

COMMISSION OF INQUIRY INTO STATE CAPTURE
HELD AT
CITY OF JOHANNESBURG OLD COUNCIL CHAMBER
158 CIVIC BOULEVARD, BRAAMFONTEIN

12 MAY 2021

DAY 393



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TRANSCRIBERS:

B KLINE; Y KLIEM; V FAASEN; D STANIFORTH



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PROCEEDINGS RESUME ON 12 MAY 2021

CHAIRPERSON: Good morning Mr Pretorius, good morning everybody.

ADV PRETORIUS SC: Morning Chair.

CHAIRPERSON: Are you ready? Good morning Dr. Dintwe.

DR DINTWE: Good morning Chair.

CHAIRPERSON: Thank you.

ADV PRETORIUS SC: Dr Dintwe you will have to put the microphone closer to you please.

10 **CHAIRPERSON:** They sometimes complain – witnesses sometimes complain about that chair – the seat. But the problem is that the other one is – seems further from the mic. But try and just make yourself comfortable.

ADV PRETORIUS SC: Is it necessary for the oath to be taken?

CHAIRPERSON: Ja it is. Please just administer the oath or affirmation again.

REGISTRAR: Please state your full names for the record.

DR DINTWE: Setlhomamaru Isaac Dintwe.

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

DR DINTWE: No objection.

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

DR DINTWE: I do.

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

DR DINTWE: So help me God.

CHAIRPERSON: Thank you. You may be seated.

ADV PRETORIUS SC: Thank you Chair. Dr Dintwe your statement in affidavit form is before the Chair in Bundle SSA2(b) and it is Exhibit YY15. We ended the last session
10 of your evidence at page 812 the black numbers in the top left hand corner of the pages.

DR DINTWE: I confirm that I can see that.

ADV PRETORIUS SC: You gave evidence before we adjourned in relation to an appointment or the approval of appointment you say without due process by Mr Bongani Bongo and you deal with that in paragraphs 119, 120 and 121 of that page.

You informed me just before commencement of your evidence today that there was an issue that you wish to
20 clarify.

DR DINTWE: That is correct Chair.

ADV PRETORIUS SC: Please so so.

DR DINTWE: Yes Honourable Chair I am not amending what I would have written there but I could have created an impression that the Minister accepted our findings and

recommendations readily – at first instance.

But I have since checked my records again there was something – some other correspondence that I would have omitted and I think that the commission – The Chair will appreciate that I am sitting with about 200 complicit and given time so those mistakes do happen. But it does not really change the whole complexion of what I would have written in my affidavit.

I however request your permission that I read
10 something here so that I clarify that once step that I say
that I would have jumped.

CHAIRPERSON: That is fine.

DR DINTWE: Thank you very much. And may I continue?
So we – we have written to the Minister with the findings
and recommendations but she then wrote to us and although
she was not saying that the appointment was regular she
raised about three points and we accepted them as includes
because when you are doing investigations you want to also
give them an opportunity to input into that investigation. So
20 we accepted that but the following points were raised in her
letter and this was on the 27th of February 2020 where she
said that:

“From the report it appears as though the
former Minister of State Security Mr B Bongo
and the former Director General of State

Security Agency SSA Mr A Fraser were not interviewed with the aim of ensuring that the other version is heard. It is difficult for me to reach a logical conclusion without information from these two critical role players on this matter.”

And then she further concluded in that letter – in her letter and I quote – open quotes

10 “It will be prudent to guard against a culture that erodes the integrity of the organisation and opens up such issues once the political principle has left.”

So the investigators then decided to explain those matters and the reasons obviously why we did. And the following reasons were sent to the Minister and these are not direct quotations but they will be in my report – in the – if you – if you like the report after the inclusion of – of her inputs.

We said that there was no need for us to have interviewed the former Director General Mr A Fraser in light of the fact of
20 that Mr Fraser as the Accounting Officer of the SSA then was excluded in the submission to appoint the aforesaid member to the position aforesaid.

So you will have a number of signatories and Mr Fraser was not in fact one of those entries.

The second reason that we 00:06:13

was that in – “We are in possession of the approved submission wherein the member concerned was appointed to the aforesaid post of 00:06:25 Manager within NICOC the National Intelligence Coordinating Committee. The approved submission as an official document under the custody of the State Security Agency constitutes prima facia proof of the appointment of the said member by the then Minister Advocate Bongani Bongo MP as contemplated in Section 8 (2) of the Intelligence Services Act 65 of 2002.”

10

The third reason:

“It was clear on the face of the submission aforesaid that the appointment of the member concerned by the then Minister of State Security Advocate Bongani Bongo was done in total disregard of the applicable laws and regulations.”

20

And then finally we said:

“The affidavit by a member of the SSA who implemented the approved submission confirmed that the member concerned was appointed as a result of their aforesaid

submission as approved by Advocate Bongani Bongo MP in his then capacity as the Minister of State Security. It was indicted to the Minister that with the evidence collected thus far by us it was clear that the appointment of the member concerned was irregular and unlawful. No useful purpose was going to be served by approaching the former Minister and
10 interview – interview him.”

And then we sent that particular letter. Now this is a significant point since then the Minister has never reverted back to us.

ADV PRETORIUS SC: Alright. Just to summarise then you gave evidence last time of an appointment which was called into question by your office.

DR DINTWE: That is correct Chair.

ADV PRETORIUS SC: As being irregular.

DR DINTWE: That is correct.

20 **ADV PRETORIUS SC:** You conducted an investigation and made certain recommendations.

DR DINTWE: That is correct Chairperson.

ADV PRETORIUS SC: The Minister – Minister Dlodlo raised what appeared to be procedural concerns about who had been heard and who had not been heard.

DR DINTWE: That is correct.

ADV PRETORIUS SC: You responded to those complaints maintained your recommendation and the matter was from your point of view not resolved.

DR DINTWE: That is correct to date.

ADV PRETORIUS SC: If we could go over the page then please to page 813. You deal in the paragraphs on that page and over the page with appointments to the cadet program and to other portions or departments within State
10 Security. Page – paragraph 122 just very briefly what happened in relation to those appointments there or recommendations.

DR DINTWE: It is a generally accepted practice amongst intelligence services that sometimes they will want to identify intelligence officers at an early stage. They could visit high schools, they could go to the universities and start recruiting there. And what they have done here is that in certain instances they will identify the so called underprivileged or previously disadvantaged students or
20 individuals they will give them a bursary and then they will go and study with already a commitment at that stage the they will be absorbed into the agency once they complete that.

Same principle with the cadet program as well. So they have done a lot on that. Like a single cadet program

could have around thirty or even more students who will be taken to the college. We would not have a problem of that it is a good practice accepted.

The only problem is that they do not have a criteria which says what are the requirements basic or otherwise that these cadets or students should you know comply with and that is creating a serious problem because there is evidence even in the high level 00:10:57 panel which concludes that the SSA has been turned into an employment
10 agency for the politically connected as well as those who are connected to the senior managers within the State Security Agency. And we cannot question that as an oversight because the things that we should be doing is to say what is the criteria and check really whether that criteria and the procedures were followed when recruiting those people.

ADV PRETORIUS SC: Alright you have given me examples in paragraphs 122 to 124 and the facts are set out there but in principle what is wrong if a Minister of State Security
20 suggests a particular candidate for a cadet program with the undertaking that that person will then employed by SSA? Surely a Minister can identify a person suitable for such appointment on his or her own? What is – what is the problem with this Ministerial overreach as you call it?

DR DINTWE: The problem is that more often than not we

have stumbled across or in fact we found that there would be familial relations between people who are appointed between them and the political principles and in certain instances also with senior managers within the State Security Agency.

ADV PRETORIUS SC: Alright. What about – yes you do not mention...

DR DINTWE: For us it is nepotism and – and we cannot really deal with that issue satisfactorily until we know which
10 criteria was used to identify that.

ADV PRETORIUS SC: Alright. So that – the danger of nepotism you do mention as a general point but the – in paragraph 122 you do say there are other instances of the children and family members of senior politicians and Ministers being appointed to these cadet positions. You do mention that. But the particular examples you give here are not examples of nepotism.

DR DINTWE: They are examples of nepotism. We decided to – to remove about two names.

20 **ADV PRETORIUS SC:** Oh I see.

DR DINTWE: For the reasons of the time – the pressures of time Chairperson and we are also trying to limit the notices that would have sent. But in the – in the documents that will be declassified and transmitted to yourself you will see the names, the surnames and that relationship.

ADV PRETORIUS SC: I am – I understand what you are saying.

CHAIRPERSON: So – so we would – so we will get that information.

DR DINTWE: It is in the documents that I have submitted to the commission already.

CHAIRPERSON: Okay.

ADV PRETORIUS SC: Alright. The second point is what is the – what are the issues around the future loyalty of the
10 SSA member a cadet becomes a SSA operative about the potential of partial loyalty to the person influential in his or her appointment, is that a problem?

DR DINTWE: That is a problem and I think I would have raised it earlier as well to say that they become beholden to the appointing authorities and they are ingratiated in a particular manner because some of them will tell you that I did not expect this you know. Just imagine how easy it is
Chairperson if I get identified I am given a bursary, I get appointed but our neighbours child who may even be more
20 qualified than myself is not getting considered for that position. It is obvious that I will be beholden to the appointing authority.

ADV PRETORIUS SC: And then in addition to that you have testified to the Chair that you are not clear whether the requirements – the appointment requirements were actually

followed in each case.

DR DINTWE: That is correct. We would not be able to establish that because each time we request the assist – the criteria they say we do not have the criteria.

CHAIRPERSON: But how rife is this problem of appointments that are done in this way particularly those that seem to have features of nepotism roughly do have some idea? Are we talking about two, three okay in instances are we in a year are we talking about over the
10 past five years fifty people more or less. Do you have some idea or is that difficult to say?

DR DINTWE: It is frequent practice Chairperson. In fact when I was driving – drafting the affidavit and I wanted that documentary proof I was given a list of about forty.

CHAIRPERSON: Forty.

DR DINTWE: Cadets yes.

CHAIRPERSON: Yes, yes.

DR DINTWE: And – and at that particular point I am informed reliably that the then Minister of State Security
20 Minister Kasrils I am not implicating him so I think I can mention the name he actually disowned those students because he said that when he was going through the list he could pin point exactly that Minister, that other former Minister, that other Minister.

CHAIRPERSON: Is that so.

DR DINTWE: That other DG, that Deputy.

CHAIRPERSON: Yes.

DR DINTWE: DG.

CHAIRPERSON: Yes.

DR DINTWE: So he disowned about forty graduates on a cadet or a cadet program. The other ones it was actually two students who had gone to university but then the reason why I focused on that it is because they would have written to us now complaining in turn. But there were not placed on
10 a level that they were promised before they went to university. It is a very, very, very frequent you know issue at the Security – the State Security Agency.

CHAIRPERSON: Do you have an idea as to whether there is a number that they seek – or a target that they seek to achieve per year that they must have got X number of people that will go into this training and then later on get employed by SSA?

DR DINTWE: I do not remember I think that we – we made that enquiry but it should have been included in that annual
20 report.

CHAIRPERSON: Yes.

DR DINTWE: If not they are planned.

CHAIRPERSON: Yes.

DR DINTWE: For the so called 00:18:08 ATT.

CHAIRPERSON: Yes.

DR DINTWE: But we could not get kind of information so I do not know in any given year how many people are they targeting to recruit.

CHAIRPERSON: Because it would be good to have an idea whether one can say over the past five years or even more it looks like on average per year so many people get put into the program even if to the training with a view to later being employed by SSA – even if not all of them are people who have been employed due to nepotism but people go
10 into that program to see its size.

DR DINTWE: Ja I will not be – I will not have any intelligence – intelligent you know response to that.

CHAIRPERSON: No, no that is fine.

DR DINTWE: I – work that out.

CHAIRPERSON: It can be furnished later in writing if – if it is information that you can get.

DR DINTWE: Maybe safe to indicate that it is also happening loosely in that ...

CHAIRPERSON: It is not (talking over one another).

20 **DR DINTWE:** In that you will get and I write – I write the names of the Ministers you will get Minister David Masobo who will visit a particular high school in KZN and then he identifies maybe three or four students. You will get the then Deputy Minister I mentioned her name Ms Molekane who will go to a high school in – and I am exchanging

provinces here to the North West and identify two that we have that particular information. And then you will have the Director General then who will have a program of about thirty or forty at any given time them being sent on this cadet current program. So it has happened because there is no criteria. Other people are going and where we are sitting now we may even be oblivious to some of those cases.

CHAIRPERSON: Okay. Mr Pretorius.

10 **ADV PRETORIUS SC:** Just in summary then as a matter of principle at the bottom of page – or at the end of paragraph 123 on page 813 you say:

“This involvement of the Ministry and the recruitment process constitutes significant executive overreach into the functioning of the SSA.”

And as I understand it you have raised at least three problems one is question mark around proper qualification.

DR DINTWE: That is correct.

20 **ADV PRETORIUS SC:** And adequate suitability of the candidate for the post being properly assessed. The second is that there would a potential of the relationship between the state official or the Minister and the operative being exploited. I suppose both ways is it possible that the operative would be loyal then to the Minister and the

Minister could exercise influence over the operative. Is that a valid observation that you make?

DR DINTWE: It is an observation that we – we confirm and – and maybe can I give a final example of what happened in terms of the executive overreach? And this is the matter that we are dealing with – with now.

Now the specifications starts writing a submission and that submission appoints 26 managers – now it is senior managers they use their own levels there but I think
10 that in the public service it would be your directors and – because they are also general managers who could be equivalent to chief directors and so forth.

Now this is the chase that is confirmed but what happens there is that they did not advertise it. There is no selection panel. There are no interviews. Some of those people do not meet the requirements of that particular post. The DDG – I mean the DG the acting DG that even refused to recommend because he is writing his concerns about how these people were identified. 26 Chairperson managers and
20 the only thing that you find in that submission is that they have a blog where they write their motivation.

One example of that motivation is that this person used to act in the particular position and he is a loyal member for years and he has experience on that particular field and so forth. And then they got appointed. Some of

them and what the DG wrote under the comments is that some of them were even recalled from retirement and then they were appointed – appointed – appointed again.

There is no regulatory framework. When you go through that particular submission they did not tell you about this any legislation which empowers the 00:22:28 but it is the Minister who then appoints this group of 26.

As I am talking to you they are in their positions.

CHAIRPERSON: So – so are you saying that there is no
10 legislation or regulation that gives power to anybody whether it is Minister or DG to say this can be done?

DR DINTWE: The way I see it Honourable Chairperson sorry – ja the way I see it, it is that the Minister was intending to come up with what we called a deviation. So the regulations are in place and they could not code those regulations because regulations says you advertise, you come up with a selection criteria, selection panel and then you follow those steps.

That is what their own regulations are saying. So –
20 so they did not write any of those there. The only reason that they provided under the motivation is that there is a huge number of managers who have either resigned, went on retirement.

In fact coming up with what one could see as an emergency recruitment. So in my career I have only heard

about emergency procurement when there is a burst pipe somewhere and so forth.

But I have never ever heard of an emergency recruitment.

CHAIRPERSON: The – the legislative provisions that you have in mind about the advertising and so on I think those would relate to the actual appointment of these people. Is it not?

DR DINTWE: That is correct Chairperson.

10 **CHAIRPERSON:** Yes. What I was more concerned about is how they come in because based on your evidence it is like they first have to get into some training or they get bursaries on the basis that once you have got whatever the qualification or training is you will be employed. So I was asking about any legislative provisions relating to the granting of those bursaries or whatever the program is. Do you know anything?

DR DINTWE: Ja no in that case they do not have and I will request the Chairperson to delineate the two that I was
20 talking about.

CHAIRPERSON: Okay.

DR DINTWE: The latest example that I was referring to is people who are long in the service.

CHAIRPERSON: Oh.

DR DINTWE: Now that are appointed into management

positions.

CHAIRPERSON: Okay, okay.

DR DINTWE: I had exhausted...

CHAIRPERSON: Oh you had exhausted the earlier one.

DR DINTWE: At least (talking over one another) time – there is cadets and the students.

CHAIRPERSON: Oh okay. But the cadets get bursaries to get some training or whatever and then they get employed afterwards, is that right?

10 **DR DINTWE**: That is correct Chairperson.

CHAIRPERSON: Ja. So – okay that is where I was still on – and you say that one has got no legislative provisions – framework as far as you know?

DR DINTWE: It does not have and that is what we have been requesting.

CHAIRPERSON: Yes.

DR DINTWE: Even if it is a policy which this was the criteria.

CHAIRPERSON: Yes.

20 **DR DINTWE**: To be considered.

CHAIRPERSON: They do not have?

DR DINTWE: They do not have that Chairperson.

CHAIRPERSON: Yes. So it is like somebody just decides it is a good thing to look around and give bursaries sometimes to people who seem to be deserving and then it is done.

DR DINTWE: That is correct Chairperson.

CHAIRPERSON: Yes. Okay but the latter category you were talking about is people who have been in the system but not in certain positions and then they are promoted to certain positions without following any processes.

DR DINTWE: That is correct.

CHAIRPERSON: Okay.

DR DINTWE: And in that instance there are regulations.

CHAIRPERSON: Ja there are...

10 **DR DINTWE**: Which deals with that but they get ignored.

CHAIRPERSON: Yes.

DR DINTWE: Completely.

CHAIRPERSON: Yes. Yes. And in regard to that both Ministers and DG's are involved as well in the breach of those regulations?

DR DINTWE: In the latter example.

CHAIRPERSON: Ja.

DR DINTWE: The acting DG refused to recommend.

CHAIRPERSON: Yes.

20 **DR DINTWE**: But the Minister went ahead and approved.

CHAIRPERSON: Yes.

DR DINTWE: The appointment. As I am talking to you those people are in those positions.

CHAIRPERSON: And that is about how many people?

DR DINTWE: 26.

CHAIRPERSON: 26.

DR DINTWE: Managers.

CHAIRPERSON: And which Minister are we talking about do you know?

DR DINTWE: Minister Ayanda Dlodlo.

CHAIRPERSON: Yes and how recent is that that appointment are – or how recent are they?

DR DINTWE: They are yet to get their 00:28:11 salary Chairperson.

10 **CHAIRPERSON:** So it is something that happened after this commission had heard some evidence about some of the challenges in SSA.

DR DINTWE: That is correct Chairperson.

CHAIRPERSON: Yes.

DR DINTWE: Yes.

CHAIRPERSON: Okay alright. Mr Pretorius. I am sorry – I am sorry Mr Pretorius. Have you got any understanding with regard to this category – have you got any understanding why Ministers and DG's would act in breach
20 of the regulations in regard to these appointments when they know them. Do you know why they would be doing this?

DR DINTWE: I do not want to give you conspiracy theories.

CHAIRPERSON: Ja. Okay. Alright.

DR DINTWE: I did not want to give you that.

CHAIRPERSON: Okay.

DR DINTWE: Chairperson.

CHAIRPERSON: Okay. Because the – it cannot be that they do not know I would imagine. They must be – know the regulations. You do not want to say anything.

DR DINTWE: Alright. And I – I think with one of those appointments there was a media opinion. There was an opinion in the media. Those people are connected majority of them are connected to the previous management. The
10 management that would have worked with Mr Arthur Fraser during that time. People are able to appoint and – and there is a belief that they are coming back and 00:29:54 in the State Security Agency. Yes.

CHAIRPERSON: Okay. Mr Pretorius.

ADV PRETORIUS SC: The period that you are referring to, is that the period covered by the PAN 1 Report, Principal Hedge and Network 1 Report, that period?

DR DINTWE: During that period. That is correct, yes.

ADV PRETORIUS SC: Alright. And the allegation - and it
20 is an allegation for the moment, we may deal with that later, Chair - is that people who were implicated in the PAN 1 Report were reappointed to the SSA.

DR DINTWE: That is correct.

ADV PRETORIUS SC: Is that what ...[intervenes]

DR DINTWE: Maybe we should not call it the

reappointment. We should ...[intervenes]

CHAIRPERSON: Promotion.

DR DINTWE: ...talk about promotion.

CHAIRPERSON: H'm.

ADV PRETORIUS SC: I see.

DR DINTWE: So during Pan 1, they would have been in a level below, the level that are pointed to now.

ADV PRETORIUS SC: Alright. So it is promotion you are talking about?

10 **DR DINTWE**: That is correct, Chairperson.

ADV PRETORIUS SC: Just to summarise then. The Cadet Programme, the Bursary Programme has its outcome appointment into the ranks of the SSA. Correct?

DR DINTWE: That is correct, Chairperson.

ADV PRETORIUS SC: And you have given examples of ministerial involvement in the selection and appointment informally, of course, into that programme.

DR DINTWE: That is correct, Chairperson.

20 **ADV PRETORIUS SC**: And your concern is that the proper procedures are bypassed in that process.

DR DINTWE: That is correct.

ADV PRETORIUS SC: In relation to the 26, you speak about irregular promotions to senior positions within the SSA.

DR DINTWE: I confirm that, Chairperson.

ADV PRETORIUS SC: But all these are done under the direction rather than the recommendation of the minister, as I understand what you are saying.

DR DINTWE: The approval of the minister. So the minister is the last signatory and it will be written, like, on the submission to say that recommend, not recommend that. So it will be the other signatories. You will get an HR official somewhere but the last part there it is approved or not approved. And the minister - the appointments
10 happened under the approval of the minister.

ADV PRETORIUS SC: What is wrong with that?

DR DINTWE: Exactly what I am saying that involvement of the minister in the recruitment process constitutes significant executive overreach and this is not – cannot not be seen as my opinion only because it is also contained in the HLRP.

ADV PRETORIUS SC: So, as I understand it, the minister does not approve finally but is involved in the process leading up to his or her approval, irregularly?

20 **DR DINTWE:** That is correct. Yes, Chair.

ADV PRETORIUS SC: In paragraph 124, page 813 you record an interesting observation. You say:

“This was also the case in the Free State Provincial Office of Crime Intelligence where the Provincial Head, Major General Makele has

acknowledge this practise.

According to her the appointment, the appointment of children and family members of senior police officials, as well as, a girlfriend to one her brigadiers assisted in ensuring that they recruited trustworthy people.

These members were then placed in a very sensitive environment without the necessary experience to the detriment of Crime Intelligence...”

10

Leave aside the former qualification issue which you raised in the second sentence but are you then aware of the statement actually being made that family members are appointed because they are trustworthy?

DR DINTWE: And I am still shocked, even today, Chairperson. But what happened is that when my staff members go and do what we can call, like, verification, like, when they visit these offices, I, sometimes I accompany them and we will deal with or we will have a meeting on the first day and then I will leave them because sometimes they will work there for a week or so.

20

So in this specific meeting I was sitting there with the Provincial Head, Major General Makele, and I posed that question. It was from myself to say: But we are informed by somebody in that meeting... In fact, a

component - responsible for Counterintelligence because Counterintelligence in the SAPS will investigate the other officials with intelligence(?) agents. And I was shocked to her response to that and that is the reason that was given to myself.

Because the names – the names were mentioned and next to each name it will be a station commander of that station, police station in Bloemfontein – the Bloemfontein area. It will be a major general somewhere
 10 in the provincial office. It will be a brigadier in the same office whose girlfriend is appointed in that space. And then you will also have a relative of Advocate Mapele(?) herself.

And the reason what – and the reason that she provided to us was to say that these children or these kids are well-bred. Well-bred up. Because they belong – they are children to senior officials of SAPS and so forth. And that was the reason that was provided to us. I am still in disbelief even today that that was the reason used.

20 **ADV PRETORIUS SC:** Right. You go on in that paragraph to say:

“There has also been a complaint that because they... [and I presume it these appointees] ...owed an allegation to the provincial head.

They only share the intelligence that they

gather with those members of management to whom they owe allegiance...”

Is that a complaint you received.

DR DINTWE: That is the complaint that I received. May I please paint a this by using an alphabet, if you will allow me Chairperson. Now you will have A and A is a head of Counterintelligence. And then you will have B who is a head of Surveillance. Now because this group falls under this other group of B, for instance, they will then provide
10 information only to B so that B could appear more successful than A.

So they will be sitting there, and I am just being careful because this is one of the networks that they are doing but let me use a similar or simplistic example. Let us say they are responsible for listening to conversations and they come across, for instance, people who are blaming to commit cash-in-in-transit heist, for instance.

Instead of giving that information to A, they will not do that but they would rather give it to B because B
20 was on their side and would have influenced their appointment. So that kind of a competition also exists and which poses a serious problem then because it means that the other people may not even come across that information.

ADV PRETORIUS SC: So do I understand you correctly to

be saying that one of the principles of employment in State Security particularly, and I presume it applies throughout the public service, is that the person appointed must be completely independent of external influence?

DR DINTWE: That is correct.

ADV PRETORIUS SC: Particularly influence in regard to their appointment in the first place?

DR DINTWE: That is correct, Chairperson.

ADV PRETORIUS SC: You go on in the next section,
10 paragraph 125 and following, to deal with the controls relating to the use and flow of money in the Intelligence Services. Now we have heard detailed evidence in this regard. You give evidence of a more general nature arising out of your own experience and independent investigations. What have been your findings? You deal with that in paragraph 125 and following.

DR DINTWE: Yes. And Chairperson, yes, I think that I need to stand by confirming that indeed we would have removed specific transactions because amongst your
20 witnesses I think that Ms K detailed all those. We do have also a detailed list of money-flows. What I can confirm is that money has been stolen and we are talking lots and lots of money taken with suitcases, others being lost and people were never really held accountable for that money.

And what I am saying there is that our findings

are that these monies have been used for other things that, in fact, could affect our National Security adversely. For an example, some of those monies could be used to fuel political tensions. There is evidence in our possession that some of those monies were used to finance a particular faction within in the governing party and in other jurisdiction you will find that these monies can be used also to finance terrorism.

ADV PRETORIUS SC: Right. In paragraph 126 you go
10 into a little more detail. Would you deal with that? But before you do. The documents that you are yet to provide in the various bundles supporting your statement, do they contain more evidence of this?

DR DINTWE: They do contain itemised, Chairperson. Itemised, you know... Ja, the items which indicate at what stage was this amount taken and what reason was given, and I even attached examples of what could be seen an invoice. In other words, reporting that the recipient would have received the money.

20 **ADV PRETORIUS SC:** Alright. So that documentation, we trust, will be forthcoming hopefully as soon as possible Dr Dintwe.

DR DINTWE: That is correct. I confirm that.

ADV PRETORIUS SC: Yes. Paragraph 126, you go into a little more detail.

DR DINTWE: Yes. And I also referred them to that. I think... Okay. I am aware, Chairperson, that during the evidence of Ms K you were shown an example of a Word document. So I take the money and say that I am taking this money to Josef. Josef could be a source or he could have done certain work for us. And what I do is that I only type. I, the undersigned, confirm that I have received this particular money. And then there is just a signature. No letterhead, no nothing and so forth and they are taking
10 huge amounts of money. One of the transactions was equivalent to 200 000 Euros at a call(?).

ADV PRETORIUS SC: Alright.

CHAIRPERSON: Who is quick to work out how much that is in – is it multiplied by eight or ten? To turn it into – convert it Euros.

ADV PRETORIUS SC: Nineteen, I think.

DR DINTWE: Even eighteen. It is eighteen.

CHAIRPERSON: Oh, okay.

DR DINTWE: It is around eighteen.

20 **CHAIRPERSON:** I have not travelled in a long time.
[laughs]

ADV PRETORIUS SC: [laughs]

DR DINTWE: It runs into millions.

CHAIRPERSON: It is roughly?

DR DINTWE: It runs into millions.

CHAIRPERSON: Millions.

DR DINTWE: At that time that I was doing that calculation.

CHAIRPERSON: Ja.

DR DINTWE: To be – what I find at that particular point. I know it is fluctuating but it was R 2.7 million.

CHAIRPERSON: H'm.

DR DINTWE: Yes. That was taken by a member and it just got lost, just like that.

10 **CHAIRPERSON**: H'm. And there is no proof of what it was used for?

DR DINTWE: Not at all, Chairperson.

CHAIRPERSON: H'm.

ADV PRETORIUS SC: Alright. You are saying, firstly, that the use of cash is inherently problematic, although it might be necessary, I think, that has been conceded by you elsewhere, but it is the accounting and the documentary records in relation to the disbursements of cash that is of concern. Is that correct?

20 **DR DINTWE**: That is correct. And also to add that managers deliberately or being unaware attempt to misconstrue secrecy and allow the commission to use cash, to mean that then it is no accountability. There must be an authority somewhere where you go and account. So they see that kind of a thing to say that once you say that

you can use cash, then it means that you can – you may not, in fact, account it for and that is what is happening.

CHAIRPERSON: So it is a tap that must be closed without jeopardising the effectiveness of intelligence, proper intelligence and the use of cash legitimately for intelligence purpose but close the tap for those who can just take money and they do not have to account to anybody as to whether that money was used properly.

DR DINTWE: That is correct, Chairperson but they will
10 never ever be able. None – all intelligence service will need to use cash in certain instances.

CHAIRPERSON: No, no I ...[intervenes]

DR DINTWE: [Indistinct]

CHAIRPERSON: ...the legitimate part of using cash, that must continue. The problem is to close the tap of using it illegitimately.

DR DINTWE: That is correct, Chairperson.

CHAIRPERSON: Ja. Because one can understand why cash may have to be used for legitimate intelligence
20 purposes but one must close the tap if one can in regard to people being able to just take money and go and use it for whatever they choose to use it for and say it was for intelligence purposes and their word must be accepted.

DR DINTWE: That is correct. That is our proposition, Chairperson.

CHAIRPERSON: Ja.

ADV PRETORIUS SC: We will deal an extract from one of the reports you actually made in this regard over the page but for the moment if we could stay on paragraph 126. You say you raised concerns about the prevalence of large sums of cash being withdrawn at the SSA and that is in relation to the 2016/2017 Financial Year of SSA Operations.

And you say:

10 “This concern was raised following claims that large sums of cash were being carried out of the SSA by members sent by senior management of the SSA to various destination between 2014 to around 2017 with limited proof of receipt of those monies by persons at the purported destinations...”

Are those the claims that were made to you and your office?

DR DINTWE: Yes but we would have investigated them.

20 So what we include in our certificates. Remember – that I referred to last time.

ADV PRETORIUS SC: [Indistinct]

DR DINTWE: Yes. It will basically be findings not value(?). So we would have received a report and we would get into the system and check whether all that

money indeed went out and we will check whether there was some kind of invoice or settlement of that particular money.

ADV PRETORIUS SC: Alright.

DR DINTWE: So what I list in the certificate will be our findings to say that this X amount of money went outside and we do not have proof that it was really received by the intended recipient.

ADV PRETORIUS SC: Right. Now these claims that were
10 made - complaints that were raised with your office. You say you investigated and you made findings.

DR DINTWE: That is correct, Chairperson.

ADV PRETORIUS SC: And those findings highlighted concerns over the use of cash and the improper or inadequate accounting for that cash.

DR DINTWE: That is correct, Chairperson.

ADV PRETORIUS SC: Now you say that you raised these issues in certificates. Who receives your certificates?

DR DINTWE: First it would be the minister responsible for
20 that particular service. In other words, Minister Bheki Cele will get on behalf of the police of SAP-CI. Minister Nosiviwe Mapisa-Nqakula will get on behalf Defence Intelligence, and Minister Ayanda Dlodlo will get on behalf to the State Security Agency. That is the first authority.

The second authority will be the Head of

Services. So it will be the DG and the Divisional Head's Commissioner. In the case of SAP-CI, it will be Chief Defence Intelligence Officer in that right(?) chain(?). The third authority will be the Joint Standing Committee on Intelligence.

ADV PRETORIUS SC: Now in regard to the latter. Without the intervention of the minister or the director general or acting director general, as the case may be, in each security establishment, there is a direct reporting
10 between your own office and the Joint Standing Committee of Intelligence. Do I understand that correctly?

DR DINTWE: You understand me correctly.

ADV PRETORIUS SC: What did the JSCI do on receipt of these certificates in relation to the improper use of cash, as you found?

DR DINTWE: The previous committee never acted. Never acted on this.

ADV PRETORIUS SC: Do you know why?

DR DINTWE: The one or the other reason that was
20 provided at a particular point was that they want to really achieve(?) the separation of powers. For them they saw these as the decisions which happened with them, the executive realm. And I do not know to what extent they were intended to hold those executives, you know, to account but as far as I know is that I was never really

provided a reason, a convincing reason. Let me say that. I was never convinced as to the reason why they could not act.

ADV PRETORIUS SC: You conduct in your office an oversight role over the executives, correct?

DR DINTWE: That is correct, Chairperson.

ADV PRETORIUS SC: And you do so independently.

DR DINTWE: That is correct.

ADV PRETORIUS SC: With your knowledge of what
10 oversight entails, are you satisfied that the JSCI performed its functions adequately?

DR DINTWE: No, not – I can say and submit to the Chairperson that no they – that is not sufficient their oversight role.

CHAIRPERSON: I thought you were tempted to say I can say without fear of contradiction that they are not doing their job. [laughs]

ADV PRETORIUS SC: [laughs]

DR DINTWE: No, Chairperson I can say confidently
20 ...[intervenes]

CHAIRPERSON: Ja.

DR DINTWE: ...that their oversight was never adequate.

CHAIRPERSON: H'm.

DR DINTWE: The reason why I say I am confident about it is that it is also a finding of the HLRT(?) ...[intervenes]

CHAIRPERSON: Yes.

DR DINTWE: But I think that there is evidence before this Commission, as it were ...[intervenes]

CHAIRPERSON: Yes, yes.

DR DINTWE: ...to say that Parliamentary oversight was not adequate.

CHAIRPERSON: Now with regard to this particular committee. Are you basing your view on your experience during your term of office only or are you only basing your
10 view on records or lack of records that you found in your office as to interactions between your predecessors and this particular committee or what is the position?

DR DINTWE: My preference was to confine this to my term of office.

CHAIRPERSON: Yes.

DR DINTWE: Because I think that even officials(?) will tell you that it is I have been there for a sufficient time to then be able to formulate an opinion.

CHAIRPERSON: Yes.

20 **DR DINTWE:** But also formulate or identify a particular pattern.

CHAIRPERSON: Yes.

DR DINTWE: So, I mean, I have been there now for four years ...[intervenes]

CHAIRPERSON: Yes, that is a long time.

DR DINTWE: So I confined myself to my – office.

CHAIRPERSON: Ja. By the way, who was your predecessor?

DR DINTWE: My predecessor was Advocate Faith Radebe, the late.

CHAIRPERSON: Oh, she is late?

DR DINTWE: Yes.

CHAIRPERSON: So she would have been there, from what? Around 2010? Is it a five year term?

10 **DR DINTWE**: Yes, I am writing about – it is a five year term.

CHAIRPERSON: Ja.

DR DINTWE: Ja.

CHAIRPERSON: Then there was the space of two years when there was nobody.

DR DINTWE: That is correct.

CHAIRPERSON: Before your time. Before you were appointed.

DR DINTWE: That is correct.

20 **CHAIRPERSON**: Yes.

DR DINTWE: I think in my earlier paragraph here, I have written which years exactly.

CHAIRPERSON: Yes, yes.

DR DINTWE: But 2010 sounds more probable.

CHAIRPERSON: Yes, yes. Now if – I am trying to find out

how one can find out even without asking the committee, find out as to what may have been sent to the Portfolio Committee by, for example, Ms Radebe and what responses, if any, she may have received in response to her reports. What did you call them? What do you call your reports?

DR DINTWE: Certificates.

CHAIRPERSON: Certificates in regard to her certificates. So in your office, you would have copies of certificates that
10 she would have sent during her time. Is that right?

DR DINTWE: That is correct, Chairperson.

CHAIRPERSON: But in terms of the mechanisms, you do not have a way of knowing whether the committee acting upon each certificate, do you?

DR DINTWE: No, but I will know ...[intervenes]

CHAIRPERSON: Ja.

DR DINTWE: ...by implication.

CHAIRPERSON: Yes.

DR DINTWE: Because there is continuance in the office.

20 **CHAIRPERSON**: Yes.

DR DINTWE: It is only the Inspector General of Intelligence who gets appointed who comes and go.

CHAIRPERSON: Yes.

DR DINTWE: The rest of the staff and very senior people including investigators are always there.

CHAIRPERSON: Yes, yes.

DR DINTWE: Now during my first year in the office and when I started dealing with my first certificate there was reference made or recommendations that remained unimplemented and were coming from the tenure of Advocate Faith Radebe.

CHAIRPERSON: H'm.

DR DINTWE: There are many examples. Examples of that. In fact, the so-called Rogue Unit at SARS and so
10 forth. I still had to deal with that issue after I have taken occupancy of that office. So I will have a group of certificates which will show what my predecessor sent to the committee but those problems would still be applicable under my term of office.

CHAIRPERSON: Yes.

DR DINTWE: Like, for instance, the one that I am writing there. Inadequate controls relating to the use and flow of money in the Intelligence Services. You will find those things also under the certificates that were drafted or that
20 were signed before I assumed the office.

CHAIRPERSON: Well, I think this is how we can deal with it and maybe you deal with it in your affidavit. Maybe we have dealt with it last time. Mr Pretorius will remember. Or maybe it is still to come amongst the documents that you will send. I think it would be good if you were able to

say I have looked at the certificates that were sent by my predecessor from that year up to that year. I am aware of what she recommended or whatever.

What issues she raised before the committee to look at or deal with as well as the ministers, the relevant minister because you have said that the certificates go to the relevant ministers, the relevant DG and the committee. You – so if you could identify those for each year and be able to say the following – the problem – this problem that
10 was raised during that year is still there or when I arrived it was still there.

So I can tell that nothing has been done to deal with it properly. So or whatever had been done has not worked. You know. And so I think that could help just to give that indication. In terms of law, there is nothing that requires the committee or the relevant ministers and DG's to revert to your office to say you raise these issues. This is how – this is what I have done in response.

DR DINTWE: I think my submission, Chairperson, was to
20 say that our recommendations are just being ignored willy-nilly.

CHAIRPERSON: Yes.

DR DINTWE: And we touched on the PAN 1 Investigation. If I can make the specific example. And I am using this example to submit to the Commission that it is doable. It

is an exercise that I think that if I go back to the office I can readily ...[intervenes]

CHAIRPERSON: You can do that, ja.

DR DINTWE: ...identify so say that...[intervenes]

CHAIRPERSON: Ja.

DR DINTWE: ...this has been a problem for time ...[intervenes]

CHAIRPERSON: Ja, ja.

DR DINTWE: Or since the establishment of this particular
10 office.

CHAIRPERSON: Yes, yes.

DR DINTWE: Let us take an example of what one of my staff members would be writing an affidavit about that I discussed and I think it is in here. Now, the former Minister Mahlobo says that he was not aware that Mr Arthur Fraser was implicated in the PAN Investigation. And I went to the office because the Commission wanted us to confirm whether there were some presentations made to the minister with regard to the PAN Investigation.

20 So the same recommendations in the PAN Investigation was that people should be judged(?), for instance. So that is exactly what – it is a classic example and I think an accurate example of saying or being able to furnish(?) the Commission that it is a doable exercise to go there and say that these were the findings before even my

occupancy of the office and they were never ever implemented.

CHAIRPERSON: Yes.

DR DINTWE: In law, I do not think that ...[indistinct]

CHAIRPERSON: Yes.

DR DINTWE: ...therefore ask as – in terms of oversight body.

CHAIRPERSON: Yes, yes. Well, of course, I think you suggested the last time or you do in your statement that I
10 think you wish for a regime in terms of which your recommendations cannot just be ignored but they would be binding. I got the impression you had in mind the same situation as the Public Protector but I may be misrepresenting what you say but certainly the minimum, it would seem, is that those authorities when your office has raised issues and made recommendation they should at least come back and say we have noted, we agree and this is what we will do or we do not agree because of the following reasons, so you can take it from there but to
20 have a situation where they just completely ignored you and you never - you are not – you never know whether they did anything seems untenable.

ADV PRETORIUS SC: You are not misrepresenting me, Chairperson, you have got a very sharp memory.

CHAIRPERSON: Yes.

DR DINTWE: Because that is what I was saying and I was saying that I think that we do have a good model to say are these remedial measures, we know that they are not. But I was even saying to yourself that I wish that we had the resources because I was going to take myself to court and say that I do not think that any legislature will have an intention to put so money into this organisation but then recommendations are just being ignored.

CHAIRPERSON: Ignored, ja.

10 **DR DINTWE:** Yes, that was what I said.

CHAIRPERSON: Okay. Mr Pretorius?

ADV PRETORIUS SC: In paragraph 127 on page 814 you cite two examples. I would just like to ask whether you confirm those. You say:

20 “In one instance a member claimed that he had lost an amount of approximately R3.6 million while on an operation. This is clearly absurd. A further finding was that since 2016 there was an SSA member who had been submitting fraudulent travel claims amounting to R9 million.”

Do you confirm that those were findings or investigations conducted by you?

DR DINTWE: These were findings and I write there, I say this is clearly absurd because what came to our attention was that - in the 3.6 million, there is a gentlemen on an

operation to Jupiter, this other planet and he comes back and says but I lost it, they have taken it or I misplaced it or whatever but then he does not even create serious attention or, you know, serious attention because he then tells that I have lost it and you deduct it from my salary.

In fact the gentleman went on an early retirement during the course of 2020 and others, who will know, that their pensions will not even get to that particular amount and in this instance he just came back and said that oh, I
10 have no reasons, I have lost it and please start deducting it and so forth. I am told that that money – and they would have attached his pension if not part thereof. Now this is a problem and it came in the analysis of our evidence. If

Now if I got 3.6 million and I went and bought a property I will be saving about another 100% because if I am buying a property for R3.6 million and it is bonded, I am going to end up paying about R7 million but if I buy it cash and I say that no, no, you can buy that money from my pension it means that I would have received and
20 interest free loan to do other things. That is the first example.

The second example of R9 million in the finding, also, this person is a protector. He is a protector who accompanies a principal when he travels both internationally and locally and our findings is that this

person could not have pulled this mission alone because it is very easy. If I am not travelling overseas but you get my protector coming to claim money that they would have travelled. It should be well-know but no, no, no but he did not apply, you know, to go to this and other country and so forth. So it happened over a period of time until he reached an amount of R9 million.

Inadequate controls and there is an argument about that because other people will say absence of internal
10 controls. No, in this instance controls are there but they are being ignored as well.

CHAIRPERSON: And this would have been in a period of about how many years? Do you have that information?

DR DINTWE: Three years on average, a travel of three years.

CHAIRPERSON: Accumulated to R9 million within three years?

DR DINTWE: That is correct, Chairperson, yes.

CHAIRPERSON: Okay.

20 **DR DINTWE:** It also tallies with the usage of cash. I will never understand why do they give me cash when I travel outside the country, I just do not know, because it is even risky, I am called Inspector General Intelligence, I am not collecting intelligence, I am not doing anything, I am oversight body. But believe you me, when I travel they

give me that kind of cash. So when I come back normally I will return some.

CHAIRPERSON: Not millions.

DR DINTWE: I beg your pardon?

CHAIRPERSON: Not millions.

DR DINTWE: No, it will not run into millions, ja.

CHAIRPERSON: Ja.

DR DINTWE: Yes.

ADV PRETORIUS SC: Is this a convenient time, Chair? It
10 is, let us take a 15 minutes break, we will resume at half
past eleven.

ADV PRETORIUS SC: Thank you, Chair.

CHAIRPERSON: We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Okay, let us continue.

ADV PRETORIUS SC: The examples that you have given
to the Chair, Dr Dintwe, both at a general level and at a
particular level. Were these included in the certificates
20 that were given to parliament and to the Minister and the
heads of department?

DR DINTWE: I confirm that, Chairperson.

ADV PRETORIUS SC: In paragraph 128 you raise a
concern about the possible use of these monies. What do
you say about that? That is on page 815.

DR DINTWE: I am saying that they were used to fuel or finance a particular – I mean, a particular faction depending on who is taking that money. Our finding in that regard is not one-sided at all.

CHAIRPERSON: So it is like different people may have taken monies to finance different factions.

DR DINTWE: That is correct, Chairperson.

ADV PRETORIUS SC: And that information too would be in the certificates.

10 **DR DINTWE:** It will be in the certificates.

ADV PRETORIUS SC: Having been reported to parliament?

DR DINTWE: That is correct.

ADV PRETORIUS SC: Or at least to the joint standing committee on Intelligence.

DR DINTWE: That is correct, Chairperson.

ADV PRETORIUS SC: You say in paragraph 129 that you made certain recommendations in a report and you talk of one of your reports, would this report have been included
20 in your certificates?

DR DINTWE: It is certificate – I think that I used the word report interchangeably there.

ADV PRETORIUS SC: Okay, so it was a certificate reported to all those instances to whom you have referred including the JSCI?

DR DINTWE: That is correct.

ADV PRETORIUS SC: Right.

DR DINTWE: Would you not like me just in one or two sentences explain why I would have used the word report over there? So over and above the certificates, I also do what is called monitoring reports. Now monitoring report, I may change just one subject because the certificates will run – will deal with issues, a variety of these sort of issues but in this instance I may decide to do a monitoring on
10 procurement maybe of software, for instance, and just write that particular issue and then I will send to a responsible minister.

ADV PRETORIUS SC: Would those reports go to parliament?

DR DINTWE: They will then go to parliament because a certificate is a culmination of your review reports monitoring reports, outcome of investigations.

ADV PRETORIUS SC: I see.

DR DINTWE: So even if I would have sent only this
20 subject right in the middle of every reporting year it will then be found in the certificate as well.

ADV PRETORIUS SC: Right. Perhaps you should read onto the record your recommendation in paragraph 129.

DR DINTWE: I will do that, Chairperson.

ADV PRETORIUS SC: Thank you.

DR DINTWE: I say:

“Whereas the movement of large sums of cash is justifiable within the context of secrecy of operations there is a need to ensure stricter controls to ensure full accountability for cash given to members for operational purposes. However, the veil of secrecy associated with intelligence operations does not make any public servant immune to accountability and sound financial management hence the person who claims any money or uses the resources of the SSA is required to settle such in accordance with applicable prescripts. During over certain engagements I came across a number of instances where the monies are not properly accounted for. I am aware that even the SAA internal investigative units are currently working on several cases where money is not accounted for.”

ADV PRETORIUS SC: And then you go in page 815, paragraph 130 to talk of recommendations that you made in your capacity as Inspectors General Intelligence. What were those?

DR DINTWE: It was that although the control measures are there, they need to be tightened a little bit because some of them were too old.

ADV PRETORIUS SC: A little bit?

DR DINTWE: Old for my liking, in any event even the secretary's account I think it was 1957 or so.

ADV PRETORIUS SC: No, you used the word a little bit. Was it just a figure of speech?

DR DINTWE: Maybe too old. Ja, but my intention was to say that they could be a little bit old, just too old for our liking and that ...[intervenes]

CHAIRPERSON: But I think Mr Pretorius is suggesting
10 that in the light of what appears to be large scale abuse of monies that should be used legitimately for Intelligence the tightening should not be or cannot be for just a little bit, much more is required. I think [inaudible – speaking simultaneously]

DR DINTWE: Yes but my quagmire is that times will differ.

CHAIRPERSON: Ja.

DR DINTWE: So they would have amended one out of fifteen. Maybe in 2009 they would have, you know, adjusted three or four in 2014 and so forth. That is why I
20 cannot use an umbrella weight that too old..

CHAIRPERSON: Okay, alright.

DR DINTWE: For us, yes.

ADV PRETORIUS SC: We have heard the evidence of Mr Jafta as to what steps have been taken more recently in relation to financial controls but it appears from your

evidence that what you are saying is a substantial review of control measures and their implementation is required within the SSA and other intelligence organs.

DR DINTWE: That is correct, Chairperson, but I also said in this instance that they must be both preventative and deterrent.

ADV PRETORIUS SC: Right. And you say that steps should be taken to recover outstanding temporary advances from members who have not settled those.

10 **DR DINTWE:** That is correct, Chairperson.

ADV PRETORIUS SC: Now all these issues concerning financial controls, the absence of financial controls, the loss of state security monies, the inadequate controls over the use of cash are – and which you have now highlighted over the last hour or so, your report or your reports or your certificates audit to the JSCI and the Ministers would contain detail in this regard.

DR DINTWE: That is correct, Chairperson.

20 **ADV PRETORIUS SC:** And would contain detail in regard to your recommendations.

DR DINTWE: That is correct, Chairperson.

ADV PRETORIUS SC: How is – and these questions I have been asked to raise in relation to further evidence to be led by Adv Freund, who I have spoken to in the break, Chair – to whom does this report go in particular? I mean,

does it go to the secretary of the JSCI? The Chair of the JSCI?

DR DINTWE: We address them to a Chairperson.

ADV PRETORIUS SC: Right, who is the Chairperson of the JSCI or who was the Chairperson of the JSCI at the time you would have been submitting these reports?

DR DINTWE: Previously it was – no, there is a previous committee, the immediate previous one, it was Mr Nqakula, who then was transferred to the Presidency as State
10 Security Adviser and during that particular time there was an acting Chairperson, Mr Ganebe and we then also – okay, ja, Mr Ganebe acted for a while. With the current one is honourable Maake

ADV PRETORIUS SC: Now this is a multi-party committee, as I understand it.

DR DINTWE: That is correct, Chairperson.

ADV PRETORIUS SC: And did you ever have occasion to speak to any member of the JSCI and say what is going on? Why are you ignoring my recommendations? What are
20 you doing about my reports. Was there any interaction of that nature either in correspondence or verbally?

DR DINTWE: I would not address any formal letter to any other person except for the Chairperson but I cannot rule out that there could have been a discussion between myself and one of the members because they also had an

open line to myself. In fact one of the people that I remember raising these issues with is General Bantu Holomisa because he was sitting in the previous committee but apart from that, there is also a Chief Whip, a Deputy Chief Whip in parliament that I also have that kind of an open line. So we would have had those discussions about these issues.

ADV PRETORIUS SC: So you would have in discussions raised concerns about your certificates, how they were considered and what was being done in response thereto?
10

DR DINTWE: That is correct, Chairperson.

ADV PRETORIUS SC: Are you able to say – do you feel comfortable to say what General Holomisa said to you?

DR DINTWE: General Holomisa said that he is aware – normally he will sort of give me counsel, such as you have to be strong, we are aware that you are doing your work and perhaps he could have promised me that he will see how he would nudge, you know, the Chairpersons or the committee itself in its entirety to really implement these
20 things because all these people that I would have, you know, talked to, they were aware of the rot that was dipping especially in the State Security Agency but also in Crime Intelligence, so they were not oblivious to those.

Can I say that there is an interview that was done by one of the current members, Dr Mbuyiseni Ndlozi who

said in that interview on TV that he is aware that we are doing what we are supposed to be doing but the failure is at the point of implementation by the committee itself.

CHAIRPERSON: But somehow it seems that even though different members of that committee may be aware including members of opposition parties serving on that committee, may be aware of the problem, it looks like they cannot get action to be taken by the committee because, from what you have said, it looks like no action seems to
10 have been evident or seems to be taken that is effective. At least, if anything has been done, it seems not to have been effective but you cannot tell what it is that may have been done.

DR DINTWE: That is my submission, Chairperson.

CHAIRPERSON: Yes, yes. And one does not know whether it might be the same problem that has been experienced by some portfolio committees in parliament in regard to oversight where members of opposition parties say we can push as far as we can if the ANC and members
20 of the party who are in the majority do not agree, we cannot do anything because a decision must be by majority. So one does not know whether that is the situation with this committee as well.

ADV PRETORIUS SC: Well, whether that is a satisfactory explanation or not from a member of parliament is

something we will make submissions on in due course, Chair.

CHAIRPERSON: Ja, ja. No, no, that is fine. Thank you, let us continue.

ADV PRETORIUS SC: But in summary then, the problems that you have raised, the impropriety, the illegalities, the loss of monies, the inadequate accounting for monies, the looting that you have spoken about, the improper use of monies in factional battles, those are all in your reports.

10 **DR DINTWE:** They are all in my reports, Chairperson.

ADV PRETORIUS SC: No member of the JSCI can claim ignorance of what you have reported to the JSCI.

DR DINTWE: Not at all because, to confirm that, I would submitted the certificates in a redacted version for the Chairperson. All what I removed was methods that they use, sources but I also removed organisational weaknesses. But in terms of the transactions I made it a point that the Commission, you know, becomes aware.

20 **ADV PRETORIUS SC:** So when we get those certificates the Chair will be able to see exactly what the JSCI knew, apart from the redaction.

DR DINTWE: That is correct, Chairperson.

CHAIRPERSON: Would you be able to say whether because of the redaction, the redactions that you made, there would be nothing wrong with those reports. Now I

cannot remember whether they are classified or not, your certificates, being available to the Commission if those redactions have been made or they will still be a problem even if there are redactions?

DR DINTWE: No, there would not be problems because I deal with administrative issues.

CHAIRPERSON: Yes.

DR DINTWE: With regard to procurement, for instance.

CHAIRPERSON: Yes.

10 **DR DINTWE:** And I think I will make submission earlier or later to say that there is generally over classification and it done to hide malfeasance.

CHAIRPERSON: Yes.

DR DINTWE: So I have worked on the certificates to an extent but I am satisfied that they can be made public also.

CHAIRPERSON: Okay.

DR DINTWE: That is the reason why I would removed the other issues.

20 **CHAIRPERSON:** Yes, yes, well I would be very interested in seeing those certificates, those report insofar as one can look at them without any problems in terms of security and so on.

DR DINTWE: Thank you, Chair.

ADV PRETORIUS SC: Chair, our understanding, we have looked at this quite carefully and have consulted externally

as well, is that you would be entitled, as Chair, to see the unredacted versions of the certificates.

CHAIRPERSON: Yes, okay.

ADV PRETORIUS SC: However, for the purposes of your report and whatever goes public, the redacted version would be necessary to be revealed.

CHAIRPERSON: Ja, okay.

ADV PRETORIUS SC: Provided, of course, the person in control and who has the lawful power to deal with it
10 agrees.

CHAIRPERSON: Ja, okay. No, that is fine.

ADV PRETORIUS SC: And that is Dr Dintwe.

CHAIRPERSON: Ja, no, no, that is fine. I think it would be important in order to get the full picture. Whatever can be dealt with publicly without being in breach of any law, it would be good to look at that. Whatever I can look at away from the public, that might also be important if it can be done.

ADV PRETORIUS SC: We will consider the position.

20 **CHAIRPERSON**: Ja, okay.

DR DINTWE: I have considered that position. It is in fact my administrative decision that I said to the co-functionaries that I consulted with to say that there are two levels of disclosure here. The first disclosure is to yourself, Chairperson, and maybe I also mean the legal

team. The second disclosure is then to the public.

CHAIRPERSON: Ja, ja. Okay, alright.

ADV PRETORIUS SC: Thank you. In paragraph 131, page 816, you deal with what is another serious issue in your terms in relation to Crime Intelligence and you say in paragraph 132:

10 “Our investigations have revealed that the systematic and endemic institutionalised looting of the Secret Services account is carried out and perpetuated by senior managers within Crime Intelligence and their trust subordinates under the guise of legitimate intelligence operations in order to avoid culpability and accountability in the event of detection.”

Now these issues or some of them at least are in the hands of law enforcement agencies at present but would you tell the Chair, please in general terms what you say in paragraphs 131 and following? And you give an example in paragraph 133.

20 **DR DINTWE:** Yes, I give an example of that and I used the word looting deliberately because pure looting. Yes, of course, there are investigations that are taking place. We were also promised that the Crime Intelligence itself will conduct its own internal investigation. To date we are aware of about two members who are dismissed. I think

that they have appealed and so forth based on those findings.

Now what was happening there and I am giving an example later, is that we were even calling the subordinates their runners. What would happen is that a Chief Financial Officer based at Crime Intelligence will be involved in operations. An example of an operation here is that he will handle a source and it is not acceptable but because he cannot go and claim money for that particular
10 source, he will use a Captain or a Colonel or a Warrant Officer somewhere because he will be a Major General. So a poor Captain will go, collect money, give it to the CFO, the CFO will then claim that I would have paid a source and the settlement will then be done on behalf of the Captain not on behalf of the person claims that they are actually real handlers of the particular person. So we are calling them runners, that these senior managers will then have these other people.

ADV PRETORIUS SC: So a senior official would require a
20 subordinate to go and collect money allegedly for the payment of a source.

DR DINTWE: That is correct, Chairperson.

ADV PRETORIUS SC: That money would be given to the senior official who had no authority to deal with sources at all.

DR DINTWE: That is correct, Chairperson.

ADV PRETORIUS SC: And that senior official would then say or claim, perhaps not, that that money had been handed to a source, correct?

DR DINTWE: Yes, he would just return and give him something and say that I have given to the person that I have given so he can go back and [inaudible – speaking simultaneously]

ADV PRETORIUS SC: But the person accounting to the
10 system, as it were, the accounting system, would be the runner, the person deputised by the senior official, is that correct?

DR DINTWE: That is correct, Chairperson. And during the investigation what was also surprising is that – I think that we have an affidavit, I stand to be corrected, here by the staff members in my office, but many instances where a subordinate will tell us that I did not have any proof that the money was given to a source, I do not even know who that source is.

20 **ADV PRETORIUS SC:** Yes, that is a point I wanted to raise, the subordinate or the runner who is used to collect the money allegedly to hand over to a source and as used by the senior officer, that subordinate or runner has never seen, in this example, the source.

DR DINTWE: Not at all.

ADV PRETORIUS SC: Cannot. But, nevertheless, accounts and says that the money has gone to the source.

DR DINTWE: Yes, that is what the account will say.

CHAIRPERSON: Let me also just make sure I understand it. So you have somebody such as a CFO who, in terms of his authority and job description, is not supposed to have a source.

DR DINTWE: That is correct, Chair.

CHAIRPERSON: And a source here is an operative, is
10 that right or it can be...

DR DINTWE: I do not know I will – I will not be discussing the method here.

CHAIRPERSON: Ja, okay.

DR DINTWE: But a source could be somebody at a different rank.

CHAIRPERSON: Who gives information.

DR DINTWE: Yes, it is somebody that takes a rank, ja, it is not a police official.

CHAIRPERSON: Hey?

20 **DR DINTWE:** It could be somebody that ...[intervenes]

CHAIRPERSON: Yes, okay.

DR DINTWE: That I saw when this thing was happening.

CHAIRPERSON: Ja. Yes, it is somebody who gives information required by the organisation.

DR DINTWE: That is correct.

CHAIRPERSON: Okay, alright. And there could be different categories but that is the general.

DR DINTWE: Yes.

CHAIRPERSON: So if I, as CFO, want some cash, maybe from time to time I could just have somebody that I connect with, a subordinate of mine who, in terms of the law, is entitled to have a source.

DR DINTWE: That is correct, Chairperson.

CHAIRPERSON: And then I give the money to my
10 subordinate to give to the source and then I get it in some other way or no money gets given to the source physically but the records are written in such a way as if my subordinate gave money to a source.

DR DINTWE: No, you I misunderstood me there.

CHAIRPERSON: Yes.

DR DINTWE: And it is very critical that I explain.

CHAIRPERSON: Yes, yes.

DR DINTWE: Now the CFO instructs the subordinate to go to accounts department and collect money there.

20 **CHAIRPERSON:** Oh.

DR DINTWE: And the reason that he is using there is to say that you know that I have ...[intervenes]

CHAIRPERSON: A source.

DR DINTWE: A responsibility to handle a source.

CHAIRPERSON: Yes.

DR DINTWE: So this money that I am taking from you is for a source.

CHAIRPERSON: Is for a source, okay.

DR DINTWE: But it never goes to the source himself, he gives it to the CFO.

CHAIRPERSON: To the CFO.

DR DINTWE: Yes.

CHAIRPERSON: Oh, okay, so ...[intervenes]

DR DINTWE: And then the CFO tells him that no, do not
10 worry, I am going to give to the source.

CHAIRPERSON: Oh, so suddenly the CFO must give to the source.

DR DINTWE: Yes, that is the claim by him.

CHAIRPERSON: But would the – would both of them know – I guess the CFO knows the subordinate would know what is going on, that this is criminal?

DR DINTWE: They know, the CFO knows, the subordinate knows.

CHAIRPERSON: The subordinate also knows.

20 **DR DINTWE:** Yes. That is why we are calling them runner because I think that there was a suggestion by the evidence that they could have been getting some kickbacks.

CHAIRPERSON: Ja, ja.

DR DINTWE: But we did not have that – because why

would you go there?

CHAIRPERSON: Yes.

DR DINTWE: Because when questions are asked, they will not be posed to the CFO, they will be posed to yourself as a real handler, as you claimed.

CHAIRPERSON: Yes, yes, okay.

ADV PRETORIUS SC: And there is an added element that you have just said that perhaps the public requires a more detailed explanation or a clearer summary. Chair, I will
10 attempt to do that. The CFO says to a subordinate you go and fetch money and you tell administration that it is for a source and you give it to me.

DR DINTWE: That is correct.

ADV PRETORIUS SC: And then the CFO says I am going to give it to a source. He may or may not do so.

DR DINTWE: That is what our proposition is.

ADV PRETORIUS SC: Right. So he may keep the money.

DR DINTWE: That is correct.

ADV PRETORIUS SC: He may give the money for another
20 illegitimate purpose because the CFO has no mandate or power to deal with monies in this way.

DR DINTWE: That is correct, Chairperson.

ADV PRETORIUS SC: That is why he must use a subordinate who had the power to go and get the money in the first place.

DR DINTWE: That is correct.

ADV PRETORIUS SC: But importantly, also to report that the money has been given to the source, when he does not know that at all.

DR DINTWE: That is correct.

CHAIRPERSON: So - but the subordinate also knows that what the CFO is doing is criminal because he knows that it is not part of the CFO's job to be paying sources or is there no such - or is that not the position?

10 **DR DINTWE:** Although we would not have concrete evidence to say that they were getting kickbacks and that is why I am using this word selectively of a runner.

CHAIRPERSON: Yes.

DR DINTWE: But he is aware that in terms of the prescripts that is not allowed.

CHAIRPERSON: Yes.

DR DINTWE: And if he was oblivious to that, he would ask the CFO as to why do you not go straight there?

CHAIRPERSON: Yes.

20 **DR DINTWE:** So this is an activity of a person who is fully aware that the CFO cannot handle a source.

CHAIRPERSON: Well, I guess the bottom line is the law does not allow the CFO to be taking money to a source because if the law allowed that, the CFO, if he was acting lawfully, would go to the accounts department himself.

DR DINTWE: That is correct, Chairperson.

CHAIRPERSON: Yes. The reason why he must use the subordinate is because he is not allowed to go there and claim money from the accounts department for purposes of giving to a source.

DR DINTWE: That is correct, Chairperson.

CHAIRPERSON: Ja.

ADV PRETORIUS SC: You give another example in paragraph 134, page 817, but you have dealt with the
10 system that can be used or abused. Paragraph 135 you say:

“There are many other instances which include the misuse of monies from the Secret Service account. Misuse of safe houses and the renting out of personal houses by senior managers as safe houses to Crime Intelligence at inflated prices. Investigations into these abuses cannot be concluded because there is a refusal to declassify documents.”

20 Let us deal with the first issue first. We know from other sources that these – this type of misconduct or illegal use of monies and assets has occurred but was this also part of your investigations and were these your findings?

DR DINTWE: These are finding, Chairperson.

ADV PRETORIUS SC: On investigations into the detail?

DR DINTWE: The details.

ADV PRETORIUS SC: And you have summarised the findings here, or you have summarised the type of malfeasance that occurred?

DR DINTWE: That is correct.

ADV PRETORIUS SC: Right, would these issues and reports and findings also be included in your certificates?

DR DINTWE: That is correct, Chairperson.

ADV PRETORIUS SC: Alright. You then say something in
10 addition in paragraph 135. You say:

"Investigations into these abuses cannot be concluded because there is a refusal to declassify documents."

Before you answer the question that I would like to put to you, I would like to put you a preliminary question. Is it clear to all concerned that classification cannot be used to conceal criminality?

DR DINTWE: That is the general principle, the general rule.

20 **ADV PRETORIUS SC:** Is it also clear to all concerned in terms of the legislation that classification cannot be used as a reason for not giving you documentation?

DR DINTWE: That will be my response, but there is a rider to that. That last sentence does not refer to us. It does not refer to the investigations conducted by the office

of the Inspector-General of Intelligence. I do not know. I may have – it sounds as if that is the submission but it is not a submission. When I say investigations cannot be concluded, now I am referring to criminal investigations and we have got instances such as those.

ADV PRETORIUS SC: Right.

DR DINTWE: In our chains they do not have a right to withhold any information.

ADV PRETORIUS SC: Yes.

10 **DR DINTWE:** Whether classified or not.

ADV PRETORIUS SC: That's good.

DR DINTWE: We always give to others. So our investigations in the specific case will be concluded, but the other investigations that follows will be hampered by refusal to declassify.

ADV PRETORIUS SC: Right.

DR DINTWE: So I am referring to investigations such as those conducted by IPID, for instance, and those maybe conducted by the Hawks.

20 **ADV PRETORIUS SC:** We will come to those in detail in due course. The regulations in terms of security are unfortunately and ironically and quite improperly kept in our submission themselves secret. So the law or the regulation which says you cannot use classification to conceal criminality secret, but that principle is widely

known, as I understand it.

DR DINTWE: It is widely known and I think that it is laughable. In fact, the team have always laughed about it. Maybe I should just explain what happened with this specific one.

ADV PRETORIUS SC: Yes, please.

DR DINTWE: Now, the SSA wanted to develop a regulation which will sort of put into effect the provision of the missed documents. Now we decided that we should
10 have our own document in the regulation which takes that position which states it cannot classify documents to hide malfeasance. But guess what they do, Chairperson? The very same reason they classify it as secret.

ADV PRETORIUS SC: So it has the consequence, Chair, that any person affected or interested in unlawful classification of documents cannot source the very regulation that deals with it.

CHAIRPERSON: But the classification of the law, you know, the classification of such a document cannot be
20 legitimate. I mean, if you do that, how do you expect that people will benefit from the principle that you cannot use classification to hide criminality?

ADV PRETORIUS SC: Yes. Well, Chair, the idea that one could classify the law.

CHAIRPERSON: I mean, you just have to say it to realise

how absurd it is.

DR DINTWE: There is another dimension to that, Chairperson. Now, I am just imagining that if it was myself and I contravened the same regulation and that they wanted to ask me questions. Let's say we are an operating and over-classified and they said oh, but you have contravened that. My response will be that once you classify and say that you will apply a principle of need-to-know, so which means that I may not have been considered
10 as a person who should be aware of that particular ... And I can easily say that was classified. I did not have access to it. So you are defeating your own purpose, your own objective by ensuring that people do not over classify because they will say but I am not aware of that.

ADV PRETORIUS SC: Yes. And it goes a lot further than criminality. It talks about administrative abuse as well, that classification cannot be used. We can get the wording. I think you deal with it somewhere in your statement. You deal with the expression and the missed
20 document, but let us deal with it when we get there. In paragraph 136 – well, perhaps we should then just clarify what you say in paragraph 135, that these abuses, this criminality, is reported to a law enforcement agency.

DR DINTWE: Yes, but over and above that their management – divisional management of Crime Intelligence

also promised us that they are going to deal with these issues and they are going to refer them to law enforcement agencies, because our recommendation would be that here is a clear case of criminality, so please refer it. We do not want to replace the management of these agencies. We can only flag and point out to where malfeasance, especially criminality, would have taken place.

ADV PRETORIUS SC: It is up to them to take it further in terms of law enforcement, prosecution and the like.

10 **DR DINTWE:** That is correct, Chairperson. And I think that they would have developed an access path for me if I did have to do that, I mean, into the courts. I could be at the Magistrate's Court and the other courts every day of my life because of the level of malfeasance in those particular ...

ADV PRETORIUS SC: Now, but you say that – in paragraph 1.35 you make the point that these law enforcement agencies, their investigations and prosecutions are hampered by their refusal to declassify
20 documents.

DR DINTWE: That is correct, Chairperson.

ADV PRETORIUS SC: And in paragraph 136 what is the evidence that you give there?

DR DINTWE: Alright.

ADV PRETORIUS SC: It is another form of fraud or

malfeasance.

DR DINTWE: Yes, it is another - it is another form. And maybe I can use an example of what happened there. So they would have told us that they procured and ...[indistinct]. Chairperson, I do not want – because it will be names of companies normally. But on Advocate Pretorius's laptop he will have, like, for an example antispymware in that. So normally he will – you will pay a certain licence fee. So they bought something along those
10 lines in the region of millions and the intention of that particular licence was to protect the principles within the environment – within the management so that their gadgets could not be easily intercepted by foreign, you know, agents and so forth.

But now what we found – because I went there personally again. What we found is that, in fact, the licence itself or the software was never delivered and the investigators in my office were actually tipped that it was never delivered and it was about to expire. So normally
20 you will pay it for a period of 12 months. But when we went there we satisfied ourselves that it was supposed to be still there and we requested that we should be taken there so that we can observe it. And there was a confirmation that it was not available. It was never delivered.

ADV PRETORIUS SC: So procurement funds, funds for procurement, are basically stolen.

DR DINTWE: That is correct. They buy non-existent things.

CHAIRPERSON: Which means they pocket the money.

DR DINTWE: That is the only inference I think that one could make.

CHAIRPERSON: But on the records – the records will say the money was used to buy such-and-such an equipment or
10 something like that but the equipment would not be there.

DR DINTWE: That is correct, Chairperson.

ADV PRETORIUS SC: And just to confirm once more, these various investigations in their detail, including your findings and recommendations, would be in the certificates you have spoken about.

DR DINTWE: That is correct. I confirm that, Chairperson.

ADV PRETORIUS SC: Okay. Let's move on then to paragraph 137 on page 817. What is a grabber without revealing too much method?

20 **DR DINTWE:** Well, the general came back that they use and there is a second gentleman who is appearing before a court in Centurion ...[indistinct] so it is in the public domain.

ADV PRETORIUS SC: Okay.

DR DINTWE: But a grabber is an equipment that can be

placed within a particular radius and it will be able to create a tower. But there are side issues. But it will create a tower. So, in other words, when I call the Chairperson you will have the other line, so that machinery will be, like, between myself, so call it eavesdropping, because that particular person that is not really prevent my communication to reach you but the only effective ability of hearing the conversation between myself and the Chairperson.

- 10 **ADV PRETORIUS SC:** If the grabber is placed in the required radius of a party conference, and you gave this evidence now, it would be possible for the person in control of the grabber to hear everything that is spoken over a cell phone.

DR DINTWE: That is correct, *ja*, including it goes to the extent of emails as well.

ADV PRETORIUS SC: Emails as well.

DR DINTWE: So let us say digital communication in general.

- 20 **ADV PRETORIUS SC:** So all electronic communications would be able to be monitored within the specific required radius of the grabber?

DR DINTWE: That is correct, Chairperson.

ADV PRETORIUS SC: So in paragraph 137 you refer to media reports. Would you, without naming the company

and the name of the person who is the director of the company, please – and I will explain the circumstances thereto in due course, but would you tell the Chair the story of the grabber?

DR DINTWE: Alright.

ADV PRETORIUS SC: And its procurement.

DR DINTWE: Okay. However, we use the names that we will have used. I think it is very important to refresh the Chairperson's memory to say that there was this gentleman
10 called – that we called Ivani here.

ADV PRETORIUS SC: Ivani?

DR DINTWE: Yes. Who is a director of a company called IDI. So this person is the person who accompanied a group of other people to go investigate ...[indistinct]. He is the same person now, but he is appearing under the other circumstances. Now, just days before the NASREC conference I received a call from Mr Mbindwane, Mr Bongani Mbindwane. He was given notice. I am aware of that, Chairperson. And at that time he was the advisor to
20 the then Minister of Police, Mr Fikile Mbalula. And what he informs me is that, "There is an urgent issue that I want to discuss with you." And obviously he was telling me that he is sent by the minister, but I really have to impress upon the Commission that the minister never requested me to attend that particular meeting but I went there. And then

when we met at that particular place he told me that there was a group of backpackers who wanted to influence the conference, the outcome of the conference, the NASREC conference, and ...

ADV PRETORIUS SC: That is a group?

CHAIRPERSON: I'm sorry. A group of what?

DR DINTWE: He called them backpackers.

CHAIRPERSON: Backpackers?

DR DINTWE: Yes.

10 **CHAIRPERSON:** Okay.

DR DINTWE: Well, they use that concept in criminology and so forth, but it will be, like, people who will claim to be tourists, for instance, so they are known to have those backpacks, you know. It may be full of cameras and so forth.

CHAIRPERSON: Because they ...[indistinct].

DR DINTWE: Mr Chairperson, that is how you describe that group of people who were said to be coming from a foreign country and they were, you know, littered around
20 Soweto. So he told me that the biggest challenge that they have is that the then acting divisional commissioner of ...[indistinct] did not want to procure the grabbers. He said that they were actually in need of grabbers to the region of R210 million. However, because the date was too close they could settle for one grabber at a tune of R45 million.

He explained, like, you know, the idea. This is how it works. These are the capabilities so do not be surprised that it is so expensive. An ordinary grabber costs around R7 million.

But the reason why he called me was to say that the divisional commissioner was scared or did not want to purchase because I was conducting some investigation with the previous procurement. And I felt so bad. I said how could they want to use my name and if something
10 terrible really happened it will seem as if, you know, I was involved in that, hence I promised him that I will go to the divisional commissioner and change it. "No, no, do not worry. If there is a threat and so forth, leave. Continue. Manage the organisation and make decisions." And that is what I did. I left there immediately and I went to see the divisional commissioner. I know I am taking long, but I think it is important to do this.

When I got to where the divisional commissioner was he was not at his headquarters. He was there at the
20 other place. We met. So we will normally meet in a room, so he had ...[indistinct] room. We did not even get to sit down, because the divisional commissioner then asked me, "Are you aware of the company that they want me to procure from?" I said, "No, he did not tell me." And he mentions this company, IDI, and I immediately said that,

"No, no, but he was not honest with me, hence I am no longer getting involved in this particular issue." "Then I understand why you do not want to procure." And that is where we ended on that day, claiming, the divisional commissioner that, "No, no, I was coming to permit you or somehow tell you that I will not stand in front of any procurement." But in this instance I am no longer getting involved.

ADV PRETORIUS SC: I would say in summary there was
10 an attempt to procure and it seems to me that you suggest,
at least in your statement or your affidavit, at an exorbitant
price a grabber for use at the NASREC conference of
December 2017.

DR DINTWE: That is correct, Chairperson.

ADV PRETORIUS SC: Is it correct that that intended
procurement was halted by IPID?

DR DINTWE: That is correct.

ADV PRETORIUS SC: And amongst the reasons, as you
say in your statement, was that the company from whom
20 the grabber was to be procured had already been flagged
in relation to irregular procurement previously.

DR DINTWE: That is correct, Chairperson. But we also
as the office of the OIGI we are involved in keeping the
IPID. In fact, a senior manager from my office was working
with a senior manager from IPID, because we had

information and I am calling it *information*, not *evidence*, information to say that the rest of the money will be used to buy votes at NASREC.

ADV PRETORIUS SC: So not only was the procurement process irregular, not only was the party from whom the grabber would be procured already under investigation for irregular procurement, but you had information that you used to which the grabber would be – sorry, not the grabber – used to which the money would be used, either
10 through inflated procurement ...[indistinct] inflated procurement prices was the information you received was to buy votes at NASREC.

DR DINTWE: That is correct. And it sounded probable. That's when we interrupted or intervened, because the grabber's original price or average price would be R7 million, but here in this case they wanted R45 million to buy only one grabber.

ADV PRETORIUS SC: Right. And during this process when problems arose about the procurement, influence was
20 sought to be exercised on you to facilitate the project. Is that correct?

DR DINTWE: That is correct, Chairperson. Maybe I should also mention that I stopped somewhat about this procurement, but there was a subsequent meeting again that took place in front, Chair.

ADV PRETORIUS SC: Well, let's tell the Chair about that, please?

DR DINTWE: Alright. Now, after withdrawing – telling the divisional commissioner that I will not get involved in this because I did not make those decisions, I then received a WhatsApp message that I am attaching the documents that will be coming from Mr Bo Mbindwane, saying that, "AG, I had thought that we agreed on a particular position." And my understanding is that that WhatsApp message came as
10 a result of the Divcom, the divisional commissioner, telling Mr Mbindwane that, "No, no, that guy did not, you know, agree or he did not want to get involved in this particular process." And then I said that, "I will settle then for a tripartite meeting, because I spoke to you alone. I went somewhere else and I got a different story, so let us meet." And yes, of course subsequently we met here in Sandton and again I reiterated that I do not get involved in procurement by any of the services, as long as they procure in accordance with the applicable prescripts,
20 whether applicable with any other legislation that regulates procurement. And I ended up in leaving that particular meeting and they give ...[indistinct] behind with Mr Mbindwane.

ADV PRETORIUS SC: Alright. Now, so Mr Mbindwane had been involved in procurement at all?

DR DINTWE: He was involved. That is ...

ADV PRETORIUS SC: But should he have been involved?

DR DINTWE: No, he should not have. He is a ministerial special advisor. Even the minister, I mean, for that matter never really gets involved in ... That is exactly what they tell us. And in this instance I have to be very clear that even Minister Mbalula has never, ever discussed this matter with myself. It was the advisor who was pushing for this.

10 **ADV PRETORIUS SC**: Alright. And the relevant crime intelligence unit that would have been responsible for the purchase of this grabber, was it ever consulted? Did you investigate this issue?

DR DINTWE: I investigated it though they were never ...[indistinct].

ADV PRETORIUS SC: They didn't even know?

DR DINTWE: They didn't even know that there was a process to a trial and a purchase of this particular equipment.

20 **ADV PRETORIUS SC**: Alright. Now, you say ...

DR DINTWE: And – sorry, sorry. This could be very much important to say that if I'm hacking surveillance in crime intelligence journals, they call me end user. In other words, I am the one who initiates the process, who go to the procurement people and tell them that I am in need of

these three bottles of water and then they will conduct their own research, source the prices and then buy. So I am an end user. I must initiate. It cannot be initiated anywhere else.

ADV PRETORIUS SC: Alright. Now, you say in paragraph 143 that:

10 "Media reports suggest that the money was, in fact, intended to be utilised for vote-buying during the mentioned ANC conference. I cannot comment on the correctness of these reports other than to note that the procurement process was stopped when IPID became aware of the irregularities and raised a query."

Is that – are those comments an accurate reflection of where you stand in relation to your own knowledge?

DR DINTWE: It is correct and that is the reason why I said that information should not be misconstrued for evidence.

20 **ADV PRETORIUS SC:** Right. So you were relying on media reports. You had a suspicion. Those suspicions were corroborated but you have no knowledge of that fact, of the vote-buying.

DR DINTWE: That is correct, Chairperson.

ADV PRETORIUS SC: Right. But you say that that matter is under investigation by IPID.

DR DINTWE: Yes, it was under investigation and there was also litigation with regard to that particular matter, in fact, yes. There was a finding per se – I mean, a judgment which states that those documents must be declassified.

ADV PRETORIUS SC: Now, well, that is the point. IPID was investigating the series of events, right?

DR DINTWE: That is correct.

ADV PRETORIUS SC: Were they able to access the relevant documentation?

10 **DR DINTWE**: Not at that stage.

ADV PRETORIUS SC: Not at that stage. Before the court case?

DR DINTWE: Before the court case, yes.

ADV PRETORIUS SC: And how did this affect their ability to investigate this obvious – well, certainly obvious allegations of criminality?

DR DINTWE: The investigation could not even take off as far as I know, because there was an application by police management, including Mr Mbindwane, to say that IPID cannot have access. And I think that interdict was, you know, issued until there was an appeal or a review as far as that decision was concerned, yes.

20

ADV PRETORIUS SC: Now, all these are serious allegations. Are they currently still under investigation?

DR DINTWE: We know a lot more now. But even at that

stage as the office we knew more than what IPID knew because we were in possession of these documents.

ADV PRETORIUS SC: Right. And is your office investigating the matter?

DR DINTWE: Yes, our office also got involved in the investigation of that particular matter. Remember that I always say, Chairperson, that the other agents cannot stop the investigation on our behalf or at our instance, because we are reporting to different authorities. So IPID was
10 conducting a criminal investigation. We were conducting, if you'd like, oversight investigation.

ADV PRETORIUS SC: And would you have reported your investigations through the various instances in your certificates or would you do that in the future?

DR DINTWE: It will be in the certificate, this one, because it is a 2017 matter, so it will be in the 2017/2018.

ADV PRETORIUS SC: So all this has been reported to Parliament?

DR DINTWE: That is correct. Yes, that is correct.

20 **ADV PRETORIUS SC:** And the response?

DR DINTWE: No, there was not a response as far as that is concerned. But I think that even the ANC members in that committee were really concerned and worried about what I have reported ...[indistinct].

ADV PRETORIUS SC: Was this reported to you, this

concern?

DR DINTWE: *Ja*, the concerns. So it will be during the deliberations, during presentation when they started comments and so forth to say that this is worrisome that it is actually happening.

ADV PRETORIUS SC: Right. So did you make a presentation on the basis of your certificate to the JSCI in relation to this?

DR DINTWE: That is correct. I did that, Chairperson.

10 **ADV PRETORIUS SC**: And what ...? Well, I suppose the proceedings are top secret. Is that not correct?

DR DINTWE: *Ja*, they are.

ADV PRETORIUS SC: So we will consider that position and deal with it but maybe the Chair wants to ask a question.

CHAIRPERSON: Well, I'll ask the question. You know what you would have said to the committee. You cannot tell us what the committee said, but what you can tell us is whether subsequently there was anything you learnt there
20 which indicates that the committee has done something about it.

DR DINTWE: I do not think I clearly understand your question, Chairperson.

CHAIRPERSON: Okay. I am trying to deal with the problem that you cannot tell us what the committee says,

but you can tell us if indications are that something has been done.

DR DINTWE: Okay. Now ...

CHAIRPERSON: In terms of what you have observed since then.

DR DINTWE: The other part then happens in the public domain.

CHAIRPERSON: *Ja.*

DR DINTWE: It displayed itself, so I do not have
10 reservations informing the committee what happened then about this.

CHAIRPERSON: *Ja. Ja.*

DR DINTWE: I think two issues that I want to mention, Chairperson.

CHAIRPERSON: *Ja.*

DR DINTWE: Now, during the time that it was reported in the public domain there was an expression by senior ANC officials who are not even in Parliament to say that this is worrisome and these monies are used to fuel the factions.

20 **CHAIRPERSON**: Factions.

DR DINTWE: Yes. In the ANC and some of them were also worried to say that to what extent can Intelligence be involved in the internal for that event, because that is an internal ANC event, it is not a government – government event.

CHAIRPERSON: H'm.

DR DINTWE: There is confirmation that officials of Crime Intelligence were even removed from NASREC and they were told to go a little bit far because they were causing problems for that particular conference, but now after the Court decision this issue came to the fore again, and now there are two incorrect narratives that have been created about this particular issue.

That the declassification of the documents revealed
10 two things that General Sithole never signed the procurement of this grabber of R45million. The second issue that we lost the declassification is that General Sithole kept on telling the – my other managers, the management that you can do this as long as you comply with procurement prescripts.

So he kept saying those two things but the problem is that the narrative that was being built, whilst this was declassified was that General Sithole signed the submission and that he could have allowed a deviation, but
20 it never really reached a particular stage.

The other issue which is very important and critical to National Securities, but it is in the public domain, again, where Minister Cele accused or said that this grabber with the R45million was also - could also have been used to intercept the emails of the then Deputy President of the

ANC but that event took place way before we were involved in that investigation, way before this attempted procurement.

So those are the issues, the narratives that are incorrect, and they've played themselves out now in the public domain.

ADV PRETORIUS SC: And the correct position, at least the position evidence by the documents now declassified and public was at least that General Sithole did not
10 approve.

DR DINTWE: That is correct, Chairperson.

ADV PRETORIUS SC: Right, you deal in paragraph 144 Dr Dintwe with a new issue and that is an issue involving the same company, Ivane's company and you deal with a different form of corruption or malfeasance in relation to information technology, solutions for Intelligence collection. Could you tell the Chair briefly about what happened here, you deal with in paragraph 144 and 145 of your statement?

20 **DR DINTWE:** Yeah, so this is the general and similar principle that they procure irregularly and sometimes goods are not delivered, the problem that I have expressed. But here let's say that they change the tact, they changed modus operandi.

In this instance they call for quotations and when

we analysed these quotations, there were certain facts, which came to the fore. The first one being that the font the manner, the structure of the quotations was actually similar. The other concern or what we established was that one of the companies that provided one of the quotations was not even involved on this, they told us that they are an HR consultancy company, and they say that they have never even sold an equipment of that particular nature.

ADV PRETORIUS SC: Alright but just stop there, I am
10 sorry to do this, but I think maybe you and I are out of sync here. I think you are dealing here with paragraphs 146 and 147 the voice encryption system.

DR DINTWE: Oh, ja.

ADV PRETORIUS SC: If you could go back please to paragraph 144 where there was a quotation from the Council for Scientific Industrial Research, CSIR, for the amount of R7million for a particular software solution, and tell the Chair about that incident please, and then we will get on to the voice encryption system.

20 **DR DINTWE:** Alright now...[intervene]

ADV PRETORIUS SC: So at the top of page 820.

DR DINTWE: Yes, I see that look CSIR is a government entity. It is something on those lines and the researchers there will develop some of the solutions for even for State information technology agencies or for other government

departments. So in this instance, they had offered the Crime Intelligence that we could develop this kind of IT solution for yourselves, and it was going to be at around R7million but now that offer was then ignored and SUB-CI then called for the other potential over and above what CSIR would have offered them.

ADV PRETORIUS SC: For R33million.

DR DINTWE: For R33million now this time around.

ADV PRETORIUS SC: Yes, but to make matters worse,
10 you then did an investigation to find out whether this IT solution had ever been actually installed.

DR DINTWE: That is correct Chairperson I did that and I visited personally with members of my office, visited.

ADV PRETORIUS SC: And what did you discover?

DR DINTWE: We discovered that it was never delivered to Crime Intelligence.

ADV PRETORIUS SC: So quotations go out for an IT solution CSIR, say we are provided for R7million.

DR DINTWE: That is correct Chairperson.

20 **ADV PRETORIUS SC:** This particular company says we will give it to you for R33million.

DR DINTWE: That is correct Chairperson.

ADV PRETORIUS SC: It is procured from this company, in inverted commas.

DR DINTWE: It is procured in inverted commas, monies

are paid.

ADV PRETORIUS SC: Monies are paid but nothing is installed on your finding.

DR DINTWE: That is correct Chairperson.

ADV PRETORIUS SC: And you relate that your personal visit and your personal investigations in paragraph 145 and you say you were informed that the original product no longer existed and had since been replaced but you couldn't be shown the replacement either, is that correct?

10 **DR DINTWE:** I could not be shown a replacement as well, Chairperson.

ADV PRETORIUS SC: Right.

CHAIRPERSON: So again, it's just theft.

DR DINTWE: Pure theft.

CHAIRPERSON: Ja.

ADV PRETORIUS SC: So your conclusion was in paragraph 145, that the amount of R73million was fraudulently paid from Crime Intelligence to this company for a non-existent product and you then say:

20 "IPID has since been investigating this matter that has to go it again, not succeeded in securing pertinent classified documents relevant to its investigation."

DR DINTWE: That is correct Chairperson.

ADV PRETORIUS SC: What would be secret about these

procurement documents?

DR DINTWE: I am arguing always argue that you cannot over classify this issue, just a pure procurement issue. There is nothing National Security about it, there is nothing Intelligence about it, it is like procuring a car.

ADV PRETORIUS SC: Right, and then on paragraphs 146 and 147 on page 820 and following, you deal with the voice encryption system, procurement process, what happened there just briefly? You talk about cover quoting.

10 **DR DINTWE:** Yes, but it is the same company now, this company gets involved in all these kinds of procurement, which I can supplies him and irregular instances not even getting delivery but in this instance that system - oh, but on the paragraph I am talking about flouting of their procurement regulations again.

ADV PRETORIUS SC: Which was also existent you say in relation to the previous issue that you have discussed the software solution, you said that prescripts were not followed.

20 **DR DINTWE:** That is correct Chairperson.

ADV PRETORIUS SC: Here prescripts were also not followed in relation to the voice encryption system where it was procured for about R23 million.

DR DINTWE: That is correct Chairperson.

ADV PRETORIUS SC: And you say that all manner of

procurement requirements were flouted.

DR DINTWE: I submit that Chairperson.

ADV PRETORIUS SC: Yes, you say:

“The system was not procured for any Crime Intelligence section responsible for any counterintelligence function.”

Is that correct?

DR DINTWE: Yes, that is correct.

ADV PRETORIUS SC: Right, but...[intervene]

10 **DR DINTWE:** Yes, so in the instance where I said Chairperson, that an end user will be somebody who is responsible for that particular thing. So if you say that it is a voice encryption, if you say it is a grabber and we are looking at some body as surveillance, you know, and all those an issues, but the end user will be somebody somewhere.

ADV PRETORIUS SC: The cost of this procurement, you say in paragraph 146, was R23million.

DR DINTWE: That is correct Chairperson.

20 **ADV PRETORIUS SC:** However you investigated the matter and you saw competing quotes one for R58million, were those genuine competing quotes?

DR DINTWE: They were not genuine and as I say the paragraph that we picked up some of the other thing, for example, in one of those, there was no VAT number, V-A-T

number and it was also apparent that the latter two quotations were for purposes of creating fictitious competition, also referred to as cover quoting, in contravention of their applicable Treasury regulations.

ADV PRETORIUS SC: And that - those were your findings in investigating the facts.

DR DINTWE: Those were my findings, because the name of the director of Company B was also the director of Company C.

10 **ADV PRETORIUS SC:** Okay, alright so a related company issues a quote for R58million and I understand what you mean by cover quoting it makes the quote for R23 million look reasonable.

DR DINTWE: That is correct Chairperson.

ADV PRETORIUS SC: Is that the point, you are making?

DR DINTWE: Yes, yes.

ADV PRETORIUS SC: Chair, I must place on record that we have a response from the company, the director who is Ivana but what they say in this response is:

20 “We are giving you this information, we do not know whether it is classified or not that is your problem.”

They say to us. So as a precaution, we have had to consult with the Director General of the SSA, the acting Director, General, who first see whether we can deal with the whole part, and if so, how we can deal with it.

So I am not in a position to put that now, we must go through the process first and then we will put it up for you. But we might just put it up to you anyway under the rubric that it is for your eyes, only.

CHAIRPERSON: Ja, no that is fine.

ADV PRETORIUS SC: Can we move on then on page 8712 to the failure of oversight over the Intelligence Services. Now we have dealt with this piecemeal in several parts of your affidavit to date but if you could just
10 summarise what you say, in paragraphs, 148 to 150 please, and you can do it in summary form because we have dealt with these issues.

DR DINTWE: Yes, and I might need to on paragraph 148, that I am not executing that failure only to the Joint Standing Committee on Intelligence. I am saying that we have failed also as the OIGI and I think that I would have provided reasons what I think were the reasons behind that because we were weakened and all those other things but the failure there of oversight over this organisation is also
20 attributable to us as the office.

ADV PRETORIUS SC: Alright, but in relation to that you have given evidence to the Chair about your independence, or lack of independence, the structural and organisational challenges you face as the office of the OGI its capacitation and funding, we have dealt with that evidence

it is all there. You ask the question in page 8748, you say:

“The Chairperson of the Commission may reasonably ask how weaponisation and fraud and corruption in the Intelligence Services was permitted to continue in the face of the oversight responsibilities which should have been exercised by the OIGI, that is your office, and what the reasons for the failure of such oversight was in the circumstances.”

10 So you are dealing here with a finger that might be pointed at your office.

DR DINTWE: That is correct Chairperson.

ADV PRETORIUS SC: You have dealt with issues in relation to this earlier in your statement last time you appeared before the Chair. But would the same comments that you make now apply to the JSCI with the JSCI is not unrelated in this series of events?

DR DINTWE: It is related and I think that is where previously I said to the Chairperson that no one and no
20 one within this fraternity should come to you and mislead you that we were not aware of this because on paragraph 149 I am dealing with the certificates and I am also referring to what I would have sent, and I think that I am also attaching the letters that will accompany those certificates to the Joint Committee on Intelligence.

ADV PRETORIUS SC: You say in paragraph 149 if I may just read it for the sake of time:

10 “The certificates that have been produced and presented to the heads of the Intelligence Services, the Ministers of the three departments, and the JSCI over a period of time, reflect the many findings of wrongdoing by the Intelligence Services made by my office. Monies have been stolen from the Intelligence Services and in certain instances, these monies were used to fund parallel Intelligence capacities and to achieve political ends and or to fight factional battles. These certificates of different Intelligence Services that were issued during my tenure indicate how the resources of the Intelligence Services were misused, stolen and squandered. These certificates are annexed.”

Well, they are in the documentation that you will provide to the Chair in due course hopefully sooner rather than later. You list in paragraph 149.1, 149.2 and 149.3 you list and
20 identify the certificates for the years 2016,2017,2018, 2019 for the three Intelligence structures. That is Defence Intelligence, Crime Intelligence and the State Security Agency.

DR DINTWE: I confirmed that Chairperson.

ADV PRETORIUS SC: Alright.

CHAIRPERSON: Is the position that - I am just quickly having a look at those paragraphs, is the position that in regard to each service that falls under your jurisdiction, you have provided certificates for the same period, in terms of years, financial years?

DR DINTWE: That is correct Chairperson.

CHAIRPERSON: Okay.

ADV PRETORIUS SC: In paragraph one...[intervene]

CHAIRPERSON: Well, maybe – I may be taking you back
10 Dr Dintwe but you mentioned under the failure of oversight over the Intelligence Services, that you include your own office, that it also failed and then you said you could give reasons you were weakened and so on. It may be that you dealt with it earlier on but I have forgotten, can you just tell me, this is why the reasons why you say your office failed?

DR DINTWE: It is because Chairperson I mean, if you get an office and you get appointed, there is an expectation that you should come up with a turnaround general
20 strategy and without deviating looking at any reasons to justify that I am glad to say that maybe we could even have pushed more than this.

CHAIRPERSON: Yes.

DR DINTWE: And I know the attitude of the Chairperson I have heard you saying, telling other people we will

normally say that, but what did you do with the little that you had?

CHAIRPERSON: Yes.

DR DINTWE: So I should not come here and say that we melt down, we have really got broken down, to me I see that as a failure of the OIGI.

CHAIRPERSON: Okay, no, no, I am glad you say that because, you know, with these problems that the Commission is looking at to face the country, we will not
10 solve them until - unless people who are leaders are prepared to look at themselves, look at their own roles and say, I know, I accept that from my side I did not do enough here and going forward, this is what I am committed to doing to make sure that yesterday or tomorrow is not the same as yesterday, you know.

If we are not prepared to do that, and if leaders are not prepared to do that people who are in positions are not prepared to do that there is not going to be a change. So I am always glad when a leader, somebody in charge does
20 not just look at what others have done wrong, but also says, have I done enough on my side and what can I do differently going forward? So I am happy that you have said that.

DR DINTWE: And then there is an example, which further elucidate that Chairperson

DR DINTWE: That is correct Chairperson but for instance, over this four years I have struggled to get information, when in fact, the oversight act criminalises a refusal by any person in decent physical services and I always, you know, wanted to regard that as a last resort. So that is – this is an example of a lapse on our side and because it does not need money, it needs me to cross the roads, the nearest police station, open a case and not wait, not write four letters before I can get one signal as an information.

10 So we should not be myopic, about the challenges facing the office we could have done more.

CHAIRPERSON: No, thank you.

ADV PRETORIUS SC: In fact, have you sought to secure your powers through Court intervention?

DR DINTWE: I have done with the litigation that I would have referred to earlier.

ADV PRETORIUS SC: In paragraph 151, on page 822, Dr Dintwe, you deal with the failure to implement the recommendations of the OIGI, you have dealt with this
20 issue in questions, in answers to questions to the Chair. You say at the bottom of paragraph 151:

“Recommendations made and reports produced by the OIGI are largely ignored by the Ministry and the Director Generals of the Intelligence Services.”

Would that comment, apply equally to the JSCI?

DR DINTWE: That is correct Chairperson, there is this legal issue that I think that maybe during the arguments, the closing arguments maybe the legal team will deal with it because if a recommendation is developed and sent to their accounting officer for implementation, can we really bemoan the failure of the implementation and place it at the door of the legislature? I think that that distinction should be made, I think that the Joint Standing Committee on Intelligence should only hold the DG's accountable, as
10 to the extent that they fail to implement, because these other issues are administrative decisions and so forth, which are a sole preview or province of the director, Director General's. I do not know if the if that argument is raised whether it will be acceptable, but I did not want to venture into that myself.

CHAIRPERSON: Ja, no, no, that that is fine. I mean, the
- one has got to look at what each body or functionary is required to do by law and did they do what they are required to do by law or what they were empowered to do
20 but did not do.

So you look at the committee and say what is there role, what were they employed to do, what were they apply to do, what is it that they did, and what is it that they could have done and you look at there the DG's as well, if they should have pursued certain issues with DG's and they did

not then they have valid reasons for not pursuing those issues, those are the types of issues, questions that one looks at.

ADV PRETORIUS SC: And so perhaps my question was put in to general a term, as I understand, what you are saying is that the Chair has now pointed out is that many of your recommendations and reports would be directed specifically at functional officers, for example, the Ministry and the Director Generals of Intelligence Services, it would
10 be their duty to consider your reports and recommendations and where appropriate to implement.

DR DINTWE: That is correct Chairperson, I think that is what – not I think rather than to say that the majority of the recommendations will go to the accounting officers for implementation.

ADV PRETORIUS SC: Yes, but to the extent that they are not implemented an oversight body, such as yourself and the JSCI, would then come into play and be accountable for the failure to exercise oversight over the non-
20 implementation of your recommendations.

DR DINTWE: That is correct and I think that also in the spirit of legislation, you remember there is superintendence a role of the Ministers as well. So in any event, if a decision is done, I have recommended to the DG the Minister is aware of that recommendation. I think that

her role eventually in that office superintendence so she has more powers to us the DG, why are you not implementing this?

ADV PRETORIUS SC: And then in paragraph 153, you say:

10 “It is my submission, that it is necessary to provide appropriate enforcement mechanisms to the OIGI to ensure that its recommendations are implemented, and that the failure to do so should be visited with serious penalties.”

DR DINTWE: Yes, that is that is my submission.

ADV PRETORIUS SC: As for your recommendation, the Chair will have to think about that further. Chair it is 1 o'clock.

CHAIRPERSON: I see it is 1 o'clock. Do you have an idea how much more time you need because if for example, you were to be done in 30 minutes, maybe we could delay taking lunch and then take lunch after you are finished but if it is going to be longer then we maybe could take lunch?

20 **ADV PRETORIUS SC:** I would be at least another hour and I will try my best to finish within that time.

CHAIRPERSON: Okay, no that is fine let us take the lunch adjournment then we will resume at two.

ADV PRETORIUS SC: Okay I have communicated this to the next...[intervene]

CHAIRPERSON: No that is fine, so then 3 o'clock would be - they could be here. Okay, we take the lunch adjournment, we adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Okay let us continue.

ADV PRETORIUS SC: Thank you Chair. Dr Dintwe much of what follows to the conclusion of your affidavit we have dealt with albeit piecemeal and out of order already so given the
10 constraints that we have in regard to time I am going to summarise and extract what I think are important passages from your affidavit of course if I leave anything out you will take me to task on that issue and intervene.

You deal in paragraph 154 on page 822.

DR DINTWE: Yes I – may I please address the Chairperson on one point?

ADV PRETORIUS SC: Of course.

DR DINTWE: In less than a minute. I did not – I know I am surprising the evidence leader I just deliberately did not want
20 to discuss this issue with him.

CHAIRPERSON: Yes.

DR DINTWE: I want to provide the commission with the date on which the submission was signed with regard to the 26 managers.

CHAIRPERSON: Oh okay.

DR DINTWE: It just that – it is just that part.

CHAIRPERSON: Just that – okay no that is fine.

DR DINTWE: It was signed on 6 March 2021. Minister approved appointments on the 6 March 2021.

CHAIRPERSON: So...

DR DINTWE: For the 26 appointments.

CHAIRPERSON: Yes.

ADV PRETORIUS SC: What document was that?

CHAIRPERSON: So that is a submission you say. Is that
10 the submission to the Minister?

DR DINTWE: No, no it is an approval.

CHAIRPERSON: That is the actual – the approval of the
appointment.

DR DINTWE: Yes that is correct.

CHAIRPERSON: Oh okay. Okay.

DR DINTWE: Yes.

CHAIRPERSON: Of the 26 managers.

DR DINTWE: Yes on 6 March but on the 26th of March
something happened there.

20 **CHAIRPERSON:** Yes.

DR DINTWE: The – we have what we call a budget
controller.

CHAIRPERSON: Yes.

DR DINTWE: The budget controller wrote to the Minister
and the DG – the acting DG then saying that most of the

posts are not funded or were not funded so he was recommending that they should be put on hold until due diligence was completed. But that was just ...

CHAIRPERSON: Ja. Ja.

DR DINTWE: A recommendation from the budget controller. What we are sitting with it is an approval which is signed on the 6th of March.

ADV PRETORIUS SC: On the 6th of March.

DR DINTWE: 6th of March 2021.

10 **CHAIRPERSON**: The actual appointment is made by what – by – by who – by the DG but the – he must get the approval of the Minister or is it the Minister who makes the appointment?

DR DINTWE: In terms of the signatories the acting DG signs as a recommender.

CHAIRPERSON: Okay.

DR DINTWE: So – so you will have a compiler Chairperson.

CHAIRPERSON: Ja. Ja

20 **DR DINTWE**: And then you will have maybe assessed level of recommendation.

CHAIRPERSON: Recommended.

DR DINTWE: Maybe from the HR person and then you will have the acting DG then who was supposed to recommend – he did not do it he raised some concerns and then you have got an approval by the Minister dated 6 March.

CHAIRPERSON: Yes. So you say in regard to these 26 managers the acting DG did not recommend – did not sign – he had some issues?

DR DINTWE: Yes. So what he did is that he scratch both sides.

CHAIRPERSON: Ja.

DR DINTWE: And then he wrote – ja he wrote amended.

CHAIRPERSON: Ja.

DR DINTWE: So which means that in other words why do we
10 not say that he chose to – to abstain.

CHAIRPERSON: Abstain – to abstain. Ja.

DR DINTWE: Yes.

CHAIRPERSON: Ja it is like spoiling your – your ballot.

DR DINTWE: Yes. Yes. He spoilt it. He spoiled his ballot.

CHAIRPERSON: He spoilt his ballot. Okay but the – the Minister then approved but it means if I understand you correctly in approving the Minister is appointing.

DR DINTWE: Yes the people are occupying as we know.

CHAIRPERSON: Yes.

20 **DR DINTWE**: The positions.

CHAIRPERSON: Okay alright.

DR DINTWE: Yes.

CHAIRPERSON: Mr Pretorius. So you do not know what the response was to the budget controller's consent.

DR DINTWE: No we did not know that. What we know is

that the Minister upon signing that she also made comments – handwritten comments and one of the comments there was that the concerns raised by the acting DG will be discussed between herself and the DG.

CHAIRPERSON: Oh.

DR DINTWE: That is all what we know now.

CHAIRPERSON: Yes. Yes. But I would have thought that the appointing authority before he or she appoints would need to satisfy themselves whether there is budget for these
10 posts.

DR DINTWE: That is an ideal.

CHAIRPERSON: Yes.

DR DINTWE: And I think that the conclusion that I am able to draw now is that she appointed and in fact the recommendation of the budget controller was ignored.

CHAIRPERSON: Oh alright. Mr Pretorius.

ADV PRETORIUS SC: Thank you Chair. On page 822 at the bottom of the page you deal with the issue of limited access to information and you have throughout your evidence have
20 raised the issue of the – in regard to the fact that you and law enforcement agencies do not have free access to information enabling you to do your job adequately.

DR DINTWE: That is correct.

ADV PRETORIUS SC: Let alone ideally. In paragraph 154 you say:

“Members of my office and I have been allowed only restricted or managed access to information from the Director Generals and other heads of services evidenced by the protracted delays and or their lack of response to our numerous requests for information.”

Is that a fair summary of the position?

DR DINTWE: It is the summary of the – of our submission
10 Chairperson.

ADV PRETORIUS SC: And you say in paragraph 155:

“In light of the consistent constructive refusal and I will ask you what you mean by that in a moment to provide information on the part of the heads of services I have come to the conclusion that there has been a conscious move on their part to progressively and incrementally restrict or manage my access to information in order to frustrate the OIGI’s
20 Intelligence Services oversight mandate.”

Do you persist with that contention?

DR DINTWE: Yes I still stand by that contention.

ADV PRETORIUS SC: When you talk about constructive refusal what do you mean.

DR DINTWE: And I can only explain it but we borrowed that

word from a constructive dismissal in terms of the labour relations you know legislation to say that on face value you cannot say it is a dismissal but it is you know done in such a manner that it could confuse other people.

So what I mean is that in most cases we will still be given information but where there is refusal you will not get a letter which says that we will not give you that information. Let me make an example.

I will have a letter that – that will reach the
10 commission at a later stage where I was requesting information with regard to the deployment of operatives at party political events for instance. And the letter that I got in response was to say that may you please explain how this request fall – falls under your mandate. So I had to explain back to them to say that apart from monitoring and all those other issues I also have a function called investigation which includes maladministration which includes corruption but which also includes abuse of power. Because at that stage I had received complain from one of the political parties who
20 were saying that we do not even want this number of intelligence operatives attending our events. So – so constructive because they will not say that – we are not giving it to you but they will say explain to us how does it fit into your mandate.

ADV PRETORIUS SC: So whilst there may not always be a

direct refusal of information the conduct of the party from whom information is sought might make it clear that you are not going to get the information whatever you do.

DR DINTWE: That is correct Chairperson.

CHAIRPERSON: Well you told me last time that you are not a lawyer but constructive refusal seems also consistent with a judgment of the Supreme Court of Appeal that Mr Pretorius will probably remember where the Supreme Court of Appeal says well if a judge has given a judgment and the party who
10 lost applies for leave to appeal and that application for leave to appeal is not adjudicated for a long time it is constructive refusal of leave to appeal. So – so it has not been decided the Judge has not decided that he is refusing leave but because it is left hanging for too long it is constructive refusal of leave to appeal.

ADV PRETORIUS SC: That is some interesting example.

DR DINTWE: Yes Chairperson. Can I mention Chairperson that this is my third year of completing an undergraduate degree in law and a LLB

20 **CHAIRPERSON**: Oh that is good.

DR DINTWE: Yes. So I just decided to study that yes.

CHAIRPERSON: Oh no that is good – so good.

DR DINTWE: So I am not a lawyer but I do 00:10:56 of law.

CHAIRPERSON: Ja well I have every reason to believe you are going to pass and pass well.

DR DINTWE: Thank you Chairperson.

ADV PRETORIUS SC: We may be the opposite on the other hand.

CHAIRPERSON: One day.

ADV PRETORIUS SC: Lawyers could not con students of law. Paragraph 156 you mention that:

10 “In crime intelligence there appears to be a reluctance on the part of the divisional commissioner’s office to pursue disciplinary processes against senior member implicated in infractions.”

 Is that consistent with your findings?

DR DINTWE: It is consistent with my findings Chairperson and I think that will also have submissions so affidavit in our possession where junior members says that I would have stolen this particular amount but it will just be a fraction of the amount stolen by somebody senior. And they just get you know they just dismiss them in a short sort of time so there is a pattern there and it is our observation and finding.

20 **CHAIRPERSON:** But also does it mean there seems to be a culture that ah this is small why – why are you bothering about it somebody else has taken much more. Is that part of the – of what you are saying that there is that culture with the junior members or not?

DR DINTWE: Some of them may not take that angle.

CHAIRPERSON: Okay.

DR DINTWE: In arguing they will almost admit – let us say they will confess.

CHAIRPERSON: Ja.

DR DINTWE: And say that okay I am dismissed – I am here – I have stolen but there is somebody somewhere who it is known that they would have stolen more than myself but it is not – he is not saying that he should not have been dismissed. They only say that our dismissal happened.

10 **CHAIRPERSON**: So quickly.

DR DINTWE: So quickly.

CHAIRPERSON: Ja.

DR DINTWE: If compared to senior managers.

CHAIRPERSON: Okay.

ADV PRETORIUS SC: In paragraphs 158 and 159 on page 824 you deal with your conclusion that there has been some resistance by the intelligence services and you talking there crime intelligence I understand to criminal investigation by law enforcement agencies. And you say in paragraph 159:

20 “The law enforcement agencies in particular IPID and the DPCI that is the Hawks have been struggling to investigate and prosecute criminal cases of malfeasance and corruption committed by crime intelligence officials or committed by members of the public with the

assistance of the officials of crime intelligence.”

And you talk about investigations being stalled or delayed by amongst other things refusal to declassify documents. Is that consistent with your experience and findings?

DR DINTWE: It is consistent with our findings Chairperson without mentioning names I think that the Chairperson will be aware that there is a former head of crime intelligence who
10 is now convicted. And there is a matter which is enrolled which happened more than ten years ago. So you ask yourself why could you not just enrol this particular matter at that particular stage. But there is something again where we get – we get approached by some of there is this other captain who comes to us and he complains – he writes we have the file and he says I may have committed this particular crime and whatever however our preference – my preference is that it is you who should investigate us. So they know that we can only make recommendations and he
20 even went to an extent because you ask them what kind of recourse or recommendation that you are wishing for and he says that if you have those powers could you please tell IPID that they did not have powers to investigate myself because I am incriminating 00:15:23. So they get to choose between these two institutions.

ADV PRETORIUS SC: On page 824 paragraph 158 you deal with the concerted effort as you put it by management of crime intelligence to ensure that pending cases do not off the ground and avoid detection by oversight bodies. And you go so far as to say it had become clear that the implicated persons and entities enjoy the continued protection of the divisional management. You have just referred to one exception and General Lazarus and the proceedings against him would be another exception.

10 **DR DINTWE:** That will be another exception Chairperson.

ADV PRETORIUS SC: Matters were pursued against him.

DR DINTWE: That is correct.

ADV PRETORIUS SC: And of course there may be others but you deal with your findings I presume of your investigations and summarise those in paragraph 159, am I correct?

DR DINTWE: You are correct.

ADV PRETORIUS SC: Right. And you then go on in paragraph 160 on page 824 and following to deal with in
20 general terms the refusal of intelligence services to declassify information that relates to suspicious transactions or criminality and you have given examples and you have stated that on a few occasions in your evidence. But for example in paragraph 161 you deal with the contention that it would be palpably wrong for intelligence services to hide

behind classification of documents in instances of suspicion of criminality. Procurement issues for example need not be regarded as secret and if there are secret elements they could be redacted, am I correct?

DR DINTWE: You are – you are correct.

ADV PRETORIUS SC: Issues relating to safe houses and I am told by you that many of those issues are contained in documents which are refused declassification. How could that be dealt with?

- 10 **DR DINTWE:** That is correct there is another case that we were involved in and I think it is one of the enrolled matters now where one of the senior managers traded in his own personal vehicle there was a shortfall so he used the monies from a service from a particular service to pay for that particular shortfall and this case could not be concluded. The investigation was concluded long time ago but they could not prosecute merely because that administrative part was classified also and it has always been hidden under information that on face value one may think that it is
- 20 intelligence and it is not intelligence at all – it is a pure criminality and theft of state funds.

ADV PRETORIUS SC: And in relation to safe houses I think you suggested in consultation that one could just redact the address of that.

DR DINTWE: You could do that. In the documents that I will

be submitted or that are in my bundle Chairperson which is not in front of us now is that I make an example of them purchasing groceries from one of the supermarkets that we all go to and they classify that particular submission. Instead of just removing the house number and the address where these things will be taken to because it is a safe house yes.

ADV PRETORIUS SC: A safe house. Then in paragraph 163 you deal with the mis-document and that document as I
10 understand it adopted by cabinet on 4 December 1996 is available on the internet.

DR DINTWE: It is available and it – they only write or wrote restricted. Now restricted documents are not necessarily classified documents.

ADV PRETORIUS SC: In any event you say in paragraph
163

20 “The mis-document deals with classification and declassification of information. Of particular relevance to the issue at hand as paragraph 3 of the mis-document which sets out guidelines on the procedure for classification and the declassification of classified documents.”

And insofar as it is necessary we can deal with that in submissions to you Chair.

“The mis-document provides an explanation on classification documents and in particular paragraph 3.4 gives an injunction that security measures are not intended and should not be applied to cover up maladministration, corruption, criminal action etcetera or to protect individuals/officials involved in such cases.”

The point about that is that the mis-document
10 precludes classification in categories far wider than just
corruption and criminal action. It includes mis-
maladministration and I think regulation 3 of the Security
Services document goes so far as to say that classification
cannot be used to preclude or prevent embarrassment to
officials. Words to that effect I may not have the precise
words but the point I – as I have – understand from mis is
that classification is precluded or prevented or prohibited in
broader range of cases than simple corruption and criminal.

DR DINTWE: I confirm that that is our proposition
20 Chairperson.

ADV PRETORIUS SC: And you say in paragraph 165

“The mis-document enjoins the head of an
institution to test on a regular basis
classification of documents generated in the
institution and further provides that over

classification of documents must be guarded against.”

It seems that the point that is made there is the duty to manage classification as an on-going duty. It is not as if a document once classified it remains classified forever. Is that correct?

DR DINTWE: That is correct Chairperson and maybe one should hasten to add that what is a secret today may no longer – may not be a secret two weeks or two months to
10 come you know. So that is why it enjoins the head of services to keep on testing or retesting and identifying those that – those issues that should remain classified and those that need to be declassified.

ADV PRETORIUS SC: And in paragraph 167 you refer to the judgment of the constitutional court in the Independent newspaper versus Minister for intelligence case where the Deputy Chief Justice Moseneke laid down several factors to be considered when the disclosure of classified documents is being dealt with and he lists there a number of factors that
20 must be considered when a document which is formerly classified is sought to be declassified.

DR DINTWE: That is still our submission Chairperson.

ADV PRETORIUS SC: And you say in any event in paragraph 170 it has been said that members of IPID as is the case with members of the OIGI have security clearance

to the level of top secret.

So there would be no reason for refusing classified documents to you. The law prohibits that anyway but to IPID. They have security clearance anyway as I understand.

DR DINTWE: They do have that Chairperson. There are often some internal arrangements such as if one of the investigators is still waiting for the re-vetting and so forth that they remove them from cases of that – of that nature. But they are always alive to the requirement that only people
10 with top secret should access these documents in crime intelligence environment. I think that is now happening also with the investigative directorate. It is also happening with the Hawks as well to say that if you are waiting please step aside for a while until you are re-vetted.

ADV PRETORIUS SC: Right. And then in paragraph 171 you put before the Chair several examples of the mis-use or overuse of classification. For example a case involving the procurement of blinds and curtains by crime intelligence officials. Any reason why those documents should be
20 classified?

DR DINTWE: They should not have been classified at all. The matter is yet to be prosecuted because we have got the Centurion case number and the prosecutors could not proceed with that – with that issue. Ten or so yes that is actually 2013 matter.

ADV PRETORIUS SC: Ja and that is because of over-classification of documents.

DR DINTWE: That is correct Chairperson it is over-classification because it is purchasing of blinds; of curtains.

ADV PRETORIUS SC: In any event you have given examples and you have spoken already of examples in relation to procurement of IT Solutions and the like. They are there for the record.

CHAIRPERSON: So knowledge of curtains that were bought
10 is a threat to National Security.

DR DINTWE: It cannot – my argument is that it is the delivery thereof which becomes a National Security issue.

CHAIRPERSON: To a particular house.

DR DINTWE: Place – house yes.

CHAIRPERSON: But not the actual purchase of curtains.

DR DINTWE: Yes.

CHAIRPERSON: Ja.

DR DINTWE: Chairperson I do not know if I am dealing with
it but I save to say a critical issue. We have been dealing
20 with a case where the management of crime intelligence
decided to buy PPE for Covid – now I am talking masks,
sanitizers and all of those sort of things and they decided to
use what we call Secret Service account. Now they have got
two accounts the other one they call it open account the
other one they call secret service account and you ask

yourself because secret service account is used for cover operations. So where do you buy those because from where we are sitting as and when you go and buy them it is – it could be issued to anybody. What you have to worry about is that after the purchase who do you issue to and that is the level at which you should start protecting the identity of the recipients. But you should not be using the secret account to purchase – to purchase those things. It is happening 00:28:07.

10 **ADV PRETORIUS SC:** Understood. At paragraph 172 you deal and that is on page 829 you deal with a – quite an ironic situation and that is where the law enforcement agencies are saying in relation to criminality, misconduct and the like only you as the officer of IGI have jurisdiction. That seems rather strange in the context of the evidence you have given. Could you explain the problems attached to that approach?

DR DINTWE: Let me explain that and – yes and it is a finding of the Mokgoro Commission where we have letters
20 that were written by seasoned and very senior prosecutors to our office to say that this and that other issue it is – it falls under your exclusive jurisdiction. The police can never ever you know investigate a particular matter and I think that the Justice Mokgoro would have made a finding on it and it led to the removal of two of the senior – very senior prosecutors.

So that is an example of that absurdity where people say that it is only you because I think that they – they have reconciled themselves with the fact that this office is so weakened that nothing will happen.

ADV PRETORIUS SC: Yes and you have restricted powers anyway. You have no powers to prosecute.

DR DINTWE: I cannot prosecute.

ADV PRETORIUS SC: Or be disciplined. You have recommendation powers only.

10 **DR DINTWE:** That is correct, Chairperson.

ADV PRETORIUS SC: Obviously investigative powers but ultimately powers of recommendation. So do I understand it correctly, as you put it in paragraph 173, that:

“In encountering the investigation efforts by IPID and the Hawks an argument is routinely profit that these law enforcement agencies do not have a legal mandate to investigate any conduct of criminality, fraud or malfeasance of persons within Crime Intelligence.

20 This argument is profit on the basis that the OITI has exclusive jurisdiction over the Intelligence Service. In bolstering this argument that has consistently been maintained that the OITI is the body that is legally mandated to have access to classified

information of crime intelligence...”

So do I understand it correctly that when it comes to prosecution of criminal acts, fraud and corruption within the State Security Agency, the response of some law enforcement officials is: We have no jurisdiction. Go to the IGI. Is that correct?

DR DINTWE: That is correct. And Chairperson, this has led at a particular point where I convened what we called – we used the word *trapper(?) tide(?)*, *supper(?) tide*
10 workshop. [Speaker not clear] We sat around the table because ...[indistinct] kept on using a term – they were referring to us as a clearing house. So whenever I picked an investigator approaches them and say that I am investigating this particular matter, they will say that but the OIGI is our clearing house.

In other words, they were giving me powers to decide which information to be given. They said: No, no, no. We can provide the information but only subject to you going to an OIGI instead of you getting it directly from us.

20 **ADV PRETORIUS SC**: And what was your response to that?

DR DINTWE: I said that we cannot be regarded(?) with that and there were a lot of deliberations. We then made resolution about that issue. They withdrew(?) in that meeting, the usage of the concept and we signed those

minutes. They are part and parcel of the documents that I would have submitted to the Commission.

ADV PRETORIUS SC: Right. You were told by IPID, and you relate this in paragraph 174, that this view that only the IPI can deal with the issue of criminality, fraud or malfeasance within Crime Intelligence, that this view was relied upon in the investigation of the criminal charges against the former Divisional Commissioner, General Mduli during or about 2011. Is that correct? Can you confirm
10 that?

DR DINTWE: I confirm that, Chairperson.

ADV PRETORIUS SC: And you say it has been raised frequently during your tenure.

DR DINTWE: That is correct, Chairperson.

ADV PRETORIUS SC: And in response to what you have just told the Chair about the use of your offices as a clearing house for declassification which you have resisted. Clearly, the duties will lie elsewhere. Documents must be declassified at the Lord Chester and if they no
20 longer deserve classification.

In paragraph 177, you say that:

“In 2018 IPID approached the Minister of Police Minister Cele for his intervention who referred the matter to the OIGI for our comments regarding the possible impact of the

declassification of documents in question to national security...”

In my letter dated 5 April 2018, is that letter you refer to?

DR DINTWE: That is correct. That is the letter that I referred to, yes.

ADV PRETORIUS SC: Addressed to the minister. It will be in your documents.

10 “I indicated that in instances of suspicion of criminality involving classified documents, the Divisional Commissioner and/or the National Commissioner were duty bound to reconsider earlier classification of documents.

Moreover, Crime Intelligence should, as a general rule, be inclined in favourable classification of documents in order to rely for proper and unhindered criminal investigation and possible criminal
20 prosecution...”

So as I understand your position that the duty to monitor classification and to declassify documents were appropriate, cannot be roistered upon your office.

DR DINTWE: That is my submission. That is correct, Chairperson.

ADV PRETORIUS SC: In paragraph 182, it seems that the JSCI became quite active in summoning you to appear before it. What was the issue you were required to explain?

DR DINTWE: Which paragraph is that?

ADV PRETORIUS SC: 182. Concerning the leakage of information. Just read the paragraph and tell the Chair, please, what point you are making there.

DR DINTWE: Alright. Now there was a stage that General
10 Jacobs wrote to Parliament and he titled(?) about a complaint against the OIGI. There were several complaints. The first one, he was complaining that I was threatening him. There was a letter that I – that he thought it was a threat. And secondly, that the information I our possession would find itself, you know, somewhere else.

And in this instance, if I have to be specific, is that they were part of my certificate that were sent to the National Anti-Corruption Hotline of the Public Service Commission and I was called to come and account and
20 explain whether it was not my office that would have leaked that information. I have no business leaking information to that because I have clear reporting lines. So I do not need to do that.

ADV PRETORIUS SC: Okay. But anyway, there the JSCI was active in calling you to account.

DR DINTWE: That is correct. And my explanation was accepted.

ADV PRETORIUS SC: Alright.

DR DINTWE: And the allegations were seeing as being unsubstantiated.

ADV PRETORIUS SC: Alright. Then in paragraph 183, on page 833 you deal with quite an important topic, really. And that is the role of the Auditor General in relation to the audit reports of Intelligence Services. And you say in
10 paragraph 184:

“In the audit reports of the Intelligence Services, the Attorney General of South Africa has always had to provide qualified audits owing to its inability to access certain areas of the Intelligence Services that were deemed to be sensitive for access by the AGSA...”

And you end the paragraph by saying:

20 “After protracted meetings with all stakeholders including the JSCI, it was agreed that the Officer of the Inspector General of Intelligence should assist the Auditor General of South Africa in the auditing process of the Intelligence Services and in this manner provide some kind of combined audit assurance...”

If you could tell the Chair, please, what is the problem here about auditing the Intelligence Services and whether the Officer of the Inspector General of Intelligence can usefully play a role, what has been tried, what works, what does not work.

If you could just tell the Chair that, please. You had come to some conclusions in paragraph 187 as to really a method that was tried to deal with the problem of security of information on the one hand and the need to
10 audit on the other.

DR DINTWE: Firstly Chairperson, this amount to a legislative difficulty because the Auditor General is mandated in terms of the founding legislation. We are mandated with that. In our legislation the Oversight Act, we are not given auditing mandate of function and if you like, whether you differentiate it between financial auditing performance, audit and all those other things. We do not have any business to do that kind of work.

But maybe let us ask ourselves. If I had to do
20 that particular work, to which report was going to belong(?)? Because the Auditor General will write their own report and we actually write what we call certificate. We report to different authorities in Parliament or committees, if you like, but the most important thing is that we do not even have auditing capacity.

I am not an auditor myself. I do not have an auditor in my office and I do not see even Treasury allowing us to recruit auditors because by legislation we do not have that particular, you know, mandate.

But the problem about it, about this practise called Combined Audit Assurance is that there was a sort of an agreement before my arrival where the Auditor General's Office will then give the so-called working documents to our staff members but it is obvious that they
10 will really, really conduct what is called a box ticking exercise because they did not even understand, they cannot even get deeper into this particular issue.

So it was really giving or creating lots and lots of problems. One of those being that the Intelligence Services had even reached an agreement, I do not know how, with Auditor General but before you even start auditing us you can qualify us already or disclaimer or, you know, in terms of what they called slush funds in the SSA or what they call secret service account and they are
20 taking about 10% of the budget allocated to those agents.

So it is the bulk of the money and they created deliberately so a blind spot for the Auditor General. So it was only ourselves who could go there and I have to admit today that I do not think that we really had capacity to audit that particular portion of the budget.

ADV PRETORIUS SC: So that very category of funds that you have investigated and shown to be the source of much corruption and blatant looting and theft, as you put it, is concealed from the Auditor General. Is that right?

DR DINTWE: That is correct, Chairperson.

ADV PRETORIUS SC: And of course, it stands to reason, as I think you said elsewhere, that monies would be allocated to those sectors of the SSA operations precisely to conceal, to keep them away from auditing processes.

10 **DR DINTWE:** That is correct, Chairperson.

ADV PRETORIUS SC: You say then in paragraph 187, notwithstanding that and notwithstanding the lack of skills and experience and expertise in the audit process, your office has observed that there was large scale flouting of rules and legal prescripts by the Intelligence Services. It was observed that chaos and maladministration thrived and you say that in paragraph 187.

DR DINTWE: I confirm that, Chairperson. So when I see that we did not have an auditing function, I did not mean
20 that we did not book into their books. We looked into their books but we call it something else. It is oversight but we do look at their books. So you will see that this area albeit you know a blind spot to the answer(?) but there is a lot happening as far as those portions of the budget were concerned.

ADV PRETORIUS SC: And you say in paragraph 187 that the IGI certificates, those are your reports to various instances, have included in them a list of suspicious financial transactions and these have been reported to the ministers, the JSCI and the relevant heads of the Intelligence Services. Is that correct?

DR DINTWE: That is correct, Chairperson.

ADV PRETORIUS SC: And you give one instance here where certain of these financial irregularities in your view
10 were also reported to the current President while he was still the Deputy President.

DR DINTWE: That is correct, Chairperson.

ADV PRETORIUS SC: We will deal with that matter in due course but having said that. There must obviously be some balance between secrecy on the one hand and the need for proper financial auditing on the other. Quite how that problem is to be solved is a matter that the Chair may consider. But do you have any comment in the solution to that issue?

20 **DR DINTWE:** I do have a comment and maybe let me use an analogy of a tale which works a dock(?). The other way around and tell you about this meeting that was convened by the JSCI Chairperson there. And the Auditor General that is the late Thembekile Kimi Makwetu was there. I was there, representing this office and then there were people

from the CFO's, most importantly, that were sitting there.

And the SSA had gone to do a benchmark with the other countries. Their interest was to establish how do these other countries deal with the auditing of the Intelligence Services and they made recommendations. That is the reason why the meeting was called, to say that we have to also make inputs.

Chairperson, I never go to Cape Town and I did not utter a word. This is the only meeting that I went and I
10 never uttered a word in that meeting. I only introduced myself and I never uttered anything because I was very much surprised that an intelligence service will go do a benchmark, approach a Committee of Parliament and the oversight bodies and tell them that this is how we would like to be audited and they will be using a particular jurisdiction.

It is a country that I will not mention with a name, you know, by a name but literature and your OECD reports and other transparency, international and all those
20 other things, they would have rated that country as number one most corrupt country in Africa. Now there they – and said that: Oh, you have got a nice model. From this particular country. You know in this country, Auditor General do not get involved in the auditing of this particular, you know, Intelligence Services.

And the reasons why I did not utter a word, it is because I would have caucused between myself and Makwetu to say that I feel so much defeated and I do not want to be seen as somebody who is resisting this kind of arrangement. And it was himself who then recommended that:

You will know I – I hope that you know that we cannot move an inch before there is a legislative amendment. So he explained eloquently to them. So there
 10 was no reason for me to do that. That is why I am saying it is an analogy of a tale which work the dock, not the other way around.

And I think this led to a lot of you know malfeasance against increased(?) it because the services had an audacity to tell us as oversight body and a parliamentary committee how they should be audited, how they should be held accountable.

ADV PRETORIUS SC: Alright. Is this document, this benchmarking report, available?

20 **DR DINTWE:** I beg your pardon?

ADV PRETORIUS SC: The benchmarking report that you spoke of.

DR DINTWE: Well, it was not my document. It was not given to me. I never even bothered to request that document. So I do not have it. It is not there in the

bundle that I have provided.

ADV PRETORIUS SC: I could be wrong. You mentioned that there might be international literature available on how internationally and acceptable intelligence services are audited.

DR DINTWE: No, no I was referring to something else.

ADV PRETORIUS SC: Alright.

DR DINTWE: I was saying that the country that was being fed of the model that was preferred, that country has been ranked as you know number one by literature and some research conducted by, for example, transparency international.

ADV PRETORIUS SC: It was another comment you made that we can pursue that in due course.

DR DINTWE: Yes, yes.

ADV PRETORIUS SC: In paragraph 188, you draw a conclusion arising out of the latter part of your affidavit. You say:

20 “The covert nature of the intelligence environment makes oversight of the Intelligence Services crucial.

In order for there to be effective oversight over the Intelligence Services, it is necessary that OIGI be entirely distinct from the SSA and be funded separately from it, had full access to

all information and documentation and be granted powers of enforcements.

It is also essential that such services be fully audited by the Auditor General and that there be proper consequent management...”

Presuming you mean consequence management.

10 “This includes not only that disciplinary steps be taken by those implicated but that law enforcement agencies are supported by declassifying documents required for prosecution...”

Is that your conclusion in respect of most, if not all, of your evidence?

DR DINTWE: That is my conclusion, Chairperson. And my wish is that it is understood again in the context that I would have raised earlier to say that we have hope. We did not only come here to assist the Commission. We also have hope that maybe this Commission would be different from all other commissions.

20 It is the first commission that has a rule which says that the information gathered here may be used for prosecution. I think that is a novelty as far as this Commission is concerned. So in my conclusion, I am saying that this rot should not be allowed to happen again in future and we hope that, as I mentioned there, that there

will be proper consequent management now moving forward.

I personally will not be a beneficiary of this. I will be out of this office on the 15th of March 2022 but I will be the happiest man if my successor will reap the rewards if there are any in terms of strengthening this oversight mechanism which is very much crucial in the Intelligence space.

ADV PRETORIUS SC: Chair, it is necessary to deal just
10 very briefly, hopefully, with a few matters that have arisen
...[intervenes]

CHAIRPERSON: Ja.

ADV PRETORIUS SC: ...since Dr Dintwe last gave evidence.

CHAIRPERSON: H'm?

ADV PRETORIUS SC: The first I have dealt with and that
is the company and the director of the company, Ivani, that
was involved in procurement. They have presented a
version. That can only be given to you or given to the
20 Chair for publication, at least, once certain procedures
have been gone through and perhaps we can do that in
writing and due course.

The second is that there have been certain media statements by Mr Bongo. I am not going to deal with the evidence given through the media. It matters what be

raised before the Commission, they must be raised directly.

Then Mr Arthur Fraser has given a response to your evidence. That document is not before the Chair yet but again, it may be necessary to obtain written responses. They are not being ignored.

Then I have an affidavit from “Danny” and he was involved in the vetting security clearance of Mr Nxasana and he gives a version that differs from your version in some respects and I want to put that version to
10 you in summary form. It is a long affidavit and it will be put before the Chair.

He says that around October 2013, he was instructed by the then director General to commence a vetting process of Mr Nxasana who had been appointed as the National Director of Public Prosecutions. And he says there was a vetting field investigator appointed, a unit head initiated a polygraph examination, and the polygraph examiner found that the subject that Mr Nxasana was being truthful.

20 She was of the opinion that the subject qualified for top secret clearance. And in this phase, the vetting evaluator made a recommendation that a security clearance be issued. So that process, that initial process in October 2013 and the months that followed, recommended that each step that the clearance be

granted.

He then says the file was handed over the Vetting Evaluation Divisional Head and upon consideration of all the relevant information contained in the file, the recommendation that a security clearance be issued was confirmed. Alright.

The file than gets to “Danny”. “Danny” says:

10 “On consideration of the information provided, there were no compelling reasons which could influence him not to make the recommendation that the security clearance be issued...”

And he, in fact, made a recommendation that security clearance of top secret category be granted. So each step in the vetting process resulted in a recommendation and there are several steps that security clearance be granted. But what happened then is that “Danny” took the file to Mr Ntombela, the then Director for the domestic branch and “Danny” advised of the recommendations that Mr Nxasana be issued with a top
20 security clearance for five years.

What Mr Ntombela then did was he challenged the recommendation and findings and indicated that he, that is Mr Ntombela, had information, and this he told to “Danny”, that Mr Nxasana was involved in a murder case which was still pending. Right? “Danny” then retorted. He

said:

“Having regard to the information collected and the necessary investigations done, there was no evidence of information which implicated Mr Nxasana in the allegations made...”

And the person who was alleged by Mr Ntombela, and this was told to “Danny”, to have made these allegations was Mr Thulani Dlomo. So it appears
10 from what “Danny” says, at least, that Mr Thulani Dlomo reported something to Mr Ntombela and Mr Ntombela, on the strength of that, said no security clearance despite the process that had preceded it.

It was at that stage that Mr Ntombela said: Well, go and contact Mr Dlomo. He is based in Kwazulu-Natal. He is the relevant information who has information regarding this murder case or alleged murder case. “Danny” then said he appointed a new field investigator to conduct it on the basis that the original – that field
20 investigator had already submitted a report and was therefore... [Speaker’s voice drops – unclear]

He then says a meeting was held with Mr Dlomo in order to confirm the information received from Mr Ntombela. And he says Contrary to the information provided by Mr Ntombela – and I am paraphrasing the

affidavit – Dlomo did not provide any information relating to the alleged murder case. Dlomo advised that they approach the police where the case was handled.

So it seems that somewhere along the line incorrect information had influenced the decision of Mr Ntombela not to grant the security clearance. You have a different version and I will come to the difference in due course. So the further investigations were conducted and the field investigator indicated that no information was
10 found which implicated Mr Nxasana as per the allegations of Mr Ntombela.

So the process was renewed or continued or restarted, whatever – however you wish to describe it, but there was no basis found for any refusal of a security clearance for Mr Nxasana. So “Danny” then makes a second recommendation on his version to Mr Ntombela, that a top security clearance be issued as – and again I am paraphrasing: There was no information or evidence which indicated that Mr Nxasana should not be granted this
20 certificate since these new allegations could not be verified.

Nevertheless, says “Danny” in his affidavit, Mr Ntombela decided not to grant the security clearance to Mr Nxasana. “Danny’s” comment is that the decision not to grant the security clearance to Mr Nxasana was informed

by the facts at their disposal.

And he goes on to say that he denies, however, that he was involved in the decision to deny Mr Nxasana security clearance. In fact he says he was dumbfounded when he learned through the news on TV that Mr Nxasana had been denied proper security clearance and we know that Mr Nxasana later appealed the decision and he was granted security clearance.

Now the difference between his version and your
10 version is firstly that Danny says he was not involved in refusing a security clearance, he had nothing to do with it, he merely investigated, further conducted the further process and he came to that conclusion. That is the first thing that he says.

The second thing that he says is the record is indeed available, he says that that record is with SSA with all the records and it seems to be corroborated by the fact that he goes into a lot of detail.

And thirdly, and importantly, he says that there was
20 no first certificate that was somehow withdrawn, that there was no certificate at all, there was only the refusal by Mr Ntombela after all the recommendations were made and the reversal of that refusal on appeal.

Now I have summarised the different versions. From the point of view of the Commission, these

allegations are as serious as the allegations you made but what do you say in regard to those differences that I have highlighted to you. Was Danny involved? Is the record available and thirdly, was there a first certificate issued and then disregarded in favour of settlement process?

DR DINTWE: Chairperson, I had an opportunity to go and refresh my mind again because I received – I was made aware of this particular affidavit.

First point, in my evidence I have never said that
10 Danny refused the security clearance, I said that the process was completed but then he recalled the file and allocated it to somebody else. So in fact you are saying the same thing, it is only that I think that we are only differing with regard to at what stage did he intervene. But he did intervene and he is confirming it. I am confirming it as well.

So I have never said that he would have refused. Anyway, he does not have powers to refuse because it get signed by the DG especially for such senior people. So Mr
20 Nxasana is so senior that an expectation will be that it will be sent by DG and not anybody. By that time Danny was a general manager for that, but that is one point.

The second point with regard to the timeframes, I have got difficulty there because he does not tell us on what date was security clearance given. My version is that

it was issued on the 6 March and ...[intervenes]

ADV PRETORIUS SC: What year? 2014?

DR DINTWE: 2014, yes. Now if you take that date and you go through the information that we have just received, albeit not complete, you will realise that there will be entries beyond the 6 March and that can only suggest one thing and one thing only that the investigation with regard to Mr Nxasana continued beyond him getting the security clearance.

10 We cannot say that the process was whether stopped or whatever or whatever but the legislation which deals with the appointment of the NDPP says that he cannot resume his duties until that process is finalised. So if he had provided the date exactly when this thing was restarted and when it was consequently, you know, finalised, we will then be able to see that Mr Nxasana would not have been allowed to start with that particular process.

20 At least, the third point, the name of Thulani Dlomo is mentioned. I did not say that Mr Thulani Dlomo was involved in refusing, I said that the investigator was sent to him to get the names of the people in Kwazulu-Natal that could assist with that particular process. That is what I said.

 The last point, it is very strange that a DG will

refuse to sign. That is actually – it is a pure administrative matter. This file would have passed through a committee, an adjudication committee. The reason why they sent it to there, it is because they want to remove that human element so that if I am hated by the Director General, he is not given an opportunity to be a sole decision-maker. So my take is that once it has passed this committee, it is as good as being accepted and issued.

ADV PRETORIUS SC: Right, I understand.

10 **DR DINTWE:** I do not see where I am differing with Danny if there are any differences it could be about the dates and at what stage did [inaudible – speaking simultaneously]

ADV PRETORIUS SC: And it may be the issue of whether a certificate was actually signed by the Director General rather than all the processes being concluded to the point where for all intents and purposes the certificate ought to have been granted.

DR DINTWE: I beg your pardon again, sorry?

20 **ADV PRETORIUS SC:** So it may be – what Danny says is that no certificate was granted in the sense that it was signed by the Director General and actually issued to him and then taken away or the decision reversed? You seem to be saying that that could be correct but not in the sense that all the administrative procedures had been concluded in favour of the granting of a certificate.

DR DINTWE: That could be correct because even if it is correct I do not see a conflict between what I am saying and what he is saying so that here we could be talking about two different dates but the activity itself took place and we are both confirming that.

ADV PRETORIUS SC: So Danny may say the rubber stamp at the end of the process was not there, you are saying everything leading up to that required the issue of a certificate.

10 **DR DINTWE:** That is what I am saying, Chairperson.

ADV PRETORIUS SC: But it seems that both Danny and yourself are very clear that the process and its culmination resulted in an outcome that was not justified.

DR DINTWE: That is correct, at least now that I had an opportunity to look at that particular affidavit, we are both saying the same thing again in that regard.

ADV PRETORIUS SC: And that the Chair will look at in relation to other evidence involving Mr Nxasana and we do not need to go into that here.

20 **DR DINTWE:** That is correct, Chairperson, but maybe I should also mention to say that his version about the availability of the documents ...[intervenes]

ADV PRETORIUS SC: Yes, that is the last issue.

DR DINTWE: Ja, at the time that I was conducting this monitoring or investigation, if you like, Danny was out of

the system. So there was an acting person. He has since returned, that is the reason why we are using a pseudo name, he has since returned but he has returned after I had conducted that and there is a written report from an acting personnel or the personnel manager who says that we could not locate at least a physical file of Mr Nxasana. I will be very happy – if he had to cross-examine me on that I think I have got to concede to say that you found it, I did not find it.

10 **ADV PRETORIUS SC:** So you are saying that the unavailability or loss of the records was for a particular period when Danny was not in office?

DR DINTWE: That is correct.

ADV PRETORIUS SC: Yes, he himself refers to a period when he was out of office in his affidavit.

DR DINTWE: That is correct, Chairperson.

ADV PRETORIUS SC: Alright, just one last question, if I may, and that is in relation to PAN1, Principal Agent Network. That report, the summary of that report, do you
20 have it?

DR DINTWE: I do have the summary of that report, Chairperson.

ADV PRETORIUS SC: Do you feel that you can legitimately give it to the Commission?

DR DINTWE: I suspect that it will be in the documents

that I can give.

ADV PRETORIUS SC: Alright.

DR DINTWE: And look, it is my document, it is our document, I was told declassify, we have got the power to put any restrictions if we want to [inaudible – speaking simultaneously]

ADV PRETORIUS SC: These are events over a decade ago, there is controversy over whether they have been properly dealt with, there are allegations of criminality or
10 maladministration, at least, there does not seem from our point of view at least any reason for the continued classification of that document.

DR DINTWE: As I said earlier that certain issues graduate out of national security, I mean, but if you say that you have to investigate further criminally and charge person A, what is secret about that?

ADV PRETORIUS SC: Yes. And then finally, if I may just ask you, were you present at any stage where the PAN1 report was presented to any ministerial or other official?

20 **DR DINTWE:** I was not present, Chairperson.

ADV PRETORIUS SC: Alright. Thank you, Chair, those are the questions.

CHAIRPERSON: Thank you very much, Dr Dintwe, for availing yourself to assist the Commission, we appreciate it very much. Thank you very much, you will ensure that you

give us what you may give us lawfully. Okay, thank you very much, you are now excused. We are going to adjourn for about ten minutes to enable the next work stream to set up but we will continue on Friday with witnesses connected with SSA.

ADV PRETORIUS SC: Yes, Chair, thank you.

CHAIRPERSON: Yes, thank you, we adjourn.

INQUIRY ADJOURNS

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