

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

**20 APRIL 2021**

**DAY 378**



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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:** Good afternoon Chair.

**CHAIRPERSON:** Yes, are you ready?

20

**ADV PRETORIUS SC:** Yes we are ready to lead the witness, Dr Isaac Dintwe, but there an application before you and I presume those would want to ask you firstly to hear the application and if you are going to hear it Chair to address you on it?

**CHAIRPERSON:** Well this application I was told about last night, I have not read it, why should I hear it now?

**ADV PRETORIUS SC:** Well perhaps the ...[intervenes]

**CHAIRPERSON:** Ja, you might not be the right person to ask.

**ADV PRETORIUS SC:** I am not the right person to ask, we have our own views, it is late.

**CHAIRPERSON:** Ja, who is the right person? I haven't even authorised that he should be before me now.

**ADV PRETORIUS SC:** Yes Judge perhaps I ...[intervenes]

**CHAIRPERSON:** Let's leave that part. Who is here?

**ADV PRETORIUS SC:** I am being collegial Chair.

10 **CHAIRPERSON:** Yes, who is here?

**ADV RAMOGALE:** Good afternoon Chair, my name is Tshidiso Ramogale, I appear on behalf of Lt General Peter Jacobs.

**CHAIRPERSON:** Yes?

**ADV RAMOGALE:** And we have brought the application that the Chairperson is referring to, and I am not sure by way of procedure whether you would want us to move the application and to provide our reasons for why the application is late, but we are in the Chairperson's hands.

20 **CHAIRPERSON:** Ja, well I haven't read it in the first place, why should it be dealt with now before I hear Dr Dintwe's evidence?

**ADV RAMOGALE:** Well Chairperson our view is that the application need not be heard today.

**CHAIRPERSON:** Ja.

**ADV RAMOGALE:** The – provided of course that the relevant parts of the application which we have brought, in essence an application to strike out certain paragraphs from Dr Dintwe’s ...[intervenes]

**CHAIRPERSON:** Why must they be struck out?

**ADV RAMOGALE:** The grounds are irrelevance.

**CHAIRPERSON:** Ja, but that is none of your business, that is the Commission’s business, if the Commission admits them as irrelevant it does not hurt you so why is  
10 that your business. It would be different if they hurt you, they infringe your rights, your client’s rights, but that they are irrelevant this is not litigation where you are a party, this is an inquiry.

**ADV RAMOGALE:** Yes, no Chairperson that is correct that this is an inquiry but we are entitled if the Commission is being drawn to facts that are not within its purview.

**CHAIRPERSON:** Yes.

**ADV RAMOGALE:** To be objecting as such.

**CHAIRPERSON:** No, no, if they don’t infringe your rights,  
20 your client’s rights, it is just that they are irrelevant I don’t see why that should be your business, that is what I am saying. It is different if you say they infringe your client’s rights.

**ADV RAMOGALE:** Well no Chairperson the argument we make is the test as the Chairperson is well aware of is one

of prejudice and the scope of prejudice is quite wide, it is not necessarily that a person has to be directly adversely affected by the allegations and what we say is that the allegations made in the affidavit are in fact damning before we even make our submissions on whether they are true or not we say that they are irrelevant to the Commission's mandate.

**CHAIRPERSON:** Yes, when did you get the – Dr Dintwe's affidavit?

10 **ADV RAMOGALE:** We got the notice on the 29<sup>th</sup> of March, we set out our reasons, I appreciate that the Chairperson has not read the affidavit.

**CHAIRPERSON:** Yes, but I am looking at the time, if you got it on the 29<sup>th</sup> of March that means today is what – the 20<sup>th</sup>?

**ADV RAMOGALE:** Yes, yes.

**CHAIRPERSON:** Then I see that it was signed on the 19<sup>th</sup> of April the Notice of Motion so where were you for three weeks?

20 **ADV RAMOGALE:** So we set out our reasons when General Jacobs was implicated, because he was implicated in his official capacity as Divisional Commissioner, we had to make an application for funding from the National Commissioner.

**CHAIRPERSON:** Ja.

**ADV RAMOGALE:** And that is what held us back, that is the first reason. The second reason we have advanced is that the time General Jacobs was away on annual, on paid leave, and he couldn't cancel and ...[intervenes]

**CHAIRPERSON:** He was away on?

**ADV RAMOGALE:** On annual leave, the arrangements had already been made and he had already paid for the trip with his family.

**CHAIRPERSON:** So he went on leave instead of  
10 preparing his application?

**ADV RAMOGALE:** No Chairperson, I will go to the other reasons. When it became clear that he would not be able to submit his affidavit within fourteen days we made a request to the Commission, we wrote a letter to the Commission's Secretary and we were informed that the Commission is not in a position to grant or deny applications and that the application would have to be moved with you.

**CHAIRPERSON:** But in the end apart from saying that  
20 certain allegations are irrelevant what else is your – what other complaints do you have about the allegations to which you are objecting?

**ADV RAMOGALE:** No that is it, the only – we give a full answer to the allegations but the only grounds on which we bring this ...[indistinct] is that we say that they are

irrelevant.

**CHAIRPERSON:** Okay, no, no that is fine. I don't think that that should be something that should hold up me hearing the evidence, you will be able to deal with the allegations in terms of whether they are true or not, I think that is the important thing. As Dr Dintwe gives evidence if there is something that I consider irrelevant I will deal with it as we go along and Mr Pretorius will also be aware of that, and – but that is not something that should hold up  
10 the hearing of his evidence.

**ADV RAMOGALE:** Chairperson might understand that application has been denied, our application to ...[indistinct]

**CHAIRPERSON:** That is what I am inclined to do, based on what you have said so far, that is what I would like to do, is there any reason why you think I should not do that.

**ADV RAMOGALE:** Oh well we have provided our reason, I just wanted to be clear for the record that our application has been denied.

20 **CHAIRPERSON:** Yes, yes.

**ADV RAMOGALE:** The added application that we have brought Chair is to – as I understand the rules require us to bring an application for leave to produce evidence which we have done in the same application.

**CHAIRPERSON:** You have done it in the same

application?

**ADV RAMOGALE:** We have done it in the same application.

**CHAIRPERSON:** No, no that would be different, applying for leave to adduce evidence or applying for leave for cross-examine that would not be different, but that can be dealt with after.

**ADV RAMOGALE:** Yes Chair. The only thing I wish to point the Chairperson to is that there is no specific prayer  
10 in our Notice of Motion for leave and at the appropriate time I will move the application.

**CHAIRPERSON:** Yes well in fact even on the question of relevance if you - I mean from what you are saying you really were mentioning the issue of relevance but you apply for leave to adduce evidence?

**ADV RAMOGALE:** In addition to that yes.

**CHAIRPERSON:** Yes, and you also apply for leave to cross-examine or not?

**ADV RAMOGALE:** No, no we reserve our right in that  
20 respect depending on what the testimony is.

**CHAIRPERSON:** Okay.

**ADV RAMOGALE:** But it is a threefold application, condonation for the late filing, an application to strike out as well as an application for leave to give evidence.

**CHAIRPERSON:** Yes, what I will say is I do not think

there is a warrant to deal with it now, okay. If you later on after today wish to indicate what you insist you want a decision on other than your application for leave to adduce evidence you must write to the Secretary and indicate and then – because obviously that can be dealt with but it does not have to be dealt with now.

**ADV RAMOGALE:** Sorry Chair, I am a little bit confused now, so is there no decision on the application or ...[intervenes]

10 **CHAIRPERSON:** No, no I am saying I am not going to need to deal with it now, okay, the application for leave to adduce evidence I can deal with that later, we don't have to deal with that now, if there is any other thing that you want a decision on in regard to this application other than the application for leave to adduce evidence you must let me know in due course through the Secretary, but there is no need to deal with it now.

**ADV RAMOGALE:** No I understand, thank you very much for your time.

20 **CHAIRPERSON:** Okay, thank you. Yes Mr Pretorius?

**ADV PRETORIUS SC:** Chair the witness before you is Dr Setlhomamaru Isaac Dintwe. May he be sworn.

**CHAIRPERSON:** Please administer the oath or affirmation.

**REGISTRAR:** Please state your full names for the record.

**DR DINTWE:** Setlhomamaru Isaac Dintwe.

**CHAIRPERSON:** If you are going to take off your mask when you give evidence you may as well take it off now.

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

**DR DINTWE:** No.

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

**CHAIRPERSON:** I am sorry you just have to speak up so  
10 your answers can be recorded.

**DR DINTWE:** Yes.

**CHAIRPERSON:** Registrar you are whispering to me.

**REGISTRAR:** Should I start over Judge?

**CHAIRPERSON:** Well you don't have to start from the beginning if his earlier answers were audible but if you are not sure then start from the beginning, if you are not sure, if you are sure that they were audible it is fine.

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

20 **DR DINTWE:** Yes.

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

**DR DINTWE:** So help me God.

**SETLHOMAMARU ISAAC DINTWE:** [d.s.s]

**CHAIRPERSON:** Thank you, you may be seated Dr Dintwe. Thank you very much Dr Dintwe for availing yourself to assist the Commission, we appreciate that very much.

Yes Mr Pretorius?

**ADV PRETORIUS SC:** Thank you Chair. Chair you have before you a bundle, Bundle SSA2B.

**CHAIRPERSON:** Yes.

10 **ADV PRETORIUS SC:** In that bundle are three exhibits and the statement of Dr Dintwe is Exhibit YY15.

**CHAIRPERSON:** Yes.

**ADV PRETORIUS SC:** I will ask that it be admitted in due course. Dr Dintwe do you have Exhibit ...[intervenes]

**CHAIRPERSON:** I am sorry Mr Pretorius, I just picked up something here and maybe you are aware of it, the – Dr Dintwe's affidavit in this file appears at the end, and I see that I cannot see any annexures to it, and yet I understand that his affidavit has got annexures.

20 **ADV PRETORIUS SC:** Yes, Chair I will explain the position with regard to annexures.

**CHAIRPERSON:** Okay.

**ADV PRETORIUS SC:** In due course.

**CHAIRPERSON:** Okay.

**ADV PRETORIUS SC:** Dr Dintwe do you have Exhibit

YY15 before you?

**DR DINTWE:** I do have.

**ADV PRETORIUS SC:** Would you go please to page, and these are the black numbers in the top left hand corner, SSA2775, we will just be referring to the last three numbers, but always the black numbers on the top left hand corner, do you see SSA2775?

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

**ADV PRETORIUS SC:** Is that the first page of your  
10 affidavit?

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

**ADV PRETORIUS SC:** Please go to page 835, that is the last page.

**DR DINTWE:** I am on that page.

**ADV PRETORIUS SC:** Yes whose signature is that above the name Isaac Dintwe, Setlhomamaru Isaac Dintwe?

**DR DINTWE:** I confirm it is my signature.

**ADV PRETORIUS SC:** Your signature, are you satisfied that the contents of this affidavit insofar as you are aware  
20 are true and correct?

**DR DINTWE:** I can certify that.

**ADV PRETORIUS SC:** There are no annexures to this affidavit as the Chair has pointed out, we will explain in due course, but there are indeed intended to be annexures, certain of those documents need to be declassified, either

by yourself or by the State Security Agency or another appropriate instance and that process is still underway?

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

**ADV PRETORIUS SC:** And in due course you may return to identify the relevant documents?

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

**ADV PRETORIUS SC:** Dr Dintwe you are at present the Inspector General of Intelligence?

10 **CHAIRPERSON:** Hang on Mr Pretorius. You request me to admit his affidavit?

**ADV PRETORIUS SC:** Yes please I do.

**CHAIRPERSON:** As an exhibit? It would be Exhibit?

**ADV PRETORIUS SC:** YY15.

**CHAIRPERSON:** YY15. And the affidavit of Dr Setlhomamaru Isaac Dintwe starting at page 75 is admitted as an exhibit and will be marked as Exhibit YY15.

**ADV PRETORIUS SC:** Thank you Chair. Dr Dintwe - may I proceed? Thank you Chair. Dr Dintwe you are the  
20 Inspector General of Intelligence, is that correct?

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

**ADV PRETORIUS SC:** When were you appointed, by the President?

**DR DINTWE:** With effect from the 15<sup>th</sup> of March 2017.

**ADV PRETORIUS SC:** And in terms of which piece of

legislation were you appointed?

**DR DINTWE:** The Intelligence Services Act and the Oversight Act Number 40 of 1994.

**ADV PRETORIUS SC:** We will refer to that as ...[intervenes]

**CHAIRPERSON:** One second. Yes Mr Pretorius you may proceed.

**ADV PRETORIUS SC:** Before we deal with the contents of your affidavit perhaps by way of certain preliminary  
10 remarks we can inform the Chair why you are here to give evidence and in summary what topics you are going to cover.

You are aware of the fact that certain evidence has already been given by or on behalf of members of the State Security Agency.

**DR DINTWE:** I am aware of that Chairperson, I do confirm but I will only be dealing with some of the other evidence that was not adduced.

**ADV PRETORIUS SC:** And in accordance with the  
20 Constitution the State Security Agency is subject to civilian oversight, correct.

**DR DINTWE:** Yes, but Section 210 you know want to cover the whole of the Security apparatus of the country and will go beyond the State Security Agency to also cover Crime Intelligence which is a division of the South African

Police Services, it will also cover the Defence Intelligence which is just a division in the South African National Defence Force.

**ADV PRETORIUS SC:** So the three arms of State Security, Intelligence, Crime Intelligence and State Security Agency fall within your oversight purview?

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

**ADV PRETORIUS SC:** And you are currently in office as the Inspector General of Intelligence, performing that  
10 oversight mechanism?

**DR DINTWE:** That is correct.

**ADV PRETORIUS SC:** Now you will deal I understand it with the nature and functioning of the Office of the IGI, the Chair is concerned in this and other fields with the question of oversight and your evidence will deal with two aspects in regard to that oversight, as I understand it firstly aspects relating to the independent of the Office of the IGI?

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

20 **ADV PRETORIUS SC:** And secondly the powers of the IGI.

**DR DINTWE:** That is correct.

**ADV PRETORIUS SC:** And then you will deal with a number of factual issues relating to your office, its independence, its hours and how these are dealt with by

other statutory bodies or officials.

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

**ADV PRETORIUS SC:** You will also I understand deal with matters relating to the operational relationship between the office of the IGI, the relevant Minister and State Security, the State Security Agency and other security instances.

**DR DINTWE:** I will also deal with that Chairperson.

**ADV PRETORIUS SC:** Relevant to the information that you are going to place before the Chair and certainly will  
10 place before the Chair when the declassification process has been concluded, both on your part and the part of the SSA, is Section 78A of the Oversight Act, you deal with that in paragraph 4 of your statement, what does that provide?

**DR DINTWE:** Alright, now Chairperson I have to be careful here because there is a thin line between the two processes that I am going to explain here. The first one is the provisions of Section 78 which talks about before any disclosure, to any institution or organisation outside of IGI  
20 I am required to consult with the State President and they say relevant Minister, so if it is the information which only deals with the State Security Agency it will be only that Minister but in this instance, because I am dealing with information which cover across the three different intelligence services I had to consult with four

functionaries, which will be the State President and the three Ministers; Minister of Police, Minister of Defence and Military Deterrence as well as Minister of State Security.

Now once that process is concluded then we get to the other one which then deals with the declassification of information and I do get my powers to declassify from the Minimum Information Security Standard or the MISS document, which then says that the documents can be classified, reclassified or declassified by the originator, in  
10 other words the author or the owner of those documents.

So in the Office of Inspector General of Intelligence you will get different documents, you will get those that I would have produced as the Inspector General of Intelligence but you will also get those that I would have requested from different services, so which means that then I cannot declassify those, but I can declassify only those that I have ownership of.

**CHAIRPERSON:** What is the – if you could clarify this for me, what is the source of the power to make that document  
20 called MISS? What is the – is there a provision in some law that says so and so may make this document?

**DR DINTWE:** Yes, the position of our office and I think the other stakeholders that I would have discussed this is that in fact it is a binding document.

**CHAIRPERSON:** Sorry?

**DR DINTWE:** It is a binding document.

**CHAIRPERSON:** Yes, but what I want to find out is what makes it binding and is it binding only internally within the Security bodies or is it something that has – does it have legal force, is it a regulation, supporting legislation, is it just a document that reflects cabinet’s decision or that reflects the President’s decision or that reflects a certain Minister’s decision or a certain group of – a decision of a certain group of Ministers because there has been a lot of  
10 reference to it in the past as well but I have never heard exactly whether it is a regulation that is made under the Oversight Act that you referred to, or where the power comes from to make that document?

**DR DINTWE:** Ja, it started off as a cabinet resolution or a cabinet decision and then it was used across government because there could be some information that needs to be classified and that does not necessarily belong to the Intelligent Services, even the Cabinet Ministers themselves they are classified so this will be a reference document,  
20 but what enhanced its powers or what made it more stronger was the decision of Justice Museneke on the matter of Ms Papier, on Ms Papier’s decision and since after that the Constitutional Court developed some guidelines and those guidelines were based on the provisions of MISS document, so from where I am sitting

Chairperson I will say that it is an enforceable document, it is also a binding document.

**CHAIRPERSON:** Well unless the Constitutional Court – unless the Constitutional Court in its decision said that this document is binding and then I assume indicated on whom it is binding, I am not sure that you are right because if it just assumed that it has legal force because it wasn't necessary for it to decide in that particular case whether the document had a legal force that might be a different  
10 thing, but I assume from what you are saying that you are saying to me you do not know whether it has any legal force or not but up to now everybody treats it as if it has legal force and when I say legal force I am thinking about if it is not part of legislation then it must be regulations or if somewhere there is provision to say such a document may be made, and it says who makes that document and under – for what purpose you know then one would trace the origin of the ultimate power or the source of the power for it, but if it was – it is simply somebody's decision no  
20 matter who that person is who just decided it would be good that we should have a document that sets out A, B, C, D and that document was prepared and it may be it does have a good purpose because there needs to be guideline but sometimes you need to know does this document, is it just a document of convenience that does not have legal

force or is it a document that has legal force, so that is why I was asking, but I think you are saying, one, it started as you understand as a document that reflected cabinet decision and then there was the case that went to the Control Court and you say arising subsequent to that you understand it to be taken to the finding and that's all you are able to say.

**DR DINTWE:** And perhaps Chairperson to say that debate is still ongoing.

10 **CHAIRPERSON:** Oh there is such a debate?

**DR DINTWE:** Ja, there is such a debate and maybe what I was providing to you is the position of the Office of the Inspector General of Intelligence because if it is ongoing then we also have a particular position.

**CHAIRPERSON:** Yes.

**DR DINTWE:** And it is not surprising that as a person who monitors compliance I would like to have a particular framework which will assist me so that I can go to people and say that why did you classify this one, why didn't you  
20 declassify this one when that information is required, especially for prosecution, so I think that we will have our own bias, if you like, as an oversight body.

**CHAIRPERSON:** Yes.

**DR DINTWE:** To say that the way it is drafted it can at least take us somewhere in an absence of another legal

framework ...[indistinct] with classification/declassification as well reclassification, so the debate is ongoing. In fact we have some minutes somewhere which also reflect that we have been meeting with the ...[indistinct] and really dealing with these issues.

**CHAIRPERSON:** Yes, no, no that is fine, I was asking because in the context of the evidence relating to IPID there was a lot of reference to it when there was the issue of IPID witnesses were saying the police were refusing to  
10 declassify documents that IPID needed for their investigations and in your affidavit I know that you referred to that as well and they were – there was this reference to this document and it seemed to be difficult to get also so – okay, alright.

**ADV PRETORIUS SC:** Yes, we will address the issue in due course from our point of view Chair.

**CHAIRPERSON:** Yes.

**ADV PRETORIUS SC:** One question in that regard. This document, is it classified?

20 **MR DINTWE:** It is not a classified document. This is not classified.

**ADV PRETORIUS SC:** Not classified. We know it is in the public domain.

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

**ADV PRETORIUS SC:** Right. In paragraph 4 of your

affidavit Dr Dintwe, you refer to Section 7(8)B as being the origin of the duty to consult. Sorry, you refer to 7(8)A of, as the section providing the duty to consult. If I may just refer you to 7(8)B of the Oversight Act.

It is in the bundle of legislation in front of you. Chair, you should have that bundle. At page 129. We just need to clarify disclosure and declassification and how they work with one another or do not work with one another.

10           Section 7 deals with the appointment, hours and duties of the inspector general. You see that?

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

**ADV PRETORIUS SC:** Section 7(8)B says that:

“Notwithstanding anything to the contrary contained in this or any other law or the common law, the inspector general ...”

And if we go to B:

20           “May, if the intelligence or information received by him or her in terms of paragraph A is subject to any restriction in terms of any law, disclose that only (i) after consultation with the president and the minister responsible for the service in question, and (ii) subject to appropriate restrictions placed on such intelligence or information by the inspector

general if necessary and (iii) to the extent that such disclosure is not detrimental to the national interest.”

And it is instructive that the words national interest are used, not state interest but that is something that we will deal with in due course. The point is that you have information and you have documentary information which you wish to disclose to the Chair.

The process enjoined by Section 7(8)B, the  
10 consultation process, that is complete as you will tell the Chair in a moment in sub paragraph 4 of your affidavit or paragraph 4 of your affidavit, but it is the further steps that I want to highlight for the moment.

You may then make a decision with regard to the restrictions you placed on the information that you wish now to disclose and you are in the process of doing that.

**MR DINTWE:** I confirm that Chairperson.

**ADV PRETORIUS SC:** And you will consider the provisions of the section, apply them and in due course produce the  
20 documents, subject to whatever restrictions you may deem necessary.

**MR DINTWE:** That is the correct arrangement with the legal team Chairperson.

**ADV PRETORIUS SC:** That will allow you to disclose to the Chair if there is a document that is never the less

classified, at the hands of another state entity for example the SSA, before it is made public the classification would never the less be necessary.

That is as we understand the position.

**MR DINTWE:** That is my understanding also Chairperson.

**ADV PRETORIUS SC:** Yes. So Chair, there are two processes that must be dealt with in the compilation of the annexures. The first is the disclosure to yourself of the documentary evidence, and the second is to the extent that  
10 it is declassified.

We will approach the authorities for the appropriate declassification. If the classification is not forthcoming, then it will only be you who has access to the documents.

**CHAIRPERSON:** Okay, alright.

**ADV PRETORIUS SC:** So has there been a consultation process Dr Dintwe?

**MR DINTWE:** I can confirm that we have completed that process Chairperson.

**ADV PRETORIUS SC:** And was it successfully completed?

20 **MR DINTWE:** It was successfully completed, notwithstanding with difficulty, I should mention.

**ADV PRETORIUS SC:** Yes, and have you received any confirmation from the president that the consultative process has been completed?

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

letter from the president confirming that.

**ADV PRETORIUS SC:** And the wording of the section is instructive. You may make your decisions regarding disclosure as stated in the section after consultation, not in consultation, as I understand the law in that regard it means that the decision ultimately is your decision.

**MR DINTWE:** That is correct Chairperson, that is our understanding and interpretation of the OIG.

**ADV PRETORIUS SC:** Was that consultative process an  
10 easy process?

**MR DINTWE:** Not at all Chairperson. It was a very difficult one. There were letters in fact that would have been written to the commission which could indicate to the commission that it was a to and fro kind of process.

**ADV PRETORIUS SC:** Right. A complaint was lodged against you in relation to your providing information to the commission. What was that complaint and who made the complaint?

**MR DINTWE:** Alright. Now the complaint came at the time  
20 that I was expecting their inputs because the way the consultation was done, is that I provided the three ministers and the president with the bundle, full bundle and say that I am intending to disclose this information to the commission and I am trying to comply with 7(8)A and B.

Now those documents were gone for about two

weeks or three weeks, and there was an agreement because we were under pressure of time, a serious one and the president directed a particular date. On that date instead of me getting the inputs, I then received three bound documents.

They were under the cover of a letter from the president. The president was informing me that he received complaints from the three ministers. Now Minister Bheki Cele would have written his own complaint. Minister  
10 Nosiwe Mabisang Mapula would have written hers and Minister Yanda Dlodlo would have written hers as well.

But there was a serious commonality between them. Complaint number one was that I disclosed information to the commission before I consulted, and the recommendation that they were making to the president was that I should be suspended, and obviously be removed from this position on the basis of incompetence I think they were referring to that.

But I received it on the day that I was expecting the  
20 inputs.

**ADV PRETORIUS SC:** Right. So the fact that you had engaged ...[intervenes]

**CHAIRPERSON:** Well, you mentioned ... I thought you said there were three complaints or something like that.

**MR DINTWE:** Yes, there were three complaints.

**CHAIRPERSON:** Or is it, was it a complaint about the same conduct on your part, but coming from three ministers. Were they complaining about the same thing?

**MR DINTWE:** That is correct. Maybe I should not have said complaints. I should have said there were three documents.

**CHAIRPERSON:** Ja, yes okay.

**MR DINTWE:** With three different authors, but the content ... ja, the allegations made against me was similar.

10 **CHAIRPERSON:** Was the same?

**MR DINTWE:** Yes.

**CHAIRPERSON:** Okay, okay alright.

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

**CHAIRPERSON:** It was the one that you mentioned? Yes.

**ADV PRETORIUS SC:** And the allegation ...[intervenes]

**CHAIRPERSON:** I am sorry.

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

**CHAIRPERSON:** He nodded but that will not be recorded. The allegation that was being made in the three  
20 documents, was the allegation that you have told me about, namely that you disclosed certain information to the commission before the consultation process.

**MR DINTWE:** Yes Chairperson, but maybe I should have told you that they were in one document they were four, in the other one they were three. Like in the annexures you

will see, so it will be three different allegations  
...[intervenes]

**CHAIRPERSON:** Oh.

**MR DINTWE:** Coming from Minister Bheki Cele for instance.

**CHAIRPERSON:** Oh.

**MR DINTWE:** But complaint number one will be the disclosure to this commission.

**CHAIRPERSON:** Ja, okay. Okay.

10 **MR DINTWE:** I do not mind mentioning the other two.

**CHAIRPERSON:** Ja.

**MR DINTWE:** That were also common.

**CHAIRPERSON:** Well, if they are not important or relevant, that is fine.

**MR DINTWE:** Ja, I do not think they are relevant here.

**CHAIRPERSON:** Okay, alright.

**MR DINTWE:** Yes.

20 **ADV PRETORIUS SC:** So the letter that you received mentioned a recommendation that you should be suspended. Did the, or those ... the recommendation that you should be suspended was contained in the complaint by the three ministers, am I correct?

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

**ADV PRETORIUS SC:** You then received a letter from the president. What did he say to you in that letter?

**MR DINTWE:** He was informing me that he received those complaints, that he was attaching them and that he referred that complaint to the joint state committee on intelligence, and that he hopes that they will give me *audi* and with regard to the issue of suspension, he said that it will depend on the recommendation of the committee, the JSCI.

**ADV PRETORIUS SC:** Joint Standing Committee on Intelligence, the parliamentary ...[intervenes]

10 **MR DINTWE:** That is correct Chair.

**ADV PRETORIUS SC:** Joint Standard Committee on Intelligence.

**MR DINTWE:** Yes.

**ADV PRETORIUS SC:** Yes, and all this was happening at the time you were seeking to consult with the ministers about your engagement or further engagement with the commission.

**MR DINTWE:** That is correct, I do confirm that Chairperson.

20 **ADV PRETORIUS SC:** Did you appear before the joint standing committee of intelligence?

**MR DINTWE:** That is correct. I went, I was called.

**ADV PRETORIUS SC:** And what was the outcome of that process?

**MR DINTWE:** When I was starting to explain to them and

my starting point, my opening point was to say that if this is an inquiry in terms of the Oversight Act, I think that you should have informed me in the letter so that I can also seek legal representation or, and then they told me that no, no, no we decided not to start an inquiry in terms of this particular issue.

In fact, they also informed me that they missed sending me a letter that they sent back to the president. So they would have responded to the president already,  
10 and they only said that they wanted to only hear the side of my story, but it did not go any far, because it became a moot point.

On the basis that the [indistinct] Committee on Intelligence was saying two things. The first one was to say that the allegations against me were unsubstantiated from the three ministers, but secondly that there were no rules of parliament which deals with the removal of the inspector general of intelligence.

So the Chairperson of the committee was saying I  
20 cannot start this particular process, because we are still behind and we still have to deal with that particular issue.

**ADV PRETORIUS SC:** In any event, has that matter now been put to rest?

**MR DINTWE:** The matter has been put to rest now but not entirely. When the minister of security receive the 33

notices, she wrote again to the committee asking them how far are you with this complaint. So she repeated the very same complaint again, and asked just ... and then she also attached the Rule 33 notice from this commission as well.

**ADV PRETORIUS SC:** Okay, alright. So that is where that is for the moment. Paragraph 6, you talk of an attempt was made to pursued you to limit your evidence. Would you just tell the Chair about that please?

**MR DINTWE:** Yes. So in a meeting which was held  
10 between myself and the three ministers, which was a very hostile meeting I should also add and in the absence of the president, they requested me to give them the letter written to me by the secretary of the commission.

Now in that letter normally they will just say that you are being mentioned. I was, the office was mentioned by the likes of ambassador Moshe, Mr Matletuka, Mr Gibson Ngeenge.

So the secretary who would have written to say that we thing that you can come and close some of the gaps  
20 that we have in the evidence that was given, you know taking into consideration the position that you are occupying, but if that letter, there were only three points that were mentioned there.

The information that was required, would be that I should assist the commission in terms of the oversight

powers of the OIGI but also tell them my predecessors as well as the ministers, that we are actually working at the time of those ... of my predecessors, but then you would get a sentence which will say and any other information that you think will assist the commission.

So in that meeting the ministers were really fixated on an issue to say that but the commission has told you what they require from you, and I was telling them that no, no but the commission will not waste time for me to go  
10 there and present the Oversight Act.

It is in the public domain, they can just get that they have got researchers and so forth. So I said that no, no, no they wanted certain, any other information.

**CHAIRPERSON:** Any other information, yes.

**MR DINTWE:** And it stood there, it did not end there  
Chairperson. The commission would have received a letter in an arch file where Mr [indistinct] decided to act on my behalf, as an independent office, act on my behalf to send to the commission the regulations, the Oversight Act.

20 So those copies and the letter was addressed to the Chairperson to say that we are assisting Dr Dintwe here, because it will seem as if he wants to give you more than you required. So that letter is also in my bundle.

**ADV PRETORIUS SC:** Yes, that letter is a matter of record, Chair.

**CHAIRPERSON:** Well, hang on Dr Dintwe. I do remember that I have previously seen a file that has got the legislation and I think regulations and whatever, but I cannot remember the background. I would have assumed that I got it just from the legal team, but as you speak I now think that there was a file that would have seem to come direct from outside the commission that had just that, but I have no recollection of whether it had a covering letter, and if it had a covering letter what the covering  
10 letter was saying.

Are you saying that whatever was sent, you did see?

**MR DINTWE:** I was copied Chairperson.

**CHAIRPERSON:** You can refresh my memory.

**MR DINTWE:** Ja, I was addressee B, if you like CC the president. The president was CC, the other two ministers were CC'd.

**CHAIRPERSON:** Yes.

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

20 **CHAIRPERSON:** It was coming from which minister?

**MR DINTWE:** Minister Yanda Dlodlo of the state security.

**CHAIRPERSON:** Yes, okay.

**MR DINTWE:** And the crux of that letter, it will be somewhere Advocate Pretorius.

**CHAIRPERSON:** Ja.

**MR DINTWE:** The crux of the letter is to say that the commission has requested Dr Dintwe to provide information with regard to these three points.

**CHAIRPERSON:** Hm.

**MR DINTWE:** Who was the inspector general in this year, who was the minister during this particular period, and the legislation, the oversight and so forth. So she decided to compile it and really demonstrate to myself that it is doable, because I was refusing to do it the way she wanted  
10 it to be done.

**ADV PRETORIUS SC:** Thanks Chair, we will put together that correspondence. It is already in the bundle Chair.

**CHAIRPERSON:** Yes.

**ADV PRETORIUS SC:** That correspondence was addressed to yourself.

**CHAIRPERSON:** Yes, yes.

**ADV PRETORIUS SC:** And it ...[intervenes]

**CHAIRPERSON:** I would like to see it, now knowing this context which I did not know before.

20 **ADV PRETORIUS SC:** Right Chair.

**CHAIRPERSON:** Okay, alright. So but is the position that as far as you understand, what prompted the sending of that file by Minister Dlodlo was that you seemed to be, you seemed not to be keen to send just that. you wanted to give the commission more or you thought you seem to

indicate to them that it was impossible to just give them the commission [indistinct].

It is just that it is interesting.

**MR DINTWE:** It was my intention and I you know, I expressed to them clearly to say that I am a person on my own right. I am an adult. I am an official of government, so obviously I have to write an affidavit and that affidavit cannot be based on the letter that was actually written to myself.

10 It was based on the brainstorming session. So the accusation that I would have disclosed information to the commission, prior to the consultation process, it is because I would have sat with the investigators from the commission, and we will just have a discussion just to see which points the commission will have an interest on.

So it was based on that. So I had an idea already of how my affidavit was going to look like. So I was saying that my affidavit will have to be accompanied by these annexures, and that is the reason why I am then consulting  
20 with yourselves.

So I was telling them that as much as I would have loved to only send this information, I have made a commitment [indistinct] on the brainstorm session that I will be able to share information on these other aspects which were not necessarily in the letter.

**CHAIRPERSON:** Okay, alright.

**ADV PRETORIUS SC:** So to summarise in so far as there was a suggestion or a directive or however you want to phrase it that you should limit your evidence before the commission or your disclosures before the commission, you have decided what to say and the extent to which information should be disclosed.

**MR DINTWE:** I have decided that Chairperson, and it is a critical point because it talks to intelligence of the office of  
10 the inspector general of intelligence, but it also demonstrates how the office has been attacked from time to time.

You can imagine, I mean if I have to deal with certain allegations which are unsubstantiated, it takes about five days out of my work to only go and deal with those complaints. So even this one will demonstrate that point I think when you go to independence.

**ADV PRETORIUS SC:** Right, because the duties and powers of the inspector general are embedded in the  
20 constitution and in legislation, it is necessary for us briefly to go through the framework which governs your office. It is also relevant to the Chair, because the Chair is concerned about the oversight activities, their successes of failures in relation to the various aspects of evidence that we have heard and particularly the evidence

emanating from state security agency witnesses.

Paragraph 7, you refer to Section 210 of the Constitution. You see that?

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

**ADV PRETORIUS SC:** And sub B of that section reads that:

“National legislation must provide for civilian monitoring of the activities of those services ...”

10 Those are intelligent services:

“By an inspector appointed by the president as head of the national executive, and approved by a resolution adopted by the national assembly with a supporting vote of at least two thirds of its members.”

20 So is it correct that in terms of Section 210 of the constitution, you were appointed by the president and that appointment was approved by parliament in the National Assembly with the supporting vote of at least two thirds of its members?

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

**ADV PRETORIUS SC:** Right, and the Oversight Act also provides for another oversight body. What is that?

**MR DINTWE:** It provides for the Joint Standing Committee on Intelligence.

**ADV PRETORIUS SC:** Right, and to whom are you accountable in terms of the legislative framework?

**MR DINTWE:** The Oversight Act says that the inspector general of intelligence shall be functionally accountable to the Joint Standing Committee on Intelligence.

**ADV PRETORIUS SC:** Right.

**MR DINTWE:** Power 19 in other words.

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

**MR DINTWE:** So the Joint Standing Committee of  
10 Intelligence Chairperson, will be like a portfolio committee,  
but they did not ... they just did not want to call it a  
portfolio committee, because this one will deal with  
defence, will deal with the police, will also deal with the  
state security agency.

It will also deal with what we call the interception judge. So they also report there. Sometimes they even call the auditor general of South Africa to come there. That is why they could join instead of just the portfolio committee.

20 **ADV PRETORIUS SC:** Right, so joint committee and not just a portfolio committee?

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

**CHAIRPERSON:** They perform the same function as a portfolio committee, but it under it various departments?

**MR DINTWE:** Departments, yes Chairperson.

**CHAIRPERSON:** You know, for ja.

**MR DINTWE:** And then it is the only committee of parliament that conducts its business behind closed doors.

**CHAIRPERSON:** Alright.

**MR DINTWE:** I think that is the one significant difference.

**ADV PRETORIUS SC:** Now you have said that you were responsible or accountable as IGI to the Joint Standing Committee on Intelligence, and not to any other instance. I presume that includes the minister?

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

**ADV PRETORIUS SC:** But in your evidence and certainly in the submissions and summaries we will put before you Chair, we will show that the legislation is far from clear, and there are anomalies in the legislation and certainly in the way the legislation is interpreted and applied, that below the lines of accountability, below at the very least.

Am I correct in that observation and we will deal with that in due course?

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

20 **ADV PRETORIUS SC:** And one of the considerations in relation to independent oversight, is to look at the legislation and we will address you and the report in due course in that regard Chair. But in paragraph 9 you deal with the details of your appointment, and you have told the Chair of that.

You say you were appointed by the President and the National Assembly passed the resolution for your appointment on the 29<sup>th</sup> of November 2016.

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

**ADV PRETORIUS SC**: And you say it was passed by significantly more than the two thirds majority required by the constitution. Is that correct?

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

10 **ADV PRETORIUS SC**: And the implications of the requirement that parliament by two thirds majority must approve your appointment, are clear. Your appointment is at the highest level, of the executive and parliament?

**MR DINTWE**: That is correct Chairperson. I think that one can also even draw a comparison between the inspector general of intelligence and the public protector. The other one will be a simple majority I think.

50 plus one. This one is a two third.

20 **ADV PRETORIUS SC**: Right, and then you say and you will deal with this in more detail later, in the last sentence of paragraph 9. What the position was preceding your appointment.

**MR DINTWE**: That office does not have inspector general of intelligence for a period of 22 months. This was occasioned by this voting. So there were interviews, two interviews if my memory serves me well, and in each case

the interviewing panel which is the parliamentarians, the members of the committee, would have recommended somebody.

But every time they went to a national assembly, they could not gather necessary majority. So you know, it will then fall by its way side and then the second one came again until I got appointed, but for 22 months my predecessor had left that particular office.

**ADV PRETORIUS SC:** Right. Is that a good thing, a bad  
10 thing?

**MR DINTWE:** It is not only a bad thing, it is actually a dangerous thing because I mean, even if you are reading literature, sometimes you will really struggle to fathom what the intelligence services are doing. Not even in our jurisdiction, but you cannot really sit with intelligent services that go unchecked.

If certain things even happened in this country, in the existence of the inspector general of intelligence of the office itself at least, you would then realise how important  
20 the existence of such office is and how dangerous it can actually be if they go, they go unchecked.

Because this office Honourable Chair, it then it becomes like IPID, but only I sometimes say in a simplified manner one can say that it is the public protector of the intelligence services, because if you look at what we do,

like we investigate maladministration, corruption, compliance with the constitution, compliance with applicable legislation and so forth.

So if you look at our functions, it is only that we are doing that, but then it means that the existence of the OIGI may sort of you know bring about the situation where these other institutions cannot come and do oversight over the intelligence services themselves.

There was a reason for that obviously, [indistinct]  
10 you know, still you know under the sail of secrecy.

**ADV PRETORIUS SC:** So prior to 29 November 2016, for 22 months the office of the inspector general of intelligence was vacant.

**MR DINTWE:** That is correct.

**ADV PRETORIUS SC:** And it is worth mentioning Chair, that at least some if not much of the evidence given, covers that period given by the state security agency witnesses.

**MR DINTWE:** May I please also mention to the  
20 Chairperson to say that, and we need to say what exercise elevated this situation. It is what you are saying advocate we will be dealing with later, which talks about how the legislation, the Oversight Act is drafted.

Now the legislation does not create an office, does not say office of the inspector general of intelligence. I am

only using this word, you cannot find it there. It talks about IGI, and it becomes this particular person. In the absence of that person, no one else in the office can do the work, because then it gives me the powers also to then delegate my powers.

So in the absence of that - and I thought I thought maybe I should just mention that point.

**ADV PRETORIUS SC:** Paragraph 10 you have already told the Chair that your mandate is to conduct intelligence oversight on all statutory intelligence services, crime intelligence of the South African Police Defence Intelligence of the South African National Defence Force and now the State Security Agency. Is that correct?

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

**ADV PRETORIUS SC:** Paragraph 11 you deal with Section 7 of the Oversight Act which sets out what you state in paragraph 11 to be your accountability and mandate. 76 says –

20 “The Inspector General shall be accountable to the committee for the overall functioning of his or her office and shall report on his or her activities and the performance of his or her functions to the committee at least once a year.”

I take it that that committee is the Joint Standing

Committee of Intelligence?

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

**ADV PRETORIUS SC**: And then 7A what does that provide?

Section 7A.

**DR DINTWE**: It is 77A.

**ADV PRETORIUS SC**: Yes 77A.

**DR DINTWE**: It talks about the monitoring of compliance by any service with the constitution applicable laws and relevant policies on intelligence and counter-intelligence.

10 **ADV PRETORIUS SC**: Alright. And those policies would – what are those policies? Just name one or other of them please?

**DR DINTWE**: It includes their own policies and in this instance one can mention what they called the MTD's.

**ADV PRETORIUS SC**: Right. Internal policies.

**DR DINTWE**: Ja even that your own internal policies yes.

**ADV PRETORIUS SC**: So white paper?

**DR DINTWE**: It could be – it could be a policy of recruitment for instance.

20 **ADV PRETORIUS SC**: What about the white paper would that be a policy which you would monitor compliance with?

**DR DINTWE**: That is correct Chairperson we can also monitor compliance with that.

**ADV PRETORIUS SC**: While we are on the white paper in your view what is the status of that white paper? There has

been commentary by a number of witnesses who have to put it at its lowest different perspectives on the status of the white paper, what is your evidence in that regard?

**DR DINTWE:** My evidence is that the legislation including the constitution mirrors exactly what is contained in the – in the white paper. In fact any deviation from that will be problematic because it was a policy document where they sat down and they said that this is how we want you know Intelligence Services to be configured and these are the  
10 powers that we will like. So all those other piece of legislation such as the Strategic Intelligence Act such as the Intelligence Services Act much as the Oversight Act itself are sort of your coming out – out of the white paper. So our position and the legal advice that I had from my 00:03:33 is that it should not be ingot and non-compliance with white paper we churn as an office make some findings and recommendations on it.

**ADV PRETORIUS SC:** Right.

**CHAIRPERSON:** Well you need to make use of the white  
20 paper where as you put it its contents of principles are already mirrored in the constitution or legislation because I would have thought that once that has been done you must just comply with the constitution and the legislation.

**DR DINTWE:** Our position and maybe my submission also to the high level review panel was to say that it should not you

know belong to the dustbin of history especially in instances where you will have a lacuna – a lacuna in the current legislation. For instance one of the biggest issues that happened was the amalgamation of the then National Intelligence Agency and the then SASS – South African Secret Services and it just happened by a proclamation. So the current Strategic Intelligence Act may not have been sufficient to deal with the how those different services could be amalgamated or even disentangled as the – intending to  
10 do it now. That is my position Chairperson it is not a legal argument.

**CHAIRPERSON:** Yes okay. Alright.

**ADV PRETORIUS SC:** What does 77C say?

**CHAIRPERSON:** Well – well...

**ADV PRETORIUS SC:** Sorry Chair.

**CHAIRPERSON:** I am sorry – I am sorry. What you did not tell me about maybe it was not important but now that you tell me about legal advice is your own background a legal background or not?

20 **DR DINTWE:** No, no I am qualified in forensic investigations.

**CHAIRPERSON:** Oh okay alright. So you have to depend on legal advisors?

**DR DINTWE:** Yes.

**CHAIRPERSON:** Okay alright. Thank you. Mr Pretorius.

**ADV PRETORIUS SC:** Section 77C of the Oversight Act what does that provide?

**DR DINTWE:** It sees that I shall also perform all functions designated to me by the President or any Minister responsible for a service.

**ADV PRETORIUS SC:** How do you interpret that in relation to your duties to investigate from an independent stand point?

**DR DINTWE:** We are calling them a task team. So which  
10 means that the Minister will for instance have a serious problem with let us say absenteeism in one of the agencies and she may just decide to say that the Inspector General because you have got the investigative powers please investigate this particular matter. But it is not like they really supervise me instruct and supervise me. I think that is when you are struggling to draw a difference and the Ministers are also struggling to draw a difference. They think that to – for me to perform designated functions it is like they can you know just tell me what to do and supervise  
20 me throughout there. So the outcome here will be an independent outcome and unfortunately if the President likes it or if he does not like it is something else.

**ADV PRETORIUS SC:** And then sub-paragraph CA of Section 77 what does that provide?

**DR DINTWE:** I then receive an investigate complaints from

members of the public and members of the services. In other words there are three services that he has mentioned earlier. On the following alleged maladministration, abuse of power, transgressions of the constitution, laws and policies referred to in paragraph A.

**ADV PRETORIUS SC:** And then sub-B of 77?

**DR DINTWE:** Oh then – I am sorry about that I see that I left out a very important part there which deals with also investigating any contraventions of the Prevention And  
10 Combating Of Corrupt Activities Act.

**ADV PRETORIUS SC:** Right. And the improper enrichment of any person through an act or omission of any member?

**DR DINTWE:** That is correct.

**ADV PRETORIUS SC:** That would be a member of the Security Services?

**DR DINTWE:** But from the public as well very much important.

**ADV PRETORIUS SC:** And as I understand how you read the provisions of the act in relation to your independent  
20 oversight function that you may be requested or designated to the function of conducting an investigation but in the conduct of the investigation that is your business as an independent oversight body?

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

**ADV PRETORIUS SC:** And then sub-D what does that

provide?

**DR DINTWE:** Alright now all these functions which are contained in 77 it is – I normally summarise them to say more in. We do monitoring. We do review and then we also investigate complaints.

Now at the – at the end of the financial year they all culminate into what we will then call a certificate. A certificate they use that word in the oversight act but it is more like an annual report where I then you know summarise  
10 I would have done monitoring there. There are problems there. There will be reviews. There are problems there. It will be investigation of complaints and so forth. And then I submit that certificate firstly to the Ministers responsible Ministers and then I later go to the Joint Standing Committee on Intelligence to make a presentation on my findings and recommendations as they are contained in that. It is normally a lengthy document around 60/70 pages or so.

**ADV PRETORIUS SC:** Yes and sub-E and sub-F.

**CHAIRPERSON:** Sorry.

20 **ADV PRETORIUS SC:** Over the page.

**CHAIRPERSON:** Sorry Mr Pretorius. The document you are talking about is the document that is called certificate?

**DR DINTWE:** Yes in terms of the Oversight Act they refer to it in under level C a certificate.

**CHAIRPERSON:** Okay so – so when you talk about a

certificate in your affidavit I must not have in mind a one page document it is like a certificate it is a lengthy document. It is then in effect as you say an annual report is then in effect as you say an annual report.

**DR DINTWE:** It is like an annual report but you raise a very important issue so I will have like a one pager.

**CHAIRPERSON:** Yes.

**DR DINTWE:** We even you know print it in colours and so forth.

10 **CHAIRPERSON:** Ja.

**DR DINTWE:** And in there I will say that I am – I express an opinion on whether anything done by the intelligence services was in contravention of the law and or the constitution or their own internal policies. So I will write that but the certificate which is a one pager it is always accompanied by an annexure. So we will call it an annexure.

**CHAIRPERSON:** Oh.

**DR DINTWE:** But it will be a narrative report because in a one pager I will say that I am not satisfied with this and I am  
20 dealing with it in paragraph 18.

**CHAIRPERSON:** Ja, yes.

**DR DINTWE:** AB and C in the annexures.

**CHAIRPERSON:** Okay. Okay.

**DR DINTWE:** But then we bind it. So and you would have three.

**CHAIRPERSON:** Okay.

**DR DINTWE:** Because we make one certificate per service.

**CHAIRPERSON:** Okay alright. Yes Mr Pretorius.

**ADV PRETORIUS SC:** And then sub-E and F over the page deal with your duty to submit reports to the JSCI to the Ministers that we have mentioned and in certain circumstances to the President.

**DR DINTWE:** That is correct.

**ADV PRETORIUS SC:** Now all these reports and certificates  
10 are a matter of record. They can be provided to the Chair but depending on decisions concerning declassification they may not be able to be released to the public.

**DR DINTWE:** I know that you do not want us to delete in a piece meal fashion but I have done that activity already because what I have done in terms of – they are my documents so I have got a lot of powers to really declassified. What I have done is that I have redacted all the information which deals with organisational weaknesses which deals with their methods of the intelligence as well as  
20 the – what they call sources or informers if you like. So I have already removed that kind of information because what I wanted to show the commission is only the transactions procurement and all those other issues. So yes of course that they will be submitted.

**ADV PRETORIUS SC:** They will be submitted to the Chair in

due course suitably redacted. Then paragraph 12 – 12A is a reference to Section 7 (10) of the Oversight Act which enjoins you to comply with all security requirements applicable to employees of the agency. Now that becomes relevant as you will detail later in relation to your own security classification, is that correct?

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

**ADV PRETORIUS SC**: Security clearance.

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

10 **ADV PRETORIUS SC**: And we will deal with that in due course. And also some anomalies that arise out of that process and who performs that process. Then sub-B says:

“Shall serve impartially and independently and perform his or her functions in good faith and without fear, favour, bias or prejudice.”

Now those are fine words. What import do they have for your work?

**DR DINTWE**: It is that the independence is guaranteed and it is you know even in the – in legislation so I think that as  
20 we go deeper into my evidence I will want to portray to the commission how that independence has been you know undermined to an extent that one day will be asked a question where were you when things were getting so  
00:14:00.

**ADV PRETORIUS SC**: Alright. Now –

**CHAIRPERSON:** Well – well I must say that I was already asking those questions when I was hearing a lot of SASSA evidence or not SASSA – SSA evidence so where was the Inspector General? But you are here now to tell me where you were.

**DR DINTWE:** Yes Chair.

**CHAIRPERSON:** Okay alright.

**DR DINTWE:** And I 00:14:36 justify anything I have got to admit to their failures.

10 **CHAIRPERSON:** Okay.

**ADV PRETORIUS SC:** Yes we will get there.

**CHAIRPERSON:** We will get there ja.

**ADV PRETORIUS SC:** Chair and then in relation to the manner in which the constitutional court has described the requisite independence of an oversight body you refer to the Glennister case it is referenced there if I can just read the last three or four sentences or lines of that paragraph where the court held that:

20 “Independence in this context therefore means the ability to function effectively without any undue influence it is this autonomy that is an important factor which will affect the performance of the anti-corruption agency.”

Now that decision was made in relation to the

directorate for Priority Crime Investigation or the Hawks but do you say or are you submitting to the Chair that that applies with equal force to your office?

**DR DINTWE**: That is our submission Chairperson.

**ADV PRETORIUS SC**: Alright. Has that prescript in your experience always been followed?

**DR DINTWE**: No not in all instances.

**ADV PRETORIUS SC**: Alright. And then reference is made to the McBride case and the decision is referred to in  
10 paragraph 15 where you deal with the question of the independence of IPID but are you saying to the Chair that similar principles apply in your case?

**DR DINTWE**: That is our submission Chairperson.

**ADV PRETORIUS SC**: Particularly in regard to appointment and removal of the incumbent of the post.

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

**ADV PRETORIUS SC**: And very importantly in paragraph 16 you note that in both Glennister and McBride the constitutional court held that:

20           “The public perception of the Independence of the Institution is an integral feature of its actual independence. This requires that a reasonably informed and reasonable member of the public will have confidence in an entity’s autonomous protection and oversight

capabilities.”

I may just intervene there – there may be a well reasonable suspicion that we drafted this on this your behalf, is that correct?

**DR DINTWE**: Ja but I – I did draft that.

**ADV PRETORIUS SC**: You drafted this.

**DR DINTWE**: Yes. Chairperson yes independently so.

**CHAIRPERSON**: I like the way you put it Mr Pretorius. Legitimate suspicion – reasonable suspicion.

10 **ADV PRETORIUS SC**: Legitimate expectations which is not met in this case.

**DR DINTWE**: Alright Chairperson you may have asked me earlier my qualification is not a law degree.

**CHAIRPERSON**: Ja.

**DR DINTWE**: I did what they called Bachelor of Criminal Justice.

**CHAIRPERSON**: Yes.

**DR DINTWE**: That was my junior degree.

**CHAIRPERSON**: Okay.

20 **DR DINTWE**: And then I ventured into like your forensics when I got to Masters so...

**CHAIRPERSON**: Yes.

**DR DINTWE**: It had a lot of law modules.

**CHAIRPERSON**: Yes.

**DR DINTWE**: Where eventually understood of law.

**CHAIRPERSON:** Okay. Okay no that is fine.

**ADV PRETORIUS SC:** But these are your submissions?

**DR DINTWE:** These are my submissions.

**ADV PRETORIUS SC:** And then in paragraph 17 you say:

10           “The Inspector General of Intelligence should  
be accountable to the Joint Standing  
Committee of Intelligence to the Legislature  
alone. It is constituted – the JSCI is  
constituted by a proportional representation  
of political parties. It is therefore designed  
to represent the interests of the people more  
broadly than the government of the day.”

Is that again your submission?

**DR DINTWE:** That is also my submission that is correct  
Chairperson.

**ADV PRETORIUS SC:** Right. You trace some of the history  
of executive members relative to state security in paragraph  
18 and following would you deal with those just briefly just  
name the officials please and say when they held office.

20   **DR DINTWE:** I will do that and I am going to be very brief  
Chairperson in 1994 there was no Minister of State Security.  
There were subordinated – they use that word – they were  
subordinated to the Minister of Justice so you will have this  
big Ministry of Justice and then you will have a Deputy  
Minister and at that time it was Minister the Late Joe

Nhlanhla who became the Deputy Minister of Justice but with responsibility of the Intelligence Affairs.

In 2000 the Ministry was established and it was led by Ministers I will just mention a name and the years.

Lindiwe Sisulu from 2000 to 2004 and it also had Minister Ronnie Kasrils from 2004 to 2008 followed by Minister Siyabonga Cwele 2008 to 2014 and then later Minister David Masobo from 2014 to 2017 and then also followed by Advocate Bongani Bongo who was there only until February  
10 2019 I think he was 00:20:10 of two months and then he was followed by Minister Letsatsi Duba and then followed from May 2019 by Minister Ayanda Dlolo who is still there in cabinet now.

**ADV PRETORIUS SC:** Right. And in relation to the office of the IGI paragraph 22?

**DR DINTWE:** Ja we start this a little bit earlier in 2004 but there will be some other arrangements that happened before that I did not think that they will be so much relevant but one of my predecessors was Mr Zolani Nakane who was  
20 appointed as the IGI in 2004 and he remained in office until December 2009. The position was vacant from December 2009 to April 2010 when the late Ambassador Faith Radebe took over and then she held that position for five years until 2015 until I 00:21:12 that office 22 months later which then will be 2017.

**ADV PRETORIUS SC:** Alright. And you make the remark in the last sentence at paragraph 22 that it has not been in the interest of the public that is so vital in oversight post has remained vacant for extended periods?

**DR DINTWE:** That is correct.

**ADV PRETORIUS SC:** You confirm that. Right then in – this is reasonably important in relation to the history of your engagement with the commission the provisions of Section 7(8) A and B of the Oversight Act

10           “Provide that the Inspector General shall have access to any intelligence information or premises under the control of any of the intelligence services if such access to any intelligence information or premises is required by the Inspector General for the performance of his or her functions and he shall be entitled to demand from the Head of the service in question and its employees such intelligence information reports and

20           explanations as the Inspector General may be necessary for the performance of his or her functions.”

And if we can just complete that before you answer any questions in that regard. Paragraph 24 you refer to Section 7(9)

“Access to intelligence information or premises contemplated in sub-section 8(a) may not be held – be withheld from the Inspector General on any ground.”

Now we will deal towards the end of your evidence in relation to events that have happened in the past month or so subsequent to the testimony of the witnesses in January of this year before the commission. But very briefly what is the import of these sections?

- 10 **DR DINTWE**: The import of that section I will see that it will be twofold. The first one is to ensure that the – this office is never ever denied any information. In fact Chairperson they even make it a criminal offence to do that. Because Intelligence Services by their own nature are secretive in nature and it is an acceptable principle worldwide. So here they wanted this particular office which will have an unfettered access to intelligence because since we will get hidden. But the second point there is that – alright the second point is that it shows that the Inspector General of
- 20 Intelligence it says there may deem necessary for the performance of his or her functions. It was also in our view trying to you know prevent a situation that I was telling the Chairperson about earlier this year an instance where you will get the other functionary who will want to take the discretion as well as the powers of this particular office. So

in other words I do have a right to even meet with the people from the commission, people from the Hawks if you like or even people from IPID and be able to deal with that information or the accessed information there.

**ADV PRETORIUS SC:** Right it is important that the information to which you are entitled in terms of the Act is that which you deem necessary not anybody else.

**DR DINTWE:** That is correct.

**ADV PRETORIUS SC:** But it is also important that it is  
10 stated in two senses you are entitled to the information and nobody may refuse to give you that information as I understand the position on any ground.

**DR DINTWE:** That is correct.

**ADV PRETORIUS SC:** And failure to comply with Section 7(8) that is in relation to your access to intelligence and premises and the like is an offence as you pointed out.

**DR DINTWE:** That is an offence that is correct Chairperson.

**ADV PRETORIUS SC:** Right. And then in paragraph 26 you  
20 mention one of the requirements which will become relevant later preceding the appointment of an Inspector General of Intelligence what is that?

**DR DINTWE:** That is what they call a security clearance. So you will be vetted. You will undergo this process of being vetted and the requirement there is that I should be cleared at a level of secret – top secret in fact. In other words the –

that provision means that I may be recommended by Parliament, get appointed by the President but if I fail this requirement I will not occupy the position of Inspector General of Intelligence.

**ADV PRETORIUS SC:** Right. Now in paragraph 27 you deal with how you understand oversight and it may be a matter of controversy and is indeed a matter of controversy but how do you interpret and apply the legislative framework which provides for your oversight function?

10 **DR DINTWE:** Yes it remains a debatable issue in terms of what oversight is and so forth and we also – I have those engagements with the first person that I worked on the affidavit – I mean here because he was saying that but the constitutional provision talks about monitoring of the Intelligence Services and my take – my position is that in fact the word oversight is all encompassing because it includes monitoring, it includes review, it also includes investigation of complaints. The other people feel that the word monitoring and review may also be semantics we do  
20 not think so. We think that monitoring can happen simultaneously with whatever so if – I want to make an example which is not controversial I think ja.

If – if there is a 00:27:40 agency says that we want to recruit some – some students so that they can be employed permanently I can even you know go to those interviews. I

can be involved in the selection process and the short listings and so forth so we see that as monitoring. Whereas review may happen in hindsight when the whole process has been completed and you are able to really look – look into that. But our take is that oversight really encompasses all this activities that we are doing.

**ADV PRETORIUS SC:** In paragraph 28 you state what the provisions are that govern the intelligent services as well as the office of the IGI and you mentioned the constitution and  
10 the oversight act. You also mention policy documents which contain checks and balances which include the white paper on intelligence and the minimum information security standards. The missed document to which the Chair referred earlier and other aspects of the regulatory framework regulations directives, policies and standard operating procedures all those constitute the governing framework of the Intelligence Agencies, am I correct?

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

**ADV PRETORIUS SC:** Right in the case of the SSA the lack  
20 of effective checks and balances was listed as one of the cardinal reasons for the alleged malfeasance corruption and fraud perpetrated at SSA. That is your statement in paragraph 29.

**DR DINTWE:** I confirm that is my statement.

**ADV PRETORIUS SC:** And that state of affairs apparently

led to the establishment of the high level review panel chaired by Dr Mufamadi which we have spoken about here and we will speak more about in due course but evidence has been led in that regard. Is that correct?

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

**ADV PRETORIUS SC:** And we will deal in due course with the findings of not only that but also of two preceding inquiries. Can you name those, please?

**DR DINTWE:** There was what we call the NESU(?) report.

10 I would like you to – it is a long name – I would like you to direct me to these two paragraphs that ...[intervenes]

**ADV PRETORIUS SC:** Ja, we will deal with it in due course.

**DR DINTWE:** Yes ...[intervenes]

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

**DR DINTWE:** ...later Chairperson, ja. It is a long name. It is two different panels.

**CHAIRPERSON:** Okay, okay.

**ADV PRETORIUS SC:** And the second one was a panel  
20 that sat during 2006. Am I correct?

**DR DINTWE:** That is correct.

**ADV PRETORIUS SC:** Alright.

**DR DINTWE:** No, the first one was 2006. The second one was 2008.

**CHAIRPERSON:** H'm.

**ADV PRETORIUS SC:** Right. And they made very clear findings in regard to the Office of the Inspector General Intelligence and in particular its independent function.

**DR DINTWE:** That is correct.

**ADV PRETORIUS SC:** And we will highlight those in due course, Chair.

**CHAIRPERSON:** [No audible reply]

**ADV PRETORIUS SC:** Paragraph 30. What was the question? You can read it if you wish to the Chair that was  
10 posed by the High Level Review Panel?

**DR DINTWE:** That is exactly Chairperson why I said ...[intervenes]

**ADV PRETORIUS SC:** ...request.

**DR DINTWE:** Oh, sorry. That is exactly why I was saying that there could be questions by the next generation even who says that: Where was the oversight when this was happening?

**ADV PRETORIUS SC:** And the questions may come sooner than the next generation.

20 **CHAIRPERSON:** [laughs]

**DR DINTWE:** Oh, yes. So my submission to the Commission followed – it was followed by a particular phrase which said:

“The framers of our Constitution and Democratic Intelligence policy and the

legislation created and oversight system for our Intelligence Service comparable to the best in the world comprising a bicameral multi-party Parliamentary Committee, the JSCI and the IGI.

The question is. Given the abuses and infractions identified in this report, did this oversight mechanisms function effectively, and if not, why not?...”

10 **ADV PRETORIUS SC**: And then in paragraph 31, what is your contention in this regard?

**DR DINTWE**: My contention is ...[intervenes]

**ADV PRETORIUS SC**: ...quite generally stated.

**DR DINTWE**: Okay. My contention is that if the OIPI was strengthened, Chairperson, there was not even a need for the HLRP, of the high-level – what you call a multi-panel because then we would have been able, you know, deal with all that work. I mean, if you look at what the Oversight Act says we can do, it is – I think it is a lot.

20 I mean, if we deal with the provincial of the and the combating of the Corruption Activity Act. If we deal with maladministration, abuse of power and all those other issues. That is exactly the reasons that led to the establishment of the High-Level Review Panel.

**ADV PRETORIUS SC**: Yes, you say in paragraph 31 that

had the OIPI been sufficiently strengthened. What would you say to the proposition that it had all the powers, it had access to premises, it had access to documentation? No one could refuse that. How did it occur? We will get to it in more detail but perhaps you can begin to address the question. How could it happen that what appears to be a vast amount of fraud and corruption occurred ...[intervenes]

**DR DINTWE:** The first ...[intervenes]

10 **ADV PRETORIUS SC:** ...Security Agency.

**DR DINTWE:** Oh, sorry, sorry. The first basic reason will obviously be that after the term of tenure of Mr Ngcakani it remained vacant. And after the period of Advocate Faith Radebe, it remained again vacant for 22-months. But the strengthening, we will deal with that. I think that what I can say at this stage is that and we are ...[indistinct]

There is a colleague of mine here who is accompanying me. He will tell me if I should not tell – I should not disclose this. But we are waiting nationally,  
20 Chairperson, and my staff compliment is only 34-people. We do not even have a satellite office, a provincial office whatsoever. I do not think that that is a sign of strength of an institution which has to deal with such in cumbersome work of overseeing the Intelligence Service.

**CHAIRPERSON:** There is the issue of capacity.

**DR DINTWE:** There is a big issue of capacity,  
Chairperson.

**CHAIRPERSON:** Yes.

**DR DINTWE:** Lack of independence.

**CHAIRPERSON:** Ja.

**DR DINTWE:** But also the vacancy.

**CHAIRPERSON:** Ja. There are vacancies which are not  
filled?

**DR DINTWE:** There are vacancies that are not filled out  
10 of the 34, I am only sitting with 24-people.

**CHAIRPERSON:** Yes.

**DR DINTWE:** Some of them are only doing administrative  
work.

**CHAIRPERSON:** Yes.

**DR DINTWE:** And they are not really investigators.

**CHAIRPERSON:** But has there been an exercise done  
which seeks to answer the question how many staff should  
it have, should this office have if it is to realistically and  
effectively do its job? Has there been that kind of  
20 exercise?

And is there a report that has been furnished to  
those who control the purse and those who can do  
whatever is necessary to say: Look, if you want this office  
to be effective, at least the minimum in terms of staffing  
requirements is the minimum and 34 is way below that or

anything like that. Or has that exercise not been done?

**DR DINTWE**: We have done that many a times, Chairperson.

**CHAIRPERSON**: Ja.

**DR DINTWE**: When I assumed my position I also developed what we call 20/22 Vision. It was a five year strategy of the office. And we came up with a structure that we then submitted together with what we call a Concept Document but in the Concept Document because  
10 we do not have legislative powers, legislations making powers, we were normally advised the ...[indistinct] Committee on Intelligence that we are sitting here and we have a practical experience of how this legislation works. So we would have written to them.

I know the Legal Team always laughs this off – well, I mean not off, they really get surprised when I tell them that the Inspector General of Intelligence does not have the appointing powers. The legislation phase, the Minister of State Security shall appoint people to the Office  
20 of the Inspector General of Intelligence.

**CHAIRPERSON**: H'm.

**DR DINTWE**: It has never happened since I got there. People have gone all the time and some have resigned and so forth. No one – there is no one, not even a single person who was appointed for the past four years that I

was in this office, which makes perfect sense.

I mean if I was a Minister myself, I would not appoint people to go to an office which were to pestering(?) with me. I mean, as an institution.

**CHAIRPERSON:** Yes, but of course, that has to be wrong because if legislation says there must be the Office of the Inspector General of Intelligence or there must be the Inspector General of Intelligence to perform the following functions. If those functions cannot effectively be  
10 performed by the Inspector General of Intelligence without other people or professionals, then you are making – rendering the office ineffective if you know that there are vacancies and nothing is done to fill those vacancies and if you have...

I guess it would be difficult to say appointments are not made because we have no money, you know. Because how then do you expect the office to perform if already there has been a determination that at least there should be – there is justification for there to be 34-posts.  
20 It is different if you have not elected and it has not been made.

**DR DINTWE:** Chairperson, later I quote a paragraph from one of the letters from the Director General, from the representative of the SSA then ...[intervenes]

**CHAIRPERSON:** Yes.

**DR DINTWE:** ...the former one.

**CHAIRPERSON:** Yes.

**DR DINTWE:** And I address exactly that issue. I take out in paragraph where he writes to me to say that we cannot fill those positions.

**CHAIRPERSON:** Yes.

**DR DINTWE:** And what exhaust(?) the state of affairs is that there are funded positions at least even minimum. So this would have been the people who would have left, went  
10 on retirement or resigned or got transferred, for instance. So even if you do not then change this branch of 34, at least let us deal with the funded positions.

**CHAIRPERSON:** Yes.

**DR DINTWE:** The funded positions are there, the money will always be there.

**CHAIRPERSON:** Yes, yes. Okay.

**ADV PRETORIUS SC:** Yes. Issues of the strength of the Office of the IGI, which you have mentioned in paragraph 31, its independence and its capacity to function  
20 effectively, you deal with in the following paragraphs but an illustrative example is your budget. Who and how is your budget determined? Who determines your budget? How is it determined?

**DR DINTWE:** Alright. The Oversight Act says that the budget of the individuals shall be appropriated through the

vote of the Ministry of State Security which is not a problem. We do not have a problem with that because we do not necessarily to have a vote. What we have a problem with is that there is no prior determination that is made before the money reaches the State Security Agency. So it will only be after that, after they have received. Let us say they give them a thousand rand. Now I have to go there and back as if I am one of the Chief Directorates there. They are calling(?) the other department to their

10 directorate what they will say what our requirements or our needs are standing at about hundred-and-thirty rand, you know. So I also come there. And the Director General then determines whether he is going to give me what I have requested. Chairperson, I was never ever given what I would have requested. So there would be a particular baseline and they will always give me that money.

**ADV PRETORIUS SC:** But the point about that is that the very body and office over which you have oversight, the SSA, is the very body whom you have to deal with in

20 obtaining your budget. Is that correct?

**DR DINTWE:** That is correct.

**CHAIRPERSON:** Ja, probably maybe that is the issue because otherwise everyone who has to ask somebody, the government for money will tell you they never get given what they want, you know, [laughs] where even with

government departments, ministers will always complain, you know, that the Minister of Finance will not give you what you want. Now you come and you say this is what I want and you think you have motivated sufficiently but they always or very often you will get a little bit less. But it is important that whoever makes that decision must be somebody who can be taken to – take into account on legitimate factors in deciding. But your point might be that what you would prefer is that the money that should be used by IGI should be ring fenced by Parliament even if it is under SSA or whoever but you should not be talking to somebody about how much it should be. Parliament should ring fence it and say this is for IGI and then you should be able to use it for the operations of your office. And if somebody has to account for it other than yourself, then it must at least be furnishing whatever needs to be furnished but Parliament should be the ones who say – Parliament should be able to say out of this budget for SSA, it is SSA, so much is for IGI and cannot be touched by somebody else. Is that what you are talking about or not really?

**DR DINTWE:** I was asked that question ...[intervenes]

**CHAIRPERSON:** Yes.

**DR DINTWE:** ...you know by the committee when I was asked for their intervention.

**CHAIRPERSON:** Yes.

**DR DINTWE**: And they at least understood initially.

**CHAIRPERSON**: Yes, yes.

**DR DINTWE**: Need to mean that I want to be given above all these other departments and that was not my contention. Now this is how where we are at now. In 2016/2017, the Head of Corporate Services writes to the DG of SSA and say that you have been given us this budget but for 2016 and early 2017 we do not have an Inspector General. So we will not be able to use that  
10 particular money. So they only said that you - in the meantime just give us money so that we can pay for rent, lines(?), personnel costs and so forth.

So the money was reduced at a particular point. When I started in 2017, it was already the beginning of a new financial year and I nicely went back to them and said but this was the baseline. So they would have removed a lot of money. Now they wanted me to start again where they would have, you know, put that particular amount in other ways.

20 I started with a budget which did not include the operations of a fully functional office now because I had taken incumbency there. And that has always been my argument. My argument is never to say that I know that even SSA themselves their budget has been cut over and over again. I think two consecutive years now. All the

other departments.

I understand all the pressures of the fiscals. All what I am saying is that if my baseline was standing at thousand rand and somebody in my office, rightly so, came and said do not give me three thousand this year because I am not going to be able to – give me five hundred rand. We can expect that then I start with five hundred and I start moving at a cost of about 4% or 5% because that is what they do just to cater for the personal expenditure and  
10 for the increment and so forth. So you cannot expect me to do that. To start there again and start building a new baseline. That is my complaint.

**CHAIRPERSON:** So your complaint is that there is a certain baseline that was determined at a certain stage there may have been a valid reason to go below that at a certain stage when there was no IGI but once there was – once you had been appointed should have gone back to the baseline.

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

20 **CHAIRPERSON:** Ja. You are not complaining about wanting it to be ring fenced or anything? That is not your...?

**DR DINTWE:** Oh, no. By the way, Chairperson. Maybe I should have mentioned that we managed to get ring fencing.

**CHAIRPERSON:** Oh.

**DR DINTWE:** Ja, that is done by Treasury.

**CHAIRPERSON:** Oh, that is achieved?

**DR DINTWE:** Yes.

**CHAIRPERSON:** It has been achieved?

**DR DINTWE:** It is achieved. The only problem is that it is done after the money has been given to the State Security Agency.

**CHAIRPERSON:** Yes.

10 **DR DINTWE:** Ring fencing should happen on the other side.

**CHAIRPERSON:** Yes.

**DR DINTWE:** Because this model works perfectly ...[intervenes]

**CHAIRPERSON:** Yes.

**DR DINTWE:** ...with the Public Protector who are giving the budget, I think, through Justice Constitutional Development. We will have IEC who are getting from Home Affairs. So they never really – and I think NP(?) also  
20 getting from somewhere. But during the appropriation in Parliament, they have already made a determination ...[intervenes]

**CHAIRPERSON:** Yes.

**DR DINTWE:** ...that this amount ...[intervenes]

**CHAIRPERSON:** Ja.

**DR DINTWE:** ...belongs to – ja, IP is a good example.

**CHAIRPERSON:** Ja.

**DR DINTWE:** This amount belongs to IP.

**CHAIRPERSON:** So that has not been done in regard to IPI?

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

**CHAIRPERSON:** The ring fencing happens after the Parliament has appropriated?

**DR DINTWE:** Yes.

10 **CHAIRPERSON:** So the ring fencing gets done by SSA?

**DR DINTWE:** By SSA, yes.

**CHAIRPERSON:** And your point is, it should be done by Parliament just as it is done in regard to the Public Protector and other institutions?

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

**CHAIRPERSON:** Okay.

**ADV PRETORIUS SC:** Alright. And just so that the point is not lost then. We were talking about it earlier. You monitor the SSA and call the SSA to account?

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

**ADV PRETORIUS SC:** Is it appropriate in your view that that instance which you have the duty to monitor has a hand in determining your budget?

**DR DINTWE:** It is not right at all because it undermines independence but again you are sitting with these people

that you are basically dependent on them.

**ADV PRETORIUS SC:** Right. And then you raised another point in relation to the budgetary situation. What do Crime Intelligence and Defence Intelligence think about your relationship with the SSA in relation to your budget?

**DR DINTWE:** Ja, let us call it a third-party tendons(?) Chairperson because I am sitting in the premises of the ministry administer. I am sitting on the server of the agency and the complaint by some – the management of  
10 Crime Intelligence may not be current as well as the Defence. Is that in this instance we have a counterintelligence mandate to protect our own information.

So you are sitting there on the ICT infrastructure of the SSA. In other words, their beef is that SSA could have an upper hand in as far as the information is concerned because I call up the information, I go to my office but I am in the same premises. I mean, they can open those premises. They are providing security there  
20 and everything. So that is the complaint as it comes from the other services, Intelligence Services.

**CHAIRPERSON:** Okay alright. Let us take a ten minutes adjournment. Or do you want to ask one more question?

**ADV PRETORIUS SC:** Just one questions, if I may.

**CHAIRPERSON:** Ja, okay.

**ADV PRETORIUS SC:** So that we do not overlook it I might overlook it Chair.

**CHAIRPERSON:** [No audible reply]

**ADV PRETORIUS SC:** It is correct that your information, your digital information is on the server of the SSA?

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

**ADV PRETORIUS SC:** Is that appropriate?

**DR DINTWE:** No, it is not appropriate.

**CHAIRPERSON:** So if you receive a complaint from a  
10 member of the public about SSA or members of SSA, once it is in your own system they can access it?

**DR DINTWE:** Yes, I mean, ja, I think the digital people will also tell you there is always – I mean, if I owe the infrastructure.

**CHAIRPERSON:** Ja.

**DR DINTWE:** It is my infrastructure.

**CHAIRPERSON:** Yes.

**DR DINTWE:** It does not even need like special skills.

**CHAIRPERSON:** Yes.

20 **DR DINTWE:** I think that if you are looking it from employer's point of view is that always I will have a right to access the systems of other people.

**CHAIRPERSON:** Ja, ja.

**DR DINTWE:** Just to check a few things.

**CHAIRPERSON:** Yes.

**DR DINTWE:** Yes.

**CHAIRPERSON:** Okay let us take a ten minutes adjournment and then we will continue. I think we will come back at quarter past or so. We adjourn.

**INQUIRY ADJOURNS**

**INQUIRY RESUMES**

**CHAIRPERSON:** Okay, let us continue.

**ADV PRETORIUS SC:** In the context of the independence of the Inspector General of Intelligence and his or her office we are dealing with two aspects in your statement. The first is issues of the structure of the office, the context within which it operates in certain administrative matters like the budget and other operational matters. We will get in a moment to the conduct of the SSA in your experience, that is a separate and second issue affecting the independence of the OIGI.

In paragraph 32 to summarise it aptly, I think, would you care to read that paragraph onto the record?

**DR DINTWE:** I say there, Chairperson, that:

20           “The OIGI has since its establishment been dependent upon the minister of State Security and the SSA for its operational needs. Operational needs include but are not limited to the expenditure (budget) which is allocated to the OIGI by the SSA, the payment of the personnel necessary to perform

its mandate, the information and communication technology or ICT made available to it, the office space allocated to it and other tools needed for the function of the OIGI. This has led to a set party independence that undermines the required independence of the OIGI and impinges upon its ability effectively discharge its mandate. This is because the OIGI is both beholden to in terms of the operational needs of the OIGI and responsible for the auditing of the SSA and when necessary. The Minister of State Security.”

This is further demonstrated in the other paragraphs.

**ADV PRETORIUS SC:** Then in paragraphs 33 to 35 you deal with the classification of the office of the Inspector General of Intelligence in terms of the Public Service Act and in summary, and we need not go into detail, in summary what you are arguing for here is that the office of the Inspector General of Intelligence should not fall within the SSA administratively or operationally, it should be a separate entity in terms of the Public Service Act. Do I understand your argument correctly?

**DR DINTWE:** You understand my argument correctly, Chairperson, I further submit that its form is unknown, that is the terms that they use that they will tell you that you do not know what is the situation, the statutory body is the

constitutional body inside a government department you will have national department, it is the provincial department and that is exactly what the Public Service Act does when we talk about the scheduling of different institutions of government.

**ADV PRETORIUS SC:** So as I understand what you say and of course there may be other explanations or excuses or whatever, the SSA does not say to you you can have your own server, it says use our server.

10 **DR DINTWE:** That is correct and, Chairperson, each time you ask them – because I am Mafiki Zola, I only came yesterday, but there will be history, you know, attached to that. So I kept on asking them which legal framework was used to put this office here and you never ever get that answer because the Oversight Act does not say anything about an administrative connection between the OIGI and any of the Intelligence services, not even the SSA itself. So there is nothing in legislation which provides for that.

**ADV PRETORIUS SC:** Right. And then in paragraph 35,  
20 second sentence, you make the point that we mentioned just before the short adjournment where you say in reality, however, the SSA and its Director General in particular holds the administrative power and the purse strings over the OIGI, its own oversight body.

**DR DINTWE:** That is correct.

**ADV PRETORIUS SC:** That is the resultant outcome of the structure that you operated under, is that correct?

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

**ADV PRETORIUS SC:** Then you say in paragraph 36:

“The extent oversight powers of the OIGI have been further undermined by the conduct of the SSA and the Director General in particular.”

To whom are you referring there?

**DR DINTWE:** I am referring to Mr Arthur Fraser.

10 **ADV PRETORIUS SC:** Well, what do you say, what is your description of those events which have led you to that conclusion in paragraph 36?

**DR DINTWE:** Correct, it will be a plethora of issues that actually came to the fore that I actually ended up in court trying to litigate and get an interdict against Mr Arthur Fraser. So it is a plethora of them, I hope that maybe Adv Pretorius will be able to gloss through them as we go into this.

20 May I also remark, Chairperson, if you allow me to say that when I was working on this affidavit I had a discussion and I said that it should not sound as a personal grievance. So every time I talk about these issues I was trying to show how they defeat the principle of independence other than dealing with myself as a person at a particular point. In other words, this can also be

applicable to any other identification 06.37 at any given time. So I had that discussion I think with the legal team here also to say that I just do not know how to produce these issues or to show the Commission that I am talking about the whole office is defeated, not a person or even any office employees.

**ADV PRETORIUS SC:** Alright, so you worked with the Director General of the SSA Arthur Fraser during a period of your incumbency of the office of the IGI, is that correct?

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

**ADV PRETORIUS SC:** And what you are going to tell the Chair later is what your opinion is of the elements of that relationship which you experienced.

**DR DINTWE:** That is correct, I will be doing that, Chairperson.

**ADV PRETORIUS SC:** Right. Let us go then to paragraph 38 and deal with the filling of vacant posts in the OIGI. Who has that power as you understand the position?

20 **DR DINTWE:** It is the Minister of State Security in consultation with the OIGI.

**ADV PRETORIUS SC:** The Minister or the Director General?

**DR DINTWE:** The Minister, the oversight act is the Minister.

**ADV PRETORIUS SC:** Alright, because you say in

paragraph 38 – then you could explain this because it seems somewhat different to what you have just said now.

You say:

“Under crucial factor which has served to undermine the independence of the OIGI is the control the Director General of the SSA has over the filling of vacant posts in the OIGI.”

Is that correct or must we qualify it?

**DR DINTWE:** I can qualify it. I am not even rectifying it, 10 that was intended statement. Any Minister will have what they call a political oversight over these institutions so in an ideal world they do not get to involve themselves on issues of budget, on issues of operations and all those other issues. So, by extension, although the legislation says that the Minister shall appoint, when I make appointments, the person who is sitting with the money is the accounting officer who is the Director General of the SSA and it is a well-known fact. That is how the communication will go. I will talk to the Minister and say 20 the Minister – if it ever happens, it has never happened, unfortunately, but I will say Minister, there are two vacant positions which are critical. For instance, I do not have an office manager, I need to run my own office., I need to run my own office, I never had a PA for a very long time, I got somebody somewhere in the office to do that and then

immediately after communicating that, the Minister may write to the Director General and say that please the deal with this. But the ultimate power of releasing the money, of conducting interviews and so forth resides with the accounting officer. The Minister may sign as a final signatory on the submission that appoints those people.

So that is why I am saying that although you talk to the Minister but the Director General had more power, in fact even more than the Minister had in terms of making  
10 those decisions.

**ADV PRETORIUS SC:** Well, let us try and summarise the next section then.

**CHAIRPERSON:** So just, Mr Pretorius, just to go back whether that first sentence is correct or not. You are saying insofar as it says the Director General of SSA has control over the filling of the position, you say that is fine and that is correct because you are not saying he has the power to fill the position. The power to fill the position vests in the Minister but the Minister in order to fill the  
20 position must know that there will be money to pay those people who will be appointed and the Director General, as the accounting officer, is the one who has got to say something about this. So if he is not in support you will end up not having appointment.

**DR DINTWE:** That is the proposition that I am making.

**CHAIRPERSON:** Okay.

**ADV PRETORIUS SC:** Well, briefly if you would summarise what happened in November 2017 in relation to appointments.

**DR DINTWE:** Ja. Now that is good example of then who is holding the strings. I do not know the word power, maybe we are using it both sides but who is holding the strings. So in November 2017 I wrote a letter to the Director General so I would have spoken to Minister  
10 Mahlobo who said that in principle I do not have a problem so please tell us – give us like the list of the positions that you want filled and then I wrote a letter to the Director General and Mr Arthur Fraser and I informed him about my intention to commence with the recruitment drive. In other words asking him to facilitate that process.

Although those posts were funded, I still required Mr Fraser to release the funds in order to fill the post. Now they will explain that the CFO – the Chief Financial Officer will explain that the money sits somewhere because  
20 the only money that the release will be for warm bodies. So as and when the position remains vacant, the money will be somewhere but it will not be readily available.

So there is only – it was not even asking for permission to do that because I know that the permission was to be sought from the Minister. I was informing him

that I am starting, may you please release those funds.

**ADV PRETORIUS SC:** How important were these posts?

**DR DINTWE:** Critical posts, I can remember them from the top my head, one of those is what we call OPO. Now OPO is Oversight Principal Officer, they are sitting in my Exco because they are component heads of different structures in the OIGI. So you will have an OPO who is sitting here who is only responsible from Crime Intelligence, you will have the other one who is responsible  
10 for the domestic branch of the SSA, the other one for the fallen branch of the SSA, the other one for the defence. So these are senior people reporting directly to myself.

**ADV PRETORIUS SC:** Critical posts.

**DR DINTWE:** And [indistinct – dropping voice]

**ADV PRETORIUS SC:** Yes.

**DR DINTWE:** Can I also mention maybe the IT specialist like in my office? And the majority of the complaints that I am getting I mention because the majority of the complaint that I am getting will be like I think that I am being  
20 intercepted unlawfully, I do not where is that camera coming from because it is starting to sound like one and for me, I cannot depend then on the SSA to see that let us check your systems if you have this particular person. I need to have somebody who will have the powers vested

on him by the OIGI so that particular – so that is the second post [inaudible – speaking simultaneously]

**ADV PRETORIUS SC:** Alright, what was the response?

**CHAIRPERSON:** Just one second? I may have missed this earlier. The IGI position, at what level in terms of public service is it ranked, if it is ranked at all?

**DR DINTWE:** Oh, alright, alright. You know unfortunately I have to then refer to the conditions of service because the condition of service are determined by the President  
10 and the joint standing committee of Intelligence. So you have a document where you write – all my conditions of service are packed at a level of a Deputy Minister.

**CHAIRPERSON:** Okay, okay.

**DR DINTWE:** And I think that it makes sense because I am overseeing Director Generals.

**CHAIRPERSON:** Yes, yes.

**DR DINTWE:** Ja, with SAPS it will be a lower rank, Lieutenant General.

**CHAIRPERSON:** Yes.

20 **DR DINTWE:** [indistinct] it will be also be a Lieutenant General.

**CHAIRPERSON:** Okay.

**DR DINTWE:** But SSA, it is a full DG.

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

**ADV PRETORIUS SC:** Yes and we will come to that later

in relation to certain events that happened during your watch as IGI. But you made an approach to Mr Fraser in order to release funds to fill those six critical posts. What was his response?

**DR DINTWE:** May I please read it to the Chairperson, it is just a paragraph, it is here. He writes to me and he says:

10 “Regrettably the State Security Agency is unable to adhere to your request for funding of the post as identified in your letter. The State Security Agency has adopted and endorsed its strategic development plan as DP Vision 2035 and as a consequence thereof realigned its organisational structure and strategy. This process is underway and in its final stages. Once the final confirmed structure has been approved it will inform the recruitment process as to what the priorities are in terms of filling of vacant posts.”

Do you see that, Chairperson?

**CHAIRPERSON:** What does that have to do with you?

20 **DR DINTWE:** Nothing at all, Chairperson. But this is my work and this is a letter that is there.

**CHAIRPERSON:** Yes.

**DR DINTWE:** Where this guy say no, no, no, no, wait, you have got your own strategic what what, you are reporting somewhere but I will not be giving you that money until I

am done with my own restructuring.

**ADV PRETORIUS SC:** Right, you make that point as to the applicability of the strategy development plan to your office later on but what do you say about Section 7.12 of the Oversight Act in paragraph 41?

**DR DINTWE:** I am saying that there is a serious misconception of that particular section because that Section empowers the Minister and I have to correct this, Chairperson, I would have said in consultations – not in  
10 consultation with myself, the appointment by the Minister, it is after, that is what the Act says. It is a fine line also. But there was a misconception because Section 7.12 of the Oversight Act empower the Minister after consultation with the Inspector General to appoint such number of employees to the OIGI as may be necessary for the performance of the function of that office and that is basically my emphasis. But again we are trying to draw that distinction I think that we talked about to say that who is holding the power and who is holding the real power in  
20 this particular instance?

**ADV PRETORIUS SC:** So you refer to the power or duty to determine the needs of your office and the personnel necessary to discharge its mandate. Who in the first instance should decide there in your view?

**DR DINTWE:** It is the Inspector General, the [indistinct]

who have to decide on that.

**ADV PRETORIUS SC:** And does the – in your view ...[intervenes]

**DR DINTWE:** Because – oh, sorry, sorry, Advocate, because there is rather there which says that as maybe necessary for the performance or the functions of that office. Now the Minister is supposedly sitting somewhere.

**CHAIRPERSON:** Yes, you know the operational requirements of the office.

10 **DR DINTWE:** Exactly, I am the one who knows that.

**CHAIRPERSON:** Ja.

**DR DINTWE:** But that provision also does not say that she has to make that determination it only says that will appoint after consultation with myself.

**ADV PRETORIUS SC:** Right. Does the Director General of the SSA in your opinion and on your understanding of the law have any power or authority over the process of appointment of employees and the substantive decisions in relation to that appointment process?

20 **DR DINTWE:** Not at all, Chairperson.

**ADV PRETORIUS SC:** Right. And then you make the point in paragraph 43 in relation to the strategic development plan which was cited by Mr Fraser as being a reason not to or to delay the appointment, not to appoint or to delay the appointments that you required. Is it correct

that you, as the office of the Inspector General have your own Vision 2022, as you referred to it?

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

**ADV PRETORIUS SC:** Are you – is your office in any way subordinated to the strategy development plan of the SSA?

**DR DINTWE:** Not at all, it does not even affect the members who are sitting in the OIGI. Even if there is a restructuring they will never ever come closer to them.

**ADV PRETORIUS SC:** Right and you ...[intervenes]

10 **DR DINTWE:** Because they are not even appointed in terms of the same legislation. Staff in my office are appointed in terms of the Oversight Act where as they use Intelligence Services Act to appoint members of the SSA.

**ADV PRETORIUS SC:** Right. And let us put it at its mildest, you use strong language here but in your view is it appropriate that the head of an Intelligence service over which you have oversight and service which must account to you to determine how you should recruit staff or when you should recruit staff?

20 **DR DINTWE:** I prefer to call it irrational.

**ADV PRETORIUS SC:** Okay.

**CHAIRPERSON:** Yes.

**DR DINTWE:** Not in the legal sense but [inaudible – speaking simultaneously]

**ADV PRETORIUS SC:** And how does it affect your

independence?

**DR DINTWE:** Yes because I cannot find a reason, I cannot fathom the reason that is why I am saying that it is unreasonable.

**CHAIRPERSON:** Ja.

**DR DINTWE:** It is wrong for all reasons.

**CHAIRPERSON:** Ja.

**ADV PRETORIUS SC:** And you say in paragraph 44 by way of summary and conclusion:

10            “So long as the budgetary allocation of the OIGI remains within the purview of the SSA these lines of control over the functioning of the OIGI will remain blurred providing evidence that it is inimical to the interest mandate and independence of the OIGI that it be subsumed under the office of the SSA.”

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

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

**DR DINTWE:** That is my view.

20            **ADV PRETORIUS SC:** In this context the independence of the office of the IGI is confirmed and guaranteed in terms of the legislation, the governing legislative framework, in fact including the Constitution, correct?

**DR DINTWE:** That is correct.

**ADV PRETORIUS SC:** The question may arise and it is illustrative of a view that notwithstanding the existence of

an oversight body, there are matters that are so sensitive that secrecy must be preserved at all costs. In other words, there are some documents that you should not have, there are some things that you should not know, that should not get into any private hands. What do you say about that?

**DR DINTWE:** I will request, Chairperson, that the question be repeated, I think I missed something.

**ADV PRETORIUS SC:** Well, there may be a view, it has  
10 not been expressed as such but almost as such that there are certain matters that fall within State Security that are so sensitive that they should remain secret at all cost and should never be revealed outside the purview of the SSA and that follows that you should not have access to certain information.

**DR DINTWE:** Yes, we have several examples to show that  
20 even written letters to the effect that you cannot have information with regard to this particular issue. So yes, of course, there will be that continuous resistance. They are very clever, we call it managed access because they know it is a criminal offence. So you will request this document three times and by the fourth time when you want to cross the street and go to Garsfontein police station they will give that document to yourself. That will be after many

attempts so it defeats the efficiency of this office. So yes, of course.

**ADV PRETORIUS SC:** Yes. You have referred to the provisions of the Oversight Act which say very clearly that you must access to all information premises and the like and it cannot be refused on any grounds provided it is within – it is deemed by you to be part of your function.

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

**ADV PRETORIUS SC:** Have those provisions been  
10 followed uniformly and consistently in your experience?

**DR DINTWE:** No, not at all. Not in all cases, that is what I wanted to say.

**ADV PRETORIUS SC:** Right and paragraphs 45 to 48 you deal with the budgetary issues. We have dealt with those in questions and answers today already. Do you need to expand anything there? Can we move on?

**DR DINTWE:** No, not really, I think, Chairperson, I have made I think my point there.

**ADV PRETORIUS SC:** Right. You have under the head  
20 Recommendations made certain comments in paragraph 49, would you share those with the Chair please?

**DR DINTWE:** Yes, I am making recommendations to say that there are problems with the oversight, Oversight Act and the previous JSCI as the current one asked me previously to say that I should share with them what I think

need to be dealt with. But there was another process that was taking place in parliament to address two issues as issues with regard to all oversight bodies.

The first one was the funding because almost everyone in the oversight was not happy about the funding, to say that how do they remove it from the administrative department so that there are not problems.

But the second one was - we were informed that there is committee, that they used the word ploughing, that  
10 is ploughing through all the legislations and an explanation that was given was that the researchers in parliament realised that some of the acts of parliament were passed like in a rush [indistinct], so they said that a lot of them needed to be revisited.

The recommendations that I am making there are with regard to the oversight, the Oversight Act and I am making two distinct ones there if you will allow me to continue.

**ADV PRETORIUS SC:** In paragraph 49?

20 **DR DINTWE:** 49.1 and 49.2, yes. 49.1 I say:

“The Public Service Act needs to incorporate the OIGI as a national department distinct from the SSA and secondly, the Oversight Act to make allowance for the funding of the OIGI from an independent source not aligned to the SSA or any other

Intelligence service.”

**ADV PRETORIUS SC:** Now is this the first time that these issues have been canvassed or deliberated on?

**DR DINTWE:** Not really. In fact, Chairperson, I think you will be surprised to hear that the high level review on – I mean panel, just quoted those recommendations which were made by the two panels that were established. Can I go through them? The first one is at 2006, I must just see where they are.

10 **ADV PRETORIUS SC:** To assist you we have extracted a summary, it is in a declassified document which deals with the two reports, the 2006 report and the Matthews report. If I may, Chair, these do have reference numbers, they are in another file.

**CHAIRPERSON:** Registrar please...

**ADV PRETORIUS SC:** But for the sake of convenience we have extracted them now.

**CHAIRPERSON:** Ja.

20 **ADV PRETORIUS SC:** For the record however, Chair, they are in bundle YY2 at page 32.31 to 32.40 and we will refer to those page numbers. If we could go please to page 32.136.

**DR DINTWE:** Yes.

**ADV PRETORIUS SC:** You will see there at paragraph 13.2.2 this document deals with the Inspector General for

Intelligence and it is an extract from the report of the high level review panel on the SSA. It reads:

“The recent controversy between the IGI and the former DG of SSA around the withdrawal of the IGI security clearance has raised once more an issue that has been on the Intelligence community’s agenda for some years. The issue of the independence of the office of the IGI from one of the entities that it oversees.”

10 Now we will deal with that issue in due course.

**DR DINTWE:** Yes.

**ADV PRETORIUS SC:** It goes on to say:

“The 2006 report of the task team on the review of Intelligence-related legislation regulation and policies had this to say on the matter.”

And if you go over the page, it reads:

20 “While this may be administratively [word cut] of the need for actual and perceived independence this arrangement is untenable. It is therefore important to provide OIGI with an organisational status that gets its head accounting officer status and allows it to receive and manage its budget independently of the NIA.”

That is the precursor to the SSA, do you see that?

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

**ADV PRETORIUS SC:** And then it refers to the 2008 Matthews Commission Report, which agreed with the findings of the 2006 report and I quote:

10 “The task team recommended that the OIGI be given independent organisational status, allowing it to receive and manage its budget independently of the NIA and affording the Inspector General full control over the resources and activities of the office. The OIGI could be established as either a government agency or a schedule three organisation in terms of the Public Service Act. The Inspector General would remain functionally accountable to the JSCI but would be financially and administratively accountable to the Minister for Intelligence Services for the purposes of the Public Finance Management Act.”

And then it concludes in that regard to say, and I quote:

20 “We agree that the OIGI should have independent status. The process of establishing the status was underway in August 2008.”

And then the report of the high level review panel concludes having quoted the 2006 panel and the Matthews Commission concludes:

“In fact, the process to establish the status has never happened or at least was put aside with the

change in intelligence management in 2009.”

And then two paragraphs down it says:

“According to the then SSA Director General Arthur Fraser there had been no surveillance of the IGI, he was spotted meeting opposition parties. He said the IGI report on pan was leaked to the Daily Maverick. He claimed that it was the current Minister who instructed him to withdraw the IGI security clearance.”

10 Now I just mentioned that part now because that foreshadows evidence that you were going to give in due course.

**DR DINTWE:** Yes.

**ADV PRETORIUS SC:** But let us leave that aside at the moment that appears to have been some of the focus of the high level review panel. But the recommendations of the 2006 panel and the Matthews Commission in 2008, have they ever been implemented?

**DR DINTWE:** They have never been implemented  
20 Chairperson I think I need to mention that there is a letter in my possession which showed that during the tenure of Minister Kasrils that letter was written to the then Minister of Public Service, the former Minister Geraldine Fraser-Moleketi and in principle, she had responded saying that, yes, of course the request made by Minister Kasrils make

sense.

So she wanted to establish a work stream, they called it that was going to deal with the whole process and take it further, but then it died a natural death.

**ADV PRETORIUS SC:** While we here it is relevance will become clear later, in relation to the withdrawal of your security clearance. The conclusion of the panel, that is a high level review panel is – or the non-conclusion is on page 032.138. The last sentence of the first paragraph

10 reads:

“The panel was not able to ascertain whether Frasers withdrawal of the IGI security clearance was an attempt to obstruct the IGI’s investigation of himself.”

That is investigation of Arthur Fraser, but we will get to that evidence in due course, I just want to highlight it here. So that when we refer to that matter, we know what the high level review panel said or did not say about that issue.

20 But further down that page, that is 032.138 they summarise, that is the high level review panel summarises the 2006 Task Team Report and they there under five bullets. And the first bullet is important and I am not going to read them all:

“The task team agrees that the office of the

Inspector General for Intelligence should be given independent status, allowing the Inspector General to have full control over the resources and activities of the OIGI.”

That was the finding, and am I correct when you stated earlier, this is one of the findings that has not been implemented?

**DR DINTWE:** It has not been implemented and maybe I should remark here before it slips my mind to say that this  
10 is a document which was declassified by the President, and it was then it was made a public I mean it was then turned into - I do not know if, to call it an instruction.

So the high level, the HLRP reports, this one here, can no longer be seen as mere recommendations, because the President says, get a team together and implement these recommendations as they are but yes, of course, all those recommendations are not yet implemented two years down the line.

**ADV PRETORIUS SC:** Yes, and in relation to the original  
20 report, 15 years down the line.

**DR DINTWE:** Yes, but Chairperson may I please also mention this, and you will bear with me?

**ADV PRETORIUS SC:** Sure.

**DR DINTWE:** I know that I could be seen as arrogant in that, you are supposed to leading me.

**ADV PRETORIUS SC:** I have no power in that regard.

**DR DINTWE:** Alright, thank you very much. The recommendation of the President in terms of the Constitution, could have a binding effect and become enforceable, even if it is a policy and that is in terms of Section 85, sub-section 2, I think it is B, which says that the top part will say that the President may develop a national policy in conjunction with the members of his cabinet.

10 But sub-paragraph B talks something about the enforceability of such a policy. Maybe that could really assist our position in terms of that myth as well but I did not want to take it further than that.

**ADV PRETORIUS SC:** Right, and then certainly in respect of the Matthews Commission Report, that finding that we have just quoted was endorsed, although the high level review panel shows in what respects the two reports differed, that finding that the Inspector General's office should be given independent status is common to both  
20 reports, am I correct?

**DR DINTWE:** It is actually three, not even both, the 2006 2008 as well as the HLRP.

**ADV PRETORIUS SC:** HLRP, well what he said on page - because I am not I think the - as I read the report of the high level review panel, there were somewhat equivocal on

the findings of the two previous panels but I do not want you to debate those they are here in black and white. But they do make the point on page 032.139 of Y2, that over a decade and I quote:

“Over a decade has passed since these two sets of...[intervene].”

**DR DINTWE:** I am sorry Chairperson I did not get the paragraph there.

**ADV PRETORIUS SC:** It is the first paragraph on page  
10 032.139 of the document of the high level review panel that I have just put in front of you.

**DR DINTWE:** Okay, I am there yes.

**ADV PRETORIUS SC:** So you go to page 032.139 on top of the page it reads:

“Over a decade has passed since these two sets of findings on the OIGI were made by a Ministerial appointed entities. It appears to the panel that with the change in administration in 2009 there was no follow up on these recommendations. The panel  
20 understands, however, that there has been an attempt to draft and promulgate the regulations governing the OIGI these were drafted in 2010 and submitted to the then Minister Thwele and the JCI but it was decided to put these on hold until the promulgation of the GILA the Act which amended all

related intelligence legislation to provide for the establishment of the SSA.”

Is that correct?

**DR DINTWE:** Yes, I can see that.

**ADV PRETORIUS SC:** Yes, and of course - and in any event, we know that even since then, the independence of the OIGI has not been secured, as recommended by those, well two or three, those entities.

**DR DINTWE:** Yes, I agree with that statement and maybe  
10 one needs to also remark that the institutions of government are destroyed by the government. I do not know if it is herself or himself but you have got this very, very, very good concept of how oversights should be conducted and so forth but then you frustrate this organisation.

Even before my arrival. I like this report, because it takes it back before my arrival. So you can see that my predecessors were also contending with the same issues and it brings you to your knees, to be honest. I mean, if  
20 you are not given the money and so forth, you come there, you are excited, you say I am going to serve the country, I am going to assist them. But Chairperson, I am there for four years and I do not think that I am going to wait any day longer when this term comes to an end, I am just trying to survive, because you come there with your skills and

what happens. I mean, you can see that my predecessors including myself have failed to turn around this oversight structure. That is how frustrating it is.

**ADV PRETORIUS SC:** Alright, if we could go a little further and deal with the high level review panel report under this heading. In the second paragraph on page 032.139 the panel, that is the high level review panel report reads:

10           “One of the key concerns of the panel is the long periods of time that the IGI post has been vacant.”

And then it specifies what you have already told the Chair but it was a concern expressed by the panel.

**DR DINTWE:** Yes, that is correct, it was expressed by the panel.

**ADV PRETORIUS SC:** Then the penultimate paragraph on that page foreshadows a question that you will deal with in due course and I am going to read it to you:

20           “A question - or read it onto the record, a question of concern to the panel was, to what extent the OIGI had played a role in identifying and curbing the abuses that had occurred in recent years in the SSA. Of course, the fact that the post was vacant for two years at a crucial time did not help however the panel did have sight of a number of IGI reports on the abuses, such as the report on the principle

agent network, and others, which indeed identify problems and recommend corrective action. But as far as the panel could ascertain, no action or consequent management took place in response to the IGI's reports. This raises the question as to whether the services should be obliged to act on the findings and recommendations of the IGI similar to the status of the recommendations of the Public Protector, this would need further thought."

- 10 What is important about this paragraph is it does seek to explain the question that may legitimately be asked, where was the IGI? And of course, the answer to that question may well lie in the certificates you referred to earlier. Do you recall and the various reports, would you like to expand on that paragraph please?

**DR DINTWE:** Thank you very much. Chairperson, if I started earlier it would be just to say that no one and no one in the intelligence where I play an oversight role should come and mislead you by saying that we are not  
20 aware.

The certificates are comprehensive documents, which deals with even a transaction worth about R60, 00 or 70 if it did not happen in accordance with our prescripts, so I do that. So I would have included that, I would have included all the information and this is how the certificates

travels. I sent first to all three Ministers and I solicit inputs, obviously those inputs are also not even legislated but it is a novel thing that I introduced when I got there but they have got an opportunity to convince me otherwise.

So I will then incorporate those, that I think that they have a point and then I will finalise the certificate and then I will send to the Ministers again. We have been doing it religiously, we have got records of that, we have got covering letters and then I will go and present to the  
10 committee as well, religiously doing that, so no one should ever claim that we are not aware and I think that the high level panel is also confirming that, saying that although they say that they lacked independent but you have seen their reports and those reports are instrumental in using them ...[indistinct], because oversight should not replace the internal controls, that cannot, I cannot run the SSA, I cannot run Crime Intelligence, what I can do is to point them to this ...[indistinct] as well as you know look both in the internal controls and what I am responsible to oversee  
20 is as to whether they develop internal controls and whether they implement that.

And I think OUTA General will also be doing the same principle follow the same principle, to say there is a problem here, deal with it, whether you charge the person or whatever, so that is what the HLRP Chairperson is also

confirming to say that but there are reports there which are comprehensive enough.

**CHAIRPERSON:** Now obviously what you are, what you have just said definitely relates to the period that you have been there, so I want to ask the question whether because you have – you may have access to previous annual reports or certificates that were given or issued by your predecessors and those before them, whether you know that those reports were given in the same way as you have  
10 been doing them, namely every year if that is the position and they are given to the same people and bodies.

**DR DINTWE:** I have that evidence to show that there's continuity in that office, there is continuity because the rest of the staff members are appointed permanently.

**CHAIRPERSON:** Ja.

**DR DINTWE:** So when I got into that office there was something that they didn't bring 2015/2016 financial year and even before that, I have – I have had an opportunity to also engage with those certificates you know when I was  
20 ...[indistinct] I acclimatised myself with that office, very much comprehensive, hard-hitting, show you exactly where the problems are.

**CHAIRPERSON:** Well it's the fact that you say you have given reports, reports have been given even before your time, you know annually pointing out abuses and problems

that should have been fixed, but it seems nothing was fixed in terms of what was pointed out or maybe very little was fixed is concerning because the evidence I have heard seems to suggest also that talking about Parliament it would have been given, the Auditor General's reports about various government departments and SOE's and yet in terms of how it used those reports in respect of the SOE's about which I have had a lot of evidence of corruption, you are not sure what happens, but apart from that Boards of

10 SOE's as well as cabinet, Ministers responsible for certain SOE's, about whom I have had a lot of corruption going you know spreading over a number of years one thinks that they would have been given reports every year of the state of affairs in those SOE's, but when I hear the evidence that I have been hearing in terms of what happened over a number of years it is like nobody bothers to read those reports, and the problems continue.

I mean I was hearing evidence from the former Group CEO of PRASA today with regard to PRASA, I have

20 heard evidence where the late Auditor General pointed out how irregular expenditure was going up astronomically every year and it looked like nobody was doing anything about this, so maybe there is a problem in South Africa that people don't read reports and act on them, because the kinds of abuses that I have heard about in regard to

SSA don't suggest that anybody was aware of the problems because anybody who was aware of those problems and didn't do anything really needs to relook at themselves.

**DR DINTWE:** I know where the problem is Chairperson, if you will allow me.

**CHAIRPERSON:** Yes, yes.

**DR DINTWE:** And something which is not insurmountable. It is because you have got a body such as ours and you only give them the power of recommendation. We have a  
10 position and I was thinking that maybe that could be like a legacy project; to take myself to court and argue that I don't think that recommendations can just be ignored. I know that the answer is going to be that they are not remedial, they are not remedial measures, but I don't think that any government in its right mind will throw money into this particular organisation and this organisation only keeps on doing recommendations which are ignored you know at such a shoe space and nothing happens, so there is no power of recourse, and because I always keep  
20 evidence that I would have elevated this matter to the next level whether it is committee most of the times, I sometimes even go to the President, I have gone to the previous President, I have gone to the current President and made them aware of things that are happening in Intelligence Services, so this thing of recommendation

versus remedial measures I think that it creates serious problems.

**CHAIRPERSON:** So when you say you went to the previous President, Mr Jacob Zuma, and you have been to the current President to tell them about these problems, one, are you talking about the problems which are highlighted in your annual reports?

**DR DINTWE:** Yes it was most.

**CHAIRPERSON:** And maybe more, but certainly those?

10 **DR DINTWE:** Yes.

**CHAIRPERSON:** Yes, and when you do that would you bring the reports with you or not really?

**DR DINTWE:** Ja, I will make a presentation Chairperson.

**CHAIRPERSON:** You would make a presentation.

**DR DINTWE:** A presentation.

**CHAIRPERSON:** Which is based on your annual reports?

**DR DINTWE:** Yes, yes.

**CHAIRPERSON:** And you do that yearly going to the President or it is an *ad hoc* arrangement?

20 **DR DINTWE:** It is an *ad hoc* arrangement because the legislation does not put him in the scheme of things as ...[indistinct] are concerned, its status are sent to the ministers who shall cause them to be sent to the Committee on Intelligence.

**CHAIRPERSON:** Yes.

**DR DINTWE:** But if you look at the definition of a Minister Advocate Pretorius on the Oversight Act it says the Minister shall refer to the State President or any other member of cabinet appointed in terms of I think Section 189 and so forth, so it is an *ad hoc* thing in fact that would be my answer. I have done it once unfortunately with the current President and only once with the former President.

**CHAIRPERSON:** Yes, yes. Okay, but the Joint Committee on Intelligence in Parliament do you know what  
10 it does with these reports that you give them annually?

**DR DINTWE:** What I was informed is that the ...[intervenes]

**CHAIRPERSON:** ...whether it takes any action, I know that some of the things, or maybe everything that it deliberates on is not something one can talk about, but to your knowledge does it take any action to deal with the problems?

**DR DINTWE:** Not the previous committee and with the current committee I will be honest with you, the time that I  
20 have worked with them is not sufficient for me to create a pattern or to make an opinion, to be honest they seem very much eager you know to follow these, I have never ever had a member of parliament telling me to slow down a little bit because the environment is too complex, and it is an environment where you deal with different piece of

legislation and so forth, so I will not be able – but the previous I don't remember getting anything significant that they would have done to assist, but I keep on elevating to them and making them aware of these challenges.

**CHAIRPERSON:** Okay, alright. Well I see we are at quarter past eight, we were supposed to talk at eight o'clock about whether we go further or not. From your side Mr Pretorius will you still be fine to go up to nine, or ...

**ADV PRETORIUS SC:** Well if you are asking my opinion I  
10 will be honest Chair ...[intervenes]

**CHAIRPERSON:** You are obliged to be honest.

**ADV PRETORIUS SC:** Or I won't be deferential.

**CHAIRPERSON:** So you would like to stop now or at a different stage?

**ADV PRETORIUS SC:** Well there are just one or two issues I would like to deal with that shouldn't take very long, and then my view, but I am subject to your direction Chair, I am capable of going till nine.

**CHAIRPERSON:** Okay, alright. I was going to be very  
20 much guided by how the staff and the technicians feel but I think because you are the only one standing in the room when you indicate as you do I should allow that we – but maybe if we – so maybe if you do what you think you ...[intervenes]

**ADV PRETORIUS SC:** My quickest close-off Chair, I think

that last consideration is perhaps decisive.

**CHAIRPERSON:** Okay, alright, well I told them, you must have heard me earlier on say ...[intervenes]

**ADV PRETORIUS SC:** I did.

**CHAIRPERSON:** ...but maybe the staff said hey he is abusing us.

**ADV PRETORIUS SC:** Yes.

**CHAIRPERSON:** Okay, alright, but they are very committed. Okay I think let's round off. My concern was  
10 simply that I was hoping that we would do enough to give us the comfort that tomorrow we should be able to finish with his evidence, but the other considerations are important so let us wrap up and then we see tomorrow.

**ADV PRETORIUS SC:** Yes, the document which is the extract from the high level review panel at page YY232.139 does mention in the paragraph we have just referred to the status of the findings and the panel says in the last sentence:

20 "This raises the question as to whether the services should be obliged to act on the findings and recommendations of the IGI, similar to the status of the recommendations of the Public Protector."

This would need further thought and it is perhaps something that Chair will consider and you have given your view in that regard, but also in that paragraph in line 5

mention is made of the fact that the panel did have sight of a number of IGI reports on abuses such as the report on the principal agent network. Did you or your predecessor or one of your predecessors adduce an IGI report on the principal agent network, as opposed to the internal report of the SSA, that is correct?

**DR DINTWE**: That is correct, it was ...[intervenes]

**CHAIRPERSON**: Just remember to articulate your answer because when you nod that is not recorded.

10 **DR DINTWE**: Oh Chairperson, sorry about that.

**ADV PRETORIUS SC**: So there would have been an internal panel report and there would have been an IGI report on the principal agent network, am I correct?

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

**ADV PRETORIUS SC**: Alright now that report have you seen that report?

**DR DINTWE**: Yes, I have seen that report.

**ADV PRETORIUS SC**: Right, and it would be within your province to give it to the Chair or not?

20 **DR DINTWE**: Yes, we are the ones who produce that report ja.

**ADV PRETORIUS SC**: Yes, now what I wanted to ask to whom would such a report go in the ordinary course. Do you know to whom the report went?

**DR DINTWE**: No I know where it went after I have done a

lot of work on that, I was briefed fully on that because  
...[intervenenes]

**ADV PRETORIUS SC:** To whom did it go?

**DR DINTWE:** Yes, but this is how it started, how it started is very important. It was a ministerial task in terms of the Oversight Act. Siyabonga Twele after the SSA had concluded its own report and they went to the then Minister of Justice and the Minister of Justice said oh, there is a lot of you know criminality in this particular report. Please  
10 sent it to the SIU at that particular point and I think the Hawks if I am not mistaken, it could have been Scorpions, I am not sure.

But he then wrote a letter to the OIGI, giving them terms of reference. So he wanted them to investigate some other things. So the planned report which belongs or which was produced by the OIGI will be confined to specific issues which were in the terms of reference.

That is the reason why because the Act then forces the IGI to report back for the tasking authority. If it is the  
20 president you go back, if it is the minister you go back. So there were several presentation that were made to the, for all the ministers, to several ministers.

**ADV PRETORIUS SC:** Several ministers. Can you recall which ministers?

**MR DINTWE:** It will have been presented to Minister

Siyabonga Twele, but when Minister Mahlobo came, it was presented to him. The information that was given to me during briefing, is that it was done twice but the documentary proof that I have is that it was only done once.

So I will have like a presentation with the date, but I also have an official in the office who says that I was part and parcel of that, and I do not have a problem to come up with an affidavit to confirm that it was presented.

10 **ADV PRETORIUS SC:** Right, well perhaps you could help us in that regard. Would the former president have been briefed?

**MR DINTWE:** Yes, no I really have to check that Chairperson.

**ADV PRETORIUS SC:** Alright, do not give an answer that you cannot substantiate later.

**MR DINTWE:** Ja.

**ADV PRETORIUS SC:** Then just finally in relation to this document, at the bottom of the page the high level review  
20 panel state:

“The IGI noted that there were a series of legacy issues from previous certifications that remained unaddressed. These included the following.”

And the first bullet reads:

“The involvement of the Minister of State Security and Operational Work, an administrative decision making of the SSA.”

Over the page ...[intervenes]

**CHAIRPERSON:** I am sorry, before you go over the page. Mr Dintwe, do you know which Minister of State Security they are referring to?

**MR DINTWE:** It is Minister David Mahlobo.

**CHAIRPERSON:** Okay.

10 **ADV PRETORIUS SC:** And then halfway down, there are a number of bullets. I am not going to read them all. Halfway down there is a bullet which reads:

“There is a culture of non-accountability in the SSA.”

Was that a concern that you know was addressed to the high level review panel?

**MR DINTWE:** That is correct yes, it was our concern.

**ADV PRETORIUS SC:** Right, and then at the bottom of that paragraph:

20 “This long list of issues that remained unaddressed includes many of the issues identified by the panel and suggests that the IGI was not being taken seriously by the SSA.”

Is that a view that you share or disagree with?

**MR DINTWE:** It is a view that I share, that the office was

never, and even now taken seriously and Chairperson, these are the issues that I am comfortable addressing, because they belong to prior to, or they came to the fore prior to my tenure and it will be reports that I received and so forth, but again even evidence which just shows that we have since told you that ministers for instance should not involve themselves in operational matters, but you will have incidents where the minister would have you know, was involved in those issues.

10           So those are the issues that I based on what was given to me during the briefings, but it also materialised under my own tenure.

**ADV PRETORIUS SC:** Okay, and then finally our team has produced a document on the status and source of the MIST document, the minimum information security standards. The source is the public service regulations published or promulgated in terms of the Public Services Act of 1994.

20           Chapter 5 of those regulations deals with electronic government regulations. Part 2 of Chapter 5 deals with information security and Part B of Part 2 deals with the minimum information security standards, and there is a section which obliges the minister in consultation with the Minister of Intelligence to issue minimum information security standards for the public service in the form of a hand book.

That was adopted by cabinet on 4 December 2996. So in summary it is a standard for minimum information security measures that any institution must put in place for sensitive or classified information in order to protect national security and its source is in regulation and is therefore binding.

Chair, if I can just hand that up. We will include it in the bundle in due course.

**CHAIRPERSON:** Yes. Yes, no that is fine, and then the ...  
10 then the MIST itself, if one could get, I do not know whether there are different MIST's or there is this document based on what Mr Pretorius has just read there. It looks like different ministers can produce different documents of this nature under their department.

**MR DINTWE:** No, there is a base document.

**CHAIRPERSON:** Yes, yes.

**MR DINTWE:** Yes.

**CHAIRPERSON:** Which applies to ...[intervenes]

**MR DINTWE:** Yes, which apply to all government  
20 departments.

**ADV PRETORIUS SC:** We will provide it Chair.

**CHAIRPERSON:** Oh, okay yes.

**MR DINTWE:** Which happened to deal with information which is sensitive in nature.

**CHAIRPERSON:** How thick is that document?

**MR DINTWE:** It is very short. I remember that it runs up to about paragraph 46 or so. It is not a thick document.

**CHAIRPERSON:** Yes.

**MR DINTWE:** Yes, at least by my standards.

**ADV PRETORIUS SC:** We will provide that we put it in the bundle Chair.

**CHAIRPERSON:** Yes.

**ADV PRETORIUS SC:** It is available on the internet.

**CHAIRPERSON:** Okay, alright. Okay. Was that your last  
10 ...[intervenes]

**ADV PRETORIUS SC:** Yes Chair.

**CHAIRPERSON:** Okay. Thank you very much. We are going to end here for the day. The arrangement of course as I understand it is that you will come back tomorrow evening Dr Dintwe.

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

**CHAIRPERSON:** And to be here at four o'clock, but accepting that we might only be able to start at five, but if we are able to start at four, then that would be  
20 ...[intervenes]

**ADV PRETORIUS SC:** Chair, I am informed that the MIST document is in the legal framework document that you have. It is at tab 3.

**CHAIRPERSON:** Oh, okay. Okay, thank you. Okay, we are going to then adjourn. Thank you to everybody, thank

you to the staff and the technicians and everybody. Thank you to you Dr Dintwe. Thank you Mr Pretorius and your team and the investigators for making it possible for the commission to sit until this time.

Mr Pretorius, if I could see you in chambers briefly after we adjourn?

**ADV PRETORIUS SC:** Yes Chair.

**CHAIRPERSON:** We adjourn.

**INQUIRY ADJOURNED TO 21 APRIL 2021**