

COMMISSION OF INQUIRY OF THE PUBLIC INVESTMENT CORPORATION

HELD AT

TSHWANE, PRETORIA

10

19 MARCH 2019

DAY 17

20

PROCEEDINGS HELD ON 19 MARCH 2019

CHAIRPERSON: Morning, morning Adv Lubbe.

ADV JANNIE LUBBE SC: Good morning Mr Commissioner and members.

CHAIRPERSON: Date is what today, 15th what is the date today?

MS GILL MARCUS: It is the 19th.

CHAIRPERSON: 19th. Yes Adv Lubbe?

ADV JANNIE LUBBE SC: Mr Commissioner we're ready to proceed. Before I do so we have invited last week the FSCA and the CIPC to the Commission, the first party made their presentation yesterday. The CIPC provided us with a statement and with
10 your leave I just want to read it into the record. It is a statement by Lana Van Zyl she says:

"I'm an adult female employed as the Senior Manager Governance, Surveillance and Enforcement at the Companies and Intellectual Property Commission (CIPC) with the offices located at Block F Meintjies Street Sunnyside.

I have been employed in the CIPC since its establishment in May 2011."

... (intervention)

MS GILL MARCUS: Sorry, sorry Advocate I think you need to be closer to the mic so it
20 might be better if you sit.

ADV JANNIE LUBBE SC: Thank you I will do so.

MS GILL MARCUS: Otherwise we're not hearing clearly.

ADV JANNIE LUBBE SC: Let me start again:

"I'm an adult female employed as the Senior Manager Governance, Surveillance and Enforcement at the Companies and Intellectual

Property Commission (CIPC) with the offices located at Block F Meintjies Street Sunnyside.

I have been employed in the CIPC since its establishment in May 2011 and have a total of 41 years experience in working with the government.

I have a direct involvement in the issuing of the compliance notice dated 21 February 2019 signed by Adv Rory Voller the Commissioner of the CIPC addressed to the Board of Directors of the PIC care of the acting company secretary Wilna Louw.

10 It needs to be mentioned that the Companies Act provides in section 187(2) that the CIPC must enforce this Act by amongst other things; monitoring proper compliance with this Act subsection 2(b).

CIPC looked at media articles and what transpired at the PIC inquiry in January 2019 specifically Mr Seanie's evidence caught our attention.

20 Furthermore the annual turnover figures supplied by Ayo Technologies Limited to the CIPC and the seeming disproportionality of PIC's investment in Ayo Technologies Limited led to the CIPC questioning the oversight by the responsible persons within the PIC tasked with the approval of such investments.

CIPC consequently requested a meeting with representatives of the PIC and the requested meeting was held on 20 February 2019. At the meeting Mr Chetty and I from the CIPC explained the CIPC's view that there was non-compliance with section 76 of the Companies Act that is standards of directors conduct and that the

CIPC would be issuing the Board of Directors of PIC with a compliance notice.

None of the PIC representatives objected at the time. The PIC representatives were Messrs Deon Botha, Devilliers Makonko and Ms Wilna Louw and Candace Abrahams.”

You will recall from previous testimony Mr Commissioner that Candace Adams is the risk, acting risk officer and Devilliers Makonko is the compliance officer.

10 “I must also add that nobody of the PIC requested the CIPC to issue a compliance notice. I also need to mention that the CIPC has not informed the Johannesburg Stock Exchange of the issuing of the compliance notice to PIC.

The compliance notice is presently subject to pending litigation in the urgent court in Pretoria.”

And it is signed by the person making the statement Lana Van Zyl. Mr Commissioner we are ready to start with the next witness, we have quite a busy day ahead of us and she will be led by my colleague Adv Monnahela.

20 **MS GILL MARCUS:** Advocate before we move on to that, perhaps if you could keep track of where this CIPC dispute and court applications goes to and keep the Commission about that so that we know the steps being taken and what’s actually going to, well what the proceedings result in.

ADV JANNIE LUBBE SC: I’m fully informed of that, I will perhaps after this witness put it on record where exactly that process is at the moment.

ADV ISAAC MONNAHELA: Good morning Commissioner and members of the Commission. Like my learned leader said we are ready to proceed and our first witness is here. The name of the witness is Nomzamo Petje and her evidence will relate to

terms of reference 1.11 and 1.14. The witness is ready to take the oath.

CHAIRPERSON: Can you just stand up please Ma'am and give us your full names please, I see it's Nomzamo Colleen Petje?

MS NOMZAMO PETJE: Yes.

CHAIRPERSON: And do you have any objection to taking the prescribed oath?

MS NOMZAMO PETJE: No.

CHAIRPERSON: No objection?

MS NOMZAMO PETJE: No objection.

CHAIRPERSON: Do you swear that the evidence you're about to give will be the truth, the
10 whole truth, nothing but the truth?

MS NOMZAMO PETJE: Yes Sir.

CHAIRPERSON: Raise your right hand and say so help me God.

MS NOMZAMO PETJE: So help me God.

CHAIRPERSON: Thank you very much, you may be seated.

ADV ISAAC MONNAHELA: Commissioner may I just formally request to be seated
while leading the witness, I don't want to assume that I'm entitled to sit.

CHAIRPERSON: Yes you may be seated and that concession is given to you for this
whole week.

ADV ISAAC MONNAHELA: Thank you Commissioner. Ms Petje you have made a
20 statement which you want to present to this Commission, could I just ask you to start
reading your statement at paragraph 1?

MS NOMZAMO PETJE: By all means. I am a major female who was employed by the
Public Investment Corporation, PIC, as Communications Manager from August 2011
until November 2015. I was in the stakeholder relations division. I was then demoted
and transferred to another position in a different division within the PIC. I shall set out

the facts relating to my demotion and transfer below as I shall show my demotion and transfer was utterly baseless and unlawful it was nothing but a show of arrogance and power by management. My office is situated at Menlyn Maine Central Square Corner of Corobay Avenue and Aramist Avenue Menlyn Waterkloof Glen Pretoria.

The facts I set out in this statement are within my personal knowledge unless the contrary is stated or appears from the context and are to the best of my belief both true and correct. Mr Commissioner I made this statement voluntarily and no one instructed me to say anything in this statement that I did not agree with.

I make this statement pursuant to a request made by the Commissioner to
10 the people who may information that can assist the Commission to come forth and place that information before the Commission. I must say however that I was initially hesitant to approach the Commission due to the fear of what might happen to me if I testified before this Commission. I remember one colleague whose name I elect not to disclose asking me whether I would testify, my answer was immediate response was no. However, I continued to debate the issue with myself. I am aware that things are not as good at the PIC as some, like Mr Chris Pholwane, who is in the Executive Head Human Resources and has already testified would have this Commission believe.

I have been a victim of the unlawful treatment that has been meted out on
20 some of the employees by those in power. I would not wish what happened to me to happen to another person, not even my worst enemy. I have a desire to see things change for the better at the PIC. In order for this to happen I saw it as a moral duty to testify before this Commission irrespective of what might happen to me for exposing the ill-treatment some of us are subjected to in the workplace.

Education background: I hold the following qualifications; Diploma in Education from the erstwhile Transvaal College of Education; a Bachelor of Arts in

Communication from UNISA; Diploma in Journalism from Damelin College; Bachelor of Arts Honours in Communications from UNISA; Bachelor of Arts Honours Journalism and Media Studies from Wits University; Management Development Program from University of Pretoria; Certificate in Effective Stakeholder Management from University of Pretoria and Senior Management Program from University of Pretoria. In June this year I will be completing a Postgraduate Diploma in Strategic Management and Corporate Governance with UNISA.

My career history: I began my career as an English and History teacher and was employed by the Gauteng Department of Education from 1988 until 1995. I then
10 joined the Department of Trade and Industry as Communications Officer. I moved through the ranks and I was appointed Deputy Director Communications. My duties included developing communication strategies and plans for events designed to promote the DTI, arranging television interviews, writing opinion pieces to the media on behalf of the Deputy Minister, leading and organising communications planning for high-profile events and exhibitions and writing reports to cabinet on fact-finding missions. I was employed by the DTI from 1996 until 1999.

I was then employed by National Treasury as Director Communications from 1999 to 2002. As Director I managed the communications division of the Treasury. My activities included internal and external communications. Internal communications in
20 turn involved developing and implementing the internal communications strategy, managing the corporate communications unit, controlling the corporate image and identifying an identity of the National Treasury, controlling the flow and nature of information, advising senior management on speaking to the media, project management, projecting managing the annual report writing from information gathering to printing, designing and editing promotional documents. External communications

involved liaising with the media on core business issues, organising media briefings, identifying and exploiting opportunities for positive coverage, monitoring media and writing of communications and public relations strategy for various events.

From 2002 until 2011 I was a director and owner of a business. I do not deem it necessary to set out the detail of that business because they are irrelevant for the purpose of this statement. I was then employed by the PIC as Communications Manager in August 2011. Initially I was employed on a fixed term contract, I attach a copy of my fixed term contract marked annexure A.

ADV ISAAC MONNAHELA: If I may just stop you there, that position was it advertised
10 or not?

MS NOMZAMO PETJE: It was advertised. I was subsequently employed in the same capacity but on a permanent basis during or about August 2012. I attach a copy of my employment contract after I was appointed on a permanent basis marked annexure B. I deem it important to set out the provisions of clauses 2.1 and 11.2 of the latter contract as they are crucial to whether my demotion and transfer was lawful.

Clause 2.1 provides that the employer employees the employee and the employee accepts the appointment and shall render services to the employer in the capacity of Communications Manager or any other similar capacity required by the employer from time to time.

20 Clause 11.2 provided that the employer may after consulting with the employee change or amend the employee's duties and responsibilities from time to time in accordance with the employer's operation requirements.

My responsibilities as Communications Manager were among others internal and external communications. These roles broadly entailed media relations, public relations, stakeholder relations, speech writing, newsletter compilation, strategy

formulation, annual report compilation and corporate social investment. Since my appointment to the position I discharged my duties with diligence and the requisite professionalism. At no stage did I receive a complaint from my employer regarding my performance. To the contrary, I was rewarded for my performance I received both short term incentive which is STI and long term incentive LTI bonuses. I attach as proof of my satisfactory performance letters dated 25th May 2012, 11 June 2012, 24 January 2014, 28 July 2014, 26 February 2015, 26 August 2015 and 11 December 2015 marked annexure C to annexure 7 respectively. I draw the Commission's attention to the letter dated 24 January which is annexure C3 which states that I was grade D2.

10 The restructuring process: during or about December 2014 Dr Dan Matjila, Dr Dan was appointed as the Chief Executive Officer of the PIC.

CHAIRPERSON: Can you give us a moment please.

MR EMMANUEL LEDIGA: Ms Petje just a question if you could just give us the reporting lines to the top during that period, who were you reporting to and ja the reporting lines?

MS NOMZAMO PETJE: My line manager Sir at the time was Sigwela Sigwela who was a senior manager stakeholder relations and he was reporting Ms Petro Dekker who at the time was the Chief Operating Officer under Corporate Affairs, what is it , services yes. Thank you.

20 During or about December 2014 Dr Dan Matjila, Dr Dan was appointed as the Chief Executive Officer of the PIC. After his appointment the PIC embarked upon a restructuring process, there was general anxiety regarding how the restructuring would affect us as individual employees. On 9th October 2015 a staff meeting was held about the restructuring. A document entitled PIC restructuring update staff meeting was produced for the purpose of a presentation. I pause to state that the presentation was

done by Mr Chris Pholwane. The document among others communicated the following; consultation with staff over the next two weeks which would have been from the 12th to the 23rd October 2015. Next one, all staff members will be getting letters confirming their status and positions during the one-on-one consultations session from the 12th to the 23rd October 2015. Employee skill sets, level of competency will be assessed to identify a suitable position. All the re-graded jobs a range to accommodate different levels of competencies and to ensure that salaries are within ranges. There will be no automatic salary adjustment to a higher grade. If there is a competency gap identified employees will be placed on a training and development program for 12 months to
10 accelerate skills required. I attach a copy of the document marked annexure D. As it shall appear below what was stated in the document was not adhered to at least insofar as employees like me were concerned.

Unlawful demotion and transfer: On the 6th November 2015 I was called to a meeting, it was attended by Ms Petro Dekker who became Executive Head Corporate Services after the restructuring and has since resigned and Mr Pholwane. Before the restructuring process Ms Dekker was the Chief Operating Officer and Head of the Corporate Services Department. The Stakeholder Relations Division fell under the department at the relevant time. Mr Pholwane's opening statement was and I quote
20 "You are the worst affected by the restructuring in the entire organisation". I did not imagine the extent and debilitating effect of Mr Pholwane's statement until I read a letter dated 3rd November 2015 that was handed to me by Ms Dekker. The letter was signed by Ms Robena Solomon who was the General Manager Investment Management. The letter stated among others that I would now be employed as an Environmental Social and Governance ESG for short analyst and would be based in the Investment Management ESG Listed Division. I attach a copy of the letter marked annexure E.

Unlike the communications manager position the ESG analyst position is an entry level and a junior position. The effect of the transfer to the ESG analyst position was that I now had to report to people who would have been my juniors and reporting to me in my former position and division. Therefore the transfer was nothing but a demotion. I deal in the next paragraph with an issue which also confirms that the transfer was a demotion.

Above I referred to the letter dated 24 January 2014 which confirmed that I was on grade D2. As if the transfer to a junior position was not enough I later discovered that I had been moved from grade D2 to grade C5 which was in line with the
10 ESG analyst position. It is important to point out that the letter I was given at the meeting of 6 November 2015 was silent on the issue of the grade. Grade C5 is two levels below grade D2. Being grade D2 meant that I could qualify to participate in the LTI bonus as confirmed by the letter dated 26 February 2015 which is already attached to this statement. Being moved to grade C5 meant that I no longer qualified for the LTI bonus. This was confirmed by Mr Pholwane when he testified before this Commission on the 22 January that the LTI bonus is “limited to a certain pool of employees that would be grades up to the highest level”. The quotation can be found at line 9 to 10 of the transcript of the hearing of 22 January.

The demotion also effectively affected my ability to qualify for the STI bonus
20 in that according to the ... (intervention)

MR EMMANUEL LEDIGA: You are going too fast because I’m just battling to find the letters which you are talking about is it G1, the letter of January the 24th 2014 where is it in the annexures?

MS NOMZAMO PETJE: I beg your pardon Commissioner are you still looking for annexures?

MR EMMANUEL LEDIGA: I see annexure E is the letter on 3rd November the position for ESG that I can see.

MS NOMZAMO PETJE: Yes.

MR EMMANUEL LEDIGA: And then annexure F I can see ja which is the appointment letter, where is the 24th Jan 2015?

ADV ISAAC MONNAHELA: That should be annexure C3.

MR EMMANUEL LEDIGA: Oh it's part of those annexures which, okay alright. Okay and then the letter of the 26th Feb 2015 we just have to make sure that we have this.

ADV ISAAC MONNAHELA: That should be annexure C5.

10 **MR EMMANUEL LEDIGA:** Oh I see okay, alright so it's those, okay I get you, I get you now.

MS NOMZAMO PETJE: May I proceed.

MR EMMANUEL LEDIGA: Ja, ja please proceed.

MS NOMZAMO PETJE: The demotion also effectively affected my ability to qualify for the STI bonus in that according to the PIC remuneration policy STI is calculated based on the corporate, departmental and individual scores for specific grades. This means that for higher grades the corporate, departmental and individual scores weighted percentage share in the bonus pool is higher and decreases with lower grade levels. At grade D2 the percentage share of the bonus is therefore higher than at C5. Even
20 though bonuses are discretionary this demotion just meant that where I did qualify for a bonus I was further prejudiced due to the unfair process.

The demotion was contrary to my understanding of HR processes. I understand that an employee may not be demoted for the sake of being demoted. An employee must have a justifiable basis for demoting an employee. This may for example happen where the employee's performance is substandard, however the

employer must first take measures to ensure that an employee's performance is satisfactory such as making the employee to undergo training. If the employee's performance is still not satisfactory the employer may demote the employee instead of dismissing them. However, the demotion cannot just happen without the employee being given an opportunity to be heard. In my case my performance was satisfactory as is confirmed by the letters referred to above therefore management had entirely no basis to demote me.

Before the meeting of 6 November 2015 management had never had any meeting with me regarding my impending demotion and transfer. It will be recalled that
10 in terms of clause 11.2 of the contract relating to my appointment as Communications Manager the PIC which is the employer might change or amend my duties and responsibilities in accordance with its operational requirements after consulting with me. I can state without fear of contradiction that there was no consultation with me before I was demoted and transferred. At the meeting of 6 November I was asked whether I had any questions. I stated that I did not have any although I would have liked to have questioned the decision taken against me.

The question I was asked does not by any stretch of imagination amount to consultation. The reason I did not oppose management's decision was that I was confronted with a fait accompli. It is clear from the letter I was given at the meeting that
20 a decision had already been taken before the meeting. As I had said the letter was dated 3rd November 2015 therefore no amount of resistance would have served any purpose.

In any event as witnesses have already testified before this Commission the culture at the PIC is one of intimidation and victimisation. Employees have no option to comply with management's instructions. I could not have dared to confront

management and risk losing my job. Someone might ask why I did not challenge the decision in the courts, the simple answer is that I did not have the resources to do so while the PIC could have tapped into its resources. The PIC is reputable for being the largest asset manager in the continent and can afford any costs it might incur in litigation. In any case any victory in the courts might have been hollow as I would still have been victimised for daring to challenge management. As my qualifications attest I am a communications professional.

By November 2015 I had at least 20 years experience in the profession. When I was made an ESG analyst I had no investment experience at all. The position
10 was completely unsuitable for me, as proof that I was not qualified for the position I attach a copy of a document setting out the roles of the ESG analysts marked annexure F. Therefore given my lack of relevant skills one would have expected management to have fulfilled its promise that employee skill set, level of competency will be assessed to identify a suitable position and that if there is a competency gap identified employees will be placed on a training and development program for 12 months to accelerate skills required.

My understanding of the restructuring process as governed by the Labour Relations Act 66 of 1995 is that an employer must consider suitable alternatives. The employer must give an employee an opportunity to choose from those alternatives. It
20 cannot just impose its decision on the employee. I fail to understand how management identified the ESG analyst position to be a suitable position for me. I was never placed on any training and development program to acquire the requisite skills for the new position. The only training I got was when I was already in the position and I took the initiative to acquire it. I should not by any means be understood to be saying that I would have been happy with a demotion and transfer if I had been provided with

training. I merely stating that I was not provided with training to show that management's promise was not genuine insofar as I was concerned.

I found my transfer to the ESG analyst position bizarre and ironic to say the least. I say this because the PIC always prides itself as an organisation that not only delivers on its client's mandates, but also exceeds them. To keep this momentum going and to maintain this high standard, it follows that employees must be relevantly skilled and placed in suitable positions with within the organisation to ensure good performance.

My transfer to the ESG analyst position in November 2015 could not in any way properly contribute to the PIC delivering on its promise to its clients. The restructuring

10 process resulted in the Stakeholder Relations Division being renamed the Corporate Affairs Division. All the employees in the former Stakeholder Relations Division but me were transferred to the new Corporate Affairs Division. It is important to note that the roles and duties of my former colleagues in the former division remained the same.

Only the names of their positions changed. Insofar as I am aware, none of them was demoted. This begs the question why I was the only employee that was demoted and transferred, especially in the light of the fact that there was a vacant position in the new division to which I could have been transferred. I would like the Commission to require

management in particular Mr Chris Pholwane to answer this question. I can say at this stage that management will not give any sensible answer to the Commission. Instead

20 any answer management will give, will only demonstrate that the demotion and transfer was nothing but an abuse of power and a demonstration of arrogance by management.

I shall return to the issue of the position that was vacant below. At the time of the unlawful transfer, I was not informed what my role and duties in the new position would be, despite the fact that I would no longer be the Communications Manager. I was not made to sign a contract relating to my new position. It was only in July 2016 that I was

made to sign Annexure F which as I have said sets out the role of an ESG Analyst. The fact that I was only given the annexure some eight months after the transfer, demonstrates that management did not care about the situation they had put me in. I must say that my signing Annexure F did not mean that I regarded my demotion and transfer as legitimate. I merely signed because I had no option. It was either I signed or I refuse and risk losing my job. If I had refused to sign, I would probably have been charged with insubordination, found guilty and dismissed, something which management probably wished to happen. Until today I have never been provided with reasons why I was demoted, except what I was told by Mr Pholwane that I was the
10 worst affected by the restructuring. However, what Mr Pholwane said can never be a justification for my demotion. I must say that I am not surprised that I have never been given a reason for the demotion. My performance in the previous position and the reward for that performance demonstrates that none exists. Management demoted me because they felt that they could, not because it was necessary for them to do so. They knew that I was vulnerable and that I would never challenge the injustice I suffered at their hands.

MS GILL MARCUS: Sorry, can you just elaborate a little bit on the sense of how you were vulnerable and what your vulnerability in relation to what was happening expressed itself?

20 **MS NOMZAMO PETJE:** Yes Ma'am. Right now it is a known fact that the culture of victimisation and intimidation has been rife at the PIC. So within the context of that description I could never have dared to challenge that. I felt vulnerable and very, very fearful you know in view of what other witnesses and what I have personally experienced based on the culture of intimidation and victimisation within the organisation.

MS GILL MARCUS: Thank you.

MS NOMZAMO PETJE: In my view management's intention was to dismiss me. However as they had no grounds to do so, they devised a plan that would give effect to their decision. And that plan was to make me suffer through the demotion so that I could end up leaving the organisation on my own. I was not surprised when I was informed by one of my colleagues from HR that I quote: these people no longer want you at the PIC. That colleague advised me to consider leaving the PIC. During the testimony before this Commission, Mr Luyanda Ntuane. Luyanda Ntuane testified that he was phoned by a colleague from the HR, from HR who pretended to sympathise with

10 him. I believe that this was the same person that approached me. I would not be surprised if the person was being used by management to do its dirty work. I am glad that I did not succumb to their plan to force, to force me to resign. I believe that it is the duty of the Human Resource Division to ensure that employees' interests and rights are respected and protected at the workplace. It is sad that Mr Pholwane did not ensure that this was done in my case and those of other affected employees. It was his duty to advise management that what they were doing was unlawful and contrary to the laws of our country. I expect him to know that in terms of the law certain processes must followed before a decision which will adversely affect an employee may be taken. Instead Mr Pholwane enabled and assisted management to trample upon my rights.

20 Since my demotion Mr Pholwane or anyone in management has never bothered to inquire from me how I am coping. The vacant position created by the restructuring: The restructuring resulted in the creation of two investor relations positions in the Corporate Affairs Division. One public and the other private and SOE. These positions are both a Grade E level. The Investor Relations Public position was filled at the time of the restructuring. The other position, Investor Relations Private and SOE was not

filled during or immediately after the restructuring. It was left vacant. It is important to note that I hold qualifications which are relevant to the position that was left vacant, therefore nothing prevented management from appointing me to that position instead of demoting and transferring me to the ESG analyst position.

MR EMMANUEL LEDIGA: Question, question.

MS NOMZAMO PETJE: Yes.

MR EMMANUEL LEDIGA: On paragraph 28, can you please explain these positions briefly what they mean? Investor Relations Public and Private, what do they actually mean?

10 **MS NOMZAMO PETJE**: Ja.

ADV ISAAC MONNAHELA: What do they do?

MS NOMZAMO PETJE: Well I do not have the job description you know at hand. But you know Investor Relations just from the word it will be relating, it entails you know relating with the outside world. For instance the Investor Relations Public, I assume that this person would liaise with clients of the PIC, you know on what the PIC and how the PIC is investing their monies and all of that. And the Investor Relations SEOs, I would suppose and assume that this person will be attached and assigned to dealing with SEOs in the country. But as I say, I speak under correction. A proper job description would be forwarded to the – in due course. Okay.

20 **CHAIRPERSON**: Did you engage with management with regard to those positions seeing that you were now being demoted?

MS NOMZAMO PETJE: You mean back in 2015 sir?

CHAIRPERSON: Yes.

MS NOMZAMO PETJE: No, I did not. As I said I was very fearful, I did not engage. I did not even ask any questions about the demotion. Okay. It is important to note that I

hold qualifications – okay I think I read this. Okay, which are relevant to the position that was left vacant, therefore nothing prevented management from appointing me to the position instead of demoting and transferring me to the ESG analyst position. Management could argue that the position was on a higher grade than the Grade D2 at which I was before my grade was changed to C5. However, that is not an excuse at all. Nothing prevented management from making the position a Grade D position to accommodate me. Also, nothing prevented them from appointing me to a Grade E position and keeping me on the same salary if they so wished. Their own document relating to restructuring stated that there would be no automatic salary adjustments to a
10 higher grade.

CHAIRPERSON: Well I thought, I thought I would wait until you finished the statement.

MS NOMZAMO PETJE: Ja.

CHAIRPERSON: When you were demoted, did the same happen to your salary? Was it lower than it used to be?

MS NOMZAMO PETJE: No Sir, my salary was not touched.

CHAIRPERSON: It remained the same?

MS NOMZAMO PETJE: It remained the same.

MR EMMANUEL LEDIGA: Okay can I just ask you this question? It flows from what the question that you were asked. Would management have been entitled to reduce
20 your salary?

MS NOMZAMO PETJE: Not that – I do not think so. I have heard that by law they were not supposed to touch my salary. But I must say that even if I had been appointed to a Grade E position and my salary been adjusted to that grade, there could not have been no problem. I am aware of at least one employee whose position was rendered redundant and she was appointed to a higher position. Her salary was adjusted to a

higher grade. The employee I am referring to is Ms Robina Solomon. She was occupying the position of General Manager Investment Management. That position was inexplicably rendered redundant and she was appointed Executive Head Investment Management. As a result of the promotion, Ms Solomons' salary was increased by a hooking R953 304,21. I attach hereto copies of a memorandum that was written to Dr Dan to request approval to absorb Ms Solomon to the Executive Head Investment Management position. And off a letter Dr Dan addressed to Ms Solomon regarding her appointment to the position marked Annexure G2 and G1 and G2 respectively. These documents were contained in the files which Mr Pholwane placed

10 before this Commission when he testified.

MR EMMANUEL LEDIGA: If I may intervene. The position of Executive Head Investment Management to which Ms Solomon was appointed, was it advertised?

MS NOMZAMO PETJE: No sir it was not advertised. Not that I know of. I have not seen it. If Ms Solomon could be promoted and her salary be automatically adjusted to a higher grade, nothing prevented the same being done in my favour. In my view it is irrelevant that Ms Solomon's promotion and salary adjustment occurred approximately two years after my demotion. The treatment according, accorded to Ms Solomon and the one accorded to me shows that employees are not treated equally within the PIC. The evidence that has already been placed before the Commission by some of the

20 witnesses also bares testimony to this unequal treatment. Such differential treatment is reminiscent of a phrase coined the novelist George Orwell, that says: all animals are equal, but some animals are more equal than others. The Investor Relations position which was left vacant during the restructuring process, was later filled by Mr Adrian Lackay. According to the documents that were placed before this Commission by Mr Pholwane, Mr Lackay was initially appointed on an 18-month contract. Some of us

were not even aware that Mr Lackay had been appointed to the position until Mr Pholwane testified as to the best of my recollection there was no advert to this effect. We merely saw Mr Lackay on a daily basis at the PIC. He attended staff meetings. We wondered why someone who was not an employee of the PIC attended those meetings. The position was subsequently advertised on a permanent basis and Mr Lackay was appointed to it. Surprisingly Mr Lackay was appointed directly to Grade E3. Mr Lackay's appointment to Grade E3 resulted in his salary on that grade, exceeding the salary he was earning on a fixed term contract by a R333 200,00. I attached copies of a memorandum addressed to Dr Dan seeking approval of the
10 appointment of Mr Lackay on a permanent basis and off a letter addressed to Dr Dan to Mr Lackay regarding his appointment marked Annexure H1 and H2 respectively.

MR EMMANUEL LEDIGA: Question. These documents, you go them from the PIC? Where did you get the documents from?

ADV ISAAC MONNAHELA: If I may assist the documents were contained in the files that Mr Pholwane placed before the Commission.

MR EMMANUEL LEDIGA: Ja, I can remember that, ja. Okay.

MS NOMZAMO PETJE: I was aware that the position was advertised internally. I elected not to apply for it because first, Mr Lackay's appointment was in my view a foregone conclusion. I believe that he had been appointed on a fixed-term contract for
20 a lengthy period so that he would stand a better chance to be appointed when the position was made permanent. I failed to understand why the position was not advertised on a permanent basis the first time management saw the need for it to be filled. The second reason I did not apply is that management had ignored me when the position was created as a result of the restructuring. If they did not appoint me during that time I did not see any reason why they would appoint me after the position was

advertised. The third reason I did not apply, is the remark Ms Matshgo More allegedly made when I applied for the position of Head Corporate Affairs. I was informed by an employee in the HR, in the Human Resource Division that Matshepo had gone to that division and asked to be given my CV. I elect not to mention the employee's name for the fear of them being victimised. Matshepo allegedly asked why I thought I could be appointed to that position. Despite the prejudice she had already demonstrated against me. Matshepo was a member of the panel that conducted the interviews. Attempts to have the decision to demote me reversed: In 2017 I mustered the courage to approach Dr Dan in an effort to persuade him to have the decision to demote and transfer me reversed. I informed him that the demotion was unfair and requested him to do something about the matter. I further informed him that the PIC had breached the contract relating to my appointment as Communications Manager. I also informed him that I had not been given an explanation for the demotion. I furthermore said that this amounted to a constructive dismissal. Dr Dan did not give me any reason why I was demoted. Instead he suggested that we should hold another meeting where Matshepo would be present since I quote: she was part of the process. I assumed that the process that Dr Dan was referring to was the one that lead to my demotion. A meeting was then held in October 2017 where Dr Dan and Matshepo were present. I was asked to state the reasons for the meeting. I repeated what I had told Dr Dan in my previous meeting with him. Ms More then arrogantly told me that the PIC no longer had an internal communications function. The statement by Ms More was disingenuous to say the least. The PIC needs both internal and external communications functions given its size and importance in the asset management space, especially as the largest asset manager in the continent. The criticism of the PIC by the Standing Committee On Public Accounts, SCOPA for short, also confirms that the PIC needs both internal and

external communications functions. When PIC Exco appeared before SCOPA in December 2018, SCOPA publicly criticised the PIC for its failure to adequately communicate. If I remember correctly SCOPA requested Exco to submit a communications strategy which should be tabled before SCOPA before the end of its tenure. As further proof that Matshepo's statement was disingenuous, my colleagues who formerly reported to me were as I have said retained in the Corporate Affairs Division after the restructuring. Those colleagues still perform the same functions they were performing before the restructuring process, including internal communications functions. Matshepo still requires internal communications assistance from these colleagues. The restructuring process only resulted in the renaming of the division, the changing of the titles of the colleagues I have referred to and the creation of the Head Corporate Affairs Investor Relations positions. My attempt to convince Dr Dan and Matshepo to reverse the injustice that was perpetrated against me did not bear any fruit. Dr Dan and Matshepo merely demonstrated to me that they were the most powerful people in the organisation whose word was final. They told me that they would, not could, do nothing about my situation. This just demonstrated to me that they realised that they had the power to do something but elected not to exercise it. To make matters worse, they told me that I was free to leave the PIC if I wanted to. This confirmed my suspicion that the only reason for demoting me was so that I could resign. As a result of their demonstration of the power they had over me as their subordinate, I elected not to try to persuade them any further to reverse the decision. I left the meeting disappointed.

MS GILL MARCUS: Sorry could you just advise the date of that meeting? The month and the year?

MS NOMZAMO PETJE: It was in October, we can check the meeting, the date.

MS GILL MARCUS: Don't need the exact date, but the month and the year?

MS NOMZAMO PETJE: 2017. Yes, around September, October 2017.

MS GILL MARCUS: So at this stage, this interaction with you and your demotion and trying to rectify it had been going on from the beginning of 2015 to the mid of 2017, about two and a half years?

MS NOMZAMO PETJE: The engagement formally started in September, thereabout 2017. I remember it was after the James Nogu saga and then I ...

MS GILL MARCUS: No, the engagement with you towards the end but at the time when you were first demoted ...

10 **MS NOMZAMO PETJE**: Yes.

MS GILL MARCUS: What was or when? What was that date?

MS NOMZAMO PETJE: November 6th, 2015.

MS GILL MARCUS: That is why I am saying.

MS NOMZAMO PETJE: That is when, yes that is when I got the letter of demotion.

MS GILL MARCUS: Ja, so your demotion was end of 2015.

MS NOMZAMO PETJE: Yes.

MS GILL MARCUS: The restructuring was taking place in 2015.

MS NOMZAMO PETJE: Yes.

MS GILL MARCUS: And at this point in time it was October 2017 ...

20 **MS NOMZAMO PETJE**: Yes.

MS GILL MARCUS: When you were still trying to resolve it, so it is almost two years?

MS NOMZAMO PETJE: Yes.

MS GILL MARCUS: Thank you.

MS NOMZAMO PETJE: But I must say that that was my initial attempt to talk about it with the then CEO. I had never done anything about it before.

CHAIRPERSON: Tell me positions of Communications Manager which you occupied

...

MS NOMZAMO PETJE: Yes.

CHAIRPERSON: And the position of General Manager, are they the similar level or is there a difference between them?

MS NOMZAMO PETJE: No sir, they are not, they are not at the same level. General Manager would be quite senior. Further meetings and attempts to reverse my demotion: On August 24, 2018 all female employees at the PIC were given staff half day – were given half day time off to mark Women’s Month. I could not leave the office
10 as I had a huge workload on that day. I decided to continue working. Later on that day Dr Dan came to our floor. He was doing a surprise walkabout on each floor and engaging with staff. He invited me for a chat. We met a week later. At that meeting Dr Dan wanted to know how I was coping and encouraged me to talk to him. I repeated the request I had made to him and Matshepo in 2017. I also informed him that the demotion had negatively affected me in that it had resulted in me losing both as the STI and LTI bonuses in 2017. The meetings I had with Dr Dan since August to October 2018 were positive and inspired hope than those we held in 2017. He was more willing to listen to me and do something about my situation. In the meeting of the 24th August 2018, he requested me to give him time so that he could speak to Mr Pholwane
20 regarding the issue. About a week later Dr Dan informed me that they had decided to take me back to the Corporate Affairs Division. He also told me that he had informed Mr Botha and Mr Sigwela about my return to the renamed division and that they did not object to my return. I then had a meeting with Dr Dan, Mr Botha, Mr Sigwela and Mr Pholwane where Dr Dan advised that Mr Botha and Mr Sigwela should sit with me to discuss my new role.

ADV ISAAC MONNAHELA: Sorry, can you please explain the sort of reporting line?

Who is Sigwela?

MS NOMZAMO PETJE: Yes.

ADV ISAAC MONNAHELA: Mr Botha?

MS NOMZAMO PETJE: Okay. Mr Botha is the Current Head Corporate Affairs and Sigwela is the – occupies the Investor Relations position public, one of those two positions you were asking about. Yes.

ADV ISAAC MONNAHELA: Reporting to?

MS NOMZAMO PETJE: Pardon.

10 **ADV ISAAC MONNAHELA:** Who were you reporting to?

MS NOMZAMO PETJE: The structure ...

ADV ISAAC MONNAHELA: Who would you report to? Ja, if ...

MS NOMZAMO PETJE: The structure at the moment is flat. Everybody reports to Mr Deon Botha. Dr Dan advised that Mr Botha and Mr Sigwela should sit with me to discuss my new role. He said that there was no need for him to be present during that discussion. Dr Dan then appointed me to act in the position of Investor Relations Private and SOE. This is a position to which Mr Lackay was appointed on a permanent basis. I was not aware that Mr Lackay had been seconded to the Department of Public Enterprises which is under the leadership of Minister Pravin Gordhan. My appointment
20 was for a period of six months from 3rd October 2018 to the 31st of March 2019. Dr Dan
...

MS GILL MARCUS: Sorry can I just ask you something in relation to that? Given all of the experience of demotion and over the period of that two to three years that this discussion was going on, when you were appointed to act in the position of Investor Relations, was there any question at that point in time about your competency? Any

reason saying that we were demoted here, now we are appointing you to this position which if I can understand it, this was in fact the position you could have been allocated if they had just moved you into that.

MS NOMZAMO PETJE: Yes.

MS GILL MARCUS: In the first place?

MS NOMZAMO PETJE: Yes.

MS GILL MARCUS: Was there any discussion about competency training, preparations for that role? Anything that would give an indication as to a change of approach that related to why they would feel that you were not going there in the first
10 place but now are suitable to be acting? Was there any of that discussion at the time?

MS NOMZAMO PETJE: There was no discussion necessarily about my competencies regarding that role, but I believe that for Dr Dan to deem it fit to promote – I mean to ask me to act in that position which is a higher position than the one I previously occupied, was a demonstration of his confidence that he had in me that I will be able to manage the position. Because Dr Dan was exposed. I used to write Dr Dan's speeches previously when he was the CEO. CIO. I used to work with him closely together with Sigwela in regarding media relations issues you know. I used to sometimes travel with him when we had projects that were presenting or maybe saw turning events where we would be building a hospital and wherever. And I would be
20 responsible for to write speeches. So he was aware of my competencies. He also when I was at the Communications Division I was responsible to compile a newsletter. In that newsletter he had a column whose, to whom I was responsible for. I used to write those articles and let him just vet them and then he would okay them. So he knew that I was able to do my work or to execute the responsibilities that come with this

position. So actually there was no need in that regard because he was basically taking me back to my forte.

MS GILL MARCUS: I mean I cannot question your saying there was no need, but the question, the fact that he enabled, agreed with your demotion and transfer would have assumed that if he wanted now to put you into the position he could have put you in two or three years prior, there would have been some reason given and did you not ask him how did this, why do you think I am fit now and I was not fit when it was the position available to me in the beginning? Did you have no discussion about that at all?

MS NOMZAMO PETJE: I didn't have any discussion. In the context of the meetings
10 that we had and the mood of the meetings that I had with Dr Dan since 2018, the meetings were very cordial. And I saw in him someone who wanted to make amends. And that is how I interpreted his gesture. Okay.

MS GILL MARCUS: But that does assume that there is no advertising. That this is then at his discretion rather than processes within the PIC that are followed to make these appointments.

MS NOMZAMO PETJE: Ma'am this was just an acting position. It's not a permanent position. It's just an acting position for six months.

MS GILL MARCUS: So you would have expected after the six months to go back to where you were you your demoted level?

20 **MS NOMZAMO PETJE**: Well, I, I ...(intervenes).

MS GILL MARCUS: You may have hoped differently but ...(intervenes).

MS NOMZAMO PETJE: Yes.

MS GILL MARCUS: Okay took the view that it was an acting position. The assumption would be you would go back to where you were after the acting?

MS NOMZAMO PETJE: Yes as I set out in my statement I did ask him that question. If

you may allow me to read my statement?

“My appointment was for a period of six months from October the 3rd – 2018 to 31st March 2019. Dr Dan informed me that I would be paid an acting allowance in accordance with the remuneration policy. I attach a copy of a letter confirming my appointment to the acting position marked Annexure I. I wish to point out and emphasize that I did not beg to be appointed to act in Mr Lakay’s position as some might think. As I have said I was not aware that Mr Lakay had been seconded to Minister Gordan’s department.

10 In my feelings – in my meetings Dr Dan – excuse me – in my meetings with Dr Dan – sorry – I enquired from him about what would happen to me when my acting appointment came to an end. I informed him that I was not willing to go back to the ESG analyst position. Dr Dan informed me that there would be more need for Communications in the PIC in the near future and that there could be a restructuring at Communications. Mr Botha once informed me that Dr Dan had instructed him to create a position for me. The instruction was allegedly made at a meeting attended by Dr Dan, Mr Botha and Ms Solomon on the eve of my commencement of duty in the Corporate Affairs Division. I am hoping – I am thinking that Mr Pholwane could have been part of the meeting because it was an HR related matter but I am not sure about that. I only am sure about these three.

20

In January 2019 I engaged Mr Botha on the issue of the position Dr Matjila had alleged instructed him to create for me. Mr Botha has now changed his tune. He now claims that Dr Dan had only mentioned the issue in an informal and general way, whatever that means. The impression I get however is that Mr Botha is now renegeing on Dr Dan’s instruction which he

did not object to when it was given to him. I have made several attempts to engage with Matshepo in her capacity as Acting CEO to resolve my predicament. On the 29th January 2019 I exchanged emails with her in an attempt to secure a meeting with her so that we could discuss the issue.

I requested that the meeting be held on an urgent basis. My attempt to secure a meeting did not yield any fruit as it was postponed and on approximately three occasions on the basis that other relevant parties were not available. However on the 15th March 2019 I received an email from her PA asking if I would still be coming to the meeting. Unfortunately I could not attend the meeting as I was on sick leave.

10

My conclusion

As I conclude Mr Commissioner I would like to highlight one of the values of the PIC. That is we care. It is my sincere submission to this Commission that as a black woman I have been subjected to the worse form of victimization and intimidation at the hands of my seniors. All this was done to manage me out of the organisation by making my situation unbearable and untenable. This colours an insensitive action which bordered on arrogance, flies in the face of this value, we care.

20

I have ironically experienced the cruelty and none caring nature of the people in power that have also cost great pain to me and my family. Mr Commissioner I hope that after this commissioner the PIC will be a better place to work for. I thank you.”

MS GILL MARCUS: Sorry can I just ask one question for clarity?

MS NOMZAMO PETJE: Yes ma'am.

MS GILL MARCUS: Your appointment for six months is until the end of the month

we're in at the moment.

MS NOMZAMO PETJE: Yes.

MS GILL MARCUS: So you've roughly got ten more days of that position. Do you have any idea of what happens to you on the 1st April?

MS NOMZAMO PETJE: Ma'am I do not know but I have already – I'm taking legal, you know advice privately. I have already communicated this to my line manager, Mr Deon Botha that I am not willing to go back to the ESG analyst position. I made him aware that I will not allow the organisation to do what it did to me back in 2015 and for that matter I am prepared to actually wage a legal war against the organisation despite the
10 fact that I might run out of resources.

But he is quite aware. I have written to him. I have written several emails to him to which he's never responded. Thank you.

MS GILL MARCUS: But just for clarity there's been no communication from seniors, it doesn't matter at which level, advising you that you'd been extended in the position. Do you know if there has been an advertisement for that position and that it has been filled or otherwise or is there no information occupying in an acting capacity or what you will do after the 1st April?

MS NOMZAMO PETJE: There is no information, none whatsoever ma'am.

ADV ISAAC MONNAHELA: If I may ask you. You said you were demoted during the
20 restricting process. Are you aware of any other employee that suffered the same faith?

MS NOMZAMO PETJE: I am not aware of, like what Mr Pholwane said that I was the worst affected by the restructuring. I am not aware of any person who was demoted two grades down and on top of that moved to a very strange division and position without any skills. I am not aware of such.

MR EMMANUEL LEDIGA: Question. In terms of your demotion I just wanted to find

out. Is there some way in which there was some break down of relationships? You know things just don't happen you know and if someone say feel that they are targeted there could have been something that has happened along the way.

You know is there something that you can tell us around that?

MS NOMZAMO PETJE: Mr Commissioner through you. How I wish to know those reasons because in my view like I said I working closely, very closely with Dr Dan. Actually with both of them, the former CEO Mr Elias Masilela and Dr Dan Matjila in terms of media relations. I have already mentioned that actually I was writing most of Dr Dan's speeches.

10 Mr Masilela you know had the strength of writing and of communication so there was no need for us to offer him that service. So in the best of my knowledge I did not have anything against Dr Dan in particular. I don't know if he had anything negative or against me in particular.

I also don't know of anything, I've never you know had any run in with Matshepo More previously. But clearly the way they treated me demonstrated that there must have been something. But though you know the environment at the PIC is such that also there is a lot of money spread about people you know.

20 There is a lot of gossip and some people find a way of going to the high offices and spread malice about people. The unfortunate part is that it's the lack of existence of the other side of the story at the PIC. By that I mean that a story has got two sides.

Usually you know people will spread malice and those who are recipients of that malice never bother to check the other side of the story. One of the things that I heard you know from being loosely communicated was that – oh ja this happened to you because you were close to the former CEO.

I said how so? What does that mean? Because all of us, including Matshepo, Sigwela Sigwela, we worked very closely with him amongst others and none of that happened to me. Why me? I still don't know.

MR EMMANUEL LEDIGA: So currently – I mean the way things are you are in limbo. In a sense that the position hasn't been, you know advertised, the one you are doing at the moment.

Has Mr Botha spoken to you about what's going to happen next ...*(indistinct)*?

MS NOMZAMO PETJE: The position as it is at the moment, it's filled by Mr Adrian
10 Lackay. He has just been seconded for a period of time. I don't know for how long, at the Department of Public Enterprises. So it's an occupied position. He permanently occupies the position.

So no there hasn't been any communication regarding my next move or what would happen to me next by Mr Botha. All he said to me was that well the contract is from March and it ends – it's from October and it ends in March when I was engaging with him.

Because I have been engaging with him. I have written emails to him but you know, no, there is just no information regarding that. Yes it's true, I like the word that you've used that I am in limbo indeed.

20 **ADV ISAAC MONNAHELA:** So meaning chances are you will probably be going back to the position which don't like?

MS NOMZAMO PETJE: Well I am prepared to resist that with all the strength and might that I have.

ADV ISAAC MONNAHELA: Okay.

COMMISSIONER: I asked you a little earlier about the levels of the positions of the

Communications Manager and General Manager and you said the General Manager position is higher than Communications, am I correct?

MS NOMZAMO PETJE: Yes sir.

COMMISSIONER: What would you categorise General Manager as management position? Is it senior management position and would Communications Manager not be categorised as senior management position?

MS NOMZAMO PETJE: General Manager would be senior management position. Communications Manager would be your middle management position yes. We however do not have a General Manager Communications.

10 I'm not sure what the commission – in what context the Commissioner is asking the question but we do not have such a position as General Manager Communications.

COMMISSIONER: Well I was going to address myself to Mr Monnahela – Advocate Monnahela hereafter because he said your evidence will relate to two terms of reference. 1.11 and 1.14, I'm looking at 1.14 Advocate Monnahela.

It speaks of Executive Heads and Senior Managers rather than other managers.

ADV ISAAC MONNAHELA: Mr Commissioner you will recall that the witness referred to the appointment of Ms Robina Solomons as Executive Head. The question is was –
20 according to her evidence the position was not advertised. She was just – her general manager position was rendered redundant and she was promoted to the Executive Head Investment Management position.

COMMISSIONER: And I suppose you would argue that proper processes weren't followed there in that instance? Is that the aim?

ADV ISAAC MONNAHELA: Proper processes were not followed. She was just – the

Annexure says or the memo that was written to the CEO requested approval to absorb Ms Solomon to the position.

COMMISSIONER: And what would due and proper process have been? It being advertised and so?

ADV ISAAC MONNAHELA: I believe it will be that the position should have been advertised so that everyone could compete for it. Because I believe that Ms Solomon is not the only employee within the investment management division who could have been given the position.

10 There are probably other employees that could have applied if it had been advertised.

MS NOMZAMO PETJE: If I may add through you Commissioner. The reason why we just opposed my situation with Ms Robina's situation is to show how differently we have been treated. She was just catapulted to the next higher position whereas I was demoted when there was a vacant position to which they should or they could have just appointed me on – in – sorry – if they wanted and they didn't.

So it's to show how differently we have been treated within the PIC. Thank you.

COMMISSIONER: And was there a position for her to be catapulted to or was it created specifically for her?

20 **MS NOMZAMO PETJE:** I wouldn't speak authoritatively on that. What I know is that that position was not advertised. The Human Resource Division runs internal adverts and we all see them.

Like I have said the position in which I am acting was advertised last year in March. I chose not to apply for the reasons that I've already advance. I did not see an advert like that for the one that Ms Robina Solomon is occupying at the moment.

Also previous witnesses did speak to that who came before this Commission.

COMMISSIONER: And your old position of Communications Manager does that position exist or doesn't it exist?

MS NOMZAMO PETJE: No sir. If I may use this word, ...(indistinct), they killed it. It's no longer in the structure and it is the only position might I add that was removed from the structure.

All other positions are still there. They were just renamed differently.

COMMISSIONER: And of course you say according to you view there is a need for the position that you occupied in the PIC? You don't agree with it being redundant as it
10 were?

MS NOMZAMO PETJE: You mean the Communications Manager position? Yes there is a need. It could you – whatever they organisation chose to call it, evidence is the fact that they appointed Mr Adrian Lackay in a position much higher, higher than the one that I was occupying which speaks of the need for that kind function to be there.

Otherwise if there was no need for that they wouldn't have created that position through restructuring in the first place. Also you know based on what SCOPA said when they criticized EXCO last year in December, that the PIC is not communicating adequately and everybody knows that the PIC is in a deep crisis

We need to communicate you know in a crisis situation like this to – I mean
20 to give comfort to the clients, to the public and any other relevant stakeholder. So you cannot afford to be, you know – I mean killing positions that are key for the organisation.

Just on the last point on my side is that, there is a tendency of relegating communications you know to the back benches. But communications is actually a strategic management position which should be taken seriously by the organisation that

I work for the PIC especially in a situation like this.

Because right now what the public, the clients and government want to know is how is the PIC going to navigate itself out of the crisis in which it finds itself and it is important for those individuals to be able you know – I mean to do that and to do that convincingly if they are given the space, the time and resources by the organisation to do that.

COMMISSIONER: Can you just remind me the position held by Mr Lackay ...(intervenes).

MS NOMZAMO PETJE: Mr Lackay ...(intervenes).

10 **COMMISSIONER:** Sorry, that you are acting in now, is that still to do with Communications or is it something else?

MS NOMZAMO PETJE: Yes sir.

COMMISSIONER: Okay.

MS NOMZAMO PETJE: Ja it does although maybe there are other additional functions because you know like I said he – it's a public investor relations, SOE's and whatever they call it. So he would over and above the communications functions, he would be liaising closely with State owned enterprises I would assume.

COMMISSIONER: And you didn't apply for that position?

20 **MS NOMZAMO PETJE:** I didn't apply sir for the position because to me it was a foregone conclusion that it was his and besides I also did not apply out of respect of self-respect and self-preservation.

I felt that I did not want to expose myself and legitimise what I would have considered as a process that had a foregone conclusion. That is why I abstained.

COMMISSIONER: Thank you.

MR EMMANUEL LEDIGA: Question from my side. I just want to follow up on

something you mentioned about ex CEO's people. You know you mentioned that there could be some undercurrent that there are people who belonged to the last CEO versus Dr Dan.

Is that thing a big thing at the PIC? Is that still continuing that there is that undercurrent about that? Am I clear?

MS NOMZAMO PETJE: You are clear. What I would say based on my experience and by the way this is my eight year at the PIC. My observation and my experience is that the – some people thrive by doing wrong things in the sense of bad mouthing and spreading malice about other people.

10 They find themselves you know maybe promoted or getting huge bonuses or salary increments and all of that. People talk, I do not have hard evidence on that but I believe that I am not the only person who is speaking to this issue.

So in my experience and in my observation, yes there would be people that could be viewed as you know maybe favourites, you know for lack of a better word or people who would be - who would easily access the seventh floor as it were and I wasn't one of them.

ADV ISAAC MONNAHELA: You referring to the seventh floor – accessing the seventh floor. Who is on the seventh floor?

MS NOMZAMO PETJE: It was the former CEO, Dr Dan Matjila and the current acting
20 CEO, Ms Matshepo More and their PA's.

ADV ISAAC MONNAHELA: Are they the only people that occupied that floor?

MS NOMZAMO PETJE: I must say the seventh floor is split into two. They occupy a wing – one wing of the seventh floor and the other wing I think its internal audit, yes.

MR EMMANUEL LEDIGA: Follow up question. Just in terms you mention that there are people who are like favourites or you know the powers that be. How, you know how

do you become that? How does someone become unfavoured and how do others become like favourites?

What are the characteristics that you must display to be favoured and all that you know? Ja like if you could, you know what do these people display you know?

MS NOMZAMO PETJE: Well let me start by saying I mentioned that there are people who would access actually the seventh floor easily than others. Of course interpretation may vary. We could say they are favourites you know.

Like I said my experience has been that for some people it would be easy to spread malice, damaging information about other people and well maybe with intentions for favours from those they are taking this information to.

If I remember when Mr Victor Seanie spoke very well to this issue as well.

MR EMMANUEL LEDIGA: And how do people fall out of disfavour? You know how do they suddenly you know hear that they don't want you here you know and all that?

MS NOMZAMO PETJE: It would be very difficult to actually determine that. but I could imagine that if I spread a rumour about you to person X, you will automatically fall out of favour with that person.

Especially if that person does not do the rational thing and the reasonable thing to actually hear the side of your stories which makes two sides of the story.

MR EMMANUEL LEDIGA: I get it. So it could be that someone says Ms Petje said something about some head of a department and it's just a rumour and now they take it personal and say I'm going to deal with that person now, is that what you are saying?

MS NOMZAMO PETJE: I wouldn't know the issues in particular raised or spread by other people but I know that there is a lot of malice spread about people at the PIC, very damaging and malice that actually has affected people's destiny's and future.

Some of them I want to believe that they are baseless. That is what makes

me maybe think that I could have fallen within that category of people. However I do not know what could have been spread.

What malice could have been spread about me except what I told you that I heard people comment loosely in the passages that, oh okay that's because you were close to Mr Elias Masilela and the only thing I was close to with Mr Masilela was a professional relationship just as I was close with Dr Dan.

I could walk in their offices anytime there was a need for that to happen you know. I wouldn't even make an appointment. I would phone their PA's, especially when there were pressing media issues. I would simply run, at the time we were at the third
10 floor on the old building and just walk in and discuss whatever needed to be discussed and ...(indistinct).

That was just the nature of the relationship with both gentlemen and just to add you know. The nature of a Communications Manager or a professional communications person is that you work with everybody across the board. You work with people within the organisation and I have done that during my tenure at the PIC.

I have worked with different divisions. For instance when I was responsible for compiling the newsletter I used to have representatives from different divisions who made input from their different divisions you know, to the newsletter and constantly we would, you know communicate with this people even their heads.

20 I used to sit in listed you know meetings, listed division meetings. They had meetings every morning just to check what's happening in the markets for the day and all of that. I would sit with them just to track on communications issues that we could pick up from those meetings you know.

I worked with people differently across the board within the organisations besides or over and above the two heads that I am referring to. So there is no way you

can be a communications professional and be confined to a particular corner otherwise you won't be able to effectively communicate on behalf of the organisation.

Internal communications is as important as external communications. The employees are the most valuable asset of an organisation and sometimes – actually always it is important to ensure that you communicate with them.

I'll give you an example sir. During this whole saga from 2017 about the James Nogu rumours and all of that, there was no proper communications within the PIC. We would rely on external you know information from the media and all of that.

The only time that I remember that stuff was communicated to us was I think
10 when I was discovered actually that Dr Dan didn't have a relationship with Ms Pretty Louw and all of that. If I'm not mistaken that part that was communicated.

But the rest of it, we were on our own. We were depending on the independent news media, SABC, E News, social media and to me that is bad. That is where you need to actually reinforce your internal communications. Because that destabilises the organisation and indeed it did because we didn't have information.

We were not sure what next. What else we had to expect, you know what else was going to come out and how is it going to be dealt with. So that in essence has just painted the importance of internal communications in particular.

COMMISSIONER: Thank you very much Ms Petje. Thank for the time that you took to
20 come and testify here before us and I must say still being inside the PIC and you come forward to testify in the way that you have done required bravery and I commend you for coming okay.

MS NOMZAMO PETJE: Thank you sir.

COMMISSIONER: Thank you.

MS NOMZAMO PETJE: Thank you.

ADV ISAAC MONNAHELA: Mr Commissioner may we take an adjournment, the tea break?

COMMISSIONER: Then we come back ten to?

ADV ISAAC MONNAHELA: Yes Commissioner.

COMMISSIONER: Right we'll adjourn until 11:50.

INQUIRY ADJOURNS

INQUIRY RESUMES

ADV JANNIE LUBBE: Mr Commissioner, we are ready to proceed with the next witness, but before I do so I undertook to update the commission on the status of the legal proceedings at the moment between the PIC, the CIPC and Ayo and the situation today is the following: The PIC launched an urgent application against the CIPC to set aside the notice served on them by the CIPC, supposed by the CIPC, but the CIPC has agree, to an extension of the time limit in that notice from 15 days to 60 days. They do not agree and will not concede that it must be set aside, so it's in-the-post matter (?). At the same time Ayo launched urgent application against CIPC and the PIC and where they seek the following relief they want to set aside the CIPC notice and they want to interdict the PIC to comply with the notice. That's a different application. It's also an urgent application. Now, those two applications have been consolidated and will be heard in the North Gauteng High Court tomorrow. I am further informed by the PIC that they have already instructed their lawyers to institute proceedings against Ayo for an anti-dissipation Order of the funds and to reclaim the total amount invested in Ayo. That is the situation and I undertake to update the commission on Wednesday morning of what happened tomorrow in court. I will inform the commission on Wednesday morning of the outcome of that application.

CHAIRPERSON: Thank you. Just a question. When the PIC says they need to

reclaim the amounts or – like, how do they mean? Do you know?

ADV JANNIE LUBBE: They'll have to do so through legal proceedings, Mr Commissioner. So they will have to bring an application in the High Court or they will have to institute action.

CHAIRPERSON: Thank you very much, Mr Lubbe.

ADV JANNIE LUBBE: Mr Commissioner, Mr Mervin Muller is ready to take the oath.

CHAIRPERSON: (Indistinct)

MR MERVIN MULLER: Mervin Muller.

CHAIRPERSON: Do you swear then that the evidence you're about to give will be the
10 truth, the whole truth and nothing but the truth? Raise your right hand and say 'so help
me, God'.

MR MERVIN MULLER: So help me, God.

CHAIRPERSON: Thank you. You may be seated.

ADV JANNIE LUBBE: Thank you, Mr Commissioner. Just for the record, Mr Miller,
before you start your evidence, is it correct that you have prepared the statement
yourself?

MR MERVIN MULLER: Yes.

ADV JANNIE LUBBE: Did anybody, including any member of my legal team, ask you
to change or add anything to your statement?

20 **MR MERVIN MULLER:** No.

CHAIRPERSON: And did you go through your statement?

MR MERVIN MULLER: Yes, I did.

CHAIRPERSON: And you didn't find anything added to it that you didn't ...
(intervention)

MR MERVIN MULLER: No. Not at all.

CHAIRPERSON: Thank you.

ADV JANNIE LUBBE: Alright. Now, do you confirm the content as correct?

MR MERVIN MULLER: Yes, I do.

CHAIRPERSON: Because I will ask you in some instances not to read from your statement because the commission already had evidence on matters touched onto – touched in your statement. I want you to concentrate in your evidence on the issues raised in your statement but from the perspective as a member of the Executive Committee off the PIC. Do you understand that?

MR MERVIN MULLER: Yes.

10 **CHAIRPERSON:** Alright, but first of all I'd like you to tell the commission, in the first paragraph ... (intervention)

MS GILL MARCUS: Sorry. Sorry, Advocate. Can I just ask that when in – when the evidence is being given and you refer to the Minister can you please just name which Minister because, given the different Ministers in a very short period of time it would just help if we know which one you're referring to.

MR MERVIN MULLER: I will. Thank you, Mr Commissioner. Thank you, Mr Commissioner. If I can start? Like I stated, my name is Mervin Muller.

20 "I am a 38-year-old adult male and until last week, the 14th of March 2019, I was employed by the PIC as an Executive Head of Private Equity and Structured Investment Products. I have been in the employ of the PIC since January 2008, so just over 11 years. The facts..."

I've already said that the facts are true, and if I go to number 3:

"I was first seconded to the PIC from an auditing firm where I was doing my articles to assist the PIC in forming a new department, at

that time called Monitoring and Workout. I was then permanently employed by the PIC on 10 September 2008 as a Monitoring and Workout Officer, the first employee in this newly formed division, at that stage reporting to Ms Petro Decker. I was later promoted to the Senior Manager of the department and by the time I left the department in 2013 we had about 10 employees in the department. At that point I was reporting directly to the Chief Investment Officer at the time, Dr Matjila. This department is now called the Portfolio Management and Valuations Department within the PIC. In February 2013 I was appointed as an Associate Principal in the Private Equity Division, reporting to the head of the department at the time. In February 2014 I was promoted to the Fund Principal of the Division, responsible for all direct private equity transactions. On 1 January 2016 I was appointed as Acting Executive Head, Private Equity for 12 months up to 31 December 2016 as my manager at the time took sabbatical leave to further his studies.”

ADV JANNIE LUBBE: Can you just tell who it is – who that was?

MR MERVIN MULLER: My manager at the time was Mr Koketso Mabe.

20 “On 1 January 2017 my manager then resigned from the PIC and after his notice period, on the 1st of February, I was again appointed as the Acting Executive Head of the department.”

MS GILL MARCUS: Sorry, just for clarity: That he took a sabbatical for a year and at the end of the sabbatical resigned?

MR MERVIN MULLER: Yes.

MS GILL MARCUS: So... Okay. And therefore you were acting during that period and you became acting again?

MR MERVIN MULLER: Acting again, yes.

ADV JANNIE LUBBE: You can perhaps... We had evidence previously, but perhaps you can confirm it: During his sabbatical he in fact got a bonus?

MR MERVIN MULLER: Well, I've heard of it. I obviously don't work in the department but that's what's been said, yes.

ADV JANNIE LUBBE: Okay, thank you.

MR MERVIN MULLER: "I then applied for the position Executive Head,
10 Private Equity when it was advertised and I was awarded the position and appointed on 15 March 2017 and had served in this position until I resigned last week on the 14th of March. I was a member of the Executive Committee of the PIC for the last three years. I have obtained the following qualifications: A BCom Law in 2002; a BCom Honours Accounting CTA in 2008; LLB degree in 2010. I am a qualified chartered accountant.

MR EMMANUEL LEDIGA: A question here. So before you sort of proceed can you just please talk a bit to us about what CIPC is and what private equity is? Just the lay of the land there.

20 **MR MERVIN MULLER:** So private equity is specific investments in – mostly in companies that is not listed. In the PIC the Private Equity Division have a specific mandate, which is to transform the economy, so we will specifically look at transformational private equity deals mostly in companies that are unlisted or maybe are planned to be delisted with a certain requirement which is similar to all private equity in the market of over 20%. Structured investment products is a portfolio where

we do transformational transactions on mostly listed companies but where we require underlying protection for those investments, so we've got a couple of different models in that portfolio and we can send you, maybe, a presentation of exactly how that portfolio works if that will assist the inquiry.

MR EMMANUEL LEDIGA: Definitely, please. And where does this division fall under?

MR MERVIN MULLER: The division falls under the Private Equity Department. So the mandate comes from a specific allocation where the listed department also makes use of that specific portfolio to do hedging, normal type of hedging, on the portfolio and then we access that portfolio from the private side to do transformational transactions on
10 listed companies.

MR EMMANUEL LEDIGA: So it's a separate division? So it's not in listed or unlisted, it's a standalone division?

MR MERVIN MULLER: It sits within the Private Equity Department, so it was sitting in my department when I left the PIC.

MR EMMANUEL LEDIGA: Okay. Alright. Thanks.

MR MERVIN MULLER: It's not a separate department.

MR EMMANUEL LEDIGA: Okay.

MR MERVIN MULLER: Thank you, Mr Commissioner. So:

20 "I volunteered to assist the commission with the statement to deal with matters of remuneration and incentives at the PIC. I felt a lot has been said so far at the commission and that for various reasons, which will be clear from my statement, I am in a unique position to deal with this matter and hopefully provide more clarity on it. I believe that the lack of transparency internally and at the PIC as well as the retrospective interference by the shareholder in

the incentives of the PIC staff creates a risk for the most important resource of the PIC, its staff, to be diluted over time and the current highly skilled staff complement to be lost to the market.”

I start off with the one part that I want to deal with, under point 16, which is the retrospective shareholder intervention in incentives. I then start with the payment of short-term incentive bonuses to staff and ExCo within the PIC:

10 “The PIC pays its staff members a short-term incentive bonus in August of every year based on each employee’s performance for the year ending 31 March. The payment of STIs to staff, including ExCo members, is regulated *inter alia* by the remuneration policy, approved and adopted by the PIC.”

I’ve attached this remuneration policy under Annexure A.

20 “Section 12.1.5 of the ... (indistinct) policy regulates how the variable remuneration, i.e. the short- and long-term incentive bonus payments, are determined. Section 12.2 of the policy records the eligibility criteria and basis of calculation of the SCI. In my 11 years at the PIC the PIC, for the first five or six years, paid STI incentives without fail on 15 June of each year. For the last five or six years this changed to payment only occurring in August of each year. There was a couple of times where it even occurred later than this date. This is mainly because of an additional requirement placed on incentives where incentives can now only be paid when the PIC board approves the annual financial ... (indistinct) statements of the PIC. The Minister of Finance, as a representative of the shareholder, annually approves STIs before

it is paid out to staff members. It is my understanding that the Minister has always only approved the bonus pool for the specific year and STIs and LTIs were then allocated from this pool. There is only one pool for all staff and ExCo...”

And there was a question asked by Ms Marcus on that specifically. So there's only one pool.

10 “...and both the STI and the LTI are then allocated from this pool every year. A certain percentage of the pool will be allocated to the STI for that year and the balance will be allocated to the LTI allocation, which is an allocation which will only then vest three years after allocation subject to the conditions. Up until 2015/2016 year I am not aware that the shareholder has suggested any changes to the due amount when approval was granted. In 2016/2017 allocation we were informed that certain caps were introduced to the bonuses of staff and ExCo members by the Minister. These caps were then...”

ADV JANNIE LUBBE: Can you just... Sorry to interfere there. Can you just tell the Commission, who was the Minister there?

20 **MR MERVIN MULLER:** I would assume at that stage it would have been Mr Nhlanhla Nene. ‘And in that allocation we were informed...’ Okay, so I have dealt with point 25.

“The cap applied on ExCo members was then 80% of their annual guaranteed packages. These caps were now introduced and applied retrospectively to the incentives of the previous year and this was not a concept introduced ever before and not covered in the remuneration policy.”

MS GILL MARCUS: Sorry, can I ask you in relation to that and looking at this issue yourself, on what basis can this be applied retrospectively in terms of labour law without consultation or agreement?

MR MERVIN MULLER: So I've had the benefit of actually going through a hearing and there is various legal opinions which I have attached in the statement as well which covers the Minister's right of issuing directives and it's mainly got to do with public interest where he can make these type of allocations or findings on the bonuses. And it's not just done with the PIC. I understand it's been done with other departments or SOEs as well. I'm not sure if this was properly tested already in law but we've got legal
10 opinion which I have found through my hearing process that covers his rights to change the bonuses prospectively or retrospectively. I'm not sure if that was really covered but it's something that I think is a question.

MS GILL MARCUS: I mean, I would understand going forward, but I'm not sure about retrospective.

MR MERVIN MULLER: Yes. And that's exactly why I'm covering it here, is the fact that it's being actually applied retrospectively.

20 "In the 2017/2018 financial year the PIC submitted the incentives for the year to the Minister for approval in August 2018 after the board of the PIC already approved it. I am not privy to these submissions but I am aware though that in anticipation of the Minister applying caps again to the incentives a proposal was made to the Minister to apply even more stringent caps to the incentives and a proposal was made specifically for ExCo bonuses to be capped at 50%."

MS GILL MARCUS: Sorry, who made that proposal?

MR MERVIN MULLER: So that proposal was made through our HR Department, I'm assuming through our HRC Committee and our board but it wasn't discussed at ExCo level so I'm not aware. It's from PIC, yes. So:

"The Minister then, by September 2018, had not yet approved the incentives for the year. Staff were getting very impatient at that stage and at a staff meeting in September 2018 where staff was addressed by the PIC chairman and Deputy Minister of Finance..."

That's Mr Gungubele.

10 "...staff made it known to the chairman that they are extremely unhappy with the ongoing delay regarding the payment of the STIs."

ADV JANNIE LUBBE: Just for the record, the Minister then, at the time, was Mr Mboweni?

MR MERVIN MULLER: The Minister at that specific time, I think, was still Mr Nene. It was at that time when it was going to change. I'm not exactly what the date was.

20 "It was then agreed that all staff members of the PIC except ExCo members be paid the STI bonus payments and they were then paid on the 30th of September 2018. Their payment was in accordance with the remuneration policy and in line with the PIC board recommendation to the Minister. This effectively meant that the payment was done in line with an agreed pool, as presented to the shareholder, as there was no further reduction made to this pool for this payment to the staff. The pool that was agreed and now used to pay the staff is also the one that has been agreed between the PIC and the shareholder in the shareholder compact

for 2017 and 2018 that was signed on 7 July 2017 between the parties.”

So it's an agreement between government and the PIC and I've attached that as Annexure B.

MS GILL MARCUS: Does that have an annual renewal or is it in place until it is reviewed?

MR MERVIN MULLER: It's an annual renewal.

MS GILL MARCUS: Annual renewal?

MR MERVIN MULLER: Yes. And you would see if you look – if you go through the
10 legal opinions a lot of the opinion is based on this shareholder compact. What I haven't
stated here is if you look – if you compare the previous compact, the 2016/17 compact
to the 2017/18 compact it's only in this new compact that there is a clause stating that
the Minister should approve bonuses of the PIC even though it's been a practice over
all of the years that I've been at the PIC.

“At that same time there was also pressure for the PIC to release
its annual financial statement, its annual report. It was a
requirement for the PIC ExCo members' incentives to be disclosed
in the annual report so it was then decided to disclose the
amounts requested to be approved with the *caveat* in the report
20 that these still require approval from the Minister. Incentives for
ExCo was then disclosed publicly in the annual report at the 50%
cap applied as proposed to the Minister.”

I refer you to Annexure D, where there's an extract from the annual report
where these bonuses for ExCo members was disclosed.

“Then, only on 14 December 2018 the PIC paid STI bonuses to

ExCo members. The STI bonus paid to ExCo members on 14 December 2018 was significantly reduced by the shareholder from the STI bonus amounts reported in the annual report for the PIC for 2018. The STI bonus payments originally recommended by the board had already been reduced significantly by introducing the caps.”

As I’ve explained above, and now it’s further reduced by the shareholder when it is paid. I refer you to Annexure C, where I have attached the letter from the Minister approving these bonuses to be paid and how he has then calculated these STI
10 bonuses that is then paid to the ExCo members.

ADV JANNIE LUBBE: This is now Mr Mboweni?

MR MERVIN MULLER: This is now Mr Mboweni, yes. So:

“The Minister now introduced a new method of calculating the bonuses to ExCo members. It is also a change to the practices applied at the PIC previously for the 10 years that I have been at the organisation before this. This new calculation is now in direct contravention to the shareholder compact signed between the government and the PIC on 7 July.”

As I have attached.

20 “If you specifically look at clause 9.2 of the agreement it states that:

‘STIs and LTIs shall be paid to members of ExCo in line with the remuneration policies of the PIC and that the bonus pool shall not exceed 50% of total personnel costs.’

The calculations ostensibly used by the shareholder to reduce the STI are at odds with the principles contained in the remuneration policy and at odds with the distribution of the pool already approved and used for the payment of the rest of the staff, so government is, in my view, therefore, in contravention of this contract. The PIC has not engaged the shareholder on the above breach, that I am aware of, and to the unfair discrepancies in the calculation and payment of the STI bonus for 2018 as required by the agreement in clause 18 and it seems that it was accepted as a *fait accompli*. In some cases the reduced amounts paid to ExCo members translated in employees reporting directly to ExCo members and having a lower performance score than their executive being paid more than their executive.”

And I think I have about three people in my own department where this is the case.

“The downward adjustment was applied only to ExCo members and not all employees equally or fairly and again it was applied retrospectively as opposed to giving principles for incentives in future. Even if the Minister’s powers are accepted his calculation in Annexure C was without consultation and resulted in an incorrect formula being used as it double-applies performance of the company to the incentive amounts to explain. In paragraph 2 it refers to an assumption that the company’s performance was not applied when calculating incentives but these are already taken into consideration when each individual’s score is calculated.”

So, just, if I can explain it maybe in a little bit more detail? The company gets a performance scorecard that they need to achieve, which is contained in this shareholder compact and those are then used to compile ExCo members' performance scorecards. So if you got a certain score based on the company's score achieved by double-counting on both sides you've actually been double-applying the performance to the bonus, and that is then what occurred.

10 "These bonus payments were also now made some two-and-a-half months later than other staff and four months after being due with no due compensation for interest or interest added. In fact, a letter from the shareholder was not tabled or referred to the ExCo members either in committee or otherwise.'

I deal with this lack of transparency later in my statement.

"This meant that the employees affected by the shareholder's intervention have been kept in the dark as to the basis on which STIs were calculated and traduced and for what reason the LTI has been deferred."

I deal with the LTI in my next section.

20 "It would therefore seem as if the shareholder's payment directive is unreasonable, breach of contract and that irrelevant factors were considered in determining the SCI payment due and payable to ExCo members. There exists no valid or fair reason why ExCo members should not, at a minimum, be paid on the basis and calculation used to pay lower levels of management to ensure fairness and prevent high-performing ExCo members from being paid less than low-performing senior managers."

So my next section will then deal with the LTI payments, the long-term incentives. So:

“The PIC annually awards its...”

And it’s very important, the word ‘award’.

10 “...awards to its staff members the long-term incentive bonus each year based on each employees’ performance for the year ending 31 March. The PIC annually pays to its staff members all vested LTIs on 31 December of each year based on the conditions imposed by the policy for vesting of LTIs. The remuneration policy read with the shareholder’s compact provide for the board to submit its recommendation for the allocation of LTI bonuses to ExCo members on an annual basis to the shareholder. The shareholder is required to approve the LTIs before it is awarded.”

Again, important to refer to the word ‘awarded’ because if you also look at the legal opinions that I have attached the word ‘award’ is being used when – most of the time when used in – when the Minister’s powers are described, so ‘award’ and ‘payment’, I’m making a distinction on that.

20 “The policy provides that the allocated LTI only becomes payable three years after allocation. An employee has to comply with certain vesting requirements and if these are met the payment is made on 31 December. The shareholders... The shareholder has, at all times prior to 2018,...”

So every year prior to the last year.

“...only approved the allocation of LTIs and no approval has ever been sought for the payment thereof when the payment is due. All

staff except members of ExCo were paid LTI benefits on 31 December 2018. The Minister has discussed before and in his letter request ExCo LTI payments for 31 December 2018 to be deferred. The shareholder, this year for the first time ever, requested to review the LTI payments of only the ExCo members before it is paid.”

And you can find that in Annexure C.

“This LTI, currently still being reviewed by the shareholder, was approved by the shareholder in 2016.”

10 So I think in 2016 this awarding was approved by Minister Gordhan at the time.

“It would have made sense if the new Minister now wanted to have insight in the current year’s awarding of LTIs for ExCo members but he is now reviewing the already approved LTIs that’s now only due for payment. No reason or explanation for the continued delay in payment has been forthcoming and this matter remain unresolved still today. The following features of the LTI are important:...”

20 I’m not going to deal with 60. I think I’ve dealt with it enough in the statement. On 61:

“No fair justification exists for ExCo members being deprived for – of their LTI payments whereas all the other staff have been paid their vested allocations. At the time when my LTI was awarded to me I was not even an ExCo member.”

So my fellow colleagues, who was awarded LTIs at that time, now got their

payments and I still haven't received the payment.

“Having resigned, my only option now is to seek legal remedies, at a large cost to myself, to try and get these paid to me. I have met all requirements for the vesting and payment of the LTI. My chief score at the PIC has actually always been way above four out of five and I easily met all the requirements.”

I then follow the grievance process, which I deal with from point 65:

10 “On 18 December 2018 I was advised by the Executive Head, Human Resources that my only recourse would be to lodge a formal grievance as per my contract and the policies of the PIC. I lodged a formal grievance on 19 December 2018 in respect of the STI and LTI issues described above. As there was a significant delay by the employer to entertain a grievance hearing I, on 12 February 2019, based on legal advice sought, furnished the employer with a letter of demand requiring compliance with the terms and conditions of my contract as it relates to SCI and LTI.”

I have attached that letter of demand as Annexure E.

20 “The grievance proceedings was then scheduled and heard on 19 February 2019, two months after lodging my grievance, and the employer now sought to derail the grievance process by raising a point *in limine* issue insofar the STI and LTI are concerned, effectively arguing that the grievance process does not have jurisdiction over the matter. This now after dragging me along in the process which they instructed me to follow for two months at that point. The Ruling ... (intervention)

ADV JANNIE LUBBE: Just to make it clear, you were advised by the Executive Head, Human Resources to follow this course?

MR MERVIN MULLER: Yes.

ADV JANNIE LUBBE: And when it came at last before this grievance hearing they took the point, the employer took the point, that the grievance process does not have jurisdiction?

MR MERVIN MULLER: Yes.

10 “The Ruling subsequently by the chairperson of the grievance hearing was that PIC as an employer could not entertain or endeavour to resolve the grievance insofar as the STI is concerned as the PIC is bound by the shareholder’s decision to reduce the STI of ExCo members.”

I deal with it a bit later, but on the LTI she found that a hearing could be held because – specifically because the word ‘award’, you would see in the legal opinions, was mentioned a lot. And the award was already approved, so she felt that the hearing can be heard and it was scheduled for 15 March 2019. I might repeat that when I get to that point again.

20 “A couple of days before the hearing the Executive Head, HR supplied me with two legal opinions sought by the PIC in July 2017 regarding the powers of the Minister with regards to the incentive. I was surprised that as an ExCo member this has never been shared with ExCo before, and still not to date.”

But I deal with this later in my statement.

“The Ruling of the chairperson relied mostly on these opinions.”

And I have attached them under Annexure F.

“The grievance relating to the LTI issue was scheduled to continue on 15 March 2019.”

I’ve just said that.

“I was subsequently advised by senior counsel to lodge a case at the CCMA and this was formally lodged on the 8th of March. The LTI payment remains unresolved and if the Minister choose to reduce the amount due as well it will again be a retrospective application of his powers. I have, in line with legal advice sourced, tendered my letter of resignation to the PIC Acting CEO last week, 14 March 2019. The resignation was with immediate effect as a result of the breaches not being rectified by the employer.”

10

And I have attached my letter of resignation.

“The grievance hearing scheduled for 15 March was thus – has thus then not continued.”

So I then deal with the effect of this specifically on myself, but not as a grievant. More to give you an example of how this can influence and the unintended consequences if this continues for people in the employ of the PIC. So my personal case:

20

“I planned to leave the employment of the PIC in August 2017 as I intended to move to the United Kingdom to seek different opportunities and obtain other skills as I had already at that stage spent nine years with the PIC and I felt it was time to move on. At that stage I have already spent about three years planning my move, including going through the application process for an ancestral visa for the UK as well as registering my kids to start

school in the UK for September 2017. After consulting the CEO, Dr Matjila, of my intended move in August 2017 he urged me to stay at the PIC a bit longer as it was a very turbulent time and there was a general view that external forces were trying to penetrate the PIC. As school start their new term in September each year in the UK I decided to move the registration of my children at the school in the UK to September 2018 and stay at the PIC until I receive my STI payment in August. In early 2018 I informed the CEO that I intend to resign from the PIC after receiving my STI in August 2018.”

10

This is now last year.

“On 1 August 2018, as per normal process, I received my performance score from the PIC for the year ending March 2018, which will form the basis of my STI payments for that month. My score was 4.23 out of 5 and I expected a decent STI because of this performance. On 8 August 2018 I took leave from the PIC for three weeks and myself and my family, my wife and two kids, five and seven years old, left and moved to the UK.”

It was my intention at that stage to submit my resignation as discussed with the CEO as soon as I received my STI payment later in the month. It was also my promise to my family that after serving my notice period expected to be no later than the end of September 2018 I will permanently join them in the UK, this already was a very difficult discussion as they're moving to a new country and it wasn't an easy discussion.

20

So point number 84, my STI amount reported in the annual financial

statements was just over R1.8 million and it was definitely worth waiting for this amount for myself and taking some discomfort from flying up and down between South Africa and the UK for a short period of time. At no stage during the next five months was there any clarity on how long we will be waiting for the shelled to approve the STI and it literally became a case of us hoping every week that it would be approved by the following week. I then for five months remained in this state of flux, expectation and promise and you can imagine how this started to influence my family life. I had to fly up and down constantly and in hindsight the amount paid in the end was not even worth the effort.

10 In September when the rest of the staff was paid and the annual report was published the anticipation was that the end is near and we will be paid soon. Ultimately we were only paid on 14 December as discussed above but now our amounts has basically halved. Our LTI payments was then due on 31 December and I decided to wait for this payment before I resign and join my family as it was now only two weeks before this payment was due. Our Executive Head HR never shared the letter from the Minister with Exco but we were told that the Minister also determined that the LTI payments for Exco must be delayed until he has made a decision about these.

 The letter from the Minister was only shared with me in my hearing when requested by my lawyer and has still not been shared with other Exco members, but I
20 deal with this later in my statement. I then followed the grievance process as described above as the pressure for me to join my family has now increased significantly and I could not afford to wait much longer. The cost of travelling between South Africa and the UK has also now become untenable. Clearly the Minister's reluctance to deal with the matter expediently has had unintended significant consequences in my life personally and it's my view that other people could find themselves in similar positions

in future if this trend continues.

I then start with my new section.

MS GILL MARCUS: Sorry just again for clarity, so at this point in time the LTI has not been paid and that your STI was half what you expected, was there any steps taken by the PIC in relation to the shareholder to say, to challenge that position and say this is what has been agreed, this is what has been published, can you give us details of your arguments, protect your staff, their contracts with the staff actually matter, something from the PIC to the shareholder that there's an engagement about this matter, were you aware of anything of that nature?

10 **MR MERVIN MULLER:** Yes as it relates to the short term bonuses as I said my understanding is that there's no further engagement on that and it has been accepted that the Minister has got the rights and there's no further point in dealing on the matter. As it relates to the LTI I am aware that the PIC are in constant discussion and constantly trying to get the shareholder to sign it off even when I left last week I heard that they were still engaging. Unfortunately this is not shared with Exco members you have to hear it in, through the grapevine typically but I am aware that they are engaging even our Board is engaging. So it's a big concern for our Board specifically as well and I know that this is something that they want to deal with urgently and the problem does not lie actually with the PIC or its Board, they have been very helpful and very
20 supportive but it's almost out of their hands.

MS GILL MARCUS: Advocate can we ask the Board to give us information as where this stands?

ADV JANNIE LUBBE SC: We will do so Mr Commissioner.

MR MERVIN MULLER: So my next section I deal with the regrading of staff, changes in salaries and Exco's involvement in these. It's firstly important to make a clear

distinction between annual increases and increases as a result of regrading or restructuring. All PIC staff annually receives an increase in their salaries based on their performance and the remuneration policy. From time to time the PIC has undergone restructuring or regrading processes whereas salaries were adjusted ad hoc as a result of these exercises, these would be done to ensure the PIC is paid in line with the market.

In August 2017 most PIC staff were issued with letters stating that they were re-graded in terms of a regrading process undertaken by the employer informed by an independent service provider and most staff including Exco received significant increases of their annual salaries as a result of this. The regrading was done effective 10 1 April 2017 and all re-graded staff received a back payment in August 2017 for their newly determined salaries. Exco was never involved in this process and never had sight of the calculations of these increases and was only supplied with a list of broad criteria used as to how general staff was assessed. In fact some of us was confused when we saw the back payment being made into our accounts as we haven't even received letters ourselves at this stage.

MS GILL MARCUS: Just on this question, in relation to Exco meetings was this ever raised by yourselves or other members to say on what basis is this happening? You know as Exco members you have certain obligations and rights is there a question that 20 this was ever raised by Exco members to say we need to know what's going on?

MR MERVIN MULLER: I deal with some of it later as well but it's definitely the case that on various occasions that we have requested that we be involved to understand the process and I think there's been evidence led in this Commission already of some other Exco members that's not at the PIC anymore who've confirmed they've also raised it but I mean confidentiality of the information was always used as an excuse

that Exco members cannot be that directly involved specifically in those type of amounts.

MS GILL MARCUS: And at that point in time the CEO was the Acting CEO during this period, partly was the CEO and then partly the Acting CEO?

MR MERVIN MULLER: Yes. Exco has never been privy to how the regrading and increases were determined as the principles used for staff was different to the principles for Exco members. Staff in general were quite unhappy with this process as when people started to compare themselves to their peers they could not understand the discrepancies between each other, some people received negligible increases and
10 others a very significant increases. This in some cases caused situations where peers had differences of up to R1 million between each other and most felt concerned on the criteria applied when they compare their experience, performance and qualification to each other.

The lack of transparency created a perception rightly or wrongly that favouritism was rife in application of these principles. In my department it created massive gaps between peers and I was not in a position as the head of the department to explain the reasons for this. It seemed that only a select few were allowed involvement in determination of staff gradings and this included the HR head and the CFO at the time, now the Acting CEO. I raised a concern on how I cannot be involved
20 in analysing my own staff prior to approval of these new grades but confidentiality as I stated before of the information was always used as an excuse.

ADV JANNIE LUBBE SC: Can you just explain to the Commission how can that be an excuse to an Exco member of this institution?

MR MERVIN MULLER: Yes I deal with the terms of reference of Exco a bit later so I totally agree that it can't be an excuse, it specifically actually is a responsibility of Exco

to have oversight over these salaries and gradings and incentives but as I state throughout the statement we are not involved in any of those.

ADV JANNIE LUBBE SC: Okay.

MR MERVIN MULLER: I was also uncomfortable to sign the letters to my staff as some of the other Exco members were as well and ultimately the HR head signed the letters on my behalf to my staff. Shortly after the regrading payments of staff in August 2017 we were told that all appointments of new staff members would now be frozen as the regrading has now resulted in a shortfall in budget that would first need to be sorted out. The freeze was only lifted in March 2018. This specific freezing ... (intervention)

10 **ADV JANNIE LUBBE SC:** I'm sorry to interrupt you again, I find it very difficult to understand and luckily you're in the position of a chartered accountant, how can there be a regrading and then a freeze because of the budget implications, does that make sense?

MR MERVIN MULLER: It doesn't make sense, no. You would expect the budgets to be done before the regrading is implemented.

ADV JANNIE LUBBE SC: Thank you.

MR MERVIN MULLER: This freezing of appointments has affected two of my staff at that stage significantly as we just finalised the interviewing process for their appointments and already identified them as successful candidates, this is now for
20 promotions in the department, but due to the freeze could not finalise these appointments. It was only in March 2018 that we managed to finalise these appointments. As a result of this they missed the LTI allocation for that year, they got a lower increase and they also got a lower STI than their peers. They are still paid way below their peers in the department.

In August 2018, this is now last year August, Exco salaries were adjusted

again. This was again never discussed with Exco and the principles supplied was never disclosed. All we were told was that this was start of the previous year's regrading process and that Exco's adjustment was done over a two year period. So in August 2018 Exco salaries were adjusted for effective 1 April 2018 and a back payment was made to each person. General staff heard of this additional adjustment and there was further unhappiness generally on how Exco are paying themselves before looking at the rest of the staff.

MS GILL MARCUS: It might just be a rhetorical question given that you've indicated there was no communication to you but if it was a two year regrading process to be paid in two parts why would it have to be retroactive from August to April surely it would
10 have just come into effect as something that had been previously agreed in April?

MR MERVIN MULLER: Yes, that's a good question, I don't know. I don't have the answer to that. So the head of HR after this told staff at various staff meetings that the PIC is in the process of regrading them as well and that the implementation of it is imminent. On 16 August 2018 a moderation committee which is a subcommittee of the Exco was held to discuss the regrading of the rest of the staff. I was on leave but asked if I can dial into the meeting to at least discuss my own staff's gradings. This was the first time since serving on Exco that Exco was asked to be involved in the detail of staff regrading and adjustment to salaries. It was strange to me that we are
20 now being asked to be involved as we were not involved the year before but thought it was a step in the right direction in creating transparency of the process followed.

At the meeting on the day a spreadsheet was sent to Exco members with a suggested regrading and salary increases for all staff members excluding Exco. As I said Exco was already paid at this point. I was then dialled in when it came to the discussion on my team. We had a robust discussion on people and even compared

them to their peers in different departments. As I recall there was an adjustment for almost every person suggested in my team, I was quite satisfied with the approach followed in the meeting as it now sought to rectify the massive discrepancies between peers that existed because of the process followed the previous year.

It's important to state that the CFO at the time, Ms More, did not participate in this meeting. The meeting then took a break and I was never dialled back in on the day. I heard then that the meeting was rescheduled to a later date. On my return to the office by end of August I realised that the meeting has still not occurred. A meeting was then scheduled again on 21 September 2018 more than a month later. I state here
10 Ms More was in the meeting, I think she was in the meeting. At this meeting we were issued with the principles that will be applied for the rest of the staff and their regrading at the meeting on that day.

If you compare the principles used in the previous year to this year you would see now that there are some changes made to the principles that will now be applied. The most significant change was that staff who received a grading change within the last three years would now not be eligible for grading and additional increases. This is a significant change to the principles used on 16 August 2018 as now only one person in my team will be eligible for a change as opposed to almost all of the members as I stated previously. This also does not allow for the gaps now that
20 existed to be rectified.

A meeting was then only again scheduled for 19 December 2018. So remember the regrading of the rest of the staff is by this stage still not done and affected. At this meeting new principles were introduced again mainly by the Acting CEO. These new principles caused to eliminate even the last person in my team that was eligible. The main new principle introduced was that to be eligible you now have to

have had three years of scored performance ratings.

ADV JANNIE LUBBE SC: Can I just again ask you, these new principle introduced were they discussed with Exco?

MR MERVIN MULLER: Yes so at this specific Exco meeting on 19 December these were introduced in the meeting.

ADV JANNIE LUBBE SC: No but the point I'm making before introduction were they discussed with Exco?

MR MERVIN MULLER: Not before, no. So these new principles were then captured and sent to Exco members by HR on 20 December 2018. I've attached all three the
10 principles that I've referred to in the statement under annexure H and also there's a fourth additional attachment that deals with a comparison that was made by HR between the principles. It was generally accepted that these new principles will be communicated to staff and Exco accepted that we will now only have a regrading of less than 30 people in the organisation. It was explained to Exco by the head of HR that there was always the intention for Exco's regrading to be paid over a two year period and that it should not have been an expectation by the rest of the staff to receive another adjustment for that year.

My concern came at a staff meeting somewhere in January 2019 where a question was asked by one of the staff members on where the PIC's at on the regrading
20 process for the rest of the staff. The Acting CEO and Executive Head HR then told the staff that the finalisation of the process is imminent and then proceeded to state that the principles applied to the previous year has not changed from the year before. I was shocked as I knew that this was not true. I was then approached within the next week or two ... (intervention)

ADV JANNIE LUBBE SC: Sorry can I interrupt. At the meeting you realised it's not

true, was it taken up at the meeting?

MR MERVIN MULLER: No. I was then approached within the next week or two after the staff meeting in a corridor by one of the HR representatives and told that they will send me a memo to sign regarding the regrading. I told him that I'm not willing to sign this memo as staff has now been told that there has been no change to the principles applied and that this is not true and I was expecting that this memo is actually now going to deal with these changes in principles which later I've realised was the truth. So if they are not willing to be honest to the staff then I don't want to be part of the process. I was then told that HR still proceeded to seek signatures from other Exco
10 members on the matter but to my knowledge no one was willing to sign.

On 7 March 2019 we were then invited to an Exco meeting, so not a moderating committee as previously so all of the other meetings I was referring to was scheduled as a moderating committee so now we were called to an Exco meeting on the 7th March. And there was no documents or agendas supplied prior to the meeting. The Executive Head HR then walked in and talked to the members at this meeting that it will be dealing with the memo that the members are not willing to sign. Ms More was not in this meeting. Exco members made it known to the Head of HR that they felt uncomfortable with the process followed to date and that we should revert to the process followed in August 2018 where it seemed the principles hasn't been changed
20 from the previous year.

It was greed that HR will go back to the spreadsheet used at that meeting, update it with the latest information and will reconvene the meeting then on 8 March as well as 11 March. Such rescheduled meeting has not been called to date and the matter remains outstanding to my knowledge, and it was outstanding when I resigned on the 14th March. My suspicion is that they find themselves again where they found

themselves in August 2017 where the fair application of the principles will result in a budget concern or shortfall for the PIC and that HR probably do not have an answer on how they should deal with this conundrum. In the meantime staff salaries remain a massive bone of contention at the PIC with suspicions of unfairness and favouritism.

My next section incentives of staff and Exco's involvement. As indicated, above, the PIC annually awards STI's and LTI's to its staff dependent, on the application of the remuneration policy and its principles. Each staff member contracts annually with their managers through a balance scorecard on their performance requirement for the year as already outlined by the Executive Head of Human
10 Resources to this Committee. After the year end of 31 March each year an employee will rate his own performance and a discussion about his performance will be held with his manager, adjustments will be made to the scorecard as agreed between the parties.

Every year Exco members will be invited to a moderation committee where all staff, except Exco members, will be discussed and scores will be moderated based on criteria applied at this committee meeting. This meeting generally takes place between May and June each year. The CEO and CFO annually have their own moderating committee meeting to discuss all other Exco members. The final moderated scores of each employee will only be sent to them formally in August of each year. STI's and LTI's ... (intervention)

20 **MS GILL MARCUS:** Sorry can I just ask you on that, on the final moderated scores given the engagement would those scores be known to the head of department and agreed to in terms of each of their staff members?

MR MERVIN MULLER: Yes. STI's and LTI's will then be calculated based on the scores achieved and pool approved by the shelled and the principles in the remuneration policy. In my first six years at the PIC the calculation of incentives was

extremely transparent. It was very easy to after receiving your own score as well as the corporate score and your manager's score to calculate your own bonus according to the principles in the remuneration policy. This has all changed in the last five years. As I was not an Exco member at that time I do not know why it was changed and exactly how the calculation now works.

Since then the process has become much less transparent and it has become impossible to calculate your own incentive or to verify the correct application of these principles. In fact since serving on Exco I've realised that not even Exco members are taken into the confidence of the CFO and the HR head to understand how
10 these calculations are done. I have on numerous occasions requested sight of the model used for the incentives at Exco meetings. The CFO was always visibly upset when I made these requests and they have refused to date to share these calculations with other Exco members. The explanation has always been that it gets audited by internal audit and there's no need for Exco to see the model used. We have no idea of what the scope of the audit entails.

In a meeting in November 2018 I made the request again to share the model and it was again refused. The CFO made a comment to the head of HR in another language at the time in the meeting, I was later told that she said to him we do not ask them to share their models with us. There's a general perception by all staff and Exco
20 members that these incentives are tampered with by the CFO and the head of HR. In my belief this perception is created because of the lack of transparency. The perception is probably incorrect but could easily be avoided if there was more transparency. It would be very easy for each Exco member to create comfort to their staff or the process followed if they themselves was taken into confidence on the calculations.

As stated in this Commission before Exco members are then expected to sign the incentive letters to staff that reflects these amounts that they have no sight of or influence over. These letters are normally only given to Exco members the day before payment of the incentives.

ADV JANNIE LUBBE SC: I'm sorry to interrupt you again, and perhaps we need an explanation. It seems from your evidence that Exco members were united in asking these information from the CFO and the Executive Head HR and they were united in refusing it. Why didn't the Exco members in the majority it seems to me to the CFO and the HR head, why didn't you stand up to them?

10 **MR MERVIN MULLER:** I wouldn't say that at any of these meetings there was a united front asking for the information, it might have been one or two people and the rest would have been very silent on the matter especially when the answers are coming through very quickly and it seems to be aggravated but I would think over time most Exco members, well they've all definitely felt that there needs to be involvement so over time most of them would have expressed their view but I wouldn't say it was simultaneous with each other.

MS GILL MARCUS: Did you feel as an Exco member that you were, you had the ability to voice your concerns and you were talking about the CFO prior to her appointment as Acting, what was the role of the CEO in relation to this because, you
20 know what I'm asking you is how much did you feel you were able to ask and get a response from the CEO because this isn't just a HR person or a CFO?

MR MERVIN MULLER: Yes I think that the – I never really had a view that the CEO is really much involved in the incentives and the calculations, I've never had a discussion with him about it because we always knew it was quite centralised within the HR department and then reporting to the CFO the involvement really lies there. I'm not

aware that the CEO has requested that this information should be shared with us but people were generally, I wouldn't say scared but not as, or reluctant to ask these questions in the meetings.

MS GILL MARCUS: But in an Exco meeting the CEO is present when these things are discussed?

MR MERVIN MULLER: Yes.

MS GILL MARCUS: So no role in relation to ... (intervention)

MR MERVIN MULLER: No specific role, no. So I deal then with, in point 48 with Exco decision-making and transparency. The Exco members are the Chief Executive Officer, 10 the Chief Financial Officer and the executive heads of various departments whereas the Board of Directors is a governing body of the PIC Exco assist the CEO in managing the PIC when the Board is not in session and I refer to the terms of reference as annexure I of Exco. Clause 4.1.1 of the terms of reference states that Exco has the authority to manage the PIC business, operations and staff in terms of the PIC Act and in accordance with the directives and requirements laid down by the Board. Exco inter alia defined document and implement parameters and strategies for the PIC on human resources. Exco is further tasked with implementing the policies and procedures of the PIC. The human resources and remuneration committee plays an oversight role in line with its terms of reference and delegated authority.

20 The role that Exco plays in the preparation and calculation of STI and LTI allocations are as described above in my view not in line with the responsibilities imposed by the terms of reference. All submissions made to the HR and Board with regards to incentives and regradings are not sent to Exco for approval first and Exco has no involvement in these submissions. It has become noticeable that sharing of HR related information and developments to Exco tends to be selective and anything but

transparent. Typical examples fortifying such perspective include the fact that Exco was not taken into confidence on strategic information such as the legal opinions sought on the shareholders rights and intervention on the STI's as I've attached and the calculations made. So the facts or basis of the shareholders LTI interventions and related information requested from HR.

So the only reason I know of the above information is because it was supplied as evidence in my grievance hearing in February of this year. This information, although relevant to Exco members and their incentives has still not been shared with Exco members. Also the letter from the Minister of 4 December explaining
10 how he came to the new calculation of Exco STI's has never been shared with Exco members.

I refer you to annexure J for a couple of e-mail exchanges between myself and the Head of HR where it's evident of this lack of transparency in terms of information. So I say here as can be seen from these e-mail exchanges there was a general reluctance by the Head of HR to share all kinds of information to me even as it related to my grievance hearing as all this information in my view should have in any case been shared with Exco but there's even resistance to share this when it is required for a hearing. Still today it hasn't been shared with other Exco members. There seems to be a belief that only certain people are privileged to see this
20 information and most other related information. In my view this lack of transparency is in breach of the terms of reference of Exco.

In conclusion, shelled intervention and the PIC staff incentives are a big risk to the to the sustainability of the PIC and its biggest resource its staff. What will make it more tenable is if the intervention is made prospectively as opposed to the current retrospective applications of its powers. Staff can then fairly and knowingly plan their

lives and their appetites to still work for organisation in future. Any intervention by the shareholders should be handled with care and I recommend this Commission makes a finding that this intervention can be limited and fair.

The problem unfortunately is not only external, even internally the practices at the PIC needs to change and be more transparent. Exco should at all times be involved in decisions regarding their staff, salaries, incentives and regrading. There should be proper review or practices of staff regrading and salaries to ensure fairness across the board. More than 50% of employees have now joined a union something never seen before at the PIC. I would recommend that the Commission do a climate
10 survey at the PIC where the issues raised above can be tested. The findings most certainly would be extremely negative as it relates to these issues and the people responsible for these.

ADV JANNIE LUBBE SC: Thank you Mr Commissioner this is the evidence of Mr Muller.

MR EMMANUEL LEDIGA: Section J you mention section J but I see it's just presentations but it's not letters.

MR MERVIN MULLER: Sorry Commissioner I can also see in my own pack that section J and H is swapped around so maybe it's with everyone.

MR EMMANUEL LEDIGA: Yes.

20 **MR MERVIN MULLER:** I thought it was only my pack.

MR EMMANUEL LEDIGA: Okay.

MR MERVIN MULLER: So H is actually supposed to be J which is the e-mail exchanges and then J is supposed to be H.

MR EMMANUEL LEDIGA: To be H okay, so it's a swap.

MR MERVIN MULLER: Ja.

MR EMMANUEL LEDIGA: Thanks, thank you.

ADV JANNIE LUBBE SC: If there's no further questions Mr Commissioner can Mr Muller be excused, I have advised him that there is a possibility that the Commission might ask him to return and he's prepared to do so if he's requested.

CHAIRPERSON: Yes are you not in the UK, are you travelling up and down?

MR MERVIN MULLER: I've stopped travelling up and down now but I'm so used to it I'm happy to come back.

MR EMMANUEL LEDIGA: So are you working at the, like are you working now in the UK?

10 **MR MERVIN MULLER:** No, I don't have a job yet I'm planning to actually start my own fund and raise funds for doing similar investments on a continent still from there.

CHAIRPERSON: Yes, thank you very much Mr Muller, thanks for your time and good luck for your intended future venture. Thank you so much.

MR MERVIN MULLER: Thank you Mr Commissioner.

ADV JANNIE LUBBE SC: Thank you Mr Commissioner shall we take the lunch adjournment till two then?

CHAIRPERSON: Till two o'clock then we shall adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

20 **ADV JANNIE LUBBE SC:** Mr Commissioner before we start, I was requested by the Commission to inquire about the outstanding issue of the Minister's approval for the payment of the long-term incentives. The latest news as I have had a discussion with the Acting Secretary of the PIC is that the request was resubmitted to the Minister of Finance by the Board on the 8th of March this year and they still await his response to that submission.

ADV NKAISENG KHOOE: Good afternoon Commissioner and members. The next witness is ready to take the prescribed oath.

CHAIRPERSON: And who is the next witness? And who is the next witness?

ADV NKAISENG KHOOE: Wellington Mthombwe Masekesa.

CHAIRPERSON: Mthombwe. Do you have any objection to taking the oath sir?

MR WELLINGTON M MASEKESA: No Commissioner.

CHAIRPERSON: Do you swear that the evidence you are about to give will be the truth, the whole truth and nothing but the truth?

MR WELLINGTON M MASEKESA: Yes Commissioner.

10 **CHAIRPERSON**: Raise your right hand and say: So help me God.

MR WELLINGTON M MASEKESA: So help me God.

CHAIRPERSON: Thank you, you may be seated. Yes Ms Khooe.

ADV NKAISENG KHOOE: Thank you Commissioner. Mr Masekesa's statement is going to be in relation to terms of reference 1.1. Mr Masekesa, did or were you coerced to make the statement?

MR WELLINGTON M MASEKESA: No Commissioner.

ADV NKAISENG KHOOE: Is this statement a true reflection of your view and your part in this whole deal?

MR WELLINGTON M MASEKESA: Yes Commissioner.

20 **ADV NKAISENG KHOOE**: Mr Masekesa can you please start at paragraph 2.

MR WELLINGTON M MASEKESA: Sure. So my name is Wellington Mthombwe Masekesa, and I am adult male aged 36 years. And I would like to confirm to the Commissioner that to the best of my knowledge that the contents contained in this statement are true and accurate. I was employed by the Public Investment Corporation, the PIC on 20 March 2009 and I have been in the employ since then with

uninterrupted service ...[indistinct] in telling to certain responsibilities aligned to those roles. I have been in the employ of the PIC close to 10 years. Commissioner my anniversary for 10 years is actually tomorrow. There is a coincidence there. I am currently employed as the Executive Assistant to the CEO and I report directly to the Chief Executive Officer of the PIC. And prior joining the PIC I started my career in investment banking, corporate finance and investment advisor and then when I joined the PIC I was one of the first few employees to establish what is now known as the Portfolio Management Workout and Restructuring Unit within the unlisted investments. Then later I joined the office of the Chief Investment Officer in 2011. And among other
10 responsibilities I was tasked to lead a task team to design, recommend and implement a new unlisted investment operational module which was successfully implemented. I am also a Non-Executive Director in various companies, as a PIC representative including the SNS Refinery that we are going to discuss today.

CHAIRPERSON: Sorry what is done in that portfolio management? The workout and restructuring unit? What do you do there? Or what is done there or what work do they do?

MR WELLINGTON M MASEKESA: Okay, thank you Commissioner. This was my when I was first employed at PIC there was no unit that was supposed to do POS Investment Management for the unlisted investments. We were still – PIC was still
20 building up their Unlisted Investment Unit and there were some few things that needed to be done. So this unit we actually started, my colleague who have just recently testified, Mr Mervin Muller and myself and another colleague who is ...[indistinct] to establish this unit which now called PMV at the moment.

ADV ISAAC MONNAHELA: It is called PMV is it not?

MR WELLINGTON M MASEKESA: Yes. Portfolio Management and Valuation.

ADV ISAAC MONNAHELA: And Valuation.

MR WELLINGTON M MASEKESA: Yes. I have obtained the following educational qualifications.

ADV ISAAC MONNAHELA: Just another question, just another. What does – just explain what a PA to the CEO does? The Executive Assistant to the CEO?

MR WELLINGTON M MASEKESA: Okay Commissioner, in some companies they call, they would call me a Chief of Staff. My role is more like investment strategist would assist the Chief Investment Officer by that time to design, implement various investment strategies and as well as to do a ...[indistinct] top portfolio monitoring board for the listed and unlisted investments. I was also tasked to maintain what we call strategic investment partnerships, both locally and internationally. And I was also tasked with maintaining what you call the investment balance ...[indistinct]. So I would monitor what is happening in both listed investment unity, what is also happening in the unlisted investment unity. So some would call me Chief of Staff, but we have resorted to use Executive Assistant.

10

MS GILL MARCUS: Sorry but how would that function relate to the executive heads and departments? Are you a monitor of them because that seems to be a bit of an odd portfolio to sit at the top in relation to the executives? I would have thought your CEO would relate directly to the executives on those matters. Are you a Super Monitor?

MR WELLINGTON M MASEKESA: Thank you Commissioner. And thank you for the question, there was a lot of guys when we explained to them I am an Executive Assistant, they would keep on asking if I was a PA or are you a Super Monitor, are you above executive heads? It is a difficult position to explain, but the position is very similar. I am an assistant to the CEO, so most of the responsibilities that were, that are entitled to the CEO I would assist him. I do not want to equate to the assistant to the

20

Commissioner, but I am saying I assist the CEO when his or her duties which includes mainly strategy, implantation of a strategy, monitoring that strategy and also reviewing that strategy.

ADV ISAAC MONNAHELA: So it could be maybe likened to a DG in the President's office or a DG in the premier's office?

MR WELLINGTON M MASEKESA: Correct.

ADV ISAAC MONNAHELA: Would you say that?

MR WELLINGTON M MASEKESA: Correct.

ADV ISAAC MONNAHELA: Ja, ja.

10 **MS GILL MARCUS**: What would your relationship be to the heads of department or Exco?

MR WELLINGTON M MASEKESA: So my relationship to the heads of department would be mainly on ...[indistinct]. I would from time to time discuss with them the strategy where they are. I request information on their performance. I discuss that performance with the executive heads which I will also discuss with my superior and find ways where we can adjust that strategy. So my relation is mainly monitoring, coordination with executive heads. I can also say that I am a permanent invitee of all Exco meetings and Exco Committees and as well as some of the Board sub committees.

20 **MS GILL MARCUS**: So you are the man of the moment? You are in all these meetings and you monitoring all of that of what happens there. So the effectiveness and the coordination given some of the evidence we have had of Exco, if you are permanent member there, you would have access to what is coming to Exco, plan, help plan the Exco agenda for the CEO, you would know what is in and what is out of the Exco. Is that correct? What is on the agenda of Exco would be part of your responsibilities for

the CEO?

MR WELLINGTON M MASEKESA: From time to time we would discuss the agendas of Exco with him and I will provide my inputs as an assistant. But I do not have a final say, the final say will lie with Chief Executive Office. But from time to time I have to put my input in the agenda and what will be discussed and I also discuss what we will be discussing in those committees prior to those meetings as an assistant. Okay. Thank you Commissioner. Then I will go to my educational qualifications. I have a Bachelor of Commerce Honours Degree in Finance which I obtained from National University of Scient and Technology. I got a Masters in Finance and Investments from University of
10 Witwatersrand. I have got a certificate in Accelerated Supervisory Development from University of South Africa. I got also an advanced certificate in Common Law which I obtained from University of Witwatersrand and I am also a PIC FAIS representative with either E1, 3 and 5 in accordance to FSCA certification.

ADV NKAISENG KHOOE: Sorry, can I ask you just one question? Which other boards do you sit on?

MR WELLINGTON M MASEKESA: Currently on behalf of the as a PS representative, through your Commissioner I sit on SA Home Loans, I also sit on Royal Bafokeng Properties, SNS Refinery and also a subsidiary of SA Home Loans called South African Housing Development Fund.

20 **ADV NKAISENG KHOOE**: Thank you.

MR WELLINGTON M MASEKESA: Commissioner I will go on the paragraph 4 where I am describing the background to my statement today. So I have been requested, this was a request from the Commission that I should present a statement that details the investment by PIC into the SNS Refinery, a company that is registered in accordance to the Mozambican laws. And this statement will cover only details as it relates to my role

in the transaction as a PIC representative on the Board of SNS Refinery. On paragraph 5 Commissioner I am just giving a brief description of the company called SNS Refinery. The SNS Refinery is a palm oil refinery and soap manufacturing plant that is based in ...[indistinct] Nampula Province in Mozambique, so Nampula is in the northern part of Mozambique. And Nampula is the provincial city and the company is located in Nacala. The plant refines and ...[indistinct] pump to produce refined palm oil, soap and ...[indistinct]. The plant is located in a pass of land with an area of approximately 10 hectares. The plant is strategically located closer to border, the national roads and approximately nine kilometres from Nacala Port. On paragraph 6, the PIC invested 63 million United States dollars into the company. And this was ...[indistinct] 28 million US dollars as equity and 35 million dollars as senior debt. So the PIC on behalf of Government Employee Pension Fund now owns 70% of the company's equity. And the PIC initially approved the investment into the company on the 8th of October 2014. The total project was then funded by local banks being Millennium BIM, Moza Bank and also Banco. And I will terms this as Mozambican banks as I go through the statement. With the majority of senior debt of 40 million US dollars and PIC contributing USD 35 million US dollars as senior debt. And the balance was equity which was split between PIC and the local partner. To my knowledge Commissioner, the transaction was done in accordance with the client mandate to invest in the rest of the continent. At the time PIC recently obtained the mandate to invest on the rest of the African continent and Mozambique was identified in the PIC Africa strategy to be one of the key countries to invest in. I would discuss this later, why Mozambique was so attractive when we invested at that time. Then the transaction was also in line with the PIC strategy of working with local partners, investors, financiers and also it had a developmental impact. So at the time when the transaction was done, my role in the office of the Chief

Investment Officer by then, among other responsibility was to assist in the development of the Africa Strategy, coordination and implementation of the strategy in accordance with the client's mandates. And the SNS Refinery transaction was one of the first few direct investment transactions in the rest of Africa within the Developmental and Investment portfolio. I was therefore part of the transaction team that worked on the SNS transaction.

ADV ISAAC MONNAHELA: Question. Just a question. So when the PIC has got a new strategy or a new mandate, like this one does it communicate it to the broader investment community to know and bring opportunities or it is just kept within the PIC?

10 **MR WELLINGTON M MASEKESA**: Thank you Commissioner. To my knowledge I think there was a lot of noise around 2010, 2011 when the GPF announced that they were going outside South Africa. Though this was not the first time that the GPF have invested outside of South Africa, because one of the first funds that they invested was the Hurried Fund Managers that got the mandate to invest in the infrastructure investments. But in 2010, 2011, that is where there was explicit strategic asset allocation to invest in the rest of the continent. And once you get the mandate from the client then the work of the PIC is to develop a strategy to implement that, to implement that strategy or that mandate that you got from the client. If you remember very well we, there was an announcement where PIC is showing that they have now began to
20 invest in the rest of the continent. And I know in 2012 I attended a private equity conference in Accra where by then the Chief Investment Officer had to make a big presentation to a crowd of different investment partners across the continent that we do have a 5% allocation to invest in Africa. So this was made public. And also in our annual report it is very clear that we have the mandate to invest in the rest of the continent.

ADV ISAAC MONNAHELA: And was that made locally too with the local professionals to know and to bring transactions to the PIC?

MR WELLINGTON M MASEKESA: I am not sure if it was communicated. I am not sure about that. But what I am very sure about is we did communicate in our annual report.

ADV ISAAC MONNAHELA: Alright, okay thank you.

MR WELLINGTON M MASEKESA: So on paragraph 10, right. Okay I was part of the investment team that worked on the transaction and my role initially was in relation to the transaction was limited to attending meetings with sponsors, due diligence, providing input in structuring, valuations, negotiations, review of reports by external due diligence providers and negotiations with senior debt lenders which are termed Loco Mozambican Banks, negotiation with promoters, sponsors and advisors. And at that time we were dealing mainly with BDO Maputo. And I would also want to state on paragraph 11 that there was a subsequent transaction that was done on SNS Refinery which I will discuss later and I would want to state that I was not involved in any subsequent, additional or follow-on investment of USD 10 million SNS Refinery, but however I was aware of the transaction as the Non-Executive Director of the company. And then the investment team was composed of the following individuals, and Commissioner I have provided the table with different individuals that were involved in the transaction and were argued by external experts. So from the PIC team there was a Senior Fund Principal at that time and his name was Mr Roy Raja and he was the lead, he played the lead role and he provided guidance and inputs in the transaction, investment process from origination, negotiations, evaluations, structuring and closing of the transaction. He also lead the negotiation with sponsors, banks, advisors and engagements with due diligence service providers. And I must also say

Mr Roy Raja is my colleague from the PIC and I sit with him on the Board with SNS Refinery. And then there was Mr Paul Magula. By that time he was the Associate Fund Principal working in the Easy Buy Division. He led and performed the financial modelling, due diligence assessment of valuations, review of due diligence reports from external experts. He also later performed credit risk analysis of the transaction. And then there was the Chief Economist from the PIC Chief Economist who by the time was called Mr Elikana Maroge. He performed the market study, economic assessment, assessment of potential demand and supply of palm oil in Northern Mozambique and he also did country analysis. And then there was an Investment Analyst called Mr

10 Imran Mia, who also assisted with due diligence, transaction administration and implementation of the transaction, including ensuring disbursement. And then there was Mr Tshepo Rapudi who also performed the financial modelling, due diligence, also assisted with administration and implementation of the transaction, including ensuring disbursement. And then the legal, the PIC Legal team also was part of the transaction and by that time it was led by Mr Nesani who performed the internal review of legal due diligence reports, review of transaction agreements, providing comments and attending meetings, sponsors, advisors as well as the Mozambican Banks. And then the team, the PIC's internal team was supported by technical experts and the technical experts were ...[indistinct] McDonald who performed the technical due diligence and then the

20 financial experts were Ernest and Young who performed the financial due diligence, including valuations. And then the legal experts were ...[indistinct] Cadera of Mozambique which were supported by the CDH of South Africa and they performed the legal due diligence including drafting and negotiations of CTA with local banks. And then after the transaction was approved Mr Roy Raja who is now the Executive Head of Impact Investing and myself, were appointed as the PIC representative on the Board of

SNS Refinery as Non-Executive Directors. Commissioner on paragraph 14 I will start to discuss how the transaction according to my knowledge came to the PIC and how it was originated. So I was first made aware of the transaction by Mr Roy Raja who by the time was the Senior Fund Principal in Development and Investments. And currently Mr Roy Raja is Executive Head of Impact Investing. I was informed by Mr Raja that the proposal which was in the form of hard copy came through the Chief Investment Officer's office, but that time it was Dr Daniel Matjila. And Mr Raja informed that he was provided with the contact details of a company called Indiafrec Tread Investment Private Limited which I will continue to term it as Indiafrec as project sponsors. And the

10 person that was the contact person there was Mr Siyabonga Nene. Mr Raja invited me to attend with him the meeting with Indiafrec. The meeting was held in one of the board rooms at the PIC offices at number 41 Matroosberg, Menlo Park in Pretoria. This meeting was held in around early mid-February 2014, I do not have the exact date but it was around February 2014.

MS GILL MARCUS: Sorry, at the time that you were, where this was taking place, who was the Minister of Finance?

MR WELLINGTON M MASEKESA: True Your Worship, to my knowledge it is at that time in February 2014 Mr Nene was the Deputy Minister of Finance and Chairman of the PIC board.

20 **ADV ISAAC MONNAHELA**: And probably Mr Gordhan was the Minister. The Finance Minister, is that correct?

MR WELLINGTON M MASEKESA: I would check that but I know that Mr Nene was the Deputy Minister by that time.

ADV NKAISENG KHOOE: Sorry. And did you at that time know that Siyabonga Nene was the Deputy Finance Minister's son?

MR WELLINGTON M MASEKESA: True Commissioner, it was my first time to meet Mr Siyabonga Nene and I did not know at that time he was the son of Mr Nene who was the Deputy Minister of Finance by that time.

MS GILL MARCUS: Didn't the names make you ask?

MR WELLINGTON M MASEKESA: True Commissioner they rhymed, they rhymed. But out of profession I could not ask him in the meeting, but subsequently I did have a chat with my colleague and he did confirm indeed that he was the son of Mr Nene who was the Deputy Minister of Finance by that time.

MS GILL MARCUS: At the outset you knew that?

10 **MR WELLINGTON M MASEKESA**: In the meeting I guessed.

MS GILL MARCUS: In the meeting you guessed, but then from then on you actually checked and you knew that this was a family member. It is not a trick question. I mean it is simply a question of saying, obviously there is a Nene one and a Nene two. I mean you know you just assumed yes it is and you were conscious about it, you were aware of it. Yes or no? Yes? No?

MR WELLINGTON M MASEKESA: After the meeting, then I knew. Yes. Okay. Then I was on paragraph 18. So in the meeting – no 17 sorry. So now in the meeting then Mr Mirza and Mr Siyabonga Nene representing their jointly company called Indiafrec were present at the meeting. And then in the meeting Mr Mirza introduced Indiafrec as the
20 company that is registered in South Africa and is involved in various business interests including ...[indistinct] Manufacturing. The company registration details at the time indicated that Mr Mirza and Mr Nene were directors of the company. Then Mr Amir Mirza who have later discovered was of an Indian nationality, presented the investment opportunity to us to invest alongside Indiafrec in an edible palm oil project in Nacala Mozambique which was promoted by Mr Mohamed Rassul Rahim. Mr Mohamed

Rassul Rahim was the project promotor and owner of the project in Mozambique. He is a well-known Mozambican business man who has interest in various business ventures. He speaks Portuguese, Hindi, Urdu with extremely limited understanding of English. So during the presentation Mr Mirza seemed to have a good understanding of the transaction he was presenting. He was so passionate about the proposed transaction. Mr Nene did not contribute much to the presentation. He was quiet throughout the meeting, saying nothing except a greeting. In the meeting ...

ADV ISAAC MONNAHELA: Just to check something, Mr Rahim and Mr Mirza were they Mozambican? Or were they from India? Do you know?

10 **MR WELLINGTON M MASEKESA:** True Commissioner, so Mr Mirza as they presented to us was a business partner of Mr Siyabonga Nene. And jointly they owned a company called Indiafrec that approached us with a proposal to invest in a company that Mr Mohamed Rassul who is a Mozambican is being promoting. I do not know if it is clear.

ADV ISAAC MONNAHELA: Ja, and Mr Mirza was he a local or Indian? You said Indian decent, is he from India or what?

MR WELLINGTON M MASEKESA: True Commissioner, so what I picked up from the CIPC document, he was of Indian nationality. Mr Mirza. And Mr Mohamed Rassul Rahim is a Mozambican. So in the meeting on paragraph 22, so in the meeting
20 Mirza concluded by inviting us to travel with them to Nacala Mozambique to perform plant site visits the following day. He even offered to arrange a scheduled plane to fly us to Nacala the following day. We did not accept this request as it was not in line with our travel policy and we made this known to him. Then later in the meeting it was eventually agreed that we should later arrange to go to Nacala Mozambique to see the plant as presented. In around late February 2014, we travelled to Nacala. Mr Roy Raja

who was the Senior Fund Principal at that time, Mr Paul Magula who at the time was the Associate Principal at Easy Buy Division reporting to Mr Roy Raja. Mr Amir Mirza from the Indiafrec and Mr Siyabonga Nene of Indiafrec and myself travelled to Nacala Mozambique through Nampula Airport.

MS GILL MARCUS: Can I stop you there?

ADV NKAISENG KHOOE: At this point in time did the PIC have a policy on politically exposed persons or not?

MR WELLINGTON MASEKESA: Okay through you Commissioner. To answer that I have to check but I will like to – my recollection is the PEP policy should have been developed I think around 2015, 2016 within the PIC. Because I remember at that time
10 in 2014 we didn't have a specific department called ESG ...(indistinct) in 2014 and I remember we were still refining the process within the unlisted investments.

I don't remember if we had the politically exposed policy within the PIC. But however during the DD ...[indistinct] people – the investment team would look at ESG issues including politically exposed people if they have influence or if there is any problems with them that could hinder us to do business with them.

In paragraph 25

“On the following day a meeting was held at S&S Rifeneria Lda offices in Nacala. We were introduced by Mr Amir Mirza, to the project promoter who
20 is Mohamed Rassul Rahim, his wife Ms Saidata Rassul. We were told that Ms Saidata was a business partner in the S&S Refineria and Ms Saidata from my recollection she speaks both Portuguese and English. We were then later introduced to a very big team of experts. Specialist engineers from a company called Ayoki Fabricon in India. Some local engineers and some from Belgium from a company called Desmet Ballestra Group.

Commissioner I was impressed with the enthusiasm and the professional conduct of the engineers who were working on the project.

The engineers took turns to explain to us how the plant was designed, constructed and configured.”

ADV NKAISENG KHOOE: Can I stop you there? Can you just tell me is it normal for the PIC deal team to go to a far off country at origination stage?

MR WELLINGTON MASEKESA: Through you Commissioner. It is very normal. You know investments and investment professionals and worse in the territory that you are not used to you must – you want to have a ...(indistinct) otherwise you might be sold –
10 you might end up buying something that does not exist.

So before we even attempted to go and think about investing in this transaction I thought it was important for us to go and see the plant that indeed that was being presented by the sponsors was correct.

So it's very normal that during origination the investment team from time to time go and do some site visits.

MR EMMANUEL LEDIGA: Let's follow up there. So was PM1 you know unlisted there at that time or should this have gone through PM1 first to authorise ...(indistinct)?

MR WELLINGTON MASEKESA: Okay through you Commissioner. PM1 ...(intervenes).

20 **MR EMMANUEL LEDIGA:** PM1 was around at that time. I mean wouldn't this have gone first to them to authorise the spending to travel and all that?

MR WELLINGTON MASEKESA: Okay through you Commissioner. So this was still at origination stage. So and Commissioner also bear in mind this was one of the complex first transaction by the team in the rest of the continent.

We didn't want to take chances. I think by that time we have heard stories of

big companies that have flown four five hours to Nigeria to invest in some companies that does not exist and the money was gone.

So we wanted to make sure ...(intervenues).

MR EMMANUEL LEDIGA: No I understand, no I – I just wanted to check whether was a process sort laid out in terms the African investments that you need to go through PMC first and all that. Was there a process during that particular time?

MR WELLINGTON MASEKESA: Through you Commissioner. At that time I don't remember and I don't know what is called origination process. But when you originate a transaction you do a lot of things.

10 You meet sponsors at their offices or at PIC offices. You are trying to establish if there is a transaction and part of establishing if whether there is a transaction they might invite you to come and see the asset.

So this process it was still under the origination stage – there is no ...(indistinct) at the moment. We are still testing whether there should be a deal or not. So part of that was to go and see the asset which was being presented by the sponsors.

COMMISSIONER: But who would give you the go ahead to go and then view what is called the project?

MR WELLINGTON MASEKESA: Okay so ordinarily this will go – at that point all of us
20 we got authorisation from the Chief Investment Officer for us to travel there.

MS GILL MARCUS: And did you take any of your own engineers?

MR WELLINGTON MASEKESA: Okay through you Commissioner. At that moment we didn't take any independent engineers. That process followed after we got permission to go on deeper DD after PMC1.

ADV NKAISENG KHOOE: And did the PIC take an interpreter with them, a translator

for them? I see here you just read out on your statement that there was Ms Saidata who was a business porter in S&S Rifeneria who speaks both Portuguese and English. did the PIC from its side take a translator or an interpreter with them?

MR WELLINGTON MASEKESA: Okay through you Commissioner. Okay through you Commissioner. I think most of all the investment team at that time had a very limited understanding of Portuguese and you'll see when I discuss later it's a serious issue when you go to the countries where English is not the first language.

But when we went to Mozambique one of the sponsors, Mr Amir Mirza he was very fluent in English as well as Hindi. I'm not sure if his Hindi or Urdu. So he
10 could discuss issues with the sponsor in Hindi or Urdu and then there was – he could interpret.

Then the interpreter from Portuguese to English by that time when we went it was the wife of the sponsor whom I called Ms Saidate Rassul, where she could speak English and Portuguese at that time.

In paragraph 26 just describe what I saw.

"I was impressed with what I witnessed. I could term the plant though I'm not
an engineer. From what I witnessed the plant was well built and by
experience international engineers from Ayoki Fabricon, an international
engineering and large scale plant Engineering Construction Company which
20 is based in India. The equipment that were used were of high quality which
were sourced reputable equipment suppliers from Belgium, the Desmet
Ballestra Group which is a world leader in the fields of engineering and
supply of equipment.

Then Commissioner when we visited the plant, the plant was near completion. It was around 80 to 90% complete. Then during the visit apart

from the plant site visits we also had the opportunity to visit various other business ventures the local partner was involved in Nacala in surrounding areas and we stayed in Nacala for two days.”

So Commissioner from paragraph 29, here now I discuss the investment process now that was followed on this transaction.

10 “So after the initial visit when we were doing the origination the transaction team was assembled to have a deeper look into the transaction. So based on the desktop review, discussing the sponsors, various engineers, management and plant site visits, so the PIC investment team felt that the proposed transaction required further investigation for a possible PIC investment. Then to my knowledge the investment followed the PIC investment process and it was approved in accordance to the approved process in delegation of authority at that time. So the following process was followed. So the first one was PMC1, the scoping report.

20 The investment team developed a scoping report to be presented to PMC1. I also contributed to the compilation of the scoping report and it was fitting that we all compile the scoping report as we had first-hand site visit of the project. Then on the 18th March 2014 the scoping report was presented to the portfolio management committee, unlisted investments which I will term as PMC1 and the PMC approved the transaction to undergo due diligence. I have attached to this Annexure A the PMC submission.

Then the initial proposal by that time what was proposed in the PMC1 was – it entails that PIC participation in the transaction to acquire 50% of S&S Rifeneria by the Consortium that was comprising of the PIC and Indiafrec Trade & Investments. We call them the Consortium Oil Edible –

Edible Oil Consortium, for a total consideration amount of ...(indistinct) of 29,25 million. So Indiafrec Trade & Investment requested to be funded by PIC for their portion of shareholding in S&S Refinery.”

Then we went to the due diligence process after the PMC1.

10 “So after the PMC1 approval due diligence process began in around mid April 2014 so we travelled again to Nacala, Mozambique and then a full transaction team including myself travelled to Northern Mozambique in a fact finding mission for the second plant site visit. So as part of the due diligence process Mr Paul Magula, Mr Elikana Maroge, Mr Royith Rajdhar, Mr Imraan Mea and myself travelled to Nacala. Then on this trip we again joined by the project sponsors Indiafrec. By that time which was Mr Amir Mirza and Mr Siyabonga Nene.”

MS GILL MARCUS: Alright can we just go back slightly. Of the 29,25 million that was required according to 31.2, how much of that was PIC funding of the Indiafrec?

MR WELLINGTON MASEKESA: Thank you ma’am. Through you Commissioner. So when the sponsors approached us they were asking that we partner together as a Consortium to buy 50% of this plant. But they didn’t have the capital for them to invest in.

20 So they said, can you fund us and then become partners into this Consortium to buy into the Indiafrec. That was the initial transaction. The basis in which they were coming in, one was saying can we be your local partner, like your BEE partner in this transaction when we invest into the rest of continent.

So were going to fund half of the 29,5 to Indiafrec.

COMMISSIONER: Just for clarity. What was supposed to be purchased? Was it the refinery, the plant or project or was it a share and then PIC and Indiafrec would then

club together to buy a share, is that what it is or shares?

MR WELLINGTON MASEKESA: So the initial proposal or the subscription of shares into this project of 50%.

COMMISSIONER: (Indistinct).

MR WELLINGTON MASEKESA: Yes.

MR EMMANUEL LEDIGA: So meaning that the PIC offered that 29,25 million into a vehicle and that vehicle was like hundred percent funded by the PIC but it was 50/50 shareholdings, is that it?

MR WELLINGTON MASEKESA: Ja.

10 **MR WELLINGTON MASEKESA:** And that vehicle then used that money to purchase a 50% stake in the company is that correct?

MR WELLINGTON MASEKESA: Correct.

MR EMMANUEL LEDIGA: Okay.

MS GILL MARCUS: Did that actually happen or is this the initial proposal because your initial question was that the money spent was more than this. So this was the initial proposal or was this actually implemented in this way?

MR WELLINGTON MASEKESA: Okay so this was the initial proposal. So you'll find out when I go through the statement what happened subsequent to this.

20 **MR EMMANUEL LEDIGA:** Just a question there. So that roughly 30 million dollars was it injected in the business or it was a share sale meaning that the promoter took the money away.

MR WELLINGTON MASEKESA: It was a share subscription and partly was to finalise the ten to twenty percent compilation of the plant. So if you recall that I've mentioned that when we came in the plant was about 80 to 90% complete.

So partly was to pay it down to complete ja and then partly the project

promoter, who was Mr Mohamed Rassul by that time he had borrowed some funds in his personal capacity as a shareholder. And put in a shareholder's loan into the project.

So partly that money was going to go to his shareholder's loan repayment as well.

MR EMMANUEL LEDIGA: To repay his shareholder's loans?

MR WELLINGTON MASEKESA: Yes.

MR EMMANUEL LEDIGA: And then also to fund the business to complete that project?

MR WELLINGTON MASEKESA: Yes.

10 **MR EMMANUEL LEDIGA:** So roughly you know what were the amounts, out of that 30 million what was the amount to complete the project and the amounts to repay the shareholders loans or are you coming there?

MR WELLINGTON MASEKESA: Yes.

MR EMMANUEL LEDIGA: Are you coming there - okay?

MR WELLINGTON MASEKESA: Ja through you Commissioner. I think if I go through – this was the initial – rough initial thing ...(intervenes).

MR EMMANUEL LEDIGA: Proposal.

MR WELLINGTON MASEKESA: Yes. So a lot of things happened.

20 **MR EMMANUEL LEDIGA:** Maybe lets' wait for you and then we see how ...(intervenes).

MR WELLINGTON MASEKESA: Then we can discuss that?

MR EMMANUEL LEDIGA: Ja, ja, ja.

MR WELLINGTON MASEKESA: Yes. Thank you Commissioner.

“So then we went through to the due diligence process. Then after the PMC1 approval, due diligence process began around mid April 2014.”

I think I've gone through that. I'll go to 31.33.

“Okay the due diligence scope covered the financial, technical, commercial, operational and sponsor assessment. Then the financial, technical and legal due diligence were outsourced to experts. Ernest and Young they did the financial and evaluation due diligence. Mott Macdonald they did the technical, those are the engineers. Then Sal Caldeira Attorneys in Maputo working with the Cliffe Dekker Hofmeyer ...(indistinct), they performed the legal due diligence.

10 The local banks as well, the Mozambican Banks who were already invested in the project by that time also performed their own independent evaluations. So the technical experts also conducted their own site visits of the plant in Nacala, Mozambique during the due diligence phase. We all performed the physical plant site visits with the assistance of various engineers at the plant. We also performed physical market site visits and surrounding areas to assist the potential demand and supply of cooking oil. Mr Elikana Maroge who by the time was PIC Chief Economist performed the analysis and review of the economy, Northern Mozambican regional economy and potential demand and supply of the refined cooking oil.

20 Then my role in the due diligence process was to provide and contribute inputs in reviewing findings and reports by external outsourced experts, contribute in negotiations with other senior lender, the local banks, engagements with promoter's advisors, BDO Mozambique and the analysis of the financial model. Then Mr Paul Magula was responsible for leading and developing the financial model assumptions and valuations. Commissioner everyone in the team contributed in the development of the

financial model and valuations of the project, scoping report and review of the due diligence reports from the experts.”

MS GILL MARCUS: Can I just take you back to the 31.37. We all performed physical plant site visits with the assistance of various engineers at the plant. Are we saying that the engineers were those who were working on the plant and the PIC did not have an independent engineer review or assessment?

MR WELLINGTON MASEKESA: Through you Commissioner. We had our own technical experts and engineers from Mott Macdonald and over and above that we didn't only rely from the independent, we also went with the assistance of the resident
10 engineers to go and see what was being discussed in the proposal.

So we had independent reports that were done by Mott Macdonald who were the qualified engineers but over and above that we also went and have our own site inspection of the plant.

Then on 31.4 Commissioner that was the PMC2 approval process.

“So after the DD we came out with the result of that DD, it was positive and then we presented on the 7th August 2014, the project was tabled to PMC unlisted investment for recommendation to priority sector, Small Medium Enterprises Fund Investment Panel, which approved the investment of USD 62,5 million, which was split as 44 million senior debt and USD 18,5 million
20 equity on August 2014. I have attached the Annexure B, PMC2 submission. Then we took the transaction after the approval by PMC2 to the priority section, Small Medium Enterprise Fund Investment Panel which approved the investment of USD 62,5 million which was split at USD 44 million senior debt and USD 18,5 million equity. Subsequent to this approval some Mozambican banks agreed to partake in the senior loan funding. This lead

to PIC funding decreasing from 62,5 million to 62 million which was made up of USD 35 million debt and 18 million equity.

This amended structure was approved by PMC FIP and it was around 20 March 2014. I have attached the Annexure C as the FIP submission.”

Then I deal on 31.5

10 “Then so during the negotiations there were many iterations from the initial transaction structure ...(indistinct) various factors such as negotiation, change in shareholding, co-funding partner requirements, the Mozambique and Central and bank regulations. So that’s why there was this change of the initial transaction that was bought in to a new structure. For example PIC could not fund Indiafrec – subsequently we could not fund Indiafrec because PIC did not apply the BEE policy for investment outside the country.

20 Thereafter then Mr Rassul who was the Mozambican local partner, he agreed to fund Mr Mirza for his portion but subsequently discussion fell through which again affected the structure. Also initially the banks had funded Mr Rassul on his personal capacity and therefore this would have reflected as a shareholder’s loan on the balance sheet. However the banks later changed their position to become directly a lender in the business given that the transaction had occurred several years – I cannot fully recollect all the changes which culminated to the final structure.”

ADV NKAISENG KHOOE: Can I come in here. Initially did the PIC - when the transaction came to the PIC earlier on was the PIC aware that they could not apply the BEE policy for this particular investment before it went to the PMC? When the transaction came in as it was with Mr Mirza and Nene as business partners and

approaching the PIC for funding did the PIC not know at that particular time that they BEE policy would not apply to this investment?

MR WELLINGTON MASEKESA: Okay thank you Chair. So when the transaction was bought by Indiafrec they came is as – they asking us to fund them as their South African counterparts, as a BEE partner to invest in the rest of the continent.

If my recollection is correct by that time we had just got an approval of African Investments Strategy Implementation. I think it was around 2012, 2013. To my recollection we didn't have a policy of investing in transformation transactions outside South Africa.

10 So there was no basis for us to fund Indiafrec as a BEE or as a BEE partner for the PIC to invest in the rest of the continent.

ADV NKAISENG KHOOE: Sorry but was Indiafrec aware of this particular stance with the PIC before they took PIC to Mozambique or not?

MR WELLINGTON MASEKESA: No we were both unsure about it and we never informed them that we couldn't fund them. But after we have gone – when we in the scoping stage – after the scoping stage that's we realised that we cannot fund them as a BEE partner.

20 Therefore we communicated to them we cannot fund them in this transaction but if they want to partner with us we will be very glad to partner with them but they were supposed to go and find their own funding.

MS GILL MARCUS: If we looked at 31.54 and Mr Mirza coming or coming to the PIC with various other projects but if I understand that correctly that would have been through a different company. How did you relate to the question that you come to the PIC on the one hand with one company and on the other hand with another company? Did that raise any questions for you?

MR WELLINGTON MASEKESA: Thank you ma'am. Through you Commissioner. With having read through 31.54 can you – if Commissioner can allow me to go through it and then I can answer the question.

COMMISSIONER: Yes please.

MR WELLINGTON MASEKESA: Okay.

10 “So the first thing I’m saying I was not involved on the facilitation fee negotiations with Mirza. I was not directly involved but however I’m aware that during the S&S transaction negotiations we became aware of other projects that were being promoted by Mr Rassul with the assistance of Mr Mirza. So he was promoting – there were other projects’ that we thought it was of interest by that time. There was one – a hotel transaction a Clinker plant transaction and a Cement plant transaction. Then Mr Mirza indicated that he could facilitate the first right of refusal and co-investments rights to these projects provided he could be compensated for this and for facilitating PS investments in the project.

Mr Mirza was then paid a fee of about USD 1,7 million for facilitating the transaction to his company, Zaid International Trade and Investments. This fee was approved by the PSSME FIP.”

20 **ADV NKAISENG KHOOE:** Can you just explain on what amount percentage wise was this 1,7 million based on?

MR WELLINGTON MASEKESA: The amount was 1,5% - if I can remember and it was calculated on the total project cost.

COMMISSIONER: Which project?

MR WELLINGTON MASEKESA: So it was calculated on the project cost – the S&S Refinery project cost.

COMMISSIONER: The Mozambique project?

MR WELLINGTON MASEKESA: Correct.

MS GILL MARCUS: But how does that relate to the company that comes to you, Indiafrec and you pay a different company for doing the same job with a different partner, by the looks of it? I mean because Indiafrec had two components, Mr Mirza and Mr Nene and then the payment was made to Zaid International?

I just want to understand how one company comes with a proposal and another company is the one that's paid the fee.

MR WELLINGTON MASEKESA: Thank you ma'am. Through you Commissioner. I
10 don't know if you can allow me to read – to finish 31.55 and then I'll answer the whole question.

COMMISSIONER: (Indistinct).

MR WELLINGTON MASEKESA: Thank you Commissioner.

“So my recollection is that Mr Siyabonga Nene was not actively involved in facilitating this transaction. He did not play any meaningful role in the transaction although he did travel to Mozambique on occasions. Mr Siyabonga was not then paid any fee from the PIC.”

Now Indiafrec board this transaction. They introduced us to the promoters and when they approached us they were two partners or they claimed that they were two directors
20 of the Indiafrec but one partner was active. Even when we travelled to Mozambique Mr Siyabonga Nene he was not much interested in this transaction.

It appeared as if the other partner had good knowledge of what was happening on the transaction. He knew the people there. He could discuss everything that we wanted to do. If we wanted a meeting with the banks he will run around and do everything.

Now when we came to PMC – after PMC1 when we informed them that we could not fund them as our partner right then Mr Siyabonga Nene was no longer in the picture. It was Mr Mirza who was doing all the work. Now he was trying to negotiate to be a part of the transaction as Mr Mirza not as Indiafrec at that point of time.

Then when we asked him for the facilitation fee he indicated from the discussion that we had initially with him, he indicated that he was doing all the work and Mr Nene was no longer involved in facilitating the transaction. So that's how Mr Siyabonga Nene was not part of the facilitation fee to my knowledge.

COMMISSIONER: But Mr Mirza, the Zaid International Trade and Investment was his
10 company am I correct?

MR WELLINGTON MASEKESA: Correct Commissioner.

COMMISSIONER: At the same time he was a partner with Mr Nene in Indiafrec?

MR WELLINGTON MASEKESA: Correct Commissioner.

COMMISSIONER: And Indiafrec had come to the PIC for assistance?

MR WELLINGTON MASEKESA: Correct Commissioner.

COMMISSIONER: So in actual fact you are paying \$1,7 million to somebody who has come with his company and said can you help us out? Am I putting it correctly? He is a director isn't he of Indiafrec – Mr Mirza?

MR WELLINGTON MASEKESA: Correct Commissioner. You are very correct
20 Commissioner.

COMMISSIONER: He wants assistance – monetary assistance to get into a project in Mozambique with the PIC and he ends up getting paid 1,7 million?

MR WELLINGTON MASEKESA: Correct Commissioner.

COMMISSIONER: Although it is paid into a different company but he is the person who requested assistance, so he is now being paid for bringing a transaction to the PIC, is

that the position - his own transaction.

MR WELLINGTON MASEKESA: Let me follow up on this.

MR EMMANUEL LEDIGA: Did Mr Mirza you know have a shareholding. I mean did he end up having a shareholding in this company because you might well find that he decided to be paid the amount just as a facilitator.

MR WELLINGTON MASEKESA: Okay, through you, Commissioner. I will first answer your question, Commissioner. So to my knowledge, just to put... Indiafrec, which was owned by – jointly owned by Mr Nene and Mr Mirza, or maybe they were both directors of the company. That's what we could pick up from CIPC documents. They owned
10 Indiafrec and they approached the PIC with this transaction that 'can we partner together, invest into this, but as part of us partnering together if PIC chooses to invest in can you also fund us for a portion?' That transaction did not happen, which means Indiafrec was out.

MS GILL MARCUS: Before you proceed on that, that's exactly where I would like to understand. Did you formally terminate the arrangement with Indiafrec? Did you say, look, this is not possible, this is what we're doing, thank you very much for the work done so far, our relationship with Indiafrec is – there's been no fees paid, there's no commitment to you, it's not working out, thank you very much, and you closed that book with Indiafrec?

20 **MR WELLINGTON MASEKESA:** Okay, through you, Commissioner. To my recollection, that was verbally communicated to Mr ... (intervention)

MS GILL MARCUS: How can you do that verbally if you're dealing with somebody who's come with proper documentation? You've got a commitment you've been out with them, you terminate properly. You are the PIC that is making the deal or not. There should have been some written communication. Not even an email to say thank

you very much but no thanks.

MR WELLINGTON MASEKESA: Okay.

MS GILL MARCUS: Nothing?

MR WELLINGTON MASEKESA: Through you, Chair. I will have to check whether one of my colleagues or the lead investment professional, Mr Royith Rajdhar, did have any form of email communication to Mr Mirza and Mr Nene, but what my recollection is, in one of the meetings it was – when we were discussing the negotiation of the structure it was communicated to them that we will not be able to fund them and if they want to get involved into this transaction they should find their own funding to participate into the transaction.

10

MS GILL MARCUS: I understand that. All I'm asking, I'm trying to understand the value system that PIC is engaged in here where you have a company that comes to you with a proposal and it doesn't work out and your communication to them and then one partner from that same initiative does a lot of running around and you pay them, a different company, \$1.7-million. So unless you've terminated the one and there is a clear distinction between what your interaction is with the second – the same person or half of the company in a different company in a different capacity, because that's... The question for me here is: The activity has blurred between one company and another, where one company is offering – coming with one proposal, one partner of that company does work, I'm not questioning whether work was done or not, and gets into a different account but the initial contact was through a particular company, a different company, and that has not been, from what you've said, properly terminated. So it's almost like, okay... I mean, I can put a different perspective on that if I was listening – as listening to you: We come along together, the judge and I, we make a proposal to you, you say okay, we're going to do it, we go and explore, you come out, whatever,

20

then we say no, we can't fund you, but the judge has a different deal and he starts talking to you and when he continues with you pay him money and I am sitting there saying, well, hang on, what's happened, how did that happen, because you never terminated with me. That's what I'm trying to understand, is how it morphed from one to the other without a formality of the engagement.

MR WELLINGTON MASEKESA: Ja. Let me ... (intervention)

MS GILL MARCUS: And that's of concern, if you did that.

MR WELLINGTON MASEKESA: Ja.

MS GILL MARCUS: That's of concern.

10 **MR WELLINGTON MASEKESA:** Let me ... (intervention)

MS GILL MARCUS: So I would like to know that there was a formal termination to that with the one company, whether it's correct or otherwise about funding. That I'm not asking. I'm just saying they came with a proposal, it wasn't concluded and there was a formal response and terminated that enabled the one partner with a different approach to interact with you and get paid. This way it sort of seems to me a little bit like...

MR WELLINGTON MASEKESA: Let me.

MS GILL MARCUS: There's just something not quite comfortable for me there. Thank you.

MR WELLINGTON MASEKESA: Ja. Ja. Let me try to understand this thing this way:
20 So once Nene and Mirza were no longer part of the transaction, that's a separate matter now, they are out of the way, Mirza continues to do the work. Alright? And then Mirza then says he's entitled to some fee because he's doing the work, mainly because the PIC is going to invest in this company. Ja? The one thing I just want to find out: Did Zaid International actually put in a different proposal and say we are doing the work now, we are entitled to the fees and all that. I think that's where the problem comes

through. That was the formal process from Zaid saying forget about the Indiafrec, we are Zaid now, we are running around and we'll charge you a R1.7-million (*sic*) fee for the work which we are doing and it will be billed through this Zaid International. Is that...? I'm trying to find clarity too around there.

MS GILL MARCUS: And if you could just relate it to the sentence in the middle starts 'he would be... He could be compensated for this and for facilitating PIC's investment in the palm oil project', which is exactly what was happening in the first place with the other company?

MR WELLINGTON MASEKESA: Okay. Thank you, Commissioner, and through you,
10 Commissioner. So after Indiafrec was not part of the transaction Mr Amir Mirza, from my understanding he requested that he wanted to be paid for the work that he has done to bring that transaction that we are not aware of as the PIC and the PIC was continuing to go to invest in the transaction that he has brought in and he was out, and then... And secondly, he said over and above right, right, he had already also introduced us to three projects, which was the hotel, clinker plant and cement plant. And then he said over and above that I will be able to assist you – or to facilitate to the PIC that they have the first right of refusal to co-invest with the local partner in these three projects. And then my recollection was I was not initial – I didn't have a direct
20 initial negotiation with him. That was facilitated by Mr Roy Rajdhar. He wanted 2.5% and then we came back to him that the committee said they cannot pay him 2½% that he requested. So the condition of him being paid the 1.7-million was, number one, he have facilitated a transaction where you've already ... (indistinct), the transaction that we are going to invest, which, if he has introduced that transaction we are not going to invest there. Then the second one, over and above that he had assisted the PIC also to have the first right of refusal to co-invest in the three projects that I have mentioned

and that's how he has been paid the 1.7-million. And then ... (intervention)

MS GILL MARCUS: Did you follow any of the three investments, the hotel, the clinker plant and the cement plant? Was that ever followed by the PIC?

MR WELLINGTON MASEKESA: Yes. So ... (intervention)

MS GILL MARCUS: And are you invested in them?

MR WELLINGTON MASEKESA: Through you, Commissioner. The hotel and the clinker and cement plant project projects, they were assessed by the team and the time – from my recollection, the time they were assessing it we were having some teething problems. You get to know about it when – as I go through my statement, because
10 there were some problems that we started encountering with the local sponsor in this particular transaction, but we did – the PIC did look into these projects. And there was... And then there was also a commitment that was signed off by the sponsor that the PIC will have the first right of refusal on these projects and co-investment rights on these projects, which was signed off and facilitated by Mr Mirza. And from my recollection, Zaid International, it was the – it was his company. It was the same person that we were paying. It was Mr Mirza that we were paying through the company. So Mr Nene was not part of that.

CHAIRPERSON: But did the PIC ultimately invest in the Mozambican project?

MR WELLINGTON MASEKESA: Correct. We ultimately invested into this S&S
20 Refinery project.

CHAIRPERSON: So the question of the fee would then be right, it seems to me. But the question is it's now paid into a company that was not involved.

MR EMMANUEL LEDIGA: Ja, so, because, you see, the – it appears that the PIC couldn't pay the company where Mr Nene, the young Mr Nene, was a shareholder, so it's why they couldn't... It appears that you couldn't pay that company – another

company to be paid and it was then said Zaid can be paid, isn't it?

MR WELLINGTON MASEKESA: Through you, Commissioner.

MR EMMANUEL LEDIGA: Ja.

MR WELLINGTON MASEKESA: Correct.

MR EMMANUEL LEDIGA: Ja. Ja.

MR WELLINGTON MASEKESA: The company that was paid is...

MS GILL MARCUS: It's not correct.

MR WELLINGTON MASEKESA: ...is the person that was doing the work.

MS GILL MARCUS: Ja.

10 **MR WELLINGTON MASEKESA:** Which was Mr Mirza. And Mr Mirza was represented by the company called Zaid International.

MR EMMANUEL LEDIGA: Ja. Ja.

MS GILL MARCUS: I'm sorry, I don't think we can get into a debate about it, but this is very unclear and I would like to pursue it further and try and get some more information because it's not that... If it were simply from the first company, Indiafrec, that said okay, we want to partner and we're going to do the BE that's one thing. They brought you the deal. The essence of it, they brought you the deal. Whether Mr Mirza says he was doing the work and Mr Nene was not doing the work, that's their company problem. That's the PIC's issue. That's the company that is dealing with you and if you
20 said look, you've brought us the deal, we can't fund you, right, but you've brought us the deal and we will pay you the commission for having brought us the deal because we're doing the investment, so that would have gone to that company, excepting that Mr Mirza came with a different company and different work and you followed that and I'm just saying it's unclear to me and I just would like to have clarification that you terminated your activity with Indiafrec before you started working with a separate

company. Because the same thing could have been done. You could have said to them equally, look, we'll pay you, if you like, a facilitation fee and that's it. There is something here that does not sit comfortably and I would like further information on it, thanks. And it is about the way this interacted. It's not the PIC's determination as to whether a partner in a company, who is doing the work in the partner (*sic*). That's the job for that company to sort out and sort themselves out, would be my view. I wouldn't want somebody else saying, oh, I'm paying you out of this company but not you because I think you've done more work. I don't think that's correct. But I'd like just to be clear about the interaction with Indiafrec, that it's terminated and you started working
10 with Mirza on his own and that everybody knew that that was the circumstance.

CHAIRPERSON: Mr Maseka? Is it Masekela? Masekesa. We are not attacking you. We realise, of course, that in the paragraph you say 'I was not involved in the facilitation of a transaction fee' and so forth. We are not. But we are trying to simply get the information and understand the position.

MR WELLINGTON MASEKESA: Correct, Commissioner. And for the clarity I am sure there are some colleagues who are also coming to clarify this.

ADV NKAISENG KHOOE: Mr Commissioner, I just wanted to perhaps assist. He had already said that he wasn't involved in a facilitation fee. Right? We are going to have the person who was in charge of those negotiations, who was actually there, to come
20 and explain who and what. I think the question that I'd asked was on what percentage this was based on and he said on the total amount of the project, so my follow-up question was going to be why on the total amount of the project when PIC's stake was 53-million? Can you just clarify why PIC paid 1.5% of the total project when its stake was only 53-million?

MR WELLINGTON MASEKESA: Ja. Okay, thank you, Commissioner. Through you.

That's why I have – on paragraph 31.5.4 my recollection and what I'm aware of was over and above this S&S transaction there were some additional work that he had done for the PIC to introduce the three projects that I have mentioned, the hotel, the clinker plant and the cement plant, which he was assisting the local partner to raise funding, and then PIC was given the first right of refusal to co-invest in those projects.

ADV NKAISENG KHOOE: Can you just explain what that means in simple terms when you say first right of refusal? And can you also explain whether it meant that the referral fee would be paid after PIC had seen the project and they have refused or before?

- 10 **MR WELLINGTON MASEKESA:** So what remains, the first right of refusal is we are shown the project, you are shown the opportunity and then you are given an opportunity to go and do what you could do, like follow your process, and then during that process the promotor, or the project sponsor, will not be obliged and he will not be able to go and find other funders in that project. So until you say I don't want to participate then he can go and find another. So he have an advantage then in other participants who would want to come and co-invest in that project.

ADV NKAISENG KHOOE: And according to that agreement when was the referral fee supposed to be paid? At the completion of the project? Before the project was approved? When exactly?

- 20 **MR WELLINGTON MASEKESA:** Through you, Chair. I would... I think I will provide that information to the evidence leaders. I don't have it, when this fee was actually paid and when the project was finalised. That we can... I can provide that to you.

ADV NKAISENG KHOOE: But in normal circumstances when would that referral fee be due? When would it be paid?

MR WELLINGTON MASEKESA: In normal circumstances once the deal is approved

and all the conditions to the – to that fee has been met then a fee can be paid.

MR EMMANUEL LEDIGA: I just want to understand. Was there a contract? Because then that contract will lay out when the fee has got to be paid. Was there a contract, and in what name was that contract, just as a first question? If you know. Because you might not know, you know, so we need to be fair to you. If you know. The 1.7-million, what was it based on? What amount was it based on? The \$52-million or what? Then we'll be able to know the percentage.

MR WELLINGTON MASEKESA: I will speak under correction for the first question. There was an agreement, but I'm not sure when it was signed, to have this amount be
10 paid to Mr Amir Mirza. Yes. And then, the second one, the 1.7-million, to my recollection, was – it was also motivated to fund investment panel. It was 1.5% of the total project cost.

MR EMMANUEL LEDIGA: Which is how much? What is the total project cost?

MR WELLINGTON MASEKESA: The total project cost was US\$115-million.

MR EMMANUEL LEDIGA: Ja, but then how can you base...? You can't base... You go to... Isn't it that you only get paid for the money you are raising? You cannot be paid for the total project costs. You can't... If the PIC is going invest a certain amount because you have raised it you can only claim that part. You cannot claim the total project costs, isn't it? Isn't it how it's done?

20 **MR WELLINGTON MASEKESA:** Through you, Commissioner. That's correct. That's the norm. But from my understanding this was an exceptional because he was not only bringing this deal. He didn't only bring, originally, this deal. Over and above, that's why I'm explaining that he brought other three possible transactions.

MR EMMANUEL LEDIGA: Ja. Ja. Can I stop you there? Then this agreement should have been structured differently in the sense that we'll charge you for what the

PIC has brought in but we have introduced you to other work and you charge it as a separate amount. You cannot charge the project fee. This could have been structured differently, isn't it?

MR WELLINGTON MASEKESA: Through you, Commissioner. Correct.

MS GILL MARCUS: Perhaps it would help if we get the submission that went to the ... (indistinct) that authorised this payment and that would just help us clarify exactly what was submitted and what was approved and on what basis.

MR EMMANUEL LEDIGA: And the money part might not be the issue, but how they structured the money could be the issue.

10 **ADV NKAISENG KHOOE:** Can I request just a few minutes for him to actually point the commission to the relevant part?

MS GILL MARCUS: We can get it later. It doesn't have to be now. I think there's a lot of evidence that can continue and he can just do that and you can just indicate where it is in due course.

MR WELLINGTON MASEKESA: Okay.

ADV NKAISENG KHOOE: May I just say to – when you don't know, you don't have an answer to a question, it is fine to say you don't know and just point to the relevant person who is going to be able to answer that question because you are just dealing with the part that is – that you know, that you played.

20 **MR WELLINGTON MASEKESA:** Okay. Thank you, Commissioner. Shall I proceed?

ADV NKAISENG KHOOE: Yes, please.

MR WELLINGTON MASEKESA: On paragraph 32 I talk...

“My active involvement in the transaction ended upon the approval of the transaction by FIP then the subsequent negotiations and implementation of the approved terms by the PIC FIP was done, in

most cases handled by PIC legal team, the investment team within the Development and Investment Unit.”

Then on paragraph 33 I am now discussing what happened after the transaction was approved. So:

“After the legal agreements were signed between parties I am aware that the disbursements were made in tranches on 26th of November 2014, USD18-million, and 28th of May 2015, USD5-million, and 17 July 2015, USD30-million, and further, USD10-million on the 17th of May 2016 to acquire a further 25% equity into the S&S Refinery, and all these payments were made pursuant to approval of the project by the PSSME FIP.”

ADV NKAISENG KHOOE: Can I just stop you there? On 17 May 2016, when PIC went further to acquire 25% equity, was the refinery operational at the time?

MR WELLINGTON MASEKESA: The refinery was... We have just finished the commission and the operation started in April 2016. And I was not... In reference to the 10-million of – to acquire a further 25% equity:

“I was not involved in that transaction but I was also made aware, as a non-executive director of the company, that the follow-on investment was a necessity to facilitate that an appropriate operator to be part of the shareholding at some point in the future, hence an additional 25% would be allocated to the operator to ensure alignment of the interest. I am also aware soon after the disbursement the PIC Portfolio Management and Valuation, PMV team, also took over the responsibility of post-investment monitoring and active management of the investment. I was then

appointed by the PIC Directors Affairs Committee to be a non-executive director of the S&S Refinery post the transaction approval in and around March 2015. The board is comprised of two representatives from the PIC and two representatives from the promoters. Then Mr Momade Rassul and Ms Saidata Rassul, his wife, represented the promoters while Mr Rajdhar and myself represented the PIC on the board.”

Then after the... Then I go on to discuss, Commissioner, on the post-investment and my period as the PIC representative on the S&S board. So:

10 “My role later was limited to that of a non-executive director of S&S Refinery and I was not involved in any operations or administration of the business. Soon after our appointment as the PIC representatives on the board our first task was to ensure that all the plant engineering construction work is well completed, which at the time was done by a company called Ayoki, and also ensure the equipment which was assembled by Desmet Ballestra, a Belgian company, was well complete, assembled and tested. In fact, we wanted to ensure that the plant construction work was completed on time as envisaged when the PIC investment. The

20 technical experts who were assisting us, Mott MacDonald, continued to assist us in tracking construction and commissioning of the plant progress. And in and around 2015 the S&S board...”

Now, it was Mr Roy Rajdhar and myself and the representative of the local partner.

“...we took a decision to visit crude palm oil suppliers and traders

in Malaysia, operation and maintenance company in India as well as the construction company Ayoki in India. We also negotiated with the various crude palm oil suppliers in Malaysia who undertook to provide us with sufficient supply at well negotiated terms and agreements. We also met an operation and maintenance company that we targeted to appoint to operate the plant. The name of the company was called Arian Engineering and Arian Engineering is (*sic*) head office in India and it has demonstrated their experience in design, construction and operations of large process plants, boasting their involvement in the oil and fats sector since 1999. They have operated in nine countries and in over 37 projects. So we were satisfied that Arian Engineering would be able to operate the plant. We also met Ayoki in India, the company that was responsible for design and construction of the plant.”

MR EMMANUEL LEDIGA: Question. I don't understand. I mean, you guys are – you are on the board of the company but it seems you are managing the company. I mean, did the company have a CEO and management?

MR WELLINGTON MASEKESA: Thank you, Commissioner, and through you. So when we came in, I think I will discuss it later as well ... (intervention)

MR EMMANUEL LEDIGA: I think if you ... (intervention)

MR WELLINGTON MASEKESA: It was... Okay. Should I continue?

MR EMMANUEL LEDIGA: Ja, continue. Continue.

MR WELLINGTON MASEKESA: Yes, alright. Thank you. So... And then later:

“The first dry commissioning of the plant started around October

2015 and wet commission around December 2015.”

ADV NKAISENG KHOOE: Sorry. Can you just explain what dry commissioning is and what wet commissioning is?

MR WELLINGTON MASEKESA: Okay. Thank you, Commissioner. So dry commissioning is... I'm not an engineer, but I will try to explain. So they will go process by process. They have to switch on, that if it is boilers – boilermakers they will switch on. They are putting in the real oil and see whether they are functioning and then they will tick. They will go to another equipment, they will test it without the real oil being used. And then the water commission is now where you only procure enough oil just for
10 you to test if the whole process is working. So when I say first dry commission started around October 2015, that's what they did with the engineers and equipment suppliers, right, and then wet commission was later in 2015.

MR EMMANUEL LEDIGA: Since we are there, can you explain this whole process about palm oil, conversion to soap and the other things? I think since we are there, you know? We know the other part, where crude oil is processed to refined petrol and all that. That maybe we know a bit. But just explain the other process.

ADV NKAISENG KHOOE: Sorry.

MR EMMANUEL LEDIGA: Okay.

ADV NKAISENG KHOOE: I'm sorry. Before he does that can I – Mr Commissioner,
20 can I have a two-minute adjournment, please?

CHAIRPERSON: Or a five-minute or 10 minutes if you like. We'll adjourn for 10 minutes.

ADV NKAISENG KHOOE: Thank you, Commissioner.

INQUIRY ADJOURNS

INQUIRY RESUMES

ADV NKAISENG KHOOE: Thank you very much Commissioner for the adjournment. I thought so when I found it congested when I got to the bathroom. Thank you Commissioner. You can continue.

ADV ISAAC MONNAHELA: I think just continue and then we will ask at the end and all that or somewhere in between, but just continue.

MR WELLINGTON M MASEKESA: Ja. Thank you Commissioner. Before I continue there was a question that was asked on what was presented to the final approving Committee in terms of this fee. So I would want to give you a reference to Annexure C1, Fund Investment Panel Report. And take you to page 3 on paragraph 2, that was
10 the request that was made to ...

ADV ISAAC MONNAHELA: Yes ...[indistinct] report.

MR WELLINGTON M MASEKESA: Called Appraisal Reports.

ADV ISAAC MONNAHELA: Yes, page 3, ja.

MR WELLINGTON M MASEKESA: Page 3, paragraph 2.

ADV ISAAC MONNAHELA: Paragraph 2, okay.

MR WELLINGTON M MASEKESA: So that is where the request for the approval of the
...

ADV ISAAC MONNAHELA: Just read it. Just read it ...

MR WELLINGTON M MASEKESA: The heading says, the Purpose of Submission. So
20 I will not read the first paragraph, I will read the second paragraph. It say: In addition PMC is recommend to the PSSME fee the payment of referral fee of USD 1 1 726 500,00 to Mr Amir Mirza who introduced the potential investment in the company. This equates to 1,5% of the project costs of USD 115, 1 million which is in line with the guidelines approved by PIC investment company. PICs delegation of authority requires that fees in excess of 15 million is approved by the relevant fund investment panel.

The fee shall be payable to, payable provided that Mr Mirza is able to secure co-investment rights for PIC in Nacala Cement plant which is the main sponsor Mr Rassul intends developing and implementing.

ADV ISAAC MONNAHELA: Ja, so can you see that the project cost is still an issue but I mean maybe somebody can explain it better some way? Is it not?

MR WELLINGTON M MASEKESA: True Your Commissioner, correct.

ADV ISAAC MONNAHELA: Ja, okay.

MS GILL MARCUS: And perhaps just to add that then if I understand this correctly, it is the same person. Mr Rassul who is part of the palm oil and the cement?

10 **MR WELLINGTON M MASEKESA**: Yes Commissioner.

MS GILL MARCUS: So it is one counterparty?

MR WELLINGTON M MASEKESA: Yes.

MS GILL MARCUS: Two different companies, but two different investments but one counterparty.

MR WELLINGTON M MASEKESA: Yes Commissioner.

MS GILL MARCUS: And the total now has changed from your 63 odd million to 115 million.

MR WELLINGTON M MASEKESA: The 115 on 1 million was the project costs.

MS GILL MARCUS: Yes, but why would you pay it on the project cost as a fee?

20 **MR WELLINGTON M MASEKESA**: That is the explanation that my colleague will come and explain.

MS GILL MARCUS: Okay, thank you.

MR WELLINGTON M MASEKESA: So Commissioner I am on paragraph 42. So following the commission of the plant, the first batch of palm oil production commenced on the 1st of April 2016 with 2 874 tons of crude palm oil producing 2,2 million litres of

edible oil and 360 000 kilograms of laundry soap. And then the second shipment was again approximately 300 metric tons in October 2016. Maybe if I should add on Commissioner that currently now I was also told that there was another consignment that has just landed at the port. I will explain that later.

ADV ISAAC MONNAHELA: Just a quick one. Before we left, I asked for that process of converting palm oil to this end products, if you know you can explain that to us. I asked the question earlier, not in this session.

CHAIRPERSON: But are you able to answer that question? Are you able to give an indication as to how it is done?

10 **MR WELLINGTON M MASEKESA**: True Your Commissioner I am not a process engineer or a chemical engineer, but as a board member I can try to explain the process. I understand you were trying to equate with the process of crude palm, crude brand oil that is refined to produce refined petrol or diesel. It is almost similar process. They harvest what they call crude palm oil from the palm trees, so it is purely dirty oil. Right. And then that dirty oil is processed through various process, they go what they call first thing is to separate impurities from the real oil and then it goes to a process of cleaning it. Then after they have cleaned it then there is a bi-product called Stearin which is used for soap making and so forth. And then what is left now which is almost clean oil, then it goes through a process of deodorising it because it will be to have a
20 certain smell. And then it will go to process of cleaning it until it comes edible palm oil that you can use for your frying and cooking. So the process is almost similar. So it is a big plant that processes, that the crude palm oil goes through that process.

ADV ISAAC MONNAHELA: So the ...[indistinct] the last end product, the biggest end product is actually palm oil to cook?

MR WELLINGTON M MASEKESA: Yes.

ADV ISAAC MONNAHELA: To cook with it, it is like – okay, alright.

MR WELLINGTON M MASEKESA: Okay, thank you Commissioner if I may proceed.

And then when I joined the – I am on paragraph 43. When I joined the SNS board in 2015, I was aware that governance may present challenges. We initially took comfort from oversight, from Mozambican Banks who already invested in the project and BDO, which is an audit firm in Mozambique who were the advisors of the project sponsors, Mr Rassul. So I completely understood that I was a Non-Executive Director of a company in a unique business operating environment, very different from the South African operating environment. The business culture is different and the level of governance is

10 still very elementary when compared to the South African economy. It was a mammoth task if I should say that Commissioner for me as a board member to adjust and at the same time ensuring that strong corporate governance principles are observed nonetheless. There was a lot of work that need to be done by Management to strengthen the governance of the company. At the time the company was a one man family business. Mr Rassul controlled the operations of the company and ran the company as a family business, even after the new funders came in. So at the first board meeting it was agreed that the governance of the company needed to be implemented, including appointment of the permanent CEO responsible for the operations and administration of the company. It was also agreed that the company's

20 secretary or the company should be appointed. So at that time, at that point of time our then partner, the local partner Mr Rassul was responsible for the day to day operations of the company. And the SNS Board agreed that it would be a short term arrangement whilst we were in the process of finding a suitable candidate to head the operations and administration of the company. Then over time I realised that the promoter or the local partner had very little understanding of the importance of corporate governance. He

lacked understanding of corporatisation of the business as the new investors and funders came on board. He continued to run the business as a family business given that he was still the majority shareholder at that time. The Board later appointed a permanent CEO responsible for operations and administration. He did not stay for a long period due to his health problems and family business, family issues. He also appointed that he was not happy with the working conditions and pressure he was getting from the shareholder, in particular the local partner. So after the departure of the first CEO, the board again appointed another General Manager for Operations in early 2017. And that GM did not stay long again. In my understanding it was that he
10 was frustrated by the working conditions and he was not given enough authority by Mr Rassul to run the operations. So the administration of the operations of the company were disrupted. That posed a challenge to us as the board members and we could not get adequate operations updated and – we could not get adequate operations upped it and management accounts. The PIC, PMV team also faced similar challenges. They could not get access to the information or upped it. We travelled to Nacara in then times to Maputo and held several meetings with co-partner which was led by Mr Rassul and his advisors, BDO Maputo in an effort to resolve these issues. There was very little progress and willingness by the co-partner on this issue. So it was difficult for us and I am referring to Mr Roy Raja and myself as Non-Executive Directors as we were not
20 responsible for the day to day operations in the administration of the company. And the difficulty was further worsened by the fact that the project is very far and it is not easy to travel to the plant from South Africa. It is approximately five to six hour travelling time and the round-trip journey cannot be completed in a day.

ADV ISAAC MONNAHELA: Before you proceed, just one question lingers a lot here. When you pull in the money in this company, did you have a good shareholder

agreement to regulate all these issues about you know an entrepreneur wanting to run the company the way they run it?

ADV NKAISENG KHOOE: Sorry Commissioner if I may, excuse me. Mr Masekesa had been asked to complete the statement, that the shareholder agreements and all the CPs are going to be addressed at the end because I didn't want to keep on cutting him and asking him to go back to there.

ADV ISAAC MONNAHELA: I am going to stop, I am going to stop now.

ADV NKAISENG KHOOE: Thank you.

MR WELLINGTON M MASEKESA: Thank you Commissioner. If I may proceed to
10 paragraph 52 where I am discussing the impediments in project implementation. So I will start with external market conditions challenges, so what really happened then after we have invested and what were the problems. So at the time the PIC considered the investment, the Mozambican economy was flourishing. In fact the country was regarded as one of the fastest growing African economy. The Mozambican GDP was around 8%. Interest rates were stable, inflation was very stable. The domestic currency was stable and there was strong influx of foreign direct investments into the country. And furthermore, the Northern most province of Mozambique were growing too. It was also that period when there was discovery of natural gas in that region. So the reason why I am putting this Commissioner is just to support the reason why, why
20 Mozambique at that point. And I would want to show you how the economy was doing at that point by showing research that was done by an independent research company in United States of America with Mozambique and what subsequently happened. On Annexure D on page 7, I just want to show you what happened when we invested and subsequently what happened. On Annexure D, the research report, the NKC African Economics Report. And I would like to take you through to page 7 of that report where

they are talking about the quarterly update. This is a recent report, this is a December 2018 report. So on page 7 of that report, right, you see the economy was growing on average 7,1 or 7,4 so when you invested, the actual growth in that economy around 2014, you can see it was around 7,4% growth. Right and then we disbursed around 2015. It was growing around 6,6%. And if you read some of the research from IMF Award Bank at that time they were saying Mozambique was just growing. It was on average, going to grow around 6 to 7% over the next five to 10% - over the next five to 10 years, over a long period of time. And we used that basis as part of the or projection to invest that country. But if you see suddenly, sudden fall in 2016 when we were

10 supposed to start production, remember between 2014 when we entered this thing was between 80 and 90% complete, so we finished the construction and the commission. In 2016 we were about to start production, see how the economy has dropped from 6,6% to around 3,8% which is I think close to about 100% fall from the projections. And if I take you further to the second page, sorry. Page 12 of that report. Page 12 of the NKC Report. That talks about the inflation as well as the short-term interest rates, right. Remember this business had borrowed money from local banks in which the interest rates were locally, they were linked to the local interest rates for the lock of the 40 million secured debt. If you see between 2014, so it is flat around 10% and shot up close to 30%. That was three times, ja, interest rates and it was accruing on the

20 balance sheet of this company. And then we were not, we were not actually we could not, we could also produce crude palm oil at that point. So this sudden changes in the Mozambican economy were never expected. And did affect the projection.

ADV ISAAC MONNAHELA: So this is the graph at the bottom is it not? Where you are saying short-term interest rates?

MR WELLINGTON M MASEKESA: Yes.

ADV ISAAC MONNAHELA: Ja.

MR WELLINGTON M MASEKESA: If you went through ...

ADV ISAAC MONNAHELA: So they went from the 15% to 30%, is that what you are saying?

MR WELLINGTON M MASEKESA: **Correct, correct. So Commissioner the reason why I am showing you that is the time we invested things were very good. Mozambique was the right country to be in. That is where the returns could come from the rest of the continent. And I have attached the McKenzie report, the lines on the move. That is a**
10 **well-known report on Africa and the Africa story. And if you see in the McKenzie report in Annexure E, again Mozambique is actually picked up at that point in 2010 as one of the best countries to invest in. And I could from my experience when I was travelling to Mozambique I know they used to have a very small flight, I think of 30 to 40 passengers from Oliver Tambo to Nampula. And the next in 2014 – in 2015 they had to deploy a bigger plane because there was a lot of engineers that are going up in the north. But around 2016, 2017 the cranes now they have rusted. They have stopped. It tells you what actually happened. It was a sudden shock in the economy. And that**
20 **affected the project as well. And then on number 53 Commissioner I will talk about after the disbursement, both Mozambican economy and operating environment drastically changed. The Mozambican**

economy and the market conditions deteriorated worse than expected since inception of the PIC investments. The local current interest rate for instance was as I have discussed this was around 15% and subsequently the interest rate more than doubled over 30% which was adversely affected – which adversely the SNS Refinery financial viability and projections of the project. And what also means that our initial projections and assumptions when we did the transactions were meaningless. And on paragraph 54 I have already emphasised that the local currency so too depreciated significantly since we

10 completed the transaction. The exchange rate was approximately 30 metical and it went to close to about 70 metical it almost depreciated by 100 – more than doubled. So the reason why I am saying the local currency is very important because the business model is that you procure your raw materials. Crude palm oil is not produced in Mozambique, you use the hard current to buy that palm oil from either Malaysia or Indonesia. And now if your projection was around 30 to 40 and then suddenly it went to 70, that means you will be out of business on day one. So this actually contributed to some problems or some teething problems with this project. The paragraph 55 I

20 spoke about the SNS asset finance business model is highly sensitive to accentuate risk as it procures raw materials in foreign currency, the United States dollars while the revenue sales is in local currency.

Meticals translating foreign currencies exposure into product pricing will result in SNS Refinery not being competitive within the local markets. And then the currency edging was initially considered, however it was too expensive by that time without first testing the market and reaching the full production. In another problem was the lack of credit in Mozambique. So when the economy was facing problem, the Mozambican Banks were also hit very hard by the sudden changes in the economy and the operating environment in Mozambique. Some banks even collapsed. For this reason local banks in particular were not willing to assist SNS Refinery with a letter of credit for its working capital requirements. The SNS Refinery is highly reliant on the procurement of packaging and raw materials which requires the letter of credit support from local banks. This is also contributed to delays in full production of the plant. And then the projection at the time of concluding transaction indicated that the plant was capable of producing sufficient volumes and were allowed organisation to trade itself back to its financial sustainability. And in order to do this, the plant would need to operate at a full time skill basis at 80% and of its designed capacity of 350 tons per day which translates to around 280 tons per day. And production at this levels would have resulted in the final producing in the region of 960 320 tons of refined palm oil annually. Then the incumbent does not have

significant reserves with no, which to finance the working capital by then required to fund production as discussed above. And then the working capital requirement to procure the raw materials necessary for the production volumes discussed above equate to around 25 million. So the local banks were supposed to give us a letter of credit of 25 million US dollars for the company to operate in a full cycle. But so the company could not require, they could not get the letter of credit from the local banks, including the banks that they already invested into this project. So what meant, so what that meant was the

10 company was stuck in between problems. So the first one, there was high cost of raw materials as a result of depreciation of the local currency. There was no working capital. And local banks were failing to provide a letter of credit capacity for to the company. And this and then there was amounting interest costs on the balance sheet as a result of interest that has sky rocketed after the investment by the PIC. And this was a serious challenge to the board and the management of the company. So the above challenges that I have discussed Commissioner were considered during due diligence and at the time of concluding the transaction however, our assumption did

20 not factor in the effects of such steep interest rates and sudden changes in the economy growth factors and significant currency devaluation. Then there were some also internal challenges that we

faced after we have invested and so on. On paragraph 61 I think I spoke about it, about the interest rates and accumulating interest costs that was on the balance sheet. But I also discussed on paragraph 62 where I said there were also delays in the construction in commissioning of the plant which was a result of various factors such as the management issues that I have eluded to, there were some flooding in Nacala which happened around December 2015, resulting in power outages. And furthermore I spoke about the local banks were not in support of issuing letter of credit to assist SNS
10 Refinery with its production working capital. And also the process of obtaining the letter of credit was a very protected process which also resulted in significant delays in procuring the crude palm oil. And another problem, internal problem is there was also a lack of strong management and constant interfering by the local partner. I think I have explained this earlier in the operations of the business. And also management kept on, the local management was also frustrated by the working conditions and delays in the procurement of the crude palm oil. And lastly some of the problems that we faced was, I can summarise that it was issue of governance, problem of a one-man
20 business, the business culture there is different from what we are used to. And there was an issue of language barriers. Those all posed challenges and in the project. Now having faced with these

projects, there were some key interventions that we did to this company. Having faced with the above challenges, the PIC including myself as the PIC representative on the SNS board, came up with various interventions and I will discuss some of the interventions that we did. So the first one we have appointed now a newly qualified and strong operator to run the operations and the administration of the company. And that company is called Vamara and Vamara is a subsidiary of Export and Trade Group which is known as ETG. And ETG is one of the largest and fastest growing integrated agriculture supply chain managers and processes in sub Saharan Africa importing and exporting soft commodities from 22 African countries with operations across 40 countries. They also have oil refinery, refinery plants across the continent. Vamara through its distribution channels has the market for the products as well. And we have already started engaging with the local banks, the senior ...[indistinct] leaders to relook at the ...[indistinct] balance sheet restructuring as well as the local interest rates, if you can restructuring as the local interest rates increased significantly. And we have also removed the local partner, Mr Rassul from the operations of the company and he is no longer involved in any way in the operations of the business. And then I will go to my last conclusion Commissioner. There were some assertions and by some media news that the PIC invested in a

dilapidated plant in Mozambique and those assertions I would like to – according to my knowledge, I have seen this plant. They are not true and they are very unfounded. The SNS Refinery plant, here my knowledge existed of the ...[indistinct] well designed, well viewed by qualified engineers and based and built by best equipment. And currently the plant is in operations and is managed by Vamara an ETG subsidiary as an operator. And I have also attested to that by giving an Annexure F. This is an independent valuation that was recently done last year by KPMG on the valuation of the current valuation of the plant. So if you look closely on the, on that report Commissioner, it shows that the PIC is not significantly lost its value. The equity value is declined as compared to the last year's valuation, but the asset is still intact. And we are still in the money if we are going to do the nett asset valuation on the plant. So that is the reason why I have attached the KPMG independent valuation of SNS Refinery that was recently done. And as we speak I was also informed that there was another crude palm oil reconsignment that has just landed on the 12th of March 2019 to commence full production circle. So I also believe Commissioner that like any investment risks and challenges are very inherent, but anything can go wrong and this case some unforeseen challenges and we have manifested and the projections were missed. And some of them we could not have, we did not have control over it.

And personally Commissioner, I am still convinced that with the right operator in place now the PIC will recoup its investment in the long-term period. And then my other recommendation is from my experience now, I picked up investing outside South Africa in the rest of Africa, it is tough. It is not for weak people, it is very tough. And I therefore recommend that the PIC should probably set up a standalone division that looks into the investment which are outside South Africa. So should we have a unity for Africa investments and global investments that is separate with the right skill, with the right people with experience and the rest of the continent. And my other recommendation is partnering with locals is very important when investing outside South Africa. However, a careful analysis of the local partners is crucial. Local partners should be established corporates, not individuals or a family run business. We have burnt our fingers already but we have learnt that going forward we should partner with established business rather than family run businesses. And then my last point Commissioner is advancing corporate governance the rest of Africa is a challenge again, but PIC should develop a different ESG matrix for the rest of Africa, since most corporates are only beginning to embrace this new business culture and it is a cultural process. And Commissioner, I would like to end there, and that's my statement. Thank you.

CHAIRPERSON: I assume the original has been signed.

ADV NKAISENG KHOOE: It has. Sorry. It has, Commissioner.

MS GILL MARCUS: I would just ask, in relation to your testimony so far, you've mentioned the board a number of times. Have there been any changes to the board composition, and when and what – when and who are on the board, given your approach and concerns about governance?

MR WELLINGTON MASEKESA: Thank you, and through you. The board has not changed. I am still sitting on the board of the S&S Refinery and I also understand Mr Roy Rajdhar is still sitting on the – as a PIC representative on the board. We have
10 just embarked on the process now of bringing in the new operator, where we are going to relook at how we are going to change the governance because we need to include in the operator as part of the board as well. And we are also in the process of removing the other local partner to – from the board.

MS GILL MARCUS: But who is on the board now? Is it just the two you had mentioned before and the two PIC representatives? Is that the full composition of the board? Who are the other members of the board apart from the two of you?

MR WELLINGTON MASEKESA: The other members of the board is Mr Momade Rassul and his wife, Ms Saidata Rassul.

MS GILL MARCUS: So that's the board as it was? Then it hasn't changed? You are
20 looking at changing the board?

MR WELLINGTON MASEKESA: Yes, correct.

MS GILL MARCUS: Okay. Can I ask a couple of others? When you were in discussions with Indiafrec had you ever heard of the Zaid International Trade and Investments? Or is that something that occurred subsequently?

MR WELLINGTON MASEKESA: Through you, Commissioner. I haven't... When we

were in discussion with Indiafrec I didn't know a company called Zaid.

MS GILL MARCUS: Not heard of it?

MR WELLINGTON MASEKESA: I was not aware of it.

MS GILL MARCUS: Okay. And then just looking at the business case, when you went out to look at it you looked at the plant and the equipment and the state of the art of that, but were you accompanied by the risk component of the PIC? Because then obviously the business case is purchases in dollars, so you've got a currency risk, growth risk, all of those kinds of things. In that initial consideration of the business plan and looking at your input costs how much – what role was the – what role did risk play
10 in that evaluation? And you have acknowledged that some of your assumptions were not appropriate – or not accurate enough, you know, so just... Was there sufficient input from risk, in all its elements, into the decision making?

MR WELLINGTON MASEKESA: Okay, thank you, Commissioner, and through you. I would like to take you to Annexure C1, the FIP report, right, and I will take you to page... Okay. No. FIP. The PMC, it is there. Everything is there. So I would like to take... The essential issue. Okay, if you go to page 59 of the report, where there is some – the last paragraph, saying 'operating costs', so I want you to flip that page, right, 1, and then you flip, 2, then you will see a report, a risk report, which is written 'risk and the mitigating measures' in a table format. Yes. So that was the risk report.
20 So these are the issues that they picked up as the risk and some risk mitigants. So indeed the Risk did assess this project in conjunction in conjunction with the investment team.

ADV NKAISENG KHOOE: While... Sorry. While he's at it, can you go to page 65 of that particular document?

MR WELLINGTON MASEKESA: 65?

ADV NKAISENG KHOOE: H'm. Oh, sorry, it's PMC2.

MS GILL MARCUS: Where are you in the document?

ADV NKAISENG KHOOE: It's PMC2 page 65.

MS GILL MARCUS: PMC2.

ADV NKAISENG KHOOE: Annexure B.

MS GILL MARCUS: Annexure B? 65? It's this table here.

ADV NKAISENG KHOOE: Yes. Can you just read the part that goes 'exchange or currency risks'?

MR WELLINGTON MASEKESA: H'm.

10 **ADV NKAISENG KHOOE:** Can you read that out into the record?

MR WELLINGTON MASEKESA: Okay. So it says so:

"The key risk that was identified by Risk was the exchange or currency risk."

And then the risk description was:

"The price of the product is dependent on the ... (indistinct) to US\$ exchange rate. Current fluctuation may impact the price negatively."

Right? And then the risk mitigant:

"The company..."

20 Which means S&S. Right?

"...to develop a hedging strategy."

I think I have answered this in my statement, was to put a hedge without full production, right, and having tested the market. Remember it is a new project. It was going to be expensive for the company, which was not generating any income at that point of time and hence we did not implement this hedging strategy. And what normally

happen with this crude palm oil traders, they don't normally give you a long-term hedge on the currency risk. They normally gave you maybe a three months forward. Anything above that they won't give you. They normally trade as and when you have confirmed an order. But... So to put – to buy a hedge on the total production was going to be expensive for the company that was not generating any income.

MS GILL MARCUS: I think the question really isn't whether the risk... Although my question was the role of risk and clearly they have set things out, to what degree was that taken heed of in the decision to invest? That's more the question, is that Risk is pointing real risks that have in fact materialised and therefore, with hindsight, which is
10 always perfect, but with hindsight was sufficient account taken of what the risks were that were identified by your risk team in terms of both investing in the first place and secondly the mitigants that should be in place, including governance and everything else? With your assessment of the risks as identified by your own team and whether sufficient account, retrospectively what would your decision have been if you had to look again and say we took it now, taking all of this information and what has materialised into account?

MR WELLINGTON MASEKESA: Thank you, Commissioner. I will not answer for the committee, but I was in the committee when this thing was discussed. Key macroeconomic indicators were also discussed because things like how the economy
20 was going to grow, what is going to happen with the foreign currency in that country, what are the fundamentals that are likely going to impact this business model, that was considered by the committees. And if I can even take you to page 23 of the same document you will see what our Chief Economist was saying at that point of time, which were the inputs that we used, right, to make a business case, or a best-case assumption in our models, on page 23, where he's talking about country and sector

overview. So the information that we had at that time, if you'll see – if you'll just look at that table, the economists took some information from Business Models International, IMF, World Bank, and some research is done. He was telling us, number one, the economy is going to grow up to 10% in 2019. The economy is below 3%. He is telling us that the CPI was going to maintain around 6%. I think it's more than doubled. And then he was telling us the exchange rate is going to average around 30, 35. It's close to more than doubled. We... Even if we look at the models that have been used, he even put a leeway maybe that maybe exchange rate will go as far as 40 or 45. Still it's more than doubled to 70. So the information we had, the research that was done at
10 that point, it was saying that this thing is going to be – is going to fly once we have invested into it. And then things drastically changed after we have invested.

ADV NKAISENG KHOOE: Were there any CPs that were put in place before PIC embarked on this deal?

MR WELLINGTON MASEKESA: Okay, through you, Commissioner. Yes, there were some CPs and the CPs, they are in Annexure C2. I can read them to you.

ADV NKAISENG KHOOE: Can you please read them into the record?

MR WELLINGTON MASEKESA: It's Annexure C2, FIP resolution. So you have to skip the first minutes, right, after page 5, and then there is the resolution of the Priority Section and Small/Medium Enterprise Fund Investment Panel making that passed at a
20 meeting held on the 11th of August 2014.

MS GILL MARCUS: I think what we're looking for are the CPs, which is 10.17.

MR EMMANUEL LEDIGA: 10.17 are the CPs that we are looking for.

MR WELLINGTON MASEKESA: Sorry. Sorry, Commissioner. I wanted to take you to the one on the resolution that were taken on the – the decisions that were made on that FIP meeting, what was the CP that was approved by the FIP at that point, and it's on

the – on your Annexure C2, right, FIP resolutions, and then the first one were minutes and then onto page 5, if you flip that page 5 you see the resolution of the Priority Sector and Small/Medium Enterprise Fund.

MS GILL MARCUS: I am asking you to go back. Go to page 4 of the same document.

MR WELLINGTON MASEKESA: Yes.

MS GILL MARCUS: Because that's the conditions precedent before you come to the resolution.

MR WELLINGTON MASEKESA: Yes, those are conditions precedent that we captured (?) ... (intervention)

10 **MS GILL MARCUS:** I think that was the question being asked.

MR WELLINGTON MASEKESA: Okay. I can... They are almost the same. I can read them. So on 10.17 talks about the condition precedent and the condition precedent were as follows, signed off by PSE Legal of transaction agreement, which were:

20 “The shareholders agreement, project agreements, transaction agreements, engineering and construction agreement, procurement agreement, crude palm oil and raw material supply agreement, referral fee to Mr Mirza of 1.5% of the project value, paid on condition on him securing PIC co-investment rights in the cement plant, proposed Nacala plant and any other businesses that were of interest to PIC. Then S&S Oil Refinery must complete the ... (indistinct) prior to disbursement and all assets relating to refinery operations should be transferred to S&S Oil Refinery. “

ADV NKAISENG KHOOE: You can continue.

MR WELLINGTON MASEKESA: Okay. Further conditions were as follows:

“In light of the fact that Mr Rassul obtained bank funding loans from his other companies to invest in S&S and used assets as security PSE should take pledge of the sponsors’ shares in S&S Oil Refinery, a lock-in period for a minimum of 10 years for Mr Rassul in the event that he resigns. He or his family members should not engage in any business activities of a similar nature as S&S Oil Refinery.”

It’s like a restraint of trade. Then:

10 “S&S Oil Refinery should ensure that the bank funding was negotiated on terms substantially the same as PSE funding.”

That’s the CTA. Then:

“The PSE and the bank will enter into a security-sharing agreement or security SPV. “

Then:

20 “The plant has the right to appoint... The PIC has the right to appoint or remove the CEO, CFO or any senior management staff. The PSE should have the right to appoint a person or a firm to verify that all assets are properly transferred prior to disbursement. The PSE should appoint a majority of directors to the board of the directors that the day one (*sic*) audited financial statements be submitted, the ... (indistinct) evaluation for the amount of 115.1-million.”

MS GILL MARCUS: No, where did it suddenly go ... (indistinct)

MR WELLINGTON MASEKESA: “The secondment of CEO and CFO will be a precondition to the transaction. High costs to promote 17-

million.”

Why should the PSE be responsible to pay that? I don't know if it was...

Then:

“The risk report conditions should form part of the transaction.”

Then 10.91:

“The PSSME FIP further approved authority to the Chief Investment Officer or a senior fund principal, Small/Medium Enterprises, or their ... (indistinct) to sign all documents required for PSE to participate in the transaction.”

10 **MS GILL MARCUS**: And that basically reflects the resolution that was taken as well.

MR WELLINGTON MASEKESA: Yes.

MS GILL MARCUS: Correct?

MR WELLINGTON MASEKESA: (Indistinct)

MS GILL MARCUS: Ja?

MR WELLINGTON MASEKESA: Yes.

ADV NKAISENG KHOOE: Are you aware of how many of the CPs were fulfilled before entering into this transaction?

MR WELLINGTON MASEKESA: Okay, thank you, Commissioner. Like I said, the process of investment implementation after my active involvement was mainly led by

20 our legal team.

MS GILL MARCUS: H'm?

MR WELLINGTON MASEKESA: To make sure that all the condition precedents were met.

MS GILL MARCUS: H'm?

MR WELLINGTON MASEKESA: What I can talk to you, what I have seen at the board

of S&S Refinery. But like things like warehouse, they are there, I have seen them. Things like the appointment of CEO, yes, we did appoint a CEO when we came to the board, but unfortunately that CEO was frustrated, he left. We appointed another CEO, he didn't leave. And now we have an operator and then we don't need the permanent CEO because the operator does all the operation and administration of the plant. And another one was that – the conditions that I'm aware, that – or the agreements, I am aware of them, that they were done. The engineering and construction agreement, when we entered there it was – they were already signed because the contractors were already there. The crude palm oil raw material supply agreement, that's why I even
10 indicated that we even went to Malaysia. The crude palm oil, they are like traders. They don't sign an agreement that they are going to give you crude palm oil at this price because the price are determined on the date in which you purchase. Thus the traders don't sign forward agreements – supply agreements with suppliers, but what they could do, they could just say that anytime that you need we'll give you a preferential treatment, make sure that your crude palm oil is available.

MS GILL MARCUS: Perhaps I could just ask, while you're checking that, for a couple of other things, if you could explain? Because if one looks at the document that was submitted, there is a reference in there just above 10.9.1 that the first bullet point is the picture to appoint (?) the majority of directors to the board of the company and that
20 doesn't seem to be in the resolution. And then third bullet point, the Ernst and Young valuation to the amount of US\$115.1-million, if you look at the resolution that has suddenly become 129-million. How does that become 129 from 115 and from 63? I think we'll need to understand these numbers better and perhaps we can get a proper presentation, whether it's from yourself or Mr Rajdhar when he comes. But these numbers change every time you look at the document, so that would be the one – the

two questions I would have there. And then just, as a board member, is the refinery servicing the PIC loan?

MR WELLINGTON MASEKESA: Okay. Through you, Commissioner. So the first question, I think the team including Mr Rajdhar will give you this discrepancy between the one that is in the minutes and the one that was final, signed on the resolution. And then the second one is the terms of the debt was – it was a 10-year loan with a two-year moratorium, which has expired, and because of the challenges that I've discussed, Commissioner, we never – after we have disbursed the funds we never – and then we have finished the construction, we have done the commissioning. So... And then
10 things changed. We never had a point where we got to full production of this plant because of all these problems that I was explaining, and for that reason the interest was not serviced by the company. But now, with the coming in with the operator, who has the working capital to assist us, we are hoping that the financials of the company will start kicking and we will be able to – the company should be able to service its interest.

MS GILL MARCUS: Just for clarity, as at this point the debt is not being serviced?

MR WELLINGTON MASEKESA: It's not. It's not serviced at the moment.

MS GILL MARCUS: Okay. And then the difference between the 115 and the 129, you're saying Mr Rajdhar will deal with it?

MR WELLINGTON MASEKESA: Yes, and I think the team will also give the evidence
20 to the evidence leader.

MR EMMANUEL LEDIGA: Okay, I've got one or two questions. Let me start with this... Okay. No. Two questions, ja. So you mentioned that, I think on your point 69 and point 70 on your statement, you said that sort of investing on the continent is not child's play, or something like that, you know. You know, this talks to best practices on the continent, you know. Many people have paid school fees already on the continent,

whether it's French company in Francophone, you know, Portuguese companies in Mozambique and Angola and all that. It's a bit worrying that the PIC just went in there, you know, alone without, you know, partnering with people and all that. So it's, I mean, it's something on a broader scale that the best practices were not looked at, you know, given this risky... These countries are not as mature as Sweden and Switzerland and all that. Before the PIC sort of adopted this Africa strategy was there quite a lot of thinking around that, you know, in terms of best practices and the many risks, whether it's currency risk and political risk and...? Even here you had key-man risk, succession-planning risk, those kind of issues.

- 10 **MR WELLINGTON MASEKESA:** Thank you, Commissioner, and through you. I was privileged to be part of the team that designed this Africa investment strategy and when we were designing this Africa investment strategy in the CI's office the first thing that we said is we cannot go solo and we really knew that going to the rest of the continent is going to be volatile. By that time we were hearing stories of big corporates that have lost money in the rest of the continent and we also heard of companies, South African companies, that were moving up the north and they were making it. So what was – what we realised when we were doing the research was the best thing is we have to develop a strategy that is that we should always partner with locals, number one, or if you are not partnered with locals we should always partner with a financial institution,
- 20 right, in the country in which we will be operating because normally they will know where the dead bodies are buried because they will be operating in those countries, and hence we said our strategic investment partners' programme was very important. And also, as part of our strategy, we actually developed what we call the SA Inc. strategy, where PS – where PIC, as a funder we collaborate with institutions or companies in South Africa that were going up in the rest of the continent. Let's say, for

argument's sake, Shoprite is moving up the north, then PSE will become a co-funder in the rest of the continent and Shoprite will run the operations and then they will deal with all those things. So we did consider that as part of our investment strategy. And I was also part of the team, we travelled across the rest of the continent. I remember myself and my boss, we even went to AFGA in Accra in ... (indistinct) where we actually announced that PIC is now a big player in the rest of the continent and we would want to partner with the local funders and other private equity funders who were doing business in the rest of the continent. We even travelled to the likes of AFDB. By that time they were still in Tunis. We presented our story and our credentials and we asked

10 them to partner with them. We sent MOUs with them that we would want to work on a co-investment partnership with them. We initiated discussions with IMF, World Bank, because we know they're already in the rest of the continent and they have some interests in the rest of the continent. They will give you, sort of inverted commas, political risk insurance because their – how big the institutions are – they are. We have MOUs with them. We went and see some original DFIs, like the like of PTA Bank in central Africa. We have some MOUs with them. We also signed an MOU with Eco West (?) Bank, which is a regional bank in the – western Africa. So these were all strategies that we were trying to put in place that when we go into the rest of the continent we are not just going there nakedly. We have to work with the local partners,

20 local finances, and perhaps with regional DFIs or international DFIs the likes of World Bank and so forth. So we did consider that. And the good thing was Mozambique was 45-minutes' flight to Maputo, close home (*sic*), SADAC, good story, but I guess the challenge there, that I have alluded to you, was probably we didn't pick the right partner to work with in that country. So the strategy did speak to that, those issues. We picked those challenges, we came out with some mitigants and this – on this case we were

partnered with the wrong partner.

MR EMMANUEL LEDIGA: And of course you can have a strategy, but it needs to be tested on the ground, you know, and as you saw, that you could have a plan but once it's on the ground, you know, you could have problems. Ja?

MR WELLINGTON MASEKESA: No. Through you, Commissioner. Correct. We also have some good stories as well in the rest of the continent where we have partnered with the right partners and we were doing well.

MR EMMANUEL LEDIGA: With the... Ja. Okay. Question. In terms of production, the current production over the last year or two of the plant, where are we now, how
10 different it is to the sort of projections and all that? I think you do have some figures somewhere.

MR WELLINGTON MASEKESA: Yes.

MR EMMANUEL LEDIGA: If you could just highlight where we are in terms of production and all that?

MR WELLINGTON MASEKESA: Okay, thank you, Commissioner. I will provide the hard numbers, the current hard numbers to the evidence leaders because I don't have them at the moment, but, like I said, in 2017 – in 2017 – 2018 there were some disturbances.

MR EMMANUEL LEDIGA: Ja.

20 **MR WELLINGTON MASEKESA:** And we didn't have a full production. 2016, April, we – the commission was done and we started production until, I think, December, and then we started having these problems with our local partner. So there might be – there should be – there is some interruption that happened between 2017, 2018, but I will provide the details of the production numbers to the evidence leaders.

MR EMMANUEL LEDIGA: The last question, it's a bit different, but just to get some

flavour about something here: You mentioned that Mozambique has got a different corporate governance/different business culture. I mean, I've never done business there, so can you please just highlight some of the differences between Mozambique and us here?

MR WELLINGTON MASEKESA: Okay, it's through you, Commissioner. It's a totally different business-operating environment, especially if you are investing in an unlisted space, and west, if you are venturing a partnership with a family-owned business and they... In South Africa, we are very advance when it comes to the issue of corporate governance. I'm talking of an environment where they don't understand why we should
10 have an audit and risk committee in a board. They would tell you that, anyway, we can just hire an audit firm, they do the thing. Why should we interrogate it? They don't understand why they should have subcommittees of the board or why should the board sit every quarter to discuss the performance of the company. If they can send you that I have made so much money and do this and this then you should just believe it. So those are kind of differences. Here in South Africa you go to a company, especially us, our finances, investment professionals, go ... (indistinct), give me audited financial statements, give me audits, give me where is your management, where is the contracts, are you paying your UIF? You cannot easily get that in Mozambique. You have to go an extra mile for you to get that information. I will give you another example, is I want
20 to know more about you, Assistant Commissioner, and I can always go to ITC and then all the information about you comes out. That you cannot do in Mozambique, where you can just go and google someone and then you get all the information. These were some of the challenges that we met. So you have to adapt. It's not an easy business environment and it's not as the South African business environment that we have.

MR EMMANUEL LEDIGA: And do you have the same kind of sort of labour laws and

pension fund contributions and those kind of things in Mozambique?

MR WELLINGTON MASEKESA: Yes, they do. But the second question is compliance. Do they comply, you see? Or... And then if they don't comply is there a proper monitoring mechanism to fine and penalties that are given to corporates that are not complying, especially companies that are privately owned? They don't have strict rules. For example, they don't have strict rules that they should have – audit financials, you see, because it's a privately owned company. And all those issues. You must have strict rules on tax returns and so forth. That's different from public companies that are registered in Mozambique as compared to companies that are unlisted and are probably a one-man family-owned business.

10

MR EMMANUEL LEDIGA: Thank you very much. Thanks.

ADV NKAISENG KHOOE: I think one last question if you do know. If you don't know just say so. Do you know how long Zaid was in existence when it entered the transaction space?

MR WELLINGTON MASEKESA: Thank you again, Commissioner, and through you. Like I said... Maybe let me ... (indistinct). I don't know.

ADV NKAISENG KHOOE: Thank you.

CHAIRPERSON: Just for interest's sake, when last were you in contact with people at the project? Why I'm asking, there was a cyclone there the other day.

20 **MR WELLINGTON MASEKESA:** Correct.

CHAIRPERSON: Was it affected? Or was it safe?

MR WELLINGTON MASEKESA: Correct. So I just got an updated email from the operator now. They were not affected on the – up north. The cyclone hit the Beira area and then it went parallel into Zimbabwe, so it didn't go up. But the last year's one is the one that affected them. But I'm not sure, because I heard some powerlines were also

disturbed there, so I'm not sure if there electricity pipeline – powerlines are linked to the Beira corridor and – but I haven't had any report so far from the operator.

MR EMMANUEL LEDIGA: This is a follow here on the economic front. What triggered, I know it's been read somewhere but what triggered the economic crisis there with like in interest rates doubling and like inflation. What happened – what was the initial trigger?

MR WELLINGTON MASEKESA: Okay thank you again Commissioner. Is a very interesting story. Again I am not a economist ...(indistinct) on Mozambique and we often discuss this with the local partners. So I don't know – when the elections were –
10 when ended there was – I don't know is it Kabuza or I don't know who was the President by that time and then soon after there was elections and then there was new President who is currently the President now. It was around 2015, 2016. 2016 okay.

Then the member – the IMF and the – from what we read from the research reports they said the IMF and the FDI's they were pushing money there and then later there were some corruption that were found around how they were managing those non-governmental organisation funds and the FDI's.

Then there was this bad publicity that went on. Then everyone was put out of Mozambique and that's where the problem started. From what I read from the research there is papers that are prepared by various economists. So there was a
20 problem of issue of governance again around mismanagement of funds that were deployed by nongovernmental organisation including IMF.

That ...(indistinct) problems in Mozambique.

MR EMMANUEL LEDIGA: Yes, yes because this might be linked with the Finance Minister probably who is ...(indistinct) problems here I think. I understand ...(intervenes).

MR WELLINGTON MASEKESA: I won't comment on that.

MR EMMANUEL LEDIGA: Let's not comment on that.

MR WELLINGTON MASEKESA: I won't comment on that.

MR EMMANUEL LEDIGA: Let's not comment on that. Let's withdraw it, let's withdraw it.

ADV NKAISENG KHOOE: One last question. Relating to paragraph 66 of your statement where there are sessions about some news media that the PIC invested in a dilapidated plant in Mozambique that are untrue and unfounded.

There has also been media reports on PIC being embroiled in litigation
10 between – do you know of any litigation that the PIC has been involved in regarding the S&S Refinery's project?

MR WELLINGTON MASEKESA: Thank you Commissioner and through you. I've heard about – I've read about that news media report. I'm not sure from which news article. The litigation that was widely publicized was on the local partner in Mozambique who was under investigation by their – or tax authorities in Mozambique.

It had nothing to do with S&S Refinery. That's the one that I'm aware of.

ADV NKAISENG KHOOE: Okay. Thank you Commissioner, that will be all from the witness and myself.

COMMISSIONER: Yes thank you. Mr Masekesa thank you so much for your time.
20 Thank you for coming to testify before us and thanks for the good work that you have done. Providing us with documentation etcetera, alright.

MR WELLINGTON MASEKESA: Thank you Commissioner.

COMMISSIONER: I'm sure you were told that you might be called again at a later stage. I hope not but there is a possibility alright.

MR WELLINGTON MASEKESA: Thank you Commissioner.

COMMISSIONER: Thank you very much. We'll adjourn until tomorrow at 10:00.

INQUIRY ADJOURNS TO 20 MARCH 2019