

# Eskom Section 92 PFMA Exemption (withdrawn); with Minister

Finance Standing Committee

05 April 2023

Chairperson: Mr J Maswanganyi (ANC)

## Meeting Summary

### Video

The Minister of Finance had granted a partial exemption to Eskom from disclosing irregular, fruitless, and wasteful expenditure in its annual financial statements for a period of three years. In response to this, four committees - the Standing Committees on Finance, Public Accounts, the Auditor-General, and Public Enterprises – called an urgent joint meeting for the Minister and National Treasury to explain this decision.

At the meeting, the Minister announced the decision to withdraw the Gazetted exemption granted to *Eskom* from the requirements of section 55(2)(b)(i) of the Public Finance Management Act (PFMA).

Members were told that the exemption would still have required Eskom to disclose all irregular and fruitless expenditure in its annual report, and would have been subject to audit, but separately from the financial statements, so that the financial statements of Eskom would be more aligned with how listed companies generally reported. It also would not have exempted Eskom from taking appropriate steps to prevent irregular and fruitless and wasteful expenditure, including appropriate criminal or disciplinary steps because of any losses incurred to date.

The withdrawal of the notice followed discussions with the Auditor-General (AG) as the AG had wanted to explore certain issues. Treasury had sought legal advice before the exemption notice was gazetted to ensure it was headed in the right direction.

Members were unanimous in their condemnation of the exemption, which they said undermined transparency and accountability, and would serve to conceal fraud and corruption in Eskom. They welcomed the withdrawal of the exemption, which they said had damaged the Treasury's reputation and credibility. Several Members saw it as an attempt to misrepresent Eskom's true financial situation to its lenders, who they said would not be fooled by the deceit. While welcoming the withdrawal of the Gazette, they remained critical of the initial granting of the exemption. It was also some Members considered view that the exemption was irrational and unjustifiable.

Treasury said that while the outcry, and some of the misunderstanding of the practical and technical implications of the exemption, were regretful, the interest shown in the matter by a wide range of citizens was evidence of the deep interest of South Africans in the democratic process. Treasury welcomed the comments by Members in the meeting, as well as comments on the technical aspects of the exemption that related to the applicable accounting principles. The period for written technical comments would begin on 11 April and continue until 21 April.

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## Meeting report

The Chairperson explained that the Committees had invited the Minister of Finance to give a briefing, which was necessitated by the letter issued by the Minister on 31 March 2023 to the Eskom board chair, granting exemptions from section 55(2)(b)(i) of the Public Finance Management Act (PFMA) and approval to depart from the National Treasury (NT) regulations, instructions, and conditions. The exemption was also gazetted on 31 March 2023 to give effect to the Minister's decision.

The matter had generated a lot of public interest, given the state of Eskom, and the state-owned enterprises (SOEs) in general. As public representatives, the Committee Members had a duty to attend to issues raised by the public, as taxpayers and the electorate. Parliament also had a duty to play an oversight role over the national government (the Executive). The Executive had to abide by the authority of the national Parliament – in this case, the National Assembly. Section 55 of the PFMA outlined Parliament's oversight role over the Executive and its entities. The Committees wanted to get the Minister's rationale for arriving at the decision to give exemption to the Eskom board in the letter that he had written to the board, accompanied by the Gazette.

### Briefing by Minister

Mr Enoch Godongwana, Minister of Finance, stated that in the 2023/24 budget, NT had made provision for a bailout of Eskom of R254 billion over the medium-term, which was a major risk for the NT. It was the NT's intention to mitigate whatever risk arose which may

complicate the problem. Eskom had then applied for an exemption.

Transnet had done a similar exercise, and the NT had granted that, because some of the challenges that Transnet faced were not necessarily something that the current management could handle, such as the issue of locomotives bought from China. Such challenges were becoming a constraint for the current management in raising capital. When Eskom applied for an exemption, the NT had to ask itself a question: If Eskom's financial statements were being constrained by those irregularities, what were the implications for Eskom's cost of capital? If it could not raise that capital, what were the implications for the fiscus? The NT was looking at the issue from a fiscal sustainability point of view. It then said that it should grant Eskom the exemption from reporting those material losses due to criminal conduct, irregular expenditure, and fruitless and wasteful expenditure in the annual financial statements.

However, those needed to be disclosed in the broader annual report. The NT was not hiding those aspects of Eskom's finances. It wanted to make sure to set conditions for Eskom to report quarterly on what actions it was taking in that regard. The public had taken an interest in the matter, given the history of corruption. The NT appreciated that South Africans were vigilant against corruption, which was an important point for society, and it took that as a positive step.

Part of the challenge that South Africa was facing with the grey-listing was that it was affecting the NT's ability to deal with corruption. The intention was to allow Eskom to have a better financial statement, but at the same time create an environment where there was transparency on corruption and irregular expenditure. There were two platforms created in that exemption. The intention was not to hide anything regarding the exemption.

The NT had heard the comments, and the previous day it had an intensive discussion with the Auditor-General of South Africa (AGSA). In that discussion, there were some comments by the AG which needed to be part of the framing of the Gazette. Given the AG's comments and the public comments, the NT decided to withdraw the Gazette "for now", and take all of those comments into account. It would also have a detailed conversation with the AG, and with Deloitte, the auditors of Eskom, so that the framing was proper, and checks and balances for corruption were tightened.

## ***Discussion***

Mr B Hadebe (ANC) welcomed a platform to talk about a matter that was "very sensitive" in terms of the public discourse, saying that "we are the creatures of statutes. In this regard, the Constitution is the supreme law of our country." In a situation where South African legislation was in conflict with the Constitution, the Constitution would always prevail. With section 216(1) of the Constitution, it was stipulated that national legislation must establish a National Treasury and prescribe measures to ensure both transparency and expenditure control in each sphere of government, by introducing:

generally recognised accounting practices;  
uniform expenditure classifications; and  
uniform treasury norms and standards."

Section 217 of the Constitution said that any organ of state or any institution contracting goods and services must do so in accordance with a system that was fair, equitable, and cost-effective. In everything Parliament did in relation to the public purse, the above-mentioned matters needed to be taken into consideration. Members were mindful of the separation of powers and were aware that the executive authority of that country was vested within the Cabinet. However, the National Assembly was given a key and important role of oversight and accountability. All knew that the Cabinet, both collectively and individually, was accountable to Parliament, not only in the exercise of its functions but also in the powers that it possessed. Having scrutinised, and then listened to the short presentation by the Minister, Members welcomed that "sanity had prevailed," and the Minister had considered withdrawing the exemption.

It was the Standing Committee on Public Accounts (SCOPA)'s view that the request and the subsequent decision on the exemption were irrational and unjustifiable, given the current state of Eskom. The basis of his decision had been that Eskom had received a qualified audit opinion over the past five years, and those qualifications were based on irregular and fruitless, and wasteful expenditure, as well as other material findings on its compliance with legislation. It was also important to note that irregular expenditure remained the basis of the qualification for the past five years, which was from 2017/18 to date. The irregular expenditure was increasing instead of decreasing. When Eskom had attempted to receive a qualified audit opinion, what that implied was that all the aforementioned particulars would no longer be subjected to a full statutory audit, despite the fact that when one looked into the closing balance for the past five years, one would realise that the irregular expenditure was now at R4.9 billion.

It was a good move from the Minister's side that the NT had sought to withdraw the exemption on the basis of the public outcry, or on the basis of what the Minister had referred to -- that further consultation was needed. Such consultation would take into account the issues raised by the AG. The NT also needed to take the views of key stakeholders into account. Consultation needed to be conducted with all those tasked with the responsibility of oversight, so that all the relevant standing Committees and portfolio Committees understood the rationale behind the decision. Eskom also needed to be given a chance to explain the rationale behind asking for an exemption, because Members had read all the correspondence, and there was no mention of dealing with the challenges confronting Eskom at the current juncture. There was no mention of how it would help Eskom to deal with inadequate systems of control, inadequate supply chains, and the

lack of supporting documents for the past five years.

Would the exemption help Eskom deal with those issues? While SCOPA Members were vehemently opposed to the decision to grant an exemption, they were not trying to dictate what the Minister should do. He felt that Eskom needed to be occupied with how to put in place adequate systems controls and to timeously record all irregular expenditure. It also needed to ensure completeness of assessment of expenditure linked with transgressions of the supply chain, and not hide things. It needed to disclose the full extent of the irregular expenditure.

Regarding the figures that he had mentioned earlier on, the audit opinion had said that the figures were not full disclosure. The Committees were now sitting with an entity that wanted to remove such things from its annual financial statement, yet it was unable to disclose everything in an annual report, and it would give progress made on dealing with criminal cases and consequence management. It could not manage that which it could not measure. If it could not measure the extent of regular fruitless and wasteful expenditure, how could the Committees find comfort that the steps taken to deal with those issues were adequate? The Committees would be deprived of the details of such expenditure. Members wanted rational reasons for the exemption to be furnished to them in the public. Additionally, the public needed to be informed about the steps taken, but the current nature of Eskom would not be able to facilitate that. The timing was wrong and suggested that Parliament was “hell-bent” on hiding and protecting those who were corrupt, and people would be justified to question that particular decision. Information was key, and information was power.

Mr S Somyo (ANC) said he appreciated the withdrawal of the notice. The Minister was the custodian of such regulations, as empowered by the same Act, and he had the responsibility to look into the matter. His main concern was informed by the fact that there should not be a suggestion of negating full accountability for actions by entities or any responsible authority. The Act stipulated the requirement to inform the AG of such a decision. It was section 79 of the PFMA which dealt with such departures from NT regulations, instructions, and conditions, where it was stated quite clearly that there should be good grounds to approve such departures from NT regulations or instructions. In those instances, the notice did not necessarily carry for Members such an indication.

There was a need to stipulate the technical grounds which informed the Minister’s decision around those matters, because it was the same ministry that had issued Instruction Note 4 of 2022/23, where the ministry had ensured that that came into effect on 3 January 2023. That had coincided with the time when there had been a withdrawal as far as Eskom’s application was concerned. There was a stated and firm note of such an instance that dealt with matters of irregular expenditure, which had to be disclosed in the annual financial statements of the mandated institution. It also needed to be disclosed as a comparative amount in the annual financial statements. That was the essence of Instruction Note 4, which stated those intentions clearly, which was for the exemption to be withdrawn as far as Eskom concerned.

All that had happened against the background of the entire economy and the country being “shaky” as far as the international outlook was concerned. There were also the issues of the grey-listing, and how Eskom had benefited, even from the Instruction Note 3 sessions as far as its performance and procurement processes were concerned. Taken together, such issues created the assumption that something was being hidden from the populace regarding Eskom.

He appreciated the decision to withdraw the exemption, which also empowered those who did the work to account appropriately. The current findings of Eskom’s audit looked into the myriad issues that were highlighted. Such issues “flew in the face” of the accuracy as far as its own declared fruitless and wasteful expenditure were concerned, as well as irregular expenditure. He observed that there was considerable depth to the absence of consistency for the required high level of accountability at Eskom. Lastly, when it came to consultation on Eskom’s exemption, the Members were aware of how they could be involved in assisting with that process.

Mr G Cachalia (DA) was pleased that the Minister had withdrawn the Gazette for now, pending review. Was it possible to see the letter from Eskom requesting the exemption? That would clear up the intention of what was requested. What would Eskom detail in the integrated report schedules of wasteful, fruitless, and irregular expenditure? Would everything be in those reports?

Now that every local news outlet, respected foreign papers such as the Financial Times, numerous commentators, unions, and opposition parties were expressing “significant disquiet” about the exemption, how did the NT see it affecting Eskom’s prospects of raising capital? He suggested that legacy issues could be separated in the annual financial statements notes, and current issues of considerable importance of impact be addressed transparently, instead of a “ham-fisted attempt” to hide those in the hope that prospective investors would not pick them up.

What was Eskom’s current cash cover ratio, in the event that those loans and bonds were raised? He observed that Transnet, after a similar exemption was raised, a dollar-denominated bond with a coupon rate of 8.25% had been raised, but there appeared to be insufficient cash cover to service that bond. Was Eskom hoping for the same, and would it be able to meet repayments and covenants in that regard? If so, how?

Mr A Shaik Emam (NFP) asked if the Minister and his team had ever been to a financial institution to buy something on credit or to borrow any money. His understanding was that the only thing that such institutions required, other than an identity document and proof of address, was financial statements. His interpretation of what was happening with Eskom was that it was a deliberate attempt to defraud

financial institutions or lenders by not providing them with an accurate picture of the financial situation of the entity that wanted to borrow money. If one read media reports, the intention was very clear – when Eskom's figures were put into a financial statement, they would not create a good picture. As such, lenders would be reluctant or would refuse to lend money.

Members had heard from the AG, who had raised concerns about other entities such as Transnet also raising exemptions, which made it difficult even for the AGSA to deal with those matters. Assuming that what the Minister said was correct -- that one would find it in the annual financial report -- Eskom would then submit the annual report together with the financials. All of that would show to that lender that Eskom was a high risk, judging from the irregular, fruitless, and wasteful expenditure. His understanding was that potential lenders would request the financials.

Expressing his disappointment, he asked whom the NT received guidance and advice from in wanting to go in that direction in the first place, given that it knew better than anybody else how serious the situation was with South Africa's SOEs when it came to corruption and manipulation of the financials. The NT must have known that an exemption could be used to manipulate Eskom's finances. While he was concerned that the NT had considered an exemption, he also welcomed the fact that the Minister had decided to withdraw the Gazette. If a financial institution was going to lend money to Eskom without getting a clear reflection of its true status, would it not be putting itself at risk based on the financials provided? That would mean misleading a financial institution. If one went to a financial institution and misrepresented things, then it could charge one with fraud. What would be the case as far as Eskom was concerned?

Eskom needed to go out into the open market to get more financial resources. What measures would be put in place if the exemption was rejected to enable Eskom to go and borrow money? He was concerned that Eskom was potentially going in the direction of borrowing more and more, falling off a "fiscal cliff," and not being able to pay. Did the Minister of Finance and the NT understand the damage that had been done to South Africa's reputation? The NT had put forward the exemption without consulting the Standing Committee on Finance (SCOF), the Standing Committee on Appropriations (SCOA), and all other relevant stakeholders in Parliament before they had considered it. Parliament was responsible for oversight as far as such matters were concerned. If it was not defrauding, then what was it, according to the Minister's interpretation? Eskom found itself in a situation where it could not be given more bailouts, and he agreed with that. Was the Minister saying that Eskom must go out and "lie to the people" and get that money?

Dr D George (DA) thought that the exemption was fake news when he first heard of it. He had been in touch with the Minister, who was aware that Dr George thought the exemption was a "really bad idea". This idea had damaged South Africa's reputation even more than it was already damaged. South Africa was grey-listed already and was not considered to be a transparent player. Here was an "amateur attempt" to try and "fiddle with the system" so that Eskom would get a better audit outcome, and then be able to attract possibly cheaper capital into Eskom, which needed capital desperately. With Transnet, the information was not transparent, and then there was an issue with a bond after that. That was seriously problematic.

With the Eskom situation, who had advised the Minister on that? South Africa did have a competent treasury – that advice must have come from somewhere. The NT needed to be clear about where that advice came from because it was "really bad advice." What other options were considered, given the various problems at Eskom and its being "riddled with corruption", etc? No one wanted Eskom to collapse financially, because everyone knew what that meant in terms of South Africa's electricity supply and the economic impacts. Had there been pressure from the AG? It was required to be audited. He had not spoken to the OAG, but he expected that it would be extremely unhappy with a situation like the current one. It was important information that was required to be audited by law because it was public money being spent.

Dr George urged the NT to think about a way forward -- it had gone through an "amateur hour." Everyone was looking at Eskom and assuming it wanted to hide things, so clearly, there was a problem. The rating agencies would probably have an even closer look now than before since there were "red flags" waving. Members knew that the NT did not have enough money to completely bail out Eskom. There would probably be a transfer of a large portion of Eskom's debt onto the national balance sheet, but it still needed to attract investment for its operations. That was because Eskom was not viable as it was at that moment.

The government had been saying that Eskom would be unbundled, and a viable financial model could be worked out, which he thought was possible. The government had then backtracked on that. What exactly was the plan? If Eskom was not unbundled, and there was not some kind of plan that people believed to be credible, then the investment would dry up, and Eskom would financially fail. No one wanted that to happen in the absence of a better alternative.

What was the timeframe for the plan now? The Minister was saying that the exemption had been withdrawn. Was it completely off the table? Parliament needed an assurance that the exemption was off the table and that another one was not coming. Once that was clear, then what was the plan? How would investment be attracted, given that there was likely to be a disclaimed audit opinion, and even a ratings downgrade?

Mr N Singh (IFP) observed that what had happened over the last few days left a "bad taste in one's mouth." It was not just about Eskom, and the ability of lenders to give money to South African SOEs and to South Africa at large. It was also about the credibility of the NT, and the Government in the larger scheme of things. He believed that what had happened would have the opposite effect, instead of strengthening Eskom's ability to get funding. All lenders would look at South Africa and the financial statements produced from there with



a microscope. Fortunately, South Africa still had the AGSA, which he believed still had a lot of credibility, and was recognised internationally. The AGSA would “keep an eye on things”, and ensure that there was good governance and good financial management. That was why he had asked at the beginning of the meeting if the AG had been invited to the meeting because he believed that the AGSA was a key role player in the current matter. Why was Ms Tsakani Maluleke, the Auditor-General, not invited?

He felt that “sanity had prevailed,” and welcomed the fact that the announcement of the exemption had been withdrawn. In the eyes of Parliament and the public, it seemed to be a statutory cover-up, where people were manipulating things so that South Africa could be made to look good. Parliament needed to get to the bottom of things and find out how exactly the decision about the exemption had come about. Where did the consultation take place? Which officials were involved in recommending that that decision be taken?

The lenders would not be fooled by the exemption -- they would recognise that there was non-compliance with the PFMA and financial regulations. Perhaps there was a better way to make Eskom look good if that was what was intended. Eskom was a “swear word” in South Africa, not only because of its financial management but also because of the load-shedding that was taking place regularly and increasing. Since the shutdown that was called, load-shedding seemed to be fine for a day or two. Thereafter, it was increasing. South Africa was not hearing much from the Minister of Electricity about what remedial action was being taken to ensure that South Africa went back to stage one -- or stage two if necessary -- and not where it was at the moment. He urged the Government not to compromise on good governance.

Mr Singh observed that the Minister had said that he wanted to consult -- did that mean that the matter was still on the table? As far as the IFP was concerned, that matter should be taken off the table, and alternative ways be found to strengthen Eskom. Billions of rands had been given to Eskom in the form of guarantees. Surely there must be other options? He was disappointed, as a person who had been in politics for a long time, that the idea of an exemption came from the NT because Members held the NT in high regard. He hoped that the current matter did not dent the NT’s credibility.

Ms B van Minnen (DA) agreed with Mr Hadebe’s points about transparency and accountability. There was a situation where the Covid-19 pandemic had prevented the South African taxpayer from being involved in holding the government accountable and seeing transparency. Then Parliament burned down, which made the situation worse. The attempt to stifle the transparency at Eskom could be seen as a third attempt to prevent the South African taxpayer from what was happening at Parliament. She wanted to add her voice to Dr George’s question and ask how the original decision was reached, and who was involved with that decision. Did the fact that the decision was withdrawn indicate that there was a conflict in the NT? Was there a conflict with the AG? If so, how did that happen?

There was now a situation where Eskom was looking bad in the eyes of the public because it appeared that after all the reports of corruption, wasteful expenditure and financial losses, the government was dealing with it now by trying to cover it up. Then when there was an outcry, everyone backed down and decided not to cover it up, which in itself made one look at Eskom’s financial statements with a very jaundiced eye. There needed to be accountability and transparency, and Parliament needed to be taken into the confidence of the NT to understand “how the whole debacle happened.”

Ms V Mente (EFF) stressed her disappointment because the NT did not have a Director-General (DG), and maybe because of that, there were strategies that were out of place and “criminal” in nature. Concealment was a criminal offence. She felt that the finance committees needed to move with speed in putting pressure on the issue of appointing a DG, who would deal with the affairs of the public purse in South Africa.

She observed that the laws in South Africa were simple. If people protested, they had to inform the police that they were going to be protesting at a particular time, and from a particular point to another point. Law enforcement then had to put systems in place to make sure that there was no disruption to other persons and businesses operating at that time. When it came to the public purse, there were strict regulations. There were many laws. None of those laws had room to be breached. In the matter at hand, there was a letter from the Minister, and it was safe to say that there was no consultation at any point with any of the bodies that regulated the expenditure and procurement processes from the government, which was a dangerous route that could create precedents in all the turnaround strategies of the municipalities that were dysfunctional, and by any SOE that was dysfunctional, which could, in turn, cripple the state fiscus. She was not sure if the Minister had thought of that. Once one set an example, and built a case in trying to conceal expenditure, any person could use it. Even if one went to court when one denied the same process being used by other arms of the state, municipalities, or SOEs, one could not win when a successful case study had been allowed to roll out.

That did not only undermine the powers of Parliament. As separate as the arms of the state might be, the arms could not undermine each other. That not only undermined the powers of Parliament, but it also undermined all of the country’s citizens by saying that with the R2 trillion collected by the South African Revenue Service (SARS), the state could decide to exempt all elements of its expenditure. Nothing would happen. The government was “showing the public the middle finger” by telling it that it could exempt a particular entity and that the Executive could not be touched -- the public could not even use Parliament to touch the Executive. The Executive could tell the public how it used that money, and there was nothing that could happen to it. It was wrong, and a “dangerous path” that the Minister had chosen to take. She agreed with her colleagues that Parliament was owed an explanation of how the NT arrived at such a decision.

Ms Mente added that disclosing in a broad annual report was not the same as accounting, especially where finances were concerned. That was why in an annual report, one had a section with annual financial statements and the audit report signed by the AG. The annual report

belonged to the Department; it said what it wanted to say. The opening page of the annual report was signed by the Department, the Minister, and the DG. It was the Department's report, and it could tell Parliament what it wanted to hear. The AG could not do anything. None of the people of South Africa could blow the whistle.

Eskom had made payments to people who did not deliver even a single service and was going through an inflated crisis. On a daily basis, it failed to report on consequence management. An exemption would have said to Eskom it could go and spend whatever was given to it in the fiscus. Parliament could not be part of setting such a precedent. It was wrong, criminal, and against the rule of law. The broader annual report was not provided for in the laws. An exemption was still subjected to disclosing every single transaction. Colleagues in the SCOPA had dealt with the issue of the Road Accident Fund (RAF). What Eskom wanted to do was very similar to what the RAF had wanted to do, where it wanted to introduce a new law that was not South Africa's law. The court had produced an outcome on that, and she encouraged the NT to read that outcome.

The issue of the NT not having a DG was a problem because it should have familiarised itself with other entities that had attempted to conceal expenditure in South Africa, and what the implications and consequences of that were. Could the NT assure Members that the issue of the exemption would not come back? If it came back, the NT would be taken to court. It could not introduce a law that was not passed by Parliament and use it without "passing the test of time" -- it was criminal.

She also asked the Minister to explain the issue of new loans. As far as she understood, the conditions of the government recapitalising Eskom were that it was not going to get a new loan. Instead, the government would assist in shaping Eskom up. It would not be helpful if the Minister of Electricity was in a "game" of borrowing money that Parliament did not know of, then at the same time, Parliament did not have financial statements. Parliament needed a clear picture of where the new loans were coming from. Things being unclear were not part of what Parliament understood. It understood that Eskom was not going to engage in borrowing but was rather engaging with what the state was affording and using that effectively.

Ms Mente mentioned the issue of the AG in the consultation about the exemption. Where had the Minister placed the AG in that idea? Was the AGSA being undermined, or was its role not welcome at Eskom? What would happen to the current financial status of Eskom as disclosed in the previous financial year? How were the consequences of those financial statements going to be managed? What would happen with the auditing of Eskom? What was the NT trying to say when it said that Eskom's expenditure must not be looked at?

Lastly, the SCOPA could not be rendered useless. When the Executive rendered Parliament useless and rendered useless all forces of Parliament that needed to be "policing" financial affairs and the public purse, Parliament was not going to allow or accept that. The role of the financial oversight mechanisms of Parliament was to make sure that everyone followed the law, and that everyone accounted to it accordingly, until such time as Parliament adopted a new law that allowed the route the NT wanted to take, which was "never going to happen anyway."

Ms N Ntlangwini (EFF) agreed with Ms Mente that the NT's "deliberate attempt" to conceal the financial statements of Eskom was wrong. There was a need for a written record that stated that the Minister had withdrawn the exemption for Eskom to declare its financial records. The former Chief Executive Officer (CEO) of Eskom, Mr Andre de Ruyter, had come to Parliament. Previously, Eskom had to leave SCOPA meetings because it either did not have or did not want to declare, the financial records. There was now another watered-down attempt to say that Eskom did not have to declare some form of financial records. That was "criminal." The CEO had said that there were high-ranking politicians in charge of Eskom's corruption. The Minister had then said in his budget speech that the NT would bail out Eskom with R250 billion for its debt, and there would be a set of strict conditions. Now it was the same Minister that had made a "360-degree turn" and said that Eskom must get an exemption. Part of the conditions was that Eskom would come and report on a quarterly basis on how the money was being spent. Who was behind that unwise advice to the Minister?

South Africa had been grey-listed, and one of the reasons was that it had a President who did not want to account for the dollars he had "in his couch." Where was the NT placed with that? Was it part of the cover-up? Saying that state entities must "cover up their financial records" would become a norm, and once that was started, it would only go downhill from there. The EFF "would never be part of the plot of breaking down state entities," or help the Executive to break down state entities in the manner that it wanted to do. It was illegal. Taxpayers expected Members of Parliament (MPs) to block such irrational decisions that the NT, together with those it wanted to "protect," took. The EFF would block such irrational decisions.

It needed to be stated that the Minister's withdrawal of the Gazette was a permanent withdrawal. One could not have a state entity that already had financial records "in a dilemma," and then say that it did not need to show how it could afford the debt. It did not make financial sense. South Africans needed to be taken into confidence as to how the NT was part of a "plot" to get Eskom an exemption from declaring its financial statements. The exemption needed to be permanently withdrawn.

She agreed with Ms Mente that the NT needed to get a DG so that the Minister could stop bringing this "boys' choir" to meetings. In today's meeting, the Minister was "sitting with a round table of men" -- she could see only one woman. Members needed to emphasise that the NT must get a DG very soon. Dr Mampho Modise needed to cease being an Acting DG -- the NT needed a woman who would take the NT forward.

Mr W Wessels (FF+) observed that the public outcry over the exemption should be an indication of public sentiment. That exemption had shown that the NT had lost touch with public sentiment when it came to public finances, and anything that “looks or smells like corruption.” He emphasised that the exemption created a lot of uncertainty and, as Mr Singh had pointed out, led to a loss of credibility, which needed to be taken into account. If there was an exemption considered in the future, then it was important to get clarity on that matter.

The NT had said that the irregular, fruitless, and wasteful expenditure would have still been declared in the annual report. Many colleagues had mentioned how that could be problematic, as it was not in the annual financial statements. If one looked at the exemption notice gazetted by the Minister, the extent of the exemption read that Eskom was exempted from disclosing any irregular, fruitless, and wasteful expenditure that occurred during the financial years in the annual report. Then the letter from the Minister to the Chairperson of Eskom referred to what the Minister mentioned today, that when there was irregular expenditure that was criminal in nature, that should be declared in the annual report. That was not what the Gazette said. It was also only under those certain circumstances that the letter of the Minister referred to disclosure in the annual report where there was criminal activity. The impression was created that all the irregular expenditure would have still been disclosed under that exemption in the annual report. That was not what the Gazette stated, and it was also not what the letter from the Minister said.

It was also a legal question. What would hold the hierarchy between the Gazette and the letter specifying the conditions of the exemption? In legal terms, the wording of the Gazette would probably be what took precedence, not the letter specifying certain conditions. In these circumstances, would it not be better to Gazette the conditions as well? He was raising that because the process seemed badly thought out. It seemed as though the conditions came after the Gazette, that it had been rushed and, as many colleagues had pointed out, was ill-advised. The Minister did not gazette the exemption on good advice, and nor did he take everything into account. It was almost as if the letter and those “after the fact” conditions tried to rectify the situation. Now there was a withdrawal, which was welcomed.

Mr Wessels did not understand how the exemption would have worked. How would there have been an assurance that expenditure that occurred under the exemption in the next financial year and was criminal in nature, was then investigated to conclude that there was criminal activity if it was not audited? There was no assurance that those action steps would be taken regarding irregular expenditure, to have it in an irregular expenditure register, to investigate it, and to then conclude on the nature thereof, and if it was criminal or not, if there should be consequence management or not, if there was no audit on it. That was why the exemption did not make sense at all. He wanted an explanation as to the thinking behind it – how would there have been any assurance that those investigations would be conducted if there was no audit of the irregular expenditure register because it was not contained in the annual financial statement?

He concluded that it was important that the current matter served as a lesson that those types of exemptions and actions were not regarded as being in good faith by the public and that the public's concern was about all types of action that seemed like a concerted effort to cover up any criminal activity or corruption. It was bad that that situation had occurred, and that the credibility of the NT and Eskom had been further tainted.

Mr N Kwankwa (UDM) said that section 12 of the PFMA dealt with exemptions. It said that the Minister, by notice in the national Government Gazette, may exempt an institution to which this act applies, or any category of those institutions, from any specific provisions of that Act for a period determined in the notice. Therein lay the problem -- if one looked at the Act, and how that specific section of the Act was written, it gave the Minister sweeping powers, which was part of the problem. While Parliament must condemn what was done, he also felt it should take responsibility to a large extent for what had happened. He suggested amending that section to make sure that all the institutions that were relevant should be contained in that section -- in other words, that parameters needed to be set for such an exemption. For example, if one agreed that in the future there might be a need for such an exemption to be considered, it should not be entirely up to the Minister to make that decision. Additionally, that section itself did not give powers to the Minister to say that an institution could “decide to tuck some of the information away” in what he preferred to call a “public relations (PR) document,” which was the annual report. It only said that a state entity could be exempted from being able to say certain information, but for a certain period, and it left it at that. Where was the part that said that information could be tucked away elsewhere?

Where the Minister and the Department had got those powers from was another issue that needed to be addressed. The implications were that anything that made people uncomfortable when it came to accountability could be tucked away because it was an inconvenience. It would be tucked away in the annual report, which was really “a PR document which always attempts to sanitise problems,” and to downplay some of the governance challenges facing the entity. Members who spoke before him had been correct in saying that Parliament should be dealing with the underlying root causes of the problems, rather than trying to paper over the cracks. Governance problems had been a perennial problem at Eskom. Parliament, the Executive, and relevant state entities needed to work together to deal with that.

By tucking certain information away, the unintended consequence was that investors were being misled. If one understood how economic agents acted, the principle of rational behaviour when it came to the acquisition and processing of information stated that there was no economic agent who would invest in Eskom by just considering current information, without being persuaded by what happened in the past. Any investor would use an “extra collative approach,” where they would consider the past and the present, and also look at the trends to see whether there was an improvement in the performance of that entity before an investment decision was made. The investors would base their decisions only on the current state of the organisation. Investors had to consider what happened in the past

with irregular expenditure and all of the governance challenges that had taken place at Eskom, but also consider whether there had been any material improvements in how the entity had been governed. That enabled investors to predict the entity's future.

The exercise of the exemption was not going to help Eskom to attract investment. If one considered the negative publicity that it had received, he would put it to the NT that it had rendered the exemption "null and void," because people knew that Eskom had something to hide. Rather than the Government doing something about the challenges of Eskom, it was saying that it would tuck all of the inconvenient parts into a PR document, and hide them away in an attempt to mislead investors. His understanding of the withdrawal was that the withdrawal was only temporary. It was intended to show respect for the wide range of consultations that the NT had to make, including the Parliamentary process that was currently underway. He encouraged Parliament to commend the Minister and the NT on their leadership with respect to the issue at hand, but the NT was also encouraged to make the withdrawal permanent, so that the entity's challenges could be faced.

Mr Kwankwa said that the Minister must also consider the context of the issue. The exemption had also happened at the time when a person had come to the public to whistle-blow on the misuse of government funds. In his interview, Mr De Ruyter had given the example of being told that "other people must be allowed to steal a little bit." If Eskom was exempted from providing certain financial information, it meant that Parliament was protecting those people who were allowed to "steal a little bit" when Eskom was sourcing funding. Mr De Ruyter had been referring to funding that Eskom had sourced from multilateral institutions and international financial institutions to deal with challenges that it faced. An exemption was saying to those people that because they found themselves in the dominant faction, they should be protected by using exemptions. Everything needed to be laid on the table, and there needed to be accountability.

The other unintended consequence of the exemption was that it created a culture of impunity at Eskom, or at any other entity that was exempted from using section 12 of the PFMA. It was saying that for as long as such people were at the entity, they could continue to misappropriate government funds, waste taxpayers' money, and not consider the seriousness of the AG's findings when it came to audit reports. Audits that Members received were how they knew about the irregular and wasteful expenditure incurred by entities. If that could be tucked away because the information did not serve a particular purpose at a specific point in time, the unintended consequence was weakening the AGSA and the credibility of the reports that came from there. It could also, for example, weaken the extent to which departments would take the AG's reports seriously.

He was not a lawyer, so he wanted to ask which one carried more weight legally in terms of being able to charge someone criminally for irregular and wasteful expenditure. Could he take an annual report, and say that based on that "watered-down" version that had been explained, he was charging someone criminally, or was it the financial information that had a legal standing, including the reports of the AG, that one would be able to use to charge people criminally on the basis of whatever transgressions might have occurred? Stakeholders, including Parliament, would have to seek recourse elsewhere to find out whether the NT's decision was in favour of accountability, transparency, and proper financial management of South Africans' taxes in general.

Mr M Hlengwa (IFP) observed that some of the pertinent questions one would want to build on had not been responded to yet, including but not limited to the scope of consultation exercised by the NT in implementing the exemption. It was clear from the outset that it involved "malicious compliance" with the law. While the provisions of section 92 of the PFMA may apply, the expectation was that the invoking of any legal section had to be rational, reasonable, and responsible. In the case of the exemption, that had not happened if the Minister now said that the NT would have to go back and consult. The rational, reasonable, and responsible course of action would have been to do that prior to taking that decision. It meant that the withdrawal had not been done in good faith. It sought to "circumvent" that day's meeting and any further public accountability as a means to "go back to the drawing board," and then come back with what was supposedly going to be a legitimised process. The decision was a *fait accompli*, in that it had been taken -- what was absent was a reasonable justification as to why the exemption had been given.

Section 55 of the PFMA directed that irregular expenditure was one of the areas that must be audited. What Members were seeing was an act of "legislative gymnastics," which did not augur well for the legitimacy of the exemption process. Over the past five years, Eskom had been qualified on the basis of irregular expenditure year-on-year. It had not formulated a credible, functional, and sustainable audit action plan in response to audit outcomes, which did not give anyone confidence that it was dealing with the areas of material concern, including but not limited to irregular expenditure. Now, to "sanitise the books" of Eskom, the NT was coming up with a "manipulation of the law" at Eskom, in a key area that had been a persistent issue for the past five financial years, as contained in the audit outcomes. Nothing had changed at Eskom, and "nothing would change," so the cop-out was for Eskom to be exempted, because it was unable to deal with irregular expenditure.

Mr Hlengwa emphasised that Eskom did not have a credible audit action plan. He said to the Minister that it would be dangerous and irresponsible to condone that through an exemption. Whoever had advised the Minister had misled him. The holistic picture of the state of affairs at Eskom spoke not to an exemption, but to a tightening of legislative compliance. The government would not turn Eskom around by "sanitising the books, shielding things, or by willy-nilly exemptions," given the gravity of the situation.

Additionally, what did "for now" mean? If the exemption was withdrawn for now, when would it come back, and for what purpose? Did the Minister legitimately think it was correct to bring it back? Eskom did not deserve an exemption -- it exacerbated an already dire situation at the utility. He wanted to advise the Minister to withdraw the exemption permanently in its entirety, and to insist on an Eskom that was

going to conduct its business operations consistent with the law. He urged the NT not to “aid and abet” the corruption taking place at Eskom through “legislative gymnastics.” A cover-up through irregular expenditure was happening, and it was one of the biggest areas of material concern that the AG had. Whilst section 92 of the PFMA was legally permissible for the NT to use, the absence of regulations on how it implemented that section was what had landed the Committees in the current situation, and that had to be corrected. Members were strongly advising the Minister against an exemption. Eskom must not get an exemption, because that would not solve the problem, but instead make it worse.

Mr A Lees (DA) recalled that the Minister had mentioned Transnet and asked if the exemption had been withdrawn from Transnet, as it had from Eskom. If not, why not? What other entities had been given the same exemption? Were those exemptions still in place?

Was the withdrawal of the exemption granted to Eskom a result of a negative reaction from international rating agencies? What had been the response of international rating agencies, and had that influenced the withdrawal? There had been a state of disaster declared for Eskom. If Government was going to use that to give exemptions of some sort -- which needed to be rational and reasonable -- then surely there was a need to look at the issues raised by Eskom, which were regulatory and inhibiting its operations from getting it back on track? He felt that that was where Eskom should be getting possible exemptions, so that it got the best possible price no matter who the supplier was, for example.

Mr Z Mlenzana (ANC) joined his colleagues in welcoming the Minister’s decision to withdraw the Gazette or the application of section 55(2) (b) of the PFMA. He was not a qualified auditor, but with the little he knew about the audit process, he would do two things. Firstly, the Minister had said he had been in consultation with the AG, and after such an interaction, the AG felt that there were issues that had to be tweaked. As such, the Minister had decided to put the exemption on hold until such time as there had been enough interaction. The one part that the AG played was the role of giving advice. The second thing would be that any auditor would be instructed by the supposed-to-be auditee and the Government. After that, the auditor would have to ascertain only if what was agreed on was implemented accordingly. The Minister could have “abused” section 55(2)(b) of the PFMA to “cover up” the red flags that were shown by the audit opinion. If one refused to provide information that was sought by an auditor, whether a private auditor or the AGSA, then the auditor would simply seek that information through management. If one continued refusing, then the auditor would say that they were unable to have an audit opinion and would therefore disclaim the opinion. If such a thing happened consistently, year after year, and the Minister used his powers as given in section 55(2)(b) of the PFMA to exempt the entity, then when one was talking about irregular and wasteful expenditure, he would be concealing things. Could the Minister tell the Committees more about the performance information of Eskom? How many material irregularities were there at Eskom at that moment? What did the balance sheet of Eskom look like?

Mr Mlenzana had heard colleagues asking about the necessity of Eskom going out to the market for borrowing after Parliament had taken a decision to do two things for Eskom. Firstly, it had agreed on bailing out Eskom. Secondly, it had agreed to treat it as a “disaster,” hence the declaration of a state of disaster as far as Eskom was concerned. Parliament had then agreed that if it was treated in that fashion, it would allow the President to appoint a Minister of Electricity, which would be a short-term post to deal with the disaster facing Eskom.

He wanted to be cautious, and not prescribe what the Minister of Finance should do or not do. In the SCOA, the Committee had said that there would not be a situation where the government was going to simply appropriate money, and it would turn its back. If money was going to be appropriated, there must be follow-up, so that expenditure was monitored. The Gazette sought to assist Eskom towards a situation where it was seen by the rating agencies to be clean, but there was debt within the entity. It could be seen as taking a piece of clean, white linen and covering up the debt so that whoever was out there for borrowing or lending purposes would see a “bright, white picture,” only to find that it had been “wrapped around the debt inside.”

He echoed the sentiments that said it was good that the Minister had put the exemption on hold. However, if the Minister was thinking of coming back with the Gazette, then let there be a thorough approach to doing so, with thorough consultation, where all would be convinced of what the implementation of the Gazette would mean to Eskom, the government, and Parliament.

Although he had not applied his mind “deeply” on everything raised by the Zondo Commission, one point he had noted was that the Zondo Commission had raised a point about the laxity in Parliament when it came to its oversight over the Government and its entities. If that was allowed to continue, it would mean that Parliament was slipping back to what the Zondo Commission was raising. Colleagues had been saying that there was a difference between malicious compliance and accounting. If the Minister was talking about accounting, then there would be facts, figures, and timeframes. If there was a situation where there had been fruitless and wasteful expenditure, then how was it followed up? If there was irregular expenditure, then what was being done?

Mr X Qayiso (ANC) appreciated what the Minister had explained before the Joint Committee. Now that a state of disaster had been declared regarding Eskom and electricity, everything that was said in the meeting should not exclude the atmosphere of a disaster, as moving forward, the Members could contribute to how best to assist in ensuring that Eskom played the critical role it was mandated to do. Eskom was central to ensuring that there was an economic recovery in South Africa. Eskom should not be discussed in isolation from what had been pronounced by the Office of the President. There was also the establishment of the Ministry of Electricity. It was a “whole package.” When the Minister went back and repackaged things, it would be something that was inclusive of what had already been established as part of the process that would assist Eskom generally to realise its mandate.

He did not want to speak about words such as “exemption” as if he were a legal guru. The term “exemption” was included in the PFMA. He was careful not to speak over the PFMA, but Members needed to acknowledge that there were instances where there were legal concepts that implied something specific within the PFMA. There was nothing that Members could do until a new subject was brought in all together to deal with the word “exemption.” It did not mean “to do nothing.” It still meant that there was something that had to be done by the Minister beyond the current discussion.

He appreciated the invitation from the NT to hold a joint meeting. Within the individual Committees, there was a need to make submissions to shape the current issue. It was not only a concern of the joint Committees, but also an issue of the entire National Assembly to make sure that Eskom became a fully functioning entity realising its mandate through its contributions. Members appreciated the discussion that had taken place between the ministry and the AG. It was a continuing work, and the Committees would not finish it that day. Such work would continue until Eskom was performing according to its mandate.

Mr S Buthelezi (ANC) thanked the Members for availing themselves for a meeting at short notice. It showed the importance given to the matter on hand.

He reiterated Mr Hadebe’s point that the Constitution was the supreme law of South Africa. Section 2 of the Constitution read: “This Constitution is the supreme law of the Republic; law or conduct inconsistent with it is invalid, and the obligations imposed by it must be fulfilled.” One of those obligations was for Parliament to play an oversight role, and to hold the Executive accountable. There should not be anything done which could be seen to impair Parliament’s ability to carry out its oversight responsibility.

He thanked the Minister for his decision to withdraw the exemption. Economic agents, such as vote holders, taxpayers, and rating agencies, made decisions based on the financial statements. That meant that the reliability and credibility of annual financial statements were taken as a true reflection of the financial position of a company. That was critical and indivisible. Hence Members’ concern about the application and exemption of Eskom from section 55(2)(b)(i) of the PFMA and the NT regulations 28.2.1 (in Treasury Regulations, 2005, Gazette No. 27388, dated 15 March 2005). It was better to disclose the problems facing a company, be it wasteful and fruitless expenditure so that users of annual financial statements could factor that into their decisions. In that way, the company could assure the public that it was doing something about its challenges.

Mr Buthelezi recalled that other Members had said that the government should be very careful not to be seen to be misleading the public and the economic agents -- the users of the annual financial statements -- because they were basing decisions on such statements. If the government was not careful, it could be opening itself up to litigation, because down the line people could say that they had made decisions based on an annual financial statement, only to find out that the statement was not true. The global economic crisis of 2008/2009 was still fresh in people’s minds, where companies had been given a clean bill of health, and then at a later point “went belly-up.” There had been a lot of litigation following that. The best thing to do was to disclose when it came to finances. Something that could be an unintended consequence of the exemptions was that economic agents could say that they gave money or a particular rate, but if they had had certain information, they would have given a higher rate to mitigate their risk. That was “treading on dangerous territory.” so it was better to disclose so that when people made decisions based on annual financial statements, it should be based on the correct information. There was no information that the government should think was “not good for the public.”

Another problem that he felt should be discussed when the government dealt with Eskom was what he would call “the negative contagion effect.” People out there would think that was how all other SOEs were operating and were guilty of the same practice because people would be questioning if such practices were limited only to Eskom and Transnet, or if others were doing that as well. Financials could be treated with suspicion if the information was withheld, and rightly so.

The proposal to assist Eskom by transferring about R250 billion of its debt to the sovereign debt was aimed at assisting it to deal with its problem. Therefore, as the government did that, transparency and good governance were paramount. It should not just be done, but also seen to be done, so that South Africans were assured that there was proper accountability as they assisted Eskom in dealing with its problems. As Parliament was enjoined by the Constitution, it could not be a case of “half oversight.”

Mr Buthelezi observed that the meeting was proof of Parliament performing its responsibility, and he did not think Members should lose sight of that. It was also proof of the Executive’s responsibility that it was being subject to oversight by Parliament. Within three days, the Committees had come together to discuss very serious issues. It was important that the Minister had decided to withdraw the exemption, and it was also very important to listen to what people were saying. The Committees had decided to have an urgent meeting, even as Parliament was in recess. Perhaps there had been “blind spots” when the exemption was originally put forward, but many issues were being brought out through the platform of the joint meeting, which the Members appreciated. He encouraged the NT that in whatever it did, Parliament’s ability to do oversight and play its constitutional role was not being compromised and undermined.

Ms T Tobias (ANC) said she was “fresh from being a marketer” of South Africa to being an overseer. Marketers looked at the possible securing of investment portfolios for the country and made sure that any other matter was dealt with, as long as marketing the country was dealt with first and foremost. She felt that the centre must hold, in that it formulated policy. Because it formulated policy, the policy position that was taken by South Africa became the “gospel truth” of that country. Therefore, there could be “no dilly-dallying” about where one stood on policy formulation.

Parliament had dealt with precedents to the Eskom matter, such as what Steinhoff and KPMG had done at a particular point when dealing with misstatements of their financial positions. Mr Mlenzana had observed that an auditor was instructed by an auditee on what to look at, which was currently a short-lived debate because of the time management of the debate itself. That would have to be unpacked at a later stage.

She commented that there was a difference between disclosure of irregular expenditure and accounting fraud. Those were two distinct issues. Accounting fraud was when a company had misstated its financial position. However, if there was irregular expenditure and it had not been disclosed, that was not fraud.

She felt that Members should not be “nice with words” because they were afraid of the polarisation of the subject matter. As to where the NT stood and the timing of the Gazette, it was an issue for a different debate. Sometimes the NT might have wanted to be expeditious in explaining its position. At the current juncture, it needed to be evaluated if Eskom had actually disclosed all relevant information. Mr Kwankwa had said that the annual report was a PR document. It might sound like a PR document, but it was an important document that gave an account of what had happened. If one did not disclose information properly in such a document, it could have legal implications.

At the current juncture, the Minister might have withdrawn his submission on the Eskom exemption on the basis of consultations, which fellow Members had said needed to take into account the bailouts granted to Eskom. It needed to be borne in mind that Eskom was still a national key point. It was being audited by a private company. Additionally, there was the issue of South Africa’s economic outlook, which had been revised to a lower figure. She felt that it was necessary to go back to the drawing board to discuss what was in the best interests of the country. Eskom was not a Johannesburg Stock Exchange (JSE)-listed company. Thus, it was not just a company risk appetite issue, it was also a national key point issue.

Ms P Abraham (ANC) remarked that she had not heard such unity between political parties in a long time. Mr Singh had summarised it well when he referred to the timing of the exemption, as well as Eskom being a “swear word” at that point in time. She felt that the FF+ and EFF Members had raised critical points, and she agreed with them. The issue at hand was not just an issue of the NT, but also a national, if not an international issue. South Africa had “boasted” about having one of the best constitutions in the world. It was critical that the country stuck to the Constitution’s precepts.

She agreed with Members who had pointed out that the Minister had committed to pausing the exemption and was going to do what was necessary in consultation and content. Members could also perhaps advise the ministry. That did not mean coming back with the same issue at a different time. For her, the issue had a lot to do with fiscal consolidation. A re-look at financial risks and dangers, and restructuring Eskom’s debt, were not new issues for the NT. There had been reprioritisation from the NT since 2013. That would not be a new issue, but rather one where one could look back and see how to learn from the experiences of the past.

Did Parliament want the NT to “escape” the AG’s regulatory conduct by shifting irregular expenditure to annual reports, just to please Eskom’s corporate rating and credit assessments with rating agencies? Apart from the consultation that Parliament wanted to do with the NT, had Parliament exhausted the rationalisations and solutions to the problem at hand? One might turn around and find that the same rating agencies were judging South Africa on the pretext that it was “deceptive” in the way it was dealing with those issues.

This was not the finance Committees’ first encounter with how entities, including the NT, wanted to “avoid further liabilities” by avoiding adverse audits. Was that being done for Eskom? The key thing was that it was being done at the request of Eskom. The same agencies from whom South Africa was trying to avoid negative judgment would come to the same conclusions when they read about Eskom’s problems in the annual report.

Mr Ismail Momoniat, Director-General, National Treasury, suggested that members of the accounting team could begin the responses because there had been many questions about factual information.

Mr Shabeer Khan, Accountant-General, NT, observed that many questions were on whether the exemption would diminish or dilute accountability and transparency in the way the information would be disclosed. The exemption under section 55 was a reporting requirement. As part of a broader financial management framework, the PFMA outlined what was required to be reported. Section 55 dealt with the annual financial statement and the annual report. It went into detail and noted that the public entity must prepare financial statements in accordance with a recognised framework. In the case of Eskom and many other Schedule 2 public entities, the reporting framework was known as the International Financial Reporting Standards (IFRS). This was quite a comprehensive financial reporting standard, and it was internationally approved. South Africa had adopted that standard. Eskom also had to comply with the Companies Act, as well as the JSE debt listing required.

Over and above the accounting standards, the JSE requirements, and the Companies Act, section 55(2)(b) went on to say that all material losses through criminal conduct must be disclosed, as well as all fruitless and wasteful expenditure. Section 55(2)(b) further said that any criminal or disciplinary steps taken as a consequence of such losses must be disclosed, and any losses that were recovered or written off must also be disclosed in the annual financial statements. The NT was dealing with the matter of asking a fundamental question: If the exemption was granted, what did that mean? What did it mean in terms of whether the annual financial statements would still fairly



present Eskom's financial position, its performance, and whether the AG could still provide an opinion on whether the financial statement fairly presented Eskom's financial affairs in an appropriate manner?

There had been a number of reforms over the last few years in how irregular expenditure was reported. That had been done in consultation with a number of stakeholders. The NT was primarily responsible for the setting of norms and standards. In doing so, it would have had consultations with provincial accountants-general, and with provincial treasuries. The AGSA was a key stakeholder, along with accounting officers and chief financial officers (CFOs) of departments and public entities.

As part of the reforms, the NT had done some research, which had shown that there was a problem, in that the concept of "irregular expenditure" was unique to South Africa. Over the past decade, irregular expenditure had increased at an annual growth rate of 36%. Such irregular expenditure had become a major concern for the government, but the definition was also quite broad. That contributed to some of the problems that the NT was seeing. An example from the research was that in the 2020/2021 financial year, the irregular expenditure across the state had increased significantly, by R77 billion. That example was an irregular expenditure transaction recorded by the National Student Financial Aid Scheme (NSFAS) for its disbursements to bursaries. The transaction was irregular because the NSFAS had omitted to Gazette the funding guideline. All of the other processes were correct, and the correct amount was correctly distributed. That lack of Gazetting had caused the entire transaction and all of the disbursements to be irregular.

The NT had also looked at what the United Kingdom (UK) did. In the UK, the focus was largely on where public resources were lost or stolen, rather than focusing on the concept of irregular expenditure. In South Africa, the concept of irregular expenditure focused on the value of a transgression, rather than focusing on the resulting loss to the state.

As part of its research and in its engagements with the AG, the NT issued Instruction Note 4 in December 2022 to deal with some of the reforms that were required to enable it to report in a way that provided a lot more value to readers of the annual financial statements. Instruction Note 4 said that all irregular expenditure recorded in a financial year must be disclosed in the annual financial statements. The note went on to say that all prior financial year irregular expenditure, where it was still required to be either investigated or was subject to condonement, could be moved into the annual report. The reason for doing so was that it allowed one to maintain a certain level of transparency and allowed accounting authorities such as the board of Eskom to deal with some of those matters. That framework had changed the way that some of those matters were being reported. The framework was applicable to all national departments and public entities.

On the exemption itself, and how it was considered, there were a number of tests that the NT and the team within the Office of the Accountant-General (OAG) had looked at. The rationality of the exemption centred on a reporting and accounting principle. The first test for the Eskom exemption was a transparency test, and whether the disclosure of that information in the annual report would provide adequate transparency -- first for the users of the annual financial statements and the annual report, but also for the oversight bodies such as the audit committee, the Eskom board, and the oversight structures within Parliament. The NT had looked at whether the disclosure in the annual report would lead to transparency. In the prior year, the NT had worked with Transnet, and had come up with a template on how that could be disclosed to give full effect to what was required to be disclosed.

Mr Kwankwa raised a point of order to find out whether the NT's answers responded to the direct questions that MPs asked, or whether the NT sought to justify the actions taken so far.

The Chairperson said that he had heard Mr Momoniat say that the Accountant-General would respond first.

Minister Godongwana said that at the core of the questions was the issue of accountability, transparency, and concealment of information. The Accountant-General was saying what the rationale was behind the exemption, and how those matters were being addressed. He asked that the Accountant-General be allowed to proceed, and then the NT would deal with any other questions that had come up.

Mr Khan continued that he was outlining the considerations taken by the NT as it advised the Minister on the transaction. With the transparency test, it was a question of whether the NT would have had complete transparency on the transaction. With the accountability test, what the NT considered when advising the Minister was whether material losses through criminal conduct would still be reported. In considering the exemption, the NT had made it quite clear that Eskom needed to report on all material losses due to criminal conduct. Furthermore, the NT had indicated in the exemption that all criminal and disciplinary steps taken as a consequence of such losses or irregular expenditure must still be disclosed. Losses recovered and written off must also be disclosed. With the accountability tests, those parts which a large number of Members had raised around fraud and the concealment of such transactions, the NT had made it clear that those transactions must be fully disclosed in the annual financial statements and would be subject to an audit.

When looking at the accountability test, the NT also looked at how, when it came to the areas of irregular, fruitless, and wasteful expenditure, the board still had the primary responsibility as the accounting authority to take adequate steps to prevent those types of irregularities. It had also looked at whether there were sufficient checks and balances to ensure that what was reported was appropriate for the users. In auditing terms, it was called an "agreed-upon procedures assurance" -- that when the readers read the annual report, they would have the knowledge and the comfort that those numbers were subject to agreed-upon procedures by the auditors.

It was important to note that when the NT looked at how Eskom had disclosed some of those matters, especially the matters around fraud and corruption, it had looked at the previous year's annual report and the annual financial statement. These included matters which were in the public domain, such as the theft of conductors, cabling, and related equipment; estimated non-technical revenue losses; and fraud within the organisation. All of that would still be fully reported in the annual financial statements and the annual report.

As part of the process of dealing with the transparency and accountability tests, the NT had looked at prior exemptions, and whether the transparency and accountability tests had been achieved. The only exemption that was previously granted was for Transnet. There, it had been permitted to disclose such information in the annual report around irregular, fruitless, and wasteful expenditure. There were adequate consultations with the AG, who performed the agreed-upon procedures. That was then adequately disclosed in the annual report. That enabled the audit committee of the board to have full sight and visibility of such transactions. The annual report was also tabled in Parliament to enable oversight structures such as the Committees to hold the Executive and Transnet to account.

*[Mr G Masualle (ANC) wrote in the chat box: In the light that the Gazette was withdrawn, so the matter was moot, why further engagement when the matter was to come back maybe in a different form, with a possibility for wider consultation?]*

Mr Khan said there were a number of questions asking why the annual report, and not the annual financial statements. One of the Members remarked that the annual report talked about the PR elements. The annual report was more than just a PR exercise – it contained valuable information, such as performance against predetermined objectives. At the start of every year, the annual performance plan was tabled in Parliament. Those objectives, indicators, and targets became the performance plan for every organ of state. That performance plan, which formed the bulk of the annual report, was also subject to an audit. The AG would then also report on whether there were any findings on the performance information. There was a lot of value in the annual report of an organ of state because it provided useful information to different users of the financial statements.

As part of the exemption and further engagements, the Accountant-General's office and the NT set the standards around how accounting should happen in the public service sector. There would be further engagements with the AG and the Eskom auditors to ensure that the issues and concerns raised by the public and the Committees were strengthened to ensure that accountability and transparency were not diminished in any way.

Mr Momoniat said that with the exemption process, the precedent had been set when Transnet was exempted last March. He asked his colleague to go through the engagement process with the AG. He observed that there had been consensus on why the provision for Transnet was required, and how it had helped Transnet. The NT had a good reason for not withdrawing the Transnet exemption.

Ms Malijeng Ngqaleni, Head: Intergovernmental Relations, NT, said detailed consultations had taken place regarding Eskom's request for an exemption. The NT started discussing the request with Eskom and other key stakeholders in the NT in July 2022. On 26 October 2022, the Energy, Procurement and Finance Working Group discussed the matter of an exemption from section 55(2)(b) of the PFMA. The group had indicated that a formal letter would be submitted to the NT from the Chairperson of Eskom. The NT received the letter on 9 March. The reason the letter came on 9 March was because the NT had said to Eskom that it was still busy working on the irregular expenditure framework that had been revised, so it would want the entity to engage with that framework to see if it assisted it to some extent, and to indicate what it assisted the entity with in order for the exemption to be minimised since certain key factors would have been addressed in the framework.

When the NT received that exemption request, it had bilateral meetings with the AG -- such meetings were part of its usual process -- and weekly meetings. The reason for those meetings was to discuss issues of compliance and accounting. The framework that the NT had issued in December was discussed at length with the AG, together with any other disputes that parties may have had on the interpretation of legislation and on other matters that may relate to accounting and compliance. If the NT received a departure request in terms of section 79 of the PFMA, or a section 92 exemption, it did caution the AG.

Ms Ngqaleni continued that the NT did have those kinds of engagements with the AG. Even after the framework was issued, it did a lengthy rollout process of the framework. The NT met with the SOE senior managers who were responsible for the audits of those organisations, and also spoke with some of the external auditors who were doing audits on those matters, in order to indicate the changes that had been brought in by the framework. What would have followed after the Gazette was that the NT would engage the AG on what the audit implications were, and how the audit would unfold, now that Eskom had been granted an exemption to disclose in the annual report, was the same process that the NT had followed with Transnet. There were different steps that it followed. Firstly, it cautioned the AG. Secondly, it had done a transparency and accountability test, and thirdly it looked at the different implications that could come with that exemption and with the audit process.

The NT was at the stage of entering into an engagement over the audit process of the Eskom exemption. Eskom started communicating with the NT around July 2022. The NT and Eskom had a number of meetings during the 2022 financial year. The last "intense" meeting it had with Eskom on the exemption, where it had submitted the draft letter, was on 26 October last year. From that meeting, the NT had decided to tell Eskom that it had issued a framework and that Eskom needed to look at that and see if it addressed some of the challenges that it was facing. Eskom could then come back with a revised letter that showed exactly what it wanted to be exempted from. It was

important to note that the exemption was not granted on any losses to the state. It was not granted on any irregular, fruitless, and wasteful expenditure emanating from criminal activities. The NT still wanted to see consequence management being reported in the annual financial statement. If there were losses that were recovered in the financial period or losses that were written off for any other information in terms of Eskom's policy, the NT still wanted to see it reported in the annual financial statement. She could almost say that what the NT exempted Eskom from was to disclose in its annual report irregular, fruitless, and wasteful expenditure that was not attached to any criminal activity or losses. What the NT could perhaps have done better was to issue an explanatory note with the Gazette to explain the intention and the rationale, and to differentiate between those different categories of irregularities and losses.

Dr Duncan Pieterse, Head: Asset & Liability Management, NT, responded to questions about lenders and the broader Eskom reform process.

He started by outlining the broader context of the steps the NT was taking to restore Eskom to financial sustainability. Ultimately, all of those different initiatives were aimed in the direction of restoring Eskom's financial sustainability and putting it on a sound financial footing. As part of that, the Minister had arranged a debt relief arrangement of R254 billion over the next three years. Through the Eskom Debt Relief Bill, the NT was proposing a loan to Eskom that would be converted to equity, as the conditions outlined by the Minister of Finance were met. Very strict conditions had been developed to safeguard public funds, including limitations on new borrowing. The Minister, through the NT, would ensure that those conditions were enforced, and upon compliance with the conditions, allow Eskom to convert the loan to equity. As part of the Eskom debt relief, the NT was imposing additional reporting obligations on Eskom, to ensure that the funds it was allocating would be used for the debt relief arrangement only, and to assure that the NT addressed additional governance challenges at Eskom.

There had been questions on the implications for lenders. Dr Pieterse said that due to restrictions the NT was imposing on Eskom as part of the Eskom debt relief arrangement, Eskom did not plan to borrow over the next three years. Because there was no borrowing planned by Eskom, there were no new loans that the entity would be engaged with. The debt relief arrangement created a sustainable balance sheet for Eskom without the need for borrowing over the next three years. Eskom still had existing loans that it had to engage lenders upon, and the NT was assisting Eskom to repay those loans over the next three years. The way that the lenders managed the information requirements associated with those loans was through covenants that they attached to those loans, on which Eskom needed to report on a regular basis. Should it not meet those covenants, it had to request waivers from those lenders. Members could be assured that the lenders of Eskom had the information they needed to make the right decisions about the loans that had already been extended to the entity.

On whether any of the NT's decisions had been informed by the rating agencies, he said the answer was "no." The NT had engaged the rating agencies after the budget speech, as it always did. That had not been a matter discussed with the agencies.

As part of the Eskom debt relief arrangement, the quarterly meetings between Eskom, the NT, and the Department of Public Enterprises (DPE) would continue, to ensure that the parties discussed the progress required by Eskom for the debt relief arrangement. Eskom would continue with its usual quarterly reporting to Parliament.

As to whether the NT was backtracking on unbundling, the broader reforms that Eskom was undertaking were part of the National Energy Crisis Committee (NECOM) process, were still on track, and would go ahead as planned. Unbundling remained a very important step to ensure that Eskom became financially sustainable over the long term. Those steps – the Eskom debt relief arrangement, and the steps the NT was discussing that day – were all aimed at ensuring that Eskom had a sound balance sheet. For the NT, it was important that the entity was able to undertake the investments that it needed, both in the current fleet, but also in the critical investments required for the transmission and distribution infrastructure, so that South Africa could deal with load-shedding and the broader social and economic implications associated with it.

Mr Momoniat said that aside from the NT wanting a financially healthy Eskom, making sure that this was achieved free of corruption was critical. Additionally, the dilemma the NT faced was that it wanted to protect the fiscus. Eskom had already come to the NT for "far too much funds," and this had impacted South Africa's debt. The issue was to reduce the scope for Eskom to come for more grants and guarantees from the fiscus. The technical issue was that the reporting system caused a problem that needed to be addressed. The challenge was ensuring that the system was not abused. When he had heard the strong response to the exemption, he got the impression that South Africans were saying that the corruption that had become entrenched in some of South Africa's SOEs needed to be addressed urgently by the government – it needed to be more effective in how it was doing that. That was one of the reasons why South Africa had been grey-listed – it was not effective in fighting corruption, which was often committed by syndicates, and these were issues that needed to be dealt with. The NT had circulated a fairly detailed presentation to Members.

As far as investors were concerned, they understood that an entity such as Eskom was judged by the same metrics as any listed company. There were still the International Financial Reporting Standard (IFRS) and the Johannesburg Securities Exchange (JSE) listing requirements, which were the highest standards. If Eskom had the exemption, it would still be qualified, so there was no attempt to hide a qualification from any financial mismanagement. Eskom had further reporting requirements. Those requirements were important because, in the public sector, one had to do more reporting since there were more issues of public interest. Legacy issues were impacting on an "honest Eskom board" that was trying to fix Eskom.

Minister Godongwana said that the NT welcomed the comments, criticisms, and questions from the Members. The NT was not impervious to criticism. He wanted to dispel the idea that there was someone behind the scenes advising the NT, which then made mistakes. The NT had the technical capability to deal with those things. The Accountant-General who was leading the team was a chartered accountant who was shortlisted for the AG position and had experience. The Minister had sought legal advice from outside of the NT (from one of the prominent commercial lawyers in the country) so that he could make sure he was on the right track. The intentions had been good and were aimed towards fiscal sustainability.

With section 92 of the PFMA, Mr Kwankwa had correctly said that the exemption did not say one should "tuck financial information away." It was part of the accountability and transparency requirements for such information to be disclosed somewhere so there should be accountability. That was the rationale that had prompted the NT to take that route. Part of the difficulty was the toxic environment surrounding Eskom, which sometimes clouded the substantive issues. A Member had remarked that the NT was "hiding" certain colleagues. Some of the Minister's colleagues had asked if he was hiding Andre de Ruyter, and Minister Bheki Cele had asked if he was exempting criminals from prosecution. The Minister said that the NT had to make various exemptions at times. That was because section 92 of the PFMA gave it the power to make secondary legislation in the form of regulations.

The NT had learned some lessons in the Eskom exemption process. When it published the regulations on procurement, somebody Tweeted that "Godongwana killed [the regulations], and everybody ran with it." With hindsight, it was realised that they should have been pre-emptive in the communication and pre-emptive in the consultative process and realised that some technical issues had serious political implications. The NT had detailed and extensive consultation on the Transnet matter with the AG. The Minister's interaction with the AG, even on the Eskom matter, was that the AG was comfortable with the exemption. However, the consultation had not been quite as extensive as it was with Transnet. The Auditor General had wanted to look into other things because Eskom was a different animal from Transnet. There were further details that the AGSA had wanted to explore. The NT had accepted that proposal from the AG. There was no conflict between the NT and the AGSA.

Eskom was complicated in the sense that although the NT had made the same provision for Transnet, Transnet did not have any state guarantees. Therefore, the NT's exposure to Transnet was not the same as its exposure to Eskom. It faced a serious risk at Eskom in the case of all of the components that were being discussed, which could come back to "haunt" the fiscus. There was no intention on the NT's part to hide any corrupt activities. The NT wanted the law enforcement agencies to move with speed in dealing with those issues.

The unbundling process was in motion. There was a timetable because, by the time Eskom submitted its annual financial statements by the end of May, the NT should have found a solution to the question of unbundling. The NT would have an extensive consultation with the AG and Deloitte, who were the auditors of Eskom. Given that the NT had circulated a detailed presentation, it welcomed any comments that would help it to achieve two objectives -- to ensure Eskom's balance sheet was sound and to ensure that there was accountability, transparency, and consequence management. That was the framework that the NT hoped the Members would help it to achieve.

The NT appreciated the Members taking time out from their constituency work to come to the meeting. He assured them that it was not the NT's intention to undermine the supreme authority of oversight of Parliament. The NT would cooperate with Parliament in achieving that objective.

Mr Somyo was disturbed by the fact that the Minister's executive team had emphasised that it consulted with the AG. He was disturbed because after he had seen the correspondence between the Minister and the Chairperson of the Eskom board, he had spoken with the AG. The AG was not auditing Eskom -- it was Deloitte that was doing the auditing. The correspondence by the Minister with the Chairperson of the Eskom board had referred to the fact that the AG would have been consulted in that instance. Members of the Executive spoke as if the AG had been taken through the matter of the exemption point-by-point. He agreed with the Minister on having that kind of consultation in taking forward the process of exemption. He felt that the Executive needed to refrain from equating the extensive consultation which had taken place with the AG at the time when the Transnet matter arose, with the current situation. The AG was auditing the books of Transnet at the time of that exemption. With the Eskom situation, far less consultation had taken place. Nonetheless, he commended the Minister's commitment to have such consultations going forward. The justification for arriving at the Eskom decision should not be equated with the Transnet decision -- it was a "different ball game altogether."

Ms Mente said that she was covered by Mr Somyo, who was a fellow Member of the Standing Committee on the Auditor-General. She asked the Minister regarding Deloitte and the collaboration with the AG. What was the status of the AG and Deloitte where Eskom was concerned? When was Parliament going to deal with the matters of Deloitte and Eskom? There had been credibility issues with private auditing firms. Was there anything from that angle in terms of getting the AGSA to deal completely with Eskom's affairs?

Secondly, the NT's response had been "interesting." In the letter from Eskom, the matters on which it would like to be disclosed regarding criminal matters, etc, were defined clearly in paragraph four. All other matters needed to go to the broader annual report. How was Eskom going to measure that because in most cases, transactions of government were picked up at the level of the audit. Now, Members were being told that certain transactions would be sifted out from the other transactions. What tool would Eskom use in real-time during the expenditure to pick up such things? Who would Eskom then report that to?

Earlier on, she indicated that companies A, B, and C had received money without delivering services. The money from the state then had to be spent to collect such money from the people who had been given money. These were people who were inflating prices. The issue of irregular expenditure was an item that was very problematic. If services were provided, then one could not say the matter was irregular. In the meantime, a bottle of water that could have cost R20 had been sold to the state for R100, and Parliament would be told that services had been provided. It was therefore not criminal, as services had been provided. Which tool would be used to ensure that criminal transactions were reported? A law was being created that was not there.

Dr George thanked the NT for its responses. His colleague had asked a question about the rating agencies which had been more about whether there had been a discussion with them regarding the withdrawal of the exemption. Had the agencies made contact with the NT to express their unhappiness about the exemption?

Was the exemption off the table, and when would it be withdrawn? When would the withdrawal be Gazetted? That was important. It was “no secret” that Dr George had drafted court papers, and if the exemption came back, the matter would go to court.

Mr Kwankwa felt that the NT was attempting an improvised “stop-gap” of some kind, because of the challenges with how irregular expenditure was labelled. Was the NT not addressing a symptom instead of a problem, where the labelling of irregular expenditure should be dealt with so it was clear, and it communicated what Government wanted to communicate on that matter? Doing “fancy footwork” to try and avoid what Government sought to communicate could then be avoided. Could Parliament undertake a process to address that gap? The use of improvisation and using stop-gap measures created all manner of problems.

Members appreciated the NT saying it was open to accountability and was not trying to undermine the checks and balances on the Executive. He cautioned the NT on section 92 of the PFMA – therein lay the problem. Firstly, it was a serious step to exempt an entity from any matter to do with the PFMA. Why was Parliament, which played an oversight role over the Executive and governmental entities, not forming an integral part of the consultation process? It should not be easy to come to Parliament and say that the Executive needed funds appropriated for certain institutions to be bailed out due to financial challenges when entities were not able to report for whatever reason on how they used that money, Parliament was being bypassed. Parliament would then have to see those matters in the Government Gazette when those matters had already been Gazetted. There was a gap that needed to be addressed.

Mr Kwankwa did not think that some of the NT's responses had helped the Minister's cause. The submission where one of the NT colleagues said that the intention was to make sure that wasteful expenditure not involved in criminal activity was not included, sent out the wrong message. This message said that the NT was trying to adopt a “cavalier attitude” towards how state monies were being spent, because wasteful expenditure was wasteful expenditure, whether it was criminal or not. The colleague had also admitted that the separation between criminal and non-criminal wasteful expenditure was usually difficult until a proper investigation had been carried out. When the Minister made his preliminary remarks, he had said that Eskom would be able to go to the markets and borrow money and was therefore not negatively affected by the issue of exemption. One of the NT officials had said that Eskom did not intend to borrow and take out new loans. That was a contradiction, which needed to be addressed. There was borrowing of money, and there was drawing down on existing facilities, which was still the same because the government would still be extending its debt book.

Mr Hlengwa felt that the answers from the NT “were causing a problem.” The answers suggested that the exemption was not being withdrawn – it was being justified and clarified, and its intentions (rightly or wrongly) were being stipulated. He was uncertain that the status of the exemption could be categorised as withdrawn at that point. The NT had even been given “theoretical lessons” in terms of borrowed experience. The NT had complicated the matter, and he was not convinced that the exemption had been withdrawn. It went to what he had asked earlier on: what was the status of the “for now”? Did it mean that the Minister would issue a notice in the Gazette withdrawing the exemption, or did it mean that the implementation would be deferred or delayed? The language coming out from the NT team was of an exemption that was on the table, and that was in place. The question was whether the exemption had force and effect. If the exemption was being withdrawn, when was it being withdrawn? Was there an intention to bring it back?

SCOPA had engaged with the Auditor General, and she had said that it was worth noting that the AGSA had not been consulted in the decision to grant the exemption, and in the formulation of the related conditions. The NT had said it had engaged with the AG. Could it provide in writing when those engagements had taken place, and with whom at the AGSA the NT had talked to?

There was a longstanding matter that the AG was aware of. This issue was the transition of “weaning SOEs off private auditors and to be audited by the AG.” The AG was a public entity, as opposed to the private interests which existed in the private auditors. It was not to cast aspersions, but “hindsight was the best sight.” There were times when the SCOPA had not received any joy from the auditors based at private companies. That roadmap from the AG was important, and the SCAG needed to assist in the development of a roadmap for the AG to indicate when the AG intended to take over the audit of Eskom. That matter had been on the table for far too long. It was almost five years old, and Parliament kept on saying the same thing over and over again. It was unacceptable that there was a prolonged delay. Seemingly, the transitional interventions for it were not being followed through. It had a material bearing on the audit processes.

There was the consultation process that the Minister indicated had included but was not limited to private legal experts. The Committees needed a list of who had been consulted on that decision, so that they could gauge whether the consultation process was adequate, in light of the fact that so many had said they had not been consulted. It then went to the heart of the issue that Mr Kwankwa had raised on

the implementation of the regulations of section 92 of the PFMA.

Mr Mlenzana called for order. He assumed that Members had raised issues, and the Minister had responded. Members knew what they normally did when they were not fully happy with how the Minister and his team had responded. He saw that there were a number of hands “digging deeper to investigate the NT and the Minister,” and he did not think the meeting platform was meant for that.

The Chairperson said that the purpose of the meeting was to seek clarity on a matter of public importance. The Minister had made it clear that the exemption had been withdrawn. The news was on the wire. He did not think it would be right not to take the Minister’s word on the withdrawal. What the officials and the Minister were doing was to clarify and give the background. He did not understand the Minister to be saying that he was giving conditions, and now was not withdrawing. He had never interpreted it in that way. The Committees had asked the Minister lots of questions. He and his team had responded to those questions, giving background and context, but the matter remained that the Minister had withdrawn the exemption. He did not think the Committees should “overreach” and tell the Minister what to do, and that Members wanted the Gazette now. He did not think that was the oversight role that the Committees should play. The Minister had made a commitment that he would withdraw, and Members should allow him to do that, and follow the procedure of withdrawing the Gazette without “supervising” him. If the Minister did not do so, the Members knew what platform to raise that issue on.

Mr Shaik Emam was not satisfied with the NT’s explanation. In the entire explanation response, what he had heard was that the NT was raising concerns about Eskom, and rightfully so. Eskom had found itself in a dire situation – it had had bailouts, and it needed to be brought back in order and get some financial stability. What the NT had not explained was how the process of the exemption – if it was not an attempt to hide anything or misrepresent things – would help Eskom.

This was the NT, the custodians of the funds and the assets of the country. If the NT found itself in a situation of wanting to enforce mechanisms for misrepresentation by an entity to lenders, then it raised a serious question about its integrity. It should be protecting integrity, and not encouraging misrepresentation. His understanding was that it was an attempt to misrepresent Eskom’s situation to financial institutions. There was a contradiction. On the one hand, where the exemption was put in place so that Eskom could go to the open market and borrow, although lenders were of course going to find Eskom a serious risk and perhaps not provide the funding. But at the same time, Members were hearing that Eskom was not going to be borrowing for the next three years, so what was the purpose of putting the exemption in the process right now? The NT needed to tell Members more eventually – if not today, but soon. More importantly, the NT needed to understand its role and responsibility in protecting the fiscus, and not creating avenues for corruption, looting, and mismanagement, which was what it was doing by having introduced the exemption. He welcomed the fact that the NT was withdrawing the exemption.

Mr Cachalia asked about the Transnet exemption. With the structure of the Gazetted announcement, the rationale and intent were to enable the raising of capital. The same applied to the Gazetted and now withdrawn exemption in respect of Eskom. But the Treasury had said in its response that Eskom had no plans to borrow. He was at a loss here to understand how Eskom was going to finance the fixes that were sorely needed, especially since Eskom’s cash cover for interest payments was insufficient, even after the government had taken a chunk of its debt off Eskom’s balance sheet. It just did not make sense. It was “all over the place”, and he was at a loss.

Mr Qayiso felt that the Committees needed to be fair in how they dealt with the issues at hand because now the discussion seemed to be “moving all over the world.” The subject that had brought everyone there was about the Gazette, and the Committees had reached their ultimate objective. The Minister had confirmed that he was going to withdraw the Gazette. Seemingly, Members would end up causing a situation where there was confusion as to what they were trying to discuss and what objective the Committees were trying to reach in the meeting. If Members had new proposals based on what had happened, then those needed to be proposed in future meetings and on future platforms. Such proposals needed to be brought up in the future, rather than bringing a level of discombobulation to the meeting.

Mr Khan responded to the questions raised around the role of the Auditor-General in the appointment of some of the private sector audit firms. That part was regulated under the Public Audit Act (PAA). The AG used section 4(3) of the PAA, where it would consider instances where private auditors could complete the audit for those state-owned companies (SOCs). There was a process that the AG followed in coming to that conclusion.

There were also questions about real-time audits on some of the criminal aspects. The NT had seen the value of some of those real-time audits during the Covid-19 period. That was something that could be raised with the AG, or even with the auditor of Eskom, on how that could be implemented within a framework that allowed management to actively deal with some of those matters. However, once again, this was regulated by the PAA, where the AG had full and complete oversight and control over the matter.

Dr Pieterse said that there had been no discussions with rating agencies on the exemption matter. The agencies had not reached out to the NT to request information. It had not been discussed at all with any of the rating agencies, and it had not come up at all with them.

On the borrowing issue, Eskom had no plans to borrow over the next three years. However, because it was a complex entity, and because its environment was complex, the wording that the NT had put into Annexure W3 of the budget review was that Eskom was not allowed to borrow without the permission of the Minister of Finance. Should circumstances force Eskom into a situation where it had to borrow, it would need the Minister’s permission for that. But beyond that, the key issue was that Eskom still had extensive debt with lenders, and

that debt was also implicated in the exemption process. The debt was implicated because should the covenants of that existing debt be triggered, that would likely have a fiscal consequence, both in terms of the cost of borrowing but also in terms of potential additional bailouts required for Eskom.

Minister Godongwana said that in his opening remarks, one of the key things that had persuaded him to withdraw had been his interaction with the AG, on the basis that the extensive consultation the NT had done with the AG on Transnet had not been done in this particular circumstance. The NT needed a better and more extensive consultation. He accepted that point.

He agreed with Mr Kwankwa's point that the NT needed to deal with the issue of irregular expenditure. There was a question on what process the NT was engaging with, and he noted that the NT was engaging in a PFMA reform. It would take that question into account as it dealt with the PFMA reform.

The NT had learned a few lessons. Previously it had not been possible for each and every exemption to have a consultative process, but the lessons the NT had learned were that there were certain exemptions where, because of their nature and their political sensitivity, it may be necessary to have a consultative process.

Responding to the question of Dr George and Mr Hlengwa as to whether the NT was withdrawing, and that it must confirm the withdrawal, he confirmed the withdrawal of the exemption. By the following day (Thursday), there would be a Gazette withdrawing the current Gazette. The NT would bring back the issue of the exemption.

He urged Dr George not to go to court. Instead, he encouraged a submission on how to achieve a balance between fiscal sustainability and Eskom's balance sheet and to deal with accountability and transparency. The NT would welcome Dr George's views and other views. Eskom's statements would be submitted for audit by the end of May. The NT would have tightened up all of the processes by then.

## **Closing**

The Chairperson observed that on more than two occasions, while debating the fiscal framework report, Parliament had taken a decision on the SOEs. It was not the first time that the issue of the SOEs had come up. There needed to be clear and achievable turnaround plans, and he felt that Eskom had that plan. In doing oversight as the SCOF and other Committees, all would want to have a view of that plan from Eskom. Parliament also discussed and emphasised the importance of risk management strategies. He hoped that Eskom had a risk management strategy, to be effective in providing confidence to businesses, investors, and credit rating agencies.

If one went back to fiscal framework reports that had been presented by the SCOF and other Committees, the issue of accountability of SOEs had been emphasised. He hoped that the plans he was talking about were in place, including the audit action plans. The previous week, the SCOF had spent two days at the NT's office in Pretoria meeting many of the entities that reported to the NT, to deal with the issue of audit action plans to which the entities had committed themselves after an audit outcome from the AG. Such plans would say how the issues raised by the AG would be corrected.

The AG had issued a National Government Accountability Ecosystem (NGAE) which all the departments and their entities were supposed to follow in terms of accountability. When the SCOF met the NT the previous week, it had encouraged the NT to go further. The NT had indicated other levels which were not in the NGAE, and it needed to indicate all of the levels and how those were responsible for fitting into that ecosystem. The NGAE applied to all organs of state. Eskom was an organ of state.

While the AG had appointed Deloitte to do Eskom's auditing, it did not mean that Eskom was a private company. Eskom was a state entity, and it should comply with the standard set by the AG because that was the authority in terms of the Constitution of South Africa on the accounting of all departments and entities. The SCOF and other Committees would continue to play an oversight role to make sure that all entities had a risk management strategy, a turnaround plan, an audit action plan, and that they stuck to the NGAE, as it had been designed by the AG.

The Committees acknowledged the decision taken by the Minister to withdraw the exemption and, if ever there was any development in the future, the Committees would deal with it when it came to that point.

The meeting was adjourned.