

**COMMISSION OF INQUIRY INTO STATE CAPTURE**

**HELD AT**

**PARKTOWN, JOHANNESBURG**

10

**18 FEBRUARY 2019**

**DAY 50**

20

**PROCEEDINGS HELD ON 18 FEBRUARY 2019**

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

**ADV PAUL PRETORIUS SC:** Morning Chair. Chair.

**CHAIRPERSON:** Yes

**ADV PAUL PRETORIUS SC:** Today and tomorrow have been reserved for the evidence or further evidence of Mr Fuzile and Catherine MacLeod from treasury. The issue has arisen in relation to the cross-examination of Mr Fuzile by the representatives of Mr Van Rooyen. That issue you have direction should be dealt with at the start. And then after that Chair the evidence this week and in the next two weeks will be lead in  
10 relation to the matters relating to Eskom. Mr Maleka will deal with today's proceedings, tomorrow's proceedings and will lead the team in relation to Eskom.

**CHAIRPERSON:** Okay thank you. The applicant or counsel for Mr Van Rooyen.

**ADV M K MATHIBA:** Chairperson for the record I am Homaswane Mathiba the initials MK the surname Mathiba.

**CHAIRPERSON:** Thank you.

**ADV M K MATHIBA:** I am leading this matter by T Masugo SC who

**CHAIRPERSON:** Yes.

**ADV M K MATHIBA:** Who could not make it today. Right. We from our understanding today this time was meant to move the application for the application for leave to cross-  
20 examine Mr Fuzile. An application for leave to give evidence by our client Mr Van Rooyen and thirdly a condonation application. We will be guided by your Chairperson with regards to how we deal with this aspect mainly because we are in the process of completing a supplementary statement for our client in relation to the areas that were pointed out to us that needs to be addressed.

**CHAIRPERSON:** Yes.

**ADV M K MATHIBA:** So by the end of today it will be ready.

**CHAIRPERSON:** Yes.

**ADV M K MATHIBA:** And from what I picked up was your suggestion could be that it be submitted first before we move this application because it relates thereto. So I would be guided by you Chairperson there.

**CHAIRPERSON:** Ja. Well Mr Van Rooyen submitted or delivered his application for Leave to Cross-examine Mr Fuzile some time back. I had occasion to read the application at some stage last week and there was an issue that I thought ought to be addressed by him in affidavit or supplementary affidavit in regard to his application for  
10 leave to cross-examine. I requested the legal team to mention that to Mr Van Rooyen's lawyers so that they could apply their mind to it as to whether they accepted that it is lead you to make issue to address. I understand from what you have said that indeed Mr Van Rooyen and his legal team have no problem addressing that issue in a supplementary affidavit and that that supplementary affidavit should be available at some stage today. Is that correct?

**ADV M K MATHIBA:** That is correct I confirm that Chairperson. Yes.

**CHAIRPERSON:** Now it would not be appropriate to I think deal with the application for leave to cross-examine before we have that supplementary affidavit and it is possible that once that supplementary affidavit has been received by the legal team and by Mr  
20 Fuzile's lawyers it may well be that they might decide that certain allegations that may be made in it need to be investigated or that they may need to file some affidavit in response to them. And it seems to me that that scenario places us in a position where it would not be appropriate to deal with the application for leave to cross-examine at this stage until all of that has happened. Do you have anything to say about that?

**ADV M K MATHIBA:** Chairperson I – nothing to say except to say that I agree with the

approach that you propose be taken so that we then submit the supplementary affidavit. We had actually thought – let me just mention this while I am still on the floor. We had actually thought the reference to supplementary affidavit was inadvertent reference to supplementary statement.

**CHAIRPERSON**: Oh okay.

**ADV M K MATHIBA**: Because we have had – ja – because he had submitted a statement so we thought in that regard what we really preparing is a supplementary statement.

**CHAIRPERSON**: Well you just need to look at the rules. My recollection is that the  
10 rules require you to make – when you make an application for leave to cross-examine my recollection is that what is contemplated is an affidavit. I may be mistaken just apply your mind to that.

**ADV M K MATHIBA**: Agree Chair – sorry to interrupt. I agree. We actually have submitted an affidavit in relation to the application for leave to cross-examine.

**CHAIRPERSON**: Yes, Yes.

**ADV M K MATHIBA**: Ja so when the information came to us for – to request more information.

**CHAIRPERSON**: Yes.

**ADV M K MATHIBA**: We thought it was in relation to the statement rather than in  
20 relation to the affidavit for the application to cross-examine or leave to cross-examine.

**CHAIRPERSON**: Or...

**ADV M K MATHIBA**: So now I understand.

**CHAIRPERSON**: Yes, ja you see that – the issue that you were asked to consider addressing in a supplementary affidavit which you understood to be statement is an issue that is relevant to the application for leave to cross-examine and my inclination is

that it should have been dealt with there. But I can understand if those who prepared the affidavit might not have appreciated that it was important. So – but it is a factor to be taken into account in regard to the application for leave to cross-examine. Ja.

**ADV M K MATHIBA**: So I think what – all we will do is to convert it into an affidavit.

**CHAIRPERSON**: Yes, yes.

**ADV M K MATHIBA**: Then it should not be a problem at all.

**CHAIRPERSON**: It should not.

**ADV M K MATHIBA**: Ja.

**CHAIRPERSON**: Yes okay, okay.

10 **ADV M K MATHIBA**: Thank you.

**CHAIRPERSON**: Well what we – I will hear what everyone else may have to say but it may be that the – all parties may well indicate their attitude as to whether if I saw fit – if I see fit I could deal with the application for leave to cross-examine in chambers as opposed to in an open hearing with argument but obviously the decision would be announced or in open hearing. That might just help expedite things but obviously if we are to deal with it that way it would be important that everybody concerned must have an opportunity to put in whatever submissions they might wish to put in. I do not know whether you are in a position to indicate what your attitude is to that or is it something you would need time to reflect on?

20 **ADV M K MATHIBA**: No we definitely would support the – that approach of resolving it in chambers and then announcing it later.

**CHAIRPERSON**: Yes.

**ADV M K MATHIBA**: The – what was communicated to us by the legal team is that they will not object to application for leave to cross-examine or testify.

**CHAIRPERSON**: Yes, yes.

**ADV M K MATHIBA**: Yes.

**CHAIRPERSON**: Okay no that is fine. I do not know whether it should be counsel for Mr Fuzile or Mr Maleka?

**CHAIRPERSON**: Yes. Oh your mic. Yes.

**ADV ADILA HASSIM**: Thank you. Mr Fuzile is under subpoena to attend the commission today and tomorrow. He is no longer in the employment of National Treasury. He has left other work responsibilities to assist the commission over the next two days. He has indicated and instructed that he is willing to subject himself to cross-examination by Mr Van Rooyen's legal team today or tomorrow and so he is available  
10 and would prefer that the cross-examination takes place either today or tomorrow. We are also instructed by National Treasury to bring a substantive application to cross-examine Mr Van Rooyen. We have not submitted that application yet we are still within the time frame of the fourteen days in terms of Rule 3.3.6 of the Rules of the Commission and we will be submitting such application within the allotted time frame. And we are in your hands Chair as regards the cross-examination of Mr Fuzile in the meantime.

**CHAIRPERSON**: Well I do understand from last time that Mr Fuzile is now with new employers who are not part of the government. It is important that the processes that we follow be fair. It seems to me that while the legal team certainly of the commission  
20 certainly wanted to accommodate concerns that Mr Fuzile or his employers may have and try and finish his evidence and cross-examination within these two days at a practical level that is not possible without the commission acting unfairly. Mr Van Rooyen and his lawyers had prepared an application for leave to cross-examine that they believed was in order. I am the one who raised certain issue to say they should address it and they are addressing it and they will put in a supplementary affidavit they

say to the extent that they thought it was a statement it would be available sometime today. I do not know whether the fact that it is now going to be converted into an affidavit might cause a delay by one or two days but the – that supplementary affidavit is important for purposes of considering his application for leave to cross-examine and the application should not be dealt with before that is in place. Obviously you have heard what I have said about the whole thing. I think that I should just say to Mr Fuzile I hope his new employers will understand the importance of the work of the commission. There is nobody who is dragging Mr Fuzile to the commission unnecessarily and from what Mr Fuzile has said before he is willing to assist the

10 commission as much as he can. My understanding is that there may be challenges because he is with a new employer. I hope that somebody can just explain to the new employer the importance of the work of the commission. Mr Fuzile was occupying a very senior position at Treasury. He has information that is going to be useful to the commission in dealing with its work. So the new employers must just show an appreciation of the importance of the work of this commission and allow Mr Fuzile time to assist the commission. It is not like we are – we want him here like every week after tomorrow arrangements would be made for another time. I just want to emphasise this point both in regard to Mr Fuzile's employers and other parties we have been trying as a commission as far as possible to accommodate people in regard to dates. But we

20 cannot do that all the time and forever without compromising the speed with which we must do this work. So there are going to be times when various people are not going to be happy with us because we are going to insist on certain dates. This commission has a very limited time within which to finish its work and if we were to accommodate everybody we would never finish. So everyone will have to show appreciation and understanding that is going to be the case with counsel, with lawyers. That is going to

be the case with witnesses and employers of witnesses. Will just have to show appreciation that the work of the commission is work for the country. They are doing business in the country they want a better country and this commission is about making a contribution to the building of a better country. So they – all of us must make sacrifices. So I just thought I would mention that. So – but from what you say it seems to me that you cannot do anything more than record what you indicated but you understand what needs to be done.

**ADV ADILA HASSIM:** Chair I fully appreciate what needs to be done and the constraints of the commission.

10 **CHAIRPERSON:** Yes.

**ADV ADILA HASSIM:** And for the record National Treasury ...

**CHAIRPERSON:** Yes.

**ADV ADILA HASSIM:** The attitude of National Treasury is to fully co-operate with the commission.

**CHAIRPERSON:** Yes, yes.

**ADV ADILA HASSIM:** Both in the provision of written evidence and appearances.

**CHAIRPERSON:** Yes, yes.

**ADV ADILA HASSIM:** And that remains to be the case.

**CHAIRPERSON:** Yes, yes.

20 **ADV ADILA HASSIM:** As far as the cross-examination of Mr Fuzile goes I have made my submissions.

**CHAIRPERSON:** Yes.

**ADV ADILA HASSIM:** The – I am in agreement and I would support the Chair's suggestion of an expedited process with the application to cross-examination to take place.

**CHAIRPERSON**: Yes, yes.

**ADV ADILA HASSIM**: But through a chamber's application perhaps.

**CHAIRPERSON**: Yes.

**ADV ADILA HASSIM**: And – and if it is – if it is possible to do that within the application to take place.

**CHAIRPERSON**: Yes, yes.

**ADV ADILA HASSIM**: At least within the next two days and for us to respond that would also be our preference.

**CHAIRPERSON**: Ja.

10 **ADV ADILA HASSIM**: I understand there is a supplementary affidavit to be filed.

**CHAIRPERSON**: Yes.

**ADV ADILA HASSIM**: But that would be done today we would be in a position to respond tomorrow.

**CHAIRPERSON**: Yes, yes.

**ADV ADILA HASSIM**: So we are here and present and accounted for.

**CHAIRPERSON**: Yes, yes. And with regard to Mr Fuzile once it is accepted that there is a legitimate issue that has been raised and I can just tell everybody what the issue is. The issue is that in terms of the Public Protector's Report the Public Protector indicated that there were cell phone records which indicated that around about the time or  
20 immediately before Mr Van Rooyen's appointment certain cell phone records reflected that he was around Saxonwold or visited the Gupta family a number of times.

**ADV ADILA HASSIM**: Yes.

**CHAIRPERSON**: I – I think it is important that I should know what he has to say about that. Is it true, is it not true or what the version is? That is what – that is the issue I have raised. So it is an important issue and he should be given enough time to deal

with it and once he has dealt with it it may well be that both the legal team as well as Mr Fuzile might want to respond to what he says if we are going to do justice.

**ADV ADILA HASSIM**: Yes.

**CHAIRPERSON**: Okay?

**ADV ADILA HASSIM**: Yes.

**CHAIRPERSON**: Alright thank you.

**ADV ADILA HASSIM**: Thank you Chair.

**CHAIRPERSON**: Mr Maleka.

10 **ADV VINCENT MALEKA**: Chair I hope what I am going to say does not upset the  
applecart.

**CHAIRPERSON**: Yes.

20 **ADV VINCENT MALEKA**: We would suggest that there is a middle ground between  
the two extreme positions proposed on the one hand by the lawyers of Mr Fuzile and on  
the other hand the suggestion proposed by the lawyers of Mr Van Rooyen. And the  
middle that we would ask you to explore arises from the powers you have in terms of  
the regulations to consider and if necessary grant leave to cross-examine only if it is in  
the best interest of the work of the commission. So we underline the pre-requisites of  
that power that you have and as you consider all of these questions as you navigate  
between the two extreme positions we would ask you to consider what is in the best  
interest and the work of the commission. We understand that there is a need to be fair  
to Mr Van Rooyen but we will ask you as you consider the question of fairness to Mr  
Van Rooyen that we are in this difficult position of the attitude he has taken and the  
attitude which arises from his papers before you. There is an application for  
condonation because his application for leave to cross-examine and his application for  
leave to testify come almost a month later than the time period he was required to

submit that application. So we are in this difficult position because he has decided to make an election in terms of the rules a month later than he was required to do so. And so fairness require that as you consider the conflicting or competing interests take into account that we are in this difficult position because of the late choice he made.

**CHAIRPERSON**: When was his application for leave to cross-examine delivered to the commission?

**ADV VINCENT MALEKA**: Chair you now have before you the bundle comprising the statement under oath – not under oath – a statement by Mr Van Rooyen responding to the evidence of Mr Fuzile and other so corroborated that evidence. Somewhere in the  
10 middle of that bundle there is an application for condonation.

**CHAIRPERSON**: And it should actually have been at the top?

**ADV VINCENT MALEKA**: It should have been at the top but it is somewhere in the middle of the belly of that bundle. You will see that the application for condonation is prefixed by an index and you will see that the last part of that index bears the date of 25 January 2019.

**CHAIRPERSON**: Yes.

**ADV VINCENT MALEKA**: At best for him the application was made on the 25 January 2019. If you go to page 22 of that bundle you will see that there is Annexure DD1 of the application for condonation. There is the Rule 33 Notice that was given to Mr Van  
20 Rooyen at the request of the legal team of the commission informing him about the nature and extent of aspects of Mr Fuzile and others who corroborated his evidence which may or could implicate him. You will see that the notice is dated 19 November 2018 that is on page 25 of the bundle.

**CHAIRPERSON**: Well my page – well there are – my page 25 there are two pages 25's and both of them do not reflect a notice from the commission.

**ADV VINCENT MALEKA:** There is Annexure DD to the application for leave to condone.

**CHAIRPERSON:** Ja but anyway you say the date was November sometime in November.

**ADV VINCENT MALEKA:** 19 November 2018.

**CHAIRPERSON:** Yes, ja.

**ADV VINCENT MALEKA:** So taking the two dates together the application for leave to cross-examine and or lead evidence is out by at least a month. And so we are in this difficult position because of the lateness of that application. So that we would submit  
10 that if there is going to be fairness in order to allow Mr Van Rooyen to cross-examine Fuzile it must take into account the fact that he was late. It must take into account the fact that people like Mr Fuzile and of course we the legal team of the commission would be prejudiced by reason of the fact that he did not comply. So the level of prejudice that I would want you to consider in order to explore the middle ground is this. Firstly that Mr Fuzile is here to be cross-examined. He has made it quite clear that he is here today and tomorrow and for that reason we would like you to consider that part of the balancing exercise. I understand that it is important for him to make as much contribution as is necessary to assist the commission and its work. We ourselves have prepared to complete his evidence in relation to that discrete narrow part of the terms of  
20 reference which is paragraph 1.8. It is fairly narrow, it is discreet and it can be completed because on that term the only outstanding evidence as far as we see it is that of Mr Fuzile and it is that of Ms Catherine MacLeod, it is that of Mr Van Rooyen. That completes the evidence in relation to paragraph 1.8 of the terms of reference.

**CHAIRPERSON:** Ja but I am not sure to what extent you as the legal team are ready to deal with Mr Fuzile's – not Mr Fuzile Mr Van Rooyen's version. If you tell me you are

I will take that but I – I do not know and I have not seen anything here that suggests that we have statements or affidavits from relevant persons in regard to those cell phone records that the Public Protector talked about. I do not know whether such – whether there is not any investigation that the investigation team is doing in around Mr Van Rooyen among other people to check certain things to enable you to deal with certain issues properly. So, but I hear what you say, but if in the end I think logistically it is, there is difficulty in doing this over and having Mr Fuzile considering the application for leave to cross-examine before the supplementary affidavit is in and, and when it is in depending on what he would be saying in it. You might have need as the  
10 legal team to approach the person who produced the cellphone records and say what do you say to this version and so on. So when the application for leave to cross-examine is considered obviously including the condonation application such delay as may have happened on the part of Mr Van Rooyen will be considered and dealt with but logistically there, there is difficulty in dealing with that application until everything is in.

**ADV VINCENT MALEKA:** Yes. Chair I understand.

**CHAIRPERSON:** *Ja.*

**ADV VINCENT MALEKA:** But may I tell you the position.

**CHAIRPERSON:** *Ja.*

20 **ADV VINCENT MALEKA:** Of the legal team?

**CHAIRPERSON:** *Ja.*

**ADV VINCENT MALEKA:** And I hope I am not misrepresenting my colleagues' position.

**CHAIRPERSON:** Yes, yes.

**ADV VINCENT MALEKA:** And the position arises from this context.

**CHAIRPERSON:** Hm.

**ADV VINCENT MALEKA:** Neither Mr Fuzile nor his former colleagues.

**CHAIRPERSON:** Hm.

**ADV VINCENT MALEKA:** In Treasury.

**CHAIRPERSON:** Hm.

**ADV VINCENT MALEKA:** Raised the question of the cellphones.

**CHAIRPERSON:** Yes.

**ADV VINCENT MALEKA:** The question of the cellphone arose for the first time in the Public Protector's Report.

10 **CHAIRPERSON:** Yes.

**ADV VINCENT MALEKA:** You would recall that part of the bundle you have.

**CHAIRPERSON:** Yes.

**ADV VINCENT MALEKA:** From Mr Van Rooyen.

**CHAIRPERSON:** Yes.

**ADV VINCENT MALEKA:** Includes the application for an interdict.

**CHAIRPERSON:** Yes.

**ADV VINCENT MALEKA:** Against the use of.

**CHAIRPERSON:** [Intervenes].

**ADV VINCENT MALEKA:** The Public Protector's Report.

20 **CHAIRPERSON:** Yes, yes.

**ADV VINCENT MALEKA:** In parts of that affidavit.

**CHAIRPERSON:** Ja.

**ADV VINCENT MALEKA:** She deals with the question of the cellphone records.

**CHAIRPERSON:** Huh-uh.

**ADV VINCENT MALEKA:** He does not squarely deny.

**CHAIRPERSON:** Hm.

**ADV VINCENT MALEKA:** Whether the Public Protector's reference to those records is accurate or not.

**CHAIRPERSON:** *Ja.*

**ADV VINCENT MALEKA:** The position he took at that point in time.

**CHAIRPERSON:** *Ja.*

**ADV VINCENT MALEKA:** Was that until he sees that records.

**CHAIRPERSON:** *Ja.*

**ADV VINCENT MALEKA:** Those records.

10 **CHAIRPERSON:** Yes.

**ADV VINCENT MALEKA:** He would not be able to comment.

**CHAIRPERSON:** Yes.

**ADV VINCENT MALEKA:** When you raised with us the question of the cellphones.

**CHAIRPERSON:** Yes.

**ADV VINCENT MALEKA:** And asked us to inform him about that issue.

**CHAIRPERSON:** Yes.

**ADV VINCENT MALEKA:** So that he make a chose.

**CHAIRPERSON:** Hm.

**ADV VINCENT MALEKA:** To deal with them in the supplementary statement.

20 **CHAIRPERSON:** Yes.

**ADV VINCENT MALEKA:** We prepared ourselves.

**CHAIRPERSON:** [Intervenues].

**ADV VINCENT MALEKA:** To deal with that part of the omission.

**CHAIRPERSON:** Yes.

**ADV VINCENT MALEKA:** Should.

**CHAIRPERSON:** In a certain way.

**ADV VINCENT MALEKA:** In a certain way.

**CHAIRPERSON:** *Ja.*

**ADV VINCENT MALEKA:** We can assure you that as far as the investigators are concerned.

**CHAIRPERSON:** *Ja.*

**ADV VINCENT MALEKA:** They have done the investigation.

**CHAIRPERSON:** Yes.

**ADV VINCENT MALEKA:** In the trial bundle that we were going to hand up to you.

10 **CHAIRPERSON:** *Ja, hm.*

**ADV VINCENT MALEKA:** We have included several cellphone records.

**CHAIRPERSON:** Yes.

**ADV VINCENT MALEKA:** Relating to the various communication activities.

**CHAIRPERSON:** Yes.

**ADV VINCENT MALEKA:** That took place during that period.

**CHAIRPERSON:** *Ja.*

**ADV VINCENT MALEKA:** Before and after.

**CHAIRPERSON:** *Ja.*

**ADV VINCENT MALEKA:** So we are ready to deal.

20 **CHAIRPERSON:** Directly.

**ADV VINCENT MALEKA:** With that issue.

**CHAIRPERSON:** Okay.

**ADV VINCENT MALEKA:** Should he be called upon.

**CHAIRPERSON:** Yes.

**ADV VINCENT MALEKA:** To testify and should you allow us.

**CHAIRPERSON:** Yes.

**ADV VINCENT MALEKA:** To cross-examine him.

**CHAIRPERSON:** *Ja*.

**ADV VINCENT MALEKA:** So we are prepared and.

**CHAIRPERSON:** *Ja*.

**ADV VINCENT MALEKA:** I am not suggesting that we are.

**CHAIRPERSON:** To, to, to put questions to him.

**ADV VINCENT MALEKA:** Indeed.

**CHAIRPERSON:** As opposed to cross-examine.

10 **ADV VINCENT MALEKA:** Indeed, indeed.

**CHAIRPERSON:** Okay.

**ADV VINCENT MALEKA:** So.

**CHAIRPERSON:** Hm.

**ADV VINCENT MALEKA:** The last issue that I, I would like you to consider Chair is this.

**CHAIRPERSON:** *Ja*, hm.

**ADV VINCENT MALEKA:** That we have taken time to prepare.

**CHAIRPERSON:** Hm.

20 **ADV VINCENT MALEKA:** For Mr Van Rooyen's evidence and to complete Mr Fuzile's evidence.

**CHAIRPERSON:** *Ja*.

**ADV VINCENT MALEKA:** On the understanding that we will be beginning a new phase of the hearing and that.

**CHAIRPERSON:** *Ja*.

**ADV VINCENT MALEKA:** Is the Eskom enquiry.

**CHAIRPERSON:** *Ja.*

**ADV VINCENT MALEKA:** The first witness of Eskom will come on Friday.

**CHAIRPERSON:** Hm.

**ADV VINCENT MALEKA:** But before he comes to take.

**CHAIRPERSON:** Hm.

**ADV VINCENT MALEKA:** The witness stand.

**CHAIRPERSON:** Hm.

**ADV VINCENT MALEKA:** We would like to ask you for time to take you through a number of documents.

10 **CHAIRPERSON:** *Ja.*

**ADV VINCENT MALEKA:** And it is going to be a document intensive exercise.

**CHAIRPERSON:** Hm.

**ADV VINCENT MALEKA:** We have set aside two days to do so.

**CHAIRPERSON:** Hm.

**ADV VINCENT MALEKA:** We are willing to give up one of those days.

**CHAIRPERSON:** Hm.

**ADV VINCENT MALEKA:** In order to complete the outstanding evidence on 1.8.

**CHAIRPERSON:** Hm.

**ADV VINCENT MALEKA:** So that for that reason.

20 **CHAIRPERSON:** Hm.

**ADV VINCENT MALEKA:** We would be willing to start with the Eskom's leg of the hearing.

**CHAIRPERSON:** Hm.

**ADV VINCENT MALEKA:** On Thursday.

**CHAIRPERSON:** Hm.

**ADV VINCENT MALEKA:** Instead of Wednesday.

**CHAIRPERSON:** *Ja.*

**ADV VINCENT MALEKA:** And that additional one day.

**CHAIRPERSON:** Hm.

**ADV VINCENT MALEKA:** Can be made available in order to accommodate the complexities that arise from the delayed application for leave to cross-examine.

**CHAIRPERSON:** Hm.

**ADV VINCENT MALEKA:** And testify.

**CHAIRPERSON:** Hm.

10 **ADV VINCENT MALEKA:** And so Chair that is the balance exercise that we would ask you to take into account, because as you rightly point out.

**CHAIRPERSON:** Huh-uh.

**ADV VINCENT MALEKA:** This Commission does not have the luxury of time.

**CHAIRPERSON:** *Ja.*

**ADV VINCENT MALEKA:** The Commission does not have luxury of endless resources.

**CHAIRPERSON:** Hm.

**ADV VINCENT MALEKA:** Time and the clock is always ticking.

**CHAIRPERSON:** Hm.

20 **ADV VINCENT MALEKA:** And it is ticking against the context of a court order that we have at least.

**CHAIRPERSON:** Hm.

**ADV VINCENT MALEKA:** Not more than a year, one and half years to complete the investigation.

**CHAIRPERSON:** From, from much less

**ADV VINCENT MALEKA:** From much less Chair.

**CHAIRPERSON:** As from now.

**ADV VINCENT MALEKA:** We have much less. So that is the difficulty and.

**CHAIRPERSON:** Well, well there was also the issue, but as you stand here you do not know what the supplementary affidavit will say. So how can you say that you will be in a position to, you will not seek time to deal with whatever the allegations are?

**ADV VINCENT MALEKA:** No, no. I do not know what the supplementary affidavit would say.

**CHAIRPERSON:** Yes.

10 **ADV VINCENT MALEKA:** But I know what you asked him to say in relation.

**CHAIRPERSON:** To, to deal with.

**ADV VINCENT MALEKA:** Indeed.

**CHAIRPERSON:** *Ja.*

**ADV VINCENT MALEKA:** And on that we are prepared.

**CHAIRPERSON:** *Ja.*

**ADV VINCENT MALEKA:** Because in [indistinct] version.

**CHAIRPERSON:** Hm.

**ADV VINCENT MALEKA:** And by the way yes I would give a version.

**CHAIRPERSON:** Hm.

20 **ADV VINCENT MALEKA:** But that version is not in a manner that you asked him to deal with. So we [intervenes].

**CHAIRPERSON:** But I am not sure maybe he did. You talk about the High Court affidavit?

**ADV VINCENT MALEKA:** Yes.

**CHAIRPERSON:** I do recall the statement that he wanted to see the cellphone

records. I do not know whether he does anything more than that. You need not commit yourself.

**ADV VINCENT MALEKA:** No.

**CHAIRPERSON:** To anything. You, you have read, you know what you want to deal with in due course in regards to that and look the only real issue from your point is Mr Fuzile's evidence or is it Mr Fuzile and Mr Van Rooyen's evidence?

**ADV VINCENT MALEKA:** It is, it is both. The real issue for me is to complete the evidence of Mr Fuzile including his cross-examination by Mr Van Rooyen and thereafter is to have Mr Van Rooyen testify and complete his evidence.

10 **CHAIRPERSON:** But did his counsel not say he is not available today or?

**ADV VINCENT MALEKA:** I understand that he is not available today.

**CHAIRPERSON:** *Ja.*

**ADV VINCENT MALEKA:** And I understand that they say he is not available tomorrow.

**CHAIRPERSON:** *Ja.*

**ADV VINCENT MALEKA:** But all we can say Chair is that we have indicated to them long ago.

**CHAIRPERSON:** *Ja.*

**ADV VINCENT MALEKA:** In writing.

**CHAIRPERSON:** *Ja.*

20 **ADV VINCENT MALEKA:** That these are the dates.

**CHAIRPERSON:** *Ja.*

**ADV VINCENT MALEKA:** And we leave it in your hands.

**CHAIRPERSON:** *Ja.* No, let, let me hear. Counsel for Mr Van Rooyen what is his availability again?

**ADV VINCENT MALEKA:** Oh, by the way I am just being reminded by Mr [intervenes].

**CHAIRPERSON:** Yes.

**ADV VINCENT MALEKA:** That he indicated that they can, his counsel can make himself available on Wednesday.

**CHAIRPERSON:** Oh, okay. Mr Mathiba?

**ADV M K MATHIBA:** Chairperson the, just, just before I deal with that availability.

**CHAIRPERSON:** Ja.

**ADV M K MATHIBA:** There are just a few issues that arise from Mr Maleka and I thought I, I should just deal with those very briefly.

**CHAIRPERSON:** Ja.

10 **ADV M K MATHIBA:** Because I see that he says we are here because of the attitude that was adopted my client Mr Van Rooyen.

**CHAIRPERSON:** Hm.

**ADV M K MATHIBA:** Now we will deal, I mean we agreed that it would be dealt with in Chambers.

**CHAIRPERSON:** Well, well.

**ADV M K MATHIBA:** But we, we.

**CHAIRPERSON:** Well you maybe wanting to say.

**ADV M K MATHIBA:** Hm.

**CHAIRPERSON:** As far as the application for leave to cross-examine.

20 **ADV M K MATHIBA:** Yes.

**CHAIRPERSON:** Is concerned.

**ADV M K MATHIBA:** Yes.

**CHAIRPERSON:** You were ready to move that application today?

**ADV M K MATHIBA:** Yes.

**CHAIRPERSON:** Had it not been for the fact that the Chairperson you were told

wanted you to apply your mind to whether you should not deal with a certain issue.

**ADV M K MATHIBA**: Definitely.

**CHAIRPERSON**: Yes.

**ADV M K MATHIBA**: Yes.

**CHAIRPERSON**: Otherwise you were.

**ADV M K MATHIBA**: *Ja*.

**CHAIRPERSON**: You were ready.

**ADV M K MATHIBA**: Definitely we ready more.

**CHAIRPERSON**: *Ja*.

- 10 **ADV M K MATHIBA**: To move it today and, and as I indicated the legal team of the Commission had told us they are not going to oppose it. So I mean.

**CHAIRPERSON**: Yes.

**ADV M K MATHIBA**: It is not fair therefore for Maleka to stand up here.

**CHAIRPERSON**: *Ja*.

**ADV M K MATHIBA**: Mr Maleka then to say you know they delayed by this period, but why, why, why are they supporting it?

**CHAIRPERSON**: Hm.

**ADV M K MATHIBA**: If, if, if that is the case.

- 20 **CHAIRPERSON**: No, I think, I think, I think to be fair to him he is raising that in the light of what is unfolding.

**ADV M K MATHIBA**: Yes.

**CHAIRPERSON**: Arising from the fact that I have said I would like Mr Van Rooyen to deal with the issues that we; I think he is.

**ADV M K MATHIBA**: Yes.

**CHAIRPERSON**: As long as the application for leave to cross-examine was dealt with

today.

**ADV M K MATHIBA:** Yes.

**CHAIRPERSON:** And as long as Mr Fuzile gave his evidence and.

**ADV M K MATHIBA:** Hm.

**CHAIRPERSON:** Mr Van Rooyen made himself available he would have no problem.

**ADV M K MATHIBA:** Right.

**CHAIRPERSON:** *Ja*.

**ADV M K MATHIBA:** Yes.

**CHAIRPERSON:** *Ja*.

10 **ADV M K MATHIBA:** Then I think that he should point at the right problem rather.

**CHAIRPERSON:** *Ja*, but what, what is his availability again?

**ADV M K MATHIBA:** *Ja*, he is not available, he is not available today and tomorrow.

**CHAIRPERSON:** *Ja*.

**ADV M K MATHIBA:** Wednesday he could be.

**CHAIRPERSON:** *Ja*.

**ADV M K MATHIBA:** Available.

**CHAIRPERSON:** Yes.

**ADV M K MATHIBA:** *Ja*, but what Mr Maleka did not deal with is that we, we raised

with them the fact that with regard to Mr Fuzile we could not prepare for his cross-

20 examine as we are dealing with the supplementary.

**CHAIRPERSON:** *Ja*.

**ADV M K MATHIBA:** Affidavit.

**CHAIRPERSON:** *Ja*.

**ADV M K MATHIBA:** And secondly we have a statement that was given to us this morning.

**CHAIRPERSON:** *Ja.*

**ADV M K MATHIBA:** Which we need to read through and see how it relates to our client and advise him accordingly and consult.

**CHAIRPERSON:** *Ja.*

**ADV M K MATHIBA:** *Ja. So.*

**CHAIRPERSON:** [Clearing throat], *ja.*

**ADV M K MATHIBA:** So, but that is why we had proposed Monday.

**CHAIRPERSON:** *Ja.*

**ADV M K MATHIBA:** Next week.

10 **CHAIRPERSON:** *Ja.*

**ADV M K MATHIBA:** For us to, for him to testify; first for us to cross-examine Mr Fuzile and secondly for him to testify and be cross-examined if the application for leave to cross-examine has been granted.

**CHAIRPERSON:** Okay.

**ADV M K MATHIBA:** *Ja.*

**CHAIRPERSON:** *Ja* that is fine.

**ADV M K MATHIBA:** Right.

**CHAIRPERSON:** Okay.

**ADV M K MATHIBA:** That is the context, *ja.* Thank you.

20 **CHAIRPERSON:** Thank you. Well I have heard everybody. We are going to postpone the application. I am going to postpone the application for leave to cross-examine brought by Mr Van Rooyen. A fresh date will have to be arranged and it will be set down again. It is important that this Commission be fair to all parties. The issue that I have raised and that I wanted Mr Van Rooyen and his lawyers to deal with is an important issue. They were only informed of it late last week. There are other

witnesses who come and give evidence and they do not finish. They, they come back. Ideally we should be having witnesses where they come once and get cross-examined and they finish their evidence. Logistically it has not been happening like that. I will allow Mr Van Rooyen to have the opportunity to file his supplementary affidavit and let the legal team as well as Mr Fuzile's team look at his supplementary affidavit and see if they want to file anything. A fresh date will have to be arranged and I have already made remarks with regard to the fact that we understand, I understand that Mr Fuzile is no longer with the Government. He is employed by new employers but we just have to make sure that things are done in a manner that is fair everybody. Unfortunately he will  
10 have to be asked to come back at some stage. So the application for leave to cross-examine brought by Mr Van Rooyen is postponed and in due course arrangements must be made for that to be dealt with and if need be I will consider whether I can deal with it in chambers. I understand that all parties have, no party has a problem with that to try and expedite matters. Okay, thank you.

**HEARING ADJOURNS**

**HEARING RESUMES**

**ADV VINCENT MALEKA:** Chair now that Mr Fuzile's evidence would not be heard today and tomorrow [intervenes].

**CHAIRPERSON:** No Mr Fuzile's evidence can be heard. It is, it is the application for  
20 leave to cross-examine that will not be heard.

**ADV VINCENT MALEKA:** The; Mr Fuzile has given a second statement. We received it on, on, on, on Friday.

**CHAIRPERSON:** Yes.

**ADV VINCENT MALEKA:** He does not affect any interest of Mr Van Rooyen.

**CHAIRPERSON:** Yes.

**ADV VINCENT MALEKA:** I hope that you have been given that statement.

**CHAIRPERSON:** I have, I have seen it *ja*.

**ADV VINCENT MALEKA:** And the statement mentions topics that are dealt with and I would like to take you through to some of them, because it seems on the reading of the statement that a number of persons are mentioned, but they are mentioned in the context of topics which have already been dealt with by other witnesses and he raises two additional matters both of which will be dealt with in due course and fully when our colleagues who are dealing with other state owned entities present their version of the hearings and so I am going to take you through those parts in order to persuade you  
10 that on the reading of the statement there is no need to give notice to persons who are mentioned, because they have already been mentioned by others who have given evidence before you and in respect of the two new matters he raises notices to the persons he mentioned as possible implicated parties will be given to them in due course when full hearings on those aspects take place, but if you conclude that on the face of his statement and with reference to persons who have been mentioned there is a need to give notice then the legal team will have to undertake that exercise. So can I ask you first of all to go to the statement and it has not yet been given an exhibit.

**CHAIRPERSON:** Yes.

**ADV VINCENT MALEKA:** Number. What we suggest is that this statement be  
20 admitted as EXHIBIT P2, because.

**CHAIRPERSON:** The, the, the statement, well the entire bundle the statement and annexures, and annexures hey?

**ADV VINCENT MALEKA:** Yes.

**CHAIRPERSON:** Yes, okay.

**ADV VINCENT MALEKA:** Remember that his previous evidence was part and parcel

of EXHIBIT P before you.

**CHAIRPERSON:** Yes, yes.

**ADV VINCENT MALEKA:** So we would respectfully suggest that sequentially it should become EXHIBIT P2.

**CHAIRPERSON:** Okay. It shall be so marked.

**ADV VINCENT MALEKA:** And Chair to take it to the various points of the statement can I ask you to go to the second, well the third page of that bundle? You will see that there is a table of contents.

**CHAIRPERSON:** Yes, yes.

10 **ADV VINCENT MALEKA:** And you will see that there is an introduction. We can skip that for the moment. You can see that the second item which starts on page 5 is his role at National Treasury. He has already testified about that earlier on when he took the witness stand on 22 November. He then talks about the budget process and then in paragraph, sorry on page 14 he introduces more or less a new topic which is the attempts to move the budget to the Presidency. It is at page 14, Chair. So can I?

**CHAIRPERSON:** Yes.

**ADV VINCENT MALEKA:** Interrupt myself and ask you to go to page 14?

**CHAIRPERSON:** Yes.

20 **ADV VINCENT MALEKA:** You will see that in paragraph 30 on page 14 he talks about rumours that he heard concerning the unhappiness of the former President concerning the budget process and then in the next paragraph he talks about the process that followed thereafter in order to remove the budgetary process from National Treasury to a different entity and then he mentioned persons, but we have looked at that part of his statement. It does not suggest that either the former President or other persons he mentioned did something wrong to the extent that there was an attempt to remove

National Treasury from, sorry the budget from National Treasury to any other department or the office of the Presidency. We would respectfully suggest that all of those persons he mentioned they were mentioned as a matter of context, but not suggesting that they have done something unlawful, irregular or illegal and for that reason we do not believe that there is a reason to give notice, but of course like any other thing. It maybe that we are wrong to the extent that we are going to canvas this part of Mr Fuzile's evidence and to the extent that in the course of his evidence he suggests that something untoward was done. Then at that point in time there may well be a need to give notice in terms of I think it is Rule 10 of the Commission's Rules. So

10 that is the first new thing that comes about.

**CHAIRPERSON:** Yes.

**ADV VINCENT MALEKA:** If you go back to the index at the table of contents you will see from then he moves to the nuclear procurement which starts on page 18 of his affidavit. That issue has been canvassed at length by both former Minister Nene and Minister Gordhan and all he does in that regard is simply to give corroborating evidence. We would respectfully suggest that his evidence on that score does not raise anything new.

**CHAIRPERSON:** So you say that other witnesses made statements and gave evidence that may have been said to implicate certain people in regard to that program

20 and those persons were given Rule 33 notices.

**ADV VINCENT MALEKA:** Yes.

**CHAIRPERSON:** Then?

**ADV VINCENT MALEKA:** Yes.

**CHAIRPERSON:** [Intervenes].

**ADV VINCENT MALEKA:** Especially Minister Nene and also.

**CHAIRPERSON:** Hm.

**ADV VINCENT MALEKA:** Minister Gordhan.

**CHAIRPERSON:** And actually they, at least to my knowledge, they do not seem to have reacted in any way.

**ADV VINCENT MALEKA:** Yes.

**CHAIRPERSON:** Is that correct from the legal point of view?

**ADV VINCENT MALEKA:** That is my understanding.

**CHAIRPERSON:** *Ja.* They have not conceded that they wanted to put up a version or to complain about anything.

10 **ADV VINCENT MALEKA:** Yes.

**CHAIRPERSON:** Okay.

**ADV VINCENT MALEKA:** And my understanding of Mr Fuzile's evidence is that it is corroborating in nature.

**CHAIRPERSON:** Okay, okay.

**ADV VINCENT MALEKA:** And then he completes the corroborating evidence of the nuclear procurement at page 38 and from page 40 he goes to the next topic which is the Engen PetroSA deal. You have heard on this issue the evidence of Minister Nene and the evidence of Mr Gordhan. His evidence here too is merely to corroborate their evidence and at some point he says so in expressed terms. So we would submit that

20 there is nothing in that regard other than to provide an additional source of information which we would take into account in order to assist whether you accept the versions of the previous Ministers who talked on this issue and then next is matters relating to SAA on, from page 47. That is the second new topic he raises, but of course you know that both Minister Nene has testified on it and both Mr, Minister Gordhan has testified on it. What is new in relation to the evidence of Mr Fuzile on this is that he mentions persons

by name. We would submit to you that to the extent that he mentions persons by name on this topic there is no need for us to give notice, because SAA as you know it is a different topic which will be dealt with extensively before you by Ms Hofmeyr and she has been preparing on it and once that part of the enquiry starts relevant notices will be given in respect of those persons.

**CHAIRPERSON:** Well what you, to the extent that you say Mr Fuzile's evidence today and tomorrow will be corroborative of evidence that has been given by other witnesses before that on its own might not be a ground for or justification for not issuing notices, because what will be important is what the rule says, the relevant rule says. If the rule  
10 says if a witness, if the Commission receives a statement from a witness who implicates a particular person the legal team must give notice to that person. Then where that is corroborative or original might be neither here nor there as long as it implicates the person and indeed somebody who might feel that they are implicated by the evidence of an original witness if we can call the first witness to implicate somebody that they might feel that if somebody else comes to corroborate that they should just have the right to be notified that there is somebody who is going to repeat or corroborate those allegations and therefore they should be ready to apply for leave to cross-examine the witness who is corroborating another witness, you know. So, so it may be that what you are saying might not provide justification as such, but the fact  
20 that, but the, the conduct of the persons implicated in the evidence of the original witness in relation to, in reaction to that evidence might well provide a basis for saying well maybe even if notice is not given ahead of the hearing of the evidence of the witness that person did not seem to be concerned about the allegations coming from the original witness because they have never applied for leave to cross-examine. They have never sought to challenge that evidence. Therefore if somebody is just going to

corroborate that that might that might be their attitude as well and therefore that might show or mitigate the position of not having given notice earlier, but maybe notice may well have to be given even if it is not ahead of the hearing.

**ADV VINCENT MALEKA:** Yes.

**CHAIRPERSON:** So that that, that is the thoughts that comes to my mind at the moment.

**ADV VINCENT MALEKA:** Yes.

**CHAIRPERSON:** And you might wish to deal with, you might wish to finish what you were pointing out to me.

10 **ADV VINCENT MALEKA:** Yes.

**CHAIRPERSON:** *Ja.*

**ADV VINCENT MALEKA:** Can I get to?

**CHAIRPERSON:** *Ja.*

**ADV VINCENT MALEKA:** The issue now raised?

**CHAIRPERSON:** Yes.

**ADV VINCENT MALEKA:** The conundrum for the legal team.

**CHAIRPERSON:** Hm.

**ADV VINCENT MALEKA:** And of course for you also.

**CHAIRPERSON:** Hm.

20 **ADV VINCENT MALEKA:** Is this.

**CHAIRPERSON:** Hm.

**ADV VINCENT MALEKA:** That assuming we have to give notice.

**CHAIRPERSON:** Hm.

**ADV VINCENT MALEKA:** By reason of what Mr Fuzile says with reference to SAA, of course we will do so and therefore he may not testify on this issue until persons

consent, get notices and react to it or you may allow us to go ahead with this evidence despite the fact that notices were given late as happened I believe in.

**CHAIRPERSON:** In other situations?

**ADV VINCENT MALEKA:** In other situations.

**CHAIRPERSON:** *Ja.*

**ADV VINCENT MALEKA:** It means that those persons once they get notice.

**CHAIRPERSON:** Hm.

**ADV VINCENT MALEKA:** They will exercise their choice to apply for leave to cross-examine.

10 **CHAIRPERSON:** Hm.

**ADV VINCENT MALEKA:** And we will then play this game again.

**CHAIRPERSON:** Hm, hm.

**ADV VINCENT MALEKA:** And persons with original knowledge.

**CHAIRPERSON:** Hm.

**ADV VINCENT MALEKA:** And primary knowledge on those facts.

**CHAIRPERSON:** Hm.

**ADV VINCENT MALEKA:** Come in and testify.

**CHAIRPERSON:** Hm.

**ADV VINCENT MALEKA:** Then notices will be given.

20 **CHAIRPERSON:** Hm.

**ADV VINCENT MALEKA:** And those persons will be cross-examined yet again on the same.

**CHAIRPERSON:** Hm.

**ADV VINCENT MALEKA:** Issue.

**CHAIRPERSON:** Hm.

**ADV VINCENT MALEKA:** We would respectfully submit that it is a conundrum which is inherent in the rules.

**CHAIRPERSON:** Hm.

**ADV VINCENT MALEKA:** But the rules are not there for the sake of it.

**CHAIRPERSON:** Hm.

**ADV VINCENT MALEKA:** The rules are there in order to make sure that you practically discharge or finish in the most efficient way. In this case the most efficient way is to allow Mr Fuzile to testify without the need to give notices to those persons. Because they are prejudiced. As and when persons with primary knowledge, personal information or personal knowledge of matters relating to SA come and testify then they will be given relevant notices.

**CHAIRPERSON:** You see my inclination now is that Mr Fuzile's evidence must proceed but you must seriously consider at least saying to the persons concerned your names are mentioned in the statement. The legal team takes the view that you not implicated so that if they want to make an issue of that they still have a chance to make an issue and come before me. So I think that is how we have dealt with that in – with that situation in regard to another matter so we do not make any decisions as to whether they are implicated or not. We give them a chance to have a look at the statement if they want to and indicate if they feel that they are prejudiced.

20 **ADV VINCENT MALEKA:** Yes.

**CHAIRPERSON:** And if they want to make any issue about it they can come before me and I hear what they have to say and we take it from there. So I am inclined to say we should proceed with Mr Fuzile's.

**ADV VINCENT MALEKA:** Yes.

**CHAIRPERSON:** Evidence but that you should consider making contact with them just

to indicate what view the legal team takes.

**ADV VINCENT MALEKA:** Yes.

**CHAIRPERSON:** So that they have a chance to say, you are wrong this is what we – this is our view and then we take it from there.

**ADV VINCENT MALEKA:** Thank you Chair we are grateful for the guidance in that regard and we will no doubt send appropriate letters to persons that mentioned.

**CHAIRPERSON:** Yes.

**ADV VINCENT MALEKA:** And just to complete the chronology for you before we get to the body of the statement.

10 **CHAIRPERSON:** Yes.

**ADV VINCENT MALEKA:** You will see that he concludes the question of SAA at page 54 and then he starts with a related topic which is the appointment of board members of SAA. And then the next new topic he raises is Social Security Grant. Minister Gordhan had something to say about it and then he moves onto the question of the closure of the Gupta bank accounts. That issue has been dealt with before you extensively we would submit by firstly the relevant chief executive officers of the banks who came before you.

**CHAIRPERSON:** Yes.

20 **ADV VINCENT MALEKA:** It has also been dealt with by Minister Gordhan with reference to the application to the high court which he made and supported by the various banks.

**CHAIRPERSON:** Yes.

**ADV VINCENT MALEKA:** So at best for him he is corroborating evidence

**CHAIRPERSON:** Ja.

**ADV VINCENT MALEKA:** And then the last...

**CHAIRPERSON**: Wait – the social security grand is that not a new issue?

**ADV VINCENT MALEKA**: It is but not – I think Minister Gordhan testified on this if I am not mistaken.

**CHAIRPERSON**: Okay I guess with all of them you as the legal team must just consider.

**ADV VINCENT MALEKA**: Ja.

**CHAIRPERSON**: What I said a few minutes ago.

**ADV VINCENT MALEKA**: Yes but again as we go through his evidence you will see that he does not implicate any person.

10 **CHAIRPERSON**: Yes okay.

**ADV VINCENT MALEKA**: But it may be that we are wrong and we will deal with it.

**CHAIRPERSON**: Ja, no, no that is fine. It is just important to always go back to the rule, apply your mind to what it says and then take it from there.

**ADV VINCENT MALEKA**: Yes.

**CHAIRPERSON**: Because the rules and of course the regulations and the commissions add in the constitution are things that implicated persons look at to see where – where there are rights – what their rights are.

**ADV VINCENT MALEKA**: Ja.

**CHAIRPERSON**: Okay.

20 **ADV VINCENT MALEKA**: And finally is the Denel VR Lazer deal and we will deal with that when we canvass the body of his evidence. So Chair against the background of the table of content we would like to get to the body of Mr Fuzile's second statement and I see that it is almost past 11:15?

**CHAIRPERSON**: Yes.

**ADV VINCENT MALEKA**: If it is convenient for you we can adjourn and resume with

the evidence after tea break.

**CHAIRPERSON**: Yes. That is fine. But it seems to me that contrary to what Mr Fuzile and his new employers may have thought it seems to me that with or without postponing Mr Van Rooyen's application for leave to cross-examine him it is likely that he would have to come back anyway if anybody who may be implicated in this statement applies in the future for leave to cross-examine and is granted leave to cross-examine. That is assuming that his statement can be said to implicate certain people even if it is corroborate what another witness I think what an implicated person would be entitled to if he is granted leave to appeal is I want to cross-examine both the  
10 one who makes the original allegations against me and the one who purports to corroborate those allegations. They would not confine themselves to the original person.

**ADV VINCENT MALEKA**: Yes.

**CHAIRPERSON**: So I just want to mention that – so that everybody is realistic in terms of what may happen in the future.

**ADV VINCENT MALEKA**: Yes.

**CHAIRPERSON**: Okay. We will take the tea adjournment and we will resume at half past eleven. We adjourn.

**INQUIRY ADJOURNS**

20 **INQUIRY RESUMES**

**CHAIRPERSON**: Yes Mr Maleka.

**ADV VINCENT MALEKA**: Chair we are waiting for Mr Fuzile.

**MR LUNGISA FUZILE**: I am here.

**ADV VINCENT MALEKA**: Oh okay.

**CHAIRPERSON**: Okay [indistinct] just administer the oath.

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

**MR LUNGISA FUZILE:** I am Lungisa Fuzile.

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

**MR LUNGISA FUZILE:** No.

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

**MR LUNGISA FUZILE:** Yes.

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

10 **MR LUNGISA FUZILE:** So help me God.

**REGISTRAR:** Thank you.

**CHAIRPERSON:** Thank you. Yes Mr Maleka you may proceed.

**ADV VINCENT MALEKA:** Thank you. Mr Fuzile good morning and welcome once again.

**MR LUNGISA FUZILE:** Good morning Sir.

**ADV VINCENT MALEKA:** Yes. You have submitted a further statement to the commission and that statement has now been placed before the Chairperson as Exhibit P2. I take it that you have Exhibit P2 before you?

**MR LUNGISA FUZILE:** Yes I do.

20 **ADV VINCENT MALEKA:** Yes. Can I ask you to go to page 69 of Exhibit P2.

**MR LUNGISA FUZILE:** I am there.

**ADV VINCENT MALEKA:** Is that your signature?

**MR LUNGISA FUZILE:** Yes it is.

**ADV VINCENT MALEKA:** And can you confirm the dates that appears on page 69?

**MR LUNGISA FUZILE:** 15 February.

**ADV VINCENT MALEKA:** Is that when you completed preparing the statement?

**MR LUNGISA FUZILE:** Yes.

**ADV VINCENT MALEKA:** I take it that you have read the contents of the statement?

**MR LUNGISA FUZILE:** A few times.

**ADV VINCENT MALEKA:** Do you confirm that what you have said in that statement is true to the best of your knowledge and belief?

**MR LUNGISA FUZILE:** Yes.

**ADV VINCENT MALEKA:** Alright. You heard me taking the Chairperson through the chronology of topics that you discuss in your statement. They appear in the table of contents, you recall that?  
10

**MR LUNGISA FUZILE:** Yes I do.

**ADV VINCENT MALEKA:** And I would like to go through your statement bearing the mind that chronology. But let me clear first thing first. On page 2 paragraph 1 of that statement you say that you consulted with the legal team of the commission, can I ask you who did you consult with in the legal team of the commission?

**CHAIRPERSON:** Well maybe Mr Maleka for what it is worth it might be important just to mention that actually the page on which the statement starts is marked page 2 so I assume that the table of contents is supposed to be page 1?

**ADV VINCENT MALEKA:** Indeed, indeed.

20 **CHAIRPERSON:** So when we refer to the pages we will just bear that in mind that – ja.

**ADV VINCENT MALEKA:** Ja. It is that old type setting where computers suppress the numbering of the first page and begin at page 2. I thought that these were outdated methods but here we are again.

**CHAIRPERSON:** They are here.

**ADV VINCENT MALEKA:** Anyway. That will be – the table of contents will be page 1.

If you do not mind can you just mark it by hand as page 1. Back to the question. Do you recall who you consulted with?

**MR LUNGISA FUZILE:** I remember some of the names. Why is the names escaping me now? But it is him – Mr Nene this guy or – ja but I can check it on my phone but I remember the names if I – I did not expect you to ask them now.

**ADV VINCENT MALEKA:** Okay but it is none of the members of the legal team?

**MR LUNGISA FUZILE:** It is none of the people here ja.

**ADV VINCENT MALEKA:** Okay I just wanted to confirm that with you.

**CHAIRPERSON:** Mr Fuzile that mic – do you – it is pointing...

10 **MR LUNGISA FUZILE:** Is it too far?

**CHAIRPERSON:** Well not necessarily but I just see it is pointing.

**MR LUNGISA FUZILE:** In the wrong direction.

**CHAIRPERSON:** Ja so I think it should point towards you. Ja thank you.

**MR LUNGISA FUZILE:** Sorry about that.

**ADV VINCENT MALEKA:** Now I would like to take you to page 4 of your – oh sorry paragraph 4 on page 2 of your statement.

**MR LUNGISA FUZILE:** Yes.

**ADV VINCENT MALEKA:** And there you talk about some growing dissatisfaction when you were still the Director General of Treasury. Can I ask you to tell us more about that  
20 dissatisfaction? Who held the dissatisfaction you talking about in paragraph 4?

**MR LUNGISA FUZILE:** Clearly the president was one of the persons and it does I do say a few things about that later on in the statement to reinforce the view.

**ADV VINCENT MALEKA:** Ja who was the president you talking about?

**MR LUNGISA FUZILE:** Former President Zuma.

**ADV VINCENT MALEKA:** Okay. And as a matter of your personal knowledge were

you aware of this dissatisfaction?

**MR LUNGISA FUZILE:** Yes I was.

**CHAIRPERSON:** Mr Maleka I am – you and I have read the statement and he has read the statement well I did not finish reading it but I have read quite a large portion of it.

**ADV VINCENT MALEKA:** Yes.

**CHAIRPERSON:** And we know what it says before he comes to paragraph 4 but whoever is listening does not know so this dissatisfaction comes without any context. You might wish to get him to make sure that whoever is listening who has not read the statement understands what this comes from.

10

**ADV VINCENT MALEKA:** But that is what I thought I am doing Chair?

**CHAIRPERSON:** Well you may be doing that but the way it comes across I am sure and I see some of the people in the room are nodding that they do not understand the context.

**ADV VINCENT MALEKA:** Well I will get there but first things first.

**CHAIRPERSON:** Ja.

**ADV VINCENT MALEKA:** I mean Mr Fuzile has to talk about matters that are within his personal knowledge and I have to...

**CHAIRPERSON:** Yes but he has in the previous paragraph said something that when you come to 4 you understand if you have read that.

20

**ADV VINCENT MALEKA:** Okay.

**CHAIRPERSON:** Yes. It is just that if somebody who has not read that even to me when you ask the way it is lacks context – the connection.

**ADV VINCENT MALEKA:** Let me try again Mr Fuzile. What dissatisfaction are you referring to in paragraph 4 of your statement?

**MR LUNGISA FUZILE:** The – during my tenure and working under the Ministers whose names I mentioned in the statement it will become apparent later on there were projects, there were initiatives most of which required either the concurrence of the treasury or the approval of the treasury at some stage to enable them to go through. Some of which the treasury or the Ministers of the – the respective Ministers of Finance either ask questions on or turned down. In other words did not support or did not give the approval required and it was that which in large measure gave rise to the dissatisfaction that is referred to in paragraph 4.

**CHAIRPERSON:** That gives the context.

10 **ADV VINCENT MALEKA:** Thank you. Yes.

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

**ADV VINCENT MALEKA:** Thank you Chair.

**CHAIRPERSON:** Thank you.

**ADV VINCENT MALEKA:** Then who – let us be clear and I would like you to be as clear as you can and try to talk in direct terms and less so through indirect speech. So who was dissatisfied about National Treasury?

20 **MR LUNGISA FUZILE:** Definitely President Zuma and I said this in – even the previous testimony. And one got this in a number of ways. First for instance I indicated in the previous system that someone said I might have a new minister soon. I do refer to some of that in a different way this time around. And this was on the occasion as I referred to in the previous testimony when the CEO's of banks when I was still in government I just happen to be in a role that now but it was when I was still in government had a meeting with the President of the new Brics bank and then someone pulled me aside. I remember I made the mistake last time I said pulled me apart. Pulled me aside and which carries quite a different meaning.

**CHAIRPERSON:** Well it does.

**MR LUNGISA FUZILE:** Yes.

**CHAIRPERSON:** In more than – in more ways than one.

**MR LUNGISA FUZILE:** Yes.

**CHAIRPERSON:** Because maybe there might be implicated persons who might wish to pull your evidence apart.

**MR LUNGISA FUZILE:** Exactly. Exactly that Chair.

**ADV VINCENT MALEKA:** Chair you must wait until you get cross-examined.

**MR LUNGISA FUZILE:** Yes maybe they will pull me.

10 **ADV VINCENT MALEKA:** You very well understand the meaning of pulling apart.

**MR LUNGISA FUZILE:** Of pulling apart. Thanks Mr Maleka and I could see your reaction that you were trying to tell me that I should not have it the time will come for me to be pulled apart. I am waiting for that one. It is not going to be easy. But let me just say then someone had – you know pulled me aside and said, look you will have a new minister soon. I said, by why? And they indicated, made reference to this dissatisfaction.

**ADV VINCENT MALEKA:** Yes.

**MR LUNGISA FUZILE:** And there were a few other instances but I do not want to waste the time of the commission at all.

20 **ADV VINCENT MALEKA:** In paragraphs 4.1 to 4.7 at page 3 of Exhibit P2. You do identify several causes of what you conceive to be dissatisfaction. I am not going to waste time by asking you to repeat them because you deal with each and every one of them at length. So if you do not mind we will deal with them when we get to each of the detailed....

**CHAIRPERSON:** Well I think Mr Maleka it will not take much time for him to just

indicate the headings which has indicated.

**ADV VINCENT MALEKA**: Yes, yes.

**CHAIRPERSON**: Then whoever is listening can follow when you – he deals with them in detail they can connect.

**ADV VINCENT MALEKA**: Ja. Right do you want to deal with just by having to...

**CHAIRPERSON**: Just to say what they are that is all.

**MR LUNGISA FUZILE**: I am at your service.

**ADV VINCENT MALEKA**: Yes let us get through them quite quickly.

**MR LUNGISA FUZILE**: Yes, no I will. I mean it was the nuclear procurement project.

- 10 The purchase of shares in Engen by Petro SA. The matters relating to SAA, a few approvals. The social security grant contract. The Denel Asia matter. The closure of Gupta accounts by banks. Those are the ones that I list here as examples.

**ADV VINCENT MALEKA**: Yes.

**CHAIRPERSON**: Well – well maybe I can also say this Mr Maleka. To the extent that we have got his statement if he covers as much as he can in his oral evidence what is in the statement it enables one to make sure that when one reads the transcript one does not have to go to the statement. You just read one and because everything is covered then you do not really need to also read the statement to refresh one's memory.

- 20 **ADV VINCENT MALEKA**: Alright.

**CHAIRPERSON**: Ja thank you.

**ADV VINCENT MALEKA**: Alright. Mr Fuzile we ...

**CHAIRPERSON**: But you may deal with it the way you see fit.

**ADV VINCENT MALEKA**: Yes.

**CHAIRPERSON**: As long as you understand the substance.

**ADV VINCENT MALEKA:** Yes.

**CHAIRPERSON:** It does not need to be everything but the substance.

**ADV VINCENT MALEKA:** No. It will be a laborious exercise so please if I do rush apply the brakes and emphasise some aspects of your statement which I may skip over if you do not mind. Because it is your statement, it is your testimony. You have dealt with and identified the various topics of concern that gave rise to the dissatisfaction and can I ask you this, why would those issues give rise to that type of dissatisfaction? What was so unique about them as to give rise to a dissatisfaction?

**MR LUNGISA FUZILE:** These were big, most of them. Let me say significant. In fact  
10 if you just take an example of something like the nuclear procurement. I cannot think of any other project that the South African government has ever embarked upon. Certainly not in the 25 years or so post freedom of the magnitude of nuclear. I mean estimated by some generous conservative estimates should be about R1 trillion it could be a few percentage points higher than that so it is very, very significant. Trillion even if you take it as a proportion of the size of the South African economy so it was their big projects, very weighted projects. They involved a lot of money. So the – it stands then to reason that when we – the people in the treasury, the Minister of Finance were just doing their job asking the tough questions about these kinds of things people would get frustrated. Because they wanted to see them to the end in other words the  
20 commitments being made and we felt that such significant commitments required very para due diligence evaluation of their affordability not only in the immediate term but in the longer term detailed assessments of their impact on the fiscus in terms of affordability again but also just the impact on the entire economy and different constituencies in that economy. If you take something like nuclear again it has got to be paid for in the final analysis or in large measure true tariffs. Tariffs affect every

household. They affect every business. So you cannot approach a decision that relates to that cavalierly if I were to use the word. So we were insisting on thorough processes. Of course I would submit that for some of these it would seem that people had other interests other than what is supposed to just inform how you approach these kinds of decisions.

**ADV VINCENT MALEKA:** Yes now in paragraph 5.1 you say that the Minister of Finance and Treasury became a stumbling block to the erosion and in parenthesis you say corruption of due process in policy and decision making in the state. I am intrigued the word you put in brackets, what do you mean by that?

10 **MR LUNGISA FUZILE:** Just – if you just take procurement. I mean our legal frameworks take the matter of procurement very seriously. The fact that it is mentioned in 217 of the Constitution that every procurement process and I am not quoting this verbatim but it must be transparent. It must be fair. Cost effective. There are a few things that are mentioned there.

**ADV VINCENT MALEKA:** Yes.

**MR LUNGISA FUZILE:** So what we then were insisting upon was that the processes as prescribed in 217 of the Constitution and reinforced by a series of other legislations or pieces of legislation such as the preferential procurement framework, the PFMA and the regulations that got with those. That we should follow those processes as they  
20 were prescribed there. And it was evident as the statement does show later on that at different points there was temptation, proclivity to try to cut corners, to try to avoid certain processes that are prescribed in law and we had to insist on those five right of reasons but chief among these is the fact that these commitments were huge and the reason the law is written the way in which it is written it is to make sure that the processes that are followed produce the most optimal outcome. Because if you invite

for instance as many bidders as you possibly can then you have got the possibility to choose the best. So when you then narrow the range of bidders from whom you choose right from the beginning you are in fact corrupting the process.

**ADV VINCENT MALEKA:** Yes.

**MR LUNGISA FUZILE:** You are – you are eroding elements of what is provided for in law and regulations.

**ADV VINCENT MALEKA:** Alright and you say in paragraph 5.2 I do not want to read it but I would like to sum up what you say there and ask you for a comment. That any bad decision made on those major projects would have dire consequences that would  
10 burden future generations with debt. I wonder whether you are able to explain for a lay person like me how a bad decision on a procurement say for instance of nuclear project would give rise to such burdensome consequences for future generations.

**MR LUNGISA FUZILE:** If you just take again the nuclear example and there is a presentation that is attached here as an annexure which shows for instance in one part how both the debt of the South African government and potentially guarantees would have been imparted under different kinds of assumptions by nuclear procurement. In  
others words we show – we try to show in that presentation under assumptions that we make very transparent by how much government would have had to support for instance whichever entity would have ultimately been chosen to implement nuclear with  
20 some equity first. Because there was no entity with the balance sheet. Large and strong enough to be able to support the raising of the amount of debt that would be required. So the first thing is that government would have had to inject the cash. Now government most people – not most let me not be rude. Some people think that it has got a lot of money that is sitting somewhere. It just takes and it can put in them for instance Eskom or NERSA, but it would have had to raise that money through

borrowing. That is the first impact. The second bit would have been then in future years to enable which ever entity it was to raise more debt. Government would have had to provide guarantees. It is, it is public knowledge now that Eskom on its own cannot raise the kind of money that nuclear would have required. Then it would have required the support of the Sovereign. We show again hereby how much the guarantees would have had to, to increase and of course the servicing of the, the debt that is on Eskom's books or NERSA if it was going to be the, the implementer and operator of the nuclear power stations would have had to come from tariffs because that is the one sources of revenue that Eskom has. So that is where the notion of the

10 debt then battering South Africa's future generations. It is both what is in the Sovereign's books and what is on the entity that would have been running those nuclear power stations having to get the revenue from, from tariffs. So that is what we, one is referring to here. The amounts are huge. The amounts are huge. I mean if you just view them against the backdrop of the increases in tariffs that there have been since the mid-2000s. One of the newspapers this past weekend just carried the, the figures.

**ADV VINCENT MALEKA:** Yes.

**MR LUNGISA FUZILE:** They are staggering, because it is like multiples of 10. Now the tariffs would have had to increase quite significantly going forward. I would, I would

20 contend that it does not matter which option one would have chosen to fund these power stations. Short of another generous country choosing to donate it to us the [indistinct] service that would have been huge.

**ADV VINCENT MALEKA:** Alright.

**CHAIRPERSON:** You might be able to deal with this now or you might deal with it later when you deal with the annexure to which you have just referred. If South Africa had

committed itself to the nuclear program and had signed all the agreements that National Treasury was opposed to, was opposed to what would that have done to other nationals issue that require money for the country? You can deal with it now or if it is more convenient you can deal with it when you deal that annexure, but I would like at some stage to know what you say about that. Yes Mr Maleka.

**ADV VINCENT MALEKA:** Okay. Can we just, if we can, deal with it at the moment and can I ask you to go to a document which begins at page 132 and I see that the document has been marked, marked “secret”. You disclose it as part and parcel of your statement. I suppose we do not have to pay too much attention to the characterisation  
10 of the document as secret. It is now before the Chairman in open hearing.

**MR LUNGISA FUZILE:** Yes.

**ADV VINCENT MALEKA:** And the heading of the document is “Modelling of Fiscal Implications”. Correct?

**MR LUNGISA FUZILE:** Yes.

**ADV VINCENT MALEKA:** You were modelling the fiscal implications of the procurement of a nuclear power station of a particular size and capacity in terms of its ability to provide energy. Correct?

**MR LUNGISA FUZILE:** Yes.

**ADV VINCENT MALEKA:** Now on that issue do you recall what was the estimated  
20 nuclear plant or plants capacity in terms of energy generation which you were modelling?

**MR LUNGISA FUZILE:** We, we modelled two scenarios. We did the, the maximum amount that was contemplated which was 9.6 gigawatts and then we also did a smaller scenario which was predicated on a modular raised approach to the procuring of nuclear which started with 2.4 gigawatts and we wanted to see the, the differences in

the impacts of the two on, on the various fiscal matrix and of course affordability.

**ADV VINCENT MALEKA:** Yes. In fact if you go to page 135.

**MR LUNGISA FUZILE:** Yes.

**ADV VINCENT MALEKA:** In paragraph 8 you do study it as part and parcel of the modelling exercise that you were dealing with a 9.6 gigawatts.

**MR LUNGISA FUZILE:** Yes.

**ADV VINCENT MALEKA:** Of nuclear plant or plants.

**MR LUNGISA FUZILE:** Yes.

**ADV VINCENT MALEKA:** And for some of us who do not have an understanding of  
10 these contracts engineering concepts and who have some kind of knowledge about at  
least one nuclear plant that we have here which is Koeberg.

**MR LUNGISA FUZILE:** Yes.

**ADV VINCENT MALEKA:** Do you know what the size of Koeberg's gigawatts capacity  
is?

**MR LUNGISA FUZILE:** No, I do not know.

**ADV VINCENT MALEKA:** You do not know. Okay.

**MR LUNGISA FUZILE:** Huh-uh.

**ADV VINCENT MALEKA:** Alright. I will not mislead you, but anyway that was the size  
that you were considering and then you talk about the costs of it from page 138 in  
20 terms of the debt burden of it, in terms of the cost of it as a ratio of GDP. These are  
typical technical terms and I wonder whether you would be able to explain them to us  
with reference to some of the graphs that appear at least from page 138 so that the  
Chairperson is able to follow precisely what you were doing and what message you  
were trying to send to the policy makers.

**MR LUNGISA FUZILE:** Yes. Just, now we are starting in the middle of it, but let me try

my best with it. Essentially one, we made assumptions about the size of what we were going to buy, 9.6 gigawatts versus 2.4. Second, we made assumptions about the cost per kilowatt as you see on the left hand side there and of course we had to make assumptions that you, there are no interest payments which sort of simplifies the modelling so that you, you, you make assumptions about the overnight cost of procuring the nuclear. Third, we made assumptions about GDP growth, because you will see Mr Chairman that some of these measures we do them relative to GDP. In other words we express the debt as a percentage of GDP. We express the guarantee as a percentage of GDP. So we must then make assumptions about the rate at which

10 the GDP is going to raise or expend over the next several years. Now perhaps let me put just emphasis on this. We were assuming by the way that the growth rate would be between two and 3 percent for most of these scenario and if you look at the recent past our economy has the difficulty realising even 2 percent. So that alters these matrixes because in a way the, the debt component would have been what it is, because simply because your GDP is not growing fast. Whoever sells you the stuff does not say okay let us sell it cheap now, because the price is not indexed to GDP. They, we have locked it in contract.

**ADV VINCENT MALEKA:** Yes.

**MR LUNGISA FUZILE:** But all of a sudden your GDP is small. All of a sudden when

20 you express this debt and your, your guarantees as a percentage of a smaller GDP it becomes much bigger. Just a point.

**ADV VINCENT MALEKA:** Just to clarify there.

**MR LUNGISA FUZILE:** Yes.

**ADV VINCENT MALEKA:** I mean your model begins at year 2016?

**MR LUNGISA FUZILE:** Yes.

**ADV VINCENT MALEKA:** And you will see that you model it horizontally across up to.

**MR LUNGISA FUZILE:** Yes, 2014.

**ADV VINCENT MALEKA:** 2014.

**MR LUNGISA FUZILE:** Which is sort of roughly some 20 years on you can say.

**ADV VINCENT MALEKA:** Yes and then when.

**MR LUNGISA FUZILE:** [Intervenues], continue okay, okay.

**ADV VINCENT MALEKA:** My apologies.

**MR LUNGISA FUZILE:** It is okay, it is fine.

**ADV VINCENT MALEKA:** That gives you the time and space of the period you cover  
10 from 2016 projecting forward.

**MR LUNGISA FUZILE:** Yes.

**ADV VINCENT MALEKA:** To 2014 in case.

**MR LUNGISA FUZILE:** Yes.

**ADV VINCENT MALEKA:** Some of us, some of us live that long and then on the  
vertical side.

**MR LUNGISA FUZILE:** Yes.

**ADV VINCENT MALEKA:** You express percentages of possible economy growth. Is  
that correct?

**MR LUNGISA FUZILE:** Hm.

20 **ADV VINCENT MALEKA:** Or not?

**MR LUNGISA FUZILE:** No, no, no. It is a, it is a, it is the, it is on the one at the bottom  
it is the debt as a percentage of GDP. The, the one at the top it is debt and the  
guarantees and they are different colours although they are not obvious here with black  
and white. We put the, the nuclear debt at the bottom I think as a sort of lighter grey.  
That is what it would add to the existing guarantees.

**ADV VINCENT MALEKA:** Alright.

**MR LUNGISA FUZILE:** Am I making sense? Their existing guarantee is already in the system.

**ADV VINCENT MALEKA:** I understand that.

**MR LUNGISA FUZILE:** Ja.

**ADV VINCENT MALEKA:** So for.

**MR LUNGISA FUZILE:** This is.

**ADV VINCENT MALEKA:** For you to build a nuclear project.

**MR LUNGISA FUZILE:** Yes.

10 **ADV VINCENT MALEKA:** You would have to issue new guarantees?

**MR LUNGISA FUZILE:** Extra guarantees to whichever entity is going to build the power stations.

**ADV VINCENT MALEKA:** Yes.

**MR LUNGISA FUZILE:** Whether it is Eskom or NERSA.

**ADV VINCENT MALEKA:** I understand. In other words assuming it is NERSA, NERSA will have to go out to the market to raise capital?

**MR LUNGISA FUZILE:** Yes.

**ADV VINCENT MALEKA:** And Government must back up that debt by means of guarantees?

20 **MR LUNGISA FUZILE:** Yes.

**ADV VINCENT MALEKA:** Okay.

**MR LUNGISA FUZILE:** You understand that?

**ADV VINCENT MALEKA:** Yes.

**MR LUNGISA FUZILE:** So what you then see is sort of projected draw down. So if we just stick with the guarantees.

**ADV VINCENT MALEKA:** Yes.

**MR LUNGISA FUZILE:** Once we have issued a guarantee let us say, let us use an existing example, 350 billion guarantee is issued to Eskom.

**ADV VINCENT MALEKA:** Yes.

**MR LUNGISA FUZILE:** It, it does not mean that on day one Eskom has raised debt equal to 350 billion.

**ADV VINCENT MALEKA:** Yes.

**MR LUNGISA FUZILE:** It just means that Eskom in some of these technical terms has got head room, has got the ability to raise debt totalling 350 billion on the back of that  
10 guarantee.

**ADV VINCENT MALEKA:** Yes.

**MR LUNGISA FUZILE:** In other words people can sit through the weak, weaknesses or poor rating of Eskom and look instead at the Sovereign as the backer of, of the entity. So overtime this is what we estimated they would draw down in guarantees.

**ADV VINCENT MALEKA:** Huh-uh.

**MR LUNGISA FUZILE:** Over the life of this project.

**ADV VINCENT MALEKA:** Alright.

**MR LUNGISA FUZILE:** With that peak around 2030. In other words that is the maximum point at which both, both the guarantees and the debt would be and beyond  
20 that point because the building would have, of the power stations would have been completed. All you are doing now is to amortise the debt over time. So the guarantees at the bottom then at the top it is the actual debt in other words where the, either the entity itself in this case or assuming it would be the Sovereign helping the entity would, would have to take up more debt.

**ADV VINCENT MALEKA:** Alright. Then you draw a conclusion. I am at page 138.

**MR LUNGISA FUZILE:** Yes.

**ADV VINCENT MALEKA:** And it is a conclusion that the Judge will be instructed in.

“You say the combination of nuclear debt, nuclear guarantees and baseline debt results in an unsustainable debt path reaching in excess of 75 percent of GDP by 2030 and continuing to rise.”

You confirm that that is the conclusion you had expressed in?

**MR LUNGISA FUZILE:** That is the conclusion we have expressed Mr Maleka. So in a way what we were arguing was that on an assumption of a growth rate in GDP of  
10 between two and 3 percent, I keep emphasising this point, because it does determine the affordability because that is your base.

**ADV VINCENT MALEKA:** I, I understand that.

**MR LUNGISA FUZILE:** And it is important whether it is the Sovereign or Eskom by the way, because if there is no growth then there is no demand for the electricity. Then there is no revenue to generate and, and therefore be able to pay for the debt. So you can see if you look at the bottom graph those lines that is pointing up which show that the debt would rise from the base to anything between 75 and 95 and of course the, the graphs are still pointing upwards. They are not beginning to level off.

**ADV VINCENT MALEKA:** Yes.

20 **MR LUNGISA FUZILE:** By 2014 from that bottom graph.

**ADV VINCENT MALEKA:** Yes.

**MR LUNGISA FUZILE:** What decreases are the additions to the debt, and sometimes people they make the mistake of thinking that when the additions to the debt decreased the debt itself is decreasing. That is not necessarily the case. You can reach a peak where the rate, the amounts that you add seems to be big. In other words as you see

in this graph that the highest addition is around 2030 there about. The addition to this talk of debt starts to fall.

**ADV VINCENT MALEKA:** Yes.

**MR LUNGISA FUZILE:** But it does not mean that the debt itself is falling. All that it means is that it is increasing at a decreasing rate.

**ADV VINCENT MALEKA:** Yes. Right and you give the figures with reference to 2030 and those figures are at page 140 and the peak there.

**CHAIRPERSON:** Before that Mr Maleka, Mr Fuzile the part of page 138 that Mr Maleka referred you to, to which you have just talked.

10 **MR LUNGISA FUZILE:** Hm.

**CHAIRPERSON:** Should we read that the word before debt as unstable or is it supposed to?

**MR LUNGISA FUZILE:** Unsustainable, unsustainable.

**CHAIRPERSON:** Unsustainable?

**MR LUNGISA FUZILE:** Unsustainable.

**CHAIRPERSON:** So we should amend it?

**MR LUNGISA FUZILE:** Sorry. Yes, it is unsustainable.

**ADV VINCENT MALEKA:** Okay. Thank you Chair and then you will then give the 2030 estimates about this unsustainable debt path.

20 **MR LUNGISA FUZILE:** Hm.

**ADV VINCENT MALEKA:** On page 140 and there you will see that the percentage rise of G, GDP is 90 percent.

**MR LUNGISA FUZILE:** Hm, of debt.

**ADV VINCENT MALEKA:** Of debt?

**MR LUNGISA FUZILE:** Ja, [intervenes].

**ADV VINCENT MALEKA:** And that is the peak that is the highest it could reach if you go on this procurement?

**MR LUNGISA FUZILE:** It is not, sadly. I wish it was.

**ADV VINCENT MALEKA:** Oh.

**MR LUNGISA FUZILE:** I wish it was.

**ADV VINCENT MALEKA:** Alright, [intervenes].

**MR LUNGISA FUZILE:** We stopped the modelling at that point.

**ADV VINCENT MALEKA:** At 2030?

**MR LUNGISA FUZILE:** Yes.

10 **ADV VINCENT MALEKA:** Yes.

**MR LUNGISA FUZILE:** I mean you can see in the graph if you look at the graph at the bottom. It is still pointed up. That is why I was illustrating this, *ja*.

**ADV VINCENT MALEKA:** Alright.

**CHAIRPERSON:** So if it was going to be, if this would result in a debt that was in excess of 75 percent of the GDP in 2030 I guess that you are simply saying it was out of the question or not really?

**MR LUNGISA FUZILE:** Look not really.

**CHAIRPERSON:** Hm.

20 **MR LUNGISA FUZILE:** These things, this is the difficulty with these things, because it is not, it is not like science. With all this let me for instance illustrate that there are countries whose debt is more than 100 percent of the GDP.

**CHAIRPERSON:** Hm.

**MR LUNGISA FUZILE:** What matters with debt is what you used the money that you incurred the debt to do, but it is also then whole lot of other dynamics which include the structure of that debt. What do we mean by the structure of the debt? Its, its maturity

profile. Do you have repayments that are very big at given points in time?

**CHAIRPERSON:** Hm.

**MR LUNGISA FUZILE:** So big that that is what got Greece into trouble. I hope that there is no problem with me mentioning a country like that.

**CHAIRPERSON:** Hm, him.

**MR LUNGISA FUZILE:** Because at a time when the global financial crisis broke Greece happened to have very high as we call it maturities. In other words debt service costs interest and capital that they had to settle. So all of a sudden lenders said huh-uh, we do not believe that if we give these people money in other words if we  
10 allow them to refinance that debt to roll it they will be able to repay it. So then they refused to give them the money and when you, when you are at that point that is when your debt has, has trapped you. That is when you, you need the market to have confidence in your ability to continue to service your debt to be able to keep it. So, so I do not want to for instance say here Chair there is signs that when you reach that point it would easily, the scales would have tipped, but the truth of the matter is also that when you get to that point and, and another graph does show this here that just the Sovereign's own debt repayments reach about 80 billion at one of those years.

**ADV VINCENT MALEKA:** Yes.

**MR LUNGISA FUZILE:** Now when you then overlay this on top of that that is what  
20 makes it unaffordable.

**ADV VINCENT MALEKA:** Of course we know that, I am sorry to interrupt you.

**MR LUNGISA FUZILE:** Yes that is fine that is fine, anytime.

**ADV VINCENT MALEKA:** There is a policy position adopted by Cabinet which Minister Gordhan and I believe Minister Nene testified on about the debt ceiling which this country has adopted. Are you aware of that?

**MR LUNGISA FUZILE:** I am aware there is, there is a convention in SADC.

**ADV VINCENT MALEKA:** Yes.

**MR LUNGISA FUZILE:** Which says that preferably countries should try and make sure that their debt as a percentage of GDP should not exceed 60 percent.

**ADV VINCENT MALEKA:** And Minister Gordhan confirmed that that was the position.

**MR LUNGISA FUZILE:** Yes, yes.

**ADV VINCENT MALEKA:** As at the time when he was still the Minister.

**MR LUNGISA FUZILE:** Yes. No it is a, it is a broadly accepted [intervenes].

**ADV VINCENT MALEKA:** So we could not go out in the markets and borrow money  
10 which was in excess of 60 percent of our GDP?

**MR LUNGISA FUZILE:** We would be breaching that convention to which we have subscribed.

**ADV VINCENT MALEKA:** Indeed. It is a policy position. In the context of that policy and forgetting about Greece, we are talking about South Africa, if we had gone ahead with this nuclear procurement what would it have meant to that fiscal policy on the debt ceiling of that kind?

**MR LUNGISA FUZILE:** No, certainly it would have meant that we, we, we breached that debt ceiling. What it would also quickly have taken us to by the way which is a very important anchor for fiscal policy is to cause our country to breach the expenditure  
20 ceiling that Government had set for itself which we thought was an important anchor for confidence in our ability to manage our fiscal affairs, because lenders were beginning to be a bit jittery about our ability to manage our affairs. So we said look trust us. We will not allow spending to exceed this particular ceiling and we normally just allow expenditure to grow marginally above inflation to set a new ceiling over time. That one would have been breached by now if this program had started say around 16 or 17

without a doubt with these amounts.

**ADV VINCENT MALEKA:** Yes. Right. Then you draw some conclusions and make recommendations and I would like, I would like to take you to that part of your modelling exercise where you draw some conclusions and make some recommendations. They are at page 148.

**MR LUNGISA FUZILE:** Yes.

**ADV VINCENT MALEKA:** And can I ask you to summarise them for us so that those who do not have this document would be able to appreciate the import of those recommendations?

- 10 **MR LUNGISA FUZILE:** I mean we, we, if you just look at the first one. We were saying that it would be wise for the South African Government to avoid contracting for 9.6, because the modelling does suggest that it might, it, it is not affordability. Instead go for that modular which as I was saying contract for a smaller portion for first execute it to its conclusion and then you can go for the next phase. Second, we were making the point that it will be important to make sure that if you look at A, a thorough, thoroughly considered process of procurement very transparent that begins with undertaking a feasibility study and looking at whatever legislative amendments might be necessitated by this. What we had as an example in relation to the legal stuff, this is not just legal what is standing out there. There was a contemplation to have NERSA
- 20 doing, being the builder and operator of these power stations. Now currently the law does not allow NERSA to, to do that. They are predominantly a kind of research outfit and so on. So we were anticipating that there would have to be a, a process to, to legislate for that and of course we list a few things that would have had to be considered to make sure that, to make sure that the litigation risk would not occur. In fact it is common cause now that for instance those treaties that had been signed were

found to be, I hesitate to use these words. I do not know whether illegal or unlawful, but in any event they did not pass the, the legal master.

**ADV VINCENT MALEKA:** Yes. We leave that to the Cape High Court.

**MR LUNGISA FUZILE:** Yes. In, in B we were saying that to mitigate the fiscal risks in other words all of these things that we have talked about insofar as affordability is concerned it will be good to first make sure that the fiscal consolidation process that Government had set itself to start takes root in other words the stabilisation of the debt of Government exclusive of helping whichever entity would undertake nuclear must be bedded down, must be clear that we are succeeding to control our debt. Then you  
10 embark on this new program that we will see the debt rising not overlaid with a new thing and of course C is not very different from what I said in A and D is about just managing the thing over a longer period of time and so on and so forth.

**ADV VINCENT MALEKA:** Yes. I mean on these conclusions.

**MR LUNGISA FUZILE:** Yes.

**ADV VINCENT MALEKA:** There would not be a possibility of procuring a nuclear plant of that kind, because there had to be a completion of fiscal consolidation.

**MR LUNGISA FUZILE:** *Ja.*

**ADV VINCENT MALEKA:** That would have happened a year later in 2017?

**MR LUNGISA FUZILE:** On some assumptions and it has not happened by the way  
20 without nuclear. Just to be clear. I mean we know from the, unless this new budget pulls something out of a hat whatever the phrase is, but we know from the October budget that the deficit path that was proposed still sees the deficit at about 4 percent of, of, of GDP. That is quite significant. It is not consistent with the fiscal consolidation of it all.

**ADV VINCENT MALEKA:** So on any premise you were telling policy makers that it is

impossible to procure?

**MR LUNGISA FUZILE:** Yes. It is important though to make this point which is the angle to the submission that I made here which is that this thorough presentation there was an attempt not to go through it in as thorough a way as we are even doing here and precisely because it, it was saying things that people did not like. That is the point I was making about the corruption of course. Here and perhaps it is another point to make a very, very important point. It was not only the Treasury that was insisting on following good process and due process. The Department of Energy as the statement says earlier on had found a way to get to Cabinet with the recommendation to approve  
10 that it proceeds to procure nuclear or nuclear procurement should proceed, but in Cabinet some members of Cabinet did say that look we cannot approve something like this without knowing what it means in terms of its cost implications and how we are going to pay for it. So go back and talk to Treasury, work together to show us that as a country we can afford it, which created the opportunity then for this work to be done.

**ADV VINCENT MALEKA:** Yes.

**MR LUNGISA FUZILE:** Notwithstanding that there was still an attempt to suppress it or to make sure that it does not get seen, but we will talk about that.

**ADV VINCENT MALEKA:** Chair I believe.

**CHAIRPERSON:** *Ja.*

20 **ADV VINCENT MALEKA:** We have exhausted this issue and your.

**CHAIRPERSON:** Yes, I think you have, yes.

**ADV VINCENT MALEKA:** Your, your, your concerns.

**CHAIRPERSON:** *Ja.*

**ADV VINCENT MALEKA:** Would have been adequately.

**CHAIRPERSON:** *Ja.*

**ADV VINCENT MALEKA:** Addressed by Mr Fuzile.

**CHAIRPERSON:** Hm.

**ADV VINCENT MALEKA:** We were at page 4 of your statement and I respectfully suggest to you that from paragraph 9 you are telling us about things that you had previously conversed in your evidence.

**MR LUNGISA FUZILE:** Yes.

**ADV VINCENT MALEKA:** I am going you to, I am not going to ask you to repeat it.

**CHAIRPERSON:** *Ja.*

**ADV VINCENT MALEKA:** And also when you go to page 7, when you talk about the  
10 role of the Director-General of National Treasury you are.

**CHAIRPERSON:** *Ja* that was dealt with last time.

**ADV VINCENT MALEKA:** Indeed.

**CHAIRPERSON:** Yes, *Ja.*

**ADV VINCENT MALEKA:** Unless you have something that you would want to share  
with us.

**MR LUNGISA FUZILE:** No, not at all.

**ADV VINCENT MALEKA:** Not at all.

**MR LUNGISA FUZILE:** Most of it.

**ADV VINCENT MALEKA:** Alright.

20 **MR LUNGISA FUZILE:** We can, we can skip it.

**ADV VINCENT MALEKA:** Alright then that takes us to page 14 of your statement.

**MR LUNGISA FUZILE:** *Ja.*

**ADV VINCENT MALEKA:** And sadly you start about the question of rumour about the concerns which your heard concerning the budget process and you talk about the DG or the Department of Planning Monitoring and Evaluation. Who had something to say

about that rumour? Do you want to develop that theme for us in your own words?

**MR LUNGISA FUZILE:** Yes I had a conversation with Mr Matha and I thought that this is later. It is on 36.

**ADV VINCENT MALEKA:** Yes.

**MR LUNGISA FUZILE:** This bit just deals with the presentation that was done by – page 14 at the bottom from 30 downwards. Just deals with the presentation that was done at a forced forum of South African Directors General by three colleagues. And the reason for raising this is to just point out two things. First the fact that a – the budget process does give rise to dissatisfaction for many people. And it is to be expected  
10 because most people would like to do too many things than the country is able to pay for.

**ADV VINCENT MALEKA:** Yes.

**MR LUNGISA FUZILE:** It is rare that even in any household people start by trimming what they wish for to fall within what they can afford. It is just that kind of a problem. But it then creates fertile ground for this kind of resentment which when the authorities people like the president of the country then feed into it your Department of Finance and those who are charged with running it are in trouble actually. That is the essence of this because they do not have that air cover where people say no, no, but they are doing their job we have got to spend what we can afford. So I am putting that here  
20 where we can have colleagues some of whom by the way which is the irony of this were participating in the very process of making the budget but where also joining others when they say they are dissatisfied with it.

**ADV VINCENT MALEKA:** Yes.

**MR LUNGISA FUZILE:** Then go to the Digi of presidents in the presidency and National Planning Commission from 34 downwards.

**ADV VINCENT MALEKA:** Yes.

**MR LUNGISA FUZILE:** Mr Kolekane Martha he...

**ADV VINCENT MALEKA:** And you say that he talked to you about that rumour for the first time in November 2015?

**MR LUNGISA FUZILE:** Yes, yes Mr Maleka so he talked to me about that yes.

**ADV VINCENT MALEKA:** Alright and can you just summarise what was the upshot of the discussion you had with him on that score?

**MR LUNGISA FUZILE:** Two things. First then there was a process within the presidency which used the National Planning Commission to ask that they should  
10 assess whether the budget is aligned to the priorities. And one contends that that by the way was strange because no one had come to us to say, look this process we do not think it does this or can you make an assessment or can you show that the budget is aligned to priorities. That is the first thing. And connected to that as a sub point was just what appeared to be real I do not want to suggest anger but I do not have a better word which came from the president which in 39 I used his own words he says – he said: They must give him the evidence. If the evidence confirms that the treasury is failing him then he will shake the tree if it must fall so be it. At which point I asked Kolekane what he understood this to mean which takes me then to the second point  
20 that I would make on this without belabouring the point. He said look he thinks that maybe the president was readying himself to fire the Minister of Finance and some of us. Right this is what he said to me.

**ADV VINCENT MALEKA:** Ja but that is at the level of rumour.

**MR LUNGISA FUZILE:** Yes.

**ADV VINCENT MALEKA:** The president did not tell you that, did he?

**MR LUNGISA FUZILE:** No he did not except that he did it not long afterwards.

**ADV VINCENT MALEKA:** No we understand. We can draw some conclusions from it but as far as you know sitting as you do in the witness stand.

**MR LUNGISA FUZILE:** Yes, yes. Okay.

**ADV VINCENT MALEKA:** He did not tell you anything to that effect?

**MR LUNGISA FUZILE:** No he did not yes.

**ADV VINCENT MALEKA:** And the final point which I would like to raise with you on this score because it may become important for the direction the Chairperson might make on us – to us is this. In the ordinary course of events is there anything wrong with the head of state raising concerns with you as National Treasury about the budget process?  
10

**MR LUNGISA FUZILE:** No not at all. Except that there is a difference between what you are saying and what is said here and I know that you know it. You are saying that there is nothing – is there anything wrong with the president raising his concerns?

**ADV VINCENT MALEKA:** Yes.

**MR LUNGISA FUZILE:** There is no problem at all.

**ADV VINCENT MALEKA:** Okay.

**MR LUNGISA FUZILE:** We do this on his behalf. What is strange is when in essence the president presides over the budget.

**ADV VINCENT MALEKA:** Yes.

**MR LUNGISA FUZILE:** Right the – the budget that gets tabled every year gets approved by a full cabinet and sometimes parts of it like the division of revenue between the spheres it is approved by extended cabinet which brings in premiers of provinces and organised local government. So the budget process is not the preserve of the treasury. The budget is not the preserve of the Minister of Finance.  
20

**ADV VINCENT MALEKA:** Yes.

**MR LUNGISA FUZILE:** It gets approved to those structures and there are structures under that but I will not bore you about that.

**ADV VINCENT MALEKA:** Yes.

**MR LUNGISA FUZILE:** So there is no problem whatsoever with it. What is strange is when people who run a process are unhappy with it and then they do not just say fix it for example then they try ways that are hard to explain to do it.

**CHAIRPERSON:** In effect what you are saying – is what you are saying this that what is strange is when a person who is part of a particular forum and processes if he or she is unhappy about some things going outside of that forum in – to raise concerns?

10 **MR LUNGISA FUZILE:** That is precisely it Chairperson.

**CHAIRPERSON:** Is that what you are saying? Ja okay.

**ADV VINCENT MALEKA:** Alright Mr Fuzile unless there is any issue you want to raise in relation to the budget process, the rumour you heard and the attitude of the then president I would like to move to the next topic which begins at page 18.

**MR LUNGISA FUZILE:** I am with you. I am on 18.

**ADV VINCENT MALEKA:** Are you at 18?

**MR LUNGISA FUZILE:** Yes.

20 **ADV VINCENT MALEKA:** And just to make sure that you understand what 18 deals with. It talks about things that occurred when you were still the DG relating to removal of ministers and for the record can you confirm who those ministers were?

**MR LUNGISA FUZILE:** It was Mr Gordhan, Mr Nene and I would say Mr Jonas as well as the Deputy. Mr Gordhan was removed twice.

**ADV VINCENT MALEKA:** Was removed?

**MR LUNGISA FUZILE:** Twice.

**ADV VINCENT MALEKA:** Okay he has testified on that score. I am not going to ask

you to repeat what you say. In fact in paragraph 42 of your statement you refer to aspects of the statements of Mr Gordhan and aspects of the statement of then Minister Nene which you confirm and corroborate, correct?

**MR LUNGISA FUZILE:** Yes Sir I corroborate on that.

**ADV VINCENT MALEKA:** And I would like you to then go to page 19 where you talk about your position as the DDG for assets and liability management and you said you were chairing the fiscal liability committee and there certain things happened. I do not want to put words in your mouth can you discuss for us what happened when you were still the chair of the FLC?

- 10 **MR LUNGISA FUZILE:** The FLC Mr Chairman is a committee of direct – deputy directors general which are people just a level under the DG. They get – it has got about six or so of them. It looks for purposes of this submission at among other things the guarantees that government extends to entities. And it is normally chaired by the DDG who is responsible for assets and liabilities. A job I occupied for about two years or so from 2008 July and during my – the time I was part of the FLC not only just the time that I chaired it it is important to clarify. We had occasion to approve two guarantee applications for Eskom. The first one for about R176 billion and the second one which was the difference between that number R350 billion which was meant to increase the guarantees to Eskom to enable Eskom to be able to raise debt. Because
- 20 the markets as I indicated we were beginning to have doubts about Eskom's ability to afford that debt on their own. Of course there are two other things that happened. One is that government had to give Eskom a subordinated loan of about R60 billion around that time which was later converted into equity. Because again the balance sheet needed some propping up.

**ADV VINCENT MALEKA:** Yes.

**MR LUNGISA FUZILE:** Subsequent to that and there was also a further injection of equity totalling R23 billion into Eskom. The relevance of these things is that it is in that context that the procurement of what is a substantial programme was being contemplated. So you have got this entity whose balance sheet is quite weak and people then on the other hand are contemplating that it should be part of procuring something as big as nuclear.

**ADV VINCENT MALEKA:** Yes. You talk about government subordinated loan of R60 billion in Eskom and you say at some point – we know what subordination means. It means you back rank your right to claim that amount as a creditor until other debts  
10 have been paid to other creditors. But you say at some point that was converted into equity, do you know when was that debt converted to equity?

**MR LUNGISA FUZILE:** I would hesitate to say under oath.

**ADV VINCENT MALEKA:** Well we will ask Eskom if you cannot remember.

**MR LUNGISA FUZILE:** Yes but it was – it was after – around 2013/2014 thereabout.

**ADV VINCENT MALEKA:** 2013/2014?

**MR LUNGISA FUZILE:** Ja.

**ADV VINCENT MALEKA:** Alright and the effect of it is to try and improve your balance sheet?

**MR LUNGISA FUZILE:** Yes because you sort of – although already a substantial  
20 proportion of it was recognised on the books of Eskom as equity but now the effect of converting it to equity is that the full extent of the amount is recognised as equity and of changes most of the ratios that are worked out on the basis of equity and less is debt.

**ADV VINCENT MALEKA:** Alright and on page 20 you draw attention to two tables in order to illustrate your point. I confess that I do not understand those tables but if you want to clarify them for us that will be helpful.

**MR LUNGISA FUZILE:** You will understand very quickly Mr Maleka I have seen you go through stuff. Essentially the first table sets out the total debt of government over a period from 2008/9 to 2017/2018. Right?

**ADV VINCENT MALEKA:** Yes.

**MR LUNGISA FUZILE:** So that is at the top it is the time. The first then line with numbers is gross loan debt. That means it is all the debt that government has.

**ADV VINCENT MALEKA:** In real figures?

**MR LUNGISA FUZILE:** In absolute terms. Right.

**ADV VINCENT MALEKA:** Just mention them for us please.

10 **CHAIRPERSON:** In millions? I see there is...

**ADV VINCENT MALEKA:** Billions Chair.

**CHAIRPERSON:** R millions or what?

**MR LUNGISA FUZILE:** Yes ...

**CHAIRPERSON:** Was is R millions?

**MR LUNGISA FUZILE:** It is very important yes now once that R million means that when you read the 626975.

**CHAIRPERSON:** The first figure.

**MR LUNGISA FUZILE:** The first number.

**CHAIRPERSON:** Ja.

20 **MR LUNGISA FUZILE:** It is R626 billion because if you add six zeros to that then that number becomes a billion, am I making sense?

**ADV VINCENT MALEKA:** Yes.

**MR LUNGISA FUZILE:** Otherwise if we were to write all the digits the...

**CHAIRPERSON:** Oh okay ja.

**MR LUNGISA FUZILE:** The table would go out the door.

**ADV VINCENT MALEKA:** Ja.

**CHAIRPERSON:** Okay, okay.

**MR LUNGISA FUZILE:** So it is a way of simplifier. So whenever you read those numbers.

**CHAIRPERSON:** Ja.

**MR LUNGISA FUZILE:** Just remember that 626 975 it is just 626 billion.

**ADV VINCENT MALEKA:** Yes.

**CHAIRPERSON:** Ja.

**MR LUNGISA FUZILE:** The next one if 804 billion.

10 **ADV VINCENT MALEKA:** Yes, yes.

**CHAIRPERSON:** Okay.

**MR LUNGISA FUZILE:** Just continue like that.

**ADV VINCENT MALEKA:** And then it gets to 2.5 trillion.

**MR LUNGISA FUZILE:** Then it gets to 2.5 trillion when you get to 2017/18.

**ADV VINCENT MALEKA:** Yes.

**MR LUNGISA FUZILE:** Right.

**ADV VINCENT MALEKA:** Which is the...

**MR LUNGISA FUZILE:** And that is debt. That is not – there is no error there. It is debt.

20 **ADV VINCENT MALEKA:** These are real figures so that...

**MR LUNGISA FUZILE:** It is.

**ADV VINCENT MALEKA:** In...

**MR LUNGISA FUZILE:** Yes now you will notice the economies hesitate to follow you when you say real figures because real might mean in our case that you have excluded inflation.

**ADV VINCENT MALEKA:** Okay.

**MR LUNGISA FUZILE:** These are absolute figures. In other words they are what they are.

**ADV VINCENT MALEKA:** Yes.

**CHAIRPERSON:** Ja.

**MR LUNGISA FUZILE:** When you are looking at them.

**CHAIRPERSON:** Ja.

**ADV VINCENT MALEKA:** Ja.

**MR LUNGISA FUZILE:** Now you may think that when you say real it is just okay but I  
10 will not follow you because...

**ADV VINCENT MALEKA:** No that is fine but I mean you giving a figure which is an absolute number?

**MR LUNGISA FUZILE:** Yes.

**ADV VINCENT MALEKA:** Referencing the previous financial year.

**MR LUNGISA FUZILE:** Yes.

**ADV VINCENT MALEKA:** To understand how much we as a country owe the world?

**MR LUNGISA FUZILE:** Exactly.

**CHAIRPERSON:** So if you go for example to 2011/2012.

**MR LUNGISA FUZILE:** Yes.

20 **CHAIRPERSON:** That first column.

**MR LUNGISA FUZILE:** Yes.

**CHAIRPERSON:** You have got 1 187 790 that would be 1 trillion, is that right?

**MR LUNGISA FUZILE:** Yes.

**CHAIRPERSON:** 187 billion.

**MR LUNGISA FUZILE:** Yes.

**CHAIRPERSON:** And then the rest.

**MR LUNGISA FUZILE:** Then it is 790 million and [indistinct].

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

**MR LUNGISA FUZILE:** Yes. Now the essence of this table – then the next line is nett loan debt. In other words you take out cash. Because if government has got cash in the bank right very easily if it is called upon to settle its debt it can take its cash and pay it and therefore just to show the true picture of the indebtedness of government you have got to show that they have got the cash. Now the essence of these figures without borrowing you is that they show just the trajectory of South Africa's total debt  
10 stock over this period. That it rose from 626 to 2.5 – billion to 2.5 trillion by 2017/18.

**CHAIRPERSON:** Ja.

**MR LUNGISA FUZILE:** It is a huge increase. Now this is not to blame anybody. I spent a lot of time...

**CHAIRPERSON:** It is simply to state a fact?

**MR LUNGISA FUZILE:** It is simply to state a fact Chair – Mr Chairman and it is also to paint a picture that says as we were thinking about nuclear procurement this is what was unfolding in front of us.

**ADV VINCENT MALEKA:** Yes.

**CHAIRPERSON:** Which you were aware of at the time?

20 **MR LUNGISA FUZILE:** Which we were aware of at the time and then if you go back to the grafts or the exhibits that Mr Maleka meticulously took me through you would add that debt on top of this for some of those graphs.

**CHAIRPERSON:** Yes.

**MR LUNGISA FUZILE:** Except the one at the bottom because the one at the bottom is just showing debt as a percentage.

**CHAIRPERSON:** Yes.

**MR LUNGISA FUZILE:** Of GDP it was adding on the base.

**CHAIRPERSON:** Yes.

**MR LUNGISA FUZILE:** But the other ones that they talking would add on top of this which is why we came to the conclusion that the debt would become unsustainable.

**CHAIRPERSON:** Okay thank you.

**ADV VINCENT MALEKA:** The last issue that I would like to plod on that score and it is just to make sure that the Chairperson has a full picture of those figures is the next table.

10 **MR LUNGISA FUZILE:** Yes.

**ADV VINCENT MALEKA:** Which talks about the revenue side of our country and the expenditure side and the revenue side is substantially taxes?

**MR LUNGISA FUZILE:** Mm.

**ADV VINCENT MALEKA:** You generally when you prepare budget project estimation of the tax which SARS is going to collect?

**MR LUNGISA FUZILE:** Yes.

**ADV VINCENT MALEKA:** And then on the basis of that you project an expenditure from all the departments and state entities and you draw a balance. I would like to reflect on two financial years. The one is when this nuclear project was being  
20 conceived in 2015 and 2016 financial year and ask you to comment on what was our financial health as a country in relation to the revenue and expenditure side?

**MR LUNGISA FUZILE:** Around that time Mr Chairman you would notice that our total revenue for example 2014/15 was R965 billion. Our total expenditure was a bit higher than that at R1.131 trillion. So what that then means is that we have got a shortfall which is that negative R166 – R160 – R166 pardon me R166. That is what is called the

main budget balance. In other words the difference between the taxes you collect in that year versus the expenditure in that year.

**ADV VINCENT MALEKA:** Budget versus...

**MR LUNGISA FUZILE:** That translates you to the amount that you have to borrow to finance the shortfall in the given year.

**CHAIRPERSON:** Alright.

**MR LUNGISA FUZILE:** And expressed as a percentage of GDP and that is very significant actually is that 4.3 percent of GDP at the bottom. Because that is the number that then signals when people – if you just check after Wednesday – is it  
10 Wednesday that the budget will be tabled?

**ADV VINCENT MALEKA:** Yes.

**MR LUNGISA FUZILE:** I can assure you there will be headlines that refer to the budget deficit. It is a very significant number in signalling the state of health of the fiscus. If the number stays high at 4% or some figure higher then it means that your fiscal consolidation in other words your reining in of debt slowing the rate at which you accumulate debt but not slowing the debt itself but at least you adding little amounts or decreasing amounts over time. It means you are not succeeding if that number is increasing or is constant. And lenders like it when that number is falling because it demonstrates that you are managing your spending to get closer to being within the  
20 revenue that you are raising in a specific year. You are getting closer to a point where you are going to be living within your means because that line you can say is a reflection of living beyond your means actually simply put. You can only collect so much revenue from your economy but you spend more than that. It is not a crime but ...

**CHAIRPERSON:** But it is not good.

**MR LUNGISA FUZILE:** It will be better not to have it.

**CHAIRPERSON:** Ja.

**ADV VINCENT MALEKA:** Okay the last financial year is the previous one 2017/2018.

**MR LUNGISA FUZILE:** Yes.

**ADV VINCENT MALEKA:** Again reflect on the money we receive and the money we spend through the budget process estimation and the difference as a deficit?

**MR LUNGISA FUZILE:** Then in that year it pops up this deficit if I may go straight now to the number is 217 and that 217 expressed as a percentage of GDP is 4.6. It is almost a full percentage point higher than the year before which is the 3.8. Which then means instead of fiscal consolidation what you are getting is you are adding increasing amounts as a percentage of GDP. As I was saying the opposite then people will lend you money – start to frown at this and sort of get consent that you are not managing your affairs – fiscal affairs properly and these are some of the reasons why then the rating off the country by rating agencies drops. And of course it translates to a whole host of things that have been ventilated here previously.

10

**ADV VINCENT MALEKA:** Right. So to conclude on this point Mr Fuzile on your figures 2014/2015 financial year going forward to 2017 to 2018 we have not been able to control our spending?

**MR LUNGISA FUZILE:** Well you can – we have not succeeded to effect fiscal consolidation.

20

**ADV VINCENT MALEKA:** Which is a complex and complicated term for inability to manage and control your debt?

**MR LUNGISA FUZILE:** I would agree with that yes.

**ADV VINCENT MALEKA:** Now we are going to the next topic and again here I should remind you that two other witnesses have already testified upon it. And with your

permission and the permission of the Chair I would like to move quite quickly on it if you do not mind?

**MR LUNGISA FUZILE**: No it is fine.

**ADV VINCENT MALEKA**: We do so against the context of the numbers that you have canvassed and you start at page 49. You talk about your discussion with Ms Nelisiwe Ngobane and I would like you to expand on that because it is a matter that you have personal knowledge about.

**CHAIRPERSON**: I think you said 49.

**ADV VINCENT MALEKA**: Paragraph 39.

10 **CHAIRPERSON**: Meant – meaning paragraph 49.

**ADV VINCENT MALEKA**: Paragraph 49. Paragraph 49.

**CHAIRPERSON**: Ja.

**ADV VINCENT MALEKA**: I am sorry about that Chair.

**MR LUNGISA FUZILE**: I indicate in the statement that Ms Ngobane who was the DG of Energy at the time gave me a call and he said that he needed some advice before her she had a proposed agreement between South Africa and the Federation of Russia or Russian Federation whichever is the proper way you say it. Her concern pardon me – her concern was that the agreement was making reference to tax incentives or favourable tax treatment of the nuclear procurement with the Russians and she did not  
20 think that she was empowered to deal with that. And of course I indicate that I gave her my preliminary view on this which was that our law is not very flexible on matters of giving tax exemptions. It is a South Africa's system is decidedly legalistic. You have got the taxation law and you have got tax administration act issues of exemptions you cannot just give them willy nilly and I made reference to how difficult it was to give some of those exemptions to the FIFA even though they were demanding that they get

them everywhere. We gave them a bit of a run around because there are careful considerations relating to why it is not advisable to give those types of exceptions. But then I make – I made the second point to her which was that I was concerned that they were at the point of signing an agreement with one country and I was hearing about it for the first time. I thought – I said to him having been here all along I would have thought that given just the requirements of our constitution and all other legal prescripts the country ought to be knowing about the fact that there is a procurement process for nuclear that has gone as far as signing agreements. That is why I said but she should send me a request in – you know formally to do which she dutifully did. And of course

10 we then had correspondence in which for instance I was indicating to her just how we were thinking about this and how unwise it would be to proceed as they were contemplating. The important point to perhaps make on this is that this is one of those agreements that there has been a finding maybe there is an appeal against it I do not know in the Western Cape.

**ADV VINCENT MALEKA:** What intrigues me is why Ms Ngubane would come to you when we have a lawfully established body such as SARS whose domain it is to deal with questions of tax incentives?

**MR LUNGISA FUZILE:** Yes. No there would not be anything wrong. Remember SARS is the tax administrator.

20 **ADV VINCENT MALEKA:** Yes.

**MR LUNGISA FUZILE:** But the policy on tax is – is done by Treasury and if there are to be any considerations of the kind that were contemplated here and the decision on the legality or otherwise it would still be within treasury and the Minister of Finance. But the enforcement of what is in law and has been agreed or exempted is SARS business correct.

**ADV VINCENT MALEKA:** Oh I see.

**MR LUNGISA FUZILE:** Yes.

**ADV VINCENT MALEKA:** So you were the frontline policy making body on questions of tax incentives?

**MR LUNGISA FUZILE:** Yes.

**ADV VINCENT MALEKA:** And SARS was the second line of administration?

**MR LUNGISA FUZILE:** Yes.

**ADV VINCENT MALEKA:** I understand. What was the upshot of all of those discussions you had with Ms Ngubane now that she had made available to you a copy  
10 of that agreement?

**MR LUNGISA FUZILE:** Look the –

1. It was that the process had gone a bit far and was not consistent with the legal prescripts of South Africa. Just even the process of procurement.
2. The contemplated tax incentives were inconsistent with our law and we pointed this out to her.

**ADV VINCENT MALEKA:** Yes.

**MR LUNGISA FUZILE:** And of course I learnt later on as I indicate on paragraph 54 that the agreements were signed with those favourable conditions.

**ADV VINCENT MALEKA:** Yes. But the upshot of it is that you as treasury had not  
20 contributed anything.

**MR LUNGISA FUZILE:** No.

**ADV VINCENT MALEKA:** In relation to the agreement that was presented to you ultimately?

**MR LUNGISA FUZILE:** Yes, we have not.

**ADV VINCENT MALEKA:** Now you take the matter further on page 23 from paragraph

56.

**MR LUNGISA FUZILE:** Yes.

**ADV VINCENT MALEKA:** And introduce that development through a telephone call. You got from Mr Mogajane. At the time we know he was the Chief of Staff of Minister Gordhan.

**MR LUNGISA FUZILE:** Hm.

**ADV VINCENT MALEKA:** What happened after you received that call?

**MR LUNGISA FUZILE:** We, we; I mean the Minister and I availed ourselves for the meeting with, the call was inviting us to a meeting with President Zuma at his residence  
10 on an afternoon, on a Friday afternoon. We, we proceeded as, as asked. We ended up there. When we ended up there we first were ushered into a room where we met a gentleman whose name I mention in the submission Mr Senti Thobejane who introduced himself to us as the Advisor to both the President and the Minister of Energy on, on energy matters and of course, because the President was out of the country he was returning from I think Angola at the time. We had to wait and whilst waiting we had a longish conversation with Mr Thobejane in which he, he was just taking us through some of his thoughts on nuclear which is what he, he said you know he thought maybe the meeting was going to be about. Explaining then the different technologies as I captured that on 63.

20 **ADV VINCENT MALEKA:** Yes.

**MR LUNGISA FUZILE:** And then at the bottom of page 24 you will see that I, I refer to this sort of proposed approach to procurement that was being contemplated which refers to the first stage where we would, there would be a decision on the countries that would potentially provide nuclear and then the next stage would be for those countries to compete amongst themselves.

**ADV VINCENT MALEKA:** Yes.

**MR LUNGISA FUZILE:** And of course we, we did sort of hint at our reservations about that approach to procuring nuclear and it is consistently, consistency or otherwise with Section 217 and all other relevant prescripts of, of the law. I do make the point in 65 that all, I mean Mr Thobejane sort of explained all these technologies and the countries that they were offering and he tried to be objective, but I could not help but detect that when he came to Russia he liked their technologies and stuff like that and I mean he is a nuclear physicist as I learnt later on and I do not want to even try to pretend as if I understood those technologies. I am just a mere economist, a rusted one *nogal*, but

10 he, he, he explained and you could tell now maybe, let me not, I mean I suspect that I was looking at what he was saying against the background of those agreements that Ms Mokobane talked about. Of course needless to say that the, the President then arrived and the, the conversation kind of continued. Mr Gordhan did tell him that we have had some conversations. Mr Thobejane has told us a few things about nuclear and so on which the President indicated he, he, he actually wanted that to happen that is why the meeting had been called. Then I make the observation towards the end on page 26 which was that Minister Gordhan just made those comments about, two

20 comments. The first one was that if and he was very emphatic about the if deliberate about if South Africa were to continue with the deal of procuring nuclear it would have to follow every rule in the book were his words kind of, because failure to do so and I am paraphrasing would turn and this bit is his own words, would turn the arms deal problems into a Sunday School picnic which I found quite instructive. He just, he made that point and of course he asked that to avert a situation like that Mr Thobejane and I as technical people should sort of talk to each other and make sure that we can help ensure that the procurement process was in line with the relevant laws.

**ADV VINCENT MALEKA:** And.

**MR LUNGISA FUZILE:** I will, I will end this by just saying that something perhaps that, not perhaps that I do not touch on here is that it was strange by the way to have this conversation with an Advisor, because Advisors in departments I indicated in the previous appearance here they do not have signing authorities over things. The DGs are principal Chief Advisors to Ministers.

**CHAIRPERSON:** Hm.

**MR LUNGISA FUZILE:** The executive authority is with the Minister.

**CHAIRPERSON:** Hm.

10 **MR LUNGISA FUZILE:** The accounting duties or responsibilities are with the DG.

**CHAIRPERSON:** Hm.

**MR LUNGISA FUZILE:** They can delegate to people under them. Nowhere does it make provision for delegating to an Advisor or that interface.

**CHAIRPERSON:** Hm.

**MR LUNGISA FUZILE:** Advisors play important roles, but it was a bit odd for me.

**CHAIRPERSON:** Hm.

**MR LUNGISA FUZILE:** That we had the conversation solely with the Advisor from the department, but it happened that way.

20 **ADV VINCENT MALEKA:** Fair enough. You have talked about that at length with reference to.

**MR LUNGISA FUZILE:** *Ja.*

**ADV VINCENT MALEKA:** Cabinet special dispensation.

**MR LUNGISA FUZILE:** *Ja.*

**ADV VINCENT MALEKA:** In terms of Section 12(a) of the Public Service Act.

**MR LUNGISA FUZILE:** *Ja.*

**ADV VINCENT MALEKA:** Chair I see that it is just past one. I wonder whether this a convenient.

**CHAIRPERSON:** Yes.

**ADV VINCENT MALEKA:** To stay.

**CHAIRPERSON:** I think just maybe the convenient time. So as that meeting ended what, what appeared to have been the purpose of the meeting as you understood it?

**MR LUNGISA FUZILE:** I asked Mr Gordhan. I said, but what was the purpose of this meeting. He kind of gestured in a queer way but it is, I mean one of, I think part; I mean what the President communicated was that look the reason he called the meeting  
10 sort of nuclear procurement has got to proceed and, and it has got to happen. You are kind of expedited. That is the one thing, but I also think that just given the, the kind of approvals that are often necessary in Government that have got to go via Treasury. Take for instance the tax stuff here and you will see when we get to the SASSA issue that I mention that, you know when you want to deviate from a procurement process you have got to ask the Treasury. There is always then this when people look at things they say but were can the glitches be.

**CHAIRPERSON:** Hm, *ja*.

**MR LUNGISA FUZILE:** Treasury looms large and then.

**CHAIRPERSON:** Hm.

20 **MR LUNGISA FUZILE:** You know signalling to them. I, I hesitate to use the word nudging.

**CHAIRPERSON:** Hm.

**MR LUNGISA FUZILE:** Because if you, if you sort of.

**CHAIRPERSON:** Hm.

**MR LUNGISA FUZILE:** You know.

**CHAIRPERSON:** Hm.

**MR LUNGISA FUZILE:** [Indistinct].

**CHAIRPERSON:** Hm.

**MR LUNGISA FUZILE:** The same guy.

**CHAIRPERSON:** Hm.

**MR LUNGISA FUZILE:** I just think you know you have sort of without necessarily forcing, but.

**CHAIRPERSON:** Hm.

**MR LUNGISA FUZILE:** You have signalled.

10 **CHAIRPERSON:** *Ja.*

**MR LUNGISA FUZILE:** How dear you hold the project.

**CHAIRPERSON:** Hm.

**MR LUNGISA FUZILE:** And therefore soften the people.

**CHAIRPERSON:** Hm.

**MR LUNGISA FUZILE:** I do not know.

**CHAIRPERSON:** *Ja.*

**MR LUNGISA FUZILE:** Because there was never stated a purpose before the meeting, at the meeting or after the meeting.

**CHAIRPERSON:** Yes, but it does appear that the President may have wanted that  
20 there be a discussion in his presence initially between Treasury and Mr Thobejane in regard to various views and then maybe later on they would have those discussions later on, but initially it seems that he needed that they come together.

**MR LUNGISA FUZILE:** Yes. That is quite a generous interpretation Chair and, and one can say it is. I mean I, I would have understood.

**CHAIRPERSON:** *Ja.*

**MR LUNGISA FUZILE:** In a way if the people who were supposed to do the procurement.

**CHAIRPERSON:** Hm.

**MR LUNGISA FUZILE:** You know facilitate it.

**CHAIRPERSON:** Hm.

**MR LUNGISA FUZILE:** As in the Minister of Energy.

**CHAIRPERSON:** Hm.

**MR LUNGISA FUZILE:** The DG of Energy.

**CHAIRPERSON:** Hm.

10 **MR LUNGISA FUZILE:** Or the DDG relevant.

**CHAIRPERSON:** Hm.

**MR LUNGISA FUZILE:** For nuclear.

**CHAIRPERSON:** Hm.

**MR LUNGISA FUZILE:** You know what I am saying? [Intervenes].

**CHAIRPERSON:** If they were there.

**MR LUNGISA FUZILE:** You, you, why you jump to the people who might have to approve something at some point.

**CHAIRPERSON:** Hm.

**MR LUNGISA FUZILE:** Down the line.

20 **CHAIRPERSON:** Hm.

**MR LUNGISA FUZILE:** And say the thing must happen fast.

**CHAIRPERSON:** Hm, okay.

**MR LUNGISA FUZILE:** You know. It is a.

**CHAIRPERSON:** Hm.

**MR LUNGISA FUZILE:** It is a kind of a.

**CHAIRPERSON:** Hm. Okay, I understand.

**MR LUNGISA FUZILE:** It is a queer approach.

**CHAIRPERSON:** Hm. Okay. We will take the lunch adjournment. It is now five past one. We will resume at five past two. We adjourn.

**ADV VINCENT MALEKA:** Thank you Chair.

**REGISTRAR:** All rise.

**INQUIRY ADJOURNS**

**INQUIRY RESUMES**

**CHAIRPERSON:** Yes Mr Maleka you may proceed.

10 **ADV VINCENT MALEKA:** Mr Fuzile we were at page 26 and you were about to turn to the technical aspects of the proposed nuclear procurement with reference to the task teams as of 8 December 2015. You recall that?

**MR LUNGISA FUZILE:** Yes.

**ADV VINCENT MALEKA:** And we know the significance of that date of 8 December. What happened from the 8 December 2015 with regards to the nuclear procurement?

**MR LUNGISA FUZILE:** We were advised when I say we the rest of the members of that technical team that on the 8<sup>th</sup> which I think was a Tuesday.

**ADV VINCENT MALEKA:** Yes.

**MR LUNGISA FUZILE:** There was going to be a meeting of the NNEE

20 **ADV VINCENT MALEKA:** CC

**MR LUNGISA FUZILE:** CC committee which is a committee of cabinet that President Zuma chaired which was considering or tasked with considering matters relating to nuclear and nuclear procurement among other things. So we were then ready with a presentation that was combining this presentation that we went through – that annexure with the some details.

**CHAIRPERSON:** One at page 138 and some pages earlier than that.

**MR LUNGISA FUZILE:** Yes that one yes.

**CHAIRPERSON:** Ja.

**MR LUNGISA FUZILE:** That presentation. That presentation was kind of the one we have here was the Treasury's starting point which of course elements of it were now supposed to be combined in a presentation that would have a representative view of that technical task team. So the meeting was scheduled for let us say two in the afternoon of that day and then when we were on our way there we were told no the meeting has been rescheduled to commence an hour later than the original planned  
10 time. But of course because we were already on our way we continued. We – I am referring to Mr Mgajane and Mr Michael Sacks. When we got there we realised at the President's residence – official residence in Pretoria we realised that many of – there were many cars parked outside so that did not really bother us, we continued to the holding room. What then struck us was that closer to the time of the start of the meeting the people whose cars that had been parked outside came out of one of the rooms and it happened to be all of the relevant government people, officials and ministers who were part of the process of considering nuclear procurement in government except us as Treasury.

**CHAIRPERSON:** Who were part of the committee that maybe for convenience can be  
20 called what nick or knack or the NNEECC.

**MR LUNGISA FUZILE:** Yes.

**CHAIRPERSON:** Were they part of that committee?

**MR LUNGISA FUZILE:** Yes they were part of that committee.

**CHAIRPERSON:** Okay.

**MR LUNGISA FUZILE:** So all the people in other words the executive – members of

the executive who were members of that committee.

**CHAIRPERSON**: Ja ministers?

**MR LUNGISA FUZILE**: Ministers and the official – and their officials.

**CHAIRPERSON**: Yes.

**MR LUNGISA FUZILE**: Who were members of the technical team.

**CHAIRPERSON**: Ja.

**MR LUNGISA FUZILE**: That was doing to the technical work.

**CHAIRPERSON**: Ja.

**MR LUNGISA FUZILE**: Which was supposed to answer to the question of what it  
10 would cost and how it could be made affordable, paid for and so on and so forth. All of  
them but Treasury and Finance – or the Minister Finance were not part of that.

**CHAIRPERSON**: They – did they emerge from ...

**MR LUNGISA FUZILE**: One of the...

**CHAIRPERSON**: A meeting or just one of the rooms whether there was a meeting or  
not you do not know.

**MR LUNGISA FUZILE**: It was from a meeting. No they came from a meeting.

**CHAIRPERSON**: There was a meeting?

**MR LUNGISA FUZILE**: There was a meeting.

**CHAIRPERSON**: Okay. And do you know whether to discuss issues that were relevant  
20 to this committee or not?

**MR LUNGISA FUZILE**: I do not know.

**CHAIRPERSON**: You do not know that part okay.

**MR LUNGISA FUZILE**: I do not know.

**CHAIRPERSON**: Okay.

**MR LUNGISA FUZILE**: So we – then the meeting commenced without you know sort

of sparing you some of the details which do not add value to this.

**ADV VINCENT MALEKA:** Yes.

**MR LUNGISA FUZILE:** The meeting commenced and so the Minister of Energy just introduced opposition, the discussion and the Director General and the DDG responsible for nuclear energy then they went through the details of the presentation.

**ADV VINCENT MALEKA:** Where was Minister Nene at the time?

**MR LUNGISA FUZILE:** Minister Nene had arrived now we were all there.

**ADV VINCENT MALEKA:** Ja he – I seemed to recall that before that meeting in his evidence he referred to a trip to Russia.

10 **MR LUNGISA FUZILE:** Yes, yes.

**ADV VINCENT MALEKA:** Did you know about his trip to Russia?

**MR LUNGISA FUZILE:** I did. I mean I did. He – Minister Nene had gone to Russia and upon returning he did relate to me that when he was in Russia there was some discussions involving him and the Minister of Energy and some of the ministers were there and at some point President Zuma where they discussed a need to write a letter to the President of Russia which he did not agree to.

**ADV VINCENT MALEKA:** Ja. Alright he canvassed that part of his evidence.

**MR LUNGISA FUZILE:** Yes, yes.

**ADV VINCENT MALEKA:** You do not have to worry about it.

20 **MR LUNGISA FUZILE:** Yes.

**ADV VINCENT MALEKA:** What I would like you to do if you can and subject to your level of comfort. Just quickly take us through the proceedings at the meeting?

**MR LUNGISA FUZILE:** The meeting okay.

**CHAIRPERSON:** And before you do that was President Zuma chairing that meeting on that day?

**MR LUNGISA FUZILE:** Yes he was Mr Chairman.

**CHAIRPERSON:** Okay alright.

**MR LUNGISA FUZILE:** President Zuma was chairing the meeting. The meeting commenced and you will tell me if I am leaving things that you want – I am trying to summarise.

**ADV VINCENT MALEKA:** Yes.

**MR LUNGISA FUZILE:** But at the same time without leaving important details out. So the presentation was done and it will become evident as I talk through the differences between what was presented and what is contained here just now. And that is I think  
10 what is consequential more than the background to it. So when they finished presenting the President turned to Mr Nene and asked him if he had anything to say. And he said a few things including the following that he thinks that the estimates that were presented by the colleagues from energy were a bit optimistic. In other words they estimated costs were a bit too optimistic. I guess he was remembering what he knew from the presentation that we had taken him through in preparing. But he then – because one of the things that was proposed was that maybe there should be market sounding. In other words there should be a testing of what those who could potentially supply nuclear would charge for it and that was the way to test the market on it. So and then he paused and at that point the President turned towards me and I was on his right  
20 and he said – asked if I had anything to say.

**ADV VINCENT MALEKA:** Before you get to that point.

**MR LUNGISA FUZILE:** Ja.

**ADV VINCENT MALEKA:** Can you deal with one of the most important concerns Mr Nene had with regards to the pricing?

**MR LUNGISA FUZILE:** Yes, yes.

**ADV VINCENT MALEKA:** With reference to the exchange rate.

**MR LUNGISA FUZILE:** Yes. Yes in fact Mr Nene pointed out that insofar as what energy had presented which was that the weakest that the rand could be in other words the most expensive that nuclear could be when converted to rands from dollars was an exchange rate of R10,00 to the dollar. He did highlight the discrepancy that we had run a few more modelling scenarios which assumed a weaker rand and he pointed out that in fact on the day the rand was probably 40% plus weaker than the weakest that the presentation had assumed. By the way Mr Chairman needless to point out that it never strengthened to R10,00.

10 **ADV VINCENT MALEKA:** Yes. So this was a dollar based acquisition?

**MR LUNGISA FUZILE:** 60% of it by our estimates was going to be denominated in dollars. So in other words we would have been importing some of the stuff and therefore we would need dollars to pay for it so the exchange rate matters in that respect.

**ADV VINCENT MALEKA:** So your liabilities are denominated in dollar?

**MR LUNGISA FUZILE:** Yes.

**ADV VINCENT MALEKA:** And your payment obligations are denominated in rand?

**CHAIRPERSON:** Yes.

**ADV VINCENT MALEKA:** Which is weaker as against the dollar.

20 **MR LUNGISA FUZILE:** Yes, yes.

**ADV VINCENT MALEKA:** Alright. In paragraph 93.

**CHAIRPERSON:** Well I am not sure even on their presentation did they not factor in that they had to use the dollar/rand exchange rate but they just got it too low?

**MR LUNGISA FUZILE:** Yes.

**CHAIRPERSON:** Ja.

**MR LUNGISA FUZILE:** Yes they did but they just assumed that the weakest it could be was R10,00.

**CHAIRPERSON:** Ja. So in other words what I mean is you might use the rand.

**MR LUNGISA FUZILE:** Yes.

**CHAIRPERSON:** But provided you have got the exchange rate right that should not be a problem?

**MR LUNGISA FUZILE:** I would say yes that is there is no problem about it.

**CHAIRPERSON:** Yes.

**MR LUNGISA FUZILE:** But in a way ...

10 **ADV VINCENT MALEKA:** No, no it is a problem.

**MR LUNGISA FUZILE:** You can – you can understate because if you assume that the weakest that the rand can be you are understating what the likely costs is going to be.

**CHAIRPERSON:** Yes. I think Mr Maleka wants to follow that up.

**ADV VINCENT MALEKA:** Yes I mean if you underestimate.

**MR LUNGISA FUZILE:** Yes.

**ADV VINCENT MALEKA:** The exchange rate.

**MR LUNGISA FUZILE:** Ja.

**ADV VINCENT MALEKA:** You are under-pricing your [indistinct].

20 **MR LUNGISA FUZILE:** That is true. I do not – I am not disagreeing with that. If I sent the impression that I was disagreeing with it in fact I think I just said that if you just use the exchange rate on that day you would have understated the costs of the programme by about 40%.

**ADV VINCENT MALEKA:** Yes in fact I would like you to deal with that issue with reference to the actual figures that Minister Nene put forth at the meeting.

**MR LUNGISA FUZILE:** Yes.

**CHAIRPERSON:** Maybe Mr Maleka maybe – maybe it is my question that may have caused confusion. I – but it was following upon your question.

**ADV VINCENT MALEKA:** Yes my apologies Chair.

**CHAIRPERSON:** I understood you to be suggesting that what the people who made a presentation on behalf of the Department of Energy that what was wrong that they did was to use the rand in terms of their estimate of costs and I was suggesting to Mr Fuzile that the use of the rand alone if you have got the exchange rate against the dollar correct should not on its own be a problem. Obviously if you use the rand without the dollar then it is a problem.

10 **ADV VINCENT MALEKA:** Yes.

**CHAIRPERSON:** Okay.

**ADV VINCENT MALEKA:** Thank you Chair. Can you just confirm that the figures that Minister Nene put to the meeting and which were not disputed are the figures set out in page 34 paragraph 93.

**MR LUNGISA FUZILE:** Yes. No they are.

**ADV VINCENT MALEKA:** They are?

**MR LUNGISA FUZILE:** Ja.

**ADV VINCENT MALEKA:** Yes.

20 **MR LUNGISA FUZILE:** Ja they are correct. So that is why I was using you know about 40%.

**ADV VINCENT MALEKA:** 40%.

**MR LUNGISA FUZILE:** Ja.

**ADV VINCENT MALEKA:** So that the Department of Energy's pricing was 40% understated?

**MR LUNGISA FUZILE:** Ja.

**ADV VINCENT MALEKA:** Instead of being at the rand/dollar exchange of R14.57.

**MR LUNGISA FUZILE:** Yes, yes.

**CHAIRPERSON:** Well you might not be able to say this but I would have thought that people who were working on something so important and delicate would not have got the exchange rate so wrong or am I being unfair to them?

**MR LUNGISA FUZILE:** Let me just say this Chairman to that. Having worked with budgets for many years I do know that people know that when you want approval for something you do not say it is very expensive.

**CHAIRPERSON:** Okay, okay.

10 **MR LUNGISA FUZILE:** Because already it is counter intuitive because you want to say to people we can afford it plus other things. You know what I am saying? Once you have signed a contract you have signed it. I mean an example and I hope I do not offend anyone by saying this but it is the truth. When the Gauteng government wanted to procure the train very beautiful thing the estimated cost – the initial estimated cost I think was R7 billion or thereabout. But the ultimate cost of the thing was between R25 and R30 billion. It is the – that is the magnitude of – and it happens having dealt with budgets it is so rare.

**CHAIRPERSON:** It happens often?

20 **MR LUNGISA FUZILE:** It is so rare. It – the way it works it is like this. If people want the project to be supported and they think that it might not be they will understate the cost. When they know that the project has got such support that no one can say no to it they will overstate it because they know that once the money is allocated then they can move it to other things. Once you – so it is part of budget gaming.

**CHAIRPERSON:** Yes.

**MR LUNGISA FUZILE:** But it does not work well because it means that you misleading

– you taking a decision on the assumption that something costs you 40% less than what it will actually cost.

**CHAIRPERSON**: Ja but it could be quite serious is it not because if you put the price low because you genuinely believe that is the price it is one thing and maybe we can talk about your understanding of the relevant issues, your competence and knowledge and experience and so on. But if you know what the true position is and you give a wrong one you are misrepresenting and that is not acceptable is it not? In other words if you do it deliberately knowing what the true position is as opposed to you giving a position that you genuinely believe is correct but it might be found to be incorrect?

10 **MR LUNGISA FUZILE**: No that is – that is very true but the trick with this thing is to...

**CHAIRPERSON**: You do not want to condemn them too much?

**MR LUNGISA FUZILE**: I – no – look – no, no, I still condemn them but I still condemn them actually but it can be argued that no it was my projection and I thought that the rand would strengthen. And what do I say to that? You cannot say no you should have thought that it will – it will appreciate – it will depreciate. However having said that the strength of our own approach lies in the fact that in our case we had gone back in history and looked and found and we say this in the presentation at how the rand behaves towards – to the dollar over time and what we found was that on average over two decades or so in fact I think longer the rand had weakened to the dollar by about  
20 4% each year. So on the strength of that at least you can say but what then made you think that the rand will strengthen? And what do you say now that the rand has not strengthened if fact it has weakened in line with what the Treasury had said? You know kind of stuff. So you are right. It is hard – it would have been hard for them to motivate that their assumption is stronger than ours.

**CHAIRPERSON**: Ja okay alright.

**MR LUNGISA FUZILE:** Let alone the fact that after time has moved it has been confirmed that our modelling was superior to theirs.

**CHAIRPERSON:** Okay thank you.

**ADV VINCENT MALEKA:** Chair this is a very important point.

**CHAIRPERSON:** Yes.

**ADV VINCENT MALEKA:** Because you going to hear a lot about that when Eskom comes in.

**CHAIRPERSON:** Yes.

**ADV VINCENT MALEKA:** With regard to the capital expenditure relating to Kusile and  
10 Madupe power plants and you know that the justification about the four folding crease  
in the estimated initial capital expenditure it is around the so called cost of the rand but  
it raises a very fundamental point of...

**CHAIRPERSON:** Yes.

**ADV VINCENT MALEKA:** Project planning.

**CHAIRPERSON:** Yes.

**ADV VINCENT MALEKA:** Project pricing and project estimation.

**CHAIRPERSON:** Okay.

**ADV VINCENT MALEKA:** The second point that we would ask you to consider there is  
that we will lead evidence of Ms Catherine MacLeod who would give you the actual  
20 figures or the annual – sorry annualised performance of the rand there before Nene  
gate and the annualised performance of the rand as against the dollar a year later to  
give you a sense of the figures. But on this score Mr Fuzile and that is the issue that I  
would like you to comment on because I am afraid I do not accept your explanation and  
it is this. The estimation provided by the Department of Energy at the time about the  
value of the rand against the dollar which was understated by 40% could not have

given rise to a prudent fiscal pricing because when you estimate the performance of a currency in relation to a foreign based currency acquisition you protect yourself as a buyer and there are many instruments that you use in order to protect yourself of volatility of your own currency. And we know there are a number of hedging instruments so this could not have been a reasonable estimate against which the country could not have protected itself given the far big difference between the actual rand performance at the time and the estimate at the time.

**MR LUNGISA FUZILE:** Yes look the – I cannot disagree with you at all. If I created the impression that I disagree with that then I take that back. Bear in mind which is the most powerful point about this. On the day the rand was trading at the numbers you see.

**ADV VINCENT MALEKA:** Yes.

**MR LUNGISA FUZILE:** Right so it is one thing to project forward and say it can be as weak as R20,00 to the dollar.

**ADV VINCENT MALEKA:** Yes.

**MR LUNGISA FUZILE:** On the specific day which is why the thing was – it did not make sense let me just say at all. But of course you can spend the whole day, you can spend weeks and someone can just say I am assuming that it will strengthen what do you say?

20 **CHAIRPERSON:** Well you see the reason why Mr Maleka you know says that this is quite important.

**MR LUNGISA FUZILE:** Yes.

**CHAIRPERSON:** Is the context in which it comes before the commission.

**MR LUNGISA FUZILE:** Yes.

**CHAIRPERSON:** We looking to see whether anybody was actually making a

contribution that – that could facilitate something that is wrong.

**MR LUNGISA FUZILE**: No, no I understand.

**CHAIRPERSON**: And you see you make the point that somebody could say but I made assumptions, certain assumptions. You see there would be a line where you say in the light of so and so's knowledge and experience in these matters on these issues. If he gives an estimate like X and I think it is Y I can accept that he might be making an honest error okay. But you come to a stage where say if the same person gives Z as an estimate knowing what he knows – what his training is, what his experience is it cannot be an honest error.

10 **MR LUNGISA FUZILE**: No that is ...

**CHAIRPERSON**: So we may be looking for those kinds of things.

**MR LUNGISA FUZILE**: Yes. In fact Chairman if I may let me perhaps try and help here. I do refer in the statement earlier on that part of what troubled us, all of us and in my intervention in that meeting this comes out. Was the fact that we had discussed these things with the colleagues from energy?

**ADV VINCENT MALEKA**: Yes.

**MR LUNGISA FUZILE**: And we pointed out these risks for instance this logic of how to project the exchange rate. No one knows but you can estimate it. You can use the historical patterns to say more or less if ABC obtains the exchange that will be there in  
20 future hence the reference to the fact that historically our own currency has weakened against the dollar by about 4% each year. So – and we argued these things out. They appeared to have accepted our logic which is part of our contention.

**CHAIRPERSON**: Yes.

**MR LUNGISA FUZILE**: And it was part of my contention.

**CHAIRPERSON**: Yes.

**MR LUNGISA FUZILE:** In my intervention.

**CHAIRPERSON:** Yes.

**MR LUNGISA FUZILE:** Right. They accepted the soundness of our logic. Then came – come the [indistinct].

**CHAIRPERSON:** Yes.

**MR LUNGISA FUZILE:** Then all of a sudden they go to the R10,00.

**CHAIRPERSON:** And they do not counter the arguments that they knew you had raised about projections?

**MR LUNGISA FUZILE:** It was worse than that. Their option they presented it as  
10 though we had agreed to it.

**CHAIRPERSON:** And...

**MR LUNGISA FUZILE:** And that I found objectionable.

**CHAIRPERSON:** And I would have imagined that having had a situation where you had engaged with them on these issues and they seemed not to have any problem with the soundness of your arguments you might have expected that if they were to present something different they would come back to you first and say you know what we had this meeting and we thought you were right but we have changed our mind because of ABCD.

**MR LUNGISA FUZILE:** No precisely.

20 **CHAIRPERSON:** That is what you would have expected?

**MR LUNGISA FUZILE:** No that is what – under normal circumstances.

**CHAIRPERSON:** Under normal circumstances.

**MR LUNGISA FUZILE:** So just – so that I am clear. We found it objectionable.

**CHAIRPERSON:** Ja.

**MR LUNGISA FUZILE:** And that was part of my you know intervention because you

say look what has been presented is not what we agreed to. I could not with a clean conscience sit there and you can see our own presentation which is what I have taken you back to.

**ADV VINCENT MALEKA:** Yes.

**MR LUNGISA FUZILE:** To show you how we tried to – and we water it down we still say more work would need to be done to get to a closer approximation of what nuclear would cost. But it is definitely not what is predicated on exchange rate of R10,00 to the dollar. Needless to say the rand never got anywhere close to that years later. In fact I think about a decade later. Am I working the numbers right? Over a decade later.

10 **CHAIRPERSON:** Well just under a decade – was it 2015 or thereabout?

**MR LUNGISA FUZILE:** Or it was 2015 ja.

**CHAIRPERSON:** Just ja.

**MR LUNGISA FUZILE:** I do not know why I cannot count now. But anyway yes maybe it is safer to say years later.

**ADV VINCENT MALEKA:** Yes. Ja you summarise all of that and your intervention including your observation of 40% in paragraph 98 and that takes me to paragraph 101 on page 36. And I leave that for you to explain in your own words because a further procurement matter has been raised with you. Alright can you just take us through what you say there.

20 **MR LUNGISA FUZILE:** Yes as I say on 101 the President looked towards me and said...

**CHAIRPERSON:** Well before you that just ...

**MR LUNGISA FUZILE:** Yes.

**CHAIRPERSON:** Just indicate that you are now in a certain meeting that...

**MR LUNGISA FUZILE:** No it is the same meeting.

**CHAIRPERSON**: Oh is it the same meeting?

**MR LUNGISA FUZILE**: It is the same meeting.

**CHAIRPERSON**: Oh I thought it was – oh okay.

**MR LUNGISA FUZILE**: It is the same meeting.

**CHAIRPERSON**: Oh okay alright.

**MR LUNGISA FUZILE**: And now I have registered this objection.

**CHAIRPERSON**: Your objections ja.

**MR LUNGISA FUZILE**: And I have indicated that what we had discussed and thought we had agreed with the colleagues at energy was the option of phasing nuclear rather than you know take the modular approach 2.4 gigawatts contract for it.

**CHAIRPERSON**: Yes.

**MR LUNGISA FUZILE**: Rather than 9.6 which we had from our modelling come to the conclusion it will be unaffordable.

**CHAIRPERSON**: Yes.

**MR LUNGISA FUZILE**: And then I ended by indicating that whilst the colleagues from energy had not enthusiastically accepted what we were telling them but we thought we were at one that it would be phased approach would be the most sensible option. And then of course I closed my own intervention and then the President raised the issue that the former Minister of Finance and I had stopped the Engen Petro SA project just out of the blue like that. And then made the comment ...

**CHAIRPERSON**: I think you have got that in quotations in your statement.

**MR LUNGISA FUZILE**: Yes.

**CHAIRPERSON**: I think you must put it...

**MR LUNGISA FUZILE**: Yes, yes, yes.

**CHAIRPERSON**: The way he put it let me...

**MR LUNGISA FUZILE:** Oh okay.

**CHAIRPERSON:** Ja.

**MR LUNGISA FUZILE:** At that point I am saying the President turned towards me and then said that and I quote “You and your former Minister had stopped the Petro SA – the Engen Petro SA project”.

**ADV VINCENT MALEKA:** Who is the former minister you refer to?

**MR LUNGISA FUZILE:** It was Minister Gordhan.

**ADV VINCENT MALEKA:** Alright.

**MR LUNGISA FUZILE:** Remember by that time he had been shuffled to local  
10 government and provincial affairs and Nene was the minister.

**ADV VINCENT MALEKA:** Yes.

**MR LUNGISA FUZILE:** Before he got shuffled back later on.

**ADV VINCENT MALEKA:** Yes.

**MR LUNGISA FUZILE:** A few days from that time. Then he ...

**CHAIRPERSON:** Oh this is still on the 8 December?

**MR LUNGISA FUZILE:** This is still on the 8<sup>th</sup>.

**CHAIRPERSON:** 2015.

**MR LUNGISA FUZILE:** This is still on the 8<sup>th</sup> Mr Chair. This is still on the 8<sup>th</sup>.

**CHAIRPERSON:** Before 9/12?

20 **MR LUNGISA FUZILE:** Yes.

**CHAIRPERSON:** 2015?

**MR LUNGISA FUZILE:** Yes.

**CHAIRPERSON:** Okay.

**MR LUNGISA FUZILE:** It is just hours.

**CHAIRPERSON:** Alright.

**MR LUNGISA FUZILE:** Before that.

**CHAIRPERSON:** Okay.

**MR LUNGISA FUZILE:** Then he said, then again I quote him. He said:

“You know in other countries of the world Finance Ministers do not tell the President that there is no money. Their job is to find the money. So that what, what has been decided can be implemented, but alas this was not the approach of Ministers in South Africa.”

I do not want to put an interpretation to that, but it did shock me.

10 **ADV VINCENT MALEKA:** Yes.

**MR LUNGISA FUZILE:** And I, I leave it to everyone with the background that I have painted to, to make, make out what it means.

**ADV VINCENT MALEKA:** Yes. Before we get to the next topic. You make a big jump because in the next topic you talk about events after the removal of Minister Nene and the Chairperson has reminded you that after the 8<sup>th</sup> there was a momentous Cabinet meeting on 9 December which was the Wednesday following the previous Tuesday of the discussions we have dealt with and you.

**CHAIRPERSON:** Well I am sorry Mr Maleka. Let us, can we conclude this meeting of the 8<sup>th</sup> in a way that makes it clear what happened? You made your presentation where  
20 you raised your objections towards the recommendations and approach taken by the team from the Department of Energy and then you, then you say at paragraph 101 the former President then turned towards you and commented:

“You and your former Minister had stopped the Engen PetroSA project”.

And then what comes after that and you say:

“You were shocked and the meeting resolved to take the recommendations of the 9.6 gigawatts as presented by the Department of Energy to Cabinet the following day.”

Am I correct to take it that the conclusion of that meeting was effectively to reject or not to follow what Treasury was recommending should happen? In other words to just take the recommendations to which Treasury had a lot of objections, take those to Cabinet for purposes of possible approval. Is that a fair understanding of how the meeting was concluded?

**MR LUNGISA FUZILE**: Perfect.

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

**ADV VINCENT MALEKA**: Alright. Then the next day you, you have a Cabinet meeting and I understood from your previous evidence that you attended that meeting?

**MR LUNGISA FUZILE**: Yes. Only for the part that related to [laughing]. Excuse me for laughing, but essentially I was there for the part that related to our business as Treasury.

**ADV VINCENT MALEKA**: Yes.

**MR LUNGISA FUZILE**: Which was the approval of the National Allocation.

**ADV VINCENT MALEKA**: Yes.

20 **MR LUNGISA FUZILE**: But I think that people knew I was there. So the item on nuclear was before that and as we were sitting in the waiting room, because you never, we never knew when we would be called or our turn would come. I, I just went around the corner to the gents and when I returned they said no, no, no you are needed inside. I said, so quickly. Is it our turn, because we had the agenda.

**CHAIRPERSON**: Yes.

**MR LUNGISA FUZILE**: They said no you are needed for the nuclear discussion.

**ADV VINCENT MALEKA:** Hm.

**MR LUNGISA FUZILE:** I hardly sat and the matter had been decided. So.

**CHAIRPERSON:** Oh.

**MR LUNGISA FUZILE:** Yes.

**CHAIRPERSON:** So you ended up not making any contribution?

**MR LUNGISA FUZILE:** No, nothing. In fact.

**CHAIRPERSON:** Ah.

**MR LUNGISA FUZILE:** I just walked in and then out.

**CHAIRPERSON:** Hm.

10 **MR LUNGISA FUZILE:** And then back for our item.

**CHAIRPERSON:** Okay, hm.

**ADV VINCENT MALEKA:** Ja., alright and we know that later in the late evening of that day the President announced the release from office of Minister Nene and the appointment of Mr Van Rooyen as the new Minister. You have talked a lot about what happened immediately after announcement was made. I am not going to ask you to rehash what you said unless you find reason to do so. What I would like to do is to take you back to the events you describe after the removal of Minister Nene as you discuss them from paragraph 103 on page 36. Are you there?

**MR LUNGISA FUZILE:** Hm.

20 **ADV VINCENT MALEKA:** Alright. You refer to the Chief Procurement Officer. At the time I believe it was Mr Brown?

**MR LUNGISA FUZILE:** Hm, yes.

**ADV VINCENT MALEKA:** What did he have to do with this issue of nuclear so much so that you refer to him and his office?

**MR LUNGISA FUZILE:** One of the things that I did which may not be quite apparent

here is that I set up a team of DDGs led by Mr Mogaja.ne but and, and supported by Michael Sacks, but in the main but then also the Chief Procurement Officer and Mr Donaldson and I just the four of them and to the extent that they could bring in anyone from the department with the expertise that they thought they needed, but they should just look at all the technical aspects of this thing and the relevance of Mr, of the Office of the Chief Procurement was in relation to, his is a procurement issue decidedly. So was to just test along the way the, the alignment or otherwise between the approach proposed or contemplated in relation to procuring nuclear to the rules, laws and all such things that are relevant for an example. I have referred earlier on in the statement and  
10 even in this testimony here to the fact that there was a two stage approach contemplated and that stuff the Chief Procurement Officer was supposed to assist with looking at and indeed he did get, what do you call this thing now, legal opinion. Pardon me on this thing and I think even two of them which sort of indicated that the a approach that was contemplated might, was not consistent with the law.

**ADV VINCENT MALEKA:** Yes. So the relevance of the Chief Procurement Officer was to ensure that there had to be a legally compliant procurement?

**MR LUNGISA FUZILE:** Yes.

**ADV VINCENT MALEKA:** In relation to the nuclear.

**MR LUNGISA FUZILE:** That is the short of it, yes.

20 **ADV VINCENT MALEKA:** Proposed project?

**MR LUNGISA FUZILE:** Yes.

**ADV VINCENT MALEKA:** And then you say that there were continuing engage, engagements between the Treasury team led by Mr Mogaja.ne?

**MR LUNGISA FUZILE:** Hm.

**ADV VINCENT MALEKA:** And the Department of Energy Team and that ultimately led

to a request for proposal. That you say in paragraph 107 of your statement on page 38.

Are you there?

**MR LUNGISA FUZILE:** Yes.

**ADV VINCENT MALEKA:** What happened thereafter once this idea of a request for a proposal was put up?

**MR LUNGISA FUZILE:** Look some of the engagements then kind of tapered off so to speak, but of course this maybe the phase around which several of the agreements with the different countries were signed. You know with, with Russia, China, France. I will stop there. I think about six countries.

10 **ADV VINCENT MALEKA:** Eskom became involved?

**MR LUNGISA FUZILE:** Yes.

**ADV VINCENT MALEKA:** Do you [intervenes]?

**MR LUNGISA FUZILE:** Yes, there was a switch, because at one stage there was the contemplation as I already indicated earlier on that this would be done by NERSA and then, and then and I, I mean I can say out of almost out of the blue there were changes at Eskom at board level, at CEO level and all of a sudden in my view Eskom then came back and said look they can do nuclear. They think it is possible. They think it makes sense and they were back looking at the possibilities of, of that.

20 **ADV VINCENT MALEKA:** *Ja.* In paragraph 108 you indicate the extent to which Eskom become involved.

**MR LUNGISA FUZILE:** Yes.

**ADV VINCENT MALEKA:** Can you just highlight the key aspects and how Eskom became involved?

**MR LUNGISA FUZILE:** Yes around November Cabinet approved that Eskom would be the owner, the operator and procurer of nuclear and around that time Eskom indicated

that it was intending to issue a RFP for, for nuclear. What then stalled that was the fact that Earth Life then challenged because the, the procurement process had been following the, this two stage approach that I talked about which is the selection of countries and signing agreements with them and then having those countries inside that lot competing among themselves. In other words the RFP now would go to them. So that was the stage and then Earth Life Africa. Sorry I, I did not say the name fully, took this, those agreements to court on the grounds that they were unlawful, unconstitutional and so on and I think that there is a, even a court process that unfolded in relation to that.

10 **ADV VINCENT MALEKA:** Yes. Chair that is a matter of public record in the judgment of the Cape High Court. I doubt if there is anything that arises from it at this stage.

**CHAIRPERSON:** No that is fine.

**ADV VINCENT MALEKA:** Yes. Mr Fuzile I mean you draw some conclusions.

**MR LUNGISA FUZILE:** Hm.

**ADV VINCENT MALEKA:** Beginning from page 109, sorry page 39 paragraph 109.1 about your experience relating to this proposed nuclear deal until it became ill-fated in the court process. You can, for the sake of those who do not have your statement yet you can just pick up the highlights of the conclusions that you draw.

**MR LUNGISA FUZILE:** I, I, I can summarise that. The first point one makes in relation  
20 to this is, is something I hinted at earlier on which was that this was the biggest procurement ever in, in the history of the country. Yet the, the processes were, were rushed and some of the stuff that we have talked about one hopes illustrates that and it is my humble opinion that if nuclear had proceeded as it had been conceived of, in other words 9.6 gigawatts of nuclear had been signed up for given you know what we were projecting then and what we know now we think that actually, this country would

have been in trouble. I mean I, I, I say that with humility, but I believe it sincerely. Second, the, the, the process that was followed was seriously flawed as, as you know we just indicate for instance a technical you know Cabinet dutifully asks and rightly so that there must be a process that determines the cost of nuclear, determines how we would pay for it and determines if we can afford it and then when we get to answering the question the process gets so I, I do not have a better word, but manipulated to end up with 9.6, because 9.6 is made to look 40 percent cheaper than it is likely to cost. You know and there is the brushing aside of the, what is the likely true cost of the, of the, the, the program.

10 **CHAIRPERSON:** But.

**MR LUNGISA FUZILE:** I say that that is.

**CHAIRPERSON:** Is it not more surprising that the same Cabinet which had said this is what must be done then seems to approve when something else is done as well? In other words, in other words as I understand it the, the Cabinet had said Treasury must you know be part of looking at how, how much this would cost and how the country would pay for it and then what was brought before the Cabinet as I understand from your evidence was not giving answers to the questions that Cabinet had raised namely this is what must be looked into by Treasury and yet Cabinet was approving nevertheless or have I misunderstood something?

20 **MR LUNGISA FUZILE:** There is just nuance.

**CHAIRPERSON:** Yes, yes.

**MR LUNGISA FUZILE:** Mr Chairman. Cabinet asked that there should be that process that we have described.

**CHAIRPERSON:** Yes.

**MR LUNGISA FUZILE:** Which is described here.

**CHAIRPERSON:** Yes.

**MR LUNGISA FUZILE:** And in fairness to Cabinet when then that process is made to appear to produce an outcome that Cabinet finds acceptable then you know, how do I put it?

**CHAIRPERSON:** So you, you, you are suggesting that Cabinet when they approved what was placed before them may not have been aware that what was placed before them did not include Treasury's true position or Treasury's position and because they thought it was an inclusive thing they, they may have approved. They may have approved because they did not know the true facts as to Treasury's position.

10 **MR LUNGISA FUZILE:** I, I think that that is closer to the truth. Just, just take the fact that the, there is the prep meeting before the meeting in which we participated.

**CHAIRPERSON:** Yes.

**MR LUNGISA FUZILE:** And when we get to the meeting that we participated in it puts now firmly on the table the recommendation of going with 9.6 and it assumes that the 9.6 will cost 40 percent less.

**CHAIRPERSON:** Hm, hm.

**MR LUNGISA FUZILE:** Right?

**CHAIRPERSON:** Hm.

20 **MR LUNGISA FUZILE:** As opposed to the 2.4 gigawatts phased procurement at a cost of you know which is 40 percent higher. So by the time it goes to Cabinet representation I showed which is the annexure here.

**CHAIRPERSON:** Hm.

**MR LUNGISA FUZILE:** I, I want to emphasise is not the representation Cabinet saw.

**CHAIRPERSON:** Hm, hm, yes.

**MR LUNGISA FUZILE:** Although I was not in that meeting. My suspicion is that

Cabinet saw the same presentation that Mr Nene and I objected to the previous day.

**CHAIRPERSON:** Hm, yes.

**MR LUNGISA FUZILE:** Which was saying the thing is going to cost cheaper.

**CHAIRPERSON:** Yes.

**MR LUNGISA FUZILE:** And it is affordable.

**CHAIRPERSON:** Yes.

**MR LUNGISA FUZILE:** And it has been discussed with all of us.

**CHAIRPERSON:** Yes.

**MR LUNGISA FUZILE:** And by the way it was true that it was discussed with all of us

10 on the 8<sup>th</sup>. What may not be true?

**CHAIRPERSON:** Yes, but you have no [intervenes].

**MR LUNGISA FUZILE:** Is that we agreed to it, because I.

**CHAIRPERSON:** Yes.

**MR LUNGISA FUZILE:** Never agreed to it and I can say that I, we never agreed to it from Treasury.

**CHAIRPERSON:** Well I seem to recall that when he gave evidence before me Mr Nene then that meeting of the 9<sup>th</sup> probably is the meeting where he says his attitude was, he had said everything that he needed to say. There was nothing further he could say that would help. So which might suggest and I cannot remember his full evidence, it might  
20 suggest that he might not have had the chance or, or felt that it was going to serve any purpose to put the position, his position or that of Treasury at the meeting of the 9<sup>th</sup>. You are not able to say anything about that?

**MR LUNGISA FUZILE:** No, I am not able to say about that.

**CHAIRPERSON:** Hm.

**MR LUNGISA FUZILE:** But I can say the, the one thing I can say is the, the essence of this

part of my submission is this notion of manipulation of process.

**CHAIRPERSON:** Yes.

**MR LUNGISA FUZILE:** I.

**CHAIRPERSON:** *Ja.*

**MR LUNGISA FUZILE:** No one has imposed that on me. I say.

**CHAIRPERSON:** Yes, yes.

**MR LUNGISA FUZILE:** So that it produces the outcome you want.

**CHAIRPERSON:** Yes.

**MR LUNGISA FUZILE:** So that it legitimises a particular outcome.

10 **CHAIRPERSON:** Yes.

**MR LUNGISA FUZILE:** Which is not necessarily, so there was a sense now in which Cabinet had asked a question.

**CHAIRPERSON:** Hm.

**MR LUNGISA FUZILE:** Which was a very good question.

**CHAIRPERSON:** Hm.

**MR LUNGISA FUZILE:** Which was a valid question.

**CHAIRPERSON:** Hm.

**MR LUNGISA FUZILE:** And Cabinet thought it was getting, let me rephrase that. It is not inconceivable that Cabinet thought it was getting the answer that it asked for.

20 **CHAIRPERSON:** Hm, hm.

**MR LUNGISA FUZILE:** Yet it was half of it.

**CHAIRPERSON:** Hm, hm, hm, hm.

**MR LUNGISA FUZILE:** So, so and it is a very, very important point and one says these things. You ask me at the end of my testimony last time what is the lesson for me. So obviously one takes no joy in coming here and saying you know these people did this to

me.

**CHAIRPERSON:** *Ja, ja.*

**MR LUNGISA FUZILE:** But the lesson is that.

**CHAIRPERSON:** Hm.

**MR LUNGISA FUZILE:** You know, if people want the Treasury.

**CHAIRPERSON:** Hm.

**MR LUNGISA FUZILE:** Sadly in this case to tell on, because the Treasury it is its job.

**CHAIRPERSON:** Hm.

**MR LUNGISA FUZILE:** To work out whether a country can afford to pay for something.

10 **CHAIRPERSON:** Hm.

**MR LUNGISA FUZILE:** You may not like.

**CHAIRPERSON:** Hm.

**MR LUNGISA FUZILE:** What it does.

**CHAIRPERSON:** Hm.

**MR LUNGISA FUZILE:** If you do not like it, if you think that the people who are running it.

**CHAIRPERSON:** Hm.

**MR LUNGISA FUZILE:** Are not of the calibre you want.

**CHAIRPERSON:** Hm.

20 **MR LUNGISA FUZILE:** I may live to regret this.

**CHAIRPERSON:** [Laughing].

**MR LUNGISA FUZILE:** It is better to remove them rather than.

**CHAIRPERSON:** Hm.

**MR LUNGISA FUZILE:** Pretend as if they have agreed with something that they have not agreed with. So it.

**CHAIRPERSON:** Hm.

**MR LUNGISA FUZILE:** It is not inconceivable that Cabinet believed on the day.

**CHAIRPERSON:** Hm.

**MR LUNGISA FUZILE:** That what was being presented was.

**CHAIRPERSON:** Hm.

**MR LUNGISA FUZILE:** What Treasury and DOE had agreed to.

**CHAIRPERSON:** Hm.

**MR LUNGISA FUZILE:** And from a meeting that was chaired by no less than the President of the country and then people come to us and say but we do not believe  
10 this. You have got no basis to do.

**CHAIRPERSON:** But based on what you have told us everyone who was at the meeting of the previous day.

**MR LUNGISA FUZILE:** No for sure.

**CHAIRPERSON:** Of the 8<sup>th</sup>, knew exactly what the position was. They also knew that what was being presented to the Cabinet on the 9<sup>th</sup> did not represent or did not include the views of Treasury?

**MR LUNGISA FUZILE:** Without a shred of a doubt.

**CHAIRPERSON:** *Ja*.

**MR LUNGISA FUZILE:** Without a shred of a doubt.

20 **CHAIRPERSON:** *Ja*, thank you and you say included in the meeting of the 8<sup>th</sup> were the former President and a number of Ministers and a number of Ministers?

**MR LUNGISA FUZILE:** Yes.

**CHAIRPERSON:** And officials, some officials.

**MR LUNGISA FUZILE:** Yes.

**CHAIRPERSON:** From, *ja*. So there were quite a number of people in the executive

who knew what the position.

**MR LUNGISA FUZILE**: Yes.

**CHAIRPERSON**: Was, but of course those who had not attended that meeting might not have.

**MR LUNGISA FUZILE**: Yes.

**CHAIRPERSON**: Known.

**MR LUNGISA FUZILE**: Yes.

**CHAIRPERSON**: Okay.

**MR LUNGISA FUZILE**: No, in fairness to them.

10 **CHAIRPERSON**: *Ja*, okay alright. Thank you.

**MR LUNGISA FUZILE**: So the other two conclusions I would make Mr Maleka, I think we have exhausted the point. Is that, I mean I have hindered at the manipulation of process but I, it is also the thing that is, I mean Government and governance Chairman requires in one's experience a careful blending of politics and technical processes and if one dominates the other then it produces some optimal outcomes and one says this with humility. I mean many people who are Ministers are not experts in their portfolios necessarily. That is why they have got battalions of people who are technical experts in the [indistinct]. Of course the technical experts do not have the political/executive authority and accountability to the electorate. So it is the careful bringing together of  
20 these two processes that is supposed to produce what you could all optimal outcomes. If one dominates the other or then, then you do not have the right. That is the point that one makes towards the end of this and of course I do make the point in 109.4 that Mr Nene got fired in that, in that week. It may be a coincidence that it was after this disagreement with you know with what happened in the meeting of the 8<sup>th</sup>. It may also be a coincidence that you know there was some unhappiness expressed about the

budget, but it is a very strange coincidence.

**CHAIRPERSON:** Yes, Mr Maleka.

**ADV VINCENT MALEKA:** Alright. The next topic that you deal with is the PetroSA, sorry the Engen PetroSA deal. We have heard a lot about it and Minister Gordhan spent lots of time around it and subject to the direction of the Chairperson I would ask you whether you confirm that what you say about it from page 110 going to page 11, paragraph 114.

**MR LUNGISA FUZILE:** Huh-uh.

**ADV VINCENT MALEKA:** Explaining the deal structure, going to 114.5 explaining the  
10 parties to the transaction and all sorts of guarantees that were required to be put up. Is correct?

**MR LUNGISA FUZILE:** Yes it is correct Mr Maleka and Mr Chairman.

**ADV VINCENT MALEKA:** All I wanted to do is to reflect on the conclusions that you yourself draw arising from that deal, because that is something unique to you and is not a matter of repetition of the evidence previously given by other witnesses.

**CHAIRPERSON:** I.

**ADV VINCENT MALEKA:** On that deal.

**CHAIRPERSON:** I, I, I do not mind if he just looks at important features.

**ADV VINCENT MALEKA:** Yes, okay.

20 **CHAIRPERSON:** But if he could just give the context. We know that evidence has been given about this deal, but in one or two sentences if might be helpful to say this is what it was about.

**ADV VINCENT MALEKA:** Yes.

**CHAIRPERSON:** And then go to the important features and deal with them.

**ADV VINCENT MALEKA:** Can you do what Mr Fuzile?

**MR LUNGISA FUZILE:** The; as, as the Commission might beware, I mean Engen is owned by Petronas. PetroSA is a wholly state owned you can say.

**CHAIRPERSON:** Entity.

**MR LUNGISA FUZILE:** Energy.

**CHAIRPERSON:** Hm.

**MR LUNGISA FUZILE:** Entity or entity in the energy space. There was a desire expressed to have PetroSA acquire a 100 percent, in other words buy totally or a controlling share. Let me put it that way sorry, controlling share in, in Engen for a whole host of reasons that that Minister Gordhan I think ventilated here. Now we expected  
10 that as part of the call it logical/natural process of making that decision there would be something that people in commerce call a due diligence which entails among other things just assessing what it is that you are buying. When I was explaining this to some of the people in the department and they laughed at me. I said you know when there is a car parked there shining paint, shining tyres and stuff and someone says to you that car is 100 000 and you say to them can I have the keys for that. I can just start it. They say no, no, no. Come let us sign the papers if you want the car. Do not ask about starting it now, checking if the gears engage and it moves. Would you buy it? So the due diligence is about checking, you know, is there an engine. When you switch the key on, do the lights on the dashboard come on? When you turn the key on and start  
20 does the car start? When you engage a gear does it engage? It does not move forward, reverse. That kind of stuff. I mean I am maybe the example is bad, but the due diligence is about checking what is the worth of what you are buying.

**CHAIRPERSON:** Yes.

**MR LUNGISA FUZILE:** What contracts does it have?

**CHAIRPERSON:** Hm.

**MR LUNGISA FUZILE:** And, and so what was surprising about this deal is that there was a hurry to conclude it without due diligence which we found puzzling and, and of course the, the, the, we found that unacceptable. Especially in a context where the prize had increased almost every time you know without a, a convincing explanation as to why it was increasing ultimately to the 18.6 billion I think it is that is reflected here and of course the other parties that were going to be involved in the deal take for instance the party that is mentioned in one of the paragraphs and so that I was pointing to, [indistinct], 123.2 which was going to buy 49 percent, right. At first there was no written commitment from them that they would buy their 49 percent. When we insisted  
10 on it, it came but it came with a condition that subject to due diligence. So we felt that it was a risky transaction because if someone agrees to participate to the extent of 49 percent into something they think it is worth 100 billion and then when they actually do the due diligence they think that it is half. They will not agree to put you know 49 percent of 100. They will say no, no, no, but this thing is not worth that because and you are supposed to have done your own due diligence. You cannot buy something you do not know what it is worth. So we felt that it was a very risky transaction. So in essence and I, in the interest of time the, the conclusion one makes on this is that it was again about this flawed process and this hurry to get to a, a, to the end of a transaction where public monies are involved or the issuance of guarantees which can  
20 in effect recall. So which we cannot, was just totally inappropriate. I use the word here perhaps a bit strong, but that is kind of this cavalier attitude to due process. It is a well-established commercial process that you do a due diligence when you are going to buy something – full stop. There are no two ways about it. And indeed the letter from Sonangol confirmed that.

**ADV VINCENT MALEKA:** Yes.

**MR LUNGISA FUZILE:** They said they can only be on board if they were allowed. The last point I would make on this is that its timing was very awkward for ministers. Because it was just before an election and I do not think that maybe I believe in witch craft but I do not think that it was a co-incidence that when you close to the time when ministers anticipate that there will be a new cabinet reconstituted and then they are under pressure to agree to something from the person who could decide their fate I just thought that was inappropriate.

**ADV VINCENT MALEKA:** What are the...

**CHAIRPERSON:** Okay so did it ultimately not go ahead this deal?

10 **MR LUNGISA FUZILE:** No it never. It never went ahead.

**CHAIRPERSON:** Is this – and is this the project that you told us earlier the former president.

**MR LUNGISA FUZILE:** Yes, yes.

**CHAIRPERSON:** Accused you and the former Minister Nene to have derailed I am using my own words.

**MR LUNGISA FUZILE:** Former Minister Gordhan.

**CHAIRPERSON:** Oh it was Mr Gordhan.

**MR LUNGISA FUZILE:** Ja.

**CHAIRPERSON:** To have derailed I am using my own words. Is this the one?

20 **MR LUNGISA FUZILE:** It was.

**CHAIRPERSON:** Okay.

**ADV VINCENT MALEKA:** And one of the bone of contentions between the ministers that is Minister Gordhan and Minister Ben Martins at the time was the question of a guarantee?

**MR LUNGISA FUZILE:** Yes.

**ADV VINCENT MALEKA:** Which the government had to put up to back up the deal?

**MR LUNGISA FUZILE:** Yes.

**ADV VINCENT MALEKA:** I do recall from your statement that the enterprise value of that transaction was R18.67 billion.

**MR LUNGISA FUZILE:** Ja.

**ADV VINCENT MALEKA:** And the government guarantee that was required was in the order of R13 billion?

**MR LUNGISA FUZILE:** Yes, yes it is correct.

**ADV VINCENT MALEKA:** Do you know why government was called upon to put up a  
10 guarantee of that sort when Sonangol was going to acquire almost 49% of the shareholding?

**MR LUNGISA FUZILE:** Yes the guarantee – the amount that for which the guarantee was requested was the equivalent of 51% by the way of the full transaction.

**ADV VINCENT MALEKA:** Oh I see.

**MR LUNGISA FUZILE:** Yes. It was the equivalent. And in fact it was interesting because in essence what that was saying was the commitment can only be to the extent of 51% would not – because the application – the original request was for the full amount.

**ADV VINCENT MALEKA:** Yes.

20 **MR LUNGISA FUZILE:** So that the risk would have been 100% on the South African Sovereign for the guarantee. And then Sonangol would have had to pick their 49% later on which was the risk of the transaction because they could have said no, no, no we do not think it is worth what you have agreed to pay for. We will get 49 for less or nothing. You know kind of thing. So that was – that was the thing. The reason the guarantee was necessary it is because Petro SA had I think now these things are risky

here they had cash of about R5 billion plus minus only. So they did not have the balance. So – and they are small. They are small. They did not have the balance sheet neither the balance sheet nor the cash flows easily to convince they would be lenders that they would be able to pay for it. So the lenders were saying if you back your entity as the sovereign we would look through that and be willing to lend to them because we know that you as the sovereign would be able to pay.

**MR LUNGISA FUZILE:** What as you say the deal did not go through and then the next issue that you deal with and maybe we might have to spend some time on it relates to SAA and Chair I have indicated to you that SAA will be a subject matter of a  
10 presentation of detailed evidence by Ms Hofmeyer.

**CHAIRPERSON:** Yes.

**ADV VINCENT MALEKA:** But to the extent that Ms Zeelie wants to share with us his experience on this issue. We would have to deal with it. You start on it at page 47 paragraph 128. And in paragraph 129 you reflect on the total guarantees that government had extended to SAA by May 2017 when you left. What was the total amount of the guarantee?

**MR LUNGISA FUZILE:** It was R17.9 billion.

**ADV VINCENT MALEKA:** Are you able to tell the Chair how much of that guarantee SAA had used in accessing funds for its own capital and operational requirements?

20 **MR LUNGISA FUZILE:** Not off the cuff. But a substantial amount. I mean I recall by the last count when I was still in government they had used about R14 billion of it between 14 and 15.

**ADV VINCENT MALEKA:** Alright and then in paragraph 130 you explain your involvement relating to applications by SAA in order to acquire additional aircraft in terms of a deal that it was negotiating at the time with I think it is Airbus?

**MR LUNGISA FUZILE:** Yes.

**ADV VINCENT MALEKA:** Can you just give us in summary the structure of the deal that SAA was negotiating and how it was presented to you as National Treasury and what you did with that application?

**MR LUNGISA FUZILE:** The – there was an old contract between Airbus and SAA where SAA had sought to procure a particular type of aircrafts I think it is the A330's. And they were now getting close to having to acquire these aircrafts or to receive delivery of these aircrafts but of course in the way of the structures of those transactions that there is something they call pre-delivery payments which is  
10 understandable. Before you get your first aircrafts delivered at least you have got to pay a certain amount of money. As we were getting close to that time there was a portion that had been paid already of these pre-delivery payments. There was now a second bit that was supposed to be paid before the first aircrafts would be delivered. But at that time SAA's cash position was in a precarious position or situation. So in negotiations with Airbus SAA had entered into yet another deal or was on the verge of entering into yet another deal which Airbus was finding acceptable as an alternative to this original one that I have described. Where in this second deal instead of getting those aircrafts that were part of the original transaction SAA was going to receive a different type of aircraft. This was favourable to SAA or list a different type of aircraft  
20 sorry list a different price of – this was favourable to SAA for two reasons amongst others. First because Airbus was saying we will not ask you to pay the pre-delivery payments that were remaining and in fact we can give you back what you had already paid us. Now for an entity that is battling with cash flow that is – would have been cash positive. Second the original transaction that SAA had entered into where they were acquiring the aircrafts technological developments and so on had moved on such that

as SAA was receiving – at the time SAA was going to receive the aircrafts in accounting terms and this is not my expertise they would have had to impair a portion of the full value of the aircrafts. In other words you buying a car that is worth R100 000,00 I like R100 000,00 it simplifies things but on your balance sheet instead of reflecting that you have got an asset worth R100 000,000 you write that you have got only an asset worth R80 000,00 because it is an outdated – it is new but in technical terms.

**ADV VINCENT MALEKA:** Ja just making sure.

**MR LUNGISA FUZILE:** So they were going to have that which does not help them because you are acquiring an expensive asset but on your books it does not show as  
10 that asset.

**ADV VINCENT MALEKA:** Ja.

**MR LUNGISA FUZILE:** So that it had those two advantages. So they were willing to list them relatively fuel efficient aircrafts, more modern and so on. And interestingly SAA themselves had written to seek approval for this switch from the original transaction to this new one and we had done an assessment of that at the Treasury and come to the conclusion that as I was describing it was going to be favourable. Then they had a change of mind and we received correspondence and it is attached here I think as LF7 where – no, no not LF7 that is that – but anyway it is attached here as one of the annexures. As LF 8 I think ja referred to in 142. They said no, no they no longer  
20 like that transaction. They would prefer a different one now where there is I almost said a middle man which was – it is no longer politically correct but another – a facilitator. There would be another agent or whatever entity that would list the aircrafts from Airbus and on lease them to SAA. And the argument for this transaction was that it would avoid the risk of foreign exchange where you know flowing out of the country first but also just protect SAA from the foreign exchange exposure. It was not really convincing

Mr Chairman because the hedging that was referred to as for instance another party and Mr Maleka was referring to some of these in a different context earlier on. The other party would have faced the exchange rate risk because it is in South Africa or it does not matter where it is they would have faced the exchange rate risk and therefore they would have to hedge themselves. In others to buy insurance and it is not inconceivable. It is inconceivable that the other party would not price in that risk. But I mean there is no...

**CHAIRPERSON**: They would pass it on to the customer.

**MR LUNGISA FUZILE**: Somehow ja. So that their story was hardly compelling. And  
10 secondly if value is created overseas there is no way of getting that value into South Africa without money flowing out of South Africa. Except if you receive it as a gift. But someone must pay and that has got a balance of payments impact. So I am saying the second structure did not make sense at all. So the respective ministers first Mr Nene...

**CHAIRPERSON**: Was it the second or the third?

**MR LUNGISA FUZILE**: Third.

**CHAIRPERSON**: The third type of transaction was structural.

**ADV VINCENT MALEKA**: Yes.

**MR LUNGISA FUZILE**: Yes the third type of transaction yes, yes.

**CHAIRPERSON**: Okay the second one was favourable.

20 **MR LUNGISA FUZILE**: The second was favourable.

**CHAIRPERSON**: The third one...

**MR LUNGISA FUZILE**: Acceptable.

**CHAIRPERSON**: Ja and the third one.

**MR LUNGISA FUZILE**: The third one was unacceptable.

**CHAIRPERSON**: Ja problematic ja.

**MR LUNGISA FUZILE:** Yes.

**CHAIRPERSON:** Okay.

**MR LUNGISA FUZILE:** And bearing in mind Mr Chairman which is a very important point that SAA seemed not to appreciate one the time was not on their side. I think it was the 21 December by which the contract had to be signed. Right but at the same time Airbus had something to fall back onto which is the original contract which was valid.

**CHAIRPERSON:** Yes it had not been cancelled.

**MR LUNGISA FUZILE:** It had not been cancelled.

10 **CHAIRPERSON:** As all of this was being done...

**MR LUNGISA FUZILE:** At any...

**CHAIRPERSON:** It was being done on the assumption that if there was agreement then the original would be cancelled but obviously if there was no agreement on the subsequent ones the old one would stand.

**MR LUNGISA FUZILE:** So the – whenever Airbus would find the new arrangement unacceptable they just had the option of insisting that in that case let us invoke the original contract which was valid. So what then I found very strange about this and I refer to this in the statement is the fact that when we then met and I am not trying to boast that I was working on it holiday but on the 16 December we met with the acting  
20 CEO trying to find this but I remember it from the top of my head and the acting CFO Mr Musa Zwane and Ms Phumeza Nhantsi respectively to look at these two transactions. And we explained to them why we were not convinced that what they wanted to switch to was acceptable and this is in 147 on page 53.

**ADV VINCENT MALEKA:** Right.

**MR LUNGISA FUZILE:** Mr Chairman. We explained to them and ultimately not even

with any difficulty they accepted that the second transaction was logical and was favourable to the airline. So we said to them then go and implement it. The ministers approved it. And they said no but it is going to be hard for us can you go and convince our chairman like you have done to us. And I said to them, look I am not supposed to be here in the first place. Just for context I had only stayed behind because Minister Nene had been fired.

**CHAIRPERSON**: Yes.

**MR LUNGISA FUZILE**: So [indistinct] I had three ministers over a few days. So I had to stick around to just...

10 **CHAIRPERSON**: Ja. If there were issues.

**MR LUNGISA FUZILE**: If there were issues there so my leave was supposed to commence on the 13<sup>th</sup> but I happened to be there so on the 16<sup>th</sup> which is why I said to them let us meet on that 16<sup>th</sup> so that afterwards I left then Mr Ismail Mononiat to act.

**CHAIRPERSON**: Ja.

**MR LUNGISA FUZILE**: Needless to say ultimately Minister Gordhan only approved the second transaction.

**CHAIRPERSON**: The second transaction.

**MR LUNGISA FUZILE**: After having received a call from the President and staff and he has testified in that regard here.

20 **ADV VINCENT MALEKA**: Thank you Chair. The one footnote which was canvassed by Ms Mathanda when she gave evidence related to a newspaper enquiry about what the firing of Minister Nene would mean to the request for approval which was pending at the point in time. And Chair I think you heard her evidence that she had to raise that issue with the Chief of Staff of Minister Van Rooyen and it was dealt with on the basis of his suggestion. You conclude that part of SAA by referring to the resignation of one

of the board members and you refer to her details on page 54 paragraph 151. Do you want to sum up?

**MR LUNGISA FUZILE:** Yes.

**ADV VINCENT MALEKA:** Your version on that issue.

**MR LUNGISA FUZILE:** Yes. I mean I am saying there on 151 I make the point that it was around that time that apparently because of dissatisfaction with the fact that what the board wanted had been rejected by the two ministers because it was first rejected by Mr Nene. Mr Van Rooyen did not have time to consider it and then it was then again rejected by Mr Gordhan instead approved what they [indintinct] us for as the second  
10 transaction. She then tendered her resignation and you can see in her letter which is annexed here as LF9 she does make some reference to her dissatisfaction.

**ADV VINCENT MALEKA:** Yes it is on page 167. And then you draw some conclusion also by referring to the appointment of a new board for SAA.

**MR LUNGISA FUZILE:** Ja.

**ADV VINCENT MALEKA:** Again Minister Gordhan testified about this. I wonder whether you have any additional issues to raise concerning the appointment of new board members.

**MR LUNGISA FUZILE:** Probably three very quick points on it and I promise they will be quick. The first one is just it was difficult for me as an official to understand how an  
20 important entity like SAA could be made to continue with what I could call a skeleton board essentially. There were three people for an extended period of time. Ms Myeni, Doctor Thambi and Ms Yakhe Kwinana because at one stage along the way Mr Dickson in November 2015 had resigned. So essentially they had three people.

**CHAIRPERSON:** The board had consisted of five people.

**MR LUNGISA FUZILE:** At one stage it was four.

**CHAIRPERSON**: Oh. Okay.

**MR LUNGISA FUZILE**: Ms Myeni, Ms Jakhe Kwinana, Doctor Thambi and Mr Anton Dickson.

**CHAIRPERSON**: Ja but what I mean is when it had a full compliment or is that something that you do not know?

**MR LUNGISA FUZILE**: On why fives – no, no it is about ten or twelve people.

**CHAIRPERSON**: Oh.

**MR LUNGISA FUZILE**: It is supposed to be a big board but other members had resigned along the way.

10 **CHAIRPERSON**: To the point where only about three were...

**MR LUNGISA FUZILE**: To the point where only about three were remaining.

**CHAIRPERSON**: And they – were they [indistinct]? You do not know?

**MR LUNGISA FUZILE**: I mean it is difficult to tell. I mean they were only – they were three non-executives or as you remember the CEO and the CFO would be executive members of the board.

**ADV VINCENT MALEKA**: Executives.

**CHAIRPERSON**: Ja.

**MR LUNGISA FUZILE**: So we were concerned about this and so were the lenders. And I know this because I had to personally speak to all of the CEO's of the banks  
20 requesting them to continue to support SAA because we were dealing with the board appointment issue. But one makes the point on this Mr Chairman and Mr Maleka just to make the point that it was so difficult and there was the insistence and one might say these things perhaps in less diplomatic ways in the interest of time now but there were so many attempts to try and appoint the board. But it became apparent as Mr Gordhan testified here that whilst the lenders of the view and I think they had good reasons to

hold that view that you – government needed to sweep clean and remove everyone who was on the board because they had lost confidence in them. They doubted their credibility for their own reasons good or bad. And they had given SAA money, SAA needed their money. It was just hard to understand this insistence on keeping Ms Myeni as part of the board otherwise there would be no board. But ultimately as I indicate in the submission once Mr Gordhan had accepted that the removal of Ms Myeni was not going to happen the process for appointing or helping with choosing the other members of the board was left to a process that Ms Lakela Kaunda and I ran and I kept Mr Mgojane close by just so that I am not on my own at any time. And so we had  
10 a few meetings and ultimately a board was appointed still chaired by Ms Myeni.

**CHAIRPERSON:** You are able to give an estimate of to your recollection how – for how long it was that this SA board consisted of three or four members or so if you are able to either a year or more than that?

**MR LUNGISA FUZILE:** In 162 we indicate that the board was ultimately on the 2 September.

**ADV VINCENT MALEKA:** Yes but the key point to start with on the date sequence.

**MR LUNGISA FUZILE:** Yes.

**ADV VINCENT MALEKA:** Is 153 when Mr Dickson resigned.

**MR LUNGISA FUZILE:** Yes.

20 **ADV VINCENT MALEKA:** And that was in November 2015.

**MR LUNGISA FUZILE:** In November 2015 so from that time the board – it is almost a year actually to just simplify it.

**CHAIRPERSON:** Oh.

**MR LUNGISA FUZILE:** Because by 20.

**CHAIRPERSON:** Yes.

**MR LUNGISA FUZILE:** Because from October 2014 as 152 indicates the board only four non-executives. And then that status continued until the 2 September as indicated under 162 Mr Chairman.

**CHAIRPERSON:** Okay so almost a year.

**MR LUNGISA FUZILE:** Almost a year.

**CHAIRPERSON:** Ja okay.

**MR LUNGISA FUZILE:** And the difficulty as I say in 163 was just that you know the people who were lending money to SAA felt that working that board was not ideal. In fact some of them they did not mince their words at least two of them called me and  
10 said you know how do you expect us to continue to do business with this entity? And I mean if truth be told SAA has had enormous difficulty raising money which is why government so far I think has injected about R15 billion of tax payers money into SAA because lenders I mean some people do not like this but when you depend on people to run a business you cannot ignore their views.

**ADV VINCENT MALEKA:** I am sure Minister Tito Mboweni will have something to say in the course of his budget presentation.

**MR LUNGISA FUZILE:** Yes.

**ADV VINCENT MALEKA:** Tomorrow or so on SAA. But Chair the details on these issues will be given to you in full.

20 **CHAIRPERSON:** Ja no that is fine.

**ADV VINCENT MALEKA:** By Ms Hofmeyer.

**CHAIRPERSON:** Ja.

**ADV VINCENT MALEKA:** And this third last remaining topic is the social grants question and it is a matter that has been publicised time without number because it has gone up and down, in and out of various courts. And the Chairperson would be aware

of various judgments of the Constitutional Court on this matter. You discuss it from page 57 paragraph 164. Can you pick up the highlights again without repeating what we have already heard and I hope I am not constraining you unduly.

**MR LUNGISA FUZILE:** No not at all. No I am very happy with that approach Mr Maleka. You will let me know when I am not being helpful to the commission. The main issue that I raise in my case here Mr Chairman which I think adds value to the work of the commission relates to the fact that I received a letter and the specifics of it are contained here in that letter is attached I think as LF10.

**ADV VINCENT MALEKA:** Yes. It is page...

10 **CHAIRPERSON:** At what page is it?

**ADV VINCENT MALEKA:** 168 Chair.

**CHAIRPERSON:** Thank you.

**MR LUNGISA FUZILE:** I received this letter and this letter was no, no leave that interference one. The one that I am looking for is the one applying for the extension of the contract sorry.

**ADV VINCENT MALEKA:** Alright that will be on page 172.

**MR LUNGISA FUZILE:** Yes. Thank you, thank you for that Mr Maleka.

**CHAIRPERSON:** What page again?

**ADV VINCENT MALEKA:** 172.

20 **MR LUNGISA FUZILE:** 172. Thank you very much for that.

**CHAIRPERSON:** Okay.

**ADV VINCENT MALEKA:** Onwards.

**MR LUNGISA FUZILE:** Thank you very much for that help. Now and I think this is the [indistinct] of my introduction of this issue to this commission which is the fact that I received this letter requesting that we should allow SASSA to deviate from inviting

competitive bids and instead have them continue with the CPS contract.

**CHAIRPERSON:** That is Cash Paymaster Services.

**MR LUNGISA FUZILE:** Yes Cash Paymaster Services Mr Chairman. Now I found that problematic because that contract had been found as the Chairman would know to be invalid. I think is the phrase that is used. And the invalidity had been suspended until the 1 April 2017. So in a way I said to the applicant but how would I get around this reality of the finding.

**CHAIRPERSON:** Yes.

**MR LUNGISA FUZILE:** And of course there is other contractual issues where any  
10 impression had been created that a new alternative would be in place around that time  
and the right thing to do would have been upon realising that the alternative was not  
going to be able to be switched on on the 1 April to go back to the court and say look  
there is this invalidity you have suspended it can you suspend it again. I mean so  
people were not giving us any convincing argument of the place where Treasury, me in  
particular because the application was addressed to me I would derive the authority to  
override what the con court had decided. I find this to be very awkward actually.  
Needless to point that at a date that I do not quite remember but end February or March  
it is I think it was in March Mr Chairman, in March 2017 there was a discussion in  
cabinet on this matter. My interpretation of it was that I mean I could not understand  
20 why the matter was there, with me there with the question of why not provide for this  
deviation. You know, and one puts it because the, there was a risk at a moment like  
that that one could have succumbed to that pressure. In which case that would have  
placed me in a position where all of a sudden now I am the one who is cited in the  
papers at Concourt and other places because I have exercised authority I did not have.  
So one raises this with a bit of a heavy heart, but again in the context of wanting to help

South Africa and South Africans understand some of the difficulties we had to deal with during this period some of which might repeat themselves in future by the way.

**CHAIRPERSON:** Yes.

**MR LUNGISA FUZILE:** Because I, I just felt that I could not understand for the life of me.

**CHAIRPERSON:** *Ja.*

**MR LUNGISA FUZILE:** That anyone could ask.

**CHAIRPERSON:** How it could [intervenes].

**MR LUNGISA FUZILE:** Any person.

10 **CHAIRPERSON:** Hm.

**MR LUNGISA FUZILE:** To do something.

**CHAIRPERSON:** Hm.

**MR LUNGISA FUZILE:** Along these lines.

**CHAIRPERSON:** Huh-uh.

**MR LUNGISA FUZILE:** Thankfully.

**CHAIRPERSON:** Hm.

**MR LUNGISA FUZILE:** You know, one could stand one's ground and, and we had support from the entire department and so on. So, so it is a; that is the most useful I think lesson from this.

20 **ADV VINCENT MALEKA:** Yes.

**MR LUNGISA FUZILE:** In other words the problem of SASSA would have become my problem.

**CHAIRPERSON:** Hm.

**MR LUNGISA FUZILE:** You know had I granted it.

**CHAIRPERSON:** *Ja.*

**MR LUNGISA FUZILE:** This deviation.

**CHAIRPERSON:** *Ja.*

**MR LUNGISA FUZILE:** And I was not going to allow that to happen.

**CHAIRPERSON:** Hm, hm, hm. No I, I think you did well to, to raise the issue Mr Fuzile.

**MR LUNGISA FUZILE:** Okay.

**CHAIRPERSON:** It is quite important.

**ADV VINCENT MALEKA:** Yes. I mean reading the rest of the issue on SASSA request for deviation was dealt with by Minister Gordhan and Chair you remember he  
10 referred you to, I think it was annexure what, 30 to his affidavit which was his confidential response to the President when he was asked to deal with that question.

**CHAIRPERSON:** Okay.

**ADV VINCENT MALEKA:** After Minister Dlamini had made a representation to the President and the issue has been well covered.

**CHAIRPERSON:** Well I might not have as good a memory as, as you but if you say it was covered I will, I will take that.

**ADV VINCENT MALEKA:** Yes.

**CHAIRPERSON:** I will accept that.

**ADV VINCENT MALEKA:** I have an annexure here which is confidential.

20 **CHAIRPERSON:** Yes, okay.

**ADV VINCENT MALEKA:** Which was part of his statement.

**CHAIRPERSON:** Okay.

**ADV VINCENT MALEKA:** And I do recall that the issue was raised with.

**CHAIRPERSON:** No that is fine.

**ADV VINCENT MALEKA:** *Ja.*

**CHAIRPERSON:** That is fine.

**ADV VINCENT MALEKA:** Alright. The next issue is the closure of the Gupta bank accounts. You deal with that issue from page 61.

**MR LUNGISA FUZILE:** Yes.

**ADV VINCENT MALEKA:** And once again we heard the evidence of the Bank CEOs who were led by my colleague, Mokoena and others of, his colleagues. I think all the major banks testified on this issue to explain why they closed the bank accounts. We also heard the evidence of Minister Gordhan about his application to court. Is there any issue that you want the Chairperson to consider from your perspective regarding that  
10 topic?

**MR LUNGISA FUZILE:** Just again two points. It looks like there is magic with two now here. The first one is that, I mean I, I bore witness to the conversation.

**CHAIRPERSON:** Yes.

**MR LUNGISA FUZILE:** Between Minister Gordhan and Mr Howe.

**CHAIRPERSON:** Yes.

**MR LUNGISA FUZILE:** Howe.

**ADV VINCENT MALEKA:** Howe.

**MR LUNGISA FUZILE:** Howe.

**CHAIRPERSON:** Yes.

20 **MR LUNGISA FUZILE:** Howe and, and Ms Veronica Ruthven when they asked for the meeting. We contemplated whether to meet them. Ultimately the meeting took place and the contents of the meeting are captured in Minister Gordhan's letter the matter later was later ventilated in courts and stuff like that [indistinct]. It, it just corroborates the fact that there was this pressure brought to bear on, on Minister Gordhan somehow to intervene in the relationship between banks and the client which as, as I in the

statement do refer to some of the comments that I even made during the discussion with Mr Howe to say that but the only best place for them to go to was the court and if they think that the banks are behaving waywardly or inconsistently with the law, courts exist for that purpose and if they think that the law is written badly and it gives too much power to banks there again courts would be the best place. I mean I even emphasised to him that we want that. We want case law to help us either reinforce the correctness of the law and the processes followed or to show them to have flaws and stuff like that. That is the first point.

**ADV VINCENT MALEKA:** Yes, but then.

10 **MR LUNGISA FUZILE:** And then.

**ADV VINCENT MALEKA:** Sorry, I am sorry to interrupt you.

**MR LUNGISA FUZILE:** *Ja.*

**ADV VINCENT MALEKA:** The meeting concerned took place on 24 May.

**MR LUNGISA FUZILE:** Yes.

**ADV VINCENT MALEKA:** 2016?

**MR LUNGISA FUZILE:** Yes as referred to in [intervenues].

**ADV VINCENT MALEKA:** At the offices of National Treasury?

**MR LUNGISA FUZILE:** Yes.

**ADV VINCENT MALEKA:** You were present at that meeting?

20 **MR LUNGISA FUZILE:** Yes.

**ADV VINCENT MALEKA:** And you had some remarks to make?

**MR LUNGISA FUZILE:** Yes.

**ADV VINCENT MALEKA:** And can you to go page 63 paragraph 188?

**MR LUNGISA FUZILE:** Yes.

**ADV VINCENT MALEKA:** 1-8-8?

**MR LUNGISA FUZILE:** Yes.

**ADV VINCENT MALEKA:** Would you draw some strings from the concluding remarks you made at that meeting?

**MR LUNGISA FUZILE:** Yes. I hope I am going to where you want me to go to, 188. I mean one of the points that I pointed out by the way to Mr Howe was that the attacks that there had been on the integrity of the Treasury by some people including him actually were not helpful and they were not in the national interest and if they could they should avoid them. There was a presentation that was doing rounds. I looked for it and I gave up finding it, but it had his name and he did not deny that he had made the  
10 presentation to people at the Headquarters of the ANC, but the presentation was purporting a connection between people who had been at the Treasury before and some who remained and, and white monopoly capital and all that kind of, those kinds of [indistinct] and I said to him those kinds of stuff are not helpful and of course I do refer there that in his own presentation if not, there, there was, there was reference to a document that had surfaced around August of, of I will remember at some point, but his reference to [indistinct], but there was this Spider Web document on which you know that is referred to in 188 and Operation Spider Web was kind of a document that was anonymous which found its way into the email system of certain officials at the Treasury and it was almost like an intelligence report of sorts itself, but it also was making very,  
20 very bad very, very bad actually pathetic comments about people at the Treasury being former apartheid spies, about us being connected to or being part of broader kind of conspiratorial project of Stellenbosch and stuff like that and that we were controlled which I find insulting by people or outside interests. I mean this is despite the fact that many of us and I mean I am not just referring to myself here, many of us have got academic qualifications from some of the best institutions in South Africa and the rest of

the world. For people to think that when we make recommendations on policy it is because we are being controlled by people other than our own ability to think. I find it to be very insulting.

**ADV VINCENT MALEKA:** Well if you do not know in the world of intelligence it is called active measures.

**MR LUNGISA FUZILE:** Okay.

**ADV VINCENT MALEKA:** Yes.

**MR LUNGISA FUZILE:** But.

**ADV VINCENT MALEKA:** I commend the book by a man called Malcolm Nance. The  
10 title is The Plot to Destroy Democracy.

**MR LUNGISA FUZILE:** Huh-uh.

**ADV VINCENT MALEKA:** You will see how active measures of these kind operate.

**MR LUNGISA FUZILE:** Yes.

**ADV VINCENT MALEKA:** In the world of intelligence.

**MR LUNGISA FUZILE:** *Ja*, except that some of the inferences and the way they are made here it is, it is a, it will be silly to call that stuff intelligence.

**ADV VINCENT MALEKA:** Well if you read that book you will be less affronted.

**MR LUNGISA FUZILE:** I, I understand. It is, we can debate it, but the stuff that I am talking about in this Operation Spider Web if you see it.

20 **ADV VINCENT MALEKA:** Yes.

**MR LUNGISA FUZILE:** But anyway he was saying that what was happening between the banks and their businesses and our insistence that the only route they had were the courts was serving to confirm what was in that Spider Web thing. In other words that we were captured that we, we, we were serving other interests. I mean in all fairness I am sure time will tell, but they had a lot to explain in terms of stuff.

**ADV VINCENT MALEKA:** Yes.

**MR LUNGISA FUZILE:** We did not need to come to.

**ADV VINCENT MALEKA:** You summarise.

**MR LUNGISA FUZILE:** Ja.

**ADV VINCENT MALEKA:** The Spider Web Operation.

**MR LUNGISA FUZILE:** Ja.

**ADV VINCENT MALEKA:** By referring to.

**CHAIRPERSON:** Oh, oh before you proceed, can I confirm that you have actually covered the two original points that you had said you needed to?

10 **MR LUNGISA FUZILE:** I think so.

**CHAIRPERSON:** [Intervenes].

**MR LUNGISA FUZILE:** The one or the second point that I wanted to cover by the way which is, I refer to it in a, in a by the way type of way in 186 which is that where two pieces of legislation that got stuck in the system around the time of this closure of Gupta accounts process. One of them was the Financial Intelligence Amendment Bill which was seeking to amend the Financial Intelligence Act and give more teeth and strengthen the anti-money laundering and all those kinds of provisions and the Financial Sector Regulation Bill. One mentions these because for some very peculiar reason these pieces of law encounters, encountered serious problems going through  
20 the, the processes of making law in South Africa including going up to a point where they would reach the President's desk and then get sent back, right and, and, and what I take from that is that and a colleague was even reminding me that I made this point which I, I, I did not recall until he reminded me. I did not remember until he reminded me which was that I was amazed out inside Government would make the arguments that I used to see on ANN7. I mean honestly against these two pieces of law and, and I

was shocked that people who were tasked with making the law in the interest of the country who would be informed by the considerations around the stuff as to how to frame the law. If you, I mean I can explain why I, but I found that very, very, very disturbing.

**CHAIRPERSON:** Well maybe for the sake of completeness you need to, to say why you, you found it strange that people I think you said within Cabinet you used arguments that you used to hear from a certain TV channel. It looks like to me there is a context which you.

**MR LUNGISA FUZILE:** Yes.

10 **CHAIRPERSON:** [Intervenes].

**MR LUNGISA FUZILE:** Essentially.

**CHAIRPERSON:** For, for anybody reading your evidence.

**MR LUNGISA FUZILE:** Yes.

**CHAIRPERSON:** To understand where you are coming from.

**MR LUNGISA FUZILE:** *Ja.* Essentially Mr Chairman in a modern world our financial system is an integral part of the international financial system. I needed not explain that if you were to have to travel overseas now all you would do is just to pack your bags and go to the airport. When you land on the other side you transact. Perhaps you never asked why that is possible. It is possible because the international financial  
20 system is intertwined, it is interconnected.

**ADV VINCENT MALEKA:** Yes.

**MR LUNGISA FUZILE:** And for that reason the regulation thereof has got to move in tandem to some degree globally because the system is as strong as the weakest part of it. I do not know if I am making sense. If the, if, if part of what the world is grappling with is fighting money laundering illicit flows you name all of those things. There cannot

be a part of the world that says we will not do it, but we want to be part of that international financial system, because in essence that part of the world would considerably undermine the efforts and the investments of the entire world. So, so.

**CHAIRPERSON:** Well, sorry.

**MR LUNGISA FUZILE:** So then the laws.

**CHAIRPERSON:** Hm.

**MR LUNGISA FUZILE:** If I may just finish.

**CHAIRPERSON:** Ja.

**MR LUNGISA FUZILE:** This point.

10 **CHAIRPERSON:** Ja.

**MR LUNGISA FUZILE:** The laws were being crafted not with the Guptas in mind. The laws were being crafted with the, the interest of South Africa, the rest of the population, the rest of the businesses of South Africa, all of them not just the Financial Services Sector, because the Financial Services Sector exists to serve in the main these other businesses. So the laws were being crafted to make sure that we strengthen the regulation of the South African Financial System to be in line with the rest of the world. The fact that these laws were beginning to cause some inconvenience for certain people because of the way they were conducting their businesses was incidental.

**CHAIRPERSON:** Okay. You may proceed Mr Maleka.

20 **ADV VINCENT MALEKA:** Thank you Chair.

**CHAIRPERSON:** [Laughing].

**ADV VINCENT MALEKA:** Yes. Mr Fuzile you can take comfort from the fact that Mr [indistinct] spoke a lot about.

**MR LUNGISA FUZILE:** Yes.

**ADV VINCENT MALEKA:** The reason why.

**MR LUNGISA FUZILE:** Yes.

**ADV VINCENT MALEKA:** The FICA Act had to be amended.

**MR LUNGISA FUZILE:** Hm.

**ADV VINCENT MALEKA:** And we know it has been and ultimately the President signed and we know that the Financial Sector Regulation Act has been passed.

**MR LUNGISA FUZILE:** Hm.

**ADV VINCENT MALEKA:** And the Twin Peaks model is now in operation. So those issues were canvassed in detail and I wonder whether there is anything that is left for you to say in relation to the closure of the bank accounts.

10 **MR LUNGISA FUZILE:** No, nothing that is all.

**ADV VINCENT MALEKA:** Then we go to the second last issue which is the Denel VR Laser deal on page 65 and again I have to say to the Chairperson that this issue is going to become rust, become rust at detail or in detail by my colleague Ms Gcabashe who is busy with Denel, but just give us the highlights of your contribution on that deal, because you were part and parcel of the affidavit that was signed by National Treasury to oppose the application for Denel for a direct order that it has procured the relevant permission in terms of Section 54 of the PFMA.

**MR LUNGISA FUZILE:** Yes. I mean it, it has been covered in quite detail by I, Mr Gordhan did that and you are right. It will become back later on, but the one point I  
20 just wanted to add on this was that I was astounded by the determination of the people involved to just proceed with a transaction without the requisite approvals and in the words Minister Gordhan their belligerence which was reflected as I remember in my case and the fact that they could issue even a very terse statement which was attacking him personally and the Treasury as a department or institution in response to a letter that never existed but, but what was even more striking about this was the fact that for

a very long time and I take this to be a reflection of the fragility of our system at the time most of the people, when I say most I mean perhaps an over generalisation, but people in Government for whom things like this ought to have mattered they did not seem to matter. It was left to be the Treasury/Minister Gordhan's problem with Denel. Whereas what we have at risk were the following two things. One, was the risk that the intellectual property which was borne out of investments made out of South African taxpayers money were going to be externalised or exported just easily like that. Secondly, it was the fact that in fact Denel had been propped up by Government through guarantees to the tune of about 1.8 billion and therefore needed to be using or commercialising its intellectual property in a manner that would have enabled it to raise the money into service. It had to reduce the risk that those guarantees would be called and there they were willing to externalise very easily at, at excessively generous prices or contractual arrangements and doing so by the way without the requisite approvals.

10

**ADV VINCENT MALEKA:** As a matter of interest do you know what happened to that litigation after you filed your opposing affidavit?

**MR LUNGISA FUZILE:** Yes, I am told that Denel withdrew. They pulled back.

**ADV VINCENT MALEKA:** Okay and do you know the context why Denel which initiated the application suddenly went a change of heart and withdrew the application?

20

**MR LUNGISA FUZILE:** No, the honest truth is that I do not know, because I do not know if they changed on the board and stuff preceded, but I do not know. I did not check that part.

**ADV VINCENT MALEKA:** Ms Gcabashe will deal with that. Finally your reflective conclusions about your resignation as the DG of Treasury and those are the painful reflective remarks you make and I would not be presumptuous. I would like you to deal with them.

**MR LUNGISA FUZILE:** Yes.

**ADV VINCENT MALEKA:** In your own words beginning from paragraph 205.

**MR LUNGISA FUZILE:** Essentially what had happened was that we sought the requisite approvals in my case from Minister Gordhan to travel overseas as the rules require in his case and in Mr Jonas' case from the President, because when members of the executive, Ministers or Deputy Ministers are to travel abroad they have got to seek such approval. We obtained it, they obtained it. That is my understanding. In my case I know as a matter of fact that I had received the approval. The idea was to go overseas so that we can meet investors, we can meet rating agencies with the sole purpose and I emphasises sole purpose of just telling them about economy policy developments in South Africa and to the extent that they will be interested political developments and it is a routine thing. We do this minimum twice a year after every budget or medium term budget [indistinct] a statement and the idea of it is to make sure that the people who buy South African Government bonds are fully aware and they hear it from the people close to the processes of making policy and developing budgets are aware of the direction of the South African Government on those matters. Of course upon landing in London we were told that the approval to be on the roadshow had been rescinded and we should return forthwith, forthwith and of course it is a, I think Mr Gordhan had explained we had to confide in each other and, and decide on the spot whether we sit on our hands in London for the whole day having incurred the cost to go there. Having people ready to meet us or we would them. We decided on the latter. We decide that we should meet the people. We should talk to the rating agencies, all three of them. We met two face to face as scheduled on the day and only one over the phone and we continued with the meetings on the day and then flew back to, to South Africa and upon arrival here we, because I, I was using his car. We ended up at Luthuli

House. He has reported or, or testified on the conversation between him and Mr Mantashe which I sat in, but it was their conversation and it was clear from that meeting that he was, he and Mr Jonas were going to be removed from the, the, the positions of Minister of Finance and Deputy Finance Minister respectively and of course I had kind of made up my mind in my case from the time that we were called back that I actually think that my time for serving as a Director-General was up. So I tendered my resignation on 29<sup>th</sup>. We discussed it on the 28<sup>th</sup>. I said, because I mean out of respect I just did not want to shove it under their noses. I told them of, about my thoughts and, and, and how I was visioning the process. So I, I did tender my resignation on the 29<sup>th</sup>.

10 Of course I decided that just to make sure that the process was orderly I would give six weeks' notice ending on 15 May. That is the last line I think or second last line in my, in my submission. So I, I, it was on that note that I, I reached the end of the, the runway in respect to working for Government.

**ADV VINCENT MALEKA:** What made you resign? What made you come to the conclusion that you have reached the end of the runway in public service?

**MR LUNGISA FUZILE:** Look I felt that I, there was no chance of making a positive difference.

**ADV VINCENT MALEKA:** What would you have done had you not been recalled from the London/New York trips?

20 **MR LUNGISA FUZILE:** I cannot quite tell, but I would have continued with the road show and returned to come back and do my work until May 2018 which was the time that my contract was supposed to expire, but of course I had made up my mind and let me just state this categorically that after all the changes that I had encountered of Ministers not because of any loyalty to Minister Gordhan, but I just decided that he was going to be the last Minister I would serve under. I mean on the occasion of tabling the

budget one journalist you know asked the question what the changes were doing to moral and just people, frequent changes of Ministers so to speak and, and, and I mean one made the point that it takes a lot to learn to work with each politician, because each one of them has got their own style. When they change frequently it is very hard to keep focussed on the work and of course it gets worse when they change and you keep wondering in your mind what are the reasons for the change and you cannot find any rationale reasons for such changes. You, you start to wonder if there is a [indistinct]. At least in my case I did, about whether in fact part of what was playing out was there fact that the Ministers would come and we, we just work well together and we continue  
10 on the same course and then people say oh okay even this one does not do what we want and then the next one. I mean I am human. So that that thought did cross my mind and I, I came actually to the conclusion that some of the changes could never be meant to strengthen the Treasury. They were meant to weaken it and, and I feared that having being part of building it for 18/19 years I could not also be part of seeing it getting weak. I would rather watch it from outside even if with a sore heart.

**ADV VINCENT MALEKA:** Chair I have reached the end of the runway regarding my questions to Mr Fuzile.

**CHAIRPERSON:** Yes. Thank you very much Mr Fuzile for coming back again to assist us. It may be that you might be asked again. I just hope that your employers will, after  
20 my remarks today will be more understanding, but thank you very much for having come to give evidence again and, but if you have got something to say please feel free.

**MR LUNGISA FUZILE:** Chair, Chairman I do not want to leave the Commission with the impression that my employer is not keen to help. In fact if anything they do want to help, but it is, it is important for me definitely but also for my employer that I suspect that I mean some of these dates I think it will assist a lot if we just talk about them in

advance.

**CHAIRPERSON:** *Ja, ja.*

**MR LUNGISA FUZILE:** Because I mean let me illustrate it this way.

**CHAIRPERSON:** Yes.

**MR LUNGISA FUZILE:** They are very, very important. This is very important.

**CHAIRPERSON:** Yes, yes.

**MR LUNGISA FUZILE:** It is exceedingly important for the country I must first preface.

**CHAIRPERSON:** Yes.

**MR LUNGISA FUZILE:** What I am going to say by saying that.

10 **CHAIRPERSON:** Yes.

**MR LUNGISA FUZILE:** But there are also other important things. So there is a sense in which a person in a position like me if for instance on a day that the board is scheduled to meet and the Commission says to me it does not matter what. It is not helping my career.

**CHAIRPERSON:** Hm, hm, hm, hm.

**MR LUNGISA FUZILE:** Right.

**CHAIRPERSON:** No, no I understand, yes.

**MR LUNGISA FUZILE:** And it is not, it is not out of lack of appreciation of the importance, the urgency and all, all that kind of stuff. It gets a bit and I understand the  
20 balances that you are dealing with.

**CHAIRPERSON:** Yes.

**MR LUNGISA FUZILE:** But then it gets worse and someone says they want to cross-examine me. I say look the 19<sup>th</sup> and the 18<sup>th</sup> may not be convenient or the 19<sup>th</sup> and the 20<sup>th</sup>. I cannot remember the dates well.

**CHAIRPERSON:** Yes.

**MR LUNGISA FUZILE:** I have gone blank. People insist you come and then I come and then.

**CHAIRPERSON:** Hm.

**MR LUNGISA FUZILE:** I get told no, no, no.

**CHAIRPERSON:** Yes.

**MR LUNGISA FUZILE:** The person is not ready.

**CHAIRPERSON:** Yes.

**MR LUNGISA FUZILE:** Ai, you know I have changed things, cancelled things.

**CHAIRPERSON:** Yes.

10 **MR LUNGISA FUZILE:** To be here.

**CHAIRPERSON:** Yes.

**MR LUNGISA FUZILE:** So and I know if you were to schedule and be accommodating to everyone.

**CHAIRPERSON:** Hm.

**MR LUNGISA FUZILE:** You would never do your job.

**CHAIRPERSON:** Hm, hm, hm.

**MR LUNGISA FUZILE:** But similarly.

**CHAIRPERSON:** Yes, but you, you, you just.

**MR LUNGISA FUZILE:** It is just a balance.

20 **CHAIRPERSON:** Yes.

**MR LUNGISA FUZILE:** Yes.

**CHAIRPERSON:** No, no I, it is a legitimate.

**MR LUNGISA FUZILE:** So I do not want to leave the Commission.

**CHAIRPERSON:** Yes.

**MR LUNGISA FUZILE:** With the wrong impression.

**CHAIRPERSON:** No, no thank you.

**MR LUNGISA FUZILE:** My employer is very happy to release me to come here.

**CHAIRPERSON:** Yes.

**MR LUNGISA FUZILE:** But.

**CHAIRPERSON:** The manner in which.

**MR LUNGISA FUZILE:** They, they, they want to make sure that I make a fair contribution for what I am paid.

**CHAIRPERSON:** To them as well, *ja*. No, no, I understand Mr, Mr Fuzile. Those concerns will be taken into account. Obviously from your own remarks I can tell that  
10 you were paying attention this morning when I talked about you know the balancing act you know. We have been trying to do that and as you point out you know it will be difficult always make everybody happy but we, we will not disregard concerns. We will take them into account and do the best that we can having regard to all the interests, the balancing act that we must do. So, so I, I will say that the legal team will have heard what you have said. You, you have heard what my attitude is and we, we will be trying our best, but it might not be with you, but there, there may come a time where we, one just has no other way but to make certain decisions so that things can go ahead, but thank you very much and we appreciate that you came and you were allowed to come. Thank you very much. You are, you are excused. Thank you.

20 **MR LUNGISA FUZILE:** Thank you very much Mr Chair.

**CHAIRPERSON:** Thank you.

**ADV VINCENT MALEKA:** Chair the last witness.

**CHAIRPERSON:** Hm.

**ADV VINCENT MALEKA:** Who we propose to call tomorrow.

**CHAIRPERSON:** Yes.

**ADV VINCENT MALEKA:** Is Ms Catherine Macleod.

**CHAIRPERSON:** Yes. How long is she likely to be? Are you able to tell me?

**ADV VINCENT MALEKA:** Were I to lead evidence I would take about one and a half hours to two hours, but Mr Mokoena might well want to do that.

**CHAIRPERSON:** Might take only 30 minutes.

**ADV VINCENT MALEKA:** No, I will ask him.

**CHAIRPERSON:** [Laughing] *ja*. Okay, alright but by all accounts we are unlikely, she is unlikely to need the whole day?

**ADV VINCENT MALEKA:** Yes, no, no.

10 **CHAIRPERSON:** *Ja*.

**ADV VINCENT MALEKA:** I do not think she will need the whole day.

**CHAIRPERSON:** *Ja*.

**ADV VINCENT MALEKA:** And we may usefully.

**CHAIRPERSON:** Hm.

**ADV VINCENT MALEKA:** Make use of what remains of tomorrow's time to deal with outstanding issues.

**CHAIRPERSON:** Yes.

**ADV VINCENT MALEKA:** Relating to the program going forward.

**CHAIRPERSON:** Yes.

20 **ADV VINCENT MALEKA:** Hm.

**CHAIRPERSON:** Well [intervenes].

**ADV VINCENT MALEKA:** [Intervenes] of the promise by the lawyers of Mr Van Rooyen to give us his affidavit.

**CHAIRPERSON:** Yes.

**ADV VINCENT MALEKA:** By this afternoon.

**CHAIRPERSON:** Yes.

**ADV VINCENT MALEKA:** And if the affidavit is, meets your expectation then you will decide on the question of cross-examination.

**CHAIRPERSON:** Hm.

**ADV VINCENT MALEKA:** And then we can make logistical arrangements on when that should take place.

**CHAIRPERSON:** *Ja*, I guess that the best one can say is as soon as the affidavit is in the next thing will be for all concerned to apply their mind to it and say whether they will need to file anything in response.

10 **ADV VINCENT MALEKA:** Yes.

**CHAIRPERSON:** And once we know all of that then one can take it from there.

**ADV VINCENT MALEKA:** Yes.

**CHAIRPERSON:** But if we finish early tomorrow as it looks like we would with regard to Treasury witnesses. Would there be room to begin with Eskom in regard to that portion of Eskom that might not entail witnesses as yet?

**ADV VINCENT MALEKA:** Yes. We have set it down for Wednesday Chair.

**CHAIRPERSON:** [Laughing].

**ADV VINCENT MALEKA:** Because there is lots of documentation. We.

**CHAIRPERSON:** Oh, okay. So we should rather keep it for Wednesday?

20 **ADV VINCENT MALEKA:** Yes and.

**CHAIRPERSON:** Okay.

**ADV VINCENT MALEKA:** We would like to make submissions on the suggested way of dealing with Eskom's evidence because as you know they have lots, there have been lots of enquiries and in fairness we do not want to repeat.

**CHAIRPERSON:** Yes.

**ADV VINCENT MALEKA:** What has taken place in those enquiries.

**CHAIRPERSON:** *Ja, ja.*

**ADV VINCENT MALEKA:** We simply want to focus on areas where the previous enquiries left the gaps for you to fill.

**CHAIRPERSON:** *Ja, yes.*

**ADV VINCENT MALEKA:** Rather than to rerun.

**CHAIRPERSON:** *Ja.*

**ADV VINCENT MALEKA:** And we would like to present to you evidence which has been heard by the previous bodies.

10 **CHAIRPERSON:** Hm.

**ADV VINCENT MALEKA:** That conducted enquiries.

**CHAIRPERSON:** Huh-uh.

**ADV VINCENT MALEKA:** to show to you that that evidence.

**CHAIRPERSON:** Hm.

**ADV VINCENT MALEKA:** Was elicited publically.

**CHAIRPERSON:** Huh-uh.

**ADV VINCENT MALEKA:** It remains.

**CHAIRPERSON:** Hm.

**ADV VINCENT MALEKA:** Largely undisputed.

20 **CHAIRPERSON:** Hm.

**ADV VINCENT MALEKA:** And it calls for explanation by, by those.

**CHAIRPERSON:** Hm.

**ADV VINCENT MALEKA:** Who are implicated.

**CHAIRPERSON:** Yes.

**ADV VINCENT MALEKA:** So there will be lots of documentation.

**CHAIRPERSON:** *Ja.*

**ADV VINCENT MALEKA:** For you.

**CHAIRPERSON:** Okay. So no, no that is fine. I just wanted to see whether there, there might be, whether we, we would adjourn for the day after the next Treasury witness or whether we might continue, but from what you are saying it looks like we, we certainly will not commence with anything connected with Eskom until Wednesday?

**ADV VINCENT MALEKA:** Yes Chair.

**CHAIRPERSON:** Yes. Okay, alright. We are going to adjourn then until tomorrow morning at 10 o' clock. We adjourn.

10 **REGISTRAR:** All rise.

**INQUIRY ADJOURNS**