

# Judicial Commission of Inquiry into State Capture Report: Part V

**Vol. 1: State Security Agency  
and Crime Intelligence**



This is the report of the Judicial Commission of Inquiry into allegations of State Capture, Corruption and Fraud in the Public Sector including organs of state, also known to the public and the media as the Zondo Commission

Chairperson: Justice RMM Zondo  
Chief Justice of the Republic of South Africa

Report of the Judicial Commission of Inquiry into State Capture: Part V: Vol. 1



## **PART V**

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Judicial Commission  
of  
Inquiry into Allegations  
of  
State Capture, Corruption and Fraud in the  
Public Sector Including Organs of State

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and

Crime Intelligence

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# STATE SECURITY AGENCY

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## **Sub-Section BB**

AP	Advance Payment
AT	Advance Transfer
CDIS	Chief Directorate Internal Vetting
CDSO	Chief Directorate Special Operations
CDVA	Chief Directorate Vetting and Advising
CSU	Covert Support Unit
DDG	Deputy Director General
DG	Director General
DPSS	Directorate for Presidential Security Support
FCA	Firearms Control Act 60 of 2000
IGI	Inspector General of Intelligence
JSCI	Joint Standing Committee on Intelligence
NIA	National Intelligence Agency
NICC	National Intelligence Co-ordinating Committee
OD	Operational Directive(s)
OIGI	Office of the Inspector General of Intelligence
PPU	Presidential Protection Unit
PSSS	Presidential Security Support Service
SANAI	South African National Academy of Intelligence
SASS	South African Secret Service
SOP	Standard Operating Procedures
SPOU	Special Projects Operation Unit



# STATE SECURITY AGENCY

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## INTRODUCTION

1. The Commission conducted an investigation into various allegations of fraud, corruption and abuse of tax payers' money at the State Security Agency. This section of the Report relates to the Commission's investigation and inquiry into those allegations. Quite clearly, such an investigation fell within the terms of reference of the Commission.
2. The section of the Report relating the State Security Agency (SSA) will be divided into two subsections. The first sub-section (subsection AA) will be an overview of the evidence heard by the Commission. In other words, the first subsection will present the picture that emerged from the evidence heard by the Commission. The second subsection (subsection BB) will give a summary of the evidence of the individual witnesses who gave evidence. At the end of subsection BB will be the recommendations.

## SUB-SECTION AA

### OVERVIEW

3. The South African State Security Agency ("**SSA**" or "**Agency**") is the Government department that bears the overall responsibility for civilian intelligence operations. It is mandated to provide the government with intelligence on domestic and foreign threats or potential threats to national stability, the constitutional order and the safety and well being of South African citizens.

4. The SSA evidence focuses on the intelligence section of the State, as the SSA is the primary intelligence service. The SSA evidence has shown how vulnerabilities in the regulatory framework make the intelligence services especially susceptible to abuse for improper political and personal gain. In particular, the sensitive and secret nature of intelligence operations carries a heightened risk of corruption as operational funds are not subject to the same level of scrutiny as other public budgets.
5. The SSA evidence also highlights the critical role of oversight bodies mandated by the Constitution, including:
  6. The Inspector-General of Intelligence ("**IGI**");
  7. The Joint Standing Committee on Intelligence ("**JSCI**"); and
  8. The Auditor-General of South Africa ("**AG**").
9. Evidence of criminality which occurred at the SSA and which has been the subject of evidence before the Commission, was handed over to the Directorate for Priority Crime Investigations ("**DPCI**") in early 2019 by the then Director-General, Mr Lloyd Mhlanga ("**Mr Mhlanga**").<sup>1</sup> Similar evidence was handed over to the Investigating Directorate of the National Prosecuting Authority ("**NPA**") during October 2020 by Mr Loyiso Jafta ("**Mr Jafta**"), who was the Acting Director-General of the SSA.<sup>2</sup>
10. The evidence suggests that this Commission may not in fact have been necessary if the SSA had detected, fully investigated and countered state capture as a threat to our constitutional order when the symptoms of state capture first appeared. That is, of course, if SSA was allowed to do its job properly because the evidence of Ambassador

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<sup>1</sup> Mr Mhlanga, *Affidavit* (Exhibit YY6) at para 5.2, SSA02 215.

<sup>2</sup> Mr Jafta, *Affidavit* (Exhibit YY3) at para 19.4, SSA02 049.

Maqethuka, General Njenje and Ambassador Mo Shaik made it clear that in 2011 or so they wanted to investigate the Guptas but the situation was made so difficult for them that they left SSA without pursuing the investigation that they had considered was necessary.

### **Project Veza Investigation by the SSA**

- 11 As part of the Commission's investigation, the Commission engaged directly with the SSA. The focus of this work was the SSA's internal investigation, which was known as Project Veza.
- 12 The Project Veza investigation team was tasked with investigating irregularities and criminality arising from contraventions of the SSA's governance, operational and financial prescripts during the period 2012 to 2018. The investigation focused on various units within the SSA chiefly the projects carried out by the Chief Directorate Special Operations as the covert operational structure within the SSA, but also the Cover Support Unit ("CSU") and operations run from the office of the Director-General at the time.
- 13 During the period 2012 2018, the CDSO undertook a number of counterintelligence projects and operations. According to Mr Y, the Project Veza team found that the majority, if not all, of these projects were established in breach of the SSA's policy and regulatory prescripts. The grounds for the establishment of these projects make only vague reference to the counterintelligence mandate of the SSA. Such attempts to comply with policy prescripts seemed only, if at all, to be aimed at meeting the minimum requirements for gaining authorization to access funds <sup>3</sup>

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<sup>3</sup> Mr Y, *Witness Statement* (Exhibit YY4) at para 6.3, SSA02 093.



## Challenges of declassification and disclosure

14. Section 7(8)(a) of the Intelligence Oversight Act 40 of 1994 (**"the Oversight Act"**) requires the Inspector General of Intelligence to consult with any of the responsible Ministers and the President prior to disclosing any information obtained from a Head of a Service or any employee of a Service. In terms of that Act a "Services" is defined "the Agency, Intelligence Division of the National Defence Force and the Intelligence Division of the South African Police Service".
15. Pursuant to section 7(8)(a), the IGI, Dr Setlhomamaru Dintwe (**"Dr Dintwe"**) consulted with the respective Ministers of the South African Police Service, State Security and Defence and Military Veterans as well as with President Ramaphosa. In both the investigation and preparation of evidence, the Commission sought to handle the SSA evidence in accordance with the sensitivity that it deserves. Accordingly, the importance of protecting the identities of SSA members and operatives, as well as trade craft or work method of the SSA is readily acknowledged.
16. However, as a matter of law, classification cannot be used to conceal criminality or to prevent embarrassment to persons or institutions.<sup>4</sup> The evidence of Dr Dintwe shows that this may be part of a broader trend. His evidence is that the Intelligence Services have refused to declassify many documents for no justifiable reason. It would appear that, these documents remain classified for no reason other than to avoid embarrassment and to protect senior officials.<sup>5</sup>

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<sup>4</sup> This is according to Para 3 of Chapter XXV of the Intelligence Services Regulations, cited in Dr Dintwe, *Witness Statement*, (Exhibit YY15) para 103 at SSA02 806. Reference is also made to the Minimum Information Security Standards (MISS) document, available at [https://www.sita.co.za/sites/default/files/documents/MISS/Minimum%20Information%20Security%20Standards%20\(MISS\).pdf](https://www.sita.co.za/sites/default/files/documents/MISS/Minimum%20Information%20Security%20Standards%20(MISS).pdf)

<sup>5</sup> Dr Dintwe, *Witness Statement*, (Exhibit YY15), para 161 at SSA02 825.



17. Minister of State Security, Ms Ayanda Dlodlo ("**Minister Dlodlo**"), stated that during the Commission process, classified information was disclosed which is a national security risk. This is incorrect. The then Acting Director-General of the SSA, Mr Jafta declassified all of the information placed before the Commission.
18. Minister Dlodlo refers to the President's objection to Dr Dintwe's having disclosed classified information to the Commission prior to the requisite statutory consultation process with the Security Cluster Ministers having taken place.<sup>6</sup>

## DOCTRINAL SHIFT

19. Whereas the Intelligence Services Act 65 of 2002 established the intelligence services, the National Strategic Intelligence Act 39 of 1994 ("National Strategic Intelligence Act") outlines the mandate of the intelligence services. In terms of the National Strategic Intelligence Act, only the intelligence divisions of the South African National Defence Force ("SANDF"), the South African Police Services ("SAPS"), as well as the Civilian Intelligence Services (namely the SSA), may conduct intelligence functions.<sup>7</sup>

## The White Paper on Intelligence and the Principles of Intelligence

20. In 1994 the Government issued a White Paper on Intelligence (White Paper). One of the principles enunciated in the White Paper is the principle of oversight by Parliament, such as through the JSCI. The other principle is the balancing between secrecy and transparency that translates into the issue of classification and declassification of information, where there are standard norms globally. There must be a balance; the

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<sup>6</sup> Minister Dlodlo, Affidavit dated 17 November 2021, paras 42; 46-47

<sup>7</sup> Section 2 of the National Strategic Intelligence Act.

public must accept that they may not know everything, otherwise the work of operatives on the field would be jeopardised <sup>8</sup>

- 21 The above principles are reflected in the White Paper which provides a policy framework for the establishment, principles and functioning of the intelligence services in a democratic South Africa. The White Paper sets out the mandate of the civilian services (domestic and foreign) as the provision of an effective, integrated and responsive intelligence machinery that can serve the Constitution and the government of the day through the timeous provision of relevant, credible and reliable intelligence.<sup>9</sup>

## 2009 Proclamation

- 22 Mr Loyiso Jafta, at the time of testifying before the Commission an Acting Director General of SSA, stated that the creation of the SSA in 2009 resulted in an architecture in which all the authority and power over the civilian intelligence architecture was concentrated into the hands of a single Director-General. The Director-General was subject to the Executive oversight of a single Minister of State Security in accordance with section 12 of the Intelligence Services Act. The provision for the SSA's establishment in terms of which the National Intelligence Agency ("**NIA**"), the South African Secret Service ("**SASS**"), National Communications Centre, Electronic Communications Security (Pty) Ltd ("**COMSEC**") and the South African National Academy of Intelligence ("**SANAI**") were absorbed into and made up the SSA, was legislated in section 3 of the Intelligence Services Act <sup>10</sup> Mr Jafta's view was that an

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<sup>8</sup> Ambassador Maqetuka, Transcript of Testimony (Day 231) at pages 89 – 90

<sup>9</sup> Mr Y, *Witness Statement* (Exhibit YY4) at para 3.2, SSA02 072

<sup>10</sup> Mr Jafta, *Witness Statement* (Exhibit YY3) at para 9, SSA02 038-039.

arrangement where one Director-General had authority over the domestic, foreign and other branches in the SSA would be prone to abuse <sup>11</sup>

- 23 Mr Jafta explained that this amalgamation promised enhanced integration and coordination of functions in the intelligence community with Directors heading each of the Domestic and Foreign Branches and a single Accounting Officer. The Director-General Mr Jafta stressed that the ultimate reality was an over-concentration of power in the hands of the Director-General. This was because the two positions for the Directors of the Domestic and Foreign Branches were done away with as a result of the implementation of the Strategic Development Plan ("**SDP**") in April 2018 <sup>12</sup>
- 24 Former Minister of State Security, Dr Siyabonga Cwele ("**Dr Cwele**"), denied that the amalgamation had taken place by proclamation. He said that statements to this effect were "false"<sup>13</sup> and "demonstrably untrue"<sup>14</sup> Dr Cwele said that he was "unable to understand the allegation that the SSA was amalgamated through a proclamation " He added that it was more difficult to conceive how this could be possible with Ambassador Maqetuka and other senior officials leaving a matter of this magnitude "unattended".<sup>15</sup>
- 25 When shown the proclamation, Dr Cwele said that the proclamation itself was not what amalgamated the agencies; rather, it was the legislation which came afterwards that established the SSA.<sup>16</sup> He explained that, after "each and every election",<sup>17</sup> it was a normal process for the President to reorganise departments by proclamation and not

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<sup>11</sup> Mr Jafta, *Transcript of Testimony* (Day 331) at page 95.

<sup>12</sup> Mr Jafta, *Witness Statement* (Exhibit YY3) at para 11, SSA02 040.

<sup>13</sup> Ambassador Cwele, *Affidavit* (Exhibit YY19) at para 14, SSA05 704.

<sup>14</sup> Ambassador Cwele, *Affidavit* (Exhibit YY19) at para 11, SSA05 712.

<sup>15</sup> Ambassador Cwele, *Affidavit* (Exhibit YY19) at para 14, SSA05 714.

<sup>16</sup> Ambassador Cwele, *Transcript of Testimony*, (Day 419) at page 131

<sup>17</sup> Ambassador Cwele, *Transcript of Testimony*, (Day 419) at page 150.



by legislation. The legislation, he said, then followed “because it is a process which needs to be followed”<sup>18</sup> He said that the proclamation merely proclaimed which departments were going to be changed<sup>19</sup>

26. It was Dr Cwele’s contention that the General Intelligence Laws Amendment Act of 2013 (“GILA”) “regularised” the change that had been proclaimed in 2009.<sup>20</sup> This is a view supported by Mr Arthur Fraser<sup>21</sup> Dr Cwele did not explain why, if this was so, the change (the amalgamation) was effected in 2009 pursuant to the Proclamation and not in 2013 after the Amendment Act came into effect.

27 The combination of the shift in intelligence philosophy and the restructuring of the SSA resulted in SSA resources increasingly being channelled towards “state security”, including the security of President Jacob Zuma in particular, rather than “national security”<sup>22</sup> The doctrinal shift from human security to state security is not just reflected in the name of the SSA, but is borne out in the intelligence priorities and operations that followed the amalgamation. Some of these intelligence priorities and operations will be discussed below.

## VULNERABLE FEATURES OF THE REGULATORY FRAMEWORK

28. Before going into detail about what these intelligence priorities and operations were, it is important to identify certain vulnerable features of the regulatory framework which may have left the SSA susceptible to capture

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<sup>18</sup> Ambassador Cwele, *Transcript of Testimony*, (Day 419) at page 147.

<sup>19</sup> Ambassador Cwele, *Transcript of Testimony*, (Day 419) at page 151

<sup>20</sup> Ambassador Cwele, *Transcript of Testimony*, (Day 419) at page 152

<sup>21</sup> See AF2 attached to Mr Fraser Affidavit dated 20 April 2021, at para 40SEQ 22/2021 269-270.

<sup>22</sup> Mr Y, *Witness Statement* (Exhibit YY4) at para 5 1, SSA02 083-084 See also Mr Jafta, *Affidavit* (Exhibit YY3) at para 7, SSA02 037.



## The susceptibility of intelligence agencies to politicisation

- 29 Section 199(7) of the Constitution entrenches the principles of political neutrality of among others SSA and its members as follows:

"Neither the security services, nor any of their members, may, in the performance of their functions –

prejudice a political party interest that is legitimate in terms of the Constitution; or further, in a partisan manner, any interest of a political party."

30. Section 10(4)(b) of the Intelligence Services Act places a duty on the Director-General of the SSA to ensure compliance with this constitutional imperative of political neutrality and non-interference. That provision reads:

"10(4). The Director-General must, as far as is reasonably practicable, take steps to ensure that -

(b) neither the Agency nor any of its members may, in the performance of their functions

(i) prejudice a political party interest that is legitimate in terms of the Constitution; or

(ii) further, in a partisan manner, any interest of a political party"

- 31 One of the reasons why intelligence services are susceptible to politicisation is that they are valuable tools, the use and control of which can help to cement political power
32. A High Level Review Panel was appointed by President Ramaphosa to conduct some investigations into SSA and submit a report to him. One of the key findings of the High Level Review Panel ("**HLRP**") was that there had been a serious politicisation and factionalisation of the intelligence community, based on factions in the ruling party, the ANC, resulting in an almost complete disregard for the Constitution, legislation, policy and other prescripts <sup>23</sup> Evidence to support this finding has also been given by a number

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<sup>23</sup> Dr Mufamadi, *Witness Statement*, (Exhibit YY2) at para 1.4, SSA02 004.

of witnesses who submitted affidavits to or appeared before the Commission. I am in complete agreement with this conclusion of the High Level Review Panel

### **Ministerial powers and executive overreach**

33. The risk of politicisation of the SSA was heightened by a second vulnerability in the regulatory framework: the powers of the Minister of State Security in relation to the powers of the Director-General of the SSA at least during the period under review. Political responsibility for the SSA then lay with the duly designated Minister, who had extensive powers to create structures and posts in the SSA, to make appointments and to make regulations <sup>24</sup>
34. While the Ministry exercised political oversight, the Director-General was and remains the Accounting Officer entrusted with the administration of the department. The Deputy Directors-General and senior managers are tasked with running the operations. The separation of these functions political oversight, administration and operations is crucial for an intelligence service to insulate itself from political interference, thus ensuring that it serves the national security interests rather than the political interests of the government of the day <sup>25</sup>
35. Section 209(2) of the Constitution provides:

"The President as head of the National Executive must appoint a woman or a man as head of each intelligence service established in terms of subsection (1), and must either assume political responsibility for the control and direction of any of those services, or designate a member of the Cabinet to assume responsibility."

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<sup>24</sup> Section 209(2) of the Constitution

<sup>25</sup> Mr Y, *Witness Statement* (Exhibit YY4) at para 3.6, SSA02, 073.

36. Ambassador Riaz “Moe” Shaik (“**Ambassador Shaik**”) told the Commission that he was sceptical about a dedicated Minister of Intelligence as opposed to having the reporting lines directly to the President. Ambassador Shaik thought the Constitution preferred that this be a Presidential responsibility rather than a Ministerial responsibility.<sup>26</sup> His view was that, having the Directors-General reporting to a Minister would be a basis for conflict. In his case, it was indeed a basis for conflict. His relationship with the then Minister Cwele broke down. So did those of Ambassador Maqetuka and General Lizo “Gibson” Njenje (“**Mr Njenje**”) with the Minister, who all ended up resigning from their posts because of clashes with the Minister.<sup>27</sup>

37. The extent of the politicisation of the SSA is illustrated by the executive interference in operational activities which occurred during the period under review. Below are some examples of this, with reference to specific Ministers of State Security:

37.1 Ambassador Cwele was appointed as the first Minister of State Security in 2009. Messrs Maqetuka (former Director-General of the SSA), Njenje (former Director: Foreign Branch) and Shaik (former Director: Domestic Branch) had been conducting an investigation about the emerging influence of the Gupta family over government officials and President Zuma as a threat to national security. Ambassador Maqetuka detailed how Minister Cwele objected to such an investigation because, in his view, it was not being pursued in good faith. It is quite clear from the evidence that Minister Cwele was protecting President Zuma.

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<sup>26</sup> Ambassador Shaik, *Transcript of Testimony* (Day 192) at page 192.

<sup>27</sup> Ambassador Cwele gives different reasons for the breakdown of these relationships, which are discussed in different sections of this report. It should also be noted that before there was a Minister of Intelligence, administrative responsibility for the SSA fell under the Minister of Justice.



- 37.2. In May 2014 Mr David Mahlobo was appointed as the Minister of State Security. According to Mr Y, during the period that followed the Office of the Director General became involved in covert operations which were called the "President's Projects", purportedly pursuant to a directive from Mr Mahlobo. This is reflected in the notable increase in operational expenditure in the Office of the Director-General, which was mainly attributed to expenditure on these covert projects.
- 37.3. On 12 December 2017, when Mr Bongani Bongo was the Minister of State Security, supported by the then Director-General, Mr Fraser, tried to remove Dr Dintwe from his office and reduce his and any future Inspector General of Intelligence's powers significantly.<sup>28</sup> The Oversight Act does not provide explicitly for the power to appoint somebody to act in the position of the Inspector-General of Intelligence in the absence of the Inspector General of Intelligence. Section 7 provides explicitly that the President appoints the Inspector General of Intelligence nominated by the Joint Standing Committee on Intelligence and approved by the National Assembly by a resolution supported by at least two-thirds of its members. Mr Bongo and Mr Fraser attempted to get around this provision by using a Ministerial Delegation of Powers and Direction of Payment ("**MPD**") The MPD utilised by them provided that, in the absence of the Inspector General of Intelligence, the Director General of SSA may appoint the Acting Inspector General of Intelligence.<sup>29</sup>

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<sup>28</sup> Dr Dintwe, *Witness Statement*, (Exhibit YY15) at para 59, SSA02 791

<sup>29</sup> Dr Dintwe, *Witness Statement*, (Exhibit YY15) at para 60-61, SSA02 791-792.



## **Financial controls and accountability**

- 38 A third weakness in the regulatory framework is the scope for non-compliance with financial controls and accountability mechanisms. This includes both internal SSA controls and controls external to the Agency.
39. According to Mr Jafta, the SSA always had in place adequate systems for corporate governance, underscored by sound policies, procedures and processes set out in comprehensive directives.<sup>30</sup> However, the evidence reveals that internal controls relating to operational expenditure were usually breached or bypassed with impunity.

## **Secrecy: classification and covert operations**

- 40 The secrecy measures at SSA undermine financial accountability and reflect a more general vulnerability in the regulatory framework governing the intelligence services. Nevertheless, it is acknowledged that secrecy is an essential component of effective intelligence. According to Mr Y, the SSA's Operational Directives constitute a rigorous and comprehensive regulatory framework governing its operational activities, including deep cover operations. These Operational Directives align with the constitutional imperative that national security be pursued in compliance with the law.
41. The SSA evidence exposes at least two ways in which secrecy is abused. These are classification and covert operations.

## **METHODS: PATTERNS AND PROCESSES**

- 42 In the light of what has been discussed about the weaknesses of the regulatory framework, what follows below shows how these vulnerabilities were exploited to use

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<sup>30</sup> Mr Jafta, *Witness Statement* (Exhibit YY3) at para 17, SSA02 043-044.

the intelligence services as a resource to pursue personal and political interests rather than human security

### **The centralisation of authority and restructuring of the SSA**

43. Mr Jafta expressed the view that the corrosion of governance in the SSA and the systemic breakdown of governance systems and processes were enabled considerably by the intelligence architecture. He said that the over-concentration of power in the hands of a single Director-General resulted in a span of control and authority that was too wide, and such authority consequently enabled that resources could be hidden or moved so that there was no or limited robust oversight <sup>31</sup>

### **The abuse of processes and resources**

44. Within the centralised structure of the SSA, resources became increasingly concentrated in the hands of a few individuals. The evidence shows how these individuals abused civilian intelligence to promote illegitimate interests
45. The following patterns and processes by which this occurred exploited the vulnerabilities of the regulatory framework:
- 45.1 Firstly, persons were recruited, trained, armed and deployed in ways that bypassed or breached official channels of accountability within the SSA.
- 45.2. Secondly, parallel vetting procedures were created. Vetting refers to the process of verification and investigative procedures relating to the determination of the security competency of members, prospective members, and contract employees. According to Mr Y, the Project Veza investigation uncovered

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<sup>31</sup> Mr Jafta, *Witness Statement* (Exhibit YY3) at para 13, SSA02 042.

evidence of a parallel vetting structure that operated within the Office of the Deputy Director-General: Counterintelligence during the period 2013-2018. The evidence shows that this parallel structure vetted selected individuals and issued them with purported SSA clearance certificates. This process bypassed official SSA channels, and the vetting processes followed by this parallel structure were irregular and weak <sup>32</sup>

### **The weakening of oversight**

46. The lack of effective checks and balances operating in and over the security environment was considered by the High Level Review Panel to be one of the key reasons for malfeasance, corruption and fraud at the SSA

47. These are as follows:

47 1 Firstly, Auditor-General's independent audit function serves to promote financial transparency and accountability. According to Mr Jafta, the activities that fall within covert operations did not receive the same level of scrutiny that other aspects of the SSA received from the Auditor-General.

47 2 Secondly, the Inspector-General of Intelligence Dr Dintwe, explained that since its inception, the Office of the Inspector General of Intelligence had been dependent on the Ministry of State Security and the SSA for its operational needs. This includes the expenditure budget which is allocated to the OIGI by the SSA, the payment of personnel necessary to perform its mandate, the information and communication technology made available to it, the office

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<sup>32</sup> Mr Y, *Witness Statement* (Exhibit YY4) at para 9.10, SSA02 126.



spaces allocated to it and other tools necessary for the functioning of the OIGI.<sup>33</sup> This, Dr Dintwe said, had led to a situation of “third-party dependence”,<sup>34</sup> which undermines the required independence of the OIGI and impinges upon its ability effectively to discharge its mandate. This is because the OIGI is both beholden to and responsible for the oversight of the SSA, and in some instances the Minister of State Security<sup>35</sup>

47.3. Thirdly, the oversight role of the Joint Standing Committee on Intelligence must be considered. The JSCI reports to Parliament on the intelligence and counterintelligence functions of the Agency. These include the administration, financial management and expenditure of the Agency in accordance with section 2(1) of the Oversight Act.<sup>36</sup> The HLRP Report noted that the JSCI was unable to engage substantively with the Panel. The Panel was told that most of the committee members were new and had no institutional memory. In addition, the Chair of the Committee had changed thrice since 2014 and the process of replacement took time, rendering the Committee rudderless.

48. The evidence has shown that there was a centralisation of authority and a restructuring of the SSA, while officially sanctioned processes were transgressed, side-lined or simply ignored. Together with the failure of oversight mechanisms, this paved the way for the carrying out of intelligence operations which were clearly illegal.

49. Examples of the illegal intelligence operations were:

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<sup>33</sup> Dr Dintwe, *Witness Statement*, (Exhibit YY15) at para 32, SSA02 784. Confirmed in oral testimony on Day 378 at page 318.

<sup>34</sup> Dr Dintwe, *Witness Statement*, (Exhibit YY15) at para 33, SSA02 784. Confirmed in oral testimony on Day 378 at page 319ff.

<sup>35</sup> Dr Dintwe, *Witness Statement*, (Exhibit YY15) at para 34-35, SSA02 785.

<sup>36</sup> Mr Jafta, *Witness Statement* (Exhibit YY3) at para 12.2, SSA02 041.

- 49.1. The Chief Directorate: Special Operations ("CDSO") undertook a number of counterintelligence projects and operations. The Project Veza team found that the majority, if not all, of these projects were established in breach of the SSA's policy and regulatory prescripts.
- 49.2. SSA firearms were abused by individuals and the CDSO for illegal purposes. The Project Veza investigations indicate a glaring nexus between, on the one hand, the flouting of SSA recruitment processes, the circumvention of vetting processes and parallel training initiatives and, on the other hand, the illegal access to SSA firearms that this parallel counterintelligence structure obtained. Witness accounts received during the Project Veza investigations revealed to Mr Y that the SSA firearms were distributed to non SSA members ("co workers") who were irregularly recruited as agents by the CDSO and deployed to sensitive areas around President Zuma and the then Deputy President, Mr Ramaphosa. These individuals were not vetted and contributed to the establishment of a parallel intelligence structure.
- 49.3. Dr Dintwe testified that there had been numerous instances of irregular appointments within the Intelligence Services. The OIGI also found that a person in top management at SSA ordered the withdrawal of a vacant position of Programme Manager at the Intelligence Academy. He did so allegedly because his preferred candidate did not qualify in terms of the post requirements. In his affidavit, Dr Dintwe mentioned several instances of irregular appointments.<sup>37</sup> The cases he mentioned sufficiently demonstrated a practice of irregular appointments to the intelligence services. It is also clear from his evidence that the IGI's recommendations to remedy the situations

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<sup>37</sup> Dr Dintwe, *Transcript of Testimony* (Day 379) at pages 362–367; Dr Dintwe, *Witness Statement* (Exhibit YY15) at paras 118 to 124, SSA02 811-814.

were not implemented by the relevant Ministers: Mr Bongani Bongo, later Ms Letsatsi-Dube and Ms Ayanda Dlodlo <sup>38</sup>

## CESSATION OF INVESTIGATIONS

50. There is a discernible pattern, one which is reflected in recent events at the SSA, that investigations into wrongdoing at the SSA are interfered with and eventually stopped. Alternatively, they continue until completion but are never acted upon and the findings remain recommendations which are never implemented.

51. This means that wrongdoers are not called upon to account, nor are systemic issues dealt with. The result is that malfeasance and even criminality continue unchecked. Some examples are given below.

51.1. Investigation into the Guptas and their relationship with President Zuma, including the possible influence they had on him as well as the possibility of their exploitation of that relationship for personal gain, was clearly justified as the top three intelligence officers felt.

51.2. The implementation of a Principal Agent Network ("PAN") is accepted practice in intelligence agencies. The internal auditors found that there had been acts of maladministration, including discrepancies on advanced transfer in the amount of R85 million, and non-compliance with various directives. Ambassador Maqetuka summed up the problems into three main categories. Firstly, the centralization of power in Mr Arthur Fraser regarding the PAN project. Secondly, lack of accountability; that there was no control by the Director General; it became a free for all and Mr Fraser was a law unto himself. The

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<sup>38</sup> Dr Dintwe, *Transcript of Testimony* (Day 379) at pages 368 – 369.



third problem was the ability to draw large amounts of cash, while there was no accountability for it <sup>39</sup>

- 51 3 An internal investigation with the code name “Project Momentum” was established in June 2018 by then Minister Letsatsi-Dube to address allegations of corruption in the SSA. Limited progress was made under this project due, according to Ms K, to lack of cooperation from implicated persons as well as allegedly the fact that the investigation was undermined.

## **EVIDENCE OBTAINED BY THE COMMISSION AFTER 29 JANUARY 2021**

### **Termination of the existing operation of the Veza investigation**

- 52 During the week of 11 February 2021 the Ministry instructed Mr Jafta to hand the Project Veza investigation over to Advocate Muofhe.<sup>40</sup> Despite having diligently carried out their investigation, the Veza Project team was subsequently labelled as a ‘rogue unit’ by Advocate Muofhe.<sup>41</sup> The investigators were denied access to their workspace, the documentation and the computers and printers allocated to them. Ms K points out that no other member, suspended or not, has been subjected to such treatment, save for one member whose office was locked to safeguard information and secure the relevant chain of evidence.<sup>42</sup>

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<sup>39</sup> Ambassador Maqetuka *Transcript of Testimony* (Day 231) page 284.

<sup>40</sup> Ms K, *Supplementary Affidavit of 11 May 2021*, (Exhibit YY9) para 45, SSA02 419 17

<sup>41</sup> Advocate Muofhe referred to the Project Veza investigation team as a “rogue unit” when the NPA attempted to execute a summons at SSA. See Ms K, *Supplementary Affidavit of 11 May 2021*, (Exhibit YY9) para 58, SSA02 419.20

<sup>42</sup> Ms K, *Supplementary Affidavit of 11 May 2021*, (Exhibit YY9) paras 55-56, SSA02 419.19-20.

### **Outsourcing of the Veza investigation**

- 53 Minister Dlodlo states that the type of forensic investigation contemplated was beyond the resources of the Agency. Minister Dlodlo states further that the Veza investigation was "political" and the persons involved in that investigation worked within the Agency. It is worth repeating that any further investigation into the affairs of the SSA should be entirely independent of those persons implicated in the Project Veza investigations. This would require an entirely independent investigation. Despite its investigations, the Commission has been presented with no evidence directly implicating the Veza investigators in harbouring political motives.

### **The conduct of certain SSA officials, in response to a summons which the Investigating Directorate of the National Prosecution Authority attempted to serve on and execute against the SSA**

- 54 Minister Dlodlo and Advocate Muofhe, on the one hand, and Mr Jafta and representatives of the NPA (and the ID) and the Office of the IGI, on the other, adopted diametrically opposed views in regard to the legality of the attempts of the ID to obtain documentation from the SSA. What is also apparent is that Minister Dlodlo adopted an entirely adversarial stance which she has maintained. There is no evidence of any attempt by Minister Dlodlo to regularise the position and to facilitate the handover of documents to the ID.

### **The meeting of the Audit and Risk Committee of the SSA**

55. In her supplementary affidavit, Ms K explained that, after the leading of the SSA evidence, the Project Veza investigation team was summonsed to attend a meeting with the Audit and Risk Committee of the SSA ("ARC") on 11 February 2021. During the meeting the Committee members sought to discredit the Project Veza investigation and

questioned, not only the progress of the investigation, but also the legitimacy of the investigation and the methodology adopted

### **Allegations made by Mr Fraser**

56. Mr Fraser brought an application to cross-examine several witnesses who had testified at the Commission. In this application, Mr Fraser refers to his unsigned and incomplete statement to the Commission, annexed to his application as Annexure AF 1 <sup>43</sup> In the main, Fraser's statement to the Commission seeks to justify his involvement in the PAN program and the activities conducted by the CSU as necessary counter-intelligence.

### **THE JSCI REPORT**

57. The latest report of the JSCI is of relevance to the evidence before the Commission. This report covers the financial year ending 31 March 2020 as well as the period up to December 2020.
58. The JSCI recorded, amongst others, the following findings and made the following observations:
- 58.1. It was found that the implementation of the recommendations of the HLRP report had been slow <sup>44</sup> It commented that the Inspector General of Intelligence Certificate refers to financial irregularities, as well as security breaches leading to intelligence failures.<sup>45</sup>

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<sup>43</sup> This application was refused on 1 December 2021

<sup>44</sup> Para 8.1.1 at page 29 (report page 23).

<sup>45</sup> Para 8.1.2 at page 29 (report page 23).



- 58.2. Threats to the Veza project team were noted. Security protection for those individuals involved in the investigation was recommended (this also assumes the project's continuation) It was also noted that serious financial irregularities had taken place at SSA.<sup>46</sup>
- 58.3. Challenges in the SSA's financial statements were noted. It was also noted that quarterly reports were not produced by the SSA to enable Ministerial oversight.<sup>47</sup>
- 58.4. Governance challenges were noted as well as instability in senior management. The Committee also noted a lack of consequence management.<sup>48</sup>
- 58.5 Irregularities at Crime Intelligence were noted <sup>49</sup> It was noted that the Inspector General of Intelligence reported "looting of funds" from the Secret Service Account by "officials" <sup>50</sup>
- 58.6 The JSCI made the following recommendations of significance:
- 58.7. All three Intelligence Services Ministers were directed to implement the IGI's findings. Furthermore, it is stated that the JSCI is to investigate ways of making the OIGI recommendations enforceable <sup>51</sup>

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<sup>46</sup> Para 8.1.5 at page 30 (report page 24).

<sup>47</sup> Para 8.1.7 at page 30 (report page 24).

<sup>48</sup> Para 8.1.8 at page 31 (report page 25).

<sup>49</sup> Para 8.2.1 at page 31 (report page 25).

<sup>50</sup> Para 8.2.3 at page 31 (report page 25). See also Dr Dintwe, *Affidavit* (Exhibit YY15) at paras 131-132, SSA02 816.

<sup>51</sup> Pages 33-34 (report pages 27-28).

- 58.8. The HLRP report is to be implemented without delay.<sup>52</sup> Those implicated in financial irregularities are to be reported to law enforcement agencies<sup>53</sup>
- 58.9. Regarding Project Veza: security is to be provided to the investigators. Furthermore, implicated persons are to be reported to law enforcement agencies. The Veza team is directed to report quarterly to the JSCI.<sup>54</sup> The clear understanding of the JSCI therefore seems to be that the Veza investigation would be maintained.
- 58.10. Disciplinary action is to be taken in respect of financial mismanagement.<sup>55</sup> Crime Intelligence must consider the recovery of money looted from the Security Services Account<sup>56</sup> While the JSCI may not have performed its oversight function effectively over SSA and Crime Intelligence, the above finding it made and recommendations must be welcome. They are steps in the right direction.

### **The AG's report to Parliament**

59. Attached to the JSCI Report is the AG's report to Parliament on the SSA for the 2019-2020 financial year. The AG found that effective and appropriate steps had not been taken to prevent irregular expenditure.<sup>57</sup> Furthermore, effective steps had not been taken to prevent fruitless and wasteful expenditure of R16 261 000.<sup>58</sup>

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<sup>52</sup> Para 10.1.1 at page 34 (report page 28).

<sup>53</sup> Para 10.1.2 at page 35 (report page 29).

<sup>54</sup> Para 10.1.5 at page 36 (report page 30).

<sup>55</sup> Para 10.1.7 at pages 36-37 (report pages 30-31).

<sup>56</sup> Para 10.2.3 at page 38 (report page 32).

<sup>57</sup> Para 34 at page 70.

<sup>58</sup> Para 35 at page 70.

## QUESTIONS PUT TO PRESIDENT RAMAPHOSA CONCERNING STATE SECURITY FOR HIS COMMENT

60 Below are President Ramaphosa's responses concerning state security for his comment.

### The PAN Investigation

61 The President stated that he had become aware of the allegations in relation to PAN through the HLRP report.<sup>59</sup> The President was also aware of the Inspector General of Intelligence investigation into PAN. President Ramaphosa also agreed that the investigations into PAN had been taken away from law enforcement. As to how that happened, President Ramaphosa said "it happened as many other things happened that are unexplainable"; the task, he said, is now to "move forward".<sup>60</sup>

### The Project Veza Investigation

62 President Ramaphosa admitted that when he deployed Mr Fraser to Correctional Services in 2018, he was aware of some of the allegations against him in relation to SSA. He stated, however, that he was hoping that the Commission was going to assist him in making a fuller determination.<sup>61</sup>

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<sup>59</sup> President Ramaphosa, *Transcript of Testimony* (Day 428) 12 August 2021, pages 26-28.

<sup>60</sup> President Ramaphosa, *Transcript of Testimony* (Day 428) 12 August 2021, pages 29-30.

<sup>61</sup> President Ramaphosa, *Transcript of Testimony* (Day 428), 12 August 2021 page 61.



## **The events surrounding the recent violence following President Zuma's arrest**

President Ramaphosa accepted that these were matters of great concern, which should "raise red flags"<sup>62</sup>

### **CERTAIN FINDINGS**

63. A summary of some of the findings of the Commission is shared below:

**Regarding the barring or discontinuation of investigations against the Guptas and its probable consequences.**

#### Findings

64. Under the leadership of Ambassador Maqetuka, as the Director General, Ambassador Shaik, as Head of the Foreign Branch, and Mr Njenje, as Head of the Domestic Branch ("the trio"), the SSA wanted to conduct investigations into the Guptas. This followed information that the Guptas had informed Minister Mbalula of his then forthcoming appointment as Minister of Sport and Recreation before he heard from President Zuma

65. In the view of the three (i.e. Ambassadors Maqethuka, Shaik and Ben Njenje), there were three possible sources of the information obtained by the Guptas, all of which warranted investigation. Firstly, whether there was a breach of national security in the office of the President which was the cause of the leak of this information. Secondly, whether the Guptas had overheard a conversation of President Zuma dealing with the aforementioned appointment and they were peddling the information for their own benefit. Thirdly, whether they had suggested Mr Mbalula's appointment to President Zuma or whether President Zuma had told them about his decision to appoint

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<sup>62</sup> President Ramaphosa, *Transcript of Testimony* (Day 428), 12 August 2021 p43-44.

Mr Mbalula before he could tell Mr Mbalula and before he could make an official announcement

- 66 All of the aforementioned three scenarios would have constituted serious threats to national security, with the latter, even more so because it may have meant foreign nationals had suggested to the President who should be in the South African Cabinet, and President Zuma had agreed
67. A further concern was that, by informing Minister Mbalula in advance of his appointment, the Guptas would be creating a dependency by Mr Mbalula on them as their advance knowledge of his appointment would make him feel beholden to them. This kind of undue influence over the Minister of Sport was serious as the Guptas had interests in businesses that included cricket stadia.
- 68 The Commission's finding is that all of the aforementioned scenarios justified an investigation into the Guptas. The Commission was, however, told that the investigations were stopped by Ambassador Cwele, who was then the Minister of State Security. Although the trio agreed that President Zuma never directly instructed them to stop the investigation, it was clear from what he said and his body language that he disapproved of the investigation.
69. In his evidence, Dr Cwele denied giving instructions to the trio to stop the Gupta investigation. The probabilities are, however, overwhelming that he did not want the investigations into the Guptas to continue and therefore instructed that they be discontinued:
- 69 1 Firstly, Ambassador Cwele's version does not explain why the trio would have decided of their own accord to stop the investigation if he did not make it clear to them that the investigation should be stopped or if he had not conveyed to

the trio that he was against the investigation and that by implication, it should be stopped

69 2 Secondly, Ambassador Cwele did not explain why the three decided to go and see President Zuma to discuss the matter with him if he had not either instructed that it be stopped or if he had not shown such strong opposition to it as to make it clear to them that even if he may not have expressly instructed them to stop the investigation, it was clear that he did not want them to continue with it.

69 3 Further, at no stage did Ambassador Cwele ask for an update or progress report on the investigation. Moreover, Ambassador Cwele's position towards the investigation was given as one of the reasons for the breakdown of the relationship between the three and Ambassador Cwele.

70 It is thus the Commission's finding that Ambassador Cwele involved himself in operations of the SSA by interfering with and effectively calling a halt to the investigation into the Guptas. It is further the Commission's finding that President Zuma did not want the Guptas to be investigated. President Zuma defended his friendship with the Guptas and their close association with him. President Zuma said that there was no need to investigate the Guptas as they were "good people" with whom he had a good relationship.

71 Although President Zuma may not have given express instructions that the Gupta investigation be stopped, he said enough at the meeting with the trio to make it clear to them that his view was that there was no justification for the investigation and in his view, it should not be pursued.



## **Executive/Ministers' involvement in operational issues and its probable consequences**

### Findings

- 72 Even prior to the creation of the Ministry of State Security and the consequent appointment of a "Minister of State Security" through the 11 September 2009 Proclamation, the SSA was required to report to a Minister. This paved the way for the Minister's involvement in the operations of the SSA, and that was exactly what happened: The evidence is overwhelming that Minister Cwele and Minister Mahlobo in particular did just that.
- 73 Minister Mahlobo, on the evidence, not only involved himself in operations, but also directed them. He was actively involved in, for example, projects under Project Mayibuye which included Operation Justice (about alleged attempts to bribe some Judges) and Operation Commitment (which involved amounts of cash that were withdrawn from the SSA and given to Minister Mahlobo to give to President Zuma) and Operation Lock (which involved Mr Eugene De Kock and was admitted by Mr Mahlobo.) A further stark example is that of Project Wave (which involved the media).
- 74 Above all, there was a letter referred to in evidence entitled "Projects approved by the Minister" which sought to justify the required budget of R130 million for various CDSO projects, which included an amount of R20 million for the "Minister's" projects.<sup>63</sup>
- 75 Some of the dangers attendant upon a Minister's involvement in operations were clearly articulated by witnesses. A few examples were given, including that the Minister of State Security would have knowledge of the identities of operatives, which knowledge the Minister would take along with him upon leaving office. Another example is that he/she

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<sup>63</sup> SSA01 30ff.

might acquire information about other fellow Ministers, which could potentially enable such Minister to exercise undue control over them

### **Illegal operations by the State Security Agency**

#### Findings

76. There was evidence that SSA money was withdrawn, at the instance of Ambassador Dlomo, and used to transport, accommodate and feed ANC MK veterans, for the ANC's January 8 rally in Rustenburg in 2016.
77. A member of the SSA (Dorothy) was also used to assist at the ANC NASREC Conference, for which she withdrew a subsistence allowance. This witness' evidence also points to the Intelligence Services rendering financial and other assistance to the ruling party in connection with its NASREC conference.
78. There were also some activities undertaken to improve the fortunes of the ANC in the Western Cape, Eastern Cape and Northern Cape amongst the Coloured people <sup>64</sup>
79. The Special Operations Unit (SO) of the SSA, particularly under the direction of Ambassador Dlomo, was a law unto itself, launching many projects that operated illegally as indicated above.
80. Not only were the activities against the Constitution, but there is a strong indication that some of them contravened the legislation governing the Intelligence Services.

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<sup>64</sup> Operation Sesikhona: See Mr Y, *Witness Statement* (Exhibit YY4) at para 6.36.1, SSA02 102.

## Cash withdrawals, movement of cash and accountability for cash

### Findings

- 81 Cash withdrawals: Large sums of money were withdrawn. Given the nature of the covert operations of the SSA, the withdrawal of cash was necessarily required and inevitable. However, what was striking was the huge amounts of cash withdrawn at any one time, literally running into millions of Rands.
82. Abuse of the Temporary Advance (TA) payment system: Money was withdrawn in advance and in cash for operations. There were many problems with this. For example, the purpose for which the funds were withdrawn would often be obscure or not set out and sometimes, the source or informant allegedly to be paid would not be disclosed. All in all, the motivation for the advance was generally inadequate and the financial controls, such as were there, were poor or not adequately enforced.
83. There was no proper verification to determine for what purpose the money withdrawn was actually used and whether the intended recipient in fact received the money. There was, accordingly, no way of knowing whether the funds were used for some other undisclosed purpose. Lack of accountability manifested itself in various ways: To give one astonishing example, in instances where the person to whom an advance payment was made was disqualified from taking a further advance before accounting for the first one, this rule was circumvented simply by requesting another operative, who had settled his/her advances, to withdraw the further amount required in their name. A member of SSA who gave evidence at the Commission admitted to acceding to such requests, which were relatively common.
84. A witness estimated that over the period 2012 to 2018, an amount of R1.5 billion was unaccounted for. Mr Mahlobo handled large sums of cash. For example, on the



evidence, there was a time when he received R4.51 million a month in cash. R2.5 million of this was said to be for Operation Commitment, which the witnesses understood was for President Zuma, although there was no direct evidence of President Zuma actually receiving the money.

85. Details were provided by one witness that on at least three occasions, millions in cash were delivered to Minister David Mahlobo, and counted in front of her. On two of these occasions she was accompanied by another member of SSA. The Commission noted the denials by Mr Mahlobo. However, if the evidence of the witness is to be believed, there were at least two eyewitnesses to the delivery of cash in the amount of R4 51 million to Mr Mahlobo. The fact that cash was regularly provided to Mr Mahlobo was also confirmed by the evidence of other witnesses, including Steven, Frank and Darryl.
86. The Commission finds therefore that Mr Mahlobo did indeed involve himself in operational matters at SSA, and further that large amounts of cash were delivered to him on several occasions. What he did with the cash delivered to him was not established in evidence. Since Mr Mahlobo denied having received cash as testified to by a number of witnesses it means that, if it were to be established in a Court that large amounts of cash were given to Mr Mahlobo it would mean that he stole the money. After Mr Mahlobo's appointment, the budget of the SSA increased hugely. This conclusion was based on documentary evidence relating to the budget of the SSA.

## **Maintenance of Secrecy**

### Findings

87. The Commission appreciates and agrees that there is a need for secrecy regarding covert and counter-intelligence operations in the national interest. However, there is

also a need to balance this with the need for transparency and, in particular, accountability required in our Constitution. This includes both financial accountability and accountability for criminal activities.

88. Various instances of the abuse of secrecy were mentioned, particularly by Dr Dintwe. A glaring example was an instance where SAPS Crime Intelligence reportedly withheld information in respect of the purchase of curtains for a safe house on the basis of secrecy, whereas details of the purchase, including where the curtains were bought, could have been given without disclosing the address of the safe house for which the curtains were bought.<sup>65</sup>
89. Criminal investigations were removed from law enforcement agencies allegedly on the basis of national security, when in truth and in fact, this was to disguise criminality and prevent accountability. This includes the alleged withdrawal of the PAN investigation from the Hawks by General Njenje on the instructions of Minister Cwele. These instructions given to Mr Njenje had, according to what was told to Mr Njenje by Ambassador Cwele, come from President Zuma. These instructions by President Zuma had allegedly been given to Minister Cwele on the basis that it would not be in the interests of state security to prosecute Mr Fraser. This was despite Mr Njenje's firm stance that to proceed with the prosecution of the persons implicated would not have threatened national security.

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<sup>65</sup> Dr Dintwe, *Transcript of Testimony* (Day 393) at pages 122–123; Dr Dintwe, *Affidavit* (Exhibit YY15) at para 171, SSA02 828-829.

## **The use of SSA firearms and their disappearance**

### Findings

- 90 Witnesses testified that firearms and ammunition were taken out of the SSA's Armoury at Musanda. On one occasion, they were taken out at the instance of Ambassador Dlomo. The person who collected the firearms did not have the competence to handle a firearm. The firearms were, therefore, given to this person in contravention of the Firearms Control Act and the SSA prescripts governing the issuance and control of the SSA armoury.
- 91 There was an assortment of firearms collected, including rifles and sub-machine guns. When instructions were later given by Mr Fraser for their return, only some of the firearms were brought back. Some were still outstanding at the time of the hearing of this evidence. The purpose for the arms was not explained. Issuing firearms under these circumstances amounted to the abuse of the assets of the SSA. One 'Johan' (pseudonym), who was at the armoury, played a major role in facilitating the irregular issuance of the firearms.
- 92 The release and distribution of weapons from the SSA armoury appeared to have been lax as the documentary evidence of their receipt did not clearly reflect what the firearms were required for, by whom they were required or whether the people to whom they were to be provided had the necessary competence to handle them.

## **The abuse of the vetting system**

### Findings

- 93 One of the issues before the Commission was the manner, in which and the purpose for which, the vetting system was conducted. The evidence established that, apart from



the normal vetting system of the SSA, Ambassador Dlomo established an unlawful parallel vetting system. Ambassador Dlomo recruited somebody from outside the SSA to do the vetting of the persons recruited from outside of the SSA. This created a potential danger to national security as it meant that people who did not qualify were given security clearance.

94. There was evidence to the effect that the process of vetting was flawed in many ways. For example, some forms were not properly completed, some persons were interviewed by more than one vetting official, thereby breaking the consistency of the assessment of such person, and the names and information regarding the person vetted were not loaded onto the official system.
95. There was also evidence of further abuse of the vetting system. Questions were asked about the regularity of the vetting process concerning Mr Fraser, who was provided with Top-Secret Security Clearance on an expedited basis. While the practice of expedited clearance was acknowledged, questions arose about the need to do so in Mr Fraser's case when he was appointed DG.
96. There was also evidence of the most glaring abuse of the vetting system by Mr Fraser himself. After the IGI, Dr Dintwe, told Mr Fraser that he was investigating him as the result of a complaint levelled against him with the OIGI, Mr Fraser revoked Dr Dintwe's security clearance. Dr Dintwe had to go to court to have his certificate restored.

### **On the irregular recruitment and appointments to the Intelligence Services**

#### Findings

97. There was evidence to the effect that there were no clear criteria for the recruitment of non-SSA members. The recruitment was also not always done in the best interests of

the SSA and national security, but for bipartisan purposes and nepotism. Ministers were even involved in the recruitment of their relatives or people they knew to the SSA. Mr Mahlobo also selected people for recruitment by the SSA. In addition, Ambassador Dlomo became involved in the recruitment of persons for the SO unit even before his appointment as General Manager: Special Operations on 18 January 2012.

98. Cogent evidence was placed before the Commission by Dr Dintwe regarding irregular appointments and the possible motive behind them. There were irregular appointments to both the SSA and to Crime Intelligence. Such appointments, according to Dr Dintwe, created instability and a potential for state capture. In some instances, no criteria were used to determine the suitability of the person recruited.
99. Dr Dintwe gave a few examples of this, which also indicated executive overreach. He referred to an instance where Mr Bongo ordered the National Intelligence Co-ordinating Committee ("NICC") to appoint someone to a senior position on the basis that the person was personally known to him. Shortly after the appointment, the person was promoted, again irregularly, to a higher position. Despite queries raised with her concerning this, including prima facie evidence that her predecessor (Mr Bongo) contravened the provisions of the Intelligence Services Act, Minister Letsatsi-Dube, then Minister of State Security, failed to respond.
100. The Commission is satisfied that, on the basis of the evidence before it, irregular appointments were made and Ministers involved themselves in the recruitment. Such appointments were not in the best interests of the Intelligence Services as there was a risk that non-meritorious appointments were made who would feel beholden to those who recruited them. It is also possible that at least some of those recruited, especially those recruited by Ministers, could have contributed to state capture, as these persons may have been recruited to achieve political or bipartisan objectives.

## **The use of questionable Intelligence Reports**

### Findings

- 101 Convincing evidence was placed before the Commission of the danger posed by the use of questionable Intelligence Reports. Those that were referred to as examples were by SAPS Crime Intelligence.
- 102 At his meeting with Ambassador Maqetuka, Ambassador Shaik and Mr Njenje to discuss the investigation into the Guptas, President Zuma first raised what was called the Mdluli Report, which was not even on the agenda. This was a report by Police Crime Intelligence which was at the time headed by General Richard Mdluli. The report alleged that there was a plan to topple President Zuma. It turned out that it had been rejected by the trio after a thorough analysis. Despite that, President Zuma told them that he believed it. This was in spite of the fact that the people who prepared the report were junior to the three.
103. In Ambassador Shaik's view, the raising of the Mdluli Report bore direct relevance to the issue of the investigation of the Guptas. President Zuma's statement that he believed General Mdluli over the three most senior intelligence chiefs at the time was an expression of lack of confidence in them, which Ambassador Shaik believed was meant to impact on the discussion they had come for, namely, the issue of the investigation of the Guptas. As Ambassador Shaik was to put it later in his evidence before this Commission, the discussion of the Mdluli Report set the tone for the discussion about the Gupta investigation.
- 104 The other discredited Police Crime Intelligence report averred that there was a conspiracy by certain generals within the SAPS to remove General Mdluli who had been



appointed as the Head of Crime Intelligence. This report also played a role in the breakdown of the relationships between President Zuma and the above trio

105. The well-known alleged intelligence report concerning Minister Pravin Gordhan was also canvassed by Dr Dintwe in evidence. It was on the basis of this report that Minister Gordhan and his then deputy, Mr Jonas, were recalled by President Zuma from a trip abroad. The report allegedly stated that Mr Gordhan and Mr Jonas were overseas to meet with some foreign agents who were calling for regime change in the country.
106. Dr Dintwe received a complaint about the report from the Democratic Alliance and the South African Communist Party. What he set out to investigate was the origin, authenticity and veracity of the alleged intelligence report. President Zuma, according to Dr Dintwe, was the only person who said he had the report. Dr Dintwe set up a meeting with him to ask for the report. He said President Zuma did not say there was a report; the only thing he said was that, when the time was ripe, he would explain his reasons in order for Dr Dintwe to understand. However, President Zuma did not commit himself on whether the report existed or not. Soon after the meeting, Dr Dintwe wrote to President Zuma to indicate he was awaiting further engagement to conclude his investigation.
107. Two more questionable intelligence reports were referred to and criticized by Dr Dintwe. They were also issued by Crime Intelligence during the time of General Mdluli. The first report alleged a plot by General Shadrack Sibiya, Mr Robert McBride and Mr Paul O'Sullivan and others to overthrow the government. The second one related to the alleged unlawful rendition of foreign nationals involving Generals Sibiya and Dramat. Dr Dintwe said both reports turned out to be untrue. The criminal charges against Generals Sibiya and Dramat relating to the rendition matter were withdrawn. From the Commission's point of view, there was a relevant and important angle to this second

report: At the time it was compiled, General Sibiya was, according to Dr Dintwe, involved in investigations against General Mdluli, then Head of Crime Intelligence

108 The aforementioned two reports were also not put through the vigorous process of checks and balances. Yet, he said, if acted upon they had the potential to seriously impact upon the lives and rights of the aforementioned persons.

109 It is not for the Commission to adjudicate on the veracity of the two reports but there are three worrying things about them: Firstly, that General Sibiya was investigating General Mdluli who, incidentally, has since been convicted of crimes relating to the kidnapping and assault of Alice Manana and is being investigated for fraud and corruption relating to the Crime Intelligence Secret Service Account. These were matters investigated by General Sibiya. Secondly, the poor standard of the reports and, thirdly, the fact that not only did no prosecution ensue, but that, on the contrary, in the case of the rendition matter, the charges were withdrawn. These considerations should be borne in mind, particularly by those in power, to be cautious of intelligence reports.

### **South African Police Service: Crime Intelligence**

#### Findings

110. It is SAPS Crime Intelligence which was allegedly involved in attempts to procure a 'grabber' which intercepts telephone conversations, amongst other things. The grabber was to be used at the ANC's NASREC Conference where the ANC's national leadership elections were to be held. The evidence was to the effect that part of the excessive price that was to be paid for the grabber would be used to buy votes at the conference. This would, of course, interfere in the internal politics of the party.

111. The Commission finds that the attempts were indeed made as alleged, although it can't make a finding that Crime Intelligence was officially involved. There were, however, strong indicators that that was the case because the intention to procure the grabber was confirmed by a Divisional Commissioner to Dr Dintwe.
112. It is also the Commission's finding that there were irregular recruitments into Crime Intelligence.

### **The role of Parliament as an authority of oversight**

#### Findings

113. Section 3 of the Intelligence Services Oversight Act 40 of 1994 deals with the functions of the Joint Standing Committee on Intelligence (JSCI), namely, to exercise oversight over the functions and activities of the Intelligence Services. In executing its duties, the Committee may, amongst others, request relevant officials to explain any aspect of reports furnished to it, including reports by the SSA, Police Crime Intelligence, Defence Intelligence and the Inspector General of Intelligence.
114. Parliament's Joint Standing Committee on Intelligence (JSCI) failed to properly perform its oversight duty in respect of the SSA. President Zuma restructured the country's Intelligence Services by way of Proclamation dated 11 September 2009. The Proclamation purported to amalgamate the NIA and the SASS into the SSA. This was not permissible as the proposed restructuring could only be effected through national legislation; that is, through Parliament.
115. It was not until 13 September 2021 that the JSCI noted the unlawfulness of the Proclamation and sought to regularise the amalgamation which had been effected. In paragraph 5.1.1 of its Annual Report "For the Financial Year Ending 31 March 2020



Including the Period Up to December 2020" published on 13 September 2021, the JSCI recorded:

"The proclamation was announced in July 2009 but only approved in October 2010. The legislation that amended the changes was only approved later in the form of the General Intelligence Laws Amendment Act, No. 11 of 2013. The gap between 2010 and 2013 resulted in serious concerns and illegal functioning of the SSA. The new structure created a powerful Director-General with powers concentrated on a single individual. The amalgamation also enabled some members of the executive to issue illegal instructions to members of the SSA. These instructions amounted to executive overreach."

116. The aforementioned report was issued by the JSCI of the Sixth Parliament. There is no evidence before the Commission that any committee before it did anything about the illegal functioning of the SSA during the period between 2010 and 2013 when the General Intelligence Laws Amendment Act was passed.
117. There was a time when there was no IGI appointed for a period of about 22 months. During this period, Parliament failed to fill a national position of government which played a very important oversight role.<sup>66</sup> This had deleterious consequences as the Commission was told that a lot of malpractice within the SSA occurred during this period.<sup>67</sup> There can be absolutely no justification for this failure and Parliament should have ensured that this did not happen or that the executive was held to account for this.
118. By failing to properly carry out its oversight role and to heed the call by the country's then intelligence chiefs, Parliament has, at least to some extent, contributed towards the continued problems at SSA. This is because Parliament's failure to do its job meant that acts of corruption were allowed to spread and deepen. It should have stepped in to ensure the continuation of the investigations into the Guptas, for one thing. It should

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<sup>66</sup> HLRP Report at SSA02 032 139

<sup>67</sup> Between December 2009 and April 2010, and again between March 2015 and March 2017.

also have stepped in to ensure that the problems at SSA were resolved or that there were consequences for wrong doing

119. Regarding Crime Intelligence: The report highlighted that Crime Intelligence's Audited Financial Statements revealed irregularities. Its Annual Report revealed that some senior managers were not vetted and that over and under expenditures had not been reported. It was also recorded that the Certificates issued by the Office of the Inspector General of Intelligence reported looting of funds from the Secret Services Account.
120. Regarding Defence Intelligence: The report points out that the Audited Financial Statements of Defence Intelligence showed non-compliance with legislation, the failure to comply with competitive bid processes for the procurement of goods, lack of compliance with the National Treasury policy and weak financial controls.
121. Defence Intelligence's Annual Report revealed, amongst others, vetting and human resource challenges. The IGI's Certificates also revealed a vetting backlog and that some generals and senior managers were not vetted.
122. It is to be noted that the above findings of the JSCI are in line with the evidence tendered by various witnesses regarding the challenges that have plagued the above Intelligence Services.

## **Law Enforcement Agencies**

### Findings

123. An internal team of the SSA conducted an investigation into a project, known as the Principal Agency Network ("**PAN**"), which had been launched by Mr Fraser. The report revealed possible criminal conduct and was handed over to the Directorate for Priority Crime Investigation (the Hawks) and to the NPA for prosecution. The prosecution was,

however, stopped by Minister Cwele, apparently on the instructions of President Zuma, on the basis that prosecuting Mr Fraser would compromise national security. General Njenje insisted that prosecuting Mr Fraser would not have compromised national security. This was because what was being investigated was purely criminal activity which could not be condoned in the interests of secrecy or national security. Moreover, the Minimum Information Security Standards document precludes the use of secrecy to hide criminality.<sup>68</sup>

124. It is the Commission's finding that Minister Cwele did say that President Zuma gave instructions that the investigation should stop

### **The National Prosecuting Authority**

125. Not much was said about the National Prosecuting Authority (NPA) in the State Security Agency stream. It was alluded to in relation to the instructions said to have been given to Ambassador Cwele, then Minister of State Security, by President Zuma that the investigations by the Hawks and the NPA's intended prosecution of Mr Fraser be stopped.
126. From the evidence of General Njenje, then Head of the SSA's Domestic Intelligence arm, it appears that the top three were not satisfied with the NPA's decision not to proceed with the prosecution of Mr Fraser. It is not clear why the NPA took that decision. If it was taken on the ground that doing so would compromise national security, the then intelligence chiefs would beg to differ, as stated above. The matter therefore needs to be revisited or, at the very least, discussed by all stakeholders. This is particularly so

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<sup>68</sup> The MISS document is dealt with in section F.d.i



when one has regard to the nature and seriousness of the alleged crimes alluded to above

- 127 Despite the referral of the PAN investigation and the Project Veza investigation to the Hawks by Mr Mhlanga during 2018 and more recently, by Mr Jafta, there would appear to have been little progress made on the matter and no charges have yet been brought against those implicated that the Commission is aware of

### **On the Inspector General of Intelligence Recommendation on independence**

#### Findings

- 128 The Inspector General of Intelligence is meant to exercise oversight over the activities of the country's Intelligence Services. To that end, he or she accepts complaints from the public, including individuals, against such services. Yet it is the Commission's finding that obstacles were put in place to inhibit the Inspector General of Intelligence in the execution of his duties. Dr Dintwe, the Inspector General of Intelligence at the time of his evidence, testified at length about such obstacles. These include, its limited budget and the fact that it has no budget independent of the SSA; the budget of the OIGI is within that of the SSA, over which the Inspector General of Intelligence is supposed to exercise oversight.
129. Further difficulties have been caused by restriction of the Inspector General of Intelligence's access to information by the Director-General's and other heads of the Intelligence Services. The OIGI does not have enough personnel, with some important posts not filled even though funded. The Inspector-General of Intelligence's complaints to Parliament's JSCI did not attract an adequate response and Dr Dintwe's reports were not acted upon. The OIGI could only employ staff upon approval by the Minister through the Director-General of the SSA, the very body over which the Inspector General of

Intelligence was to exercise oversight. Moreover, rather remarkably, the OIGI shared the IT system (the server) with the SSA, giving rise to some concern on the part of other Intelligence Services, such as the Police Crime Intelligence

## **On the Auditor-General**

### Findings

- 130 The evidence points to the need for the Auditor-General to audit the expenditure of the SSA. Large sums of money were not accounted for. Yet, the AG is not able to adequately fulfil its role because some information is classified and has been withheld from the AG. This has meant that the AG has only been able to provide qualified audits
- 131 The arrangement between the AG and the Inspector General of Intelligence pursuant to which the Auditor General directed the OIGI on how to carry out audits of classified material the AG was itself not able to audit, was not adequate. This is because such an audit was performed by persons without the requisite auditing skills and amounted to a box ticking exercise without any proper analysis. The arrangement between the AG and the SSA that the AG would provide a qualified report in respect of the Secret Service Account (which forms a substantial part of the budget) was also not acceptable
132. It is the Commission's view that the large sums of monies that were not accounted for was at least in part because the office of the AG could not execute its duties as it should have, with the result that implicated people acted with impunity as they were aware of weaknesses in the system
133. With the above overview, it is now appropriate to give detailed evidence of individual witnesses who gave evidence before the Commission about allegations of corruption, fraud and other irregularities at SSA. There will be a certain level of repetition in what is

dealt with below but that is unavoidable where an overview is first given as has been done

## **SUB-SECTION BB**

### **EVIDENCE OF MR RIEAZ SHAIK**

134. Before testifying, Mr Riaz Shaik deposed to an affidavit that was submitted to the Commission. The nature and scope of his evidence, related to the activities of certain officials within the Intelligence community (within the confines of the Commission's Terms of Reference) by virtue of his experience in the intelligence field; he also testified about the intelligence functions of various constitutional structures as mandated by the Constitution, the relationship between the structures, and, furthermore, he explained generally the standards of conduct required by the Constitution of security entities and operatives<sup>69</sup>

135. Mr Shaik started his evidence by giving his background particularly in the intelligence field. It appears that he was a pre-1994 activist. He was once detained. Later he received some intelligence training as a political activist in the then Eastern Germany during what he described as the underground days of intelligence. In that period, he worked directly under the supervision and command of former President Jacob Zuma; he participated in CODESA negotiations; served on the Sub-Council of Intelligence; was chair of what he referred to as the Amalgamation Committee which dealt with the amalgamation of statutory and non-statutory intelligence services, from 1991 to 1994 and, in his words, contributed towards the passing of some three pieces of legislation governing the Intelligence Services. He left the Intelligence Services in 1997, joined the Deputy Minister of Foreign Affairs and eventually returned to the intelligence services

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<sup>69</sup> Page 21 line 24 to page 22 line 15



in 2009 as Director General of the South African Secret Service (SASS). Prior to 1994 and in the period leading to 2009, Mr Shaik had worked a lot with former President Zuma.<sup>70</sup> This aspect is important in the light of his subsequent interaction with former President Zuma.

136. The evidence of Mr Shaik was that at the beginning of the Fifth Administration in 2009, Dr Siyabonga Cwele was appointed "Minister of State Security"; prior to that, there was no Minister of that title. In that year, Dr Cwele summoned him, Ambassador Gibson Njenje and Ambassador Maqetuka to his office. They were told that they were being appointed to the following positions: Ambassador Maqetuka as Director General of the State Security Agency (SSA); Mr Gibson Njenje as the head of the domestic branch of the SSA, and himself as the head of the foreign branch of the SSA; the three of them had no prior knowledge of their forthcoming appointments; they were informed shortly before being led to a press conference for the announcement of their appointments.<sup>71</sup>
137. Mr Shaik helped unpack different intelligence entities that were created by the National Strategic Intelligence Act 29 of 1994 (NSIA). Firstly, the National Intelligence Agency (NIA), responsible for the collection of domestic intelligence. Secondly, the South African Secret Service (SASS), which was responsible for the collection of intelligence outside the borders of the country, that is, foreign intelligence. Thirdly, Crime Intelligence (CI), falling under the South African Police Service (SAPS). Fourthly, Military Intelligence (MI), falling under the military.<sup>72</sup> Mr Shaik explained in detail how those various organisations worked.<sup>73</sup>

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<sup>70</sup> Page 24 line 17 to page 25 line 24 and per paragraphs 1 to 9 of Mr Shaik's affidavit

<sup>71</sup> Page 27 line 11 to page 28 line 15

<sup>72</sup> Page 34 line 6 to page 35 line 13

<sup>73</sup> Page 35 line 19 to page 44 line 25

138. At a certain level, SAPS Crime Intelligence and Military Intelligence shared joint services; and there would also be collaboration between NIA and SASS; Crime Intelligence (CI) and Military Intelligence (MI) could request technological assistance from NIA and SASS. All these four entities reported, for co-ordination and co-operation, to the National Intelligence Co-ordinating Committee (NICC); the committee reported to an Intelligence Co-ordinator who in turn reported to the President. The above set up was the one that obtained at the advent of the new constitutional order in 1994 and continued until 1997, where after it was changed.<sup>74</sup>
139. Mr Shaik's evidence was that from the beginning, both in terms of the Interim Constitution and the final Constitution, it was never envisaged that there would be a dedicated Minister of Intelligence; the Minister of Justice assumed administrative responsibility for the Intelligence Services but not the control or direction in terms of the substance of work; the Minister would deal with, for example, budget matters, appointments and regulation matters but not the control of the intelligence process itself.<sup>75</sup>
140. The principles governing National Security of the Republic, as set out in Chapter 11 of the Constitution were restated by Mr Shaik: for example, to ensure equality, living in peace and harmony, prohibition and control of participation in armed conflict, and the pursuit of National Security.<sup>76</sup>
141. Regarding section 198(a) of the Constitution: Mr Shaik set out what, in his view, amounted to a paradigm shift from the past (under apartheid) concerning the maintenance of security. In his view, section 198(a), i.e. living in peace and as equals,

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<sup>74</sup> Page 45 line 9 to page 46 line 20

<sup>75</sup> Page 49 line 2 to line 24

<sup>76</sup> Page 51 line 13 to page 52 line 12

refers to human security; this is distinct from the concept "State Security" which was the paradigm of the apartheid regime, concerned with the security of the State (and not the security of the people) In brief, a shift to the security of people would for example mean that, where there is an uprising or a protest, the objective would be to address the cause thereof; that is, to address the concerns of the people. In the Mr Shaik's view, that is a classic distinction between human security and what is called "State Security" which was the paradigm of the apartheid system; another example (and Mr Shaik gave quite a few to illustrate the new paradigm shift) is that, when people burn trains, find out what the real cause is; if you put too much emphasis on the protection of the State's assets or the Government's assets you are forgetting the most fundamental thing, namely, what is the reason why that thing is happening.<sup>77</sup>

142 Regarding section 198(b) of the Constitution: Mr Shaik said it deals with the issue of armed conflict both within the borders and internationally According to Mr Shaik, this provision had a historical context. In the past, the apartheid government engaged in destabilizing other countries; for example, it provided funds to Renamo in Mozambique to fight Frelimo; some mercenaries from South Africa engaged in armed conflict outside the country; the intention was to prohibit such things or control them; armed conflict within the country is absolutely prohibited and should be prosecuted.<sup>78</sup>

143 Regarding section 198(c) that national security be pursued in accordance with the law, and section 198(d) subjecting national security to the authority of Parliament and the national executive, Mr Shaik said that it was envisaged that, unlike in the past, intelligence and security should not be a law unto itself; there had to be a new paradigm; for example, the Nuremberg doctrine that says that "I simply followed the orders" could no longer apply. National Security had to be subjected to Parliament for it to be fully

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<sup>77</sup> Page 51 line 13 to page 54 line 3

<sup>78</sup> Page 55 line 16 to page 57 line 3



involved in intelligence affairs and the budget. To that end, the Intelligence Services Oversight Act 40 of 1994 (ISOA) was passed through which, for the first time, the country established two important institutions. Firstly, a Joint Standing Committee on Intelligence (JSCI), a multiparty committee with access to records of the intelligence community, thus balancing transparency and accountability; members of the committee were vetted <sup>79</sup> The second institution to be established was the Office of the Inspector General of Intelligence (OIGI). The Inspector General (IG) would be some kind of an ombud to whom the public, aggrieved by any misconduct of the intelligence service, would resort. The establishment of this office is rooted in section 210 (b) of the Constitution, which requires that the person to occupy that office be appointed by the President after a two-thirds majority approval of the National Assembly; the high bar set was to ensure that the Inspector General was acceptable to almost all <sup>80</sup> It will be a provision to bear in mind later when dealing with the role and experiences of the Inspector General of Intelligence during the period under consideration, it being the period after 2009.

- 144 With reference to section 199 of the Constitution regarding the establishment, structuring and conduct of security services, Mr Shaik gave a perspective to some of the provisions. There would be only one national defence force and Police Service none of which would be a provincial competence. Ignorance of the law was to be no excuse; people, therefore, had to be trained; the members had to uphold the Constitution; one could not carry out a manifestly illegal order; members had to be taught to make the right decisions and had a constitutional obligation not to obey a manifestly illegal order. Members of the security services would not in the performance of their duties prejudice the interests of any political party, or act in a partisan manner to further the interests of any political party. Thus for example if an intelligence officer came from a particular

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<sup>79</sup> Page 57 line 4 to page 58 line 9

<sup>80</sup> Page 57 line 4 to page 59 line 6

party, the person should divorce themselves from furthering the interests of that party to the prejudice of other political parties. As the witness stated, those were important principles to bring the Intelligence Services out of the realm of politics and the political machinations; important enough to be embedded in the Constitution.<sup>81</sup>

145. As Mr Shaik said, section 199(8) of the Constitution is of particular importance with reference to transparency and accountability in the security services. The section provides:

“To give effect to the principles of transparency and accountability, multi-party parliamentary committees must have oversight of all security services in a manner determined by National legislation or the rules and orders of Parliament”

146. All the parties had to have the comfort that the workings of the Intelligence Service or Security Services were in accordance with the values enshrined in the Constitution and that they were consistent with the code of conduct relating to Security Services, given our past; there was no attempt to hide Security Services from Parliament; on the contrary, it had to play a proper role of oversight, including budget oversight, hence oversight committees in respect of Police, Military and Intelligence Services with access to the budgets as well”<sup>82</sup>

147. Section 209 of the Constitution deals specifically with the establishment and control of an intelligence service. In terms of 209(1) only the President can establish an intelligence service (other than any intelligence division of the defence force or police service) and only in terms of national legislation. As the legislation must be debated in Parliament first, it means the President’s powers are not unlimited. In terms of section 209(2) of the Constitution the President appoints the person in charge of that

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<sup>81</sup> Page 59 line 10 to page 64 line 6 et seq

<sup>82</sup> Page 68 line 12 to page 69 line 17

intelligence service, and either assumes political responsibility for the control and direction or designates a member of the Cabinet to assume that political responsibility; in respect of the police and the Defence, the President must assign political responsibility to a Minister.<sup>83</sup>

148. Next is section 210 which deals with the powers, functions and monitoring of the intelligence. It reads:

"National legislation must regulate the objects, powers and functions of the intelligence service, including any intelligence division of the defence force or police service, and must provide for

(a) the co-ordination of all intelligence services; and

(b) civilian monitoring of the activities of those services by an inspector appointed by the President. .... and approved by a resolution adopted by the National Assembly with a supporting vote of at least two thirds of its members "

There are, therefore, mechanisms for oversight by Parliament <sup>84</sup>

### **The Intelligence Organogram for the period 1994 to 1997**

149 This organogram was lodged with the Commission. It depicts reporting lines to the President through a National Intelligence Committee; it also shows the oversight duties of Parliament, the Inspector-General of Intelligence and the Intelligence Oversight Committee. The Intelligence Co-ordinator co-ordinated the work of the Intelligence Services and reported directly to the President and also made presentations to Cabinet on matters of intelligence.<sup>85</sup> As far as oversight was concerned, there was the Intelligence Oversight Committee, which was a multi-party body which functioned well

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<sup>83</sup> Page 73 line 22 to page 75 line 25

<sup>84</sup> Page 76 lines 4 to 25

<sup>85</sup> Page 79 line 19 to page 80 line 17



over the intelligence services. An Inspector-General for Intelligence was appointed. The office had considerable powers including powers to subpoena and to get whatever documents it wanted from intelligence services <sup>86</sup>

### **The Intelligence Organogram 1997 2009**

150. This organogram was lodged with the Commission. Not only did Mr Shaik confirm it, but also he gave some historical explanation for such changes as were brought about. The Intelligence Co-ordinator of the time, Mr Joe Mlambo, was a sitting member of Parliament. The Democratic Party expressed the concern to then President Mandela that one could not have a sitting member of Parliament as a co-ordinator of intelligence, on the ground that the position contemplated a non-partisan person. The law was then amended, hence the above organogram. The Ministry of Intelligence Services was established, the Minister of Intelligence appointed and the powers of the co-ordinator were housed under the Minister of Intelligence Services. The National Intelligence Committee was placed under the supervision of the Minister. That was the beginning of the Ministry of Intelligence and arrangement in terms of which reporting was to the Minister of Intelligence as opposed to reporting directly to the President <sup>87</sup>
151. The oversight functions of Parliament, through the Intelligence Oversight Committee (IOE) remained; the Inspector-General's office became increasingly dependent on the Minister of Intelligence for budget, staffing etc; but the Inspector General reported to Parliament <sup>88</sup>
152. Mr Shaik also gave some clarification of the functions of the various intelligence sub organs on the organogram. They were: the National Intelligence Agency (NIA); the

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<sup>86</sup> Page 80 line 18 to page 81 line 21

<sup>87</sup> Page 81 line 22 to page 82 line 21

<sup>88</sup> Page 82 line 22 to page 84 line 4

South African Secret Service (SASS); the South African National Academy of Intelligence (SANAI) which offered intelligence training to the Intelligence Agency, the Secret Service and other departments on request. Then there was also the National Communications Centre (NCC), with technological capacity to engage in technological intelligence interception; the Electronic Communications Security (Pty) Ltd (COMSEC), an entity to deal with internal communications of government to ensure that it was secured; and the Office for Interception Centres (OIC) created for the Police, Military and civilian interceptions on approval by a judge who also stipulated the terms.<sup>89</sup>

### **The Intelligence Organogram 2010 to 2019**

153 Mr Shaik also testified to the above organogram, which replaced the 1997–2009 one. This organogram was also lodged with the Commission. The evidence tendered by Mr Shaik was that this new arrangement was brought about through a proclamation by the President, Proclamation 59, of 2009 published in the Government Gazette of 11 September 2009. It was Mr Shaik's view that the proclamation brought a reversal of the previous order. There were indeed some important changes. Pursuant to the proclamation, a new entity, known as the State Security Agency (SSA), was created; the erstwhile National Intelligence Agency (NIA) was converted into the domestic branch of the SSA and the erstwhile South African Secret Service (SASS) was converted into the foreign branch of the SSA. The SSA would have been under the auspices of a Director General but, as an interim measure, Mr Shaik and Mr Gibson Njenje retained their positions as Directors-General: Mr Gibson Njenje was the DG and head of the domestic branch and Mr Shaik was the DG and head of the foreign branch as the new paradigm was evolving.<sup>90</sup>

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<sup>89</sup> Page 84 line 8 to page 85 line 20 and paragraph 11 of Mr Shaik's affidavit; and page 93 line 10 to page 94 line 4

<sup>90</sup> Page 85 line 21 to page 86 line 17

154. Mr Shaik took issue with the fact that the reorganization of intelligence organs as depicted in the above organogram was effected through a proclamation by the President, who was the head of the Executive, and not by Parliament as the Legislature.<sup>91</sup> He said that in terms of the Constitution that kind of restructuring could only be done through national legislation which meant that it should have been effected by Parliament. He asserted that the proclamation usurped the authority of Parliament; because the SSA, a National Security structure, was being created without the involvement of Parliament; Mr Shaik said that even if the President were to do it, it would have been through national legislation as opposed to a mere proclamation.<sup>92</sup>
155. In terms of the above organogram, the SAPS Crime Intelligence continued to be subject to the oversight of the Inspector-General of Intelligence and of Parliament; but the National Intelligence Coordinating Committee and the Intelligence Coordinator reported to the Minister of State Security.<sup>93</sup> It was Mr Shaik's view that the result of the set up brought about by the proclamation, namely, the establishment of a single organizational entity in the form of the State Security Agency with its two branches, domestic and foreign, was that the principle of coordination that was envisaged by the Constitution was undermined. Mr Shaik testified that, in the absence of coordination, you would have frolics of your own; a situation where for example you would have people recruiting the same source, disinformation and bogus informants.<sup>94</sup>
156. Mr Shaik pointed out that, by creating a single organization in the form of the SSA, the proclamation distracted from the intention of the country's new dispensation not to concentrate power in one organization. In his view, that took the country back to the period under the apartheid regime when there was excessive concentration of power in

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<sup>91</sup> Page 86 line 17 to page 87 line 1

<sup>92</sup> Page 87 line 2 to page 88 line 17

<sup>93</sup> Page 89 line 17 to page 90 line 3

<sup>94</sup> Page 90 line 4 to page 91 line 8



one organization (the National Intelligence Service that housed both the domestic and foreign operations) whereas under the new dispensation the country wanted separate but coordinated services. Mr Shaik said that the proclamation was, therefore, contrary to the Intelligence White Paper, which had informed the intelligence laws in 1994.<sup>95</sup>

157. Despite his reservations, Mr Shaik, nevertheless, went along with the implementation of the new regime brought about by the proclamation; he did so under the leadership of the Director General, Ambassador Maqetuka. As already mentioned above, his one reservation was that the President was not competent to create the SSA by proclamation. His second reservation was with regard to the use of the name "*State Security Agency*" which, he said, seemed to have moved away from the concept of human security which was a principle outlined in the Constitution. He said that that explained why there was no reference to "State Security" in 1994 but to the concept of "National Security", maintained by National Intelligence Agency and the South Africa Secret Service<sup>96</sup>

158. Mr Shaik testified that, despite inquiry by the witness himself, Mr Njenje and Ambassador Maqetuka as to the reasons behind the change brought about by the proclamation, no information was given. This was despite their involvement in security issues as early as prior to 1994 and the senior positions they held.<sup>97</sup> However, Mr Shaik was of the view that, on reflection, the reason was firstly, lack of experience in understanding the complexities of intelligence and why the situation was designed as it initially was; secondly he opined that it could have been because of a very narcissistic approach towards the consolidation of power. In that context, he felt that the three of them, despite their seniority and vast experience in intelligence, were not accorded the

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<sup>95</sup> Page 94 line 5 to page 95 line 11

<sup>96</sup> Page 95 line 12 to page 97 line 10 and paragraph 12 of Mr Shaik's affidavit

<sup>97</sup> Page 97 line 16 to page 100 line 25

respect they deserved in allowing their experience to help shape the policies that were unfolding <sup>98</sup>

159 Mr Shaik, Mr Njenje and Ambassador Maqetuka were made to report directly to the Minister of State Security, Dr Siyabonga Cwele. That did not sit well with them; to Mr Shaik, it was an oddity; the Constitution preferred this to be the responsibility of the President, even though it allowed for the President to assign a Minister; but the Minister should not direct intelligence operations; the head of Intelligence Service or State Security Agency should have unfettered access to the President to discuss matters of National importance. What would happen where information was picked up about the very Minister of Intelligence, for example, and what would the relationship be with the Minister if he/she was bypassed in such a scenario? The Minister of State Security would also have advantage over other Ministers because he would have knowledge they didn't have, even about them. Accordingly, said Mr Shaik there should be no direct reporting to the Minister, unless there be clear guidelines.<sup>99</sup>

160. Mr Shaik testified that the Minister of Security should not be involved in operations. His view was that, by involving the Minister in operations, the people, for example, infiltrating other countries could come under serious harm; the information must therefore be limited to the Director-General and the President; that would also protect the Minister; that was why there had to be utmost trust between the head of intelligence and the President; while there is no reporting to the Minister, but to the President, it should remain for the head of Intelligence to direct operations.<sup>100</sup> That is why there were checks and balances in place against the Director-General and also that the Director-General

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<sup>98</sup> Page 101 line 2 to page 102 line 23

<sup>99</sup> Page 104 line 18 to page 106 line 20 and paragraph 14 of Mr Shaik's affidavit

<sup>100</sup> Page 107 line 10 to page 109 line 4

would be professional and do things by the law; that was why things worked well from the beginning in 1994 <sup>101</sup>

161 As an illustration of the difficulties that may arise when the Minister is involved in intelligence operational functions of the intelligence services, Mr Shaik painted a scenario where a Minister may ask for the names of spies; and when the Minister leaves office, they will still have knowledge of the names of individuals who are spies; this is unlike former Presidents, who although, they have such knowledge, they are bound by certain protocols not to divulge such information, including the protection they enjoy. Therefore, even if there were to be a Minister of Intelligence, he or she should not be involved in operations <sup>102</sup>

162. As further illustration of a problem which may arise when the Minister is involved in intelligence operations and thus strain relations Mr Shaik referred to the case of the wife of the then Minister of State Security Dr Siyabonga Cwele, who was charged with drug trafficking. They were providing her with protection in that they transported her to and back from court; eventually the three of them; i.e. Ambassador Maqetuka, Mr Njenje and himself ("the top three") had to discuss the matter and eventually told the Minister that they would no longer protect her notwithstanding the presumption of innocence until proven guilty; it created a sense of awkwardness to them in terms of their sense of morality <sup>103</sup>

163 Mr Shaik testified to the issue that related to the appointment of Mr Fikile Mbalula as a Minister. There was a press report, following a meeting of the African National Congress National Executive Committee, that Mr Mbalula had told the meeting that he had been

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<sup>101</sup> Page 109 line 7 to line 23

<sup>102</sup> Page 110 line 7 to page 112 line 14

<sup>103</sup> Page 113 line 3 to page 115 line 4 and paragraph 14 of Mr Shaik's affidavit



told of his impending appointment as Minister by one of the Guptas. Mr Shaik, Ambassador Maqetuka and Mr Njenje met as of practice on a Monday, at which meeting the issue was discussed. They considered three possible sources of information to the Guptas, all of which were of concern to them and, therefore, needed investigation: firstly, whether there was breach of national security in the office of the President in that there was a leak; secondly, whether the Guptas overheard a discussion where the President was consulting someone and they were peddling the information for their own benefit; thirdly, whether they had suggested Mr Mbalula's appointment.

164 To them, the latter would have been even more serious as it would have meant that foreign nationals suggested who should be in the Cabinet of another country. All these three issues fell within the purview of national security. The top three discussed the matter with their Deputy Directors General and an intelligence investigation was agreed upon. Mr Shaik said that any of the above three scenarios warranted investigation. While the overhearing scenario was the least serious, recommendations would have been made to prevent its recurrence in future. Of necessity, the possibility of a leak out of the President's office had to be of great concern. The seriousness with the third possibility was that, unlike in the case of media speculation, it would have pointed to the Guptas' foreknowledge of Mr Mbalula's appointment, which foreknowledge they also wanted to demonstrate to him before the actual appointment was made.<sup>104</sup>

165 Apart from pointing out the dangers of foreigners interfering in the affairs of a country in that manner, Mr Shaik also pointed out what he described as the creation of dependency; that is, in this case, expecting to extract some value from Mr Mbalula once appointed Minister of Sports; particularly if this was considered against the investments the Guptas had in cricket and sport stadia. They would have made him feel beholden

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<sup>104</sup> Page 115 line 19 to page 120 line 24 and paragraphs 15 to 19 of Mr Shaik's affidavit

to them for their benefit by showing him that they were in charge or had influence. Mr Shaik's evidence also had to be considered together with the evidence before the Commission by Mr Ramathlodi, a former Minister, on the issue of the landing of the Guptas' plane at the Waterkloof base.<sup>105</sup> It would also tie up with the evidence of Mr Jonas that he was taken to a meeting where one of the Gupta brothers, in the presence of Mr Duduzane Zuma (son of former President Zuma) said they wanted to make him appointed the new Minister of Finance to replace the then Minister, Mr Nene, who was expected to be dropped. The Guptas would have wanted him to feel dependent on them; that is, that if they could have him appointed, they could have him dismissed. The issue of informing Mr Mbalula about his impending appointment could therefore not be seen as an isolated case regard being had to the evidence tendered by other witnesses before the Commission relating to the alleged role of the Guptas.<sup>106</sup> Mr Shaik could not, for certain intelligence reasons, tell the Commission at the time of his evidence the outcome of the investigation in respect of the Gupta statement to Mr Mbalula.<sup>107</sup>

166. Mr Shaik testified that Mr Njenje, in his capacity as the Head of domestic branch of the SSA, received an inquiry from the CIA about the Gupta's buying a uranium mine in the country which the CIA was concerned was being financed by Iran for their nuclear programme; he too was approached by the then US Ambassador to South Africa with the same concern by the US State Department. The consequences would have been enormous for South Africa, he said; we would have been seen as violating multinational multilateral agreements, something which would have caused sanctions to be extended to the country. They therefore wanted to determine the source of the funding for the uranium mine. He discussed the American's concern with President Zuma who later

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<sup>105</sup> Page 120 line 25 to page 122 line 8

<sup>106</sup> Page 122 line 9 to page 124 line 7

<sup>107</sup> Page 124 line 21 to page 126 line 2

informed him that the Iranians were not involved in the funding of Shiva Uranium, an information he passed onto the US Ambassador.<sup>108</sup> Notwithstanding the assurance by President Zuma, the top three decided that the matter be the subject of the SSA investigation as it would remain a national security issue.<sup>109</sup>

167. On the same day or a day after the decision was taken to investigate the Guptas about the Mbalula saga, Mr Shaik, Ambassador Maqetuka and Mr Njenje were summoned to fly urgently to Cape Town for a meeting with Minister Cwele; they did so that same evening. Mr Shaik had never before, either as Head of Secret Service (of the then SASS) or Foreign Branch of the SSA, been called by a Minister to explain an operation; so, it was his first experience to see Minister Cwele do that; this was in the latter months of 2011 because, as he put it, by 2012 he was history.<sup>110</sup> Mr Shaik's firm view was that it was inappropriate and probably illegal for the Minister to become involved in operational matters; the best way would have been for him to await the outcome of the investigation and then deal with the outcome and recommendations of the investigation. Mr Shaik said that making known your view on an investigation into a matter of National Security when you were the Minister of National Security was also an indictment on one's understanding of National Security.<sup>111</sup>

168. The meeting with Minister Cwele which took place that same evening, was extremely confrontational according to Mr Shaik. After being held in the holding room, the three of them repaired into the Minister's meeting room. The Minister had two other people; namely, a Mr Dlomo (later Ambassador to Algeria) then special advisor to the Minister and one Doctor Kaw Mabangu or Mavungo (name and spelling uncertain to the

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<sup>108</sup> Page 126 line 3 to page 127 line 14 and paragraphs 20 and 21 of Mr Shaik's affidavit

<sup>109</sup> Paragraph 22 of Mr Shaik's affidavit

<sup>110</sup> Page 127 line 20 to page 128 line 23 and paragraph 23 of Mr Shaik's affidavit

<sup>111</sup> Page 128 line 24 to page 129 line 12



witness); the latter was head of the Ministerial Services and a member of the Foreign Service, thus falling under Mr Shaik and being his junior; for that reason Mr Shaik or Ambassador Maqetuka successfully objected against his presence; they, however, had no problem with Mr Dlomo's presence.<sup>112</sup>

169. The Minister wanted to know from Ambassador Maqetuka the reasons behind the investigation. As they had not told him about their decision to investigate, it was clear that someone who had been at the meeting when the decision to investigate was taken had told the Minister, although the trio were unable to determine who that person was. Ambassador Maqetuka gave the reasons for the investigation: There were noises, he explained, about the Gupta family, and the investigation was going to be in the interests of the President because, if there was nothing to the story, the President would be cleared; on the other hand, if there was something to it, corrective action would be taken. However, said Mr Shaik, reason left the room when they entered! They could not find each other with the Minister; in fact, the meeting deteriorated to the point where the Minister made matters personal by saying the investigation was to pursue or further Mr Njenje's personal business interests. The latter was angered. Yet, according to Mr Shaik, Mr Njenje had earlier satisfactorily explained his position and, if anything, the situation was completely opposite to what the Minister was alleging. The Minister did not listen to the explanation given; he just did not want the investigation to go on; the meeting was tense. The Minister wanted the investigation to stop but the trio told him his authorization was not needed as the matter fell within the ambit of the SSA mandate and that only the President could stop the investigation; they asked the Minister to arrange a meeting with the President.<sup>113</sup>

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<sup>112</sup> Page 129 line 19 to page 131 line 17

<sup>113</sup> Page 131 line 17 to page 133 line 25 and paragraph 24 of Mr Shaik's affidavit

170. As Mr Shaik put it, the confrontation with Minister Cwele showed why it is inappropriate to have a Minister of Intelligence because they serve at the behest of the President to whom they might want to ingratiate themselves, as compared to the Director General of Intelligence Services (reporting directly to the President); the Director-General would serve national interests which may not always coincide with the President's interests, as was demonstrated in that matter <sup>114</sup>
171. The meeting took about an hour to two. Besides his reason that the investigations were to benefit Mr Njenje, the Minister also said that the allegations that triggered the investigations were mere media allegations, whereas the trio's view was that the matter be investigated anyway to arrive at an objective understanding of what in fact happened; they felt that the Minister ought to have rather opted to err on the side of caution; as it turned out, the decision to investigate became vindicated, hence this Commission; had the investigation been allowed, things might have turned out differently, according to Mr Shaik. <sup>115</sup>
172. It was Mr Shaik's strongly held view that Minister Cwele was guilty of dereliction of duty in that, having assumed the responsibilities of Minister of State Security, he opted to stop the investigation; he was even of the view that, had the investigation been allowed to continue, the Waterkloof air force base landing of the Gupta plane would not have happened. Referring to that incident, Mr Shaik lamented the fact that, in his view, Ambassador Kholoane had taken the fall in protection of politicians; politicians must take responsibility for the things they do. He said that the notion that officials should take the fall for the errors of their political bosses must be brought to an end <sup>116</sup>

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<sup>114</sup> Page 134 line 1 to page 135 line 3

<sup>115</sup> Page 135 line 5 to page 136 line 21

<sup>116</sup> Page 138 line 22 to page 140 line 8

173. To sum up their meeting with the Minister: There was a debate whether the Minister had the authority to stop the investigation; the Minister instructed the trio to stop the investigation, but they insisted that they were going to investigate; they finally asked the Minister to arrange a meeting with the President as a result; (and they subsequently met with the President).<sup>117</sup>
174. It was Mr Shaik's view that the Guptas had some information gathering mechanism, though the information was not of good quality; it comprised mostly of rumour mongering. For that reason, he believed that it could have been the Guptas who told Minister Cwele about Mr Njenje's business interests. He believed that there was information from the Guptas to the President that there was a possible group of people who wanted to topple him, including Mr Shaik himself; that was in 2011.<sup>118</sup> The relevance of that accusation is that it would have led to the breakdown of the relationship between former President Zuma and Mr Shaik; it was therefore detrimental to national security and serious.
175. Mr Shaik repeatedly made the point that in his view the Minister did not have the authority to stop the investigation, that the meeting was heated and that they would rather discuss the matter with the President; and that they had a legitimate justification to investigate.<sup>119</sup>
176. Mr Shaik confirmed parts of an affidavit by Ambassador Maqetuka that Minister Cwele got wind of the investigation and summoned the trio to Cape Town for the meeting, which started in the evening and continued until about midnight; and also that the Minister said Mr Njenje was investigating the relationship between President Zuma and

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<sup>117</sup> Page 142 line 11 to page 143 line 10

<sup>118</sup> Page 143 line 11 to page 144 line 5

<sup>119</sup> Page 145 line 10 to page 146 line 2



the Guptas for his own business interests. He also confirmed Ambassador Maqetuka's affidavit that the latter told the Minister that it was not Mr Njenje's own investigation but an investigation by the SSA in terms of its mandate, a point the Minister ignored <sup>120</sup>

177. Although in his affidavit Mr Maqetuka says he did not recall the Minister instructing directly that the investigation be stopped, Mr Shaik's recollection was that that was the case; but he contended that there was no debate that at the very least, the Minister did put pressure on them, (which would be consistent with the fact that the trio sought to take the matter up with the President).<sup>121</sup>
178. Mr Shaik kept on making the point that the three of them told the Minister that the investigation into the Guptas was justified on the basis of the information they had, while the Minister held the opposite view; that the meeting was confrontational and adversarial; that at no stage did they concede to the Minister's position; that at one point it seemed as though the Minister would be persuaded but quickly shut the door firmly and immediately again focussed on Mr Njenje despite Ambassador Maqetuka's explanation that the investigation had nothing to do with Njenje's business interests; that the meeting went around in circles about that with the Minister not wanting to listen Mr Shaik stated that it boiled down to a situation where they put it as best and strongly as they could that the Minister had no authority to give instructions on an operation, and that they were going to proceed as the only person who could stop them was the President; they put their case as strongly as possible but in a manner that would avoid an absolute breakdown; but they believed the Minister did not have the authority to stop them despite his unambiguous unhappiness about the investigation <sup>122</sup>

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<sup>120</sup> Page 148 line 2 to page 150 line 19 and paragraphs 6 and 7 of Mr Maqetuka's affidavit

<sup>121</sup> Page 150 line 21 to page 153 line 21 and paragraph 7 of Mr Maqetuka's affidavit

<sup>122</sup> Page 154 line 7 to page 158 line 15

179. The only reason given by the Minister for stopping the investigation was, as far as Mr Shaik could recall, the issue of Mr Njenje's business interests, although, on reflection, he thought that there could have been fear that the investigation would extend to the former President; yet their view was that investigations should proceed and whatever came out would have to be dealt with; the Minister was not quite clear why investigations should stop; it appeared he did not expect resistance. Even if there was conflict of interest on the part of Mr Njenje or one of them, that would not have been the reason to stop the investigation; the person would have stood aside and the investigation continued objectively.<sup>123</sup>

180. Mr Shaik said they indeed met with the former President soon after their meeting with the Minister; it was only them and the former President. He first raised a discussion about what Mr Shaik referred to as the Richard Mdluli Report. It was a report by Police Crime Intelligence, then headed by Mr Mdluli, which had claimed that there was a plan to topple President Zuma. It turned out that Ambassador Maqetuka had investigated that report and found it unconvincing. But Mr Zuma told them that he and Minister Cwele believed the report nonetheless, this despite the fact that the trio had rejected it after analysis.<sup>124</sup>

181. According to Mr Shaik, the SSA report rejecting the Mdluli report had been by the three of them, the three most senior people in the intelligence; the President's rejection of their finding therefore amounted to expression of lack of confidence in them in favour of the Police Crime Intelligence report; yet all three of them had a long history of working

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<sup>123</sup> Page 160 line 21 to page 162 line 23

<sup>124</sup> Page 163 line 1 to page 168 line 23

with the former President, which made his rejection of their dismissal of the Mdluli Report difficult to deal with <sup>125</sup>

182. After the discussion of the Mdluli Report, the meeting turned to the Gupta investigation. Mr Shaik was of the view that the discussion of the Mdluli Report set the tone for the meeting; because their report that had rejected the Mdluli Report was being rejected by the President to whom they were directly responsible to provide intelligence and, moreover, he gave no reasons for rejecting their dismissal of the Mdluli Report. <sup>126</sup> On the face of it, the former President's reference to the Mdluli Report appears irrelevant; but it is not. In raising it, clearly the former President was creating an appropriate climate in which the soundness of their judgment to investigate the Guptas would be discussed. It could be unsettling to the meek to be reminded of their past folly just before the start of a crucial meeting at which the soundness of your judgment is, once more, going to be the subject matter of the meeting. This is why in his evidence Mr Shaik referred to, and dealt with, the former President's discussion of the Mdluli Report.
183. Once the meeting turned to the Gupta investigation, Ambassador Maqetuka took former President Zuma through a document outlining to him the reasons for the investigation. The former President listened calmly; he did not scream or shout. In his response, he told them about his long standing relationship with the Guptas; that they were business people; that they once assisted his son Duduzane Zuma when nobody was going to employ him; that they were introduced to the ANC by people associated with President Mbeki; that the relationship with them was of long standing, dating back to the Mbeki administration. To him there was no need to investigate. It was clear to them that he did not want the investigation to continue. President Zuma cast himself as a victim by peddling the narrative that the Gupta investigation was because they wanted to get at

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<sup>125</sup> Page 168 line 24 to page 169 line 19

<sup>126</sup> Page 168 lines 8 to 14



him, something that was hurtful to the three of them as they all had had a long relationship with him. Mr Shaik even had a feeling as though the three of them were seen as part of the people wanting to topple him. The bottom line of Mr Shaik's evidence was that former President Zuma did not want the investigation to go on as there was no need. His son stayed with the Guptas in India when he went there for studies; the relationship, according to the former President, was not on the basis of him being President; again, with the narrative of being a victim, he said people wanted to topple him.<sup>127</sup> This narrative could also be linked to the Mdluli Report.

- 184 It was Mr Shaik's view that, even if the issue of the former President's relationship with the Guptas was being used as part of a conspiracy to harm or topple him, that would not have been a valid reason to stop the investigation; the reason being that what was to be investigated was a possible breach by the Guptas at the highest level (the office of the President): as said earlier, either it was information peddling on their part, a leak from the President's office or a suggestion from them on the appointment of a Minister. It appeared that they were engaged in creating dependency to extract value. All these were conveyed to the President. Although he did not in so many words instruct them to stop the investigation, the President made it clear, by pointing to the long relationship he had had with the Guptas and through his victim narrative, that the investigation should stop. After the meeting with the President, they decided that the investigation should not continue; if it did, it would be at the cost of their jobs.<sup>128</sup>

185. On the basis of all the above, Mr Shaik made the point that the former President disregarded his experience and the collective professional advice of the country's three top senior intelligence officers that there was a legitimate basis for investigation; that the former President did not properly apply his mind to his obligations and had failed to

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<sup>127</sup> Page 170 line 6 to page 173 line 8

<sup>128</sup> Page 173 line 11 to page 174 line 23

provide effective and efficient direction to the Intelligence Services; in his view, the country had paid the price as a result. The rejection of the advice was a big thing in the intelligence world; it impacted negatively on the trust relationships between them and the President.<sup>129</sup>

186. Returning to the matter of the former President's rejection of their dismissal of the Mdluli Report, Mr Shaik said there was another aspect to it; namely, that the three of them were at a very senior level in comparison with the authors of the Mdluli Report in Police Crime Intelligence: Ambassador Maqetuka was the Director General and Accounting Officer of the SSA; both Mr Njenje and Mr Shaik were also at the level of Accounting Officer, and Director General; on the other hand, Crime Intelligence was just a Division within a large organization, SAPS; add to that, amongst others, the fact that all three of them had advised the former President over many years when he was the head of intelligence in the ANC; they felt that their sincerity was questioned, something which was difficult to deal with.<sup>130</sup>

187. The meeting with former President Zuma was, in contrast to the one with former Minister Cwele, civil and polite. However, it was prescriptive in that it was the former President who did the talking while the three listened, though they tried to push back where they could. He did not raise the issue of Mr Njenje's business interests like the Minister had done. With all the arguments the former President raised, he was making the point that it was not necessary to continue with the investigation but without saying so in so many words. Mr Shaik's view was that from what the former President said, pushing the

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<sup>129</sup> Page 175 line 5 to page 176 line 6

<sup>130</sup> Page 176 line 7 to page 180 line 9

investigation would have made them appear as part of the people who wanted to topple the former President.<sup>131</sup>

188 In his engagement with the Commission on the issue of conflict of interest, Mr Shaik opined that where for example a Director General of intelligence such as Ambassador Maqetuka was conflicted, his immediate subordinate could go directly to the Minister, and there being no Minister, to the President; where the Minister was conflicted, to go to another Minister or the President; the difficulty would be where the President was conflicted as the Constitution was silent on that and did not contemplate such a situation; but he thought one could approach the Joint Standing Committee on Intelligence. The rest of Mr Shaik's evidence on this aspect extended to instances of no moment and was merely his personal legal opinion.<sup>132</sup> The important point he made though was that where one senior officer was conflicted, that person would stand aside and others would continue with the investigation

189. After the meeting with the President, Mr Shaik established that the information in the media was true that Minister Mbalula had mentioned in the NEC meeting that the Guptas notified him of his impending appointment in advance. The confirmation came from former Minister General Sphiwe Nyanda. His meeting with former Minister Cwele caused the relationship to be irretrievably broken down; the meeting with former President Zuma left him feeling that he had lost the confidence of the former President; something which was not justifiable.<sup>133</sup>

190. Mr Shaik had strong views on whether the views the former President had about the investigation of the Guptas were genuinely held or whether he might have been

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<sup>131</sup> Page 186 line 1 to page 188 line 14

<sup>132</sup> Page 189 line 17 to page 194 line 5

<sup>133</sup> Page 2 line 14 to page 4 line 21



prompted by other reasons. Firstly, he was of the view, as an intelligence officer, that the former President clearly understood what they were telling him and the enormous consequences thereof, which was why he went into a lengthy explanation of his relationship with the Guptas. Secondly, as a person who had known the former President for a very long period of time, he knew him to be the kind of person who, once his mind was made up, it would often be too difficult to shift that mind-set. Thirdly, that the former President was very loyal to his friendship with the Guptas, even though it was causing him some embarrassment in respect of his public office; he was minded to defend that friendship by embracing the victimhood state of mind; those factors made him see nothing wrong.<sup>134</sup>

191. Mr Shaik accepted that there was nothing wrong with the friendship itself; the problem was the influence peddling to which the former President had to be alive; yet, mysteriously, he was dismissive of it; the inappropriateness of the behaviour by the Gupta family admitted of no doubt. Mr Shaik mentioned, as an example, the case of Mr Themba Maseko, the former CEO of the Government Communication and Information System (GCIS). Mr Maseko testified that his then boss Minister Chabane told him that he was instructed (by Mr Zuma) to remove him from his position for turning down a request by one of the Guptas to place government advertisements in the New Age newspaper in which the Guptas had financial interest. Mr Shaik says in his evidence that he was with Mr Maseko when he received such a call from one of the Guptas, about which he immediately expressed his unhappiness. Such instances pointed to the former President being beholden to the Guptas; the Guptas were making similar inappropriate approaches to government officials.<sup>135</sup>

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<sup>134</sup> Page 4 line 22 to page 6 line 5

<sup>135</sup> Page 6 line 7 to page 9 line 12

192. It was Mr Shaik's view that the former President owed the country an explanation as to the true nature of his relationship with the Guptas, and why, despite so many people raising concerns about it, he still felt it necessary to defend it. Well, as to that, it is now a known fact that, when the former President appeared before the Commission on 15 July 2019, he defended his relationship with the Guptas. It was also Mr Shaik's evidence that it was important for the office of the President to be staffed by appropriate people and that the process of doing so be managed in a particular way. The intelligence services were, after all, there to protect the President from undue influences.<sup>136</sup>
193. The investigation did not continue, even though the top three wanted it to. Mr Shaik had no doubt that, had they proceeded with the investigation regardless, they would have been removed from office; he gave the case of one Billy Masetla, who was the Director General of the National Intelligence Agency during President Mbeki's term of office, who was dismissed from that position. Mr Masetla went to the highest Court in the land to challenge the legality of his dismissal and sought reinstatement but was not reinstated by the Court even though it found that his dismissal was unlawful. President Mbeki said he had lost confidence in Mr Masetla as the Head of the National Intelligence Agency. Mr Shaik went to great lengths to show that to challenge such a removal and seek reinstatement would have been futile. He made an important point, namely, that anyone replacing him or them would, of course, not have continued with the investigation; he also lamented the silence of those who should have spoken out, such as Ministers.<sup>137</sup> Mr Shaik's evidence shows the extent of the former President's determination to stop the investigation into the Guptas by the intelligence services. He suggested that other law enforcement agency should be asked by the Commission whether they made their

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<sup>136</sup> Page 9 lines 14 to 23

<sup>137</sup> Page 9 line 24 to page 16 line 8

own investigations for submission to the Commission, because the Gupta issues were publicly reported <sup>138</sup>

194 To restate Mr Shaik's evidence: the meeting with the President was in his capacity as the head of the Executive responsible for Intelligence; he was therefore not justified to adopt the attitude to defend his relationships with the Guptas and stop the investigations. He failed to separate his personal relationships from his responsibility as Head of State; he failed to heed the advice by his three Chiefs of Intelligence; he failed to be alive to his constitutional responsibilities in directing the Intelligence Services in terms of what they had to do or not to do <sup>139</sup>

195 In the meeting, the President did not address the pertinent issues or the grounds for the investigation as advanced by the top three; he did not apply his mind to the National Security issues, namely, the peddling of information which implicated his office. One of the problems the trio had with the President at the meeting was that they had assumed that, as the former head of ANC Intelligence, he would understand the issue raised and rely on his experience; but it was clear that his mind could not make that separation between issues of his personal friendships with the Guptas and a matter of national security. <sup>140</sup>

196. The President did not address the facts placed before him. This could have been because of his past experience with his friends, like Mr Schabir Shaik, and himself being investigated and criminally investigated. That notwithstanding, it was Mr Shaik's view that a point came when the President failed to separate issues of his personal relationships with the Guptas and his responsibility as the Head of the National

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<sup>138</sup> Page 16 line 10 to page 17 line 11

<sup>139</sup> Page 17 line 19 to page 19 line 1

<sup>140</sup> Page 19 line 6 to page 20 line 8



Executive with certain constitutional obligations; he did not carry out his duties as Executive Head accountable constitutionally for intelligence <sup>141</sup>

197 After the meeting with the President, Mr Shaik continued working for the State Security Agency for a few more months. During the remaining period of his service, his relationship with Minister Cwele deteriorated. He said the Minister took to micromanaging the organization; the foreign branch He caused people below Mr Shaik to report directly to him and did things *via* them. Mr Shaik's role was reduced to just signing off things. Some of those people gloated about that, while some felt compromised The Minister caused him to write explanations on almost everything; they both came to realize that the relationship was not working The Minister offered him a transfer to another department, an offer he said he would consider. The Minister later offered him an appointment as an Ambassador to Japan; yet it was not for him to make that offer as the appointment of Ambassadors was the President's prerogative Mr Shaik therefore told him so, and asked the Minister to arrange for him to discuss the matter with the President. What concerned Mr Shaik was that the Minister indicated that he would make the appointment, this notwithstanding the fact that the Minister of Foreign Affairs was someone else; he therefore felt that the Minister was descending to an unacceptable level of unconstitutionality.<sup>142</sup>

198 Later and after informing the Minister that he did not have the competence to appoint him an Ambassador, Mr Shaik told him that he wanted to see the President to discuss his exit from the department as their relationship had irreversibly broken down.<sup>143</sup> In any

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<sup>141</sup> Page 20 line 9 to page 25 line 2

<sup>142</sup> Page 25 line 3 to page 28 line 10

<sup>143</sup> Page 28 line 11 to line 25

event, much as Mr Shaik recognized that Japan was important, he was not in favour of going there; there had just been an earthquake and a nuclear disaster <sup>144</sup>

199 Subsequently, Mr Shaik did meet with President Zuma, and told him that his relationship with Minister Cwele had irreversibly broken down. He indicated to President Zuma that the posting to Canada would be fine for him and his family as his wife was Canadian; the President said he would attend to that. He soon got a call from the Director General of the Department of International Relations and Co-operation, Mr Jerry Matjila, asking him whether he would accept an appointment as Ambassador to Canada. He put the phone down, shocked; shocked because, according to him, it was an indication that it was former President Zuma who wanted him to leave the Intelligence services as he had not discussed the matter with anyone else about a New York or Canadian position; moreover, Mr Matjila had made no reference to the President and things developed pretty fast. He declined the offer <sup>145</sup> He declined, given his age at the time, which was about 53; the posting would have meant that five years later, at 57, he would return to look for a new career. Secondly, he was of the view that he did not have a good relationship with the then Foreign Minister, Ms Nkoane-Mashabane <sup>146</sup>

200. Mr Shaik eventually resigned in February 2012 because he wanted to go to the private sector. After doing a course with Harvard Business School, he took up employment with the Development Bank of Southern Africa. He said Mr Njenje was likewise offered the post of Ambassador in Africa but also declined. They had not consulted each other; each one had taken his own decision.<sup>147</sup> He resigned, not because he did not want to serve the intelligence services any longer. He said that it was, firstly, because of the

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<sup>144</sup> Page 29 line 1 to line 16 and paragraph 30 of Mr Shaik's affidavit

<sup>145</sup> Page 30 line 25 to page 34 line 11

<sup>146</sup> Page 34 line 8 to line 23

<sup>147</sup> Page 35 line 3 to page 37 line 8

irretrievable breakdown of his relationship with Minister Cwele and, secondly, he had lost the confidence in the President <sup>148</sup> It is clear from the evidence of Mr Shaik that both the irretrievable breakdown of the relationship and the loss of confidence were basically because he, Mr Maqetuka and Mr Njenje, had wanted to investigate the Guptas; it was the turning point, although there had previously been incidents between him and the Minister. The three of them left more or less around the same time <sup>149</sup>

201. Mr Shaik mentioned a few incidents that demonstrated the breakdown of his relationship with Minister Cwele. According to him, one of them broke the camel's back. It was when the Minister questioned his loyalty to the country, spreading the disinformation that he was working for another government's secret services, something which his two colleagues dismissed.<sup>150</sup>
202. There were also policy differences with the Minister and later with President Zuma. From the witnesses' point of view, the two were focussed on short-term benefits with regard to national interests as opposed to long-term benefits. Mr Shaik actually says he was pushed out. In his view, the root cause of the differences was the decision to investigate the Guptas. In his words, everything that ensued from that moment was as a consequence of that.<sup>151</sup>
203. After leaving the Intelligence Service, Mr Shaik received a call from Mr Ajay Gupta, telling him that the Mail and Guardian was going to write that the Guptas were behind his being fired. Mr Gupta expressed himself in endearing terms which Mr Shaik rejected. He sought to tell Mr Shaik that they were not behind his being fired, and wanted Mr Shaik to confirm that to the Mail and Guardian. Mr Shaik's response was that his reply

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<sup>148</sup> Page 27 line 14 to line 25

<sup>149</sup> Page 38 line 9 to page 40 line 2

<sup>150</sup> Page 30 line 2 to page 42 line 12

<sup>151</sup> Page 42 line 23 to page 44 line 18



would be "no comment"; in fact, according to him, a source once told him that the Guptas really wanted to get him out of the Intelligence Services, saying that he was one of the people wanting to remove Zuma; but at the time of that information, he was not aware that the Guptas wielded enormous influence.<sup>152</sup>

204. Mr Shaik was aware, a memorandum that was submitted in March 2016 to Mr Gwede Mantashe, then Secretary General of the ANC, by senior commanders and commissars of the former military wing of the NAC, umMkhonto we Sizwe; he took part in drafting it at the request of General Sipiwe Nyanda. He still stood by that memorandum. That memorandum was submitted to the Commission. The memorandum made reference to the removal of Minister Nene as Minister of Finance, and his proposed redeployment to the BRICS New Development Bank. This was at the time when Mr Shaik was the Group Executive of the International Unit of the Development Bank of Southern Africa and thus a knowledgeable banking person, from being an intelligence person.<sup>153</sup> As appears below, reference to his banking experience, especially at that international level, is relevant.

205. As a result of his above position within the Development Bank, Mr Shaik came to know about the formation of the BRICS's New Development Bank, and also regarding its structure, including its shareholding and its management. It will be recalled that when President Zuma removed Minister Nhlanhla Nene from the position of Minister of Finance, he issued a media statement to the effect that the reason was that Mr Nene was to be deployed to the position of the Regional Head of the BRICS Bank in South Africa. Which Mr Nene said in his evidence was a fabrication. Mr Shaik explained the structure of the bank in detail to make the point, which became quite clear, that it would not have been possible for former President Zuma to impose Mr Nene as the Regional

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<sup>152</sup> Page 44 line 19 to page 46 line 13

<sup>153</sup> Page 46 line 21 to page 48 line 4

Head of the Bank (in South Africa). Such an appointment was a matter that was within the competence of the management of the bank, not a shareholder (South Africa). Secondly, Mr Nene, as he had reportedly indicated himself, would not have agreed to such an appointment as that would have meant moving from a senior position as Minister of Finance to a lower position of Regional Head.<sup>154</sup> Furthermore, the Chief Financial Officer of the New Development Bank, Mr Leslie Maasdorp, a South African, was appointed through a process in which Mr Nene, then as South Africa's Minister of Finance, participated. Mr Nene's appointment as Regional Head would have entailed him reporting to people even far below Mr Maasdorp. Mr Shaik's evidence was that, generously interpreted, the idea of appointing Mr Nene as Regional Head showed a lack of proper understanding of how the New Development Bank would work or be set up.<sup>155</sup> Of course, as I have found elsewhere in this report, that was just an excuse to fire Mr Nene and a ridiculous one at that.

206. Mr Shaik talked about the phenomenon of disinformation, its possible use by the Intelligence Agencies and the danger of it giving rise to false reports. Pieces of false information may be put together to appear as if it is credible information. He gave as an example a report to then President Mandela by retired General Meiring that there was a possible *coup d'état* against him, which Mandela rejected. He also referred to a workshop they once had with a Ghanaian expert on the subject.<sup>156</sup> He referred to an occasion where he himself was accused of disinformation. This was with reference to Mr Bulelani Ngcuka, the first National Director of Public Prosecutions in South Africa. It appears from Mr Shaik's evidence that he did give wrong and adverse information about Mr Ngcuka, that led to an inquiry by the Hefer Commission which cleared Mr Ngcuka and proved Mr Shaik wrong. In his evidence, Mr Shaik says he accepted the outcomes

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<sup>154</sup> Page 48 line 5 to page 53 line 22; especially page 52 line 2 to page 53 line 23

<sup>155</sup> Page 53 line 24 to page 54 line 20

<sup>156</sup> Page 55 line 16 to page 58 line 20

of the Hefer Commission and has since apologized to Mr and Mrs Ngcuka. He explained that his reasons for peddling the misinformation was that he believed then that the office of the National Director of Public Prosecutions was being used for political purposes, something he thought amounted to an abuse of State power. However, he denied that he was involved in the game of disinformation or being party to dirty tricks.<sup>157</sup>

- 207 In fact, when referred to the contents of the book "*The President's Keepers*" written by Mr Jacques Pauw, Mr Shaik admitted that he met with Mr Arthur Fraser after hearing that he had the so-called spy tapes. He told Mr Fraser to take the tapes to the National Prosecuting Authority, which he did. Mr Shaik said in his evidence that he felt the information affected the innocence or otherwise of another person (former President Zuma). It is clear from his evidence that Mr Shaik was of the view, without saying so in so many words, that the information would assist Mr Zuma. The following excerpt from the book was put to him:

"Mo Shaik was involved in the Zuma camp's own dirty tricks campaign two weeks after the State had announced that the NPA was about to hurl Schabir Shaik before a Judge. Mo Shaik identified prosecutions boss Bulelani Ngcuka as apartheid spy R5452. He later said he had made the allegations in order to defend the honour of the Deputy President of this country Jacob Zuma".

208. Mr Shaik did not dispute what was said in the book. His response was an attempt to justify the accusation that Mr Ngcuka was a spy. He said back in the 1980's when he was the ANC's intelligence officer, he came across information that gave him reason to investigate Mr Ngcuka's possible association with the apartheid Government; information was communicated to Lusaka, which he said was "*Head Office*"; he told the Commission that the matter rested there until later when, according to him, he received another information that made him feel there was abuse of Mr Ngcuka's office in relation

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<sup>157</sup> Page 55 line 19 to page 59 line 25



to, not necessarily Schabir (his brother) but also to the then Deputy President (Mr Zuma) He told this Commission that he linked this abuse of office back to the investigations they did in the 1980's and he went public with that, which was why the Hefer Commission was established. He said he did not consider that to be dirty tricks or a smear campaign; the Hefer Commission was public and open; he participated in it and made it clear he would accept the outcome, which he did He conceded before this Commission, when it was put to him by the evidence leader, that the agent code name R5452, which he had said was Mr Ngcuka, was apparently later identified as relating to a certain Vanessa Brereton <sup>158</sup>

- 209 Two points need to be made by this Commission of Mr Shaik's above evidence Firstly, it was meant to demonstrate the dangers of manipulation of information by intelligence agencies You therefore need people of integrity to populate intelligence structures The second thing is to point out the lack of truth, as Mr Shaik himself admitted, of his allegations against Mr Bulelani Ngcuka who, in any case, was not seen as an implicated person by this Commission and therefore not invited to appear. The Commission does not therefore express itself on what clearly appears to be Mr Shaik's self-justification for levelling seriously damaging accusations against Mr Ngcuka, which were rejected by the Hefer Commission. It is a matter of public knowledge that the Hefer Commission's finding was that there was no evidence that Mr Ngcuka was an apartheid spy In fact, it is clear from Mr Shaik's evidence that there was hardly any factual basis to accuse Mr Ngcuka of having been an apartheid spy as he presented no findings of his 1980's investigation There is also the fact that his own brother was being prosecuted by the National Director of Prosecutions, something which could justifiably cause him to be biased.

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<sup>158</sup> Page 60 line 1 to page 62 line 6

210. As far as the memorandum was concerned, Mr Shaik said it was well received by the office of the Secretary General of the ANC. In it, suggestions were made as to the accessibility to intelligence documents by this Commission; namely, that the ANC could approach the Inspector General of Intelligence for access to documentation through declassification; both MR Shaik and Mr Maqetuka were not willing that documentation be provided to the ANC as that would have been in violation of the Constitution; they showed the ANC the correct way.<sup>159</sup>
211. Mr Shaik could not substantiate the allegations of political conspiracy raised by former President Zuma to stop him from rising to power. He said before 1994 Mr Zuma, did once tell him that he had information that there were two foreign agencies which did not want him (Zuma) to rise to the Head of Intelligence or to assume a Ministerial position; possibly not even to rise within the ANC as well. However, he did not give reasons. Mr Shaik was not aware of a conspiracy to topple Mr Zuma, or that this Commission was the culmination of such conspiracy. In fact, one of the things called for by the memorandum submitted to the then Secretary General of the ANC, Mr Gwede Mantashe, was the establishment of a commission, and to say things were not going right in the country; there was no conspiracy against Mr Zuma.<sup>160</sup> The conspiracy theory raised by Mr Zuma against himself was therefore disputed by Mr Shaik.

## THE EVIDENCE OF MR LIZO NJENJE

212. Mr Lizo Njenje filed an affidavit with the Commission, which he confirmed at the beginning of his oral evidence and which was filed of record; the affidavit was attested

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<sup>159</sup> Page 62 line 7 to page 63 line 9

<sup>160</sup> Page 64 line 1 to page 68 line 25

to on 20 August 2019. His evidence must therefore be considered in conjunction with his affidavit <sup>161</sup>

- 213 Mr Njenje, who also acquired the name Gibson, held the position of Director within the Intelligence Services. He left the country in 1977 to join the ANC. He went for military training after joining Umkhonto we Sizwe; he later went for specialized intelligence training in the Soviet Union, returned to Africa and joined the intelligence and security unit of the ANC in which he served, from 1979 until 1994. <sup>162</sup>
214. Mr Njenje played various roles and carried out various responsibilities in the department of intelligence and security within the ANC; he did the security vetting of people coming through Mozambique to join the ANC, whether to go to school or to join Umkhonto we Sizwe; he did that until around 1980/1981 based at the "DIS" office in Maputo; submitting reports on all the biographies submitted by field workers and getting reports from Swaziland, Lesotho and South Africa with sensitive intelligence reports which he would compile and consolidate and then send to Lusaka weekly<sup>163</sup>. He would come to know of threats of infiltration into the ANC; to know of the identity of such people, which information he would give to the leadership of his department in the ANC, specifically the President of the movement. It would be the information received from interviews, or the media and from agents, membership of the ANC or people working underground as well as information form amongst the ranks within the enemy <sup>164</sup>
- 215 Mr Njenje played a role during the CODESA negotiations, such as looking at laws for the new dispensation, security of the ANC leaders such as Mr Mandela and the setting up of the working committees of intelligence for the new dispensation; he did not join

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<sup>161</sup> Page 73 line 16 to line 24

<sup>162</sup> Page 74 line 22 to page 75 line 4 and paragraphs 1 and 2 of Mr Njenje's affidavit

<sup>163</sup> Page 75 line 5 to line 20

<sup>164</sup> Page 75 line 21 to page 77 line 9



the new intelligence structures as he resigned from the DIS (Department of Intelligence and Security of the ANC) in December 1994 in the face of the then forthcoming amalgamation of the different forces which started happening around January 1995. He went into the private sector.<sup>165</sup>

216. In 2002 Mr Njenje was headhunted to serve as Deputy Director General for the South African Secret Service. In 2003, he became the Deputy Director General: Operations, National Intelligence Agency. He resigned in late 2005 due to problems that arose between President Thabo Mbeki and Mr Billy Masetla, then Director General of the National Intelligence Agency, an issue which has no bearing on the Commission's Terms of Reference: Mr Njenje was Mr Masetla's deputy at the time.<sup>166</sup>
217. In 2009, while in the private sector, Mr Njenje was approached by Dr Cwele, then Minister of State Security, who told him that President Zuma wanted him to join the government as Head of Intelligence Services. He agreed and joined the State Security Agency as Director for Domestic Branch; Mr Shaik was head of the Foreign Branch and Ambassador Maqetuka was the Director General, to whom the two reported. Mr Njenje's duties related to counter-intelligence services, and generally, he had to look after the security of the country in terms of intelligence.<sup>167</sup>
218. Upon his appointment, Mr Njenje received instructions from Minister Cwele as to which matters he should investigate. Dr Cwele showed interest in the Principal Agent Network (PAN) programme, which was described as a covert collection structure established outside the agency (SSA), comprising people and infrastructure not linked to the agency. It was not an agency *per se*, but supposed to be under the Director General.

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<sup>165</sup> Page 77 line 17 to page 79 line 7 and paragraph 3 of Mr Njenje's affidavit

<sup>166</sup> Page 79 line 8 to page 80 line 14 and paragraphs 4 and 5 of Mr Njenje's affidavit

<sup>167</sup> Page 80 line 19 to page 81 line 17 and paragraphs 7, 8 and 9 of Mr Njenje's affidavit

Operations. However, upon investigations into it as instructed by Dr Cwele, who suggested that it was established outside the legal framework, Mr Njenje did establish that it fell outside the legal framework <sup>168</sup> The investigation established that the PAN was instead under the auspices of the Deputy-Director General Operations Mr Arthur Fraser, as revealed by the investigation carried out by Mr Njenje, in respect of which he received reports from time to time from the investigators; he reported to Minister Cwele regularly. <sup>169</sup>

219. While the investigation was still going on, Mr Fraser, other members and someone who was responsible for what was called the Covert Support Unit and others were suspended and Mr Fraser resigned. The allegations against them generally related to the acquisition of properties, vehicles and the employment of people who were either members or non-members as part of the PAN programme; these allegations could be summed up as being about the abuse of funds <sup>170</sup>
220. During 2009 Mr Njenje, Mr Shaik and Ambassador Maqetuka were involved in the restructuring of the intelligence services following the amalgamation of the NIA and the SASS into the State Security Agency (SSA). Minister Cwele's initial enthusiasm later waned and he would take too long to respond to their submissions until the relationships became strained in relation to the restructuring; problems developed and, after they had raised the matter with him, he promised to pick up speed. As a result, their work was hampered <sup>171</sup> Because of that, there was a decision by the three of them, the top three, to see the President. That was President Zuma. The Minister was sitting on submissions

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<sup>168</sup> Page 80 line 23 to page 83 line 25

<sup>169</sup> Page 84 line 1 to line 15 and paragraphs 10 of Mr Njenje's affidavit

<sup>170</sup> Page 84 line 16 to page 85 line 10 and paragraph 12 of Mr Njenje's affidavit

<sup>171</sup> Page 85 line 14 to page 87 line 1 and paragraph 13 of Mr Njenje's affidavit

for too long and wanted to be involved in operational and administrative issues which should have been left to the three of them. The result was tension.<sup>172</sup>

221. In 2010 Mr Njenje came to know about proposed investigations into the Gupta family; he had received information from his operatives; his section (domestic) worked together with foreign section; it was investigations relating to the Uranium Mine. He found the investigations going on when he was appointed but he did not think that the Minister was aware of the investigation.<sup>173</sup>
222. Somebody within Mr Njenje's section informed the Minister about the investigation and the Minister called the three of them for a meeting. The Minister raised the question of an alleged conflict of interest on the part of Mr Njenje in terms of his business in relation to the Gupta investigations about the Uranium Mine, but he did not tell Mr Njenje where he got the information from. He did not even raise the issue of Mr Njenje's recusal. Nobody had raised the issue of his alleged conflict of interests. It was just a question of rumours. He did not know of other business interests of the Guptas and he did not have any active business interests, once he started working for the State. Not even former President Zuma raised the issue of his being conflicted.<sup>174</sup>
223. Reasons for the investigation of the Guptas were their alleged influence on the former President and their association with the President's children; also their business with certain elements using resources of the country, putting the country in jeopardy. At the meeting with the Minister, Mr Njenje questioned him about the manner in which he went about raising the issue of his alleged conflict of interests. Mr Njenje was very unhappy. He felt attacked without any evidence and was very angry; the Minister could not tell

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<sup>172</sup> Page 87 line 2 to page 88 line 6

<sup>173</sup> Page 88 line 7 to page 89 line 19

<sup>174</sup> Page 91 line 18 to page 93 line 16



which businesses he had which put him in conflict with the Gupta's interests and yet he knew that he was in business when he recruited him and he had declared his interests; he had resigned the business interests he had when he came in which could have caused conflict of interest<sup>175</sup>

224. Minister Cwele said that the investigations against the Guptas should stop because he felt that that would amount to investigating the then President, namely, Mr Zuma. However, the three told him that they were not investigating the President, but sought to help him and the Executive to know better how to deal with that family; there was also to be an investigation into the funding of the purchase of the Shiva Uranium Mine by the Guptas; the investigation involved other people from India and Pakistan; also to be investigated were illegal sales of South African technology to some of those countries; but he did not think the Minister linked the investigation to attempts to unseat the President. They were looking at all angles<sup>176</sup>. Minister Cwele's view, which he expressed forcefully, was that the investigations should not lead to the President.<sup>177</sup> The Minister seemed to have other interests in stopping the investigations other than national interests. In effect he said that, if they continued with the investigation, they would be investigating the President; he did not give any other reasons.<sup>178</sup> The three of them indicated to the Minister that they were not convinced why the investigation should stop and that they were going to continue with it but he remained unpersuaded.<sup>179</sup>

225. During 2010 Mr Njenje got a call from an old friend and comrade, Mr Archie Luhlabo, to come and see him urgently in Sandton. He was together with Ms Gugu Mtshali, now Ms

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<sup>175</sup> Page 93 line 17 to page 95 line 25

<sup>176</sup> Page 96 line 16 to page 99 line 21

<sup>177</sup> Page 100 line 4 to line 17

<sup>178</sup> Page 101 line 4 to line 25

<sup>179</sup> Page 104 line 1 to 6

Motlanthe. He found them at the house of former President Motlanthe. Mr Njenje could not say when in 2010 this was. It was just the three of them. Mr Njenje said he found them fuming; they told him that they had just had a meeting after which they phoned a certain Adv Sandile Nogxina, then Director-General of the Department of Mineral Resources who advised them to call him (Mr Njenje). Mr Njenje then called Adv Nogxina, who asked him to help calm down the situation.<sup>180</sup>

226. As it turned out, Ms Gugu Mtshali and Mr Luhlabo were directors of Imperial Crown Trading (ICT). The situation was that Arcelor Mittal, a mining company, had a 21% stake in Sishen Mine and its mining rights had expired on 30 April 2009. Upon the expiry of those rights, Sishen Iron Ore (a subsidiary of Kumba) and ICT had applied for those mining rights which were awarded to ICT in November 2009. The legality of that award was challenged, resulting in litigation between Kumba, on the one hand, and, the ICT and the Department of Mineral Resources, on the other hand. The litigation took some time.<sup>181</sup> Mr Njenje gave further background information the end of which was that ICT sold 50% of the rights it had acquired from Sishen Ore to a company known as JIC Mining Services in which Mr Duduzane Zuma and the Guptas had an interest. The meeting Mr Njenje had with Ms Gugu Mtshali and Mr Luhlabo related to this 50% sale of ICT's stake to that Zuma/Gupta entity.<sup>182</sup>

227. Ms Mtshali and Mr Luhlabo told Mr Njenje that they were angry because they had been called to Saxonwold by Ajay Gupta who told them that he wanted a 90% stake in ICT which he said they had to give to him as he was the only person with the financial muscle and political backing to get the prospecting rights.<sup>183</sup>

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<sup>180</sup> Page 105 line 4 to page 108 line 6 and paragraph 17 of Mr Njenje's affidavit

<sup>181</sup> Page 110 line 12 to page 112 line 14 and paragraph 17 of Mr Njenje's affidavit

<sup>182</sup> Page 112 line 15 to page 113 line 17

<sup>183</sup> Page 114 line 6 to line 17

228. Adv Nongxina was in London with President Zuma at the time Mr Njenje spoke to him over the phone when he was in the company of Ms Mtshali and Mr Luhlabo. In effect, Mr Nongxina was asking Mr Njenje to get the two to surrender their shares to the Guptas; he said he himself was under pressure from President Zuma in London. Mr Njenje tried to persuade them, but they did not agree. Eventually the three of them agreed to go to the Guptas and Ms Mtshali phoned Mr Ajay Gupta to tell him that they were coming, together with Mr Njenje, as suggested by Adv Nongxina. At that stage Mr Njenje saw his role as a mediator between the parties.<sup>184</sup>
229. Although Mr Njenje and Adv Nongxina were friends, he did not know why the latter chose him to go and speak to Ms Mtshali and Mr Luhlabo, but, of course, Adv Nongxina knew that Mr Njenje was working for the State Security Agency at the time.<sup>185</sup> Subsequently, as it turned out of the litigation, ICT lost the prospecting rights it had acquired which was a 21% stake.<sup>186</sup> The trio went to the Gupta's place and met with Ajay Gupta there. When Mr Njenje introduced himself to him, he said that he knew his name and where he was working. Mr Ajay Gupta said that Ms Mtshali, Mr Luhlabo and a third person should be content to retain 10% and give the Zuma/Gupta entity 90% instead of walking away with nothing. Mr Ajay Gupta said that it was not a matter of them being greedy, but because he too had others to look after.<sup>187</sup>
230. Ms Mtshali and Mr Luhlabo were adamant that they were not going to accept what Mr Ajay Gupta was demanding; they became emotional and even mentioned that the Gupta's were foreigners. Mr Njenje had to calm down the situation; he knew of no basis for Mr Gupta's claim, except that he was aware that Advocate Nongxina was in London with the former President. Mr Gupta also mentioned that he could help settle the legal

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<sup>184</sup> Page 115 line 4 to page 119 line 18

<sup>185</sup> Page 120 line 16 to page 121 line 2

<sup>186</sup> Page 122 line 8 to line 24

<sup>187</sup> Page 123 line 21 to page 124 line 17



dispute with Arcelor Mittal. He said he was not going to pay for the 90% though. In return for that, he would use his influence and financial backing to ICT to overcome its problems including the litigation Ms Mtshali and Mr Luhlabo were at times shouting at him and reminding him he was a foreigner, they could not just come and grab; eventually, though, they conceded to the demand, giving 50% away, but for no payment.<sup>188</sup> Subsequent to the meeting, Mr Ajay Gupta told Mr Njenje that, upon Ms Mtshali phoning him to arrange the meeting he, Mr Gupta, phoned and checked with the former President whether Mr Njenje was the right person. He said and that the former President answered in the affirmative and also said that Mr Njenje was his old friend and would sort things out. It was Mr Njenje's view that, at that time, people knew that the Guptas were friends of the President; add to that the fact that Mr Gupta said there were more people on their side to share with <sup>189</sup>

- 231 Mr Ajay Gupta was to use an entity known as JIC After Ms Mtshali and Mr Luhlabo had angrily agreed to giving 50% to the Duduzane/Gupta entity, Mr Njenje reported back accordingly to Mr Nongxina.<sup>190</sup> Mr Njenje subsequently arranged and held a meeting with Mr Ajay Gupta to express to Mr Gupta the concerns of the State Security Agency; he asked Mr Gupta what his role was with the former President; that they were causing the former President and the governing party some problems of bad publicity involving Duduzane Zuma as well, when they should be protecting the President as their friend Mr Gupta said he understood and promised to stop harassing people and that he would also talk to his brother, Atul. Mr Gupta agreed that it was not good for the former President to receive bad publicity He also said that his brother had first met Mr Mandela, then Mbeki and now Zuma whom they met when he was not yet having any

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<sup>188</sup> Page 125 line 3 to page 129 line 11

<sup>189</sup> Page 129 line 13 to page 131 line 4

<sup>190</sup> Page 133 line 24 to page 134 line 6

position in government and when he was in trouble, and that they would continue to look after Duduzane. Mr Njenje was talking to him in his official capacity, and reported back accordingly to his colleagues.<sup>191</sup>

232. From all that is said in the preceding paragraphs, it appears to the Commission that the investigation of the Guptas and their relationship with former President Zuma, including their possible influence they had with him as well as the possibility of their exploitation of that relationship for personal gain, was clearly justified as the top three intelligence officers felt.
233. During Mr Njenje's meeting with Mr Ajay Gupta, the latter asked him what Minister Cwele's interest in the family was. Mr Gupta told him of a fund raising occasion where they had bought a table which Minister Cwele came to join after asking another Minister to move; but Mr Njenje did not know what Minister Cwele's interest was in the family.<sup>192</sup>
234. Mr Njenje confirmed Mr Shaik's evidence that, after the trio had had a difficult meeting with Mr Cwele, when they insisted on investigating the Gupta family, they went to see the President in 2010 or early 2011 to raise their concerns about Minister Cwele with former President Zuma.<sup>193</sup> At that meeting former President Zuma confirmed his good relationship with the Guptas; how they took Duduzane into their company and that they came from a good family. Zuma's view was that the Guptas should not be investigated.<sup>194</sup>
235. Regarding the trio's problems with Minister Cwele, the former President said that, as adults, they should sit down and sort out the matter; he was not happy about their issues

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<sup>191</sup> Page 134 line 14 to page 137 line 11

<sup>192</sup> Page 137 line 10 to page 138

<sup>193</sup> Page 138 line 8 to line 21

<sup>194</sup> Page 138 line 22 to page 140 line 18

with Minister Cwele.<sup>195</sup> The former President's statement that the Guptas did not need to be investigated had a negative effect on the morale of Njenje's team. The former President would ask for reports but, on that occasion, it was clear that he did not want the investigation to go on despite being told that those were intelligence matters justifying an investigation; he did not give adequate reasons but simply said that there was nothing wrong with the Gupta family.<sup>196</sup>

236. The trio were demoralized; they were blocked from doing their work by Minister Cwele, and their appeal to the President was to no avail; he just said sit down and sort out the problem; and they were not securing any appointments.<sup>197</sup> The relation was not good; and Mr Njenje expressed opinions why the President did not want to see them at times despite attempts; they were worried about the influence of the Gupta family; going to the Joint Standing Committee on Intelligence did not help; and they could not whistle blow, they just could not continue to investigate once the President had said they should not.<sup>198</sup>

237. It appears that the trio did not take the matter to the Parliamentary Joint Standing Committee on Intelligence, but to the chair of the ruling party's caucus for them to try and intervene by exerting pressure by talking to the Minister and the President; the chair said he would see how to handle it and come back, but he did not come back.<sup>199</sup>

238. Turning to the investigations into the Principal Agency Network (PAN), by 2011 significant progress had been made with the investigation by Mr Njenje's team. They handed over their report to the Directorate for Priority Crime Investigation (the Hawks)

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<sup>195</sup> Page 140 line 19 to page 141 line 10 and paragraph 21 of Mr Njenje's affidavit

<sup>196</sup> Page 142 line 18 to page 144 line 18

<sup>197</sup> Page 146 line 1 to line 18

<sup>198</sup> Page 148 line 19 to page 149 line 11

<sup>199</sup> Page 150 line 22 to page 153 line 21



and to the NPA and everybody was ready for the prosecution. The investigations involved Mr Arthur Fraser: The crimes investigated were fraud and corruption; properties had been bought with ulterior motives which ended up with private individuals; people were employed without security clearance; 300 cars and computers were bought and not used. The PAN project was supposed to be an extension of the official intelligence structures, the domestic branch of the NIA.<sup>200</sup> The cars were parked in warehouses all over Gauteng; had been bought by funds earmarked for other operations, thereby putting those operations at a disadvantage. The number of houses bought was substantial, all over Gauteng; they were registered in the names of some private people including children. All in all an amount of about R600 million had been spend in that way.<sup>201</sup>

- 239 After Mr Njenje had held a meeting with the law enforcement agencies, following which they were all ready to prosecute, he got a call from Minister Cwele asking that they meet at OR International Airport. When they met, Minister Cwele said that the prosecution of Mr Fraser must stop. Despite Mr Njenje's protest that a lot of time and money had been spent in investigations, the Minister insisted and said it was President Zuma's decision; Minister Cwele said the President had said that the prosecution would compromise national security, despite Mr Njenje's protest to the contrary, and that what was in issue was pure crime. The Minister knew that Mr Njenje had handed over the file to the NPA as he was being briefed at all steps, and he was the one who had asked for the investigation; Mr Njenje, therefore, believed the Minister that it was the President's decision.<sup>202</sup>

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<sup>200</sup> Page 143 line 23 to page 156 line 25 and paragraph 22 of Mr Njenje's affidavit

<sup>201</sup> Page 157 line 3 to page 160 line 12

<sup>202</sup> Page 160 line 20 to page 164 line 6 and paragraph 23 of Mr Njenje's affidavit

240. After the meeting with Minister Cwele, Mr Njenje went back to his team to tell them that the prosecution would no longer proceed; he also informed the SIU and the NPA. It was a difficult message for him to convey as people had put in a lot of effort in the matter, sometimes despite threats to their lives. Although Mr Njenje did not specifically tell Minister Cwele that the matter was no longer in his hands but in the hands of the NPA, the Minister ought to have been aware of that. It is clear from the evidence of Mr Njenje that the office of the NPA accepted the proposition not to prosecute; which is not clear why but apparently on the Minister's say-so that the President's view was that the prosecution would compromise national security, overruling Mr Njenje's view that that would not be the case as the activities amounted to pure crime; (the documents had already been handed over to SIU who were also looking at possible seizures).<sup>203</sup>
241. After the above episode, Mr Njenje was offered a diplomatic post by Minister Cwele, at the instance of the President, to Rwanda, which he declined; a few days later the Minister called him to his office; this was in November 2011. He asked Mr Njenje if he was accepting the post, but, instead, Mr Njenje presented him with a letter of resignation. He reminded Minister Cwele that he was not the Minister of Foreign Affairs, and that such appointments were by the President, and that he, the Minister, had recruited him to become Head of Intelligence, domestic branch.<sup>204</sup>
242. Mr Njenje was firm in his evidence that the prosecution of Mr Fraser would not have compromised any national security as the President said; he was an expert in issues of national security; he and his team were the ones who advised the President on security and had there been any threat to national security, they would have picked it up. The issues raised by the investigation were pure crime. It was also his evidence that about

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<sup>203</sup> Page 164 line 7 to page 168 line 5

<sup>204</sup> Page 168 line 6 to page 170 line 9 and paragraphs 24 and 25 of Mr Njenje's affidavit

three years later, former President Zuma appointed Mr Fraser as head of State Security Agency <sup>205</sup> This would have been despite serious allegations against him that had been revealed by the PAN investigation

243. While attending a Cabinet Lekgotla in 2011, Adv Nongxina asked Mr Njenje to accompany him and his Minister Ms Susan Shabangu, then Minister of Mining, to a meeting she was to have with Ajay Gupta, for Mr Njenje to protect them as Mr Gupta was exerting pressure on the Minister. Mr Njenje agreed after approval by the Minister, and was told the meeting was going to be at the Sheraton Hotel; however, the Minister was later told by the former President that he knew about the meeting and that it was going to be at Mahlamba Ndlopfu (President's official residence) where, he told the Minister, Mr Ajay Gupta was waiting. When they arrived there, Mr Gupta ushered them into the President's study. The meeting was not a good one, said Mr Njenje. Mr Gupta was pressing Minister Shabangu to fast track their application for some mineral rights, in an overbearing manner. Mr Njenje intervened, reminding him that he was speaking to a Minister whereupon Mr Gupta apologized but kept on nagging. The Minister and Adv Nongxina told him that certain procedures had to be followed first and they would come back to him; he said he did not understand why things he wanted took so long; he wanted them to be done immediately. The meeting did not take long; the four of them were the only people in the meeting <sup>206</sup> The fact that the meeting was held at the President's official residence, and in his absence was, in Mr Njenje's view, for the Guptas to show how powerful they were; to show a Government Minister that she could be called to the President's study in his absence. <sup>207</sup>

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<sup>205</sup> Page 170 line 10 to page 172 line 19

<sup>206</sup> Page 173 line 11 to page 179 line 12 and paragraph 26 of Mr Njenje's affidavit

<sup>207</sup> Page 179 line 17 to page 180 line 10



244. Mr Njenje's evidence in the previous various paragraphs, including the stopping of the investigation of the Guptas, the episode relating to the acquisition of shares by the Guptas for nearly nothing, how pressure was brought to bear on Ms Mtshali and Mr Luhlabo, down to the holding of the meeting at Mahlamba Ndlopfu and what transpired there and the involvement of former President by the Guptas in all of these, was given to demonstrate the power of their influence and their potential role in the State capture saga.
245. It was placed on record before this Commission that the investigation relating to Mr Fraser into the PAN, was later resuscitated towards the end of 2018; the SSA resuscitated the investigation and the High-Level Review Panel led by Dr Mufamadi, about which more later, also looked into the matter.<sup>208</sup>
246. In relation to claims by former President Zuma of conspiracies against him prior to 1994, Mr Njenje said he worked for the ANC Intelligence Operation from 1979 to 1994. Intelligence information relating to the ANC operations in that period would therefore have come to his knowledge, especially as he worked as deputy to the Head of Information Processing, Dr Sizakele Siglashe, including information relating to threats to the ANC posed by infiltrators, personnel in the ANC as well as information about infiltrations; information about conspiracies against Mr Zuma would not have been confined to him; Mr Njenje would have come across it too. He was never aware of a plot or conspiracy by three intelligence agencies, including a South African one, prior to 1995, that targeted the former President; he believed that had there been such a thing, he would have known; his relationship with the former President at the time of return from exile and his assumption of the country's intelligence activities was good; he knew the former President closely from about 1980 and he was one of three people sent by

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<sup>208</sup> Page 180 line 12 to page 181 line 9

the ANC to assess chances of a negotiated settlement, led by Mr Jacob Zuma himself<sup>209</sup> His work involved providing security to the ANC leadership, including Mr Zuma; had Mr Zuma received information about threats to his life, he would have informed them for counter measures; Mr Zuma never gave such information and there was no reason for him not to do so.<sup>210</sup>

- 247 The above evidence therefore contradicted conspiracy claims by former President Zuma against himself.

### **THE EVIDENCE OF AMBASSADOR MZUVUKILE JEFF MAQUETUKA**

- 248 Ambassador Mzuvukile Jeff Maquetuka was formerly employed as the Director General of the State Security Agency; he was appointed in October 2009 and left 28 January 2012. He spoke of retirement but also of resignation; the situation being that while indeed he took a decision to resign more or less the same time with Mr Shaik and Mr Njenje, his period was left with a few months which he stayed out Ambassador Maquetuka made an affidavit for the Commission which was filed of record. It was his first statement, dated 13 December 2018. He made another one which was more detailed to address additional matters<sup>211</sup> which was also filed of record He came to the Commission to testify about matters relating generally to national security in its constitutional context and on principles governing the practice of national security. While he was the DG, Messrs Njenje and Shaik worked under him, both of whom testified before him His evidence was to also deal with issues on which the two had already testified, including about factual matters relating to Minister Cwele and former President Zuma, particularly in relation to the investigation of the Guptas; his evidence

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<sup>209</sup> Page 181 line 11 to page 183 line 3

<sup>210</sup> Page 183 line 3 to line 18

<sup>211</sup> Page 44 line 3 to line 24

was also to be on the investigation of the PAN that was supposed to be under the auspices of the SSA; he also testified on matters leading up to his decision to resign <sup>212</sup>

249 Ambassador Maqetuka had a lengthy experience in intelligence; from 1979 for the ANC while he was in exile until 2012 when he retired. While in exile, he received training in intelligence in the then German Democratic Republic and served for years in the ANC's Department of Intelligence and Security (DIS). When the intelligence agencies of the previous regime, the various homeland intelligence services, the ANC and the PAC intelligence services were integrated at the dawn of the new democracy to form the new National Intelligence Agency (NIA), he was part of it until his retirement or resignation. Ambassador Maqetuka was therefore eminently qualified to express his opinion on matters of intelligence.<sup>213</sup> He gave details of his training and intelligence background; including his degree in Communications in England in May 1994, and participation in the integration of the various intelligence services which was accomplished in January 1995.<sup>214</sup>

250. Upon integration and the formation of the NIA, Ambassador Maqetuka was appointed Deputy Director General of the NIA, which had different structures, in 1995; in that position, he dealt with domestic intelligence from 1995 to 1997 when he moved to serve in various national government departments including serving as an Ambassador to Algeria in 2007, after which, in 2009, he was appointed Director General of the State Security Agency <sup>215</sup>

251. In 2010, while serving as an Ambassador to Algeria, Ambassador Maqetuka was recalled for consultations at home. Upon arrival, he was informed by the then Director

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<sup>212</sup> Page 47 line 2 to line 19

<sup>213</sup> Page 47 line 20 to page 49 line 25.

<sup>214</sup> Page 50 line 2 to page 53 line 22 and also paragraphs 6 to 13 of his first statement

<sup>215</sup> Page 53 line 23 to page 55 line 23



General of the Department of the then Foreign Affairs (now DIRCO) Dr Ayanda Ntsaluba, that he was wanted back home for his former department; that is Intelligence, and that he would get a full briefing from the Minister of Intelligence, Dr Siyabonga Cwele.<sup>216</sup>

252. Ambassador Maqetuka indeed met with Minister Cwele. Minister Cwele told him that there was going to be formed a new agency, integrating the two separate agencies then, namely, the National Intelligence Agency (NIA) and the South African Secret Service (SASS); all structures of intelligence would be integrated into a new organization to be known as the State Security Agency (SSA) The Minister told him that he would be briefed by the President. Indeed, he met with the President who told him that he intended to appoint him. He agreed to the appointment and got himself released as Ambassador to Algeria Shortly before the press conference to announce his appointment, he met, for the first time, Mr Shaik and Mr Njenje, who, it turned out, were also going to be appointed although none of them knew into what position. It was at that conference that it was announced by Minister Cwele that Ambassador Maqetuka would be appointed Director General of the State Security Agency, deputized by Mr Shaik as head of the foreign component while Mr Njenje would head the domestic branch.<sup>217</sup>

253. Ambassador Maqetuka testified extensively on the importance of the Intelligence White Paper, which was developed probably just before 1994 It bears mentioning at the outset that his evidence on the White Paper will be dealt with at some length herein because one of the Commission's recommendations is a revisit of the document

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<sup>216</sup> Page 55 line 25 to page 57 line 7

<sup>217</sup> Page 57 line 8 to page 59 line 23

254. Ambassador Maqetuka's evidence sets out amongst others the philosophy of intelligence, the structure of intelligence and the code of conduct for intelligence practitioners or officers. He says the White Paper is usually seen as the most important document in the organization of intelligence, barring of course the Constitution; even more important than legislation as the latter is more of an operational guide.
255. The White Paper was formulated to inform intelligence provisions that were to be incorporated into the new Constitution. It informed the formation of a new culture of intelligence. In brief, the new intelligence dispensation would be a democratic one; it would not only concentrate on traditional military security matters but also deal with issues of human security; that is, the well-being of the people <sup>218</sup>
256. The Ambassador's evidence was that, when he and Messrs Shaik and Njenje were appointed, there was no clarification provided in relation to the philosophy, mission or intelligence intended for the newly formed SSA; there had been no opportunity for their orientation or briefing and yet the previous intelligence regime was different, with two separate services.<sup>219</sup> As his view was that the SSA should be structured in accordance with the principles and philosophy of the White Paper, Ambassador Maqetuka was made to discuss extensively the principles and philosophy of the White Paper, including international comparative studies that covered post-Cold War context and even in relation to the apartheid era. One of the important principles underlining the philosophy of intelligence as espoused in the White Paper was a shift from "State Security" to "National Security" where security is human centred. The other important aspect of national security was the interdependence amongst various organs of State, which would involve, where necessary, the sharing or cross-usage of skills. The example he

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<sup>218</sup> Page 63 line 22 to page 66 line 9 and paragraphs 25 and 26 and Ambassador Maqetuka's second statement

<sup>219</sup> Page 67 line 7 to line 22

gave was the issue of the Covid 19 pandemic, which, from different angles, was a matter of threat to national security. It was not only a threat from a health point of view, but from an economic one as well;<sup>220</sup> one could further argue that from an educational, sporting etc. point of view as well. He also made the point that policy makers should be told by intelligence structures what they need to know,<sup>221</sup> (as opposed to what they want to know). All those things were his unpacking of fundamental principles of sound intelligence practice.<sup>222</sup>

257. The establishment of the intelligence structures in 1994 and 1995 were intended to accord with the principles of intelligence discussed above. These included integrated national intelligence capability; political neutrality which is absolutely critical in a democratic country for the purpose of a democratic intelligence service in which intelligence operatives must be politically neutral and not act to the detriment of other political parties or to the detriment of the citizens. There are new methods of intelligence. One important principle is that people's interests come first; which was why the likes of him, Messrs Shaik and Njenje responded to the Commission's call to come and testify; they understood their functions as intelligence officers; Intelligence is concerned with the well-being of people and the country.<sup>223</sup>

258. One of the principles enunciated in the White Paper which Ambassador Maqetuka correctly emphasized, is the principle of oversight by Parliament, such as through the Joint Standing Committee on Intelligence (JSCI); but, as he pointed out, it would be pointless if such mechanisms did not work as he believed was unfortunately the case.<sup>224</sup>

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<sup>220</sup> Page 66 line 10 et seq

<sup>221</sup> Page 68 line 1 to page 82 line 18

<sup>222</sup> Paragraphs 25, 26 and 27 of his second affidavit

<sup>223</sup> Page 82 line 19 to page 86 line 13

<sup>224</sup> Page 86 line 18 to page 89 line 4



The other principle is the balancing between secrecy and transparency; that translates into the issue of classification and declassification of information, where there are standard norms globally. There must be a balance; the public must accept that they may not know everything, otherwise the work of operatives on the field would be jeopardized.<sup>225</sup>

259 Ambassador Maqetuka pointed to other sound principles of intelligence such as the Principle of the Separation of Intelligence from Policy Making in terms of which a policy maker is not supposed to interfere with the operations of the intelligence services.<sup>226</sup> Then there is the Principle of Effective Management Organization and Administration to ensure that there is no wrongdoing within the organization.<sup>227</sup>

260. There is also the Principle of Coordination of Intelligence and Liaison with Departmental Intelligence Structures; the principle being that South African's new intelligence dispensation is premised on coordinated intelligence; it would be dangerous for one department to take a product to the President or Cabinet which has not been checked by other departments, hence the need for coordination, though not necessarily always in respect of operational activity.<sup>228</sup> The next one is the Principle of Ethical Code of Conduct to govern the performance and activities of individual members of the service; it speaks to the command and control which leads to accountability based on ethics. It is not enough just to understand it, but also to know how to implement it; oversight bodies must exercise control. If you were to have an unethical intelligence service there would be mayhem in the country.<sup>229</sup>

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<sup>225</sup> Page 89 line 6 to page 90 line 5

<sup>226</sup> Page 92 line 13 to page 93 line 6

<sup>227</sup> Page 93 line 20 to page 94 line 3

<sup>228</sup> Page 94 line 12 to page 95 line 7

<sup>229</sup> Page 95 line 8 to line 25

261. Intelligence agencies must work in accordance with certain principles. Firstly, as required by the White Paper, they should accept the authority of democratic institutions of society; accept that no changes will be made to the doctrines and structures and procedures of the national security framework unless approved by the people and their respective bodies; furthermore, they should bring themselves to the contract entered into with the electorate through a mutually agreed set of norms and code of conduct <sup>230</sup>

The fact that the intelligence community operates at least to some extent in a confidential or secret manner, should not necessarily affect the need for a strict code of conduct. Our country's intelligence regime should be considered against the background of our history when intelligence and security services were a law unto themselves, which resulted in situations such as at Vlakplaas or the Koevoets activities. There must be a balancing because if everything were to be locked up in vaults, people would not know what is happening, yet it is not necessary for everything to be in secret; for example, Ambassador Maqetuka mentioned participation with other bodies such as the Human Rights Commission and the Institute of Security Studies who participated around 2003/2004 in the development of a National Security Strategy at the Council for Scientific and Industrial Research (CSIR); yet it is true that there must be secret activities; not everything can be open which is why there is an Intelligence Organization <sup>231</sup>

262. Departing from the situation under the apartheid regime when there was one centralized national civilian intelligence (the National Intelligence Service), in 1994/1995 two major intelligence structures were created in line with the White Paper. These were the National Intelligence Agency (NIA) and the South African Secret Service (SASS). The former dealt with domestic intelligence while the latter dealt with foreign intelligence. The advantages were specialized expertise in those fields, although there would be

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<sup>230</sup> Page 96 line 3 to line 29

<sup>231</sup> Page 96 line 21 to page 101 line 10

some cooperation. Ambassador Maqetuka held the view that that arrangement, which was informed by the White Paper, was the best. It was also his view that, if one wanted to have a tight or firm control over the country's intelligence, collapsing the two into one structure such as the SSA (as it was done through the contested proclamation) would make things easier for one because there would be one Director General instead of two Directors General.<sup>232</sup> The evidence of Ambassador Maqetuka and Messrs Shaik and Njenje show that that was precisely what happened following the amalgamation of the two sections into the SSA by former President Zuma through the proclamation.

263. Regarding parliamentary oversight post 1994/1995, legislation had provided for a Joint Standing Committee on Intelligence and two Inspectors General of Intelligence (later only one to save costs). The committee comprised members of Parliament from different political parties but were not accountable to their parties; they would also have to get security clearance; furthermore, it held its meetings behind closed doors and it issued reports, though Ambassador Maqetuka was not sure to whom within Parliament the reports would go; but presumably somewhere Parliament had to have some control.<sup>233</sup>

264. The other institution that exercised oversight was the office of the Inspector General. The Inspector General received complaints from members of the public, be it individuals or groups, against intelligence bodies; such an office was an international trend and not unique to South Africa. It appears from the evidence of Ambassador Maqetuka that there were at least some people within the intelligence who were of the view that an Inspector General did not have an unfettered access to all the information or documents, although personally he would have preferred such access. He had high

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<sup>232</sup> Page 104 line 12 to page 106 line 3

<sup>233</sup> Page 106 line 16 to page 109 line 19



regard to those who served in that office. He felt that it would cause a problem if the body to be investigated were to withhold information from the investigator<sup>234</sup>

265 As far as the White Paper was concerned, the National Intelligence Coordinating Committee (NICOC) was also important in relation to the control and coordination of intelligence. Ambassador Maqetuka was in fact the Coordinator for Intelligence from 2002 to 2004. He knew how it was structured and how it worked. Its task was, in his words, to generate the national strategic intelligence product, which went to Cabinet; there would also be other products it produced depending on the situation. It, therefore, fulfilled a very important function. There was also a Cabinet Committee on Security and Intelligence comprising Security Cluster Ministers which received reports from the NICOC.<sup>235</sup>

266 The White Paper also envisaged a transformed intelligence through a transformed methodology, which aimed for demystifying, and building trust in the national intelligence community where legal limits for the classification and declassification are clearly understood and accepted by society; in Ambassador Maqetuka's view, the process of declassification took too long to mature.<sup>236</sup> Interference with the lawful activities of internal parties and organizations would be prohibited; the aim was to prohibit interference with the legitimate activities of opposition political parties. It would be like treason to do so.<sup>237</sup> So too is disinformation about political parties by a national intelligence organization because it is a national asset; in fact engaging in assisting a

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<sup>234</sup> Page 109 line 20 to page 113 line 13

<sup>235</sup> Page 113 line 14 to page 115 line 10

<sup>236</sup> Page 115 line 12 to page 116 line 12

<sup>237</sup> Page 116 line 16 to page 118 line 2

political party or individuals within that party to achieve political objectives would lead to being charged under the various intelligence Acts <sup>238</sup>

267 As stated earlier, the White Paper was developed in 1994; but it is still of relevance today although it needed to evolve to adapt to the changing demands nationally, regionally and continentally such as dealing with international terrorism or demands on the African continent. That would put South Africa where it once proudly was on the Continent but Ambassador Maqetuka was not sure that we still enjoy that esteem as a beacon of hope that the White Paper had envisaged. He has not seen any other White Paper since the one developed in 1994 <sup>239</sup>

268 It was Ambassador Maqetuka's view therefor that the White Paper should be revisited and, if need be, be amended; he said there was no need to re-invent the wheel; its basic underlying principles are still relevant <sup>240</sup>

269 It was not only Messrs Shaik and Njenje who were concerned about the restructuring of the SSA through a proclamation; Ambassador Maqetuka was too; they felt it should have been through National Legislation as required by the Constitution; in fact, Ambassador Maqetuka said he raised this concern already at the time of their appointment in October 2009. <sup>241</sup>

270. Ambassador Maqetuka, Messrs Shaik and Njenje, together with the legal team, expressed some concerns about the Proclamation also in relation to the then Draft State Security Bill; both of which they felt were in conflict with the Constitution and they

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<sup>238</sup> Page 119 line 1 to line 10

<sup>239</sup> Page 120 line 18 to page 122 line 16

<sup>240</sup> Page 122 line 18 to page 124 line 4

<sup>241</sup> Page 124 line 9 to page 125 line 8 and paragraph 28 of Ambassador Maqetuka's affidavit

brought this to the attention of Minister Cwele in a document on 28 April 2010.<sup>242</sup> It is therefore clear that the concerns about the legality of the Proclamation of 11 September 2009 in terms of which the SSA was created was raised early with the Minister. In his letter to the Minister, Ambassador Maqetuka drew the Minister's attention to certain practical problems which would arise especially in regard to the reporting lines; the problems were largely organizational in relation to the structures that the new dispensation sought to bring about, and whether those structures were appropriate for the efficient functioning of the intelligence community; and that the new structure went against the philosophy of the White Paper, taking the situation back to the regime of centralized authority under the Apartheid regime.<sup>243</sup>

271. Ambassador Maqetuka confirmed the contents of the letter he had written to then President Zuma dated 14 November 2011 in which he asked for the President's intervention to resolve a number of concerns he had raised that related to how Minister Cwele, ran the department, in a manner that undermined his mandate as the Director General.<sup>244</sup> The Minister had by and large been dismissive of his concerns, including the queries about the validity of the proclamation. As already indicated, in Ambassador Maqetuka's view, the correct way to restructure the SSA should have been through Parliament where there would have been public participation.<sup>245</sup> Yet the relevant parliamentary committee, which in all probability must have been aware of the proclamation, failed to do anything; it, therefore, ought not to have mattered whether or not the intelligence chiefs specifically asked for their intervention.<sup>246</sup>

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<sup>242</sup> Pages 125 line 9 to page 127 line 4 and paragraph 30 of Ambassador Maqetuka's affidavit

<sup>243</sup> Page 131 line 10 to page 133 line 24 and paragraph 31 of Ambassador Maqetuka's affidavit

<sup>244</sup> Page 134 line 9 to page 135 line 13 and paragraph 33 of Mr Maqetuka's affidavit.

<sup>245</sup> Page 135 line 16 to page 137 line 25

<sup>246</sup> Page 139 line 16 to page 141 line 16



272. Ambassador Maqetuka's view is that in terms of the Constitution it is the President who guides the Intelligence Services, a duty the President cannot assign to a Minister; what can be delegated is the authority to administer the functions of the intelligence; and that, prior to 1994 and immediately thereafter there was no Minister of Intelligence Services. However, there was a Deputy Minister of Intelligence (the late Joe Nhlanhla) in charge of such administration, but reporting to the Minister of Justice (the late Dullah Omar) to whom the President had delegated such authority. There was, therefore, in his view, no need to have a Minister of Intelligence (Dr Cwele) as it happened under former President Zuma; on this point, Ambassador Maqetuka was therefore agreed with Mr Shaik <sup>247</sup> Having a Minister of Intelligence was in his view in conflict with the principles set out in the White Paper; such a scenario compromises the separation between Intelligence and Policy maker and it should have been preceded by public debate <sup>248</sup> When there is a Minister of Intelligence who directs intelligence they may find themselves in a difficult situation when dealing with intelligence reports because they would be from the ruling party; for example, they may be getting contrary instructions from their party <sup>249</sup>
273. In the Ambassador's view, the restructuring of the Intelligence through the proclamation referred to above was effected by what he called the post-Polokwane Zuma faction simply to assert power by taking control of the Intelligence without proper application of mind. In fact in retrospect, the establishment of for example the parallel covert Intelligence Operations by Mr Arthur Frazer, pointed to a more sinister motive; and those who refused to serve that broader agenda like him were replaced to enable the pursuance of a broader agenda <sup>250</sup> They were pushed out; not only him, Shaik and

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<sup>247</sup> Page 141 line 17 to page 145 line 19

<sup>248</sup> Page 145 line 19 to page 146 line 23

<sup>249</sup> Page 148 line 2 to page 149 line 9 and paragraphs 38 and 39 of Ambassador Maqetuka's affidavit

<sup>250</sup> Page 154 line 21 to page 156 line 20 and paragraphs 44 to 46 of Ambassador Maqetuka's affidavit

Njenje. He mentioned a number of people who had been recruited by former President Zuma, some of them from the private sector, but who were later pushed out. Yet those were the people who had shared a common background with former President Zuma and had all been in exile with him. They were constructively dismissed, he believed, to make way for pliable people.<sup>251</sup> He supported his view with reference to the difficulties that arose when they wanted to investigate the Guptas and the establishment of the parallel security structure under Arthur Fraser.<sup>252</sup>

274. Ambassador Maqetuka gave an account of how he briefed his team about the difficulties they were encountering; he also gave an account of how he similarly briefed Parliament's Committee on Intelligence about the problems they were having; that they were in deep trouble.<sup>253</sup> At the end of the two day briefing of the Committee, the chair thereof, Mr Burgess, said they would be called back to Cape Town for the discussion of the issues; nothing further was heard; there was no follow-up.<sup>254</sup> On the basis of this evidence, it can be said that the Parliamentary Joint Intelligence Committee did not do much, if anything at all, to address the issues raised by the Director-General of Intelligence and his team. After Ambassador Maqetuka and Messrs Shaik and Njenje had resigned, Ambassador Dlomo was appointed Acting Director-General, and later, Mr Arthur Fraser – the very person who had headed the PAN project that was investigated on the concern of Minister Cwele – took over as Director-General. In this respect, Ambassador Maqetuka agreed with the relevant parts of Mr Pauw's book, *The President's Keepers*.<sup>255</sup>

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<sup>251</sup> Page 158 line 7 to page 161 line 15 and paragraphs 44, 45 and 46 of Ambassador Maqetuka's affidavit

<sup>252</sup> Page 163 line 20 to page 164 line 13 and paragraph 47 of his affidavit

<sup>253</sup> Page 166 line 3 to page 168 line 25

<sup>254</sup> Page 169 line 13 to page 170 line 3 and page 171 line 11 to line 19

<sup>255</sup> Page 170 line 7 to page 171 line 9

275. Ambassador Maqetuka dismissed the argument that the investigation into the Guptas had nothing to do with National Intelligence, as former President Zuma suggested. Firstly, Ambassador Maqetuka said national security as understood in terms of the White Paper relates to the preservation of peace, stability, development and progress. It is about the economic development of the country and the well-being of the citizens; investigations into corruption, which negatively affects the economy and the well-being of people, is, therefore, a matter of concern for Intelligence and falls within its mandate, unless one has an archaic concept of intelligence, namely, military security type of intelligence.<sup>256</sup> When one wants to destabilize a country or people, one destroys institutions which may be stumbling blocks, like the Intelligence.<sup>257</sup> This is because it is the duty of intelligence structures to warn against threats to the economy and the well-being of citizens; there is no other government department to do that.<sup>258</sup>
276. In the Commission's view, a strong case is made, from the foregoing evidence, that there were deliberate efforts made, post Polokwane, to capture national intelligence; furthermore, efforts were made to thwart investigations into the Guptas.
277. As to what initially sparked interest in the Guptas, Ambassador Maqetuka confirms the evidence Mr Shaik and Mr Njenje that it arose because the Americans had raised the concern that the Guptas were getting funds from Iran to buy the Shiva Uranium Mine.<sup>259</sup> The second angle from which the need arose to investigate the Guptas, arose from the issue of Minister Mbalula having said that he was informed of his impending appointment as Minister by the Guptas even before he was told by the former President. It needed to be investigated for two reasons according to Ambassador Maqetuka. Firstly, to them,

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<sup>256</sup> Page 171 line 21 to page 173 line 3 and paragraphs 46 to 51 of the witness's affidavit.

<sup>257</sup> Page 173 line 18 to line 22

<sup>258</sup> Page 173 line 23 to page 174 line 15

<sup>259</sup> Page 174 line 23 to page 175 line 13 and paragraph 52 of the witness's affidavit.



for Minister Mbalula to be informed in advance by an outsider posed a serious security risk. Secondly, there was a need to protect the former President as that would tarnish his name; Mr Maqetuka said they had since been vindicated by the subsequent developments.<sup>260</sup>

278. Ambassador Maqetuka, Mr Shaik and Mr Njenje took the decision that Mr Njenje, head of domestic intelligence (below Mr Maqetuka as the DG of SSA), would conduct the investigations.<sup>261</sup>

279. While waiting for Mr Njenje to conduct the investigation, Ambassador Maqetuka received a message from then Minister Cwele summoning the three of them to Cape Town. Arriving in Cape Town, they met with the Minister, who had his staff, including the person now known as Ambassador Dlomo. The Minister told them that Mr Njenje's investigation of the Gupta's relationship with former President Zuma was irregular; he said it was not *bona fide* as Mr Njenje was conducting the investigation to protect his own business interests. Mr Maqetuka disputed that. Asked for proof thereof and said in any case that could not be the reason to stop the investigation as Mr Njenje could be removed from the matter. Moreover, said Ambassador Maqetuka, it was not the Minister's area as a member of the Executive to determine what the operations should be; operations start on the basis of information received.<sup>262</sup>

280. Not even a conflict of interest on the part of Mr Njenje would have been a valid reason to stop the investigations because he could simply have been removed and the

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<sup>260</sup> Page 175 line 14 to page 178 line 8 and paragraph 54 of the witness's affidavit.

<sup>261</sup> Page 178 line 8 to page 179 line 8 and paragraph 55 of the witness's affidavit.

<sup>262</sup> Page 179 line 9 to page 183 line 23 and paragraphs 56 to 60 of the witness's affidavit; and page 184 line 9 to page 185 to line 3

investigation continued; what was more, the Minister did not even ask for the reasons behind the investigation; had he done so, he would have been briefed accordingly <sup>263</sup>

281 Ambassador Maqetuka did not know who had informed Minister Cwele about the investigation into the Guptas. He was the only person, given his position, to inform the Minister and he had not yet done so yet as the decision to investigate had just been taken. Whoever informed the Minister did so in breach of the protocol rules <sup>264</sup>

282. Ambassador Maqetuka could not say how long the meeting lasted, possibly three hours. <sup>265</sup> In all that period he was not given the opportunity to explain to the Minister as to what gave rise to the investigation; the discussion went back and forth about Mr Njenje's alleged conflict of interest and the Minister's contention that it was an investigation about former President Zuma. <sup>266</sup> When they could not agree with him, they told him that they wanted to take the matter to the former President. <sup>267</sup>

283 Although Ambassador Maqetuka could not recall the Minister giving direct instructions that the investigation should stop, he said that the Minister's clear attitude was that it should stop; he said the investigation was Mr Njenje's agenda to safeguard his interests against the Guptas; anyway Ambassador Maqetuka makes the point that he would not have stopped the investigation even if the Minister had given such instructions. <sup>268</sup> The Minister did not say which business interests Mr Njenje had which he wanted to promote; and neither did Njenje, himself or Mr Shaik know <sup>269</sup>

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<sup>263</sup> Page 185 line 4 to page 186 line 18.

<sup>264</sup> Page 187 line 20 to page 189 line 22

<sup>265</sup> Page 190 line 4 to line 20

<sup>266</sup> Page 190 line 24 to page 191 line 16

<sup>267</sup> Page 191 line 18 to page 192 line 16

<sup>268</sup> Page 192 line 17 to page 194 line 6

<sup>269</sup> Page 194 line 7 to line 18

284. Ambassador Maqetuka, Mr Shaik and Mr Njenje did finally meet with the President. Mr Njenje made the presentation to the former President about the issue of the Americans (concerning the Shiva Uranium Mine) and the issue relating to Minister Mbalula's appointment. The former President listened throughout, though, according to Ambassador Maqetuka his body language showed that he did not like what he was being told; at one time he asked for the report which Ambassador Maqetuka said he could not give to him as he, the former President, was conflicted. The former President was calm and also talked about his relationship with the Guptas; the meeting could have taken more than two hours.<sup>270</sup>

285. During the meeting the former President did not raise the issue of Mr Njenje's conflict of interest, even though he was told the Minister had raised it.<sup>271</sup> According to Mr Maqetuka, the former President did not express a view as to whether the investigation should stop or not, except that he gave a long explanation about his relationship with the Guptas and how it started.<sup>272</sup> When Mr Njenje briefed the former President, he was not presenting a formal report, but rather reading from his notes; nor did the Mr Maqetuka see a formal report or a scoping report until he left in 2012.<sup>273</sup>

286. Ambassador Maqetuka expressed the opinion, which he conceded was not factual, that the President must have already been briefed by Minister Cwele prior to their meeting with him; and secondly, although he did not order that the investigation be stopped, the former President had bought into Mr Cwele's story of Mr Njenje's conflict of interest; he based his opinion on, firstly, the fact, that after the meeting it became difficult for them to get an appointment with the former President; secondly, on the fact that the former

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<sup>270</sup> Page 197 line 19 to page 200 line 20

<sup>271</sup> Page 201 line 9 to page 202 line 1

<sup>272</sup> Page 202 line 8 to line 15

<sup>273</sup> Page 202 line 18 to page 203 line 19



President never asked for a progress report.<sup>274</sup> However, after some engagement with the Chair of the Commission Ambassador Maqetuka conceded that it was his own opinion that the former President did not want the investigation to proceed; his conclusion was based not on what the former President actually said in the meeting, but on what happened after the meeting because in the meeting the former President did not, unlike Mr Cwele, say that the investigations should stop.<sup>275</sup>

287. After the meeting with the former President, Ambassador Maqetuka felt that they were no longer wanted in the institution; they did not proceed with the investigation; and they left at different times; Messrs Shaik and Njenje resigned and Mr Maqetuka too informed the former President that he was going to leave at a particular time. He wrote a report to the former President to explain why he intended to resign.<sup>276</sup>

288. It was put by counsel leading evidence to the witness that in his letter of resignation, Ambassador Maqetuka did not mention anything relating to interference with any investigation; it was not mentioned at all, whereas, had the former President ordered a stop to it, that would have been mentioned.<sup>277</sup> Ambassador Maqetuka's response was that the former President knew the facts and, secondly, that he was dealing with broader things.<sup>278</sup> And the letter was essentially to deal with matters that led to the breakdown of the trust between Mr Maqetuka, Messrs Shaik and Njenje, on the one hand, and the Minister, on the other hand.<sup>279</sup>

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<sup>274</sup> Page 203 line 20 to page 204 line 14

<sup>275</sup> Page 204 line 6 to page 210 line 6

<sup>276</sup> Page 211 line 1 to page 213 line 11 et seq

<sup>277</sup> Page 217 line 24 to page 218 line 16

<sup>278</sup> Page 218 line 17 to line 21

<sup>279</sup> Page 219 line 24 to page 220 line 4

289. Notwithstanding what Ambassador Maqetuka said in his affidavit a part that was corrected his evidence was that he had no knowledge of any report on the investigations that was ever prepared or finalized after the meeting with the former President. He also stated that, while the indication by the former President, and the Minister, that the investigation should not continue was there, it was not stated quite clearly.<sup>280</sup>
290. Ambassador Maqetuka concluded from what he said was the former President's body language that he was not happy with what he was being told; but he could not put it higher than that.<sup>281</sup> The former President did say that there was nothing wrong with his relationship with the Guptas.<sup>282</sup> It was Ambassador Maqetuka's view that, had the investigation been allowed and proper action taken, there would have been no State capture because it would have helped stop the former President's relationship with the Guptas.<sup>283</sup>
291. Mr Maqetuka conceded that the former President might argue that he did not order that the investigation be stopped.<sup>284</sup> However, that concession should be considered against what all the witnesses said, namely, that the Minister said the investigation should stop as it amounted to an investigation of the former President; secondly, although they appealed to the latter, he defended his relationship with the Guptas; thirdly, Ambassador Maqetuka and his colleagues thereafter found it difficult to secure any appointment with the former President; fourthly, he never asked for a report after the meeting. There was a plethora of other indications that he thwarted the investigation. In

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<sup>280</sup> Page 223 line 16 to page 225 line 9 and paragraph 70 of his affidavit

<sup>281</sup> Page 226 line 14 to page 227 line 9

<sup>282</sup> Page 228 line 20 to page 229 line 10

<sup>283</sup> Page 229 line 11 to page 230 line 1 and paragraph 71 of the witness's affidavit

<sup>284</sup> Page 230 line 7 to page 231 line 21

a situation where the relationships between the three senior intelligence officers and the Minister had irretrievably broken down, and the President did not intervene to rescue the investigation, it is hard to say he did not impede it. Moreover, as the witness (and others) said, he defended his relationship with the Guptas.<sup>285</sup> That kind of attitude is compatible with the inclination not to see any investigation continuing for there would be no need to do so, especially against people one sees as one's good friends

292. Ambassador Maqetuka addressed a document to the former President dated November 2011 in which he raised a number of issues, which he requested the former President to respond to within 14 days on how he wished to address them; this letter preceded his resignation which took effect on 28 January 2012.<sup>286</sup> One of the reasons for his resignation was the irretrievable breakdown of the relationship between him and the Minister; he said that other reasons for that was that he had taken the Minister to task for the abuse of the resources of the SSA in providing protection services to his wife attending court on charges of drug trafficking; from that time, the Minister started undermining him.<sup>287</sup> Yet it was absolutely critical and important, regard also being had to the performance agreements, to have support from the Minister; one of the things the Minister had to do was to create a conducive environment within the agency for Ambassador Maqetuka as the Director General to fulfil his duties.<sup>288</sup> The fact that he was never paid his performance monies despite the fact that the assessments showed he performed well, also contributed to the breakdown.<sup>289</sup>

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<sup>285</sup> Page 257 line 3 to line 21

<sup>286</sup> Page 233 line 13 to page 235 line 8

<sup>287</sup> Page 236 line 12 to page 237 line 21 and page 242 line 4 to page 243 line 16; and paragraphs 95; and 96 of the witness's affidavit

<sup>288</sup> Page 238 line 24 to page 239 line 17

<sup>289</sup> Page 239 line 17 to page 242 line 2



293. Ambassador Maqetuka said that Minister Cwele did not see anything wrong with the transportation of his wife to attend her drug trafficking charges, even though the resources of the SSA were being used, until Mr Njenje issued instructions to stop it; this despite the fact that transporting his wife under those circumstances was not only irregular but also illegal and he was told so; he could not have thought otherwise; there was no reason for him to think so.<sup>290</sup> The Ambassador repeated that after stopping the services to the Minister's wife, the Minister started undermining him which was one of the causes of the breakdown of their relationship.<sup>291</sup> Although Ambassador Shaik felt that the three of them should go on to fight for the investigation, Ambassador Maqetuka told them they would not win the fight because the President would eventually get rid of them; which was why they eventually resigned; he did not enjoy the Minister's support.<sup>292</sup> One of the things the Minister did to undermine him was to bypass him by giving instructions directly to the Department.<sup>293</sup>
294. Ambassador Maqetuka said he did not know of anybody within the SSA who may have given instructions for the investigation to stop; he personally did not give such instructions; nor did the three of them, after the meeting with the former President, have a discussion on whether or not to proceed with the investigation.<sup>294</sup>
295. Ambassador Maqetuka affirmed the concerns which were raised in a memorandum, dated 18 March 2016, drafted by former members of the MK addressed to the top 6 of the ANC. The gist of the memorandum related to the concerns about the influence of the Gupta family, such as in relation to the appointment of Ministers or the appointment

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<sup>290</sup> Page 243 line 19 to page 247 line 10

<sup>291</sup> Page 247 line 11 to page 248 line 14

<sup>292</sup> Page 249 line 15 to page 251 line 17 and paragraph 98 of the witness's affidavit

<sup>293</sup> Page 251 line 18 to line 25

<sup>294</sup> Page 254 line 10 to page 256 line 11

of board members to State Owned Enterprises; they expressed the concern about what they called the increasing tendency of State capture and about the many accounts of undue influence on decisions of the State; all of which issues were in the media <sup>295</sup> The memorandum also called for the establishment of an independent commission of inquiry; it was Mr Maqetuka's view that the leadership (of the ANC) acted on that request promptly enough; he said that the discussion of the memorandum was constructive <sup>296</sup>

296. Ambassador Maqetuka was at one time given a report by Minister Cwele that had been commissioned by General Mdluli and prepared by Crime Intelligence. However, he was not sure whether, according to protocol, the report should have been given to himself directly. The report alleged that there was a conspiracy by some generals within the SAPS to remove General Mdluli, then head of Crime Intelligence. The Minister said the President wanted the SSA to have a look at it <sup>297</sup> They analysed the report and found that it had no substance; firstly, they queried the fact that it was commissioned by General Mdluli himself instead of letting one of his deputies do it as he had interest in the matter; the report was also full of inaccuracies.<sup>298</sup> Ambassador Maqetuka did not, however, recall discussing it with the former President <sup>299</sup>

297. Regarding the investigations into the PAN, Ambassador Maqetuka found that they were already going on. The Minister was co-operating. Subsequently, a report, known as the PANI Investigation Report was issued. It was an investigation into the Principal Agent Network Project, which was a project of the SSA, under Mr Arthur Fraser as the Deputy Director General in charge of operations. It had properly been constituted and

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<sup>295</sup> Page 260 line 20 to page 263 line 12 and paragraph 77 of the witness's affidavit

<sup>296</sup> Page 263 line 13 to line 21

<sup>297</sup> Page 264 line 20 to page 267 line 6 and paragraph 79 of the witness's affidavit

<sup>298</sup> Page 267 line 9 to page 268 line 24, and paragraph 81 of the witness's affidavit

<sup>299</sup> Pages 274 lines 9 to 21 and page 275 line 15

authorised by the erstwhile Minister of Intelligence, Mr Ronnie Kasrils; it was a covert operation and there was nothing wrong with its objectives<sup>300</sup> However, there were several problems with the manner in which the project was carried out by Mr Fraser. It was not linked to the headquarters, in that reports did not go to the headquarters; data base or engine room was housed in Mr Arthur Fraser's house, yet for security and other reasons reports should go to the headquarters; violating that would be a serious violation of security protocol. These procedures were not followed; the nerve centre that received the information was located in Mr Arthur Fraser's house, to the detriment of the security of the information and of the informants who were important assets as sources; it would also amount to undermining their trust in the system and that could be treasonable in other countries.<sup>301</sup>

298 There were more problems. In Mr Maqetuka's words, there was no reporting lines to head office, something which gave Mr Fraser a dangerous amount of unbridled power, and there was no oversight or accountability for the projects pursued or expenditure incurred.<sup>302</sup> An amount of about R4billion or more was expended on a number of safe houses and hundreds of cars as also testified to by Mr Njenje. The information came out after the database was secured out of Mr Fraser's house and downloaded and analysed; thereafter lots of problems were discovered which the SSA was not aware of<sup>303</sup>

299 Ambassador Maqetuka summed up the problems into three main categories. Firstly, the centralization of power in Mr Arthur Fraser regarding the project (PAN); he acted like he was the Director-General. Secondly, lack of accountability; that there was no

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<sup>300</sup> Page 275 line 15 to page 279 line 7

<sup>301</sup> Page 279 line 8 to page 282 line 11

<sup>302</sup> Page 282 line 20 to page 283 line 2 and paragraphs 86.3 and 86.4 of the affidavit

<sup>303</sup> Page 283 line 4 to page 284 line 3



control by the Director-General; it became a free for all and Mr Fraser was a law unto himself. The third problem was the ability to draw large amounts of cash, while there was no accountability for it.<sup>304</sup>

300. The investigations into PAN were subsequently completed and Minister Cwele took the view that it was up to the law enforcement agencies to act against the implicated; this was done by Mr Njenje.<sup>305</sup> Ambassador Maqetuka said that he, however, learnt from Mr Njenje's evidence that he (Mr Njenje) was later instructed by Minister Cwele to withdraw the report from the law enforcement agencies (the SIU) while both of them were still there, but he was never informed; Njenje must have been instructed (by the Minister) because he never reported that to Ambassador Maqetuka, his senior.<sup>306</sup>

#### **THE EVIDENCE OF FORMER MINISTER, MR MBANGISENI DAVID MAHLOBO**

301. Mr Mbangiseni David Mahlobo, former Minister of State Security, gave oral evidence over and above the affidavit he had made dated 7 April 2021 and which was filed of record and admitted by the Commission.<sup>307</sup>
302. His evidence was that Mr Cwele was the Minister of State Security from 2008 to 2014; he took over and served from 25 May 2014 to 16 October 2017; he was then followed by Mr Bongani Bongo between 2017 and apparently 2018.<sup>308</sup>

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<sup>304</sup> Page 284 line 8 to line 19

<sup>305</sup> Page 286 line 3 to page 287 line 19

<sup>306</sup> Page 287 line 20 to page 289 line 7 and paragraph 90 of the affidavit

<sup>307</sup> Page 21 line 9 to line 25

<sup>308</sup> Page 25 line 17 to page 27 line 2

303. During his time, Mr Arthur Fraser was appointed by former President Zuma as Director General of the SSA in September 2016; after he had initially resigned in 2010<sup>309</sup> Prior to taking office, Mr Mahlobo was aware of the media allegations about the PAN; he received a report on its investigation from the Inspector General after he became Minister; there was an indication that an investigation be done by the Inspector General<sup>310</sup> He could not say whether Mr Arthur Fraser or a certain Mr Engel were implicated as he did not have a copy of the report with him.<sup>311</sup>
304. Mr Mahlobo said he did receive the report; it had certain recommendations which were acted upon and remedial actions were referred to the Accounting Officer for execution; they were also shared with the Joint Standing Committee on Intelligence; he said they (his office) reported on the progress made.<sup>312</sup> Told that there were no prosecutions that followed, Mr Mahlobo intimated that the information could not be divulged; he only repeated that there were recommendations which were acted upon, and an engagement with the parliamentary committee.<sup>313</sup> Pressed by the leader of evidence why he could not comment on the issue of prosecutions, Mr Mahlobo said he did not have the report and did not want to speculate; and he would not comment either on what recommendations were in the report as the report was not declassified.<sup>314</sup>
305. Mr Mahlobo made the point that there were certain recommendations made, and remedial actions taken, but that he could not reveal the nature of the recommendations and the remedial actions as those were classified information; the person whose duty it was to carry out his instructions did so; the accounting officer provided reports on the

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<sup>309</sup> Page 27 line 7 to page 28 line 13

<sup>310</sup> Page 28 line 14 to page 29 line 16

<sup>311</sup> Page 29 line 17 to page 30 line 19

<sup>312</sup> Page 42 line 14 to page 43 line 13 et seq

<sup>313</sup> Page 43 line 24 to page 45 line 2

<sup>314</sup> Page 45 line 3 to page 46 line 22

implementation of the remedial actions proposed, of which the Joint Standing Committee was appraised from time to time; which was why other people asked the Inspector General to reinvestigate<sup>315</sup> Mr Mahlobo was therefore clear that he would not say what recommendations were made or remedial actions taken.

306. The time Mr Mahlobo became the Minister, the Accounting Officer was Ambassador Kudjoe Mr Mahlobo implied that, under the circumstances, even the name of a Director General or official might not be mentioned. Mr Mahlobo kept on raising the issue of secrecy when asked questions. He agreed that Mr Fraser was appointed in 2016 by former President Zuma<sup>316</sup> Time and again Mr Mahlobo did not want to answer whether or not any prosecutions followed after the report, what recommendations were implemented or not implemented.<sup>317</sup>

307 After some exchanges, Mr Mahlobo agreed that appropriate notices were issued to him by the Commission, after which he asked for certain documents most of which were furnished only the night before.<sup>318</sup> But it was put to him that contrary to what he said in his affidavit, documents had been received by him not only in the past two weeks but before then; he eventually said he did not want to get into that kind of argument on a matter of administration; but the evidence leader insisted that the papers were sent to him in February 2021 already.<sup>319</sup> He was testifying in April 2021.

308 Mr Mahlobo confirmed, as it stands in his affidavit, that he testified before the High Level Review Panel; but he did not have any record of his evidence, nor did he have any notes of his evidence; he was never asked to make an affidavit.<sup>320</sup> It was his evidence

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<sup>315</sup> Page 46 line 23 to page 50 line 1

<sup>316</sup> Page 50 line 3 to page 52 line 22

<sup>317</sup> Page 52 line 23 to page 54 line 11

<sup>318</sup> Page 57 line 18 to page 58 line 15

<sup>319</sup> Page 61 line 2 to page 64 line 3

<sup>320</sup> Page 65 line 19 to page 66 line 18 and paragraph 9 of his affidavit



that the impression created by those who had testified such as Mr Shaik, Mr Njenje and Ambassador Maqetuka, that all that mattered was the White Paper and the Constitution, was wrong; there was a host of other Acts that applied as well. He said intelligence was highly regulated. The White Paper and the Green Paper did not, he said, equate to the law.<sup>321</sup>

309 He confirmed his affidavit that, when he arrived, there were no proper accounting structures in place, mainly because of the nature of the operation of the intelligence community. He said, in his words, he never found a ship that was floating, there were things that were working and there were things that were worrying; there were, generally, weaknesses, very serious and some systemic going as far back as 1995 when the Intelligence Services were established, with some of the things working others not; he said he did his best to tighten up certain things.<sup>322</sup>

310 Mr Mahlobo said that he inherited an Agency that was greatly divided and characterized by mistrust and allegations of political interference which he said was against the Constitution; it was something that had been there for some time in the form of security services being used in factional battles; it was happening.<sup>323</sup> Those things had to be considered against the fact that there were deep mistrusts because of what people in the country did to each other in the past; we were trying to forge unity amongst statutory and non-statutory forces; people peddle information; such as creating stories about judges; there were good and bad people; far reaching reforms might have to be made.<sup>324</sup> Intelligence services should not interfere in party politics or factional politics within parties, as long as they do not do anything against the law because intelligence

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<sup>321</sup> Page 67 line 12 to page 68 line 9

<sup>322</sup> Page 69 line 9 to page 72 line 6 and paragraph 16 of his affidavit

<sup>323</sup> Page 72 line 8 to page 73 line 22 and paragraph 17 of his affidavit

<sup>324</sup> Page 73 line 23 to page 76 line 3

operates everywhere; the intelligence agency should be steered towards the direction of transparency and accountability <sup>325</sup>

311 Mr Mahlobo said that in line with the directive, he did not involve himself in operations; although he argued, as against those who argued the contrary, that there was no law which prohibited him from being involved.<sup>326</sup> He again stated that he never ran operations but, once more, said that there was no law that said that one could or could not do that.<sup>327</sup> He also expressed his opinions about intelligence, including the fact that anybody could be recruited, up to a President, and that each country had its own standards and that intelligence was a complex matter <sup>328</sup>

312 The activities which undermine or negatively influence the economy of the country fall within the mandate of the SSA and Ambassador Mahlobo referred to legislation, in particular to the National Strategic Intelligence Act 39 of 1994, in terms of which National Security is so broad as to include economy <sup>329</sup>

313. It is noteworthy that this view by Ambassador Mahlobo accords with evidence of other witnesses such as Ambassador Maqetuka.

314 Mr Mahlobo was pertinently asked whether, within the context of admitting that undermining the economy amounted to threat to national security, corruption would be a matter that might legitimately draw the attention of a security agency in the country;

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<sup>325</sup> Page 76 line 4 to page 77 line 6 and paragraph 17 of the affidavit

<sup>326</sup> Page 80 line 6 to page 81 line 20; especially page 81 line 16 to line 20 and paragraph 19.2 of the affidavit

<sup>327</sup> Page 83 line 14 to line 16

<sup>328</sup> Page 83 line 17 to page 84 line 17

<sup>329</sup> Page 88 line 3 to page 89 line 3 and paragraph 32 of the affidavit

after some lengthy explanation, he confirmed that corruption was a big threat which had to be fought; it was an enemy<sup>330</sup>

315 Mr Mahlobo stated in his affidavit that Foreign Intelligence Services were aligned with negative domestic forces to destabilize the State's ability to govern the country. Asked what those domestic negative forces were, the answer was not clear, except to convey that there would have been people within the country who could have been recruited by foreign intelligence services; they could recruit anybody irrespective of the seniority of their office. Destabilization would not necessarily be in respect of economy. He did not mention which negative domestic forces were, with some unclear statements<sup>331</sup> These negative domestic forces could, according to the witness, be found in the private and public sector; could even be business people; there could be business espionage, hence intellectual property laws; one could not say whether another person, even one's spouse, was a spy or not.<sup>332</sup>

316. Labour also provides a platform to be used by foreign intelligence services to destabilize the economy of the country and to pursue their agendas; labour in a broad sense and not necessarily organized labour unions; in other words activities in which labour unions are involved and where they are not involved; that is, workers in general; intelligence exercise involved evaluation and analysis.<sup>333</sup> And the witness also pointed out to several other threats such as violence in the transport sector, violent protests and in the education section and cyber security threats.<sup>334</sup>

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<sup>330</sup> Page 92 line 4 to page 95 line 12 and paragraph 36(4); and especially page 95 line 7 to line 12

<sup>331</sup> Page 95 line 16 to page 97 line 23 and again page 97 line 24 to page 100

<sup>332</sup> Page 100 line 10 to page 101 line 11 and paragraph 37.1 of the affidavit

<sup>333</sup> Page 101 line 12 to page 104 line 12 and paragraph 37.3 of the affidavit

<sup>334</sup> Page 104 line 13 to line 16 and paragraphs 37.4 to 37.6 of the affidavit



317. The point which Mr Mahlobo was making in general was that intelligence activity spanned all sectors of society, a point on which there would hardly be any disagreement. But he did not come out clearly as to what negative domestic forces were that he kept on referring to. Another thing was that he tended not to give as much weight to the Intelligence White Paper as other witnesses did, such as Mr Shaik and Ambassador Maqetuka; yet there is ample indication that it greatly informed the structure and organization of the country's intelligence in 1994.
318. Mr Mahlobo testified about covert operations projects. Once a need arose for a certain covert project and submissions were received, project managers appointed and the name of the covert project given, the covert project would be pursued by the Chief Directorate Special Operations (CDSO) after all other procedures were complied with. As the Minister, he said, he was not involved in the day to day operations of the Agency, certainly between 2014 and 2017; but he remained accountable to Parliament as the Minister of the SSA; the CDSO often overran the budget and he would intervene by strengthening policies, systems and internal controls.<sup>335</sup>
319. Mr Mahlobo's affidavit says that the *"official records of the secret services do not reflect the true nature of the operations and projects run by the CDSO as these were covert; even the names given to these operations did not necessarily mean that the operation is accrued after its name. The true nature of these operations was only known to the project manager and the team"*<sup>336</sup> A clear understanding of this statement is that whereas the operation would have been given a name, the information on the execution documentation may differ with the information on the initial documents submitted for approval. When asked about this, Mr Mahlobo's answer was a long rumbling<sup>337</sup> The

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<sup>335</sup> Page 106 line 8 to page 107 line 19 and paragraphs 38 and 39 of the affidavit

<sup>336</sup> Paragraph 40 of the affidavit

<sup>337</sup> Page 107 line 20 to page 110 line 8

evidence leader again asked him whether what was quoted above meant that the records did not reflect the true nature of the operations<sup>338</sup> Again after some long explanation which did not quite amount to a clear answer, Mr Mahlobo agreed that, while he did not concede falsification of documents, what he meant was that the full details of the project would not necessarily be reflected on the official records; the official records of the secret services did not reflect the true nature of operations<sup>339</sup>

320. There may be some sympathy with what Mr Mahlobo said; after all there ought to be some secrecy around covert operations; but that should not be a licence to fraud and looting From the evidence before the Commission, a balance can and should be struck, with sound accounting procedures in place
321. Mr Mahlobo confirmed that the SSA was required to comply with the prescripts of the Public Finance Management Act<sup>340</sup> He also made the point that he would not know the name of a project manager as things operated on a need to know basis; his involvement was only through intelligence briefs.<sup>341</sup> He would only know about projects when briefed on aspects he needed to know; it would be a lie to say he was involved in operations; he did not get involved with an asset or agent, but the buck stopped with him; if there were complaints or problems, he would have to fix them.<sup>342</sup>
322. In his affidavit,<sup>343</sup> Mr Mahlobo expressed his disagreement with some of the allegations made against him In his oral evidence, he also disputed some of the allegations placed before the Commission by various witnesses He said they were incorrect, including the allegations that he was involved in operations. He said there was no shred of evidence

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<sup>338</sup> Page 110 line 13 to line 18

<sup>339</sup> Page 113 line 14 to page 114 line 7 et seq

<sup>340</sup> Page 115 line 19 to page 116 line 7 and paragraphs 41 to 42 of the affidavit

<sup>341</sup> Page 116 line 8 to line 25 and paragraph 43 of the affidavit

<sup>342</sup> Page 118 line 2 to line 22 and paragraph 48 of the affidavit

<sup>343</sup> Paragraph 50 of his affidavit

to show that. He said it was just hearsay. Regarding allegations that he caused large sums of cash to be withdrawn and delivered to him, he said there was no record of the paper trail with his signature. He denied allegations that he directed his then Deputy Minister to give bursaries to certain people. He said people were politicising the process of this Commission; he disputed the allegation by witness Steven that he introduced him to judges; he dismissed the allegation that he attempted to influence judges. He was however aware of people attempting to frame a judge but who never received any money; he never gave instructions for a judge to be bought and there was not a single judge who was bought; he denied the allegations made <sup>344</sup>

323 It should be noted that at this stage Mr Mahlobo intimated in his evidence that there was a second affidavit by witness Dorothy who, having implicated him in the first one, absolved him in the second, and that the Commission's team was in possession of such affidavit. The leader of evidence denied knowledge of such an affidavit; he had just spoken to Dorothy who denied having made such an affidavit. The evidence leader further indicated that they would not withhold such an affidavit. Argument about this took long and, in the end, the Commission's legal team undertook to investigate the matter.<sup>345</sup> In the end, no such affidavit was found to have been received by the Commission's team.

324 A letter dated 4 November 2015 addressed to the Minister for State Security Agency, "*Minister Mahlobo*", which was filed of record as an exhibit, was canvassed with him. This was to contest his statement that he was never involved in operations. In that letter, he approved a request for budget reprioritization and the utilization of certain funds, including the amount of R20m for "*Projects approved by the Minister*". The total amount approved, including the other items, was R130m. In his response, Mr Mahlobo denied

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<sup>344</sup> Page 121 line 12 to page 126 line 23 and paragraph 50 of the affidavit

<sup>345</sup> Pages 126 line 24 to page 135 line 23



that there were any Minister's projects; he said the term "*Minister's projects*" was used incorrectly; the document, he said, was therefore fundamentally wrong; the Minister did not approve projects <sup>346</sup> However, the letter spoke for itself in so many words, despite his protestations. He admitted that he signed in approval of the movements of the funds indicated in the requesting letter and said, importantly, that without his approval, nobody would touch the money <sup>347</sup>

325. Also canvassed with Mr Mahlobo was a letter, filed of record dated 31 May 2016. The letter was a "*Request for authorization: Renewal of Cover Project Mayibuye and payment of expenditure related to Project Mayibuye from 01 April 2016 31 March 2017*" Mr Mahlobo was still the Minister at the time as he only left in October 2017. The document says that the recommendation was made by the appropriate person on 31 May 2016 "*As per instructions issued by Minister on 06/05/2016*" Mr Mahlobo's response was that he did not give any such instructions and anybody saying he did so would have to produce written proof as such an approval would have financial implications in terms of the PFMA. <sup>348</sup>

326. On the next page of the same letter the recommendation is made by an official for the retention of some funds so as to be used in respect of the Mayibuye Project and the person wrote that the recommendation was based on the Minister's express instruction and directive for the payment to be made urgently. Mr Mahlobo denied giving such instructions, and challenged those who said he did to produce written proof of his instructions and directive; neither did he issue verbal instructions (the amount involved was about R54m) <sup>349</sup>

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<sup>346</sup> Page 144 line 1 to page 145 line 8

<sup>347</sup> Page 146 line 17 to page 149 line 1

<sup>348</sup> Page 150 line 19 to page 154 line 9

<sup>349</sup> Page 154 line 11 to page 155 line 6

327. Also canvassed with Mr Mahlobo was a letter dated 30 August 2016 addressed to him, which is also filed of record. The letter is headed: *"Approval for the utilization of the unexpended balance to fund refurbishment of infrastructure, property acquisition and covert operational projects"*. The letter shows his approval of the request with his signature, on 02/09/2016. There is an amount of R24m asked for in respect of Project Wave, in respect of which the same personnel used in Project Construc ao would be used. Then there is an amount of R24m sought in respect of Project Construc ao itself. Then comes a requested amount of R54.1m for Project Mayibuye. This was aimed at state organs of governance such as justice, Parliament and provincial legislatures. Project Wave related to cases as identified outside the borders of the country, while Project Construc ao was designed to initiate and build a tangible agent network into identified countries with the aim of serving as an early warning. Next was Project Academia for which a budget of R8,867,100.00 was sought. The objective of the project was to neutralize threats aimed at disrupting institutions of higher learning etc.<sup>350</sup> Various witnesses testified about these projects indicating that they operated illegally and outside of the law (e.g. Mr Shaik, Mr Njenje). Mr Mahlobo said that he would not comment on all the above as he was not part of the approval authority; he also said he did not want to comment as he was not privy to the projects as *per* the approved document; this despite the fact that the letter was signed by him in approval.<sup>351</sup>

328. The next project in the above document approved and signed by Mr Mahlobo as Minister of State Security was Project Khusela, the objective of which was said to *inter alia* forewarn the President and Government about identified threats against them. An amount of R25,180,000 was sought. Then Project Tin roof for which a budget of R8m was sought. The objectives were to eliminate, deter, mitigate security compromising actions directed to the *"client"* and to counter security challenges pertaining to the

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<sup>350</sup> Page 157 line 11 to page 162 line 2

<sup>351</sup> Page 162 line 3 to line 12

protection of the "*client*" environment. Asked whether the "*client*" referred to was former President Zuma, Mr Mahlobo said he would not disclose that and that the document did not have such a disclosure <sup>352</sup>

329. Regarding the above documentation relating to the approval of all the projects therein mentioned Mr Mahlobo, when asked whether he had read it, said he had.<sup>353</sup> However, he argued that the purpose of the approval did not amount to the approval of the projects as therein described, this despite the fact that the nature and purpose of each project was clearly stated at the top of every page and that his signature of approval was in respect of each one of the projects, as the evidence leader pointed out to him <sup>354</sup>

330 Mr Mahlobo was shown a letter, filed of record, dated 28 November 2016. It was written by Dorothy (pseudo name) as Acting General Manager Special Operations. That letter requested authorisation for funds for the Project Mayibuye in the sum of R4,510,000.00. Mr Mahlobo said he had no comment on the letter <sup>355</sup>

331. The contents of an affidavit by Dorothy, filed of record, was put to Mr Mahlobo. That was Dorothy's affidavit in which she confirmed that she had on three occasions withdrawn R4.5m on the instructions of one Darryl (pseudo name) to hand the money to Mr Mahlobo. He could not deny that the money was withdrawn as stated, but denied receiving it.<sup>356</sup> The evidence leader then drew Mr Mahlobo's attention to yet another affidavit by Dorothy in response to an allegation by one Mr Mhlanga. This affidavit was also filed of record. The following part of the affidavit was read to Mr Mahlobo: "*I have never told Mr Mhlanga that I have given the alleged cash withdrawals to Mr Mahlobo*".<sup>357</sup>

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<sup>352</sup> Page 165 line 7 to page 166 line 9

<sup>353</sup> Page 166 line 10 to line 19

<sup>354</sup> Page 166 line 21 to page 168 line 22

<sup>355</sup> Page 188 line 9 to line 15

<sup>356</sup> Page 189 line 1 to page 190 line 2

<sup>357</sup> Page 190 line 4 to 20



However, she went on to say that, in the absence of schedules of the cash withdrawals, she could recall only three such occasions; she made those “*temporary*” withdrawals in her name; went to the cashier with Lilly; the money was counted by the cashier in front of Lilly as well who brought the bag for the money to be packed by both of them; the money would then be taken to the official residence of Mr Mahlobo in Waterkloof; twice she did so alone and twice with Lilly; she took over the task of delivering the money from Darryl, who had instructed her to use her own name; neither Darryl nor the Minister ever told her the purpose of the money; Ambassador Mahlobo would usher her in the house, count the money to make sure it was R4 5m after which she would leave the money in the bag Mr Mahlobo’s response to all this evidence was that, to the extent that his name was mentioned, he denied the allegations.<sup>358</sup> It would appear that Mr Mahlobo and his counsel objected against the use of this affidavit on the ground that it was just received that morning I ruled in their favour and Mr Mahlobo said he was not going to deal with it.<sup>359</sup>

#### **Darryl’s affidavit on Mr Mahlobo**

332 The contents of the affidavit by Darryl (pseudonym), attested to on 23 November 2020 and filed of record, were put to Mr Mahlobo for his response. There was a section in the affidavit headed “*Minister Mahlobo’s involvement in operational activities*”. Darryl says that one of the challenges he had as the General Manager of the CDSO was Mr Mahlobo involving himself directly in CDSO operations and his personal interest therein Darryl said Mr Mahlobo used to boast about having his own sources; he would also report directly to the President Darryl says he raised his concerns on more than one

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<sup>358</sup> Page 191 line 2 to page 194 line 3 and the whole of paragraph 2 of her affidavit

<sup>359</sup> Page, i.a. 201 line 6 to line 25

occasion and warned Mr Mahlobo against taking unverified information to the President. Mr Mahlobo's response to Darryl's affidavit was that he denied the evidence <sup>360</sup>

- 333 Under the heading *"Cash delivered to Minister Mahlobo"*, Darryl says Ambassador Mahlobo would request money from the CDSO for his own projects, something which did not sit well with him as he did not think that a Minister should be handling cash from CDSO. He says on one occasion he was required to deliver cash to Mr Mahlobo. He said that he noticed that SSA members, such as Frank (pseudonym), were withdrawing large amounts of money on a monthly basis. On one occasion he asked Frank what the money he had withdrawn was for and Frank counted the money into different bundles, allocating them to some projects until there was a surplus, which Darryl put in a safe in his office. Darryl assumed that Frank must have told Minister Mahlobo about the surplus because he later got a call from Mr Mahlobo requesting money for the ANC Women's League. Darryl says that he handed over the money, on Mr Mahlobo's instructions, to his Chief of Staff, one Jay (pseudonym), at OR Tambo Airport. Jay was in the company of someone else, one Vukhani; he did not make them sign any acknowledgement for the receipt of the funds because the delivery of the cash was on the Minister's instructions. In his response to what Darryl said, Mr Mahlobo denied being involved in operations, or that Darryl delivered cash to him; he also denied requesting money for the ANC Women's League <sup>361</sup>

#### **Steven's affidavit on Mr Mahlobo**

334. Steven's (pseudonym) affidavit, attested to on 18 November 2020, was filed of record. Certain paragraphs, under the heading *"Further information regarding the payment of Judges by Minister Mahlobo from SSA covert funds"* were put to Mr Mahlobo for his

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<sup>360</sup> Page 205 line 15 to page 207 line 14 and paragraphs 50 and 51 of Darryl's affidavit

<sup>361</sup> Page 207 line 15 to page 209 line 20 and paragraphs 80, 81 and 82 of Darryl's affidavit

response. Steven said that records showed that one Dr Langa (then Director of the Domestic Branch of the SSA) authorised the withdrawal of R12m cash from the Special Operations budget; Dr Langa himself also told him so. Dr Langa said the money, packed into paper bags, was received by SSA Special Operations Frank for delivery to Minister Mahlobo for payments to Judges to influence the Judiciary. Frank was the Project Manager of Project Justice with the CDSO under Mr Dlomo. In turn, Frank informed Steven that he delivered the R12m to Minister Mahlobo who, in Frank's presence, removed R4m cash saying was payment to judges who were his operatives. The rest of the money was for other Special Operations ran by Mr Mahlobo.<sup>362</sup> Mr Mahlobo's response to this evidence was that it was all false, and put the Judiciary into disrepute; he said the person who came up with those allegations was the same person who made false allegations against a certain politician and the head of a Chapter 9 institution and was continuing to do so before the Commission; Mr Mahlobo denied that there was any money delivered to him; he disputed all the above evidence.<sup>363</sup>

335. Referring to the infamous incident during the State of the National Address on 12 February 2015 when communications were jammed inside Parliament, Steven says soon thereafter he met with Minister Mahlobo at his house. He says Minister Mahlobo who told him that the purpose of the meeting was to discuss the legal case launched by the Editors Forum in connection with the jamming. Minister Mahlobo told him that two judges WO worked for him as operatives would be joining in their meeting to help in influencing the outcome of the case by SANEF (the Editors Forum) against the SSA. Steven said that Minister Mahlobo said that, although the two judges were in Gauteng and not in Cape Town where the case was, they would influence the judges in Cape Town. Steven said that he had cordial relations with Minister Mahlobo and knew that Minister Mahlobo ran intelligence operations and paid operatives. Stevens said that this

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<sup>362</sup> Page 14 line 13 to page 216 line 6 and paragraphs 4B (sic), 49 and 50 of Stevens affidavit

<sup>363</sup> Page 216 line 7 to page 217 line 5



was a fact that was also commonly known within the SSA. Stevens said that Minister Mahlobo had demanded money to pay operatives; when he warned him that for him to run operations was irregular, Minister Mahlobo had boasted that he knew more about the running of operations than him. Stevens said he was aware of the pressure that Minister Mahlobo successfully put on Ambassador Kudjoe and the Chief Financial officer, Matthew (pseudonym) for money routinely without regard to SSA financial prescripts. Stevens said that Minister Mahlobo used to receive large sums of money for the special operations he ran.

336 The supposed two judges joined Steven and Minister Mahlobo, one black, one white. The black one was introduced as "Ngwenya", a Zulu name yet the man's accent was not Zulu, according to Steven. Minister Mahlobo instructed them to influence the judges who were to hear the case. Stevens also said that the meeting discussed legal representation and names were mentioned; after the meeting, he left. In his response, Mr Mahlobo denied introducing Stevens to any judges, or instructing that judges be paid; but he said he could not deny the meeting as he could not recall any, and pointed out, correctly, that in his affidavit Stevens said he could not identify those judges. He denied any allegations of attempts to bribe judges, and said that would be an insult to any judge.<sup>364</sup> He warned against that, as well as the danger intelligence could pose.<sup>365</sup>

337 Steven also stated in his affidavit how Minister Mahlobo had involved himself in the formation of a rival trade union to counter AMCU; how the Minister had told him that a certain Mr X was the principal agent for the project. That project went ahead but Mr X became dissatisfied with the money and demanded more, failing which he would disclose details of his assignment including the role of President Zuma and Minister Mahlobo; he demanded R6m. Stevens says he was against extortion and warned

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<sup>364</sup> Page 217 line 16 to page 225 line 12 and paragraphs 23 to 34 of the affidavit

<sup>365</sup> Page 228 lines 1 to line 13

Minister Mahlobo that Mr X would keep on demanding more money. He told Minister Mahlobo that he could not raise the R6m; that caused him to fall out of favour with Minister Mahlobo. Steven says he was later told that Mr X had launched a claim against Minister Mahlobo for the payment of the money.<sup>366</sup> Minister Mahlobo's response was long and not direct, until, assisted by the evidence leader. He denied involvement in the formation of the union, and that, because he was cited as a defendant, he legitimately became involved; that was after he had admitted that things had gone wrong with that project, the existence of which he did not deny. The case was ultimately settled for R7m.<sup>367</sup> It is difficult to think that the State would have paid someone R 7 m to settle a claim that was completely without any merit. Therefore, there must have been some merit in the claim.

#### **Darryl's affidavit**

338 Mr Mahlobo was also referred to the affidavit deposed to by Darryl, already referred to above, and filed of record, dated 23 November 2020. In particular, he was referred to paragraphs relating to the issue of the formation of a trade union, AMCU, on the Platinum Belt. Darryl says Minister Mahlobo told him to meet with Mr X referred to above to negotiate a court settlement. He also says that he met with former President Zuma who told him that he knew about the case and that he had tasked a Mr Dlomo to work with Mr X on the project. Mr X had initially wanted R30m to withdraw the case: Mr Mahlobo told Darryl to negotiate a settlement not exceeding R10m. He managed to negotiate Mr X down to R7m after which he took the proposal back to Minister Mahlobo who agreed and said he would arrange the money through the SSA.<sup>368</sup> The only thing

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<sup>366</sup> Page 237 line 4 to page 240 line 24 and paragraphs 57 to 61 of the affidavit

<sup>367</sup> Page 240 line 25 to page 244 line 3

<sup>368</sup> Page 247 line 1 to page 248 line 6 and paragraphs 69, 72 and 73 of the affidavit

Mr Mahlobo denied was indicating the amount to be paid. The rest he admitted; he said he told the responsible manager that it was their operation failure <sup>369</sup>

### **The affidavit of Shadow in relation to Project Lock**

339. With reference to the affidavit of Shadow (pseudonym) attested to on 30 November 2020 and filed of record, Mr Mahlobo was asked whether he had any involvement with Project Lock. This was a project, as testified to by other witnesses in more detail, in terms of which Mr Eugene de Kock, the former apartheid police officer who was sent to prison, was released from prison. In his affidavit, Shadow details how Mr de Kock was taken out of prison and placed in a safe house with initially R30,000 00 allowance paid to him every month by SSA; with additional amounts between R50k and R250k cash which he, Shadow, paid to de Kock, who signed for it. Mr Mahlobo denied knowledge of Shadow; that Shadow ever came to his house with anybody about this project; that Shadow came to his house with Mr de Kock, or that there was a complaint to him by Mr de Kock about the breach of the arrangement which SSA had with him. He said that Shadow never brought de Kock to his house or interacted with him. He also questioned Shadow's profile <sup>370</sup>

### **Part of the affidavit of Blaze**

340. Also placed before Mr Mahlobo for his comment were the contents of the affidavit by Blaze (pseudonym), filed of record with the Commission and attested to on 1 May 2021. Blaze confirms an extract from his earlier performance report, apparently referred to colloquially as a Boast Report. In it, Blaze states, *inter alia*, that Minister Mahlobo directly tasked the CDSO team to activate the Sesikhona agents to ensure a presence

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<sup>369</sup> Page 248 line 6 to line 18

<sup>370</sup> Page 248 line 19 to page 250 line 10 and paragraphs 21 to 26 of the affidavit



within the City of Cape Town during the SONA (State of the Nation Address). That was done with great success. In other words, Minister Mahlobo had given direct instructions for certain activities to take place in relation to SONA. Mr Mahlobo's response was that he never got involved in operational matters of SONA, that there was a structure for that and there were people who ran it. He said that responsible Ministers would get briefed including him then as Minister.<sup>371</sup>

341. The evidence against Mr Mahlobo regarding his involvement is quite detailed, given project by project, and by various individuals; it overwhelmingly shows that, contrary to his denial, he did involve himself in the operational activities of the SSA, and that from time to time, he caused or approved cash to be withdrawn, some of which was handed to him. It is unimaginable that all these people could be lying; add to that the fact that he admits to some of the allegations, such as, but not limited to, the formation of a trade union to rival AMCU. Furthermore, most of the time Mr Mahlobo's version consisted of bare denials in circumstances in which the witnesses who gave evidence against him whether by affidavit only or by both affidavit and orally, gave detailed versions. Mr Mahlobo never suggested that all these witnesses had something personal against him that they would all make false allegations improperly against him. In particular, it is important to note that they never made similar allegations against other former Ministers of State Security such as Dr Siyabonga Cwele, Minister Ayanda Dlodlo, and Minister Letsatsi-Dube or Minister Lindiwe Sisulu. The question arises: why would they all make these allegations up against him and no other Minister?

## **THE EVIDENCE OF DR SETHLOMAMARU ISAAC DINTWE**

342. Dr Setlhomamaru Isaac Dintwe deposed to an affidavit, attested to on 6 May 2021, which was filed of record and admitted by the Commission. He is the Inspector General

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<sup>371</sup> Page 250 line 23 and paragraph 5 of Blaze's above affidavit

of Intelligence (IGI), appointed with effect from 15 March 2017 in terms of the Intelligence Services Oversight Act 40 of 1994<sup>372</sup>

343 He exercises oversight over the three arms of State Security: Defence Intelligence, Crime Intelligence and State Security Agency. His evidence was to deal with the nature and functioning of his office and the issues of its independence and powers in relation to the exercise of the oversight, the operational relationship between his office, the relevant Minister and State Security, the SSA and other instances.<sup>373</sup> Dr Dintwe explained the process for the declassification of information. Where the information affects a particular Ministry, he consults with the relevant Minister and the President, and where it involves all the three intelligence services, he has to consult not only with the President, but with the three Ministers as well: Minister of Police, Minister of Defence and Minister of State Security. He gets the power to declassify from what he calls the Minimum Information Security Standard (MISS), which determines that a document can be classified, reclassified or declassified by its originator or owner.<sup>374</sup> As far as the authority of the MISS is concerned, it started off as a Cabinet resolution and, according to him, its authority got affirmed by the Constitutional Court as a binding document.<sup>375</sup> Although apparently the issue of its binding force as a legal document is still under debate, in the absence of anything else, it is being relied on; the document itself is not classified and it is in the public domain.<sup>376</sup>

344 Dr Dintwe said that he complied with the prescribed procedure in properly declassifying the documents, one of the factors to consider being National interest as opposed to

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<sup>372</sup> Page 251 line 3 to page 253 line 3

<sup>373</sup> Page 254 line 12 to page 255 line 7

<sup>374</sup> Page 255 line 9 to page 256 line 17

<sup>375</sup> Page 256 line 18 to page 258 line 2

<sup>376</sup> Page 259 line 8 to page 260 line 24

State interest. His arrangement with the Commission's legal team was that he would continue to consider the declassification of some other documents; where there was no declassification, certain arrangements would be made with the Commission; he had confirmation from the President that the prescribed consultation for declassification had been completed.<sup>377</sup>

345 The consultative process was not an easy one. After he had solicited inputs from the Ministers of State Security, Defence and the South African Police Service, he received a letter from the President forwarding to him the Ministers' complaint that he had disclosed information to the Commission, and that he be suspended. The President said the matter would serve before Parliament's Joint Standing Committee on Intelligence for it to decide, to which Dr Dintwe was indeed called.<sup>378</sup> Amongst other things, the Committee said that the allegations against him were unsubstantiated; secondly, that there were no rules for the removal of the Inspector General of Intelligence. However, the matter did not die because upon the Minister of State Security receiving the Rule 3.3 notice from the Commission, she inquired from the Committee about the status of her complaint against Dr Dintwe.<sup>379</sup>

346. Attempts were made to limit his evidence by the three Ministers. Dr Dintwe said that they had a meeting with him (in the absence of the President) which was hostile. In essence, what they wanted him to do was just to submit to the Commission the provisions of the Oversight Act and not any other information. He resisted and told them more was required; he could not only go and give information about the provisions of the Act, which information the Commission could in any case get by itself; in fact, somebody, purporting to be acting on his behalf, sent the regulations under the

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<sup>377</sup> Page 260 line 25 to page 264 line 1

<sup>378</sup> Page 264 line 9 to page 268 line 22 and paragraph 5 of his affidavit

<sup>379</sup> Page 268 line 23 to page 270 line 4



Oversight Act to the Commission claiming to be assisting him lest he gave the Commission more than it required. The letter concerned was lodged with the Commission.<sup>380</sup>

347. The then Minister of State Security, Minister Ayanda Dlodlo, had written to Dr Dintwe to say what information he should give to the Commission and had sent that document to the Commission. Dr Dintwe did not want that to be done for him because he was going to depose his own affidavit, to which end he had already held a brainstorming session with the Commission's legal team as to what information they wanted of him. He, therefore, rejected the Minister's document.<sup>381</sup>

348. Dr Dintwe gave a brief account of the legal framework governing the Office of the Inspector General of Intelligence (OIGI). He explained the procedure for the appointment of the Inspector General of Intelligence as set out in Section 10 of the Constitution, including that the appointment is by the President, approved by a resolution of the National Assembly by a majority of at least two thirds of its members. Another oversight body over the office of the IGI is Parliament's Joint Standing Committee on Intelligence, established in terms of the Oversight Act. The IGI is accountable to that Committee which is the only committee that functions behind closed doors. The IGI is not accountable to any other instance, not even to the Minister.<sup>382</sup> After his appointment by the President, the National Assembly adopted its resolution for his appointment on 29 November 2016 with a majority far more than the two thirds threshold. That was after some 22 months without an IGI as the National Assembly on several occasions could not gather the prescribed majority.

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<sup>380</sup> Page 270 line 6 to page 271 line 25 and paragraph 6 of his affidavit

<sup>381</sup> Page 272 line 1 to page 275 line 7

<sup>382</sup> Page 275 line 18 to page 278 line 10 and paragraphs 7 and 8 of his affidavit

349. It was Dr Dintwe's view that for the Country to be without an IGI for 22 months was a dangerous thing because one cannot sit with intelligence services unchecked; the office investigates issues such as maladministration, corruption, compliance with the Constitution and applicable legislation, and it is only that office which can do that in relation to intelligence and not, for example, the Public Protector.<sup>383</sup> The fact that for 22 months prior to his appointment on 29 November 2016 there was no IGI is significant, given the fact that many of the queries raised by State Security Agency witnesses before this Commission relate to that period.<sup>384</sup> The situation was exacerbated by the fact that the Oversight Act does not create an office which could have carried on the function in the absence of an IGI as an individual, but only provides for an IGI as an individual.<sup>385</sup>

350 The IGI monitors compliance by all of the three intelligence services (SAPS Intelligence, SANDF Intelligence and the State Security Agency) with the Constitution, applicable laws and relevant policies on intelligence and counter-intelligence. Policies such as internal policies and also compliance with the Intelligence White Paper.<sup>386</sup> In Dr Dintwe's view, the Intelligence White Paper needs to be complied with because the Constitution mirrors it, and the relevant pieces of legislation such as the National Strategic Intelligence Act 39 of 1994, the Intelligence Services Act and the Oversight Act came out of the Intelligence White Paper. The importance of reliance on the Intelligence White Paper is that, in his view, gaps in the current legislation may be plugged, citing what he regarded as examples.<sup>387</sup> Dr Dintwe's evidence therefore confirmed what was said by

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<sup>383</sup> Page 280 line 9 to page 281 line 10.

<sup>384</sup> Page 281 line 11 to line 18

<sup>385</sup> Page 281 line 19 to page 282 line 7

<sup>386</sup> Page 283 line 3 to line 23

<sup>387</sup> Page 283 line 25 to page 285 line 11

other witnesses, such as Ambassador Maqetuka and Mr Shaik, about the importance of the Intelligence White Paper

351 Dr Dintwe is a qualified forensic investigator, not a lawyer; he depends on legal advice. He is independent. He may be asked by a Minister or the President to investigate, but they do not supervise him on his work, and he would submit a report to whoever, including the President, whether they like the contents thereof or not; the outcome would be independent.<sup>388</sup> He investigates alleged maladministration, abuse of power, transgressions of the Constitution, laws and prescribed policies and corruption. He summed up his functions thus: Monitoring of the three intelligence services; reviewing and also investigating complaints (including complaints from the public); at the end of the year the IGI submits a "certificate", which is in fact an annual report on the monitoring, reviews and complaints. The certificate is submitted, firstly, to the Ministers responsible and later to the Joint Standing Committee on Intelligence on findings and recommendations. The report is preceded by a one page document reflecting findings, to which the detailed report would be attached.<sup>389</sup> Legislation requires that the IGI serves independently, in good faith and without fear, favour, bias or prejudice; however, there were instances, he said, when his independence was undermined to a worrying extent.<sup>390</sup>

352 He believes that the independence to be enjoyed by the IGI should be akin to the one enjoyed by the Directorate for Priority Crime Investigation (the Hawks) and by the Independent Police Investigative Directorate (IPID) as determined by the Constitutional

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<sup>388</sup> Page 286 line 1 to line 22

<sup>389</sup> Page 285 line 16 to page 289 line 25

<sup>390</sup> Page 291 line 13 to page 292 line 6



Court. That was, of course, his personal opinion, which he was entitled to express. It is his view that the IGI should only be accountable to Parliament through the JSCI <sup>391</sup>

353 Dr Dintwe pointed out that in 1994 there was no Minister of State Security. The President had assigned the running of security to the Ministry of Justice, but with a Deputy Minister of Justice (then late Joe Nhlanhla) given the responsibility of intelligence affairs. He said that the Ministry was established only in 2000, with the following Ministers serving: Ms Lindiwe Sisulu from 2000 to 2004; Mr Ronnie Kasrils from 2004 to 2008; Dr Siyabonga Cwele from 2008 to 2014; Mr David Mahlobo from 2014 to 2017; Adv Bongani Bongo from 2017 to February 2018 for a few months apparently before being followed by Ms Letsatsi-Duba who served until May 2019, and then Ms Ayanda Dlodlo from May 2019 who, we now know, served until beginning of August 2021 when the Ministry was abolished and the intelligence services taken back to the President which is the position that obtained in 1994 <sup>392</sup>. As far as the office of the IGI was concerned, and, leaving aside developments prior to that, it was occupied by Mr Zola Ngcakani from 2004 until December 2009; then followed by the late Ambassador Faith Radebe from 2010 until 2015, after which the office remained vacant for 22 months until Dr Dintwe was appointed. <sup>393</sup>

### **Access to intelligence information by the IGI**

354 Section 7 of the Oversight Act gives the IGI access to intelligence information or premises under the control of any intelligence service as required by the IGI for the performance of his/her functions. The IGI may require explanations from the Head of the Service or its employees. Such intelligence information may not be withheld from

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<sup>391</sup> Page 292 line 13 to page 295 line 15 and paragraphs 13 to 17 of his affidavit

<sup>392</sup> Page 295 line 16 to page 296 line 13 and paragraphs 18 to 21 of his affidavit

<sup>393</sup> Page 296 line 14 to line 25 and paragraph 22 of the affidavit

the IGI.<sup>394</sup> The impact of the provision is to ensure that the IGI is never denied any intelligence information. In fact, denying the IGI intelligence information is a criminal offence. This is to ensure unfettered access by the IGI to intelligence information despite the fact that the intelligence operates secretly. The access is, therefore, to ensure that criminal or improper conduct is not hidden. The provision ensures that the information is accessed by the IGI to enable him or her to perform his or her functions properly. Only the IGI determines which information is necessary and failure to comply with the IGI's request is an offence.<sup>395</sup>

### **Regarding the concept of Oversight**

355 Dr Dintwe accepts that there may be some debate about what oversight encompasses; but his view is that it is an all-encompassing concept, which includes monitoring, review and the investigation of complaints.<sup>396</sup>

### **Regarding check and balances in intelligence services**

356. : Apart from chapter 11 of the Constitution, the intelligence services of South Africa are also governed by legislation such as the National Strategic Intelligence Services Act and the Oversight Act. There is also the Intelligence White Paper, the Minimum Information Security Standards (MISS) and the regulatory framework comprising Intelligence Services Regulations, Directives, Policies and Standard Operating Procedures. Although access to the MISS is marked "*restricted*", the document is, as already mentioned, not classified and is available on the internet.<sup>397</sup>

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<sup>394</sup> Page 297 line 6 to page 298 line 4 and paragraphs 23 and 24

<sup>395</sup> Page 298 line 8 to page 299 line 17 and paragraph 25 of the affidavit

<sup>396</sup> Page 300 line 4 to page 301 line 6 and paragraph 27 of the affidavit

<sup>397</sup> Page 301 line 6 to line 18 and paragraph 28 of his affidavit

357. The absence of effective checks and balances was pointed out as one of the cardinal reasons for the alleged malfeasance, corruption and fraud perpetrated at the SSA. This led to the appointment of the High-Level Review Panel headed by Dr Mufamadi. Prior to that, there were Inquiries in 2006 and in 2008. They, amongst others, made certain findings relating to the office of the IGI, particularly regarding its independence.<sup>398</sup>
358. It was Dr Dintwe's evidence before this Commission that, had the office of the IGI been strengthened, it would have prevented the malfeasance and corruption, maladministration, abuse of power within the SSA. He said that there would not have been a need for the establishment of the High-Level Review Panel. Dr Dintwe said that although the IGI had the power and access to documentation, the IGI could not prevent the above problems for a number of reasons. After the tenure of Mr Ngcakani, the office remained vacant; again, after Adv Faith Radebe, it remained vacant for 22 months. The office has 34 posts only. Out of those only 24 positions have been filled. This means that there are 10 posts which have not been filled. There are no satellite offices. Dr Dintwe said that capacity is a big problem. He said there is lack of adequate independence. Without enough staff as it is, some of them are only doing administrative work and are not investigators. Motivated requests for more staff have fallen on deaf ears. Moreover, the IGI cannot appoint staff; only the Minister has the power to appoint staff. According to Dr Dintwe, the Minister would not appoint people who would hassle him/her. People resigned, retired or got transferred without being replaced even though those are obviously funded posts and the money should be there.<sup>399</sup>
359. Dr Dintwe also testified that determining the budget for the office of the IGI is also a problem. He said that there is no direct budget vote for the office. The budget is to the Minister of State Security. The problem was that the Director-General of State Security

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<sup>398</sup> Page 301 line 19 to page 303 line 4 and paragraph 29 of the affidavit

<sup>399</sup> Page 303 line 8 to page 309 line 16 and paragraph 30 of the affidavit



would be the one to determine the allocation to the office of the IGI; that is, the very body over which the IGI had to exercise oversight determined how much the office of the IGI should get. At the very least, the budget should be pre-determined and ring-fenced by Parliament within the SSA budget. The SSA also, in determining the allocation, goes below the baseline. Dr Dintwe expressed the view that, as the IGI exercises oversight over the SSA, the latter should not have a hand in determining the IGI's budget.<sup>400</sup>

360. Dr Dintwe said that the other thing that compromises the independence of the office is that it is situated within the Ministry of State Security; the IGI is using the ICT infrastructure of the SSA and its server, which means, being the owner of the server, the SSA may access information that is with the IGI; this point also unsettles other intelligence services such as the SAP's Crime Intelligence and Defence Intelligence<sup>401</sup>

361. According to Dr Dintwe since its inception, the OIGI has been dependent on the Ministry of State Security and the SSA for its operations. It is not a separate entity; apart from depending on the SSA for its ICT and server, it does so in respect of other tools needed for functioning such as payment of staff, office space etc; the OIGI should not fall within the SSA administratively or operationally; it should be a separate entity in terms of the Public Service Act. There is no legal framework for its existence; the Director-General of the SSA holds administrative power and the purse strings of the OIGI.<sup>402</sup>

362. The powers of the OIGI, according to Dr Dintwe, were undermined by the SSA and in particular its then Director General Mr Arthur Fraser, with whom Dr Dintwe had to litigate. Dr Dintwe said that although it is the Minister who appoints staff, in practice it is

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<sup>400</sup> Page 309 line 17 to page 315 line 16 and paragraph 31 of the affidavit

<sup>401</sup> Page 315 line 17 to page 317 line 25

<sup>402</sup> Page 318 line 18 to page 321 line 3 and paragraph 32 of the affidavit

the DG. It is the DG that sits with the money with the ultimate power to release it. If he does not support you, staff appointments would not be made.<sup>403</sup> Dr Dintwe gave as an example his request to the then Minister Mahlobo who said he had no problem with the filling of certain posts, after which he wrote to Mr Arthur Fraser to facilitate the release of the funds as the posts were funded. Dr Dintwe pointed out that the posts were critical posts. They included posts such as those of Oversight Principal Officer and an IT specialist. Dr Dintwe testified that Mr Fraser's response was that the SSA was busy with the realignment of its organizational structure and strategy and that he would attend to the matter only thereafter – something which had nothing to do with the office of the IGI!<sup>404</sup>

363. Dr Dintwe stated that the DG of the SSA does not have the power in respect of the appointment of the OIGI's staff. It is the Minister, after consultation with the IGI, who has such power. Ideally, the IGI should determine the personnel needs of the office. The office of the IGI has its own vision and should not be subordinate to the development plan of the SSA; moreover, the staff to the OIGI is appointed in terms of the Oversight Act. Dr Dintwe made the point that it is irrational that the person over whom you exercise oversight should have control over the appointment of your staff.<sup>405</sup>

364. Dr Dintwe also testified that excuses would also be given by the SSA for not providing certain information or documents despite repeated requests. He said that this continued until the he threatened to go to the police and lay a criminal offence as such denials of access constitute criminal offences. Dr Dintwe said it was only then that the IGI would

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<sup>403</sup> Page 321 line 4 to page 324 line 25 and paragraph 36 of the affidavit

<sup>404</sup> Page 325 line 2 to page 329 line 1

<sup>405</sup> Page 329 line 2 to page 332 line 6

get the information. The provisions of the Oversight Act giving the IGI access would not, according to Dr Dintwe always be adhered to <sup>406</sup>

### Recommendations by Dr Dintwe

365. In his evidence, Dr Dintwe suggested some recommendations for the Commission to consider making in this report regarding the independence of the IGI'S office. These were that:

365.1. the OIGI be established in terms of the Public Service Act as a national department, distinct from the SSA;

365 2 the OIGI should have its own funding from a source not aligned to the SSA,<sup>407</sup> he said that these recommendations had been made before in previous reports; firstly in 2006 and then in 2008. Their recommendations on this point as stated by Dr Dintwe, supported and affirmed in the report of the High-Level Review Panel, pointed out: *"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"*.<sup>408</sup> Dr Dintwe indicated that the above documents calling for the implementation of the recommendations (that the OIGI be given its own status and independent budget away from the SSA) are now declassified and that the current President has called for their implementation.<sup>409</sup>

366 Dr Dintwe repeated the point that one of the problems was that the post of IGI remained vacant for a long time at one stage; and that the High Level Panel expressed the

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<sup>406</sup> Page 332 line 8 to page 334 line 13

<sup>407</sup> Page 335 line 15 to page 336 line 1 and paragraph 49 of his affidavit

<sup>408</sup> Page 336 line 2 to page 339 line 2 and paragraph 13.3.2 of the Report of the High-Level Review Panel, I SSA Bundle o2(a) page YY2 FSM 32 136

<sup>409</sup> Page 340 line 20 to page 341 line 18



concern that recommendations by the OIGI were not implemented, raising the question whether the IGI's recommendations should not be made binding like those of the Public Protector. He also explained the process he followed before issuing the certificates or reports: he would first solicit the views of all the three Ministers (of intelligence services) even though there is no legislation requiring of him to do so; incorporate the views or inputs which he considered meritorious and then send back to the Ministers for their comment; doing so would also enable the Ministers to correct and implement or enforce their internal controls. Dr Dintwe said that the IGI's task is to see whether they develop internal controls and implement them, very much like the Auditor General does. He said that the IGI points out problems and it would be for them, for example, to institute disciplinary proceedings against their officials or employees. They would have comprehensive reports in front of them from the IGI.<sup>410</sup>

- 367 Dr Dintwe said that even his predecessors had issued the same detailed and damning reports but they had not been implemented.<sup>411</sup> The failure to implement the IGI's reports raises the concern, as indicated in the evidence placed before the Commission, that that was a common problem with other State enterprises. It was Dr Dintwe's view that the problem might be that offices such as the OIGI only issued recommendations because he had even went so far as to see President Zuma and President Ramaphosa about this problem. Dr Dintwe prefers that the IGI's reports should be binding in the same way as those of the Public Protector. He also submitted reports to the Joint Standing Committee on Intelligence of Parliament. The previous committee did not, to his knowledge, take any action but he had not yet worked long enough with the new committee to be able to say the same about it. He kept sending them reports.<sup>412</sup>

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<sup>410</sup> Page 345 line 4 to page 348 line 2

<sup>411</sup> Page 348 line 3 to page 348 line 22

<sup>412</sup> Page 348 line 23 to page 353 line 4; and also page 350 line 14 to 353 line 4

368. The office of the IGI did produce its own report on the Principal Agent Network project (which was different to the one produced internally by the SSA itself, the PAN report) It was apparently before Dr Dintwe's time. He said that the report would have been presented to Minister Cwele. When Mr Mahlobo succeeded him, it was presented to him as well. Dr Dintwe said that there were a number of issues in that report which were not addressed, such as Mr Mahlobo's involvement in operational issues as well as in the administrative decision making of the SSA, and also the problem of a culture of non accountability in the SSA, all of which, as noted in the report of the High-Level Review Panel, suggested that the IGI was not taken seriously by the SSA. Dr Dintwe said that, although Ministers should not involve themselves in operational issues, they did so.<sup>413</sup>
369. Dr Dintwe told the Commission that the source of the MISS (the Minimum Information Security Standards) was the Public Service Regulations Promulgated in terms of the Public Services Act of 1994.<sup>414</sup> He had to return to this point to clarify the source and binding power of the MISS.
370. He said that there was not only a view that it was undesirable for a Minister to be involved in operational matters, but that it was in fact unlawful to do so. However, he said, if a Minister performed an activity that fell within the purview of the authority of the IGI, the IGI would review that activity; for example, if a Minister of Intelligence services performed a task that would ordinarily be done by the Director General, and there was a complaint about that activity, the IGI would be competent to investigate and, if need be, make a finding against the Minister; this despite the fact that the Oversight Act says the IGI shall monitor, review or investigate complaints against Heads of Services, which exclude Ministers, but includes DG's. He said that the office had, however, never been

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<sup>413</sup> Page 354 line 25 to page 359 line 13

<sup>414</sup> See page 359 line 13 to page 360 line 6

challenged or taken to court by any Minister in that regard. If a Minister were therefore to involve himself or herself in operational matters of the service under their supervision, the IGI would investigate if there is a complaint arising <sup>415</sup>

### **Ministerial Delegation of Powers and Direction of Payment**

371. Dr Dintwe also testified on what, he described in his affidavit as "*Ministerial Delegation of Powers and Direction of Payment*" He said it was a document developed by the Minister, the purpose of which was to delegate certain powers to the DG, which the latter otherwise did not have in terms of legislation. He contended that the document (the MPD) was used to undermine legislation. It also blurred the lines of authority, making it difficult for the IGI to know exactly who should be accountable. In some instances, one would find situations where even the DG's subordinates exercised the delegated power <sup>416</sup> Dr Dintwe gave an example of how the MPD's were abused with reference to an incident in December 2017. He referred to the case when Mr Bongo was the Minister of State Security. An MPD was issued which sought to demote the IGI to the level of a Deputy Director General. That move would have placed him under Mr Arthur Fraser who was the Director General over whom the IGI was supposed to exercise some oversight. In doing so, the MPD said Dr Dintwe would have undermined the provisions of the Oversight Act which gave the IGI oversight powers. Secondly, the MPD sought to give the DG the power to appoint an Acting IGI in the absence of the IGI. That would have enabled Mr Arthur Fraser, in Dr Dintwe's absence, to appoint an Acting IGI. The MPD would clearly have made him subordinate to the DG of the SSA (Mr Fraser).<sup>417</sup> This would have been despite the fact that the IGI is appointed by the President and approved by Parliament and is accountable to Parliament's Joint

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<sup>415</sup> Page 255 line 3 to page 263 line 16 and paragraphs 53 and 54 of the affidavit

<sup>416</sup> Page 263 line 9 to page 266 line 9 and paragraphs 55 et seq.

<sup>417</sup> Page 265 line 24 to page 268 line 21 and paragraph 62 of his affidavit



Standing Committee on Intelligence.<sup>418</sup> It was also Dr Dintwe's view that the MPD was in any case subordinate or secondary legislation and had to be consistent with the Oversight Act and the Constitution.<sup>419</sup>

372. As a result of certain developments relative to the amendment of the MPD by Mr Bongo seeking to subordinate the IGI to the DG (Mr Fraser), Dr Dintwe made an inference that the aim was not only to undermine his authority, but also to remove him from office. In that regard, one has to look objectively at the developments he sets out. He says the move followed a flurry of letters from Mr Fraser which said that he was not competent to be entrusted with State's secrets, and that he was seen somewhere sitting with members of the opposition parties.<sup>420</sup>
373. The flurry of letters by Mr Fraser, and his above accusations, were in the wake of an investigation by Dr Dintwe against him following some complaints. Dr Dintwe mentioned in his affidavit that he had put the letters together as an exhibit; however, they were not with him at the time he gave his evidence.<sup>421</sup> In one of the letters, Mr Fraser was telling him that his clearance certificate had been withdrawn.<sup>422</sup>
374. Dr Dintwe told the Commission about the developments that preceded the above conduct by Mr Fraser in order to give context to his problems with Mr Fraser. The gist of it was that at a meeting he had with Mr Fraser, Mr Fraser told him that the caucus of the African National Congress in Parliament had told him to inform Dr Dintwe to stop a certain investigation against him as the matter was closed. Yet, in Dr Dintwe's view, what he was investigating was a different complaint by a leader of the DA in Parliament.

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<sup>418</sup> Page 268 line 22 to page 269 line 2

<sup>419</sup> Page 269 line 19 to line 24 and paragraph 63 of his affidavit

<sup>420</sup> Page 271 line 6 to page 272 line 4 and paragraph 64 of his affidavit

<sup>421</sup> Page 272 line 5 to page 273 line 4

<sup>422</sup> Page 273 line 5 to line 12

His response to Mr Fraser was that he reported to Parliament and could only be stopped by it. Upon Dr Dintwe's return to his office, he says he wrote a letter to Mr Fraser as a matter of courtesy to confirm that what he was investigating was a different complaint.<sup>423</sup> It was on the basis of the above that Dr Dintwe inferred that the steps were taken to either undermine his investigative capabilities, scope, or even to remove him from office. The letters written to him by Mr Fraser were, according to him, saying only one thing, namely, that he was not competent; they aimed to have him lose his security clearance certificate without which he could not continue to occupy that office.<sup>424</sup> On the basis of those objective facts, the conclusion drawn by Dr Dintwe could hardly be faulted. He had to be stopped from conducting the investigation against Mr Fraser and from carrying out his duties, by the revocation of his security clearance, an issue dealt with in more detail later.

375. The amended MPD issued by then Minister Bongo was later, withdrawn by the new Minister at the time, Minister Letsatsi-Dube.<sup>425</sup> This was after Dr Dintwe had representations that the amendment was unlawful.

### **The alleged weaponization of Vetting or Security Clearance**

376. The evidence of Dr Dintwe tallied with the other witnesses that there was a parallel vetting structure. In fact, the evidence spoke of it as an illegally operated parallel structure. Dr Dintwe's evidence was that the vetting was granted, as he puts it, according to who enabled, State Capture and who did not. Investigations carried out by

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<sup>423</sup> Page 273 line 13 to page 275 line 1

<sup>424</sup> Page 275 line 1 to line 17

<sup>425</sup> Page 275 line 19 to page 276 line 24 and paragraph 65 of his affidavit

the OIGI revealed that Intelligence Services used vetting or security clearance for improper and even nefarious purposes in the manner described in his affidavit <sup>426</sup>

377 Dr Dintwe presented the legal framework relating to vetting or the issuing of a clearance certificate. He also indicated that regulations governing the issuance of security clearance for the IGI and staff were drafted but never promulgated. This created a situation where that matter is governed as if they were members of intelligence services while they were not. The result was that the DG of the SSA could remove the IGI by withdrawing his clearance certificate even if there is no legislative or regulatory provision to that effect <sup>427</sup>

378 As examples of the abuse of the vetting system, Dr Dintwe mentioned the case of Mr Robert McBride, at the time when he was the Head of IPID. It turned out the issuance of his certificate was not issued in time before the expiry of his term, even though he had applied timeously. It also turned out that certain accusations were made against him by a company which he was investigating which company subsequently got lucrative deals running into millions with the intelligence service. Mr McBride then lodged a complaint with the OIGI, which was the matter that Dr Dintwe said he was investigating. <sup>428</sup>

379. The other example given by Dr Dintwe of the abuse of the vetting or issuing of clearance certificate was the case of Mr Mxolisi Nxasana, the former National Director of Public Prosecutions. In the course of the IGI's investigation into the issue of the removal of Mr Nxasana's security clearance, a number of irregularities were discovered. The context given by Dr Dintwe was that Mr Nxasana had given indication to prosecute former

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<sup>426</sup> Page 276 line 25 to page 278 line 9 and paragraph 66 of his affidavit

<sup>427</sup> Page 270 line 4 to page 281 line 13

<sup>428</sup> Page 282 line 6 to page 287 line 21 and paragraphs 72 to 81



President Zuma. Queries about his clearance then emerged. One of the queries found was that he was re-vetted outside of the period for which he had given consent; but the documents relating to that re-vetting disappeared.<sup>429</sup> The situation with Mr Nxasana was summed up by Dr Dintwe as follows in his evidence, based on his investigations. Former President Zuma relied upon the alleged lack of Mr Nxasana's security clearance to institute an inquiry into his fitness to hold office and notified Mr Nxasana of his intention to suspend him. Yet, Mr Nxasana had been issued with a valid Top Secret Security Clearance. Nevertheless, a further investigation into his security status was conducted which, according to Dr Dintwe, was improper because his original certificate was in place. Despite that, queries around its alleged lack of validity were used as one of the reasons for questioning his fitness to continue to hold office as National Director of Prosecutions. The second round of vetting revealed a charge of murder of which Mr Nxasana had been acquitted. According to Dr Dintwe the grounds on which the second vetting were fallacious.<sup>430</sup> Dr Dintwe went on to poke holes in the second vetting and the justification for it.<sup>431</sup>

- 380 Throughout his evidence, Dr Dintwe made the point that he did not raise the issues he raised as a personal grievance. That point may be important in evaluating his evidence; he said that he came to testify like other witnesses who are opposed to fraud, malfeasance, state capture and corruption in government. He said that it is a matter of testifying in the interests of the office as well.<sup>432</sup>

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<sup>429</sup> Page 287 line 21 to page 292 line 23

<sup>430</sup> Page 294 line 23 to page 296 line 19 and paragraph 87.7 of his affidavit

<sup>431</sup> Page 296 line 4 to page 299 line 16

<sup>432</sup> Page 301 line 7 to page 302 line 10

### The issue of Dr Dintwe's own vetting

- 381 Dr Dintwe's evidence returned to the matter of his own security clearance certificate alluded to earlier. His own security vetting was done pretty quickly; he was given a top secret security clearance; the period thereof is not regulated, he said, but it would normally be for a period of five years.<sup>433</sup>
- 382 Dr Dintwe said that during 2017 and 2018 he suddenly found himself a subject of re-vetting. He told the Commission of the circumstances that led to that. At one point he made Mr Arthur Fraser aware of the fact that he was investigating a complaint against him. Dr Dintwe said that Mr Fraser's response to this was that, because he (i.e. Mr Fraser) had a counter-intelligence mandate, Dr Dintwe had to give him all the information concerning the complaint. According to Dr Dintwe, Mr Fraser made that request because he knew that the complaint related to the PAN (Principal Agent Network) investigation – one of the projects Mr Fraser had run. Dr Dintwe turned down the request on the ground that granting it would defeat the very purpose for which the IGI office was created.<sup>434</sup>
- 383 After Dr Dintwe's above refusal, Mr Fraser wrote a letter to him informing him that he had launched a counter investigation against him. Mr Fraser's letter of 8 November 2017 reflected that the reason for the counter-investigation was that Dr Dintwe had met representatives of political parties in Parliament and received classified information relating to the SSA and its activities. According to Dr Dintwe that was an incorrect accusation. The letter also said that members or former members of the SSA had

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<sup>433</sup> Page 302 line 14 to page 303 line 9 and paragraph 88 of his affidavit

<sup>434</sup> Page 303 line 10 to page 305 line 22

disclosed classified information to a political representative, which Dr Dintwe alleged to have failed to disclose to him (Mr Fraser) <sup>435</sup>

- 384 Mr Fraser wrote another letter on 13 November 2017 as a follow-up. He repeated his accusation that Dr Dintwe was in receipt of unlawfully obtained classified information from political parties in Parliament. He said that Dr Dintwe had violated the provisions of section 7(10) of the Oversight Act <sup>436</sup> Section 7 (10) reads:

"An Inspector-General-

(a) shall comply with all security requirements applicable to the employees of the Service in respect of which he or she has been appointed; and

(b) shall serve impartially and independently and perform his or her functions in good faith and without fear, favour, bias or prejudice"

385. Dr Dintwe then received yet another letter from Mr Fraser dated 15 November 2017. It told him that he would be re-vetted by the SSA as he had not reported or disclosed to Mr Fraser that he was in receipt of unlawfully obtained classified information. Dr Dintwe said that Mr Fraser delivered that last mentioned letter himself to Dr Dintwe and violently dropped it on the table telling Dr Dintwe that he had to re-vett him and then angrily left the office

386. Dr Dintwe sums up the events leading to the decision by Mr Fraser to re-vett him as follows: Dr Dintwe received a complaint from a Member of Parliament, which was about the Principal Agent Network (PAN) project; from the evidence of other witnesses the PAN report implicated Mr Fraser; Mr Fraser wanted classified documents received by Dr Dintwe which formed part of the report; Dr Dintwe told him that he was not going to disclose the contents of the report at that stage to him; Mr Fraser became unhappy that

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<sup>435</sup> Page 305 line 23 to page 307 line 17 and paragraph 91 of his affidavit

<sup>436</sup> Page 309 line 20 to page 310 line 12 and paragraph 91 of his affidavit



Dr Dintwe was investigating the complaint against him without disclosing to him the information relating to the complaint investigated; he then decided to re-vett Dr Dintwe, the ground of which was being exactly Dr Dintwe's handling of the complaint against Mr Fraser.<sup>437</sup> Dr Dintwe concluded, based on this sequence of events, that Mr Fraser was abusing the vetting system and the issue of clearance certificate.

387 Dr Dintwe received a letter dated 3 December 2017 from Mr Fraser accusing him of having been uncooperative with the vetting. It also added an accusation of the leaking of information, and a further ground for re-vetting was added on the basis of some "*disturbing news*" (Mr Fraser's words), Dr Dintwe testified that he was never appraised of what that was about. However, in hindsight, he concluded that it was the allegation that he was "*spotted*" meeting members of the opposition which seems to have been a reference to members of the Democratic Alliance. That accusation was revealed in the report of the High Level Panel Review.<sup>438</sup> Dr Dintwe pointed out that it was the responsibility of the IGI to meet with members of the public raising complaints in order to receive information from them, classified or not.<sup>439</sup> At any rate, Mr Fraser would have been conflicted as he was the person being investigated; furthermore, the IGI does not report to the DG or any of the intelligence Ministers, but to the JSCI; the DG's powers could not supersede his.<sup>440</sup>

388 Dr Dintwe was served with a letter from Mr Fraser on 28 March 2018 to the effect that his security clearance had been withdrawn with immediate effect. The reasons given were: failure to exercise his duty to report and act on breaches of disclosure of classified information in or from the office of the IGI; secondly, failure in the execution of his

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<sup>437</sup> Page 312 line 7 to page 313 line 14

<sup>438</sup> Page 314 line 2 to page 317 line 21 and paragraphs 98 and 99 of his affidavit

<sup>439</sup> Page 318 line 15 to line 23

<sup>440</sup> Page 320 line 1 to page 321 line 10 and paragraph 106 of his affidavit

fiduciary duties towards the intelligence services by obstructing due administration and defeating the ends of justice; another reason was that he had failed to comply with a request to submit himself to be re-vetted <sup>441</sup>

389. Thereafter, Dr Dintwe received a letter dated 5 April 2018 which informed him that his security clearance had been withdrawn. The effect thereof was, he says, to bring the office of the IGI to its knees. The import was to remove him physically from his office not only as a person but also as the IGI. This meant closing the office as it could not operate without him, meaning that the complaint against Mr Fraser would not be investigated. Moreover no one else could carry on with the investigation because Mr Fraser instructed his managers not to communicate with him, thereby cutting any communication with him.<sup>442</sup>

390. Following all the above developments, Dr Dintwe launched an urgent application in the High Court for the re instatement of his security clearance. Mr Fraser filed an affidavit to oppose the matter, but at the court's doorstep, the Minister agreed to have the security clearance re-instated. The Minister, too, had filed an opposing affidavit, but the matter was pursued after the issue of urgency was resolved <sup>443</sup>. On that someday Dr Dintwe received a call from the "*Johannesburg Diplomat on Intelligence*", Mr Charles Ngqakula, to tell him that there was a decision to move Mr Arthur Fraser out of the State Security Agency, and that was what happened; the case was postponed <sup>444</sup>

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<sup>441</sup> Page 321 line 16 to page 324 line 10 and paragraph 108 of his affidavit

<sup>442</sup> Page 325 line 20 to page 328 line 3 and paragraph 109 of his affidavit

<sup>443</sup> Page 328 line 5 to page 331 line 25

<sup>444</sup> Page 332 line 4 to line 14

### Dr Dintwe's reference to questionable Intelligence Reports

391 In his evidence, Dr Dintwe gave examples of some questionable intelligence reports. He went into details about that. The one example he gave was an investigation he had to conduct into an alleged intelligence report on the basis of which former President Zuma said he was recalling Minister Pravin Gordhan and his then Deputy Mr Jonas from a trip abroad; the content of the alleged intelligence report being that they were overseas to meet with some foreign agents who were calling for regime change in the country. Dr Dintwe received a complaint from the Democratic Alliance, the South African Communist Party and a member of the public to investigate the source of that report. He investigated what he described in his affidavit as the *"core issues that needed to be investigated were the origin, authenticity and veracity of this alleged intelligence report"*<sup>445</sup>

392 The former President was the only person who had said he had that report. Dr Dintwe asked him for it and a meeting was set up with the former President. It was a warm meeting. The former President did not say there was a report which he would send to Dr Dintwe; the only thing he said was that when the time was right, he would explain for Dr Dintwe to understand; that was how he left the President's office.<sup>446</sup> In the meeting, the former President did not commit himself as to whether such a report existed or not, except to say that he was aware that people were saying there was a report somewhere. Dr Dintwe said the former President told him that he would explain to him, but he did not indicate the timeframe. But soon after the meeting, Dr Dintwe wrote a letter to confirm the above conversation and indicated that he was awaiting a further engagement, and that he wanted to conclude the investigation as soon as possible; this

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<sup>445</sup> Page 335 line 17 to page 338 line 3

<sup>446</sup> Page 338 line 6 to page 339 line 8



was in 2017.<sup>447</sup> It is not clear from Dr Dintwe's evidence that the former President committed to the existence or otherwise of the alleged intelligence report

393 At any rate Dr Dintwe's evidence, summed before the Commission, was as follows: He was asked to investigate the origin and authenticity of the report; he interviewed various people including the former President, with whom he had a discussion about the existence or otherwise of the alleged report he was investigating; he asked the former President for a copy thereof, which the former President did not furnish to him until he left office; no one ever gave Dr Dintwe a copy of the report; the only thing he saw was a badly written document shown on social media. They could not rely on a document downloaded from the media; the former President did not take ownership of it, therefore, he could not deal with the veracity of an unowned document. He never got a full and satisfactory report from the former President until he left office, which he could still have proffered even after departure from office.<sup>448</sup> Dr Dintwe said that all the three intelligence agencies said that the report was not given by them.<sup>449</sup> He did not investigate the merits of the allegations or the authenticity of the document for a number of reasons, including the fact that that might have been beyond his scope, and also that he deemed Mr Gordhan and Mr Jonas as victims and not complainants; however, he did speak to Mr Gordhan but could not get hold of Mr Jonas; nor were they viewed as members of the intelligence services; his finding was simply that he could not verify the authenticity of the document.<sup>450</sup>

394. As more examples of questionable intelligence reports, Dr Dintwe mentioned a report by Crime Intelligence that they came across an alleged plot by General Shadrack Sibiya, Mr Robert McBride and Mr Paul O'Sullivan and others to overthrow the

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<sup>447</sup> Page 339 line 9 to page 341 line 20

<sup>448</sup> Page 345 line 16 to page 347 line 22

<sup>449</sup> Page 347 line 23 to page 348 line 13

<sup>450</sup> Page 348 line 15 to page 353 line 25

government. The second report related to the alleged unlawful rendition of foreign nationals involving Generals Sibiya and Dramat. Both reports turned out to be untrue. The criminal charges against General Dramat and General Sibiya in the rendition matter were later withdrawn. It was well-known, said Dr Dintwe, that General Sibiya was involved in the investigation against General Richard Mdluli (then head of Crime Intelligence). Dr Dintwe attached copies of the questioned reports to his affidavit.<sup>451</sup>

395. Dr Dintwe had serious criticism of the reports; for example, that they were incoherent, prepared in a clumsy manner, full of spelling errors and unintelligible; yet they were dealing with human lives and the rights of individuals; they were too sub-standard to be worthy of being sent to the President of the country. The identity of the compiler of the report was, more often than not, not stated or evident; while he appreciated security measures in that regard, there at least had to be a code name or a number. It was Dr Dintwe's view that the reports were compiled knowing that they would not stand up in court, and that they were compiled to remove people from their positions who stood in the way of State Capture; by the time cases against the accused people fell away, their careers were damaged.<sup>452</sup> The reports did not go through the vigorous process of checks and balances, according to Dr Dintwe.<sup>453</sup>

#### **Dr Dintwe's evidence on the irregular appointments within the Intelligence Services**

396. It was Dr Dintwe's evidence that there were a number of irregular appointments to both the State Security Agency and Crime Intelligence. He said that such appointments created instability and a potential for State capture. In some instances no criteria were used. Dr Dintwe gave examples to illustrate the point. The one case was where former

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<sup>451</sup> Page 353 line 25 to page 355 line 5 and paragraph 116 of his affidavit.

<sup>452</sup> Page 353 line 25 to page 358 line 12 and paragraph 117 of his affidavit.

<sup>453</sup> Page 358 line 16 to page 360 line 10.

Minister Bongani Bongo ordered the National Intelligence Coordinating Committee (NICOC) to appoint somebody to a senior position, on the basis that the person was personally known to him. Shortly after that irregular appointment, the person was promoted to an even higher position; again irregularly. The IGI's recommendation for rectifying the situation has remained unimplemented. The other instance concerned the position of a Programme Manager at the SSA. The IGI's investigation revealed that a senior person there caused an advertised post to be withdrawn because his preferred candidate was not shortlisted. Recommendations made by the IGI to rectify the situation sent to former Minister Dlodlo remained unimplemented. In his affidavit, Dr Dintwe mentioned several instances of irregular appointments.<sup>454</sup> The cases he mentioned sufficiently demonstrated a practice of irregular appointments to the intelligence services. It is also clear from his evidence that the IGI's recommendations to remedy the situations were not implemented by the relevant Ministers: Mr Bongani Bongo, later Ms Letsatsi-Duba and Ms Ayanda Dlodlo.<sup>455</sup>

397. Instead of implementing the recommendation of the IGI made to her predecessor Mr Bongo, Minister Letsatsi-Duba raised a query with the IGI that Mr Bongo and the DG of the SSA, Mr Fraser, had not been given the opportunity for an input. In response, the IGI gave an explanation. That was that, regarding Mr Fraser, it was explained that he had not been involved in the process of making the appointment; as for Mr Bongo, it was pointed out that there was *prima facie* proof that the appointment by him was in contravention of the Intelligence Services Act. After that response, Minister Letsatsi Duba never came back to Dr Dintwe about the implementation of his commendation.<sup>456</sup>

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<sup>454</sup> Page 362 line 3 to page 367 line 17 et seq and paragraphs 118 to 124 to his affidavit

<sup>455</sup> Page 368 line 20 to page 369 line 4

<sup>456</sup> Page 4 line 18 to page 9 line 5



398. There was an acceptable practice of recruiting young people or even giving them bursaries as future recruits. However, the IGI found that there were problems with the recruitment programme. There were no clear criteria for selection and recruitment. This resulted in situations where people recruited their family members; political principals and senior managers within the SSA did the same. Because there were no criteria set out, the IGI could not determine whether the recruitments were properly done. There was nepotism. There was the recruitment of families of Ministers.<sup>457</sup>
399. In his affidavit Dr Dintwe mentioned cases in which former Minister Mahlobo himself identified people to be recruited. Instances of that nature were also found in Crime Intelligence where one General acknowledged the practice, citing the recruitment of a girlfriend.<sup>458</sup> The problem with people appointed in that manner is that, according to Dr Dintwe, they become beholden to the people who recruited them. Each time the IGI asked for the recruitment criteria, he would be told that there were no criteria.<sup>459</sup>
400. The practice of recruiting family and friends into the SSA was prevalent. In one instance the IGI counted forty. Some of those people would come to him themselves, complaining that, after the completion of the programme or studies, they were not placed at the promised level. At one time former Minister Kasrils discussed a number of recruits made through nepotism; he could connect some of them to some Ministers. Regarding the recruitment target *per year*, the IGI, was not given that information.<sup>460</sup>
401. In Dr Dintwe's view, the involvement of the Ministry in the recruitment process constituted significant executive overreach into the functioning of the SSA. It also

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<sup>457</sup> Page 9 line 6 to page 12 line 7 and paragraph 122 of his affidavit

<sup>458</sup> Page 25 line 21 to page 27 line 19 and paragraphs 123 to 124 of his affidavit

<sup>459</sup> Page 12 line 8 to page 13 line 4

<sup>460</sup> Page 13 line 5 to page 15 line 3

compromised the proper assessment of the suitability of candidates and made the future operative beholden to the Minister. There was no proper selection panel; some of the people did not meet the requirements for the posts; sometimes they would plead an emergency to make a case for deviation which would not be strong enough.<sup>461</sup>

402. According to Dr Dintwe, there is no regulative framework governing the granting of bursaries to cadets, or a policy with criteria.<sup>462</sup> The other problem he pointed out related to the promotion of people. Processes were not followed; the applicable regulations would be ignored including by Ministers and DG's; in one instance the DG refused to recommend, but the Minister went ahead and appointed anyway; 26 people were irregularly promoted. Dr Dintwe said that this was during the period of Minister Ayanda Dlodlo.<sup>463</sup>

#### **Dr Dintwe's evidence on the inadequate controls on the flow of money in the Intelligence Services**

403. Dr Dintwe was certain that large sums of money, sometimes in suitcases, were stolen and lost without people being held accountable; monies were used for things which could adversely affect National Security and to fuel political tensions; there was also evidence that monies were used to finance a particular faction within the governing party the African National Congress. Dr Dintwe said that he based the above conclusions on the basic documents which, amongst others, indicated when money was taken and for what reason; he also had acknowledgements of receipt; all of which documents he was prepared to provide to the Commission.<sup>464</sup> An example was given of an amount of EU200,000 (about R 2 7 million) taken out, acknowledgement of which

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<sup>461</sup> Page 16 line 10 to page 19 line 3 and paragraph 123 of his affidavit

<sup>462</sup> Page 20 line 7 to line 22

<sup>463</sup> Page 21 line 2 to page 22 line 5 and page 106 line 23 to page 110 line 15

<sup>464</sup> Page 29 line 9 to page 30 line 23 and paragraph 125 of his affidavit

was a mere piece of paper; the money allegedly got lost and there was no proof of what it was used for. While the use of cash would be necessary, there was no accounting for it, which should not be the case; otherwise people would take money and use it for whatever purpose and then claim that it was used for intelligence purposes.<sup>465</sup>

404. There were also concerns about the prevalence of the withdrawals of large sums of cash at the SSA in relation to the period 2016/2017 financial year of the SSA operations; monies were withdrawn and taken to various destinations between 2014 and around 2017 with limited proof of receipt by the recipients. The office of the IGI made findings of improper or inadequate accounting for cash withdrawn; all these findings would be highlighted in the IGI's reports or certificates.<sup>466</sup> Those certificates would be received by the Ministers of Police ; of Defence and of State Security as the first level of authority, and then to the people just below them at the level of DG's and thirdly, to the Joint Standing Committee on Intelligence to which there was a direct reporting line.<sup>467</sup> Dr Dintwe testified that the Committee did not do anything and never gave him the reason why. He said that their oversight was never adequate.<sup>468</sup> He said that it was the same problem in the period preceding him.<sup>469</sup> He said that the IGI's recommendations were being ignored willy-nilly.<sup>470</sup>

405. As further examples of classic cases of lack of accountability, Dr Dintwe referred to one case where somebody took out R3 6 million and came back to say the money was lost or misplaced. The person offered that the money be taken from his pension and, not long thereafter, he took retirement. The second one involved an amount of R9million

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<sup>465</sup> Page 30 line 24 to page 33 line 25

<sup>466</sup> Page 34 line 2 to page 35 line 16 and paragraph 126 of his affidavit

<sup>467</sup> Page 35 line 17 to page 36 line 12

<sup>468</sup> Page 36 line 13 to page 37 line 22

<sup>469</sup> Page 41 line 2 to line 20

<sup>470</sup> Page 42 line 19 to 21



taken out by a protector over a period of about three years in connection with overseas trips<sup>471</sup> The examples given were included in the certificates or reports given to Parliament, the Minister and Heads of Departments

406. Dr Dintwe's evidence therefore tallies with the evidence of other witnesses to show that there were regular cash withdrawals of large sums of money without adequate control and accounting measures within the SSA
407. The monies withdrawn were also used to fuel or finance a particular faction; this, in his view, applied to both sides depending on who took out the money; this information would have been contained in the IGI's certificates to the Joint Standing Committee on Intelligence.<sup>472</sup>
408. Dr Dintwe made some recommendations with regard to the financial controls and accountability He accepted that the movement of large sums of cash within the context of secret operations might be justifiable; however, people were not immune to accountability. The person taking out money must handle it in accordance with applicable prescripts; monies were not accounted for.<sup>473</sup> Also, that control measures be tightened, as some were too old; implementation was required; furthermore, financial controls should be both preventive and deterrent; steps had to be taken to recover outstanding temporary advances; all the above recommendations were contained in certificates for Ministers and the chair of the JSCI<sup>474</sup> Dr Dintwe said that nothing was done to implement them<sup>475</sup> This, despite the fact that the certificates or reports to the JSCI reflected issues of impropriety, illegalities, loss of monies, inadequate accounting

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<sup>471</sup> Page 45 line 12 to page 47 line 18 and paragraph 127 of his affidavit

<sup>472</sup> Page 48 line 23 to page 49 line 16 and paragraph 126 of his affidavit

<sup>473</sup> Page 50 line 22 to page 51 line 18 and paragraph 129 of his affidavit

<sup>474</sup> Page 51 line 19 to page 54 line 13 and paragraph 130 of the affidavit

<sup>475</sup> Page 56 line 4 to 13

and the improper use of monies in factional battles; no member of the JSCI could claim ignorance of them <sup>476</sup>

409 The office of the IGI also found some systemic and institutionalized looting of the Secret Services account by senior managers within Crime Intelligence; for example, senior managers would use trusted juniors to get cash purportedly for a source and later claim that the money was indeed given to the source; the trusted junior, who would be the accounting officer, would then be given something in return; in some instances the juniors admitted that they were shown no proof that the money was indeed given to the source and that they did not even know who the source was but still vouched that the money was given to the source <sup>477</sup> Dr Dintwe gave other examples in his affidavit; such as the renting of safe houses at exorbitant prices.<sup>478</sup> It is important to note that whereas investigations by IPID or the Hawks cannot be conducted into classified documents, the IGI may do so <sup>479</sup> Once the IGI identifies criminal activity, it advises management of the intelligence services concerned to refer the matter to law-enforcement agencies.<sup>480</sup> There was also a claim that a particular equipment had been bought and licence paid for, only to find that it never was <sup>481</sup>

#### **Dr Dintwe's evidence on the attempted procurement of the Precise Mobile Location (Grabber) during the 2017 ANC Conference**

410 Dr Dintwe testified on an attempt to buy the Precise Mobile Location, commonly known as the "grabber" He said it was an instrument used to monitor all electronic

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<sup>476</sup> Page 57 line 5 to line 3

<sup>477</sup> Page 62 line 3 to page 63 line 3 and paragraphs 131 and 132 of his affidavit; and also page 66 line 7 to page 68 line 6

<sup>478</sup> Page 68 line 10 to line 19 and paragraph 135 of his affidavit

<sup>479</sup> Page 70 line 3 to line 19

<sup>480</sup> Page 72 line 24 to page 73 line 9

<sup>481</sup> Page 73 line 22 to page 75 line 17 and paragraph 136 of the affidavit

communications both the conversations and emails within a certain radius; it would create some kind of a tower; simply put, its use is for eavesdropping <sup>482</sup>

- 411 He gave some startling evidence regarding attempts to buy a grabber. Needless to say, his evidence calls to be considered together with his affidavit. A few days before the NASREC conference for the election of the ANC leadership in December 2017, he received a call from a certain Mr Bongani Mbindwane, then an advisor in the office of the then Minister of Police, Mr Fikile Mbalula. Mr Mbindwane told Dr Dintwe that there was an urgent issue he wanted to discuss with him. At the meeting Mr Mbindwane told him that there was a group of people posing as backpackers (i.e. tourists) from a foreign country littered in Soweto, who wanted to influence the outcome of the conference. Mr Mbindwane told him that the biggest problem they had was that the then Acting Divisional Commissioner X did not want to procure the grabbers. Dr Dintwe stated in his affidavit that Mr Mbindwane told him that he was acting on the instructions of his Minister. Mr Mbindwane said they were in need of grabbers to the amount of R210 million but, as the date was too close, they could settle for one at R45 million; he spoke of the grabber's capabilities which he said ordinarily cost R7 million. Mr Mbindwane said the reason he came to Dr Dintwe, whose approval he said he needed, was because the Divisional Commissioner did not want to purchase one as Dr Dintwe was at the time conducting an investigation into a previous procurement. Dr Dintwe was not keen to be involved and said that he would approach the Divisional Commissioner. He immediately left to meet with the Divisional Commissioner. When the latter gave him the name of the company they planned to buy from, it turned to be a company which Dr Dintwe was investigating (relating to another matter); that made him terminate the meeting and he told the Divisional Commissioner that Mr Mbindwane had not been honest enough with him to disclose the identity of the company. The grabber was to be bought on an

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<sup>482</sup> Page 75 line 17 to page 76 line 23



exorbitant price; the intended procurement had already been halted by IPID and the company had already been flagged in respect of earlier irregular procurement <sup>483</sup>

412 Dr Dintwe's evidence was also that his office got information that part of the money paying for the grabber would be used to buy votes at the NASREC conference which, he said, was probable because the R45 million they wanted was too much as the average price for a grabber was R7 million; the procurement of the grabber was also halted by IPID because it had flagged that company,<sup>484</sup> which was why Dr Dintwe's intervention was sought. At a subsequent meeting with the Divisional Commissioner and Mr Mbindwane, Dr Dintwe told them that he was not involved in issues of procurement, as long as they were in accordance with the law <sup>485</sup>

413. Mr Mbindwane, being a Ministerial special advisor, should not have been involved in the attempted procurement; not even the Minister; and Dr Dintwe pertinently pointed out in his evidence that Minister Mbalula never discussed the matter with him; it was the advisor who was putting pressure on him.<sup>486</sup> As for the Crime Intelligence Unit, which would have been responsible for buying the grabber, it did not know about the purchase; yet, as the supposed end user of an instrument for crime surveillance, they were ones who should have initiated the purchase and no one else.<sup>487</sup>

414. The OIGI was investigating the matter, so, too was IPID. The latter was conducting a criminal investigation while the OIGI was conducting an oversight investigation. The IGI submitted its reports/certificates to various bodies, including the Parliamentary Joint Intelligence Committee in the period 2017/2018; there was no response although even

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<sup>483</sup> Page 76 line 24 to page 80 line 21 and paragraphs 137 to 140

<sup>484</sup> Page 80 line 22 to page 81 line 18

<sup>485</sup> Page 81 line 18 to page 82 line 23

<sup>486</sup> Page 82 line 24 to page 83 line 9

<sup>487</sup> Page 83 line 10 to page 84 line 4

some members of the ANC expressed some concern about the matter.<sup>488</sup> When the matter reached the public domain, some members of the ANC expressed the concern about the involvement of Intelligence in ANC internal matters and Dr Dintwe said there was confirmation that members of Crime Intelligence were removed from NASREC a distance away as they were allegedly causing problems. Dr Dintwe then referred to what he called two incorrect narratives that emerged after the matter became public but which need not detain this Commission,<sup>489</sup> except to state that the declassified documents show that General Sithole, the National Police Commissioner, did not sign for the acquisition of the grabber.<sup>490</sup>

- 415 One of the things emerging from the preceding paragraphs about the intended procurement of the grabber at an exorbitant price and its intended use at NASREC, including the alleged buying of votes, albeit by Crime Intelligence, confirms the evidence of other former members of the SSA that the country's intelligence services became involved in political party activities and also functional battles within the ANC, all of which were illegal and against their Constitutional mandates.

#### **Dr Dintwe's evidence on the supposed procurement of an Information Technology Solution for Intelligence Collection**

416. The above evidence was with regard to a case where the CSIR had issued a quotation for R7 million for the supply of an information technology solution to Crime Intelligence. Instead, Crime Intelligence got a quotation for the same technology for R33million from the same very same company that wanted to sell the grabber. The R33m was paid, but no delivery was made. In fact, Dr Dintwe and his team visited the place where it was

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<sup>488</sup> Page 86 line 9 to page 87 line 4

<sup>489</sup> Page 88 line 16 to page 90 line 6

<sup>490</sup> Page 90 line 7 to line 11

supposed to be installed, but it was not there. He was told that the original product no longer existed as it had since been replaced but no replacement was shown. It was just a matter of plain theft. IPID was investigating the matter but the investigation was being stymied by the fact that they could not get the relevant classified documents; yet, in his view, there ought to be nothing of national security about the transaction which was as open as buying a car.<sup>491</sup>

### **Evidence relating to the procurement of a voice encryption system**

417. What happened in that instance was that a quotation was issued for R23m but there were other quotations which were not genuine; one of them had no VAT number, and one was for R53 million; it turned out to be a so-called cover quotation, i.e. issued out to make the R23 million one look genuinely cheaper. All costs of procurement procedure were flaunted; the system was not procured from any Crime Intelligence section responsible for counter intelligence function, which was supposed to be the end user and, therefore, the initiator. Also, regarding the supposedly competing quotations, the name of the director of company B was also the director of Company C.<sup>492</sup>

418. It is apparent from the preceding paragraphs that on the face of Dr Dintwe's evidence, fraud was committed; at the very least criminal investigation was warranted.

### **Dr Dintwe's evidence on the failure to exercise oversight over the Intelligence Services**

419. Dr Dintwe conceded that his office could also have failed in the exercise of its oversight duties, although he did earlier mention that it had challenges such as lack of sufficient independence and structural, organizational, and funding constraints. In his view all the institutions which ought to have exercised oversight, failed to do so. The certificates

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<sup>491</sup> Page 91 line 14 to page 94 line 5 and paragraphs 144 and 145 of his affidavit

<sup>492</sup> Page 94 line 6 to page 96 line 6 and paragraphs 14 and 147 of the affidavit



were given to the Joint Standing Committee on Intelligence, Ministers of all the three relevant departments and heads of Intelligence Services showing that monies were stolen from Intelligence Services; some used for parallel intelligence capacities, and to achieve political goals or to fight factional battles. The certificates pertained to the years 2016, 2017, 2018 and 2019 and in respect of the three intelligence structures: Defence Intelligence, Crime Intelligence, and the State Security Agency <sup>493</sup>

420. Dr Dintwe's evidence shows that there was failure to implement recommendations of the OIGI by Ministers and Directors General. He said that the Joint Standing Committee on Intelligence also failed to take steps to ensure that Ministers and Directors-General implemented the IGI's recommendations <sup>494</sup> The recommendations would primarily be directed at the Ministers and the DG's as the functionaries; it was for them to implement and the JSCI should have stepped in whenever they failed to do so. For their part, Ministers should have asked their DG's why there was no implementation <sup>495</sup>
421. Dr Dintwe submitted to the Commission that it was necessary to provide appropriate enforcement mechanisms to the OIGI to ensure that its recommendations were implemented, and that failure to do so be visited with serious penalties. <sup>496</sup>
422. The IGI also complained that his office would only be allowed restricted or managed access to information by the DG's and other Head of intelligence services; they would take long to respond to his communication or not respond at all. At times the refusal would not be direct what he called constructive refusal in that they would raise

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<sup>493</sup> Page 99 line 24 and para 148 to 149 of his affidavit

<sup>494</sup> Page 102 line 17 to page 103 line 1 and paragraph 151 of his affidavit

<sup>495</sup> Page 104 line 4 to page 105 line 3

<sup>496</sup> Page 105 line 4 to line 11 and paragraph 153 of his affidavit

unnecessary queries such as questioning his mandate; all these to frustrate the OIGI's oversight over Intelligence Services <sup>497</sup>

- 423 Despite the IGI's certificates to the Divisional Commissioner indicating fraudulent activities involving large amounts of money in Crime Intelligence, the Divisional Commissioner showed a consistent unwillingness to take action, but did so in instances involving juniors for minor infractions. The inconsistency gave rise to complaints <sup>498</sup>

### **Resistance by Intelligence Services against Criminal Investigations by Law Enforcement Agencies**

- 424 Dr Dintwe's evidence was that investigations by law enforcement agencies such as IPID and DPCI (the Hawks) of criminal cases and fraud against intelligence officials, as well as against members of the public who collaborated with crime intelligence officials, were being resisted by the Management of Crime Intelligence. They did this by refusing to declassify the relevant documents. This had been the conduct of successive Divisional Commissioners, including the one as at the time of Dr Dintwe's evidence before the Commission; this, despite the fact that documentation showed serious criminal malfeasance of corruption. In fact, Dr Dintwe's view was that the frustration or blocking of investigations amounted to defeating the ends of justice. <sup>499</sup>

425. Dr Dintwe dealt extensively with the practice of classifying documents to conceal acts of criminality. He said that it would, for example, be wrong for intelligence services to hide behind the classification of documents in cases of suspected criminality where no proper grounds for classification of the documents exists, such as in instances of

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<sup>497</sup> Page 110 line 17 to page 112 line 8 and paragraphs 154 and 155 of his affidavit

<sup>498</sup> Page 114 line 6 to line 19 and paragraph 156 of the affidavit

<sup>499</sup> Page 115 line 5 to page 116 line 5 and paragraphs 158 and 159 of his affidavit

procurement; moreover, redactions can be made; for example, where it involves safe houses, the addresses can be redacted; he gave other examples to demonstrate the point.<sup>500</sup> Yet, as Dr Dintwe says, the MISS document provides, *inter alia*, that “*security measures are not intended and should not be applied to cover up maladministration, corruption, criminal action etc or to protect individuals/officials involved in such cases.*” The MISS document, as stated earlier on, is a National Policy on Security adopted by Cabinet on 4 December 1996. It sets out guidelines on the procedure for the classification and declassification of classified documents; the document also places a duty to manage classification on an ongoing basis, and warns against the over classification of documents. The head of services must keep on determining whether or not a document should continue to be classified.<sup>501</sup> In any event members of the OIGI and IPID and the Hawks have, according to Dr Dintwe, top secret clearance and those members whose applications would still be pending, would be taken off secret cases; there is, therefore, no need to deny OIGI members and cleared IPID and Hawks members access to classified information.<sup>502</sup>

- 426 Dr Dintwe gave examples of the misuse of classification. It is sufficient to refer to the case of the purchase of blinds and curtains for a house by Crime Intelligence Officials which was classified, thereby thwarting a criminal prosecution. The matter of sheer purchase of curtains can, as the witness indicates, hardly be a matter of national security; perhaps the address where they were delivered, but that could be redacted and allow prosecution to proceed.<sup>503</sup> The examples given demonstrate the abuse of classification

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<sup>500</sup> Page 117 line 18 to page 119 line 7 and paragraphs 160 to 162 of his affidavit

<sup>501</sup> Page 119 line 15 to page 121 line 13 and paragraphs 163 to 165

<sup>502</sup> Page 121 line 23 to page 122 line 14 and paragraph 170 of his affidavit

<sup>503</sup> Page 122 line 15 to page 123 line 17 and paragraph 171 of his affidavit



427. Dr Dintwe's evidence also referred to the problems encountered by IPID and the Hawks when attempting to investigate suspected criminal conduct into the activities of Crime Intelligence. Members of Crime Intelligence would, according to him, tell IPID and the Hawks that only the OIGI could conduct such investigations and not those, arguing that the OIGI is the institution legally mandated to have access to the classified information of Crime Intelligence. He argued that the exclusion of the jurisdiction of law enforcement agencies is made in the comfort that there is no legal obligation to implement the recommendations of the IGI, which they sometimes actually ignore. They would also be aware that, unlike the law enforcement agencies, the OIGI has no criminal investigation competence for prosecution. He referred to workshops that were held around these issues, which remain unresolved.<sup>504</sup>
428. Dr Dintwe testified that in 2018 IPID approached the Minister of Police, Minister Bheki Cele for intervention; he referred the matter back to the OIGI for comment on the possible impact of the declassification of documents in question on national security. Dr Dintwe's response to the Minister was that it was the duty of the Divisional Commissioner or National Commissioner to reconsider classifications, and not the OIGI; he also said that where there was crime, the inclination should be to declassify so as not to hinder criminal investigations.<sup>505</sup>
429. Within the context of the tussle about investigations by the OIGI, Dr Dintwe related an occasion where he had to appear before the JSCI after he had been reported to it by a Divisional Commissioner. One complaint was that Dr Dintwe had threatened that Divisional Commissioner. The second was that Dr Dintwe had leaked documents out of his office, which Dr Dintwe denied. The allegations were seen as baseless and Dr

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<sup>504</sup> Page 124 line 10 to page 126 line 6 and paragraphs 172 et seq of his affidavit

<sup>505</sup> Page 127 line 20 to page 128 line 25 and paragraph 177 of his affidavit

Dintwe's explanations were accepted.<sup>506</sup> The case demonstrates the difficulties the OIGI faces, as well as the abuse of secrecy as a necessary mechanism

- 430 Dr Dintwe also raised the point that in the audit reports of the Intelligence Services, the Auditor General always had to issue qualified audit reports because of that office's inability to access certain areas of the Intelligence Services deemed to be too sensitive for access by it. After some protracted engagement with all stakeholders, including the JSCI, it was agreed that the OIGI should assist the Auditor General to provide some kind of combined audit assurance. Yet it was not an ideal state of affairs because the OIGI lacked the necessary expertise. The OIGI's governing legislation, the Oversight Act, does not give the OIGI the auditing mandate of whatever nature
431. The problem with the Combined Audit Assurance is that the Auditor-General prepares some guidelines, in the form of some kind of ticking boxes for ticking by the OIGI staff, without getting deeper into the issues. One of the problems was that by agreement between the Auditor-General and the Intelligence Services, the Auditor-General would not audit what was called the slush funds or secret funds which amounted to about 10% of the budget allocated; as a result, it was agreed beforehand that a qualified audit would be made in respect of that. That account would then be audited by the OIGI which lacked the expertise. Yet the OIGI's investigation has revealed that the secret funds are the source of a lot of corruption, blatant looting and theft concealed from the proper prying of the Auditor-General.<sup>507</sup> It is clear from the above that no proper auditing of the Intelligence Services is taking place; a solution needs to be found particularly because, even with limited expertise, the OIGI discovered massive flouting of rules and legal

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<sup>506</sup> Page 129 line 5 and paragraph 182 of his affidavit

<sup>507</sup> Page 130 line 6 to page 133 line 10 and paragraph 183 et seq

prescripts that were even reported to the JSCI and the current President, then as Deputy President <sup>508</sup>

432 Dr Dintwe's conclusion was that the covert nature of the Intelligence Services environment made their oversight crucial. He suggested that, to that end, the OIGI, entirely distinct from the SSA, be funded separately from it and be allowed full access to all information and documentation, and also be granted powers of enforcement. It was also essential for Intelligent Services to be fully audited by the Auditor-General. There should be consequence management in terms of disciplinary actions and criminal prosecution by enabling law enforcement agencies proper access to documentation <sup>509</sup>

433 After Dr Dintwe had testified, one Danny (pseudonym) responded to his evidence by way of an affidavit that was lodged with the Commission. In his affidavit Danny says he was involved in the vetting of Mr Nxasana, the former National Director of Prosecutions. In some instances, Danny's affidavit appeared to differ from the evidence of Dr Dintwe. This related to the vetting of Mr Nxasana. After some engagement between the Commission's evidence leader and Dr Dintwe, it turned out that the difference essentially revolved on one aspect: to the extent that Dr Dintwe had said that the clearance certificate was actually issued, his evidence seemed to differ from Danny's version that it was not issued at all.<sup>510</sup> Dr Dintwe had said that it was issued on 6 March 2014 <sup>511</sup> On either version, everything that had to be done for the issuance of the certificate had been done, including all the necessary approvals, rubberstamping being the only thing outstanding. The important thing was that both versions indicated unfair

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<sup>508</sup> Page 133 line 11 to page 134 line 12 and paragraph 187 of the affidavit

<sup>509</sup> Paragraph 188 of his affidavit

<sup>510</sup> Page 144 line 19 to line 20 to line 22

<sup>511</sup> Page 145 line 25 to page 146 line 1



treatment to Mr Nxasana.<sup>512</sup> The case shows that the issue of security clearance was abused for nefarious purposes.

## THE AFFIDAVIT OF DERRICK BONGANI MBINDWANE

434. Subsequent to Dr Dintwe's evidence, Mr Derrick Bongani Mbindwane made an application for leave to adduce evidence by way of an affidavit to be placed before the Commission. He had delayed in furnishing his affidavit in response to Dr Dintwe's affidavit and evidence. By way of an Order of 6 November 2021, I condoned his delay in furnishing the affidavit and, secondly, admitted his affidavit which was setting out his version. However, his version would be taken into account only to the extent that it would be necessary for the purpose of compiling the Commission's report. This condition is important to bear in mind because in his affidavit, Mr Mbindwane not only went way beyond Dr Dintwe's evidence relating to him, but also dealt with some pre 1994 history. What follows below will therefore be only a summary of his relevant response to Dr Dintwe; also reflected will be his recommendations to the Commission.
435. Dr Dintwe implicated Mr Mbindwane in only one material respect, namely, the role he allegedly played in the failed attempt to acquire the grabber. Indeed, in paragraph 3 of his application to the Commission, Mr Mbindwane himself says the following:

"The gist of the allegations against me by Dintwe have been aptly summarized by the Secretary of the Commission in the rule 3.3 Notice as follows, as well as being directed to specific portions in the affidavit for my ease of reference, for which I am grateful:

3.1 I improperly involved (myself) in the procurement of a grabber for Crime Intelligence, notwithstanding that (I) ought properly not to have been involved in operations

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<sup>512</sup> Page 148 line 6 to line 16

3.2 I failed to inform Dintwe that the party from whom the grabber was sought was I View Integrated Systems, which was being investigated by the Office of the Inspector General of Intelligence.

3.3 Media reports suggested that the grabber was going to be used for vote buying at the ANC Conference (sic)".

436 The above are therefore the issues to be dealt with by this Commission

437 That he improperly involved himself in the acquisition of the grabber

438. Mr Mbindwane admits having had one meeting with Dr Dintwe, and also a second one attended by the two of them with the then SAPS Crime Intelligence Acting-Head Major-General Ngcobo. The meeting with Dr Dintwe was at his suggestion with prior authority by his then principal, Mr Fikile Mbalula, then Minister of Police. He had sought permission from the Minister because of the prevailing circumstances, which was why he wanted to meet with Dr Dintwe for an opinion and advice from him. He therefore denies any suggestion that he met Dr Dintwe without the knowledge of the Minister; doing so, he says, would have been irregular.<sup>513</sup>

439 Mr Mbindwane says he can neither confirm nor deny knowledge of how the grabber (or the Listed Equipment as he prefers to call it) worked; but it was within his province to advise the Minister on its acquisition, having done some research into it. He says there are norms and standards that regulate the use of such a tool. There was a procedure he would have to follow for the acquisition of the grabber, including seeking the opinion of the IGI, Dr Dintwe. Based on the probity report he had, he believed they were bound to consult with Dr Dintwe. He therefore denies that he improperly involved himself in the acquisition of the grabber or that the Minister did not know.<sup>514</sup>

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<sup>513</sup> Paragraphs 15 – 20 of his affidavit

<sup>514</sup> Paragraphs 21 – 26 of his affidavit

440. Actually, Dr Dintwe did not say that Mr Mbindwane did what he did without the permission or knowledge of the Minister; what he said was that he could not say whether the Minister did know about the acquisition of the grabber. There is therefore no real dispute between the two on this particular issue.
441. That he failed to inform Dintwe that the party from whom the grabber was to be acquired was under investigation by the OIGI
442. Mr Mbindwane's response is startling. Dr Dintwe's gripe was that Mr Mbindwane did not tell him of the identity of the intended supplier of the grabber (I-View Integrated Systems); had the identity been revealed to him, Dr Dintwe would have realized that the company was already under investigation by IPID and the OIGI, and he would not have been comfortable with that company being given the contract. Mr Mbindwane admits that the company was under investigation, but says that it was not in connection with the supply of the grabber (which he describes as the Listed Equipment) <sup>515</sup>
443. Mr Mbindwane says the following:

"Had Dintwe informed me that there was already a probe on the specific Listed Equipment (the grabber) at the time of my request for meeting him, where I informed him of the procurement, shared many related concerns and sought his advice, I would have had a very different opinion formulated for my principal.

444. The two probes that I was aware of had nothing to do with the Listed Equipment at that time and the procurement process was not known to Dintwe. <sup>516</sup> Two points emerge from the above. Firstly, Mr Mbindwane did not disclose the identity of the intended supplier to Dr Dintwe, which was exactly what Dr Dintwe complained about before the Commission. Secondly, Mr Mbindwane happily went along with the idea of awarding

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<sup>515</sup> Paragraphs 47-52 of his affidavit

<sup>516</sup> Paragraphs 52 and 53 of the affidavit



the contract to supply the grabber to the very company which he was aware was under investigation by IPID and OIGI; he was comfortable with the award of the contract because, according to him, the investigations he was aware of were not in respect of the grabber. Dr Dintwe was therefore correct to say that the identity of the intended supply was not disclosed to him; had that been done, he would have realized that his office was already investigating the company and he would have therefore been against giving it the contract to supply the grabber even if the investigation was not in respect of the grabber. Dr Dintwe's complaint was therefore justified. Mr Mbindwane's attempt to justify awarding the contract while being aware of the investigations against the company simply because the investigations may not have related to the grabber but to something else is untenable; contrary to his assertion, issues of probity were there. He does admit that he did not disclose the identity of the company to Dr Dintwe, and argues that it was not necessary even though he was aware of the investigations against it.<sup>517</sup> It was a company with which the police had done business before, hence the investigations against it by TPID and the OIGI.

445 That media reports suggested that the grabber was going to be used for vote buying at the ANC Conference

446. This issue must be considered against the fact that Dr Dintwe did not put the issue of vote buying as a fact, but, as Mr Mbindwane himself states, as a media allegation Mr Mbindwane responds as follows: *"There was no vote buying or attempt to do so by myself or Mr Mbalula or any SAPS leadership relating to the ANC Conference in Nasrec the story (of vote buying) by IPID and IGI was and is still political dirty tricks campaign aimed at disrupting SAPS and destabilizing it"*<sup>518</sup> It was not necessary for Mr Mbindwane to express himself in this manner. As said already, these were mere

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<sup>517</sup> Paragraphs 90 - 92 of his affidavit

<sup>518</sup> Paragraphs 150 - 152

allegations and Dr Dintwe did not state the accusation as a fact. No dispute therefore exists between the two

447 The worrying thing is for Mr Mbindwane to see nothing wrong in contemplating doing business with a company that was under investigation by IPID and the OIGI. It should have been immaterial whether or not the investigations related to the grabber itself or to something else; that is precisely how corruption creeps in, particularly in the case in question as the company concerned had previous contracts with the SAPS. It begs the question: how do you justify contemplating awarding a contract to a company whose probity you know is being investigated?

448 It is heartening to see that, after the Nasrec conference, the relationship between Dr Dintwe and Mr Mbindwane remained cordial, according to the latter. More importantly, it negates any malice on the part of Dr Dintwe against Mr Mbindwane. They simply held different opinions.

449. In his affidavit, Mr Mbindwane ventured into some theories which were not relevant to him, but did so in defence of the Commissioner of Police and the then Minister, even though Dr Dintwe had implicated none of them; in other words, as said earlier, Mr Mbindwane in many respects went beyond the three issues which he himself had correctly identified. The same applies to the issues he raises with IPID. He also accused the IGI of having subcontracted his constitutional powers to IPID. He raised new issues and allegations which, for them to be considered properly, would have required a response not only from Dr Dintwe, but also from IPID. Those issues and allegations have therefore not been dealt with in this report, which has restricted itself to the issues which Mr Mbindwane himself had correctly identified as being the core. As an example of the issues he canvassed which were beyond the core ones, he says the following of the IGI (Dr Dintwe) and IPID:

"The actions of IPID and IGI have directly contributed to disempower and disrupt a (sic) SAPS network of field agents and informants through their over-zealous and misguided counter-intelligence tactics against SAPS Crime Intelligence

Their many bogus investigations, often ANC factionally aligned, have played the biggest and singular role in disempowering and demobilizing vast and elaborate teams of intelligence gatherers on the field, including officers, who had been deployed and had solid cover in the field"<sup>519</sup>

450. Firstly, there is no factual basis provided for these serious allegations. Secondly, it would be extremely unfair to consider them without response from the IGI and IPID. Had Mr Mbindwane tendered his evidence in time when he had the opportunity to do so, the IGI and IPID could have had the opportunity to respond. It is for these reasons that this report has restricted itself to the core issues correctly identified by Mr Mbindwane himself. Far from detracting from the evidence of Dr Dintwe, Mr Mbindwane's affidavit has demonstrated that the complaints raised against him by Dr Dintwe in his evidence, were justified. It is also important to note that he does not deny being involved in attempts to acquire the grabber.

451 Mr Mbindwane's recommendations: Mr Mbindwane makes certain recommendations in relation to the issue of State Capture and corruptions. He recommends the introduction of formally regulated and open lobbying through legislation, instead of secretive lobbying which would lead to bribery and tender fraud. To this end, he recommends an appropriate amendment of the Privileges, Immunities, Independence and Protection of Members of Parliament Act of 2004 to provide for, amongst others, the registration of lobbyists, registration of their contracts with the government, declaration of gifts etc. He opines that in this way, the Guptas and others would have been registered as lobbyists

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<sup>519</sup> Paragraphs 184 and 185 of his affidavit



to indicate who and what they were lobbying for. He also calls for improved whistle blower protection <sup>520</sup> These recommendations are worthy of consideration

## **THE EVIDENCE OF DOROTHY (Pseudonym)**

452. Dorothy (pseudonym) was one of three witnesses granted leave by Order of the Chair of the Commission to give evidence under a pseudonym, and without their identity being revealed Dorothy was legally represented also represented was former Minister, Mr David Mahlobo. Dorothy made two affidavits. The first one in respect of which she started her evidence, dated 2 March 2021, was filed of record, and also admitted as an exhibit on 14 May 2021 <sup>521</sup>
- 453 Dorothy's background is set out in her affidavit She joined the National Intelligence Agency (NIA) on 1 May 1998 as a secretary in Human Resources (HR) Chief Directorate and later absorbed into the State Security Agency (SSA) after the amalgamation of the NIA and the SASS by Presidential Proclamation 59 of 11 September 2009. She headed the Presidential Security Support (PSS) from August 2013 to early 2017, which was a Directorate within the CDSO (Chief Directorate Special Operations) <sup>522</sup> These details were, however, not mentioned in her evidence to avoid easy identification of herself. <sup>523</sup>
454. Dorothy described various steps for the withdrawal of cash. She described a procedure for the payment of the temporary advance (TA). The member taking it would compile a memorandum, a submission, requesting the advance and motivating the use for specific operation or project; once a submission had been approved by the person qualified to

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<sup>520</sup> Paragraphs 190 and 191 of his affidavit

<sup>521</sup> Page 17 line 19 to line 21 (page 431 of Bundle – SSA02) using the black numbers top left

<sup>522</sup> Paragraphs 2 and 4 of her affidavit

<sup>523</sup> Page 18 line 20 to page 19 line 3

do so, a document would be issued to the requester which would be handed over to the Finance Chief Directorate, together with the authorised submission, for the processing of payment. The Finance Department or Section would then issue a TA number to enable the requester to withdraw cash or to get an electronic transfer. The member would then in due course account for the money by producing a receipt of payment from the recipient of the cash, be it by a service provider company or a source or anyone who received the money.<sup>524</sup>

455. Dorothy also explained how the advance payment would be eventually “settled”, which was the term used for accounting for the money. To put it in her words: On any temporary advance (TA) requested and approved, if the amount of money spent fell short of the amount taken and no cash was returned, the amount of the unpaid funds would be loaded onto the system and deducted from the member’s salary. Furthermore, should there be monies outstanding or not settled by the member, they would not be allowed to take out any further money until the advance previously taken by them was fully settled.<sup>525</sup>

456. Dorothy’s evidence was that there was within the SSA a directorate to ensure the protection of then President Zuma and the then Deputy President, Mr Ramaphosa wherever they went. Two groups of individuals, known as co-workers, were recruited, trained and utilized. The first group was recruited by Mr Thulani Dlomo while he was the General Manager at Special Operations; the second one was recruited by him after his appointment as DDG at Special Operations; they were contracted to the SSA; they were not members of the SSA.<sup>526</sup> On the instruction of Mr Thulani Dlomo, these people

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<sup>524</sup> Page 19 line 18 to page 21 line 19 and page 23 line 14 to line 17 and paragraph 4 of the affidavit; and also page 26 line 17 to page 29 line 12

<sup>525</sup> Page 25 line 16 to line 23 and paragraph 5 of her affidavit

<sup>526</sup> Page 29 line 13 to page 30 line 22 and paragraph 6 of her affidavit

were used at Special Operations (SO). They were not members of the SSA but their monthly salaries were paid by SSA; about fourteen members from the first group who were sitting at home were assigned to assist at PSF <sup>527</sup>

457. Dorothy confirmed that, on the instructions of Mr Thulani Dlomo, she withdrew cash to the sum of R38.5m over the period March 2014 to September 2016. She said that R1m of that amount was expended on MK veterans deployed at the Royal Bafokeng Stadium at the ANC rally of 8 January 2016 in Rustenburg. Dorothy said that the MK Veterans' task was to assist in averting disruptive behaviour. Mr Dlomo would be better placed to know why ANC veterans were used instead of the police <sup>528</sup> The funds from the SSA were used to transport the MK veterans to the Royal Bafokeng Stadium for the rally and their transport fees, accommodation and meals were paid for by the SSA. <sup>529</sup>

458 Dorothy testified that in September 2016 an amount of R1.85m was withdrawn and that was allegedly used to pay MK veterans used for #OccupyLuthuliHouse #OccupyLuthuliHouse was created by certain individuals wanting to go and occupy the ANC's Head Office, Luthuli House on the day the former President Zuma and then Deputy President Ramaphosa were to be there for the weekly meetings Dorothy said that she withdrew the money on the instructions of Mr T Dlomo. She said that the funds were used to cover expenses, stipends, transport fees, accommodation and meals for the MK veterans who were deployed She said that she was instructed by Mr T Dlomo to requisition and pay all the expenses relating to that operation <sup>530</sup> The MK Veterans

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<sup>527</sup> Page 30 line 25 to page 31 line 22

<sup>528</sup> Page 32 line 20 to page 35 line 1 and paragraph 9 of her affidavit

<sup>529</sup> Page 34 line 23 to page 35 line 7

<sup>530</sup> Page 36 line 10 to page 38 line 11 and paragraph 9b of the affidavit



were not the persons to occupy the house; but, she said, Mr Dlomo would be the person best placed to explain the deployment of the MK Veterans <sup>531</sup>

459 Dorothy also stated that, while she was deployed for SONA in Cape Town in February 2017, she received instructions from Mr Arthur Fraser to receive some money from a member of the SSA, and to take it to the house of the then Minister of State Security, Mr David Mahlobo, in Cape Town. She said that she received the money in a bag, allegedly an amount of R1.5m. She said that she took the money to Mr Mahlobo's official residence in Cape Town. She did not know what the money was meant for. She could not remember whether Mr Mahlobo signed for the money or how the TA was settled. She was not sure if the money was related to the SONA or not. Dorothy said that Mr Fraser's instructions were verbal. She said that he would also not have known the specific member would be bringing the money <sup>532</sup>. She was not hundred percent sure that she handed R1.5m to Mr Mahlobo because she was just told that that was going to be the amount. She said that she he did not open the bag containing the money at any stage. She could not recall if Mr Mahlobo opened the bag in her presence. She could not recall that she ever saw that there was indeed money in the bag. She said that Mr Fraser told her in person in Cape Town that there would be R1.5m coming which she should take to Mr Mahlobo herself. <sup>533</sup> Dorothy's evidence, in summary, is therefore that she did not open the bag that allegedly contained the money. She could not recall Mr Mahlobo opening the bag. In other words, she never personally saw the money; but accepted that there was some money to the amount of R1.5m because she had been told by Mr Fraser that that was the money to be taken to Mr Mahlobo.

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<sup>531</sup> Page 38 line 12 to page 39 line 1

<sup>532</sup> Page 39 line 2 to page 41 line 19 and paragraph 9a of her affidavit

<sup>533</sup> Page 41 line 20 to page 46 line 20

460. Dorothy said that it was not her first visit to Mr Mahlobo's official residence. She said she did not recall the conversation with Mr Mahlobo but assumed that she could not just have dropped the money and left; therefore, there must have been some conversation. But she said she would not have told Mr Mahlobo that there was some R1.5m in the bag because it would not have been her place to say what was in the bag. There was no mention of money; she just told Mr Mahlobo that she was tasked to bring the bag.<sup>534</sup>
461. Back to the R1m for the veterans in connection with the ANC's January 8 rally Rustenburg in 2016, not only did Dorothy personally withdraw the money, but she was personally involved in handing cash to the MK Veterans, after the event. She said that but food was paid for daily with accommodation being a once-off payment. She could not recall how long the veterans were there at the rally.<sup>535</sup> Dorothy said that she did also had an amount of R500,000.00 deposited into her personal account from the SSA account around November 2020. She said that that amount was to be used on a safe house. She said she did so and the money was subsequently properly accounted for.<sup>536</sup>
462. Dorothy did sign a submission in respect of funds to be utilized for Project Construcáo. She did so in her capacity then as Acting General Manager; her signature and recommendation were on the basis of the fact that "Lilly" (pseudonym) would have vetted and verified the content of the submission before it was presented for her recommendation.<sup>537</sup>

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<sup>534</sup> Page 46 line 21 to page 48 line 9

<sup>535</sup> Page 48 line 12 to page 50 line 11

<sup>536</sup> Page 50 line 13 to page 54 line 24 and paragraph 9d of her affidavit

<sup>537</sup> Page 55 line 23 to page 56 line 17 and paragraph 11 of her affidavit

463. Dorothy said that she was not involved in the conceptualization of Project Mayibuye nor did she play any role in the operations Justice, Commitment and Lock <sup>538</sup>
464. Dorothy confirmed the contents of two documents signed by herself, Mr Thulani Dlomo and "Lilly". The first document is entitled "*Temporary Advance and Expense Application Form*"; the second one entitled "*Acknowledgment of Receipt*". The purpose of the documents was to requisition the withdrawal of cash in the amount of R5m. As motivation for the withdrawal of the money, the nature of the expense is described "*As per Approved Project Mayibuye.*" Dorothy confirmed her signature as that of the requisitioning person and that of Mr S T Dlomo (Mr Thulani Dlomo) as the approving line manager in his capacity as the Deputy Director: Counter-Intelligence <sup>539</sup>. It is apparent that Dorothy signed the requisition on 15/09/2015 and Mr Dlomo signed on the same day; Dorothy also signed on 15/11/2015 an undertaking to return the money by "*10 December 2014*" This was strange
465. The Acknowledgment of Receipt indicates that it was one Moses who received the R5m on "*25/07/2015.*" For a start, here, too, the date is anomalous because the supposed receipt date precedes by many months the date 15 September 2015, being the date on which both Dorothy's requisition and Mr Dlomo's approval were signed as indicated above. The second thing about the receipt is that the amount of R2.5m was for the Project Mayibuye, and R1.8m for "*OP Justice*" The balance of R700k was apparently labelled "*Safe Return*" <sup>540</sup>
466. Dorothy's evidence was that, whereas the receipt was in Lilly's handwriting, the signature was not hers (Lilly's); she did not know whose signature it was. She also said

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<sup>538</sup> Page 58 line 6 to line 9 and paragraph 12 of her affidavit

<sup>539</sup> Page 59 line 5 to page 60 line 22; and the document on pages SSA-0-385 to page SSA-01-387 of SSA Bundle 01, Exhibit YY1

<sup>540</sup> Page 60 line 23 to page 61 line 19 and also page SSA-01-387 of SSA Bundle 01 EXHIBIT YY1



that she did not know about the transaction as it was outside the scope of her work. Lilly would be the one to give an account. Dorothy said her own signature appeared there as she was taking out the money in her own name, but, for another person who was dealing with the project.<sup>541</sup>

467. Earlier on Dorothy made the now well-known point that anybody who still had not yet settled a previous advance would be barred from taking another advance until the previous one was settled. It was against the above background that the following evidence by Dorothy in relation to her requisition of the R5m should be understood: *"The only time, Chair, that I would take money out in my name which is outside of my scope of work (as she acknowledged the operation was) is when I am assisting them to take money if somebody within the project managers or Lilly herself have outstanding TA's that need to be settled at headquarters"*<sup>542</sup> She went on to say that Mr Dlomo approved the requisition knowing that she did not deal with the project, and why the person who was supposed to take the money did not do so; and, she went on, Lilly would be the best person to talk to the transaction.

468. Two points that emerged from Dorothy's preceding evidence were put to her and she agreed with them. The first was that, at times the rule that a person who had not settled a temporary advance could not withdraw funds or cash was evaded by that person asking someone else to withdraw cash for him/her, as was the case in the above scenario.<sup>543</sup> The second point, was that on more than isolated occasions persons would sign (for the withdrawal of the money) without knowing what the money was for or how the money was going to be spent (as was the case with her in the scenario above)<sup>544</sup>

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<sup>541</sup> Page 61 line 20 to page 63 line 12

<sup>542</sup> Page 64 line 4 to line 9

<sup>543</sup> Page 69 line 21 to page 70 line 7

<sup>544</sup> Page 71 line 14 to line 17

469. From the documentation furnished to the Commission, which included money requisition forms and some invoices, it appeared that in a certain capacity Dorothy, signed in recommendation of the advance withdrawal of the amount of R13 5m in respect of a *"Request for Authorisation: Payment of relating expenses as per the approved Project Mayibuye"*. She signed on the 9 September 2016. On the same day, Darryl also signed in recommendation beneath Dorothy's signature, Darryl was at the time occupying a certain position. The request was approved by S T Dlomo (Thulani) on 2016/09/12. All the three signatures were identified by Dorothy. Both Darryl and S T Dlomo were senior to Dorothy, according to her evidence. Dorothy also identified certain invoices submitted in settlement of various amounts relating to Project Mayibuye, for *"Professional Fees"* for the amounts R5.3 m (invoice dated 6/10/2016); R5m (invoice dated 10/10/2016) and R2 850,000 (invoice dated 12/10/2016).<sup>545</sup> The total value of the invoices corresponds to the R134 5m advance withdrawal
470. A few points emerged from Dorothy's evidence. Darryl took the R13.5m and then came to Dorothy to sign off his settlement, which she did. This despite the fact that she did not, on her admission, know anything about the services that were to be provided or had been provided as indicated in the documentation; even though she had signed in recommendation. Furthermore, Darryl did not tell her what the money was for, except to say it was for Project Mayibuye. She admitted that it was not normal (that is, it was irregular) practice for a senior person to sign for the money without knowing what the money was for. However, she said that in the environment in which she worked, they worked on the so-called need-to-know principle; therefore, as long as there was a submission approved for the project, it was not her place to know what the money was to be used for because of that principle. Under those circumstances, one would not

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<sup>545</sup> Page 71 line 18 to page 73 line 22 and paragraph 12 of her affidavit and the relevant documentation under Annexure M16 SSA Bundle 01 pages SS-01-469 to 480

know whether or not the money was going to be spent properly in accordance with the submission, or even not spent at all <sup>546</sup> On Dorothy's above evidence it was, to say the least, such contents as may have been to control SSA expenditure were as good as non-existent.

471. In the same manner as above, Darryl withdrew an advance in the amount of R4.510m for Project Mayibuye. Amongst others, it was Dorothy and Mr Dlomo who signed. There were invoices in respect of the expenditure of the amount on the basis of which Dorothy settled the money. However, again, she did not know what the money was for or used for <sup>547</sup> The submission motivating for the payment of the money was dated 3 October 2016

472. There was also a submission dated 26 October 2016 requesting the withdrawal of yet another R4 510m for Project Mayibuye for the month of October 2016. The amount was taken by Darryl and after Mr Fraser had approved, Darryl had also signed. The claim settlement in respect of that amount was also settled by Dorothy in similar circumstances. That is she did not know how and for what the money was used for. <sup>548</sup>

473. Once more there was a submission on 28 November 2016 requesting the withdrawal of a third R4.510m for Project Mayibuye. It was compiled by Lilly and being for the same amount as the previous two submissions referred to above. Dorothy was one of the people who recommended the approval of the request. Mr Fraser, the Director-General of the SSA at the time, approved the request and the withdrawal of the cash. On Dorothy's evidence, there was first R470,000.00 cash withdrawn and later the balance

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<sup>546</sup> Page 73 line 23 to page 76 line 4

<sup>547</sup> Page 76 line 5 to page 77 line 13 and paragraph 12 of her affidavit and Document M17 in SSA Bundle 01 pages SSA-01-481 to 493

<sup>548</sup> Page 77 line 14 to page 78 line 11 and paragraph 12 of her affidavit and Document M18 SSA Bundle 01 pages 494 to 503



but, in the end, she had a total cash of R4.510m. The invoice is again for “professional fees as per approved contract Project Mayibuye” Dorothy said that that was one of the instances where she took the R4 510m in cash to Minister Mahlobo at his residence. She did not know how the invoice from the company mentioned was generated.<sup>549</sup> She said in her evidence that she specifically put the cash in a bag, and then took the money to Minister Mahlobo's official residence, and gave it to him in his study. She said that, on that occasion, she took the money out and counted it in Mr Mahlobo's presence. She said that she took the money to Mr Mahlobo on the instructions of Darryl. Darryl had told her before that occasion that she was going to take over from him the role of taking money to Mr Mahlobo. Darryl was her senior. She said that she took the money to the former Minister on the same day she withdrew it.<sup>550</sup> She gave details of how she interacted with the Minister at his official home in Pretoria on that occasion. She said she could not recall whether the conversation was only about the money, but said, after counting the money and handing it over, she left.<sup>551</sup> The amount of R4.510m was withdrawn on 8 December 2016 in two parts, namely, R470, 000.00 and R4,040,000 00.<sup>552</sup>

474. Dorothy said that she had on all the three different occasions withdrew the money to take to Mr Mahlobo on Darryl's instructions. This amount was corrected in her evidence to R4 51 on each occasion.<sup>553</sup> The first occasion was when she went alone.<sup>554</sup> She said that on the other two occasions she was accompanied by Lilly.<sup>555</sup> The occasion when

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<sup>549</sup> Page 78 line 12 to page 83 line 8 and paragraph 12 of her affidavit and Document M19 in SSA Bundle 01 pages 504 to 513

<sup>550</sup> Page 83 line 22 to page 86 line 21

<sup>551</sup> Page 86 line 22 to page 88 line 8

<sup>552</sup> SSA Bundle 02 page 522.137

<sup>553</sup> Page 100 line 24 to page 102 line 11

<sup>554</sup> Page 96 line 4 to line 14 and paragraph 13 of her affidavit on page 441 of SSA Bundle 02

<sup>555</sup> Page 96 line 14 to line 18

she delivered R1.5 on the instructions of Mr Fraser was a different one.<sup>556</sup> On the occasions when she went with Lilly, she said that they counted the money with the cashiers. She said she phoned Mr Mahlobo to ask him to expect her. She said that she and Lilly were ushered in by Mr Mahlobo's protectors into his study and counted the money in his presence before leaving. She said that there would not be much conversation.<sup>557</sup> She said that on none of the three occasions did she make Mr Mahlobo sign for the receipt of the money.<sup>558</sup> Nobody gave her a receipt for the money; a week or two an envelope would come which she would give to Lilly, but she could not confirm that it was a receipt based on the money that the former Minister had received, or whether they were receipts in respect of the activities the money was intended for; but she did not see receipts for the three amounts of R4.51m she delivered.<sup>559</sup>

475 The sum total of Dorothy's evidence regarding her delivery of the money to Mr Mahlobo was that: apart from the R1 5m about which she testified much earlier on to have delivered to him in Cape Town during the SONA, she also delivered on three separate occasions cash in the amount of R4.51m that she had withdrawn and counted in the presence of Mr Mahlobo. The first R4 51 she delivered alone, the second and third she was in the company of Lilly. The details of the deliveries set out in the previous paragraphs were confirmed by her in her affidavit attested to on 2 March 2021 in response to the one by one Lloyd Mhlanga.<sup>560</sup>

476 Dorothy's evidence was that, before the R4 51m deliveries she made to Mr Mahlobo, some deliveries were made by Darryl because Darryl told her that she was to take the

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<sup>556</sup> Page 96 line 20 to page 97 line 2

<sup>557</sup> Page 97 line 10 to page 100 line 22

<sup>558</sup> Page 101 line 6 to line 11

<sup>559</sup> Page 102 line 15 to page 104 line 5

<sup>560</sup> SSA Bundle 02 page 460 et seq paragraph 2 of the affidavit

delivery of money to Mr Mahlobo over from him. After she had made the three deliveries, she could not say whether deliveries continued to be made <sup>561</sup>

477 Dorothy's evidence was also that an amount of R7m (in two parts of R6m and R1m) was withdrawn by her on 17 September 2015 at the request of Lilly and one Frank (pseudonym), utilizing the name of the project (Project Mayibuye). The reason for the request was because Frank could not take out the money in his name as there was an amount he first needed to clear before he could take any further monies. She took it that it was about Project Mayibuye (which would have tallied with the findings of the investigations by the Commission's Investigation team) <sup>562</sup> She did not know what the money was intended for or to whom former Minister Mahlobo was going to give it <sup>563</sup> The amount of R7m was withdrawn by her in the presence of Lilly and Frank, but she handed it over to them <sup>564</sup>

478 There were other monies, in respect of which projects Dorothy had signed recommendations without knowing much about the use of the monies; these included Project Hollywood, Project Accurate and Project Construc ao, as well as Project Tin Roof <sup>565</sup>

479. In 2017 Dorothy was asked by a certain Paul Langa, head of the ANC security, to assist him at the ANC NASREC conference. When she told Langa that she needed permission from her seniors, Langa told her that he had already obtained it from Mr Fraser. Nevertheless, Dorothy wrote for permission and got it. The only money she withdrew was for subsistence and travelling and accommodation. She assisted the ANC in

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<sup>561</sup> Page 105 line 24 to page 106 line 17

<sup>562</sup> Page 104 line 9 to page 105 line 21 and paragraph 13.2 of her affidavit

<sup>563</sup> Page 107 line 10 to line 20

<sup>564</sup> Page 107 line 22 to page 108 line 17

<sup>565</sup> Page 109 line 6 to page 111 line 19 and paragraphs 16, 17 and 18 of her affidavit



monitoring the movement of buses from provinces, coordinating that movement and checking if there were any glitches along the way and reporting back to them. She was not performing work for or duties for the SSA as she was at home during that time. However, the ANC was not paying her.<sup>566</sup>

480. Dorothy deposed to another affidavit, also attested to on 2 March 2021, which was admitted by the Commission.<sup>567</sup> As said earlier, she confirms in that affidavit details of the deliveries of monies she made to Mr Mahlobo, this time in response to one Lloyd Mhlanga, which response was read into the record verbatim.<sup>568</sup>

481. Dorothy also testified about an occasion on 28 January 2015 when she was instructed to collect some firearms and ammunition from Musanda Armoury which was the SSA armoury. Upon her inquiry, a colleague of hers, who is now late, confirmed the instructions and said they were from Mr Thulani Dlomo. She also had a letter from Mr Dlomo when she went to the armour, confirming that she was to collect the firearms and the ammunition. She took the firearms and ammunition to her house. One of Mr Dlomo's VIP protectors came and collected them and left.<sup>569</sup> It was not normal for an operative like her to go and fetch firearms for someone else. That was why she had to get the confirmation first. She had no idea what the firearms were to be used for.<sup>570</sup> Later, when she learnt that Mr Dlomo was leaving, she became worried about the weapons and informed the then DG, Mr Fraser, about the matter and Mr Fraser instructed that all SO firearms be returned. They were returned except three pistols and two R4 rifles which she reported to the police in February 2021 as she did not know what had happened to

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<sup>566</sup> Page 112 line 20 to page 114 line 22 and paragraph 19 of her affidavit.

<sup>567</sup> Page 117 line 12 to line 14.

<sup>568</sup> Page 117 line 23 to page 120 line 22.

<sup>569</sup> Page 120 line 23 to page 122 line 2.

<sup>570</sup> Page 122 line 3 to line 25.

them. Later, she learnt that two pistols were recovered; she had no competency or training in relation to the handling of firearms; she had no idea why she was asked to collect and deliver the firearms <sup>571</sup>

482. During internal investigations by SSA, Dorothy clarified that, when she spoke of seeing receipts in relation to the monies she delivered to Mr Mahlobo,<sup>572</sup> she was not referring to receipts by Mr Mahlobo himself for the monies, but receipts, by say, the companies that would have claimed to have rendered services, which would be receipts on the basis of which to settle or account for the advance payment. Her position therefore is that she never saw a receipt bearing the signature of Mr Mahlobo and that the receipts or invoices she said she would have seen would have been those given by Lilly to her from the company (that she could not name).<sup>573</sup>

483 On the whole, Dorothy's evidence points to large sums of money being withdrawn in her name without her knowing what the monies were used for. She gave minute details regarding her delivery of those monies to former Minister Mahlobo at his residence. On occasions she had withdrawn, counted and delivered the cash not alone, but with Lilly. The response by Mr Mahlobo was a bare denial and did not quite match up. Not only did Dorothy give minute details about the cash deliveries, but that on, at least two occasions, it was in the presence of another person when the money was counted and delivered. Her evidence also points to the intelligence services rendering financial and other assistance to the ruling party, such as in connection with its NASREC conference and its 8 January 2016 rally in Rustenburg.

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<sup>571</sup> Page 123 line 1 to page 124 line 20 and paragraph 3 of her affidavit pages 462 to 466, SSA02

<sup>572</sup> Page 522 63 of SSA02

<sup>573</sup> Page 128 line 16 to page 131 line 12; in particular, for better clarity, page 130 line 8 to page 131 line 12

## THE EVIDENCE OF DR SIYABONGA CYPRIAN CWELE

- 484 Ambassador Siyabonga Cwele was Minister of State Security for the period September 2008 to May 2014; before that he was Chair of the Joint Standing Committee on Intelligence (JSCI).<sup>574</sup>
485. He became aware of the evidence of Messrs Shaik, Njenje and Maqetuka that they came upon a report in a Sunday Newspaper about what had transpired between Minister Fikile Mbalula and the Guptas regarding Minister Mbalula's then forthcoming appointment as Minister of Sport. This appears to have been around 2011/2012. Ambassador Cwele had also come to learn that Mr Njenje, Mr Shaik and Mr Maqetuka had taken the decision to investigate the matter. However, Ambassador Cwele's evidence was that he did know about the investigation into the alleged purchase of a Uranium mine by the Guptas until their evidence before the Commission.<sup>575</sup>
- 486 Ambassador Cwele said that it was not correct that he called the three people to his office in Cape Town. He said he only called Mr Njenje to his office in Cape Town after discussing an issue of interception and monitoring. He had discussed it with Mr Njenje's Deputy because at the time he wanted to discuss it with Mr Njenje. He said that Mr Njenje was on leave. He met the Guptas for the first time in September 2010 at the ANC's fund-raising dinner in Durban.<sup>576</sup> Mr Njenje's Deputy confirmed to him that they were indeed investigating the Guptas. Ambassador Cwele then asked him if they had a judge's permission and the person said no; they were acting on the instructions of the

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<sup>574</sup> Page 7 line 17 to line 25

<sup>575</sup> Page 8 line 1 to page 9 line 11

<sup>576</sup> Page 9 line 12 to page 11 line 9



top trio, namely, Ambassador Maqetuka, Mr Shaik and Mr Njenje. The person was the DDG for Domestic Branch, of the NIA <sup>577</sup>

- 487 Ambassador Cwele said he had only asked Mr Njenje and his DDG to come to Cape Town. He said that he did not ask Mr Shaik or Ambassador Maqetuka, but they too came. He then had a meeting with the three of them. He was worried about an investigation without a judge's permission to intercept as doing so caused problems in the past. He said that he had no problem with the investigation, his only problem was an investigation without a judge's direction.<sup>578</sup> It is not easy to understand why Ambassador Maqetuka and Mr Njenje would buy air tickets to fly all the way from Pretoria to Cape Town without a clear request from the Minister
488. Ambassador Cwele said he told them he had no problem with them investigating, as long as they had a judge's permission to intercept a person. He also raised the issue of Mr Njenje's conflict of interest. Ambassador Cwele said that he told the three to go and get a judge's direction which, on the facts they were placing before him, would not be too difficult to get. He testified that he also reminded Mr Njenje that, when they employed him, he was told to stop his business interests as he could not be in business while in charge of State Security, to which he had agreed; yet according to Dr Cwele he was still pursuing some mining interests. Dr Cwele said he told Mr Njenje that he was conflicted as he was investigating the same people he was in business with; that was why the meeting took long <sup>579</sup> It was put to Ambassador Cwele by the evidence leader that there was no discussion of the issue of a judge's direction, but he insisted that it was discussed. His constraint in not putting that in his affidavit was that he was not sure what their version was and that he did not have access to the documents or minutes of

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<sup>577</sup> Page 11 line 10 to line 25

<sup>578</sup> Page 12 line 16 to page 14 line 10

<sup>579</sup> Page 15 line 15 to page 18 line 17

the meetings. Dr Cwele said that the issue of business interests arose while they were discussing interception <sup>580</sup>

489 Ambassador Cwele said that the conclusion of the meeting was that they could continue with the investigation provided they got a judge's direction to do the interception; but it was put to him that had that been the case, they would not have felt the need to see the President. His response was that he did not know they went to the President; he only read about it later; secondly, he said that they had the right to go and see the President anyway as they used to do; according to him there was no need for them to go and see the President and they did not see the President only on that issue <sup>581</sup>

490 The second issue was the one of Mr Njenje's alleged conflict of interest. Ambassador Cwele was not comfortable even if Mr Njenje did not directly hold shares in the company concerned; apparently, there was a conflict between the Guptas and the company and, by intercepting the Guptas, the Ambassador felt that Njenje would be using state security resources to investigate his dispute with his partners; but he did not see Njenje's personal interests as being a hurdle to the investigation, and, again no reason for them to go to the President; except that he expressed his great displeasure at Mr Njenje investigating people while doing business with them. <sup>582</sup> He said that the investigation could go on without hindrance as he had no power to stop it nor did he do so, except to make it categorically clear that there should be no interception of any citizen without following the law. However, he was not sure he necessarily told them that if they wanted to continue with the investigation they must go and get a judge's directive <sup>583</sup>

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<sup>580</sup> Page 19 line 15 to page 20 line 9

<sup>581</sup> Page 22 line 17 to page 23 line 19

<sup>582</sup> Page 23 line 20 to page 25 line 22

<sup>583</sup> Page 25 line 23 to page 27 line 9

491. Ambassador Cwele said the three denied that they were intercepting, they were just doing the scoping, which did not need a judge's directive; but he queried why they did not bring along the DDG who had told him that they were intercepting, to which they said they thought only the top three should come.<sup>584</sup>
492. There are three things on which the top three and Ambassador Cwele disagree. Firstly, the three say he never raised the issue of a judge's directive whereas he insisted that he did. Secondly, they said that the conclusion of the meeting was that he did not want the investigation to continue, which was why they decided to go and see the President. Furthermore, they said that Mr Njenje denied the conflict, whereas Ambassador Cwele said he did not. The Ambassador agreed, too, that even if there was conflict of interest, that would not be the reason to stop the investigation.<sup>585</sup> These issues were extensively canvassed with the Ambassador, the end of which was: he had no problem with the investigation going on, as long as Mr Njenje was not directly involved. He maintained that there should not be interception without a judge's directive; Njenje (who would personally not be involved) would have to make sure that whoever was to investigate, junior or senior, did so properly; the Ambassador did not, he said, say the investigation should stop.<sup>586</sup> However, this would beg the question why the three would have wanted to take the matter to the President, if, firstly, Ambassador Cwele had no problem with the investigation as long as it did not entail interception without a judge's directive (which they said they were not doing) and secondly, if Njenje's conflict (which he denied anyway) would not be a bar either. These considerations make the Ambassador's version that he did not stop the investigations problematic.

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<sup>584</sup> Page 27 line 9 to page 29 line 16

<sup>585</sup> Page 29 line 21 to page 32 line 7

<sup>586</sup> Page 44 line 1 to line 25 and i.a. paragraph 34 of Ambassador's affidavit, SSA-05-720



493. Although the nature of Mr Njenje's conflict is not clearly stated, it appears from the evidence of Ambassador Cwele that, according to him, Mr Njenje was involved in a dispute with the Guptas about the acquisition of certain shares in a company in which Mr Njenje was a shareholder, part of which shares the Guptas wanted to acquire.<sup>587</sup> Neither party gave clear details of Mr Njenje's alleged interest.
494. Regarding the disagreement over certain things said or not said at the meeting, Ambassador Cwele thought that, as the meeting was recorded, the transcript could tell the truth.<sup>588</sup> The Commission made various efforts to obtain the recording or transcript of the recording of that meeting after Ambassador's evidence but the State Security Agency denied that there was such a recording
495. It was Ambassador Cwele's evidence that he reminded Mr Njenje that he was not permitted to use state resources to pursue private interests; there were circumstances in the past when things went wrong. He said that, as Minister, it was his duty to tell management on what should not be done; intelligence resources were powerful tools.<sup>589</sup>
496. It was pointed out to Ambassador Cwele that his evidence before the Commission that he was not opposed to the investigation, contradicted his affidavit in which he said that the absence of a judge's directive made Mr Njenje's conflict of interests even more untenable; he denied that that statement amounted to a very clear opposition to the continuation of the investigation.<sup>590</sup>
497. It was pointed out by the evidence leader to Ambassador Cwele that there was another divergence between his evidence and the contents of his affidavit. In his evidence he

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<sup>587</sup> Page 42 line 25 to page 43 line 7 and page 47 line 1 to line 11

<sup>588</sup> Page 53 line 23 to page 56 line 16

<sup>589</sup> Page 56 line 20 to page 57 line 21

<sup>590</sup> Page 57 line 22 to page 60 line 2 and paragraph 20 of his affidavit, page SSA05

said the issue he raised and was concerned about was the electronic "*interception*" (without a judge's directive) but, in his affidavit, he said what he raised with the top three and was concerned about was the "*surveillance*" Ambassador Cwele's response was that there was no difference between the two, yet, as it was pointed out to him, surveillance did not necessarily take the form of electronic interception and, therefore, if it did not take that form, it did not require a judge's directive <sup>591</sup> The difference was significant in that Ambassador Cwele's objection against the investigation would have been unfounded because, whereas, indeed, "electronic interception" required a judge's permission, the top three denied conducting it; in other words, they told him that they were conducting the kind of surveillance which did not require a judge's approval since their surveillance was not in the form of "electronic interception" (which required a judge's directive) The premise of Ambassador Cwele's objection was therefore misconceived This is yet another problem with his version

498. In his evidence, Ambassador Cwele, while maintaining that he did not instruct that the investigation be stopped, conceded that it would have been improper for him as the Minister to have done so. He said that he did not have the power to do so He said that had no role, except a supervisory one to ensure things were done according to the law. He said he neither authorised nor directed investigations as the Minister. He said he only got reports <sup>592</sup>

499 The versions of the top three were put to Ambassador Cwele: Mr Shaik's evidence that he instructed that the investigations be stopped. Mr Njenje's version was that, although he might not have said so in so many words, in effect Ambassador Cwele was telling them to stop the investigation Ambassador Maqetuka's version, which was

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<sup>591</sup> Page 60 line 4 to page 63 line 24 and paragraphs 18, 21 and 32

<sup>592</sup> Page 63 line 25 to page 65 line 12

substantially the same as Mr Shaik's, except regarding the location of the meeting,<sup>593</sup> a difference which was inconsequential as it was common cause that the meeting did take place, wherever it might have been. Ambassador Cwele took issue with all that and denied stopping the investigation. Firstly, that Shaik was the only one who said he did say so, and the others were clear that he did not say so.<sup>594</sup>

500 It could not be disputed that there were two things that came out of the meeting between Ambassador Cwele and the top three. Firstly, that the top three went to see the President, something Ambassador Cwele said he did not know about but could not dispute.<sup>595</sup> The second outcome was that, for all intents and purposes, the investigation against the Guptas stopped, despite the trio's intent and keenness to conduct it, to the point of wanting to go to the President for clarity. The Ambassador insisted that he was not the one who stopped the investigation.<sup>596</sup>

501 Whereas Ambassador Cwele's evidence was that the meeting was called because of his concern about the illegal electronic interception, it appeared that, in the course of the meeting, according to the version of at least one of the top three – that the meeting was called because of the Ambassador's view that an investigation into the relationship between the Gupta family and the former President was irregular. That is the investigation itself,<sup>597</sup> and not the method (electronic monitoring). Ambassador Maqetuka's affidavit is to the effect that Ambassador Cwele's attitude was that the investigation should stop and that he was not interested in the merits of the investigation but in Mr Njenje's motive.<sup>598</sup> This would be in contrast with Ambassador Cwele's

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<sup>593</sup> Page 65 line 23 to page 66 line 14

<sup>594</sup> Page 67 line 20 to page 68 line 8

<sup>595</sup> Page 66 line 16 to line 25

<sup>596</sup> Page 67 line 1 to page 68 line 12

<sup>597</sup> Page 72 line 17 to line 24

<sup>598</sup> Page 73 line 20 to page 74 line 1



evidence that he did not call the meeting because of the relationship between the Guptas and the former President, but because of an illegal interception <sup>599</sup>

502 Not surprisingly, the argument that Ambassador Cwele in effect said the investigation should stop, kept on coming up in his evidence, with him contesting it; in that respect, he was, for example, referred to the verbatim evidence of Mr Njenje, who said that in effect that was what he (Ambassador Cwele) said, which was what drove them to go the President.<sup>600</sup> The Ambassador agreed that the top three were intent on pursuing the investigation to finality, but insisted that he was not the one who stopped it.<sup>601</sup>

503 Although the Ambassador's version was that he did not stop the investigation and that, on their own statements, the top three said neither he nor the President would stop them, it was not in dispute that during his time and until he left office, he neither received any briefing or a report on the investigation even though that would normally happen if there was an important investigation; he said he never knew whether the investigation was stopped until he left office.<sup>602</sup> One would have thought that, when he was not getting any reports, he would have made a follow-up for update on the investigation.

### **Regarding the Principal Agent Network Plan**

504. The Principal Agency Network was established before Dr Cwele was appointed Minister of State Security. He had concerns about its implementation. He said that, as a result, he initiated the work to clean up the programme<sup>603</sup> soon after his appointment. He was concerned about the fact that, whereas it had started with a small budget, it soon

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<sup>599</sup> Page 74 line 8 to line 12

<sup>600</sup> Page 77 line 4 to page 78 line 13

<sup>601</sup> Page 80 line 16 to page 81 line 5

<sup>602</sup> Page 81 line 5 to page 83 line 23

<sup>603</sup> Page 85 line 20 to page 87 line 1

ballooned to more than 10 times within a short space of time. Dr Cwele also said that there were also questionable acquisitions of operational movable and fixed assets. He said that he ordered the investigation before the appointment of the top three who found it ongoing; he briefed them. The programme was not supposed to be a deep cover operation and the CFO of NIA was concerned that there was no proper accounting for the funds. The programme was syphoning funds from the budget of the Domestic Branch of Intelligence. There were several investigations. The first one was the audit one, the second one was a counter-intelligence operation and the third was by the Inspector General of Intelligence; it appeared that there might be criminal charges to be levelled <sup>604</sup>

505. An internal audit was done. Pursuant to that internal audit report, Mr Njenje appointed an investigation team in 2010 to investigate maladministration and allegations of financial irregularities. A report was then produced. The gist of the report was that there were numerous incidents of breach of the SSA's regulatory framework, and irregular authorization and utilization of funds. It also listed the names of some 14 people against whom criminal investigations had to be conducted. It also stated that there were criminal offences in terms of the Preventing and Combating of Corrupt Activities Act 2004 and the Public Finance Management Act. There were several findings of this nature, including acts of forgery and uttering, fraud and contravention of the Companies Act 2008. Ambassador Cwele agreed with these findings <sup>605</sup>

506. The report also recorded that at a meeting (at OR Tambo Airport) with the Minister (Ambassador Cwele) on 9 November 2019 it was agreed that the matter would be

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<sup>604</sup> Page 89 line 2 to page 90 line 3 and paragraph 13 page 5505 - 689

<sup>605</sup> Page 90 line 4 to page 91 line 25 and also page 93 line 20 to page 95 line 23

referred to the national prosecuting authority for criminal investigation into the alleged activities in the PAN Programme and that the matter would be referred to the SIU <sup>606</sup>

507 Ambassador Cwele also agreed to have knowledge of some interaction between one Pieter Bishop of the SIU and Mr Njenje, as set out in Mr Bishop's affidavit about how the two bodies could co-operate regarding the criminal investigations. In respect of which the SIU would, as a matter of co-operating with the investigations of the criminal activities, consider reducing costs.<sup>607</sup> Mr Bishop's affidavit went further to say that, however, shortly after he had advised the NIA that the SIU would consider reducing the costs, he received a call from the NIA that NIA management had advised that the investigations should rather be dealt with by the Inspector General of Intelligence; after that, the SIU did not have any further dealings with the NIA regarding the PAN investigation

508 Ambassador Cwele's response was that he had received many reports, but he was aware that there was an approach to the NPA, the Police and the SIU. He said that he was also aware that costs were at one time being negotiated with the SIU; as for the rest of what Mr Bishop said in his affidavit Dr Cwele could not comment <sup>608</sup>

509. In the light of the above, it was indicated to Ambassador Cwele that firstly, the SIU, a law enforcement agency, was tasked with conducting the investigation that could lead to criminal prosecutions; secondly, that the SSA took away the investigation from them Ambassador Cwele's response was that he was not part of the SSA top management that took that decision; but he admitted having made the referral of the matter to the office of the Inspector General of Intelligence but not because of the fact that there was

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<sup>606</sup> Page 97 line 3 to page 98 line 6

<sup>607</sup> Page 100 line 21 to page 102 line 24

<sup>608</sup> Page 102 line 25 to page 104 line 5



an investigation by law enforcement agencies. He said that his reason was that there were several issues, namely, that the reports were not clear, were contradictory, and some suggesting disciplinary action. He also said that intelligence was not given as evidence in court.<sup>609</sup>

510. An engagement followed between the leader of evidence and Ambassador Cwele. The essence of it was to make the point to the Ambassador that a case of criminality was taken by the SSA out of the hands of the SIU, which was prepared and ready to conduct the investigations, and taken to the office of the Inspector General of Intelligence, and that that was how criminal investigations were ended. Ambassador Cwele's final response was that he was not the one who removed the matter from the SIU.<sup>610</sup> Although Ambassador Cwele agreed that he was the one keeping an eye on the matter to the extent of referring it to the Inspector-General of Intelligence, he said that he did not know that the matter had been removed from the law enforcement agencies; he ought to have known as the Minister.<sup>611</sup> It was put to him that he must have been aware that the matter was taken away from law enforcement agencies because firstly, he had referred the matter there; secondly, he was aware that no prosecutions were ever conducted. He must have known that the matter was taken away from the law enforcement agencies.<sup>612</sup>

511. The Ambassador said that he did not know that the matter had been taken away from the law enforcement agencies and that it was not his decision; yet at the same time he indicated his concern about the matter going to court; he said in their experience judges were not keen on secrecy.<sup>613</sup> Clearly, this is consistent with the argument that he

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<sup>609</sup> Page 104 line 6 to page 105 line 25

<sup>610</sup> Page 106 line 1 to page 109 line 14

<sup>611</sup> Page 109 line 15 to page 110 line 10

<sup>612</sup> Page 111 line 11 to page 112 line 24

<sup>613</sup> Page 112 line 25 to page 113 line 11

stopped criminal investigations. In the end, the content of Mr Njenje's affidavit was put to Ambassador Cwele. The gist of it was that he got a call from Minister Cwele to meet him at the OR International Airport. Mr Njenje said that at the meeting, Minister Cwele told him about his meeting with President Zuma where the latter had expressed strong opposition to them taking Arthur Fraser to court, saying that there were concerns of national security.

512. Mr Njenje said he was gobsmacked. He said he failed to persuade Minister Cwele who finally said that it was the President's decision. Mr Njenje said that he had the misfortune of having to go to his dedicated team to convey the President's decision. Ambassador Cwele's response was that Mr Njenje was wrong; but it was pointed out to him that in his replying affidavit, he did not mention the meeting at all. In response, he referred to parts of his affidavit which did not speak to Mr Njenje's above pertinent statement; nor did he do so in his evidence before the Commission, except to retort that the President never expressed any concern about pursuing the matter.<sup>614</sup>
513. Given Mr Njenje's statement and other pointers, it is difficult to accept that Ambassador Cwele and or former President Zuma did not give instructions that the matter be taken away from the law enforcement agencies. As pointed out to Ambassador Cwele, there was a host of such pointers; to mention a few: Ambassador Cwele's concern about the judges not accepting secrecy and thus his ambivalent position; he never asked for a follow-up report about the developments regarding criminal investigations whereas he said, as the Minister concerned, he had directed that the matter be referred to law enforcement agencies, yet he said he was not aware of the stoppage; this, despite his evidence that he had strongly supported reporting the matter to the law enforcement agencies. Unless it were to be accepted that instructions came from above to stop

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<sup>614</sup> Page 117 line 21 to page 121 line 3

criminal investigations, no reasonable explanation would exist why the matter was taken away from law enforcement agencies <sup>615</sup>

- 514 Part of the summary of a report by Mr Njenje's team indicated that the then Minister of Justice, Mr Radebe, received a briefing regarding the criminal activities. He was satisfied that there was a *prima facie* case and promised support from his Department. In fact, part of that summary also showed that the SIU had decided not to charge anything any longer, except that the investigations might take longer. The summary said the presentation to Minister Radebe was on the instructions of Ambassador Cwele. It also said that the PANI report revealed the most serious allegations of criminal conduct. All these pieces of evidence were aimed to show that Ambassador Cwele was aware that the criminal investigations had stopped which he persistently denied.<sup>616</sup> The point made was that, while other investigations could have continued, such as by the Inspector General of Intelligence or even internal investigations, criminal investigations by law enforcement agencies were indeed stopped for the reasons stated above. The other point made was that, given his earlier interest in the matter, Ambassador Cwele would not have been unaware that criminal investigations were stopped; for example, he said that they stopped the funding of the PAN Programme, and recovered most of the assets in the form of houses and cars, which was their major priority while still dealing with issues of evidence for disciplinary cases and for criminal cases; and he agreed that allegations of serious criminal conduct needed to be investigated by law enforcement agencies.<sup>617</sup>

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<sup>615</sup> Page 121 line 6 to page 123 line 7

<sup>616</sup> Page 123 line 9 to page 126 line 4

<sup>617</sup> Page 126 line 5 to page 129 line 13



### Regarding the 11 September 2009 Proclamation

515 It was put to Ambassador Cwele that the above proclamation, which amalgamated the National Intelligence Agency and the South African Secret Service into the State Security Agency, was not competent legislation to do so; that it should have been through a Parliamentary process involving many stages. He disagreed with Ambassador Maqetuka's argument that the amalgamation could not have been through a mere proclamation, but by Parliamentary legislation. A debate followed.<sup>618</sup> Ambassador Cwele argued that the President was competent to make the proclamation. In his view, it is only when it comes to the reorganization of the State Security Agency that the Constitution prescribes that it be through Parliamentary legislation. The General Intelligence Laws Amendment Act 11 of 2013 purported to regularize the queried amalgamation made through the proclamation.<sup>619</sup> The passing of this Act was an indication that the proclamation was incompetent to effect the amalgamation.

516. In his affidavit, Ambassador Cwele took Mr Shaik to task for failing to respond to an SSA intelligence report adverse to him. It turned out that Mr Shaik had in fact done so; and that he had submitted his response to his superior at the time, Ambassador Maqetuka. Mr Shaik's response, which Ambassador Cwele had apparently not seen, was presented to him.<sup>620</sup> As he was unable to comment on it, the Chair decided to give him time to read it and, if need be, to respond by way of an affidavit.<sup>621</sup> To enable Ambassador Cwele to respond to Mr Shaik properly, attempts would be made to declassify the report allegedly implicating Mr Shaik and a copy given to him.<sup>622</sup> The fact

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<sup>618</sup> Page 146 line 11 to page 151 line 16 and paragraph 12 of Ambassador Cwele's affidavit.

<sup>619</sup> Page 151 line 17 to page 152 line 25.

<sup>620</sup> Page 153 line 2.

<sup>621</sup> Page 153 line 2 to page 159 line 19.

<sup>622</sup> Page 163 line 6 to line 16.

that Mr Shaik responded to deny the adverse allegations intimated by Ambassador Cwele, would of course be of relevance to his (Mr Shaik's) credibility

517 Ambassador Cwele's Counsel, put some questions to the Ambassador. The latter's evidence could be summarized thus: The top three, that is Ambassador Maqetuka, Mr Njenje and Mr Shaik, were not the kind of people to be made to do something illegal; that there might have been a report, with good reasons, for discontinuing criminal investigations; that the trio would not have agreed to discontinue investigating something illegal anyway. There was no such report or written instructions (by him or former President) to stop investigations.<sup>623</sup> Had there been any stoppage, Mr Njenje, who left first, would have informed his senior Ambassador Maqetuka; as the Minister of State Security, he would have had no power to stop the SIU from investigating; or to stop criminal prosecutions; finally, that the classified report allegedly adverse to Mr Shaik would assist the Commission in determining the truth on the matter.<sup>624</sup>

#### THE EVIDENCE OF DR FHOLOANI SYDNEY MUFAMADI

518. Apart from his oral evidence before the Commission, Dr Fholisani Sydney Mufamadi had also made an affidavit, attested to on 30 November 2020, which was filed of record and admitted by the Commission. He was appointed by the President in 2018 to chair what became to be known as the High-Level Review Panel. The panel produced a report in 2018, entitled *"HIGH-LEVEL REVIEW PANEL REPORT ON THE STATE SECURITY AGENCY DECEMBER 2018."*<sup>625</sup> The report was obviously given to the President; however, for the public, certain parts of it were redacted. The objective of the panel was to look into the workings of the State Security Agency (SSA) over a particular

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<sup>623</sup> Page 166 line 2 to 6; and page 168 line 15 to page 169 line 14

<sup>624</sup> Page 169 line 18 to page 171 line 7

<sup>625</sup> Page 33 line 9 to line 25

period of time: whether the Agency had the requisite capacity, whether there were adequate oversight mechanisms over it, whether the mechanisms were circumvented and if so why was that possible; and what recommendations to make to ensure the country had a really professional security agency<sup>626</sup>.

519. Summary of the Panel's findings: Dr Mufamadi summarized some of the key findings of the High-Level Review Panel, based on its investigation of the SSA. There was serious politicization and factionalization of the intelligence community over the past decade which mirrored factions within the ruling party; evidence of disregard of the Constitution, policy, legislation and other prescripts; the civilian intelligence community had been turned into a private resource to serve the political and personal interests of particular individuals; and there was a doctrinal shift that was given effect to through the proclamation issued by the then President, Mr Zuma<sup>627</sup>.

**The 2009 Proclamation issued in 2009 by the then President Zuma; and its implications.**

520. The evidence of Dr Mufamadi was that the Proclamation, *inter alia*, ran counter to the basic tenets of our constitutional democracy and rode roughshod over principles of separation of powers. Its passing usurped the role of the Legislature; it limited and constrained executive authority and in some instances in practice removed the fetters on executive authority because it was a framework which was a deviation from the provisions of the Constitution<sup>628</sup>. The evidence of Dr Mufamadi was that it would be

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<sup>626</sup> Page 47 line 7 to page 48 line 9 of day 330

<sup>627</sup> Page 48 line 25 to page 49 line 20 and paragraph 1.4 of Dr Mufamadi's affidavit

<sup>628</sup> See further page 52 lines 1 to page 53 line 11 and paragraph 1.4 of Dr Mufamadi's affidavit



*"difficult for anybody to argue that there is no causal link between"* the passing of the proclamation and the wrongdoing that followed <sup>629</sup> The Agency was *"repurposed"* <sup>630</sup>

521 Once the Proclamation was introduced, Parliament and its Committee did not do anything about it for a whole period of four years, even though the proclamation had usurped Parliament's legislative powers. Parliament was *"sleepwalking"*. <sup>631</sup>

522 Dr Mufamadi's panel interacted with many institutions and people, e.g. the Inspector General of Intelligence, the Auditor General and some individuals previously involved. <sup>632</sup> The report of the panel is an annexure to Dr Mufamadi's affidavit. <sup>633</sup> The report was given to the President in December 2018, and a redacted version released to the public, but this Commission got the declassified full report subject to certain conditions. The annexure has certain redactions. <sup>634</sup>

523 The panel invited submissions from other sister intelligence communities such as the Police Crime Intelligence and the Intelligence Division of the SANDF <sup>635</sup> Dr Mufamadi testified extensively about the terms of reference of his panel. <sup>636</sup>

524. On paper, there were actually good mechanisms in place, which made one wonder why some of the things happened <sup>637</sup>

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<sup>629</sup> Page 56 lines 6 to 13

<sup>630</sup> Page 52 lines 20 *et seq*

<sup>631</sup> Page 57 lines 5 *et seq*

<sup>632</sup> Page 60 lines 3 *et seq*

<sup>633</sup> Page 61

<sup>634</sup> Page 62

<sup>635</sup> Page 65 line 2 *et seq*

<sup>636</sup> Pages 67 *et seq*

<sup>637</sup> Page 71 line 10 *et seq*

525. The Intelligence White Paper apparently had some good features<sup>638</sup> which was in contrast with the Proclamation
- 526 Some evidence given to the Panel showed that some of the activities of the SSA flew in the face of the principles of Political Neutrality.<sup>639</sup>
527. The problematic Proclamation was issued by then President Zuma on 11 September 2009.<sup>640</sup> It generally undermined operational efficiency.<sup>641</sup> It amalgamated the National Intelligence Agency (NIA) with the South African Secret Service (SASS). The amalgamation had the effect of creating a situation where some people sat in positions which were not existent for too long.<sup>642</sup>
528. The Principal Agent Network (PAN): it conducted its activities between 2006 and 2011 and was subjected to investigation thereafter.<sup>643</sup> It was investigated for alleged abuse of State Resources.<sup>644</sup> It was followed by the Special Operations Unit referred to below
529. The Special Operations Unit (SOU): It conducted its activities in the period after the PAN.<sup>645</sup> Under the rubric "Special Operations" things were done which should not have been done; e.g. protection of political office bearers; weaponization of intelligence

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<sup>638</sup> Page 73, day 330

<sup>639</sup> Page 73 line 10 to page 74 line 5

<sup>640</sup> Page 74 line 6 *et seq*

<sup>641</sup> Page 74 line 22 *et seq*

<sup>642</sup> Page 74 lines 12 to 21

<sup>643</sup> Page 75, lines 16–18

<sup>644</sup> Page 76

<sup>645</sup> Page 75, bottom

capabilities, etc.<sup>646</sup> It appeared whenever something untoward was done, it was under the auspices of the Special Operations; i.e. projects of dubious legitimacy<sup>647</sup>

530 Special Operations Unit was part of the SSA, but SSA did not recruit people from outside; it did so through Special Operations. Some of the people so recruited (for special operations) considered themselves accountable to members of the executive rather than to the management structures of the SSA<sup>648</sup>

531. One Mr Thulani Dlomo was the head of Special Operations Unit during the period reviewed by the panel.<sup>649</sup> The panel did not get his co-operation.<sup>650</sup>

532 What follows below was the evidence regarding some of the activities of the SOU during the period reviewed by the panel

533. According to Dr Mufamadi's evidence, the unit was a law unto itself; that is, relative to the management structure of the SSA. This was because, as far as reporting was concerned, members of the unit (the operatives) were not following proper reporting lines. People senior to Dlomo said they were not getting reports from Special Operations; because people in Special Operations would say they reported directly to the executive and not to them<sup>651</sup>

534. Money was advanced to operatives through the Temporary Advance systems. There were cash intensive transactions, with people not accounting (for the money given in

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<sup>646</sup> Page 77 line 1 *et seq*

<sup>647</sup> Page 78

<sup>648</sup> Page 79 line 13 to page 80 line 7

<sup>649</sup> Page 85 top

<sup>650</sup> Page 87

<sup>651</sup> Page 88 line 2 to 11



advance); huge amounts were allocated on a regular basis for projects; yet there were no reports to the financial accounting people accounting for the money<sup>652</sup>

535 Some of the operations were misdirected; looking at things that had to do with political intelligence; running the projects in an inappropriate manner in that principles such as political neutrality were not observed; to such an extent that the review panel talked of the weaponization of intelligence for wrongful political reasons. Those were the things that the Special Operations Unit (SOU) was mostly doing.<sup>653</sup>

536. People within the SSA welcomed initiative of his panel, and hoped that it would help.<sup>654</sup> This must have been indicative of the depth of problems in the SOU. It also appeared that people were afraid to speak out for fear of losing their jobs.<sup>655</sup>

537. The SOU undertook intelligence operations projects which were clearly unconstitutional and illegal, one of which was Project Construc ao (Portuguese). The unit was a law unto itself and served political interests.<sup>656</sup> Some of those queried special projects are discussed briefly below. Other witnesses have already testified extensively about them; particularly regarding the monies that were syphoned out of the SSA.

### **Project Construc ao**

538. Dr Mufamadi's evidence was highly informative about this project. What did the project involve? Whereas it is the responsibility of the South African Police Service to provide VIP protection for political office bearers, the first thing that was wrong with the unit was

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<sup>652</sup> Page 88 line 12 to page 89 line 2

<sup>653</sup> Page 89 line 3 to line 12

<sup>654</sup> Page 93 lines 22

<sup>655</sup> Page 94 line 2 to page 95 line 7

<sup>656</sup> Page 95 line 16 et seq ad paragraph 7.7 of Dr Mufamadi's affidavit

to organize, through this project, the training of uncover agents in VIP protection.<sup>657</sup> Through this design, the Commissioner of the South African Police Service (SAPS) would be bypassed in that the accountability line would not be to him because the function (of VIP protection) would instead be carried out elsewhere and not under SAPS; you are by so doing bypassing the reporting structures of the police. The protectors become accountable to SSA operatives and the person receiving the benefit of the protection; the SAPS is then left out of the loop.<sup>658</sup> The project therefore involved the formation of the Special Operations Protection Services.<sup>659</sup>

539 The other problem with the project was that the budget of the SSA ought not to have provided for that function because there is a sense in which there would have been double-dipping; whatever the undercover agents did, might well have been a duplication of what SAPS believed itself to be doing; also, you can imagine a stampede when there is a parallel provision of VIP protection service<sup>660</sup>

540. The undercover agents were trained in a foreign country; there might have been a need to do so; but it was not within the competence of the SSA to do so.<sup>661</sup>

541 It is so that if the VIP protection is not done by, and through, SAPS who must first assess the threat level, but is instead done by the Special Operations Unit, the result could be that people who do not properly fall into the category of those who should be protected, may end up being protected<sup>662</sup> Indeed, there might well have been people given VIP protection but who did not fall within the VIP protection category because the

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<sup>657</sup> Page 96 lines 15 to line 22 ad paragraph 7.8 of Dr Mufamadi's affidavit

<sup>658</sup> Page 96 line 25 to page 97 line 21

<sup>659</sup> Page 101 line 21 to 23

<sup>660</sup> Page 97 line 21 to page 98 line 4

<sup>661</sup> Page 98 line 5 to page 99 line 5

<sup>662</sup> Page 99 line 6 to page 100 line 6

determination was not made by SAPS as it should have on the basis of a threat assessment. The VIP protection is a sensitive function and should not be a free-for-all activity. The undercover agents were also not assigned to everybody, but only to certain selected individuals; some of whom did not deserve that kind of protection.<sup>663</sup>

542. As an example of duplication of services and stampede, the SAPS genuine VIP protection advance team members would go to a place, only to collide with the protection agents from the Special Operations Protection Services unit of the SSA.<sup>664</sup>

543. Some of the people who were given VIP protection under this project by the Special Operations Protection Service unit of the SSA were: the former Chair of the Board of South African Airways, Ms Dudu Myeni; former National Director of Public Prosecutions Mr Shaun Abrahams; then African National Congress Youth League President Mr Collen Maine and apparently his deputy as well; and also the former Acting Head of the Director for Priority Crime Investigations General Yoliswa Matakata. SAPS was not able to say whether they had done the threat analysis, except to concede that there was in any case an apparent need to protect Mr Abrahams; but what mattered was who made the determination.<sup>665</sup>

544. Project Construcão has since been terminated.<sup>666</sup>

### **Project Commitment<sup>667</sup>**

545. The reviewing panel was told that under this project former President Zuma was initially given an amount of R2.5million *per* month, that is, during the 2015/2016 financial year;

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<sup>663</sup> Page 100 line 8 to page 101 line 20.

<sup>664</sup> Page 101 line 24 to page 102 line 13.

<sup>665</sup> Page 102 line 13 to page 103 line 15.

<sup>666</sup> Page 103 line 17 to line 18.

<sup>667</sup> Page 105 line 3 *et seq* and paragraph 7.9 of Dr Mufamadi's affidavit.



the amount was later raised to R4.5 million *per* month in the 2016/2017 financial year; the money was said to have apparently provided *via* then Minister of Security Mr Mahlobo, though the informant said while he/she was certain of this, he/she was not certain that President Zuma received the money.<sup>668</sup> The impropriety of a Minister doing this admitted of no debate.<sup>669</sup>

546 It needs to be pointed out that this evidence ties up with the evidence by other witnesses such as Dorothy, Darryl and others regarding the withdrawal of large sums of money and its delivery to former Minister Mahlobo.

547 The payment of the money was not the practice, according to Dr Mufamadi, and was unheard of even though he himself had previously been in the Cabinet for many years.<sup>670</sup> The money was in cash;<sup>671</sup> and, as said earlier, was R2.5 million every month in the 2015/2016 financial year and then R4 5 million every month during the 2016/2017 financial year<sup>672</sup>

548. Although there was no proof that Minister Mahlobo paid the money over to President Zuma, the informant said there were acknowledgements of receipts of these monies by Minister Mahlobo; the receipts were, however, not shown to the panel. All those allegations were considered by Dr Mufamadi as being worthy of investigation as such a practice was unheard of.<sup>673</sup>

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<sup>668</sup> Page 105 line 2 to page 106 line 4

<sup>669</sup> Page 106 lines 11 - 14

<sup>670</sup> Page 106 line 15 to page 107 line 18.

<sup>671</sup> Page 109 line 5 to line 17

<sup>672</sup> Page 106 line 3 to page 107 line 5; also page 108 line 20 to page 109 line 4

<sup>673</sup> Page 109 line 18 to page 111 line 10

## Project Justice

549. This was a project which ostensibly involved the recruiting and handling of sources within the judiciary to influence the outcome of cases against President Zuma; it involved payment of monies; the information said amounts of R1.2 million and R4.5 million were routinely given from SSA and provided to Minister Mahlobo who was said to be responsible for the handling of the sources.<sup>674</sup>
550. The panel was told that the project was to influence Judges hostile to President Zuma; that judges were bribed to achieve the purpose. However, the panel felt that these allegations had to be treated with extreme caution as that was a sensitive issue; one would not want to be party to the destruction of the confidence in the Judiciary as there was no evidence that the operation was actually carried out; though it would be a matter warranting some investigation with an open mind; the panel had a sense that some of the operations could have been a ruse for moneymaking undertakings.<sup>675</sup> Some balancing was required.<sup>676</sup>
551. Whether or not the project was carried out or not, the fact is that it was conceived and money was attributed or paid to the project; the fact that people's imaginations carried them that far in the SSA worried the panel that the country was in trouble.<sup>677</sup>
552. Considering the monthly amounts given to Minister Mahlobo under this project, the total amount would have amounted to millions; over R60 million.<sup>678</sup>

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<sup>674</sup> Page 111 line 11 to page 112 line 2 and paragraph 7 10 of Dr Mufamadi's affidavit

<sup>675</sup> Page 112 line 5 to page 115 line 8 to line 25

<sup>676</sup> Page 115 line 8 to line 25

<sup>677</sup> Page 116 line 1 to line 14

<sup>678</sup> Page 117, line 2 to line 25

553. Much as it would have been an elaborative and far-reaching ruse, it was, in Dr Mufamadi's view, a dangerous narrative because the Judiciary would lose its independence; any suggestion of the subversion of independence of Constitutional organs of State would be a matter of grave concern. The allegations made being that judges were bribed to counter the influence of the judges hostile to President Zuma.<sup>679</sup> It was a matter which the panel felt warranted full investigation<sup>680</sup> But of course, no evidence was placed before the panel that any judge was bribed or received the money.
554. Dr Mufamadi's evidence was that Minister Mahlobo was interviewed by the panel, but the recording was apparently distorted; the line was corrupted; but he urged this Commission to find a way of taking this matter further<sup>681</sup>

### **Operation Lock**

555. This project related to the release of Mr Eugene de Kock from prison after spending some time there; released apparently on the basis of a memorandum of understanding with the Department of Correctional Services. But, according to Dr Mufamadi, what happened was not in the brief of the panel; there were sensitivities around the matter. But SSA did provide Mr de Kock with a safe house and protection<sup>682</sup> One would have expected that if there was a memorandum of understanding between Correctional Services and Mr de Kock, it would be the problem of Correctional Services or, if it needed help, get it from its sister Department which would be SAPS. Dr Mufamadi could

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<sup>679</sup> Page 118 line 19 to page 121 line 21

<sup>680</sup> Page 122 line 2 to line 6

<sup>681</sup> Page 122 level 7 to page 123 line 3

<sup>682</sup> Page 123 line 4 to line 25



not understand why SSA got involved, with its money being advanced for Mr de Kock's upkeep<sup>683</sup>

### **Project Wave**

556. It involved infiltrating and influencing the media, apparently to counter bad publicity for the country and former President. It aimed at infiltrating and influencing media; project launched 2015/2016 financial year with a budget of R24m; one of the largest amounts issued was R20m given to a media agency, namely, Africa News Agency.<sup>684</sup> Yet there is a legit arm of Government that deals with publicity for Government activities.<sup>685</sup>

### **Project Accurate or Khusela**

557 The evidence was that this was a project to recruit toxicologists to test food and bedding of former President Zuma. Initially at R500,000.00 a month but in the 2015/2016 financial year the amount increased to R1 5m a month. Its known achievement was that it once discovered expired soft drinks. It was an expensive project which was, in any case, not the responsibility of SSA.<sup>686</sup>

### **Project Tin Roof**

558 It involved the investigation into the alleged attempted poisoning of former President Zuma by his wife MaNtuli. It involved getting a safe house for her seemingly, and maintaining

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<sup>683</sup> Page 123 line 4 to page 124 line 22 and paragraph 7.11 of Dr Mufamadi's affidavit

<sup>684</sup> Page 125 line to line 21 and paragraph 7.12 of Dr Mufamadi's affidavit

<sup>685</sup> Page 126, line 4 to line 8

<sup>686</sup> Page 126 9 to page 127 line 14 and paragraph 7.13 of Dr Mufamadi's affidavit

her. The budget for the project was R5.2m with a monthly withdrawal of R800,000 (not stated withdrawal by whom).<sup>687</sup>

559 Dr Mufamadi's overview of the above projects that were undertaken by the SOU was that there were many questions about all of them. With all his experience as the former Minister of Safety and Security, they should have been handled via the SAPS which apparently was not the case.<sup>688</sup>

560. Monies expended in relation to them were testified to by other witnesses, which involved large sums.

### **The Workers Association**

561 According to Dr Mufamadi the above workers union was formed with the support of the Special Operations Unit of the SSA, with the ostensible purpose to neutralise instability in the Platinum Belt; to counter the influence of some unions which had broken ranks with COSATU, and were critical of former President Zuma.<sup>689</sup>

562. Evidence was given before the Commission about millions having spent in that regard.

### **Project Academia**

563 Dr Mufamadi said his panel was told that, to use his words, the project was meant to intervene in the "Fess Must Fall" protests and influence the direction of the student movement. The name of that particular movement has been redacted. What was to be

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<sup>687</sup> Page 127 line 15 to line 22 and paragraph 7.14

<sup>688</sup> Page 127 line 23 to page 129 bottom

<sup>689</sup> Page 130 line 19 to page 131 line 25 and paragraph 7.15 of Dr Mufamadi's affidavit

supported was "Young Bright Minds", to be patriotic and strategically deployed to ensure stability at universities. The main agent was sent for training.<sup>690</sup>

### **The Boast Report**

564. Dr Mufamadi also referred to what was called the Boast Report. It was a report to the then SSA DG Mr Frazer in February 2017 on certain activities of the SOU which were seen as having been successful, as the name of the report shows. These activities included operations impeding the distribution in 2016/2017 of the CR17 campaign regalia and of the transportation systems of dissident groups from Gauteng Province in relation to the ANC 2016 January 8 statement in Rustenburg. They also included the infiltration of the Zuma Must Fall movement during the February 2016 State of the Nation Address which resulted in only fifty Zuma Must Fall supporters turning up, and the infiltration of various groups such as CASAC and Green Peace.<sup>691</sup>

### **Members of the SSA made to swear allegiance to President and to recognise the authority of the Minister of State Security (then Mr Cwele)**

565. In the past, that is prior to the period that was under review by the panel, members of the SSA took oath of allegiance to the Constitution and to the Agency, an example of which was placed on record before this Commission.<sup>692</sup> However, during the period under review, the panel heard that members were also made to swear allegiance to the President and to recognise the authority of the Minister of State Security.<sup>693</sup> The new oath was read by Dr Mufamadi into the record.<sup>694</sup> There was no need to swear

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<sup>690</sup> Page 135 line 13 to page 136 line 20 and paragraph 7.16 of Dr Mufamadi's affidavit

<sup>691</sup> Pages 138 line 9 to page 140 line 18 and paragraph 17 of Dr Mufamadi's affidavit

<sup>692</sup> Page 146, line 17 to page 147 line 5

<sup>693</sup> Page 143 line 20 to page 133 line 17

<sup>694</sup> Page 148 line 2 to page 149 line 2



allegiance to the President and to the Government or to swear to the recognition of the authority of the Minister. In Dr Mufamadi's view, the oath interfered with the *"balance of power and authority between the legislature and the executive"*<sup>695</sup> Such an oath in respect of an individual in a position of authority has an impact on the issue of illegal instructions.<sup>696</sup>

#### **Dr Mufamadi's closing assessment of the above activities of the SOU**

566. Dr Mufamadi's assessment of the activities of the SOU was that it was a structure that served factional interests within the ruling party and the personal political interests of incumbents in breach of the Constitution and the White Paper, the relevant legislation and good governance. The second oath was internally contradictory in that it shared allegiance to the Constitution with individual incumbents.<sup>697</sup>

#### **Failure to implement financial controls in the SSA and absence of consequence management**

567. The High-Level Panel Review was told that it was difficult to implement financial controls because the actual movement of money was in cash form; the payment in advance was also in cash. One did not have to account in full to the people who gave one the money. The Auditor-General also confirmed to the panel that the SSA was not always able to provide documentary support for money used in operations.<sup>698</sup> The Auditor General would also be told that it did not have people with the necessary level of security clearance to look into certain matters.<sup>699</sup>

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<sup>695</sup> Page 149 lines 10 to 19

<sup>696</sup> Page 150, lines 9 to 18

<sup>697</sup> Pages 152 lines 1 to 14

<sup>698</sup> Page 153 lines 6 – 19, day 330

<sup>699</sup> Page 155 lines 19 - 22

568. Even where theft of money was known, there seemed to be lack of consequence. This happened in the case of the theft of over R17million from a safe inside the SSA complex in December 2015. Despite video footage of the perpetrators and the outcome of internal investigations there appeared to have been no consequence management, despite the capabilities of the SSA; the then General Berning Ntlemeza failed to take the investigation to its logical conclusion <sup>700</sup>
569. The panel received submission from a number of people working in the finance department that the person in charge of Management Accounting restructured the budgeting process that led to the stripping of powers of the Chief Financial Officer and the concentration of all powers in the provinces. That reduced transparency and enabled the movements of funds to areas of the SSA favoured by the SSA leadership, such as Kudjoe and Dlomo <sup>701</sup>

### **Auditor-General**

570. Dr Mufamadi told this Commission that the then Auditor-General told the panel that he was forced to automatically produce a qualified audit of the SSA as he was not provided access to information to verify the finances and assets of the SSA. The Auditor-General also pointed to the fact that the Agency operated in a high-risk area; for example management could not provide documentation to verify the operational expenditure of R125.6 million in the period 2017/2018, and the Auditor General had also noted lack of consequence management in the 2017/2018 report. A host of problems experienced by the Auditor General and shortcomings were set out.<sup>702</sup> Dr Mufamadi said the impression the panel got was that all those problems relating to the auditing of the SSA

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<sup>700</sup> Page 157 line 19 to page 158 line 10; affidavit para 9.7

<sup>701</sup> Page 160 line 23 to page 161 line 14; para 9.6 of the affidavit

<sup>702</sup> Pages 162 line 12 to page 168

were as old as the Intelligence Services.<sup>703</sup> The disclaimer in the Auditor General's report had become an accepted norm.<sup>704</sup>

#### **Re: Section 2(a) of the Secret Service Act**

571. Dr Mufamadi expressed some concern about the potential danger created by the above provision. It enabled SSA to keep any unused funds at the end of the financial year instead of disclosing and returning it to the fiscus like other departments do. One could just deliberately create a huge unused amount, which would then not have to be accounted for.<sup>705</sup> Clearly, this created potential for theft.

#### **The Principal Agency Network Programme (PAN)**

572. The programme, terminated in 2011, involved the recruitment of agents outside of the Agency to be trained. The process became abused. It evolved into a methodology to avoid or bypass the procedural requirements for recruitment of staff, disbursements of funds and procurement. One example was the temporary employment of an outside person to provide analysis support when there were full time employees with the necessary capacity. Some assets were also irregularly acquired. Examples of other abuses were given, such as criminal behaviour, irregular procurements, irregular employment of family members and close associates such as where Mr Fraser employed family.<sup>706</sup>

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<sup>703</sup> Page 169 lines 3 to 24

<sup>704</sup> Page 171 line 18 to page 172 line 17

<sup>705</sup> Page 172 line 20 to page 173 line 11 and paragraph 9 23 of Dr Mufamadi's affidavit

<sup>706</sup> Pages 173 line 20 to page 177 line 13 and para graph 10 in entirety, of the affidavit



573. It made sense that after some investigations, decisions were taken to refer the findings to law enforcement agencies although, according to the evidence before this Commission, those criminal investigations were stopped and no prosecution ensued
574. Dr Mufamadi testified that the panel was also worried about lack of consequence management. There was for example failure to report fruitless and wasteful expenditure to National Treasury in terms of the Public Finance Management Act 1 of 1999 and to SAPS in terms of section 34 of the Prevention and Combating of Corrupt Activities Act 12 of 2004.<sup>707</sup>
575. Again, apart from suspending the PAN programme in 2011, it appeared that no formal action or consequence management was taken by the executive or the agency management; the agency's internal investigation team members were subjected to various forms of intimidation. Allegations involving hundreds of millions of Rands against the agency and the Minister of State Security by former PAN members were not addressed with the seriousness they deserved.<sup>708</sup>

#### **EVIDENCE OF MR LOYISO MHLOBO THANDO JAFTA**

576. At the time of his evidence, Mr Loyiso Mhlobo Thando Jafta was the Acting Director General of the SSA. It needs to be mentioned that at the commencement of the hearing of his evidence, the then Minister of State Security, Ms Ayanda Dlodlo, asked for a postponement of the hearing of his evidence. The basis of the application was that some parts of the evidence might compromise State Security or National interest. The application was dismissed. Firstly, it turned out that the Minister had been in possession of Mr Jafta's affidavit since 20:00 the previous night, yet her counsel could not say

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<sup>707</sup> Page 177 lines 2 to 13; and paragraph 10.7 of the affidavit

<sup>708</sup> Page 177 line 14 to page 178 line 14; affidavit paragraphs 10.8 to 10.10

exactly which parts of the affidavit she was objecting to. The second consideration was that Mr Jafta had indicated that his evidence would not compromise National or State Security. Thirdly, the Commission was pressed to finish its work within certain time frames and would not afford to lose a whole week, as such a postponement would have entailed. Furthermore, a proper reading of the relevant provisions of the Intelligence Services Act 65 2002 did not assist the Minister's case for a postponement. It transpired that the provisions gave the Director General the powers to determine what might or might not be disclosed as prejudicial to National Security.<sup>709</sup>

577 Mr Jafta had made an affidavit which was filed of record and admitted as an exhibit.<sup>710</sup> He was legally assisted in making his affidavit. His affidavit set out factors he had taken into consideration, which he read into the record, that informed him in the preparation of his affidavit. He stated that he took due account of matters of national security, including the protection of sources of information and the identity of members of the Agency from unauthorized disclosure; the information he was giving was already in the public domain; he had been Acting DG since 17 April 2018, enjoying the same powers as a permanent DG.<sup>711</sup>

578. One of the things he became aware of immediately upon assumption of office was that the systems for proper management, particularly of finances and their expenditure, were not adhered to, which he regarded as important for a healthy organization. Many officials were indebted to the Agency, in fairly large amounts of money, running into millions; prescripts were not followed with regard to the management of financial resources and the prosecutions of operations; monies were expended on projects

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<sup>709</sup> Page 3 to page 40 line 24

<sup>710</sup> Page 61 line 24 to page 62 line 25

<sup>711</sup> Page 63 line 4 to page 64 line 25

outside of the Agency's legal mandate; obligations were incurred to people in pursuit of operations with disregard to the Constitution<sup>712</sup>

579 There was a selective adherence to the Constitution and the law of the Republic and the prescripts; if they barred one from doing certain things, creative ways were conjured up to go around the Constitution and the law.<sup>713</sup>

580 Mr Jafta referred to the amalgamation of the National Intelligence Agency and the South African Secret Service into the formation of the State Security Agency through a proclamation as opposed to, in his opinion, being through the Constitution a matter that was raised by many witnesses, such as Dr Mufamadi. He said thereafter a lot of factions followed.<sup>714</sup> In his evidence, he made the point that it was important to have sufficiently autonomous systems, autonomous of the accounting officer; he picked up a systemic gap in the management of the intelligence environment. There was executive overreach and clear instances of manifestly unlawful or illegal instructions; oversight was extremely uneven and ineffective.<sup>715</sup>

581. He found that many people owed the Agency some money; they took the temporary advance and used it as a funding instrument for projects. If the project was worth say R10 million, they would, through this temporary advance instrument, take the whole R10million at once whereas the correct procedure was to take money in stages as you progressed with the project.<sup>716</sup>

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<sup>712</sup> Pages 65 line 4 to page 66 line 18

<sup>713</sup> Page 66 line 30 to page 67 line 3

<sup>714</sup> Page 67 line 4 to line 14

<sup>715</sup> Page 67 line 14 to page 70 line 1

<sup>716</sup> Page 70 line 10 to page 72 line 2



582. After making these discoveries, he instituted some investigations. In his interaction with the High-Level Review Panel, he pointed out the politicization of the SSA; projects in terms of which money left the SSA to fund political activity, principally within the African National Congress; not that party *per se*, but to fund activities authored by a particular faction within the party, that is, factional funding; towards elections there would be projects funding the ANC; resources were used to found an alternative union to weaken AMCU around the Platinum Belt; politicisation manifesting itself in inter ANC activities.<sup>717</sup>
583. There has also been evidence before the Commission supporting Mr Jafta's findings of political meddling and the funding of factions within the ANC; for example, the evidence of Dorothy who referred to the party's Rustenburg Conference where there were activities carried out to stymie the so-called CR17 campaign
584. There were a number of unlawful projects undertaken by the SSA. They included funding a media entity; a project justice which was in part to influence the judiciary which meant that the Judiciary was a target for intelligence operations; this was how politicisation manifested itself.<sup>718</sup>
585. Here, too, there is abundant evidence implicating the SOU of the SSA with regard to various projects such as Project Wave to influence the media where a large sum of money was given to a news agency. Project Justice was said to be aimed at influencing the Judiciary. The evidence of Dr Mufamadi is but one example.
586. It was Mr Jafta's view that we must appreciate the conceptual difference between "*State Security*" and "*National Security*". With the former the emphasis is on the interests of

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<sup>717</sup> Page 72 line 18 to page 74 line 11

<sup>718</sup> Page 74 line 121 to page 75 line 23

the State instead of on national interests, ending up gravitating towards the interests of the Head of State and the regime instead of national security. It is therefore not desirable to put emphasis on “*State Security*” as opposed to “*National Security*”; you might end with regime security instead of national or people security. It is an important principle.<sup>719</sup> His view therefore tallies with those of other witnesses such as Ambassador Maqetuka and Mr Shaik that with “*National Security*” the emphasis is on the interests, security and well-being of the people.

587. It may be mentioned that it was in this context too that a call was made to return to the spirit of the Intelligence White Paper, a call that was also made in the High-Level Review Panel Report

588. Mr Jafta said that the amalgamation through a proclamation in 2009 of the National Intelligence Agency (NIA) with a domestic mandate and the South African Secret Service (SASS) with an external mandate into the State Security Agency (SSA), resulted in their authorities being concentrated in one pair of hands; that is, the Director General of the SSA. He was of the view that that was not in accordance with the spirit of the Constitution; it has inherent risks; for example, you can destabilize South Africa and other countries as you have the authority over all intelligence operations of the SSA within and without; it also makes effective oversight difficult.<sup>720</sup>

589. The other thing is that secrecy is absolutely necessary; we can’t do without it. Secrecy is not an accountability problem; the problem is absence of effective oversight; secrecy requires a very measured degree of transparency and very robust accountability; otherwise it would be a problem.<sup>721</sup>

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<sup>719</sup> Page 76 line 1 to line 22

<sup>720</sup> Pages 76 line 23 to page 77 line 24

<sup>721</sup> Page 77 line 25 to page 78 line 10

590. The other point was abuse of resources: money and assets. Money was stolen; people enriched themselves; there were fictitious projects. Firearms issued for legitimate use were given to non SSA members completely outside of relevant prescripts. Abuse of resources also manifested itself in the personnel of the Agency being used to do work outside of the mandate of the Agency; immovable assets were also registered in the name of individuals to become part of their personal estates.<sup>722</sup>
591. All the points just made above must, in his view, be considered together with the issues of compliance assurance instruments, illegal instructions and executive overreach.<sup>723</sup>
592. As already mentioned, Mr Jafta's view was that there was a doctrinal shift from National Security to State Security.<sup>724</sup> The shift gravitated away from serving National Security towards serving State Security, resulting in, amongst others, involvement in political activities of the African National Congress and the confliction between the personal interests of the person who was Head of State, on the one hand, and his interests in his official capacity as Head of State, on the other,. An example of such confliction was when the SSA became involved in the detention of Ms MaNtuli Zuma, President Zuma's wife without due process after it was alleged that she was involved in trying to poison Mr Zuma.
593. There was introduced a parallel vetting system supposedly to facilitate emergency appointments by the President; it amounted to, as it were, a drive through process; people vetted too quickly even within three days. The problem here was that the parallel

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<sup>722</sup> Page 78 line 11 to page 79 line 10

<sup>723</sup> Page 79 line 15 to line 21

<sup>724</sup> See para 7 of the affidavit



vetting system was created by the Special Operations Unit outside of the SSA; it was completely parallel; it was fake <sup>725</sup>

594 Some of the steps taken by Mr Jafta upon his appointment as Acting DG of the SSA to cure some of the ills: He said one of the first thing he had to do was to restore systems of corporate governance. For example, a directive was issued that anyone who owed money to the Agency given on terms of the advance payment system had to return the money. Secondly, that activities would thenceforth be funded strictly within the prescripts of temporary advance payment. Thirdly, investigations were launched as to what preventive measures could be put in place, and not so much as to what happened. The compliance measures were effective. The remit of the Auditor-General to audit the SSA's covert existence and business was extended. The SSA benchmarked itself against comparable agencies abroad and the Auditor-General was now auditing the SSA. The compliance assurance instruments were still to be crafted <sup>726</sup>

595. Mr Jafta also expressed views on the security structure up to 2009. He said it was more in line with the Intelligence White Paper and the Constitution as compared to the post-2009. He said there were three distinct arms of intelligence: the NIA (domestic intelligence agency) with its own Accounting Officer; the SASS (foreign intelligence agency) with its own Accounting Officer. The two heads co-ordinated their activities but none was subordinate to the other and from an oversight point of view, you knew where to go in terms of Domestic or Foreign; you could not move assets and you could not have an official in the Domestic realm operating outside of the Republic. Then there

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<sup>725</sup> Page 85 line 10 to page 88 line 23; paragraphs 7 of the affidavit

<sup>726</sup> Page 89 line 2 to page 92 line 6

was the Signals Agency (interception) over which none of the two had direct authority. Signals had to co-ordinate with the foreign branch <sup>727</sup>

596 He then referred to the period from 2009. We now know that the structure from 2009 was created by collapsing the NIA and the SASS through proclamation into the SASS. Mr Jafta's evidence is that the risk with the current architecture is that one DG has authority over Domestic, Foreign and Signals; that is prone to abuse, a situation comparable to the pre-1994 era. He said the separation was recommended by the High Level Review Panel, and the (current) President has accepted the recommendation. The post 2009 architecture has very big systemic problems <sup>728</sup>

597 Mr Jafta said the amalgamation of the NIA and the SASS occurred under a plan known as the Strategic Development Plan; the plan was supposed to be approved by Parliament Joint Standing Committee on Intelligence (JSCI). The Committee said it did receive the plan, but was yet to comment; therefore, the plan could not proceed and that was why it was stopped; yet the amalgamation was proceeded with notwithstanding. <sup>729</sup>

598 According to Mr Jafta, there are a few reasons why the JSCI did not see or learn as to what was happening with the State Security Agency. Firstly, they lack research capacity, just like other committees and oversight bodies. Secondly, where parallel entities are established like parallel vetting procedures, oversight becomes difficult to exercise; the issue of secrecy as a problem arises. Thirdly, there is ineffective compliance assurance instruments. On the issue of the Committee's lack of political will, Mr Jafta could not say. For years the JSCI failed to tender any report to the National

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<sup>727</sup> Page 93 line 3 to page 95 line 6

<sup>728</sup> Page 95 line 8 to page 96 line 7

<sup>729</sup> Page 96 line 8 to line 22

Assembly as required by law, to the point that the then Speaker Mr Max Sisulu raised a query<sup>730</sup>

599 What Mr Jafta says about the JSCI raises questions whether the body properly and fully carried out its oversight functions in relation to the SSA. His evidence would tally with the evidence of other witnesses on that point.

600 Parliamentary committees, said Mr Jafta, needed to be better resourced, but on the other hand, they needed to do the most they could with what they had; also, their political parties had the responsibility to resource themselves.<sup>731</sup>

601 Mr Jafta therefore lamented the lack of effective control over the activities of the SSA by Parliament; citing as yet another example the fact that, for at least two years, around 2015 to 2017, the position of Inspector General of Intelligence was not filled.<sup>732</sup>

602 For his part, in his evidence Dr Dintwe, the current Inspector General, not only referred to that, but also indicated that the absence of the Inspector General for that long period of time exacerbated the situation within the SSA as subsequently revealed by his own investigation into the agency.

603 Mr Jafta felt constrained to once more labour the point that the appointment of one overarching DG, in whose hands power was concentrated, caused oversight problems.<sup>733</sup>

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<sup>730</sup> Page 98 line 10 to line 21

<sup>731</sup> Page 99 line 3 to page 100 line 9

<sup>732</sup> Page 100 line 10 to line 11; see also paragraph 12 of the witness's affidavit, Exhibit YY2

<sup>733</sup> Page 101 line 1 to line 6; and paragraph 13 of the affidavit



604. The flow of money from the SSA used for a political party, the African National Congress, was disguised but in a laughable manner; it could easily be picked up <sup>734</sup>
605. Mr Jafta agreed with the recommendation by the High-Level Review Panel that the SSA be restructured back to the period before the amalgamation: namely, the Domestic (NIA), the Foreign (SASS) with the distinct Signals branch, working closely with the foreign branch <sup>735</sup>
606. In his evidence, Mr Jafta referred the Commission to the findings of the report of the High-Level Review Panel on the JSCI failure for years to exercise oversight over the SSA: The report of the panel says the JSCI could not substantially engage with the panel; the panel was told that most committee members were new; that it took long to replace its former chair; that members did not serve on a full time basis and could meet for few hours only once a week. The result of this, as one member admitted, being the loss of the JSCI's control over its oversight role. It was rendered worthless; hence for years it failed to submit report to Parliament. <sup>736</sup>
607. It is clear that the Joint Standing Committee on Intelligence failed to exercise proper oversight, if any, over the SSA for years.
608. Mr Jafta demonstrated the weaknesses of the funding instruments he found. These would, for example be with regard to temporary advances (the so-called TA) and operations. To demonstrate the point: a person would draw up a certificate to say there is such and such a project; it needs say R10m; they would be given that money in cash; they might return to say R2million more was needed and would then be given the money. After some time, they would come back and simply say the project had been

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<sup>734</sup> Page 101 line 9 to page 103 line 19

<sup>735</sup> Page 103 line 24 to page 104 line 12 and para 14 of the affidavit

<sup>736</sup> Page 104 line 13 to page 106 line 7; and paragraph 141 of YY2 (Panel's report)

completed and the entire money was expended; that would be it! This kind of thing, that is temporary advance, was stopped by reverting to the proper funding instrument. People abused the system; whenever the Constitution and the law proved to be an inconvenience, they worked around them.<sup>737</sup>

609. The system described above enabled people to hide the movement of money from oversight structures; this was done on purpose; brazenly; such movement of money imperilled relations with the bank and posed risks to operations; and it was done for years; large amounts of money left the organization; you had to rely on a person's word that money had been used for the intended purpose.<sup>738</sup>

610 Yet it was easy to pick up the abuse and to stop it; all you needed to do was to insist on an adherence to the prescripts and funding instruments.<sup>739</sup>

611 As a result of the abuse of the system, large amounts of monies running into millions, as well as assets worth about R9 million could not be accounted for.<sup>740</sup>

612. Mr Jafta concedes that the use of cash cannot be avoided; but the Agency now tries not to bring a lot of cash to the environment.<sup>741</sup>

613 Mr Jafta read as an example a certificate requesting money on the basis of which money would be given for a project; it was a document with sparse details, and the reason for

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<sup>737</sup> Page 107 line 12 to page 110 line 12

<sup>738</sup> Page 110 line 17 to page 112 line 8

<sup>739</sup> Page 112 line 14 to page 113 line 12

<sup>740</sup> Page 113 line 13 to page 114 line 18

<sup>741</sup> Page 114 line 19 to page 115 line 10

the request was couched in broad terms; it did not allow for proper financial controls and also for the proper control of operations and projects <sup>742</sup>

614 In demonstrating the danger of concentrating power in the hands of one person yet again, Mr Jafta referred to the case of the then DG of the SSA. He said that operations were conducted from the office of the DG who was, of course, the Accounting Officer. He says ideally operations should not be conducted from the office of the Accounting Officer; for example, who is going to approve the projects? The DG might be biased when assessing projects for approval as other compliance assurance instruments might not be as robust as they would otherwise be; checks and balances are rendered ineffective. The DG himself happened to conceive and execute a project. The dangers, continued Mr Jafta, were demonstrated by the fact that an amount of R125million which could not be accounted for was in respect of operations that were conducted from the very office of the Accounting Officer; had the operation been run from another unit there could have been enough checks such as the DG to make sure the money did not disappear without being accounted for.<sup>743</sup>

615 Since the amount of R125million disappeared in connection with operations that were run from the office of the Accounting Officer, it ought to have been easy for an action to be taken to hold him accountable; but Mr Jafta had no knowledge that that was done.<sup>744</sup>

616 Millions of Rands were dished out on the basis of scribbled papers; millions on different occasions; and the impression given is that the Chief Financial Officer and financial controls were leaned upon.<sup>745</sup>

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<sup>742</sup> Page 115 line 11 to page 118 line 3

<sup>743</sup> Page 118 line 4 to page 120 line 14 and also paragraph 18 of his affidavit

<sup>744</sup> Page 120 line 15 to line 25

<sup>745</sup> Page 123 line 14 to page 125 line 23



617. Mr Jafta repeated that the measures he took to correct the situation were to demand that people who had been given money in advance, such as for travelling or temporary advance, should account for the money. Failure to enforce this in the past resulted in people owing the State money such as R20million. He would go so far as to ask people to produce receipts.<sup>746</sup>
618. Where a person was unable to account for the money, steps would be taken to recover it; the money would be deducted from their salaries, or even put onto their retirement for the money to be deducted from their pension. Doing so was not a matter of being cruel; they would have after all taken huge amounts of money. Recoveries have thus been made though not all matters have been finalized; what has not been done is to write off the debts.<sup>747</sup>
619. Some of the illegal operations of the Special Operations Unit (SOU) of the Agency were terminated; such as the protection of individuals like Mr Collin Maine, Ms Dudu Myeni and so too services around Ms MaNtuli Zuma, Eugene de Kock project, operations to influence political developments in the country and other operations outside of the legal mandate of the Agency; relations were terminated with people utilized by the Agency and instructions issued for the return of resources of the State; also terminated was the Agency's protection of the President, which was then taken over by SAPS; the protection of the presidential jet by the Agency was also terminated without leaving it exposed; it is the property of the SANDF.<sup>748</sup>
620. Details of the kind of operations involving community-based organizations, projects such as supporting a union around the Rustenburg area, improving the fortunes of the

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<sup>746</sup> Page 125 line 24 to page 128 line 8

<sup>747</sup> Page 128 line 9 to page 129 line 25; and page 139 line 10 to 15

<sup>748</sup> Page 130 line 2 to page 132 line 20; see in detail paragraphs 19.1, 19.2 and 19.3 of the witness's affidavit

ANC in the Western Cape were given by Mr Jafta, from which it is clear that the Agency was carrying out activities it was not mandated to do Mr Jafta said that all these were terminated<sup>749</sup>

621. The termination of relationship with people that were utilized by the Agency resulted in problems. People in Kwa-Zulu Natal, Gauteng and other provinces demanded to be paid; some threatened court action as funding would have been stopped for projects which, for example, did not comply with the law; some took their complaints to the Inspector-General; some of them had been recruited out of their previous jobs, others had been recruited and trained abroad and many demanded integration into the SSA; but it also appeared that some of the claims were not genuine Clearly all these caused problems for the Agency.<sup>750</sup>

622 There were problems with the recovery or return of the firearms that had been issued to members or people outside the Agency; pistols and assault rifles Not all of them were recovered; some came back with ammunition which did not belong to the Agency; no one in management knew where the firearms were stored or had been used. Contrary to the prescripts, the firearms were issued to people in some instances outside of the SSA; the Agency even collaborated with the Office of the Inspector General; those recovered were subjected to ballistic tests by the SAPS to see if they had been used to commit crime As not all firearms were recovered, it is possible that they could have been used to commit crime The issuance of such firearms amounted to the abuse of assets of the SSA. Some of the SSA firearms are still out there at the time of the preparation of this report<sup>751</sup>

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<sup>749</sup> Page 135 line 2 to page 137 line 11

<sup>750</sup> Page 137 line 18 to page 139 line 9; and para 19.2 of the witness's affidavit

<sup>751</sup> Page 139 line 10 to page 141 line 18; and paragraphs 19.3.1 and 19.3.2 of the affidavit

623. SSA is in the danger of losing assets, according to Mr Jafta. Some of the movable and immovable assets of the SSA were, to maintain cover, registered in the name of individuals. It is difficult to recover some of them such as against the estates of those who died except where evidence was available.<sup>752</sup>
624. During the period that was under review by the Mufamadi panel, the Executive was in the practice of overreaching; that is, they (Ministers responsible) became involved by regularly running operations; they handled sources, tasked them, debriefed them and did things in the realm of the intelligence cycle; thus possibly advising themselves and possibly the President and/or their colleagues. Mr Jafta said that he was sure that that did happen; and, according to Mr Jafta, that was manifestly unlawful because the Executive should not be involved in operations. He was also sure that that kind of overreaching by the Executive is prevalent in other State Own Enterprises; policy instruments should be put in place to prevent that; and to have an auditable system. The Legislature and the Auditor General should play an oversight role. These measures should also apply to DDG's or Chief Directors so that they do not give illegal instructions.<sup>753</sup>
625. Mr Jafta said he caused a number of investigations to be done into the infractions referred to earlier; a number of people were suspended. Cases of breach of law were referred to the law enforcement agencies and prosecuting authorities: the Hawks, the National Prosecuting Authority and the South African Revenue service. As far as he knew, nobody was prosecuted despite the fact that this body of evidence was handed over particularly to the Hawks.<sup>754</sup>

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<sup>752</sup> Page 142 line 19 to page 143 line 14; and paragraph 19.3.5 of the affidavit

<sup>753</sup> Page 143 line 16 to page 146 line 23; and also paragraph 40 of the affidavit

<sup>754</sup> Page 146 line 24 to page 147 line 24; and see also paragraph 19.4 of the affidavit



626. Mr Jafta said that there should be instruments or tools available to enable them to scan the environment to detect any risks to national security. The reality of terrorism is there where people may be recruited online. In the event there are Signal Intelligence services, which are necessary in his view, there should be emphasis on control that is appropriate and suitable. Unlike cell phones of the past, the current ones can give a lot of information. Mr Jafta articulated challenges in dealing with underground operatives. There must be a balance between Cyber Security and private privacy. Mr Jafta said that the bottom line of the evidence is that you need intercepting surveillance services but there must be proper checks and balances. The world is a messy place.<sup>755</sup>
627. Mr Jafta came to certain conclusions, which he read into the record. In summary, it is a restatement of what the White Paper espoused: a doctrine that promotes Intelligence that provides a societal environment free of violence and instability; that protects the Rule of Law and human life; that engenders respect to lawful instructions and Code of Conduct for Intelligence Officers and the instilling of ethical intelligence practices. He said that there were plans to establish an ethical intelligence office within the office of the Director-General.
628. Investigations were not concluded as to whether or not some of the projects such as Project Justice were accomplished, or as to what all the monies were used for or where it went to. The problem was that, because the Agency was a small community, some people were alerted that they were going to be investigated, and briefed on progress; some people would undertake to come forward but did not do so. There was also fear of self incrimination, a pushback and intimidation; and, in some instances, monies were recovered.<sup>756</sup>

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<sup>755</sup> Page 147 line 23 to page 151 line 24; and paragraph 21 of the affidavit

<sup>756</sup> Pages 154 line 1 to page 158 line 16

629. Regarding Project Justice specifically, Mr Jafta said that they had strong suspicion that some of the money went into the hands of some members or a member of the Judiciary, but said he had no concrete evidence. Transactions were in the form of cash and there were no receipts issued. People would just say they handled loads of monies. The judge has not yet been asked but the witness says it is inevitable that the judge will be asked. The matter is still being investigated. Regarding Project Veza, investigations were going on.<sup>757</sup>

630. Mr Jafta was satisfied that the arrangement between him and the Commission's Legal Team regarding the giving of evidence by him did not result in jeopardizing what had to be protected.<sup>758</sup>

631. Mr Jafta could not give the amounts that, over the years, were given to members of the SSA for projects in respect of which the accounting was not satisfactory.<sup>759</sup>

**An overview of the evidence of Mr Loyiso Jafta:**

632. As Mr Jafta was the Acting Director-General of the SSA, it is necessary to present a brief overview of his evidence.

632.1 At the time of his evidence, he was Acting Director-General of SSA, and had been in that position for a few years.

632.2. He deplored the amalgamation of the NIA and the SASS into the SSA, which resulted in the concentration of the powers into the hands of one person,

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<sup>757</sup> Page 158 line 17 to page 162 line 22

<sup>758</sup> Page 162 line 23 to page 163 line 19

<sup>759</sup> Page 163 line 21 to page 165 line 17

namely, the Director-General of the SSA. This view was held by other witnesses

632 3 It is clear that monies were issued to members in advance for various projects, and in cash form; with no receipts.

632.4. The accounting mechanism were virtually non-existent. As a result, large sums of monies, running into millions if not billions, were unaccounted for. Several assets of the Agency, movable and immovable, were not accounted for and were in the names of individual persons, all of which made the recovery difficult if not impossible; these included firearms and ammunitions which disappeared

632 5 Members of the Executive, such as the Minister of State Security and others, involved themselves in intelligence operations; for example, they issued instructions, handled agents and debriefed them

632 6 The SSA involved itself in activities that were outside of its mandate; that were manifestly unlawful; it got involved in factional political fights within the ANC and funded activities to that effect; even advancing money to fund a union to destabilize AMCU

632.7. The witness testified to several projects that were launched by the Special Operations Unit (SOU) of the SSA, such as Project Justice; Project Wave.

632 8 After assuming office, he implemented several corrective measures aimed at curbing the wanton advance payments; attempts were made to recover some of the assets such as firearms and monies; some were recovered others not. In some instances, people who could not account for the money they had taken, had it recovered from their pensions



- 632.9. Importantly, he opened the door to the Auditor General to audit their books.
- 632 10 He advocated the return to the pre-amalgamation period
- 632 11 He lamented the lack of oversight by the Parliament's Joint Standing Committee on Intelligence, and lack of action by law enforcement agencies.
- 632.12. It became clear from his evidence that a lot of money, which he could not quantify without investigation, had been lost
- 632.13. He confirmed the problems and concerns within the SSA which had been found by the High-Level Review Panel.
- 632 14 Obviously, he emphasized the need for intelligence services, including what he described as mechanisms for scanning the security environment, subject to effective control measures, and the proper balancing of national security and personal privacy

#### **THE EVIDENCE OF WITNESS MS K (pseudonym)**

633. When proceedings commenced on 27 January 2021, one counsel who said he was appearing for Mr Arthur Fraser complained that Mr Jafta had implicated his client without due warning, and raised certain issues. He was advised that Mr Fraser could bring an application for the cross-examination of Mr Jafta.<sup>760</sup>
634. The second issue dealt with was an application by the Commission's evidence leader, that the identity of the next witness should not be disclosed, as well as the identity of the secret place from where she would be testifying virtually. Two reasons were given

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<sup>760</sup> Page 10 lines 7 to 24

Firstly, that she was employed by the SSA and was part of a team involved in the ongoing investigations of a sensitive nature Secondly, that there had been some threats or intimidation against the team <sup>761</sup> For those and other considerations, I ruled in favour of the Commission's team ordering, *inter alia*, that the witness's identity and her location should not be disclosed, and that her names be redacted.<sup>762</sup> She therefore testified under the pseudonym "K" (Ms K)

### **The evidence of MS K**

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635 Ms K was employed by the SSA She was involved in the Project Veza investigation with "Mr Y" (pseudonym) whose affidavit she affirmed; she knew Mr Y's signature Mr Y was a co-sponsor of the project and was getting reports; he was not involved in the day to day running of the project; Ms K was the project manager involved in the actual operations, giving reports to Mr Y <sup>763</sup> Ms K and Mr Y had continuous interactions in relation to the work of Project Veza; they shared knowledge concerning activities of the project and, except, where indicated, Mr Y also knew about the workings of the project as much as she did and she had personal knowledge of the contents of Mr Y's affidavit whenever she referred to same.<sup>764</sup> Ms K's affidavit as well as the affidavit of Mr Y, which she confirmed, were furnished and admitted together.<sup>765</sup> Three arch lever files containing documents declassified by the Acting Director-General were also put together and admitted as one Exhibit; they related to the investigation work that Project

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<sup>761</sup> Page 11 line 20 to page 13 line 9

<sup>762</sup> Page 42 line 9 to page 46 line 3

<sup>763</sup> Page 48 line 6 to page 51 line 21

<sup>764</sup> Page 53 line 3 to line 25

<sup>765</sup> Page 53 lines 10 to 20

Veza had done and they contained documentary evidence which Ms K and Mr Y submitted<sup>766</sup> There are different documents inside the Exhibit<sup>767</sup>

636 The arrangement was that Ms K would only testify in relation to the contents of Mr Y's affidavit (even if implicating other people as they would have been served in time with Mr Y's affidavit); but she would not add anything new to implicate them; for that, she would have to make her own separate affidavit<sup>768</sup> The reason why Ms K testified on Mr Y's affidavit was because he could not come to testify himself as he was seriously indisposed; he had just come out of a coma.<sup>769</sup>

637 Ms K knew that the SSA, in particular the Director General, received requests from the Commission for information on the SSA's investigation into irregularities within the Chief Directorate Special Operations. She confirmed that a number of reports, presentations, assessments and several documents were handed over to the Commission in response to the request for information; she also knew that the Commission had issued summons for certain materials from the SSA and that the materials were produced.<sup>770</sup> These documents were relevant to the witness's investigation and constituted the contents of the Exhibit referred to above; they were found in a walk in safe, and were declassified for the purpose of making them public.<sup>771</sup>

638. Ms K confirmed Mr Y's affidavit that the above documents had also been handed over to the Directorate Crime Investigation on 10 June 2019 and to the "*Investigating*

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<sup>766</sup> Page 53 line 25 to page 54 line 21

<sup>767</sup> Page 57 lines 11 to 24

<sup>768</sup> Page 58 lines 1 to 15

<sup>769</sup> Page 35 line 3 to line 5

<sup>770</sup> Page 58 line 16 to page 59 line 24

<sup>771</sup> Page 59 line 25 to page 60 line 24



*Directorate ID*" on 15 December 2020 following two inquiries opened by SSA on 10 April 2019 in terms of the Prevention and Combating of Corrupt Activities Act.<sup>772</sup>

639 There was a project known as Project Momentum, which was an internal investigation of the SSA to address allegations of corruption within the SSA. Limited progress was made because of challenges of access to information until the investigation was re-launched and re-enforced by the Acting DG Loyiso Jafta on 5 December 2018. This was under the name Project Veza. Project Veza's mandate was to investigate irregularities and criminality arising from the contraventions of the SSA governance, operational and financial prescripts during the period 2012 to 2018.<sup>773</sup>

640 The investigations by the Project Veza team focused on various units within SSA but chiefly on the covert operations of the Chief Directorate Special Operations (CDSO) and the cover support unit as well as operations run from the office of the DG. This was an all-encompassing approach to the investigations to attain a sustained institutionalized governance culture within the SSA.<sup>774</sup>

641. Ms K confirmed Mr Y's wide experience and that his affidavit was on behalf of the team; that threats were made against members of the investigation team by certain implicated persons and against implicated people co-operating with the investigation team; furthermore, that there had been attempts to interfere with and even sabotage the Project Veza investigation, something Ms K experienced personally.<sup>775</sup>

642 There were unlawful operations of a parallel intelligence structure within the SSA in the period 2012 to 2018, some of which showed a continuation of irregularities that

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<sup>772</sup> Page 60 line 25 to page 61 line 14 and paragraph 2.6 of Mr Y's affidavit

<sup>773</sup> Page 61 line 15 to page 62 line 18 and paragraphs 2.7 and 2.8 of Mr Y's affidavit

<sup>774</sup> Page 62 line 19 to page 63 line 14; paragraphs 2.8 and 2.9 of Mr Y's affidavit

<sup>775</sup> Page 64 line 20 to page 65 line 1 and paragraph 2.10 of Mr Y's affidavit

accompanied the implementation of the Principal Agent Network (PAN) during 2007 to 2010. Both the PAN and Project Veza investigations uncovered the unlawful use of parallel intelligence to bypass internal controls and avoid accountability for gross financial irregularities of SSA resources for improper purposes.<sup>776</sup>

643. Ms K confirmed the legal framework, including the Constitution and National Legislation, in accordance with which the SSA had to operate.<sup>777</sup>

644. The activities of the SSA are governed in detail by various regulatory instruments which may be termed internal.<sup>778</sup>

645. She had knowledge of the documentary and other evidence, as a member of the Veza investigation team, which the team collected.<sup>779</sup> The team established that some of the operations ran by the Chief Directorate Special Operations fell outside the lawful mandate of the SSA; prescribed procedures were not followed and applicable governance, financial and operation directives of the SSA totally ignored.<sup>780</sup>

646. There were unlawful parallel intelligence capacities carried out by the Chief Directorate Special Operations (CDSO) whose activities included the siphoning of funds from the SSA; posing risk to National Security and constitutionally established State; parallel procurement services, vetting counter-intelligence, VIP Protection and Domestic Operations; benefitting family members or close associates directly through unauthorized contracts with front companies and/or illegal operations.<sup>781</sup>

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<sup>776</sup> Page 65 line 4 to page 66 line 7 and paragraph 2.11 of Mr Y's affidavit

<sup>777</sup> Page 66 line 20 to page 68 line 5 and paragraphs 3.1 to 3.4 of Mr Y's affidavit

<sup>778</sup> Page 70 lines 16 to 20

<sup>779</sup> Page 70 line 21 to page 71 line 10

<sup>780</sup> Page 71 line 11 to page 72 line 9 and paragraph 3.8 of Mr Y's affidavit

<sup>781</sup> Page 72 line 10 to page 73 line 14 and paragraph 3.9 et seq. of Mr Y's affidavit

647. The structures of the CDSO were used to further political ends by drawing political heads into the security space, and they were used to further political ends by undue interference in the political process. However, Ms K could not confirm that the above activities had stopped. One of the implicated people admitted to them taking money to fund the Luthuli House campaign; that SSA used money to transport and accommodate and feed MKVA members from KZN; all of which things amounted to political interference and is in contravention of the SSA's mandate and the Constitutional prescripts relating to Civilian Intelligence.<sup>782</sup>
648. There were categories of persons revealed by the Project Veza investigation who formed an important illicit value chain, showing how organized and orchestrated some of the activities seemed to have been according to evidence; they fell into three categories; namely, initiators (of operations), facilitators and primary and secondary beneficiaries.<sup>783</sup>
649. Ms K confirmed the names of implicated people mentioned in Mr Y's affidavit to the extent that she personally knew from her Project Veza investigations that they were indeed implicated. She read the paragraph of Mr Y's affidavit which said that at the Executive level the abuse of SSA's mandate occurred primarily under the political leadership of Ministers Siyabonga Cwele, David Mahlobo and Advocate Bongani Bongo, and executed or implemented primarily, although not exclusively, by Mr Moruti (Stan) Nosi, Ambassador Thulani Dlomo, Ambassador Sondo Kudjoe and Mr Arthur Fraser.<sup>784</sup>

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<sup>782</sup> Page 73 line 15 to page 75 line 17 and paragraph 3.11 of Mr Y's affidavit

<sup>783</sup> Page 75 line 19 to page 76 line 12; and paragraph 3.12 of Mr Y's affidavit

<sup>784</sup> Page 76 line 13, in particular page 79 line 16, to page 80 line 15 and paragraph 3.13 of Mr Y's affidavit



650. Ms K confirmed the truth of Mr Y's affidavit that there was a planned system of corruption which entrenched and sustained executive and mandate overreach, political interference and abuse of power within the SSA; recruited 48 non-SSA members in 2008 and 2009 were trained for deployment after the May 2009 Elections into various responsibilities including VIP Protection and intelligence collection; all these by direction of Ambassador Thulani Dlomo (Ms K was not sure that he was part of former President Zuma's protection team.)<sup>785</sup>
651. The new recruits were mostly from Kwa Zulu-Natal and also received training in *inter alia* counterintelligence, weapon training, counter terrorism and VIP protection; trained at the SA National Academy of Intelligence in May 2009 and elsewhere on the continent; all these were established by the Project Veza investigation team.<sup>786</sup>
652. Ms K confirms that Ambassador Dlomo's rationale for the recruitment was that they would collect intelligence affecting the President, along the model of the USA Secret Service; the recruited personnel would be deployed in the SANDF, SAPS and SSA bypassing official recruitment and vetting processes when Zuma assumed leadership after the 2009 elections, except that she was not sure of the bypassing of official recruitment and vetting processes at SAPS and SANDF; however, she was sure about the bypassing of the SSA vetting processes.<sup>787</sup>
653. By the end of 2009 only about 28 of the original 48 recruits were left as the rest had left the programme. According to Ms K, Ambassador Dlomo's involvement in the recruitment and training of the above non SSA members is noteworthy because at the

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<sup>785</sup> Page 81 line 5 to page 82 line 24 and paragraphs 4.1 and 4.2 of Mr Y's affidavit

<sup>786</sup> Page 83 line 4 to page 84 line 3, and paragraph 4.3 of Mr Y's affidavit

<sup>787</sup> Page 84 line 4 to page 85 line 11 and paragraph 4.4 of Mr Y's affidavit

time he was still employed by the Kwa Zulu-Natal Department of Social Development and had no official position at the SSA <sup>788</sup>

654 Ambassador Dlomo's involvement was facilitated by the then Principal of the South African National Academy of Intelligence (SANAI) who sent a letter to his employers confirming that Ambassador Dlomo was assisting the SSA with the training of the Presidential Protection Unit. The Veza investigation team saw some of those letters dated 10 June 2009 and 30 October 2011, thus predating the establishment of a Directorate for Presidential Security Support (PSS) within the SSA on 27 December 2011 and Ambassador Dlomo's appointment to the SSA on 18 January 2012 as General Manager Special Operations. Ms K did see those letters <sup>789</sup>

655. Ms K affirmed that the evidence available to the Project Veza investigation team showed that during that period (of recruitments) the groundwork was being laid for a Private Protection Unit dedicated to President Zuma. However, she was not sure if the recruits were absorbed within the Justice Crime Prevention and Security Cluster (JSPS), though they were appointed to the CDSO (Chief Directorate Special Operations); these non-SSA members (recruits) were not subject to the formal recruitment and vetting processes of the SSA but were rather "co-workers" not formally employed by the SSA (a term the witness did not know what it meant); they were given contracts; they were also given access to SSA funds and resources and provided with firearms from the SSA Armoury. Through the Chief Directorate Special Operations (CDSO), the SSA assumed responsibility for former President Zuma's food and toxin security, his physical security and the static protection of the President's aircraft; and sources that should have been

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<sup>788</sup> Page 85 line 12 to page 86 line 21 and paragraph 4.5 of Mr Y's affidavit

<sup>789</sup> Page 86 line 1 to line 21 and Mr Y's affidavit paragraph 4.6

used by legitimate intelligence structures were channelled through this parallel structure that served the interests of President Zuma rather than national interests.<sup>790</sup>

656 Ms K confirmed the summary contained in Mr Y's affidavit that, *inter alia*: the recruitment of the above private force was done outside formal structures: part of their training was outside the country; these persons were armed and financed by the SSA; some deployed to various security structures; they were accountable to Dlomo and served the interests of former President Zuma; at least initially, they performed duties outside formal SSA structures; some of them deployed to various security structures. These people would travel throughout the country for months, and most provinces did not even know what they were doing; they cost the SSA a lot of money; it was not known by the SSA what they were doing.<sup>791</sup>

657 A 27 December 2011 proposal (copy of which was filed of record) by one Mr Nosi, then acting Director: Domestic Branch was recommended by Mr Dennis Dlomo, then Acting DG, for Minister Cwele's approval. The recommendation sought Mr Cwele's authorization for some structural changes within the SSA. Simply put, the effect of the proposal was to concentrate three sections into the Deputy Directorate Counter Intelligence as a single division.<sup>792</sup>

658. On the same day, 27 December 2011, Mr Cwele approved the above proposal for the amalgamation of the 3 divisions into Deputy Director Counter-Intelligence; this was shortly before the appointment of Ambassador Dlomo on 18 January 2012 as General Manager Special Operations; a year later he became Deputy Director: Counter

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<sup>790</sup> Page 86 line 22 to page 91 line 18 and paragraph 4.7 of Mr Y's affidavit

<sup>791</sup> Page 91 line 19 to page 96 line 24 and paragraph 4.8 of Mr Y's affidavit

<sup>792</sup> Page 96 line 25 to page 100 line 9, in particular page 99 line 1 to page 100 line 9 and paragraphs 4.9 and 4.10 of Mr Y's affidavit



Intelligence. The above amalgamation envisaged a leading strategic role for the Chief Directorate Special Operations <sup>793</sup>

659 Except for insignificant qualifications, Ms K agreed with the contents of Mr Y's affidavit that the reasons given for the above amalgamation of the above three divisions into the Chief Directorate Special Operations were not sound; amongst others, no threat analysis was made in relation to the former President. But the bottom line was that such an amalgamation and concentration of power into one office (CDSO) was not necessary.<sup>794</sup>

660 Ms K agreed with Mr Y's criticism of the shifting of the VIP protection services to buy the SAPS and the Technical Surveillance Counter Measures operations to the SSA's without first canvassing that with the other stakeholders. The motivation for the shifting wrongly created the impression that the VIP protection was the responsibility of the SSA, without outlining the origin of the envisaged doctrinal shift or its approval by SAPS and the SANDF; the motivation created an impression that there was a vacuum, and provided no in-depth threat assessment.<sup>795</sup>

661 Another wrong impression created by the motivation and the recommendation was that the recruitment and appointment of 20 officers listed in the supporting attachments had been legitimate. Ms K testified that they were the very same individuals who were recruited and trained under direction of Ambassador Dlomo in 2008/2009 and had not been through the official recruitment and vetting process of the SSA. Two years later,

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<sup>793</sup> Page 100 line 10 to page 101 line 25 and paragraphs 4.11 and 4.12 of Mr Y's affidavit

<sup>794</sup> Page 103 line 10 to page 108 line 19; and paragraphs 4.13 to 4.15 of Mr Y's affidavit

<sup>795</sup> Page 108 line 20 to page 110 line 6; and paragraph 4.16 of Mr Y's affidavit

they got absorbed into the newly established Presidential Security Support Service, coinciding with Ambassador Dlomo's appointment as General Manager of the CDSO <sup>796</sup>

662 Ms K said that Dorothy (pseudonym) who also testified before this Commission confirmed to her during an interview with Ms K the truth of what stood in Mr Y's affidavit that she (Dorothy) had played a key role in the implementation of the structural changes referred to above. She (Dorothy) was in February 2012 seconded from Mr Nosi's office to assist Ambassador Dlomo. She facilitated the compilation of the contracts with so called "co-workers", their placement within CDSO as well as preparations of submissions relating to their requisition and payment <sup>797</sup>

663 Shortly after Ambassador Dlomo's appointment on 18 January 2012 (as General Manager Special Operations) the scope of his authority was expanded further. An urgent approval was sought in February 2012 to bring the cover support unit under special operations. The effect of this proposal by Dorothy was that the Chief Directorate Special Operations, the Presidential Security Support Service and the Cover Support Unit were brought under Ambassador Dlomo's control as General Manager Special Operations <sup>798</sup>

664. Ms K agreed with Mr Y that the above timelines show that the above restructuring within the SSA to place counter-intelligence operations under Ambassador Dlomo was planned long before January 2012; that the groundwork for the restructuring and repositioning of CDSO was laid by him in 2008/2009 with his recruitment and training of the "co-workers" who would subsequently be deployed for the President's projects at the SSA. The structural changes approved by Mr Cwele in December 2011 meant that,

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<sup>796</sup> Page 110 line 7 to page 111 line 4 and paragraphs 4.17 and 4.18 of Mr Y's affidavit

<sup>797</sup> Page 111 line 5 to page 112 line 16 and paragraph 4.19 of Mr Y's affidavit

<sup>798</sup> Page 112 line 17 to page 113 line 13 and paragraph 4.20 of Mr Y's affidavit

when Ambassador Dlomo was officially appointed in January 2012, the SSA's counter-intelligence architecture was set up to provide him with power and resources to serve directly the interests of former President Zuma. This was to be done through intelligence operations that were clearly unconstitutional and illegal. Under Ambassador Dlomo's watch, the CDSO engaged in exponential overspending and flouted the SSA's financial operations and HR directives through covert mechanisms and illegal contracts.<sup>799</sup>

665. Ms K agreed with Mr Y's summary on the impact of the concentration of counter intelligence power as indicated in the activities later carried out, the Presidential Support Service and cover support unit. In summary the consequences were: the infiltration into the SSA by "co-workers" who bypassed official recruitment, training and vetting processes; the overreach of the only authorised mandate of the SSA; illegal activities by a parallel counter-intelligence structure under the guise of covert operations; Executive interference in operational activities; rampant looting of SSA funds and illegal use of SSA firearms.<sup>800</sup>

666. She confirms Mr Y's affidavit dealing with the Directorate for Presidential Security Support in some details: for example, that the CDSO (Chief Directorate Special Operations) exceeded the duly authorised mandate of the Agency; the Presidential Security Support was a clear overreach of CDSO under Ambassador Thulani Dlomo; the restructuring was a shift in intelligence philosophy; in terms of the Presidential Handbook, the President's health care rested with the health unit of SANDF, and the protection with the SAPS and not with the Special Operations Unit of the SSA as was restructured under Ambassador Dlomo; the protection duties by the SAPs are set out in detail in the Presidential Handbook; the Special Operations Unit in the form of Presidential protection security assumed the following duties as outlined in terms of a

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<sup>799</sup> Pages 113 line 14 to page 114 line 25, and paragraph 4.21 of Mr Y's affidavit

<sup>800</sup> Page 115 line 4 to page 116 line 2 and paragraph 4.22 of Mr Y's affidavit



formal documentation: VIP protection to the President, cyber security, technical surveillance counter measures and toxicology all of which were otherwise not to be rendered by Special Operations set up by Ambassador Dlomo<sup>801</sup>

667. Ms K agreed that the effect of the above was that the mandate of the SSA was broadened and the SSA usurped the functions of the SAPS Presidential Protection Unit and the South African Military and Health Services Unit of the SANDF as there was no MoU with either of the two indicating that their services had been requested by the SSA. Ms K and her colleagues were told there were no such MoU's. The result was tensions between members of the CDSO's Presidential Protection Unit, on the one hand, and, on the other hand, members of SAPS's Presidential Protection Unit, to the detriment of the effective working of protective services of SAPS; she, however, said that she did not engage SAPS on the issue of its detriment<sup>802</sup>

668 It was the Commission's impression of Ms K that she was cautious not to simply confirm or dispute what stood in Mr Y's affidavit; that she did not uncritically endorse what stood in the affidavit of Mr Y.<sup>803</sup>

669 Ms K confirmed Mr Y's affidavit that, according to members of the Presidential Security Support Service, they were responsible for security around accommodation venues, routes and crowds in connection with the President and Deputy President. They would be deployed as an advance team and the information they got would be channelled only to Ambassador Dlomo and not to formal information management structures of the SSA; and there was no indication that the threat and risk assessment which should have as

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<sup>801</sup> Page 116 line 5 to page 124 line 20 and paragraphs 5.1 to 5.5 of Mr Y's affidavit

<sup>802</sup> Page 124 line 21 to page 127 line 18 and paragraph 5.6 of Mr Y's affidavit

<sup>803</sup> See page 127 line 19 to page 129 line 13

*per* Presidential Handbook been made available to the SAPS and SANDF were provided regularly, though she could not say they were not provided at all <sup>804</sup>

670 There was therefore a separate and discreet force that was established within the SSA reporting to and accountable in the main to Ambassador Dlomo, entirely side-lining the lawful structure (SAPS) for the personal protection of the President, which might have caused tension Ms K and her colleagues believed that Ambassador Dlomo was reporting directly to the President though she had seen no proof; but there were other people who said they reported to the President (though not sure if it meant through Ambassador Dlomo); some said they did so directly to the President and one of them actually boasted that he felt powerful as he was reporting directly to the President Ms K also agreed with Mr Y that the result of the above arrangement for his protection was that former President Zuma benefitted from an SSA based protection service financed and controlled by the SSA; and some of these people were performing intelligence functions. <sup>805</sup>

671. It needs to be noted that in the course of the overall evidence regarding the SSA, reference was made to "Thulani Dlomo" and "Denise Dlomo" (who was rarely mentioned before the Commission). Ms K said both of them did become Ambassadors; but she clarified that as far as her evidence on Mr Y's affidavit was concerned, reference to "Dlomo" or "Ambassador Dlomo" was to "Thulani Dlomo" unless the context indicated otherwise <sup>806</sup> In fact, in this Report, reference to "Ambassador Dlomo" is to "Thulani Dlomo" and not to "Denise Dlomo", except where indicated otherwise.

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<sup>804</sup> Page 129 line 13 to page 131 line 3, and paragraph 5.7 of Mr Y's affidavit

<sup>805</sup> Page 131 line 5 to page 134 line 13, and paragraph 5.8 of Mr Y's affidavit

<sup>806</sup> Page 117 line 9 to page 118 line 25

672. A Toxicology Unit (for President Zuma) was established in 2012 within the CDSO under Ambassador Dlomo's management. There were no indications that it was established legitimately or even to comply with the threshold governance prescripts of the SSA. In collaboration with one Dr Mandisa Mokoena, a non-SSA member, the recruitment and training of individuals and the capacitation of the unit took place. All these in conjunction with an organization referred to as Foreign International Development Agency for Food Safety and Security based in a particular country (name redacted); when a search was done, that organization could not be found.<sup>807</sup>
673. The recruitment and training agreement was signed by Ambassador Dlomo for South Africa and by an unidentified person for that foreign country; the agreement being that the foreign side would provide the course curriculum, training equipment, and installation and with an overall implementation date of 20 January 2013; in 2012 individuals were identified through referrals and invited to submit CV's; four were selected, namely, two toxicologists and two lab assistants; these people were not interviewed but allegedly vetted and sent for polygraph examination by the foreign country in December 2012. All the above information was given to Ms K and her colleagues by one of the toxicologists.<sup>808</sup>
674. The Toxicology Unit was located within the Directorate for Presidential Security Support, but fell within a CDSO project called Project Khusela previously called Project Accurate of which Dr Mokoena was the project manager; however, according to her, although Project Khusela purportedly replaced Project Accurate, Project Accurate also continued to exist.<sup>809</sup> The Toxicology Unit including a vivarium (apparently a container with animals) was established in an SSA safe house in Waterkloof.<sup>810</sup> There appeared

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<sup>807</sup> Page 134 line 14 to page 136 line 4 and paragraph 5.9 of Mr Y's affidavit

<sup>808</sup> Page 136 line 5 to page 137 line 11 and Mr Y's affidavit paragraph 5.10

<sup>809</sup> Page 137 lines 12 to 23

<sup>810</sup> Page 128 lines 1 to 12



to be a double dipping of funds between the Directorate for Presidential Security Support and Project Khusela as part of the CDSO operational expenditure; in other words operatives within the toxicology unit drew money both under the head Project Khusela and under the head Toxicology Unit; it appeared so.<sup>811</sup>

675. Ms K's recollection on how funds for the Toxicology Unit were handled was different to that of Mr Y. Her version was that the funds for the unit were channelled through a company known as Remix. The company was established in 2007 independently of SSA, and as an environmental kind of company. It initially received R1.8m from SO operatives a month in cash. The owner of the company felt it was too much cash to handle and offered to Ambassador Dlomo that they could use her own company to disperse the funds.<sup>812</sup>

676. Ms K confirmed Mr Y's evidence on affidavit that members of the Toxicology Unit were deployed in line with other Presidential Security Support Services such as technical surveillance counter-measures to all areas domestically and internationally; checking rooms, kitchens and dining spaces to be occupied by the President, but not the Presidential aircraft. Ambassador Dlomo was named in the toxicology documents relating to the agreement with the foreign international development as Chief Thulane Dlomo not as a donor but as a co-sponsor of the Toxicology Unit.<sup>813</sup>

677. The Toxicology Unit that was irregularly established in 2012 within the CDSO (Chief Directorate Special Operations), as opposed to the current legitimate Toxicology Unit now properly falling under the SSA, appeared to have had little impact since its establishment; for example, it failed to detect the alleged poisoning of President Zuma

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<sup>811</sup> Page 138 line 14 to page 139 line 22, and paragraph 5.11 of Mr Y's affidavit

<sup>812</sup> Page 139 line 24 to page 140 line 19

<sup>813</sup> Page 140 line 20 to page 141 line 25, and paragraph 5.12 of Mr Y's affidavit

in 2014 if there was poisoning, despite its specialized training and considerable resources at its disposal. Some of the members of the illegitimate Toxicology Unit established in 2012 under the CDSO have now been absorbed into the now legitimate toxicology unit properly falling under the SSA. In fact, one person employed by the then Toxicology Unit said that in all the years they serviced the President, the only threat that had been detected was expired soft drinks; a failure to detect the poisoning of a sitting President showed a major intelligence failure or that the unit was used as a structure to siphon funds of R1.8m a month out of the SSA or that they were used for other non-disclosed purposes.<sup>814</sup>

678. In November 2014 Ambassador Dlomo, then Deputy Director General Counter Intelligence, instituted a project for the protection of the Presidential aircraft: people who were used told Mr Y and Ms K that Ambassador Dlomo said the reason was that pilots and crew members were bringing unauthorised people to sleep in the aircraft. However, there was no proper threat analysis; there was just an oral briefing by Ambassador Dlomo on a purported threat. The people who were used for this purpose said that they never got any training or had any knowledge of aviation matters.<sup>815</sup>

679. Regarding the amount of R1.8m per month, Ms K clarified that the amount was for Project Kusela which was focussing on the Toxicology request of the work of the CDSO; but she was not sure whether the entire unit used only that amount. She said that the amount could have been more.<sup>816</sup>

680. Ms K confirmed Mr Y's evidence on affidavit relating to the protection of the Presidential aircraft. Although Ambassador Dlomo selected the SSA members to protect the

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<sup>814</sup> Page 141 line 25 to page 145 line 15 and paragraphs 5.13 of Mr Y's affidavit

<sup>815</sup> Page 145 line 16 to page 147 line 3 and paragraph 5.14 of Mr Y's affidavit

<sup>816</sup> Page 147 line 7 to page 149 line 3

Presidential aircraft, the project was formerly allocated to the Chief Directorate Internal Security (CDIS) It was reasonable to infer that that was done to deliberately remove all things related to the protection of the former President out of the realm of the SAPS and to instead place them under the control of Ambassador Dlomo. Ms K testified that by taking over the protection of the Presidential aircraft, the CDIS encroached upon the SANDF and not SAPS because that function used to be done by the SANDF and not by SAPS. To sum up Ms K said:

- 680.1. The Presidential Security Support Service (PSSS) resided in the Chief Directorate Special Operations (CDSO) and, by taking over the (general) protection of the President, it encroached on the services of SAPS
  - 680.2. The aircraft protection project which used to be the function of the SANDF, was placed under the Chief Directorate Internal Security (CDIS) This encroached on the function of the SANDF
  - 680.3. Both the CDIS and the CDSO were placed under Counter Intelligence which would have made both units to report to Ambassador Thulani Dlomo as the DDG Counter Intelligence <sup>817</sup>
681. Ms K pointed out that her evidence was based not only on things she witnessed herself, but also on interviews with individuals and the perusal of documentation in the course of carrying out the Project Veza investigations. Some of the people implicated she had known before; many of them had been at the SSA; others she met for the first time

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<sup>817</sup> See page 149 line 6 to page 153 line 21 (and note in particular page 152 line 6 to page 153 line 4); and paragraph 5.15 of Mr Y's affidavit



during the course of the investigation. She said that she also knew positions that some of them occupied as well as the structures within the SSA <sup>818</sup>

682 All these factors are relevant to the authenticity and accuracy of Ms K evidence

683. Ms K was initially part of the investigation under Project Momentum, which was later replaced by Project Veza. She was one of the people who continued with Project Veza and this had been going on for more than two years as at the time of her evidence <sup>819</sup>

684. One of the aspects of Ms K's evidence so far is that, without going into details, some divisions were collapsed into the office of the Deputy Director Counter- Intelligence which was eventually headed by Ambassador Thulani Dlomo <sup>820</sup>

685 Ms K said that it was highly unlikely that the protection of the Presidential aircraft was not catered for in the budget of the Chief Directorate Internal Security (CDIS) as the protection of the Presidential aircraft did not fall within the SSA's duly authorised mandate. Given that the CDIS incurred approximately R1 5m a month at an organizational level and that its operational budget for 2015/2016 and 2016/2017 financial year was R48m and R38m respectively, it means that about 40% was redirected from other operational activities to protect the Presidential aircraft <sup>821</sup>

686. Ms K confirmed that rather than fulfilling its function to protect the Agency from internal threats, the CDIS was weakened during Johan's (pseudonym) tenure; its vetting integrity was eroded; its members became complicit in facilitating the abuse of the SSA resources, which included enabling CDSO members' illegal access to firearms, the

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<sup>818</sup> Page 153 line 23 to page 156 line 4

<sup>819</sup> Page 156 line 5 to line 22

<sup>820</sup> See Page 99 line 4 to page 100 line 23

<sup>821</sup> Page 4 line 13 to page 5 line 23; paragraph 15.6 of Mr Y's affidavit

transport of cash for CDSO operations and involvement in a parallel vetting structure.<sup>822</sup> CDIS members were implicated in the robbery of R17m from a safe inside the SSA complex at Musanda in December 2015. This was confirmed by Johan and that the people were within his unit, and they were still there at the time of the evidence.<sup>823</sup>

687. Certain conclusions made by Mr Y were supported by Ms K, e.g.: that the reconfiguration and establishment of CDSO by extending the mandate of the SSA violated the security architecture set out in the Constitution, legislation, policy prescripts and the Presidential Handbook. She said it usurped the functions of the South African Military Health Services and the SAPS; the establishment of the Toxicology Unit and the Static Security Force for the protection of the Presidential aircraft through the Presidential Security Support Services disrupted the reporting lines and undermined accountability.<sup>824</sup>

688. The Presidential Security Support Services became one of the biggest consumers of the SSA resources. This was because members of the Chief Directorate Special Operations (CDSO) and the so-called co-workers (irregularly recruited and trained by the CDSO) travelled extensively. Yet, the Project Veza investigation found no evidence that they provided any information. These various projects were led by junior people in the SSA. They benefitted financially such as through allowances for acting in senior positions and travelling allowances for going wherever the President or the Vice President went. The increased cost was not only monetary, but also in the form of weakened State functioning manifested for, example, in the erosion of legitimate structures.<sup>825</sup>

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<sup>822</sup> Page 5 line 24 to page 6 line 19

<sup>823</sup> Page 6 line 20 to page 7 line 5 and paragraph 5.17 of Mr Y's affidavit

<sup>824</sup> Page 7 line 9 to page 8 line 7 and paragraph 5.18 of Mr Y's affidavit

<sup>825</sup> Page 8 line 8 to page 10 line 22 and paragraphs 5.19 and 5.20 of Mr Y's affidavit

689. Unskilled and unvetted persons were deployed within the inner perimeter of the Presidential security; there was haphazard approach to the work of the CDSO in contrast to the way the SSA performs its legitimate activities and those in charge of protecting the integrity of the SSA did not do so. They were also complicit in the CDSO bypassing official accountability structures. However, unlike Mr Y, Ms K believed that there were some efforts by e.g. Ambassador Kudjoe to get the CFO to exercise more control and raising queries about the CDSO not even having an APP (Annual Performance Plan); also, there was a case where a note was written to stop the withdrawal of R1 8m a month, only for the CFO to override that.<sup>826</sup>
690. Some of the recruited people did not even have matric but were paid R40, 00 00 a month; others were irregularly vetted through the illegal parallel vetting system created by Ambassador Dlomo; they were issued with fake security clearance certificates. The seniors could not even produce an Annual Performance Plan (APP) and it is difficult to see how the budget could have been properly allocated without it.<sup>827</sup>
691. The improperly vetted and trained individuals exclusively reported to Ambassador Dlomo and thereafter to former President Zuma. This resulted in the creation of a personal force at the disposal of Ambassador Dlomo with State resources.<sup>828</sup> Ms K would not say that the focus of the Security Cluster shifted from the security of the people of the country to former President Zuma; but some of the resources or elements of the SSA were reallocated for the benefit of Mr Zuma.<sup>829</sup>
692. The fact that the above services were stopped when President Ramaphosa entered office demonstrated that they were indeed established and operated for the sole

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<sup>826</sup> Page 10 line 23 to page 13 line 3 and paragraph 5.21 of Mr Y's affidavit

<sup>827</sup> Page 14 line 6 to page 15 line 2

<sup>828</sup> Page 15 line 23 to page 16 line 6 and paragraph 5.23 of Mr Y's affidavit

<sup>829</sup> Page 16 line 9 to page 17 line 12



personal protection of former President Zuma. A CDIS 'members' submissions (of claims) including those for travelling, were, after NASREC (that is after the election of Mr Ramaphosa), turned down. Those members of CDIS were told that that was because Mr Zuma was no longer the President. The DCSO was closed down by Mr Fraser when he arrived as the DG of the SSA in 2016 but some of its activities such as the guarding of the Presidential plane continued. At some point there was collaboration between the CDIS and CDSO on certain matters.<sup>830</sup>

693. According to Ms K after the CDSO was closed down in 2016, some of the implicated people said that Mr Fraser instructed them to hand over all of their documents to his office. However, the projects continued under the DG because some money was still expended in 2017/2018 under the CDSO budget; and Mr Fraser said, as far as guarding the Presidential plane was concerned, they should report to him.<sup>831</sup>

694. Contrary to Mr Y's view, Ms K did not think that the mandate of the SSA was too broad and should be reviewed; she had no problem with the mandate as framed, but thought that the focus should rather be on how not to abuse it.<sup>832</sup>

695. She confirmed Mr Y's evidence on affidavit that during the period 2012 to 2018 the CDSO undertook a number of counter-intelligence projects; that the Project Veza Team evaluated these projects and operations from a number of perspectives including: their alignment with the SSA's or CDSO's mandate, compliance with policy prescripts, controls applied to the disbursements of funds, and the nature of the operational activities purportedly carried out.<sup>833</sup>

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<sup>830</sup> Page 17 line 14 to page 20 line 7

<sup>831</sup> Page 20 line 18 to page 21 line 16 and paragraph 5.22 of Mr Y's affidavit

<sup>832</sup> Page 21 line 18 to page 22 line 24 and paragraph 5.23 of Mr Y's affidavit

<sup>833</sup> Page 23 line 1 to line 21 and paragraph 6.4 of Mr Y's affidavit

696. Four general conclusions made by Mr Y about the activities of the CDSO were supported by Ms K which related to the period investigated by Project Veza: inadequate documentation for the motivation of the establishment of the projects, containing only generic reference to SSA's counter intelligence mandate; no or limited detail regarding proposed plans and outcomes of operational activities and conflicting accounts of deliverables; no record of how or when or what intelligence was provided to the client resulting from these activities; and operation activities manifestly unlawful as they exceeded the mandate of the SSA; and conduct that undermined the Constitution and involved criminality<sup>834</sup>

697 The Project Veza Team found that the majority, if not all, of the projects of the CDSO were established in breach of the SSA's policy and regulatory prescript; grounds for the establishment of projects were vague and were in generic terms, referring to the mandate of SSA and increasingly aimed at minimums just to get funds; only sometimes would the real purpose of the project be mentioned; only occasionally, would an operational plan be given, or a one-liner as to what the project was about; one had to at least justify even if one did not have to give all of the details; examples of such vague and inadequate motivations were in respect of the establishment of Project Construc o, Project Mayibuye and Project Wave.<sup>835</sup>

698 Ms K took the Commission through documents submitted in motivation for the establishment of Project Construc o, Project Mayibuye and Project Wave, all of which were couched in vague terms and without sufficient information but which were approved<sup>836</sup>

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<sup>834</sup> Page 26 line 23 to page 28 line 16 and paragraphs 6.2 of Mr Y's affidavit

<sup>835</sup> Page 28 line 17 to page 30 line 24 and paragraphs 6.2.1 to 6.2.4 of Mr Y's affidavit

<sup>836</sup> Page 30 line 20 to page 41 line 1

699. Regarding Project Construc ao, for example, the submission requesting its establishment referred to about “*payment of related expenses*”, whereas one was supposed to have an operational claim;<sup>837</sup> motivations for the establishment of the projects were couched as general statements dealing with the Special Operations mandate without specific reference to the exact aim of the project; while the documents stated that the “covert nature of the project is intended to protect identification of personnel”, it did not tell “exactly what these people would be doing in any case”<sup>838</sup>; some motivations came as a training project, yet one could hardly train people for a year; if it was meant training for intelligence gathering, it should be at an academy but the document was vague; the pictures given were too general.<sup>839</sup> Again, there was a gap as regards Project Construc ao: whereas it was to provide security to certain named individuals, this was not anywhere made clear in its motivation as a project

700 Defects or shortcomings in the submissions regarding the motivation for Project Mayibuye was another example. Firstly, the same defective motivation that was used in respect of Project Construc ao was used word for word; the nature of these projects was only partially set out; the details given were the same as Project Construc ao’s. They were giving an impression of compliance and yet they were not.<sup>840</sup>

701. The evidence was that notwithstanding the vague and generic motivations, the operational activities purportedly undertaken were in clear breach of the constitutional prohibitions against partisan and politicized intelligence, although not all of the projects were. The politicization of the CDSO could be traced back to the restructuring of the SSA’s counter-intelligence capacity which shifted focus and resources to the personal

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<sup>837</sup> Page 31 line 5 to line 22

<sup>838</sup> Page 31 line 23 to page 33 line 15

<sup>839</sup> Page 34 line 13 to page 35 line 4

<sup>840</sup> Page 36 line 21 to page 41 line 1 and paragraphs 6.3 to 6.4 of Mr Y’s affidavit



and political security of former President Zuma. They were run under Ambassador Thulani Dlomo; they were the results of the politicized intelligence priorities <sup>841</sup>

702 The politicization was further illustrated by the direct Executive interference by Minister David Mahlobo in operational activities including the handling of large amounts of cash drawn under the projects; and in seeking budgetary approval for projects in November 2015 provision was made for huge funds to be retained for what was described as the Minister's projects; and there is documentary proof, confirmed by the Ms K, of Minister Mahlobo's involvement which says "*Projects approved by the Minister*". <sup>842</sup>

703 It has already been mentioned that, despite Mr Mahlobo's denial, the weight of the evidence by various witnesses, including those who personally counted and delivered the cash to Minister Mahlobo, is overwhelming.

704 Executive overreach shows the importance of balancing political authority with operational authority because, without political restraint, there is a risk of intelligence services being pressed to serve the narrow political interests of the political authority rather than the security interests of the country. <sup>843</sup>

705 As a result of pervasive financial irregularities and weak financial controls, it was difficult to determine the full extent of operational expenses for these projects. The outlay of cash was fast and loose and there was frequent blurring of lines between projects, using funds meant for one project for the other; there was also suspected frequent double dipping of funds as shown in Project Khusela; it was difficult to verify the final destination

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<sup>841</sup> Page 41 line 16 to page 42 line 22; paragraph 6.5 of Mr Y's affidavit

<sup>842</sup> Page 44 line 13 to page 46 line 9 and paragraph 6.6 of Mr Y's affidavit

<sup>843</sup> Page 46 line 10 to line 25 and paragraph 6.7 of Mr Y's affidavit

of funds as result of the temporary advance system with cash being disbursed to CDSO members without reconciliation against expenditure <sup>844</sup>

706 With reference to, and confirming Mr Y's evidence on affidavit, Ms K illustrated financial irregularities by pointing out that monies required for projects, such as Project Mayibuye and Wave, were not broken down. Instead, a global amount, for example R2.5m, for Project Mayibuye was given; so, too, R2m for Project Wave and Project Construcão; doing so did not allow for proper control of funds and because budget controllers would demand the breakdowns, there was a tendency to bypass them; and where CDSO was overspending and not having money to settle advances, they would take money from other structures of the SSA <sup>845</sup>

707. The evidence before the Commission was that, despite challenges of poor record keeping, the Project Veza Investigation team calculated that, conservatively, an amount of R1billion was expended on the CDSO projects during the period 2012 to 2018; and yet the CDSO is just one unit of counter intelligence; and these projects were unlawful in purpose and operation and of little benefit to the SSA; they were used to channel funds to parallel intelligence structures with unlawful operations benefitting primarily Mr Zuma and other high ranking officials.<sup>846</sup> Ms K referred to particular projects to demonstrate the fact that the estimated accounts were not properly broken down, and also that the activities to be undertaken were not properly set out

### **Project Construcão**

708. According to the request for the authorization to establish it, this project was to be a cover project with the aim of gathering and dealing with any form of threats or potential

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<sup>844</sup> Page 47 line 21 to page 48 line 17 and paragraph 6.8 of Mr Y's affidavit

<sup>845</sup> Page 55 line 19 to page 59 line 11 and paragraph 6.9 of Mr Y's affidavit

<sup>846</sup> Page 60 line 3 to page 62 line 5 and paragraph 6.10 of Mr Y's affidavit

threats capable of destabilising the democratic rule of the Republic. Although the proposal, dated 12 December 2014, stated that operatives would begin as early as 17 December 2014, official approval was only given on 23 January 2015. The project manager (pseudonym Frank) reported directly to Ambassador Dlomo, then Deputy Director: Counter-Intelligence. The expense for the project was estimated to be R30million but there was no breakdown of items as there should have been such as breaking down into travel, operational or other expenditures.<sup>847</sup> Also, although there was an operational plan for this project, there was still no indication of the full extent of the activities that were to be undertaken; maybe as regards the VIP Protection and the training part of it, but there was no full disclosure in terms of the full extent of the activities of those individuals; furthermore, whereas it was stated that some co-workers or resources for this project would also be used in Project Wave, the manager of both told the Project Veza Investigation team that nothing was done for a year yet money was expended. Ms K was, therefore, of the view that there had not been *"full disclosure on the part of CDSO on what exactly were the activities; the submissions were general and broad and not clear but money was used"*<sup>848</sup> Money was expended over the budget; of the R30million for this project, only R5million was allocated to operational expenses; yet although the project was approved in January, by April the entire R30million had already been withdrawn for operational expenses<sup>849</sup>

- 709 Ms K confirmed the contents of Mr Y's affidavit that this project (Construcao) purported to involve further training of co-workers for the CDSO and that there was proof for that; however, it did not necessarily tie in with what was in the operational plan and one could therefore not say that that was exactly what was done or whether the training was

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<sup>847</sup> Page 62 line 12 to page 65 line 2 and paragraph 6.11 of Mr Y's affidavit

<sup>848</sup> Page 65 line 7 to page 66 line 20

<sup>849</sup> Page 66 line 21 to page 67 line 19



consistent with the operational plan or documents motivating for the establishment of the project;<sup>850</sup> as another indication that it was not clear what was done under the project, documentation was found confirming payment of money to a private company for VIP Protection services (which were supposed to be rendered by this project).<sup>851</sup>

710. Ms K agreed with Mr Y regarding the training of some 22 people under this project. They were trained in two groups. The point Ms K and the affidavit made was that these people were trained in a foreign country but the VIP training given was conducted outside the available diplomatic channels; secondly, there was a statement, that upon their graduation, they were told by Ambassador Thulani Dlomo that on their return home, they would report only to him; also, the foreign people said they were not aware of the training; Ms K's team was still investigating this at the time of her evidence.<sup>852</sup>

711 Ms K confirmed that most of the trainees under this project were from Kwa-Zulu Natal, but she could not confirm that former President Zuma said younger VIP protectors should be trained as she had not interviewed the alleged source of that information; the project was linked to the VIP protection of some high ranking officials such as Ms Dudu Myeni; co-workers were also deployed by Ambassador Dlomo to other CDSO projects like Project Lock; Ambassador Dlomo also personally benefitted from their protection services something the witness would not have a problem with, provided correct resources were used.<sup>853</sup>

712 Ms K pointed out that, again without describing activities and effective financial controls, a further amount of R24million, over the initial R30million granted, was given without

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<sup>850</sup> Page 67 line 20 to page 69 line 21

<sup>851</sup> Page 69 line 21 to page 70 line 15

<sup>852</sup> Page 70 line 16 to page 72 line 13 and paragraph 6.12 of Mr Y's affidavit

<sup>853</sup> Page 72 line 14 to page 74 line 20, and paragraph 6.13 of Mr Y's affidavit

sufficient financial details; that was in contravention of the prescripts.<sup>854</sup> Although she did not look at other units within the SSA to compare with, Ms K was sure that at least they would have indicated in their motivations the financial implication of their operation plans.<sup>855</sup>

713. It was her evidence that, regarding project Construc ao, vague and undetailed invoices were paid (in cash) A company with pseudonym Carrot Export Company issued three invoices totalling R20million (R10m, R5m and R5m) using up almost all the money allocated within three months; the invoices simply reflected that it was for services rendered; the point Ms K was making was that no details were given on the invoices as to what was being paid for and the existence of the company could not be verified <sup>856</sup>
714. The Commission would have wanted to see relevant instruments prescribing required information in a motivation letter for the DDG to know what they were going to do, the proposed activities etc so as to compare them with the ones criticized by Ms K's team <sup>857</sup> However, it appeared that these instruments were only in the form of "operation directives" and not declassified for the Commission to access them so as to compare as it had wanted to <sup>858</sup>
715. Regarding a cover project, there had to be two submissions. Firstly, the submission regarding approval for the establishment of the project. It had to have a timeframe and an overall budget, accompanied by an operational plan with a breakdown of the budget; the operational plan would have sufficient details without disclosing too much Once the first submission was approved, the second one would be for the withdrawal of the

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<sup>854</sup> Page 74 line 21 to page 76 line 11, and paragraph 614 of Mr Y's affidavit

<sup>855</sup> Page 76 line 25 to page 78 line 1

<sup>856</sup> Page 79 line 20 to page 84 line 8, and paragraph 6.15 of Mr Y's affidavit

<sup>857</sup> Page 88 line 22 to page 89 line 13

<sup>858</sup> Page 93 line 15 to page 94 line 5

money. Regarding the withdrawals, the DDG domestic branch could only approve a withdrawal of up to R200,000 00 for a branch. That being the case, Ambassador Dlomo did not have the authority to sign off the R10million, something that repeated itself in every project.<sup>859</sup>

716. The evidence of Ms K was that insufficient information was given in the motivation documents to enable proper controls.<sup>860</sup> Secondly, regarding finances, the paper trail and the control documents contained insufficient information to ensure proper financial controls being implemented in relation to projects within the CDSO, as Mr Jafta also said.<sup>861</sup>

717. The Project Veza investigation team had been in existence for approximately two years as at the time of Ms K's evidence on 28 January 2021. She could not say how many people had already been interviewed as at the time of her evidence, except to say they were many; as for documents, there were several boxes of them in a walk in safe; the team would need more manpower, unlimited access to classified documents, the co operation of all people from the most junior throughout the various levels right up to the Minister; but they did not have power of compulsion.<sup>862</sup>

718. Both Ms K's evidence and Mr Y's affidavit said that other invoices were submitted under project Construc ao by two companies codenamed Napa and Squash for the payment of a total amount of over R24 million for "*services rendered*"; no details were given to enable proper controls, and the invoices were usually consistently addressed to two

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<sup>859</sup> Page 89 line 16 to page 90 line 25

<sup>860</sup> Page 98 lines 16 to 25

<sup>861</sup> Page 99 lines 1 to 7

<sup>862</sup> Page 100 line 20 to page 102 line 3



individuals; the invoice and the acknowledgement of receipt of the cash would be attached to the temporary advance (TA) <sup>863</sup>

- 719 It appeared that a submission was made to the then DG (Mr Fraser) to waive the advertising and appointment processes in respect of some 33 people attached to Project Construc ao. This was on the basis that the project would soon end as decided by the principal client and that the SSA would call for its termination when its term expired at the end of March 2017. However, the project was extended several times and the final payments to its co-workers were only made end of September 2018.<sup>864</sup>

### **Project Mayibuye**

- 720 This project was initiated by Ambassador Thulani Dlomo and approved by Ambassador Kudjoe in January 2015, the same time the other CDSO projects were approved; it was renewed and continued after Ambassador Kudjoe and after the arrival of Mr Fraser as DG in September 2016; it was a collective name for several projects; it was a project with operations within it.<sup>865</sup>

721. It appeared from the documents referred to in Mr Y's affidavit that Project Mayibuye was established to provide counter-intelligence support to step up state authority and organs of governance (Justice, Parliament, Provincial Legislature) against hostile behaviour or radical interests aimed at undermining the rule of law and governance in general. Mr Mahlobo continuously approved the use of retained earnings for operations, against the advice that such funds be used to develop the capabilities of the SSA <sup>866</sup>

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<sup>863</sup> Page 102 line 7 to page 103 line 12 and paragraph 6.16 of Mr Y's affidavit

<sup>864</sup> Page 103 line 13 to page 105 line 9 and paragraph 6.7 of Mr Y's affidavit

<sup>865</sup> Page 105 line 10 to page 106 line 4, and paragraph 6.18 of Mr Y's affidavit

<sup>866</sup> Page 106 line 5 to page 107 line 18 and paragraph 6.19 of Mr Y's affidavit

722. Authorization was given for the renewal of the project and a budget of R54.1million was given to it for the payment of related expenditure between 1 April 2016 and 31 March 2017 <sup>867</sup>
723. Temporary advancements were paid, such as the one dated 30 June 2016 for R4.4 million signed for by those who took receipt of the cash for various operations under this project; and the temporary advancements (TA's) established by the investigation team that were paid in respect of the project amounted to R84,79 million; paid to Napa and Squash (pseudonyms); and these payments were not necessarily the only ones. <sup>868</sup>
724. From the evidence of Ms K, Project Mayibuye itself comprised several operations, including Operation Commitment, Operation Justice/Simunye Operation Lock and Operation Sesikhona; Operation Safe Return and Operation Platinum are also referenced <sup>869</sup>
725. Operation Commitment: This project fell under Project Mayibuye. It involved monthly withdrawals of cash by certain people whose names were replaced by pseudonyms, which cash was on more than one occasion delivered to Mr Mahlobo, then Minister of State Security, the allegation being that they were for onward payment by the Minister to former President Zuma; the person interviewed by the Ms K;s investigation team said he dropped monthly withdrawals of R2million to the Minister's office under this project (Operation Commitment) but could not confirm that the money was paid to President Zuma, nor did the investigation team find confirmation that Mr Zuma received the money. When they wrote a letter via Minister Letsatsi-Duba to inquire from Mahlobo about these monies, Mr Mahlobo scolded a member of the team and threatened to

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<sup>867</sup> Page 107 line 19 to page 108 line 4 and paragraph 6.20 of Mr Y's affidavit

<sup>868</sup> Page 107 line 19 to page 111 line 20 and paragraphs 6.21 and 6.22 of Mr Y's affidavit

<sup>869</sup> Page 111 line 21 to page 112 line 6 and paragraph 6.23 of Mr Y's affidavit

expose Minister Letsatsi-Duba; and the matter ended there; they did not have the capacity to investigate or the opportunity; but they could see that the money had been withdrawn; the monthly withdrawals amounted to about R24million in the financial year 2015/2016 and increased to R54.1million in the 2016/2017 financial year; Frank (pseudonym) told the team that he had received firm instructions from Minister Mahlobo that those amounts be made available despite challenges in accessing the funds <sup>870</sup>

726. Operation Justice: This, too, fell under Operation Mayibuye. To put it in Mr Y's words, it *"concerned the alleged influencing, recruiting and handling of sources within the Judiciary"* The purported aim was to ensure harmony between the State and the Justice fraternity and allegedly included efforts to influence the outcome of cases. Written responses were obtained from certain implicated persons about what the project involved <sup>871</sup> It appeared that Project Justice was a continuation of Project Simunye; this appeared from the submission of 20 July 2015; the objective of Project Simunye had been substantively the same as that of Project Justice because it too had aimed at, amongst others, influencing state power and control of the Judiciary. <sup>872</sup>

- 727 A submission dated 31 May 2016 for the renewal of Project Mayibuye, the achievements of Operation Justice (which was part of Project Mayibuye and which was preceded by Operation Simunye) were set out. One of them was to gain access and interaction with the justice system As confirmed by other witnesses, the purpose of the project was to influence the Judiciary The other achievement stated in the 31 May 2016 document was that the CDSO had contributed largely to the rise of confidence in the Judiciary in the eyes of the public by using the media, using well placed media personnel The role of Operation Sesikhona was also noted; neutralizing protests by

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<sup>870</sup> Page 112 line 7 to page 117 line 17 and paragraphs 6.24 and 6.25 of Mr Y's affidavit

<sup>871</sup> Page 117 line 19 to page 119 line 1 and paragraph 6.26 of Mr Y's affidavit

<sup>872</sup> Pages 119 line 2 to page 121 line 23 and paragraphs 6.2.7 and 6.28 of Mr Y's affidavit



some group. The above information is contained in an official declassified SSA document<sup>873</sup>

- 728 One of the individuals implicated in the Operation Justice said in a written statement to Ms K's investigation team (Project Veza) that amounts of between R1.2million and R4.5million were regularly taken from the SSA and paid to Minister Mahlobo who reportedly personally directly made onward payments; and that she personally delivered R4.5million to Minister Mahlobo's office on at least three occasions.<sup>874</sup>
729. Another witness, Frank, confirmed during an interview with the investigation team that he was instructed to regularly deliver amounts of R1 3million to R21 8million to Minister Mahlobo for Project Justice; but he said he was not aware of the details of the operation beyond that there was a complaint that judges were colluding to overthrow the government; the cash to Minister Mahlobo, he was told, was to deal with the issue of judges<sup>875</sup>
730. Ms K confirmed the view that irrespective of whether Operation Justice was indeed implemented or not, its very existence constituted a fundamental breach of the principle of the separation of powers and was unconstitutional and an attempt to compromise the independence of the Judiciary.<sup>876</sup>
731. As also indicated in the evidence of the Acting Director General of SSA, Mr Jafta, investigations into Operation Justice were still ongoing<sup>877</sup>

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<sup>873</sup> Page 128 line 3 to page 130 line 13 and paragraph 6.29 of Mr Y's affidavit

<sup>874</sup> Page 130 line 14 to page 131 line 3 and paragraph 6.30 of Mr Y's affidavit

<sup>875</sup> Page 131 line 4 to line 19 and paragraph 6.30 of Mr Y's affidavit

<sup>876</sup> Page 131 line 20 to page 132 line 3 and Mr Y's affidavit paragraph 6.32

<sup>877</sup> Page 132 line 4 to line 113

732. While it was said that investigations were still ongoing, it should be stated that there has so far been no evidence that the Judiciary or any judge was indeed influenced in the execution of their duties as had been intended by Project Simunye or Project Justice
733. Operation Lock: This operation, too, fell under Operation Mayibuye. This project involved the provision of a safe house and protection for Mr Eugene de Kock after his release from prison, apparently on the basis of a memorandum of understanding with the Department of Correctional Services; a source, Lilly (pseudonym), said that the operation was allocated around R100,000 to R200,000 per month, which included the lease of a safe house, living expenses and a salary of around R40,000 for Mr de Kock, for which he signed acknowledgement of receipts; however, Ms K could not confirm the truth of that statement from the source as she did not interview the source because the source had already left the SSA; they could only interview people within; written attempts to get Lilly through her current employer were not responded to <sup>878</sup>
734. The Commission has had a lot of evidence about this project, with the witnesses saying the same thing.
735. Mr Y's statement that the CDSO's reason for assuming responsibility for Mr de Kock, who was code named Mr Lock, apparently arose from concerns about his continued links to right-wing groupings could not be confirmed by Ms K, or that Minister Mahlobo was reportedly closely personally involved with this operation. However, she confirmed the part that a source, Frank, informed the investigation team that tensions arose between Ambassador Dlomo and Minister Mahlobo as a result of the Minister's continued access to Mr de Kock; she also emphasized that she and Mr Y had different responsibilities and access to information; because of his position, Mr Y would have

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<sup>878</sup> Page 132 line 21 to page 134 line 19 and paragraph 6.33 of Mr Y's affidavit

had more information whereas the team basically relied on documents found and responses to written or verbal questions<sup>879</sup>

736 Operation Sesikhona: This operation also fell under Operation Mayibuye. The nature and scope of the activities of this project were set out in Mr Y's affidavit in great detail. According to Mr Y, the aim of the project was to stabilize (apparently meant to say destabilize) the nature of public protest by a Cape Town group of homeless activists whose action included the spilling of human waste at the Cape Town International Airport. Mr Y said in his affidavit that people interviewed said some of the activities included the destabilisation of the Democratic Alliance to garner support for the ANC in the Northern Cape and Eastern Cape, the formation of the Patriotic Alliance to gain support in Coloured communities and the infiltration and destabilisation of the Economic Freedom Fighters by exploiting their internal divisions. A feedback report on those activities by two CDSO agents Diego and Adam (pseudonyms) was lodged with the Commission. Ms K could not, however, confirm the above activities of the project. On that basis, one counsel representing one of the intended parties successfully objected against attempts by the evidence leader to get her confirm same<sup>880</sup>. Ms K could also not confirm the contents of Mr Y's affidavit about a feedback report that was filed by two CDSO agents on the activities of Operation Sesikhona.<sup>881</sup>

737 Project Hollywood: This project was established on 16 November 2015 to commence April 2016, renewable every three months. It was to *inter alia* carry out the surveillance and the illegal interception of high-profile politically prominent or connected individuals and government officials. R800,000 monthly cash payments were made to a company, whose name was mentioned, purportedly for the provision of intelligence and security

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<sup>879</sup> Page 134 line 20 to page 135 lines 13 and paragraph 6.34 of Mr Y's affidavit

<sup>880</sup> Page 135 line 18 to page 140 line 19

<sup>881</sup> Page 139 line 18 to page 140 line 1 and paragraphs 6.35, 6.36 and 6.37 of Mr Y's affidavit



services; payments were also said to have been made to operatives. However, the company was found to be fictitious and there was no evidence of a contract between it and the SSA; in any case, the purported services, even if rendered, (which could not be confirmed) would have amounted to an unlawful outsourcing of the SSA's counter intelligence mandate and the creation of a parallel intelligence work.<sup>882</sup>

738. Project Lungisa: This project too, was part of Project Mayibuye, established on 29 December 2015 and to be renewed every three months, with the objective to neutralize and counter activities of individuals' intent on undermining the authorities. Monthly withdrawals of R500,000 cash were used to pay an entity called Zenzele Economic Advisory, purportedly to provide economic services, including data collection and analysis, collection of financial statements from banks, company and ownership analysis and compiling of reports. According to Ms K, there would have been nothing wrong with what was to be done, provided it was done by the SSA itself and not outsourced; she said that these activities should not have been outsourced. To the extent that the company's activities involved the "*interviewing of assets*", the witness was not sure what that meant, except that it possibly meant the handling or interviewing of agents.<sup>883</sup>

739. Just like Project Hollywood, Project Lungisa's details provided by the alleged service provider were fictitious (casting doubt on its existence) and there was no evidence of its contract with the SSA; the service provider not be established by the investigation team; there was no correlation between the project's stated objectives and the services purportedly provided by the service provider, which would in any case have amounted

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<sup>882</sup> Page 140 line 19 to page 143 line 6, and paragraphs 6.38 and 6.39 of Mr Y's affidavit

<sup>883</sup> Page 143 line 7 to page 146 line 1 and paragraph 6.40 of Mr Y's affidavit

to an unlawful outsourcing of the SSA's mandate and the duplication of services rendered by the Financial Intelligence Centre <sup>884</sup>

740 The key persons implicated in both Project Hollywood and Project Lungisa were Ambassador Dlomo as Deputy Director Counter-Intelligence and three people whose pseudonyms were given as Darrell, Lilly and Mandy. <sup>885</sup>

741 Project Accurate/Project Khusela: Project Khusela was established as a CDSO project run by Dr Mandisa Mokoena, a non-SSA member, but its activities overlapped with those of the Toxicology unit established in 2012 as part of the Directorate Presidential Security Support (whose tasks included detecting poisoning of former President Zuma's food); the establishment of Project Accurate/Khusela was approved on 30 April 2015 according to official documentation lodged with the Commission; and was established to substitute Project Accurate, but using the latter's 2013 operational plan (with no budget) to obtain approval for Khusela's establishment. The SSA's Operational Directives (OD's) do not permit substitution although, in any event, Project Accurate continued to run parallel to Project Khusela. <sup>886</sup>

742 There were some irregularities pertaining to the monthly payments of R1 8million for Project Khusela as in certain circumstances submissions by Project Mayibuye were attached as the basis for those withdrawals. These withdrawals, listed to Project Khusela, included two invoices totalling R9 5million from Napa (pseudonym). The invoices were included and lodged with the Commission amongst the SSA documents. Yet, stated Ms K, it was not correct to withdraw money for one project while using a submission for a different project; therefore the R1 8 withdrawn for Project Khusela in

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<sup>884</sup> Page 146 line 2 to line 16 and paragraph 6.41 of Mr Y's affidavit

<sup>885</sup> Page 146 lines 17 to 22 and paragraph 6.42 of Mr Y's affidavit

<sup>886</sup> Page 147 lines 5 to 25 and paragraphs 6.43 and 6.44 of Mr Y's affidavit

terms of its operational plan, could not properly be under Project Mayibuye Operational Plan<sup>887</sup>

743 The stated objectives of Project Khusela also varied from submission to submission; they ranged from bioterrorism threats, threats to economic security, subversive attack acts to sabotage of strategic installation and national key points; these discrepancies were confirmed by the accounts of those involved in the project. Dr Mokoena, who ran the Toxicology Unit, stated under oath that all intelligence products were submitted directly to former President Zuma, as a result of which it could not be confirmed whether the professed intelligence products met the differing objectives of the project described above. Moreover, direct reporting (to former President Zuma) was outside the formal SSA intelligence clearance channels, thus constituting a parallel information management process<sup>888</sup>

744 Ms K confirmed the contents of Mr Y's affidavit regarding the criticisms and failures of the Toxicology Unit which failed to detect the alleged poisoning of the former President Zuma by one of his wives; despite the fact that it absorbed a lot of money, raising doubts about its competency, or whether the money spent on it was not a ruse to siphon funds out of the CDSO.<sup>889</sup>

745. Project Tin Roof: There was also earlier evidence, notably by Acting Director General Jafta, about this project. It involved the provision of a safe home and maintenance monies to former President Zuma's wife MaNtuli, a period she described as detention where none of her constitutional rights were observed or respected. Former President Zuma was allegedly poisoned during his trip to the MSA in August 2014, and was

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<sup>887</sup> Page 148 lines 4 to line 24 and paragraph 6.45 of Mr Y's affidavit

<sup>888</sup> Page 148 line 25 to page 150 line 2 and paragraph 6.46 of Mr Y's affidavit

<sup>889</sup> Page 150 line 3 to line 9 and paragraph 6.47 of Mr Y's affidavit



allegedly confirmed in another country. Project Tin Roof was established in December 2014 at the instance of Minister Mahlobo who had removed MaNtuli from Nkandla and gave her "protection and maintenance" through the SSA until the finalization of investigations. The period of her alleged protection stopped when she sought the intervention of her legal counsel.<sup>890</sup>

746 Ms K also confirmed that during their team investigations, they actually interviewed the project leader of Project Tin Roof. The person did not outright say MaNtuli was detained, but said she was kept at different safe houses; but the SAPS forensics were not involved in the investigations; it was various SSA members involved; she could not however comment on what was said about Minister Mahlobo's role and the seeking of legal advice by MaNtuli.<sup>891</sup>

747 Ms K confirmed that her investigation team was told that Project Tin Roof involved about 40 people, drawn from different directorates within the SSA as well as externally such as: administration, investigations, vetting, polygraph testing, surveillance counter espionage, toxicology and physical security; it was alleged some arrests were made with the main perpetrator allegedly fleeing the country; but the Project Veza investigation team has not found any SSA documentary evidence supporting all those claims. The then National Director of Public Prosecutions, Mr Shaun Abrahams, did not action the case that was opened at Nkandla nor was there any indication why SAPS or SANAF did not conduct investigations.<sup>892</sup>

748. The evidence of Ms K confirmed two concerns about Project Tin Roof. Firstly, like the establishment of the Toxicology Unit, Project Tin Roof entailed an overreach of the

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<sup>890</sup> Page 150 line 10 to page 151 line 22 and paragraph 6.48 of Mr Y's affidavit

<sup>891</sup> Page 151 line 23 to page 152 line 24 and again paragraph 6.48 of Mr Y's affidavit

<sup>892</sup> Page 152 line 25 to page 153 line 21 and paragraph 6.49 of Mr Y's affidavit

SSA's duly authorised mandate; the SSA did not have the power to detain and in doing so the CDSO violated the civil rights of a citizen under the pretext of "national interests" and without having to account for its actions. Secondly: R800,000 monthly withdrawals were made for operational expenditure including the leasing and maintenance of safe houses, the provision of security services and leasing of high-end motor vehicles for surveillance. Internally, Felicity and Lilly (pseudonyms) appeared to have used Project Tin Roof as a fund for renting further safe houses, the hiring of VIP protectors and carrying out renovations and maintenance on the leased properties; investigations revealed irregularities with the registration numbers on invoices including PSIRA registration numbers in the case of security companies, suggesting that payments were made to fictitious entities.<sup>893</sup>

749 Operation Academia: According to the affidavit of Mr Y, the immediate aim of this project was to neutralize the "*Fess Must Fall*" protests, but the mandate extended to developing short-term mitigation strategies and long-term solutions to prevent the recurrence of these protests; Minister Mahlobo had recruited a former SSA member for that purpose. Ms K, while not denying what was said in Mr Y's affidavit, did not want to comment but preferred to rather make her own statement as she knew a lot more about the project than what Mr Y had said.<sup>894</sup>

750 Operation eThekwini: This project is discussed by Mr Y in his affidavit. It was allegedly meant to address the mushrooming instability within the ANC in eThekwini, particularly in relation to the factional contest between Ms Zandile Gumede and Mr James Nxumalo; it gave support to Ms Gumede in the form of *inter alia*, security service and resources for political mobilization. However, Ms K said she could not comment on Mr Y's affidavit on these because she did not have the actual documentation, the team did not get

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<sup>893</sup> Page 153 line 22 to page 155 line 6 and paragraphs 6.50 and 6.51 of Mr Y's affidavit

<sup>894</sup> Page 155 line 7 to page 157 line 6 and paragraphs 6.52 and 6.53 of Mr Y's affidavit

statements from people who gave information even though they met with them; although she was in the interviews which were recorded, they were not transcribed; the report she saw was not corroborated

751. One gets an uncomfortable feeling about Ms K's evidence here. The issue is not whether for example the interview was transcribed or not, but what the people interviewed did say what Mr Y says they did; nor does it matter that the people interviewed did not make statements. None of these cannot reasonably be a bar against her remembering and confirming what Mr Y said. This is the person who was, on her own version, present during the interviews on which Mr Y drew his affidavit
752. Project Wave: It was established at the same time as Project Construc ao and Project Mayibuye in January 2015 based on same template written by Frank and approved by same individuals. This information is found in documents filed of record relating to the SSA. The stated aim was to penetrate and establish operational ground within identified continental, regional and global territories utilizing deep cover members; the intended starting date was 1 March 2015. However, Frank told the investigation team that the initial plan bore no resemblance to the activities that were later carried out under the project; they related to the media instead as confirmed by interviews.<sup>895</sup>
753. Whereas the spending of funds in respect of Project Wave started soon after its establishment, it was only a year later that a group of co-workers was recruited and trained. Frank contended that the recruitment was *ad hoc*, and admitted that he included his own daughter in response to Ambassador Dlomo's invitation to bring in people.<sup>896</sup>

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<sup>895</sup> Page 160 lines 1 to 24 and paragraphs 6.56 and 6.57 of Mr Y's affidavit

<sup>896</sup> Page 4 line 1 to 21 and paragraph 6.57 of Mr Y's affidavit



754. Witness K also confirmed that the activities that were subsequently carried out by Project Wave did not bear resemblance to the documents that motivated its establishment or the motivation for the release of funds <sup>897</sup>
755. A progress report dated 26 November 2016 gave further insight into the operational activities of Project Wave. The report was filed and admitted of record by the Commission. It says that Project Wave has been able to confirm many of the allegations levelled against the involvement of foreign intelligence agencies in the destabilization of democratic rule in South Africa. It also says that investigations confirmed the involvement of senior Cabinet members and various leaders of the ANC colluding in a conspiracy to effect regime change in the country; the report was found by the investigating in a safe; and a conclusion could be drawn from the report that its objective was to protect the then regime against change <sup>898</sup>
756. Witness K also confirmed the relevant part of Mr Y's affidavit that the report that was found also said that one area of interest (media houses) had proved very difficult to penetrate for two reasons: either the remuneration demands were higher than the operatives could offer or because the media house was equal on security alert and immune to approach or recruitment. <sup>899</sup> Ms K confirmed that a conclusion could be drawn that possible sources within the media were too expensive for the operatives to recruit, or that some media homes refused to co-operate <sup>900</sup>
757. The amount of R24million was allocated to Project Wave in the 2015/2016 financial year and also in the 2016/2017 financial year; one of the largest payment was for R20million in respect of an invoice by African News Agency, in two parts of R10million each; the

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<sup>897</sup> Page 5 line 13 to page 6 line 7

<sup>898</sup> Page 6 line 8 to page 8 line 5 and paragraph 6.58 of Mr Y's affidavit

<sup>899</sup> Page 8 line 7 to page 9 line 17 and paragraph 6.58 of Mr Y's affidavit

<sup>900</sup> Page 9 line 18 to line 25

two invoices were dated around March 2016 for the attention of Mr Thulani Dlomo; the signature on the invoices authorizing payment is that of Mr Arthur Frazer dated 19 January 2017. All the above information comes from the official documents of the SSA.<sup>901</sup>

758. Including the R20million paid to African News Agency, a total amount of R48million was paid out under Project Wave; however, numerous payments and documents were missing; but there was further information attached to some of the TA's (temporary advances) giving a list of the individuals employed by apparently ANA (for African News Agency) thus showing where the money ended up.<sup>902</sup>

759. Witness K confirmed that her investigation team had not yet established the full scope and detail of the CDSO Project in the period under review; because the Commission's investigators had information on at least nine other projects; her own team tried to find out whether others existed, what their establishment documents would be saying etc; monies were paid in cash in respect of these projects; these projects could only be linked to the year 2017 onwards because no TA's could be found pertaining to these projects predating the period of CDSO's existence.<sup>903</sup>

#### **Another category of Projects: Under Director General Sonto Kudjoe**

760. In August 2013 Ambassador Sonto Kudjoe was appointed as the new Director-General for SSA. After the National Elections in May 2014, Mr David Mahlobo was appointed Minister of State Security. In the period that followed, the office of the DG became involved in covert operations purported to be the President's Project allegedly pursuant

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<sup>901</sup> Page 10 line 1 to page 12 line 13 and paragraph 6.59 of Mr Y's affidavit

<sup>902</sup> Page 12 line 17 to page 14 line 9 and paragraph 6.60 of Mr Y's affidavit

<sup>903</sup> Page 15 line 8 to page 16 line 16

to a directive from Minister Mahlobo. This is reflected in the notable increase in operational expenditure in the office of the DG, attributable mainly to these projects; this appeared from official budget and expenditure information from the SSA.<sup>904</sup>

761. During the ten years as Minister of State Security, Mr Mahlobo became directly involved in operational matters, and instructed that surplus funds be used to fund CDSO Projects including those he was personally involved in, including the handling of cash to be used with deliveries of large cash amounts of about R4.5million per month being delivered by various CDSO officials to his office or residence, as already testified.<sup>905</sup>

762 Hellen (pseudonym), who was appointed as the Office Manager in the DG's office withdrew Temporary Advances (TA's) for operational expenses related to those President's projects; this information was contained in the documents that were seized.<sup>906</sup>

763 Shortly after assuming office, Mr Fraser formally closed down the CDSO, but the financial systems, documents and witness accounts show that the office of the DG continued to run many of the operations and projects which had been found to be irregular; for example, R2 million was, according to documents, requested by Hellen as temporary advance under Project Mayibuye and approved by Mr Fraser as late as September 2017; the TA's made by Hellen also showed that about R242million was paid by her from February 2014 to March 2019 allegedly for operations run from the office of the DG; the withdrawals were by cash over a period; all that information is contained in the official records of the SSA.<sup>907</sup>

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<sup>904</sup> Page 16 line 17 to page 17 line 17 and paragraph 7.1 of Mr Y's affidavit

<sup>905</sup> Page 17 line 19 to page 18 line 10 and paragraph 7.2 of Mr Y's affidavit

<sup>906</sup> Page 18 line 20 to page 19 line 7 and paragraph 7.3 of Mr Y's affidavit

<sup>907</sup> Page 19 line 10 to page 21 line 7 and paragraph 7.4 of Mr Y's affidavit



764. There is no record that any attempt was made to investigate and charge Ambassador Dlomo for the irregular and unlawful operations undertaken by the CDSO under his leadership; and investigations show that operations from the office of the DG extended well beyond merely the continuation of some CDSO projects; also Mr Fraser brought back into the SSA individuals who had been implicated in the PAN investigation, who included "Pelane" and "Garth" (pseudonyms) some of whom went on to play key roles in the new operational activities run out of the DG's office under Mr Fraser's management.<sup>908</sup>
765. The expansion of operational activities from the office of the DG is shown by the fact that the budgetary allocations and expenditure as confirmed in the documents, increased from about R42million in the 2016/2017 financial year to approximately R303million in the 2017/2018 financial year; strikingly roughly 74% (R225million) of the 2017/2018 financial year total expenditure was used for covert operational expenditure while 15% was spent on contact (not "contract") expenditure and the remaining 5% on travel and subsistence; this concentration of SSA funds in the office of the DG during the 2017/2018 financial year came at the expense of legitimate operational structure and SSA provincial offices in particular.<sup>909</sup>
766. the documents relating to the projects run out of the office of the DG were not put onto the SSA document management systems, EMS; similarly, the purported intelligence products were not channelled into intelligence management which is the repository of all SSA information; however there were other nine to ten projects on which the Project Veza Investigation Team did not have information; but in Ms K's view it may only be said that it appeared that it was a gross dereliction of duty for the DG to completely

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<sup>908</sup> Page 21 line 8 to page 22 line 10 and paragraph 7.5 of Mr Y's affidavit

<sup>909</sup> Page 22 line 11 to page 24 line 22 and paragraph 7.6 of Mr Y's affidavit

disregard the very policies, prescripts and directives that he was responsible for enforcing as the accounting officer and head of department <sup>910</sup>

767 The absence of the details of the operational activities undertaken in respect of these projects and the deliberate circumvention of SSA systems by the office of the DG suggest that the projects were either in breach of the SSA's mandate and/or the Constitution or were special purpose vehicles to facilitate the looting of State coffers; there could be no justification for the office of the DG to run operations and especially operations of the deep cover type, instead of them being run in the normal course by people reporting to the DG as opposed to being run from the DG's office; after all, there were structures set up to do exactly that <sup>911</sup>

768. Ms K could not, however confirm Mr Y's affidavit that despite the general lack of documentary records on the period under consideration, some of the ongoing operational activities were reflected in a performance review dated 24 February 2017 submitted to Mr Fraser by one of the CDSO co-worker deployment team; she did not see it before but conceded that Mr Y might have; Dr Mufamadi and Mr Jafta mentioned it in their evidence; it is in the record <sup>912</sup>

769. Ms K requested not to comment on it at all, but the evidence leader indicated that as it was also in the documents of the SSA and was testified about by Dr Mufamadi and Mr Jafta, he wanted to read it to place it on record <sup>913</sup>

770 The report was read into the record It is lengthy and detailed It shows, amongst others, that there was an operation to impede the distribution of the CR17 regalia, the

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<sup>910</sup> Page 26 line 19 to page 33 line 11 and paragraph 7.7 of Mr Y's affidavit

<sup>911</sup> Page 33 line 12 to page 34 line 16 and paragraph 7.8 of Mr Y's affidavit

<sup>912</sup> Page 34 line 17 to page 36 line 17 and paragraph 7.9 of Mr Y's affidavit

<sup>913</sup> Page 36 line 18 to page 37 line 1

transportation from Gauteng of groups apparently supportive of the CR17 campaign; to ensure cancellation of the President's visit to America; infiltration of the Zuma Must Fall campaign; dissemination of misinformation to supporters of the campaign; initiation of media campaigns; generally infiltration of groups considered hostile; infiltration of trade unions which resulted in minimal support for those campaigns, active monitoring of some NGO's such as the South African First, Right to Know, CASAC and Green Peace etc.<sup>914</sup> The document was boasting of the above "achievements", hence it was referred to by witnesses as the "Boast Report".

771 The document was referred to in Mr Y's affidavit and was an annexure thereto; it therefore formed part of the record <sup>915</sup>

772. What Mr Y did in his affidavit, was to cite some extracts from the report.<sup>916</sup> He said that the operations reflected in the report fell outside of the intelligence mandate of the SSA, that the SSA engaged in activities that improperly sought to influence protest movements, activist groups, trade unions, civil society and internal party politics.<sup>917</sup> These were the points also made by Dr Mufamadi and Mr Jafta in their evidence in relation to those activities

773. Regarding the fact that operational activities from the office of the DG might have related to the ANC National Elective Conference at NASREC in December 2017, as stated in Mr Y's affidavit, Ms K saw nothing wrong with that, given the fact that there might have even been Ministers in attendance; she was not sure whether SSA operatives also attended conferences of other political parties such as the DA and the EFF; such an event would, in her view, have to be a special event. But what struck her was that the

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<sup>914</sup> Page 36 line 19 to page 41 line 7

<sup>915</sup> Page 41 line 11 to page 43 line 7

<sup>916</sup>Page 43 lines 23 to 25 and paragraphs 7.9.1 to 7.9.4 in Mr Y's affidavit

<sup>917</sup> Paragraph 7.10 of his affidavit



CDSO had by then purportedly been closed in 2016 or early 2017 with most of the SSA members and co-workers having had to go sit at home and were still unplaced; some of them were called from home when it was time for NASREC; but at special events there would be what the witness called a Net Joints; that is it would not just be SSA but also Police with SSA and Police co-chairing; so the SSA presence at NASREC could have been legitimate <sup>918</sup> But, despite what the witness says, what would surely matter would be what the SSA members do once there; it would be the legitimacy or otherwise of what they do that would be an issue; for example, not to take sides in factional battles within say the ANC

774 There is a document amongst the SSA documents showing that at the time of NASREC conference, Hellen, office manager in the office of the DG, withdrew cash in an amount of R19million from the SSA on 15 December 2017, a matter that was still being investigated by the Project Veza team as at the time of Ms K's evidence; the R19million is again referred to in a handwritten document amongst the SSA documents, a document which was confiscated from Hellen by the investigation team; details are given on the document of how the money was withdrawn; with some handwritten notes on how monies were disseminated, something which was not sufficient to account for how money was expended. <sup>919</sup>

775 The team is not just investigating the matter of the R19million, but also all of the TA's from 2014 to 2018, amounting to R224million nearly taken by the same person for covert operations while their main function responsibility was basically administration. <sup>920</sup>

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<sup>918</sup> Page 44 line 11 to page 48 line 19 and paragraph 7.11 of Mr Y's affidavit

<sup>919</sup> Page 49 line 15 to page 51 line 10 and paragraph 7.11 of Mr Y's affidavit

<sup>920</sup> Page 51 lines 11 to 19

**Certain conclusions drawn by the Project Veza Investigation Team as *per* the affidavit of Mr Y regarding the breach of governance and financial controls**

776 The conclusions are confirmed by witness K and are important. They therefore deserve to be restated, and, as far as possible, in the language used by Mr Y and Ms K.

777. The team's important focus was non-compliance by SSA members with legislative policy prescripts and operational and financial directives governing the Agency. In the creation and operation of a parallel intelligence structure, the secrecy surrounding deep cover operations was used as a pretext to access funds. Yet, like other government departments, the SSA had financial prescripts that governed its expenditure.<sup>921</sup>

778 Preliminary analysis indicated that there was gross non-compliance with operational and financial directives especially in the establishment and management of covert projects and the creation of special purpose vehicles to siphon funds. These financial irregularities resulted in approximately R1.5 billion according to Mr Y being taken from State coffers and expended both domestically and abroad during the period 2012 to 2018 under the guise of covert operations; the amount might be higher because according to Ms K, it was not yet fully quantified as investigations in that regard were still ongoing. The funds taken under the guise of covert operations emanated from Treasury allocated budget as well as retained funds as regulated in terms of the Secret Services Act 56 of 1978.<sup>922</sup>

779 The sustained patterns of financial irregularities and corrupt practices were exacerbated by inadequate and ineffective consequence management. The financial directorate in particular failed to check abuses of power and State resources both by political heads

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<sup>921</sup> Page 52 line 19 to page 53 line 8 and paragraph 8.1 of Mr Y's affidavit

<sup>922</sup> Page 53 line 10 to page 54 line 14 and paragraph 8.2 of Mr Y's affidavit

and executive managers. The failure of internal controls contributed to the erosion of the organizational culture of the SSA and the weakening of governing structures during the period 2012 to 2018<sup>923</sup>

780. The above conclusions are consistent, and coincide, with the evidence of other witnesses, such as Dr Mufamadi and Mr Jafta.

### **Outsourcing of the SSA's mandate**

781. There was the use of external entities to perform functions of the SSA in covert operations, which was not permitted in terms of prescripts, nor were the expenditure to operatives fully accounted for<sup>924</sup>

782. In December 2014 Ambassador Dlomo illegally signed contracts on behalf of the SSA with several companies that were integral to facilitating the illicit financial flows of CDSO projects and operations<sup>925</sup>

783. In December 2014, Ambassador Dlomo entered into contracts with four entities to provide certain services. The contracts were illegal in that they outsourced the mandate of the SSA's counterintelligence mandate to those entities; the *domicilium* of the SSA on the contracts reflected that of the entities concerned; two of these service providers were owned by friends of the project manager for some of Project Construcacao and other projects; and by February 2015 about R10m to R15m was already withdrawn for invoices issued by two service providers. In summary: the outsourcing of the SSA activities was unlawful; secondly, these contracts were entered into with the SSA being represented by Ambassador Dlomo around December 2014, and before the contracts

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<sup>923</sup> Page 54 line 15 to page 55 line 6

<sup>924</sup> Page 55 line 7 to page 56 line 13 and paragraph 8.4 of Mr Y's affidavit

<sup>925</sup> Page 56 line 17 to line 25 and paragraph 8.5 of Mr Y's affidavit



were approved; thirdly, proper procedure were not followed in some instance no proper prior authorization to conclude or extend the contracts; the total amount involved was well over R100million<sup>926</sup>

784. To support the criticism raised above, the contract with company Napa was taken as an example. After looking at the copy of the contract with this entity, MS K confirmed that the mandate given to the company indeed amounted to the outsourcing of the mandate of the SSA. The witness read the relevant terms of the contract in detail to demonstrate the point; she therefore confirmed Mr Y's affidavit that there was such outsourcing and that it was illegal. The witness read to the Commission examples of the kind of SSA's tasks which could not be outsourced, but which were nonetheless outsourced to the entity.<sup>927</sup> In summary, those tasks included: the development of the project management charter; investigation into the security risks and threats in the implementation of the project, both domestic and foreign, to conduct political, economic social security risks and threats, monitoring and evaluation of security risks and threats against the State both domestic and foreign, etc; yet the company acted as an independent contractor. All these tasks were the exclusive mandate of the SSA. The other contracts used the same template and almost copied and pasted these tasks.<sup>928</sup>
785. It was Ms K's evidence that as an amount of more than R100million was paid out to the outside companies, her investigation team concluded that there was a parallel intelligence machinery that was set up during that period; that taxpayer money was used to pay outside private entities to do intelligence work not controlled by legislative prescripts governing the SSA; thus almost rendering obsolete legitimate SSA in that they did not get the information because their monies were redirected and rerouted to

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<sup>926</sup> Page 57 line 1 to page 61 line 8 and paragraphs 8.6, 8.7, 8.8 and 8.9 of Mr Y's affidavit

<sup>927</sup> Page 65 line 15 to page 68 line 20

<sup>928</sup> Page 61 line 9 to page 69 line 61 and paragraphs 8.8 and 8.9 of Mr Y's affidavits

those outside entities, which would paralyse the Agency and its personnel not fully engaged; yet personnel got paid just as well, resulting in duplication of expenses; there was also a possibility that those companies did not do anything, but invoiced the SSA as a way of stealing the money. Finally, whereas the agreement with Napa said that Napa should report to the SSA, it was not known to whom.<sup>929</sup>

786. The covert companies mentioned above (to which the SSA mandate was outsourced) were registered in the names of individuals with full control of them but with no oversight over them; the risk of theft, fraud and money laundering was there, heightened by weak financial controls, culture of complicity and lack of consequence management; which is why covert operations rely on the integrity of people and systems to ensure that the secrecy around them is managed with the greatest care and not abused; which is why the outsourcing of the SSA mandate to people who are not vetted and controlled like internal operatives is a problem; it is also a problem that people fail to report illegal activities.<sup>930</sup>

787. Instead of mitigating the risk of financial irregularities in covert projects, the DG, CFO's and other senior managers in the SSA facilitated the funding of the unlawful intelligence operations mentioned; the CFO's in particular facilitated gross financial mismanagement and abandoned their fiduciary duties under the PFMA; failed to implement financial controls, facilitated the escalation of unauthorised irregular fruitless and wasteful expenditure and fraud in contravention of section 38 and 50 of the PFMA.<sup>931</sup>

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<sup>929</sup> Page 69 line 7 to page 71 line 17

<sup>930</sup> Page 71 line 18 to page 74 line 22 and paragraphs 8.10 and 8.11 of Mr Y's affidavit

<sup>931</sup> Page 75 line 4 to line 22 and paragraph 8.12 of Mr Y's affidavit

788. There were instances where senior managers, in an attempt to cover themselves, qualified their approval of irregular funding by remarks such as that it was *per* Minister's instructions, thereby concealing their complicity; yet they knew that unlawful instructions were not to be followed; there should have been mechanisms for them to raise objections; it was therefore no excuse for anyone to approve or recommend a submission by reference to a Minister <sup>932</sup>
789. The financial controls were weakened by restricting access by junior financial officers to operational directives; these operational directives would control the operations of the SSA and its operatives and management in some detail. But especially the CFO's should be having access because it was required that for a covert project to be established, an operational plan had to be approved by the CFO; CFO's should therefore have had copies of those operational plans and operational directives (OD's); a result of the restricted access to the OD's, the affected (junior) financial officers were unable to ensure compliance with the operational directives regarding for example the remuneration of agents or contracts, thus heightening the risk of fraud and/or theft; it was also a concern that they were, despite their top secret security clearances, made to sign non-disclosure forms; this was a control measure, a ploy, by Raymond (pseudonym) to prevent information leakage, and the investigation team had a sworn statement in support of this for the 2017/2018 financial year <sup>933</sup>
790. There was insufficient demarcation of duties within certain control processes which allowed for users with dual roles, and transaction codes not in line with their job description, to facilitate irregular transactions; this was due to lack of capacity in the Chief Directorate Finance; system notes were not linked to standard operating

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<sup>932</sup> Page 75 line 23 to page 77 line 10 and paragraph 8.13 of Mr Y's affidavit

<sup>933</sup> Page 77 line 14 to page 79 line 14 and paragraph 8.14 of Mr Y's affidavit



procedures and staff appeared to have inadequate knowledge and compliance with SSA policies, and attempts by some managers to up their skills did not have the support of CFO's <sup>934</sup>

791. The investigative team also found many financial irregularities. It found weaknesses in the financial control which allowed for state funds to be accessed with impunity; funds for projects were withdrawn irregularly, and in some instances without the necessary authorization or authorization at the correct level; there was a built-in feature called a "funds availability check", which was a tool for the budget controller to see if there were still funds available for transaction advances. During the period investigated by the team, the "funds availability check" mechanism was switched off by the then CFO which was why the CDSO was able to spend about R30million meant for a year within three months and with the transaction advances (TA's) still ongoing. Ms K stated that there was documentary proof that when the CFO went abroad for four days, other staff took advantage of that but the person who was acting reactivated the tool, only for the CFO to switch it off again on his return. Budget controllers were deliberately excluded in the approval of the disbursements of funds and in fact the CFO instructed that CDSO channelled TA's to one specific financial officer, which continued for years. <sup>935</sup>

792. Ms K confirmed that what concerned the team and other witnesses, including Mr Y, was the cash-based approach adopted by the SSA coupled with negligible audit trail; this left the SSA susceptible to illicit financial flows and possible money laundering. As an example, a receipt was pointed out dated 12 June 2017 indicating that E2082600.00 was signed for without any details of the recipient reflected in records relating to the disbursement; it was Hellen who had withdrawn and Mr Arthur Fraser approved; the matter was still under investigation at the time of the hearing before the Commission.

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<sup>934</sup> Page 79 line 15 to page 80 line 18 and paragraph 8.14 of Mr Y's affidavit

<sup>935</sup> Page 80 line 18 to page 83 line 17 and paragraph 8.16 of Mr Y's affidavit

That document was filed of record amongst the SSA documents. The document is not a proper accounting document; for example, it had blank spaces, the name of the recipient not there; it did not say who was giving the money; what the money was for and there was no voucher form. There were other similarly defective receipts with some of them having only the recipient's signature and the rest of the document blank; it begged the question how those temporary advances were cleared on the system. The document referred above as an example was not an exception.<sup>936</sup>

793. The CDSO was permitted by the CFO to process submissions for cash withdrawals. This enabled a parallel finance system and opportunities for duplicate payments; Lilly, who was responsible for the CDSO finances and access, was given an *alias* with power to order cash from a company (SBV) from which large sums would be withdrawn by a CDSO member at the headquarters; this information was obtained from documents and also corroborated by one of the implicated individuals.<sup>937</sup>

794. Standard operating procedures were not implemented and in some instances, CFO's would breach them to achieve irregular ends. The CFO's would give verbal instructions to order cash and allowed members in the office of the DG to withdraw further TA's (temporary advances) without accounting for the previous advances; any withdrawal above R50,000.00 needed the CFO's signature but Lilly would give instructions for withdrawals in millions.<sup>938</sup>

795. The above conduct resulted in monthly cash flow shortages, causing the redirection of SSA retained funds meant for infrastructure development to covert operational work for which no proper accounting was done. The CDSO budgets were approved and revised

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<sup>936</sup> Page 83 line 18 to page 88 line 25 and paragraph 8.17 of Mr Y's affidavit

<sup>937</sup> Page 89 line 12 to page 91 line 12 and paragraph 8.18 of Mr Y's affidavit

<sup>938</sup> Page 91 line 13 to page 93 line 13 and paragraph 8.19 of Mr Y's affidavit

for increase without annual performance plans. This was enabled by the deactivation of the “*funds availability check*” tool built into the system to ensure control; this resulted in less funds being available for legitimate SSA projects.<sup>939</sup>

796. Ms K could not confirm that the Budget Management Committee meetings were either not regularly held or their decisions never implemented; there was gross non-compliance with planning, budgeting and reporting cycle. But she confirmed that in one instance additional funding of R100million was given by National Treasury to an official Raymond and the then DG Mr Fraser, without knowledge of the budget committee and outside medium-term expenditure framework processes, which funds were directed to the office of the DG (Mr Fraser) in addition to the funds taken from the SSA provincial offices (to the DG’s office).<sup>940</sup>

797. Having been put elsewhere before, in terms of a further restructuring effective 1 April 2017, the Cover Support Unit was established in the office of the DG as part of the strategic development plan vision 2035.<sup>941</sup>

798. Ms K confirmed that during his tenure as DG Mr Fraser showed an intention to resuscitate an operating model implemented between 2007 and 2010 which had been found to be irregular and unlawful; in particular irregularities relating to the renting of safe houses.<sup>942</sup>

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<sup>939</sup> Page 93 line 14 to page 94 line 8 and paragraph 8.20 of Mr Y’s affidavit

<sup>940</sup> Page 94 line 121 to page 95 line 24 and paragraph 8.21 of Mr Y’s affidavit

<sup>941</sup> Page 96 line 5 to line 19 and paragraph 8.22 of Mr Y’s affidavit

<sup>942</sup> Page 96 line 20 to page 97 line 16 and paragraph 8.23 of Mr Y’s affidavit



799. In one instance approximately seven safe houses were purportedly leased by the Cover Support Unit, without the necessary approvals and leased in a manner detrimental to the SSA; the leases were entered into despite a conflict of interest within the SSA <sup>943</sup>
800. The above practice of leasing safe houses (where there was a conflict of interest within the SSA) had previously been prevalent during the project known as the PAN programme and the same people implicated at that time were again implicated in its revival under Mr Fraser's leadership; their names were known. Another irregularity relating to the Cover Support Unit was the alleged authorization by Mr Fraser on 6 September 2017 of the purchase of a minimum 80% shares in seven companies or their entire purchase. It was alleged that there was no CFO prior approval or budget for those purchases. There is a copy of the authorization but says the CFO would later be consulted. The matter was still under investigation <sup>944</sup>

### **Parallel and irregular vetting processes**

801. The Project Veza investigation team received and retrieved all of the vetting files from which the team got information including who were vetted and by who. Vetting is important because it determines the level of access a member or contact employee may have with regard to classified information and restricted premises, thereby minimizing the risk of compromising classified information, protecting the Agency against foreign and hostile intelligence operations etc and generally the interests of the Republic; vetting is a deliberately coordinated effort within the SSA environment governed by a number of statutes. In terms of legislation, the decision to issue clearance certificates resides with the DG of the SSA who may delegate the authority; in the SSA

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<sup>943</sup> Page 97 line 17 to page 98 line 21 and paragraph 8.24 of Mr Y's affidavit

<sup>944</sup> Page 98 line 22 to page 99 line 20 and paragraph 8.25 of Mr Y's affidavit

the delegation of authority lies with Provincial Managers, and the General Manager: Internal Security and General Manager: Vetting and Security Advising <sup>945</sup>

- 802 Co-workers were deployed by the CDSO without having been subjected to the formal vetting processes of the SSA, thereby posing some risks. A clearance certificate gives assurance to the recipients, organs of State, that the concerned individual is security competent. The issuance of certificates and the vetting process is sacrosanct and falls squarely within the mandate of the SSA as a first line measure in delivery on its counter intelligence mandate.<sup>946</sup>
- 803 As a result of the establishment of irregular parallel vetting structure, the checks and balances built into the SSA system were overridden, thus allowing for persons who were not security competent to gain access to organs of State, sensitive information and positions of power of influence <sup>947</sup>
- 804 The irregularly cleared individuals became involved in some important and sensitive activities such as the following: the running of illegal counter intelligence operations that were in contravention of the Constitution, the Intelligence Services Act and the Agency's operational directives; receipt of millions in cash by members of the CDSO for years thus perpetrating fraud and theft of SSA funds; receiving caches of SSA firearms and ammunition including automatic rifles some of which still remain unaccounted for; parallel military training of SSA/CDSO and so-called co-workers using SSA firearms <sup>948</sup>
- 805 The irregular parallel vetting not only weakened the SSA's first line of defence but also potentially enable the infiltration of other departments within the security cluster

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<sup>945</sup> Page 99 line 25 to page 102 line 15 and paragraphs 9.1, 9.2 and 9.3 of Mr Y's affidavit

<sup>946</sup> Page 102 line 16 to page 103 line 18 and paragraphs 9.4 and 9.5 of Mr Y's affidavit

<sup>947</sup> Page 103 line 19 to page 104 line 2 and paragraph 9.6 of Mr Y's affidavit

<sup>948</sup> Page 103 line 19 to page 105 line 19 and paragraphs 9.6 and 9.7 of Mr Y's affidavit

including SAPS Presidential Protection Unit by the people "*cleared*" in that irregular manner<sup>949</sup>

806 Apart from the risk posed to counter-intelligence measures, the parallel vetting structure posed a risk to the reputation and integrity of the SSA vetting process and could give an excuse to people to refuse being vetted; it is important that people know that we have loyal and patriotic officials within the SSA who do proper and regular vetting as it is supposed to be done. Illegitimate and flawed vetting process undermine the process.<sup>950</sup>

807 The Project Veza investigations uncovered evidence of a parallel vetting structure that operated within the office of the Deputy Director-General: Counter Intelligence during the period 2013 to possibly 2018; from documents and interviews with witnesses and implicated persons, it appeared that that parallel structure vetted selected individuals and issued them with purported SSA clearance certificates; this practice bypassed the official vetting process and its vetting process was irregular and weak.<sup>951</sup>

808. The parallel vetting structure was set up in October 2013 when vetting officers were seconded by Ambassador Dlomo into the office of the DDG: Counter-Intelligence; the correspondence seconding these members did not indicate any particular purpose for the formation of the new structure, beyond assistance to his office and the offices of the Director: Domestic Branch and the Minister of State Security<sup>952</sup>

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<sup>949</sup> Page 105 line 23 to page 106 line 16 and paragraph 9.8 of Mr Y's affidavit

<sup>950</sup> Page 106 line 17 to page 107 line 24 and paragraph 9.9 of Mr Y's affidavit

<sup>951</sup> Page 108 line 2 to page 109 line 16 and paragraph 9.10 of Mr Y's affidavit

<sup>952</sup> Page 109 line 17 to page 110 line 10 and paragraph 9.11 of Mr Y's affidavit



809. The team leader at the centre of the parallel vetting structure, Mandy (pseudonym), had worked as a vetting officer for another company before joining the Agency as an internal vetting officer with a team of five; although she was a seasoned vetting officer, the process of her team failed to follow even the basic tenets of vetting.<sup>953</sup>
810. As the team leader, Mandy was responsible for administering the vetting files generated by the structure operating out of the parallel structure; according to the declaration by the Chief Directorate: Vetting and Security Advising (CDVA), they received these vetting files in about April 2019 although Mandy contended that she had handed over the files in late 2018; she actually conducted the vetting right from the beginning in 2013 but also kept the vetting files in hard copy until she handed them over; these files had not been loaded onto the vetting system as required.<sup>954</sup>
811. The investigation team noted a few things upon perusing the said vetting files. About 162 files had been submitted to the Chief Directorate: Vetting and Security Advising (CDVA) but that was unlikely the complete set as others came to the team's attention through other sources; 53 files were complete while 109 contained incomplete documentation; 53 cases indicated no deception on the polygraph while 103 files did not contain any polygraph results; 53 clearance certificates were found of which 3 had no vetting reports or documents; 6 files had significant responses of which 5 appeared to have received clearances and 86 files had no vetting evaluation.<sup>955</sup>
812. Apart from the irregularities set out above, the investigation team noted several flaws regarding the process of file completion, demonstrating limited or no adherence to vetting standard operating procedures. One or two examples: on some occasions more

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<sup>953</sup> Page 110 line 11 to line 25 and paragraph 9.2 of Mr Y's affidavit

<sup>954</sup> Page 111 line 1 to page 114 line 8 and paragraph 9.13 of Mr Y's affidavit

<sup>955</sup> Page 114 line 9 to page 116 line 4 and paragraph 9.14 of Mr Y's affidavit

than one vetting officer worked on a single file in breach of regular vetting process aimed at enabling a single officer in order to get a complete picture of the subject; in some instances vetting of questionnaires were poorly responded to with either vague or blank answers; investigation diaries were poorly updated or outstanding and none of vetting files were loaded onto the SSA's official vetting system as prescribed; each one of those flaws indicated material procedural lapses in the process of vetting<sup>956</sup>

813. There were discrepancies in respect of clearance certificates issued in terms of the parallel vetting process; for example, according to official SSA vetting processes, the Chief Directorate: Vetting and Security Advising is responsible for vetting external individuals while the Chief Directorate: Internal Security is responsible for internal vetting; however, the vetting certificates issued by Mandy and her team through this parallel vetting process were neither those of the CDIS nor the CDVA but rather appeared to be a combination of both templates; this distinction is important and there is that distinction also regarding the paper used; moreover, the certificates did not have a clearing number as they should have, instead they only had the ID number of the individual they vetted, which was also why the vetting files produced by the parallel vetting system should have been loaded onto the SSA official vetting record system as prescribed by the standard operating procedures, which was not done. The other discrepancy was that those clearance certificates were signed by the Deputy Director general Counter-Intelligence to whom there was no delegation of authority to do so; as said earlier the other problem with the certificates was that they were not, as official SSA clearance certificates should be, printed on security paper and with an SSA logo and a number issued and recorded on the SSA system. The records of this parallel vetting system are defective and do not comply with the system.<sup>957</sup>

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<sup>956</sup> Page 116 line 5 to page 117 line 1 and paragraph 9.15 of Mr Y's affidavit

<sup>957</sup> Page 117 line 2 to page 120 line 9 and paragraph 9.16 of Mr Y's affidavit

814. The vast majority of the individuals who were vetted through the irregular parallel vetting process were the Chief Directorate: Special Operations so-called workers; they therefore formed the basis or core of the human capacity of the overall parallel intelligence structure established by Ambassador Dlomo; they were given funds, firearms and access to sensitive information and many promised permanent employment in the SSA <sup>958</sup>
815. It was of concern to the investigation team that the parallel vetting system fell under Ambassador Dlomo's control while, according to witness reports received, he was also responsible for identifying most of the people recruited into the co-worker system; there was therefore a conflict of interest as he also issued the clearance certificates as he had vested interest in the security clearance of his own recruits; also as a further abuse of Ambassador Dlomo's irregular vetting structure, Ambassador Bheki Langa, appointed Director of the Domestic Branch, had his clearance certificate signed off by his subordinate, Ambassador Dlomo, thereby likely compromising his ability to exercise effective oversight over Ambassador Dlomo. Ms K confirmed that she actually saw the file <sup>959</sup>
816. Ambassador Dlomo was himself never vetted by the SSA Chief Directorate Internal Security when he joined the SSA as General Manager of Special Operations; while his appointment without a security clearance was in itself irregular, when attempts were made by the unit to vet him, he indicated that he was already being vetted leading to the ceasing of the internal security processes; it is suspected that he utilized the parallel

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<sup>958</sup> Page 120 line 10 to page 121 line 2 and paragraph 9.17 of Mr Y's affidavit

<sup>959</sup> Page 121 line 3 to page 122 line 14 and paragraph 9.18 of Mr Y's affidavit



vetting unit, which he controlled, to undertake his vetting, thereby effectively granting himself a "Top Secret" security clearance certificate.<sup>960</sup>

817 Project Veza Team discovered the vetting file of Mr Fraser which preceded his appointment as DG in September 2016; striking irregularities were revealed by a preliminary perusal which warranted further investigation. While he was not vetted through the parallel vetting structure, his vetting also circumvented prescribed channels and followed a flawed process.<sup>961</sup>

818. Mr Fraser's vetting should have been conducted by CDIS.<sup>962</sup>

819 However, his entire vetting process was conducted by the Chief Directorate Vetting and Security Advising (CDVA) which is primarily mandated to vet external (non SSA members) in other departments; this irregular use of the external vetting capacity meant that the SSA officials responsible for vetting Mr Fraser were themselves vetted through the irregular parallel vetting system namely Philani, Wendy (pseudonyms) including Ambassador Langa who signed his clearance certificate.<sup>963</sup>

820. The entire vetting process of Mr Fraser was completed in less than three days with non-compliance and poor vetting practices being condoned on the purported urgency of Mr Fraser's vetting. While the expedient vetting of executives is in itself not irregular, his vetting raised some concerns. All witness accounts confirmed that the file was actioned on 3 September 2016 and completed on 6 September 2016, too short a period given

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<sup>960</sup> Page 122 line 115 to page 123 line 5 and paragraph 9.19 of Mr Y's affidavit

<sup>961</sup> Page 123 line 22 to page 124 line 13 and paragraph 9.20 of Mr Y's affidavit

<sup>962</sup> Page 124 lines 19 and 20 and part of paragraph 9.21 of Mr Y's affidavit

<sup>963</sup> Page 125 line 10 to page 126 line 25 and paragraph 9.22 of Mr Y's affidavit

that he was only appointed on 26 September 2016; the urgency for his vetting was therefore doubtful <sup>964</sup>

- 821 There were other irregularities about Mr Fraser's vetting which called into question his vetting form on the basis of which his vetting was done; the form was incomplete and not signed under oath by him as it was only certified by a commissioner of oath (one of the people vetted through the irregular vetting) on 6 September 2016; the vetting field work officer opened and closed the file on one day without having had sight of the prescribed form to be completed, or time to conduct pre-interview screening and record checking; only two instead of three referees were interviewed; the file did not contain the results of the polygraph test or chart that was produced; the vetting evaluator was confined to the office of one of the irregularly vetted people, Philani, without being permitted access to his regular tools of trade and all documents required for the proper evaluation of the file; there was a fraudulent criminal record presented on file; there was no South African Revenue Services (SARS) clearance certificate; there was no quality control of any vetting work undertaken and the clearance certificate issued did not correlate with the electronic record on the SSA's Security Vetting Information, which had none of Mr Fraser's details or supporting documentation uploaded onto it; a check by the team in 2020 found that under his name it was just a series of zeros; it was his clearance certificate number that was used in the search, which itself was irregular. The result of all these irregularities was that the resort to the external vetting capacity under Philani's control appeared to have served the purpose of expediting and manipulating Mr Fraser's vetting process to secure a clearance certificate and thereby validate his appointment as DG irrespective of whether he was security competent or not <sup>965</sup>

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<sup>964</sup> Page 126 line 25 to page 127 line 23 and paragraph 9.23 of Mr Y's affidavit

<sup>965</sup> Page 127 line 24 to page 132 line 16 and paragraphs 9.24 and 9.25 of Mr Y's affidavit

### The illegal use of SSA firearms

822 Regulatory regime governing the SSA's firearms: The evidence tendered accurately sketched out the legal framework governing the issuance and control of firearms; which is principally the Firearms Control Act 60 of 2000 (FCA) and the Firearms Control Regulations promulgated thereunder. The FCA regulates the possession, safekeeping and usage of firearms in the country and appoints the Office of the SAPS National Commissioner as the designated authority and Registrar of Firearms. Stringent conditions are imposed on dealers to keep records on all firearms and ammunition. The SSA is declared as one of the official institutions permitted to store and keep firearms, and it thus derives its Standard Operating Procedures relating to management of firearms from the FCA.<sup>966</sup>

823 The responsibility within the SSA resides with the Chief Directorate Internal Security (CDIS) whose mandate includes management of the armoury in compliance with the FCA to ensure full implementation of sufficient control measures such as registering with SAPS. The CDIS, to ensure sufficient security and control measures, put in place various steps including but not limited to the drafting of and approval of Standard Operating Procedures (SOPs), firearm training material, development of face recognition ID card, firearm permits and other relevant documentation. The SOPs also set out the guidelines for the application processes, issuing, possession, usage and storage of official firearms as well as for training in the use of those firearms. In summary, it can be said that the issuing, use and control of firearms is very strictly regulated in terms of legislation and the regulations in considerable amount of detail.<sup>967</sup>

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<sup>966</sup> Page 132 line 17 to page 133 line 16 and paragraphs 10.1 and 10.2 of Mr Y's affidavit

<sup>967</sup> Page 133 line 17 to page 135 line 17 and paragraphs 10.3, 10.4 and 10.5 of Mr Y's affidavit



824. Despite the controls described above, SSA firearms were abused by individuals and the Chief Directorate Special Operations for illegal purposes. Investigations by the team showed a glaring nexus between, on the one hand, the flouting of SSA recruitment processes, the circumvention of vetting processes and parallel training initiatives and, on the other hand, the illegal access to SSA firearms that the parallel counter-intelligence structure obtained <sup>968</sup>
825. Irregular access to firearms: The evidence was that in late 2014 to early 2015 the CDSO began requesting firearms from the SSA armoury. In total 39 firearms were issued to it represented by individuals, on the request of Ambassador Dlomo in his capacity as Deputy Director General Counter-Intelligence. The 39 firearms comprised 11 R4 rifles, 10 CZ75 pistols, 4 Glock 17 pistols, 8 Glock 19 pistols; 1 Mossberg 12-gauge shotgun, 3 BXP submachine guns and 2 Uzi submachine guns <sup>969</sup>
826. The request for firearms by Ambassador Dlomo were made directly to the general manager of CDIS, Johan (pseudonym) who facilitated the handing over of the firearms to CDSO. This was done without the necessary forms being filled in or assurances given that the persons receiving firearms were security competent to receive them. Where submissions with the necessary authority were provided, the documents contained little information on the actual purpose for which the firearms would be used, whereas that was required <sup>970</sup>
827. There is evidence before the Commission by witness Dorothy that she was once sent to go and collect weapons from the SSA Armoury on the instructions of Ambassador Dlomo. She also said she had no competency to take those weapons into her

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<sup>968</sup> Page 135 line 18 to page 136 line 22 and paragraph 10.6 of Mr Y's affidavit

<sup>969</sup> Page 135 line 23 to page 137 line 12 and paragraph 10.7 of Mr Y's affidavit

<sup>970</sup> Page 137 line 14 to page 138 line 7 and paragraph 10.8 of Mr Y's affidavit

possession. Her evidence was that some of those weapons had not been recovered. If those were not the same weapons as attested to above, it would mean that there were more than one such episode

828. Members of the CDSO (who were issued with the firearms) did not attend the prescribed training sessions that were supposed to be conducted by members of the armoury as scheduled; it was reported that this was because Ambassador Dlomo had indicated that the training of those people was done externally by former SAPS members who were themselves co-workers. Firstly, this constituted a parallel firearm training process whereas SSA firearms were being utilized; secondly, the SSA armoury was not provided to those trainers and trainees where those very weapons would be used in the training.<sup>971</sup>

829. Legal prescripts were breached by Johan in facilitating the handing over of firearms to SDSO members without the required safeguards; on numerous occasions he personally oversaw the issuance of firearms from the armoury. Witnesses interviewed by the investigation team said that created an environment within the CDIS armoury section where they could not refuse the irregular requests from CDSO members within the SSA because of Johan's involvement as the General Manager.<sup>972</sup>

830. Moreover, Ambassador Dlomo, being a member of the SSA executive and thus not a member of operations, did not have a justifiable reason to make those requests for firearms. To make matters worse, the CDSO, being a covert operational arm of the SSA, generally takes necessary steps to avoid links to the SSA. It is therefore not clear why CDSO, if they were indeed conducting legitimate covert operations or training, would be comfortable using firearms that were directly traceable back to the SSA

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<sup>971</sup> Page 138 line 8 to line 22 and paragraph 10.9 of Mr Y's affidavit

<sup>972</sup> Page 138 line 23 to page 139 line 9 and paragraph 10.10 of Mr Y's affidavit

Furthermore, when requests were made to the CDIS, the motivations used for the accessing of the firearms were often vague, if proffered at all <sup>973</sup>

- 831 Lack of control over the use of SSA firearms: Witness accounts to the investigation team further indicated that those firearms were distributed to non SSA members called co-workers and who were regularly recruited as agents by the CDSO and deployed to sensitive areas around the President and the Deputy President. Those individuals were not vetted, and were part of the parallel intelligence structures reporting to Ambassador Thulani Dlomo. One such incident related to the issuing of a firearm to the late Thula who posted a picture of the SSA permit on his Facebook page following an apparent fallout with Ambassador Dlomo; Thula was never in the employ of the SSA <sup>974</sup>
832. Despite the existence of the Standard Operating Procedures for the movement and storage of firearms, no controls were implemented insofar as CDSO was involved. In one particular case in January 2015 Johan authorised a CDSO member who did not have a firearm competency to collect a cache of 15 firearms without the necessary precautions for their transportation and safekeeping. In another instance firearms were kept in a hotel room unsecured with five firearms subsequently going missing; while two of them were returned to the SSA by Ambassador Dlomo in November 2019, three remained unaccounted for. The CDSO member who had accessed the firearms failed to report the missing ones to the SAPS; in fact, the investigation team opened a case against the member (in 2020) as the firearms had been missing since 2015. For four years the member had a chance to report to the SAPS but failed to do so despite advice by the armoury people to do so. <sup>975</sup>

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<sup>973</sup> Page 139 line 13 to page 140 line 4 and paragraph 10.11 of Mr Y's affidavit

<sup>974</sup> Page 140 line 5 to line 22 and paragraph 11.2 of Mr Y's affidavit

<sup>975</sup> Page 140 line 23 to page 141 line 21 and paragraph 10.13 of Mr Y's affidavit



833. According to the evidence there were indications that in September 2014 armoury officials were instructed by Ambassador Dlomo through Johan to transport firearms that included four R4 rifles and six pistols to a foreign country, whose name may not be revealed, for unclear reasons. The firearms were reportedly flown in the Presidential Aircraft. This coincided with a *coup d'état* in that country. Though the firearms were reportedly not used in that country, CDSO members were seen there in the presence of Ambassador Dlomo. The above account was confirmed by sworn statements to the investigation team. The investigation team expressed the concern that firearms were flown in the Presidential Aircraft to a volatile area.<sup>976</sup>
834. The above incidents demonstrated Johan's gross dereliction of duty and failure to adhere to the policies and directives that he himself had compiled. The irregular access to and use of SSA firearms not only exposed the Agency and the Justice, Crime Prevention and Security Cluster to infiltration by individuals unaccountable within official SSA structures but also exposed the President and Deputy President to risks posed by being protected by individuals who were not security competent.<sup>977</sup>
835. Missing firearms: It was also the evidence of the investigation team that the firearms issued to the CDSO remained unaccounted for without the SSA armoury being able to conduct firearm inspections or to ensure that permits were renewed, which was a requirement subject to which the firearms were issued. Numerous reports were submitted showing that CDSO was failing to comply with the firearms control requirements.<sup>978</sup>

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<sup>976</sup> Page 141 line 22 to page 142 line 17 and paragraph 10.14 of Mr Y's affidavit

<sup>977</sup> Page 142 line 17 to page 143 line 10 and paragraph 10.15 of Mr Y's affidavit

<sup>978</sup> Page 143 line 11 to line 22 and paragraph 10.6 of Mr Y's affidavit

836. In December 2016 the CDSO, under a new General Manager, Darryl was requested to return all firearms, but only 21 were returned 17 firearms were not returned, which included assault rifles, submachine guns and pistols In addition, 1635 rounds of ammunition were issued to CDSO and to date only 755 have been returned. But there are discrepancies with some of the ammunition returned as they had never belonged to the SSA Asked by the evidence leader what the implication was of the fact that some of the people not vetted had not returned the firearms, witness K said that while she knew, she preferred not to comment. Clearly, this is a worrying situation.<sup>979</sup>
- 837 In April 2018 eleven firearms were recovered in one of situations which could place members of the SSA armoury in danger In one instance members were instructed to meet unknown individuals in possession of SSA firearms at the Durban Airport. The individuals were armed and only agreed to release the firearms once they had contacted Ambassador Dlomo for permission, who was in Japan at the time In November 2019 two more firearms were retrieved from Ambassador Dlomo. As at November 2020 four firearms still remained unaccounted for. All recovered firearms were submitted to the SAPS for ballistic testing to determine the possibility of their use in crime The results were still awaited as late as 2020.<sup>980</sup>
838. It was the view of the investigation team, of which Ms K was part, that the proliferation of illegal firearms was a major contribution towards serious crime, with wide implications in relation to the safety of citizens, threat to the authority of the State and national security, including being threat to the economy. This point was made to demonstrate

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<sup>979</sup> Page 143 line 23 to page 144 line 24 and paragraph 10.17 of Mr Y's affidavit

<sup>980</sup> Page 144 line 24 to page 145 line 17 and paragraph 10.18 of Mr Y's affidavit

the seriousness of lack of proper control of SSA weapons; all of which threats were, ironically, the duty of the SSA to combat <sup>981</sup>

839 It was also the view of the investigation team that apart from the risk to counter intelligence measures posed by the parallel vetting structure, the issuing of SSA firearms to persons not competent to handle them posed a risk to the reputation of SSA. A concern was also expressed that non SSA members whose security and firearm competence could not be ascertained were receiving caches of SSA firearms and ammunition, including automatic rifles which remained unaccounted for and for that matter with the assistance of senior management within the CDIS, CDSO and the office of the Deputy Director of Counter-Intelligence <sup>982</sup>

### **Project Veza Investigation Team's Conclusions**

840 After their investigations under Project Veza, the investigation team came to certain conclusions. These conclusions were set out in Mr Y's affidavit, and confirmed by Ms K in her testimony before this Commission. Given their importance, based as they were on the team's investigations which included going through the various documentation referred to in Mr Y's affidavit and in Ms K's oral evidence and also based on interviews with some of the implicated individuals, they warrant being restated here verbatim:

"11.1 The channelling of SSA funds out of legitimately established and authentic intelligences structures has led to a weakening of the SSA 'Normal' work, in most instances, did not continue as morale has lessened owing to the inadequacy of the tools left, witnessing the blatant disregard for the civilian intelligence structure and, more importantly, fundamental breaches of the Constitution. The partisan involvement of the security services in the political sphere goes against the values espoused in the intelligence community and reflected in the Constitution

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<sup>981</sup> Page 145 line 18 to page 146 line 22 and paragraph 10.19 of Mr Y's affidavit

<sup>982</sup> Page 146 line 23 to page 147 line 14 and paragraph 10.20 of Mr Y's affidavit



11.2 It is clear from our investigations thus far that this deliberate weakening of the State's protective security and risk management arm was done in order to enable the looting of state funds and to prevent detection and accountability within the Agency. Politically connected individuals used their access to state mechanisms in order to advance their own agendas – both financial and political. The deep cover resources of the SSA, built up in the first 15 years of our democracy as an integral part of the protecting national security, have been eroded

11.3 The projects undertaken, if they are indeed authentic, raise serious concerns as to how and to what extent the Constitution was undermined. Yet irrespective of whether these projects were authentic and implemented, their very existence and stated aims are incompatible with the intelligence mandate of the SSA. The use of covert operational structures to conceal activity and bypass accountability enabled the greatest capture with the least scrutiny.

*11.4 It is imperative that law enforcement agencies pursue the case opened by the SSA in April 2019 and that the recovery of cash and assets belonging to the state be prioritised. Stringent oversight of the intelligence community is required through the combined assurance of the Ministry, the Joint Standing Committee on Intelligence, the Office of the Inspector-General of Intelligence and the Auditor-General of South Africa. Finally, the integrity of the SSA's mandate must be protected from politicisation so that the pursuit of national security reflects the resolve of all South Africans, as individuals and as a nation, to live as equals, to live in peace and harmony, to be free from fear and want, and to seek a better life."*<sup>983</sup>

841 Two points need to be made in considering the above conclusions made by the investigation team. Firstly, as already mentioned, the conclusions were based on the official documentation relating to the State Security Agency, as well as the oral interviews of some implicated individuals and, in some cases, on the basis of their affidavits as well. Secondly, the conclusions are consistent with the evidence by other witnesses such as Dr Mufamadi, the leader of the High-Level Review Panel, Dr Dintwe, Inspector General of Intelligence and Mr Jafta, the Acting Director General of the SSA

842 In her oral evidence before the Commission, Ms K expressed the concern about the conditions under which some of the committed members of the armoury were working;

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<sup>983</sup> Page 148 line 17 to page 152 line 9 and Mr Y's affidavit paragraph 11 *in toto*

that to date some of them still get worried that the weapons used might be traced back to the armoury <sup>984</sup>

- 843 In concluding her evidence, Ms K made the point to be recorded that the majority of the officials within the SSA were courteous, qualified and committed people and that not everybody should be painted with the same brush; that they did not have the opportunity to express themselves, and that their commitment should be acknowledged; she, finally, expressed that we could rebuild the organization (the SSA) for the sake of the country. There is little doubt that Ms K was pained by the evidence she gave, but felt it was her duty to do so in the interests of the country <sup>985</sup> There is therefore good reason to believe that, like the other witnesses, she told the truth as she saw it

## **SUMMARY OF FINDINGS AND RECOMMENDATIONS**

- 844 On the basis of the oral and documentary evidence placed before it, the Commission sets out below its Findings and Recommendations regarding certain aspects of the State Security Agency in line with the Commission's Terms of Reference. They are not made in any order of importance. The evidence revealed a plethora of problems that bedevilled the SSA; they are almost innumerable. It would serve no purpose to engage in a hair-splitting exercise. Therefore, in making both the Findings and the Recommendations, the Commission will address at least some of the root causes, and not the consequent symptoms.

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<sup>984</sup> Page 148 line 4 to line 15

<sup>985</sup> Page 153 line 21 to page 154 line 13

**Regarding the amalgamation, restructuring and re-organization of the erstwhile National Intelligence Agency (NIA) and the South African Secret Service (SASS) into the State Security Agency (SSA)**

#### Findings

845. The period under consideration by the Commission is the period from 2009. Evidence was placed before the Commission presenting the organograms of the national intelligence services in three stages: the period from 1994 to 1997; and then for the period 1997 to 2009; and lastly, for the period 2009 to 2019. The last organogram reflects the structure brought about by former President Zuma through Proclamation 59 of 2009, 11 September 2019. It amalgamated the National Intelligence Agency (NIA) and the South African Secret Service (SASS) into a new structure, namely, the State Security Agency. Until then, the NIA's mandate was domestic intelligence, while the SASS mandate was foreign intelligence.
846. On the evidence presented to the Commission, it has to be accepted that the new intelligence regime resulted in a shift from the spirit, philosophy, and some principles of the Intelligence White Paper, which were reflected in the Constitution. The virtues of the Intelligence White Paper were articulated by amongst others Ambassador Maqetuka, the first Director General of the SSA, who had extensive experience in the field of intelligence, and Mr Shaik. Under the new intelligence regime there was for the first time a dedicated Minister of Security ("Minister of State Security") as opposed to the past, when a deputy Minister of Justice was only assigned to be responsible for the administration of the NIA but not involved in its working; there was therefore no reporting to a Minister, but directly to the President as also apparent from the two previous organograms.



847. The new 2009 regime also for the first time introduced the concept of “*State Security*” as opposed to “*National Security*” This brought in a paradigm shift: The emphasis fell on the security of the State, as opposed to National Security which laid emphasis on the security of the people; that is, the welfare of the people. As the evidence indicated, that paradigm shift paved the way for the use of the SSA to serve the power and interests of the incumbents, including especially former President Zuma. In fact, members of the SSA were made to take an additional oath in terms of which they swore allegiance to the President and also to recognize the authority of the Minister of State Authority who was Dr Siyabonga Cwele at the time whereas, prior to that, members only took oath of allegiance to the Constitution and to the Agency.
848. A special section, namely, the Presidential Security Support Services (PSSS) was created by Ambassador Thulani Dlomo within the DSCO to protect former President Zuma, a task that properly belonged to the SAPS; he also irregularly removed the President's health services from the SANDF to the DSCO. There was also political overreach by the Minister of State Security, Mr David Mahlobo by becoming involved directly in the operations of the SSA as will be shown below. One of the consequences of the amalgamation was that the powers that were enjoyed separately by the Director General of the NIA, and the Director General of the SASS, were put in the hands of one person, namely, the Director General of the SSA. The result was the potential for its abuse. The evidence before the Commission has shown that such abuse did in fact occur. Most of the problems that beset the SSA were the consequence of the amalgamation. It indeed constituted a paradigm shift from what was espoused by the Intelligence White Paper. That abuse manifested itself in various ways; for example, using the SSA and its resources for political ends; being involved in the ANC's factional battles or to improve its political fortunes etc –more about which later. The proclamation also usurped the powers of Parliament; and the intelligence services were made to report directly to the Minister and no longer to the President.

849. The High-Level Review Panel, as testified to by Dr F S Mufamadi, the chair thereof, also made similar findings regarding the paradigm shift from the Intelligence White Paper

## Recommendations

850. The period prior to 2009 might have had its own challenges and therefore not perfect but the Commission has not been told of any major problems that existed prior to the amalgamation of the NIA with the SASS into the SSA. As already mentioned, in that period there was no dedicated "*Minister of State Security*" and there was no notion of "*State Security*", but of "*National Security*"; all these were in line with the Intelligence White Paper and the Constitution. The Commission therefore recommends a close look once more at the spirit, guidelines and principles of the Intelligence White Paper, while recognizing that it, too, might need to be adapted. As said in the evidence, it is still important and sound. Therefore, there is no need to reinvent the wheel. One of the characteristics of the pre 2019 era was that there being no dedicated Minister of intelligence, the NIA and the SASS reported directly to the President who directed their activities. Since about August 2021, the country seems to have reverted to that. However, concerns have been expressed, especially in the media, about the concentration of such powers in the President. It is not for the Commission to adjudicate on this, save to state that, in the course of discussions about the Intelligence White Paper, no doubt all the views would be heard and considered.
851. A lot of commendable work was done by the High-Level Review Panel. The Commission therefore commends the recommendations it made for consideration, together with the Intelligence White Paper, which the Panel's Report holds in high regard.

**Regarding the barring or discontinuation of investigations against the Guptas and its probable consequences.**

### Findings

852. The State Security Agency under the leadership of Ambassador Maqetuka as the Director General, Mr Shaik as Head of the Foreign Branch and Mr Njenje as the Head of the Domestic Branch (the trio) wanted to conduct investigations into the Guptas. This followed information that the Guptas had informed Minister Mbalula of his then forthcoming appointment as Minister of Sport and Recreation. In the trio's view, there were three possible sources of information to the Guptas, all of which warranted investigation. Firstly, whether there was a breach of national security in the office of the President in that there was a leak; secondly, whether the Guptas had overheard a discussion where the then President, Mr Zuma, was consulting someone, and they were peddling the information for their own benefit. Thirdly, whether they had suggested Mr Mbalula's appointment to the former President. All the three scenarios would have been serious, with the latter even more so because it would have meant foreign nationals suggested who should be in the Cabinet of another country. All the three issues fell within the purview of national security. The other concern was that, by informing Minister Mbalula in advance, the Guptas would be creating dependency on the part of Mr Mbalula as Minister of Sport on them that would make him feel beholden to them. This was serious as the Guptas had interests in businesses that included stadia. The Commission's finding is that the investigations were justified.

853. The Commission was, however, told that the investigations were stopped by Minister Cwele, then as Minister of State Security. With regard to President Zuma, although the trio agreed that he never instructed them to stop the investigation, it was clear from what he said and his body language that he disapproved of the investigation. In his evidence,



Dr Cwele denied giving instructions that the investigations be stopped. Probabilities are, however, overwhelming that he did not want the investigations into the Guptas to continue and therefore that they be discontinued; for example, his version would not explain why the trio, would have decided of their own to stop the investigation if he did not make it clear to them that the investigation should be stopped or if he did not show himself to be against the investigation. Secondly, it would not explain why the three decided to go and see former President Zuma to pursue the matter; furthermore, at no stage did Minister Cwele ask for an update or progress report on the investigation. Moreover, Minister Cwele's position towards the investigation was given as one of the reasons for the breakdown of their relationship with Minister Cwele. It is also the Commission's finding that former President Zuma did not want the investigation to go on. He said, according to the evidence, that there was no need to investigate the Guptas and said that they were good people with whom he had a good relationship. He defended his friendship with them. Although Mr Zuma may not have given instructions that the investigation be stopped, he said enough at the meeting with the trio to make it clear to them that his view was that there was no justification for the investigation and, in his view, it should not be pursued.

854. It is also the Commission's finding that a Minister, in the person of Dr Cwele, involved himself in operations of the SSA by interfering with the investigation
855. The stopping of the investigations into the Guptas demoralized at least some members of the SSA; not least the top three: Ambassador Maqetuka, Mr Shaik and Mr Njenje, to the point that they decided to leave, more or less at the same time for that matter. A question arises as to what otherwise would have prompted all three of them to decide to leave and more or less at the same time.

856. The stopping of the investigation into the Guptas was not a small matter. In all probability, considering all the evidence relating to, for example, their involvement in the businesses of State-Owned Enterprises such as Eskom, timeous investigations could probably have prevented at least some of their activities that led to the State Capture and, by all indications, the loss of billions of Rands.

### Recommendations

857. The basic reason why the investigation was discontinued was the interference by Minister Cwele; that is, it was discontinued through conduct which amounted to Ministerial interference in the operations of the country's intelligence services. The Commission recommends in the appropriate section and for the reasons therein stated, that a Minister should not be involved in the operations of the country's intelligence services.

858. The Commission's finding that former President Zuma also inhibited if not stopped the investigations might, as alluded to earlier, itself prompt debates about the President being involved inasmuch as the SSA reports to him/her and she/he directs their operations. It may, indeed, be an issue for debate, leading to discussions about appropriate checks and balances. This view is, moreover, based on the Commission's finding that a sitting President did in fact himself contribute significantly to the discontinuation of the investigation with serious consequences to the country; that is a sitting President himself interfered with legitimate operations by the country's three most senior intelligence officers who by all indications had legitimate reasons to pursue the investigation.

## Executive/Ministers involvement in operational issues and its probable consequences

### Findings

- 859 The creation of the Ministry of State Security and the consequent appointment of "*Minister of State Security*" through the 11 September 2009 proclamation, made the SSA to report to a Minister, at the time Dr Siyabonga Cwele, who was later followed by Mr David Mahlobo; that paved the way for a Minister's involvement in the operations of the SSA, and that was exactly what happened. The evidence is overwhelming that both Ministers in particular did just that.
- 860 One of the ways in which that happened was when Minister Cwele, on the weight of the evidence before the Commission by the country's then top intelligence chiefs, interfered in the investigation against the Guptas; he said investigating them would amount to investigating former President Zuma. He was also against the Hawks investigating Mr Arthur Fraser. This issue is dealt with separately later.
861. Minister David Mahlobo, on the evidence, not only involved himself in the operations, but also directed them. He was actively involved in for example projects under Project Mayibuye such as Project Wave (about the media), Project Justice about alleged attempts to bribe some judges. Above all, there was a letter entitled "*Projects approved by the Minister*" which involved the spending of some R130m. In fact, one of his responses was that the law did not prohibit him from being involved. If what he says is correct, the situation would certainly require a very close look. However, even more worrying, was his involvement in the withdrawals, handling and distribution of large sums of money, an aspect that is dealt with separately herein. Former Minister Bongo also involved himself to some extent in the operations.



862. Some of the dangers attendant upon a Minister's involvement in operational matters were clearly articulated by witnesses, in particular, the top three. A few examples were given. The Minister of State Security would have knowledge of the identities of operatives, which knowledge the Minister would take along with upon leaving office; secondly, that he/she might acquire information about other fellow Ministers, which would make him/her better placed than them. Nothing further really needs to be said to make the point that a Minister should not be involved in operations, except to add political bias in favour of his or her own party or own faction in intra-party politics; all of which, on the evidence before the Commission, did happen.

### Recommendations

863. Whether the two former Ministers deny involvement in operations or not, does not detract from the importance of the principle against Ministerial involvement. The recommendation, therefore, holds good under any weather; accordingly, the Commission recommends that a Minister should not be involved in the operations of the intelligence services.

### **Illegal operations by the State Security Agency (SSA)**

### Findings

864. Section 199(7) of the Constitution prohibits a security service or a member thereof, in the performance of their functions, to prejudice the interests of a political party that is legitimate in terms of the Constitution, or to further any interests of a political party in a partisan manner. Yet, there was evidence that some of the activities of the SSA did just that. There was evidence, for example, that SSA money was withdrawn, at the instance of Ambassador Dlomo, and used to transport, accommodate and feed ANC MK veterans, for the party's January 8 rally in Rustenburg in 2016.

865. A member of the SSA (Dorothy) was also used to assist at the ANC NASREC Conference, for which she withdrew subsistence allowance. There were also some activities undertaken to improve the fortunes of the ANC in the Western Cape, Eastern Cape and Northern Cape amongst the Coloured people.
866. The Special Operations Unit (SOU) of the SSA, particularly under the direction of Ambassador Thulani Dlomo, was a law unto itself, launching many projects that operated illegally as indicated above.
867. Not only were the activities against the Constitution, but there is a strong indication that some of them contravened legislation governing intelligence services.

### Recommendations

868. Investigations should be carried out internally for disciplinary action against members, and also by law enforcement agencies against possible criminal statutory contraventions. The use of the resources and services of national intelligence agencies to destabilize opposition parties, to benefit a ruling party and to fan intra-party factions in order to influence political or electoral outcomes, amounts to a serious threat to democracy. Steps therefore need to be taken to deal with this.

### **Cash withdrawals, movement of cash and accountability for cash**

#### *Findings*

869. Cash withdrawals: Large sums of money were withdrawn. Given the covert operations of the SSA, the withdrawal in cash was inevitable. However, what was striking was the huge amounts at any one time; running literally into millions. There was a case where cash in the amount of R145m was stolen within the SSA offices. Varying amounts were withdrawn; for example R38.5m over the period March 2014 to September 2016; money

withdrawn by then Minister Mahlobo for, allegedly, former President Zuma at R2.5 pm in 2015/2016 which was later raised to R4 5 pm in 2016/2017 Ambassador Dlomo approved and caused the withdrawal of cash in large amounts; for example, R5m, R13.5m and R4.510m. Mr Arthur Frazer instructed a junior to receive and take cash in the amount of R1.5m to the then Minister Mahlobo; signed in approval the withdrawal of R4 510m to be taken to the then Minister Mahlobo, and for yet another R4 510 the following month to be taken to the then Minister. All these are just examples.

870. Abuse of the advance payment system. Money would be paid in advance and in cash for operations. There were many problems with this; for example, the purpose for the money would be obscure or not set out, nor was the final destination (supposedly some operatives). To sum up, the motivation would be inadequate; financial controls, such as were there, were poor or not adequately enforced

871. Poor or no accountability There would be no verification as to what the money was used on because, to start with, the intended use would itself be obscure; no verification as to whether the intended recipient actually got the money, such as in the form of receipts; one of the service providers was found to be non-existent. Lack of accountability manifested itself in various ways; to give two astonishing examples: Firstly, whereas the person to whom an advance payment was made was disqualified from taking a further advance before accounting for the first one, this rule would be circumvented. A different person would be used in whose name the money was withdrawn and handed over to the one disqualified; one of the people whose name was used in this manner told the Commission as much. The second example was where a person simply acknowledged debt in terms of the money they were unable to account for with the money amounting to millions without any effective recovery of the money. Instead, the money, amounting to millions, would be offset against the person's



pension; in some instances, such people simply resigned thereafter. A witness estimated that over the period 2012 to 2018 an amount of R1 5b was lost

- 872 As shown above, Ambassador Thulani Dlomo, in his capacity as the Head of the Special Operations Unit, handled a lot of cash; in many respects, the use and destination of the monies remained obscure.
- 873 Minister Mahlobo, too, as shown above, then as Minister of State Security, handled large sums of cash. For example, on the evidence, there was a time when he received R2.5m a month, later increased to R4.5 m a month, which he allegedly said was for former President Zuma. Details were given by two witnesses that in the presence of both of them on at least two occasions, millions in cash were delivered to Mr Mahlobo, and counted, apart from an earlier occasion when that was done by only one of them. The Commission noted the denials by Mr Mahlobo, now Deputy Minister Mahlobo. However, as said, there were at least two eyewitnesses; secondly, the details were too much to be a figment of their imagination. Probabilities are overwhelming against Mr David Mahlobo. After his appointment, the budget of the SSA increased hugely. This conclusion was based on the scrutiny of the budget as documentary evidence relating to the budget.
874. Mr Arthur Fraser, then DG of the SSA, also handled and caused a lot of cash to be withdrawn, as shown above. After his appointment, budgetary allocations increased from about R42m in the 2016/2017 financial year to about R303m in the 2017/2018 financial year, approximately 74% (R225m) of which was used for covert operations from his office. It was said by the Project Veza investigation team that an amount of about R125m remained accounted for by Mr Fraser, even as investigations were still going on. Add to all these, the findings of the PAN Report that were referred to the Hawks and the NPA.

## Recommendations

- 875 To state the obvious, financial controls and accountability need to be tightened
- 876 As already said, the handling and use of cash is inevitable, especially in covert operations. However, consideration should be given to minimizing the amounts involved.
- 877 There should be consequence management, including the recovery of the monies lost
878. There was a report, the PAN report, that had been compiled by an internal investigation team which revealed, amongst others, at least *prima facie* criminal activities, which recommended criminal investigations that could have involved Mr Fraser. After the report had been handed over to the Directorate of Special Crime Intelligence Unit (the Hawks), Minister Cwele ordered that the matter be taken from the Hawks. The resumption of the investigations should be reconsidered by the Hawks; it might be that whoever were involved, including Mr Fraser, get absolved; but the investigations should be allowed to take their normal course. The Commission has noted Ambassador Cwele's denial that he ordered the discontinuance of the investigations, but it would remain a puzzle why they stopped. In any event, the denial is irrelevant to the Commission's recommendations.
879. The role played by Ambassador Thulani Dlomo, Mr Mahlobo, Mr Arthur Fraser and other people involved in the withdrawal, handling and distribution of SSA's money, should be looked into by the law enforcement agencies
880. The Inspector General of Intelligence should be allowed more access into the activities of the country's intelligence services. There has been evidence by the current IGI that attempts were made to frustrate some of his investigations

881. Consideration should be given to allowing the Auditor General adequate access to audit the country's intelligence agencies; without prescribing, consideration may be given to giving top clearance certificate to some staff of the Auditor General; consultations with the IGI and the Auditor General should be considered by the SSA. The Commission notes as commendable the efforts of Mr L Jafta, the former Acting Director-General of the SSA, that he has opened the door to the Auditor-General to audit the SSA. It is a step in the right direction and an indication that this recommendation is implementable, particularly subject to other conditions such as security clearance at the appropriate level.

### **Maintenance of Secrecy: The balancing act**

#### Findings

882. The Commission appreciates and agrees that there is a need for secrecy regarding covert operations. However, there is also a need to balance that with transparency and, in particular, accountability; be it in the form of financial accountability or accountability in respect of activities carried out to ensure compliance with the law; for example, that intelligence services are not abused to serve the personal interests of some individuals. As was said in the evidence, which must be accepted, not everything should be locked up in the vaults.

883. Various instances of the abuse of the secrecy principle were mentioned. The Commission gives a few examples of them. To start with, there was a ridiculous case in which SAPS Crime Intelligence reportedly withheld information in respect of the purchase of curtains for a house on the basis of secrecy, whereas details of the purchase could have been given without disclosing the address of the house such as where the curtains were bought. Regarding the SSA, it was as a result of reliance on the secrecy principle that no verification could be made that intended beneficiaries did



receive monies intended for them; that some service providers were found to be non-existent; that attempts were made to thwart investigations by the Inspector-General of Intelligence; that the Auditor-General arranged with the SSA for a qualified audit annually; and the Hawks were taken off criminal investigations against certain people including Mr Arthur Fraser for the reason that it would not be in the interests of the State or national security to prosecute him, despite Mr Njenje's firm stance that that would not be the case

### Recommendations

884 The Commission recognizes the difficulty in balancing the maintenance of secrecy, on the one hand, with transparency and accountability, on the other

885. The evidence has revealed abuse of secrecy. The situation should not be left entirely in the hands of the intelligence agencies themselves. There must be some measures to hold them to account, otherwise they would become law unto themselves. The role of the IGI, the AG, and Parliament through its Joint Standing Committee on Intelligence, must be sharpened. Secrecy should not be used to hide criminal activity; law enforcement agencies should therefore be able to investigate and, where appropriate, the NPA should prosecute, otherwise there would be criminal impunity under the cover of secrecy. A situation cannot be allowed where intelligence officers are their own guardian

### **The use of SSA firearms and their disappearance**

#### Findings

886 A few witnesses testified that firearms and ammunition were taken out of the SSA's Armoury, Musanda. On one occasion, they were taken out at the instance of

Ambassador Dlomo, the person who collected them did not even have the competence to handle a firearm. They were therefore issued to that person in contravention of prescripts and the law. It was an assortment of firearms including rifles and submachine guns. When instructions were later given by Mr Fraser for their return, only some were brought back; some were still outstanding at the time of the evidence. The purpose for the arms was not explained. Issuing firearms under those circumstances amounted to the abuse of the assets of the SSA. One Johan, who was at the armoury, played a major role in facilitating the irregular issuance of the firearms.

- 887 The release and distribution of weapons from the SSA armoury appeared to have been lax; for example, it would not be clear what they were to be used for or by whom, or whether the people for whom they were meant had the necessary competence to handle them.

### Recommendations

888. The involvement of Ambassador Thulani Dlomo and Johan, constitute, *prima facie*, criminal conduct in violation of the Firearms Control Act, and the SSA prescripts governing the issuance and control of the SSA armoury. The matter calls to be referred to the law enforcement agencies for further and thorough investigation, particularly as some of the firearms and ammunition have not been returned. It is noted, in this respect, that the witness (Dorothy) who was involved in the collection of the firearms on the instructions of Ambassador Thulani Dlomo, testified that she opened a case of missing firearms with the police; the question is: what have the Police done with that matter?
- 889 The process for the issuance of firearms out of the SSA armoury needs to be tightened up, bearing in mind that even rifles and submachine guns were issued. These are weapons of war. The country presently has a problem with the illegal possession and use of firearms. As indicated earlier, the emphasis of intelligence services should not

be on the security of the State (State Security) but on the interests of the citizens (National Security) The wanton distribution of SSA weapons by the SSA undermines its very core function to ensure the security of the citizens

### **The abuse of the vetting system**

#### Findings

890 One of the issues before the Commission was the manner, and the purpose for which, the vetting system was conducted.

891. Firstly, the evidence established that, apart from the normal vetting system of the SSA, Ambassador Thulani Dlomo established a parallel vetting system which may well have been probably illegal He also actually recruited somebody from outside the SSA to do the vetting of certain people. This created a potential danger to the country in that people who did not qualify were given security clearance Evidence was further that the process of vetting was flawed in many ways For example, some forms not being properly completed, a person being interviewed by more than one person thereby breaking the consistency; and names and information not being loaded onto the official system

892. Then there was the abuse of the vetting system. For example, questions were asked about the regularity of Mr Arthur Fraser himself, the former DG of the SSA, regarding his top-secret clearance certificate which was said to have been issued on an expedited basis; while the practice of expedited clearance was acknowledged, questions arose about the need to do so in his case. Then there was the most glaring abuse of the vetting system by Mr Fraser himself Once the Inspector General of Intelligence, Dr Dintwe, told him that he was investigating him because of certain activities, Mr Fraser invoked Dr Dintwe's clearance certificate! Dr Dintwe had to go to court to have his



certificate restored but the matter was resolved without the Court deciding the matter. Another case of apparent abuse of the vetting system was the withdrawal, or refusal, of the security clearance certificate to the former National Director of Public Prosecutions, Mr Mxolisi Nxasana, who Mr Zuma may have feared was poised to reinstate criminal charges against former President Zuma.

### Recommendations

It appears from the evidence that the parallel vetting system created and implemented by Ambassador Thulani Dlomo was discontinued. However, given the danger posed to national security by issuing security clearance certificates to people who might not have qualified, makes for a serious matter; moreover, Ambassador Dlomo and those involved might have transgressed the law. An investigation by law enforcement agencies is warranted. An internal investigation should also be conducted in respect of those whose certificates are suspect.

### **On the irregular recruitments and appointments to Intelligence Services**

#### Findings

893 Evidence tendered was that there were no clear criteria for the recruitment of non SSA members. Ministers were even involved in the recruitment of their relatives or people they knew. Ambassador Thulani Dlomo also became involved in the recruitment even before his appointment as General Manager: Special Operations on 18 January 2012. The danger with the recruitment based on connectivity was its potential to make the recruited people beholden to those who brought them in; they might tell those who recruited them only what the latter wanted to hear, thus compromising the objectivity of information. The recruitment was therefore not always done in the best interests of the SSA, but primarily to benefit individuals.

894. Cogent evidence was placed before the Commission by Dr Dintwe, the IGI, regarding irregular appointments, also as to their possible motive and impact on the issue of State capture. There were irregular appointments to both the SSA and to Crime Intelligence. Such appointments, said Dr Dintwe, created instability and a potential for State Capture; in some instances, no criteria were either used or were not there. He gave a few examples, which also indicated executive overreach. In one instance, former Minister Bongani Bongo ordered the National Intelligence Co-ordinating Committee ("NICC") to appoint someone to a senior position on the basis that the person was personally known to him; shortly after the appointment, the person was promoted, again irregularly, to a higher position. In another instance a senior person caused the advertisement of a vacant post to be withdrawn because his preferred candidate was not shortlisted for interview. The many other instances mentioned by Dr Dintwe demonstrated beyond doubt that irregular appointments were made to intelligence services.
895. Despite queries raised with her, including *prima facie* evidence that her predecessor (Mr Bongo) contravened the provisions of the Intelligence Services Act, Minister Letsatsi-Duba, then Minister of State Security, failed to respond. There was nepotism including recruitment of families of Ministers. Former Minister Mahlobo, then Minister of State Security, also selected people for recruitment. Such instances were also found with Crime Intelligence; one General in the Free State acknowledged the practice and cited the recruitment of a girlfriend. Dr Dintwe indicated that the people appointed in that way later feel beholden to those who recruited them. The Commission is satisfied that, on the basis of the evidence before it, irregular appointments were made; that Ministers involved themselves in the recruitment and that such appointments were not in the best interests of the intelligence services as they held the potential of non-meritorious appointments; and also that the people would feel beholden to those who brought them in. It is also possible that at least some of them, especially those recruited by Ministers, could have contributed to State Capture; at least such a suspicion, would

be well founded. Such appointments must therefore be frowned upon. In one instance, the Director-General refused to recommend, but the Minister made the appointment anyway; in another, 26 people were irregularly promoted during the period of Minister Ayanda Dlodlo.

### Recommendations

- 896 The recruitment criteria must be clear and be strictly adhered to; and certainly there should be no Executive involvement, let alone by bringing in people on familial or other non-professional considerations.

### **The use of questionable Intelligence Reports**

#### Findings

897. Convincing evidence was placed before the Commission of the danger posed by the use of questionable Intelligence Reports. Those that were referred to as examples were by SAPS Crime Intelligence;
898. At his meeting with Ambassador Maqetuka, Mr Shaik and Mr Njenje to discuss the investigation into the Guptas, President Zuma first raised what was called the Mdluli Report, which was not even on the agenda. It was a report by Police Crime Intelligence which was at the time headed by General Richard Mdluli. The report alleged that there was a plan to topple President Zuma. It turned out that it had been rejected by the trio after a thorough analysis; despite that, former President Zuma told them that he believed it. In fact the people who prepared it were junior to the three
899. In Mr Shaik's view, the raising of the Mdluli Report bore direct relevance to the issue of the investigation of the Guptas: the fact that the President believed Mr Mdluli over the three most senior intelligence chiefs at the time was an expression of lack of confidence



in them meant to impact on the discussion they had come for, namely, the issue of the investigation of the Guptas. As Mr Shaik was to put it later in his evidence before this Commission, the discussion of the Mdluli Report, set the tone for the discussion; the rest is now history! A thoroughly discredited intelligence report had a bearing on that history. The Commission has already noted the probable consequences of the stopping of the investigations into the Guptas in relation to State Capture.

900. The other discredited Police Crime Intelligence report by General Mdluli also played a role in the breakdown of the relationships between former President Zuma and the above trio. The report was given to Ambassador Maqetuka by the then Minister of State Security, Dr Cwele, on the instructions of the former President for the SSA to have a look at. It alleged that there was a conspiracy by some generals within the SAPS to remove General Mdluli, at the time the Head of Crime Intelligence. After looking at it, the trio rejected it for a number of reasons such as that it was full of inaccuracies and, importantly, that it had been commissioned and prepared by General Mdluli himself thereby raising the issue of a conflict of interest; he should have stood aside and asked one of his senior colleagues to investigate.
901. The well-known alleged intelligence "report" was canvassed by the IGI, Dr Dintwe. It was a report on the basis of which Minister Pravin Gordhan and his then deputy Mr Jonas were recalled by former President Zuma from a trip abroad. The report was to the effect that Mr Gordhan and Mr Jonas were overseas to meet with some foreign agents who were calling for regime change in the country. Dr Dintwe received a complaint about the report from the Democratic Alliance and the South African Communist Party. What he set out to investigate was the origin, authenticity and veracity of the alleged intelligence report. Former President Zuma, according to Dr Dintwe, was the only person who said he had the report. Dr Dintwe set up a meeting with him to ask for the report. He said the former President did not say there was a

report; the only thing he said was that, when the time was ripe, he would explain in order for Dr Dintwe to understand; he did not commit himself on whether the report existed or not. Soon after the meeting Dr Dintwe wrote to President Zuma to indicate he was awaiting further engagement to conclude his investigation.

902. As at the date of Dr Dintwe's evidence before the Commission, he has not heard from the former President; he did not furnish him with a copy of the alleged intelligence report, except to see a badly written document on social media which he could not act on as the former President had not taken ownership of it. Importantly, all the country's three intelligence agencies told Dr Dintwe that the report was not given by them. Based on all these, the Commission doubts the existence of any authentic intelligence report on the basis of which former President Zuma removed Mr Gordhan as Minister of Finance and his then Deputy Mr Jonas. It is to be noted that President Ramaphosa criticised the intelligence report when he spoke publicly about Mr Gordhan's removal.

903. Two more questionable intelligence reports were referred to and criticized by Dr Dintwe. They were also issued by Crime Intelligence during the time of Mr General Mdluli. The first report alleged a plot by General Shadrack Sibiya, Mr Robert McBride and Mr Paul O'Sullivan and others to overthrow the government. The second one related to the alleged unlawful rendition of foreign nationals involving Generals Sibiya and Dramat.

904. Dr Dintwe said both reports turned out to be untrue. The criminal charges against General Sibiya and General Dramat relating to the rendition matter were withdrawn. From the Commission's point of view, there was a relevant and important angle to this second report: at the time it was compiled, General Sibiya was, according to Dr Dintwe, involved in investigations against General Mdluli, then Head of Crime Intelligence.

905. Dr Dintwe had serious criticism of the two reports; for example, that they were incoherent, prepared in a clumsy manner, full of spelling errors and unintelligible and

too substandard to be submitted to the Head of State. These reports were not put through the vigorous process of checks and balances. Yet, he said, they were dealing with the lives and rights of people. It is not for the Commission to adjudicate on the veracity of the two reports but there are three worrying things about them. Firstly, that General Sibiya was investigating General Mdluli who, incidentally, has since been convicted of some crime or crimes which might or might not be related to his investigation by General Sibiya. Secondly, the poor standard of the reports and, thirdly, the fact that not only did no prosecution ensue, but that, on the contrary, regarding the rendition matter, the charges were withdrawn. These considerations remind all and sundry, let alone those in power, to be cautious with intelligence reports. Again, as a matter of interest to the Commission, Dr Dintwe's view was that those who compiled the reports did so in the knowledge that their reports would not stand scrutiny before the courts, but were compiled to remove people from their positions who stood in the way of State capture or corruption and looting of state resources.

### Recommendations

- 906 The peddling of false and unsubstantiated so-called intelligence reports can destabilize the country. The country's intelligence structures, as well as those in power to whom they report, need to be alive to those dangers. The bottom line is that sound and effective mechanisms should be in place to be able to sift out false reports. The Commission was told that former President Mandela rejected an intelligence report that there were people planning to overthrow him. A great deal of prudence is required in dealing with intelligence reports. You need to have professional people, appointed on the basis of merit, to be in charge of intelligence services.



## **South African Police Service: Crime Intelligence**

### Findings

- 907 Although there was not much evidence about the SAPS Crime Intelligence, enough evidence was given to enable the Commission to make adverse findings on the SAPS Crime Intelligence reports under the leadership of General Richard Mdluli; they were discredited. The danger of such false intelligence reports has already been pointed out. The findings and the recommendations have already been made.
908. It is SAPS Crime Intelligence which was allegedly involved in attempts to procure the grabber. The grabber was to be used at the ANC's NASREC Conference where the ANC's national leadership elections were to be held. The evidence was to the effect that part of the excessive price that was to be paid for the grabber would be used to buy votes at the conference. This would, of course, interfere in the internal politics of the party. The Commission finds that the attempts were indeed made as alleged, although it can't make a finding that Crime Intelligence was officially involved; there were, however, strong indicators that that was the case because the intention to procure the grabber was confirmed by a Divisional Commissioner to Dr Dintwe.
909. It is also the Commission's finding that there were irregular recruitments into the Crime Intelligence, because no less than a General admitted that much.

### Recommendations

- 910 The recommendations made in respect of false reports, irregular recruitments and abuse of secrecy made earlier in this report in respect of the SSA, also hold good with regard to SAPS Crime Intelligence.

## The role of Parliament as an authority of oversight

### Findings

911 Section 3 of the Intelligence Services Oversight Act 40 of 1994 deals with the functions of the Joint Standing Committee on Intelligence (JSCI), namely, to exercise some oversight over the functions and activities of the intelligence services. In executing its duties, the Committee may, amongst others, request relevant officials to explain any aspect of reports furnished it, including reports by the SSA, Police Crime Intelligence, Defence intelligence and the Inspector General of Intelligence. Parliament's Joint Standing Committee on Intelligence (JSCI) failed to properly perform its oversight duty in respect of the SSA; to mention some examples: It is so that through the 11 September 2009 Proclamation, former President Zuma restructured the country's intelligence services. He did that by amalgamating the NIA and the SASS into the SSA, something that could not be done through a mere proclamation but through national legislation; that is, through Parliament. In paragraph 5.1.1 of its Annual Report *"For the Financial Year Ending 31 March 2020 Including the Period Up to December 2020"* published on 13 September 2021, the following is recoded: "The proclamation was announced in July 2019 but only approved in October 2010. The legislation that amended the changes was only approved later in the form of the General Intelligence Laws Amendment Act, No. 11 of 2013. The gap between 2010 and 2013 resulted in serious concerns and illegal functioning of the SSA. The new structure created a powerful DG with powers concentrated on a single individual. The amalgamation also enabled some members of the executive to issue illegal instructions to members of the SSA. These instructions amounted to executive overreach." True, the report was issued by the JSCI of the Sixth Parliament, but there is no evidence before the Commission that any committee before it did anything about such illegal functioning of the SSA in the period 2010 to 2013 when the above Act was passed. A committee could not have justified its failure to raise its

voice or to exercise its oversight on the excuse that it would have acted in breach of any law relating to secrecy. Nor is there any evidence that the JSCI dealt with the matter of the executives' illegal instructions and overreach. The report also confirms in its paragraph 5.1.4 that information was given about challenges such as corruption, irregular recruitment of some members of the Special Operations Unit, illegal proactive services, parallel vetting structure that issued fake top secret clearance certificates and sniper training for some non SSA members as was attested to by various witnesses.

912. There was a time when there was no IGI appointed for a period of about 22 months; that is, for all that period, Parliament failed to fill a national position which played a very important oversight role. The Commission was told that a lot of malpractice within the SSA occurred during that period. There can be absolutely no justification for this failure and Parliament should have ensured that this did not happen or that the executive was held to account for this.
913. The Committee failed to act on the reports submitted to it by the IGI, which set out amongst others the misuse of money, and attempts to procure a grabber (by Crime Intelligence) irregularly.
914. The Committee failed to act on the advice and information given to it by the country's three most senior intelligence officers. The then Director-General of the SSA briefed the Committee for two days about the problems the SSA was experiencing in the execution of its duties; as he put it, that they were in deep trouble. The then chair of the Committee said at the end of the briefing, that they would be called back but nothing further happened; there was not even a follow up.
915. There was a failure on the part of the JSCI to hold the Ministers of the time accountable, especially former Ministers Cwele and Mahlobo. If the Committee accepted that the Ministers had the right to be involved in operations, it failed to hold them accountable.



given the issues placed before it by the IGI or senior intelligence officers; if the Ministers did not have the right to be involved in operations, that was all the more reason why they should have been hauled before the Committee; either way, there was a failure by the Committee to carry out its oversight duties.

916. By failing to properly carry out its oversight role and to heed the call by the country's then intelligence chiefs, Parliament has, at least to some extent, contributed towards State capture. Because its failure to do its job meant that acts of state capture and corruption were allowed to spread and deepen. It should have stepped in to ensure the continuation of investigations against the Guptas.
917. Some findings of the JSCI and its recommendations: Naturally, the report deals with a number of issues some of which have no bearing on the mandate of this Commission. The Commission therefore mentions only some of the findings in the report which are pertinent to some of the issues raised; these are set out in paragraph 8 of the JSCI's report. The findings are significant in that they show that all was not well within the SSA, Crime Intelligence and to some extent Defence Intelligence; a few examples are mentioned below to illustrate the point
918. Regarding the SSA: The slow implementation of the High-Level Review Panel Report, security breaches that led to intelligence failures, threats to the Veza investigation team that was investigating irregularities within the SSA, challenges in the financial statements, and instability in the SSA's senior management. The problem of finance management is confirmed by the qualified opinion of the Auditor General, which is an annexure to the Committee's report
919. Regarding Crime Intelligence: Audited Financial Statements revealed irregularities; its annual report revealed that some senior managers were not vetted, so too over and under expenditures not reported. Certificates of activities by the Office of the Inspector

General of Intelligence reported looting of funds from the Secret Services Account, and also lack of operational directives

920 Defence Intelligence: Audited Financial Statements showed non-compliance with legislation; failure to comply with competitive bid processes for the procurement of goods; lack of compliance with the National Treasury policy and weak financial controls. Its annual report revealed amongst others vetting and human resource challenges. The certificate of activities showed vetting backlog and that some generals and senior managers were not vetted.

921 Regarding the Office of the Inspector-General of Intelligence: The JSCI noted that the office had human resource challenges; and also noted that only 0% to 2% of the OIG's recommendations were implemented. This means that between 98% to 100% of the IGI's recommendations are not implemented

922 It is to be noted that the above findings of the JSCI are in line with the evidence tendered by various witnesses before the Commission regarding challenges that plagued the above intelligence services.

### Recommendations

923. It hardly needs mentioning that Parliament should exercise its oversight role properly and fully.

924 Returning to the report of the JSCI, it is to be noted that in paragraphs 9 and 10, respectively, the Committee makes generic and specific recommendations. These recommendations are aimed at ensuring a better service by the country's intelligence services. It is hoped that they will be seriously considered; the report having been tabled before Parliament for consideration. It is a public document for anybody to access.

## Law Enforcement Agencies

### Findings

925. An internal team of the SSA conducted an investigation into a project known as the Principal Agency Network (PAN) which had been launched by Mr Arthur Fraser. The report revealed some criminal activity and was handed over to the Directorate for Priority Crime Investigation (the Hawks) and to the NPA for prosecution, both of which indicated at one stage that they were ready to do so. The Hawks even reduced the costs they would charge. The prosecution was, however, stopped by Minister Cwele, who said it was on the instructions of President Zuma, at the time, on the ground that prosecuting Mr Fraser would compromise national security, this notwithstanding Mr Njenje's insistence that that would not be the case as what was being investigated was pure crime. It is public knowledge that, after Mr Zuma had served a few weeks of his 15-month term of imprisonment imposed on him by the Constitutional Court for defying its order that he appear before this Commission, Mr Fraser who was the National Commissioner of Correctional Services, granted him medical parole under questionable circumstances and against the recommendations of the Parole Board. That matter is the subject of pending litigation in the Courts. However, the picture that emerges is that Mr Zuma put a stop to an investigation that could well have led to Mr Fraser's arrest, prosecution and maybe imprisonment and Mr Fraser put a stop to Mr Zuma's continued incarceration despite the fact that Mr Zuma's incarceration was in terms of an order of the Constitutional Court.

926. Ambassador Cwele's denial that he stopped the investigation as alleged, was noted. However, it boggles the mind why the matter would be taken away from the Hawks, who were ready and willing to proceed; why the top three would abandon the matter after, as they put it, so much effort and resources had gone into the investigation. It also



boggles the mind why Ambassador Cwele, having supported the referral to the Hawks, did not demand progress reports when he did not receive any. It also boggles the mind that, thereafter, in September 2016, former President Zuma appointed Mr Arthur Fraser as DG of the SSA. On the basis of all the foregoing, it is the Commission's finding that while Ambassador Cwele might not have personally wished for the criminal investigation by the Hawks and the prosecution to stop, he did say that the former President said it should stop and also that former President Zuma did give instructions for the investigation to stop.

## 927 Recommendations

928 It is recommended that the law enforcement agencies resume this investigation that was stopped by President Zuma on the basis that it would threaten national security as no evidence has been presented that pursuing the investigation would threaten national security with a view to the NPA possibly considering if there is enough evidence, possible criminal charges against all those implicated including Mr Arthur Fraser. The allegations are serious; they point to a massive abuse of the assets of the SSA, such as the purchase of some 300 vehicles now idling all over Gauteng, and many houses registered in the names of individuals. The issue of a possible compromise to national security can always be discussed with the National Prosecuting Authority with the appropriate intelligence heads, and should not be decided solely by politicians who might have other reasons, possibly political, not related to national security.

## **On the Inspector General of Intelligence**

### Findings

929. The Inspector General of Intelligence is meant to exercise oversight over the activities of the country's intelligence services; to that end, he or she accepts complaints from the

public, including individuals, against such services. Yet it is the Commission's finding that obstacles were placed to inhibit the IGI in the execution of his duties. The current IGI has testified at length about such obstacles; for example, limited budget and no direct budget; being allowed only restricted or managed access to information by the DG's and other heads of intelligence services.

930 The IGI's complaints to Parliament's Joint Standing Committee on Intelligence would not attract adequate response and his reports were not acted upon. The office could only employ staff upon approval of the Minister through the DG of the SSA, the very body over which he was to exercise oversight; his office shared the IT system (the server) with the SSA, giving rise to some concern on the part of other intelligence services such as the Police Crime Intelligence.

931 The office of the IGI does not have enough personnel, with some important posts not filled even though funded. It has been indicated above how the Inspector General's security clearance was withdrawn by the then DG of the SSA, Mr Fraser, once the IGI had told Mr Fraser that he was investigating him. The budget of the office of the Inspector General is within that of the SSA, over which he is supposed to exercise oversight.

### Recommendations

932. Instead of being weakened or undermined, the office of the Inspector-General needs to be strengthened in many ways. It needs more staff and a budget of its own. The Inspector General should enjoy unfettered access to classified information and be better equipped. The office of the IGI must be independent and respected.

933. The findings and reports of the IGI must be taken seriously by the Executive and Parliament. The IGI told the Commission that the issues he took to the JSCI Parliamentary were not being responded to.
934. The Commission cannot make an exhaustive list of all the steps that need to be taken to make the office of the IGI effective and capable of carrying out its duties; the bottom line is that all the necessary measures must be taken to achieve that objective.
935. The issue of the independence of the IGI is fundamental. In his evidence, Dr Dintwe made this point, and referred to the kind of independence enjoyed by the Hawks and IPID. In this respect, reference has to be made to the judgments of the Constitutional Court in the *Glenister*<sup>986</sup> and the *McBride*<sup>987</sup> cases.
936. The *Glenister* case (popularly known as *Glenister II*): In that case, in which the independence of the Hawks was an issue, the Court made the point that it was a constitutional duty of the state, when creating an anti-corruption entity, to give it adequate independence.<sup>988</sup> *"We therefore find that to fulfil its duty to ensure that the rights in the Bill of Rights are protected and fulfilled, the state must create an anti-corruption entity with the necessary independence and that this obligation is constitutionally enforceable. It is an intrinsic part of the Constitution itself."*<sup>989</sup> The Court said that failure to create a sufficiently independent anti-corruption entity would infringe on people's fundamental rights which would otherwise be corroded by corruption.<sup>990</sup> It does not have to be full independence, but adequate level of structural and operational autonomy to prevent undue political influence. Obviously, some of the issues that arose

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<sup>986</sup> *Hugh Glenister vs President of the Republic of South Africa and Others* 2011(3) SA 347 (CC)

<sup>987</sup> *Robert McBride vs Minister of Police and Others* 2016(2) SACR (CC)

<sup>988</sup> Paragraph 195 of the judgment

<sup>989</sup> Paragraph 197 of the judgment

<sup>990</sup> Paragraph 198 of the judgment



in the Glenister case do not arise with regard to the IGI; for example, security of tenure. The IGI does enjoy security of tenure, and the method of appointment is constitutionally sound. It is by the President, approved by a resolution of the National Assembly by at least two thirds of its members. However, there is one point that the Court made that applies with equal force, if not more, with regard to the IGI, namely, the issue of public perception as to whether or not the IGI is in fact independent. On this point, the Court said that the appearance or perception of independence plays an important role.<sup>991</sup> In this respect, Dr Dintwe says that the other thing that compromises the independence of the office is that it is situated within the Ministry of State Security; the IGI is using the ICT infrastructure of the SSA and its server, which means that being the owner of the server, the SSA may access information that belongs to the IGI; this point also unsettles other intelligence services such as the SAP's Crime Intelligence and Defence Intelligence.<sup>992</sup>

937. The McBride case: The case affirmed the principles set out in the Glenister case with regard to the importance of the independence of an anti-corruption entity. At issue was the power of the Minister of Police over and in relation to the Independent Police Investigative Directorate (IPID), in particular the power to unilaterally suspend its Executive Director and to institute disciplinary proceedings against him. The Court referred to and agreed with the majority judgment in the Glenister II judgment, that *"a corruption-fighting entity will have the requisite independence if it can be established that the 'reasonably informed and reasonable member of the public will have confidence in an entity's autonomy protecting features'"*<sup>993</sup>

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<sup>991</sup> Paragraph 207 of the judgment.

<sup>992</sup> Page 315 line 17 to page 317 line 25

<sup>993</sup> Paragraph 37 of the judgment.

938. It is recommended that the Inspector General of Intelligence should enjoy adequate independence in line with the guidelines set out above

### **On the Auditor-General**

#### Findings

- 939 The evidence points to the need to have the Auditor General authorised to audit the expenditure of the SSA. It has been pointed out already how large sums of money were not accounted for. Yet, the role of the Auditor General is not properly fulfilled because some information is deemed classified for that office to access. The arrangement between that office and that of the Inspector General of Intelligence, in terms of which the Auditor General directed the office of the Inspector General on how to carry out some audit, was not adequate; it amounted to a ticking box exercise without depth. An arrangement between the Auditor General and the SSA to agree on a qualified report in respect of the so-called slush fund (which forms a substantial part of the budget) was also not acceptable. It is the Commission's view that the fact that there were the large sums of monies that could not be accounted for, was due at least largely to the fact that the office of the Auditor General could not execute its duties as it should have, and that the implicated people acted with impunity as they were aware of the weaknesses in the system

### **Recommendations**

940. A way should be found to enable the auditing of the SSA by the Auditor General while preserving the required secrecy; for example, by granting the appropriate security clearance to some staff within the office of the Auditor General. As stated above, the Inspector General has indicated that his office does not have the expertise and capacity to audit the intelligence services. The bottom line is that the current situation cannot be

left as it is; at the very least the office of the Inspector General should be properly capacitated – an exercise which might require a lot of resources. The Commission has noted that the former Acting Director-General of the SSA, Mr L Jafta had accepted that the SSA be audited by the Auditor-General.

## **The role of some key players**

### **Findings**

941. In the midst of all the questionable activities of the SSA from the period after its formation in 2009, there are certain prominent role players. The role of each one of them was testified to by various witnesses, as appears in the summary of evidence. For the sake of convenience, the witnesses in respect of each such role player are grouped together, with their respective evidence being restated more or less as it appears in the summary.

942. Former President Jacob Zuma: One of the most important roles he played was to restructure the intelligence services by collapsing, through the 11 September 2009 Proclamation, the NIA and the SASS into the SSA. The amalgamation had disastrous consequences. For a start, it was not competent to do this through a mere proclamation; it concentrated powers of the former NIA and the former SASS in the hands of one person, namely, the Director-General of the SSA, Ambassador Maqetuka and later Mr Arthur Fraser; he, for the first time, created the Ministry of State Security and drifted away from the guidelines and principles of the Intelligence White Paper that were reflected in the Constitution; it was under him that Ministers of (of State Security) became involved in SSA's operational issues. Crucially, he discouraged the investigation against the Guptas, and stopped the Hawks investigations against *inter alia* Mr Arthur Fraser whom, some three years thereafter, he appointed Director



General of the SSA, notwithstanding the findings against him that were referred to the Hawks and the NPA which he knew about

943. As it is known, former President Zuma failed to return to the Commission to put his own version with regard to evidence against him.
944. The Commission has already made a finding that stopping investigations against the Guptas was one of the factors that contributed towards State Capture. Therefore, by discouraging investigations against the Guptas, former President Zuma, wittingly or unwittingly, contributed towards State capture. In this respect, it may be convenient to restate and put together the evidence by the trio, Mr Shaik, Mr Njenje and Ambassador Maqetuka here
945. Mr Shaik: The former President listened calmly; he did not scream or shout. In his response, he told them about his long-standing relationship with the Guptas; that they were businesspeople; that they once assisted his son Duduzane Zuma when nobody was going to employ him; that they were introduced to the ANC by people associated with President Mbeki; that the relationship with them was of long standing, dating back to the Mbeki administration. To him there was no need to investigate. It was clear to them that he did not want the investigation to continue. President Zuma cast himself as a victim by peddling the narrative that the Gupta investigation was because they wanted to get at him, something that was hurtful to the three of them as they all had had a long relationship with him. Mr Shaik even had a feeling as though the three of them were seen as part of the people wanting to topple him. The bottom line of Mr Shaik's evidence was that former President Zuma did not want the investigation to go on as there was no need. His son stayed with the Guptas in India when he went there for studies; the relationship, according to the former President, was not on the basis of him being President; again, with the narrative of being a victim, he said people wanted to topple

him.<sup>994</sup> This narrative could also be linked to the Mdluli Report. However, although the former President did not in so many words instruct them to stop the investigation, he made it clear, by pointing to his long relationship with the Guptas that the investigation should stop. After the meeting with the President, they decided that the investigation should not continue; if it did, it would be at the cost of their jobs.<sup>995</sup> He did not raise the issue of Mr Njenje's business interests as the Minister had done. With all the arguments the former President raised, he was making the point that it was not necessary to continue with the investigation. Mr Shaik's view was that from what the former President said, pushing the investigation would have made them appear as part of the people who wanted to topple the former President.<sup>996</sup> The former President was very loyal to his friendship with the Guptas. The investigation did not continue, even though the top three wanted it to. However, Mr Shaik had no doubt that, had they proceeded with the investigation regardless, they would have been removed from office; he gave the case of one Billy Masetla, then Director General of the National Intelligence Agency, who was dismissed from a senior intelligence position.

- 946 Mr Njenje's evidence: Mr Njenje confirmed Mr Shaik's evidence that after the trio had had a difficult meeting with Mr Cwele when they insisted on investigating the Gupta family, they went to see the President to raise their concerns about Mr Cwele with President Zuma.<sup>997</sup> At that meeting President Zuma confirmed his good relationship with the Guptas; how they had taken his son Duduzane into their company, and that they came from a good family. Zuma's view was that the Guptas should not be investigated.<sup>998</sup> The former President's statement that the Guptas did not need to be

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<sup>994</sup> Page 170 line 6 to page 173 line 8

<sup>995</sup> Page 173 line 11 to page 174 line 23

<sup>996</sup> Page 186 line 1 to page 188 line 14

<sup>997</sup> Page 138 line 8 to line 21

<sup>998</sup> Page 138 line 22 to page 140 line 18

investigated had a negative effect on the morale of Njenje's teams The former President would say give me reports but on that occasion it was clear that he did not want the investigation to go on despite being told that those were intelligence matters justifying an investigation; he did not give adequate reasons but simply said that there was nothing wrong with the Gupta family.<sup>999</sup>

947 The evidence of Ambassador Maqetuka: The former President listened throughout, though, according to the witness, his body language showed he did not like what he was being told; at one time he asked for the report which the witness said he could not give to him as he, the former President, was conflicted The former President was calm, and also talked about his relationship with the Guptas; the meeting could have taken more than two hours; the former President would not rush them whenever they met with him <sup>1000</sup> During the meeting the former President did not raise the issue of Mr Njenje's conflict of interest, even though he was told the Minister had raised it <sup>1001</sup> According to the witness, the former President did not express a view as to whether the investigation should stop or not, except that he gave a long explanation about his relationship with the Guptas and how it started <sup>1002</sup> When Mr Njenje briefed the former President, he was not presenting a formal report, but rather reading from his notes; nor did the witness see a formal report or a scoping report until he left in 2012 (the witness explained what a scoping report was) <sup>1003</sup>

948 The totality of the above evidence by the three witnesses: Although the witnesses differ on some details regarding what transpired at their meeting with the former President Zuma, they all agree that it became clear that he did not want the investigations against

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<sup>999</sup> Page 142 line 18 to page 144 line 18

<sup>1000</sup> Page 197 line 19 to page 200 line 20

<sup>1001</sup> Page 201 line 9 to page 202 line 1

<sup>1002</sup> Page 202 line 8 to line 15

<sup>1003</sup> Page 202 line 18 to page 203 line 19



the Guptas to continue; that was why he went on and on about the fact that they were good people, his friends and that they had helped his son. Moreover, there are other pointers. He never asked for a progress report. Also important was what Mr Njenje said earlier in his evidence. He testified about an occasion when he accompanied the then Minister of Mining, Susan Shabangu, to the Presidential residence where she was to meet with one of the Guptas at the behest or with the blessing of the former President. They were actually received by Mr Gupta in the President's study. In that meeting Mr Gupta hassled the former Minister into expediting their application for some mining, until Mr Njenje objected to the way Mr Gupta was treating the former Minister. The incident points strongly to the Guptas having enjoyed a special relationship with the former President, something which would be consistent with the evidence that he did not want any investigations to be conducted against them. Yet another indicator was the pressure that was brought to bear on Ms Mtshali and her business partner to part with their shares in a company in favour of the Guptas.

949. As said already, it is the view of this Commission that the stopping of the investigation at the behest of former President Zuma contribute to State Capture, in the country. This conclusion is not reached simply on a default basis, but after thorough consideration of all the evidence placed before it, including evidence relating to some State-Owned Enterprises.

950. Regarding the amalgamation of the NIA and the SASS into the SSA, through the proclamation, compelling evidence by the country's three former most senior intelligence officers that it resulted in problems some of which are referred to above; that it was the case of a faction (within the ruling party) asserting power by taking control of the country's intelligence; those who refused to serve that broader agenda, including those who had been in exile with former President Zuma such as the above three were like them replaced to enable the pursuance of the agenda; the difficulties that

arose when the three wanted to investigate the Guptas such as the fallout they found themselves in as a result, was given to demonstrate the point. Some of the appointees are referred to below. As said already, it is the view of this Commission that the stopping of the investigation at the behest of former President Zuma, if not the fundamental cause of State Capture, certainly one of them. In the absence of explanations by the former President which he chose not to proffer despite compulsion, the Commission agrees with the above view. This conclusion is not reached simply on a default basis, but after thorough consideration of all the evidence placed before it, including evidence relating to some State-Owned Enterprises. The evidence relating to the State Security Agency cannot and should not be considered in isolation.

951. 773.2 Ambassador Thulani Dlomo: The evidence shows Mr Dlomo's massive involvement in operational issues and, secondly the handling of cash. Witness K and Mr Y's affidavit: The affidavit of Mr Y, who was too ill to come and testify in person, together with the evidence of Ms K which confirmed the contents thereof, show Ambassador Thulani Dlomo's massive involvement in the activities and operations of the SSA. He was appointed to the SSA on 18 January 2012 as General Manager Special Operations. Investigations by the Veza team established that some of the operations that were run by the Chief Directorate Special Operations under him fell outside the lawful mandate of the SSA; prescribed procedures were not followed and applicable governance, financial and operation directives of the SSA totally ignored.<sup>1004</sup> Shortly after Ambassador Dlomo's appointment on 18 January 2012 (as General Manager Special Operations) the scope of his authority was expanded further. Presidential Security Support Service and the Cover Support Unit were brought under his control as General Manager Special Operations.<sup>1005</sup> He recruited non SSA people outside of the vetting procedures of the SSA. Through the Chief Directorate Special

<sup>1004</sup> Page 71 line 11 to page 72 line 9 and paragraph 3.8 of Mr Y's affidavit

<sup>1005</sup> Page 112 line 17 to page 113 line 13 and paragraph 4.20 of Mr Y's affidavit

Operations (CDSO) under him, the SSA assumed responsibility for former President Zuma's food and toxin security, his physical security and the static protection of the President's aircraft; and sources that should have been used by legitimate intelligence structures were channelled through this parallel structure that served the interests of President Zuma rather than national interests.<sup>1006</sup>

952 Witness Dorothy: On the evidence of Dorothy, Ambassador Dlomo's activities included the irregular issuance and distribution of firearms from the SSA Armoury, some of which were said to be still missing at the time of the hearing; in the process, not only infringing prescripts within the SSA, but also the provisions of the Firearms Control Act 60 of 2000. He possibly could have contravened the law in terms of activities relating to the establishment of parallel vetting structures, providing protection to civilians, and taking away protection services to former President Zuma from the SAPS VIP protection services to the Special Operations Unit (SOU) he had created, thereby usurping the function of the SAPS; he did the same with the health services for former President Zuma that used to be the responsibility of the SANDF; his SOU also offered protection services to some private individuals, which should not have been given without a prior threat assessment by the SAPS; which protection could, at any rate, have only been given by the police once it was to be at the taxpayers' expense. Ambassador Dlomo, at least *prima facie*, acted irregularly.

953 Ambassador Dlomo was also involved in the withdrawal of large sums of cash and its movement, for which no proper accounting was made. This related largely to certain projects under the umbrella project, Project Mayibuye. There were a number of such smaller projects. Reference to only part of the evidence of Ms K will illustrate the point. The witness pointed out that, without describing activities for which the money was

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<sup>1006</sup> Page 86 line 22 to page 91 line 18 and paragraph 4.7 of Mr Y's affidavit



meant and without effective financial controls, an amount of R24million, over the initial R30million granted, was given without sufficient financial details, which was in contravention of the prescripts.<sup>1007</sup> Although she did not look at other units within the SSA to compare with, Ms K was sure that at least they would have indicated in their motivations the financial implication of their operation plans.<sup>1008</sup> It was also her evidence that regarding project Construc ao, vague and undetailed invoices were paid (in cash) A company with pseudonym Carrot Export Company issued three invoices totalling R20million (R10m, R5m and R5m) using up almost all the money allocated within three months; the invoices simply said it was for services rendered; the point the witness was making was that no details were given on the invoices as to what was being paid for and the existence of the company could not be verified.<sup>1009</sup> How the monies were spent under the name of all the projects need to be looked into.

- 954 Minister Cwele: He was at the relevant time the Minister of State Security. He involved himself in operational issues; he, either alone or on the instructions of former President Zuma, *inter alia*, stopped investigations against the Guptas, and the criminal investigations by the Hawks against Mr Arthur Fraser and possibly others. The Commission has already dealt with the significance of the stopping of investigations against the Guptas, and the consequences thereof to the country. Regarding the stopping of criminal investigations and possible prosecution of Mr Fraser for his activities in relation to the PAN project, it is possible, without prejudging the outcome, that he might not have been appointed Director-General of the SSA, as it happened about three years after the criminal process had been stopped; therein might lie the significance of the stopping of the investigations against him. Minister Cwele was at the relevant time the Minister of State Security. He involved himself in operational issues.

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<sup>1007</sup> Page 74 line 21 to page 76 line 11, and paragraph 614 of Mr Y's affidavit

<sup>1008</sup> Page 76 line 25 to page 78 line 1

<sup>1009</sup> Page 79 line 20 to page 84 line 8, and paragraph 6.15 of Mr Y's affidavit

There were two vital investigations he was said to have stopped: Firstly, the investigation against the Guptas (acting alone or together with former President Zuma) Secondly, the investigations against, and possible prosecution of, Mr Arthur Fraser, the former DDG of the SSA. He also sought to argue that the well-known Proclamation 59 of September 2009 was a competent instrument by former President Zuma to amalgamate the former National Intelligence Agency (NIA) with the erstwhile South African Secret Service (SASS) into the State Security Agency (SSA).

### **Stopping Investigations against the Guptas**

955 Mr Shaik: His evidence was that although in his affidavit Mr Maqetuka says he did not recall the Minister instructing directly that the investigation be stopped, his own recollection was that that was the case; but he contended that there was no debate that at the very least, the Minister did put pressure on them, (which would be consistent with the fact that the trio sought to take the matter up with the President) <sup>1010</sup>

956. Mr Njenje: He said that Minister Cwele said that the investigations against the Guptas should stop because he felt that that would amount to investigating the former President, but the three told him that they were not investigating the President, but to help him and the Executive to know better how to deal with that family. Mr Cwele's view which he expressed forcefully, was that the investigations should not lead to the President <sup>1011</sup> The Minister seemed to have had other interests in stopping the investigations other than national interests; in effect saying they would be investigating the President; he did not give any other reasons. <sup>1012</sup> But the three of them indicated to

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<sup>1010</sup> Page 150 line 21 to page 153 line 21 and paragraph 7 of Mr Maqetuka's affidavit

<sup>1011</sup> Page 100 line 4 to line 17

<sup>1012</sup> Page 101 line 4 to line 25

the Minister that they were not convinced why the investigation should stop, and that they were going to continue with it; but he remained unpersuaded <sup>1013</sup>

957 Ambassador Maqetuka: He too was clear that in their meeting with Minister Cwele, he said investigations against the Guptas should stop. Although the witness could not recall the Minister giving direct instructions that the investigation should stop, his clear attitude was that it should stop; he said the investigation was Mr Njenje's agenda to safeguard his own interests against the Guptas. The witness could not say how long the meeting lasted, possibly three hours.<sup>1014</sup> In all that period the witness was not given the opportunity to explain to the Minister as to what gave rise to the investigation; the discussion went back and forth about Mr Njenje's alleged conflict of interest and the Minister's contention that it was an investigation about former President Zuma.<sup>1015</sup> When they could not agree with him, they told him that they wanted to take the matter to the former President <sup>1016</sup>

958. Ambassador Cwele's version: He denied stopping the investigations against the Guptas. We now know that he said he called the meeting because he was concerned that there was some surveillance of the Guptas without a judge's permit; and also Mr Njenje's conflict of interest in investigating them, not because he was opposed to the investigation of the Guptas. It was pointed out to Ambassador Cwele that his evidence before the Commission that he was not opposed to the investigation, contradicted his affidavit in which he said that the absence of a judge's directive made Mr Njenje's conflict of interests even more untenable. It was also pointed out by the evidence leader to him that there was another divergence between his evidence and what stood in his affidavit. In his evidence he said the issue he raised and was concerned about, was the

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<sup>1013</sup> Page 104 line 1 to 6

<sup>1014</sup> Page 190 line 4 to line 20

<sup>1015</sup> Page 190 line 24 to page 191 line 16

<sup>1016</sup> Page 191 line 18 to page 192 line 16



electronic "*interception*" (without a judge's directive); however, in his affidavit, he said what he raised with the top three and was concerned about was the "*surveillance*" Ambassador Cwele's response was that there was no difference between the two, yet, as it was pointed out to him, surveillance did not necessarily take the form of electronic interception and therefore that if it did not take that form, it did not require a judge's permission <sup>1017</sup> The difference was significant in that Ambassador Cwele's objection against the investigation would have been unfounded because whereas indeed "electronic interception" required a judge's permission, the top three denied conducting it; in other words, they told him that they were conducting the kind of surveillance which did not require a judge's approval since their surveillance was not in the form of "electronic interception" (which required a judge's directive). The premise of Ambassador Cwele's objection was therefore misconceived

959 His self-contradictions aside, there is in any case overwhelming evidence that he told the trio to stop the investigation against the Guptas. For one thing, his version does not explain why the three witnesses would have wanted to take the matter up with the former President, which they in fact did. Furthermore, it appeared that he never asked for a report on the investigations. The Commission has already dealt with the significance of the stopping of investigations against the Guptas, and the consequences thereof to the country

### **Stopping criminal investigations against Mr Arthur Fraser**

960. There is also the matter of the former Minister having stopped criminal investigations by the Hawks and the National Prosecuting Authority against Mr Arthur Fraser and possibly others. These were investigations into the Principal Agency Network (PAN). By 2011 significant progress had been made with the investigation by Mr Njenje's team.

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<sup>1017</sup> Page 60 line 4 to page 63 line 24

On this aspect the evidence came mainly from Mr Njenje. Him and his team handed over their report to the Directorate for Priority Crime Investigation (the Hawks) and to the NPA and everybody was ready for the prosecution. The investigations involved mainly Mr Arthur Fraser. The crimes investigated were fraud and corruption; properties had been bought with ulterior motives which ended up with private individuals; people were employed without security clearance; 300 cars and computers were bought and not used. The PAN project was supposed to be an extension of the official intelligence structures, the domestic branch of the NIA.<sup>1018</sup> The cars were parked in warehouses all over Gauteng; had been bought by funds earmarked for other operations, thereby putting those operations at a disadvantage. The number of houses bought was substantial, all-over Gauteng; they were registered in the names of some private people including children. In all, an amount of about R600 million was spent in that way.<sup>1019</sup> Mr Njenje held a meeting with the above law enforcement agencies, following which they were all ready to prosecute. However, he got a call from Mr Cwele for a meeting at OR International Airport. When they met, Mr Cwele said the prosecution of Mr Fraser must stop. Despite Mr Njenje's protest that a lot of time and money had been spent in investigations, the Minister insisted and said it was President Zuma's decision; Mr Cwele said the President said the prosecution would compromise national security, despite Mr Njenje's protest to the contrary, and that what was in issue was pure crime. The Minister knew that Mr Njenje had handed over the file to the NPA as he was being briefed at all steps, and he was the one who had asked for the investigation; Mr Njenje therefore believed the Minister that it was the President's decision.<sup>1020</sup>

961 Ambassador Cwele denied stopping the investigations; he said he did not that the matter had been taken away from the law enforcement agencies; even though he had

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<sup>1018</sup> Page 143 line 23 to page 156 line 25 and paragraph 22 of Mr Njenje's affidavit

<sup>1019</sup> Page 157 line 3 to page 160 line 12

<sup>1020</sup> Page 160 line 20 to page 164 line 6 and paragraph 23 of Mr Njenje's affidavit

interest in the matter so much so that he referred it to the Inspector General of Intelligence; indeed, he had initially shown interest in the investigations continuing, after the meeting referred to above he did not make any follow-up; he made no inquiries when he did not get any update. In all probability, that was because he was aware that the investigations had been stopped.

- 962 Regarding the stopping of criminal investigations and possible prosecution of Mr Fraser for his activities in relation to the PAN project, it is possible, without prejudging the outcome, that he might not have been appointed D G of the SSA, which appointment was made about three years after the criminal process was stopped; therein might lie the significance of the stopping of the investigations against him

#### **Defending the passing of the 11 September 2009 Proclamation**

- 963 As indicated earlier, the effect of the Proclamation was to collapse the erstwhile National Intelligence Agency and the South African Secret Service into one intelligence structure, namely, the State Security Agency (SSA). It was the evidence of amongst others Mr Shaik that by doing so, the proclamation departed from the intention of the country's new dispensation not to concentrate power in one organization; that, in his view, took the country back to the period under the apartheid regime when there was excessive concentration of power in one organization (the National Intelligence Service that housed both the domestic and foreign operations); whereas under the new dispensation the country wanted separate by coordinated services; the proclamation was therefore contrary to the Intelligence White Paper, which had informed the intelligence laws in 1994 <sup>1021</sup> Importantly, it was pointed out to Ambassador Cwele that the Proclamation was not a competent legislation to bring about the above amalgamation; that it had to be through an Act of Parliament; which was why the General Intelligence Laws

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<sup>1021</sup> Page 94 line 5 to page 95 line 11



Amendment Act 11 of 2013 was passed in an attempt to remedy the situation. All these notwithstanding, Ambassador Cwele, in his response, contended that the passing of the Proclamation was competent. It was an unsustainable argument, begging the question why the Ambassador sought to maintain it.

964. Minister Mahlobo: He followed Ambassador Cwele as the Minister of State Security. There are two main issues about Ambassador Mahlobo: his involvement in operational issues, and his receipt and handling of large sums of cash. There is also the matter of his attitude towards the Intelligence White Paper.
965. His involvement in operational matters: He involved himself massively in the operations of the SSA, running a number of projects, such as Project Wave (to influence the media), Project Justice (alleged attempt to influence some judges), Project Tin Roof (which involved one of the wives of the former President) etc. Two documents may be referred to as examples indicative of his involvement in operations beyond doubt (there are others). Firstly, there was a letter indicating to be from him (which he said was not the case), asking for an amount of R130m for a project. A letter dated 4 November 2015 addressed to the Minister for State Security Agency, "*Minister Mahlobo*", which was filed of record as an exhibit, was canvassed with him. This was to contest his statement that he was never involved in operations. In that letter, he approved a request for budget reprioritization and the utilization of certain funds, including the amount of R20m for "*Projects approved by the Minister*". The total amount approved, including the other items, was R130m. In his response, Mr Mahlobo denied that there were any Minister's projects; he said the term "*Minister's projects*" was used incorrectly; the document, he said, was therefore fundamentally wrong; the Minister did not approve projects.<sup>1022</sup> But the letter spoke for itself in so many words, despite his protestations. But he admitted

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<sup>1022</sup> Page 144 line 1 to page 145 line 8

that he signed in approval of the movements of the funds indicated in the requesting letter and said, importantly, that without his approval, nobody would touch the money <sup>1023</sup> Secondly, there was a letter, which was canvassed with him, filed of record dated 31 May 2016. The letter was a "*Request for authorization: Renewal of Cover Project Mayibuye and payment of expenditure related to Project Mayibuye from 01 April 2016 – 31 March 2017*". He was still the Minister at the time as he only left in October 2017. The document says that the recommendation was made by the appropriate person on 31 May 2016 "*As per instructions issued by Minister on 06/05/2016*". The Ambassador's response was that he did not give any such instructions and anybody saying he did so would have to produce written proof as such an approval would have financial implications, in terms of the PFMA. <sup>1024</sup> There were other documents of a like nature which spoke for themselves, referring to the "Minister's Project", in particular relating to Project Mayibuye

966. His response: Regarding the above documentation relating to the approval of all the projects therein mentioned Ambassador Mahlobo, when asked whether he had read it, said he did <sup>1025</sup> But he argued that the purpose of the approval did not amount to the approval of the projects as therein described, this despite the fact that the nature and purpose of each project was clearly stated at the top of every page and that his signature of approval was in respect of each one of the projects, as the evidence leader pointed out to him <sup>1026</sup> The Ambassador was shown a letter, filed of record, dated 28 November 2016. It was written by Dorothy (pseudo name) as Acting General Manager Special Operations, requesting authorisation for funds for the Project Mayibuye in the sum of

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<sup>1023</sup> Page 146 line 17 to page 149 line 1

<sup>1024</sup> Page 150 line 19 to page 154 line 9

<sup>1025</sup> Page 166 line 10 to line 19

<sup>1026</sup> Page 166 line 21 to page 168 line 22

R4,510,000.00. He said he had no comment on the letter.<sup>1027</sup> Ambassador Mahlobo's involvement in the operational projects of the SSA is therefore beyond doubt

967 Still on the issue of his involvement in operational issues, the contents of the affidavit by Darryl (pseudonym), attested to on 23 November 2020 and filed of record, were put to Mr Mahlobo for his response. There was a section in the affidavit headed "*Minister Mahlobo's involvement in operational activities*" Darryl says that one of the challenges he had as the General Manager of the CDSO was Mr Mahlobo involving himself directly in CDSO operations and his personal interest therein. Darryl said Mr Mahlobo used to boast about having his own sources; he would also report directly to the President Darryl says he raised his concerns on more the one occasion and warned Mr Mahlobo against taking unverified information to the President. Mr Mahlobo's response to Darryl's affidavit was that he denied the allegations<sup>1028</sup>

968 Minister Mahlobo's involvement in the handling of large sums of cash: Evidence was led relating to instances when large sums of cash were withdrawn and delivered to Mr Mahlobo.

969 Witness Dorothy: The contents of an affidavit by Dorothy, filed of record, was placed before Mr Mahlobo, in which Dorothy said that she confirmed that she had on three occasions withdrawn R4.5m on the instructions of one Darryl (pseudo name) to hand the money to him (Mr Mahlobo) He could not deny that the money was withdrawn as stated but denied receiving it<sup>1029</sup> The evidence leader then drew Mr Mahlobo's attention to yet another affidavit by Dorothy in response to an allegation by one Mr Mhlanga. This affidavit was also filed of record The following part of the affidavit was read to Mr

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<sup>1027</sup> Page 188 line 9 to line 15

<sup>1028</sup> Page 205 line 15 to page 207 line 14 and paragraphs 50 and 51 of Darryl's affidavit

<sup>1029</sup> Page 189 line 1 to page 190 line 2



Mahlobo: *"I have never told Mr Mhlanga that I have given the alleged cash withdrawals to Mr Mahlobo";*<sup>1030</sup> the point apparently being that she did not share what she knew with Mhlanga and not that what she alleged about Mr Mahlobo receiving money was not true. However, she went on to say that, in the absence of schedules of the cash withdrawals, she could recall only three such occasions; she made those *"temporary"* withdrawals in her name; went to the cashier with Lilly; money counted by cashier in front of Lilly as well who brought the bag for the money to be packed by both of them; the money would then be taken to the official residence of Mr Mahlobo in Waterkloof; twice she did so alone and twice with Lilly; she took over the task of delivering the money from Darryl, who had instructed her to use her own name; neither Darryl nor the Minister ever told her of the purpose of the money; Mr Mahlobo would usher her in the house, count the money to make sure it was R4 5m after which she would leave the money in the bag Mr Mahlobo's response to all these was that, to the extent that his name was mentioned, he denied the allegations.<sup>1031</sup> Mr Mahlobo and his counsel objected to the use of this affidavit on the ground that it was just received that morning. I ruled in their favour and Mr Mahlobo said he was not going to deal with it <sup>1032</sup>

970. Witness Darryl: Under the heading *"Cash delivered to Minister Mahlobo"*, Darryl says Ambassador Mahlobo would request money from the CDSO for his own project, something which did not sit well with him as he did not think that a Minister should be handling cash from CDSO. He says on one occasion he was required to deliver cash to Mr Mahlobo. He said that he noticed that SSA members, such as Frank (pseudonym), were withdrawing large amounts of money on a monthly basis. On one occasion he asked Frank what the money he had withdrawn was for and Frank counted the money into different bundles, allocating them to some projects until there was a surplus, which

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<sup>1030</sup> Page 190 line 4 to 20

<sup>1031</sup> Page 191 line 2 to page 194 line 3 and the whole of paragraph 2 of her affidavit

<sup>1032</sup> Page, i.a. 201 line 6 to line 25

Darryl put in a safe in his office. Darryl assumed that Frank must have told Ambassador Mahlobo about the surplus because he later got a call from Mr Mahlobo requesting money for the ANC Women's League. Darryl says that he handed over the money, on Mr Mahlobo's instructions, to his Chief of Staff, one Jay (pseudonym), at OR Tambo Airport. Jay was in the company of someone else, one Vukhani; he did not make them sign any acknowledgement for the receipt of the funds because the delivery of the cash was on the Minister's instructions. In his response to what Darryl said, Mr Mahlobo denied being involved in operations, or that Darryl delivered cash to him; he also denied requesting money for the ANC Women's League.<sup>1033</sup>

- 971 Witness Stevens: His affidavit, attested to on 18 November 2020, was filed of record. Certain paragraphs, under the heading "*Further information regarding the payment of Judges by Minister Mahlobo from SSA covert funds*" were put to Mr Mahlobo for his response. Stevens said that records showed that one Dr Langa (then Director of the Domestic Branch of the SSA) authorised the withdrawal of R12m cash from the Special Operations budget; Dr Langa himself also told him so. Dr Langa said the money, packed into paper bags, was received by SSA Special Operations Frank for delivery to Minister Mahlobo for payments to Judges to influence the Judiciary. Frank was the Project Manager of Project Justice with the CDSO under Mr Dlomo. In turn, Frank informed Stevens that he delivered the R12m to Minister Mahlobo who, in Frank's presence, removed R4m cash saying was payment to judges who were his operatives. The rest of the money was for other Special Operations ran by Mr Mahlobo.<sup>1034</sup> Mr Mahlobo's response to this evidence was that the allegations were false, and put the Judiciary into disrepute; he said the person who came up with those allegations was the same person who made false allegations against a certain politician and the head of a Chapter 9

<sup>1033</sup> Page 207 line 15 to page 209 line 20 and paragraphs 80, 81 and 82 of Darryl's affidavit

<sup>1034</sup> Page 14 line 13 to page 216 line 6 and paragraphs 4B (sic), 49 and 50 of Stevens affidavit

institution and was continuing to do so before the Commission; Mr Mahlobo denied that there was any money delivered to him; he disputed all the above evidence.<sup>1035</sup> Stevens also said that he was aware of the pressure that Minister Mahlobo had successfully put on Ambassador Kudjoe and the Chief Financial officer, Matthew (pseudonym) for money routinely, without regard to SSA financial prescripts. Stevens said that Minister Mahlobo used to receive large sums of money for the special operations he ran

972. It is clear from the above evidence that Minister Mahlobo received large sums of cash on some occasions. These monies cry out to be accounted for, and if they were legitimately expended, let it be so established

973. Regarding the Intelligence White Paper: Another thing was that he tended not to give as much weight to the Intelligence White Paper as other witnesses did, such as Mr Shaik and Ambassador Maqetuka; yet there is ample indication that it greatly informed the structure and organization of the country's intelligence in 1994

974. Mr Arthur Fraser: Arising out of his heading and running of the Principal Agency Network (PAN), Mr Fraser became the subject of internal investigation. A report that followed implicated him. The report was handed over to the SIU and the National Prosecuting Authority. As the Commission has as already mentioned, his prosecution was stopped by former President Zuma on the ground that it would compromise the security of the State. The extent of his alleged involvement has already been set out above when dealing with Ambassador Cwele. More evidence may be added as examples of his questionable activities.

975. Ambassador Maqetuka: There were several problems with the manner in which the PAN project was carried out by Mr Fraser. It was not linked to the headquarters, in that

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<sup>1035</sup> Page 216 line 7 to page 217 line 5



reports did not go to the headquarters; data base or engine room was housed in Mr Arthur Fraser's house yet for security and other reasons reports should go to the headquarters; violating that would be a serious violation of security protocol These procedures were not followed; the nerve centre that received the information was located in Mr Arthur Fraser's house, to the detriment of the security of the information and of the informants who were important assets as sources; it would also amount to undermining their trust in the system and that could be treasonable in other countries.<sup>1036</sup> The witness summed up the problems into three main categories. Firstly, the centralization of power in Mr Arthur Fraser regarding the project (PAN); he acted like he was the Director-General of the SSA Secondly, lack of accountability; that there was no control by the Director-General; it became a free for all and Mr Fraser was a law unto himself The third problem was the ability to draw large amounts of cash, while there was no accountability for it <sup>1037</sup>

976. Mr Njenje: There were also serious allegations against Mr Fraser relating to PAN about the irregular acquisition of properties, vehicles and the employment of people who were either members or non-members as part of the PAN programme; these allegations could be summed up as being about the abuse of funds.<sup>1038</sup> Mr Njenje was firm in his evidence that the prosecution of Mr Fraser would not have compromised any national security as the President said Mr Njenje was an expert in issues of national security; he and his team were the ones who advised the President on security and, had there been any threat to national security, they would have picked it up. The issues raised by the investigation were pure crime It was also his evidence that about three years later, former President Zuma appointed Mr Fraser as head of State Security Agency <sup>1039</sup> This

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<sup>1036</sup> Page 279 line 8 to page 282 line 11

<sup>1037</sup> Page 284 line 8 to line 19

<sup>1038</sup> Page 84 line 16 to page 85 line 10 and paragraph 12 of Mr Njenje's affidavit

<sup>1039</sup> Page 170 line 10 to page 172 line 19

was despite serious allegations against him while running the PAN as Deputy Director General Operations, for which he was suspended and later resigned<sup>1040</sup> His appointment as Director General of the SSA by former President Zuma was to be followed by allegations of abuse of power made against him, examples of which have already been set out above; one or two more may be restated to refresh the mind. There was evidence by Dr Dintwe, the IGI, of a letter by Mr Fraser telling him that his clearance certificate had been withdrawn.<sup>1041</sup> This was simply because Dr Dintwe had dared to launch an investigation against him. There was also his involvement in the withdrawals and handling of cash, the involvement of the SSA in political matters and the abuse of the vetting system

977. Mr Arthur Fraser chose not to present his version to the Commission, despite the fact that the opportunity was offered to him by the Commission

978 Johan (pseudonym): Ms K confirmed that rather than fulfilling its function to protect the Agency from internal threats, the Chief Directorate Internal Security (CDIS was weakened during Johan's tenure; its vetting integrity was eroded; its members became complicit in facilitating the abuse of the SSA resources, which included enabling CDSO members' illegal access to firearms, the transport of cash for CDSO operations and involvement in a parallel vetting structure.<sup>1042</sup> CDIS members were implicated in the robbery of R17m from a safe inside the SSA complex at Musanda in December 2015. This was confirmed by Johan and that the people were within his unit, and they were still there at the time of the evidence.<sup>1043</sup> Johan also facilitated the irregular removal of

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<sup>1040</sup> Paragraphs 81 and 82 above

<sup>1041</sup> Page 273 line 5 to line 12

<sup>1042</sup> Page 5 line 24 to page 6 line 19

<sup>1043</sup> Page 6 line 20 to page 7 line 5 and paragraph 5.17 of Mr Y's affidavit

firearms from the SSA Armoury, such as on the occasion already mentioned at the instance of Ambassador Thulani Dlomo. This is confirmed in his own affidavit too.

979. Members of the Gupta family: Though civilians, members of the Gupta family featured strongly as well; it would be no exaggeration to say that they were central to State capture, if not actual perpetrators. This is particularly so if evidence in other streams of State capture is taken into consideration, such as the evidence relating to their involvement with State Owned Enterprises. They cannot escape mentioning because their relationship with former President Zuma was a catalyst in the irretrievable breakdown of the relationships between the three top intelligence officers, on the one hand, and both Ambassador Cwele as the then Minister, and former President Zuma, on the other hand. The Guptas exploited their close relationship with former President Zuma, which enabled them to wield a lot of power, as demonstrated in one instance attested to Mr Njenje. While attending a Cabinet Lekgotla in 2011, Mr Njenje was asked by one Adv Nongxina, then Director General of the Department of Mining, to accompany him and his Minister, Minister Ms Susan Shabangu, to a meeting the latter was to have with Ajay Gupta; according to the DG, Mr Njenje was to protect them as Mr Gupta was exerting pressure on the Minister.
980. Mr Njenje agreed after approval by the Minister and was told the meeting was going to be at the Sheraton Hotel; however, the Minister was later told by the former President that he knew about the meeting and that it was going to be at Mahlamba Ndlopfu (President's official residence) where, he told the Minister, Mr Ajay Gupta was waiting. When they arrived there, Mr Gupta ushered them into the President's study. The meeting was not a good one, said Mr Njenje. Mr Gupta was pressing Minister Shabangu to fast track their application for some mineral rights, in an overbearing manner. Mr Njenje intervened, reminding him that he was speaking to a Minister whereupon Mr Gupta apologized but kept on nagging. The Minister and Adv Nongxina told him that



certain procedures had to be followed first and they would come back to him; he said he did not understand why things he wanted took so long; he wanted them to be done immediately. The meeting did not take long; the four of them were the only people in the meeting.<sup>1044</sup> The fact that the meeting was held at the President's official residence, and in his absence was, in Mr Njenje's view, for the Guptas to show how powerful they were; to show a Government Minister that she could be called to the President's study in his absence.<sup>1045</sup>

981. One of the witnesses, Mr Shaik, said that the country paid the price for the stopping of the investigations against the Guptas. It is probable that had investigations against them been allowed to continue, they possibly could have been deterred from engaging in some activities that amounted to State capture. They chose not to appear before the Commission to contest what was said about them

## Recommendations

It is recommended that the law enforcement agencies should conduct such further investigations to establish whether any of the persons implicated in the wrong in this report did not commit one or other crime. In particular it is recommended that law enforcement agencies conduct further investigations with a view to the NPA possibly bringing criminal charges against such people including Mr Arthur Fraser in relation to the PAN programme and any other matter revealed by the evidence before the Commission and Mr David Mahlobo and Mr Thulani Dlomo in regard to State Security Agency cash received and/or illegitimately handled by each one of them.

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<sup>1044</sup> Page 173 line 11 to page 179 line 12 and paragraph 26 of Mr Njenje's affidavit

<sup>1045</sup> Page 179 line 17 to page 180 line 10

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## CRIME INTELLIGENCE: SOUTH AFRICAN POLICE SERVICE

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### Introduction

982. This section of the Report relates to the Criminal Intelligence (CI) unit, a unit within the South African Police Services (SAPS) and the Secret Services Account (SSA), a financial account administered from within the CI) The terms of reference of the Commission included requiring this Commission to investigate allegations of fraud and corruption in general. One of the organisations in which the Commission investigated allegations of corruption and theft of public funds is the Crime Intelligence Unit within the South African Police Service. The allegations of corruption and theft related to a period when Major-General Richard Mdluli was the Head of the Unit. The evidence revealed massive corruption and theft of public funds. This is all dealt with below.

983. The structure of this section of the Report will be: this introduction; then, consecutively, a reference to the Public Protector's report which the author styled the State of Capture Report (SoCR); the terms of reference of the Commission relevant to the topics in the memorandum; the content of the SoCR relevant to this memorandum; an identification of the scope of the evidence presented in relation to CI, summaries of the evidence of the individual witnesses; a discussion and evaluation of the evidence; and, finally, my recommendations.

### The Public Protector's report

984. The establishment of the Commission arises from a report by the Public Protector, no. 6 of 2016/2017 dated 14 October 2016, written and published in terms of s 182(1) (b) of the Constitution, s 3(1) of the Executive Members Ethics Act and s 8(1) of the Public Protector Act, 1994. The Public Protector called her report *State of Capture*.

985. The report related to an investigation into complaints of alleged improper and unethical conduct by the then President of the Republic<sup>1046</sup> and other state functionaries relating to alleged improper relationships and involvement of the Gupta family in the removal and appointment of ministers and directors of SOEs resulting in improper and possibly corrupt award of state contracts and benefits to the Gupta family's businesses

#### **Commission's terms of reference relevant to this memorandum**

986. Under its terms of reference (ToR) promulgated as a schedule to Proclamation no. 3 of 2018<sup>1047</sup>, the Commission was directed to, amongst other things, inquire into, make findings, report on and make recommendations concerning the following, guided by the Public Protector's SoCR, the Constitution, relevant legislation, policies, and guidelines, as well as the order of the North Gauteng High Court of 14 December 2017 under case number 91139/2016. The following ToRs appear to be relevant to this aspect of the enquiry:

986.1. ToR1.4: whether any public official or employee of any state breached or violated the Constitution or any relevant ethical code or legislation by facilitating the unlawful awarding of tenders by any organ of state to benefit any other family, individual or corporate entity doing business with government;

986.2 ToR1.9: the nature and extent of corruption, if any, in the awarding of contracts and tenders to companies, business entities or organisations by Government Departments, agencies and entities. Particularly, whether any public official,

<sup>1046</sup> Mr Jacob Zuma. The Commission was constituted by then President Zuma

<sup>1047</sup> Published in GG no.41403 of 25 January 2018.



functionary of any organ of state influenced the awarding of tenders to benefit themselves, their families or entities in which they held a personal interest

### **Content of State of Capture Report relevant to this memorandum**

987. The investigation by the Public Protector which culminated in the SoCR emanated from complaints lodged against the President on 16 March 2016 and 22 April 2016.<sup>1048</sup> The investigation included an examination of the business dealings of the Gupta family with SOEs and government departments and included whether any state functionary in any organ of state or other person acted unlawfully, improperly or corruptly in connection with the extension of state-provided business financing facilities to Gupta linked companies or persons.<sup>1049</sup> There is no specific reference in the SoCR to improprieties within CI or arising from transactions effected through the SSA.

### **The scope of the evidence**

988. What is the focus of the evidence presented to the Commission in relation to crime intelligence? Two witnesses testified: Colonel Kobus Demeyer Roelofse, employed in the Directorate of Priority Crimes Investigations (the DPCI), Western Cape, of the SAPS, and Lieutenant Colonel Dhanajaya Gangulu Naidoo, a member of the SAPS formerly stationed at its head office, with duties which included the administration of the SSA. The focus of their evidence was on transactions effected on the SSA which appeared to constitute misappropriations.

<sup>1048</sup> SoC Executive Summary para (iv)

<sup>1049</sup> The SoCR found that the Gupta family is headed by three brothers who are business partners of the son of President Zuma Mr Duduzani Zuma. SoCR Executive Summary para (vi). It is a matter of public record that the Gupta family conducted much of their business transactions from their family compound in Saxonwold, Johannesburg.

989. In addition, I have had regard to the affidavit of Col Jacobus Johannes Hendrik Roos, which was placed before the Commission as an annexure to the statement of Col Roelofse, and the affidavits of certain persons who were served with notices under rule 3.3 of the Rules governing the Commission.
990. The Commission issued 45 Rule 3.3 notices in relation to the evidence of Col Naidoo and 43 such notices in relation to the evidence of Col Roelofse and/or Col Roos. Three persons responded to the notices in relation to Col Naidoo: Ms Navaranjeni Munusamy, General Rayman Lalla and Gen Mphego. Seven persons responded to the notices in relation to Col Roelofse and/or Col Roos: Mr Bheki Cele, Ms Navarenjeni Munusamy, Lieutenant General Johannes Khomotso Phahlane, Lieutenant General Bongiwe Zulu, Major General Chris Ngcobo, Lieutenant General Julius Molefe and Lieutenant General Richard Mdluli.
991. The affidavits submitted in response to these notices have been taken into account.

## **THE EVIDENCE OF THE INDIVIDUAL WITNESSES**

### **Colonel Kobus Demeyer Roelofse**

992. Colonel Roelofse joined the SAPS in 1986. He rose to become a section commander: major case operations in the Directorate for Priority Crimes Investigations (DCPI), where he presently serves. He signed a sworn statement for the Commission on 27 August 2019 and testified on days 165, 166, 167 and 168.
993. Colonel Roelofse investigated a murder matter implicating a very senior officer. That led to a further investigation which Colonel Roelofse described as the "looting" of the SSA. During this latter investigation, Colonel Roelofse encountered efforts to frustrate and hamper his investigation by senior officials within the SAPS and the National

Prosecuting Authority (NPA) and how the SAPS and the NPA failed to address this situation

- 994 Colonel Roelofse asserts directly that the transactions he investigated either originated or were facilitated by the <sup>1050</sup>operational unit established by Major General Solomon Lazarus, the chief financial officer of the SSA. Colonel Roelofse claimed that Gen Lazarus provided the final financial authority for these transactions and was instrumental in appointing certain officers within this operational unit. This enabled Gen Lazarus to manipulate financial transactions for his own benefit and the benefit of others.
- 995 During the period July 2009 to November 2011 Lieutenant General Richard Naggie Mdluli was the Divisional Commissioner CI, General Lazarus was the CFO of the SSA and Col Heine Johannes Barnard was the section commander, supply chain management, CI Pretoria
996. During the same period Company X<sup>1051</sup> was a trading entity which formed part of a clandestine operation, set up and funded through the SSA and operated by members of CI Col Barnard was a procurement officer for Company X
997. Colonel Roelofse elected not to go into detail in certain matters which were the subject of possible criminal proceedings unless specifically requested by the Commission to do so.
998. Colonel Roelofse described the mandate of CI as the managing of crime intelligence, the analysing of crime information and the provision of technical support for investigations and crime prevention operations <sup>1052</sup> The strategic operations of CI

<sup>1050</sup> A term coined by Colonel Roelofse. Transcript day 165 p34

<sup>1051</sup> A company whose name is known to Colonel Roelofse but which he withheld in the public interest

<sup>1052</sup> The description was taken from the SAPS annual report for 2017/2018.



include collating, evaluating, analysing, coordinating and disseminating intelligence for the purposes of technical operational and strategic utilisation; suppling intelligence products relating to national strategic intelligence to National Intelligence; instituting counter-intelligence measures within SAPS; and preventing and fighting crime through enhanced international cooperation and innovation in police and security matters.

- 999 The SSA contains government money made available through the National Treasury. All funding for CI is carried out through the SSA. The money allocated to the SSA may however be deposited into different bank accounts. The SSA is a financial management system within SAPS. The SSA is not audited in the same manner as the SAPS open account, which is designed for use in every day police operations. The secrecy which attaches to the SSA is effected to protect covert operations and protect individuals, projects and operations from exposure.
- 1000 Safe houses are premises from which members undertaking CI can carry out their functions without public exposure. Such premises may not be used for private purposes. There is an established procedure by which such premises are acquired.
- 1001 The regulatory framework applicable to CI and the SSA consists of the South African Police Services Act,<sup>1053</sup> the Public Finance Management Act (PFMA),<sup>1054</sup> the Secret Services Act,<sup>1055</sup> and policy directives and procedures for CI gathering laid down from time to time.
- 1002 Colonel Roelofse described how in South Africa documents are classified in ascending levels of secrecy called Restricted, Confidential, Secret and Top Secret. The workings

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<sup>1053</sup> 68 of 1995

<sup>1054</sup> 1 of 1999

<sup>1055</sup> 56 of 1975.

of the classification system are contained in a document classified as Restricted but available on the Internet called the Minimum Information Safety Standards (MISS)<sup>1056</sup>

1003 According to Colonel Roelofse, prosecutions of those whom he had identified as offenders were obstructed by the refusal of those senior officers who controlled the SAPS to declassify documents so that prosecutions could proceed.

1004 Colonel Roelofse proceeded to identify specific instances in which attempts to prosecute allegedly criminal conduct by members of the SAPS were frustrated from within the SAPS.

### **The Mdluli Vosloorus case**

1005 In March 2011, Colonel Roelofse was made part of a team which was assigned to investigate a criminal case against Gen Mdluli and three others. At a meeting called by Major Gen Matakata, the head of the Hawks in the Western Cape, attended by several high ranking SAPS officers, Colonel Roelofse and Lieut Col Piet Viljoen were briefed by Gen Shadrack Sibiya, the Provincial Commissioner, who disclosed that the members then conducting the investigation had been intimidated by the individuals under investigation and could not continue with the investigation. Colonel Roelofse and his team were required to take over the investigation and remain objective.

1006. On 31 March 2011, Gen Mdluli, then Divisional Commissioner of CI was arrested and brought to court on charges including murder, kidnapping, assault and intimidation. On 14 February 2012, the charges were provisionally withdrawn by Adv Andrew Chauke, the DPP for South Gauteng. After legal proceedings to challenge Adv Chauke's

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<sup>1056</sup> Available at <https://www.right2info.org/publications/laws-1>.

decision, charges were reinstated against Gen Mdluli and one other which did not include murder and attempted murder

### **The SSA investigation**

1007. After the arrest of Gen Mdluli, some members of CI approached Col Viljoen and Col Roelofse with information about crimes allegedly committed by members within CI. These informants did not want to speak openly and were fearful of Gen Mdluli and other officers within CI.

1008. Col Roelofse and Col Viljoen received a file from Col Johannes Hendrik Roos, an internal auditor within CI. This file contained claims with supporting documents regarding, amongst others, a cleaning company and repairs to motor vehicles. Col Roelofse concluded that it was clear that fraudulent quotes had been obtained to favour specific service providers. Col Roos said that he had reported these incidents to Gen Mphego, then head of CI, whereupon Col Roos had been ordered not to proceed with his investigation. Col Roos claimed that the obstructions of his investigation, which included investigation into the conduct of Gen Lazarus, came from Gen Lazarus himself.

1009. Allegedly, on Gen Mdluli's appointment on 1 July 2009, Col Roos wanted an investigation into the SSA and the conduct of Gen Lazarus. Col Roos was allegedly obstructed in this investigation and was asked by Gen Mdluli to draft a letter for Gen Mdluli's signature granting him unrestricted access to information relating to the investigation. But when Col Roos presented Gen Mdluli with the draft letter, Gen Mdluli refused to sign it.

1010. Colonel Roelofse expressed the opinion that when General Mdluli was appointed as Divisional Commissioner of CI, he began with the intention of cleaning up CI; but unfortunately, Gen Mdluli became at that stage I would call him the victim 10 of General



Lazarus, who set in motion certain events to compromise General Mdluli.<sup>1057</sup> Gen Mdluli succumbed to these pressures and stopped the investigation to protect himself

1011 In November 2009, Gen Lazarus facilitated a trip by Gen Mdluli and Ms Theresa Lyons to Singapore and, shortly thereafter, by Gen Mdluli and his ex-wife Ms Vicina Lily Mdluli, to China.

1012 On 3 December 2009, in the presence of Gen Lazarus, Gen Mdluli stopped the investigation into Gen Lazarus.

1013. In about April 2011, Colonel Roelofse and Col Viljoen established that during about April 2010, Col Barnard approached Leo Haese BMW in Pretoria to buy a 5 series BMW for Company X, with a trade in of Gen Mdluli's personal car with a settlement amount of R560 526,01 outstanding through BMW Financing. The deal that Col Barnard negotiated required that Company X had to buy two vehicles from Leo Haese to finance the shortfall on Gen Mdluli's private car. Col Barnard reported directly to Gen Lazarus who reported to Gen Mdluli.

1014. Gen Mdluli and Col Barnard were arrested. The charges against them were withdrawn in the Serious Commercial Crimes Court, Pretoria on 14 December 2011. The circumstances of this withdrawal were the subject of testimony by Colonel Roelofse before the Mocher enquiry into the fitness of Advocates Jiba and Mrwebi to hold office.

1015 In the Vosloorus case, Col Viljoen was granted search and seizure warrants to search two covert CI premises for documents. Because of the sensitivity of the matter, an arrangement was reached on 13 September 2011 pursuant to which Colonel Roelofse and his team received all files relating to the appointment of family members of Gen Mdluli, including seven agent files. Pursuant to the same warrants, Colonel Roelofse

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<sup>1057</sup> Roelofse: Transcript day 165 p 85.

discovered the two vehicles at Gen Mdluli's premises which had been bought under the transaction concluded between Col Barnard and Leo Haase

- 1016 The essence of the transaction with Leo Haase was that the balance owing for Gen Mdluli's private vehicle would be paid by CI, disguised as part of the purchase or financing cost of the two vehicles bought by Col Barnard on behalf of CI. The two vehicles bought were then used by Gen Mdluli

#### **Col Naidoo: interference by Gen Lazarus**

1017. The seven agent files obtained by Colonel Roelofse pursuant to the search and seizure warrants and the arrangement were all handled by Lieutenant Colonel Dhanajaya Gangulu Naidoo. The seven agents in question were all related to Gen Mdluli through family relationships. The seven agents were recruited at the beginning of 2010 during a recruitment drive by CI to employ agents to fight crime. None of them had any experience in CI or covert operations. Some of them received payment from the SSA. Col Naidoo did the administration in respect of the salaries received and vehicles driven by the seven agents. The agents however did not report to Col Naidoo.

- 1018 Colonel Roelofse interviewed Col Naidoo on 18 October 2011. The following day, Col Naidoo confided in Col Barnard that he had decided to assist the investigation conducted by Colonel Roelofse. On the same day, it appears, Col Naidoo confided in Col Barnard and told Col Barnard that he had spoken to Colonel Roelofse and had admitted submitting false claims on behalf of himself and others.

1019. On the same day, i.e. 19 October 2011, two persons identified as FM08 and FM09, together with Gen Lazarus told Col Naidoo to come with them. He was taken to Gen Lazarus's house where he was interrogated. Col Naidoo apparently denied at this meeting that he was working with the DPCI.

1020. On 20 October 2011, Col Naidoo told Colonel Roelofse that at the meeting at Gen Lazarus's house, he heard those present developing a strategy to use a journalist paid by CI to write a story casting suspicion on Gen Dramat, then the national head of the DPCI, also known as the Hawks, to take the focus away from them. Stories critical of Gen Dramat appeared in the Sunday Times on 13 October 2011 (before the meeting at Gen Lazarus's house) and on 23 October 2021 (after the meeting). At the same meeting, Col Naidoo reported to Colonel Roelofse, there was a discussion about the desirability of destroying the records relating to certain air tickets purchased through Westville Travel
- 1021 On 24 October 2011, Col Naidoo was again fetched from his home and taken to Gen Lazarus's office for interrogation. FM7, FM10 and Col Barnard were also present. That same evening, Colonel Roelofse placed Col Naidoo and his family in witness protection
- 1022 As part of the investigation Colonel Roelofse and Col Viljoen obtained warrants authorising the search for and seizure of electronic equipment relating to certain entities implicated in the investigation. Colonel Roelofse sought the assistance of the technical support unit (TSU) within CI. The TSU fell under the direct command of Gen Lazarus and was thus aware of the steps Colonel Roelofse had taken. There occurred what Colonel Roelofse describes as incidents and interference during the course of the investigation
- 1023 Gen Lazarus was also successful in securing the removal from the DSPI investigation of Gen Hankel, who was transferred out of CI together with Gen Sintimule and Gen Matshatse



### **Investigations: information supplied by Col Naidoo**

1024 Colonel Roelofse stated that Col Naidoo had provided him with information on several aspects of the investigation which will be detailed below. During late 2011 or early 2012, Colonel Roelofse briefed Gen Mothiba, then the national head of detectives, and Brig Odendaal, the national officer: legal services in Cape Town on the information supplied to Colonel Roelofse by Col Naidoo. The information largely related to conduct in Kwa Zulu Natal, Gauteng and the Western Cape. Gen Mothiba oversaw the investigations in KZN.

#### One Stop Travel and Tours: Flight Arrangements in late 2009 – October 2011

1025 Acting on information supplied by Col Naidoo, Colonel Roelofse obtained documents which showed that unauthorised persons made travel arrangements through Westville Travel in Durban. Westville Travel is a division of One Stop Travel and Tours (One Stop), also of Westville.

1026. On 25 October 2011, Colonel Roelofse executed a search and seizure warrant at Westville Travel. The manager, Mr Manesh Parekh, must have had advance warning of the warrant because when Colonel Roelofse arrived, he found that Mr Parekh had printed out all the invoices Colonel Roelofse required with copies for himself. Mr Parekh told Colonel Roelofse that his information on the warrant had come from FM08.

1027 Colonel Roelofse had previously received documents from Gen Hankel concluded from his examination of the documents provided by Mr Parekh, which he compared with those provided by Gen Hankel, that Mr Parekh had attempted to hide the identity of a specific passenger. However, it became clear to Colonel Roelofse that the majority of the flights had been made by Gen Mdluli, Gen Lazarus, Mr Marimuthu and, on occasion, their families.

1028. Colonel Roelofse established that during the period April 2010 to 25 October 2011, the flights in question had been paid for by cheques by Company X and amounted to R1 168 531. These payments were approved by Gen Lazarus. The costs for the three individuals and their families were as follows: Gen Mdluli: R190 919; Gen Mdluli's family: R116 000; Gen Lazarus: R131 626; Gen Lazarus's family: R28 498; Mr Marimuthu: R148 421; Mr Marimuthu's family: R66 710.

1029. Various senior SAPS officers, including Gen Hilda Senthumule, the head of security and counter-intelligence in the CI, and Gen Matshatse, the acting head of CI at that time, were flown to Durban to attend church services at the African Dream Centre (more correctly: African Dream Family Church)<sup>1058</sup>, a church attended by Gen Lazarus and Mr Marimuthu.

1030. According to Colonel Roelofse, Mr Parekh himself, his family, friends and several pastors and clergy from the church in question travelled to various parts of South Africa with air tickets paid from the SSA.

1031. Gen Lazarus was found guilty at a disciplinary hearing on charges that he had misrepresented to CI who in fact had paid for the air tickets in question. Gen Lazarus was dismissed from the SAPS.

#### Joe Marques: New World Motors - procurement of vehicles

1032. Company X maintained a register of vehicles to be used by operatives in covert operations. Colonel Roelofse called this the secret register (SR). Colonel Roelofse established that Gen Lazarus operated a scheme with Mr Joe Marques, through the firm owned or operated by Mr Marques called New World Motors (NWM). In essence, the scheme was for Mr Marques to buy SR vehicles from Company X which were due

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<sup>1058</sup> See Roelofse: Transcript day 165 p111.

for replacement and sell vehicles to Company X at inflated prices. At the end of 2010, Mr Marques had about 80 vehicles bought by him from Company X

1033 For security reasons, when SR vehicles were due for replacement, they would be sold by closed tender. There were five such closed tenderers of which two shared directors and members who were family of Mr Marques. But Gen Lazarus would inform Mr Marques beforehand of the competing bids, thereby enabling Mr Marques to bid amounts just higher than his competitors.

1034. Company X would then repurchase some of the vehicles sold to Mr Marques at inflated cash prices, paid from the SSA. Some of the cash derived from the sale by Mr Marques of vehicles to Company X would be used to settle advances made to members for work related expenses to be incurred. According to Col Naidoo, he frequently collected money from Mr Marques for this purpose. Mr Marques would provide amongst others FM07, FM08, FM09 and Col Naidoo himself with fraudulent invoices to generate cash to be used to cover shortfalls in respect of other unaccounted for expenses. Members were also allowed to buy SR vehicles bought by Mr Marques at the same prices paid by Mr Marques

1035. Shortly after 23 September 2011, Colonel Roelofse sought to obtain documents from Company X to establish whether the trade between Company X and NWM was of any significance. Gen Lazarus blocked this line of enquiry on the ground that national security issues precluded the disclosure of this information to Colonel Roelofse

#### Gen Lazarus: promotions and appointments of family and friends within and to CI

1036 According to information provided by Col Naidoo to Colonel Roelofse, Gen Lazarus operated a scheme within CI whereby Gen Lazarus saw to it that his confidants and



family members received irregular promotions within CI. Col Naidoo himself was promoted from warrant officer directly to lieutenant colonel

General Lazarus: abuse of safe house

1037. According to information provided by Col Naidoo to Colonel Roelofse, Gen Lazarus and his family stayed in a safe house which had been rented through the SSA to hide the identity of the occupier for just over a year while his own house was being renovated. The rental was R6 000 per month which, according to Col Naidoo, was paid through the SSA.

1038. This safe house was rented only for the period it was occupied by Gen Lazarus and his family and furnished from money from the SSA. After the lease expired, the furniture was written off and Col Naidoo and Gen Lazarus took some of the furniture for themselves, including mirrors, coffee tables and lamps.

Gen Lazarus: abuse of power to allocate to members vehicles financed from SSA

1039. Colonel Roelofse was informed by Col Naidoo that Gen Lazarus used his position as head of SSA to buy influence from senior police officers and other government officials and used the influence so obtained to fend off investigations into the SSA.

1040. One of the means allegedly used by Gen Lazarus was to allow senior managers to choose a vehicle to the value of about R500 000, which Gen Lazarus funded from the SSA although these managers already received a vehicle allowance through their remuneration packages. As these managers were receiving a financial benefit to which they were not entitled, they were placed in a difficult position in any action against Gen Lazarus.

1041. Colonel Roelofse gave details of the officials who benefited from this scheme of Gen Lazarus:

1041.1 Gen Mdluli: five vehicles valued at R3 153 730. This does not include vehicles provided to members of Gen Mdluli's family who were appointed to CI without due process; a security upgrade to his house funded from the SSA to the value of R190 735, to which this officer was not entitled

1041.2. Gen Manoko Nchwe: one vehicle valued at R557 079,96. The motivation was that this officer would use the vehicle for sensitive operations. But this officer was never a member of CI nor did she undertake sensitive operations. Furthermore, the vehicle was registered in her name, although it was registered on the SR. A security upgrade funded from the SSA to the value of about R40 000, to which this officer was not entitled. When given notice of disciplinary proceedings against her, she resigned

1042. Then Minister of Police Nathi Mthethwa: security upgrades to his house funded by the SSA totalling R195 581,45 during the period September 2010 to January 2011. The allegation is that the documents evidencing these transactions and payments were handed to then Commissioner of Police Bheki Cele to be used in his disputes with the then Minister to ensure that the then Minister could not act against him. This investigation did not proceed because of the failure of the SAPS to provide important documents needed in the investigation

Mr Panaganth (Timmy) Marimuthu:

1043. According to Col Naidoo, this person was recruited and registered as a contact person or informant of the CI and paid large sums of money to influence Mr Cele to support Gen Lazarus. The allegation (unsupported) is that Mr Cele was paid in cash to secure

such support. The allegation is further that Mr Marimuthu was to act as an agent of influence, which is outside the mandate of CI

1044 Again according to Col Naidoo, several family members and friends of Mr Marimuthu were appointed as agents of CI but did no intelligence gathering work.

1045. According to Col Naidoo, allegations of sexual misconduct were made against Mr Marimuthu by a woman who worked for CI. This same allegation was apparently made to the IG of Intelligence. Colonel Roelofse received an affidavit detailing this allegation but his investigation was stopped. Brig Madonsela also conducted an investigation into the activities of Mr Marimuthu which was stopped and never concluded

1046 Following information received from Col Naidoo, Colonel Roelofse established that four properties belonging to Mr Marimuthu were rented by CI as safe houses, for which Mr Marimuthu received inflated rentals of up to R250 00 per month

#### **Mr John Appalsami**

1047. According to Col Naidoo, Mr Appalsami was a friend of Gen Lazarus. Mr Appalsami controlled Daez Trading CC, reg. No. 2008/038456/23. Through Daez, Mr Appalsami facilitated various transactions approved by Gen Lazarus and benefited from an account with Atlantis Motors called the BARUT account.

1048. In November 2010, CI rented a safe house at Clearwater Estate Boksburg through Daez at a monthly rental of R20 000. This house was exclusively used by Gen Mdluli and continued to be paid in November 2011 even though Gen Mdluli had been arrested in April 2011.

1049 Gen Mdluli owned premises called Gordon Villas in Gordons Bay. CI rented this property through Daez from Gen Mdluli as a safe house at a monthly rental which,



according to Col Naidoo, was inflated by R2 000 per moth which was divided between Gen Lazarus and Col Naidoo

- 1050 Col Naidoo informed Colonel Roelofse that CI leased office accommodation through Daez at which family members of Gen Mdluli were employed, at an inflated rental. Colonel Roelofse was not able to verify that the rental was inflated.

### **Trips overseas by Gen Mdluli and family facilitated by Gen Lazarus**

1051. On 6 November 2009, Gen Mdluli and his then wife, Ms VL Mdluli, flew business class to Hong Kong and back to visit their daughter who was studying in China. The cost of the trip was R110 000, of which R60 000 was paid directly by the SSA and R50 000 was funded through the BARUT account. The travel arrangements were made through Westville Travel.
- 1052 On 21 November 2011, Gen Mdluli flew on official business to Singapore. He was accompanied by his wife Ms Lyons. Her trip was paid for by the SSA although Ms Lyons was not a member of SAPS and worked at the time for DHA as a clerk. Her ticket was upgraded from economy to business class and cost R46 809.
- 1053 These trips formed the subject of a charge and a comprehensive charge sheet was prepared. But SAPS would not declassify the documents required for the prosecution and the case was withdrawn.

### **Appointment of family and friends of Gen Mdluli within CI without due process**

- 1054 Colonel Roelofse established that six family members or friends of Gen Mdluli were appointed to positions within CI without due process.

### Atlantis Motors and the BARUT account

- 1055 BARUT was the name given to an account in the books of Atlantis Motors in Centurion. The account was created pursuant to an arrangement between the dealer principal at Atlantis, Mr Jan Venter, and Col Barnard. The account was funded from portions of the profit in the hands of Atlantis on the sale of vehicles by Atlantis to CI. Mr Venter would then procure that from time to time that these funds would be paid to third parties on the instructions of Col Barnard.
1056. Financial records detailing these transactions were only available to Colonel Roelofse from 8 April 2008. On that day, the BARUT account was in credit in the sum of R175 045,15. From that date to 19 October 2012, an additional R1 527 601,61 was credited to the BARUT account. Of that R1 659 923,08 was paid to third parties by EFT.
- 1057 The funds in the BARUT account were used to give Gen Lazarus and other CI member's discounts on private vehicles. An additional total of R465 000 was transferred to NWM, which Colonel Roelofse believes supports Col Naidoo's information to him that Gen Lazarus had to generate cash inter alia to cover shortfalls in the SSA account. An additional R143 621,78 was used to settle an amount owed to Wesbank on a vehicle registered to a journalist, Ms Munusamy.

### **Obstruction of criminal and disciplinary proceedings against CI members**

- 1058 Disciplinary proceedings were taken against Gen Lazarus which led to his dismissal. Colonel Roelofse does not know the outcome of the disciplinary proceedings against Col Barnard. Col Barnard is still in the SAPS.
- 1059 Brig Madonsela and Capt Heeralal were tasked with the investigation of 250 members of CI. Colonel Roelofse has copies of fourteen criminal case dockets opened by Capt

Heeralal, all relating to the non-disclosure of criminal convictions or civil judgments. All these dockets were closed on the SAPS criminal administration system. As far as Colonel Roelofse could establish, none of them was submitted to the NPA for a decision on whether or not to prosecute. Colonel Roelofse knows that the investigation of Brig Madonsela and Capt Heeralal was stopped but he does not know by whom.

#### **Efforts by officials in NPA and SAPS to frustrate prosecution of Mdluli and Barnard**

1060. Gen Mdluli and Col Barnard were charged with fraud and corruption in the Specialised Commercial Crimes Court, Pretoria. On 17 November 2011, Gen Mdluli made representations directly to Adv Lawrence Mrwebi, the head of Specialised Commercial Crime Unit (SCCU), Pretoria.

1061. Adv Mrwebi concluded that SAPS had no power to investigate the case and that thus any investigations into the matter could be unlawful. He embodied this view in a memo dated 4 December 2011 and decided to withdraw the fraud and corruption charges against Gen Mdluli and Col Barnard. Adv Mrwebi asserted that only the Inspector General of Intelligence had the power to investigate.

1062. The IGI expressed the view that the reasoning of Adv Mrwebi was wrong. Adv Mrwebi took the view, in a communication made on 30 March 2012, that the IGI did not have the power to review his decision, which he declared he stood by.

1063. The only reasonable inference from the circumstances arising from what happened after Adv Mrwebi's memo is that the acting NDPP, Adv N Jiba, knew of and approved the decision to terminate the prosecution of Gen Mdluli.



1064. Ultimately, the decision to terminate the prosecution was set aside by the court. It is common knowledge that Gen Mdluli was prosecuted, convicted of certain crimes and sentenced to imprisonment
1065. Gen Mdluli made strenuous efforts within the SAPS to frustrate the investigation. He accused Colonel Roelofse of improper conduct. These efforts came to naught but since 19 March 2012, Colonel Roelofse has been unable to retrieve any documentation from CI and was unable to secure cooperation from the upper echelons of the SAPS officer corps.
- 1066 Similarly, all the efforts of Colonel Roelofse to obtain declassification of documents held by CI to enable prosecutions to continue were unsuccessful
1067. Colonel Roelofse went into detail about which officers in the SAPS helped advance, and which hindered, his investigation, into the state of affairs at CI He has gone as far as he possibly can through official channels

#### **Colonel Dhanajaya Gangulu Naidoo**

1068. Colonel Naidoo holds the rank of colonel in the SAPS. He signed a sworn statement for the Commission which regrettably is not dated He testified on days 172, 173, 174 and 175. He and his family have been in witness protection since 2012. He signed a supplementary statement on 1 October 2019.
- 1069 Colonel Naidoo acknowledged in his statement and his oral evidence that he was complicit in the fraud and corruption committed by senior officers in CI, including Colonel Naidoo himself. Colonel Naidoo stated in his statement made for the Commission that he wished to enjoy the protection of an indemnity granted under s 204 of the Criminal Procedure Act, 51 Of 1977 It was however made clear to Colonel Naidoo and he

acknowledged during his oral testimony that as things stood at that stage, he had no immunity from prosecution and might well be charged <sup>1059</sup> He however also understood that the Hawks, the unit of the SAPS dealing with the case, intended to treat Colonel Naidoo as one who ought to receive the protection of s 204.

1070. The SSA is a covert fund generated from funds provided by National Treasury. It is administered by CI and is supposed to be used to fund undercover operations by purchase of equipment, rental or purchase of premises and payment for services rendered.

1071 The procedure by which funding takes place requires the member seeking such funding to make written application in prescribed form. The funding application progresses to the commander or other designated person and then, if approved, to the SSA finance section. An accounting later must take place pursuant to which the member who drew the funds must account for them and pay back any balance if there was an under spend.

1072. SAPS also maintains an open account which is used to fund the non-covert day to day operations of SAPS.

1073 Colonel Naidoo joined SAPS as a clerk on 24 June 2002 and was posted to CI head office in Pretoria. On 1 November 2002 he was posted to KZN as a clerk, where he mainly performed administrative duties.

1074 In about January 2004 Colonel Naidoo was transferred to CI head office where he was responsible for payments to members and informants and of expenses. On 1 February 2006, he was promoted to the functional arm of CI as a warrant officer. For about six

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<sup>1059</sup> Typescript: Naidoo: day 175 p175

months, he was employed as an undercover operative concentrating on drug syndicates

#### Relationship with Gen Lazarus

1075. Colonel Naidoo became acquainted with Gen Lazarus in the late 1990s. They played volleyball in the same league in Tongaat and Gen Lazarus was married to the cousin of Colonel Naidoo's mother

1076. In about 2006 or 2007, Gen Lazarus was conducting extensive renovations to his private home in Edenvale. Colonel Naidoo became the project manager for these renovations. He had to ensure that the necessary building equipment and materials were obtained and that payments were made. He performed many of these functions during SAPS office hours.

1077. Often he would drop his CI work to attend to Gen Lazarus's concerns, including by visiting the site. Because this interfered with the performance of Colonel Naidoo's official duties, Gen Lazarus arranged for him to be transferred to the operational support component (OS) of CI headed by Gen Lazarus himself. Gen Lazarus was the CFO of the SSA

1078. Supply chain management (SCM) is a sub component within OS. It was headed at the time by Col Heine Johannes Barnard. Colonel Naidoo was given the task of managing the CI vehicle fleet. His duties included maintenance, purchasing new vehicles and managing the administration of then fleet and the fleet itself

1079. The true reason for the transfer of Colonel Naidoo, however, was to enable him to manage the rebuilding of Gen Lazarus's private home and he did the minimum of genuine work



1080. During July 2009, Gen Mdluli was appointed divisional commissioner of CI which meant that Gen Lazarus reported to Gen Mdluli. Colonel Naidoo suspected that Gen Mdluli became aware of the corrupt activities relating to and the misuse of the SSA because soon after his appointment Gen Mdluli indicated that he was going to have Gen Lazarus transferred away from SSA to one of the other components within CI.

#### **Involvement of Gen Bheki Cele**

1081. At the time Gen Mdluli was appointed, 2009, Mr Bheki Cele was the national commissioner of SAPS and was rumoured to have been instrumental in the award of large tenders to Mr Marimuthu. Gen Lazarus was aware of the connection between Mr Marimuthu and Mr Cele and contacted Mr Marimuthu in an attempt to secure the intervention of Mr Cele to ensure that he was not transferred away from his position by Gen Mdluli. Thereafter, Gen Lazarus made several unsuccessful attempts to meet Mr Cele. Ultimately he made a call to another CI member to organise cash, which Colonel Naidoo assumed would need to be paid to Mr Cele.

1082. At that time, Colonel Naidoo was in possession of R40 000 which he had taken from CI head office for another purpose which he said he could not recall. He then handed the R40 000 to Gen Lazarus. A meeting then took place between Gen Lazarus and Mr Cele. Colonel Naidoo was in the house in which this meeting took place but was not in the same room. After the meeting, Gen Lazarus did not hand the R40 000 back to Colonel Naidoo, from which he assumed that it had been paid over to Mr Cele.

1083. In the result, Gen Lazarus was not transferred.

### **Trip to China by Gen Mdluli**

- 1084 A few months after the incident described immediately above, Gen Lazarus told Colonel Naidoo that Gen Mdluli wanted to take his wife to China and asked Colonel Naidoo to help by making enquiries about flight tickets.
1085. On 3 November 2009, Colonel Naidoo was called into Gen Lazarus's office. Gen Lazarus told Colonel Naidoo to take the envelope which was on the table and keep it until Gen Lazarus discussed it with him. On the same day, Gen Lazarus called Colonel Naidoo to his office where he found Col Barnard. Gen Lazarus said they had secured a loan of R50 000 from Jan Venter of Nissan Atlantis for air tickets for Gen Mdluli's wife. The same day, Colonel Naidoo applied for an advance of R50 000 which was approved by either Col Barnard or Gen Lazarus. Colonel Naidoo then went to Flight Centre, where he bought tickets for Gen Mdluli and his wife.
- 1086 Colonel Naidoo was concerned by what he had done and the fact that the advance was in his own name, so the same day, he wrote out an account of what had happened and kept a copy of his note, of the copy typed by his wife and the E-tickets. He produced these documents to Col Roelofse.
1087. On 7 November 2009, Gen Lazarus instructed Colonel Naidoo to apply for R10 000 for Gen Mdluli as spending money on his trip. Colonel Naidoo applied for the advance, which was approved by Gen Lazarus.
- 1088 On 7 November 2009, Colonel Naidoo met Gen Mdluli at the airport. He handed Gen Mdluli R20 000: the R10 000 for which he had specifically applied and R10 000 from the balance of the money left after paying for the tickets. This left a balance of R3 848 which Colonel Naidoo misappropriated. On this occasion, Gen Mdluli told Colonel Naidoo that he and his wife were going to China to visit his daughter who lived there.

1089. Colonel Naidoo later purported to reconcile the claims by Gen Mdluli for expenses. He did not actually reconcile them, for one reason because most of the receipts were in a language he did not understand
1090. Some two weeks later, a large party of SAPS officers, Ms Juanita Barnard, the wife of Col Barnard, Ms Sandra Lazarus, the wife of Gen Lazarus and Ms T Lyons, the girlfriend of Gen Mdluli travelled to Singapore ostensibly to buy electronic equipment of CI. The tickets of Colonel Naidoo and Col Miranda Venter were paid from the SSA as well as, Colonel Naidoo thinks, Ms Juanita Barnard's ticket.
1091. The tickets for Colonel Naidoo and Col Venter were paid in cash. Ms Lyons flew business class at the expense of the SSA. Gen Mdluli, Gen Lazarus and Ms Lyons travelled business class. The rest of the party travelled economy.
1092. Only two days were spent buying equipment and that was done at a general mall selling electronic equipment; the rest of the trip was spent sightseeing. There was no need. Colonel Naidoo could perceive why anyone from CI needed to travel to Singapore for the stated purpose.
1093. Colonel Naidoo bought a camera at the expense of CI as a present for his sister, valued at about R5 000. Gen Lazarus and Col Barnard approved the funding for the purchase.
1094. On their return to South Africa, through the intervention of a contact of Gen Mdluli, the party did not declare the equipment they had bought and evaded customs duty.
1095. The equipment was paid for by credit cards which had been issued to Colonel Naidoo and Col Barnard at the ABSA branch at which Ms Juanita Barnard worked. Colonel Naidoo thinks that each of the two credit cards was loaded with R100 000.



1096. Thereafter, Colonel Naidoo was involved closely with Gens Mdluli and Lazarus in both their legitimate and illegitimate activities within CI. He described himself as their lackey. He was required to be at their beck and call in most of their personal and official requirements including acquiring vehicles, the use of safe houses, buying groceries, ensuring safe houses were cleaned, buying air tickets, having their cars washed and transporting their family members.

#### **Inappropriate appointments and promotions within CI**

1097. Colonel Naidoo was himself, through his association with Gen Lazarus, promoted from warrant officer to lieutenant colonel through a covert advertisement process.

1098. During January or February 2010, 250 posts were made available within CI. Most of these positions were filled by friends or family of Gen Mdluli, Gen Lazarus and those close to them. Most of the family members and friends of Gen Mdluli were placed in the agent program, for which they had no prior police experience, to hide their connections with Gen Mdluli.

1099. During January or February 2010, Colonel Naidoo was asked to remain present at a discussion between Gen Mdluli and Gen Lazarus. Gen produced a list of persons he wanted employed in CI. While Colonel Naidoo cannot remember the exact conversation, the two generals agreed that the persons on the list would be appointed. Gen Mdluli said that Colonel Naidoo should be their handler because he trusted Colonel Naidoo. After Gen Mdluli left, Gen Lazarus remarked to Colonel Naidoo that Gen Mdluli wanted his family members appointed.

1100. Colonel Naidoo identified the persons who were appointed for their associations with one or other of the two generals but those names were withheld from his sworn statement.

1101. Colonel Naidoo further identified those who were improperly promoted or improperly skipped ranks in promotions
- 1102 Mr Marimuthu and members of his family were similarly employed in CI. The names of the family members were similarly withheld from the sworn statement of Colonel Naidoo.
- 1103 Two family members of Col Barnard were appointed through nepotism
1104. Two relatives of Major General Willie Els were appointed within the CI without any prior experience in SAPS or CI.
- 1105 Colonel Naidoo further asserted that relatives or friends of Lieut General Raymond Lalla and Lieut General Stander were improperly appointed to CI and that a relative of Gen Bellingham skipped ranks and was appointed a colonel.
- 1106 Colonel Naidoo said that various other persons were appointed to fill posts within the group of 250 posts mentioned by Colonel Naidoo who had criminal convictions

#### Appointment of Col FM41

1107. Colonel Naidoo referred to a colonel in CI, identified as FM41 who had been convicted of vehicle related fraud. He said that Gen Lazarus wanted to help the old man and placed him in the agent program. Colonel Naidoo was one of his handlers.
1108. Colonel Naidoo asserts that Col FM41 was placed in the agent program because he knew too much about Lt Gen Raymond Lalla and Gen Mulangi Mphego, also known as Marshall. Colonel Naidoo said that Col FM41 told him that he, Col FM41 was paying Gens Lalla and Mphego R100 000 per month from the money Col FM41 made from the submission of false informer claims

1109. Gen Lalla was at the time divisional commander at CI and Gen Mphego was assistant commissioner at CI. Colonel Naidoo believes that Gens Lazarus, Lalla and Mphego had Col FM41 placed in the agent program because they feared he would expose them. Both Gen Lalla and Gen Mphego have left SAPS.

#### Further improper appointments

1110. According to Colonel Naidoo, a relative of Gen Lazarus stationed at Tongaat was found guilty of corruption and dismissed from SAPS but after his dismissal was recruited as an informant by CI and paid R50 000 per month. Yet another relative of Gen Lazarus stationed at Tongaat SAPS until he retired was taken up as an informant by CI.

#### Payments of claims to agents

1111. Colonel Naidoo was responsible for paying salaries and operational expenses to relatives of Gen Mdluli and others. Colonel Naidoo identified the relatives concerned and certain payments he made to them but withheld their names in his sworn statement. Colonel Naidoo suggests that these specific corrupt claims which he administered and paid out exceeded R5 million.

1112. Apart from members of SAPS placed undercover, there are two categories of civilians used and paid by CI: contact persons, i.e. those who assist in a specific situation or provide information ad hoc; and informants, i.e. persons registered on the CI payroll who receive a monthly remuneration.

1113. Colonel Naidoo provided details of false claims submitted by the handlers of such civilians but withheld their names in his sworn statement.



## Covert offices and safe houses

1114 A safe house is a residential property leased by CI under the name of a private individual or company to be used for covert members' meetings, planning operations and administrative duties such as updating informer files and holding private or secret meetings.

1115 A procedure was in place in CI by which applications for permissions to lease were made and approvals given, after which the premises were registered on the SR and a number allocated. Applications would normally come from the head of a project or group and would normally include the background to the project or operation, the purpose for which the property was required, the anticipated duration of the need for the property and an estimate of the expense.

1116 According to Colonel Naidoo, the safe house acquisition process was subjected to significant abuse

1117. Colonel Naidoo identified the following instances of such abuse:

1118. A safe house in Gordons Bay belonging to Gen Mdluli. Mr John Appalsami of Daez Trading was employed by Gen Lazarus to assess this property for acquisition as a safe house. Mr Appalsami flew to Cape Town at SSA expense for this purpose. Gen Lazarus instructed Colonel Naidoo to delete the name of Mr Appalsami from the ticket to hide his identity Mr Appalsami signed the lease to disguise the fact that Gen Mdluli was the owner

1119. Colonel Naidoo signed the lease as a witness. The lease was for three years at R8 500 a month plus VAT for three years from 1 February 2010 to 31 January 2013 with an annual increment of 10% Company X was the lessee

1120. Furniture was bought at CI expense for the property. He is vague as to the amount spent
- 1121 CI paid the rent to Mr Appalsami, who then handed a portion of the rent, less his commission (in the beginning R2 690) back to Colonel Naidoo in cash. Colonel Naidoo in turn handed the cash to Gen Mdluli and told him it was the rent for his Gordons Bay property
1122. Lease of residential property at Clearwater Estate, Atlas Road, Boksburg. The exclusive use of this property was given to Gen Mdluli from the day it was acquired. It was leased by Daez to CI for R17 500 a month plus VAT for a year from 1 December 2009 to 30 November 2010 with an option to renew for a further year. Colonel Naidoo bought the furniture for the premises for as he remembers more than R100 000. Colonel Naidoo was responsible for the upkeep of the property and stocking it with groceries, all of which was done with SSA funds
1123. On occasion, Colonel Naidoo picked Gen Lazarus up from his home and took him to the property for discussions with Gen Mdluli.
- 1124 Flat in Rondebosch Cape Town This flat was owned by Gen Lalla. It was leased by CI with Daez as lessor. CI paid the rent to Mr Appalsami, who in turn paid Colonel Naidoo R6 000 per month which Colonel Naidoo then paid over to Gen Lalla, telling him it was the rental for his property
- 1125 Residential property in Morgan Ridge Boksburg CI leased this property from Ms CL Dicks, the daughter of Mr Joe Marques, the owner of NWM. On instruction from Gen Lazarus, Colonel Naidoo negotiated an agreement with Mr Marques by which the monthly rental was inflated by R2 000 and Colonel Naidoo collected a total of R24 000

over the period of a year minus an advance of R10 000 which was divided equally between Gen Lazarus and Colonel Naidoo. This went on for about two years.

1126. "X" Business Park premises. These premises were leased by CI through Daez and used by Col Govender who dealt with agent administration. Gen Lazarus told Mr Appalsami to inflate the rental. The difference between the inflated amount and the actual rental was retained by Mr Appalsami to be used, less Mr Appalsami's commission, by Gen Lazarus. On one occasion, on the instructions of Gen Lazarus, Colonel Naidoo collected R6 000 in cash from Mr Appalsami and handed it to Gen Lazarus for use on Gen Lazarus's trip with Mr Marimuthu.

1127. Premises rented from Mr Marimuthu. Colonel Naidoo believes that several premises were rented from Mr Marimuthu. He does not know the identities of all of them but knows that two of them were in Umhlanga Rocks. Colonel Naidoo personally inspected these two properties and found that they were unsuitable for occupation. He reported this to Gen Lazarus who said he would deal with it.

1128. A house was rented by CI as a safe house in the Boksburg area through Daez and used exclusively for Mr Marimuthu's girlfriend, a clerk in CI. Gen Lazarus told Colonel Naidoo to install cameras at the premises to obtain evidence of Mr Marimuthu and his girlfriend together to be used as evidence against Mr Marimuthu if Gen Lazarus considered it necessary. The cameras were installed by CI members whose names were withheld by Colonel Naidoo in his sworn statement.

1129. Island Rock covert facility. This is a camp on the beach in KZN, to which access by civilians is prohibited. However Gen Lazarus and Colonel Naidoo with friends and families used the facility for holidays disguised as operations. State vehicles were used for these holidays and all expenses were claimed from the SSA. Certain suppliers to CI



were given access to this facility by Gen Lazarus. Colonel Naidoo personally knows of Mr Marques of NWM and Mr Venter of Atlantis Nissan

1130 Thompsons Bay in Balito This facility was rented by CI for a year or two as safe houses. The premises contain a number of self-catering 4 bedroomed houses within an upmarket complex. Colonel Naidoo went there a number of times on holiday with his family

1131. "X" Estates, Greenstone, Johannesburg. In 2005 or 2006, an attempt was made to hijack Gen Lazarus outside his house which was being renovated. Gen Lazarus used this as an excuse to get other accommodation at state expense during the renovations. Colonel Naidoo found him the premises in Greenstone. The premises were rented at about R6 000 per month, paid from the SSA. Gen Lazarus and his family stayed there for over a year and the premises were furnished at CI expense. At the end of the lease period, when Gen Lazarus returned to his own, now refurbished, house the furniture in the Greenstone house was distributed between Col Marinda Venter (Gen Lazarus's second-in-command), Gen Lazarus and Colonel Naidoo.

1132 Sheffield Beach property This private property was developed by a consortium of CI members, Gen Deena Moodley, the commander of CIG in Durban who was promoted to assistant commissioner and became provincial head of CI in KZN, Gen Lazarus and two members whose names were withheld by Colonel Naidoo in his sworn statement. He is uncertain whether Col Barnard was a member of this consortium.

1133. Most of the funds to develop the Sheffield Beach property came from false informer claims. He was told that the project required the generation of R250 000 every fortnight. Furniture and appliances were purchased via the SSA and placed as an asset against one of the CI safe houses. Much of this furniture was later stolen. This caused a problem.

as the items were not stolen from the safe house to which they registered. On the instructions of Gen Lazarus, Col Barnard removed the items from the SR

#### Monies paid into trust account of Karin Hanekom Attorneys

1134. Gen Mdluli had to pay money to Karin Hanekom Attorneys for the purchase of a property. Colonel Naidoo was instructed by Gen Lazarus to deposit a cheque for R40 000 into her trust account. Gen Lazarus also instructed Colonel Naidoo to draw R30 000 from the SSA and deposit it with Karin Hanekom for the account of Gen Mdluli. Colonel Naidoo drew the funds from the SSA in his own name and paid the cheque and the R30 000 to Karin Hanekom. Gen Lazarus approved the withdrawal of the R30 000. With the approval of Gen Lazarus, Colonel Naidoo recouped the money drawn from the SSA by applying at least four and possibly five monthly rentals applicable to the rental of Gen Mdluli's Gordon's Bay property for this purpose.

#### **Upgrading of CI members' properties**

1135. Many properties of CI members or their relatives were upgraded with funds from the SSA:

1135 1      Gen Lazarus's sister's flat in Tongaat: R150 000

1135.2.      Gen Lazarus's uncle's premises in Richards Bay.

1135.3.      Col FM09's mother-in-law's property in Shaka's Rock.

1135 4      Col FM07's house in Durban

1135 5      Gen Deena Moodley's properties in Pinetown and Belair

- 1135.6. A property associated with Col FM08, owned by him or his father.
- 1135 7 Colonel Naidoo's own property While Gen Lazarus's property was being renovated, his builders had downtime and Colonel Naidoo had a boundary wall built and driveway gate replaced by these builders, for which Gen Lazarus gave Colonel Naidoo a cheque for R20 000. Colonel Naidoo later inflated the price of a VW Golf and used R20 000 from the SSA to convert his garage into a kitchen for his wife's catering venture.

#### **Acquisition of vehicles on the SR**

- 1136 Vehicles were from time to time purchased or leased for use by CI members in their official capacities. These were funded, licensed and maintained with funds from the SSA. Such vehicles were registered in the names of the members to whom they were allocated Each such vehicle was allocated an asset number and registered in the SR
- 1136 1 Colonel Naidoo confirmed that several such vehicles were made available to members of Gen Mdluli's family[sic]:
- 1136.2. BMW E90 33d sedan, bought for R487 313 and delivered by Colonel Naidoo to FM24 in Cape Town, to replace the BMW320D allocated to her by CI which was only a few months old.
- 1136.3. Nissan Micra 1.4 VISIA bought for R127 000.
- 1136 4 VW Golf 1.4 TSI Trendline bought for R220 365
- 1136 5 Honda Jazz 1 5 EX bought for R172 000
- 1136.6. Audi A4 2,0 T FSI bought for R352 309.



- 1136.7. VW Golf 6 1.4 TSI Trendline bought for R221 376.
- 1136 8 VW Golf 6 GTI
- 1136 9 Colonel Naidoo was responsible for the administration of all claims for petrol and tolls in respect of these vehicles.

#### Gen Mdluli's vehicles

- 1137 While he was divisional commissioner, Gen Mdluli had seven vehicles allocated to him of which six were SR vehicles. At any one time, he had three SR vehicles for his use. These included an Audi Q7 (purchased from the open account), Mercedes Benz E350 CDI (swiftly traded in because Gen Mdluli did not like it), Mercedes Benz E Class Sedan E 350 CDI (replacement for the previous Mercedes), BMW 530D Sedan, Black Jeep (Gen Mdluli did not like this vehicle and it was redirected) and a Lexus SUV (used by Gen Mdluli up until his arrest in 2011)
- 1138 Colonel Naidoo did some of the administration for these vehicles
1139. A Mercedes Benz ML350 was bought for Minister Mthethwa but the Minister found it unsuitable. Gen Mdluli and, occasionally, Gen Lazarus used the vehicle. It was taken to Cape Town to be used by Gen Mdluli when he was there and subsequently registered in the name of a CI member.
1140. Gen Lazarus decided to allocate a CI vehicle to Gen Manoko Nchwe after a disagreement between them. He bought a Lexus SUV for this purpose but Gen Nchwe was dissatisfied with it. This Lexus was then allocated to Gen Mdluli. Gen Lazarus then bought a white Audi Q5 3.0 TDI for Gen Nchwe, who was, as the head of human resources in SAPS not entitled to a vehicle from CI.

Mr Marimuthu

1141 Mr Marimuthu received a white BMW X5 fitted with blue lights

Gen Lazarus

1142. Gen Lazarus kept a pool of SR vehicles, i.e. a Mercedes Viano, a VW Caravelle, a Nissan Pathfinder, and a Nissan King Cab, which were used exclusively by him and CI members closely associated with him

Sale of SR vehicles

1143. These vehicles were supposed to be sold by closed tender to preserve security. The system was however pervaded with corruption in favour of Mr Marques of NWM. On occasion vehicles were sold to NWM, refurbished and then sold back to CI at inflated prices. According to Colonel Naidoo the profits from this scheme would be retained by Mr Marques and if needed repaid to CI, where advances had been made that needed to be repaid

1144. Colonel Naidoo spoke of two amounts in cash which, on instructions from Col Barnard, he retrieved from Mr Marques, R30 000 and R40 000 respectively. He says Gen Lazarus told him that Col Barnard had conducted this practice for some time. The R30 000 was used to repay a CI member whose name was withheld for his outlay on World Cup tickets in 2010.

1145. Certain members of CI favoured by Gen Lazarus and his relatives would be allowed to buy SR vehicles sold to NWM at NWM's cost price

1146. Colonel Naidoo testified to a transaction by which Gen Mdluli traded in his BMW730D for two other BMWs, though Nissan Atlantis. There was a shortfall of R50 000, for which

Gen Mdluli signed an acknowledgment of debt in favour of NWD. Eventually a transaction was concluded by which CI bought the two BMWs at a price high enough to offset the amount owed by Gen Mdluli to NWD

1147. Colonel Naidoo recounted how he procured that CI bought a VW Golf R32 for his use at a price inflated by R40 000, which Colonel Naidoo then retained for his private use on expenses related to the vehicle and renovations to his private home, including those needed to enable his wife to start a catering company.

#### Purchasing of airline tickets

1148 Colonel Naidoo recounted how he bought air tickets for Gen Mdluli and his family first directly through the airline and later, because the flights were so frequent, through Mahesh of WTA. These flights were paid for by Company X. Other members of CI including Gen Lazarus and Colonel Naidoo had their flights paid for in this manner

#### Renovations to private residences with CI money

1149. Colonel Naidoo claimed to know of renovations carried out to private residences with CI money on the instructions of Gen Lazarus as follows:

- 1149 1 Gen Nchwe's house in Essex World security overhaul: about R40 000
- 1149.2. Gen Mdluli's house in Vosloorus security overhaul: about R200 000.
- 1149.3. Gen Mdluli's house burglar bars and other security upgrade: about R41 330 and R150 000
- 1149 4 Discussions about airconditioners for Mr Cele's house in Umhlanga Rocks  
Colonel Naidoo does not know whether they were installed or not.



- 1149.5. Then Minister Mthethwa's private house at Kwa Mbonambi building of fence or wall: about R200 000 Colonel Naidoo and Gen Lazarus went to view progress on the project, which was very slow but nevertheless almost R200 00 was paid out from the SSA. Colonel Naidoo was interviewed by officials from the Auditor General about this project.

False claims made by Col Naidoo himself

1150. Colonel Naidoo stated that he benefited from false claims which he submitted, probably exceeding R100 000 in all. He claimed he could not remember them all without documentation but mentioned those for the replacement of windscreens at NWM, where no such service was rendered, and those for receipts for furniture not purchased from Masons Furniture.

Reaction of Gen Lazarus and his associates to reports that Col Naidoo was cooperating with investigation by Col Roelofse

1151. On 20 October 2011, Colonel Naidoo confided in Col Barnard that he had given the investigators a lot of information. Gen Lazarus and his associates tried to intimidate Colonel Naidoo in remaining silent. In his presence, Gen Lazarus discussed destroying the evidence of his dealings with Mahesh of WTA. Colonel Naidoo reported these developments to Col Roelofse and on 21 October 2011, Colonel Naidoo and his family were placed in witness protection.

Efforts to suborn the media

1152. Colonel Naidoo claims that the stories about Gens Dramat and Sibiya being arrested for illegal renditions were printed in a major newspaper with input from CI.

1153. Between late 2009 and early 2010, Colonel Naidoo says that he drew R25 000 which he gave to Gen Mdluli who, he claimed, had told him that he needed the money to pay a journalist not to print information he had about CI

1154. Colonel Naidoo claims that some R40 000 was paid to repair the silver BMW 3.3CL of journalist Ms R Munusamy, who was the confidante of ex-CI head Gen Mphego. He picked the vehicle up from her and returned it after repairs on three or four occasions

Prejudice to Col Naidoo and his family caused by delays in prosecution of crimes at CI

1155. Colonel Naidoo spoke of the suffering of his family and himself caused by the delays in prosecution of the crimes his testimony uncovered. They had been in witness protection for almost eight years at the time he testified and can make no plans for their futures. His children cannot contact their former friends.

1156. Colonel Naidoo believes that Former Minister Mthethwa, Mr Cele, Gen Mphego and Gen Nchwe were captured to try to prevent Colonel Naidoo's disclosures from being ventilated in the criminal courts.

1157. Application by Col Naidoo to have his testimony to the Commission heard *in camera*

1158. By notice dated 12 September 2019, the acting secretary of the Commission made application to the Commission for directions to allow Col Naidoo to testify *in camera*. The application was supported by the affidavit of Col Naidoo. The application was opposed by one of the persons implicated by Colonel Naidoo, namely the former Commissioner of the SAPS and current Minister of Police Mr BH Cele

1159. The grounds of opposition were, broadly, that the evidence to be given had previously been ventilated at a disciplinary hearing into the conduct of Gen Lazarus and that it was in the interests of justice that Mr Cele be able to confront his accuser face to face

1160. Despite the opposition, on 17 September 2019, the Commission ordered that the evidence of Col Naidoo be taken *in camera* and made certain ancillary orders

#### **Evidence of Col Jacobus Johannes Hendrik Roos**

1161. Colonel Naidoo is a colonel who has worked in CI for many years. He made an affidavit for the investigation conducted by Col Roelofse. He did not himself give oral testimony to the Commission but his statement, sworn on 6 November 2013 was placed before the Commission as an annexure to the statement of Col Roelofse.

1162. In 2003 Colonel Naidoo was the head of internal audit at CI. Part of the audit plan for 2004 was to conduct an audit at the SSA advance office. He conducted the audit in 2004 and found certain discrepancies. One such discrepancy related to a company called LLVS Trading and Services which provided cleaning to undercover offices used by CI. Colonel Naidoo found that LLVS was owned by a colonel in CI in charge of an undercover office. In the same audit he found fraud in relation to the repairs of CI vehicles.

1163. Colonel Naidoo discussed his findings with Brig van Vuuren, the legal officer of CI and asked this officer for a legal opinion. Then he reported the fact of his investigation and findings and his request to Brig van Vuuren for an opinion to Gen Mphego, the assistant commissioner of CI. Gen Mphego became angry and chased Colonel Naidoo out of his office.

1164. Colonel Naidoo received an opinion dated 21 October 2004 from Brig van Vuuren. Colonel Naidoo supplemented the opinion with an information note dated 22 October 2004 and handed both the opinion and the information note to Gen Mphego. Gen Mphego said that Colonel Naidoo should not discuss the matter with or hand over any documentation to any other persons.



1165. However, Colonel Naidoo promptly discussed the matter with Mr Steyn, in charge of the office of the AG responsible for auditing the SSA. Mr Steyn reported to Colonel Naidoo that he had been approached by Divisional Commissioner Lalla and Maj Gen Els, head of CIG at head office, who questioned him about the matter. Colonel Naidoo gave his documentary information to Mr Steyn.

1166 Thereafter, Colonel Naidoo was called to the office of Gen Mphego. He took with him Col Groenewald of CI Internal audit. They found Col Malaza, a suspect in Colonel Naidoo's investigations with Gen Mphego. Gen Mphego discussed the possible fraud and informed Col Malaza that he was implicated. Col Malaza gave the impression that he did not know what was going on. Colonel Naidoo tried to put the true facts to Gen Mphego but Gen Mphego interrupted him and told him and Groenewald to leave his office.

1167 In November 2004, Colonel Naidoo received a call from a brigadier in the Commercial Branch of the SAPS, who reported to Colonel Naidoo that he would send the documents to Commercial Crime in Pretoria who would conduct the investigation. A few days later, Colonel Naidoo was again called to the office of Gen Mphego. He found Gen Lazarus and Brig van Vuuren there. Gen Mphego was angry and made certain threats to Colonel Naidoo, who he believed had reported the matter to Commercial Crime. Colonel Naidoo tried to defend himself but Gen Mphego said he was not interested and would end the career of Colonel Naidoo. Brig van Vuuren said he had reported the matter to Head Office and left the meeting. Colonel Naidoo was also instructed to leave the meeting and did so.

1168 The matter was never again discussed with Colonel Naidoo and he himself did not contact any person investigating the matter. Colonel Naidoo was however given to understand that Col Malaza had resigned from SAPS. That was not the case. Colonel

Naidoo learned that Col Malaza had been placed in the undercover agent program. Colonel Naidoo also learned that Col Malaza had been convicted of fraud, forgery and uttering in the Pretoria Magistrate's Court while Col Malaza was working at CI

1169. During 2009, Gen Mdluli was appointed divisional commissioner for CI. Col Odendaal called Colonel Naidoo to a meeting with Gen Mdluli in July 2009 in a hotel room in Pretoria. This was the first time Colonel Naidoo met Gen Mdluli. Gen Mdluli told Colonel Naidoo that he wanted to clean CI and charge all corrupt members. He wanted Colonel Naidoo to give him his information in this regard. Gen Mdluli specifically mentioned the name of Gen Lazarus. Colonel Naidoo believed that Gen Mdluli was serious about the investigation and that he wanted to clean up CI

1170. Colonel Naidoo had a further meeting with Gen Mdluli in Gen Mdluli's office at Erasmuskloof. Gen Mdluli handed Colonel Naidoo a letter dated 29 July 2009 appointing Colonel Naidoo as team leader in an investigation of certain instances of fraud in relation to informer files, safe houses and receipts of purchases and invoices within the SSA in KZN, Limpopo and Northern Cape.

1171. On 3 December 2009, Colonel Naidoo was instructed to attend a meeting at Gen Mdluli's office. He found present when he arrived Col Odendaal, Col Ntuli, Brig Mokoshane and Gen Mabasa. They were told to wait in Gen Mdluli's boardroom. After a while Gen Mdluli arrived with Gen Lazarus and Brig van Vuuren

1172. Gen Mdluli was very angry and wanted to know why those present had gone to Gen Dramat and who had given permission for that. Colonel Naidoo had not done so but the others had gone to see Gen Dramat and had to explain their actions. Gen Lazarus sat there while this was happening, looking on and smiling

1173. Gen Lazarus then confronted those present because of their audacity to investigate him. Gen Mdluli did not intervene. Colonel Naidoo asked Gen Mdluli why they were being humiliated by the person Gen Mdluli had told them to investigate. Colonel Naidoo said that he saw a side of Gen Mdluli he had not known before and concluded that Gen Mdluli was now "big friends" with Gen Lazarus and Brig van Vuuren.

1174. Gen Mdluli said that the institution (SAPS) was bigger than any individual and that Colonel Naidoo and the others must stop the investigation. They were then ordered to leave the meeting.

1175. During May and June 2010, Colonel Naidoo was in control of an audit at UTE, one of the front companies used by CI. He came across fraud in relation to a company called Hills Fitment Centre in KZN. The fraud related to over quoting for repairs to vehicles. While they were still busy with the audit, Brig Steyn, the head of Internal Audit, instructed them to stop the audit and not to compile a report. By then only one report regarding the Advance Office had been compiled.

1176. Brig Steyn handed Colonel Naidoo a letter dated 14 June 2010 signed by Gen Mdluli, regarding the establishment of an inspection capability at CI and appointing Colonel Naidoo to head up the new section. Since that date, Colonel Naidoo was removed from Internal Audit and could not conduct further audits of the SSA.

### **Responses to notices under Rule 3,3**

1177. I shall summarise individually the affidavit evidence of those who responded to the Rule 3.3 notices.



### **Gen Rayman Lalla**

1178 Gen Lalla responded to an affidavit submitted by Ms N Munusamy and to questions posed to him in the notice. In around 2008, he was told by Ms Munusamy that all four of the tyres on her vehicle had been damaged or deflated and that she was uncertain whether her brakes had been tampered with. He advised Ms Munusamy to report the matter to the police. Ms Munusamy stated that the police would not do anything. Gen Lalla advised Ms Munusamy to check with Gen Mphego whether a risk assessment on the vehicle and Ms Munusamy herself could be done. He did not contact NWM about her vehicle. He does not know how it came about that NWM replaced her tyres.

1179 Gen Lalla denied that he instructed Gen Mphego to have Ms Munusamy's vehicle repaired or that he instructed that any funds be paid from the SSA for this purpose.

1180 Gen Lalla denied that he was aware of the covert status of NWM. He neither purchased vehicles for CI nor bought a personal vehicle from NWM.

1181. Gen Lalla was not aware that Ms Munusamy was employed by CI. He found some of the work that she did insightful and useful.

1182 Gen Lalla was no longer the head of CI on 9 May 2008. He left CI in late January or early February 2008. He cannot comment on the amount of R143 621,78 paid through an account held by Atlantis Motors to Company X in settlement of the amount owed by Ms Munusamy to Wesbank on her vehicle.

### **Gen Ntsumbedzeni Mulangi Mphego**

1183. Gen Mphego is no longer in the SA Police but is employed as a special advisor in the Presidency. He responded to the Rule 3.3 notice in an affidavit sworn on 21 August 2021, to which was attached a submission by his legal advisors. In a letter to Gen

Mphego's attorneys dated 6 November 2021, the Secretary of the Commission informed Gen Mphego that the Commission had granted him leave to make written submissions on the findings that the Chairperson should make on the evidence that relates to him.

1184. Gen Mphego summarised the allegations against him as follows:

1184.1        he sought to frustrate or hamper the investigations of Col Roelofse and his team into a front company with connections to CI;

1184.2.        a Colonel Vincent S Malaza, who had been found guilty of fraud, was not disciplined because he knew too much about Gen Lalla and Gen Mphego, as Col Malaza was paying them R100 000 per month from moneys generated from fraudulent claims;

1184.3        Gen Lazarus, Gen Lalla and Gen Mphego placed Col Malaza into the agent program of CI to prevent Col Malaza from exposing Gen Mphego;

1184.4.        Gen Mphego was involved in bribing a journalist, Ms Munusamy who was allegedly a confidant of Gen Mphego, as a result of which repairs were made at CI expense to Ms Munusamy's private vehicle;

1184.5.        Gen Mphego received cash from Gen Lazarus.

1185. Gen Mphego denied all the allegations made against him. He further asserted that the evidence of Col Naidoo should be treated with caution. He made extensive submissions in relation to the hearsay character of much of the evidence of Col Roelofse and Col Naidoo.

1186. A puzzling feature of Gen Mphego's submission is that he makes inordinate play of the fact, according to him, that Gen Mphego was not at the relevant time the Head of CI <sup>1060</sup>
1187. The evidence of Col Roelofse, to the Commission, which is actually quoted directly after the strident denial that Gen Mphego was the Head of CI, shows that Col Roelofse testified that Gen Mphego was either the Divisional Commissioner of Crime Intelligence or he was the acting Divisional Commissioner, I'm not exactly sure but he was the leading person of Crime Intelligence at the time when this took place.
1188. He went on to deny that he was the Divisional Commissioner of CI or acted as such at the time. He claimed to have sat completely outside the applicable reporting line or chain of command <sup>1061</sup>. He argued that if a proper investigation had been conducted, it would have become immediately apparent that [Gen Mphego] was not the head of Crime Intelligence at the time and he wasn't even in the employ of SAPS and could not therefore have been part of the SAPS management team that it is claimed to have gone all out to frustrate his investigation. <sup>1062</sup>
1189. Gen Mphego claimed that his formal title was Head, Operational Support Component <sup>1063</sup>. But Gen Mphego was not clear about how the chain of command worked in relation to the position he held or why he interacted with Col Roos in the way he did. The position is made more confusing by Gen Mphego's assertion further on in the submission that he was at a stage an assistant commissioner in CI, a rank apparently equivalent to major-general <sup>1064</sup>.
1190. Gen Mphego's version is that he called Col Roos to his office because he was concerned that certain details of an investigation had been leaked to a journalist. Why

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<sup>1060</sup> Gen Mphego: submission para 31

<sup>1061</sup> Gen Mphego: submission para 44.3

<sup>1062</sup> Gen Mphego: submission para 55

<sup>1063</sup> Gen Mphego: submission para 59

<sup>1064</sup> Gen Mphego: submission para 64



he should have concerned himself with the alleged leaking of information to a journalist is unclear

1191 As will be noted from the evaluation which follows, I conclude that the Commission ought not to make specific findings in relation to specific issues raised by Gen Mphego's submission. In my view, the proper approach by the Commission is to note the allegations and the denials in relation to Gen Mphego and make recommendations to ensure that the law takes its course.

## Evaluation

1192 During the period July 2009 to November 2011 Lieutenant General Richard Naggie Mdluli was the Divisional Commissioner Criminal Investigations (CI), General Solomon Lazarus was the CFO of the SSA and Col Heine Johannes Barnard was the section commander, supply chain management, CI Pretoria

1193 During the same period Company X<sup>1065</sup> was a trading entity which formed part of a clandestine operation, set up and funded through the SSA and operated by members of CI. Col Barnard was a procurement officer for Company X.

1194 The evidence before the Commission leaves no doubt that for an extended period at the beginning of the present century, corruption, nepotism, theft and fraud particularly in relation to the Secret Service Account (SSA) administered from within the branch of SAPS known as Crime Intelligence (CI) was conducted on such a scale that it can justly be described as looting and that these three officers controlled the looting under cover of their positions within CI. The execution of the orders of Gen Lazarus and Gen Mdluli in this regard was carried out by a number of their subordinate officers within CI Lieutenant Colonel Dhanajaya Gangulu Naidoo was prominent in the execution of the

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<sup>1065</sup> A company whose name is known to the witness but which he withheld in the public interest

criminal schemes of the two generals. So intimate was Col Naidoo's connection with them in their acts of theft and fraud that Col Naidoo aptly described himself as the lackey of the two generals

1195. Rule 3.3 of the Rules governing the Commission requires notice to be given to implicated persons of the testimony expected to be given implicating such persons, so as to enable implicated persons to defend themselves <sup>1066</sup>

1196. Proper notice under Rule 3.3 was given to all persons implicated in the statements of the three witnesses I have mentioned. None of them sought leave to cross-examine or give evidence but certain of them submitted affidavits in response to the notices I have summarised above the material in those affidavits

1197. Brig Roelofse described the mandate of CI as the managing of crime intelligence, the analysis of crime information and the provision of technical support for investigations and crime prevention operations.<sup>1067</sup> The strategic operations of CI include collating, evaluating, analysing, coordinating and disseminating intelligence for the purposes of technical operational and strategic utilisation; supplying intelligence products relating to national strategic intelligence to National Intelligence; instituting counter-intelligence

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<sup>1066</sup> These Rules were promulgated in GG41772 of 13 July 2018. Rule 3.3. reads:

"3.3. If the Commission's Legal Team intends to present to the Commission a witness, whose evidence implicates or may implicate another person, it must, through the Secretary of the Commission, notify that person ("implicated person") in writing within a reasonable time before the witness gives evidence:

3.3.1. that he or she is, or may be, implicated by the witness's evidence;

3.3.2. in what way he or she is, or may be, implicated and furnish him or her with the witness's statement or relevant portions of the statement;

3.3.3. of the date when and the venue where the witness will give the evidence;

3.3.4. that he or she may attend the hearing at which the witness gives evidence;

3.3.5. that he or she may be assisted by a legal representative when the witness gives evidence;

3.3.6. that, if he or she wishes:

3.3.6.1. to give evidence himself or herself;

3.3.6.2. to call any witness to give evidence on his or her behalf; or

3.3.6.3. to cross-examine the witness; he or she must, within two weeks from the date of notice, apply in writing to the Commission for leave to do so; and

3.3.7. that the Chairperson will decide the application."

<sup>1067</sup> The description was taken from the SAPS annual report for 2017/2018.

measures within SAPS; and preventing and fighting crime through enhanced international cooperation and innovation in police and security matters

- 1198 The SSA contains government money made available through the National Treasury. All funding for CI is carried out through the SSA. The money allocated to the SSA may however be deposited into different bank accounts. The SSA is a financial management system within SAPS. The SSA is not audited in the same manner as the SAPS open account, which is designed for use in every day police operations. The secrecy which attaches to the SSA is effected to protect covert operations and protect individuals, projects and operations from exposure.
- 1199 Safe houses are premises from which members undertaking CI can carry out their functions without public exposure. Such premises may not be used for private purposes. There is an established procedure by which such premises are acquired.
- 1200 The regulatory framework applicable to CI and the SSA consists of the South African Police Services Act,<sup>1068</sup> the Public Finance Management Act (PFMA),<sup>1069</sup> the Secret Services Act,<sup>1070</sup> and policy directives and procedures for CI gathering laid down from time to time.
1201. Col Roelofse described how in South Africa documents are classified in ascending levels of secrecy called Restricted, Confidential, Secret and Top Secret. The workings of the classification system are contained in a document classified as Restricted but available on the Internet called the Minimum Information Safety Standards (MISS).<sup>1071</sup>

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<sup>1068</sup> 68 of 1995.

<sup>1069</sup> 1 of 1999.

<sup>1070</sup> 56 of 1975.

<sup>1071</sup> Available at <https://www.right2info.org/publications/laws-1>.



1202. The evidence focussed on but was not restricted to the alleged conduct of Gen Solomon Lazarus, the CFO of the SSA at least until his arrest in 2011 and Gen Richard Mdluli, who was appointed divisional commissioner for CI in 2009
1203. According to Col Roelofse, prosecutions of those whom Col Roelofse had identified as offenders were obstructed by the refusal of those senior officers who controlled the SAPS to declassify documents so that prosecutions could proceed
1204. The evidence of Col Roos shows that the malfeasance within CI was in progress from at the latest 2003. In 2004, this officer was the head of internal audit at CI. Part of the audit plan for 2004 was to conduct an audit at the SSA advance office. He conducted the audit in 2004 and found certain discrepancies. One such discrepancy related to a company called LLVS Trading and Services which provided cleaning to undercover offices used by CI. Colonel Naidoo found that LLVS was owned by a colonel in CI in charge of an undercover office. In the same audit he found fraud in relation to the repairs of CI vehicles.
1205. Col Roos discussed his findings with Brig van Vuuren, the legal officer of CI and asked this officer for a legal opinion. Then he reported the fact of his investigation and findings and his request to Brig van Vuuren for an opinion to Gen Ntsumbedzeni Mulangi Mphego, the assistant commissioner of CI. Gen Mphego became angry and chased Col Roos out of his office
1206. In November 2004, Col Roos received a call from a brigadier in the Commercial Branch of the SAPS, who reported to Col Roos that he would send the documents to Commercial Crime in Pretoria who would conduct the investigation. A few days later, Col Roos was again called to the office of Gen Mphego. He found Gen Lazarus and Brig van Vuuren there. Gen Mphego was angry and made certain threats to Col Roos, who he believed had reported the matter to Commercial Crime. Col Roos tried to defend

himself but Gen Mphego said he was not interested and would end the career of Col Roos. Brig van Vuuren said he had reported the matter to Head Office and left the meeting. Colonel Naidoo was also instructed to leave the meeting and did so.

1207. The matter was never again discussed with Col Roos and he himself did not contact any person investigating the matter. Col Roos was however given to understand that Col Malaza had resigned from the SAPS. That was not the case. Col Roos learned that Col Malaza had been placed in the undercover agent program. Col Roos also learned that Col Malaza had been convicted of fraud, forgery and uttering in the Pretoria Magistrate's Court while Col Malaza was working at CI.

1208. During 2009, Gen Mdluli was appointed divisional commissioner for CI. In July 2009, Col Odendaal called Col Roos to a meeting with Gen Mdluli in an hotel room in Pretoria. This was the first time Col Roos met Gen Mdluli. Gen Mdluli told Col Roos that he wanted to clean CI and charge all corrupt members. He wanted Col Roos to give him his information in this regard. Gen Mdluli specifically mentioned the name of Gen Lazarus. Col Roos believed that Gen Mdluli was serious about the investigation and that he wanted to clean up CI.

1209. Col Roos had a further meeting with Gen Mdluli in Gen Mdluli's office at Erasmuskloof. Gen Mdluli handed Col Roos a letter dated 29 July 2009 appointing Col Roos as team leader in an investigation of certain instances of fraud in relation to informer files, safe houses and receipts of purchases and invoices within the SSA in KZN, Limpopo and Northern Cape.

1210. On 3 December 2009, Col Roos was instructed to attend a meeting at Gen Mdluli's office. He found present when he arrived Col Odendaal, Col Ntuli, Brig Mokoshane and Gen Mabasa. They were told to wait in Gen Mdluli's boardroom. After a while Gen Mdluli arrived with Gen Lazarus and Brig van Vuuren.

1211. Gen Mdluli was very angry and wanted to know why those present had gone to Gen Dramat and who had given permission for that. Colonel Naidoo had not done so but the others had gone to see Gen Dramat and had to explain their actions. Gen Lazarus sat there while this was happening, looking on and smiling.
1212. Gen Lazarus then confronted those present because of their audacity to investigate him. Gen Mdluli did not intervene. Colonel Naidoo asked Gen Mdluli why they were being humiliated by the person Gen Mdluli had told them to investigate. Colonel Naidoo said that he saw a side of Gen Mdluli he had not known before and concluded that he was now "big friends" with Gen Lazarus and Brig van Vuuren.
1213. Gen Mdluli said that the institution (SAPS) was bigger than any individual and that we must stop the investigation. They were then ordered to leave the meeting.
1214. During May and June 2010, Colonel Naidoo was in control of an audit at UTE, one of the front companies used by CI. He came across fraud in relation to a company called Hills Fitment Centre in KZN. The fraud related to over quoting for repairs to vehicles. While they were still busy with the audit, Brig Steyn, the head of Internal Audit, instructed them to stop the audit and not to compile a report. By then only one report regarding the Advance Office had been compiled.
1215. Brig Steyn handed Col Roos a letter dated 14 June 2010 signed by Gen Mdluli, regarding the establishment of an inspection capability at CI and appointing Col Roos to head up the new section. From that date, Col Roos was removed from Internal Audit and could not conduct further audits of the SSA.
1216. It seems probable that when Gen Mdluli was appointed divisional commissioner of CI in 2009, he was, or became, aware of the wide ranging corrupt activities of Gen Lazarus, which I shall describe below. However, Gen Mdluli himself had a personal problem



arising from the abduction and subsequent death in February 1999 of Mr Tefo Ramogibe, who had had a romantic relationship and subsequently married a lady with whom Gen Mdluli had also been romantically involved

1217. Gen Mdluli then decided to participate in the looting as an ally of Gen Lazarus. Perhaps Gen Lazarus used Gen Mdluli's problem to persuade Gen Mdluli not to take action against Gen Lazarus; or perhaps Gen Mdluli was persuaded to participate in the looting because Gen Lazarus offered to cut Gen Mdluli in. Both generals must have regarded the misuse of secret funds as a lucrative opportunity, with little risk of being detected in their criminal conduct, because they controlled the evidence in the form of the SSA, the SR and other relevant documentation. One does not know for sure why Gen Lazarus and Gen Mdluli decided on a life of crime because Gen Lazarus and Gen Mdluli have chosen not to explain their actions

1218. In March 2011, Col Roelofse was made part of a team which was assigned to investigate a criminal case against Gen Mdluli and three others. At a meeting called by Major Gen Matakata, the head of the Hawks in the Western Cape, attended by several high ranking SAPS officers, Colonel Naidoo and Lieut Col Piet Viljoen were briefed by Gen Shadrack Sibiya, the Provincial Commissioner, who disclosed that the members then conducting the investigation had been intimidated by the individuals under investigation and could not continue with the investigation. Colonel Naidoo and his team were required to take over the investigation and remain objective.

1219. Col Roelofse described how, despite the obstruction of senior SAPS officers, on 31 March 2011, Gen Mdluli was arrested and charged with 18 criminal charges, including murder, intimidation, kidnapping, assault with intent to do grievous bodily harm and defeating the ends of justice. All the charges stemmed from the death of Mr Ramogibe

in 1999. At the time, Gen Mdluli held the rank of senior superintendent and the position of commander of the detective branch at the Vosloorus police station

1220 The investigation into the death of Mr Ramogibe and related matters had been discontinued after Gen Mdluli was appointed to the post of divisional commissioner in 2009 but information about the discontinued investigation re-surfaced after Gen Mdluli's appointment. This led to the appointment of Col Roelofse and his team to investigate the case.

1221. In the light of the seriousness of these charges, the then Commissioner of Police, General Cele, suspended Gen Mdluli from office on 8 May 2011 and instituted disciplinary proceedings against him

1222. On 3 November 2011, Gen Mdluli wrote a letter to President Zuma, the Minister of Safety and Security and the Commissioner stating that the charges against him were the result of a conspiracy among senior police officers including the then Commissioner, General Cele, and the head of the Hawks, General Anwar Dramat. The letter also stated that "[i]n the event that I come back to work, I will assist the President to succeed next year" which the SCA found was an obvious reference to the forthcoming presidential elections of the ruling African National Congress in Mangaung towards the end of 2012. The allegations of a conspiracy led to the appointment by the Minister of a task team which later reported that there was no evidence of a conspiracy and that the police officers who had accused Gen Mdluli of criminal conduct had acted in good faith

1223. On 17 November 2011 Gen Mdluli's legal representatives made representations to Adv Mrwebi in his capacity as Special DPP and head of the SCCU, seeking the withdrawal of the fraud and corruption charges. These representations again contended that the charges against Mdluli resulted from a conspiracy against him involving the most senior members of the South African Police Service. The representations also indicated that a

similar approach had been made to Adv Chauke, the DPP South Gauteng. Adv Mrwebi, in response to the representations made to him, requested a report from Adv C Smith, the prosecutor in the Pretoria Specialised Crimes Court, before which the case had served, and his immediate superior, Advocate Glynnis Breytenbach. Both these advocates responded with a motivation that the charges should not be withdrawn. Despite this motivation, Adv Mrwebi decided to withdraw these charges and notified Gen Mdluli's representatives of his decision to do so on or about 5 December 2011.

1224. On 1 February 2012, the charges against Gen Mdluli were provisionally withdrawn by Adv Chauke. The circumstances under which these charges were withdrawn formed the subject of civil litigation brought by an NGO called Freedom Under Law (FUL), culminating in a decision of the SCA reported as *National Director of Public Prosecutions and Others v Freedom Under Law*<sup>1072</sup>. The circumstances under which the charges were withdrawn in that judgment. Ultimately, the decision of the NPA to withdraw the original charges of fraud and corruption and the decision to terminate the disciplinary enquiry against Gen Mdluli were set aside.

1225. On 29 February 2012 the Acting National Commissioner of Police at the time, General Mkhwanazi, withdrew the disciplinary proceedings against Gen Mdluli and on 31 March 2012 he was reinstated and resumed his office as Head of Crime Intelligence. Shortly thereafter, his duties were extended to include responsibility for the unit which provides protection to members of the national executive.

1226. Adv Chauke, who had ordered the provisional withdrawal of the charges against Gen Mdluli, directed that the death of Mr Ramogibe be the subject of an inquest. The inquest was held before a magistrate, who found that "The theory of Mdluli being the one who had orchestrated the death of [the deceased] is consistent with the facts" and "The

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<sup>1072</sup> 2014 4 SA 298 SCA



death [of the deceased] was brought about by an act *prima facie* amounting to an offence on the part of unknown persons. There is no evidence on a balance of probabilities implicating Richard Mdluli [and his co-accused persons] in the death of the deceased."

1227. The SCA concluded that s 23 of the National Prosecuting Authority Act required, on the facts of the case, that Adv Mrwebi could not competently withdraw the charges unless he had made a decision in consultation with the DPP of the area of jurisdiction concerned. That officer was Adv Mzinyathi. Further on the facts, the SCA disbelieved Adv Mrwebi's version that he had indeed consulted with Adv Mzinyathi

1228 The ground on which Adv Mrwebi decided to set aside the charges against Gen Mdluli and the other accused was that the investigation of the alleged offences by SAPS was unlawful as the only body competent to conduct such an investigation was the IG of Intelligence. The IG himself pointed out that he had no powers to investigate. In fact, Gen Mdluli had not even suggested that the investigation against him was legally incompetent on the ground that SAPS were not competent to investigate. All this, and more, was pointed out to Adv Mrwebi in a memo dated 13 April 2012 written by Adv Breytenbach and Adv JM Ferreira, who were both lead prosecutors in the case and members of the NPA's SCCU in Pretoria. Adv Mrwebi rejected the views advanced by Adv Breytenbach and Ferreira and by the IG. In the result, an untenable limbo was created, in which these serious charges were obstructed from going forward

1229. Adv Mrwebi's immediate superior at the time was Adv Nomgcobo Jiba, who received her acting appointment on 28 December 2011 from President Zuma. Although her intervention as Adv Mrwebi's superior was sought by Adv Breytenbach and Ferreira, she remained extraordinarily supine.

1230. An enquiry into the fitness of Advs Jiba and Mrwebi was conducted before Justice Mokgoro. Her report is dated 1 April 2019. Only an extract was placed before the Commission. The report recommended that their tenure in the NPA be ended. On 25 April 2019, President Ramaphosa ended their tenure after giving them an opportunity to respond to the outcomes.<sup>1073</sup>
1231. After the SCA judgment was handed down, the prosecution of Gen Mdluli resumed and according to press reports, he was convicted in the South Gauteng High Court on various charges. He was never charged for the murders. I am not aware whether details of the charges against Gen Mdluli which proceeded to final judgment in the South Gauteng High Court and the fate of any appeals were placed before the Commission by formal evidence.
1232. After the arrest of Gen Mdluli, the fact of the suspicions against Gen Mdluli and the efforts made to prevent his prosecution led to some members of CI approaching Col Roelofse and his team with information. This led Col Roelofse to investigate matters relating to the Secret Service Account (SSA).
1233. I found Col Roelofse to be a good witness. His attention to detail was impressive and he demonstrated objectivity and proper professional persistence in his efforts to get to the bottom of the matters to which his attention was drawn during his investigation.
1234. Col Roelofse recounted how, from the outset, his efforts to investigate were hampered by senior officers within SAPS. The vast majority of the alleged frauds and thefts related to transactions effected through the SSA and thus turned on documents in the possession of SAPS themselves. The constant justification for the reluctance or

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<sup>1073</sup> <http://www.governmentpublications.lib.uct.ac.za/news/mokgoro-enquiry-report>

downright refusal to make documents held by SAPS available to Col Roelofse for his investigation was that the documents were classified

1235 The question of the classification of documents received the attention of the Constitutional Court in *Independent Newspapers (Pty) Ltd v Minister for Intelligence Services: in re Masetlha V President of the Republic of South Africa and Another*.<sup>1074</sup> The power of the national executive to classify documents to protect them from disclosure derives from s 172(1) of the Constitution which permits the executive to formulate national policy. On 4 December 1998, the national executive made a policy in relation to the classification of documents called the Minimum Information Security Standards (MISS), which was adopted by the Cabinet. It applies to all departments of State that handle classified information in the national interest. It provides for measures to protect classified information and empowers the Minister to protect information by classifying it as 'restricted' or 'confidential' or 'secret' or 'top secret'. In addition national legislation and regulations prohibit the disclosure of certain classified information but these are not relevant to the present topic.<sup>1075</sup>

1236 A policy framed by an administrative decision maker is not to be treated as if it were a constitutionally compliant statute, which must be interpreted in accordance with its language, its context and its purpose. The point was explained in *MEC for Agriculture, Conservation, Environment and Land Affairs v Sasol Oil (Pty) Ltd and Another*.<sup>1076</sup>

1237 The adoption of policy guidelines by state organs to assist decision-makers in the exercise of their discretionary powers has long been accepted as legally permissible and eminently sensible. This is particularly so where the decision is a complex one, requiring the balancing of a range of competing interests or considerations, as well as

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<sup>1074</sup> 2008 5 SA 31 CC

<sup>1075</sup> See *Independent Newspapers*

<sup>1076</sup> 2016 2 SA 167 SCA para 19; footnotes omitted.



specific expertise on the part of a decision-maker. A court should in these circumstances give due weight to the policy decisions and findings of fact of such a decision-maker. Once it is established that the policy is compatible with the enabling legislation, as here, the only limitation to its application in a particular case is that it must not be applied rigidly and inflexibly, and that those affected by it should be aware of it. An affected party would then have to demonstrate that there is something exceptional in his or her case that warrants a departure from the policy.

1238. But it is unnecessary to decide whether policy articulated by the national executive is subject to the limitation described in *Sasol Oil* in relation to any of the documents to which Col Roelofse sought access for the purposes of his investigation. The text of the MISS is classified "restricted" but was placed before the Commission by Col Roelofse, who observed that it was available on the Internet.

1239. Col Roelofse quoted the definitions of the categories Restricted, Confidential, Secret and Top Secret. He further quoted Clause 3.4 of Chapter 2 of MISS which precedes the descriptions of the several types of classification. It reads:

1240. The classifications mentioned above are described below.

1241. Note: The security measures are not intended and should not be applied to cover up maladministration, corruption, criminal actions, etc or to protect individuals/officials involved in such cases.

1242. From this it follows that MISS itself requires that classified material in principle should be made available to SAPS investigators investigating alleged maladministration, corruption, criminal actions and the like. The material should not have been withheld from Col Roelofse and in the recommendation section of this memorandum I shall describe how this difficulty ought in my view to be resolved.

1243. Col Roelofse described how his team received a file from Col Roos, how Col Roos disclosed to Col Roelofse his suspicions as to fraud and theft within CI and how Col Roos's investigations were obstructed by senior officers within SAPS, all as detailed above.
1244. Col Roelofse's investigations led him to Lieutenant Colonel Dhanajaya Gangulu Naidoo. He interviewed Col Naidoo on 18 October 2011. The following day, Col Naidoo confided in Col Barnard that he had decided to assist the investigation conducted by Colonel Naidoo. On the same day, it appears, Col Naidoo told Col Barnard that he had spoken to Col Roelofse and had admitted submitting false claims on behalf of himself and others. It was already clear at this stage that Gen Lazarus was at the forefront of the corruption within CI.
1245. That same day, Col Naidoo was taken by CI members whose names were not identified in the public record and Gen Lazarus to the house of Gen Lazarus, where Col Naidoo was interrogated. On 20 October 2011, Col Naidoo told Col Naidoo that at the meeting at Gen Lazarus's house he heard those present developing a strategy to use journalist paid by CI to write a story casting suspicion on Gen Dramat to take the focus away from them. Stories critical of Gen Dramat appeared in the Sunday Times on 13 October 2011 (before the meeting at Gen Lazarus's house) and on 23 October 2021 (after the meeting). At the same meeting, Col Naidoo reported to Col Roelofse, there was a discussion about the desirability of destroying the records relating to certain air tickets purchased through Westville Travel.
1246. Gen Anwar Dramat was a high ranking officer in SAPS and the head of the Hawks at the time. He appears to have been active in the efforts made to uncover the corruption in CI.

1247. On 24 October 2011, Col Naidoo was again fetched from his home and taken to Gen Lazarus's office for interrogation. The CI members who picked up Col Naidoo for interrogation on 19 October 2011 and Col Barnard were again present, as was Col Barnard. That same evening, Col Roelofse placed Col Naidoo and his family in witness protection, where they remain to this day.
- 1248 Col Naidoo became acquainted with Gen Lazarus in the late 1990s. They played volleyball in the same league in Tongaat, their home town, and Gen Lazarus was married to the cousin of Col Naidoo's mother. Col Naidoo secured a post in SAPS as a clerk. He was later transferred to CI with the rank of warrant officer.
- 1249 In about 2006 or 2007, Gen Lazarus was conducting extensive renovations to his private home in Edenvale. Col Naidoo became the project manager for these renovations, to the neglect of his duties as a police officer. He had to ensure that the necessary building equipment and materials were obtained and that payments were made. He performed many of these functions during SAPS office hours.
1250. Often Col Naidoo would drop his CI work to attend to Gen Lazarus's concerns, including by visiting the site. Because this interfered with the performance of Col Naidoo's official duties, Gen Lazarus arranged for him to be transferred to the operational support component (OS) of CI headed by Gen Lazarus himself.
- 1251 Gen Lazarus was the CFO of the SSA. Supply chain management (SCM) is a sub component within OS. It was headed at the time by Col Heine Johannes Barnard. Col Naidoo was given the task of managing the CI vehicle fleet. His duties included maintenance, purchasing new vehicles, managing the administration of the fleet and the fleet itself.



1252. The true reason for the transfer of Col Naidoo, however, was to enable him to manage the rebuilding of Gen Lazarus's private home and he did the minimum of genuine work
- 1253 During July 2009, Gen Mdluli was appointed divisional commissioner of CI which meant that Gen Lazarus reported to Gen Mdluli. Col Naidoo suspected that Gen Mdluli became aware of the corrupt activities relating to and the misuse of the SSA because soon after his appointment, Gen Mdluli indicated that he was going to have Gen Lazarus transferred away from SSA to one of the other components within CI.
1254. As part of the investigation Col Roelofse and his team obtained warrants authorising the search for and seizure of electronic equipment relating to certain entities implicated in the investigation Col Roelofse sought the assistance of the technical support unit (TSU) within CI. The TSU fell under the direct command of Gen Lazarus and was thus aware of the steps Col Roelofse had taken There occurred what Col Roelofse described as incidents and interference during the course of the investigation Gen Lazarus was also successful in securing the removal from the DSPI investigation team of Gen Hankel, who was transferred out of CI together with Gen Sintimule and Gen Matshatse
1255. Col Naidoo provided Col Roelofse with information on several aspects of the investigation. During late 2011 or early 2012, Col Roelofse briefed Gen Mothiba, then the national head of detectives, and Brig Odendaal, the national officer: legal services in Cape Town on the information supplied to Col Roelofse by Col Naidoo The information largely related to conduct in Kwa Zulu Natal, Gauteng and the Western Cape Gen Mothiba oversaw the investigations in KZN
- 1256 Acting on information supplied by Col Naidoo, Col Roelofse obtained documents which showed that unauthorised persons made travel arrangements through Westville Travel

in Durban. Westville Travel is a division of One Stop Travel and Tours (One Stop), also of Westville

- 1257 On 25 October 2011, Col Roelofse executed a search and seizure warrant at Westville Travel. The manager, Mr Manesh Parekh, must have had advance warning of the warrant because when Col Roelofse arrived, he found that Mr Parekh had printed out all the invoices Colonel Naidoo required with copies for himself. Mr Parekh told Col Roelofse that his information on the warrant had come from one of the CI members who had picked Col Naidoo up for interrogation on 19 October 2011.
- 1258 On an analysis of documents previously received from Gen Hankel and the documents provided by Mr Parekh, which he compared with those provided by Gen Hankel, Col Roelofse concluded that Mr Parekh had attempted to hide the identity of a specific passenger. However, it became clear to Colonel Naidoo that the majority of the flights had been made by Gen Mdluli, Gen Lazarus, Mr Marimuthu (to whom mention will be made below) and, on occasion, their families.
1259. Col Roelofse established that during the period April 2010 to 25 October 2011, the flights in question had been paid for by cheques by Company X and amounted to R1 168 531. These payments were approved by Gen Lazarus. The costs for the three individuals and their families were as follows: Gen Mdluli: R190 919; Gen Mdluli's family: R116 000; Gen Lazarus: R131 626; Gen Lazarus's family: R28 498; Mr Marimuthu: R148 421; Mr Marimuthu's family: R66 710
1260. Various senior SAPS officers, including Gen Hilda Senthumule, the head of security and counter-intelligence in the CI, and Gen Matshatse, the acting head of CI at that time, were flown to Durban to attend church services at the African Dream Centre (more

correctly: African Dream Family Church)<sup>1077</sup>, a church attended by Gen Lazarus and Mr Marimuthu

1261 According to Col Roelofse, Mr Parekh himself, his family, friends and several pastors and clergy from the church in question travelled to various parts of South Africa with air tickets paid from the SSA.

1262 Gen Lazarus was found guilty at a disciplinary hearing on charges that he had misrepresented to CI who in fact had paid for the air tickets in question. Gen Lazarus was dismissed from the SAPS.

1263 Company X maintained a register of vehicles to be used by operatives in covert operations. Col Roelofse called this the secret register (SR). He established that Gen Lazarus operated a scheme with Mr Joe Marques, through the firm owned or operated by Mr Marques called New World Motors (NWM). In essence, the scheme was for Mr Marques to buy SR vehicles from Company X which were due for replacement and sell vehicles to Company X at inflated prices. At the end of 2010, Mr Marques had about 80 vehicles bought by him from Company X.

1264 For security reasons, when SR vehicles were due for replacement, they would be sold by closed tender. There were five such closed tenderers of which two shared directors and members who were family of Mr Marques. But Gen Lazarus would inform Mr Marques beforehand of the competing bids, thereby enabling Mr Marques to bid amounts just higher than his competitors.

1265. Company X would then repurchase some of the vehicles sold to Mr Marques at inflated cash prices, paid from the SSA. Some of the cash derived from the sale by Mr Marques of vehicles to Company X would be used to settle advances made to members for work

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<sup>1077</sup> See Roelofse: Transcript day 165 p111



related expenses to be incurred. According to Col Naidoo, he frequently collected money from Mr Marques for this purpose. Mr Marques would provide members of CI whose names were withheld and Col Naidoo himself with fraudulent invoices to generate cash to be used to cover shortfalls in respect of other unaccounted for expenses. Members were also allowed to buy SR vehicles bought by Mr Marques at the same prices paid by Mr Marques.

1266. Shortly after 23 September 2011, Col Roelofse sought to obtain documents from Company X to establish whether the trade between Company X and NWM was of any significance. Gen Lazarus blocked this line of enquiry on the ground that national security issues precluded the disclosure of this information to Col Roelofse.

1267. According to information provided by Col Naidoo to Col Roelofse, Gen Lazarus operated a scheme within CI whereby Gen Lazarus saw to it that his confidants and family members received irregular promotions within CI. Col Naidoo himself was promoted from warrant officer directly to lieutenant colonel.

1268. According to information given by Col Naidoo to Col Roelofse, Gen Lazarus systematically abused the institution of safe houses by using them as private accommodation for himself, persons close to him and their families. These safe houses were frequently furnished and equipped at the expense of the state and when the safe houses in question were no longer required for the private purpose in question, the furniture and appliances would unlawfully be distributed to Gen Lazarus and those who benefited from his conduct, including on occasion Col Naidoo himself.

1269. Similarly, Gen Lazarus operated a scheme by which SSA funds were used to finance partially the purchase of vehicles by senior police officers and other government officials. Col Naidoo explained to Col Roelofse that Gen Lazarus used his position as

head of SSA to ~~Abuy@~~ influence from senior police officers and other government officials and used the influence so obtained to fend off investigations into the SSA

1270 One of the means allegedly used by Gen Lazarus was to allow senior managers to choose a vehicle to the value of about R500 000, which Gen Lazarus funded from the SSA although these managers already received a vehicle allowance through their remuneration packages. As these managers were receiving financial benefits to which they were not entitled, they were placed in a difficult position in any action against Gen Lazarus.

1271 Col Naidoo gave details of the officials who benefited from this scheme and similar schemes of Gen Lazarus:

1271.1. Gen Mdluli: five vehicles valued at R3 153 730. This does not include vehicles provided to members of Gen Mdluli's family who were appointed to CI without due process; a security upgrade to his house funded from the SSA to the value of R190 735, to which this officer was not entitled.

1271.2. Gen Manoko Nchwe: one vehicle valued at R557 079,96. The motivation was that this officer would use the vehicle for sensitive operations. But this officer was never a member of CI nor did she undertake sensitive operations. Furthermore, the vehicle was registered in her name, although it was registered on the SR. A security upgrade funded from the SSA to the value of about R40 000, to which this officer was not entitled. When given notice of disciplinary proceedings against her, she resigned.

1271 3 Then Minister of Police Nathi Mthethwa: security upgrades to his house funded by the SSA totalling R195 581,45 during the period September 2010 to January 2011. The allegation is that the documents evidencing these transactions and

payments were handed to then Commissioner of Police Cele to be used in his disputes with the then Minister to ensure that the then Minister could not act against him. This investigation did not proceed because of the failure of the SAPS to provide important documents needed in the investigation.

#### **Mr Panaganth (Timmy) Marimuthu**

1272 According to Col Naidoo, this person was recruited and registered as a contact person or informant of the CI and paid large sums of money to influence Mr Cele to support Gen Lazarus. The allegation (unsupported) is that Mr Cele was paid in cash to secure such support. The allegation is further that Mr Marimuthu was to act as an agent of influence, which is outside the mandate of CI.

1273. Again according to Col Naidoo, several family members and friends of Mr Marimuthu were appointed as agents of CI but did no intelligence gathering work.

1274 According to Col Naidoo, allegations of sexual misconduct were made against Mr Marimuthu by a woman who worked for CI. This same allegation was apparently made to the IG of Intelligence. Colonel Naidoo received an affidavit detailing this allegation but his investigation was stopped. Brig Madonsela also conducted an investigation into the activities of Mr Marimuthu which was stopped and never concluded.

1275. Following information received from Col Naidoo, Col Roelofse established that four properties belonging to Mr Marimuthu were rented by CI as safe houses, for which Mr Marimuthu received inflated rentals of up to R250 00 per month.

#### **Mr John Appalsami**

1276 According to Col Naidoo, Mr Appalsami was a friend of Gen Lazarus. Mr Appalsami controlled Daez Trading CC, reg No 2008/038456/23. Through Daez Mr Appalsami



facilitated various transactions approved by Gen Lazarus and benefited from an account with Atlantis Motors called the Barut account

1277 In November 2010, CI rented a safe house at Clearwater Estate Boksburg through Daez at a monthly rental of R20 000. This house was exclusively used by Gen Mdluli and continued to be paid in November 2011 even though Gen Mdluli had been arrested in April 2011

1278. Gen Mdluli owned premises called Gordon Villas in Gordons Bay. CI rented this property through Daez from Gen Mdluli as a safe house at a monthly rental which, according to Col Naidoo, was inflated by R2 000 per moth which was divided between Gen Lazarus and himself

#### **Trips overseas by Gen Mdluli and family facilitated by Gen Lazarus**

1279 On 6 November 2009, Gen Mdluli and his then wife, Ms VL Mdluli, flew business class to Hong Kong and back to visit their daughter who was studying in China. The cost of the trip was R110 000, of which R60 000 was paid directly by the SSA and R50 000 was funded through the Barut account. The travel arrangements were made through Westville Travel. Gen Lazarus told Col Naidoo that Gen Mdluli wanted to take his wife to China and asked Col Naidoo to help by making enquiries about flight tickets.

1280. On 3 November 2009, Col Naidoo was called into Gen Lazarus's office. Gen Lazarus told Col Naidoo to take the envelope which was on the table and keep it until Gen Lazarus discussed it with him. On the same day, Gen Lazarus called Col Naidoo to his office where he found Col Barnard. Gen Lazarus said they had secured a loan of R50 000 from Jan Venter of Nissan Atlantis for air tickets for Gen Mdluli's wife. The same day, Col Naidoo applied for an advance of R50 000 which was approved by either

Col Barnard or Gen Lazarus. Col Naidoo then went to Flight Centre, where he bought two tickets for Gen Mdluli and his wife

1281 Col Naidoo was concerned by what he had done and the fact that the advance was in his own name, so the same day, he wrote out an account of what had happened and kept a copy of his note, of the copy typed out by his wife and the E-tickets. He produced these documents to Col Roelofse

1282. On 7 November 2009, Gen Lazarus instructed Col Naidoo to apply for R10 000 for Gen Mdluli as spending money on his trip. Col Naidoo applied for the advance, which was approved by Gen Lazarus

1283 On 7 November 2009, Col Naidoo met Gen Mdluli at the airport. He handed Gen Mdluli R20 000: the R10 000 for which he had specifically applied and R10 000 from the balance of the money left after paying for the tickets. This left a balance of R3 848 which Col Naidoo misappropriated

1284. Col Naidoo later purported to reconcile the claims by Gen Mdluli for expenses he did not actually reconcile, for one reason because most of the receipts were in a language he did not understand

1285. On 21 November 2011, Gen Mdluli flew on official business to Singapore. He was accompanied by his wife Ms Lyons. Her trip was paid for by the SSA although Ms Lyons was not a member of SAPS and worked at the time for DHA as a clerk. Her ticket was upgraded from economy to business class and cost R46 809

1286. The party travelling to Singapore included several SAPS officers, Ms Juanita Barnard, the wife of Col Barnard, Ms Sandra Lazarus, the wife of Gen Lazarus and Ms T Lyons, the girlfriend of Gen Mdluli. The tickets of Col Naidoo and Col Miranda Venter were paid

from the SSA as well as, possibly, Ms Juanita Barnard's ticket. The ostensible reason for the trip to Singapore was to buy electronic equipment for CI

1287 The tickets for Col Naidoo and Col Venter were paid in cash. Ms Lyons flew business class at the expense of the SSA. Gen Mdluli, Gen Lazarus and Ms Lyons travelled business class. The rest of the party travelled economy.

1288 Only two days were spent buying equipment and that was done at a general mall selling electronic equipment. The rest of the trip was spent sightseeing. There was no need Col Naidoo could perceive why anyone from CI needed to travel to Singapore for the stated purpose

1289 Col Naidoo bought a camera at the expense of CI as a present for his sister, valued at about R5 000. Gen Lazarus and Col Barnard approved the funding for the purchase.

1290 On their return to South Africa, through the intervention of a contact of Gen Mdluli, the party did not declare the equipment they had bought and evaded customs duty

1291. The equipment was paid for by credit cards which had been issued to Col Naidoo and Col Barnard at the ABSA branch at which Ms Juanita Barnard worked. Col Naidoo believed that each of the two credit cards was loaded with R100 000

1292. Thereafter, Col Naidoo was involved closely with Gens Mdluli and Lazarus in both their legitimate and illegitimate activities within CI. He described himself as their lackey. He was required to be at their beck and call in most of their personal and official requirements including acquiring vehicles, the use of safe houses, buying groceries, ensuring safe houses were cleaned, buying air tickets, having their cars washed and transporting their family members



1293. These trips formed the subject of a charge and a comprehensive charge sheet was prepared. But SAPS would not declassify the documents required for the prosecution and the case was withdrawn.

#### **Atlantis Motors and the BARUT account**

1294. BARUT was the name given to an account in the books of Atlantis Motors in Centurion. The account was created pursuant to an arrangement between the dealer principal at Atlantis, Mr Jan Venter and Col Barnard. The account was funded from portions of the profit in the hands of Atlantis on the sale of vehicles by Atlantis to CI. Mr Venter would then procure that from time to time that these funds would be paid to third parties on the instructions of Col Barnard.

1295. Financial records detailing these transactions were only available to Col Roelofse from 8 April 2008. On that day, the BARUT account was in credit in the sum of R175 045,15. From that date to 19 October 2012, an additional R1 527 601,61 was credited to the BARUT account. Of that R1 659 923,08 was paid to third parties by EFT.

1296. The funds in the BARUT account were used to give Gen Lazarus and other CI members discounts on private vehicles. An additional total of R465 000 was transferred to NWM, which Col Roelofse believed supported Col Naidoo's information to him that Gen Lazarus had to generate cash inter alia to cover shortfalls in the SSA account. An additional R143 621,78 was used to settle an amount owed to Wesbank on a vehicle registered to a journalist, Ms Munusamy.

### **Obstruction of criminal and disciplinary proceedings against CI members**

1297 Disciplinary proceedings were taken against Gen Lazarus which led to his dismissal. Col Roelofse did not know the outcome of the disciplinary proceedings against Col Barnard. Col Barnard is still in the SAPS.

1298. Brig Madonsela and Capt Heeralal were tasked with the investigation of 250 members if CI. Col Roelofse has copies of fourteen criminal case dockets opened by Capt Heeralal, all relating to the non-disclosure of criminal convictions or civil judgments. All these dockets were closed on the SAPS criminal administration system. As far as Col Roelofse could establish, none of them was submitted to the NPA for a decision on whether or not to prosecute. Col Roelofse said that he knew that the investigation of Brig Madonsela and Capt Heeralal was stopped but he did not know by whom.

### **Alleged involvement of Gen Bheki Cele**

1299 At the time Gen Mdluli was appointed, 2009, Mr Bheki Cele was the national commissioner of SAPS and was rumoured to have been instrumental in the award of large tenders to Mr Marimuthu. Gen Lazarus was aware of the connection between Mr Marimuthu and Mr Cele and contacted Mr Marimuthu in an attempt to secure the intervention of Mr Cele to ensure that he was not transferred away from his position by Gen Mdluli. Thereafter, Gen Lazarus made several unsuccessful attempts to meet Mr Cele. Ultimately he made a call to another CI member to organise cash, which Col Naidoo assumed would need to be paid to Mr Cele.

1300. At that time, Col Naidoo was fortuitously in possession of R40 000 which he had taken from CI head office for another purpose which he said he could not recall. He then handed the R40 000 to Gen Lazarus. A meeting then took place between Gen Lazarus and Mr Cele. Col Naidoo was in the house in which this meeting took place but was not

in the same room. After the meeting, Gen Lazarus did not hand the R40 000 back to Col Naidoo, from which Col Naidoo assumed that it had been paid over to Mr Cele

1301 In the result, Gen Lazarus was not transferred

#### **Inappropriate appointments and promotions within CI**

1302. Col Naidoo was himself, through his association with Gen Lazarus, promoted from warrant officer to lieutenant colonel through a covert advertisement process

1303. During January or February 2010, 250 posts were made available within CI. Most of these positions were filled by friends or family of Gen Mdluli, Gen Lazarus and those close to them. Most of the family members and friends of Gen Mdluli were placed in the agent program, for which they had no prior police experience, to hide their connections with Gen Mdluli.

1304 During January or February 2010, Col Naidoo was asked to remain present at a discussion between Gen Mdluli and Gen Lazarus. Gen produced a list of persons he wanted employed in CI. While Col Naidoo could not remember the exact conversation, the two generals agreed that the persons on the list would be appointed. Gen Mdluli said that Col Naidoo should be their handler because he trusted Col Naidoo. After Gen Mdluli left, Gen Lazarus remarked to Colonel Naidoo that Gen Mdluli wanted his family members appointed.

1305 Col Naidoo identified the persons who were appointed for their associations with one or other of the two generals but those names were withheld from his sworn statement. He further identified those who were improperly promoted or improperly skipped ranks in promotions



1306. Mr Marimuthu and members of his family were similarly employed in CI. The names of these family members were similarly withheld from the sworn statement and testimony of Col Naidoo.
1307. Two family members of Col Barnard were appointed through nepotism.
1308. Two relatives of Major General Willie Els were appointed within the CI without any prior experience in SAPS or CI
1309. Col Naidoo further asserted that relatives or friends of Lt. General Raymond Lalla and Lt. General Stander were improperly appointed to CI and that a relative of Gen Bellingham skipped ranks and was appointed a colonel
- 1310 Col Naidoo said that various other persons were appointed to fill posts within the group of 250 posts mentioned by him had criminal convictions.

#### **Appointment of Col FM41**

- 1311 Col Naidoo referred to a colonel in CI, identified as FM41 who had been convicted of vehicle related fraud. He said that Gen Lazarus wanted to "help the old man" and placed him in the agent program. Col Naidoo was one of his handlers.
- 1312 Col Naidoo asserted that Col FM41 was placed in the agent program because he knew too much about Lieut Gen Raymond Lalla and Gen Mulangi Mphego, also known as Marshall. Colonel Naidoo said that Col FM41 told him that he, Col FM41 was paying Gens Lalla and Mphego R100 000 per month from the money Col FM41 made from the submission of false informer claims
1313. Gen Lalla was at the time divisional commander at CI and Gen Mphego was assistant commissioner at CI Col Naidoo said he believed that Gens Lazarus, Lalla and Mphego

had Col FM41 placed in the agent program because they feared he would expose them.

Both Gen Lalla and Gen Mphego left SAPS

### **Further improper appointments**

1314. According to Col Naidoo, a relative of Gen Lazarus stationed at Tongaat was found guilty of corruption and dismissed from SAPS but after his dismissal was recruited as an informant by CI and paid R50 000 per month. Yet another relative of Gen Lazarus stationed at Tongaat SAPS until he retired was taken up as an informant by CI.

### **Payments of claims to agents**

1315. Col Naidoo was responsible for paying salaries and operational expenses to relatives of Gen Mdluli and others. He identified to Col Roelofse the relatives concerned and certain payments he made to them but withheld their names in his sworn statement and his testimony. Col Naidoo suggested that these specific corrupt claims which he administered and paid out exceeded R5 million.

1316. Apart from members of SAPS placed undercover, there are two categories of civilians used and paid by CI: contact persons, ie those who assist in a specific situation or provide information ad hoc; and informants, ie persons registered on the CI payroll who receive a monthly remuneration.

1317. Col Naidoo provided details of false claims submitted by the handlers of such civilians but withheld their names in his sworn statement and his testimony.

### **Alleged abuse of safe house system**

1318. Col Naidoo provided instances where he alleged the safe house system was abused. He provided the names of the beneficiaries of these schemes but the names were

withheld in his sworn statement and his testimony. Prominent in the account of Col Naidoo in relation to this alleged abuse were the names of Gen Lazarus, Mr Appalsami, Mr Marimuthu and Gen Mdluli, but he named other SAPS officers as well

#### **Alleged irregular upgrading of CI members properties**

1319. Col Naidoo gave several instances where he claimed that the properties of CI members were irregularly upgraded with funds from the SSA. In some instances he withheld the names of the officers who allegedly benefited.

#### **Alleged misuse of vehicles on the SR**

1320. Col Naidoo gave several instances where vehicles were purchased or leased with SSA funds and then improperly made available to persons for their private use. He alleged that Gen Mdluli's family benefited from this conduct in several instances and that Gen Mdluli himself had seven vehicles allocated to him of which six were SR vehicles. He further alleged that Mr Marimuthu improperly received a white BMW fitted with blue lights. Favoured CI members would be allowed to buy vehicles bought from CI by NWD at cost price.

#### **False claims made by Col Naidoo himself**

1321. Col Naidoo disclosed that he benefited from false claims which he submitted, probably exceeding R100 000 in all. He claimed he could not remember them all without documentation but mentioned those for the replacement of windscreens at NWM, where no such service was rendered, and those for receipts for furniture not purchased from Masons Furniture.



### **Alleged efforts to suborn the media**

- 1322 Col Naidoo claimed that the stories about Gens Dramat and Sibiya being arrested for illegal renditions, which were printed with great prominence by the Sunday Times were facilitated with input from CI.
1323. Between late 2009 and early 2010, Col Naidoo said that he drew R25 000 which he gave to Gen Mdluli who, he claimed, had told him that he needed the money to pay a journalist not to print information he had about CI.
1324. Col Naidoo claimed that some R40 000 was paid to repair the silver BMW 3.3CL of journalist Ms R Munusamy, who was the confidante of ex-CI head Gen Mphego. He picked the vehicle up from her and returned it after repairs on three or four occasions.
1325. Col Naidoo gave evidence at a disciplinary enquiry into the conduct of Gen Lazarus. In his findings at the conclusion of the evidence, the chairperson of the enquiry made certain comments on the credibility of Col Naidoo. He concluded that Col Naidoo's evidence should be approached with "some caution"; that his own conduct in the events leading to the charges against Gen Lazarus was "brazen and dishonest"; and that he was not a person whose evidence can be trusted. The chairperson therefore decided not to rely on Col Naidoo's evidence except where it was corroborated by other evidence or not challenged.<sup>1078</sup>
- 1326 Many of the allegations made by Col Naidoo before the Commission lack corroboration. He himself was an accomplice to many of the alleged offences and his evidence must be approached with caution. On the other hand, those implicated by the evidence of Col Naidoo were given an opportunity to contradict the allegations against them and

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<sup>1078</sup> BC-OPP-AFF-113

otherwise defend themselves. Notably, Gen Lazarus and Gen Mdluli elected not to do so.

1327 But while the general allegations of corruption within CI stand uncontradicted, the essence of the individual allegations of criminal conduct is likely to depend in large measure on the documents which have been withheld from Col Roelofse and his team by Gen Lazarus and other senior officers of SAPS

### **Recommendations: Quis custodiet ipsos custodes?**

1328. While the evidence of Col Naidoo includes claims that two Ministers of Police, one former and one present, were implicated in corrupt conduct committed by Gen Lazarus, those allegations do not appear to be corroborated by any evidence produced to the Commission. By this I do not mean either that there is no such evidence or that there is. Whether those allegations, and the other allegations made by Col Naidoo, justify further action against any individual depend on the evidence uncovered by those investigating the allegations in accordance with law.

1329. There is evidence that Gen Mdluli appealed to President Zuma to help him in his efforts to escape from the consequences of his crimes in return for the assistance of Gen Mdluli in getting President Zuma elected. There is no evidence however that President Zuma responded in any way to Gen Mdluli's overture.

1330 In my view, the conduct of Adv Mrwebi and Adv Jiba in relation to the withdrawal of the charges preferred against Gen Mdluli gives rise to a suspicion that there was something more sinister behind the decision to withdraw than mere professional incompetence and ineptitude. However, I do not consider that the evidence before the Commission goes far enough to convert the suspicion into a conclusion adverse to these two officers on a balance of probabilities.

1331. There is no evidence that either Gen Lazarus or Gen Mdluli conducted their criminal depredations of the secret funds entrusted to their custody for any purpose beyond their own personal enrichment and that of their friends and family and to provide largesse to certain of those who they feared might be in a position to uncover their wrongdoing; in other words to implicate such persons in their schemes as insurance against exposure.
- 1332 This is to place in context the crimes exposed by the evidence before the Commission; not to mitigate or minimise the extent of crimes proved to have been committed and likely to have been committed. Those I have identified were placed in positions of the highest trust in an institution critical to the functioning and the protection of society. They abused that trust over long periods of time for personal gain. In the process they corrupted their subordinates who should have been able to look up to them for example and guidance.
- 1333 This topic concerns alleged and in some instances established criminal conduct by high ranking officers in SAPS. Historically and structurally, the main obstacles to the law's taking its proper course in such cases have been that the tendency of SAPS to close ranks and obstruct the investigations into the conduct of their own and, particularly, to abuse the system of classification of documents which I described above.
1334. It is clear too, that where secret state funds fall under the control of scoundrels, as the present case makes clear, only strong oversight institutions can protect the public against the harm that such scoundrels can inflict by invoking, when their conduct is called into question, the very secrecy that should exist only for the public good.
- 1335 *Quis custodiet ipsos custodes?* Who will guard the guardians themselves? This question, attributed to the 1st and 2nd century AD Roman poet Juvenal, is generally considered the embodiment of the philosophical question of how those in power can be held to account. The problem is as old as the institutions themselves, created to protect



against wrongdoing but by their nature as such equipped to evade detection and retribution when they go rogue

1336 It seems to me that now that the allegations which Col Roelofse and his team set out with such commendable determination to investigate and place before the prosecuting authorities for further action consistent with law will have seen the light of day both in evidence before the Commission and in this report, no action is needed other than to ensure that the law takes its course.

1337. It is recommended that the Inspector General of Intelligence and the Auditor-General be given such access to relevant SSA records and to the secret accounts referred to in this Report as may be lawful but still that would enable them to their work efficiently including such investigation including as the Insepector-General of Intelligence and the Auditor-General may each consider necessary

1337 1 It is recommended that all and any investigations into corrupt conduct (in the wide sense) within Crime Intelligence continue without any obstruction and receive the appropriate support from all units within SAPS; and

1337 2 That those members of SAPS who have been tasked with investigating corrupt conduct within CI be given access by SAPS to all documents which may be relevant to establish whether any person may have committed any offence including corruption while at the same time ensuring that any legitimate state interest in preventing the wider dissemination of such documents is protected