

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

**21 APRIL 2021**

**DAY 379**



**Gauteng Transcribers**  
**Recording & Transcriptions**

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TRANSCRIBERS:

B KLINE; Y KLIEM; V FAASEN; D STANIFORTH



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**INQUIRY RESUMES:**

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

**ADV PRETORIUS SC:** Afternoon Chair.

**CHAIRPERSON:** Yes. Are you ready?

10 **ADV PRETORIUS SC:** We are.

**CHAIRPERSON:** Good afternoon Dr Dintwe. Your mic is not on.

**MR DINTWE:** Good afternoon Chair.

**CHAIRPERSON:** Yes, the oath you took yesterday will continue to apply today, okay. Alright.

**ADV PRETORIUS SC:** Thank you Chair. Before we continue with questioning, may I place something on record?

**CHAIRPERSON:** Ja.

20 **ADV PRETORIUS SC:** We received a communication from Shaun Pillay Attorneys on behalf of a party that is implicated in the evidence of Dr Dintwe. They have provided us with a statement attested to by their client on behalf of a company, both of which are identified in the statement under pseudonyms.

They say in the letter:

“We attach hereto a statement by our clients which must be carefully studied, as we are not certain whether any of the information contained in this statement falls in the category of being classified.”

Then they continue to say:

“We take no responsibility in that regard.”

The first thing that we need to place on record  
10 Chair, is that the fact that they purport to absolve themselves from any responsibility, is not a statement that we accept that responsibility, it remains with them.

**CHAIRPERSON:** Ja.

**ADV PRETORIUS SC:** But never the less, we are checking the statement carefully. We will check it with the SSA so that we do not inadvertently release any confidential or classified information. For that reason, despite the invitation to put the statement to Dr Dintwe in evidence, we will not put it at this stage, but at a later stage.

20 **CHAIRPERSON:** No, that is fine.

**ADV PRETORIUS SC:** Thank you Chair.

**CHAIRPERSON:** Okay.

**ADV PRETORIUS SC:** Dr Dintwe, are you at page 789 of Exhibit YY15 where we left off yesterday?

**MR DINTWE:** Yes, I am on that page.

**ADV PRETORIUS SC:** And you deal in paragraph 52 with the topic as you describe it, executive over reach.

**MR DINTWE:** Yes, I do.

**ADV PRETORIUS SC:** Evidence has been given on the topic of executive over reach by more than one witness to date, and there is an opinion that has been expressed that it is undesirable for a minister to become involved in the operations of the SSA.

Another view that has been put is that there is  
10 nothing that makes such involvement and operational affairs unlawful or improper but that such practice has been avoided by at least one minister who has testified or by the minister who has testified, or the previous minister who has testified.

What is your view in that regard?

**MR DINTWE:** And Chairperson, my view will be firstly be confined to our role as an oversight body and what problem is imposed by that kind of involvement or the executive over reach general. The first point is that you have a  
20 situation where the ministers bring themselves into our oversight space.

So ordinarily we will not investigate the ministers. We will not even make findings as far as they are concerned. But an example of what the legislation provides, is that the minister of state security shall have

super retendence[?] over the agency, over the intelligent service.

Now that super retendence, the examples thereof is that the minister gets involved in issues such as purchasing and leasing of property and I am just going to take that example and try to demonstrate our problem as the oversight.

Now, now that we deal with maladministration, let us say for instance the property is being leased in KZN,  
10 and they did not follow the procurement process and so forth and so forth, it means that as and when we conduct our monitoring or our review, if we find that that particular process, I mean the procurement process was not properly followed, it will mean that we will have to make a finding against the minister.

Because it will be the minister who would have made that kind of a decision. So that is a problem as far as we are concerned of that executive over reach or the involvement in operations, because we oversee operations  
20 in general.

**ADV PRETORIUS SC:** Yes, we will in due course place before the Chair an analysis of the legislative provisions dealing with the powers and duties of the minister in relation to the operations of the SSA. We are not going to deal in detail with it here Chair, but maybe to give this

evidence.

**CHAIRPERSON:** Yes.

**ADV PRETORIUS SC:** Because the legislation does at least on the face of it, the minister direct oversight powers and responsibilities in relation to matters falling within the purview of the administration and operation of the SSA. At least at an oversight level. How that is applied of course is a matter of controversy and certainly one of our submissions may be to you Chair, in due course that these  
10 issues should be clarified one way or the other.

**CHAIRPERSON:** No, no that is fine, but let me ask this question Dr Dintwe. Why would it be a problem for you as an oversight body to make a finding against the minister?

**MR DINTWE:** It is because Chair, the Oversight Act says that we shall monitor, review and investigate complaints which involves the heads of services. So the heads of services are defined as a director general in the case of SSA, as the divisional commission of sub CI, crime intelligence and also the others.

20           So there is no provision basically which says that we can investigate, monitor or even review their actions.

**CHAIRPERSON:** Oh, okay. No, then I understand, but obviously if the, if a minister does what the head of the department is supposed to do and in doing it he or she acts improperly or breaches the law, then obviously you

can say that what you were investigating was matters that fall within your jurisdiction.

It so happens that one of the players is somebody who should not have ventured into that kind of issue and then you venture into it and you have to pronounce that you did not go out of your sphere of operation to deal with matters that were outside of your jurisdiction.

So the subject matter would still be within your jurisdiction, but the person who would have acted in  
10 breach of the law or improperly, would be the minister, or are you saying your understanding is that the moment you hear that in this operation the minister was involved, you have to leave it, because you do not have jurisdiction over a minister, even if the subject falls within your jurisdiction subject matter?

**MR DINTWE:** I know that I would have provided the Chairperson with a pedantic view ...[intervenes]

**CHAIRPERSON:** Yes.

**MR DINTWE:** As far as the provisions are concerned.

20 **CHAIRPERSON:** Yes.

**MR DINTWE:** But we have dealt with that issue.

**CHAIRPERSON:** Yes.

**MR DINTWE:** I have received complaints against the ministers ...[intervenes]

**CHAIRPERSON:** Yes.

**MR DINTWE:** Previously ...[intervenes]

**CHAIRPERSON:** Yes.

**MR DINTWE:** And I have worked on them.

**CHAIRPERSON:** Yes.

**MR DINTWE:** The position of the office is that we do not follow the rank ...[intervenes]

**CHAIRPERSON:** Yes.

**MR DINTWE:** Or a person ...[intervenes]

**CHAIRPERSON:** Yes.

10 **MR DINTWE:** Or an official.

**CHAIRPERSON:** Ja.

**MR DINTWE:** We follow the activity.

**CHAIRPERSON:** The activity, yes.

**MR DINTWE:** Yes, and that is the advice that has been preferred to myself ...[intervenes]

**CHAIRPERSON:** Yes.

**MR DINTWE:** The [indistinct] also asked our office whether they could refer certain matters that involves the ministers, but I think that the reading of the legislation and

20 I think the legal team here will assist ...[intervenes]

**CHAIRPERSON:** Ja.

**MR DINTWE:** Is to say that we look at intelligence and counter intelligence activities.

**CHAIRPERSON:** Ja.

**MR DINTWE:** So it does not matter who is doing it.

**CHAIRPERSON:** Yes.

**MR DINTWE:** In fact, I think that even in the spirit of the legislation, if you like, it even goes beyond because there is a provision here which says that I may also invoke the provisions of the Criminal Procedure Act, if there is any other organisation which is not the three that I have mentioned that gets itself involved in intelligence.

So we can see that the intention of the legislature is to make the scope a little bit broader. We have dealt  
10 with the issue and I think that is our position Chairperson, is that we follow the activity and not the person.

**CHAIRPERSON:** Okay. Okay.

**ADV PRETORIUS SC:** So if a minister by their action brings himself or herself within the purview of the IGI's office, you will investigate as I understand it.

**MR DINTWE:** That is exactly what I am saying. The example that I was giving Chairperson, was to say that let us say a lease of a property. So there I am not concerned who is doing it. If it is done by even a private citizen, as  
20 long as it is one of the resources that belongs to intelligence services, it will be an activity that I can investigate if there is any maladministration coming out of it.

**ADV PRETORIUS SC:** But that does not mean to say that the legislation could at the very least be tidied up.

**MR DINTWE:** I have never ever had a challenge. I wish for a stage where there will be findings against a particular minister and maybe they take us you know, on review, but from where we are seated, because I think that a person sitting somewhere may think that now that the legislation does not say that you can investigate a minister, that then it means that you cannot investigate.

**ADV PRETORIUS SC:** We will leave that to a later stage.

**MR DINTWE:** Alright.

10 **ADV PRETORIUS SC:** Would you then deal with the examples you give in paragraphs 53 and 54 of your affidavit?

**MR DINTWE:** Alright. Now according to the Intelligence Service Act, as well as the regulations of the SSA specifically here, is that when a member gets dismissed for example, and this is the case that I would have worked on. It was just basically [indistinct].

Then that member can appeal to the minister and our view has always been but the director general, the  
20 moment you see that the minister has super retendence, it means that a dismissal that is metered out by the director general, is tantamount to a decision of the minister.

If they have super retendence. So it creates a problem, because then the minister becomes a player and a referee at the same time, because it says that then that

member would have to lodge an appeal with the minister.

**ADV PRETORIUS SC:** The SSA member so dismissed may lodge a complaint then with your office, and that minister's decision may then be subject to your oversight as I understand is what you are saying in paragraph 53.

**MR DINTWE:** That is exactly also what I am referring to Chairperson.

**ADV PRETORIUS SC:** And what if a minister were to involve himself or herself in the operational matters of the  
10 services that fall under their superintendence. Would you investigate such a matter if the complaint arose?

**MR DINTWE:** I do not have a choice. I will investigate it, but then you can understand the [indistinct] that I will find myself in because it will be almost like double jeopardy. The minister would have committed an error the first time around and the second time around.

In any event, the end result is that I have to recommend to the same minister again for rectifying.

**ADV PRETORIUS SC:** Now you deal in the next section of  
20 your affidavit, Dr Dintwe, with the ministerial delegation of powers and direction of payments, and you make out the case that this document or this direction of payments document has been used or even abused to undermine the provisions of the Oversight Act and the Intelligence Services Act, and to undermine the oversight role of the

IGI.

Would you explain please, as succinctly as possible to the Chair how this comes about and you deal with it in paragraph 55 onwards.

**MR DINTWE**: Alright. Now submission Chairperson, is that these MPD's have been manipulated and used to undermine primary legislation. Because this is a document developed by the minister and its main purpose is to delegate certain powers to the director general.

10           So which means that basically the director general does not have any powers to run that institution. So the MPD's are used to delegate. So it will be written there to say that for instance any procurement which is less than five hundred thousand, the director general can make a decision.

          Procurement of buildings for the provinces will reside with the director general. We do not have a problem with that. It is a good instrument of punishment, a good one. But now it has been used over and over again to  
20   undermine and to blend the lines between what the road of the director general is and what the role of the minister is.

          It is creating a serious problem for us as an oversight, because then we cannot really tell whose decision is it, because if you delegate a power, the power still remains with myself. If I delegate a power to a

manager in my office, I am still a decision maker in that instance.

I do not know if you wanted me to go a little bit deeper than that?

**ADV PRETORIUS SC:** Well, do you have any examples of how this delegation has been used? As I understand it, paragraph 57 you say that paragraph 1.1 of the MPD reads:

10 “Delegation refers to an institutionalised activity whereby certain activities and authority are handed down from the minister to the director general and by the director general to subordinate members of the agency.”

Do I understand you to be saying when the minister hands down one of his or her powers, in relation to their authority over you, you might find the director general or the director general’s subordinates exercising that authority over you.

**MR DINTWE:** Exactly my point.

20 **ADV PRETORIUS SC:** That I understand you to say is undesirable because in fact you have oversight over those persons who may be exercising authority over you.

**MR DINTWE:** Yes, that is our submission Chairperson.

**ADV PRETORIUS SC:** And you say that that has actually happened in your statement.

**MR DINTWE:** It has happened. There is a specific incident of December 2017.

**ADV PRETORIUS SC:** December 2017?

**MR DINTWE:** Yes.

**ADV PRETORIUS SC:** What happened?

**MR DINTWE:** Alright. Now in December 2017 we had a minister who served for a very short [indistinct] there. Court Advocate Bongani Bongo. When he got there, he clearly had an instruction Chairperson. I would have had  
10 some engagements with him which were not recorded unfortunately, but that was the [indistinct] that they wanted to remove me from the office.

That they did not want oversight. What happened is that ...[intervenes]

**ADV PRETORIUS SC:** Sorry.

**MR DINTWE:** Okay.

**ADV PRETORIUS SC:** If I may just interrupt. That is your opinion and inference you draw from what happened.

**MR DINTWE:** It is an inference that I draw from that.

20 **ADV PRETORIUS SC:** Yes, okay.

**MR DINTWE:** Yes, it is an inference. Okay, now what he did is that he then amended the MPD's and they never told anybody what was wrong with the MPD's which were in place, and there were few amendments there and I am going to give an example of one.

Where they said that the inspector general of intelligence shall be clothed with the powers similar to those of a deputy director general. Yes, so let us put that in motion. Like they started by demoting myself, to say that now I am a DDG and in that MPD, obviously the point that I think that we attempt to drive home here, is that the MPD is secondary to the Oversight Act, which does not put me at that level.

So that was the first problem. The second problem  
10 with the then MPD's was to say that in my absence and in the absence was not qualified. So I could be sick, I could be on leave, I could be on suspension and whatever. They said that the director general of the SSA shall have the power to appoint an acting inspector general of intelligence.

So they are right there, because they have been struggling. The Oversight Act does not and it is a point that we conversed yesterday, to say that in my absence no one can even appoint somebody to act in my position. I  
20 am the only person who can do that.

So I do not know if the commission will see it as an inference, because I mean it was straight forward that these are the people who want to action something, but they are preparing the ground, so that when I am not there, there will be MPD's in place which will then say that Mr

Arthur Fraser at that time will then appoint an acting inspector general of intelligence, as that I am actually subordinated to him, because now I have been demoted to a level of a deputy director general or a head off a spending centre as they called it.

**ADV PRETORIUS SC:** Well, let us just summarise that then to show how the MPD was used or even abused. Depending on which way one looks at it. You say in paragraph 62 that the MPD provided that your powers  
10 would be such that you would have the administrative authority and financial limits of a deputy director general of the agency.

That would in effect make you subordinate to the director general of the agency. Do I understand that correctly?

**MR DINTWE:** That is correct, yes.

**ADV PRETORIUS SC:** Over whom you exercise oversight.

**MR DINTWE:** That is correct Chairperson.

**ADV PRETORIUS SC:** Because he would then be the  
20 accounting officer and he would be senior to you.

**MR DINTWE:** That is correct Chairperson.

**ADV PRETORIUS SC:** And in relation to your appointment and your standing, you are appointed by the president. You are accountable to the JSCI and your appointment and the appointment of the office or the person who occupies

the office, is approved by parliament.

**MR DINTWE:** That is correct Chairperson.

**ADV PRETORIUS SC:** The effect of the amendment to the MPD, you have notes is that in your absence the person being monitored appoints your replacement. On a temporary basis.

**MR DINTWE:** That is correct. That is exactly what happened Chairperson.

**ADV PRETORIUS SC:** And you have drawn the inference  
10 from those facts that these efforts or these amendments to the MPD were directed at undermining your authority. Do I understand your opinion correctly?

**MR DINTWE:** You understand my opinion correctly. Maybe also to add, to say that as we get deeper then towards the end of my evidence, you will see that there were other activities that were being carried out by the director general and the minister which were sort of supplementary to this particular taking or amendment to the MPD's.

**ADV PRETORIUS SC:** Alright. You make the point in  
20 paragraph 63 that the MPD is subordinate legislation. You call it secondary legislation and you make the point that for it to be valid, it must be consistent with the enabling legislation, the Oversight Act and indeed the constitution.

**MR DINTWE:** That is my submission Chairperson.

**ADV PRETORIUS SC:** Alright.

**CHAIRPERSON:** Just one second Mr Pretorius. You said yesterday in answer to one of my questions Dr Dintwe, that the IGI is ranked at the level of deputy minister. What is the basis for saying that? Is it the remuneration or is there some document that says that?

**MR DINTWE:** It will be the remuneration. That is how they determine that.

**CHAIRPERSON:** Okay.

**MR DINTWE:** But as I said is that then we will develop  
10 something which looks like an agreement. So  
...[intervenes]

**CHAIRPERSON:** Yes.

**MR DINTWE:** Because I am not appointed in terms of the Public Service Act ...[intervenes]

**CHAIRPERSON:** Yes.

**MR DINTWE:** We will have a document which is actually an agreement between myself and the employer.

**CHAIRPERSON:** Yes.

**MR DINTWE:** And in that document it will tell me exactly  
20 what level am I and so forth.

**CHAIRPERSON:** Yes.

**MR DINTWE:** Now the Act only says the conditions of service shall be determined by the president in conjunction with the joint standing committee on intelligence and they shall not be down variated, I have to read but they do not

really use that word, by anybody during the tenure of the IGI.

Maybe every time I could be [indistinct].

**CHAIRPERSON:** Okay, okay. No, that is alright, thank you.

**ADV PRETORIUS SC:** You detail your inference in paragraph 64 of your affidavit on page 792 and 793 and you say in short that the amendment to the MPD was part and parcel of concerted efforts by Mr Fraser and later  
10 Minister Bongo to remove you from your position.

Now, or and if this tail to negate your oversight powers. That is quite a strong inference to make from the facts. Why do you draw that inference?

**MR DINTWE:** It is because it is based on the first sentence, which says that the mentioned MPD was issued by Minister Bongo following a flurry of [indistinct] correspondence received by the OIGI from Mr Fraser, regarding the complaints lodged against him.

**ADV PRETORIUS SC:** Right, now ...[intervenes]

20 **MR DINTWE:** And then that formed the basis of that, because you could follow the letters. The letters would have started earlier, where they will say that I am not competent to possess state secrets, that they have got some intentions to revert myself, that I was spotted somewhere sitting with the members of the opposition.

So you could see where these people are going, and the letters in my bundles, I mean in my evidence will show you exactly that there was a concerted effort to remove me from my position.

**ADV PRETORIUS SC:** So you rely on what you have told the Chair, together with other evidence which provides the context for what you have told the Chair, including other evidence which, from which you conclude directly that there was an attempt to remove you from your position.

10 Do I understand you correctly?

**MR DINTWE:** I am understood there, that is ...[intervenes]

**ADV PRETORIUS SC:** You refer for example in paragraph 64 to correspondence marked SD4. You do not by any chance have that letter with you there or must we wait for the bundle to be prepared before we place that letter on record?

You see, if you look at paragraph 64, you annex copies of the relevant correspondence marked SD4. Do you see that?

20 **MR DINTWE:** I see that Chairperson.

**ADV PRETORIUS SC:** That correspondence will be in the bundle that you were going to hand up to the Chair in due course.

**MR DINTWE:** That is correct Chairperson.

**ADV PRETORIUS SC:** You do not have it with you there?

**MR DINTWE:** I always keep those letters ...[intervenes]

**ADV PRETORIUS SC:** No, no but as you sit there ...[intervenes]

**MR DINTWE:** No, I do not have here.

**ADV PRETORIUS SC:** Can you just summarise for the Chair what that correspondence says?

**MR DINTWE:** Alright. Now in that correspondence Chair, the Mr Arthur Fraser was telling me that he is going to revert me and it was followed by a letter which then said  
10 that my security clearance has been withdrawn. I put them in a single annexure, because it is three letters which follows each other.

**ADV PRETORIUS SC:** Perhaps you should explain to the Chair was preceded these activities on the part of Mr Fraser. The fact that you were investigating complaints in regard to him.

**MR DINTWE:** Yes.

**ADV PRETORIUS SC:** If you could just explain that to the Chair.

20 **MR DINTWE:** Okay.

**ADV PRETORIUS SC:** That is an important contextual fact.

**MR DINTWE:** Thank you very much. It started in a meeting Chairperson, where I met with Mr Arthur Fraser, his office manager and office manager from my office and

myself, and in that meeting Mr Arthur Fraser told me that the caucus of the African National Congress in Parliament had told him that he should tell me to withdraw or to stop the investigation, because he said the investigation that I was busy with was now becoming personal because it was a repetition of what was investigated, so I understood him to refer to that panel which yes of course was investigated, but he misunderstood what – which complaint I was investigating. The complaint that I was investigating was  
10 from a leader of the DA in the Parliament, who said that this issue was never followed through, may you please investigate what happened, because there were recommendations which were made, so what happened.

So in that meeting I disagreed with Mr Fraser on the basis that you are not my messenger, you are not even my supervisor, I am reporting directly to Parliament and if the committee really wanted me to stop this investigation they must tell me directly so I am not going to stop any investigation and my due at that time the committee  
20 members were not there, so that is where the problems started, because I make him aware that I am investigating this particular complaint and when I went back to the office I wrote a letter because he had misunderstood what I was investigating, so it was a courteous letter to say this is the complaint as received from I think I can mention Mr

Steenhuizen here, as received from Mr Steenhuizen.

**ADV PRETORIUS SC:** Alright, then you can go back to the stage where you deal with your conclusion that action was being taken and the aim of that action was to either undermine your investigative capabilities, scope, or to remove you from office.

**DR DINTWE:** Yes.

**ADV PRETORIUS SC:** That's the conclusion you drew?

**DR DINTWE:** Ja, the conclusion that I then arrived at was  
10 to say that it is either I should give in and say that I am not going to conclude this investigation or that I was going to be removed but then the latter actually materialised because then I started receiving then a flurry of correspondence and they were saying only one thing, to say that I am not competent, because if I do not have security clearance then I cannot continue to occupy the position.

**ADV PRETORIUS SC:** Alright, well we will come to the security clearance issue in due course. Let's just  
20 complete the fate of the amended MPD. You mention in paragraph 65 that you made a presentation to the next Minister, Minister Letsatse Duba, on the 6<sup>th</sup> of April 2018. What did you say to her?

**DR DINTWE:** I told her that the – there was a frequent change of ministers in that period, so you had a minister in

December and then you had the other Minister in April, so when I was still busy dealing with this issue there was a new Minister, so I informed, I went to make a presentation in fact, to say that these are ...[indistinct] ministers and we have serious reservations about this position and that particular position and I also informed her that we were intending to boycott, because that was the advice that I had received, to say that we are ready to go and challenge these MPD's because they were outside ...[indistinct] but  
10 they were also inconsistent with the National Legislation.

**ADV PRETORIUS SC:** The primary legislation, the empowering legislation?

**DR DINTWE:** The empowering legislation.

**ADV PRETORIUS SC:** And what did the minister then decide to do?

**DR DINTWE:** A day or three later there was a message which just circulated on our internet, because I will be on the same internet, to say that those MPD's have been withdrawn and that we are relating back to the ones before  
20 the arrival of Minister Bongo.

**ADV PRETORIUS SC:** So the MPD to which you objected or the amendment to the MPD to which you objected was withdrawn?

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

**ADV PRETORIUS SC:** Right. Let's then go to the next

topic, the weaponisation of vetting or security clearance, what do you mean by that? You deal with that in paragraph 66.

**DR DINTWE:** The Chairperson would have heard evidence where they said that there were parallel structures in the State Security Agency. One of the parallel structures was a structure that was used to vet different categories of people, let's say two. Now you will have that group that was seen as opponents of State Capture, I am expressing  
10 an opinion here Chairperson, and then you will have the other group that will facilitate it, so we wouldn't be vetted by the same team, or the same structure, you will have other structure which will deal with David because David is not liked, and then you will have the other one which will deal with Joseph because Joseph is liked, so they were using vetting or the security clearance as a weapon to fight against those who were opposed to corruption and malfeasance in the State Security Agency.

**ADV PRETORIUS SC:** Was this occurrence a rare  
20 occurrence, was it a more frequent occurrence, was there a pattern, what do you conclude from what you learnt in an office?

**DR DINTWE:** It was a pattern, in fact we – when we wanted some information we got to the other office and there were no less than twelve files that were never seen

by the adjudication committee, so they will have an adjudication committee, they use the other term there, but after the investigator, that investigator and the polygraph and all those other things, they would then take it to this mini committee to then sort of you know make a final decision before it gets signed, so we had files which were no less than 12, which were never seen by anybody and they were being dealt with by this other structure that we say was parallel, parallel to the other main structure.

10 **ADV PRETORIUS SC:** Alright, you then in your statement in that paragraphs which follow give three examples, and we will deal with those now because those examples have been raised in other evidence before you Chair.

In paragraph 67 you make reference and you cite the Intelligence Services Act at Section 14, that is a Section which provides for the vetting of SSA members by the Director General of the SSA, am I correct?

**DR DINTWE:** You're correct, that is correct Chairperson.

20 **ADV PRETORIUS SC:** Right and because there is a provision in the legislation that says that you must also have a security clearance similar to the security clearance that a member of the SSA must have are you subject to these particular provisions that you quote here?

**DR DINTWE:** Yes I am.

**ADV PRETORIUS SC:** So who performs your security

clearance, or who is responsible for your own security clearance?

**DR DINTWE:** It is the same person that I oversee, the Director General of the SSA.

**ADV PRETORIUS SC:** Yes. Alright, and then you deal in paragraph 69 with another section, 14[8][a] of the Intelligent Services Act which deals with the facility of an appeal to the Minister in relation to anything that happens to your own security clearance, for example if it's been  
10 degraded, withdrawn or refused, you see that?

**DR DINTWE:** I see that Chairperson.

**ADV PRETORIUS SC:** And you refer in paragraph 70 to a related regulation under Chapter 26 of the Intelligent Services Act which also deals with the possibility of a security clearance, including your security clearance being withdrawn or downgraded.

**DR DINTWE:** Yes I am also subject to those regulations.

**ADV PRETORIUS SC:** So if the Director General decides to withdraw your security clearance that is in effect  
20 removing you from office, is that not so?

**DR DINTWE:** It is, it amounts to that.

**ADV PRETORIUS SC:** Alright. And we will come to what happened in that regard in your case in due course.

**DR DINTWE:** But may I please also impress upon the Chairperson that it should not have been the case,

because there is a difference between the regulations which deals with the members of the service. I am not a member of the service myself, so the position which deals with the regulations is found in the Oversight Act Section 78, which says if these were the regulations ...[intervenes]

**ADV PRETORIUS SC:** Section 74.

**DR DINTWE:** 74, yes, it says a Minister acting with the concurrence of the committee may make regulations regarding, and then you have got paragraphs A, B, C, I  
10 want to go to F, which says security clearance for the Inspector General and members of the committee, so these regulations were never promulgated, this 1994. Yesterday I was counting the number of ministers there, we don't have these powers but we have drafted them more than once, and because they deal with important issues they also deal with the performance of the functions by the Inspector General, the reports submitted by the Inspector General, the suspension or removal from office of the Inspector General and the termination of employment of  
20 the Inspector General.

So in the absence of these regulations which were never promulgated they then revert to the regulations which deals with the employees of the service as if I am an employee of the service.

**ADV PRETORIUS SC:** So as I understand what you are

saying to the Chair is that properly regarded there is legislation which would allow the Director General actively to remove you from office by withdrawing your security clearance.

**DR DINTWE:** That is correct.

**ADV PRETORIUS SC:** Or there is no valid legislative or regulatory provision to that effect.

**DR DINTWE:** There is not.

**ADV PRETORIUS SC:** Right, and we will later deal with  
10 an example where as I understand your evidence an attempt was made to do precisely that.

**DR DINTWE:** Exactly and they invoked the same regulations which deals with somebody else other than this ...[intervenes]

**ADV PRETORIUS SC:** Okay, we will come to that in due course, but I would just like to place on record Chair Section 74 of the Oversight Act, which reads:

“The Inspector General may be removed from office by the President ...”

20 That is the body that appoints you, but only on the grounds of misconduct, incapacity, withdrawal of his or her security clearance, poor performance or incompetence as prescribed.

**DR DINTWE:** That’s what the agreement is.

**ADV PRETORIUS SC:** So if your security clearance is

withdrawn it remains the prerogative of the President to remove you from office, as I understand that section.

**DR DINTWE:** That's correct.

**ADV PRETORIUS SC:** Is that your view as well?

**DR DINTWE:** That is my view as well Chairperson.

**ADV PRETORIUS SC:** Right let's deal with paragraph 72 and following, and that is the issues surrounding the security clearance of Robert McBride, what happened there? You deal with that at paragraph 72 and following?

10 **DR DINTWE:** ...[Indistinct] the notorious fact that the tenure of Mr Robert McBride as the Executive Director of the IPID was not renewed after the expiry of his contract in 2017, and if you follow the reasons that was provided by Minister Bheki Cele was to say that Mr Robert McBride did not have a renewed security clearance, or he was not re-vetted.

In the meantime Chairperson he had applied in time for the renewal, he did not have control over that because the State Security Agency is having that mandate to also  
20 deal with what we call external ...[indistinct], it involves vetting of other officials outside the agency.

**ADV PRETORIUS SC:** Including IPID?

**DR DINTWE:** Yes.

**ADV PRETORIUS SC:** And including you in fact.

**DR DINTWE:** Well of course yes I will be falling under

external space.

**ADV PRETORIUS SC:** We have made that point. Did the matter then arrive on your desk?

**DR DINTWE:** And then before it arrived on my desk is that a decision was made in Parliament and it was given that reason and so forth and I think that he was contemplating going to challenge that decision, but then he complained to me on something else. His complaint to us was to say that there was a team that went to this foreign country that I  
10 want to call Jupiter, I don't know how it was called there, ja, but that country, so they went there and the allegations were that Mr McBride was in cahoots with some people who resided in that particular country or in Jupiter, which is not a problem, the problem is that you cannot go and investigate an individual without having a registered project to say that we suspect that Dintwe – ja I think it is in the public domain, people have been accused of being handled by foreign intelligence agencies, so the moment there is that allegation they must register a project, they  
20 must follow their operational directives and it must be approved by the highest person in the SSA who happens to be a Director General or his delegate, but in this instance nothing of that sort was done, but there was a second problem, the second problem is that there are people who were sent there were then accompanied by a

certain gentleman ...[intervenes]

**ADV PRETORIUS SC:** Don't mention the name, don't mention the name or the company.

**DR DINTWE:** Yes, we are using a pseudo name there, I think we call him Mr Ivanhoe.

**ADV PRETORIUS SC:** Yes.

**DR DINTWE:** Now Mr Ivanhoe is a director of a company called Icebox Incorporated.

**ADV PRETORIUS SC:** Both are pseudonyms.

10 **DR DINTWE:** It is also a pseudonym.

**CHAIRPERSON:** It is very important to mention if it is a pseudonym, otherwise people accuse the Commission of not being responsible and mentioning names.

**ADV PRETORIUS SC:** We will get a complaint from the real Mr Ivanhoe.

**CHAIRPERSON:** Ja, okay, continue.

**DR DINTWE:** But who is this Mr Ivanhoe? Mr Ivanhoe and his company were being investigated by the OIGI, my office and they were also being investigated by IPID, by Mr  
20 Robert McBride. He had provided some equipment to the Intelligence and the procedure was not followed. There were also findings by Treasury that there was contravention of some of their directives and so forth, so that brought about that problem because obviously then it was Mr Ivanhoe who informed the State Security Agency

that Mr McBride was not upright, so in the meantime Mr McBride did not get security clearance, his tenure could not be extended at IPID because he was fighting against this person who is connected, there is evidence later which shoes his political connections and to what extent was he involved also in fleecing the ...[indistinct] regions.

**ADV PRETORIUS SC:** As in many spy stories they get quite complicated and it is difficult often to follow the plot, but as I understand it Mr McBride was investigating this  
10 company.

**DR DINTWE:** That's correct Chairperson.

**ADV PRETORIUS SC:** This company or the director of this company, Mr Ivanhoe, then lodged a complaint against Mr McBride which accused him of nefarious dealings in a foreign country.

**DR DINTWE:** That is correct.

**ADV PRETORIUS SC:** So the very company that was being, and the person that was being investigated by IPID under Mr McBride was at the same time reporting to Crime  
20 Intelligence I think it was, that Mr McBride was not behaving appropriately or properly or lawfully in relation to activities in a foreign country, do I understand that correctly?

**DR DINTWE:** But we should add that it was not only a complaint, he then becomes a source or an informer who

then even accompany the team that is going to investigate in Jupiter.

**ADV PRETORIUS SC:** So the company or the director being investigated by IPID and Mr McBride is now a source, protected as a source, and accompanies the investigators of Crime Intelligence to this foreign country, do I understand that correctly?

**DR DINTWE:** You understand correctly.

**ADV PRETORIUS SC:** That is the additional part of the  
10 plot that you delineate.

**DR DINTWE:** Yes.

**ADV PRETORIUS SC:** Right, what happened?

**DR DINTWE:** And when he gets to that country at the cost, full expenditure being carried by the SSA and they get to Jupiter, they meet with the people that had informed the investigators here that they have evidence of even offshore accounts that belongs to Mr McBride, but they returned empty-handed because that was never – it was never a reality, it was never the truth.

20 **ADV PRETORIUS SC:** But there is a further twist and that is that this director and this company are actual service providers and potential service providers or bidders to the extent of tens of millions of Rands to the security establishment, am I correct?

**DR DINTWE:** For Crime Intelligence to be specific.

**ADV PRETORIUS SC:** For Crime Intelligence and that you will deal with in due course.

**DR DINTWE:** We will deal with that in due course.

**ADV PRETORIUS SC:** Is there anything you wish to add then in relation to that?

**DR DINTWE:** ...[indistinct] they come back and they say that no the information was negative but by that time there is somebody already appointed to act at IPID, Mr McBride is out already, so they have done that and it is one of what  
10 we can call a *modus operandi* they just dismiss you and they just delay things and they know that there is no truth in what they are alleging, but the prejudice was still suffered.

Maybe not even call it prejudice to Mr McBride but maybe some prejudice to the citizens of this country because at that time he was fighting tooth and nail to make sure that he reverses the damaged caused by State Capture, corruption, police brutality and all those issues.

**ADV PRETORIUS SC:** We have summarised these events  
20 but they are detailed in your statement and the Chair has the report. Let us move on then to the facts surrounding the security clearance of Mr Nqasana, you deal with that in paragraph 82 and following. What happened there?

**DR DINTWE:** In Mr Nqasana's case Mr Nqasana gets appointed, they opened the files to vet him, he signs, he

consents to everything and then they go through all the processes and at the end he then they qualify him, he didn't get awarded top secret. There is communication to the Minister, the then Minister of Justice to say that no this candidate is now okay and then he resumes his duties and then something happens between himself and the former President, there is a disagreement, there is a mistrust that he could charge the former President.

They did not come back to him and withdraw the  
10 security clearance, what they do is that they then request his file, because then the file would be stored for the coming five years or until such time that you want to reinvestigate or withdraw.

They go ...[intervenes]

**CHAIRPERSON:** When you say they you mean people within SSA?

**DR DINTWE:** Ja, I just want to see if they maybe didn't use the other two names that I mentioned but ...[indistinct]

**CHAIRPERSON:** Oh pseudo names obviously.

20 **DR DINTWE:** No, those would not be pseudo names.

**CHAIRPERSON:** Oh those would be real names?

**DR DINTWE:** Oh no, they are pseudo names.

**ADV PRETORIUS SC:** Chair Mr Nqasana may have named those persons, or those persons may have been named, the persons who dealt with his security clearance, they

were not operatives, but I am not sure whether rule 33's have been issued in that regard. Well they are not named here anyway.

**DR DINTWE:** 87.2, no 87.2 the last but one sentence on page 801.

**CHAIRPERSON:** 801.

**DR DINTWE:** Yes Chair.

**ADV PRETORIUS SC:** 87.2?

**DR DINTWE:** It will be one, I mean that first sentence on  
10 that page. So it will be paragraph 872 which starts on 800.

**ADV PRETORIUS SC:** The name in paragraph 87.2 can be mentioned, he has received an 33 Chair.

**CHAIRPERSON:** Okay that is the ...[intervenes]

**ADV PRETORIUS SC:** But anyway you tell the story.

**CHAIRPERSON:** You say instead of the pseudonym, you say ...[intervenes]

**ADV PRETORIUS SC:** No, there's no pseudonym here.

**CHAIRPERSON:** On mine there is a pseudonym on paragraph ...[intervenes]

20 **ADV PRETORIUS SC:** There is a pseudonym for the first person mentioned in paragraph 87.2, that pseudonym should remain. The second person mentioned in paragraph 87.2 has received a Rule 33 and you can mention that name and they are two different people although they – ja, they are two different people, well they

are mentioned ...[intervenes] he same context.

**DR DINTWE:** Alright. So Chair after that six – I mean after the 6<sup>th</sup> of March 2014, which was the date that the certificate was issued of top secret to Mr Nqasana they two days later and unbeknown to Mr Nqasana the then general manager, we call him Danny, in the SSA gave instructions that further investigations should be conducted on Mr Nqasana. The file was then allocated to a different vetting investigator who interviewed certain unidentified referees  
10 in KwaZulu Natal and those referees can be identified by Mr Thulani Dlomo, who was then the Deputy Director General in the Domestic Branch of the SSA.

Now vetting is intrusive, they even ask funny questions, sometimes they ask are you ...[indistinct], are you, have you ever had a problem of drugs and so forth, so it is an intrusive kind of a method. Now the reason why you got informed that you sign, you are consenting, that you can go to the banks and check my actions, you can do this, you can go even talk to my referees. Here in this  
20 instance Mr Nqasana's consent ends on the 6<sup>th</sup> of March when this certificate is issued, but then this General Manager called Danny then takes the file again, he speaks to a different vetting investigator and give that instructions that Mr Thulani Dlomo will give you names, you must go and talk to these people in KwaZulu Natal.

**ADV PRETORIUS SC:** Did you investigate this vetting process or this re-vetting process?

**DR DINTWE:** I investigated that and I called for some documents during the course of our monitoring.

**ADV PRETORIUS SC:** Yes and did you look for the file?

**DR DINTWE:** We could not locate the file, we could only get some other documents which were then given to us. Some of those documents suspecting me were not even signed, I think there is one left that was still signed.

10 **ADV PRETORIUS SC:** So the evidence which would have assisted you in your investigating to what you regard as an improper or unlawful re-vetting process quite frankly disappeared?

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

**ADV PRETORIUS SC:** What do you say in paragraph 87.6 then?

**DR DINTWE:** Right, now what we found to be very strange was that when we looked at the digital vetting files, so remember that we could not get the physical file, but we  
20 could be assisted to get onto the system and check what they call digital, so – because they cannot delete that, there will always be an auditable trace there. What we found was a letter which was uploaded there which said that Mr Nqasana's vetting process was not complete.

**ADV PRETORIUS SC:** Is that a correct statement of the

facts, was that a correct statement of the facts?

**DR DINTWE:** It cannot be a correct statement because there was a certificate issued and signed on the 6<sup>th</sup> of March 2014.

**ADV PRETORIUS SC:** Correct, and was that letter ever signed?

**DR DINTWE:** The letter, this letter was not even signed.

**ADV PRETORIUS SC:** So someone put that letter in a file presumably intending it to be signed at some stage but it  
10 never got to be signed, is that correct?

**DR DINTWE:** It never got to be signed and the Chief Directorate dealing with that advised or informed us that they had no knowledge of the author of the alleged letter.

**ADV PRETORIUS SC:** Yes, you say in paragraph 87.6:

“The management of the Chief Directorate stated that the issue of the denial letter remains questionable.”

That means the denial of the certificate, does it?

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

20 **ADV PRETORIUS SC:** There was no letter of denial written by the Chief Directorate External Vetting and Advising, that does not mean to say of course that some parallel vetting process might have drafted that letter.

**DR DINTWE:** Look certain letters, like in my office you will have ...[intervenes]

**ADV PRETORIUS SC:** That may be an unfair inference on my part so ...[intervenes]

**DR DINTWE:** Yes, I understand what made it more strange was that if an official in my office writes a letter they will write on top the reference or an inquiry at least even if I sign that letter. This one did not indicate who at least the drafter is in the bare minimum.

**ADV PRETORIUS SC:** Alright. The conclusion you drew after all your own investigations in relation to whether Mr  
10 Nxasana had a valid security clearance or not what was that?

**DR DINTWE:** I will have to read that one because I – ja on paragraph 87.7 I think you are referring to that.

**ADV PRETORIUS SC:** Yes.

**CHAIRPERSON:** Yes.

**DR DINTWE:**

20 “It is not worth that Mr Thulani Dlomo’s name featured prominently in the findings of the HLRP the panel concerning the rogue intelligence unit within the SSA and reportedly took instructions from and reporting directly to the then President Mr Zuma. President Zuma...”

**ADV PRETORIUS SC:** Just before you go on. What is your source for that conclusion?

**DR DINTWE**: It is the high level review panel it is .

**ADV PRETORIUS SC**: Well it may not be stated in the high lever review panel in so many words but we can always check it. But what you are saying is you relying on what you stated in that HLRP report? Is that correct?

**DR DINTWE**: That is correct yes.

**ADV PRETORIUS SC**: Of course we do not have the full report certain portions of that report remain classified even to the commission but I am concerned that – that conclusion  
10 that you draw may not be accurately reflected in the report. Were you satisfied that it is?

**DR DINTWE**: It is fine Chairperson I am always amenable to us putting it on hold until you have checked those facts and then you are raising it Advocate because it is raising a very important issue so I am sitting with an unredacted version of the HLRP and I think that everyone else may be having a redacted version.

**ADV PRETORIUS SC**: Alright. The second sentence how does that read or what does it read?

20 **DR DINTWE**: The second statement?

**ADV PRETORIUS SC**: In 87.7.

**DR DINTWE**: Alright.

“President Zuma relied upon the alleged lack of security clearance of Mr Nxasana as a basis for instigating an inquiry into his

fitness to hold office notifying Mr Nxasana of his intention or to suspend him.”

**ADV PRETORIUS SC:** So your understanding of the facts which you investigated is that Mr Nxasana was issued with a valid Top Secret Security clearance.

**DR DINTWE:** That is correct.

**ADV PRETORIUS SC:** Subsequent to that a further investigation into his security status was conducted you say that that was improper or not – or properly authorised, am I  
10 correct?

**DR DINTWE:** That is correct.

**ADV PRETORIUS SC:** So that his original security clearance remained in place?

**DR DINTWE:** It remained in place as far as my investigators – as far as my investigators could establish.

**ADV PRETORIUS SC:** Yes. Notwithstanding that you say that the issue of the security clearance, its status, its validity and question marks around an alleged lack of security clearance were used as one of the reasons for questioning  
20 Mr Nxasana’s fitness to continue to hold office as NDPP National Director of Public Prosecutions, am I correct?

**DR DINTWE:** Yes that is correct. Would not maybe the commission wants the Chairperson allow me to just mention that there is an abstract that I would have taken from an opinion piece but it says here:

“It is absurd to suggest that a murder charge which resulted in an acquittal could conceivably affect a person’s security competence.”

So the second round of vetting then revealed this charge of Mr Nxasana from which he was acquitted.

**ADV PRETORIUS SC:** Yes that has been canvassed in evidence in fact thank you Mr Dlomo but you say as I understand it in your...

10 **DR DINTWE:** I am not Mr Dlomo Chairperson.

**ADV PRETORIUS SC:** In your statement that... - sorry

**CHAIRPERSON:** Dr Dintwe you said Mr Dlomo.

**ADV PRETORIUS SC:** I am very sorry.

**CHAIRPERSON:** You did not even say Mr Nxasana.

**ADV PRETORIUS SC:** Alright let me repeat all that. It is noteworthy that the grounds on which the subsequent investigation into whether Mr Nxasana should retain his security clearance or not was based on grounds that you say are entirely fallacious.

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

**ADV PRETORIUS SC:** And you detail that in these paragraphs of hearsay?

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

**CHAIRPERSON:** Where were you reading just before Mr Pretorius asked you where you say it – you started with It is

– I am not sure what you (talking over one another).

**DR DINTWE**: No alright yes.

**CHAIRPERSON**: Charge of murder.

**DR DINTWE**: Yes it will be paragraph 85 where I refer to a statement made by Mr Paul Ngobene of the Progressive Professionals Forum Western Cape. And then I had just went – it says a lot there but I had turned to the next page which will be page 800 and it will be line – not even a sentence 123456.

10 **CHAIRPERSON**: Oh now I can see where it says it is absurd.

**DR DINTWE**: Yes.

**CHAIRPERSON**: In the middle of a sentence.

**ADV PRETORIUS SC**: Yes perhaps – perhaps for the sake of completeness that comment should be placed on record Chair.

**CHAIRPERSON**: Yes, yes.

**ADV PRETORIUS SC**: In paragraph 85 you say Dr Dintwe:

20 “That it is my submission that the vetting and security clearance of Nxasana was not properly handled.”

And you referring there to the continuation of the investigation after the issue of a certificate I presume?

**DR DINTWE**: That is correct.

**ADV PRETORIUS SC**:

“The statement by Mr Paul Ngobene of Progressive Professionals Forum Western Cape elucidates my submission – that is your submission as he writes and I quote – or you quote “it is disconcerting that justice ministry officials appear to conflate the issue of whether an NDPP is fit and proper with the issue of his security clearance” there – these are not the same. Security clearance is simply an official document indicating the degree of security competence of a person. This reflects a person’s ability to act in such a manner that he does not cause classified information or material to fall into unauthorised hands thereby harming or endangering the security or interests of the state. Security competence is normally measured against certain criteria focussing on his susceptibility to extortion or blackmail, amenability to bribes, susceptibility to being compromised due to compromising behaviour and loyalty to the state or institution. Measured against these standards it is absurd to suggest that a murder charge which resulted in an acquittal could

conceivably affect a person's security competence. In similar vein a killing committed when Nxasana was a teenager long before he qualified to be a lawyer and before he was declared fit and proper by a court during the attorney admission process cannot be grounds for questioning his fitness now."

As I understand it you endorse those comments?

10 **DR DINTWE**: I endorse those comments.

**ADV PRETORIUS SC**: Alright. I hope that clarifies that issue Chair.

**CHAIRPERSON**: Yes, no, no I understand the issue ja. I just – I just had not seen where he was reading from.

**ADV PRETORIUS SC**: Yes.

**CHAIRPERSON**: But I have – he has told me.

**ADV PRETORIUS SC**: Right. Then you deal in paragraph 88 and following with your own security clearance. Would you tell the Chair about that please.

20 **DR DINTWE**: Ja.

**ADV PRETORIUS SC**: Before we do that you have made it clear to the investigators and the legal team all along that you are not here to raise personal grievances.

**DR DINTWE**: That is correct Chairperson. But before I go there if you allow me Chairperson can we...

**ADV PRETORIUS SC:** Yes sure.

**DR DINTWE:** Can we go back to 87.7 to say that the – the issue of Mr Nxasana took the other turn and it ended up by thinking the highest court of the land. I think that during my investigation I would have also made some reference because by that time when I was doing this affidavit and when I was doing that monitoring that decision was then made and – and the involvement of – of the SSA and the endorsement to say that it is so surprising that why would  
10 you go for the second round of vetting investigation without even informing the subject. It could also be part of that and I will request the – Advocate Paul Pretorius but maybe we need to look at those decisions and just check what were some of the facts that could have influenced my submissions there.

**CHAIRPERSON:** Well to the extent that you may be referring to the judgments of the constitutional courts we have dealt with it. Mr Pretorius led the – was the evidence leader. He had dealt with it in relation to Mr Nxasana. So Mr  
20 Nxasana himself gave extensive evidence but obviously he would not have known some of the things that you discovered I think in your investigation. But he has given extensive evidence and – and we have looked at that judgment so – so we are quite familiar with it.

**DR DINTWE:** Thank you Chair. So an earlier question...

**CHAIRPERSON:** Maybe I should just say also not only are we familiar with the judgment we are familiar even with the affidavits that were filed in that matter and the record of the constitutional court – the commission has got all of those affidavits that were before the courts in relation to these matters.

**DR DINTWE:** Thank you very much Chair. So Advocate Pretorius the Chairperson had prefaced his question – his next question by saying that again this should not be taken  
10 as a personal grievance. What I have done here I have taken examples of.

**CHAIRPERSON:** Ja.

**DR DINTWE:** Different people that in my opinion were opposed to fraud in government, malfeasance, state capture, corruption if you like. So I have taken them and I am trying to create a pattern here.

**CHAIRPERSON:** Ja.

**DR DINTWE:** So that the Chair can see.

**CHAIRPERSON:** Yes.

20 **DR DINTWE:** How did this parallel structure operate.

**CHAIRPERSON:** Yes. Well I would say while there is – there is certainly something to be said for the view that it should not be not seen as personal grievances on the other hand it is important to make sure that you do not end up not putting before the commission what should be put before the

commission in the interest of the office as opposed to in the interest of a particular incumbent but in the interest of the office because you are now too apologetic that you may be seen as ventilating personal grievances. So it is a striking of the balance. Okay.

**DR DINTWE**: Thank you Chair.

**ADV PRETORIUS SC**: Yes. And of course these matters do deal with the office of the Inspector General in Intelligence and the vulnerabilities related to that office.

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

**ADV PRETORIUS SC**: Would you then tell the Chair what happened in this regard as you deal with it in paragraph 88 and following?

**DR DINTWE**: So my – my security vetting was done and it was completed. There was in fact I think some threats from the other political parties who were saying that their President was taking too long to appoint me because the Parliament had already – had already voted in November of 2016 and here we are talking around January/February of  
20 2017.

So my security clearance was done in an extraordinary kind of speed if you like. I think that he had a little trim just to deal with that so I got a certificate yes of course there were some issues there but they were not worrisome so I got the certificate.

The problem only arose at a later stage.

**ADV PRETORIUS SC:** So you were duly vetted before you assumed duties as IGI and you were given a top secret security clearance, correct?

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

**ADV PRETORIUS SC:** What is the period of validity ordinarily of a security clearance certificate?

**DR DINTWE:** It is not legislated but they write in there they will say that this will be valid for the five years.

10 **ADV PRETORIUS SC:** And you raise the issue of the exercise of a power or an alleged power to re-vet you and that occurred during 2017 and 2018, correct?

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

**ADV PRETORIUS SC:** Alright. What is the background...

**DR DINTWE:** A few months after – after the all depends on the office.

**ADV PRETORIUS SC:** Oh you suddenly find yourself subject to a re-vetting process, is that correct?

**DR DINTWE:** That is correct.

20 **ADV PRETORIUS SC:** What were the circumstances surrounding this? You deal with that in paragraph 90 and following.

**DR DINTWE:** 90 and then following yes. May I please just refresh my memory? So I think that I would have dealt with paragraph 90 where I said that Mr Fraser was aware of the

investigation that I was busy with.

**ADV PRETORIUS SC:** So you were investigating Mr Fraser based on a complaint received by your office, is that correct?

**DR DINTWE:** That is correct.

**ADV PRETORIUS SC:** Right.

**DR DINTWE:** And he was aware of that because I would have written a letter to him saying him that this courtesy.

**ADV PRETORIUS SC:** Right.

**DR DINTWE:** I am in receipt of a complaint which implicates  
10 you.

**ADV PRETORIUS SC:** Right did he make any requirement of you in regard to the source of your information?

**DR DINTWE:** Yes then he wrote to myself saying that he has a counter intelligence mandate and his interpretation thereof was to say that if somebody comes to my office and reports I must tell him if they happen to be in possession of classified information.

**ADV PRETORIUS SC:** So he says well I have a counter intelligence mandate you must give me all the information  
20 concerning the complaint against me.

**DR DINTWE:** Exactly and the reason why he was saying that he knew that that matter had to deal with the pen investigation. So the time investigation had lots and lots of documents that were classified.

**ADV PRETORIUS SC:** Alright. Just maybe at it – mention it

now but I understand it from a source in the public domain that the – at least one of the PAN reports or part of the PAN reports was leaked to the Ama Bhungani news service, is that correct, am I correct?

**DR DINTWE:** That is correct.

**ADV PRETORIUS SC:** Right.

**DR DINTWE:** But there would have been a leak in 2014 before I came to that office in the City Press in that instance.

**ADV PRETORIUS SC:** Right. Did you accede to Mr Fraser.

10 **CHAIRPERSON:** Just one second Mr Pretorius – just one second Mr Pretorius for the transcribers reference to pan report and pan investigation is pan – just for the – for the – when they do the transcripts.

**DR DINTWE:** And they call it a Principle Agent Network.

**CHAIRPERSON:** Yes.

**ADV PRETORIUS SC:** Alright. Did you accede to Mr Fraser's requirement that you disclosed this information to him?

20 **DR DINTWE:** No I refused and then I wrote to him telling him that his belief was erroneous that I should report receipt of all classified information to his office and that that would defeat the purpose for which IGI was created.

**ADV PRETORIUS SC:** What happened after the lodging of the complaint that you were investigating in respect of Mr Fraser – what had happened thereafter?

**DR DINTWE:** He then wrote a letter to me saying that he instituting what he called – okay he instituted – he launched a counter investigation against me.

**ADV PRETORIUS SC:** On what grounds or on what alleged grounds?

**DR DINTWE:** In the first letter that I received on the 8<sup>th</sup> of November 2017 I am taking an extract out of that letter he said that:

“The Inspector General had met representatives of political  
10 parties in Parliament and had on that occasion received  
classified information which information relates to the state  
security agency and its activities. So that was the  
accusation.

**ADV PRETORIUS SC:** So let us just put that in context so we understand the plot here. The office of the Inspector General of Intelligence receives a complaint.

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

**ADV PRETORIUS SC:** Included in that complaint is the disclosure to you of a classified document or documents?

20 **DR DINTWE:** There was not in fact. His moles got it wrong.

**ADV PRETORIUS SC:** Alright. Well that is an incorrect fact upon which Mr Fraser appears to have acted.

**DR DINTWE:** Yes.

**ADV PRETORIUS SC:** But there is an allegation then let us get it step by step.

**DR DINTWE:** That is correct Chairperson it is an allegation that he is making against me.

**ADV PRETORIUS SC:** The office of the IGI receives a complaint. It is alleged or believed incorrectly that as part of that complaint you received classified documentation.

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

**ADV PRETORIUS SC:** You are then requested by Mr Fraser to give that classified information which he incorrectly received?

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

**ADV PRETORIUS SC:** You refused.

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

**ADV PRETORIUS SC:** He says then immediately after that that he is launching a counter investigation against you for receiving classified information as part of the complaint which you investigating against him.

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

**ADV PRETORIUS SC:** Alright I think we understand that. What happened then?

20 **CHAIRPERSON:** That is after he had launched the counter investigation against you – what happened?

**DR DINTWE:** Oh alright but I would have wanted to deal with the latter part of the same letter.

**ADV PRETORIUS SC:** Yes so please do so you deal with that in paragraph 91.

**DR DINTWE:** Yes of the 8<sup>th</sup> of November. That paragraph further said:

“Section 26 of the Intelligence Services Act 2002 65 of 2002 and Section 4 of the Protection of Information Act 1982 Act 84 of 1982 and I think it is a SIC there but that is how the letter was and undermines the agency’s ability to fill its counter intelligence responsibilities as defined and set out in  
10 Section 21(b) of the National Strategic Act 1994 which includes information security.”

**ADV PRETORIUS SC:** Right well let us just briefly examine the logic of Mr Fraser’s stance here. The office of the IGI must investigate the activities of the security services including the SSA, correct?

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

**ADV PRETORIUS SC:** Does that mean that you would inevitably it seems logical to me from the outside that you would inevitably have to have to access to classified  
20 information?

**DR DINTWE:** Always it is a daily thing.

**ADV PRETORIUS SC:** And there could be no reasonable interpretation of your powers and duties to say that you can do – or you can investigate the procurement of stationery and leasing of buildings but you cannot deal with the

classified activities.

**DR DINTWE:** There would not be that is why you can see that Chairperson on paragraph 91 that he is struggling – he is bringing in the laws that are not even empowering that are not even establishing the office of the Inspector General of Intelligence that does not even deal with the appointment of the incumbent and so forth. So those laws they not be applicable to myself in any event.

**ADV PRETORIUS SC:** So – but it seems that they  
10 interpreted and applied in such a way as to say that if you receive classified information in this – in the course of a complaint being made to your office you are somehow transgressing the law.

**DR DINTWE:** Yes that is exactly what the purpose of that letter was.

**ADV PRETORIUS SC:** Alright well I am sure that the Chair will with our assistance deal with the legalities there. Right what happened then? You refer in paragraph 92 that there were further – letters sent to you.

20 **DR DINTWE:** Now on the 13<sup>th</sup> of November 2017 remember the first one is the 8<sup>th</sup> of November. On the 13<sup>th</sup> he then writes a follow up letter in which he reiterates that I was in receipt of unlawfully obtained classified information from representatives of political parties in Parliament.

**ADV PRETORIUS SC:** Right. And you at the top of the or at

the end of paragraph 92 what did the Director General state in addition?

**DR DINTWE**: He then refers to Section 7 10 of the Oversight Act and only that line which says that:

“The Inspector General shall comply with all security requirements applicable to the employees of the agency.”

**ADV PRETORIUS SC**: So he was saying that the fact that someone had a classified document you must now report to  
10 someone else?

**DR DINTWE**: That is correct and failure to do so will be in contravention of 7 10.

**ADV PRETORIUS SC**: Right. Now what was the culmination of this series of events? You deal with that in paragraph 93.

**DR DINTWE**: Okay then – and Chairperson I mean they were following each other that is why I said earlier that I think the commission would decide if it was inference that I was drawing with regard to the MPD’s. Because you can see the frequencies of the letters there. One message and one  
20 message only. Then on the 15<sup>th</sup> of November again he writes in which I get informed that SSA will be re-vetting me because I had not reported or disclosed to the Director General the fact that I was in receipt of unlawfully obtained classified information.

**ADV PRETORIUS SC**: Right.

**DR DINTWE:** But there is something very interesting about that letter. This letter gets delivered by the DG himself. We are not in Pretoria we are in Cape Town so we have got offices on the 18<sup>th</sup> Floor. Mine will be on the smaller passage his will be at the corner. And his secretary or PA then tells me – knocks at my door and says that the DG will like to see you. And I said no, no it is okay maybe in ten minutes I will be done with what I am doing because I was doing some preparation. Then he comes there with that  
10 letter he puts it on the table. Somehow violently and he says that Sir I have decided to re-vet you and he observes me, he was looking at me and I 00:26:53 making me very angry because I then like took that letter and I demonstrating Chairperson I just put it aside and said okay I will see that when I get back to Pretoria. So I did not show him any signs of frustration or off here and whatever. He actually left my office an angry man on that day.

**CHAIRPERSON:** But he – so he did not want any delay in you receiving this letter.

20 **DR DINTWE:** There was no reason our head quarters are in Pretoria.

**CHAIRPERSON:** Yes.

**DR DINTWE:** When we are in 00:2;7:36 even smaller in our offices.

**CHAIRPERSON:** Yes.

**DR DINTWE:** Just for administration to go to the committee make your reports and come back here. In fact our trips were not even arranged collectively. He went there and I happened to be there. I think that earlier then he said oh this man is around let us tie this matter and sort of spoil  
00:27:56.

**ADV PRETORIUS SC:** So just to summarise then Dr DIntwe.

**DR DINTWE:** Yes.

**ADV PRETORIUS SC:** You receive a complaint from a  
10 member of Parliament.

**DR DINTWE:** That is correct.

**ADV PRETORIUS SC:** That complaint deals with the Principle Agent Network.

**DR DINTWE:** That is correct.

**ADV PRETORIUS SC:** We know from other evidence at least in principle that implicated in the PAN report was Mr Fraser.

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

**ADV PRETORIUS SC:** Mr Fraser then says I want classified documents that you have received as part of the report,  
20 correct?

**DR DINTWE:** That is correct.

**ADV PRETORIUS SC:** He then – you say you are not going to disclose the contents of the report to him at this stage or whatever you say to him.

**DR DINTWE:** That is correct. In fact if this was not a leader

in Parliament who is a well known prominent person if it is other complainants I do not even disclose the complainants beforehand to the implicated parties. I assure them confidentiality.

**ADV PRETORIUS SC:** Anyway it seems that Mr Fraser is concerned to put it at its lightest that you are investigating this complaint without disclosing information relating to the complaint to him.

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

10 **ADV PRETORIUS SC:** He then decides to re-vet you.

**DR DINTWE:** That is correct.

**ADV PRETORIUS SC:** And the grounds for the re-vetting are exactly your handling of the complaint against him.

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

**ADV PRETORIUS SC:** And then what happened on the – well what happened shortly thereafter you refer to a telephone call you received in paragraph 94?

**DR DINTWE:** Yes so when I was about to leave and I – we – I was already in the aircraft coming back to Pretoria.

20 Then I received this telephone call. The person informs that he was instructed that I should be re-vetted. So he is introducing himself as a vetting investigator and he is asking me ...[intervenes]

**ADV PRETORIUS SC:** What ...[intervenes]

**MR DINTWE:** ...ability. How soon can you get to Pretoria

so that we can fill in the form.

**ADV PRETORIUS SC:** And what happened on the 3<sup>rd</sup> of December 2017?

**MR DINTWE:** No, he writes again on the 3<sup>rd</sup> of December 2017 and he advises me of an pending investigation by the SSA regarding the leaking of a classified OIGI report. A copy of which letter is annexed. So I annexed that, okay. But I do not have it here, Chairperson.

10 He mentioned that he was informed that I had been uncooperative with these vetting efforts of the SSA. So in other words, that was just another follow-up letter without giving me further reasons but here it is trying to bring something – the OIGI report was leaked.

**ADV PRETORIUS SC:** You then deal with the applicable legislation.

**MR DINTWE:** Yes.

**ADV PRETORIUS SC:** Did Mr Fraser give you an instruction or did he ought to give you an instruction that is  
20 referred to in paragraph 98?

**MR DINTWE:** Yes, it was. I saw it as an instruction. May I continue and just ...[intervenes]

**ADV PRETORIUS SC:** Yes, please. You tell your story.

**MR DINTWE:** Okay.

**ADV PRETORIUS SCA:** And if you need to refer to the

legislation and its import, please do so.

**MR DINTWE**: No, alright. I do not know did – by the evidence leader but I think that I submitted earlier to say that in fact there are no regulations which deals with my ...[intervenes]

**CHAIRPERSON**: Yes, yes.

**MR DINTWE**: That is what I am saying,

**CHAIRPERSON**: H'm.

**MR DINTWE**: Yes. So I was instructed by Mr Fraser to  
10 cooperate with the SSA in the process of my eviction(?)  
and the email investigation into my alleged conduct. And  
in the letter that was later sent to me, I would have to read  
that into record, it is at the paragraph. Chairperson, if you  
allow me?

**CHAIRPERSON**: Yes.

**MR DINTWE**: It will be on paragraph 98.

**CHAIRPERSON**: H'm.

**MR DINTWE**: Yes.

20 “The above, notwithstanding, your attention is  
brought to the media reports of today,  
3 December 2017 in the Sunday Times,  
concerning classified reports of the Office of  
Inspector General of Intelligence, IGI.  
It has now become, as a cause of concern,  
that classified reports of the IG have been

leaked some four years after its finalisation.

You are hereby advised that the matter of the leakage(?) will be investigated and as such the corporation of the Inspector General of Intelligence is required...”

**ADV PRETORIUS SC:** Alright. And then in paragraph 99, you received further information.

**MR DINTWE:** And then I was informed by him again that I was to be re-vetted because now it is even something  
10 noble(?) there. He says because he was in receipt of disturbing information ...[intervenes]

**ADV PRETORIUS SC:** ...disturbing ...[intervenes]

**MR DINTWE:** I have gone and I should consider that but he never told me what is that information. To date I do not know.

**ADV PRETORIUS SC:** Did you later find out what the disturbing information was?

**MR DINTWE:** No, I have never to date Chairperson.

**ADV PRETORIUS SC:** You refer in the second sentence,  
20 paragraph 99 to disturbing information. What is that?

**MR DINTWE:** It is a recollection that I make because the first letter was seeing if I was in receipt. So I am saying that the only inference that I could draw from that is that this disturbing information is about me receiving, because there was no intervening issue where he would have

amended to changed the initial accusation or  
...[intervenes]

**ADV PRETORIUS SC:** So this was a suspicion that you had that this was what he was referring to?

**MR DINTWE:** Yes.

**ADV PRETORIUS SC:** He never told you what he was disturbed by?

**MR DINTWE:** No, he never told me.

**ADV PRETORIUS SC:** You drew the conclusion that it was  
10 – that you have met members of Parliament. You assumed that or suspected that?

**MR DINTWE:** I actually just assumed that.

**ADV PRETORIUS SC:** Yes. And you do say that.

**MR DINTWE:** Yes.

**ADV PRETORIUS SC:** And say: Some credence for my suspicions was confirmed in the report of the High-level Review Panel.

**MR DINTWE:** Yes.

**ADV PRETORIUS SC:** Where it is recorded that Mr Fraser  
20 had alleged that I was “spotted” meeting members of the opposition. What do you say to that?

**MR DINTWE:** Chairperson, it is a disturbing thing. I hope that one day, even if it is not myself, that somebody in that office or that office will say that we have been very mild about what happened here. And, like, again, generally

what is happening in the country. How do you follow a head of a constitutional body survey(?) them, intercept them and even spot them and then even confirm?

I think, Chairperson, that may be treasonable to, you know, to say the least. I think it is just pure criminal. And I am also able to refer to some of the other occasions where he would even write a letter to me and make me aware that we are – whether you have been meeting this and other persons. I am in possession of those letters.

10 The team is in possession of those letters.

I think it is a serious thing. I really got disturbed here to say that how do you spot a person who is doing his job?

**CHAIRPERSON:** Ja. No, quite something. Quite serious.

**ADV PRETORIUS SC:** Alright. So you say and you stress, in fact, in the last paragraph of 99 that, of course, it is your responsibility to meet with members of the public or your responsibility of members of your staff to meet with people who are raising complaints and to receive  
20 information from them, whether classified or not.

**MR DINTWE:** That is correct, Chairperson.

**ADV PRETORIUS SC:** You have given that evidence.

**MR DINTWE:** Ja.

**ADV PRETORIUS SC:** And you also refer in paragraph 101 to Section 7(8) of the Oversight Act that where you

receive information, the disclose of that information is controlled by the provisions of Section 7. You cannot just willy-nilly give it to anybody.

**MR DINTWE**: If I had to follow that process before I come to the Commission... Chair, you can just imagine the accusations that I was going to get if I disclose to Mr Arthur Fraser. It means that before that disclosure, I am enjoined by that provision that I should follow. I should inform the Minister of State Security and I should also  
10 inform the President.

**ADV PRETORIUS SC**: Right. But as I understand it, Director Generals talked to your position was that his power overrode any other provisions.

**MR DINTWE**: That is what he was telling me. And it was in the letter also.

**ADV PRETORIUS SC**: Right.

**MR DINTWE**: Chairperson, may I say that these letters were part and parcel of my application that I would have placed before the North Gauteng.

20 **CHAIRPERSON**: Yes.

**MR DINTWE**: So they are – a majority of them are declassified so that we just wanted to clean our house.

**CHAIRPERSON**: Okay.

**MR DINTWE**: And tighten a few screws.

**CHAIRPERSON**: Okay.

**MR DINTWE**: But you can see that I am quoting extravagantly from them. It is because they are actually declassified.

**CHAIRPERSON**: Okay.

**ADV PRETORIUS SC**: In paragraph 103 and following, you deal with the legal provisions and you give your interpretation of how they should be applied to the particular facts that you have related to the Chair. You see that?

10 **MR DINTWE**: I see that. And those are the Intelligence Services Regulations.

**ADV PRETORIUS SC**: Right.

**MR DINTWE**: Yes.

**ADV PRETORIUS SC**: And in paragraph 106, you say:

“Beyond the clear conflict of interest apparent in Mr Fraser’s claim to information in this instance...”

Of course, he was claiming information relevant to your investigation of him.

20 **MR DINTWE**: Yes.

**ADV PRETORIUS SC**: “It is stressed that the IPI does not report to the Director General or any of the Ministers responsible for Intelligence Services. He/she is accountable to the JSCI.

There is no legal provision requiring me to

account to the Director General on any information required in the course of the discharge of my duties...”

Correct?

**MR DINTWE**: That is correct.

**ADV PRETORIUS SC**: And his plan to have counterintelligence responsibilities, in your view, does not supersede that?

10 **MR DINTWE**: Not at all, Chairperson. He does not supersede me.

**ADV PRETORIUS SC**: But in any event, arising out of all this. If Mr Fraser then initiated a process regarding your security clearance.

**MR DINTWE**: That is correct, Chairperson. I am dealing with that, I think, on paragraph 108.

**ADV PRETORIUS SC**: What happened in paragraph – what happened on 28 March 2018?

**MR DINTWE**: Okay.

**ADV PRETORIUS SC**: As you described in paragraph 108.

20 **MR DINTWE**: On the 28<sup>th</sup>, then, of March, Chairperson, I was served with a letter from the Director General sent by him, informing me that the security clearance had been withdrawn with immediate effect based on the following reasons. Very interesting. The first one was to say that:

“Failure to exercise my duty to report and

action breaches of disclosure of classified information in or from the Office of the Inspector General of Intelligence...”

That was the first reason provided for the withdrawal.

**ADV PRETORIUS SC:** So every time you received a complaint which might include classified information, according to this, you must go and report immediately to the SSA Director General whom you might be investigation  
10 in that very context.

**MR DINTWE:** That is correct.

**ADV PRETORIUS SC:** Alright.

**MR DINTWE:** And it was now becoming a harassment Chairperson. You can see. It is different letters, one accusation. I am trying to write back to him. I am trying to educate him, basically, because at a particular point I said that maybe I should sit down and assist this gentleman. Ad that was one of the reasons. The second reason was that:

20 “You failed to execute my fiduciary duty as Inspector General of Intelligence towards the Intelligence Services by obstructing the due administration of justice...”

The third one was:

“You defeated ...[intervenes]

**CHAIRPERSON:** I am sorry. That second one.

**MR DINTWE:** Yes?

**CHAIRPERSON:** The allegation was that you had failed to your duty or fiduciary duty as the Inspector General of Intelligence towards the Intelligence Services by obstructing due administration of justice. What did you understand that to mean or did you ...[intervenes]

**MR DINTWE:** I never even bothered to understand that.

**CHAIRPERSON:** Ja.

10 **MR DINTWE:** Because I was talking to my colleagues and I was saying that now he is even accusing me of criminal offences.

**CHAIRPERSON:** Yes.

**MR DINTWE:** That is actually a criminal offence. So I was telling somebody, my legal rep, to say that if Mr Fraser was my employer or my supervisor, he would not even then be able to charge me with this.

**CHAIRPERSON:** H'm, h'm.

20 **MR DINTWE:** So the reason why I decided not even to want to understand that today, Chair.

**CHAIRPERSON:** Ja.

**MR DINTWE:** It is because it was clear that he was clutching at straws and he was just acting out... He could not find any piece of legislation that he could use to deal with me.

**CHAIRPERSON:** And everyone was defeating or obstructing the end of justice by such failure. And the fourth one: Failing to comply with a request to submit to re-vet. Those were the four.

**MR DINTWE:** Yes. The fourth one, at least, I understand.

**CHAIRPERSON:** H'm?

**MR DINTWE:** The fourth one I understand.

**CHAIRPERSON:** [laughs]

**MR DINTWE:** I get it. The fifth one: Defeat and  
10 obstructing the ends of justice.

**CHAIRPERSON:** H'm.

**MR DINTWE:** This was a sign of a person that wanted to harass me, Chairperson.

**CHAIRPERSON:** H'm, h'm.

**MR DINTWE:** He went beyond. That was just a pure harassment.

**CHAIRPERSON:** H'm.

**ADV PRETORIUS SC:** Alright. So to summarise the facts, at least, up to this stage. You received a complaint from a  
20 member of Parliament.

**MR DINTWE:** That is correct, Chairperson.

**ADV PRETORIUS SC:** That complaint concerns Mr Fraser, the Director General of the SSA.

**MR DINTWE:** That is correct, Chairperson.

**ADV PRETORIUS SC:** Part or involved in the complaint is

the PAN, Principal Agent Network Report.

**MR DINTWE**: That is correct, Chairperson.

**ADV PRETORIUS SC**: You immediately then are instructed or required by Mr Fraser to disclose what he says is classified information to him.

**MR DINTWE**: That is correct, Chairperson.

**ADV PRETORIUS SC**: And he gives the reasons that he has given but the culmination of this exchange between you, the Investigator, and Mr Fraser, the person being  
10 investigated. As I understand, the train of facts that you are giving now is the withdrawal of your security clearance.

**MR DINTWE**: Yes. That is correct, Chairperson.

**ADV PRETORIUS SC**: Alright. These facts, of course, may be contested by Mr Fraser but he will have every opportunity to come and do so. But as I understand your evidence, it is based or corroborated by documentation in your possession which you will attach, the bundle to the Chair.

**MR DINTWE**: That is correct, Chairperson.

20 **ADV PRETORIUS SC**: Right. What happened on the 5<sup>th</sup> of April 2018?

**MR DINTWE**: Now that is what actually broke the channels, Chairperson. On the 5<sup>th</sup> of April, then I received a letter which bugged(?) me from my own office, from my own premises, Chairperson. An extract from that letter, it

said: You are here by advised that your security clearance has been withdrawn. You are no longer authorised to access classified information and restricted premises.

**ADV PRETORIUS SC:** Would that include your office?

**MR DINTWE:** It will include my office because I am in a restricted area. I am sitting in the same office with the Minister, with the Deputy Minister, with Head of National Intelligence Committee, with the Head of the ICCS.

**ADV PRETORIUS SC:** Right. What is the effect of that  
10 communication or the occupation of the office of the IGI? I am talking about the office here in the official sense.

**MR DINTWE:** It was brought to its knees. There I was Chairperson - and of course, I did not go to the office because I was scattered(?) - distanced off. Maybe a physical fight between my protectors and his and the security officials. So I wanted to act as a responsible person and I decided then to take that ...[intervenes]

**ADV PRETORIUS SC:** Let us understand the import of these communications to you. It was effectively to remove  
20 you, both from your physical office and from your offices as Inspector General.

**MR DINTWE:** That is correct, but my other import is that, even go beyond that end. Close that office because that will be the ultimate impact if the ...[intervenes]

**CHAIRPERSON:** It could not operate without you.

**MR DINTWE:** Without – without. That is correct.

**ADV PRETORIUS SC:** So there is, in fact, not only you that were removed from the office but the office is effectively shut down.

**MR DINTWE:** That is correct, Chairperson.

**CHAIRPERSON:** And of course, the complaint against him could not be investigated further once you were not there.

**MR DINTWE:** That is correct, Chairperson.

**CHAIRPERSON:** Because even if, I guess, even if you  
10 could authorise somebody in your office to conduct the investigation, they will only conduct it on your behalf. And if you are not there, you have been removed, they cannot conduct – nobody can conduct any investigation lawfully.

**MR DINTWE:** I have been warned Chairperson which should – what would develop at that event(?).

**CHAIRPERSON:** Yes.

**MR DINTWE:** And let me also mention that there was an email, an Outlook email which got sent to the Exco – my Exco – now my managers... informing them that they  
20 should not provide me with anything. They should not even communicate with myself because my security clearance has been withdrawn. That Outlook is available also.

**CHAIRPERSON:** H'm, h'm, h'm.

**MR DINTWE:** So I think that the point you are raising to say that I will not be able to delegate but again, it is

cutting the communication between myself and the other members who could then continue with the investigation in my absence.

**CHAIRPERSON:** H'm, h'm, h'm. Yes, okay.

**ADV PRETORIUS SC:** After the series of events, did you approach the courts?

**MR DINTWE:** That is correct, Chairperson.

**ADV PRETORIUS SC:** What relief did you seek?

**MR DINTWE:** It was a Part A and a Part B. And Part A  
10 was on an urgent basis. Part A was just to say that my security clearance should be reinstated.

**ADV PRETORIUS SC:** Right.

**MR DINTWE:** And along with that, there were some issues of security. So you would have worked on my security.

**ADV PRETORIUS SC:** Yes. Did the then Minister intervene?

**MR DINTWE:** The then Minister ...[intervenes]

**ADV PRETORIUS SC:** What did she do?

**MR DINTWE:** Yes.

20 **ADV PRETORIUS SC:** What did she do?

**MR DINTWE:** She reinstated that – on the eleventh hour. So we arrived at court because the matter was set-down ...[intervenes]

**CHAIRPERSON:** [Indistinct]

**MR DINTWE:** Yes, there was an opposition ...[intervenes]

**ADV PRETORIUS SC:** From Mr Fraser?

**MR DINTWE:** ...from Mr Arthur Fraser.

**ADV PRETORIUS SC:** So he opposed your application to, amongst other things, to restore your security clearance?

**MR DINTWE:** That is correct, Chairperson.

**ADV PRETORIUS SC:** What did the Minister do? Was this at the doors of court?

**MR DINTWE:** Let us say that because when I was there, then they called and my legal representative was saying  
10 and think that Part A of your application may have tempt(?), you know, moot, if you like. I do not know if they used that word but then they said that there is no need for us because they have given you exactly what you are claiming(?) for.

**ADV PRETORIUS SC:** So the Minister then intervened, reinstated your clearance certificate?

**MR DINTWE:** Yes.

**ADV PRETORIUS SC:** Or status?

**MR DINTWE:** Yes.

20 **CHAIRPERSON:** Ja, let me just go back. You launched your application in the high courts. Is that right?

**MR DINTWE:** Yes, correct.

**CHAIRPERSON:** Did Mr Fraser launch any affidavit to oppose that application?

**MR DINTWE:** That is correct.

**CHAIRPERSON:** And was he the only one who was opposing – who lodged the oppose?

**MR DINTWE:** Chairperson, I cannot – really cannot remember.

**CHAIRPERSON:** You cannot.

**MR DINTWE:** My application – my court application is part of the bundle.

**CHAIRPERSON:** Of the bundle. We do not have ...[intervenes]

10 **ADV PRETORIUS SC:** [Indistinct] ...[intervenes]

**MR DINTWE:** ...but if – but I do not think he was the only respondent.

[Parties intervening each other – unclear]

**CHAIRPERSON:** Okay. No, but we do not need to check. I just want to get that.

**MR DINTWE:** Alright, Chair.

**CHAIRPERSON:** And you had not filed a replying affidavit. You had filed a replying affidavit by the time ...[intervenes]

20 **MR DINTWE:** I had.

**CHAIRPERSON:** You had?

**MR DINTWE:** Yes.

**CHAIRPERSON:** And the matter was to be argued?

**MR DINTWE:** That is correct, Chairperson.

**CHAIRPERSON:** Yes. And then, the Minister intervened.

I assume the Minister was one of the respondents.

**MR DINTWE**: The Minister was one of the respondents.

**CHAIRPERSON**: Yes, but she had not filed any papers?

**MR DINTWE**: The legal representative, as when he was communicating with mine, he was indicating that he was representing both the Minister and Mr Arthur Fraser.

**CHAIRPERSON**: Oh.

**MR DINTWE**: Yes.

**CHAIRPERSON**: Okay. But you ...[intervenes]

10 **MR DINTWE**: But there was still affidavit from the Minister.

**CHAIRPERSON**: From the Minister. Okay alright.

**MR DINTWE**: Yes.

**CHAIRPERSON**: And the effect of the intervention of the Minister, was it that your security clearance would be reinstated. Therefore, there should be a settlement and withdrawal of the application or was it that an order was granted by concerned?

20 **MR DINTWE**: There was no order. They were very allergic to that.

**CHAIRPERSON**: Oh.

**MR DINTWE**: Because there was other issue of security.

**CHAIRPERSON**: Yes.

**MR DINTWE**: That I was very much worried about.

**CHAIRPERSON**: Yes.

**MR DINTWE**: So they did that but we just felt that there was sufficient intervention. I was satisfied with that.

**CHAIRPERSON**: Okay.

**MR DINTWE**: Maybe also to mention that it was on the same day that I then get called by the then Chairperson of the Johannesburg Diplomat on Intelligence, Mr Charles Ngqula and I am not implicating him here.

**CHAIRPERSON**: H'm.

**MR DINTWE**: Who then said that there is a decision to  
10 move Mr Arthur Fraser from the state or out of the State Security Agency.

**CHAIRPERSON**: Oh, okay.

**MR DINTWE**: So those things happened ...[intervenes]

**CHAIRPERSON**: Those things happened ...[intervenes]

**MR DINTWE**: [Indistinct] ...[intervenes]

**CHAIRPERSON**: Yes.

[Parties intervening each other – unclear]

**MR DINTWE**: I thought that ...[intervenes]

**CHAIRPERSON**: Ja.

20 **MR DINTWE**: I ...[intervenes]

**CHAIRPERSON**: So ultimately you withdrew the application or it was just postponed *sine die*. It was not pursued.

**MR DINTWE**: It was postponed. I remember that I said that no, for now we will not ...[intervenes]

**CHAIRPERSON:** Ja.

**MR DINTWE:** Yes.

**CHAIRPERSON:** Okay.

**MR DINTWE:** But we have never ever really pursued even the... of that.

**CHAIRPERSON:** Okay. No, that is fine. Mr Pretorius, I think let us take some adjournment.

**ADV PRETORIUS SC:** Sure.

**CHAIRPERSON:** Let us talk about how far we would go so  
10 that we are all on the same page. Otherwise, I just push everybody [laughs] to midnight.

**ADV PRETORIUS SC:** [laughs]

**CHAIRPERSON:** I do not know, Mr Pretorius, what own assessment is?

**ADV PRETORIUS SC:** Chair, we can go as far as we can.

**CHAIRPERSON:** Ja.

**ADV PRETORIUS SC:** To whatever time you deem necessary.

**CHAIRPERSON:** Yes, yes.

20 **ADV PRETORIUS SC:** You know my views on this. They have not changed.

**CHAIRPERSON:** [laughs]

**ADV PRETORIUS SC:** But we will not finish tonight.

**CHAIRPERSON:** Ja- no, I think we will not finish tonight. Maybe we go up to half-past eight or nine. [laughs]

**ADV PRETORIUS SC:** [laughs] I...

**CHAIRPERSON:** [laughs]

**ADV PRETORIUS SC:** I will take your main prayer  
...[intervenes]

**CHAIRPERSON:** [laughs]

**ADV PRETORIUS SC:** ...up to your...

**CHAIRPERSON:** [laughs] Okay alright. Okay let us take  
a ten minutes adjournment and then after that, we will  
come back and go up to half-past eight and take it from  
10 there.

**ADV PRETORIUS SC:** Thank you, Chair.

**CHAIRPERSON:** Ja, okay. We adjourn.

**INQUIRY ADJOURNS**

**INQUIRY RESUMES**

**CHAIRPERSON:** You may be seated. Yes, let us proceed.

**ADV PRETORIUS SC:** Thank you, Chair. In paragraph  
111, Dr Dintwe, you summarise the import of this section of  
evidence that you have just given. Perhaps because it is  
well set out there you will read that paragraph onto the  
20 record?

**DR DINTWE:** Paragraph 111, I am saying that:

“I am required by law to serve impartially and  
independently and perform my functions in good  
faith and without fear, favour or prejudice. This  
requires the protection of the basic tenets of an

independent institution namely the manner of my appointment, my security of tenure (and due to the nature of my work, my security of person.) The budget of my office and the manner of and the grounds for my removal, the importance of the independent and autonomous functioning of an oversight body is underpinned by the International Best Practice and has been applied by our courts to corruption fighting institution, as in the Glenister case, and oversight bodies of other state institutions, as in the case of McBride. In view of this, the power of vetting determining security competence given to the SSA should not be permitted to be used in order to undermine the independence of the OIGI or stifle its investigations."

**ADV PRETORIUS SC:** You deal in the next section, Dr Dintwe, with what you term questionable intelligence reports and you say in paragraph 112:

20 "Mysterious intelligence reports have been used repeatedly to deal with or target those who are regarded as opponents"

And you set out in the following paragraphs some examples of this. Perhaps you could summarise these for the Chair.

**DR DINTWE:** I will summarise, Chair. The first example

is what happened in 2017. 2017 I received a complaint, this time from the Democratic Alliance, and it was followed by the other one from the South African Communist Party and the third one was from a private citizen residing somewhere in Gauteng and in that complaint I was requested to investigate the veracity of a report that was used by the former President Jacob Zuma to recall Minister Pravin Gordhan and his then deputy, Mr Mcebisi Jonas. And I was just quote what it said because it is very  
 10 important later, it becomes very important latter. It says:

“An investigation into allegations surrounding an intelligence report allegedly used as a pretext for the recall of the Finance Minister.”

**ADV PRETORIUS SC:** What was the allegation? You can summarise it because there has been evidence before, before the Commission. You deal with that in paragraph 114.

**DR DINTWE:** The allegations were – and it was open because South African Communist Party went onto the  
 20 media to report – they reported the matter to the OIGI and the person who was speaking on behalf of the organisation was the now Deputy Secretary, first Deputy Secretary, Mr Mapaila. And he had said that in one of the meetings of the top six at Luthuli House they were briefed verbally by the former President that he is in possession of an

intelligence report which alleges that Minister Pravin Gordhan and Mr Jonas were overseas and were going to meet with some foreign agents who were calling for regime change in South Africa and he also informed them that he was going to recall them from that [indistinct], not the recall from their positions, they use the same words.

But yes, of course, I think it is a matter of public knowledge that they were then recalled.

He never told them what was the source of that  
10 report because I think that when we say that, that the expectation will be that it will be coming from one of the three State Security Agencies.

**ADV PRETORIUS SC:** Yes.

**DR DINTWE:** But we were not clear in knowledge of who exactly would have briefed the President on that.

**ADV PRETORIUS SC:** It was referred to or assumed to be an intelligence report of sorts.

**DR DINTWE:** Yes, according to the witnesses that I talked to and – ja and in high place.

20 **ADV PRETORIUS SC:** But in any event you were asked to investigate the source of this report.

**DR DINTWE:** I was, yes, yes, yes.

**ADV PRETORIUS SC:** And did you investigate?

**DR DINTWE:** I investigated the matter.

**ADV PRETORIUS SC:** And you say in paragraph 115:

“The core issues that needed to be investigated were the origin, authenticity and veracity of this alleged intelligence report.”

Who to your knowledge was the person or you were the persons in possession of this report?

**DR DINTWE:** It was only President Zuma who said that I am in possession of that.

**ADV PRETORIUS SC:** Did you ask him for the report?

**DR DINTWE:** I then – because at a meeting and  
10 requested for that report.

**ADV PRETORIUS SC:** And what happened at that meeting and what was its conclusion?

**DR DINTWE:** In that meeting he – and he was welcoming, just a very, very, very nice meeting that I had with the President and he explained to me that when time is right he will then write to me and he will – he did not say he will send me the report, in fact maybe let me paraphrase what he said. He said that he is hearing people saying [indistinct] report and so forth and so forth and so forth  
20 and that report may not be existent because he is not going to be dependent on written reports and he said that I saw something on the website, somebody was waving a report. I remember the incident where somebody was waving the report, it was Minister Pravin Gordhan who was having a one pager typed in very, very, very big

...[intervenes]

**CHAIRPERSON:** I also seem to think I have seen on television somebody saying...

**DR DINTWE:** Yes, yes. So the President in that meeting never said that there is a report that he will send to myself, he only said that when the time is right he will explain this so that I understand that matter and that is how I left his office.

**CHAIRPERSON:** So you went to him as part of your  
10 investigation?

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

**CHAIRPERSON:** And did you ask him whether there was such a report and you asked him to give it to you but did he commit himself to whether it existed or not or what was the position?

**DR DINTWE:** I did that but our engagement was followed by a letter. So in a letter where I was requesting a meeting I had already put a paragraph there which says this is the purpose of the meeting.

20 **CHAIRPERSON:** Yes.

**DR DINTWE:** And I request the President to favour me with that report so that I can check its authentic.

**CHAIRPERSON:** Yes, yes. So that was before you actually met him, that was a letter that was requesting a meeting.

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

**CHAIRPERSON:** Yes and subsequently you met with him.

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

**CHAIRPERSON:** But in the meeting he did not commit himself to whether such a report was in existence or not, is that right?

**DR DINTWE:** He did not commit himself to that, save to say that he is aware that people are saying there a report somewhere.

10 **CHAIRPERSON:** Yes, okay. And then he said when the time is right he would write to you and explain or he would explain to you.

**DR DINTWE:** He said he will explain to me so I just took that maybe they will invite by way of a letter to come there or I will get a letter which explains that.

**CHAIRPERSON:** And did he give an indication of the timeframe how long it might take for him to – for the time to be right?

20 **DR DINTWE:** He did not, Chairperson, this is the reason when I got to – when I got to the office I realised that I did not understand him. The nation will forgive me.

**CHAIRPERSON:** Yes.

**DR DINTWE:** I realise that. But what I did is that I then wrote another letter when our discussion was still fresh in my mind. Basically because no minutes were taken of that

meeting so I wanted to put it in my own records to say that Mr President we met on this particular day and this is the discussion and let me also remind you that I will be waiting for that engagement and I have also indicated that I wanted to conclude that investigation as soon as it is possible and so that is how I dealt with it but there was never a commitment in terms of the timeframe as to when he was going to explain that, Chairperson.

**CHAIRPERSON:** Yes.

10 **DR DINTWE:** And which year was it when you were having this engagement with him? Was it 2017? Well, the complaint was given to you in April 2017 so it must have been in 2017.

**DR DINTWE:** Yes it was in 2017, Chair.

**CHAIRPERSON:** Ja and say actually in paragraph 114 – oh no, no, you talk about a meeting. No, it is not your meeting with the president.

**DR DINTWE:** No, it is not that one.

**CHAIRPERSON:** But it must sometime in 2017.

20 **DR DINTWE:** Yes, Chairperson.

**CHAIRPERSON:** Okay, Mr Pretorius?

**ADV PRETORIUS SC:** Two issues, Mr Dintwe. Firstly, this correspondence to which your refer, do you still have it?

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

**ADV PRETORIUS SC:** And it could be provided?

**DR DINTWE:** It is I think in the documents that I have provided already.

**ADV PRETORIUS SC:** No reference is made to it but perhaps we will check.

**DR DINTWE:** But I do have that letter.

**ADV PRETORIUS SC:** Yes.

**DR DINTWE:** I am sure, I am very, very ...[intervenes]

**ADV PRETORIUS SC:** Do you want to check?

10 **DR DINTWE:** Yes, I am very, very ...[intervenes]

**CHAIRPERSON:** Actually, both letters, the one that went when you requested the meeting and the one that you wrote after the meeting.

**DR DINTWE:** It will be two letters.

**CHAIRPERSON:** Ja.

**DR DINTWE:** Because the other one – I cannot remember if it was the one, I was getting worried whether - that I cannot just keep it open. So we can even see it as a follow up, as a follow up letter. So I will always keep those  
20 kinds of letters.

**CHAIRPERSON:** Ja, okay.

**ADV PRETORIUS SC:** Then in paragraph 115 and I need to ask whether this is accurate or not, line three, sentence begins:

“Despite numerous requests including one at a

meeting with the former President and despite his promise to provide a copy of the report, nothing was forthcoming.”

Is that correct or does it need correction?

**DR DINTWE:** Let us qualify it. I am sitting with the President, he says when time I right I will explain to yourself. I hear people saying there is a report somewhere, that report may not be existent because as the President sometimes I get verbal. But I never wanted to  
10 conclude that the report was non-existent because he said it may not be existent. So I was still harbouring under that, I will just as and when it happens what comes to me.

**CHAIRPERSON:** Well, Mr Pretorius, we have an affidavit, we have affidavits from Mr Mantashe, Dr Zweli Mkhize, if I recall correctly and Ms Jessie Duarte. If I am not mistaken, all three of them have deposed to affidavits at the request of – at my request maybe last year sometime or maybe 2019 where they were asked to give their account of what Mr Zuma said to them at a meeting of the top six  
20 the day before he – he, I think, he recalled or the day he fired Mr Gordhan. They have put up affidavits. I may be wrong, we need to check whether in their affidavit they talk about him having a written report in their hands- in his hand which he did not give to them or whether they simply said he said he had a report but did not make it available

to them because I do recall that it was not given to them.

**ADV PRETORIUS SC:** Yes.

**CHAIRPERSON:** But I do not recall whether they said he had it in his hand or whether they just said he said he had a report.

**ADV PRETORIUS SC:** My own recollection, Chair, is that there has been evidence of the existence of a written report. Yes. Operation Checkmate it is called.

**CHAIRPERSON:** Yes and I seem to think that the current  
10 President, there was – he gave an interview to one of the  
TV channels around the time of the dismissal of Mr  
Gordhan because you might recall he went public to say he  
was opposed to it. I may be wrong, I seem to think he may  
have spoken as if he had seen the report or had sight of  
some parts of it, I am not sure. So there is that clip, so  
one can check.

**ADV PRETORIUS SC:** Right, but ...[intervenes]

**DR DINTWE:** I can assist the Commission further than  
maybe taking the tow from what the Chairperson just said.  
20 So the current President, at that time the Deputy  
President, was also interviewed for this investigation and  
they wrote to myself through her legal adviser but the  
report was never provided to myself. So that one I still  
remember succinctly. His responses will be in the file  
because it will be the file from different witnesses that I

would have spoken to.

**CHAIRPERSON:** Yes but do you recall whether he said he did not have it, because that would be one thing, or whether he said he did not have it and had never had sight of it or anything like that because I am just not sure, somebody has spoken about – as mentioned, I think, on television, features of it. Features of it, so – but it is okay, we can check.

**ADV PRETORIUS SC:** Yes, Chair, and it does appear in  
10 certain media reports or not the report itself but copies of a person holding the report.

**CHAIRPERSON:** Ja or holding an alleged report.

**ADV PRETORIUS SC:** Allegedly holding the report. An alleged report, yes.

**CHAIRPERSON:** Allegedly holding the reports.

**ADV PRETORIUS SC:** Well, let us just summarise it then. You were asked to investigate the origins and authenticity of this report.

**DR DINTWE:** That is correct.

20 **ADV PRETORIUS SC:** You interviewed various people including the former President.

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

**ADV PRETORIUS SC:** You had a discussion with the former President about the existence or otherwise of a report.

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

**ADV PRETORIUS SC:** A report which you were investigating.

**DR DINTWE:** Yes.

**ADV PRETORIUS SC:** Did you ask him for a copy of the report?

**DR DINTWE:** Yes, I asked him.

**ADV PRETORIUS SC:** Did he ever give you a copy of the report?

10 **DR DINTWE:** Not at all until he left the office, Chairperson.

**ADV PRETORIUS SC:** Did anyone ever give you a copy of the report?

**DR DINTWE:** No, no one, there was only that badly written document which was on social media.

**ADV PRETORIUS SC:** Right.

**DR DINTWE:** Yes.

**ADV PRETORIUS SC:** And you say at the end of paragraph 115:

20 “We were of the view that we could not simply rely on the report leaked to the media in order to authenticate the veracity of the report allegedly provided to the former President.”

Was that the outcome of your investigation?

**DR DINTWE:** That was the outcome of the investigation

and that statement, I mean that when we had then was what we downloaded like anybody else.

**ADV PRETORIUS SC:** Right.

**DR DINTWE:** And the President had not taken ownership of it. So I say that you cannot deal with origin of a document, you cannot deal with the veracity if it is un-owned at all.

**ADV PRETORIUS SC:** In your view did you ever get a full and satisfactory report from the former President?

10 **DR DINTWE:** Not at all, Chairperson, until he left the office.

**ADV PRETORIUS SC:** Paragraph 116 you refer to another so-called intelligence report.

**CHAIRPERSON:** Before you go that one, Mr Pretorius, you referred Dr Dintwe to his departure from office. Do you know of anything that would have prevented him from making arrangements to ensure that he provided you with the explanation or the report even after he had left office if he wanted to assist on the investigation?

20 **DR DINTWE:** No, I am not aware of anything that we have presented [indistinct – dropping voice]

**CHAIRPERSON:** Okay, alright.

**DR DINTWE:** Maybe this point is also appointment that amongst the people that I would have talked to again, I wrote to the three intelligence services and I informed

them, I mean it was in their knowledge and so forth and all of them said that that report was – the report and the briefing was not given by any of them.

**CHAIRPERSON:** So all the intelligence services in the country said they never gave such a report or [indistinct – dropping voice] to the former President.

**DR DINTWE:** That is correct, Chairperson. In fact the head of defence, they call them CDI, Chief Defence Intelligence, he even requested that should I come up with  
10 that kind of information I should decide to put them in the loop because I think that it could be to embarrassment if somebody had to provide the report and none of the intelligence services in the country was aware of such.

**ADV PRETORIUS SC:** So do I understand it correctly you could conclude after your investigations that it was not an authentic report emanating from any of the State Security Agencies?

**DR DINTWE:** No, my finding was that I could not reach a  
20 finding because I did not have any document that I could verify its authenticity and its origin.

**ADV PRETORIUS SC:** But nevertheless the information you received during the course of your investigations from the intelligence agencies under your watch was that it did not come from them, is that correct?

**DR DINTWE:** That is correct, yes.

**ADV PRETORIUS SC:** Okay, alright, I understand.

**DR DINTWE:** But remember, that could not be a finding because I would have developed a hypothesis or, if you like, a question that I want to answer and the question that I want to answer was, is this report originating from any of the three? Is it an authentic report? And are we able to verify it, like the veracity thereof. So the finding, I will only mention those points in the analysis of the evidence that I got, the witness and so forth, but it will not come  
10 there because I wanted to answer a specific question.

**CHAIRPERSON:** Well, there was the question of the authentic of the report, there was the question of the allegations made against the Minister of Finance, Mr Gordhan. I guess the allegation or allegations would be – ja, would have been what those who were in the meeting with the former President save he said namely that he had an intelligence report to the effect that Minister Gordhan and Deputy Minister Jonas, while they were outside of the country, they were going to meet with – they were going to  
20 attend certain meetings which he viewed as unacceptable, threatening the security or whatever. I guess that is the allegation that you would be looking at and in the course of investigating that allegation, obviously you would want to see the report on which the allegation was made or in which the allegation was made. Is that right?

**DR DINTWE:** Ja.

**CHAIRPERSON:** Insofar as the allegation is concerned, you had interviewed the person who had said – who had made that allegation and said it was based on the report, that person being Mr Zuma and he had not given you anything to substantiate the allegation, you had – I do not know if you had interviewed Mr Gordhan and Mr Jonas because it seems to me that you ought to be able to say – you ought to have been able to say, if you had interviewed  
10 all the people that you identified, to say has this allegation been substantiated or not and if it has not been substantiated then you say the allegation has not been substantiated and part of the reason why it has not been substantiated is because those who could have furnished you with the report that would have had information about that had failed to do so.

**DR DINTWE:** I did not go there, Chairperson.

**CHAIRPERSON:** Yes.

**DR DINTWE:** And I remember the reasons.

20 **CHAIRPERSON:** Yes.

**DR DINTWE:** Not that we are not careful with other complaints but this one, I remember that we were – I had several meetings with my team and we brainstormed. The first reason why we could not look at the allegations is because the complaint was not even coming from Mr

Gordhan or Mr Jonas so I declared them victims, if you like, but they were never my complainants. The complaints came from somebody else.

But the second reason why we could not investigate the allegations was because Mr Gordhan himself and Mr Jonas cannot be viewed as say members of an intelligence service of they cannot be seen as a head of a service and our investigation will be about the intelligence and counter-intelligence matters. So there is that little bit of  
10 confinement and we just did not want to go out of that.

**CHAIRPERSON:** Well, I am not sure whether it was right to approach it that way, you know? I can understand when you say I could not make any finding or make any pronouncement on the authenticity of the report because I did not get the report. That I can understand. The fact that I got some alleged – the report from whatever source that you downloaded, you know, would not help in terms of the authenticity of the report.

But in terms of the allegation, I would have thought  
20 that you would need talk to Mr Gordhan and Mr Jonas to say I am investigating this allegation that when you people were overseas, official trip, you were going to meet with certain people for whatever, whatever purpose.

They might say – if you tell them, they might say that is nonsense or they might say yes, we were going to

meet such people but we were going to discuss legitimate issues relating to our ministries or government, you know? And you could have information from them saying there was no such thing as was alleged, you have nothing coming from Mr Zuma who had made the allegation, and I would think that they should be entitled to being cleared because Mr Zuma has provided no evidence to substantiate the allegation.

10 But I accept that you – you may have looked at it in a certain way, but I am just saying, you know, it just seems that might be unfortunate if some allegation that is not being substantiated by anybody seems to be left hanging instead of being dismissed if there is no evidence to substantiate it in circumstances where those who are in a position to provide evidence have been given an opportunity to do so and they failed.

**DR DINTWE:** Chairperson, I may have omitted something.

**CHAIRPERSON:** Yes.

20 **DR DINTWE:** And I do not want to do this when I am giving evidence.

**CHAIRPERSON:** Yes, no, no, that is fine.

**DR DINTWE:** Going back.

**CHAIRPERSON:** Ja.

**DR DINTWE:** But I was only saying that I declared them as victims other complainants.

**CHAIRPERSON:** Yes.

**DR DINTWE:** But I have met with Gordhan ...[intervenes]

**CHAIRPERSON:** Yes

**DR DINTWE:** And he was even in the company of his legal representatives in Pretoria, we were also in possession of a transcript both a recording and a transcript that was done by his lawyers, where he denied those allegations. I had extended the same invitation to Mr Jonas, but it was at a period I think he was appointed for and deal with  
10 something that's maybe something, so he was just not available, but I tried that and I also used a cell phone, because I don't understand the record to say that, but I have given you some time of an *audi* you know even if you are not an implicated person.

**CHAIRPERSON:** Yes, yes.

**DR DINTWE:** So we have those records, I don't know why ...[indistinct] or need that but part of my – and I accept criticism you know easily, part of my findings did not really deal with that ...[intervenes]

20 **CHAIRPERSON:** H'm, to the merits of the allegations.

**DR DINTWE:** If there is any information then you will find it somewhere in my report, but not under finding.

**CHAIRPERSON:** Ja, yes, okay, no, no that is fine, it is fine.

**ADV PRETORIUS SC:** In paragraph 116 Dr Dintwe you

give two further examples of the use of so-called intelligence report whether genuine or fake, would you tell the Chair about those briefly please?

**DR DINTWE:** Yes, let me preface just by saying that I am also observing a *modus operandi* here, I think the Chairperson remembers when I said that this means you suffer the consequences and then there is nothing, but they shall implicate, they even go the extent of saying ag it was a wrong ...[indistinct], but by that time the two people  
10 that I have referred to were out of their positions.

**CHAIRPERSON:** Yes.

**DR DINTWE:** Now the same thing here there were allegations, there was a report and in that report there were allegations that Crime Intelligence in this instance during their course of monitoring they came across an alleged plot by the following members, General Shadrack Sibiya, Mr Robert McBride and Mr Paul O’Sullivan and others that they were intending to overthrow government. This report purported to be – I mean, no, no, that report  
20 ...[indistinct] further report into the alleged unlawful rendition of foreign nationals involving Generals Dramat and Sibiya were questionable and have recently been proven to untrue.

The first one that I dealt with said that there was a meeting somewhere in the East Rand where these people

that I am mentioning here met and that they were plotting to overthrow the government.

**ADV PRETORIUS SC:** And the bundle of documents will include examples of these reports?

**DR DINTWE:** This one will include the example of that.

**ADV PRETORIUS SC:** Perhaps the conclusion that you reach in paragraph 117 of the existence of these reports and their use and outcome is summarised in paragraph 117, perhaps you should read that on the record if you will,  
10 paragraph 117.

**DR DINTWE:** These reports, and it is very strange, it is only these reports that raise a suspicion, they are often prepared in a very clumsy manner, with lot of spelling errors and sometimes they are even incoherent, and I am also using a word there to say that they are also unintelligible when you read it, that becomes a common denominator, it does not even matter whether they were coming from State Security Agency or from Crime Intelligence. So you will not have those reports which  
20 deals with the Domestic Intelligence as their defence is concerned, and there is a reason for that. They fall under a particular regime, but that is how these reports are, you are asking yourself who is writing them and if they are submitted to anybody what are those senior officials saying about these reports.

Not that I want them to be coherent and so forth and so forth, but I am seeking a standard ...[indistinct], they are dealing with lives and rights of individuals.

**CHAIRPERSON:** No but they must be coherent. They must be coherent and they must, when you look at them, when you read them they must show some seriousness because they deal with serious issues and as you say people's lives and if they are to be taken seriously I would have thought that any report that is going to be sent to the  
10 President of the country would be a proper report and not something that really looks something that has not been prepared by people who are serious.

**ADV PRETORIUS SC:** In addition to the features you mentioned, you mention here in paragraph 117 that the identity of the compiler of the report is more often than not, not stated or evident.

**DR DINTWE:** Yes, it is not stated in those reports. I understand the security requirements but you cannot just have a report that you do not link to anybody, there should  
20 at least be a code name or even a number, these people they will have numbers, so that they can know when they pay me, when they grade my report, they know that I am the one who compiled that report, but this one the one that was dealing with General Sibiya and Mr Robert McBride in fact it was written a compiler but it was left blank, not

knowing that when it was given to me maybe they would have tippexed that but I was expecting that the bare minimum at least I could find at least a code name or a number linked to the compiler.

**ADV PRETORIUS SC:** And the Chair has pointed out something which is very important and there is repeating that what is significant is not only who compiles the report and how the report comes about but the fact that people in senior position are prepared to make use of such reports,  
10 to take action against people.

**DR DINTWE:** That is correct.

**ADV PRETORIUS SC:** Perhaps you can go on from line 3 of paragraph 117, and just put that on record please.

**DR DINTWE:** You wanted me to read from?

**ADV PRETORIUS SC:** Yes please, line 3, you have dealt with the first three lines of 117.

**DR DINTWE:**

20 “There seems to be no recourse for the citizens whose integrity and careers are destroyed by these reports. Even in cases where the compilers are known. It is my view that these reports are relied upon fully knowing that they will not stand up in court as they achieve and they may not achieve the desired effect of removing key persons who stand in their way.”

Maybe I must just repeat that, I made a mistake.

**ADV PRETORIUS SC:** Read that sentence again yes.

**DR DINTWE:** Yes.

10 “It is my view that these reports are relied upon full knowing that they will not stand up in court as they achieve their desired effect of removing key persons who stand in the way of State Capture from their positions. The deleterious effect of this is that the names of these persons are irreparably damaged by these reports as by the time the cases are withdrawn against them it is too late, their careers have been damaged.”

**ADV PRETORIUS SC:** Thank you, in paragraph 118 Dr Dintwe you deal with a new topic and that is irregular appointments ...[intervenes]

**CHAIRPERSON:** Just before you proceed Mr Pretorius can I ask this question, to the extent that during your time you may have had the experience of investigating reports that are legitimate, that legitimately come from the  
20 Intelligence Services, are you able to say generally speaking those that alert you to make do not have these features that you have identified in regard to the reports that seem not to be legitimate?

**DR DINTWE:** That is correct Chair, the other reports will go through a vigorous – a vigorous process that I do not

want to divulge here.

**CHAIRPERSON:** Ja, no, no that is fine.

**DR DINTWE:** But it will not move from person A to person B and end there, there will be checks and balances throughout the system to an extent that some of them I think that they will be discarded and if there were compiled by somebody who was expecting some kind of remuneration they will not then be remunerated because they will be “useless”.

10 **CHAIRPERSON:** Ja, ja.

**DR DINTWE:** And you can see that – you can see the ...[indistinct] Chair, it is only in this instance you want to look at those reports that are suspect, those reports that you could have some allegations that it was used knowingly to really with somebody who was standing against malfeasance or corruption, so there is a clear distinction between that.

**CHAIRPERSON:** So you say generally they will, the legitimate ones, will have a compiler even if just a code  
20 that is given in terms of the compiler or the author and then you say even in terms of the quality of the report it is different from these other ones in terms of how professional they look.

**DR DINTWE:** It is far better, in fact Chairperson they made a presentation to me with regard to an issue which

came into the public domain about the intention of some group in Bloemfontein who wanted to attend the conference in 2012, very professional, even including the slides, where it started, where they registered the project and so forth, I was so much impressed and when you take that report and compare it to these ones that I have been mentioning here you can just see that no, no, no this one did not really go through the ordinary process of producing any grievance.

10 **CHAIRPERSON:** Oh, okay.

**ADV PRETORIUS SC:** Chair in relation to a query that you raised and comments made earlier about the so-called check-mate report, that was used at the meeting of the Top Six or referred to at the meeting of the Top Six, if I can just place on record and it is perhaps apt to do so in this context.

**CHAIRPERSON:** Yes.

**ADV PRETORIUS SC:** I have in front of me the affidavit of Ms Duarte and at paragraph 10 of that affidavit she  
20 says:

“At a meeting of the officials on 27 March 2017 former President Zuma informed the officials of an intelligence report which made reference to a meeting that Minister Gordhan had attended in London. He did not produce the report but said that

the contents gave him great discomfort.”

That evidence is confirmed by Mr Mantashe who says in paragraph 10 of his affidavit, and I will put the references on the record.

**CHAIRPERSON:** Ja.

**ADV PRETORIUS SC:**

10 “At a meeting of the officials on 27 March 2017 former President Zuma informed the officials of an intelligence report which made reference to a meeting that Minister Gordhan had attended in London. He did not produce the report but said it gave him great discomfort.”

And then it goes.

**CHAIRPERSON:** Okay.

**ADV PRETORIUS SC:** And those are in Exhibit JGZ and I am not sure that these pages consist, I will ...[intervenes]

**CHAIRPERSON:** Ja, I think those affidavits have not been as far as I know have not been admitted as yet.

20 **ADV PRETORIUS SC:** Yes, well perhaps they should be, but I shall ...[intervenes]

**CHAIRPERSON:** Well they should in due course but my recollection is that they have – there has not been an occasion for them to be admitted, but we have obtained them.

**ADV PRETORIUS SC:** Yes, we will see to that or discuss

that with you in due course.

**CHAIRPERSON:** Ja.

**ADV PRETORIUS SC:** In paragraph 118 you deal with a new topic and that is instances of irregular appointments within the Intelligence Services, would you tell the Chair about those please.

**DR DINTWE:** Yes, the problem about irregular appointments Chair is that they create instability, firstly, but they also create a fertile environment for State Capture  
10 itself because sometimes it is not only about this irregular appointment but it is about the person that is being put in that particular position. So we have made several adverse findings with regard to both the State Security Agency but also with the Crime Intelligence with – where recruitment procedures were not followed. In certain instances there will be no criteria at all, you will ask which criteria do you use to recruit these people, they will just say that no it is not there. Some of the positions will not be advertised, and those are the examples, but I have got a specific  
20 example here because it is of a senior person who was appointed.

**ADV PRETORIUS SC:** Alright, you give several examples but as I understand the point you make in the paragraphs that following, paragraph 118, is that where proper procedures aren't followed it does open the door to undue

influence being exercised and other irregularities, do I understand you correctly.

**DR DINTWE:** That is my submission and my argument.

**ADV PRETORIUS SC:** And you give those examples in paragraphs 119, 120, right through to paragraph 124, is that correct?

**DR DINTWE:** That's correct Chairperson.

**ADV PRETORIUS SC:** Alright, is there anything you wish to emphasize there for the Chair?

10 **DR DINTWE:** Let me emphasize this other one because it is done by Minister Bongani Bongo, the former Minister, so there is this position ...[intervenes]

**ADV PRETORIUS SC:** Is that paragraph 119?

**DR DINTWE:** It will be paragraph 119, so there is this position at NICOC so NICOC, National Intelligence Coordinating Committee is led by a Director General, but it is seen as part of the Intelligence Service, ja, the Director General of the State Security Agency is the accountable ...[indistinct] for NICOC, so ...[intervenes]

20 **ADV PRETORIUS SC:** That's the National Intelligence Coordinating Committee.

**DR DINTWE:** Ja, the Intelligence Coordinating Committee, so in that they had – there was a vacancy, but they did not advertise that particular vacancy and what happened is that Minister Bongo on his third or fourth day,

we can check because I have the full report in the bundle there ...[intervenes]

**ADV PRETORIUS SC:** And you investigated this ...[intervenes]

**DR DINTWE:** I investigated and I produced that report. So what happened is that he met then with the head of NICOC and he instructed the head of NICOC to produce a submission which then will come to him for approval but obviously it will go through the other signatories like a  
10 recommender, it will be a compiler/recommender and I think maybe sometimes a second recommender maybe from H R and then it will be approved.

Appointing this particular member to a level of a programme manager and the reason that he provided to the head of NICOC was only to say that he knows this gentleman and he also knows that this gentleman is raising his kids alone because he lost his wife, so his argument I think that it was just to say that put him somewhere because he does not have a secondary you know income  
20 like other families will have, that was the reason that was provided to the head of NICOC.

**ADV PRETORIUS SC:** Now however kind-hearted the gesture may have been what are the dangers that are attached to that sort of conduct?

**DR DINTWE:** It is that obviously those people will be

gratified to the appointing officers so they can be told to do anything and they will really, really do that because I mean this was unexpected and it created a lot of problems also because there were then grievances from the other people who said that we could have contested for this position.

**CHAIRPERSON:** Was this person who was the beneficiary of this decision, was it somebody that was a member of SSA already or was it somebody from outside?

**DR DINTWE:** No a member of SSA already Chairperson,  
10 but they were placed at NICOC.

**CHAIRPERSON:** So it was a question of them being put into NICOC?

**DR DINTWE:** No, no, no it is in NICOC and then they are taking from let's level 2 ...[intervenes]

**CHAIRPERSON:** Promoted?

**DR DINTWE:** ...to level 3 within NICOC.

**CHAIRPERSON:** So that they can earn higher?

**DR DINTWE:** Exactly Chairperson.

**CHAIRPERSON:** Okay.

20 **ADV PRETORIUS SC:** Right, did you make any recommendation as a consequence of your investigation?

**DR DINTWE:** I made recommendations but I should have mentioned that he only spent a week in that promoted position, the position that he was promoted and then he was then appointed to become somebody higher than an

acting deputy coordinator.

**ADV PRETORIUS SC:** So he received two promotions?

**DR DINTWE:** Two promotions in a space of a month and yes of course I sent the recommendations to the Minister of State Security.

**ADV PRETORIUS SC:** You sent a recommendation to remedy the position or the situation?

**DR DINTWE:** That is correct Chairperson, our recommendations was that the appointment for that level  
10 should be withdrawn, secondly that it should be advertised, so that everyone can take part on that, but there was something where we also recommended sometime of disciplinary measures to be taken.

**ADV PRETORIUS SC:** Alright.

**DR DINTWE:** Because one of the junior members who works at HR in that entity his signature was then forged in that submission.

**CHAIRPERSON:** To recommend?

**DR DINTWE:** I think it will be a compiler but somewhere it  
20 will be a line of signatures and as I am saying that he doesn't make decisions but normally it will go to him to check whether the recruitment process, the selection process was so when he affixes his signature it is to say that I have assisted my principals to ensure that all processes are followed, but during that time he could

remember very well that he was in Cape Town, he was not in Pretoria so his signature was forged.

**CHAIRPERSON:** And how long ago did you submit your report to the Minister, more or less? Or which year were you investigating this matter?

**DR DINTWE:** I do have a file of 120, I have got some few dates there, ...[indistinct] will need.

**ADV PRETORIUS SC:** So it must have been latter part of 2019 and 2020, the early part of 2020?

10 **DR DINTWE:** Yes, so Chairperson I investigated that matter, I made recommendations but at the time that I was writing this affidavit that recommendation – those recommendations were not yet implemented.

**ADV PRETORIUS SC:** Well ...[intervenies]

**CHAIRPERSON:** And as far as you know as you sit there have they been complied with?

**DR DINTWE:** No, no, not at all.

**CHAIRPERSON:** Have you been told that maybe the Minister doesn't agree with your recommendation for the  
20 following reasons, a, b, c, d? Has she told you anything along those lines?

**DR DINTWE:** Ja, no Minister then after I think several follow ups she wrote to me agreeing with our findings and our recommendations.

**ADV PRETORIUS SC:** That is on the 22<sup>nd</sup> of February

2020?

**DR DINTWE**: Yes.

**ADV PRETORIUS SC**: Those recommendations have not yet been implemented.

**DR DINTWE**: Not yet implemented.

**CHAIRPERSON**: Yes, so she has agreed with your recommendation but the implementation has not taken place almost a year after she indicated that she agreed with them?

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

**CHAIRPERSON**: Yes.

**ADV PRETORIUS SC**: So there were two problems as I understand it, one was your finding that a minister had exercised what I presume you regard as undue influence, is that correct?

**DR DINTWE**: That is correct.

**ADV PRETORIUS SC**: In the process of appointment, but secondly that the process itself was irregular?

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

20 **ADV PRETORIUS SC**: And your recommendations have not been implemented yet?

**DR DINTWE**: The recommendations are not yet implemented. But there was a series of ...[indistinct] of ministers during that period yet the appointment is done by Minister Bongani Bongo and then we had Minister Letsatse

Duba, she wasn't there for long, clearly I cannot recall whether I would have written to her but then she was just replaced by Minister Ayanda Dlodlo who I am certain that I would have written to her, not once Chairperson.

**ADV PRETORIUS SC:** And then in paragraph 121 you refer to another example.

**CHAIRPERSON:** I think Mr Pretorius it might be appropriate to establish from Minister Dlodlo what the position is because I think that when these oversight  
10 bodies make recommendations the relevant authority should apply their minds, take a view whether they have a problem with complying and if they think they have a problem at least they should say so and give their reasons and it may well be that in regard to some of these maybe they might have to go to court to set aside, I am not sure, but one shouldn't have a situation where there is absolute silence or there's agreement with the recommendation but for a long time nothing happens.

**ADV PRETORIUS SC:** We will do a request for  
20 information Chair, I am sure we will get a response.

**CHAIRPERSON:** Ja.

**ADV PRETORIUS SC:** A similar circumstance arises in paragraph 121 but I see we are over time.

**CHAIRPERSON:** I was thinking now maybe I shouldn't say anything but as long as you are pointing ...

**ADV PRETORIUS SC:** Well Chair I am in your hands.

**CHAIRPERSON:** [laughing] no because I think I promised that we would adjourn at half past let us adjourn but there are going to be days when I am going to ask everybody that we all be strong and move much – move beyond eight, go to nine and so on, so ...[intervenes]

**ADV PRETORIUS SC:** I will inform those accordingly.

**CHAIRPERSON:** And ja, but that is fine, let us stop now. I think we should talk Mr Pretorius to arrange another  
10 evening session for Dr Dintwe to try and finish his evidence.

**ADV PRETORIUS SC:** Yes Chair if we are able to start around four we will finish in one last session.

**CHAIRPERSON:** Ja, ja, so – but there is a possibility that my evenings next week are full, there is that possibility, and if they are full I was thinking whether it might not be a good idea to look at a morning in terms of which we could say let's start at eight, so by ten o'clock we might be done and then I continue with the witness for the day if we  
20 arrange that, how does that sound to you?

**ADV PRETORIUS SC:** Yes Chair that is fine, as long as it is after President testifies. We are obtaining the statements ...[intervenes]

**CHAIRPERSON:** Yes, okay, okay, alright. Okay, thank you very much to everybody, we will adjourn and then for

the benefit of the public I must just point out that tomorrow I will hear the evidence of Mr Anoj Singh under the Transnet work stream, as well as on Friday during the day sessions and tomorrow evening I will be hearing the evidence of the former Minister of Public Enterprises, Ms Lynne Brown, that is just to inform the public.

Thank you very much, we adjourn.

**ADV PRETORIUS SC:** Thank you Chair.

**REGISTRAR:** All rise.

10 **INQUIRY ADJOURNS TO 22 APRIL 2021**