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[Opening of Meeting // 8 September 2016]

Adv T Madonsela : Perhaps we can start. Thank you, Doctor Stals.

Dr C Stals : Pleasure.

Adv T Madonsela : Advocate De Jager ...

Dr JJ De Jager : Thank you.

Adv T Madonsela : ... and Mister Moraitis, for meeting with us this morning. We sincerely, sincerely appreciate making the effort to meet with us. Doctor Stals, we are aware that you have long retired and therefore we have taken a bite into your private time on a matter ...

Dr C Stals : And golf.

Adv T Madonsela : ... that happened many years ago and we appreciate you graciously availing yourself to assist us on this matter. We also are grateful to the Reserve Bank for interacting with you and assisting you in preparations for this meeting. I received communication from the Reserve Bank yesterday, which is a follow-up to several interactions I have had with the Reserve Bank, and basically there are just some questions that again Adv De Jager has raised. I thought therefore in commencing this meeting today I have to start again and explain what are we doing, why are we doing this and what outcome is envisaged from this process, but before doing so if you could just kindly, all of you indulge us. We are recording these, as we record all of our conversations. You are entitled to the record. If you want it immediately, a disk can be made for you today and if you want it transcribed it can be done as soon as possible, although our resources are limited when it comes to transcription, but when

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requested we do it. Because of that then we all have to indicate what our names are and designations. So I will start just for the record, I'm Adv Thuli Madonsela, the Public Protector.

Mr B Dhlamini : My name is Bonginkosi Dhlamini, I'm the Chief of Staff, Public Protector South Africa.

Adv L Tshiwalule : My name is Adv Tshiwalule, Investigator in this matter.

Dr JJ de Jager : Dr Johan de Jager, General Counsel, South African Reserve Bank.

Dr C Stals : I'm Chris Stals, unemployed pensioner.

Mr C Moraitis : Chris Moraitis from Werksmans Attorneys, I'm the Legal Adviser to the South African Reserve Bank.

Adv T Madonsela : Thank you, Sirs. Doctor Stals, you remind me, when we interviewed Mr Mboweni, he emphasised right at the beginning of the discussion that he is an unemployed pensioner who had been dragged to this meeting and he was concerned about the time he was going to spend here without being paid for the time and also concerned about the fact that somebody had to pay for the transport he had used to come here, so I do understand and we apologise for intruding into your time.

Dr C Stals : I'm a little bit easier, I wasn't dragged here. I came with pleasure at your invitation and secondly you don't have to pay me.

Adv T Madonsela : Thank you, Sir. Right, we are here to look into alleged failure by the South African Government, the National Treasury and the South African Reserve Bank to implement recommendations of the CIEX Report regarding recovery of funds that were paid by the Reserve Bank on behalf of the South African Government to Bankorp in the

1 1980's. Our focus is not so much on what happened in the 1980's.
2 Our focus is the non-recovery when that CIEX Report was received.
3 We have information that shows that a first copy of the report was
4 received in 1998 and a final report was delivered in 1999, but a final
5 conversation between Government and Mr Mike Oatley was around
6 2003 when he was asking what exactly is the way forward, after
7 having had the benefit of the commissions that had been given a
8 mandate by Government to look into the same matter. From our side
9 we thank you sincerely for honouring the invitation to meet us today,
10 Doctor Stals. From your side we are not going to be asking too many
11 questions around the recovery. We will be asking questions
12 regarding the background to the CIEX Report. From what we know
13 at the moment it deals with what are referred to as "lifeboats" given
14 to several banks, which eventually came together as Bankorp over a
15 period of time up to 1985. That is what we are looking at. I think we
16 have a timeline map here, which we are going to give you in terms of
17 what appears to have happened based on the evidence we have. We
18 are going to just ask you to assist us about two deals. I think the
19 focus of our conversation today is going to be on two deals, the
20 original deal that led to the money being given or the bonds being
21 given, the bonds being given to Bankorp. That is the first deal we are
22 interested in. Not all of the deals, because we understand there were
23 several lifeboats. We are interested in the last lifeboat, the one with
24 the 1% interest. Then the second focus of our conversation today
25 will only be around the acquisition by Absa, what was the deal? We

1 have requested Treasury, we have requested Absa and the Reserve
2 Bank to kindly give us copies of the two deals. To date we have not
3 been given copies of the two deals. We are referred to the Davis
4 Report, but the Davis Report doesn't write reports like us, where you
5 say, "My conclusions on this are 1, 2, 3 based on this document that is
6 dated whatnot, where it was stated" ... and then you state a
7 paragraph, because we are just looking for paragraphs that said, "We
8 agree to do this" or "We agree to do that". None of the reports that
9 Government keeps relying on is telling us exactly what was the first
10 deal, with who ... well, not the first deal, what was that deal with
11 Bankorp, what was the nature of the agreement with Bankorp
12 regarding payment, the amounts to be paid, the timeline for payment
13 and whether or not there was payment during that period? The
14 second part would be when Absa then came to the party, you will
15 note that the Davis Report says Absa paid value for money, but that
16 is not helpful for us. What we want to know is, what was the deal
17 between Absa, Government and the Reserve Bank or Absa and
18 Government, or Absa, Bankorp and whoever. If they had just given
19 us copies of those deals Sir, we really wouldn't have called you to this
20 meeting. We would have read those deals and said this is what was
21 agreed and did the conduct that ensued after those deals comply
22 with what was agreed, because all we are looking at is what was
23 agreed and did the parties act according to what was agreed? Then
24 the Davis Report and all of the others have looked at the legality of
25 the agreement itself. We are not concerned about the legality of the

1 agreement, because we are saying whether the money was stolen or
2 whether the money was loaned or gifted ... whether the money was
3 stolen or the money was ... maybe "theft" is not a good language.
4 Whether the money was improperly given over or whether the
5 money was legally loaned, it still would have been payable and then
6 our interest would be then what was the agreement regarding
7 payment and was that agreement changed? If it was changed, which
8 clause and what agreement changed the nature of the agreement,
9 which takes us to where we are then, but before we hand over to you
10 Sir, I just wanted to deal very quickly with some of the questions that
11 have been raised by the Reserve Bank in the letter that has been
12 graciously forwarded to me by Dr De Jager yesterday. It is not the
13 first time these issues are raised. The first one is the question of the
14 Reserve Bank, do we have jurisdiction over the Reserve Bank?

15 **Dr C Stals** : Do we have?

16 **Dr JJ de Jager** : Jurisdiction.

17 **Adv T Madonsela** : Do we have ... does the Public Protector South Africa have
18 jurisdiction over the Reserve Bank? That is the question that has
19 been raised by the Reserve Bank.

20 **Dr C Stals** : I see.

21 **Adv T Madonsela** : The answer for me is yes and then this is not the first time we are
22 investigating the Reserve Bank. This is just one of many
23 investigations we have done with the Reserve Bank and all of those
24 requests by the Reserve Bank to clarify our mandate, we have
25 clarified our mandate. From where we are sitting, the Reserve Bank

1 is clearly an institution exercising a public power.

2 **Mr C Moraitis** : If I ...

3 **Adv T Madonsela** : Mister Moraitis, I haven't explained the rules then and I don't want
4 us to start on a wrong footing. I am going to speak and then finish.

5 **Mr C Moraitis** : Okay.

6 **Adv T Madonsela** : When I have finished with my welcoming remarks – I think we have
7 given you the program – we will then have maybe the remarks from
8 the Reserve Bank.

9 **Mr C Moraitis** : Perfect. Thank you, I apologise.

10 **Adv T Madonsela** : The second part that I want to explain in terms of the rules is that
11 ordinarily as the Public Protector Act says you have access to legal
12 assistance, we prefer that then we hear you, because these are
13 inquisitorial proceedings. We prefer to hear your views, to hear you
14 as a person with your mouth and that obviously your legal assistance
15 involves people sitting next to you, and every time you say
16 something that they think needs clarification, to be clarified, if they
17 want to withdraw a statement, they can ask that it be withdrawn. If
18 there is a technical matter that can only be explained by the Lawyers,
19 the Lawyers also have an opportunity first to express that technical
20 matter. It is a fairly informal arrangement, as you can see yourself,
21 but we do try to just make sure that we don't interrupt each other,
22 we let one person speak, because also from a recording point of view
23 when there is an overlay of voices, they have indicated that they then
24 don't know who said what. So if we speak one person at a time they
25 will capture our voices or at least those voices that are more distinct

1 than mine, right. Okay, the issue of jurisdiction, from our side we
2 have explained this, consistently to the Reserve Bank, that the
3 Reserve Bank, yes, is a statutory body and we do understand that the
4 Reserve Bank ... the Government is one of the shareholders and there
5 are other private shareholders there. We understand that the
6 Reserve Bank ... the important part though is that the South African
7 Reserve Bank is tasked with a responsibility of overseeing,
8 regulating and supervising banks and the financial system as a
9 whole. Therein lies the part about the Reserve Bank, that it is not an
10 entity. The Reserve Bank doesn't occupy space similar to Absa,
11 similar to Barclays Bank or whoever. The Reserve Bank is an entity
12 to whom the Government of the Republic of South Africa has
13 delegated some of its own regulatory authority and decided the
14 Reserve Bank will do that. So it operates as a Central Bank of this
15 country or the regulator and a bank, and to that effect it does fall
16 under our jurisdiction. I in the actual report Doctor Stals, will clarify
17 exactly the statutory foundations of our powers over the Reserve
18 Bank, but that is about investigating the acts and conduct of the
19 Reserve Bank. But when it comes to asking questions, the Public
20 Protector has the power under Section 7 of the Public Protector Act
21 to ask questions from any person in the Republic and to request any
22 document from any person in the Republic. Even the Financial
23 Intelligence Centre is not exempted from assisting us with
24 (*indistinct*). So we for example are grateful that you came, because
25 you would say to us you are no longer the Governor and you haven't

1 been the Governor for two decades, why have we dragged you here?
2 The part now is not coming as an actor, you are coming as somebody
3 who can assist us to piece together this puzzle and get a sense of
4 what happened. From the law we have a sense from our side what
5 should have happened. What we are looking for is what happened
6 and if what happened is in line with what should have happened or is
7 it at odds with what should have happened, and if so, what do we do
8 two decades – or more than two decades – down the line, but again
9 what happened for us at this stage is what happened under the
10 Government of the Republic of South Africa from 1997, but people
11 then are asking why are we asking old questions? To understand
12 what happened in 1997 we have to understand the history of this
13 matter and for us to adjudicate the correctness or propriety of the
14 decisions taken or not taken post 1997, we have to have information
15 about what kind of deal were they confronted with and whether the
16 way they handled it was rational, reasonable and generally proper in
17 the circumstances? So that is the first part about our jurisdiction
18 over the Reserve Bank. The second part is the whole question of
19 when you deal with the Reserve Bank there may be a systemic
20 impact. I have heard that word from day one, having my first
21 interview with Judge Bertelsmann, who had to educate me about the
22 run on the rand, systemic impact, etcetera and he takes a totally
23 different view from the one that is taken by the Reserve Bank, so but
24 what does it say then for me, is I can't go with the Reserve Bank's
25 view about systemic impact, I can't go with Judge Bertelsmann's view

1 on the systemic. He is just one of those. Even Judge Heath, who had
2 initially worried about the systemic impact, he has now come back
3 and said he thinks the systemic impact card was overplayed, if you
4 look back now. So I'm just saying again you must bear with me that
5 as an adjudicator - and the two Lawyers will confirm this - is that
6 you are not an expert in any of these areas. The value you bring to
7 this is the ability to listen to all of the experts and if you are not
8 agreed with these experts, you go to others, other experts. In this
9 matter, the CIEX Report, you will recall that one of the people who
10 were Investigators in the CIEX Report is a former Governor of the UK
11 Reserve Bank. He also disagrees with the systemic impact.

12 **Dr C Stals** : Who is that?

13 **Adv T Madonsela** : I have been asked ... Mr McMahon. I have been asked that actually ...

14 **Mr C Moraitis** : Yeah, I have heard of him.

15 **Dr JJ de Jager** : He was never a Governor, not a Governor of the Reserve Bank.

16 **Adv T Madonsela** : He was the Deputy, Sir.

17 **Dr C Stals** : He was a Deputy, yes.

18 **Adv T Madonsela** : Okay.

19 **Dr C Stals** : Frustrated, because the Government did not appoint him and
20 *(indistinct)* a vendetta against Central Banks.

21 **Adv T Madonsela** : Okay. Doctor Stals, I will just let that go, but I was just saying ... the
22 point I was making just for the record is, we take no view about
23 whether there was going to be a systemic impact or not at this stage.
24 We are just listening to every part and my job is to weigh all of these
25 ideas, and then apply my mind in terms of what of those arguments

1 are more rational, are more persuasive and more reasonable to any
2 human being who is sitting in the position where I'm sitting. Then
3 there is a second part, the point that has been raised about that even
4 this investigation itself could lead to a systemic impact. Doctor De
5 Jager, I read that Sir and I understand. I would just say for me,
6 whether we leave this matter or we deal with it conclusively, there
7 are consequences and the fact that it has been dragged forever with
8 people having their own interpretation of what happened, and
9 people creating their own storylines ... as we are sitting there is Black
10 First Land First, because Mr Michael Oatley has been trying to find
11 anybody in South Africa who can listen to his cause and who can also
12 be persuaded to look at the possibility of getting a fair value for their
13 contribution to recovering of the money, because he is still hoping
14 that he will recover the percentage of whatever he believes is
15 recoverable. So me dropping this matter is not going to stop a public
16 debate on it and a continuous debate on it about there was
17 wrongdoing. Even the amounts involved it gets different in the
18 public out there. I think the running figure in the public is, we are
19 talking about 26 billion. The figure that we are dealing with is far
20 less than 26 billion. However, there is something Sir, where you say
21 that conjecture and speculation in the market about the nature of the
22 financial assistance provided to Bankorp by the South African
23 Reserve Bank and its effect on Absa was therefore not conducive to
24 stability in the banking sector. My approach would be, I don't think
25 any of the investigations that have been done were supposed to be

1 about conjecture and speculation, and we have to be careful about
2 which of the reports are we saying is more about conjecture and
3 speculation. There has been the Davis Report, the Heath Report and
4 the CIEX document, but from our side we don't plan to speculate. If
5 we wanted to speculate we would have sat in our little corner and
6 arrived at conclusions. We have been trying to find the truth the best
7 way we know how and we have tried to look under any stone where
8 somebody said the truth might be hiding there, and that is why Sir,
9 we have asked you to be here. The Davis Report made some findings,
10 but you will understand that the Davis Report is a report of ... Judge
11 Davis is an excellent Judge and one of my former mentors, but my
12 process here is different from the Davis Report, because the Davis
13 Report was an internal investigation commissioned by the Reserve
14 Bank. So this matter has now come to the ultimate administrative
15 oversight body in South Africa, which is the Public Protector South
16 Africa. We cannot say just because Judge Davis, there was an
17 internal investigation, we can't investigate. In fact a lot of the things
18 that we do in Government, sometimes there would have been an
19 internal forensic report that arrived at some figures. Nkandla for
20 example there were two internal reports, there was the Ministerial
21 Task Team Report that said there was no wrongdoing and there was
22 the SIU Report that said something else, but much as we were told,
23 "Don't touch it because there has been internal investigations", we
24 said we will consider those internal investigations, we will apply our
25 mind to them, but we are a different body with a different mandate

1 and those internal processes aren't a bar to us, but of course they are
2 useful materials too and again I have interviewed Judge Davis. I will
3 not indicate what he has said to me, but I have interviewed him right
4 at the beginning of this process, I think it was 2013?

5 **Adv L Tshiwalule :** 2013, yes.

6 **Adv T Madonsela :** Yes. You then quote Sir, that I had said at that stage I didn't want to
7 go for a wild goose chase. That is true. I initially refused to
8 investigate this matter and then Adv Paul Hoffman said there is low
9 lying fruit, because ...

10 **Dr C Stals :** Advocate who?

11 **Adv T Madonsela :** Adv Paul Hoffman. The complainant ...

12 **Dr C Stals :** Hoffman?

13 **Adv T Madonsela :** The complainant in this matter is Adv Paul Hoffman, although other
14 people have now jumped on the bus and make more noise than him,
15 but from his side he said the money was wrongly given, but that is
16 not the issue. The issue is the money was loaned and loans are
17 recoverable, and he said that Absa had made a provision to pay for
18 this loan, and all we needed to do then was to ask Absa to reopen
19 their vaults and find that money that they had provided for. I won't
20 indicate where are we in terms of finding out whether the money
21 was provided for or not, but when we entered of course it was here is
22 money, Government money that was wrongly given away. Whether
23 wrongly or rightly given away, but this is Government money that
24 was given away, it was recoverable. When the opportunity
25 presented itself for it to be recovered, Government did not recover

1 and the reasons Government gave or was ... or the information
2 circulating that indicates why Government chose not to recover is
3 not convincing, and then I was asked then to investigate. Indeed
4 when I ... and then I started with a preliminary and my preliminary
5 firstly took me to these key people. Judge Bertelsmann was one of
6 those people who I interviewed at the beginning and he told me the
7 money is recoverable. So by the time then I made a decision to
8 proceed with the investigation, which is what we do after a
9 preliminary, it is when we have credible information or sources that
10 suggest that the matter is worth pursuing, but whether the money is
11 recoverable or not is not dependent on what Judge Bertelsmann told
12 me or Judge Heath told me, or the former Head of NIA, Mr ...

13 **Mr B Dhlamini** : Billy?

14 **Adv T Madonsela** : Billy Masetlha. What all of those people have said ... we have their
15 statements in terms of what their view is, but it is not their views.
16 Ultimately I have to make a decision that I think takes into account
17 all rules, rules of commerce, your systemic impact and general
18 fairness, rationality, reasonableness and lawfulness, I will have to
19 take all of those. So I haven't made any decision, but I'm just
20 explaining why I move from a preliminary to a full investigation. I
21 didn't just do so foolhardy. I did do this preliminary and I did consult
22 these people who are as competent as Judge Davis. He himself I
23 interviewed him and he didn't pose an impediment to me proceeding
24 forward. In the report I will indicate what his view was about some
25 of the difficulties and how I could explore ways to overcome them.

1 You then have a complaint saying about the fact that we kept
2 postponing meetings. I sincerely apologise. It was not my intention
3 to do so. It was just scheduling errors and emergencies emerging,
4 and I will again maybe extend another written apology to former
5 Governor Gill Marcus. I had written to her on each postponement to
6 apologise, but I do apologise. We finally did meet in September, on
7 the 2nd of September 2013, as you have indicated. For us ... I
8 explained again that I'm not going to the old enquiry, but I do need
9 that background.

10 **Dr C Stals** : I understand that.

11 **Adv T Madonsela** : It is not for me at this stage to judge whether it was a gift, it was a
12 loan or it was stolen money, but I just have ... I mean my concern is,
13 was the money recoverable, whatever package it was and if it was
14 recoverable I have to find that information from the two deals, the
15 deal that led to the money being given away and secondly, the deal
16 that led to the Absa takeover or the Absa decision. A lot has been
17 said about the Bounty Hunter, Government has also complained why
18 are we investigating, because there was a Bounty Hunter involved?
19 Our approach has always been we don't care who complains.
20 Sometimes the person who tells you that somebody was murdered is
21 the guy who had been promised part of the money and they don't get
22 part of the money and then they tell us about who murdered who. So
23 we are not going to not follow up on the murder because the person
24 who is giving us the information has ill motives, or wants some of the
25 money. Like in some of those murder cases in fact people are told

1 that "You will get this money if you tell us who murdered?". So we do
2 take that into account. I think what for us is important in that case, it
3 is not about who wrote this report. It is the quality of the
4 information and the reliability of the report.

5 **Dr C Stals** : Is that the Davis Report?

6 **Adv T Madonsela** : No, that is the CIEX one.

7 **Mr C Moraitis** : CIEX, CIEX, Doctor Stals.

8 **Adv T Madonsela** : We will assess the report in terms of the quality of this report, in
9 terms of the reliability of the information it provides and the
10 concreteness of the information it provides, but that has nothing to
11 do with who wrote it. The team itself was a competent team, which
12 includes Mr McMahon, former Deputy Governor and it also includes
13 somebody who is now a Judge. So they are standing their ground,
14 but we do not look at who, we look at what and each statement must
15 defend itself, because of its rationality and reasonableness. Just
16 lastly again we thank you for being here and we assure you that we
17 have made no decision about what happened, whether it was right or
18 wrong. We are looking for answers. What we do firmly believe
19 though is that leaving this matter without a written report will do no
20 justice to the people affected, but it will also do no justice to the
21 South African economy, because this matter will remain a wound to
22 the future generations, about why this one was never dealt with? I
23 think Government should have dealt with it openly at the end of that
24 very first process. I must indicate to you we have been asking for
25 Cabinet minutes on how this matter was resolved. We haven't found

1 them. We have asked for minutes of a meeting of the Reserve Bank
2 on how this decision was made. We haven't found them. On the
3 other hand Mr Durr ... you know Mr Durr? Mr Durr ...

4 **Dr C Stals** : The bare feet one, is it?

5 **Dr JJ de Jager** : The bear feet one.

6 **Adv T Madonsela** : Mr Durr. Mr Durr was a shareholder in the Reserve Bank, so he is a
7 witness on the other side and so you have to understand then Sir,
8 that we are sitting in the middle of this thing. We hold no view, we
9 are just trying to do everything that we can to conclude this thing.
10 We do ... Mister De Jager, you reminded us that we made a promise,
11 that once we have arrived at conclusions, we will share those
12 preliminary conclusions with you. We will do so. We are trying to
13 set-up a meeting around the 23rd of this month, where we will share
14 those conclusions, because our preliminary conclusions were shared
15 with the Minister of Finance, the current Minister of Finance in 2013
16 when I met with him. I already had a draft report and then
17 unfortunately I lost the Investigator. So that explains Sir, why the
18 matter lay totally unattended from 2013 until now, I had nobody,
19 because we decided that we would not burden our investigation
20 teams with it. We would have a single Investigator who would assist
21 me. That is just basically then the end of the story. That is the
22 purpose of the meeting Sir, is to find out what happened according to
23 you in terms of those two transactions, and if you have any
24 information regarding when this report came back, how was this
25 report dealt with or if it wasn't this report, the Davis Report, how

1 was the final decision ... who made the final decision regarding what
2 is going to happen with this (*indistinct*) and how was this decision
3 made? I just want to ask you, Sir and the people accompanying you,
4 the two Lawyers, at this stage to make any preliminary comments if
5 you would like to? I know that Mr Moraitis has ... Moraitis, sorry Sir,
6 wanted to already make a comment.

7 **Mr C Moraitis** : Yeah, I just want to make a technical point. I will not say anything in
8 respect of what you want information in respect of. I wasn't around
9 then. Dr Stals is best place to answer, if he can answer what you
10 want.

11 **Adv T Madonsela** : Yes, Sir.

12 **Mr C Moraitis** : I do not want to say anything about that. You are correct, Dr Stals
13 must speak for himself. Dr De Jager and I cannot speak for Dr Stals in
14 these matters. The only technical point I wanted to make, there is
15 two points. The first one was the South African Reserve Bank has
16 never questioned your jurisdiction to investigate the South African
17 Reserve Bank. The South African Reserve Bank fully accepts the
18 Public Protector's jurisdiction to investigate the South African
19 Reserve Bank and if there is any misunderstanding on that part, I
20 would like to clear that up immediately.

21 **Adv T Madonsela** : Okay.

22 **Mr Moraitis** : The South African Reserve Bank questions your jurisdiction to
23 investigate the 1990's and pre-constitutional issues around the
24 1980's and the 1990's, not because he does not want you to
25 investigate that, but he doesn't believe your Act allows you to do

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1 that. However, you have explained what your position is with regard
2 to background information from the 1980's and 1990's. We do not
3 want to take issue with you in that regard. We do not necessarily
4 agree that your Act authorises that position, but we take no issue.
5 That is a matter, which can be dealt with if it needs to be dealt with
6 later. You have asked to speak to Dr Stals and Dr Stals is here, and
7 would like to speak to you in that regard. I just wanted to clear that
8 up. The South African Reserve Bank would never challenge your
9 jurisdiction in that regard.

10 **Dr JJ de Jager** : Yeah, can I confirm that? It was never ... I mean in our letters we also
11 set that out, so that is not a problem, but you know may I just add to
12 this?

13 **Adv T Madonsela** : Thank you.

14 **Dr JJ de Jager** : I understand you are pressed for time, I understand you need to get
15 this issue resolved now. Let us rather leave whatever we have there,
16 it is there on record. If you want to speak to Dr Stals, he is there on
17 his own volition. He never ... I must be clear, Dr Stals – and I'm
18 saying it in his presence you know so that you can hear it – he never
19 expressed any dismay or anything with regard to the fact that he had
20 to come here. He was always willing. It was only these issues that
21 we needed to clarify and those are the issues that we raised there. So
22 I think you know maybe it is the best thing for us and for you under
23 the circumstances to assist you to get this thing finalised, that you
24 speak to Dr Stals.

25 **Mr C Moraitis** : And if there is one last point I may make, if there is any information

1 specifically that you would like from the South African Reserve Bank,
2 I know you have indicated that you have asked for specific
3 information.

4 **Adv T Madonsela** : Yes.

5 **Mr C Moraitis** : I can't recall if there is any outstanding requests on our side, but
6 please if there is, won't you put it in writing and ask the Reserve
7 Bank again, because at best we can come to you and say we don't
8 have it or we don't agree that it is relevant, or something like that,
9 but I cannot recall Dr ...

10 **Dr JJ de Jager** : Yes, no, I can ... maybe I can come in here.

11 **Mr Moraitis** : Yes.

12 **Dr JJ de Jager** : There was a request for certain information. We did check for the
13 information and we have in the South African Reserve Bank, the
14 bank's Provision Department, we have certain information that we
15 have identified that is there. The reason why we haven't actually
16 supplied it yet was because of the problems that we had and that we
17 still felt you know we wanted some clarification on what this is for,
18 because I must just hasten to add that we must also be very careful in
19 terms of Section 33 of our Act, that we should not under
20 circumstances where it is not justified in terms of that section to
21 provide the information. That is the first part. The second part, I can
22 actually just give you the information. If we talk about Government
23 bonds - because I know that at some stage you were interested in
24 the Government bonds - we were requested by the National
25 Treasury to see if we could identify those Government bonds. Now

1 obviously the Government bonds – the paper, the specific paper that
2 was issued at the time – that would only be in the possession of
3 ourselves, or whoever, but Dr Stals will explain that and once that
4 has matured and it is paid, the paper goes back to Government, so it
5 is there for cancellation. It is like when I have a debt instrument
6 from you and I keep the debt instrument as long as you don't pay it
7 and the day you pay it, I hand it back to you and it is for you to decide
8 what you are going to do, so we checked our records. There was no
9 way in which we could identify ... that is according to the staff in our
10 bank, we didn't have any information anymore about the debt
11 instruments themselves. So the only persons that would be able to
12 give it to you would be Treasury, because they issued it in the first
13 instance and I did try and we did speak to Treasury, and they needed
14 information from us to see if they could identify that and my
15 understanding was you know those documents, the actual specific
16 certificates, they ... I don't know where they are. They are not in our
17 possession anymore.

18 **Adv T Madonsela** : Thank you, Sir.

19 **Mr Moraitis** : Thank you, Madam.

20 **Adv T Madonsela** : Before we then move to Dr Stals, I just want to firstly then thank you
21 Doctor De Jager and Mister Moraitis ... is it Mister or Advocate? Sorry
22 Sir.

23 **Mr C Moraitis** : No, Mister.

24 **Adv T Madonsela** : Mister. Okay, thank you. I may have misread the letter, but thank
25 you for clarifying. Then that is not going to be an issue in the report.

1 **Dr JJ de Jager** : No, we definitely don't stand outside the law, the Reserve Bank,
2 definitely.

3 **Adv T Madonsela** : Thank you, Sir. The second issue then, you have indicated that your
4 concern was about us digging something that happened before the
5 Act that establishes ... the Public Protector Act, which Act is 1995 and
6 the office itself opened doors in October 19 ... the Act is 1994, the
7 office opened doors in 1995 and we have explained ourselves, in that
8 we said we are only looking at alleged maladministration of 1997
9 and to make sense of that we need to then know what had
10 precipitated that. It is going to be impossible to judge the acts of the
11 actors of 1997 without understanding what were they dealing with.
12 That is the context of looking back in the past.

13 **Mr Moraitis** : Okay.

14 **Adv T Madonsela** : Regarding outstanding documents, I am grateful that you are saying
15 you do have some of the documents and hopefully now that we have
16 clarified that we are not only reinvestigating the propriety or
17 impropriety of what happened in the past, but looking at the
18 propriety or impropriety of what happened post 1997 only, we could
19 get that information. The Reserve Bank has given us secret
20 information, despite Section 33. The only ... not on this matter only,
21 on other matters. The only requirement was that we were supposed
22 to undertake that we will have the proper mechanisms in our offices
23 to keep that information secret and secondly, we will use that
24 information only for the purposes for which it was procured, and
25 thirdly, that before we issue a report we will talk to the Reserve Bank

1 to then look at whether the report may somehow compromise some
2 of the secrecy requirements of the Reserve Bank. Of course when we
3 deal with that, we will have to ... Doctor De Jager and Mister Moraitis,
4 as the lawyers helping Dr Stals, we have to also balance the Reserve
5 Bank Act, which precedes the Constitution and the Constitution,
6 because when we dealt with the security cluster again on Nkandla,
7 there was always balancing that, that our Act says the default
8 position is transparency and then we have some of those Acts that
9 require secrecy, and for good reasons. So we have to just find a good
10 balance between the purposes of the secrecy and the constitutional
11 requirement of transparency and openness. The issue of the bonds
12 that you say you cannot find ...

13 **Dr JJ de Jager** : Well, it is a question, you know I don't know if ... it won't be ... it is not
14 in our possession, because as I have explained to you it is the debt
15 instruments.

16 **Adv T Madonsela** : Yes. I was coming to that, that the interesting, but sad thing, is
17 Treasury has washed its hands and said, "We know nothing". At that
18 time the Reserve Bank was delegated the powers of Treasury as well.
19 So the issuing of the bonds, the looking after the bonds, the work that
20 should have been done by Treasury at the time was being done by
21 the Reserve Bank and that Treasury knows nothing. We had a
22 delegation from Treasury here that we asked the same questions and
23 Treasury washed its hands about any knowledge of anything to do
24 with the bonds and everything, but again for us what would help
25 though would be if ...

1 Dr JJ de Jager : If I can just maybe help you there?

2 Adv T Madonsela : Yes?

3 Dr JJ de Jager : Maybe Dr Stals can give you a better explanation you know how
4 these bonds work, because the South African Reserve Bank acts as an

5 issuer of bonds for Government as well, you know, so in other words
6 ... but the instrument itself is still drawn by ...

7 Dr C Stals : I think I will cover that.

8 [Indistinct // Speaking simultaneously]

9 Adv T Madonsela : That is super, because we are now going to go into the questions. I
10 just wanted to clarify that Treasury has basically passed the buck
11 back to the Reserve Bank and we then have to ...

12 Dr C Stals : Okay, I think Treasury is right. I agree with them, they didn't have
13 anything to do with that.

14 Adv T Madonsela : Okay, thank you, Doctor Stals. Now coming to you, Doctor Stals, we
15 just would like to know if you have any objection to taking the oath
16 and if you don't, would you consider the oath binding on your
17 conscience and if so, would you say, "So help me God", Sir?

18 Dr C Stals : I have no objection. It will not make any difference to me whether
19 I'm under oath or not under oath, but I will take the oath and I am
20 under oath. I have got no problem. I will tell you the truth, that is all.

21 Adv T Madonsela : Thank you, Sir. So you do swear that the evidence and information
22 you shall give shall be the truth and nothing but the truth, and if so,
23 please say, "So help me God"?

24 Dr C Stals : God help me.

25 Adv T Madonsela : Thank you, Sir. We have specific questions, but perhaps before we

1 go into the specific questions, from an inquisitorial point of view I
2 have always found that it is easier for people to tell us a quick story,
3 rather than me asking question by question. So let's just firstly
4 confirm your full names, Sir?

5 **Dr C Stals** : You want me to start speaking?

6 **Dr JJ de Jager** : Full names?

7 **Mr Moraitis** : Full names?

8 **Adv T Madonsela** : Your full names?

9 **Dr C Stals** : My full names? Christian with one "A", Lodewyk Stals.

10 **Adv T Madonsela** : Thank you, Sir. If you can just tell us about your understanding of
11 what happened when this deal between the Reserve Bank,
12 Government and Bankorp was originally struck and leading to the
13 point at which we ... where we are right now? What you know about
14 this so-called Bankorp lifeboat please?

15 **Dr C Stals** : Yeah, do we have the full day?

16 **Adv T Madonsela** : No, just cut the corner, Sir and just what you know is this, this is
17 what was agreed and yeah, this is how it came about?

18 **Dr C Stals** : It will bring back so many memories in my mind. Yeah. Okay, you
19 will respect firstly that I have been out of the Reserve Bank for 17
20 years now. Secondly, that I'm getting older, at 81 and a half years I
21 don't remember everything anymore.

22 **Adv T Madonsela** : No, congratulations on your long life.

23 **Dr C Stals** : But as you went through all these things, a lot of memories came
24 back. Thirdly, I didn't have time to prepare myself for exactly what
25 you wanted to know, but certainly I do know a lot of things that you

1 asked. Now your first question and then I thought I could go through
2 this, a lot of things and give you a long story, but let me concentrate
3 first on what do ... how do I remember, recall this whole situation.
4 Well, I think you pointed out it started in 1985. Well, it goes back
5 even further. It goes back years before that. 1985, middle of the year
6 I was asked by the Minister of Finance to come and help him out,
7 because he couldn't find a Director General for Finance. I didn't want
8 to go, but in the end between the Governor of the Reserve Bank, the
9 Minister and myself, I accepted that I will go on secondment to the
10 Treasury for 5 years and help them out, serve as Director General for
11 Finance. At the same time the whole problem of the South African
12 international debt crisis developed. I was the Senior Deputy
13 Governor in the Reserve Bank then in charge of the Reserve Bank's
14 foreign operations. I had very little to do with domestic operations
15 of the bank. So I was extremely busy at that time, but then I think the
16 negotiations between the Reserve Bank and Bankorp started. I did
17 attend the Governor's committee meetings, because all those kinds of
18 things are decided ... or those days were decided within the
19 Governor's committee, that is the Governor and the three Deputy
20 Governors. Decisions like that can be ... belong to the Board of the
21 Reserve Bank, but there is a very formal document available in the
22 bank on the delegation of powers, from the Board of the Bank to the
23 Governor and the three Deputy Governors, or for members of the
24 Board and they have full power from the Board of Directors of the
25 Reserve Bank to take important decisions. So the Governor's

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1 Committee met very regularly and things like this came up in the
2 Governor's Committee, so surely when that first kind of assistance
3 was considered, I was in the Governor's Committee, but I had very
4 little to do with that whole first transactions that took place. I said
5 this before, then some or other fortune hunter in London came out
6 with a letter and said I told lies, but they produced a letter that I
7 signed and they said I wrote the letter. Nonsense of course. As the
8 Senior Deputy Governor to sign the letter doesn't mean I wrote it and
9 it doesn't mean I had much to do with it, but the Governor happened
10 to be overseas, so I had to sign important things, but the letter they
11 then produced and published. It was a letter addressed to Merca
12 Bank, about an assistance to Merca Bank, so it wasn't to Bankorp at
13 all. In any case, that is the kind of things that I have to go live with
14 for years and years and years, blamed for things. Well, okay, that is
15 more or less when it started. Now then I left for the Treasury in any
16 case and I worked at the Department of Finance for 4 years when
17 Gerhard de Kock died and I was ... 1999, 7th of August 1999 I had to
18 go back to the Reserve Bank, Gerhard ... on the 8th of August. Gerhard
19 died ...

20 **Mr C Moraitis** : 1989.

21 **Mr B Dhlamini** : 1989.

22 **Dr C Stals** : 1989, sorry, yeah.

23 **Mr B Dhlamini** : The 7th?

24 **Dr C Stals** : Gerhard de Kock died on the 7th and I went back on the 8th of August.

25 Okay, lots of things happened in those 4 years or so when I was away

1 from the bank. I was very busy, extremely busy. I came back to the
2 bank two or three weeks before the Annual General Meeting had to
3 take place. I had to prepare a Chairman's address for a meeting and
4 so on, but early the next year in the course of 1990 Derek Keys came
5 to see me. Derek Keys was then the Chairman of Bankorp and later
6 also Minister of Finance in Mr Mandela's Cabinet and so on. Derek
7 Keys came to see me and explained to me that they owed the Reserve
8 Bank, I think it was something like R600 million, which they
9 renegotiated every year and they had to start repaying this loan in
10 the middle of 1990 or somewhere, and there was no way they could
11 do it. As a matter of fact they were running into more serious
12 problems and the bad book loans, loans that were no longer serviced,
13 was growing all the time and so on and so on and so on. Okay, we
14 negotiated it, went to a Governor's Committee and we approved it
15 that we would continue to provide support for another year. I think
16 we increased the amount then, but I can't give you the exact details.
17 Well, as it turned out the situation in Bankorp got worse and worse,
18 and the next year again by the end of 1990 they could not make the
19 repayments. Then I think around about that time we decided in the
20 Governor's Committee and I decided that listen, this can't go on
21 forever, that we have to make loans to this bank every few months,
22 extend the loans, give more loans and so on. So I asked the Registrar
23 of Banks - it was in those days the Registrar of Deposit Taking
24 Institutions I think - to do a thorough investigation into what is
25 going on in this bank, what is the position of the bank, how long

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1 would we have to go on supporting the bank and so on. Okay, it took
2 a couple of months and the Registrar then came to me with a report
3 that he prepared, together with the External Auditors of the bank
4 and they presented to us a useless situation for the bank from the
5 Auditors of the bank, and with a warning that the next report that the
6 Auditors will have to issue for this bank will have to be a qualified
7 report. To issue a qualified report is a death sentence, because the
8 public will immediately lose full confidence in the banks and there
9 will be a run on the bank and it will be forced into liquidation. The
10 bank was not insolvent, I must make that clear to you. That was a
11 very important issue for us. We were reluctant to help a bank that
12 was insolvent. Its assets still exceeded its liabilities, but it could no
13 longer comply with the minimum capital requirements of the Banks
14 Act, and the Registrar was then in the difficult position that he had to
15 withdraw the licence of the bank and he had to tell the bank, "You
16 can't go on doing banking business, because you are not complying
17 with the minimum capital requirements of the Reserve Bank Act.
18 Your assets may still exceed your liabilities, you are not insolvent,
19 but you will have to stop doing business as a bank if that qualified
20 report is published by your Auditors". Okay, that is where it all
21 started and then we had to take that difficult decision you had
22 referred to, shall we just let this bank go or is this where this
23 problem of systemic risk, the domino effect – if one bank falls, it
24 pushes over the next bank, the next one, the next one, and the whole
25 banking system can collapse – the "contagion effect". A confidence, it

1 is based on confidence of people in the bank. Now what ... the third
2 or fourth biggest bank in South Africa, R35 billion of assets and
3 liabilities, 25 000 clients, offices operating in Hong Kong, London and
4 New York, a big amount of foreign assets and liabilities, foreign
5 clients. South Africa is sitting in a situation of a debt rescheduling
6 arrangement with international banking institutions. There was a
7 big shortage of capital in South Africa. What are we going to do with
8 this bank? Sure, it was a difficult decision to take. We consulted with
9 the Minister of Finance. We consulted with ... then at that stage
10 called in the major shareholder in Bankorp, who no longer does talk
11 to Derek Keys, the Chairman of Bankorp. We also started talking to
12 Marinus Daling, who was the Chief Executive of Sanlam and we said,
13 "Look, listen, we are sitting here with a major problem, a big risk for
14 the stability of the South African banking system and thousands of
15 clients, international relations. What are we going to do?". Well, one
16 of the reactions that came in one of the meetings we had in the office
17 of the Minister, Sanlam said, "Well, as the major shareholder what
18 can we do? We can just accept the situation and walk out of it, take
19 our losses. We have an investment of so many million rand of capital
20 in the bank and in terms of the Companies Act our loss is limited to
21 that amount of our share capital. We have already used up all the
22 reserves of the bank, so we will just walk out of it and let the bank be
23 liquidated, and take our loss of R500 million". I'm not so sure it was
24 500, but I think it was R500 million. "We will take our loss and the
25 bank can be closed". Okay, we started talking, thinking, talked to

1 Eddie George in the Bank of England, I talked to Fisher in the
2 International Monetary Fund. We had long discussions and
3 eventually we decided that listen, as lender of last resort the Reserve
4 Bank will have to step in here and incidentally the Reserve Bank was
5 established in 1921, started its operations on the 1st of June 1921.
6 You go and read the first balance sheet that the Reserve Bank
7 published at the end of June 1921, it had consisted of one big asset, a
8 special loan to the National Bank of South Africa to rescue the bank,
9 okay? That is the function of the Reserve Bank. The very first
10 transaction it did in its life was to give a lender of last resort facility
11 to the bank. Okay, then we talked to the Minister again, the Minister
12 said, "There is no way that Government funds can be put into the
13 bank, but we agree with you, we can't let this bank be liquidated
14 now". We thought of all the implications it could have, so we put a
15 lot of force on Sanlam as the major shareholder. We said, "Well, we
16 can't liquidate this bank, you can't walk away from it. As the major
17 shareholder you have to work with us to try and keep this bank
18 going". All kinds of alternatives were considered, despite what you
19 will read in some reports, which is blaming us that we did not
20 consider the possibility of a merger of the bank with other banks.
21 Seriously considered, but we came to the conclusion that no bank in
22 South Africa had enough capital to absorb this bank and big shortage
23 of liquidity in the markets, capital, so we couldn't approach another
24 bank to try and absorb this bank. The Reserve Bank had to provide
25 the necessary assistance. Okay, then my clever advisors in the bank,

1 including Prof Jan Lombaard, the Deputy Governor and Chris de
2 Swardt, the Deputy Governor in charge of Bank Regulation and
3 Supervision, and Dr Hennie van Greunen, the Registrar of Banks
4 started working, "How can we provide this lender of last resort
5 facility to this specific bank in this specific situation that we find
6 ourselves in, in South Africa at this stage?". Well, now some people
7 said we did not comply with best practices in the world. I challenge
8 anybody to show me a list of best practices that existed in 1990 or
9 what best practices must be. I again discussed it with the Bank for
10 International Settlements, with the IMF. They all said, "You know,
11 most banks have what you have in your Article 33. They must keep it
12 confidential if they give any assistance and there are no standard
13 rules or regulations around in the bank". There is one that compares
14 what we did with best practices in the world. It is funny and
15 sometimes I laugh about these things, sometimes I want to cry. They
16 stumbled over a speech that Eddie George held in 1993 in Hong
17 Kong, which Eddie George gave six things that he thought a bank as
18 the Central Bank should comply with when it gives assistance to
19 banking institutions. Eddie had discussed ... we had a conference of
20 Central Bankers in London a month before Eddie held that speech. I
21 gave a presentation at that meeting in London with the Bank of
22 England. I can tell you a lot about what I said in that speech, but in
23 any case Eddie more or less used six things that we agreed to in that
24 Bank of England meeting 1993. Okay, wonderful. If we should have
25 had those standards in 1985 or in 1989 or in 1990, we could have

1 used it, but incidentally we did. We got very much close on that,
2 because I think we had a big influence on that speech ... on that six
3 things that Eddie George then mentioned in his speech, but in any
4 case we go back to 1990. We are confronted now with this situation
5 and my advisors all came up and I said, "Number one, we must
6 comply with all legal requirements. There is a Reserve Bank Act,
7 there are rules, there are regulations. Make sure that we comply
8 with this", and I went further. I said, "Employ outside legal advisers
9 to assist you with drafting this agreement". We went to ... we
10 appointed the respected firm of Rooth and Wessels. They appointed
11 two senior Attorneys, Tippy Luttig and Willem du Plessis, both dead
12 at this stage. One of my problems that I had to live so long, but in any
13 case with the assistance of the two legal advisers they drafted a
14 document, a Loan Agreement, that you have to enter into with
15 Bankorp to consolidate everything that has happened so far, to make
16 sure ... and I said, "Please, let's get something that will have ... that
17 will terminate, that will come to an end at some stage. We can't go
18 on every year and every year", and so on. Okay, they worked for a
19 few months and they produced a massive document of 61 pages as a
20 Loan Agreement between the Reserve Bank and Bankorp. Finally
21 this document was signed in 1991 for a 5-year period, working back
22 from 1990 and it will go up to 1995, and during this period this Loan
23 Agreement will apply. Now I have seen legal opinions. You know
24 sorry for all the legal people around me here, but I have really come
25 to the conclusion that something as difficult as this lender of last

1 resort facility is like going to a casino to try and get a legal opinion on
2 what it is worth. It depends on how the dice will drop that day, to
3 what legal adviser you go to. We had two legal advisers to help us
4 draft it. At a later stage there came the Hoberman investigation into
5 the Duros Tollgate affair. I don't know if you have taken notice of
6 that very important investigation that took place on the Tollgate
7 affair, because it was a wonderful opportunity. All kinds of stories
8 went around about this donations and money that was given to
9 Bankorp, but it is all nonsense. Nothing like that every happened,
10 but we couldn't say anything, because we committed and we were
11 bound by Article 33 of the Reserve Bank Act, not allowed to disclose
12 anything about a transaction between the bank and anyone of its
13 individual clients. Then came this Hoberman, Article 21
14 Investigation into the Tollgate affair and there appeared the two
15 criminals and crooks of Haskins and Diedericks, and the stories they
16 told about this lifeboat, it is just amazing. The Reserve Bank then
17 decided but listen, this is the opportunity. We approached
18 Hoberman and said, "Please, can we come and give you evidence
19 before this meeting about this lifeboat?" and then he subpoenaed us
20 and we said, "Wonderful". Rooth and Wessels came to us, "Use this
21 opportunity, because the Reserve Bank Act says you are not allowed
22 to disclose any information unless forced to do so by a competent
23 Court of Law". They established that this investigation 21 ... Article
24 21 Investigation is a competent Court of Law. Wonderful, we have
25 the opportunity and it is a public Hearing, and now we have the

1 opportunity to disclose everything. Okay, so we went there. We
2 gave them all the information, I gave them evidence and all those
3 bigmouth people who shouted at the Reserve Bank, after I talked for
4 three hours, they had no questions to ask. One of our other enemies
5 also said, meaning ... a criminal that should have been in jail long
6 before that, David Gleason, the last man to see Kibble alive, had
7 dinner with him a few hours before he was murdered, shot, but in
8 any case let me not elaborate on David Gleason. But he wrote a letter
9 to say that "This ability to be an oralist(?) like Plato Aristotle were in
10 the Greek civilisation, still has a lot of influence today, because Stals
11 convinced everybody and told them a lot of lies" and so on and so on
12 and so on, but there were no questions asked. Hoberman said to me
13 afterwards and in his final report said he could find nothing wrong
14 with the Reserve Bank's assistance, and it had nothing to do with
15 Tollgate and these were just excuses used by those people, but in any
16 case then we disclosed everything. Now okay, we laid on the table
17 the document, the Loan Agreement and I emphasise "Loan
18 Agreement", because again there is a legal interpretation that it is a
19 simulated transaction. Well, sorry, I'm not a legalist. I'm just a
20 simple economist and banking expert, but if that Loan Agreement
21 should really be construed as a simulated agreement ... well, the
22 Reserve Bank is doing simulated transactions every day, today, I can
23 assure you. Go and look what the bank is doing today. It is exactly
24 the same transaction that they are doing every day today with the
25 banks when they give them liquidity and money market assistance

1 on a day to day basis. Okay, what was the essence of that Loan
2 Agreement? It said, "The Reserve Bank will make a loan to you, so
3 you consolidating all the outstanding positions and so on" ...

4 **Mr B Dhlamini** : That is to Bankorp?

5 **Dr C Stals** : To Bankorp, "To you as Bankorp. The Reserve Bank will make a loan
6 to Bankorp of R1.5 billion. We will credit your account in the books
7 of the bank with R1.5 billion. The Reserve Bank Act does not allow to
8 give a loan to anybody without the necessary collateral, so what is
9 acceptable collateral to the Reserve Bank? In our daily operations of
10 giving loans to banking institutions, Government bonds, Treasury
11 bonds and certain commercial paper with a maximum surety of 21
12 days. We will need collateral for this loan that we give you". Now we
13 go into the second step, "You must use this R1.5 billion to buy
14 Government bonds". The interest rate on Government bonds at that
15 stage was 16/17%, that was the normal market rate of interest. "So
16 you will buy Government bonds for R1.5 billion with that loan that
17 we extend to you and you will deposit those Government bonds in
18 the Reserve Bank, and cede it and leave it open to the bank. That is
19 our collateral. That is how we do it every day when we make loans
20 to banking institutions on a day to day basis at daily clear-in".

21 **Mr B Dhlamini** : Discount window?

22 **Dr C Stals** : Discount window nowadays. So okay, that was worked out in detail
23 then. "You will pay the Reserve Bank 2% interest on this loan". That
24 was incidentally at a much later stage reduced to 1%. "Why?
25 Because that will cover all the administration costs of the Reserve

1 Bank to manage this loan and you will pay us 2% interest, you will
2 earn 16% or 17% on the Government bonds that you buy and that
3 difference ... income, that is what you must use to get your books
4 right again over the next 5 years. This is the contribution we can
5 make as a lender of last resort to get your books right again. Now
6 what must you do with this income stream that you will be earning?".
7 R225 million a year I think it worked out more or less. "You must
8 write off your bad book. So the next step, we require from your
9 Auditors to divide the total book of Bankorp into two divisions, the
10 good bank and the bad bank. You will put in the bad bank all your
11 bad loans, unrecoverable loans, loans that you have to write off, that
12 if you have no chance to get it back again. We need a certificate from
13 your External Auditors for every one of those accounts, we want the
14 name of that account, we want the outstanding amount and this is
15 the bad book". Okay, now Davis(?) says we didn't put all the loans in
16 a different company. We did put it in a different account, which I
17 think was in any case a better way to do it and we ring-fenced that
18 account, and we said, "This is the bad book and this is what you will
19 correct over the next 5 years with this assistance that the Reserve
20 Bank is giving you, and that means that your External Auditors now
21 accepted this, that they will not have to issue a qualified statement
22 anymore and what is more, go and read the Loan Agreement. You,
23 the main shareholder, Sanlam, will carry half of this book. Sorry, you
24 have already made losses, but you have to provide for a further one
25 half of this bad book". The bad book was R2 billion more or less.

1 "The Reserve Bank's contribution will be close to 1.1 ... 1 or 2 billion,
2 or something like that, but the rest you must carry as the main
3 shareholder in the bank. You must go much further, you must close a
4 lot of branches, you must reduce your staff, you must" ... oh, yeah,

5 "You are not allowed to get any dividends on your shares anymore.
6 The dividends that you get every year that will accrue to you, Sanlam
7 as the main shareholder, will be reinvested in the bank to get it right
8 again, to get its capital right again" and so on – a lot of restrictions –
9 and "You change your top management" and so on, and they did.
10 Chris van Wyk was asked to resign or to leave the bank, Piet
11 Liebenberg took over. A lot of staff changes were made, branches
12 were closed. "Restructuring of the whole organisation, get rid of all
13 these loose subsidiaries, like Merca Bank and all these others,
14 consolidate them all in one big organisation", and these are all
15 conditions. "The Registrar of Banks will attend all your meetings,
16 regular discussions on this restructuring. The Registrar will report
17 to the Governor of the Reserve Bank regularly on what is happening
18 and we have the right to appoint a Director to the Board, if necessary,
19 to attend all your Board meetings". Okay, that is all in the Loan
20 Agreement and further, "The loan will be fully repaid after 5 years
21 when you will be able to sell your Government bonds again or when
22 the Government bonds come to maturity, but in any case at the end
23 of 5 years you will use these Government bonds, they belong to you,
24 they have been ceded to the Reserve Bank and they have been made
25 transferable to the Reserve Bank, but they belong to you, you earn

1 the full interest on it, you are the owner of these Government bonds,
2 but at the end of the 5 years either you give the Reserve Bank
3 permission to use that cession and sell the bonds or you take the
4 bonds back and sell it, or you do whatever you want, but you repay
5 the full loan, the full amount of the loan that we have extended to
6 you, the R1.5 billion, you will repay at the end of the 5 years". Okay,
7 that was the Loan Agreement and I'm surprised to hear that you say
8 you don't have the Loan Agreement. *This* is it. No, this is not
9 (*indistinct*), but it is in here, 61 pages.

10 **Mr B Dhlamini** : Could we make a copy?

11 **Adv T Madonsela** : Yes, we would appreciate it. We could perhaps make a copy.

12 **Dr C Stals** : Well, this is my own personal thing. This is what I presented to the
13 Tollgate affair.

14 **Dr JJ de Jager** : Okay, shall we make ...

15 **Mr B Dhlamini** : Yeah, you can.

16 **Dr C Stals** : Maybe you wait a bit, because there are more things in here.

17 **Mr B Dhlamini** : Okay.

18 **Dr C Stals** : Okay, so that is the Loan Agreement. At least ten places in this thing
19 you will find reference to this Loan Agreement. Now to say this is
20 not a Loan Agreement, sometimes I just laugh at this, but that is the
21 Loan Agreement, 61 pages and after the Tollgate affair it became a
22 public document, because we presented this thing. I tabled it myself
23 in that Tollgate Enquiry and this is it, you can see it is signed by a lot
24 of people, it is ... and I can read to you from this document. It is a
25 Loan Agreement that the Reserve Bank extended on the normal basis

1 to a bank. The difference is, it is a longer term, it is not a very short-
2 term loan and the 2% interest we charged on it. That is where the
3 subsidy came in. We charged them only 2% and they earned
4 15/16%, and that difference that is the assistance that we provided

5 to them. Now that thing worried me, about this low interest at 2%
6 and there came a time when Heath started investigating all these
7 things, but I was still worried about it. So I agreed with the Registrar
8 of Banks that we shall get a special investigation by Senior Advocate,
9 an independent Advocate from Johannesburg and we appointed
10 Ginsburg?

11 **Dr JJ de Jager** : Yes, Philip Ginsburg.

12 **Dr C Stals** : Philip Ginsburg (SC) and said, "Now these are all the things that
13 happened with this bank, with this agreement and so on. Just can
14 you give us an opinion *ex parte*, what is called a funny thing in legal
15 terms, an opinion on this whole Loan Agreement and in particular
16 about that low interest rate that we charged". Okay, this man
17 presented the report, which I think we still have it somewhere, but
18 he said there is nothing wrong with this whole agreement. The
19 Reserve Bank acted fully within its powers. "Opinion, lender of last
20 resort assistance", *ex parte* opinion given by the Honourable Philip
21 Ginsburg (SC).

22 **Adv T Madonsela** : Would you care to share that with us, Sir?

23 **Dr C Stals** : Uhm?

24 **Adv T Madonsela** : Would you care to share that with us?

25 **Dr C Stals** : I don't mind.

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1 **Adv T Madonsela** : Thank you.

2 **Dr C Stals** : I don't think this was ever published anywhere, but I have no
3 problem.

4 **Mr B Dhlamini** : No problem?

5 **Dr C Stals** : This is ... okay, so we had two legal advisers. We did get a legal
6 opinion at some stage, we made this Loan Agreement. Okay, what
7 happened to the loan? On the day that it was effected we went
8 through the normal procedures that we do every day when we give
9 loans, we debit loans and advances in the books of the Reserve Bank,
10 we credit Bankorp. We say ... like any bank will give you an
11 overdraft, we say, "Now okay, you have a credit of R1.5 billion, which
12 you can now use. First consolidate the outstanding positions,
13 whatever it was. There was an additional amount. This is your
14 R1.5 billion, but now we want full coverage for this loan, so you must
15 deposit R1.5 billion with the Reserve Bank in Government bonds
16 before we will allow you to use that overdraft account that we have
17 given you, the overdraft loan, the loan that we have given you". Then
18 I think ... and I'm not so sure exactly how it was done, but I think the
19 bank or Sanlam people came back to us and said, "Well, it is difficult
20 to buy R1.5 billion of Government bonds in the marketplace. Can you
21 help us?". We talked to the Treasury at the time and they said,
22 "Wonderful, this is a bonus for the Treasury. We have to issue about
23 R5 billion of Government bonds to finance the budget, normal
24 Government expenditure and we will just make an issue as part of
25 our normal issue of Government bonds to finance the budget deficit,

1 and if Bankorp should come to us tomorrow with R1.5 billion, sure,
2 we have no problem, we will issue them on normal conditions,
3 normal interest rates, normal maturities". I think they even agreed
4 to give it 5-year bonds, which is more or less over the same period as
5 the Loan Agreement and those bonds were issued. Nothing special
6 issued, not a special issue, not a special interest rate, normal
7 Government bond issues to finance the budget of the Government.
8 They could have just as well bought bonds in the marketplace as far
9 as the Reserve Bank was concerned, but in any case wonderful, we
10 helped the Treasury, one of the big beneficiaries of this whole Loan
11 Agreement, enabled the Treasury to issue R1.5 billion of bonds
12 without going to the marketplace. It reduced the pressure on
13 interest rates on Government bonds, it made it easier for the
14 Treasury to finance the budget of that year, because here came a
15 sudden demand, a sudden source of funds that we did not rely on
16 and they did not expect. So if anything, Government, Treasury
17 benefited from that whole loan operation, because they could sell
18 R1.5 billion of Government bonds out of their normal budget
19 procedures. Okay, that is the only way that Treasury came into it,
20 Government, except for negotiations and talks, but they didn't
21 finance anything. They financed the budget deficit, they got money
22 for the budget deficit, money as in the budget deficit and they issued
23 Government bonds for it. That is why I said earlier I understand
24 Treasury will say, "Well, we can't identify those bonds". I can't think
25 how they can, it is part of the Government bond issues of that year,

1 1991 or whatever it was, and if they paid the annual interest on the
2 bonds, together with all the other interests they paid on all the
3 outstanding bonds, there was nothing special in it for them. It wasn't
4 a special issue, it wasn't a special interest rate, it wasn't something
5 that special. They sold Government bonds to Bankorp and they sold
6 Government Bonds to Barclays, and they sold Government bonds to
7 Nedbank. As I say, there was nothing in it for the Government.
8 Where did the funds come from? That is something that (*indistinct*)
9 again. I spent hours with Heath and I will tell you in honesty now -
10 and it will be recorded - Heath could not read a Balance Sheet, he
11 couldn't understand an Income and Expenditure Account and the
12 finances. I spent hours with him and he didn't understand it, and
13 when I tried to explain to him that the Reserve Bank issues money,
14 that is what makes the Reserve Bank a very special institution, it can
15 issue money, it can create money, it can issue bank notes. Then I
16 tried to explain to him that on the Balance Sheet of the Reserve Bank
17 ... it is the only institution in the world you will find that, but on the
18 Balance Sheet of the Reserve Bank bank notes never appear as an
19 asset. It is a liability. Now that is what confused Heath. He thought
20 this was magic, you know. We cannot allow the Reserve Bank ...

21 **Dr JJ de Jager** : Maybe if I just can come in here. If you take your rand and you put it
22 into your bank account, it is going to be for your benefit, but if it is
23 the South African Reserve Bank that receives a rand in its own hands,
24 it is its own debt instrument, so it is a liability.

25 **Dr C Stals** : It is a liability of the Reserve Bank. Even if you take the Balance

1 Sheet of the Reserve Bank tomorrow – they are publishing nonsense
2 and nonsense – you will find bank notes is a liability. You will find no
3 South African bank notes on the asset side of the Balance Sheet of the
4 Reserve Bank. So the Reserve Bank has ... that is – you referred to it –
5 Treasury delegated some of its powers to the Reserve Bank.
6 Government delegated its power to create money to the Reserve
7 Bank and that power, you create money out of nothing, out of the
8 blue. That is the power of a Central Bank and that is why it is so
9 important to have a responsible Governor in the Reserve Bank,
10 because you can create money and if you create too much money,
11 you destroy the money, you create inflation. You have the example
12 on your border, Zimbabwe. Go to Zimbabwe tomorrow and find out
13 what happened to them in the last 5 years. Mugabe took over the
14 Central Bank and started issuing money and the Rhodesian dollar
15 lost its total value, to such an extent that they can't use it anymore,
16 nobody wants to accept it. They have to use US dollars and South
17 African rand. That is the danger of creating too much money from
18 the Reserve Bank and that is why the Reserve Bank must be an
19 independent institution. It must not be controlled by Government, it
20 must not be directed by Government, it must not be instructed by
21 Government what to do. It must be an independent institution.
22 Independence given to it by Government, sure, but it must be
23 independent and that is why it is important that the Reserve Bank
24 should not just create money, and spend money and give money
25 away. No, surely, that is why you needed a 61-page Loan Agreement

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1 when you gave R1.5 billion loans to a bank and what happened in the
2 end? The loans were fully repaid. Every transaction, every cent
3 during that 5-year period were recorded in the books of the Reserve
4 Bank in the normal way. The income of 2% and later 1%, well that is
5 all that it is actually worth for us, that we reflect it from year to year.
6 The outstanding claim on Bankorp on the asset side of the Reserve
7 Bank it stayed there for 5 years and finally it was repaid, Bankorp
8 sold its Government bonds back to Government or somewhere ...
9 well, Absa at that stage and used the proceeds, and repaid the loan to
10 the Reserve Bank. Sure, it is fully repaid, the loan was repaid, every
11 cent of it and if you have doubt about that, why not go into the books
12 of the Reserve Bank? Appoint your Auditor, ask them to go through
13 the books of the Reserve Bank. Why not get ... yeah, well you can ask
14 the Reserve Bank's Auditors, but go back in 1990, go back to 1985, go
15 back anyone of those dates, you will find all those entries in the
16 books of the Reserve Bank, sure. It was a normal loan operation of
17 the bank.

18 **[Cell phone interference]**

19 **Dr C Stals** : I should have switched this off long ago, sorry. One of my golf
20 partners. Okay, so that is what I say, you know if you have doubt, if
21 you don't believe me, if you have doubt about it, why not get
22 Auditors to go through the books of the Reserve Bank? You will find
23 every detail of all these transactions. I don't know if the bank keeps
24 its records for 35 years, because we are talking about 35 years ago,
25 in 1985, yeah, but surely all those entries went through the books of

1 the bank and were recorded, and were handled as a normal banking
2 transaction. Why ... well, you come back to Article 33, you are not
3 allowed to disclose any information. For that reason the Auditors,
4 the External Auditors of the Reserve Bank, they were Deloitte's and I
5 don't know who the other firm was, they had to see me every year -
6 I mean was Governor for 5 years - to discuss with me the report they
7 will issue. For 5 years every year this came up in the final statements
8 that we are going to publish, "Drawn up by you, the External
9 Auditors, how did you handle that transaction, because we must
10 make sure nobody will be able to make any deductions from it". It
11 was never an issue, it was never a problem, because in banks ... loans
12 and advances to banking institutions in those years amounted to
13 R5 billion, and that included the R1.5 billion to Bankorp and from
14 R5 billion nobody would make any deductions and so on, could make
15 any deductions, but it was recorded in the books of the bank. It was
16 published in the annual Balance Sheet of the Reserve Bank as part of
17 loans and advances paid by the bank. The interest earned came into
18 the profit and loss account of the bank. Okay, that is the bank's story
19 and the loan was fully repaid. Okay, you are talking about reclaiming
20 something. Well, number one, what is it you are talking about?
21 Certainly not the loans. The loans were extended, the loans were
22 repaid, the loans were covered by collateral, the loans were handled
23 in absolutely the normal way. Sure, but there must be somehow or
24 other that assistance was provided, because we wanted to rescue the
25 bank and we wanted to help them cover this huge big bad book that

1 they developed through bad management in the 1970's and early
2 1980's. Surely there must have been some kind of contribution?
3 Well, easy, the contribution came from the difference in the interest
4 we charged them and the interest they earned on their investment in
5 the Government bonds. Now to whom did that accrue? I mean that
6 was your next question. If you want to claim something you have to
7 claim that interest flow. You can't talk about a loan. The loan was
8 fully repaid, a normal loan. Now that again is fully spelled out in this
9 document. Nobody after 1990 in any case, when that final Loan
10 Agreement was entered into - and the same apply to the previous
11 sections of it - it is difficult to define who benefited from the loan. I
12 think it is the wrong word to use. The loans were not intended ... or
13 the assistance was not intended to benefit anybody. It was intended
14 to protect somebody, it was intended to protect the clients of
15 Bankorp, the depositors with Bankorp, the people who made
16 investments in Bankorp, loans, they were protected, because if in
17 liquidation they would have had to accept a big loss and that is
18 where the problem of systemic risk comes into it. People want to
19 have confidence in their money. If I have money in a Cheque Account
20 with a registered commercial bank institution, I want to know I can
21 use my money, I can write out a cheque against it, I can nowadays
22 use electronic transfers against it and it is safe, otherwise I will not
23 put it with a bank. I will insist on getting bank notes and putting it
24 under my bed or something like that. So you must protect the
25 confidence that people, the clients of the bank have in a banking

1 institution. Now surely if clients start losing their money in a
2 banking institution, they need to ask questions about the safety of
3 the banking institution. Why should I put my money with this
4 banking institution? Shouldn't I take my money away from all the
5 banking institutions, if I'm going to lose billions or millions of rand in
6 a banking institution? I agree with you, it is difficult to make that
7 assessment. For legal people it is a different kind of an attitude or an
8 exercise to try and make that assessment, is there a systemic risk or
9 not? For Central Bank it is a very difficult decision to take and it was
10 an extremely difficult decision for us to take. Should we not allow
11 this bank just to go the full way and be liquidated? What will happen
12 to the next bank, the other bank? Is it then not going to cost us much
13 more to try and solve this problem? What is going to happen to the
14 safety of our banking institution, the confidence in our banking
15 institution, in our banking structure? Yesterday somebody boasted
16 again in Parliament – was it Ramaphosa or somebody – about how
17 sound our banking system is and how well it is regulated, and
18 protected and so on. Sure, why don't we appreciate what we people
19 had to go through in those periods? I can assure you if we didn't go
20 through this exercise, we would have had a depleted banking sector
21 now. We would not have had this best banking system in the world,
22 now in 2008 and I again got compliments from many places –
23 including Kit McMahon interesting enough – that we managed our
24 banking system so well that we have such a sound and healthy
25 banking sector or banking system at the moment. I mean yeah, we

1 can differ, we can have different opinions on that, but looking back
2 with the advantage of hindsight, obviously we did the right thing in
3 1990 and the period around Bankorp. We protected the banking
4 sector of South Africa. We made sure that their stability, confidence
5 will be retained in the banking sector and the way it worked out,
6 again with the advantage of hindsight, nobody lost any money in the
7 transaction. The Reserve Bank was fully repaid for the loan that it
8 made to the other bank. The Reserve Bank was fully covered for its
9 administration costs, even with the 2% and the later 1%. The
10 Government was never involved in it. No Government money was
11 ever used in this transaction. You can say, "What about the interest
12 on the Government bonds?". The Government would have had to pay
13 that interest in any case, were it for Bankorp or lifeboat or lender of
14 last resort assistance that the Reserve Bank gave, it was part of the
15 normal budget expenditure of the Government, the budget deficit,
16 the need to issue Government bonds. As a matter of fact, as I have
17 explained to you, the Government benefited from it, because an
18 additional demand was created that helped the Government to keep
19 interest rates marginally lower than what it would otherwise have
20 been. So no Government funds ever came into the picture there. You
21 can talk about the money that the Reserve Bank created. It cost the
22 Reserve Bank nothing, not a cent to create. So we earned an
23 additional 2%, 1% on this loan that we made, that we would not have
24 earned otherwise. So the income of the Reserve Bank actually
25 increased because of that loan facility. Again, funny, it is magic, but it

1 is true. You can say the Reserve Bank could have used that money to
2 make its own investment in Government bonds and earned 15%.
3 Yes, but we would not have done it, because we have a responsibility
4 to fight inflation. We don't create money to earn income. That is not
5 a function of the Reserve Bank and if it becomes a function, you go
6 the Rhodesia way or the Zimbabwe way. So surely it makes no sense
7 to say yes, but the Reserve Bank could have invested the R1.5 billion
8 in some other place. No, the Reserve Bank would not have created
9 that money and again the way that the transaction was designed
10 helped us to control the money supply. We are creating R1.5 billion.
11 It worried me a lot. I was very committed to fight inflation. Inflation
12 was 17% when I was appointed Governor in 1989. It was less than
13 2% when I retired 10 years later. So I was very committed that I
14 fight inflation. The one way to make sure that you fight inflation, you
15 don't create money unnecessary. Now I'm forced into a situation
16 where I have to create money for helping Bankorp or a banking
17 institution. Okay, we said now you know if we have to create this
18 money, let it not go into the private sector to be spent. At least if it
19 goes to Government it helps, because Government must finance its
20 budget in any case and the Reserve Bank does help the Government
21 from time to time by investing in Government bonds. So we said let's
22 try and channel it to Government, so at least its inflationary effect
23 will be less when it goes to Government. So you know now we go
24 back to ... and then I say again there was very little example, very
25 little experience, very little information of what the Central Banks

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1 did around the world as lenders of last resort. 2008/2009 the whole
2 situation exploded in the world, just about every Central Bank in the
3 world had to step in and provide assistance. My Gosh, if I compare
4 with what we did in 1990 around and what the Central Banks did in
5 2008/2009, well ... I agree, our arrangements did not comply with
6 best practices in the world. They were just better. So you can go
7 back now and compare. There are many examples now on how
8 Central Banks provide a lender of last resource facility. They were
9 not available in those years. We had to do our own things based on
10 Walter Bagehot and (*indistinct*) Adam Smith of 1694 when the Bank
11 of England was created, but I have no problem, I have no reservation
12 today looking back on this, despite what all the people are saying
13 about what the Reserve Bank did at that time. I think we did the
14 right thing, I think we achieved the right result. It is the agony of
15 Central Banking, you have to go through that. If you are Governor of
16 the Reserve Bank, bad luck, you have to go through this. Nowadays
17 they are being paid for it. In my time it was a great honour for me to
18 do that job and I had to accept these kinds of problems, and that is
19 why I went to the Tollgate affair, that is why I went to the Heath
20 Commission, that is why I went to this Davis Commission. I had the
21 responsibility, I was Governor of the Reserve Bank. I had sometimes
22 very little to do with some of the things, but I was the Governor of
23 the Bank and I was the head, and I was prepared to defend it and I'm
24 still prepared to defend it today. Now again you raised some things
25 that I really must – in your own interest – refer to, whatever you

1 want to write and so on to protect yourself and your institution's
2 very good name. Reserve Bank owns no shares in a Reserve Bank.
3 You say the Reserve Bank is one of the shareholders. As far as I
4 know it never got issued, not a single one. The Reserve Bank is not a
5 shareholder in the Reserve Bank.

6 **Dr JJ de Jager** : Government hasn't got shares in the Reserve Bank.

7 **Dr C Stals** : Government hasn't ... sorry, the Government has no shares in the
8 Reserve Bank.

9 **Dr JJ de Jager** : There may be things like ... I know the Police Widows Fund, the
10 Police Widows Fund have about 3 or 4 shares, but that is about
11 *(indistinct)*.

12 **Dr C Stals** : But in any case if they do hold shares, they are restricted by the
13 R10 000.00.

14 **Dr JJ de Jager** : No, but they don't *(indistinct)*, they don't.

15 **Dr C Stals** : But they never had shares in the bank, no, no way, but in any case, so
16 that is irrelevant. I said you know I looked at it and that is why I
17 remember it. I said in that conference in the Bank of *(indistinct)*, as
18 far as 1992, South Africa event ... well, I can tell you a lot about the
19 independence of the Central Bank, but in any case I was very
20 independent at that time. Why? Because the South African
21 Government was going out in transit(?) and didn't want to take any
22 responsibility. They had Ministers of Finance, like Chris Liebenberg
23 and then Derek Keys and so on, and they couldn't tell me anything
24 what I had to do, from experience I have had 45 years in the bank
25 and so on, and I couldn't go to them for any advice. I said in that

1 speech in London, I said, "You know a Central Bank can only be as
2 independent as the Government of the day wants it to be".
3 Remember it was created by a Special Act of Parliament, the Act of
4 (*indistinct*). So this independence of the Reserve Bank also is
5 something that you have to have ... be realistic about.

6 **Dr JJ de Jager** : May I just maybe ask just for clarity, the link between Absa and
7 Bankorp won't you just elaborate a little bit on that?

8 **Dr C Stals** : Okay. Okay, in any case I said to them at the Bank of England
9 meeting that "I can assure you, it can get very lonely if you become
10 an independent Central Bank". You need your Minister of Finance,
11 you need your Government, you need to talk to them at times, you
12 need to understand their policies, you have to work closely together
13 with fiscal policies, but in any case the Reserve Bank is an
14 independent institution and I have to emphasise that. Okay, you
15 want me to say something about the link with Absa?

16 **Dr JJ de Jager** : Just the link, yeah.

17 **Mr C Moraitis** : Yeah.

18 **Dr C Stals** : Okay, now this then ... in this Loan Agreement of 61 pages we did
19 take into account the possibility of a merger, of a takeover of this
20 troubled bank, of this problem bank. So it reads in that document ...
21 you will find 3 full pages making provision for a takeover of Bankorp
22 by another bank. Okay, this event then came in 1992, again to the
23 relief of the Reserve Bank, wonderful. This could now terminate this
24 critically sick problem, a problem that we have with this critically
25 sick bank, Absa can take it over. Now there again I was not so much

1 involved in it. It wasn't much of an administrative problem. My
2 Deputy Governor, Chris de Swardt, handled that whole situation.
3 The only important thing was, it said in this Loan Agreement that
4 Sanlam cannot sell its shares to anybody without the approval of the
5 Reserve Bank, as long as this Loan Agreement would apply. So they
6 had to approach the Reserve Bank and for another reason, they had
7 to ask the Reserve Bank what would now happen to this Loan
8 Agreement, this special assistance agreement? Okay, the Reserve
9 Bank then negotiated with Absa, entered into a special agreement
10 with Absa, signed by Chris de Swardt - I didn't sign that one - the
11 Deputy Governor and that Loan Agreement more or less just
12 confirmed to Absa that the existing agreement will continue. Absa
13 will take over the bad book loan, the good book loan and Absa will do
14 the administration of that bad book loan, Absa will use the proceeds
15 they get from the Government bonds to write off the bad book loan
16 and Absa will make full repayment of the loan at the end of its
17 maturity, when it comes to maturity, and that is more or less the
18 essence. Absa then wanted to substitute some loans and I think the
19 Reserve Bank said, "No way, that is fixed and cast, that was fixed in
20 1990, that was the list provided by the Auditors of the bank and
21 which must be certified every year by the Auditors". Then a loan
22 agreement provision was made that if they should recover any of
23 those loans, it will be deducted from the assistance given to the bank.
24 When it came to the end of the period the External Auditors of Absa
25 had to provide the Reserve Bank to confirm to us that the full amount

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1 was used for the write-off against the book. The External Auditors
2 came to us then with a report that said that the total bad loan book
3 had increased beyond expectation after Absa took over the bank, and
4 therefore the shareholders of Absa had to provide additional funding
5 for that loan. What they received from the Reserve Bank was far less
6 than the total loss and therefore that clause that said if they recover
7 anything, they will refund to the Reserve Bank a part of that income
8 stream assistance that we gave them. Well, obviously then it did not
9 have to apply, because it was proven by the External Auditors of
10 Absa and by the Registrar of Banks that the total bad loans book was
11 something like R2 billion. Okay, the Reserve Bank's assistance
12 funded about 1.1 or R1.2 billion of it. The special assistance that
13 Sanlam had to give financed another 5 or R600 million of it and
14 therefore the Absa shareholders had to absorb something like 2 or
15 R300 million. So Absa, it cost them the 2 or R300 million extra,
16 which now again I was not involved in that. I think that part was
17 covered very well in the Davis Report, the negotiation that took place
18 between Absa and Bankorp or Sanlam at the time of the takeover. I
19 think it is very clear. I wish ... it is so straightforward, it is so simple if
20 you understand bookkeeping and accountancy, and financial
21 transactions. Here comes Absa and say to Bankorp, Sanlam, "I'm
22 interested in taking over your bank. What does it look like? Sure".
23 The first thing they want, "I want your Balance Sheet, I want your
24 financial accounts. Sure, here are my financial accounts. It exists of
25 two books, a bad loan book and a good loan book". Obviously Absa

1 would say to them, "Well, I'm interested in your good loan book, I'm
2 not interested in your bad loan book. Why should I buy a bad loan
3 book from you? That is losses that have been incurred by you and
4 your bad management many years ago, why should I buy that? I'm
5 not interested in that. I'm interested in negotiating with you to buy
6 your good loan book". Okay, then obviously Bankorp had ... Sanlam
7 will say, "No, don't worry about the bad loan book. It has been
8 covered with a special facility from the Reserve Bank. Leave that out
9 of the account. That will be covered by the income that we earn on
10 this Reserve Bank loan, on condition that you just confirm with the
11 Reserve Bank that they will be prepared to transfer that same facility
12 to you, that same Loan Agreement will apply". Okay, Absa did that,
13 the Reserve Bank confirmed so and if I should have been ... so I don't
14 know, I have no idea what happened in those negotiations, but if I
15 should have been involved on the Absa side I would have said,
16 "Wonderful. I'm not interested in that income that will be earned on
17 the Reserve Bank facility, because I can't use it. It must be ... it has
18 already been used, it is finished, it doesn't exist anymore. It is there
19 to absorb the bad loan book, so leave that out of account. There is no
20 income that I'm going to earn. As a matter of fact I have to do the
21 administration of that book, that is all, but otherwise forget about
22 that book. Let's negotiate about your good book". Then obviously
23 Bankorp will say to Absa and the Auditors will say to Absa, "Well, in
24 the good book there are also bad loans, bad loans had accumulated
25 after 1990", because that bad loan book we are talking about was

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1 established in 1990, it was defined, it was ring-fenced, but then it
2 worked out that there were more bad loans that developed after
3 1990, and that is where Absa tried us to put those additional loans
4 also into that agreement. We said, "No way. Sorry, if you buy Absa
5 now ... if you buy Bankorp now, we cannot change the agreement and
6 the facility. It will be applied exactly the same way". So how Absa
7 then negotiated with Sanlam and Bankorp to buy the good book of
8 Absa I can't comment on that, but I mean just ... I don't know what
9 the word is, but ...

10 **Mr B Dhlamini** : Logic?

11 **Dr C Stals** : The logic of it all is, they must have negotiated some kind of a price
12 for buying Bankorp, fully taking into account the existence of the bad
13 book and the funding of the bad book, and the financing of the bad
14 book. Surely that is logical, but in any case that is what I read in the
15 Davis Report and I think it is fairly ... very technically, but it is
16 explained there and what he says is more or less what I said now.
17 Yes, sure Absa did take account, but they put it aside. They said,
18 "That is something that has been taken care of. I'm not really
19 interested in that. I buy the good book and I negotiate a price for the
20 good book". So Absa was in no way involved really in the lender of
21 last resort facility of 1990 and 1991. They took notice of it and they
22 knew it existed, but it was there in a separate book, the bad book and
23 it was funded in the bad book, and Absa did not have to look at it.
24 The takeover, well okay, again if there should be any good, decent
25 court case, all this evidence will certainly be produced, that Absa will

1 say, "Well, you know okay, we put that book aside and we realised
2 that that was covered, but we made a bad buy, because afterwards
3 we discovered there were more bad loans that we had to take care
4 of". I don't know to what extent that was included in the price or to
5 what extent that was negotiated, or when they discovered that.
6 Again I just have a newspaper cutting here to say, where Absa
7 officials said that the total losses exceeded R2 billion and that was
8 said by a senior Absa representative at some place ... in some place.
9 Okay, that is you know the full story. As I say, I can tell you a lot
10 about those bad loans and so on, and Absa. Now as I say, you want to
11 find somebody. Firstly you want to know what should be claimed?
12 Now again can I ask you this question, if I go today to any bank and I
13 borrow money from that bank for 10%, and I invest it at 12%, is
14 there anything wrong with that 2%, am I not allowed to earn it? Now
15 the banking institution comes to the Reserve Bank and it is given a
16 loan at 2%, should it not be allowed to use that additional income
17 that it can earn on it? Why not? I don't know. I mean as I say, I'm
18 not a Lawyer and surely some of these Lawyers must find it funny
19 and difficult to understand if I try to explain financial transactions to
20 them, but then they go on to their own interpretation, and they make
21 their own stories about it, but as I say I sometimes must just laugh at
22 it and sometimes I want to cry at it you know.

23 **Adv T Madonsela :** It is four of us actually.

24 **Dr C Stals :** Because I have grown beyond that stage now where I take it
25 personally.

- 1 **Mr C Moraitis** : But I think the important point you made, Doctor and the point is,
2 even the difference that they made, 14 or 15%, wasn't for their own
3 benefit. It was to pay to the bad book. That was your evidence as I
4 understand the commission.
- 5 **Dr C Stals** : That is right, that is right.
- 6 **Mr C Moraitis** : So it wasn't something they made for their benefit.
- 7 **Dr C Stals** : But who created the bad book, you see?
- 8 **Mr C Moraitis** : Yeah, no, but that is before then.
- 9 **Dr C Stals** : Who created that bad book? We were confronted with the existence
10 of the bad book after it happened, okay. That is the problem, that is
11 where the Central Bank have to take that difficulties. I spent days ...
12 not days. I spent a day, a full day in an Arbitration case, Judge Rabie
13 ... I think it was Judge Rabie.
- 14 **Dr JJ de Jager** : Yes, it was Judge Rabie.
- 15 **Dr C Stals** : In an Arbitration case between the Cape of Good Hope Investment
16 Bank and the Railways Commuter Corporation, because we were ...
17 the Reserve Bank was attacked for not giving lender of last resort
18 assistance to the Cape Investment Bank and why did we decide not
19 to give it to Cape Investment Bank? Because people like Andy Swartz
20 and the other one I mentioned earlier?
- 21 **Mr C Moraitis** : David Gleason.
- 22 **Dr C Stals** : David Gleason did fraudulent transact ...
- 23 **Mr C Moraitis** : And Pickard.
- 24 **Dr C Stals** : ... and Jan Pickard did fraudulent transactions within the Cape
25 Investment Bank, so the Reserve Bank ... and it was completely

1 insolvent at the time. They gave to Gleason a loan three times the
2 total capital of the bank. It is completely against the Banks Act and
3 they submitted for 6 months false returns to the Reserve Bank. Now
4 sure, the Reserve Bank can use its discretion and say, "Sorry, there is

5 no lender of last resort assistance to a bank like Cape Investment
6 Bank". Then the Railway Commuters Corporation had a huge deposit
7 in Cape Investment Bank, which they lost, because Cape Investment
8 Bank was liquidated. Then they approached us in the Reserve Bank
9 to refund them for that loan and we said, "No way. You made that
10 investment with the Cape Investment Bank, it is a bad investment
11 you made. Yeah, but you gave assistance to Trust Bank and Bankorp
12 Absa, why can't you not give assistance to Cape Investment Bank?".
13 Okay, then they went to Arbitration and Judge Rabie was the
14 Arbitrator, and I had to give evidence to Judge Rabie why we did not
15 give the loans and then the next month to the Tollgate investigation,
16 why we did give loans? You see, so it is the agony of Central Banking,
17 it is a "no lose" situation. If you give loans, you will be criticised by
18 some people. If you do not give loans, you will be criticised by other
19 people. So okay, you said I must give you a copy of this. You can
20 make a copy of this. It is a long thing.

21 **Adv T Madonsela** : But they can make copies of it straight away, so that they can give
22 you back then the original, Sir.

23 **Mr C Moraitis** : What I can also do, if you would prefer, is take it away, copy it and have
24 it delivered to your offices tomorrow morning.

25 **Dr JJ de Jager** : At your offices.

- 1 **Dr JJ de Jager** : Do you have it? You should have it, but , but we can make a copy of
2 it.
- 3 **Mr B Dhlamini** : No, we can do it, yes.
- 4 **Mr C Moraitis** : Okay, it is up to you.
- 5 **Mr B Dhlamini** : Yes, we have got a facility.
- 6 **Mr C Moraitis** : Alright.
- 7 **Dr JJ de Jager** : Because there is more in the file and ...
- 8 **Mr C Moraitis** : Do you want a copy of it now?
- 9 **Adv T Madonsela** : Are they able to do it immediately and the opinion?
- 10 **Mr C Moraitis** : Let me take it and I undertake you will have it tomorrow morning. I
11 will have this delivered to your offices tomorrow morning.
- 12 **Dr C Stals** : Yeah, but then you must just discuss this with ... I just want to go to
13 this one.
- 14 **Mr C Moraitis** : That is why I wanted (*indistinct*).
- 15 **Dr C Stals** : Okay, you see I have first the Loan Agreement.
- 16 **Mr B Dhlamini** : Yes.
- 17 **Mr C Moraitis** : It is all in Afrikaans, it is an Afrikaans document.
- 18 **Dr C Stals** : Yeah, you see that is what ...
- 19 **Adv T Madonsela** : But don't we don't mind (*indistinct*).
- 20 **Mr C Moraitis** : No, I know, but you have the misfortune ...
- 21 **Dr C Stals** : But somebody will have to translate to English.
- 22 **Mr C Moraitis** : No, no, they will do it themselves.
- 23 **Dr JJ de Jager** : Will you be able to do it?
- 24 **Adv T Madonsela** : We have Lawyers here who are fully Afrikaans speaking, yes.
- 25 **Dr C Stals** : I say this with a little bit of reservation.

1 Adv T Madonsela : Yes?

2 Dr C Stals : My one deduction was that Davis and his group could not read
3 Afrikaans, because I think they never read this agreement.

4 Mr C Moraitis : Do you want the *(indistinct)* now?

5 Dr C Stals : Just *(indistinct)* let me go through this now, let us first go through
6 this. In this book you have the full Loan Agreement and as I told you,
7 here it is, more than 60 pages. There is the list of the bad book, every
8 single loan that Bankorp and its predecessors made, and we agreed
9 to in 1990 these are the bad loans and this is what you will never get
10 back again, you will never recover it and this is what somehow or
11 other we must put right in your books.

12 Adv T Madonsela : And the agreement is dated 1991?

13 Dr C Stals : Yeah, it is in this agreement.

14 Mr C Moraitis : The agreement?

15 Dr JJ de Jager : Date.

16 Adv T Madonsela : What is the date that you have?

17 Dr C Stals : Yeah, the date of this agreement I think is ... somewhere you will go
18 back into it. I think it was ...

19 Mr C Moraitis : Let me have a look at the last page.

20 Dr C Stals : It started ...

21 Adv T Madonsela : Okay..

22 Dr C Stals : It started 3rd of August 1990.

23 Adv T Madonsela : Right. I think Doctor Stals, on behalf of my team we thank you so
24 much for taking us on to that historical road, which then gives us a
25 sense of where everything started and why things were done like

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1 that in the past, which then leads us to 1997. So before I ask any
2 specific questions about the historical information you have shared
3 with us, I would just want to ... when did you leave the Reserve Bank,
4 Sir?

5 **Dr C Stals** : 7th of August 1999.

6 **Adv T Madonsela** : Okay.

7 **Dr C Stals** : Okay, sorry, in this file I also have a copy of the agreement entered
8 into between the Reserve Bank and Absa at the time of the takeover.

9 **Adv T Madonsela** : Pardon?

10 **Dr C Stals** : In this file I also have a copy of the agreement that was entered into
11 between the Reserve Bank ...

12 **Adv T Madonsela** : Then you are a lifesaver, because we have been just asking for these
13 two agreements.

14 **Mr C Moraitis** : It is a public document, which is ... it is the Tollgate thing, we must
15 give it to.

16 **Dr C Stals** : Yeah, but I think you asked for this one.

17 **Adv T Madonsela** : Pardon?

18 **Mr C Moraitis** : It is the Tollgate Enquiry, so we must give you this document. It is a
19 public document, so ...

20 **Adv T Madonsela** : No, thank you, because none of the other actors seemed to know
21 where to find that, so, but we ...

22 **Dr C Stals** : Yeah.

23 **Mr C Moraitis** : Yeah, but it is such a big thing.

24 **Adv T Madonsela** : Yeah, it is (*indistinct*).

25 **Dr C Stals** : Okay, there are three agreements in this book. You can (*indistinct*).

1 Mr C Moraitis : I will have them delivered to you tomorrow morning.

2 Dr C Stals : And this is that Ginsburg thing that I referred to.

3 Adv T Madonsela : Plus okay, documents.

4 Dr C Stals : I'm sorry, I can give you (*indistinct*).

5 Mr C Moraitis : Can we mark it for your attention when I deliver it?

6 Dr C Stals : I think this is very important. Have you read the Heath Report?

7 Adv T Madonsela : Uhm (*positive*).

8 Dr C Stals : It starts off by saying:

9 *"The Special Investigation Unit has decided not to institute any*
10 *litigation following its investigation into the financial aid*
11 *package provided by the South African Reserve Bank to Bankorp,*
12 *where investigation into the validity" ... and so and so and so.*

13 Adv T Madonsela : Right.

14 Dr C Stals : Yeah and it more or less comes to exactly the same conclusion as
15 (*indistinct*).

16 Adv T Madonsela : Can we get a copy of the Heath Report, because we interviewed Judge
17 Heath, but he didn't have a copy of his report at the time we
18 interviewed him?

19 Dr C Stals : Okay, this ... okay, then the Davis Report you have?

20 Adv T Madonsela : The Davis Report we have?

21 Mr B Dhlamini : Yeah, we do.

22 Adv T Madonsela : I think we do, yeah.

23 Dr JJ de Jager : We gave you a copy in 2011 I think. It is part of our ...

24 Adv T Madonsela : Yes.

25 Mr B Dhlamini : Yeah, those we did receive.

- 1 **Adv T Madonsela** : Yeah, the Heath Report nobody seems to have had, although I had
2 extensive discussions with Judge Heath on the report.
- 3 **Mr C Moraitis** : It is not his report. It is the statement that he issued on a lot of
4 *(indistinct)*.
- 5 **Dr C Stals** : Yeah, he never issued a report.
- 6 **Adv T Madonsela** : No, because the report was given to the President and when we tried
7 to get that ...
- 8 **Mr C Moraitis** : That is right.
- 9 **Dr C Stals** : He never issued it.
- 10 **Mr C Moraitis** : Yes, that is right.
- 11 **Adv T Madonsela** : Okay, but we would love to see the statement.
- 12 **Dr C Stals** : Because of disputes between the Treasury and the Government, and
13 Heath.
- 14 **Adv T Madonsela** : Yeah, because all of the SIU reports are given to the President and he
15 has no duty under the law to share them with anyone.
- 16 **Dr JJ de Jager** : That is the Davis Report.
- 17 **Dr C Stals** : Yeah, it is the Davis Report.
- 18 **Adv T Madonsela** : Although we could subpoena those reports from the President.
- 19 **Mr C Moraitis** : Yeah, you could.
- 20 **Adv T Madonsela** : We could, in terms of the Public Protector Act.
- 21 **Mr B Dhlamini** : Yes.
- 22 **Mr C Moraitis** : They would never find them at his *(indistinct)*.
- 23 **Mr B Dhlamini** : Because I tried to look for them in the SIU, but I couldn't find, but I
24 think you know ...
- 25 **Dr C Stals** : Can I offer you another document? "Submission by Dr CL Stals,

1 Governor of the South African Reserve Bank, with a Section 417
2 Commission of Enquiry into the affairs of Tollgate Holdings”.

3 **Adv T Madonsela :** Okay. Oh, that would be great because incidentally ... I don't know if
4 you have all read "Dangerous" ... what is that book? Julian Askin's
5 book, "Dangerous" what?

6 **Dr C Stals :** You know I know I'm talking a lot. I know I'm talking a lot, but ...

7 **Adv T Madonsela :** Yes. No, no, but I'm saying they blame you. I mean saying from that
8 book it then ...

9 **Dr C Stals :** Yeah, but that is where the letter was published, that you know he
10 said I said I had nothing to do with the bank of loans initially and
11 then ...

12 **Adv T Madonsela :** Yeah, "Dangerous Deceit".

13 **Dr C Stals :** And then he publishes something in the end, a letter which I signed,
14 assistance to Merca Bank.

15 **Adv T Madonsela :** Right. Well, I just it would be interesting then to hear your side of
16 the story, this is his side.

17 **Dr C Stals :** You know what, I will tell you my experience. I can start with a lot of
18 people, I can mention them all to you and I will start with Martin
19 Welz of Noseweek and so on. What happens is ...

20 **Adv T Madonsela :** So this is ... is the statement ...

21 **Dr C Stals :** What happens is, somebody tells a story and then somebody else
22 tells a story, and then the third person makes his own story and it
23 goes on and on, and in the end it becomes a mythical illusion for
24 somebody. Then the mythical illusion becomes a mythical dream for
25 somebody and then somebody tries to make the mythical dream a

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1 mythical reality, and then you run into problems, because if it is
2 mythical it can't be reality and it goes on and on.

3 **Adv T Madonsela** : Right, thank you.

4 **Dr C Stals** : This is the kinds of thing that happen and you know it is a narrative
5 approach of analysis, and I'm sorry to warn you, you are relying a
6 hell of a lot on a narrative analysis.

7 **Adv T Madonsela** : Sorry, Sir, I have some specific questions, Sir. Some you have
8 answered, some you have not.

9 **Dr C Stals** : Okay, CIEX.

10 **Adv T Madonsela** : I'm going to ask because you were still Governor ...

11 **Dr C Stals** : Okay, that is very easy ...

12 **Dr JJ de Jager** : She will ask.

13 **Adv T Madonsela** : ... in 1999, the first CIEX Report was submitted in 1998. What was
14 your contact with the CIEX author, Michael Oatley? Did you have any
15 contact with Michael Oatley?

16 **Dr C Stals** : No, no knowledge of him, never met him.

17 **Adv T Madonsela** : No contact. You were not involved in any way in the Cabinet
18 grouping that was dealing with him, that was meeting with him?

19 **Dr C Stals** : No, I didn't attend Cabinet meetings myself. I'm a Governor of the
20 Reserve Bank (*indistinct*).

21 **Adv T Madonsela** : Did you get the report that Michael Oatley submitted in 1998?

22 **Dr C Stals** : No, never heard of it, nothing.

23 **Adv T Madonsela** : At the time when you commissioned Judge Davis relating to this
24 matter, what was the basis of you looking into that or when ... with
25 the Reserve Bank?

- 1 **Dr C Stals** : I was never involved. I never knew anything about the CIEX Report
2 in my lifetime, in my lifetime in the Reserve Bank.
- 3 **Adv T Madonsela** : Yes, so what triggered the Davis investigation?
- 4 **Dr JJ de Jager** : What triggered the Davis investigation?
- 5 **Dr C Stals** : I don't know, I don't know. That was after I retired as Governor.
- 6 **Dr JJ de Jager** : That was Governor Mboweni.
- 7 **Mr C Moraitis** : That is Mboweni.
- 8 **Adv T Madonsela** : Okay, Davis ... yes, no, you are right, Davis.
- 9 **Dr JJ de Jager** : Yeah, Mboweni is ...
- 10 **Adv T Madonsela** : Oh, yes.
- 11 **Dr C Stals** : It happened after I ... Mboweni never discussed it with me.
- 12 **Adv T Madonsela** : And then Heath.
- 13 **Dr C Stals** : Heath?
- 14 **Adv T Madonsela** : The Heath report is dated ...
- 15 **Dr C Stals** : Heath was about 1998 or something like that.
- 16 **Adv L Tshiwalule** : Heath was 1998.
- 17 **Adv T Madonsela** : 1998 and of course you were presented with it?
- 18 **Dr C Stals** : No.
- 19 **Adv T Madonsela** : You were not presented with the Heath Report?
- 20 **Dr C Stals** : No, I did get a copy of that statement that he issued to the press. It
21 was the statement issued to the press.
- 22 **Adv T Madonsela** : Yes. Alright, I just wanted to know did you have ... so you had
23 nothing to do with any decision that was made regarding how to deal
24 with this matter after 1997?
- 25 **Dr C Stals** : No. I will give you a copy of this. That is the first time I ever heard

1 about the CIEX Report.

2 **Adv T Madonsela :** That was 1999?

3 **Dr C Stals :** Yeah, exactly. Seven days after I retired from the Reserve Bank I
4 read it in a newspaper. That was ... and that was about the only thing
5 I heard about it until recently again. I have never ... I didn't know
6 about the existence of the CIEX Report and I really don't ... I was
7 never ... it was never discussed with me, it was never ...

8 **Adv T Madonsela :** And they never spoke to you as the Governor of the Reserve Bank
9 when they were engaging him to look into this matter?

10 **Dr C Stals :** No. No, I have never met any of those people, I have never known
11 them. It was very funny to read that report in the newspaper, but in
12 any case that is the only ... that is ... and that happened as I said about
13 a week after I retired from the bank incidentally, but then even after
14 that I was never involved and I never heard about it, until recently, in
15 the exchange of letters between you and the Reserve Bank on your
16 disputes and so on, I learnt about the CIEX Report. I asked the
17 Reserve Bank, "What is the CIEX Report? I don't know about it". I
18 have never had anything to do with it and whoever did that report
19 investigation didn't have the decency to even mention it to the
20 Reserve Bank, as far as I know, that they were doing that research
21 and that they were doing that, and the Government of South Africa
22 didn't have the decency to tell the Reserve Bank that they were doing
23 this investigation. I never heard of it again.

24 **Adv T Madonsela :** Right, thank you, that is duly noted. I just want now to confirm the
25 timelines. That agreement that you have with Bankorp is it an

1 agreement between the Reserve Bank and Bankorp?

2 Dr C Stals : Yes.

3 Adv T Madonsela : And what timeline is that, Sir?

4 Dr C Stals : What?

5 Mr C Moraitis : The date.

6 Adv T Madonsela : Did you say 1991 or is it 1990?

7 Mr C Moraitis : I'm going to give you the date.

8 Dr C Stals : No, it is 1991 sometime. It was signed finally in 19 ...

9 Mr C Moraitis : September 1991.

10 Dr C Stals : I think some of the basic things were agreed long before that and that
11 is attached to the agreement. There is a letter between the Reserve
12 Bank and Bankorp to confirm "That we are prepared to investigate
13 this and see what we can do for you", more or less and so on and so
14 and so, so but the agreement is ... the date of that agreement is ...

15 Adv T Madonsela : So that is an agreement between only two parties?

16 Dr C Stals : Yeah. - Nobody else was involved. Well, the Minister was fully
17 informed about it and many discussions took place with the Minister
18 about it, but he wasn't involved in the agreement.

19 Adv T Madonsela : Okay and then the agreement was, you would ... as the lender of last
20 resort?

21 Dr C Stals : That is right.

22 Adv T Madonsela : So you have a lender of last resort agreement?

23 Dr C Stals : Yes.

24 Adv T Madonsela : And then you said that was for R1.5 billion?

25 Dr C Stals : Yeah, I think so. It ended up as 1.5 billion in any case.

- 1 Mr C Moraitis : The first capital was a billion.
- 2 Dr C Stals : It was first a billion and then ...
- 3 Mr C Moraitis : It says, "*Die tweede bedrag 500 miljoen*", so 500.
- 4 Adv T Madonsela : So it was initially a billion ...
- 5 Dr C Stals : Yeah, so it is 1 billion plus then 500 million.
- 6 Adv T Madonsela : ... 1 million. Then plus?
- 7 Mr C Moraitis : 500.
- 8 Mr B Dhlamini : Plus 500 million.
- 9 Dr C Stals : Yeah, but it really started off as R200 million I think in the 1985 ...
- 10 Adv T Madonsela : Okay, received it?
- 11 Dr C Stals : And it was gradually raised I think to 1 billion and then the last ...
- 12 latest one was a consolidation that increased to 1.5 billion and this
- 13 agreement is about at 1.5 billion. This is really a consolidation of all
- 14 the transactions, everything that happened.
- 15 Adv T Madonsela : So this is what happened in 1991?
- 16 Dr C Stals : Yeah.
- 17 Adv T Madonsela : This was the agreement and then you are saying ... I just want to
- 18 confirm, the 1.5 billion meant you credited the account of Bankorp?
- 19 Dr C Stals : Bankorp.
- 20 Adv T Madonsela : Right, so executed through ...
- 21 Dr C Stals : And we debited loans and advances to banking institutions.
- 22 Adv T Madonsela : Correct, so then they find themselves with a balance of 1.5 billion?
- 23 Dr C Stals : Yeah.
- 24 Adv T Madonsela : Then you were the custodian of Government bonds at the time, am I
- 25 correct?

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- 1 Dr C Stals : We insisted on it, yes, as collateral.
- 2 Mr C Moraitis : They took it as security.
- 3 Dr C Stals : We took it as security, collateral for the loan, cover for the loan.
- 4 Adv T Madonsela : Yes. I'm just trying to check that apart from using the loans as
- 5 security or as collateral, you were also ... or that is Treasury's
- 6 submission.
- 7 Dr C Stals : Treasury.
- 8 Adv T Madonsela : Treasury's submission says you were the custodians of those
- 9 Government bonds. So instead of Government issuing its bonds,
- 10 those bonds would have still been issued. In other words, you were
- 11 wearing your head as the Reserve Bank and also wearing Treasury's
- 12 hat, because during those days they said ...
- 13 Dr C Stals : No, Treasury was not involved in any way.
- 14 Adv T Madonsela : Yes, that is what they say. That is exactly what they say.
- 15 Mr C Moraitis : I think let's just clarify, did you ... Doctor Stals, did you issue ...
- 16 Dr C Stals : Yeah, exactly, Treasury was not involved in any way.
- 17 Adv T Madonsela : Because they are saying you had the power to issue those
- 18 Government bonds yourself?
- 19 Dr C Stals : No.
- 20 Mr C Moraitis : No.
- 21 Adv T Madonsela : Not true. That is what they are saying.
- 22 Dr C Stals : The Reserve Bank never has ... not in my history. The Reserve Bank
- 23 has no power to issue Government bonds (*indistinct*).
- 24 Adv T Madonsela : Well, that is what Government said. Treasury's submission was that
- 25 the fragmentation of the Reserve Bank and Treasury is a recent

1 thing. During that time you would have been both the conceivers of
2 this transaction and the ones executing it, because they had ceded
3 the power to manage Government bonds to the Treasury. That is
4 what they have submitted.

5 **Dr C Stals** : No, I don't understand exactly what they mean, but look, it is fairly
6 straightforward. The Treasury issues Government bonds to get
7 money to finance the budget.

8 **Adv T Madonsela** : Yes, they said that, but they did that through the Reserve Bank ...

9 **Dr C Stals** : Yeah, they often do it.

10 **Adv T Madonsela** : ... because they didn't have the capacity to do that in those
11 (*indistinct*). So they said it was Treasury's bonds, but they were
12 managed at South African Reserve Bank.

13 **Dr C Stals** : No, managed ...

14 **Adv T Madonsela** : We want to ... because that would have meant then you made the
15 transaction, you also executed it yourselves. It wasn't Treasury that
16 issued those bonds. It was yourselves.

17 **Dr C Stals** : Treasury issued the bonds, it is Government bonds. We can't ... the
18 Reserve Bank can't issue Government bonds. There is no way.

19 **Mr C Moraitis** : I think Dr Stals' evidence to you is that the Reserve Bank never
20 issued the Treasury bonds.

21 **Adv T Madonsela** : Okay. I think we have to go back to Treasury on that one, because
22 Treasury ...

23 **Dr C Stals** : No, it is quite possible that the Reserve Bank approached Treasury
24 and said, "You know, Bankorp needs the bonds", not the Reserve
25 Bank.

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1 **Adv T Madonsela** : Yeah, that would be then the evidence we heard. That would have
2 the split in terms of a fragmented decision making, where you have
3 Treasury there, you have SARB and then you have Bankorp?

4 **Dr C Stals** : Yeah.

5 **Adv T Madonsela** : And then you are having a deal with Bankorp, but would still get you
6 know Treasury to issue the bonds?

7 **Mr C Moraitis** : Bankorp got Treasury to issue the bonds, yeah.

8 **Adv T Madonsela** : That would be your submission?

9 **Dr C Stals** : Yeah, Treasury to issue the ...

10 **Adv T Madonsela** : With their submission they said no, because they had sort of like
11 signed their like Power of Attorney or something?

12 **Dr C Stals** : Yeah.

13 **Adv T Madonsela** : You had access to the bonds. You made the decision to do it, you
14 executed your own decision?

15 **Mr C Moraitis** : So what they are saying Doctor Stals, if that is correct, is that you
16 actually issued the Treasury bonds on behalf of Treasury ...

17 **Dr C Stals** : No, but we can't do that.

18 **Adv T Madonsela** : Yes.

19 **Mr C Moraitis** : No, but that is exactly correct. That is the evidence, Dr Stals is saying
20 no.

21 **Dr C Stals** : We don't have a right to do that. We can say to Treasury ...

22 **Adv T Madonsela** : No, no, they are saying now it is different Sir, that they issue the
23 bonds, but they are saying when this happened in 1991, it ...

24 **Dr C Stals** : Yeah. No, it is quite possible. I think it is true that the ...

25 **Adv T Madonsela** : The current separation of powers (*indistinct*)?

1 **Dr C Stals** : ... that the Reserve Bank approached the Treasury and said, "Now
2 listen, with this final deal we will make ... we are making the loan to
3 Bankorp and Bankorp must buy Government bonds. Should they go
4 to the marketplace or should they approach you?"

5 **Adv T Madonsela** : And where would the Government bonds be sitting?

6 **Dr C Stals** : Well, the Government bonds were issued to Bankorp and Bankorp
7 ceded them and deposited them in the Reserve Bank.

8 **Adv T Madonsela** : No, I'm saying at the time they had to be issued who signs them?

9 **Dr C Stals** : Who?

10 **Adv T Madonsela** : Who signs them, the issued (*indistinct*)?

11 **Dr C Stals** : Would finance them?

12 **Dr JJ de Jager** : Who would sign ... I mean that is a ... who would sign on behalf of
13 Government?

14 **Adv T Madonsela** : Like they signed them like it was ... yeah, who signs them?

15 **Dr C Stals** : I don't know who signs the Government bonds when they issue
16 Government bonds. It must be somebody in the Treasury.

17 **Adv T Madonsela** : So you are saying it wasn't. I just think we just wanted to confirm
18 that. Either we misunderstood them ...

19 **Dr C Stals** : I mean it is the same person who signs all Government bonds that
20 they issue.

21 **Dr JJ de Jager** : It will be a debt instrument that has to be signed by (*indistinct*).

22 **Dr C Stals** : Yeah, it is a Government bond, a negotiable Government bond that
23 you ...

24 **Adv T Madonsela** : You see from their side they said *now* they do it, but at the time – for
25 whatever reason – that authority had been delegated to the Reserve

1 Bank, but I think all of that can be confirmed.

2 **Dr C Stals** : Yeah, as I said the normal procedure would have been that the
3 Reserve Bank would approach the Treasury and say, "Now listen,
4 these people must invest R1.5 billion on Government bonds with us."

5 Should they go to the marketplace and buy it, or should they come to
6 you and you will issue it to them?". The Treasury must have said,
7 "We will issue it to them. Wonderful, we need the money, so we will
8 issue Government bonds to Bankorp". Bankorp then had to bring
9 those Government bond pieces of paper to the Reserve Bank, sign a
10 transfer certificate and deposit them with the Reserve Bank to serve
11 as security for the loan.

12 **Adv T Madonsela** : Yes, right. Other than just crediting the account, from your side what
13 would this reflect, this 1.5 billion?

14 **Dr C Stals** : Well, as I say we credit the account of Bankorp for R1.5 billion and
15 we debit loans and advances to banking institutions for R1.5 billion.
16 That is a norm, if you give a loan ... if the Reserve Bank gives a loan to
17 anybody, that is the procedure you will follow, you credit the account
18 of the borrower, you debit loans and advances.

19 **Adv T Madonsela** : So then you debit it?

20 **Dr C Stals** : The debit entry stays on the books of the Reserve Bank as an asset,
21 the credit entry is used by the borrower.

22 **Adv T Madonsela** : I think that is the part that I wanted to understand, because you then
23 said okay ...

24 **Dr C Stals** : It is important, yes.

25 **Adv T Madonsela** : So at this stage you have ... your book is reserving ... is showing that

1 you are owed 1.5?

2 **Dr C Stals** : Sure.

3 **Adv T Madonsela** : Theirs is showing a credit of that, but it is showing that that is a
4 credit of a loan in the same way as my overdraft would show that?

5 **Dr C Stals** : Yes, yes, sure.

6 **Adv T Madonsela** : So it is still ... on their side it is still showing as a loan of some sort,
7 although it still shows creditor Bankorp. Now then you ... then you
8 have the bonds to secure it?

9 **Dr C Stals** : Yes.

10 **Adv T Madonsela** : Or what we find ...

11 **Dr C Stals** : I suppose the next logical step there was to debit the Trust Bank
12 account and credit the Treasury account. We transferred the money
13 from ...

14 **Adv T Madonsela** : So did that happen?

15 **Dr C Stals** : Uhm?

16 **Adv T Madonsela** : Did that happen Sir?

17 **Dr C Stals** : They can't both have them.

18 **Adv T Madonsela** : I'm asking did it happen then that when they got the bonds from
19 Government for 1.5, Government was paid the money that ...

20 **Dr C Stals** : Sure, the R1.5 billion, sure.

21 **Adv T Madonsela** : The 1.5 was paid for them?

22 **Dr C Stals** : Sure, they were paid for the money by the Reserve Bank.

23 **Dr JJ de Jager** : You see, otherwise ...

24 **Dr C Stals** : The Reserve Bank transferred the funds from the Bankorp account to
25 the Treasury account, the Exchequer account.

1 **Dr JJ de Jager** : You see in terms of the South African Reserve Bank Act one of the
2 assets that you can actually ... which is a liquid asset, because you
3 need liquid assets as security. One of the liquid assets that actually
4 then qualifies as an asset that you can take as a liquid asset, that you

5 can take as security or as a collateral, is Government bonds. So it is a
6 liquid asset, the reason for that being that it is easily converted into
7 cash and the Government is the counterparty. So in other words, it is
8 not a loan which has got a huge credit risk, because you have got the
9 Government. So what actually happens then is, Government sits
10 here, it needs to fund a shortage for the deficit on its budget, it needs
11 to fund that. So what it does is, to lend ... to borrow money from the
12 general public, it issues paper, debt instruments that are issued ...

13 **Adv T Madonsela** : Which we understand, but that would mean they actually normally
14 issue those and they advertise to us, the general public ...

15 **Dr C Stals** : And the Reserve Bank.

16 **Adv T Madonsela** : I'm just saying the Government bonds, they do that.

17 **Dr C Stals** : Very often they are issued to the Reserve Bank.

18 **Adv T Madonsela** : But the difference between the loan (*indistinct*) scenario explaining,
19 is that I take my own private money and I buy Government bonds.
20 They regularly advertise them, anyone from the street can buy them?

21 **Dr JJ de Jager** : Correct, yeah.

22 **Adv T Madonsela** : But this is unusual, because ...

23 **Dr C Stals** : No, there is nothing unusual about it.

24 **Adv T Madonsela** : No, I'm saying from where I'm standing, because as you are
25 explaining, Doctor De Jager ...

- 1 Dr C Stals : Yeah, but that is what I have explained.
- 2 Adv T Madonsela : ... you would then pay from your own pocket to buy those
3 Government bonds?
- 4 Dr C Stals : Yeah, not necessarily. You can pay from your overdraft to get it.
- 5 Dr JJ de Jager : You can go to the bank and you can get an overdraft, and you can
6 take your money and you can then go and buy the bonds.
- 7 Dr C Stals : Yeah.
- 8 Adv T Madonsela : Yes, but it would be your money?
- 9 Dr C Stals : Yes.
- 10 Adv T Madonsela : Whether you got it from a loan from your friend or you got it from
11 the bank, it would not be a loan by the same person to buy from the
12 same person?
- 13 Dr C Stals : No.
- 14 Mr C Moraitis : No, no, no, but you don't buy (*indistinct*).
- 15 Dr JJ de Jager : We understand, sorry.
- 16 Adv T Madonsela : I'm saying the normal scenario is the loan comes from ... it is either
17 my money that I already have or I get it from him, or I get it from my
18 bank in order to buy Government bonds, in the same way as I can
19 invest in any other thing, but here you have a scenario where
20 Government is loaning me money.
- 21 Dr C Stals : No, not Government.
- 22 Mr C Moraitis : It is not Government.
- 23 Dr C Stals : Government was never in the picture in loaning you money.
- 24 Dr JJ de Jager : No, no, Government is not in the picture, because Government is
25 selling off its bonds to a bank that has actually got the money from

1 the Reserve Bank.

2 **Mr C Moraitis** : The Reserve Bank is not Government.

3 **Dr JJ de Jager** : The Reserve Bank has granted a loan to this bank, so the bank goes
4 and it buys, takes the money that it received as a loan and he goes

5 and buys from Government its paper.

6 **Adv T Madonsela** : Okay.

7 **Dr C Stals** : What is the difference between you borrowing money from your
8 bank to buy Government bonds and Bankorp borrowing money from
9 the bank to buy bonds?

10 **Adv T Madonsela** : Okay, so we have now ... okay, we have Government, we have the
11 Reserve Bank, we have Bankorp?

12 **Dr C Stals** : Yes.

13 **Adv T Madonsela** : So Bankorp is taking money from the Reserve Bank to buy here?

14 **Dr C Stals** : Borrowing, yeah.

15 **Adv T Madonsela** : Okay, but then that means there is still a debt owed to the Reserve
16 Bank of R1.5 billion?

17 **Dr JJ de Jager** : Yes.

18 **Mr C Moraitis** : Correct.

19 **Adv T Madonsela** : So that is where I was going to ...

20 **Dr C Stals** : Yeah, but that is not right.

21 **Adv T Madonsela** : ... because there is still that amount that you are owing. So the one
22 person then that we will say you are not owing is Government,
23 because you have taken the money from the Reserve Bank and given
24 Government instantly the same amount that you had advanced to it,
25 isn't it, the 1.5 billion?

Dr. N. J.

- 1 **Dr C Stals** : Yeah, but there is nothing wrong with that, but your picture is not
2 right. I mean that is where part of your problem is. You say there is
3 Government and you say there is the Reserve Bank, and you say the
4 bank.
- 5 **Adv T Madonsela** : The bank, yes.
- 6 **Dr C Stals** : Now okay, the first part of the transaction is, Reserve Bank gives a
7 loan to Bankorp.
- 8 **Adv T Madonsela** : Yes, 1.5 billion.
- 9 **Dr C Stals** : 1.5, so ...
- 10 **Adv T Madonsela** : Meaning then *this* one is 1.5 billion in debt to *this* one.
- 11 **Dr C Stals** : So one (*indistinct*).
- 12 **Adv T Madonsela** : Yes.
- 13 **Dr C Stals** : Bankorp takes the money and buys bonds from the Government.
- 14 **Adv T Madonsela** : Right, which means then Bankorp has no money, but it owes the
15 Reserve Bank money?
- 16 **Dr C Stals** : No, they have money. They have an overdraft facility that they can
17 use as money. Now Bankorp comes to the Reserve Bank and says,
18 "Listen, that R1.5 billion that I have on deposit with you, please pay it
19 to the Government on my behalf", not on the Reserve Bank's behalf.
- 20 **Adv T Madonsela** : No, no, yes, it is on their own behalf.
- 21 **Dr C Stals** : Yeah, so you see *this* is not right.
- 22 **Adv T Madonsela** : In the same way he was explained to me that, so the ... no. Okay,
23 okay, okay. I think we are on the same page ...
- 24 **Dr JJ de Jager** : Yes, we are.
- 25 **Adv T Madonsela** : ... because you have said the Reserve Bank at the moment is like any

1 other lender?

2 **Dr C Stals** : Bank, yes.

3 **Adv T Madonsela** : But it is just a lender of last resort?

4 **Mr C Moraitis** : Correct.

5 **Dr C Stals** : Yeah.

6 **Adv T Madonsela** : So they have given you 1.5 billion, you bought from Government and
7 you paid Government, but what then we have is that on your debit
8 side, on the bank's debit side you are still owing 1.5 billion?

9 **Mr C Moraitis** : Correct.

10 **Mr B Dhlamini** : Yes.

11 **Adv T Madonsela** : Is that okay, Sir?

12 **Dr C Stals** : Yeah, yeah, it is fine.

13 **Adv T Madonsela** : If you are owing 1.5 billion, then he said that the agreement was that
14 ... having borrowed money from my bank - if I like that scenario - to
15 pay you, so I have paid you in full immediately, but because I bought
16 bonds from you ... I mean bought from you, then the bonds will trade
17 and I will get interest. Now I want to know, you were saying they
18 were supposed to feed off the 2% interest?

19 **Mr B Dhlamini** : Yes.

20 **Dr JJ de Jager** : Remember that is the interest that ...

21 **Adv T Madonsela** : From the 16 ... you said there was ...

22 **Dr JJ de Jager** : That should pay your bank. You are paying your bank. You see,
23 maybe if I just ... there is just one little thing in here that makes it a
24 little bit more complicated. You can give me (*indistinct*) or I can talk
25 from here.

- 1 **Adv T Madonsela** : Okay, but can I finish my thoughts on that, then you address me, Sir?
- 2 **Dr JJ de Jager** : Alright, sure.
- 3 **Adv T Madonsela** : We are on the same page. My understanding is that then the capital
- 4 loan that ... so now they are sitting here, it is 1991. The capital ...
- 5 **Dr JJ de Jager** : It is 1.5 billion.
- 6 **Adv T Madonsela** : Yes, loan is 1.5 billion.
- 7 **Mr C Moraitis** : Yeah.
- 8 **Adv T Madonsela** : This is as at 1991, whatever the date.
- 9 **Dr JJ de Jager** : Okay, yeah.
- 10 **Adv T Madonsela** : Then you said in your submission Sir, over 5 years they were going
- 11 to pay 2%, in other words ... and that 2% they were going to get from
- 12 the 16%?
- 13 **Dr JJ de Jager** : Yes.
- 14 **Dr C Stals** : They are going to get from?
- 15 **Dr JJ de Jager** : The 16%.
- 16 **Dr C Stals** : Yes, every year, yes.
- 17 **Adv T Madonsela** : Okay, I just want to clarify that. If then I'm paying 2% of bonds that
- 18 are worth ... interest that I'm earning ... okay, my bonds are now
- 19 mine, they are my property because I bought them?
- 20 **Dr C Stals** : Yes.
- 21 **Dr JJ de Jager** : Your return is 16.
- 22 **Dr C Stals** : So they earn the 16%.
- 23 **Adv T Madonsela** : But you understand the ... you gave me a loan, I bought, so they are
- 24 mine, I'm paying only 2%?
- 25 **Mr C Moraitis** : Yes.

1 Adv T Madonsela : So how does 2% become 1.5 billion in 5 years?

2 Dr JJ de Jager : No, no.

3 Dr C Stals : That has got nothing to do with (*indistinct*).

4 Mr C Moraitis : No, no, no.

5 Adv T Madonsela : Well, obviously it can't even be 1.5 billion, because it should be
6 1.5 billion plus 2% and then compound interest on 2%, because you
7 still owe the ...

8 Mr C Moraitis : No. The firm submission of Dr Stals is this, they borrow 1.5 billion,
9 they pay you 2% interest. They pay the bank every year 2%. It is not
10 compounded.

11 Adv T Madonsela : Okay, but ...

12 Mr C Moraitis : And then they get the 16%, so they keep 14% every year, so
13 1.5 billion stays 1.5 billion.

14 Adv T Madonsela : But that is what I'm asking you. The reason I'm asking is that if all
15 then I have been paying is the ... paying you 2% of what I'm getting
16 from my 1.5 billion worth of ...

17 Mr C Moraitis : I will answer your question. At the end they paid the 1.5 billion back.

18 Dr JJ de Jager : Back, by the bonds that matured. Remember Government needs to ...

19 Adv T Madonsela : Okay, so the bonds ... when did the bonds mature? Because that was
20 the part that I ...

21 Mr C Moraitis : 5-year bonds, yes.

22 Dr JJ de Jager : 5 years.

23 Adv T Madonsela : But that was the part that had ... confusing and I was confused about,
24 about you paying, yeah, 2% ...

25 Mr C Moraitis : 1996 they paid it back.

- 1 Dr JJ de Jager : Yeah, you have bought ...
- 2 Adv T Madonsela : Okay, so 1996 you have bought bonds?
- 3 Dr JJ de Jager : Yeah, finance.
- 4 Adv T Madonsela : So are you then saying the bonds were then given back to the
5 Reserve Bank?
- 6 Dr JJ de Jager : No.
- 7 Mr C Moraitis : No.
- 8 Dr C Stals : The bonds were sold ...
- 9 Dr JJ de Jager : Sold and the money returned was given to the bank.
- 10 Dr C Stals : And the money was paid back to the Reserve Bank.
- 11 Adv T Madonsela : So we will find the Reserve Bank now being credited?
- 12 Mr C Moraitis : Yes.
- 13 Dr JJ de Jager : Yes, with the proceeds of the bonds.
- 14 Adv T Madonsela : With 1.5 billion?
- 15 Dr JJ de Jager : Yeah.
- 16 Adv T Madonsela : Because nobody has given that evidence ever that the 1.5 billion was
17 paid.
- 18 Dr C Stals : It should be in the books of the bank.
- 19 Dr JJ de Jager : That is in the books.
- 20 Adv T Madonsela : So basically then it was ... okay ...
- 21 Dr JJ de Jager : So remember the bonds took 5 years to mature. Okay, so when the
22 bonds ... just you know if ... so here is the loan – you spoke about the
23 loan in the beginning – which is totally correct. So you have this loan
24 of 1.5 billion. So it is loaned by the Reserve Bank, sold and that you
25 understand as well, so it is loaned to them at 2%. So the capital sum

1 is 1.5 billion.

2 **Adv T Madonsela** : Yes.

3 **Dr JJ de Jager** : For security for the capital sum the Reserve Bank needs to get
4 security. So the security of those bonds that they buy, so they buy ...

5 with the loan they have they buy the bonds. They cede the bonds to
6 the Reserve Bank. They have also 5 years. After 5 years the capital
7 sum needs to be repaid. What happens? Government repays the
8 bonds and that is in the report(?).

9 **Adv T Madonsela** : So we want that amount ... that money, because that is the same thing
10 as your bond ...

11 **Dr JJ de Jager** : No, but that has been repaid.

12 **Adv T Madonsela** : Yeah, but we want evidence that that money was repaid, because at
13 the moment...

14 **Mr C Moraitis** : Okay.

15 **Dr C Stals** : No, but send your Auditors to the Reserve Bank.

16 **Adv T Madonsela** : Because until today no person has ever said the 1.5 billion was
17 repaid.

18 **Dr C Stals** : Ag, that is nonsense. There is no way that that can be ...

19 **Mr C Moraitis** : So can I ...

20 **Adv T Madonsela** : Nobody has ever said that, because we were sitting then with the
21 Reserve Bank ...

22 **Dr C Stals** : No, it didn't go to the budget, of course.

23 **Adv T Madonsela** : ... with everyone and said ... when we were asking the question,
24 "Where are the bonds now?" ...

25 **Dr JJ de Jager** : The bonds had been repaid.

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- 1 **Adv T Madonsela** : I was just ... that was the question we were asking, because the
2 answer should have been, "They are in the open market" ...
- 3 **Dr C Stals** : But what does the Government do ...
- 4 **Adv T Madonsela** : ... "because we sold them, we got the money and we paid back the
5 loan".
- 6 **Dr C Stals** : Yeah.
- 7 **Adv T Madonsela** : Nobody, nobody from Treasury or the Reserve Bank ...
- 8 **Mr C Moraitis** : So Dr Stals ...
- 9 **Dr C Stals** : No, but Treasury is not in the picture at all.
- 10 **Adv T Madonsela** : No, but I'm saying the Reserve Bank people themselves have never
11 given evidence that says that they took this asset now that they
12 bought with the loan money, sold it and then paid back the money in
13 full.
- 14 **Dr C Stals** : It is not right. No, that is not right.
- 15 **Adv T Madonsela** : They have never said that.
- 16 **Dr C Stals** : No, they gave the assets, the Government bonds, the pieces of
17 paper ...
- 18 **Adv T Madonsela** : Yes.
- 19 **Dr C Stals** : ... theoretically they gave it back to Absa and say ...
- 20 **Adv T Madonsela** : Then you can sell it?
- 21 **Dr C Stals** : ... "You get the money".
- 22 **Dr JJ de Jager** : "And give it to us".
- 23 **Mr C Moraitis** : And pay back the loan.
- 24 **Dr C Stals** : Whatever, "You get the money and you pay back the loan".
- 25 **Adv T Madonsela** : For me the consequence ...

1 **Dr C Stals** : And so in the books of the Reserve Bank they must show the
2 repayment they received from Absa.

3 **Adv T Madonsela** : Yeah, that is the only thing that we need, because the concept is not
4 rocket science.

5 **Dr C Stals** : But the Auditors of the bank should be able to confirm that to you.

6 **Adv T Madonsela** : The same thing is, I borrowed money from the bank, I bought my
7 house. Maybe after paying the bank, I then sell the house and pay the
8 bank.

9 **Mr C Moraitis** : But can I try and resolve it on this basis?

10 **Dr C Stals** : That is very reasonable. I have no problem with that.

11 **Adv T Madonsela** : But we just ... I have not found anybody Sir, who has said this money
12 was paid and on what date was it paid?

13 **Mr C Moraitis** : Can I try and resolve it on this basis? Okay, Dr Stals has given the
14 evidence that it was repaid. He was the Governor at the time.

15 **Adv T Madonsela** : Yeah, because that would help.

16 **Mr C Moraitis** : So you are looking for the physical evidence from the Auditors that
17 the 1.5 billion was received by the Reserve Bank?

18 **Adv T Madonsela** : Yes. Yeah, because then this horror would not have ... do you
19 understand Sir, that this investigation would not have even
20 proceeded then? Because if this money was paid in 5 years ... the
21 money was given in 1991. So if you are saying it was paid within 5
22 years, it would have been paid in 1996?

23 **Dr C Stals** : It was paid in 19 ... the date is available.

24 **Adv T Madonsela** : Pardon?

25 **Dr C Stals** : The date is available. The exact date when it was paid is available.

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- 1 Adv T Madonsela : Yes.
- 2 Dr C Stals : It was in 1995.
- 3 Adv T Madonsela : Okay, so it was paid in 1995?
- 4 Dr C Stals : As a matter of fact ...
- 5 Mr B Dhlamini : Can I also just ask, so ...
- 6 Dr C Stals : Sorry, I just want to make sure that you understand. The loans did
7 not all mature on the final day.
- 8 Adv T Madonsela : Oh yeah, because they were not given on the same day?
- 9 Dr C Stals : Yeah.
- 10 Adv T Madonsela : You did indicate that.
- 11 Dr C Stals : So some of those Government bonds matured two months before the
12 time.
- 13 Adv T Madonsela : I do understand. You did indicate that the 1.5 was a consolidated
14 amount?
- 15 Dr C Stals : Yeah, and then Absa came to the Reserve Bank and said, "Now listen,
16 we are not going to buy new bonds to replace those that mature,
17 because we are getting the money from the Treasury now, two
18 months before the time" and we said, "Okay, place it on deposit with
19 the Reserve Bank and we will pay you 16% until the final date".
- 20 Dr JJ de Jager : As if the bonds were (*indistinct*).
- 21 Adv T Madonsela : To Absa now?
- 22 Dr C Stals : So the money came from Absa in instalments and the Reserve Bank
23 should be able to give you all those dates.
- 24 Adv T Madonsela : Doctor Stals, I wanted to find out was it Absa that paid or was it
25 Bankorp, because the original loan was ...

- 1 **Dr C Stals** : No, no, Bankorp didn't exist anymore.
- 2 **Adv L Tshiwalule** : It is gone.
- 3 **Mr C Moraitis** : Bankorp ... remember, Absa took it over, so Absa paid it back in 1995,
- 4 is what Dr Stals has indicated to you.
- 5 **Adv T Madonsela** : Alright. Okay, Bankorp, but ...
- 6 **Dr JJ de Jager** : Is can we just ... maybe that last part ...
- 7 **Adv T Madonsela** : Okay, let's find out, when was Bankorp acquired by Absa?
- 8 **Dr JJ de Jager** : Maybe we must just give you clarity on this last one.
- 9 **Adv L Tshiwalule** : In 1992 and then in ... this loan kicked in in 1995. That is the
- 10 evidence we have, that it kicked in in 1995 ...
- 11 **Dr C Stals** : Yeah, that is right.
- 12 **Adv L Tshiwalule** : ... and then it had to be repaid as if it was entered into in 1992. That
- 13 was the agreement, but the information we have received is that in
- 14 1995 Absa couldn't pay back that loan. Then what then happened is
- 15 that there was then an agreement that was entered, which says that
- 16 these bonds now has to mature, the first one, which is the first
- 17 tranche, which is 150 of the bonds.
- 18 **Adv T Madonsela** : But be careful about where you are reading from. Are you reading
- 19 from CIEX?
- 20 **Adv L Tshiwalule** : No, this is not coming from CIEX. Is it an international paper.
- 21 **Adv T Madonsela** : But let's leave that.
- 22 **Adv L Tshiwalule** : Okay.
- 23 **Adv T Madonsela** : I think let's ... I think what you have clarified, Absa has indicated to us
- 24 they were never part of the Loan Agreement, that whatever
- 25 happened between the Reserve Bank and Bankorp was between the

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1 Reserve Bank. They bought an asset, they assumed that the asset
2 was clean and they thought all they had to do ... then the CIEX Report
3 has always argued that Absa knew there was a loan and Absa
4 continued to get interest on this loan.

5 **Dr C Stals** : It could be.

6 **Adv T Madonsela** : Now your evidence now is suggesting that actually Absa did know
7 about this loan and Absa was a party to an extension of it when it
8 came to the party in 1992. For me in my head it changes the picture
9 in terms of the arguments that have been presented by Absa and
10 Government, and your evidence today.

11 **Dr JJ de Jager** : You see, the ...

12 **Adv T Madonsela** : Because then you are saying the final ... sorry Sir. The final party that
13 should have paid the loan from your understanding was not
14 Bankorp, but Absa?

15 **Dr C Stals** : Yeah.

16 **Adv T Madonsela** : And that is not their evidence.

17 **Dr JJ de Jager** : Ja, because that is the persons that held the bonds, presents the
18 bonds, Government repays the loan and that is given to the Reserve
19 Bank.

20 **Adv T Madonsela** : For me that changes the picture drastically for Absa, because they
21 have always argued that those were deals, they just paid good value
22 for money. There was never an arrangement that they would ever
23 pay anything and that contradicts what the CIEX guy says, who says
24 they have made an arrangement for it. Now you said actually they
25 paid the money. Not only did they make an arrangement, they paid

1 the money. Now we need to just find evidence the money was paid.

2 **Dr C Stals** : The bonds.

3 **Dr JJ de Jager** : That is the bonds.

4 **Adv T Madonsela** : No, that they sold the bonds and paid back the money to the Reserve
5 Bank.

6 **Dr JJ de Jager** : But remember there is one thing that you must just remember, that
7 the maturity of the bonds – maturity being the date on which the
8 money needs to be repaid by the main debtor – the maturity of the
9 bonds didn't always specifically, precisely meet or match the term of
10 the loan. So in the end when it came to the last part of the thing, as
11 Dr Stals has given evidence, the bonds paid out, so they matured,
12 Government paid the money over to Absa and then Absa said, "But
13 what must we do now? Must we now" ... because now again we
14 didn't have security now remember, because the bonds had been
15 repaid. So they asked, "What must we do now? Must we now re-buy
16 new bonds?". The Reserve Bank's arrangement then was, "No, give
17 us the money" ...

18 **Adv T Madonsela** : Extend (*indistinct*).

19 **Dr JJ de Jager** : ... "Give us the money, we will keep it on account with us and we will
20 pay exactly the same interest that you earned on the bonds, so you
21 don't have to buy the bonds again".

22 **Adv T Madonsela** : "But still the capital arrangement was still standing", as he said?

23 **Dr JJ de Jager** : Yes, and it was paid.

24 **Adv T Madonsela** : And it was still repayable and his evidence is that it was eventually
25 paid?

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- 1 **Mr C Moraitis** : Repaid.
- 2 **Adv T Madonsela** : Whether it was paid in a lump sum or it was paid in little trenches,
3 but the evidence that is on the table is that the money was paid,
4 because I'm saying if we get evidence that it was paid, case closed.
- 5 **Mr C Moraitis** : So that is what I want to get to. Can we ...
- 6 **Dr C Stals** : Can I just ... you will get a copy of this document, that was agreement
7 between the Reserve Bank and Absa.
- 8 **Adv T Madonsela** : Yes.
- 9 **Dr C Stals** : It says very clearly – they agreed on a certain date – that the price of
10 the Government bonds that was paid ... but in any case the major
11 transaction took place, if I have it right here, on 1 June 1995.
- 12 **Adv T Madonsela** : Okay, Sir and that was ...
- 13 **Dr C Stals** : The repayment was made by Absa to the Reserve Bank.
- 14 **Adv T Madonsela** : So you say Absa made the repayment ...
- 15 **Dr C Stals** : So you will find in this agreement between the Reserve Bank and
16 Absa, and if you want to check it, you can go to the books of the
17 Reserve Bank and say, "What happened on 1 June 1995?".
- 18 **Dr JJ de Jager** : See if you see a huge amount on ...
- 19 **Adv T Madonsela** : Alright. Okay, here this is the agreement, but it is not the actual
20 payment, Sir.
- 21 **Mr C Moraitis** : Oh, you want the journal entry? You are looking for the journal
22 entry?
- 23 **Dr C Stals** : Yeah.
- 24 **Adv T Madonsela** : Yes, because you are saying this was when the agreement was
25 signed?

1 Dr C Stals : I mean you can go to the Reserve Bank with this agreement and say,
2 "You, the Reserve Bank, entered into this agreement with Absa" and
3 in there they said ...

4 Adv T Madonsela : Because that solves the whole problem.

5 Dr C Stals : Yeah.

6 Adv T Madonsela : Because Absa has always argued that they were never party to
7 anything, it never involved them.

8 Mr C Moraitis : That is the agreement (*indistinct*).

9 Adv T Madonsela : So I think then it is problem solved.

10 Dr C Stals : You see this agreement says one thousand one hundred million rand
11 and that is the value of the Government bonds.

12 Adv T Madonsela : Yes.

13 Dr C Stals : And then plus the R400 million that the Reserve Bank made an
14 advance to ...

15 Adv T Madonsela : Okay.

16 Dr C Stals : And it is in the agreement, *here* it is there, but all you have to go now
17 ... is go to the Reserve Bank and say, "I just want confirmation of this
18 transaction, that it did take place".

19 Adv T Madonsela : That is true. Thank you, Sir. I think for us you have solved a big
20 problem, because we have asked all of these guys to just give us the
21 agreements, and then now you have given us the agreement and we
22 know who agreed with who. Then now the little stone that has to be
23 turned is the payment, is the transaction track.

24 Mr C Moraitis : Can I then make a copy of all these documents and I will have them
25 for you by tomorrow morning?

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1 **Adv T Madonsela** : Brilliant.

2 **Mr C Moraitis** : And we will ask the Reserve Bank to give you the journal entries
3 from 1995 that you are looking for.

4 **Adv T Madonsela** : Yeah, that would really be helpful, or even if they just go ... zero in on
5 the exact transactions only. We don't want everything, yes.

6 **Mr C Moraitis** : No, you don't need everything. You just want the journal entries
7 from 1995, where Dr Stals has said the money was received back by
8 the Reserve Bank.

9 **Adv T Madonsela** : Yes.

10 **Dr C Stals** : You see I don't...

11 **Adv T Madonsela** : Because in that case you are right, then that the only thing you could
12 quarrel about was the interest, but that was the agreement then. So
13 that is the Davis then problem around whether the agreement itself
14 was ethical or not, but that was not our story. It was just like a
15 different story.

16 **Mr C Moraitis** : Don't get Dr Stals started on that.

17 **Dr JJ de Jager** : Yeah, but you are not worried about that. I mean the question is, was
18 money paid or not repaid? That is the thing.

19 **Adv T Madonsela** : That is the thing, yeah.

20 **Dr C Stals** : It should be very easy to check this from the Reserve Bank. In this
21 final agreement this was for the repayment arrangement, it was a
22 third agreement. It says that Absa will invest money with the
23 Reserve Bank from 1 June 1995, that is the proceeds of the bonds.

24 **Mr B Dhlamini** : Of the bonds.

25 **Adv T Madonsela** : Yes.

1 **Dr C Stals** : It will invest the money at 16% per annum and this money will be
2 retained to repay the loan, as agreed in the original agreement and it
3 will be repayable on the first working day of every month, as from 1
4 June 1995.

5 **Adv T Madonsela** : Right.

6 **Dr C Stals** : So you have all the details of that repayment in the agreement, but
7 sure, check it in the books of the Reserve Bank. It should be easy.

8 **Adv T Madonsela** : Okay, I think from me that that would then be (*indistinct*).

9 **Dr C Stals** : And it should add up to R1 500 million, the total amount of the loan
10 was repaid in that way.

11 **Adv T Madonsela** : It would have to ... 1?

12 **Mr C Moraitis** : 1 billion, 500 million, R1 500 million.

13 **Mr B Dhlamini** : 1.5 billion.

14 **Dr C Stals** : 1.5 billion, yeah.

15 **Adv T Madonsela** : Okay, thank you, Sir.

16 **Dr C Stals** : So you said ...

17 **Adv T Madonsela** : I don't know if there is anything else we wanted to ask you.

18 **Dr C Stals** : Then if I just can give you my last view on that interest that was
19 earned and that was the subsidy, the support. I think you have no
20 legal status to try and reclaim that from anybody, but ...

21 **Dr JJ de Jager** : That is your opinion.

22 **Adv T Madonsela** : Well Sir, I have heard your views on that.

23 **Dr C Stals** : So just finalise your report then.

24 **Adv T Madonsela** : I know that there is one judge who feels very strongly about that
25 arrangement, but as I have said we sit at the meeting, we listen to

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1 everyone and ... but you have been extremely helpful, Sir. I cannot
2 thank you enough for your ...

3 **Dr C Stals** : If you need me again, call me.

4 **Adv T Madonsela** : ... for your candidness, for your helpfulness and for your assistance
5 with documents, because we said ... we were accused in a court ... in
6 court papers, that we said we rely mostly on papers and then they
7 misunderstood us to be saying that we don't listen to people, but we
8 were saying that much as we listen to people, we prefer the
9 paperwork.

10 **Mr C Moraitis** : You want the facts.

11 **Adv T Madonsela** : We prefer the trail, you know the story as it happened.

12 **Mr C Moraitis** : You know I come from a long line of Greek shopkeepers and as you
13 will often see in the cafés, it says; "In God we trust, everybody else
14 pays cash". So yours is, "In you all we trust, but we want the
15 evidence".

16 **Adv T Madonsela** : Absolutely. In fact that is what I was saying to my team actually a
17 few days ago, where nobody could understand what I'm saying, to
18 say, "Yes, we have heard these stories, but can we have something I
19 can" ...

20 **Mr C Moraitis** : Let's give you the journal entries and the agreements.

21 **Dr C Stals** : Let me give you a last final joke. "In God we trust", that is on the
22 bank notes of the American bank notes, "In God we trust."

23 **Adv T Madonsela** : Oh, right. I didn't know that.

24 **Dr C Stals** : So the Governor of the Swiss Central Bank, not many years ago, when
25 all these things happened in gold, he took one out in the IMF annual

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1 meeting and he looked at it, he said, "You know I always thought it
2 said, 'In gold we trust'".

3 **Adv T Madonsela** : Oh, "in gold". Oh, my gosh they put an "L" there.

4 **Dr C Stals** : He said, "No, man, I just looked at it last night and I realised it said 'In
5 God we trust'", he said, "But just as well, because the way you are
6 running your economy in America you will need some help from
7 God".

8 **Adv T Madonsela** : Had they meant "In gold we trust"?

9 **Dr C Moraitis** : No, no, "God". They always meant it. He just read it as ... he thought
10 (*indistinct*).

11 **Dr C Stals** : He said he only made a joke you know.

12 **Adv T Madonsela** : Yeah, he always thought it was "In gold we trust".

13 **Mr C Moraitis** : When we were on the gold standard you had to match your assets to
14 gold.

15 **Adv T Madonsela** : Oh yeah, before money, before the paper money was printed.

16 **Dr JJ de Jager** : No, no, when paper money was in.

17 **Mr C Moraitis** : It is only when we came off the gold standard.

18 **Dr JJ de Jager** : You must remember if you go back in history you will find, not too
19 many years ago, on a piece of note you would see, "I promise to pay".
20 There is a promise on that, that (*indistinct*) before there was gold.

21 **Adv T Madonsela** : Oh yes, that the money was still ...

22 **Dr C Stals** : The world finally went off gold on 15th March 1968 and I was present
23 at that meeting in Washington.

24 **Adv T Madonsela** : Thank you so much, Sir. I cannot thank you enough, but can I just
25 keep that quote? You said, "In God we trust"?

- 1 Mr C Moraitis : "In God we trust, everybody else pays cash".
- 2 Adv T Madonsela : "Everybody else" ...
- 3 Mr C Moraitis : And in your case it is, "In God we trust, everybody else produces the
4 evidence".
- 5 Adv T Madonsela : I like that.
- 6 Mr B Dhlamini : We must use that as our quote in the report.
- 7 Adv T Madonsela : "Everybody else produces evidence". Well, I think this is a good story
8 for the team. I mean I'm just thinking about the team.
- 9 Mr C Moraitis : You can have it, "In God we trust, but we prefer the facts from you".
- 10 Adv L Tshiwalule : "We prefer the facts from you".
- 11 Adv T Madonsela : Okay, thank you, Sir.
- 12 Dr JJ de Jager : Okay, so we will ... you will expect from us that we get something for
13 you that actually just confirms the payment of these funds?
- 14 Adv T Madonsela : Yes, yes.
- 15 Dr JJ de Jager : But I ... we may actually have to go into records and would you just
16 accept a record or would you accept something confirmed by a
17 Chartered Accountant, or by External Auditors or what would you
18 like?
- 19 Mr C Moraitis : The journal entry Johan, I think would support ...
- 20 Adv T Madonsela : It would help if it is a proper journal entry and not something that is
21 reproduced, because we would want something that is timeless, that
22 could not be ...
- 23 Dr JJ de Jager : Yeah, that you can show it.
- 24 Adv T Madonsela : ... said to have been produced (*indistinct*).
- 25 Mr C Moraitis : So you would have to ask your Accounts Department and they would

1 have to go into the records to pull out the journal entries from June
2 1995, to reflect that ...

3 **Adv T Madonsela** : Absolutely, or everything that happened then from that stage
4 onwards, because it must say first month of the ... first day of the

5 month from that journal. So we would then have to look at how
6 many transactions did they make and starting from there.

7 **Dr C Stals** : Yeah, that is ...

8 **Adv T Madonsela** : Thank you.

9 **Mr C Moraitis** : And you would have to tie the best evidence to Dr Stals.

10 **Adv T Madonsela** : Oh, thank you, Sir.

11 **Adv L Tshiwalule** : I would also really appreciate if you can forward me the information
12 that I requested, so that we can also cite it in the report, or at least
13 some of the information that we consider in our *(indistinct)*.

14 **Dr JJ de Jager** : Yeah, I will ... you see the bonds I won't be able to give you, because
15 the bonds would go back to who the original issuer were.

16 **Adv T Madonsela** : Yes.

17 **Dr C Stals** : Yeah and don't involve me in your disputes between you and the
18 Reserve Bank.

19 **Adv T Madonsela** : So would Treasury have copies of these bonds?

20 **Dr JJ de Jager** : Yeah, they indicated ...

21 **Adv T Madonsela** : Because they say have nothing, because they claim everything was
22 done at *(indistinct)*.

23 **Dr JJ de Jager** : You never know. You must remember how many do they issue in a
24 year.

25 **Mr C Moraitis** : They issue billions and billions of them.

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1 Dr JJ de Jager : Yeah, they issue many. So you will have to have a sort of a sequence
2 where you can say these ...

3 Adv T Madonsela : The numbers. I think somewhere we have the batches and the batch
4 numbers.

5 Dr JJ de Jager : But you know that ...

6 Dr C Stals : I can give you a logical answer. Once Government bond paper reach
7 maturity, it is useless paper.

8 Adv T Madonsela : Okay, so they would destroy those?

9 Dr C Stals : I can't see why people anybody should keep it.

10 Adv T Madonsela : Yeah, you (*indistinct*) that report.

11 Dr JJ de Jager : Yeah, you give me an old cheque of yours, I mean or even if you give
12 me a receipt of debt, or an acknowledgement of debt, once I have
13 paid the debt and you have given that back to me, I throw it away
14 you know because it is (*indistinct*).

15 Dr C Stals : I can't see why anybody would keep those pieces of paper for you.
16 Well, maybe for 5 years or something like that, but then it would go
17 through the incinerator or something.

18 Adv T Madonsela : I think though the importance of the bond ... if we will go with your
19 evidence, which we don't know because we have to weigh
20 everything, but if we go with your evidence, the importance of the
21 bonds themselves diminishes, because in your view they were paid
22 up front with the loan from the bank.

23 Dr C Stals : Yeah, that is right.

24 Adv T Madonsela : So then their significance starts (*indistinct*), then it is the loan that we
25 (*indistinct*).

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1 **Mr C Moraitis** : You want to see that the Reserve Bank received its money back. That
2 is what you want to see.

3 **Adv T Madonsela** : That is correct.

4 **Dr JJ de Jager** : Look, if those bonds were not repaid ... if the bonds were repaid, the
5 only beneficiaries will be Government, because they ...

6 **Mr C Moraitis** : It is Government, because they never repaid.

7 **Dr C Stals** : No, at maturity.

8 **Dr JJ de Jager** : Yeah, at maturity, so because then Government was actually funded
9 for the 5 years ...

10 **Mr C Moraitis** : And never paid it back.

11 **Dr JJ de Jager** : ... but never paid it back.

12 **Adv T Madonsela** : Okay, we will look at that.

13 **Dr C Stals** : Okay and that Loan Agreement, the last one of the three, between the
14 Reserve Bank and Absa spelled out the details how the loans were
15 repaid. The bonds matured in a series, the money came in the
16 Reserve Bank, the loans were repaid, but that should be no problem
17 to get that from the books of the Reserve Bank.

18 **Dr C Stals** : Okay, thank you.

19 **[Discussions amongst each other]**

20 **Adv T Madonsela** : You have been exceptionally, exceptionally helpful, thank you.

21 **Dr JJ de Jager** : Thank you very much.

22 **Adv T Madonsela** : It is us who are grateful, absolutely.

23 **[Discussions amongst each other]**

24 **[Go off record // End of Meeting]**

