am sorry.

MR PAUL PRETORIUS SC: Apart from that the cabinet had mandated that there be a... [intervenes]

CHAIRPERSON: Well I am sorry Mr Pretorius, I think the question that you had asked earlier, where he nodded...

MR PAUL PRETORIUS SC: Yes.

CHAIRPERSON: His answer hasn't been captured. Do you want to repeat that? It was about the enormity of the costs, I think it was.

20 MR PAUL PRETORIUS SC: Yes you have given evidence about the financial implications of the implementation of a nuclear procurement program for the country and the vast implications it would have for the country financially, for... as you described it, decades to come. That was the context in which this meeting was taking, am I correct?

MINISTER NM NENE: Correct yes.

MR PAUL PRETORIUS SC: Cabinet has also instructed that there be a financial feasibility study so that the details of these financial implications could be known.

MINISTER NM NENE: That's correct yes.

MR PAUL PRETORIUS SC: Had this work been done by the time you and Ms Joemat-Pettersson were present in this meeting with the former President?

MINISTER NM NENE: It had not been completed, it is for that reason that I say, because there was information that needed to be given to us, that funding model from the Department of Energy, it had not been provided to us as the National Treasury in order to commence with work. The scenarios I spoke about earlier were  
10 just a preliminary feasibility that the National Treasury had conducted.

MR PAUL PRETORIUS SC: How did you understand the letter in relation to financial commitments that it might place on the South African fiscus?

MINISTER NM NENE: It is for that reason also that... I understood the letter to be committing the South African government to future commitments to Russia, if Russia were to build on behalf of South Africa.

MR PAUL PRETORIUS SC: Given your duties, was it possible for you to respond positively to the request to sign that letter?

MINISTER NM NENE: No, it would not have been prudent for me to do so.

MR PAUL PRETORIUS SC: Well would it had been legal for to do so?

20 MINISTER NM NENE: Without following due process, no.

CHAIRPERSON: Did the Minister of Energy as far as you know, appreciate that it was necessary for the feasibility study that say, I think had not been completed, to be completed before such a commitment could be made?

MINISTER NM NENE: I think she did appreciate, but I think she also felt under pressure to conclude... to have the matter concluded and I felt that the letter was not the correct approach also of dealing with matters of this nature.

CHAIRPERSON: And you have said that if you had signed that letter, that would have committed the government of South Africa to... that would have resulted in a commitment with fast, huge financial...

MINISTER NHLANHLA MUSA NENE: I eventually then also felt under pressure to conclude – to have the matter concluded and I felt that the letter was not the correct approach also of dealing with matters of this nature.

- 10 CHAIRPERSON: And you have said that if you had signed that letter that would have committed the government of South Africa to – that would have resulted in a commitment with vast huge financial implications for the country. You say she also would have appreciated that.

MINISTER NHLANHLA MUSA NENE: I expected her to appreciate that.

CHAIRPERSON: Now the pressure that you say that you think she was under also came from whom or from where?

MINISTER NHLANHLA MUSA NENE: The pressure came from, I think for both of us came from the former president, Mr Zuma.

CHAIRPERSON: Thank you.

- 20 ADV PAUL PRETORIUS SC: Right. What was your response to Minister Joemat-Pettersson when requested to sign this letter?

MINISTER NHLANHLA MUSA NENE: My response was that I would not append my signature but if she wants to sign the letter she must go ahead but purely, I mean, alone and I cautioned that whatever she ultimately signs should not have any financial commitments.

CHAIRPERSON: Let me just follow up on the questions I asked earlier. As at that time were you satisfied that the president himself appreciated the financial implications for the country if that commitment was made?

MINISTER NHLANHLA MUSA NENE: I do not think the president appreciated the actual financial implications because nothing had been presented but I felt that maybe the issues of financial implications were secondary to him rather than in agreement.

CHAIRPERSON: Yes. But would he – would you know whether he appreciated the legal requirements which I think you have talked about in terms of process that  
10 needed to be complied with before such commitments could be made or is that something you are not sure about?

MINISTER NHLANHLA MUSA NENE: I cannot be sure about it. I cannot be sure about it at this point.

CHAIRPERSON: Thank you.

ADV PAUL PRETORIUS SC: Right. According to your statement Ms Joemat-Pettersson responded to you and to your refusal to sign the relevant document. What was her comment about the involvement of the Ministry of Finance?

MINISTER NHLANHLA MUSA NENE: Well, she insisted that it had to be a joint  
20 decision of both the Ministers of Energy and Finance. Well, and I – she was not satisfied with my response but agreed to revise the letter because I said she must revise the letter so that it is purely a letter from the Department of Energy which only deals as the other agreements might have been signed which had nothing to do with the financial implications.

ADV PAUL PRETORIUS SC: And would not have financial commitments as you say?

MINISTER NHLANHLA MUSA NENE: Yes. Yes.

ADV PAUL PRETORIUS SC: What happened after that meeting?

MINISTER NHLANHLA MUSA NENE: Well, I took a break with the officials that I was travelling with and briefed them on the meeting and my refusal to sign the letter presented to me by the Minister of Energy and after that if I may proceed?

ADV PAUL PRETORIUS SC: Yes, please.

MINISTER NHLANHLA MUSA NENE: And after that, about an hour later the  
10 Minister of Energy brought a revised letter to me and I, after reading it I recall concluding that the fiscal and financial implications still remained. I rejected the letter again and she ... [intervenues]

ADV PAUL PRETORIUS SC: What was her response?

MINISTER NHLANHLA MUSA NENE: Pardon?

ADV PAUL PRETORIUS SC: What was her response to your rejection of the letter?

MINISTER NHLANHLA MUSA NENE: Well, she was concerned about what she is  
now going to present to the president and I then – because given my refusal to sign I told her that I do not know what she should say but I would not sign without seeing and approving the funding model as duly required by Cabinet and without the  
20 necessary process being followed for such a big project. She left and I was not presented with any further version of the letter.

ADV PAUL PRETORIUS SC: Given your interactions with Minister Joemat-Pettersson at that stage what was your impression of any anxiety that she may have had or any pressure that she might have felt in relation to having to report back your refusal to the former president?

MINISTER NHLANHLA MUSA NENE: I could see she really wanted to give a positive response to the president but it was unfortunate that if that response would be carrying financial implications I was not in a position to assist her.

ADV PAUL PRETORIUS SC: Right. What were the consequences then of your refusal to sign that letter and the revised letter?

MINISTER NHLANHLA MUSA NENE: Well, as a result of my refusal to sign the letter I was – it was clear that I was seen as a person standing in the way of this nuclear deal. I was accused of insubordination, not only by the president but by some of my colleagues.

10 ADV PAUL PRETORIUS SC: Were those words directly used?

MINISTER NHLANHLA MUSA NENE: Pardon?

ADV PAUL PRETORIUS SC: The word insubordination, was that a direct word or ... [intervenes]

MINISTER NHLANHLA MUSA NENE: Not directly but it was inferred.

ADV PAUL PRETORIUS SC: Words to that effect?

MINISTER NHLANHLA MUSA NENE: Yes.

ADV PAUL PRETORIUS SC: Yes.

MINISTER NHLANHLA MUSA NENE: And I recall that the attitude of some of my colleagues also, particularly the Minister of International Relations, Minister Maite  
20 Nkoana-Mashabane, and the Minister of State Security, Minister David Mahlobo whose attitude was very hostile and they actually wanted me to sign and felt that it was not right that the issues on the nuclear deal had not been finalised.

ADV PAUL PRETORIUS SC: What was your response to them in turn or what was your attitude to their attitude?

MINISTER NHLANHLA MUSA NENE: Look, I stood my ground because I knew it

was correct for me not to append my signature if the due processes had not been followed.

CHAIRPERSON: Sorry, Minister, if you go back to paragraph 76 with regard to the reference to insubordination, so would it be more accurate to read that sentence which is the second sentence of paragraph 76, to read it to say I was accused of, in effect, insubordination because as I understand it they did not use the word insubordination but that is what you inferred?

MINISTER NHLANHLA MUSA NENE: Correct. I would accept that, yes, Chair.

CHAIRPERSON: Okay. Thank you.

10 ADV PAUL PRETORIUS SC: You were dealing with the statement at paragraph 77, Minister Nene, in relation to your own attitude to the response of your colleagues or at least certain of your colleagues.

MINISTER NHLANHLA MUSA NENE: Yes, I think my colleagues with respect failed to understand the implications of my signature on the document, that is concurrence in my capacity as Minister of Finance to commitments which would have been binding on the South African government and as the Minister of Finance I was responsible for ensuring the secure, accountable, transparent, sound, effective and efficient management of the country's public finances, sovereign debt and the economy at large. Section 66 of the Public Finance Management Act provides that  
20 only the Minister of Finance as I have said earlier may enter into a transaction that binds or may bind the national revenue fund, that is the fiscus, to any future financial commitment.

ADV PAUL PRETORIUS SC: Just to pause a moment there. There are two ways of perceiving these facts. The one is in relation to what was known to you at the time. Given your knowledge at the time what is your view of the responsibility, legality,

wisdom of committing the South African government to the nuclear project at that time?

MINISTER NHLANHLA MUSA NENE: Look, we had publicly said that as it forms part of the energy mix and if we proceed with it, it must be done at a pace and cost that would be affordable to the country.

ADV PAUL PRETORIUS SC: Right.

MINISTER NHLANHLA MUSA NENE: That was our clear line ... [intervenes]

ADV PAUL PRETORIUS SC: But was that your position at the time? Was – were you in a position to make such a decision at the time?

10 MINISTER NHLANHLA MUSA NENE: Not with –without the information that would assist us to make up.

ADV PAUL PRETORIUS SC: And with hindsight, with what knowledge one has now of the size and implications of such a deal what would your comment be about the wisdom of having committed the government to such a project at that stage?

MINISTER NHLANHLA MUSA NENE: I still believe it would not have been a wise idea. It would not have been prudent.

ADV PAUL PRETORIUS SC: Right.

CHAIRPERSON: May I just go back and take you back again to that paragraph 76? It is something quite important in the context of the fact that you were subsequently  
20 removed from the position of minister that you were accused in effect of insubordination and you say not only by the president but by some of your colleagues as well. Now do you recall what the president may have said? What words or tone he may have used that made you take the view that he was in effect accusing you of insubordination?

MINISTER NHLANHLA MUSA NENE: He was obviously very upset and he felt it

was unacceptable that, you know, Cabinet had given instructions, this has not been carried out and I have not done what I was supposed to do even though I had given my reason for being unable to do that because of the unavailability of the relevant information that would assist me and the department in making that decision.

CHAIRPERSON: And was he at the Cabinet meeting which said that a feasibility study must be done first as I understand the – your evidence or you must tell me if I misunderstand it. My understanding is that Cabinet had said a feasibility study must be done first. Was he part of that meeting?

MINISTER NHLANHLA MUSA NENE: I believe so but I cannot be sure. I mean the  
10 president at times would miss some of the Cabinet meetings and would be chaired by... So at that particular meeting I cannot be certain.

CHAIRPERSON: Yes.

MINISTER NHLANHLA MUSA NENE: But I think it can be verified.

CHAIRPERSON: Yes, but if he was part, it would be – he would have been... If he was part of that meeting and was aware or was not part but was aware of what Cabinet had decided but nevertheless wanted you to do something that was contrary to a Cabinet decision, namely let us have a feasibility study first, then it would have been quite strange or not that he would want that something be done contrary to what Cabinet has said or would it not really be? Or what would you ... [intervenes]

20 MINISTER NHLANHLA MUSA NENE: I think there was a lack of appreciation of the time between that Cabinet decision and the meeting we were having to expect that it must have been concluded by the time we were in Russia, but also the absence of the relevant information to the treasury because if the matter had to be concluded with the urgency that the Cabinet had signalled, that information was supposed to be made available to the National Treasury in order for National Treasury to be able...

But it had not been done.

CHAIRPERSON: I mean for me part of the relevance of whether he had that knowledge or not is that it seems that with regard to some of the allegations of State capture there seems to be allegations that procedures were sought to be deliberately breached or not followed in order to achieve certain objectives and I am trying to see whether this may have anything of that, but you say you do not – you cannot be sure whether the president himself was or was not at the meeting which made that decision?

MINISTER NHLANHLA MUSA NENE: Yes. My reading was that there was just lack  
10 of appreciation of ... [intervenes]

CHAIRPERSON: Yes.

MINISTER NHLANHLA MUSA NENE: Whether that could have been concluded between that – the Cabinet meeting and the meeting that we were having.

CHAIRPERSON: Yes. Now you also say that it was not just him but also some of your colleagues in effect accused you of insubordination. Would you remember whether these would be, or some of them at least would be colleagues who had been party to this Cabinet decision but nevertheless who saw you as being insubordinate for insisting on compliance with what Cabinet had said before a decision could be made?

20 MINISTER NHLANHLA MUSA NENE: Those ministers might – must have probably been part of that decision themselves, yes.

CHAIRPERSON: Yes.

MINISTER NHLANHLA MUSA NENE: Yes, but again like I was saying  
... [intervenes]

CHAIRPERSON: Yes.

MINISTER NHLANHLA MUSA NENE: I am saying, Deputy Chief Justice, was that what I found strange was the lack of appreciation of the work that needed to be done and the fact that it was almost like it is only the Minister of Finance who has not discharged his responsibility and yet the relevant information that was supposed to come from the Department of Energy had not come forth.

CHAIRPERSON: Yes.

MINISTER NHLANHLA MUSA NENE: But the Department of Energy was not under the same attack and pressure to provide such.

CHAIRPERSON: Yes.

- 10 MINISTER NHLANHLA MUSA NENE: It was almost like it is only National Treasury or the Minister of Finance that is standing in the way.

CHAIRPERSON: Yes, well, that might be interesting in the context of part of the evidence that this commission had from Mr Jonas, namely that during a certain period there seemed to be a certain level of hostility in Cabinet towards Treasury.

MINISTER NHLANHLA MUSA NENE: That is true.

CHAIRPERSON: And is that something you are able to confirm?

MINISTER NHLANHLA MUSA NENE: That is very true, Chair.

- CHAIRPERSON: Yes. And what you have just told us, namely a different attitude towards Treasury and a different attitude towards the Department of Energy, could it  
20 have been part of that hostility?

MINISTER NHLANHLA MUSA NENE: That is correct.

CHAIRPERSON: Okay. Thank you.

ADV PAUL PRETORIUS SC: Okay, right. Minister Nene, at paragraph 77 you were explaining to the chair your response to the attitude of those of your colleagues who felt that you should have progressed the nuclear deal. Would you just deal with the

response that you had to your colleagues and their understanding of the implications of what you had been requested to do by the president?

MINISTER NHLANHLA MUSA NENE: Well, I tried to explain exactly but my refusal was not sign of, you know, being arrogant or refusal to do what one is supposed to do but bound by the legislation but also with my – with the understanding of what the implications might be I am not in a position to do that.

ADV PAUL PRETORIUS SC: What were your responsibilities as Minister of Finance in such a situation?

MINISTER NHLANHLA MUSA NENE: As I said earlier it was responsible for  
10 ensuring that there is secure, accountable, transparent, sound and effective and efficient management of the country's public finances, sovereign debt and the economy.

ADV PAUL PRETORIUS SC: Right.

MINISTER NHLANHLA MUSA NENE: And in terms of the PFMA which provides that it is the Minister of Finance so I would have taken responsibility if I had appended my signature.

ADV PAUL PRETORIUS SC: Right. Did you address the former president directly in relation to your understanding that you were required to sign that letter?

MINISTER NHLANHLA MUSA NENE: I did tell the president in the meeting that I  
20 could not sign the letter without having first interrogated the financial and fiscal implications and the proposed funding model which was in line with my statutory mandate as well as the recent Cabinet decision of ensuring sound management not only of government's finances but also those of the institutions governed by the Public Finance Management Act.

ADV PAUL PRETORIUS SC: Did you get the impression in that meeting that the

former president understood or accepted that you had these responsibilities?

MINISTER NHLANHLA MUSA NENE: Look, it was a very tense meeting. It ended with us just being instructed with the minister to go and find a solution which we did not find.

CHAIRPERSON: But what did he say in response to you telling him I have statutory obligations. I cannot do this until certain things have been done. Assuming he might not have known before you told him that you were acting in the manner in which you were acting because of legal obligations, now you had told him did his attitude change in any way towards your conduct?

10 MINISTER NHLANHLA MUSA NENE: Look, the manner in which the meeting was concluded meant that the two of us, Minister of Energy and myself just needed to go out and find a solution so that the president is fully appraised of what response to give to his counterpart. I would say that the meeting actually ended in an impasse where it was just said you go and find a solution to the matter.

CHAIRPERSON: Thank you.

ADV PAUL PRETORIUS SC: You refer in paragraph 79 to certain discussions that you had with your counterpart in the Russian ministry. Would you tell the Chair about that exchange please?

20 MINISTER NHLANHLA MUSA NENE: Indeed. Whilst still in Offa[?] I asked my counterpart, the Russian Finance Minister, Mr Siluanov and his deputy, Mr Sergei Shatalov, whether they were aware of this nuclear deal and what exactly our countries were talking about. The deputy minister who speaks English because the minister does not speak good English, you have to speak through the interpreter, is the one who responded that although they had heard of such discussions they had no real idea what it was about and were not involved in the discussions. This

surprised me because if I were to sign anything that had financial commitments from the Russian government I would have expected my counterparts not only to be aware but to play a role.

ADV PAUL PRETORIUS SC: Had you had any warning from the Ministry of Energy or from the presidency that you would be requested to sign this letter at the BRICS summit in Russia?

MINISTER NHLANHLA MUSA NENE: No, I had not been forewarned.

ADV PAUL PRETORIUS SC: And it is clear that from your evidence at least that your Russian counterparts were very much in the same position.

10 MINISTER NHLANHLA MUSA NENE: Indeed.

ADV PAUL PRETORIUS SC: The co-operation agreements that you referred to earlier, they were tabled in Parliament I understand.

MINISTER NHLANHLA MUSA NENE: Correct.

ADV PAUL PRETORIUS SC: And you refer to parliamentary questions that were asked as a result. Would you tell the chair about those?

20 MINISTER NHLANHLA MUSA NENE: Well, we were repeatedly asked through parliamentary questions and the media whether the treasury was consulted on the financing options for the nuclear build program and its fiscal and financial feasibility prior to these agreements being concluded. Generally I responded to such questions by indicating that nuclear would be a substantial financial commitment and that government was undertaking a careful and thorough analysis of financing options and considering the costs, benefits and risks of building additional nuclear power stations to ensure the affordability and long-term sustainability of the fiscus and financial soundness of the State-owned entity which was tasked with undertaking such a program.

ADV PAUL PRETORIUS SC: All right. You say in the next paragraph that you knew from Mr Zuma's treatment as you refer to him of you in Russia that he was very unhappy with your refusal to sign the draft letter. Is that perhaps an understatement?

MINISTER NHLANHLA MUSA NENE: It is correct. It was also confirmed to me in a conversation with the Deputy Minister of Finance, Mr Mcebisi Jonas, after my return from Russia. I received a call from him about two weeks after returning from Russia and I remember that it was the day of an ANC Lekgotla held towards the end of July 2015. He told me that he had been called to a meeting with Mr Zuma in which Mr  
10 Zuma expressed dissatisfaction with me, particularly the stance I took on the nuclear procurement process in Offa and my refusal to sign the draft letter presented by Ms Joemat-Pettersson. This confirmed what I already knew.

ADV PAUL PRETORIUS SC: What did you do thereafter?

CHAIRPERSON: I am sorry, Mr Pretorius. Minister, you might not have picked this up or you may have picked it up, I just want to make sure you understood. Mr Pretorius' question that you have just responded to was whether what you say in the first sentence of paragraph 81 is an understatement. You responded by saying this was confirmed or yes, this was confirmed. I know that you were reading from the second sentence of the paragraph.

20 MINISTER NHLANHLA MUSA NENE: Yes.

CHAIRPERSON: But I do not know whether you meant to confirm that first sentence is an understatement or not.

MINISTER NHLANHLA MUSA NENE: Well, an understatement in that it is just unhappiness which could be more than unhappiness and I ... [intervenes]

CHAIRPERSON: Okay, okay, no, I just wanted to make sure that you are alert to

what the question was.

MINISTER NHLANHLA MUSA NENE: I am, I am.

CHAIRPERSON: So it is an understatement, you say?

MINISTER NHLANHLA MUSA NENE: It definitely is.

CHAIRPERSON: Okay, thank you.

ADV PAUL PRETORIUS SC: Well, let us... Perhaps I was being unfair to you, Minister Nene. What was the degree of the president's – the former president's dissatisfaction or unhappiness as you put it?

MINISTER NHLANHLA MUSA NENE: I think it was more than unhappiness because  
10 as I am saying that when you say unhappy with my refusal to sign the draft letter but when – what was confirmed to me by the conversation that he had was just to show that it was... I do not know, perhaps it is just a degree of unhappiness that ... [intervenes]

CHAIRPERSON: Was it anger?

MINISTER NHLANHLA MUSA NENE: I think so.

ADV PAUL PRETORIUS SC: Thank you, Chair. You may ask leading questions without permission. In terms of the Rules I cannot. Minister Nene, on your return to South Africa what did you do with your fellow Treasury officials in relation to the nuclear deal?

20 MINISTER NHLANHLA MUSA NENE: Well, I convened the Director-General and their team of relevant senior officials at Treasury and instructed them to establish a joint task team with officials because the last thing you want to do is to upset your boss and not do anything to remedy that. We put together a team and instructed them to establish this joint task team with officials from the Department of Energy. The joint task team was then to be responsible for undertaking the required detailed

technical work and preparing a technical report for submission to Cabinet on the financial implications, funding model and risk and mitigating strategies related to the proposed 9.6 gigawatts nuclear new build program as had been instructed by Cabinet.

ADV PAUL PRETORIUS SC: I see I am told that it is almost 13:00. The next topic will take more than a few minutes and may we therefore adjourn?

CHAIRPERSON: We will take the lunch adjournment and we shall resume at 14:00.

HEARING ADJOURNS

HEARING RESUMES

10 CHAIRPERSON: Yes Mr Pretorius.

ADV PAUL PRETORIUS SC: Thank you Chair. Mr Nene you were at paragraph 82 of your statement and you were dealing with the establishment a joint task team. That task team as I understand it included representatives from Treasury and Energy.

MINISTER NHLANHLA MUSA NENE: That is correct.

ADV PAUL PRETORIUS SC: What were to be its responsibilities?

MINISTER NHLANHLA MUSA NENE: I was set to carry out cabinet's instruction of undertaking the required detailed technical and preparing a technical report for submission to cabinet on the financial implications, funding model and risk and  
20 mitigation strategies related to the proposed 9.6 gig watts Nuclear Belt Program.

ADV PAUL PRETORIUS SC: Did you receive a preliminary report in September 2015?

MINISTER NHLANHLA MUSA NENE: Indeed in September 2015 the team provided me with a preliminary report on the fiscal and financial implications, funding models and risk mitigation for the Nuclear Belt Program. The report set out the key

considerations in respect of the program, funding models and key risks, modelling of the fiscal implications and conclusions and recommendations. In a sense the conclusions was that even under optimistic assumptions regarding the cost of the program, that did not allow for the sort of significant costs of Rands seen on the Medupi and Kusile Projects and moderate economic growth assumptions of 2 – 3%. The government debt levels would grow exponentially . This would be absolutely fiscally unsustainable.

ADV PAUL PRETORIUS SC: And is your view co-incident with that in the last sentence that this project was fiscally unsustainable?

10 MINISTER NHLANHLA MUSA NENE: Indeed.

ADV PAUL PRETORIUS SC: What were the recommendations that the Treasury team made to moderate risk, bearing in mind of course that this project had in principle been approved.

MINISTER NHLANHLA MUSA NENE: When as means of moderating the risks the Treasury team recommended spreading the construction over a longer period, period of time. Maintaining flexibility by not entering into any legally binding commitments beyond two units of nuclear power, nuclear power stations up front and making a stop-go decisions based on an assessment of the progress in implementation. The economic environment – take into account the progress of an implementation, the  
20 economic environment, fiscal position and affordability.

ADV PAUL PRETORIUS SC: What are a stop-go decision?

MINISTER NHLANHLA MUSA NENE: I beg your pardon?

ADV PAUL PRETORIUS SC: What are stop-go decisions.

MINISTER NHLANHLA MUSA NENE: Well making sure that we evaluate as we move on with the implementation and proceed... [intervenes]

ADV PAUL PRETORIUS SC: Project can stop at any time.

MINISTER NHLANHLA MUSA NENE: Yes and which means you actually structure it such that you are able, if it is in phases, if you are, that you are able to stop at a particular time when it proves to be unsustainable beyond that point.

ADV PAUL PRETORIUS SC: Right. What did you learn about discussions between the officials of the two departments, namely Treasury and Energy.

MINISTER NHLANHLA MUSA NENE: Well I was advised that this approach was discussed was discussed between the officials of the Treasury the Department of Energy and that whilst the latter were originally determined to motivate for the  
10 purchase of 9.6 gig watts. They were ultimately persuaded to accept the phased procurement.

ADV PAUL PRETORIUS SC: Did you receive further advice?

MINISTER NHLANHLA MUSA NENE: Indeed also advised that even when there were changes, at the ...[indistinct] DG at the Energy. The Treasury DG and his colleagues took time to explain to each succeeding DG the rationale behind phased procurement.

ADV PAUL PRETORIUS SC: Did the Treasury team make a recommendation for a feasibility study.

MINISTER NHLANHLA MUSA NENE: The Treasury team recommended the  
20 provision of R200 Million for a feasibility study for preparatory work that would allow for a more thorough consideration of the costs, risks and benefits.

ADV PAUL PRETORIUS SC: What happened on 8 December 2015?

MINISTER NHLANHLA MUSA NENE: On this day, 8 December 2015, former president Mr Zuma met with all the cabinet members whose portfolios were relevant to the nuclear deal. We met at the Presidential Guest House, Mahlambandlovu

known as Sefako Machado in Pretoria. The meeting was initially scheduled for 3 O'clock 15:00, but I was later advised that the meeting would take an hour later. When I arrived at the venue just before 16:00 I discovered that the consultation had – some consultation had taken place, between Mr Zuma and my cabinet colleagues including State Security Minister David Mahlobo, International Relations Minister Maite Nkoane-Mashabane, Public Enterprises Minister Lynn Brown and Energy Minister Tina Joemat-Petterson. To my exclusion and my team from the Treasury.

ADV PAUL PRETORIUS SC: You have explained the role of Treasury in the consideration of the nuclear project and its implementation. Was any explanation  
10 given to you for your exclusion from this initial consultation?

MINISTER NHLANHLA MUSA NENE: I did not inquire because as I walked in that is when we were moving into the formal meeting.

ADV PAUL PRETORIUS SC: Right. So, any explanation in your own mind?

MINISTER NHLANHLA MUSA NENE: I just found it strange that it happened and I thought out exclusion just continued to demonstrate that we were not viewed as a willing partner in the process.

ADV PAUL PRETORIUS SC: Was this a pattern?

MINISTER NHLANHLA MUSA NENE: Pardon?

ADV PAUL PRETORIUS SC: Was this a continuing pattern, the exclusion

20 MINISTER NHLANHLA MUSA NENE: Indeed.

CHAIRPERSON: Was it the exclusion of Treasury that was a pattern or was it an attitude towards Treasury that was a pattern.

MINISTER NHLANHLA MUSA NENE: I think it was both, because as you would recall that at times it would be just – and you would see also even in the subsequent meeting the Treasury official having been left out with the Minister have to ask for

them to be included, but so in addition to the attitude the exclusion also seem to and even when we were tabling, I am sure we will come to that in a while also. Where it came to the tabling or presentation the Department Finance made, having worked together with Treasury but the presentation excluding what might have – what had come from the treasury team in order to enrich the process.

CHAIRPERSON: And in any event maybe the exclusion was a manifestation of the attitude.

MINISTER NHLANHLA MUSA NENE: Correct.

CHAIRPERSON: Okay.

- 10 ADV PAUL PRETORIUS SC: Minister Nene I am asked by a member of the legal team to ask you whether or not the amount of R200 Million for a feasibility study is not excessive.

MINISTER NHLANHLA MUSA NENE: ...[no audible response]

ADV PAUL PRETORIUS SC: Is that not a lot of money for a feasibility study.

- MINISTER NHLANHLA MUSA NENE: Well at – I think it is a figure that the officials arrived at after careful consideration. I would not say it is excessive, but considering the magnitude and the size of the project, perhaps, but it does not mean that the amount I think been allocated, it means all of it has to be spent, but what that was a signalling from the Treasury side that we want to assist the process, because the  
20 process is going to give us an outcome that says proceed or not proceed..

ADV PAUL PRETORIUS SC: Thank you for that. Did you attend the meeting then at 4 O'clock in the afternoon.

MINISTER NHLANHLA MUSA NENE: Indeed I attended that meeting.

ADV PAUL PRETORIUS SC: Were you accompanied by treasury officials

MINISTER NHLANHLA MUSA NENE: Accompanied by the Director General Mr Lungisa Fuzile, the DG Michael Sacks and the DG Don Dimchajani.

ADV PAUL PRETORIUS SC: At that meeting was anything mentioned about the prior consultation.

MINISTER NHLANHLA MUSA NENE: Nothing... [intervenes]

ADV PAUL PRETORIUS SC: Of what you have told the Chair.

MINISTER NHLANHLA MUSA NENE: Nothing was mentioned about the prior consultation. We just proceeded together in the boardroom for the Nuclear Committee Meeting which I had originally been requested to attend and nothing  
10 about the prior consultation. Initially I entered the meeting without my officials as it was a ministerial meeting, but when I noticed that the Minister of Energy had included officials from the Department of Energy I requested, as I earlier indicated to the question by the Deputy Chief Justice, I requested that treasury officials to participate in the meeting.

ADV PAUL PRETORIUS SC: And did they?

MINISTER NHLANHLA MUSA NENE: Indeed they were allowed – they were asked to come in.

ADV PAUL PRETORIUS SC: What happened at the meeting?

MINISTER NHLANHLA MUSA NENE: Well the officials who were present from the  
20 Department of Energy presented the proposed nuclear program to the president and the ministers in the room – presentation did not reflect the input from Treasury regarding the concerns with the feasibility of the program and the possible scaled approach, instead the energy officials presented their procurement based on the production of the entire 9.6 giga watt of Nuclear Energy. The department's assumptions were extremely optimistic, with respect to the assumed construction

cost and exchange rates implications resulting in a much lower cost for the program than was realistic, in addition there was no consideration for the fiscal implications on a different economic scenarios.

ADV PAUL PRETORIUS SC: Can you give some examples?

MINISTER NHLANHLA MUSA NENE: We on the presentation for instance assumed an exchange rate of R10,00 to the Dollar whereas the exchange assumed by the National Treasury was about 12, was between R12,00 and R14,00 to the Dollar, in fact on that day the exchange rate was R14,57 to the Dollar. So ja, put simply failing to show the Committee a scenario depicting the rate at which the Rand was, it was  
10 exchanged for the Dollar meant that the Committee was presented with 40% understatement of the cost of nuclear. So if the price, for instance of 9.6 gigawatts was 100 Billion US\$ the understatement was going to be 40 Billion US\$. This was truly and that was about R560 Billion. This was a truly gross material understatement of the project – while it could have been possible to argue that the Rand could regain its strength, it is instructive that the Rand is trading at around R14,00 as we speak, this week.

ADV PAUL PRETORIUS SC: After the presentation did you have an exchange with the former president?

MINISTER NHLANHLA MUSA NENE: The former president asked me if I had  
20 anything to say in response.

ADV PAUL PRETORIUS SC: This was in the meeting... [indistinct]

MINISTER NHLANHLA MUSA NENE: In the meeting. Yes. I pointed out that the concerns of Treasury were not included in the presentation, in particular I noted that the assumption in relation to the exchange rate were optimistic and that there were still no funding model accompanying the presentation. I did not really think that there

was any point in saying more and resisting any further. I suggested that the officials from the Department of Energy and Treasury finalise the presentation for the cabinet meeting the next day and I further then requested my Director General, at the time, Mr Lungisa Fuzile to give his input. He expressed serious concerns at length regarding the cost implications of the proposal and the failure by the Department of Energy to phase the construction over the longer period of time.

ADV PAUL PRETORIUS SC: Far be it for me Minister Nene to accuse you of understatement again. When you say you did not really think that there was any point in saying more and resisting any further what were your actual considerations  
10 at that time?

MINISTER NHLANHLA MUSA NENE: Look I did – I had reached the point where I had done everything humanly possible to, you know express our views on the matter, but seeing that it continues to be either undermined, excluded and not being part. I thought there was just no point in continuing to raise the issues.

ADV PAUL PRETORIUS SC: How did the meeting concurred... [intervenes]

CHAIRPERSON: I am sorry Mr Pretorius. I just want to understand more what your attitude was at that stage. Do you mean that you may have reached a point where, as far as you are concerned, the relevant people were not going to listen to reason.

MINISTER NHLANHLA MUSA NENE: There was enough evidence of that, because  
20 it was clear that, I mean for instance after so much work that had gone into it, with our officials to come to a meeting and allow the officials of one department to present their views to the complete exclusion of the views of the National Treasury team and also I mean that is why I actually just stated the obvious with regards to the exchange rate assumptions and also the absence of the funding model, but beyond a that I thought I had expended all my fighting power.

ADV PAUL PRETORIUS SC: Thank you. How did the meeting conclude, minister?

MINISTER NHLANHLA MUSA NENE: It concluded with the decision to proceed with the nuclear program and proposal for the – by the Department of Energy despite the contrary views of the Treasury. In fact the president made an off the cuff remark that Treasury would not do to ask what you did with Petro SA.

ADV PAUL PRETORIUS SC: ...[indistinct] those he is speaking when he said what you did with Petro SA.

MINISTER NHLANHLA MUSA NENE: Well I think with the Petro SA deal also we were perhaps – it is a deal that I referred to earlier. I think the National Treasury was  
10 seen also as having not been co-operative and as a result that deal could not proceed.

ADV PAUL PRETORIUS SC: So he was referring to Treasury.

MINISTER NHLANHLA MUSA NENE: Correct.

CHAIRPERSON: So, as at that point when you felt like the relevant people would not listen to reason – they were not prepared to listen to reason. Would I be right to think that you basically had put up all the arguments that you thought should persuade everybody that Treasury should be given a chance to do what they needed to do before final decisions were taken.

MINISTER NHLANHLA MUSA NENE: That is correct, Chief Justice.

20 ADV PAUL PRETORIUS SC: What happened after the meeting that night. That is the meeting with the president.

MINISTER NHLANHLA MUSA NENE: Well that night we – after the meeting with the president was concluded my officials and I proceeded to Sheraton Hotel for coffee. We were all astounded at what had transpired at the meeting given the magnitude of the Nuclear Belt program – the proposed Nuclear Belt program with the

eclipse even the strategic procurement package which the commonly known as the Arms Deal in terms of its financial implications. So, we – if we reflect on that one we thought that it was initiated before even the Public Finance Management Act came into effect. Yet even without its prescripts the National Treasury played a central role in developing affordability. Reports advising the cabinet on economic, fiscal and financial impact and risks of the procurement and monitoring and evaluating the budgetary implications of the envisaged procurement package. The officials from National Treasury, in that possess served and played a meaningful role in several committees that were to advise cabinet on the feasibility Arms Procurement, including the finance negotiating working group which assisted in negotiating foreign exchange, loan agreements with foreign bank and in negotiation financial aspects of the procurement with the suppliers and supplier related parties and the financing evaluation team which amongst others was to conduct a fiscal analysis of their affordability and budget impact of the proposals. Several key reports were produced with the assistance of the finance officials, including the availability of funding report, which was adopted by the Minister of Finance on 30 June 1998. The reports were presented to cabinet and once the acquisition process began the cabinet appointed a Ministerial Committee which included the Minister of Finance to lead the process with the view to achieving affordable agreements with the suppliers.

10

20 ADV PAUL PRETORIUS SC: I ask you to pause there, Mr Nene. Prior to the cabinet decision of 9 December 2015 which you were going to talk about in a moment, I understand, had any availability of funding report of whatever nature being presented to cabinet.

MINISTER NHLANHLA MUSA NENE: It had not been, even though as I indicated earlier, that the National Treasury had developed this preliminary report that had to

serve before the committee but was not taken into account moving forward. It was...

[indistinct]

ADV PAUL PRETORIUS SC: And that was the phased approach as I understand it.

MINISTER NHLANHLA MUSA NENE: Correct.

ADV PAUL PRETORIUS SC: But in the absence of a phased approach and if that proposal was rejected and the whole project was implemented with immediate effect.

Do you know what Treasury would have said about the availability of funding.

MINISTER NHLANHLA MUSA NENE: Look it was – it was definitely going to be unaffordable and as I would say that the numbers that were up as a different  
10 scenarios would have meant all most the entire budget of that particular ...[indistinct]being committed but O, an increase in the borrowing requirement of government that would have taken us to completely unsustainable levels and yet government has got so many other imperative to address including dealing with the needs of the poor in our country.

ADV PAUL PRETORIUS SC: In paragraph 97 of your statement you summarise the historical functions of Treasury in procurement processes of this nature and size.

Do you want to comment?

MINISTER NHLANHLA MUSA NENE: Well National Treasury in that instance played an integral role on the financial aspects of the Arms Procurement Process including  
20 warning of the financial and fiscal risks and defining the most appropriate way of financing the procurement of the defence packages. The details of the role of the National Treasury was fully set out before the Commission, the Seriti Commission, and it is not necessary for me to go into that or expand on that here. I simply wish to point out that in relation to the Arms Deal ...[indistinct] procurement process was conducted with the support of cabinet, since then our laws have even been revised

to require even regard in both the procurement process and in the management of public finances. Yet despite the nuclear procurement process being multiple times the cost of the Arms Deal this regard was not observed.

ADV PAUL PRETORIUS SC: Right whilst you were at the Sheraton Hotel did you see a report in the media?

MINISTER NHLANHLA MUSA NENE: Well the report that we saw in the media was a report that was saying that I would be fired and Mr Des van Rooyen would replace me. Again I did not pay much regard to that – to the reports. We annex the printed newspaper report the following morning as and 5... [intervenes]

10 ADV PAUL PRETORIUS SC: That is at page 420.

MINISTER NHLANHLA MUSA NENE: Correct.

ADV PAUL PRETORIUS SC: It is in very small print.

MINISTER NHLANHLA MUSA NENE: Yes.

ADV PAUL PRETORIUS SC: But to be brief it says more or less what you say it says.

MINISTER NHLANHLA MUSA NENE: Yes.

ADV PAUL PRETORIUS SC: Were you surprised at this report?

MINISTER NHLANHLA MUSA NENE: Not really, but I had again reached the point of indifference when you see some of those things and you know – you know where  
20 you almost – you almost know where you are heading, you shrug your shoulders.

ADV PAUL PRETORIUS SC: What happened the next morning. Did you meet with the president.

MINISTER NHLANHLA MUSA NENE: Well the next morning we had to brief the president inform him of the documents that would be tabled at the cabinet meeting.

ADV PAUL PRETORIUS SC: Sorry, that is 9 December 2015.

MINISTER NHLANHLA MUSA NENE: 9 December before cabinet sits. Yes. That is when we met with the president, the following morning and I informed him of the documents that would be tabled at the cabinet meeting – of particular importance was the – was to apprise the president of the budget allocations for the following year, as this was the last cabinet meeting of the year. Cabinet needed to adopt the budget recommendations so that preparations could be undertaken over the vacation period. The president did not raise with me the intention to remove me from office.

ADV PAUL PRETORIUS SC: Right the cabinet meeting then began, as you say, at  
10 08:30am

MINISTER NHLANHLA MUSA NENE: Yes.

ADV PAUL PRETORIUS SC: We have been able to declassify the cabinet minutes so we can talk a little then about the occurrences what occurred at that cabinet meeting. Can I take you please to the bundle. Page 445, that will be in bundle KB or KA2.

CHAIRPERSON: K1B.

ADV PAUL PRETORIUS SC: Or KA2. KIB

CHAIRPERSON: K1B

ADV PAUL PRETORIUS SC: Ja I am reminded. Thank you .

20 CHAIRPERSON: Page 4?

MINISTER NHLANHLA MUSA NENE: And 445.

ADV PAUL PRETORIUS SC: 445.

CHAIRPERSON: Okay.

ADV PAUL PRETORIUS SC: These documents Chair have been declassified. It is not necessary to go into much detail unless you wish to Minister, but what is

noteworthy about the proposal in paragraph 7 of the minute of the cabinet meeting of 9 December 2015 is that the proposal comes from the Minister of Energy. There is no proposal or co-proposal that involves the Treasury or your ministry.

MINISTER NHLANHLA MUSA NENE: That is correct.

CHAIRPERSON: Mr Pretorius.

ADV PAUL PRETORIUS SC: Yes.

CHAIRPERSON: What you are asking us to look at page 345.

ADV PAUL PRETORIUS SC: Four four five.

CHAIRPERSON: Four four five.

10 ADV PAUL PRETORIUS SC: Four four five.

CHAIRPERSON: Four four five. O okay.

ADV PAUL PRETORIUS SC: My apologies, Your Worship. Do you have it Chair?

CHAIRPERSON: I have got it.

ADV PAUL PRETORIUS SC: In short it appears that subject to some alteration the cabinet approved a proposal from the Department of Energy.

MINISTER NHLANHLA MUSA NENE: That is correct.

ADV PAUL PRETORIUS SC: There is nothing apparent here about any phased approach.

MINISTER NHLANHLA MUSA NENE: No.

20 ADV PAUL PRETORIUS SC: And there is no mention here of any compliance with the provisions of the public finance management act or the presentation or consideration of any feasibility study. Am I correct.

MINISTER NHLANHLA MUSA NENE: You are correct. The only interesting point made at the end. Which is on paragraph 3 of the what cabinet approved – it requested that where relevant the exchange rates referred to in the memorandum be

adjusted to current values and as I said that would have been a huge adjustment from R10,00 to the Dollar to about R14,00 at current rate and we are talking 40% again and...[intervenes]

ADV PAUL PRETORIUS SC: Did you participate in the discussion at that stage in cabinet?

MINISTER NHLANHLA MUSA NENE: Indeed my participation again was limited to raising the same issues I had raised in the meeting ...[indistinct] Including that of the exchange rate and then the non-inclusion of the funding model.

ADV PAUL PRETORIUS SC: Is anything you said at that cabinet meeting  
10 inconsistent with what you have told the chair today about your attitude towards the nuclear deal. --- No.

CHAIRPERSON: You have just referred to D at page 445 – notes that it was requested that where relevant the exchange rates referred to in the memorandum be adjusted to current values and you have just indicated what a big jump that would have been in terms of what the cost would be – are you able to say whether the cabinet appreciated what that big jump, how big it was or maybe they might not have appreciated.

MINISTER NHLANHLA MUSA NENE: Looking at the way the resolution is crafted I do not think it mattered, because all the others are approved. The D is requested.

20 CHAIRPERSON: But in terms of the jump in costs that adjustment would reveal one would have expected that you would want to see that adjustment first maybe before you approve or not really or you say it might not have mattered.

MINISTER NHLANHLA MUSA NENE: It seems like it did not because of – I mean we, it in under – in an ideal situation that is what we should have as cabinet done, but that was not done, it was put them in the last matter, but I must say that after that

when we tabled our budget – when we did our budget presentation which came after this again with that having not been declassified, because we did not request like I didn't because I mean, in an ideal situation, that's what we should have as Cabinet done but that was not done, it was put as the last matter but I must say that after that when we tabled our budget, when we did our budget presentation which came after this, again, with that having not been declassified because we did not request, but we did factor in what the implications of this might be as is our responsibility.

CHAIRPERSON: Okay now, thank you.

ADV PAUL PRETORIUS SC: Minister, we know and you will tell us in due course  
10 after dealing with a few other matters which are relevant what the outcome of that meeting was or at least what occurred afterwards in relation to yourself but it's perhaps appropriate now to summarise the situation immediately prior to your dismissal as Minister. It seems from the Minute that we have in the bundle that the proposal was largely in the hands of the Department of Energy, am I correct?

MINISTER NHLANHLA MUSA NENE: That's correct.

ADV PAUL PRETORIUS SC: And that to an extent at least and consistent with a pattern as you told the Chair Treasury and that the concerns of Treasury had at the very least been put to one side if not ignored, is that correct?

MINISTER NHLANHLA MUSA NENE: That is correct.

20 ADV PAUL PRETORIUS SC: You have also told us what happened at the BRICS Summit which similarly seem to show that to the exclusion of Treasury and without consultation with Treasury it was suggested, proposed to you that you should enter into some sort of arrangement or binding agreement involving Russian supplies for the nuclear deal, you recall that evidence?

MINISTER NHLANHLA MUSA NENE: Yes.

ADV PAUL PRETORIUS SC: And again, it seems that Treasury's concerns were put to one side if not ignored?

MINISTER NHLANHLA MUSA NENE: That's correct.

ADV PAUL PRETORIUS SC: You also referred to attacks on yourself and attacks on the integrity and viability of Treasury which it is apparent from the evidence at least that we have to date, were largely unexplained and have been largely uninvestigated, is that correct?

MINISTER NHLANHLA MUSA NENE: That's correct yes.

ADV PAUL PRETORIUS SC: Against these or in these circumstances and given your  
10 own consideration of the circumstances, can I ask you to just confirm what you have confirmed in your statement earlier in regard to the evidence of Mr Jonas. One of the paragraphs Mr Jonas gave evidence in relation to his paragraph 41, and that's one of the paragraphs that you confirmed having read and agreed with. Can I just read it onto the record please for your further comment?

"There was pressure on us from former President Zuma and other members of the Cabinet to approve the nuclear deal", I think I am going to read it as it is, "(that pressure) was immense and was ultimately the trigger for Mr Nene's dismissal on 9 December, 2015, after he again refused to back the deal at a Cabinet Meeting that day." Do you still agree with that statement?

20 MINISTER NHLANHLA MUSA NENE: I do Chair.

CHAIRPERSON: Who were the other members of Cabinet who were also putting pressure on Treasury to agree to this deal?

MINISTER NHLANHLA MUSA NENE: I mentioned earlier the Minister of International Relations and the Minister of State Security as those that were very vocal.

CHAIRPERSON: And the Minister of State Security at that time was Mr Mahlobo, is that right?

MINISTER NHLANHLA MUSA NENE: That is correct.

CHAIRPERSON: And the Minister of International Relations was Ms...?

MINISTER NHLANHLA MUSA NENE: Maite Nkoana-Mashabane.

CHAIRPERSON: Ja okay, thank you.

MINISTER NHLANHLA MUSA NENE: Correct.

ADV PAUL PRETORIUS SC: Thank you Chair. You go on to deal in your statement with South African Airways. Can I ask you to deal with that issue in so far as you  
10 deem necessary and perhaps given the pressure of time, you can take the liberty and summarise where necessary.

MINISTER NHLANHLA MUSA NENE: I will try and do and summarise. Well, on the 11<sup>th</sup> December, 2014, SAA was brought under administration of Treasury. This was gazetted on the 19<sup>th</sup> December. This was done due to poor governance and financial instability in the airline. At the time of the transfer, SAA's financial position was extremely weak. In the 2012/13 financial year, the airline suffered a loss of R1,2 billion. The loss increased to R2,6 billion in 2013/14 and the airline was on track to realise an even larger loss for the 2014/15 financial year which eventually amounted to R5,6 billion. The company was technically insolvent with its liabilities exceeding its  
20 assets by R3,5 billion as at March 2014 and was experiencing severe liquidity challenges. It was only able to raise funding with the support of Government guarantees. A total of R7,9 billion in guarantees had already been issued to the airline to enable it to continue operating as a going concern.

CHAIRPERSON: I am sorry Minister, before you proceed.

MINISTER NHLANHLA MUSA NENE: Yes.

CHAIRPERSON: From that paragraph, namely paragraph 1 or 2, one sees a picture of SAA in terms of which 3 years in a row it seems, its financial loss was like doubling and these were billions of Rand. 2012/2013 financial year, the loss had gone up to R2.6 billion and in, I am sorry, R1.2 billion in the financial year of 2012/2013. In the next financial year the loss increased to R2.6 billion and in the next financial year, that is now 2014/2015, it went up to R5.6 billion. Was there nothing being done in between after this financial year when it was seem that the loss was so much. Was there nothing been done to make sure that the following year was better or was there an environment that prevented proper steps being taken to

10 curb the losses.

MINISTER NHLANHLA MUSA NENE: I think it was very clear that whatever it is that was being done was not working and hence we are of the view that the decision that was taken then to place it under administration of the Treasury, was trying to arrest the situation albeit very late when so much damage had actually occurred.

CHAIRPERSON: I am sure that the figures once it's here are probably no different from the figures that one has seen about SAA in the public domain.

MINISTER NHLANHLA MUSA NENE: That's correct.

CHAIRPERSON: Each time you look at them they are just shocking.

MINISTER NHLANHLA MUSA NENE: Absolutely.

20 CHAIRPERSON: Thank you.

MINISTER NHLANHLA MUSA NENE: So, it was then incumbent upon me as Minister of Finance to ensure that the decisions then that are taken by SAA were responsible and consistent with the turnaround strategy to stabilise the entity that had been tabled before Cabinet.

ADV PAUL PRETORIUS SC: Before you go on, may I ask you Minister to go back to paragraph 101, I am not sure that we dealt in appropriate detail with the outcome of the Cabinet meeting on the 9<sup>th</sup> December, 2015. It's contained in the last sentence of paragraph 101.

MINISTER NHLANHLA MUSA NENE: Yes, that the Department of Energy was also instructed to issue a request for proposals for the new Cabinet programme with the final funding model to be informed by the responses received to the request for proposal.

ADV PAUL PRETORIUS SC: Right, you were at paragraph 104 before I interrupted  
10 you Minister.

MINISTER NHLANHLA MUSA NENE: Well, among other things there were issues of the going concerned guarantees and prior to the transfer of the Executive authority responsibilities the former Minister of Public Enterprises had written to the Minister of Finance on the 21<sup>st</sup> November, 2014, requesting the concurrence of the Minister of Finance to the issuance of a R6.488 billion perpetual going concern guarantee in favour of SAA.

ADV PAUL PRETORIUS SC: What is a perpetual going concern guarantee Minister?

MINISTER NHLANHLA MUSA NENE: This is the guarantee that seeks to because of the challenge of the going concern, it's a guarantee that would actually enable the  
20 SAA to be even to finalise their statements on a going concern basis and to secure the liquidity that is necessary to meet its commitments.

CHAIRPERSON: The reference to the former Minister of Public Enterprises there as a reference to...

MINISTER NHLANHLA MUSA NENE: I think it was Minister Lynne Brown.

CHAIRPERSON: Thank you.

MINISTER NHLANHLA MUSA NENE: Now at the time, SAA's cashflow focus showed that it would run out of cash by mid-January the following year unless additional guarantees were provided. This would have triggered a default by SAA on its guaranteed debt requiring Government to meet the obligations on SAA's behalf as well as negative economic impact on loss of jobs. Now having reviewed this application which was submitted in November, we reviewed it on the 22<sup>nd</sup> December. In my new capacity now as Executive authority of the airline, I issued the guarantee in favour of the airline, bringing the total guarantee facility to R14,4 billion. In reaching this decision, I took into account the recommendations of the Fiscal Liability

10 Committee comprising of the Directors General and other officials in the relevant divisions in National Treasury. In August 2015...

ADV PAUL PRETORIUS SC: Before you go on, may I just point out through you, at this stage, South African Airways resided within the Ministry of Finance, am I correct?

MINISTER NHLANHLA MUSA NENE: That is correct.

ADV PAUL PRETORIUS SC: Rather than the Department of Public Enterprises?

MINISTER NHLANHLA MUSA NENE: Correct.

ADV PAUL PRETORIUS SC: Yes, you were at paragraph 107.

MINISTER NHLANHLA MUSA NENE: Yes, then in August 2015, SAA submitted

20 application for additional guarantees totalling R5 billion. Like the previous year, this was required in order for the airline to be able to finalise its financial statements on a going concern basis and secure liquidity again. The same committee, the Fiscal Liability Committee, recommended that I do not approve the issuance of the requested guarantee citing concerns that there was no financial case to support the issuance of the guarantee and that the governance challenges at SAA did not

provide confidence that the airline would turn around within the projected timeframes. Now, as I said earlier that the Fiscal Liability Committee's structure comprising of senior officials in the Treasury, mainly the DDG's of various divisions which is chaired by the DDG who heads assets and liability management. It evaluates all applications for guarantees and makes recommendations to the Minister of Finance. In evaluating the applications, the committee seeks to determine the probability that a state guarantee might be called namely that the National Revenue Fund might have to make good some or all of the amounts guaranteed. In terms of the PFMA, calls against a guarantee I direct charge against the National

10 Revenue Fund. So if a State Owned Company whose debt is guaranteed by the sovereign, fails to pay its debt when it falls due, then the creditors have recourse against the National Revenue Fund and such a payment supersedes even the payments for Social Security Grants. That's the risk that we were at now. While the approval of a guarantee does not lead to an immediate outflow of cash from the Revenue Fund, if the guarantee is extended to an entity whose balance sheet and cashflows are weak, it can be a huge inconvenience to the country and the way guarantees work cuts out Parliamentary scrutiny. It is for this reason that Treasury's approach to guarantees has always been very circumspect.

ADV PAUL PRETORIUS SC: Minister, when you say that guarantees cut out

20 Parliamentary scrutiny, would you just explain that to the Commission?

MINISTER NHLANHLA MUSA NENE: Because it can be processed without having to go through a Parliamentary process.

ADV PAUL PRETORIUS SC: Thank you.

MINISTER NHLANHLA MUSA NENE: With the above context bearing in mind the advice was given on the nuclear guarantee, I wrote to the Chairperson requiring that

SAA finalise certain outstanding matters before the 18<sup>th</sup> September, 2015, because concluding these matters would assist in improving the financial performance of the South African Airways. Amongst the outstanding matters to be finalised before the guarantee request would be considered, was the conclusion of the airbus contract which I am about to talk to directly after this. As no response was received from the airline, I wrote again to SAA on the 28 September, requiring that the outstanding matters be finalised by the following day. This would have allowed me to table the airline's annual financial statement by the 30 of December as prescribed in the legislation.

- 10 ADV PAUL PRETORIUS SC: Minister Nene, you refer in paragraph 112 to the Chairperson, I presume you mean the Chairperson at SAA?

MINISTER NHLANHLA MUSA NENE: The Chairperson of SAA yes.

ADV PAUL PRETORIUS SC: Who was that?

- MINISTER NHLANHLA MUSA NENE: The Chairperson of SAA was Ms Dudu Myeni. In her response dated the 29<sup>th</sup> September, the Chairperson provided a high level of a view and update on the outstanding matters that I had raised. On the 30<sup>th</sup> September I responded that I had referred SAA's response to the Fiscal Liability Committee for due consideration. At the same time I stressed the decision on the a320 and the a330 swop transaction what it would have a material impact on the amount of support required and that delays in reaching finality on this matter, could delay a decision on the going concern request. That's the airbus contract I said I would want to spend a bit of time on. This contract related to a purchase agreement that had been concluded between SAA and Airbus in 2002. Among other things in the agreement, SAA was to purchase 15, a320-200 aircrafts which we just refer to them as the a320's. This agreement was amended in 2008 to increase the number of the
- 20

a320's to 20. Of these, 10 were delivered between 2013 and 2015. The remaining 10 were due to be delivered between 2015 and 2017. As a result of SAA's financial pressures and the pre-delivery payments falling due, the SAA management renegotiated the terms of the amended purchase agreement with Airbus in which the parties agreed that the purchase of the remaining 10, a320's would be cancelled and SAA would enter into operating leases of 5 long-haul a330's carriers from Airbus.

ADV PAUL PRETORIUS SC: And according to your statement, there were decided advantages to this arrangement?

MINISTER NHLANHLA MUSA NENE: Absolutely.

10 ADV PAUL PRETORIUS SC: What were they?

MINISTER NHLANHLA MUSA NENE: The SAA would not be required to recognise impairments that they would otherwise have to.

ADV PAUL PRETORIUS SC: Impairments being?

MINISTER NHLANHLA MUSA NENE: They being having to, one of them being the impairment of the pre-delivery payments which would actually have impacted negatively on the balance sheet of SAA. In addition, I mean, Airbus would also refund the R1.3 billion of pre-delivery payments because it was for a full number of 20 now that they were reducing the number. I approved this agreement because this would have reduced the pressure on the company's liquidity position. I approved this  
20 agreement on the 30<sup>th</sup> July, 2015 and later in September 2015 confirmed my approval again. Instead, after I had granted my approval, Ms Myeni, the Chairperson, proposed an alternative transaction in which SAA would purchase the a330's and enter into a sale and lease back of the aircraft with a local leasing company.

ADV PAUL PRETORIUS SC: Just before you go on Minister Nene. The arrangement, the renegotiated arrangement that you refer to in paragraph 116.

MINISTER NHLANHLA MUSA NENE: Yes.

ADV PAUL PRETORIUS SC: How important or otherwise was it for the financial viability of SAA?

MINISTER NHLANHLA MUSA NENE: It was critical as I was saying that this would have resulted in a refund of R1.3 billion of pre-delivery payments which it had made on the 10 which would reduce the pressure on the company's liquidity position.

ADV PAUL PRETORIUS SC: In short, it was critical.

10 MINISTER NHLANHLA MUSA NENE: It was critical.

ADV PAUL PRETORIUS SC: You were at paragraph 118.

MINISTER NHLANHLA MUSA NENE: Well, I then responded on the 30 September to the Chairperson, requesting assurance that any such amendment would leave SAA in a better financial position than would have otherwise been the case had the swop transaction gone ahead and that steps must be taken to mitigate any risks that could arise from the original swop transaction not proceeding.

ADV PAUL PRETORIUS SC: If I may go back please to paragraph 117. The sale and lease back arrangement with a local leasing company, do you know from your own knowledge or from any investigation whether that was an appropriate or lawful or  
20 proper arrangement?

MINISTER NHLANHLA MUSA NENE: In my response this is one of the things also I was seeking but more than anything to just demonstrate that would have a better outcome than the originally agreed position.

CHAIRPERSON: The sale and lease back arrangement, does it have any particular or would it have any particular benefits compared to the one that had already been

agreed. In other words, as far as you understood to were there any sound reasons why there seems to have been a desire to abandon the earlier arrangement and go for this one?

MINISTER NHLANHLA MUSA NENE: Our view was that it would have a negative impact. It was for that reason that I said perhaps SAA would be able to demonstrate to us what the benefit of that would be and that's why in the response of the 30<sup>th</sup>, we requested assurance that any such amendment would leave SAA in a better financial position that would otherwise have been.

ADV PAUL PRETORIUS SC: Do we know Minister Nene, the identity of that local  
10 leasing company or do you know?

MINISTER NHLANHLA MUSA NENE: Yes, we were ultimately favoured with that but I don't have the details with me here and I am sure it's something that can be provided.

ADV PAUL PRETORIUS SC: That information is available?

MINISTER NHLANHLA MUSA NENE: Yes.

ADV PAUL PRETORIUS SC: Whose responsibility ultimately was it to conclude these agreements or arrangements?

MINISTER NHLANHLA MUSA NENE: Well, finally it was the Board's decision. The Board had to but we also had to approve as the Ministry having satisfied ourselves  
20 that indeed this is the most prudent way of doing it.

ADV PAUL PRETORIUS SC: Right. You were at paragraph 118 or 119.

MINISTER NHLANHLA MUSA NENE: 119, in our response, I notified the Chairperson also that in the event that there was a material amendment to the transaction, SAA would be required to resubmit an application for approval in terms of Section 54, sub 2 of the PFMA. I required that the rationale for reconsidering the

application as well as the comprehensive business case and the financial implications of the alternatives that were now being considered be provided for my consideration. These requirements were reiterated several times in my subsequent correspondence to the SAA Chairperson. Now during October, I became aware that the persistent delays in reaching finality meant that Airbus was now threatening to walk away from the swop transaction which would have resulted in Airbus reverting to the original a320 purchase agreement which was still in place with the consequence that SAA would now have to pay the predelivery payments, the PDP's, for which funds had not been secured as well as having to recognise impairments that would negatively impact the financial performance of the airline.

10

ADV PAUL PRETORIUS SC: It may be an obvious question Minister Nene but the financial implications for SAA, what would those have been had this occurred?

MINISTER NHLANHLA MUSA NENE: It would have been negative in a way.

ADV PAUL PRETORIUS SC: Yes.

MINISTER NHLANHLA MUSA NENE: It also came to my attention that in the absence of SAA concluding the original swop transaction, Airbus was enforcing their rights under the a320 purchase agreement and demanding payment of the PDP's. I had been informed that the most immediate payments which were due at the end of November amounted to about 44 million US Dollars. Payment of this amount would have resulted in a cash shortfall and a significant risk of a default by SAA, therefore immediate and decisive action was required to conclude the transaction. Following repeated entreaties...

20

ADV PAUL PRETORIUS SC: Entreaties from whom, yourself?

MINISTER NHLANHLA MUSA NENE: From National Treasury now. The airline submitted a business case because we continued engaging with them looking at the urgency of the matter.

ADV PAUL PRETORIUS SC: And who submitted this business case, who in particular?

MINISTER NHLANHLA MUSA NENE: It was submitted by the Chairperson.

ADV PAUL PRETORIUS SC: Right.

MINISTER NHLANHLA MUSA NENE: After reviewing the business case which revealed a number of gaps and flaws, I wrote to the Chairperson on the 12  
10 November, 2015, indicating that the business case provided little in the way of concrete information that would be required to make an informed decision and requested additional details. Based on Treasury's review of the alternative proposal during November 2015, it was evident that SAA had not demonstrated that there was certainty that the proposed amendment to the transaction structure would leave the airline in a better financial position than under the original swop transaction structure. There was even a significant risk that it would leave SAA in a material worse off financial position where it would be unable to meet its commitments as they fall due. This meant that there was a high probability of SAA defaulting on its Government guaranteed debt which would have had severe consequences for the  
20 fiscus and the economy as I mentioned earlier. Now on the 2 of December, 2015, I decided not to approve the alternative transaction. I announced this decision publicly on the 3 December in 2015 in a press statement and there is that press statement, I am not sure whether you would want me to go through it?

ADV PAUL PRETORIUS SC: Please read it?

MINISTER NHLANHLA MUSA NENE: And I must also explain why also it was in public. It was because some of these exchanges were also in the public domain and I actually wanted to make sure that whatever responses because we would seem not to be co-operating when SAA continues to talk to the media on some of these issues.

The statement read as follows and I quote:

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

Now I and the Treasury were concerned that should SAA not meet the terms of the pre-delivery payments and therefore default on its obligations, it would have severe negative consequences for SAA and for the country as a whole and as with nuclear built proposal, we were concerned about the impact of the deal on Government's  
20 capacity to deliver on its Social Developmental objectives.

ADV PAUL PRETORIUS SC: Once again, as with the nuclear deal, you raised the concern about expenditure in one area involving sacrifices or prejudice in another area?

MINISTER NHLANHLA MUSA NENE: Correct.

ADV PAUL PRETORIUS SC: The appointment of the SAA Board is the next topic you deal with at paragraph 126.

MINISTER NHLANHLA MUSA NENE: Yes. Now given all of these challenges, I was extremely concerned by the leadership and stability of the airline also and my concern increased from August 2015 when several senior executives were either replaced or resigned to citing a breakdown of trust with the Board. A stable executive management team was crucial to implementing the airline's turnaround strategy so that the airline could return to financial sustainability. At the time I requested the Board to brief me on these developments and their impact on the operations of the  
10 airline. Around November, I was called to a meeting with the former President, Mr Jacob Zuma and the then Chairperson of SAA, Ms Dudu Myeni.

ADV PAUL PRETORIUS SC: That's in 2015?

MINISTER NHLANHLA MUSA NENE: 2015 yes. This meeting took place shortly after I had attended a meeting of the ANC study group meeting on the 3<sup>rd</sup> of November, 2015. A study group is a caucus of the party sitting at a particular committee where they discuss matters in camera. So having attended that study group meeting on the 3<sup>rd</sup> with those that were present in the study group meeting, as I can recall, included the Chairperson of the Committee, Mr Yunus Carrim, Ms Makhosi Khoza, Mr Des van Rooyen, Mr Pule Mabe and Mr Pinky Kekana and Ms  
20 Cindy August who is our Parliamentary Liaison and Ms Dikeledi Mahlangu. I expressed in the study group meeting the view that even Ms Myeni leaves or I leave. I said this out of frustration because I had been trying, you know, to work on this matter and she had actually been standing in my way.

ADV PAUL PRETORIUS SC: This comment, did you make it in a manner audible to all at the meeting?

MINISTER NHLANHLA MUSA NENE: Correct. It turned out that this was reported...

CHAIRPERSON: I am sorry, or have you finished paragraph 127, I want to ask you a question if you have finished with it?

MINISTER NHLANHLA MUSA NENE: I am on the last sentence.

CHAIRPERSON: Oh okay.

MINISTER NHLANHLA MUSA NENE: And I said this was reported to Ms Myeni as it turned out to be who was not in the study group on the day.

CHAIRPERSON: From what you have just said, I think about, I think you said this about either Ms Myeni.

10 It turned out that this was reported ... [intervenes]

CHAIRPERSON: I am sorry. Or have you finished paragraph 127? I want to ask you a question if you have finished with it.

MINISTER NHLANHLA MUSA NENE: I am on the last sentence, [indistinct].

CHAIRPERSON: Oh, okay.

MINISTER NHLANHLA MUSA NENE: And I said this was reported to Ms Myeni as it turned out to be who was not on the study group on the day.

CHAIRPERSON: From what you have just said I think about – I think you said this about either Ms Myeni must leave or you leave. You said this was out of frustration.

I am not sure whether up to this stage you have explained your relationship with or  
20 interactions with the chairperson of the board of SAA adequately in terms of what produced that frustration other than I think what appears here is certain suggestions were being made from her side or by her. You were responding to them. There was this agreement about some of those but it may be that it is much more than that, I do not know. Was it just – was the frustration based on just disagreement or was there much more than that?

MINISTER NHLANHLA MUSA NENE: It was indeed as a result of – you will see, Deputy Chief Justice, the goings on and lack of appreciation of the urgency of the matter and lack of appreciation of the magnitude of the problem we are confronted with. You said earlier we were – when you look at the numbers they were shocking. So we have an airline here which is in dire financial straits and when you try to remedy that through the proper processes you do not get the required response, you actually get a sense of somebody who is just not prepared to work with you in order to correct the situation.

CHAIRPERSON: Are you done with that answer or do you want to continue?

10 MINISTER NHLANHLA MUSA NENE: Yes, I am, yes.

CHAIRPERSON: At that stage what – how was the composition of the board of SAA in terms of expertise, in terms of you know, experience, relevant experience? Did – were there sufficient people in the board who ought to have had an appreciation of some of the things that Treasury or yourself was putting forward?

MINISTER NHLANHLA MUSA NENE: Chair, there were issues with the board. It was one of the things that we also sought to deal with but you will also notice that some of the board members and the staff, there was also this disconnect where some of the executives actually felt that they cannot work with the board and they were in the process – some had resigned and even in the board itself, the board was  
20 very thin on the expertise. All of that needed to be addressed as a matter of urgency.

CHAIRPERSON: Are you able to say based on your interactions with the board or with the chairperson of the board, are you able to say that whether largely the positions they were taking were based on lack of relevant experience on certain matters in terms of running a business, in terms of finances, or was it a situation

where even if there was expertise and experience, maybe an appreciation, but there was a determination to go in a certain direction, which of the two, or was it a combination? Are you able to go that far?

MINISTER NHLANHLA MUSA NENE: I think it was a combination of the two, Chair, because you would find that for instance with regards to the swap transaction when a completely – having approved the A320 swap, all of a sudden an irrational decision is taken that no, no, no, we are going to go now for a lease and – for a buyback and lease arrangement which did not make sense and for me it was not clear where it comes from, so it is a combination of both of perhaps a level of incompetence but at  
10 the same time perhaps ulterior motives to go in a particular direction.

CHAIRPERSON: Thank you.

MINISTER NHLANHLA MUSA NENE: Can I proceed to paragraph 128?

ADV PAUL PRETORIUS SC: Yes, proceed.

MINISTER NHLANHLA MUSA NENE: Then at this meeting which I have alluded to with the president and Ms Myeni, the president said he was trying to get us to find each other. I am not sure of the English here but it was because there was a sense that the two of us were, you know, at each other's throats if I were to say it ... [intervenes]

CHAIRPERSON: Was it not meant to say you find a way of working together?

20 MINISTER NHLANHLA MUSA NENE: Of working together, something like that. I think this was written in Zulu and English, both in Zulu and English, yes.

CHAIRPERSON: Oh, okay.

MINISTER NHLANHLA MUSA NENE: Yes. So then perhaps we can call it Zinglish or something. Yes, so I found this odd because Ms Myeni in a way reported to me. The institution was under administration and she was supposed. Yet I found it

strange that the president was treating us like just two errant school children. It was an awkward meeting and she went on to complain about me and that is where the issue of – that is where I picked up that she knew that I had said in the study group where she was not there, that I had said it is either she goes or I go. She complained about me, realised – and I realised that there was little to be achieved in this meeting as it seemed – intended to allow Ms Myeni to complain, however what I did was to state the issues as I saw them, that I felt that Ms Myeni was obstructive and that she played the media and that is why I ended up responding to the media as I explained earlier.

10 I indicated that I was of the view that perhaps she should be removed from the board because under her leadership the airline had perpetually been in crisis throughout the year and reckless actions by the board had repeatedly exacerbated rather than averted the crisis and on a number of occasions this had meant that there was a material threat to the airline which would default on its government guaranteed obligations which would have had negative consequences for the fiscals and the economy and after expressing my views I requested to be released from the meeting.

ADV PAUL PRETORIUS SC: Before you continue, at this stage if it is not stating the obvious, what conclusions had you drawn about the former president's  
20 understanding of and respect for the role of Treasury and in particular you as Minister of Finance?

MINISTER NHLANHLA MUSA NENE: As I indicated, I found it strange that instead of me receiving the support in terms of trying to resolve the challenge we are given the same – we were given the same status with a person whom I actually thought had been errant and I was supposed to be the one that reports to my principal.

ADV PAUL PRETORIUS SC: What was your view at this stage of the former president's understanding of the responsibilities of Treasury and the need for Treasury to carry out those responsibilities in the interests of the finances of the country.

MINISTER NHLANHLA MUSA NENE: It demonstrated either a lack of appreciation or disregard.

ADV PAUL PRETORIUS SC: Right. And you say then on 9 December 2015 at the submission?

MINISTER NHLANHLA MUSA NENE: Well, on 9 December I had made a  
10 submission for the appointment of the new SAA board which was circulated to the Cabinet but was not tabled for discussion.

ADV PAUL PRETORIUS SC: Do you know why? Can you make any assumptions as to why?

MINISTER NHLANHLA MUSA NENE: There was no consensus that it should be tabled. We were not ready to deal with it.

ADV PAUL PRETORIUS SC: Would you then ... [intervenes]

MINISTER NHLANHLA MUSA NENE: That is why it is one of the matters that we were not able to submit for declassification.

ADV PAUL PRETORIUS SC: Would you then please deal, Minister Nene, with the  
20 Khartoum Route issue?

CHAIRPERSON: I am sorry, Mr Pretorius. In regard to the matters that he is unable to deal with because there was no declassification, is there a plan to arrange that in due course or there is no intention to do? Is it matters that may be relevant that he cannot deal with, or maybe you might not do it because...

ADV PAUL PRETORIUS SC: Well, application was made for declassification of the

board minute in relation to the South African Airways issue. We received declassification of board minutes for another Cabinet meeting and not this particular meeting so we have to resubmit that application.

CHAIRPERSON: Okay. No, that is fine. Thank you.

MINISTER NHLANHLA MUSA NENE: Thank you. The Khartoum Route. On 17 June I received a letter from Ms Myeni informing me that, and I quote from the letter:

10                    “In a phone call discussion with His Excellency President  
                         Zuma while in Sudan three months ago a request was  
                         made for SAA to evaluate the potential for a new route to  
                         Khartoum.”

                         The letter requested me to consider the outcome of a business case for  
SAA to open a new route from Johannesburg to Khartoum via Entebbe in Uganda.  
The business case was set to provide a basis on which I can present the results to  
the president. The letter came to me three days after the Sudanese president, Omar  
Al-Bashir, had left South Africa after having attending a summit of African Heads of  
State. It was made in circumstances where the executive management of SAA did  
not agree with the proposal. A review of the letter and business case showed that  
SAA would incur losses of approximately R30-million in the first two years of  
operation, money that the airline simply did not have. I attach a copy of the letter  
20                    and business case as NN6.

ADV PAUL PRETORIUS SC: Briefly, Minister Nene, would you just summarise the  
conclusions in the business case? I am not sure we have to go to the document  
itself.

MINISTER NHLANHLA MUSA NENE: I think the loss of R30-million clearly spells  
that out and it just showed that this was an irrational proposition to ... [intervenes]

ADV PAUL PRETORIUS SC: And in any event was your response to Ms Myeni as dealt with in paragraph 131 consistent with those findings?

MINISTER NHLANHLA MUSA NENE: Correct.

ADV PAUL PRETORIUS SC: Could you deal with the response to the chairperson, please?

MINISTER NHLANHLA MUSA NENE: I quote again from the letter. I said:

10                    “I understand from your letter that the evaluation for a potential new route for SAA to Khartoum arose as a result of a discussion you had with His Excellency President Zuma.”

                  And then I went on to say that the business case evaluating the new route projected that the route would incur losses of approximately R30-million in the first two years of operation:

20                    “Notwithstanding the projected losses you have stated some alternative measures which could make the route financially viable. These include the subsidisation of SAA services by the government of Sudan or SAA undertaking operations on behalf of the government of Sudan as a designated flag-carrier. The costs and benefits of these alternatives have not been provided and implementation if possible would require engagement of various stakeholders within both the governments of the Republic of Sudan and South Africa before being considered. As part of the National Treasury’s on-going weekly technical meetings with SAA continuous feedback is being

provided with regard to the progress of the implementation of the network and fleet plan. During these meetings SAA indicated that the letter received from you is purely for information purposes and is not a PFMA section 54 application. In the event that SAA decides that it would be favourable to operate the route a comprehensive PFMA section 54 application would need to be submitted for my consideration. Consequently, based on the current proposal I am not in support of SAA commencing operations to Khartoum. In conclusion, due to the loss-making nature of the proposed operations to Khartoum I do not approve the commencement of operations on the envisaged route.”

10

That is how the letter – and I attached a copy of this response and memo for not approving the proposal as NN7.

ADV PAUL PRETORIUS SC: And what was the outcome of your refusal to approve the proposal to the best of your knowledge?

MINISTER NHLANHLA MUSA NENE: Well, I think this and other similar decisions frustrated Ms Myeni and the president and I suspect might have contributed to the decision to remove me.

20

ADV PAUL PRETORIUS SC: Yes. Perhaps we can then deal with your removal from office and all these circumstances?

MINISTER NHLANHLA MUSA NENE: Indeed, Chair. And after that Cabinet meeting on 9 December, after it ended at about 19:30 – you can imagine this was indeed a marathon Cabinet meeting.

ADV PAUL PRETORIUS SC: 17:30 or 19:30?

MINISTER NHLANHLA MUSA NENE: 17:30, sorry. I was on my way home from the meeting when I received a call from the president's office informing me that the president wished to see me. I immediately turned back to the Union Buildings and arrived at the Union Buildings at about 18:00 or 18:15. When I arrived I was required to wait in the waiting room for a short while. Ms Lakela Kaunda was in the waiting room. We greeted but nothing further passed between us. After a short while the president emerged and ushered me into his office. The first thing the president said to me was I had asked them to tell you that I wanted to see you. This  
10 is a quote after the meeting.

He had asked Ms Kaunda, who I found in the waiting room to contact me but she had not nor did she mention anything about it in the waiting room when the two of us were together. She was clearly aware of what was going on I assume. I informed him that I did not receive that message. The president then said, and I quote him – it was said in Zulu. I hope the interpretation is okay. It is not going to be Zinglish. He said you would remember that when we were discussing the establishment of the Africa Regional Centre I had said that we would have to deploy a senior high-ranking individual in that position. I confirmed that I recalled the president saying that.

20 Now by the Africa Regional Centre the president meant the African regional centre of the BRICS new development bank which we called the BRICS Bank. The BRICS countries had signed an agreement establishing the BRICS Bank at the sixth BRICS summit on 14 July in Brazil in 2014. The BRICS Bank, that it has to have regional offices and the first of which is the Africa Regional Centre located in Johannesburg. Now ... [intervenes]

CHAIRPERSON: I am sorry, Minister, just going back to paragraph 136.

MINISTER NHLANHLA MUSA NENE: Yes.

CHAIRPERSON: You have said that what is quoted there was said in isiZulu.

MINISTER NHLANHLA MUSA NENE: Yes.

CHAIRPERSON: So effectively or technically there should be something that indicates to the reader that what is quoted is not the words of the president.

MINISTER NHLANHLA MUSA NENE: Indeed.

CHAIRPERSON: It is the translation.

MINISTER NHLANHLA MUSA NENE: Correct.

10 CHAIRPERSON: Yes, okay.

MINISTER NHLANHLA MUSA NENE: Yes. Well, then again on this one, 138 we do mention that speaking in isiZulu he did say that we had discussed this matter with the top six and we agreed we should put you there. I asked when this decision was to take effect and he informed me that he would be making an announcement shortly. I thanked the president for having provided me with the opportunity to serve the country as Minister of Finance, we shook hands and I left. The entire meeting lasted for two to three minutes which is good after a marathon Cabinet meeting.

ADV PAUL PRETORIUS SC: May I ask at this point, Minister Nene, do you know of any protocol or practice in relation to the removal of ministers? Do you have any  
20 comment in that regard?

MINISTER NHLANHLA MUSA NENE: No, as I said earlier there is no protocol. You are on a 24-hour contract.

ADV PAUL PRETORIUS SC: Right. Please continue.

MINISTER NHLANHLA MUSA NENE: For a person who had made no mention of any other reason for my removal I did not ask him for reasons for this decision as I

did not think it would be appropriate. That was the first and last time we ever spoke about the position at the BRICS Bank. It is obvious that the deployment to the BRICS Bank was a fabrication, if I were to say so. I say so because the president had no authority to offer me a position or to deploy me to a position in the BRICS Bank nor could such an appointment be considered at that stage at least without due process which also involves other member countries.

My understanding is that there is a formal process for appointments at the BRICS Bank which we have followed now that we have appointed somebody there. Furthermore there is a clear line of authority within the BRICS Bank. It is the vice-  
10 presidents who are responsible for various functions within the bank and the responsibility for the regional offices fell under and it would be his responsibility to lead the process of the appointment of the Africa Regional Centre of the bank.

The president has in my view no authority to make any appointments at the bank. As a head of State his role is limited to participation at summit meetings. In any event I already held the position of governor at the BRICS, a position more senior than the one to which I was being deployed so to speak. Needless to say the offer did not materialise and the position remained vacant until I returned as Minister of Finance and have since appointed the current holder of that position and I always tell this guy that he took my job.

20 After my meeting with the president I made contact with several people via SMS and telephone calls regarding what had just happened. Later on I met the then DG at my official residence and I encouraged him to continue to keep the treasury team together and to motivate. Perhaps I must mention the people that I sent messages to. I sent messages to the deputy minister and I sent one to my wife because I did not want her to be shocked by the announcement and indicated that

there might be an announcement about me. It is nothing to worry about. And well, it seems like the news had already started spreading then the DG, the DDM and the DG, those are the three that I sent out.

And as I said when I met the DG I encouraged him to continue to keep the treasury team together and to motivate it even in the face of what had happened. I repeated the same in the morning of the following day when I visited the treasury to clear my office and to say my goodbyes to the rest of the Treasury staff.

ADV PAUL PRETORIUS SC: It appears that even at that time of your own personal dismissal your concern was principally at least or importantly at least in relation to  
10 the integrity of Treasury as an institution. Is that correct?

MINISTER NHLANHLA MUSA NENE: That is correct. Indeed I was also later returned – I did return later on to address the entire staff of 1 000 some odd people to preach the same gospel, that they must ... [intervenes]

ADV PAUL PRETORIUS SC: Right.

MINISTER NHLANHLA MUSA NENE: That they are important – they are an important institution. It is not about individuals, it is the institution that matters.

CHAIRPERSON: The time when you returned to address the staff, was that when you were reappointed as Finance Minister or in between your dismissal and your reappointment?

20 MINISTER NHLANHLA MUSA NENE: No, it was much earlier after my dismissal. I had just stopped by and Minister Gordhan had thought that that message was going to be critical coming from a person who has just been laid off and waiting for his unemployment insurance to pay out.

CHAIRPERSON: Okay, thank you.

ADV PAUL PRETORIUS SC: Before you deal with the conclusion, Minister Nene,

there are two matters that I would like to deal with. The first is at paragraph 49 if you would go back there, of your statement.

CHAIRPERSON: I am sorry, Mr Pretorius, what paragraph?

ADV PAUL PRETORIUS SC: 49.

CHAIRPERSON: Okay.

ADV PAUL PRETORIUS SC: Are you there, Minister?

MINISTER NHLANHLA MUSA NENE: Correct. Yes, I am.

ADV PAUL PRETORIUS SC: You say in that paragraph that you really first became suspicious of the Gupta family's intentions around 2013 after reports on the funding  
10 of the Estina Dairy Farm. You also say and would you place on record what you say in the next sentence please?

MINISTER NHLANHLA MUSA NENE: I had also been invited to the Gupta niece's wedding in Sun City but had declined the invitation and did not attend the wedding.

ADV PAUL PRETORIUS SC: Okay. Then may I just ask you, the Independent Development Corporation, does that organisation resort under Treasury?

MINISTER NHLANHLA MUSA NENE: No. Is it independent from Treasury?

MINISTER NHLANHLA MUSA NENE: It is – it falls under the Department of Economic Development.

ADV PAUL PRETORIUS SC: Okay. Are you aware of the fact that there was a loan  
20 and it appears in the public domain to be a loan of some R250-million to a Gupta-related entity to purchase a uranium mine?

MINISTER NHLANHLA MUSA NENE: From the IDC?

ADV PAUL PRETORIUS SC: Yes.

MINISTER NHLANHLA MUSA NENE: Yes, I am aware.

ADV PAUL PRETORIUS SC: And we all know that uranium and the mining of

uranium is necessary for nuclear production.

MINISTER NHLANHLA MUSA NENE: Well, I did not know then but after the revelations I do know.

ADV PAUL PRETORIUS SC: Yes. Thank you. I just wanted to place that on record. Finally your conclusion.

MINISTER NHLANHLA MUSA NENE: Well, I have prepared this statement in accordance with the request of the legal team of the State Capture Commission of Inquiry. It may not reflect all that I witnessed during my tenure as the Minister of Finance. During my brief tenure the key events related to the 2015 budget and the  
10 2014 and 2015 medium-term budget policy statements. I also tabled the Financial Intelligence – in financial intelligence I think it needs to be corrected here – Centre Amendment Bill and the Financial Sector Regulations Bill. After their approval by Cabinet which was subsequently adopted by Parliament. I reserve the right to supplement this statement at a later stage.

ADV PAUL PRETORIUS SC: And, Minister Nene, again if I may delay you a little longer, it is suggested that I ask you why if you wish to say you declined to attend the wedding referred to in paragraph 49?

MINISTER NHLANHLA MUSA NENE: As I indicated earlier I just felt it would not be appropriate.

20 ADV PAUL PRETORIUS SC: That is the evidence of the witness. I do have one matter to deal with which is of a procedural nature.

CHAIRPERSON: Well, before you go to the one matter relating to procedure, that last paragraph of the – in the minister's statement, the matters that are not covered in this statement to which he refers in that paragraph, would those be matters that fall within the terms of reference of this commission but outside of the term of

reference that we are dealing with now with the result that the plan of the legal team is that he may be invited at some other time to come and deal with them when the commission deals with other terms of reference or are those matters that do relate to the term of reference that we are talking about, namely dismissals of ministers and their appointments?

ADV PAUL PRETORIUS SC: To answer the last question first, Chair, we have probably dealt with all the matters relating to term of reference 1.1 to 1.3 subject however to issues that we have not yet investigated that arose in the short period between the time we received the statement and the time the minister has given  
10 evidence and that relates to press releases yesterday, but subject to that we have dealt with term of reference 1.1 to 1.3. I cannot say with certainty whether other matters will be dealt with and what those matters are but the likelihood is strong that the minister will be asked to return at some stage.

CHAIRPERSON: Okay. Maybe I must just ask the minister. In relation to that last paragraph, Minister, the way it is formulated it suggests that there may be matters which you believe you have not dealt with which may well be relevant and that is why you reserve the right to supplement the statement. Is that because there are other matters that you believe are not covered by your statement which nevertheless fall within the terms of reference of the commission but maybe might need to be dealt  
20 with later? I am just trying to understand so that we do not leave something out that may actually be relevant or if it is something that is relevant but conveniently should be dealt with later then I just need to know.

MINISTER NHLANHLA MUSA NENE: I think it is with the understanding that it is not possible to deal exhaustively with everything. Should there be anything outside of what I have been provided, even if it falls within this, that I am available to deal with

that.

CHAIRPERSON: Yes, I think I probably should say no more than seeing that both the legal team and Mr Trenworth[?] is here, that you obviously appreciate what is going on in my mind and if the minister has knowledge of other matters that he has not dealt with which are relevant to any of the terms of reference then at some stage that information would be disclosed to his legal team and the commission's legal team and then they can publish it. It is something we should look at.

ADV PAUL PRETORIUS SC: I am sorry, Chair, we will as an indication be dealing more thoroughly too with the role of Treasury.

10 CHAIRPERSON: Yes, and forecasts.

ADV PAUL PRETORIUS SC: The importance of integrity and attacks on Treasury and it may become necessary to request the minister for assistance at that stage.

CHAIRPERSON: Yes.

CHAIRPERSON: The information would be disclosed to his legal team and the Commission's legal team and then they can ...[intervenes]

ADV PAUL PRETORIUS SC: Yes we will ...[intervenes]

CHAIRPERSON: It is something we should look at.

ADV PAUL PRETORIUS SC: I am sorry Chair. We will as an indication be dealing more thoroughly to, with the role of Treasury.

20 CHAIRPERSON: Ja in due course.

ADV PAUL PRETORIUS SC: The importance of its integrity.

CHAIRPERSON: Ja.

ADV PAUL PRETORIUS SC: And the tax on Treasury and it may become necessary to request the Minister for assistance at that stage.

CHAIRPERSON: Yes.

ADV PAUL PRETORIUS SC: Chair before I deal with the procedural matter, perhaps Mr Shingo may want to address you.

CHAIRPERSON: Well last time I think he indicates the same. Oh Mr Shingo say what you want to say.

MR SHINGO: No Chair I have nothing to add thank you very much.

CHAIRPERSON: Okay thank you, thank you very much. I think I have one or two questions to ask. Minister you said that at that meeting of the 9<sup>th</sup>, I think it was of December 2015, the former President said to you that – I guess your departure from Cabinet, or your going to wherever, he said you were to going to be going to, had  
10 been discussed at a meeting of the top six.

MINISTER NHLANHLA MUSA NENE: Yes.

CHAIRPERSON: Is that right?

MINISTER NHLANHLA MUSA NENE: Yes sir.

CHAIRPERSON: Do you want to just explain what the top six [laughter] I have my own understanding, because I just want for the record so that we know.

MINISTER NHLANHLA MUSA NENE: Yes the top six, that is the leadership of the ANC which comprises of the President, Deputy President, Secretary General, Deputy Secretary General, the Chairperson and the Treasury General.

CHAIRPERSON: He did not tell you when that meeting had taken place?

20 MINISTER NHLANHLA MUSA NENE: No, no he did not tell me.

CHAIRPERSON: Would you know whether the top six keeps minutes of their meetings?

MINISTER NHLANHLA MUSA NENE: I would not know, I do not aspire to know also.

[Laughter]

CHAIRPERSON: No that is fine. The next thing is, what transpired between the two of you at that meeting, it is quite important? When I look at your statement it seems that he said something along the lines of asking you whether you remembered a certain conversation, previous conversation.

MINISTER NHLANHLA MUSA NENE: Yes.

CHAIRPERSON: And you did remember that conversation and that conversation contemplated that a certain type of person made me to be taken, or given a certain job, am I right so far?

MINISTER NHLANHLA MUSA NENE: That is correct yes.

10 CHAIRPERSON: Yes. Then he said in effect that is where you were going to go?

MINISTER NHLANHLA MUSA NENE: Correct.

CHAIRPERSON: Yes. But you do say in your statement and in your evidence that actually he did not have any power to effectively appoint you to that position, am I right?

MINISTER NHLANHLA MUSA NENE: You are correct. I would imagine the only thing that the leadership could have done was to encourage somebody to apply for the job.

CHAIRPERSON: Yes.

MINISTER NHLANHLA MUSA NENE: Not to deploy to the job.

20 CHAIRPERSON: Yes, yes, yes. Now did you understand the reason – okay maybe you did not. But did you understand him to be saying to you the reason why you were being removed from the position of Minister of Finance, was because you were needed in that position that he talked about? In terms of his reasons as opposed to what your own analysis of the reasons or ...[intervenens]

MINISTER NHLANHLA MUSA NENE: Well this is the position from the President articulated in the public domain, not only at that meeting.

CHAIRPERSON: Yes.

MINISTER NHLANHLA MUSA NENE: That is, the reasons that he advanced that he thinks because of my skills, you know I am the suitable candidate for that position.

CHAIRPERSON: Well my recollection might not be perfect and you may say what your own recollection is. I seem to think that he was reported in the media also maybe to have said that your skills were even more needed there, or you were very qualified for that position, as if it was a promotion, or am I mistaken?

10 MINISTER NHLANHLA MUSA NENE: Interestingly yes.

CHAIRPERSON: Yes. Now after reading your statement, it occurred to me that I may have read in the media, or heard in the media that at some stage he said maybe in Parliament, to a member of Parliament that that member of Parliament did not know what the reason was for your dismissal as Minister of Finance. So I got my staff to check something and I see here something – something here and I do not know, there is nothing. It may be that it is attributed to him. It says:

"You say a certain Finance Minister was removed without reason, but you do not know the reasons why I removed a certain Finance Minister."

20 Now I guess if it is, "I removed" that must be the President, because I guess only a President can remove a Minister. Now if, assuming that that is correctly attributed to him, I would imagine that it would create some confusion, because he had publically stated the reason why you were removed, and therefore any member of Parliament, anybody publically would be expected to know what reason he had given.

MINISTER NHLANHLA MUSA NENE: Absolutely.

CHAIRPERSON: But now if he says to a member of Parliament or anyone in the public that you actually do not know the reason why the Minister of Finance was removed, it may suggest that there was a reason other than the one that was publically stated. Is my understanding, if this is correct, would that be your understanding as well, is that how you would take it or not?

MINISTER NHLANHLA MUSA NENE: I would not want to venture into that space Chair.

CHAIRPERSON: Ja, ja.

10 MINISTER NHLANHLA MUSA NENE: I would want to venture into that. I have stated what I think are the reasons.

CHAIRPERSON: Yes.

MINISTER NHLANHLA MUSA NENE: Other than that one and that therefore would want to keep it that way.

CHAIRPERSON: Now I guess the legal team would just check in due course whether there is a record of that. I understand from what I have seen here, which is in the public domain that it may have been an answer to a question by the leader of the official opposition in Parliament. But I am sure when the former President gets an opportunity to present his side of the story he would be able to deal with all of  
20 that. Thank you very much.

ADV PAUL PRETORIUS SC: May I just ask one question arising out of your questions Chair? At that 2 minute meeting Minister Nene, did the President, or former President indicate who your replacement was to be?

MINISTER NHLANHLA MUSA NENE: No he did not.

ADV PAUL PRETORIUS SC: Thank you Chair.

CHAIRPERSON: Okay. Thank you very much Minister for coming to give evidence, as you heard, you probably will be asked to come back at some stage and I am sure that you will come back. Thank you very much for coming and you are excused, thank you.

NO FURTHER QUESTIONS

MINISTER NHLANHLA MUSA NENE: Thank you very much Chair.

CHAIRPERSON: Thank you.

ADV PAUL PRETORIUS SC: That remains Chair to ask you to condone the fact that in terms of the rules, the legal team has not issued any notices to implicate persons  
10 in terms of Rule 3.3. The principle reason for that being, we received the statement through unavoidable circumstances principally the commitments of the Minister on Monday night last – one day ago, two days ago. But we can give you the assurance Chair that we will attend to the matter as soon as possible.

CHAIRPERSON: Are you moving the application for condonation as you stand, or are you indicating that you will do so in due course?

ADV PAUL PRETORIUS SC: Well unfortunately we are asking for forgiveness not permission. So we ask you to – insofar as it is necessary and we are not sure that it is necessary for there to be a formal application and formal condonation. Because you have a wide discretion in terms of the rules Chair. We just perhaps notifying you  
20 of that fact.

CHAIRPERSON: Well in terms of process, it may well be that anyone who was entitled to be given those notices, should be given a chance to say something about whether there should be condonation.

ADV PAUL PRETORIUS SC: I do not know what one does about that.

CHAIRPERSON: I may be.

ADV PAUL PRETORIUS SC: I cannot scratch the evidence out of the record.

CHAIRPERSON: But we are safer if that is – if I make the decision after all concerned have been given an opportunity if they want to say something about it.

ADV PAUL PRETORIUS SC: Yes.

CHAIRPERSON: They might be wanting to say, really there was no reason for them not to be given notice and bla-bla-bla.

ADV PAUL PRETORIUS SC: That is fully understood Chair. Perhaps what we should do when we issue the notices is say to the affected persons if they have any matter to raise in relation to the issue of the notices, they should do so in their  
10 response.

CHAIRPERSON: Let me leave it to you how you will deal with it. But I am prepared to allow you to deal with the issue of condonation later on when everybody can be heard.

ADV PAUL PRETORIUS SC: Thank you Chair.

CHAIRPERSON: Yes. When we adjourn now, we would be resuming – is it on the 10<sup>th</sup>?

ADV PAUL PRETORIUS SC: As at present advised Chair, efforts have been made to call back witnesses to complete their testimony and to deal with cross-examination and in addition to deal with term of reference 1.8. We are still  
20 reasonably confident that we can call other witnesses for the vacant days between now and the 12<sup>th</sup> October when Minister Gordhan will give evidence.

CHAIRPERSON: Yes. So, do we make any announcement as to when we will resume, or do we make any announcement now, or are we going to issue media statement once we are certain about when the next hearing would be?

ADV PAUL PRETORIUS SC: Perhaps we should simply state that we will reconvene

on the 10<sup>th</sup> October at 10:00, subject to any notification that might be given to the public through the press.

CHAIRPERSON: For earlier?

ADV PAUL PRETORIUS SC: Attaché.

CHAIRPERSON: Okay thank you. We are going to adjourn at this stage. As things stand, the next hearing will be on 10 October, but there may be a possibility that we give out – we send out a media statement indicating to the public other earlier dates, or other dates, or if there is a change in regard to the 10<sup>th</sup>. But as things stand, the next date – the next hearing will be on the 10<sup>th</sup> October.

10 ADV PAUL PRETORIUS SC: Thank you Chair.

CHAIRPERSON: We adjourn.

HEARING ADJOURNS TO 10 OCTOBER 2018

HEARING ADJOURN

**TRANSCRIBER'S CERTIFICATE FOR COMMISSION OF INQUIRY**

**INTO STATE CAPTURE**

**HELD AT**

**PARKTOWN, JOHANNESBURG**

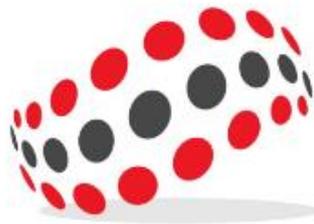
DATE HELD : 2018-10-03

DAY: : 19

TRANSCRIBERS : E. KOEKEMOER, R. BOUWER, A. BOSMAN, E

BOUWER, J CONNOUR

**Audio's are typed verbatim, as far as audible/possible**



**Accura Africa Group**

**Your Forward-Thinking Partner**