

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

20 APRIL 2021

DAY 378



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Recording & Transcriptions

22 Woodlands Drive
Irene Woods, Centurion
TEL: 012 941 0587 FAX: 086 742 7088
MOBILE: 066 513 1757
info@gautengtranscribers.co.za

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TRANSCRIBERS:

B KLINE; Y KLIEM; V FAASEN; D STANIFORTH



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PROCEEDINGS RESUME ON 20 APRIL 2021

CHAIRPERSON: Good morning Mr Soni, good morning everybody.

ADV SONI SC: Good morning Chairperson.

CHAIRPERSON: Good. Good morning Mr Montana. .You want to make sure that I do not hear you that is why you do not put on your mic.

MR MONTANA: Good morning Chair thank you very much.

CHAIRPERSON: Alright okay. Okay thank you for coming
10 back okay let us continue but maybe before we continue I just want to tell you Mr Montana I asked the legal team to look at all the concerns that you have raised with the commission and bring them to my attention so that we can look at them – each one on its merits. Okay alright.

MR MONTANA: Thank you, thank you Chair.

CHAIRPERSON: Oh I think we must just do the oath again.

MR MONTANA: Chair I thought I was still under oath because I refused to do media interviews and said I am not
20 I am under oath. I could not even speak to my family I said I am still under oath.

CHAIRPERSON: I think you were but just in case. Alright.

REGISTRAR: Please state your full names for the record.

MR MONTANA: Tshepo Lucky Montana.

CHAIRPERSON: Do have any objection to taking the

prescribed oath?

MR MONTANA: No.

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

MR MONTANA: (Not audible).

CHAIRPERSON: We cannot hear you I am sure – ja okay. Go back and start afresh.

REGISTRAR: Please state your name – please state your full names for the record.

10 **MR MONTANA:** Tshepo Lucky Montana.

CHAIRPERSON: Do have any objection to taking the prescribed oath?

MR MONTANA: No.

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

MR MONTANA: I do.

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

MR MONTANA: So help me God.

CHAIRPERSON: Thank you. You may proceed Mr Soni.

ADV SONI SC: As you please Chairperson. Chairperson I am obliged to place on record that we have received a letter from Mr Tiro Holele about certain allegations Mr

Montana made about him. He wants to file an affidavit. I am just bringing that to your attention. He complains that he was not given notice that those allegations were going to be made .

CHAIRPERSON: Yes.

ADV SONI SC: But obviously tell him to file his affidavit.

CHAIRPERSON: Yes no, no.

ADV SONI SC: As soon as possible.

CHAIRPERSON: That is fine you will – you will attend to
10 it.

ADV SONI SC: Yes.

CHAIRPERSON: Ja okay alright.

ADV SONI SC: Mr Montana can I just indicate to you the road map for today and you might remember on Friday I indicated to you that there were four sets of affidavits that you would need to respond to. We finished with Mr Molefe's – well for most of that – today I want to start with the affidavit of Mr Dingiwayo then I will go to the affidavit of Ms Ngoye and then deal with the report of Mr Ormon [?].

20 Now the affidavit of Mr Dingiswayo is in Bundle F and it is Exhibit SS8 and it is F and starts at page 96. Have you got that in front of you Mr Montana?

MR MONTANA: Indeed – indeed Chair.

ADV SONI SC: As previously I do not go over all the allegations it is just the allegations that concern you and

you know the process I follow which is asking you what you had admit you deny and what the basis of the denial is.

Can I ask you to turn to page 97 paragraph 4. I think it is the next page. It is the black 97 number Mr Montana. You will see on the left hand side page numbers.

MR MONTANA: Is that the one with the picture there?

ADV SONI SC: No, no, no. It starts with affidavit Mr Dingiswayo.

CHAIRPERSON: It is under Divider 6.

10 **MR MONTANA:** I have got it Chair thank you.

CHAIRPERSON: Oh okay.

ADV SONI SC: You can turn to page 97 he says at paragraph 4:

20 “I should point out that it has long been known and – at PRASA that there are certain persons in entities that have wielded undue influence over some of the most senior persons at PRASA starting with its former Group Chief Executive officer Mr Lucky Montana.”

What is your reaction to this?

MR MONTANA: Chair you will see in my affidavit which of course has not been considered I thought I will reject this it is not based on facts. I think that the – Mr Dingiswayo statement in fact confirms some of the things that I am

saying in my affidavit but I will come to that later.

ADV SONI SC: Yes. Then he carries on in the next sentence.

“It is equally well-known that if you cross
Mr Montana’s path or attempted to ensure
that things were done lawfully and properly
insofar as these entities and individuals are
concerned he ruthlessly abused his powers
and even arrogated to himself powers that
10 he did not deserve.”

Your reaction is the same?

MR MONTANA: Chair it is laughable what he is – what he
is saying there. Because I want the CEO of – I was the
CEO of PRASA and I was accountable for its performance
to the board of PRASA so management had ultimately they
supported me in fulfilling the mandate of the board.

They were not independent of me. So if someone
like Dingiswayo or Martha Ngoye wanted to have a life of
their own and pursue something that I did not even instruct
20 them to do or it was not in line with our strategy I had to
act Chair. So of course he does not describe what is the
issue cross path – so I assume Chair that the – if he say
cross path he mean if you do wrong things with me I will
deal with it and I will take it in that spirit yes Chair.

CHAIRPERSON: Well I do not know whether that might be

meaning but I suspect that from his point of view he – he means if you resist something that Mr Montana wants you to do because you think it is wrong and you insist that things should be done properly you are crossing his path and I suspect that that is his meaning – the intention – the meaning he intends.

MR MONTANA: No, no Chair I understand that.

CHAIRPERSON: You understand it ja.

MR MONTANA: Of course people who – who want to
10 project themselves as corruption busters.

CHAIRPERSON: Yes.

MR MONTANA: That is how they present themselves.

CHAIRPERSON: Yes.

MR MONTANA: And in my affidavit

CHAIRPERSON: Yes.

MR MONTANA: I am go into great lengths to explain.

CHAIRPERSON: Ja.

MR MONTANA: In fact what Mr Dingiswayo all the things
that he did.

20 **CHAIRPERSON:** Yes.

MR MONTANA: That are not – that are not lawful. And by the way Chair Mr Dingiswayo did not report to me. I have never even given him a single instruction.

CHAIRPERSON: Yes.

MR MONTANA: So very interesting that.

CHAIRPERSON: Yes.

MR MONTANA: He can actually describe – even have own boss Ms Ngoye never described in those terms so it is very interesting that the – we are dealing with hearsay rather than fact.

CHAIRPERSON: But I guess also what you are saying based on your earlier response is somebody in his position could level the accusation when you as the superior at work say no this is wrong it should not be done and they
10 believe it should be done they might describe that still as you would see that from their side they in resisting something you believe is lawful that they would say you = you are abusing your powers when you act against wrongdoing.

MR MONTANA: Well Chair I think one of the major things it is very interesting that it starts by saying certain entities in fact I think that in my affidavit I demonstrate that – that in fact what he did in the legal department which he did not have the authority to abuse certain things but he abused it
20 to target certain entities and leave others.

So if he was acting consistently and said this is a principle – it is a policy of the company I would understand. But if he targets certain entities and say no this I – because you see Chair at this time it is quite clear that when Mr Molefe was there certain members of the

executive when the relationship between and Mr Molefe collapsed certain people then aligning themselves and therefore they were used to – to do certain things which is...

CHAIRPERSON: You mean align themselves with Mr Molefe.

MR MONTANA: With Mr Molefe.

CHAIRPERSON: Ja.

MR MONTANA: In that instance.

10 **CHAIRPERSON:** And I guess others aligned themselves with you.

MR MONTANA: Indeed Chair.

CHAIRPERSON: ha.

MR MONTANA: So – so you will see that if you go to another executive – so this is – there is a context to all of this but I do not agree with what he is saying Chair.

CHAIRPERSON: Ja okay.

ADV SONI SC: Then in paragraph 9 he says:

20 “There is one specific matter in respect of which I wish to give details as it illustrates quite graphically the manner in which PRASA operated during the period Mr Montana was its Group CEO.”

And that is – that is what he is going to deal with in effect as you will see in the rest of the affidavit in

paragraph he starts off with a contract between PRASA and Prodigy Business Services Proprietary Limited. So that is the context against which he is laying this accusation. I am just presenting to you.

MR MONTANA: Yes no, no I – thanks Mr Soni. Chair I just wish to emphasise again I deal with this issue in my own affidavit in great length and I want to say that the contract that Mr Dingiswayo talks about he was not actually in the employ of PRASA when this thing happened and it is very
10 interesting when I read all the things you see that this actually contrasts so much even with what I had written on this particular issues.

The people who were there more specifically Mr Holele, Mr Mpefu Rakgoathe, Ms Koko who know the ins and outs of this particular matter did not file an affidavit and somebody who joins PRASA later just on hearsay and Werksmans investigation. So it is hearsay it is not based on direct personal knowledge Chair but I think he had chosen to elevate it and let us deal with the facts of the
20 matter Chair.

ADV SONI SC: Yes I – I think you are quite right let us deal with the facts as he presents them and then after that as you present them. Can I ask you then to look at paragraph 11.3 on page 99. He says in paragraph 11.3.

“Prodigy is a Johannesburg based

registered private company.”

CHAIRPERSON: Okay I am sorry Mr Soni.

ADV SONI SC: Yes.

CHAIRPERSON: I am not sure you may have said this. Prodigy the first entity that he wants to deal with is Prodigy Business Services.

ADV SONI SC: Yes.

CHAIRPERSON: Limited.

ADV SONI SC: Yes.

10 **CHAIRPERSON:** You may have mentioned it but...

ADV SONI SC: Oh I am sorry I did mention it.

CHAIRPERSON: For my record – for the record I just want to...

ADV SONI SC: Yes, no that ...

CHAIRPERSON: Show the record reflects that this is the first one (inaudible).

ADV SONI SC: This is the entity yes.

CHAIRPERSON: Okay alright.

ADV SONI SC: And he says:

20 “Prodigy is a Johannesburg based
registered private company.”

Is that correct Mr Montana at 11.3?

MR MONTANA: Well Chair it had a relationship with PRASA I do not where they are based I – I assume that is correct ja.

ADV SONI SC: Alright then he says it entered into a number of contracts with PRASA to provide training and other related services.

Is that correct?

MR MONTANA: Chair I can confirm we had one partnership agreement with Prodigy of course there were addendums over a period of time that we had indeed.

ADV SONI SC: Yes. Alright and then he – he notes that the validity of these contracts is now in dispute.

10 **MR MONTANA:** Well Chair I understand the matters are between – are in court and I think Prodigy is the one that took PRASA to court and for not honouring his agreement and payments in that regard.

ADV SONI SC: Now 11.4 he says:

“That a document that was annexed to Prodigy’s payment application reflects that Prodigy reflects that Ms Nerishni Shunmugum was a director in 2006 and then in 2011 Mr Roy Moodley was appointed as director.”

20

You aware of that?

MR MONTANA: Not at all Chair. Again in my – in my own affidavit Chair I state the fact in response to what he is saying to Rule 3.3 that the – when we entered an agreement with Prodigy there was not actually any Roy

Moodley and I think it was in 2010. So I think he says in his affidavit that Roy Moodley became part of that company in 2012.

ADV SONI SC: 2011.

MR MONTANA: I think in page 5 well rather page 100.

CHAIRPERSON: He says – he does not say when – he says he resigned in 2012 Moodley. He does not say when –

MR MONTANA: Ja in 2012 he resigned Chair 1st of March.

10 **CHAIRPERSON:** Oh he was appointed as a director five years after the company was registered which would be 2011.

MR MONTANA: 2011 ja.

CHAIRPERSON: Ja okay. And resigned in – on 1 March 2012.

ADV SONI SC: And you will find that Mr Montana at MMD1 page 123. You do not need to look at it – it is just – I am just confirming that there.

MR MONTANA: Thank you.

20 **ADV SONI SC:** Alright what we – what we can accept now and I take the point you make is that Mr...

MR MONTANA: Dingiswayo.

ADV SONI SC: No that Prodigy when it first entered into the contract with PRASA did not have Mr Moodley as a director Mr Moodley became a director in 2011 and

resigned as a director in 2012. Are those the facts that
00:15:18?

MR MONTANA: Chair I do not know – I do not know...

CHAIRPERSON: You do not know when he became a
director and when he resigned.

MR MONTANA: Oh you mean the other shareholders in the
business Chair.

CHAIRPERSON: Ja.

MR MONTANA: I would not – I would not know their names
10 Chair.

ADV SONI SC: We can accept what the document says.

MR MONTANA: Says indeed Chair.

ADV SONI SC: Yes okay. Then at paragraph 11.6 on page
100 he says:

“Mr Moodley is alleged to have benefitted or
alleged to be related to other entities that
benefitted from PRASA contracts that were
concluded irregularly.”

Now because that is a matter I take it you would
20 deny that the contracts were concluded irregularly?

MR MONTANA: Well Chair it is interesting – it is very
interesting because if you talk – you look at the company
that I mentioned firstly Royal Security the bid adjudication
of PRASA that included Mr Holele, Ms Ngoye recommended
for the expansion of this particular contract. So somebody

comes and recommend that these contracts be extended and then come to the commission and file an affidavit that these are irregularly – irregular Chair the – to take it further. Chair in my affidavit are part of my annexures they actually show that the – that the strawberry contract was signed by the CEO of Intersite at that time and it was Ms Ngoye. So – so it is very strange Chair that someone sits and you can see that at that time they did not have a problem now it is – things changes at PRASA there is a

10 conflict between the Chair and the CEO. They start to ride a whole range of things that – that they were actually part – they were central – I do not – I am a CEO I do not sit in a bid adjudication or bid evaluation. These are the people who recommend. So if somebody recommends Strawberry or recommends Royal Security or recommends Siyangena they were in the bid evaluation. In fact Chair I need to – to move beyond that and say they have got a legal responsibility – a legal responsibility when they pick up any irregularity and advise whoever is going to approve – if

20 it is going to be approved by the CEO within the delegation of authority they must say we picked up these things. We think they are material or they are not material for me to know so that when I make a decision after being told and those have been elevated Chair on all of this – oh Swifambo and anything none of these bid evaluation

committee members including Mr Holele and Ms Ngoye had elevated either to me or to the board why do they come to your commission today to say that we think that was irregular? I was not there. They were there. They were dealing with the matters Chair.

CHAIRPERSON: Well that is very important. I assume that the – the homework in terms of your affidavit has started.

MR MONTANA: Chair we were meant to meet today but
10 because we set up the date.

CHAIRPERSON: Oh okay.

MR MONTANA: We postponed .

CHAIRPERSON: Ja.

MR MONTANA: But I think Chair we had committed to engage and resolve it as quickly as possible.

CHAIRPERSON: Yes okay no that is fine because for example the last point that you made you – you made you know can be very important so it is important to see if there is any documentation that you attach and so on in
20 support of it.

MR MONTANA: Thank you Chair.

CHAIRPERSON: Okay alright.

ADV SONI SC: And then in paragraph 11.7 we have – we know that there is now a dispute that has been taken to court and PRASA is challenging the validity of the contract.

I understand you say that you cannot be held responsible other made that.

MR MONTANA: No, no, not – not in respect of this Chair I think that the 11.6 is very specific allegation. In 11.7 it is a completely different point but I know the fact that PRASA is going to court and what I have seen though affidavits that were filed where I think Prodigy was the applicant – I was not aware of the review application but PRASA is ...

ADV SONI SC: Anyway we – we know what courts are.
10 Courts make their own decisions based on the information for them. We leave that – we – that is the matter that has not yet been determined.

And the turn to paragraph 12 Mr Montana it says:

“I wish to set out in brief the manner in which the agreements.”

I know you say there one agreement in respect of Prodigy and there were a number of addenda to it. Okay but he is saying that

20 “I want to deal with how those – the agreement and the addenda were completed or concluded and when I raise questions about the validity of one of the agreements Mr Montana dismissed me and thereafter Ms Ngoye who had questioned the fairness of my dismissal.”

We will come to that in a moment but I am just saying that he is giving us a road map of where is going to in this affidavit.

MR MONTANA: Yes but I – Mr Soni I just want to say that that very statement Chair is – on – in 12 it is false number 1 and number 2 here is someone who is going to tell us about the – about how these contracts were concluded yet he was not working for PRASA Chair when this thing was signed. So maybe Mr Dingiswayo may want to bring
10 somebody who told him this story that – because now we are dealing with someone who was not there – who is telling us – and if he says this comes from an investigation he must state that not as if he was – he was personally there because I am going to read out the part of my affidavit on this particular issue and you will see that these are completely two different worlds that exist.

CHAIRPERSON: Okay.

ADV SONI SC: Now he also makes the point at paragraph 13 that there was an investigation conducted by Mr Majola
20 and he annexures the outcome of that investigation is MMD2. Can I just leave that out for a moment I want to come back to it in a little while. I want to go...

MR MONTANA: Chair but I can say without interrupting Mr – I think that I assume the investigation referred to in 13 was done after – after I had left PRASA?

ADV SONI SC: Yes. Then he says:

“In regard to the various developments regarding this contract he says on the 10th of June 2010 Ms Shumnigum sent a letter to Mr Montana proposing some form of partnership.”

And he attaches the letter as MMD3 which appears at page 138. I would like you to just go to page 138 please.

- 10 **MR MONTANA:** Chair the letter I know very well actually it has got my handwritten notes – if I remember that vividly I will not even look at it. It is my letter – it is a letter that came to me and as a 00:23:01 Chair every time I give an instruction because I knew that I am giving lawful instructions I always wrote on my thing and it is very interesting Chair that you will see as we proceed that presented before this commission are – are people have been selective where I have written and they do not like it – does not come to the commission. It is not evidence. So
- 20 these are the type of things but I know the letter Chair it came – let me correct one thing in 14.1 and I think I deal with it in my affidavit Chair. The letter was not the beginning. There were interactions between Prodigy and PRASA employees which culminated in this letter and then I dealt with it in a particular way but I detail – I detail

everything in my affidavit.

ADV SONI SC: I want to...

CHAIRPERSON: Hang on Mr Soni. We – we all know that Mr Montana he has prepare an affidavit.

ADV SONI SC: Yes.

CHAIRPERSON: That is the affidavit that is the subject of the homework I was talking about a few minutes ago.

MR MONTANA: Indeed Chair.

CHAIRPERSON: And I suspect that to help him respond to
10 some of the allegations that is the affidavit he keeps on
looking at to see what he has got in it. Now it may be that
it would be convenient that if he responds to an allegation
in – a certain allegation in 14.1 he should respond to it
fully rather than saying I deny that on the basis that later
he will give more information about it. Because if we do it
that way then in the transcript you find the whole response
to a particular allegation in one place.

ADV SONI SC: Yes.

CHAIRPERSON: Rather than find a denial and then go
20 somewhere else to find substantiation of that denial. What
do you think of that?

ADV SONI SC: I – I agree entirely.

CHAIRPERSON: Yes. Yes.

ADV SONI SC: Really the only question will be because
whether one should do that in relation to – we – what we

do not want and I understand fully why Chairperson is bits and pieces about the same thing in different parts of the transcript.

CHAIRPERSON: Yes, yes.

ADV SONI SC: Now we – we either say that Mr Montana can deal with it now and then when his affidavit comes it will be then simply part of the record he will not have to deal with it again or we say Mr Montana we reserve this issue and deal with it collectively at the time that Mr
10 Montana submits his affidavit. I am just trying to find the most 00:26:24.

CHAIRPERSON: What I was thinking is that the reason why his affidavit is not being used now it is because the issue of annexures must still be sorted out otherwise if that had been sorted out it would have been available to use. But I think there is nothing – there is no problem if he tells me what is in the affidavit without the affidavit being – because that is his response.

ADV SONI SC: Yes.

20 **CHAIRPERSON:** You know.

ADV SONI SC: Yes.

CHAIRPERSON: So that is what I was thinking so that when the affidavit is filed one – one reads – one sees in it what he has already told – told us.

ADV SONI SC: Absolutely.

CHAIRPERSON: Yes, yes. So – so let us try that Mr Montana so that your response to a particular allegation are not scattered all over.

MR MONTANA: Indeed Chair.

CHAIRPERSON: Yes, yes. Okay alright.

MR MONTANA: Chair I was trying to hide my affidavit and say that it is not – they have been admitted.

CHAIRPERSON: You were caught out.

MR MONTANA: So I was 00:27:35 and – but I got caught.

10 **CHAIRPERSON:** You got caught. No, no that is fine but there is no problem if you tell me what is in the affidavit as your oral evidence. What is not being done is give – give the affidavit to me before it is – it is completed in terms of annexures. But in terms of telling me what is – what it is in it it is fine. But I think – I think you should not tell me paragraphs for example to say in paragraph so and so in my affidavit I think do not – do not tell me the paragraph just tell me the story – your – what you have to say about a particular allegation.

20 **MR MONTANA:** Thank you. Thank you Chair I think that I address it in a – and this.

CHAIRPERSON: Ja.

MR MONTANA: This Chair are part of what I considered with regard to Rule 3.3.

CHAIRPERSON: Yes.

MR MONTANA: And Regulation 10.6.

CHAIRPERSON: Yes.

MR MONTANA: So I have included all of those as well into – into my affidavit.

CHAIRPERSON: Okay.

MR MONTANA: Check the – I am just addressing four basic things here.

CHAIRPERSON: ja.

MR MONTANA: The first one of course I deal with the
10 issue that the – Mr Soni raised the description that Mr Dingiswayo raised.

CHAIRPERSON: Ja.

MR MONTANA: And I said the PRASA he describes it did not exist I do not even know it Chair. But also indicating that I expected him to be a professional not to serve certain interests and in this particular case that is what he did and – and his target on my Mr Moodley actually Chair I deal with it at great length in terms of that. Chair I - I then go to – to indicate again that Mr Dingiswayo was not
20 at PRASA when this conversation started – when the contracts were put in place. Thirdly Chair I then go into detail to say how the process providing the genesis of this particular project that in fact it goes back to 2009 when – when Prodigy interacted with PRASA officials including Mr Mpefu Ramudwa [?] and Chair what it proposed in essence

is that it proposed a partnership because it was awarded what you call learnerships from the services SETA and he says look we have got learnerships for about 300 people to PRASA so that they – then we explore that in terms of the – on the people who service – on the services' side or customer services' side of the business. We train them. And this was a very unique proposal that they presented to us, Chair.

CHAIRPERSON: H'm.

10 **MR MONTANA:** And we are happy. We accepted and that is why the letter that Mr Soni referred. So it was then elevated to me. Then I said, no, that actually is a great thing. Let us ...[indistinct] with them, Chair. And the partnership was developed, prepared by our legal department, Chair, at that time because it was Mr Lindikaya Zide.

CHAIRPERSON: H'm.

MR MONTANA: Mr Dingiswayo was not here, at PRASA, Chair. And it was developed fine. And the training took
20 place, Chair.

CHAIRPERSON: Was Ms Ngoye there at that time?

MR MONTANA: Ms Ngoye was not at PRASA – was not – it was in 2009/2010, she was not there, Chair.

CHAIRPERSON: Okay.

MR MONTANA: She was not even there at all. She was

not - because I think she joined, if I remember and recall, Chair, she joined PRASA only in 2011 and she joined, not as a CEO or as an Executive, she actually was a – she left from Transnet in the Legal Department. She joined our property arm and being the Head of the Office of the CEO at Intersite. And Chair when the CEO left – because she was doing a lot of the work, she showed interest in the work and I am the one, Chair, who recommended that she gets appointed as the Executive, Chair.

10 So the people who say today I am a dictator, you cannot stand on my part, other people – all of them, Chair, were appointed by me. Even Mr Dingiswayo. When her first boss who joined us from, I think, Standard Bank recommended that she is keen. He held interviews but he think he has got his man. I said: Well, it is your team. You do – as long as you bring professionals that are there.

 Mr Holele, Chair, you know, when we appointed, I know Mr Holele for a very long time. When we appointed him as an Executive, I had a big fight with the HR and the
20 Remuneration Committee of the Board. They said he is still a young man, he is not yet experienced and everything. I said this man has got a sharp mind. I think that he is one for the future. Let us invest in him.

 The board rejected my arguments. They actually said: No, get an experienced old white man to guide you

and assist you instead of taking of this young man. The board then instructed the HR Committee of the board and me to say: You guys, go and meet and try to find consensus on the issue. We went, we met ...[indistinct], Chair. And the HR Committee was quizzing me, Chair, to say motivate, tell us. And I said: Look, you want me to bring an old white man to be my advisor. For me, tomorrow when I leave PRASA, I need to ensure that we built a cadre of young competent black professionals who can continue, running the same DG. And ultimately the board agreed.

Now when I disciplined Mr Holele, Chair, and that is why he is taking strong(?). He worked with me. When the unions accused me of corruption, the person who penned an article in the Mail & Guardian defending me was Mr Holele but later I had to discipline him and he changed and I became the monster that is described in these pages, Chair.

So I think that – as long as we are guided by the facts, you have got the right to form, to have an opinion, Chair, and I have got my own views about these people but all the people, Chair, who stabbed me at the back are people that I tried to build. I appointed – when Ms Ngoye is to leave Intersite, Chair, and I think in her replying affidavit she described and talked about bonuses.

The Board of Intersite of which I was a Chair,

had said: Look, we are not getting the results from ...[indistinct] Let us follow proper process and make sure that we replace her. I had a one on one meeting with her. I said: Look, my dear sister, I am not saying you are not a CEO but it is quite clear you are not ready.

Now the board want us to take this and I objected. I recommended that instead of you, you can prepare yourself. We are consolidating our – and restructuring our legal and compliance function. And I
10 think I have requested that – I have advised that you assume that position as a Group Executive. If you become CEO of PRASA tomorrow any of his divisions or subsidiaries that is fine.

Chair, she cried and she cried. She cried and when I left and I went on leave, to show my confidence as part – because we using when I leave we would then select an executive to act. So this one man show – that PRASA is a one man show like ...[intervenes]

CHAIRPERSON: I think you did not finish the point you
20 wanted to make. I think you have started making it. I think you have wanted to say when you went on leave you recommended that she be ...[intervenes]

MR MONTANA: She ...[intervenes]

CHAIRPERSON: ...a Group CEO.

MR MONTANA: Indeed, Chair. After coming(?) from

Intersite and she was in the group position that she was, Group Legal Risk and Compliance, I recommended that she act because every time I will try – I will then pick up any of the executives. Of course, that I do in consultation with the chair of the board and depending on the duration. I will say so and so will act in a position.

Martha acted in a position, Chair. But I did not realise how ...[indistinct] she was. That we – she is no longer CEO of Intersite. So when I allowed her to act into
 10 that position in December 2014 that is when she went on the defensive with Mr Molefe to investigate me, to try and find all sorts of things that were there. But again, all of them were – all of them, Chair, I wanted them here at the Commission. I prove each of these to be false and founded, Chair.

I have got my own witnesses as a human being but the ones that I am accused of in these pages, Chair, are totally false, Chair. All of us as human beings, we have got our own faults. I have got mine but the ones that
 20 I mention here, Chair, are part of an agenda to try and discredit me and at the heart of it, were people who met with Mr Molefe behind my back to try and build a case and I demonstrate that in the course of the conversation, Chair.

CHAIRPERSON: H'm. Okay alright.

MR MONTANA: Chair, finally, because you interrupted.

The final point, Chair. You know, value for money. I was part with ministers on the ...[indistinct] with the trade unions. When the first group of people were trained were being recognised because this recognise is big. For employees who do not have matric, who do not have qualification, this was a major thing.

CHAIRPERSON: That is the training?

MR MONTANA: The training ...[intervenes]

CHAIRPERSON: Ja.

10 **MR MONTANA:** ...that was done by Prodigy. And because it was accredited widely, Chair. Employees and particular our customer services, the staff, they loved it, Chair. Lastly on this issue, Chair. We even received an international award. I just – I wanted to bring it and leave it here Chair. Which our Customer Services Executive in our range division went to receive overseas which was for innovation, for excellence, Chair.

20 Today, as I come here, Chair, employees, the trade union call me to say: You know, our people have been trained. They have not been given their own certificates. They want those certificates because for them if they were to be retrenched today, they will be able to go to any customer services business and use this. So, yes, you may be pick up irregularities, Chair. I do not have a problem when somebody picks up an irregularity and say

maybe here we did not...

By the way, Mr Dingiswayo in his affidavit or rather in a letter that you see attached to my affidavit. He says some of the executives who were dealing with this issue of Prodigy actually mislead Mr Montana. He says that in black and white, okay? Yet he forgot his own letter, Chair. And now this thing is about Montana. It is no longer about those officials.

So he was in there, he writes something, he
10 changes because at the heart of is it that no, we must show... You know, Chair, after I have dealt with the Gupta's ...[indistinct] PRASA. Now people say, no, there must be another Gupta and this Gupta – that is why you see Mr Molefe, Mr Dingiswayo, Ms Ngoye the write about Roy Moodley because he is supposed to be a Gupta PRASA that lie(?). He dealt with these Gupta's. There is another Gupta.

And you must also understand the writing and the tone of.. But Chair I am an independent person and I
20 think – I know that I am maybe taking a bit long but Chair I fought with a lot of people, ministers and if there is something I believe is wrong I say it is wrong. But if I believe that is a strategy(?) - always happened in my Executive Committee meetings. We are going to do 1, 2, 3 after I have debated.

And I have never been afraid Chair because I have never made unlawful decisions and all of those things. But there is an attempt to take whatever may have been a mistake or a shortcoming on irregularity to elevate it so that it becomes criminality so that those of us who do not follow a particular narrative are persuaded and chased Chair.

And unfortunately not with the business of PRASA because I happen to have the facts and I am here
10 to assist the Commission to understand both sides of that narrative Chair.

CHAIRPERSON: Okay. No, thank you.

ADV VAS SONI SC: I am sorry, Mr Montana. I – you saw me smile and the reason I smile is somebody said to me that the Gupta's were from India. Roy Moodley was the Gupta from KZN.

MR MONTANA: From KZ... Indeed, Chair.

CHAIRPERSON: [laughs]

ADV VAS SONI SC: But I – that ...[intervenes]

20 **MR MONTANA:** [Indistinct]

[Parties intervening each other – unclear]

ADV VAS SONI SC: That is what somebody said to me. That is the reason I smiled.

CHAIRPERSON: [laughs]

ADV VAS SONI SC: But ...[intervenes]

MR MONTANA: Yes, I think that is a good point, Chair. But I was changed(?). You see, the problem at PRASA, Chair is because people thought at the beginning, they thought the Gupta's are so much at PRASA. When they realised the Gupta's are not at PRASA because we said no, then they had to find something else. They did not stop and said the Gupta's are not there. They actually thought the Gupta's were involved with President Zuma in the PRASA Rolling Stock Programme.

10 Chair, the reality is that there was no President Zuma, there were no Gupta's at PRASA. I stood my ground and all the records, Chair, even when we discussed in Parliament in the Parliamentary Inquiry into Governance at Eskom, I dealt with the Gupta's story. Minister Dan Martins came to confirm all of that. So there were no Gupta's but people thought we are captured by the Gupta's.

20 They are not my friends, Chair. I mean, even the – I have never – you know, people tell me they went to the Gupta's compound, eat, worked there, carry and other things you were told Chair. Chair, where I used to stay, I am in the – I was in the same street as Duduzane Zuma and the Gupta's were in the corner. They have never been to my house. I have never been to their house and I have never asked for any favours from them Chair in my entire

life.

And this has to do with my own upbringing Chair. My parents will frown upon me, you know, going after people to ask for favours instead of doing things in a proper way. So I am not saying, the Commission can point and say – Chair, you may ask me and say: Mr Montana, with hindsight, you think that decision was a mistake? Chair, I will be here.

I will tell you to say: Chair, after I have thought
 10 about it and seen the full picture, I think it was an error of judgment on my side. I am here to take accountability, not to pass accountability. But at the same time, the lies that have been printed in the country that do not have basis whatsoever. Chair, I think I am going to challenge them and take them head-on Chair.

CHAIRPERSON: Ja. No, no I am happy, Mr Montana, that you are using the Commission to deal with whatever allegations that it made against you and to place before the Commission all the facts that as you know them as you
 20 believe the Commission should know because that is what we want. That is what we want. We are not here to want one side because we want a particular outcome.

I mean, if – you know, sometimes I do not understand some things that one in the newspapers about me and about the Commission. If I want to make a finding

against you, Mr Montana, how – what a bad person you are, the best way for me to do that is not to have you here giving me contrary evidence, giving me examples of what a good person you are.

The best thing is for me to grab the first opportunity when you indicate you do not want to come. And you say okay, okay. You do not come. Because if I do it that way, the only evidence I will have is the evidence against you. When I want you to come and tell your story,
 10 it does not make sense to say I want to find against you. What if you give me compelling evidence that the people are saying all kinds of things against you, are lying about you.

MR MONTANA: But Chair, on a lighter note, I have asked and urge that you do make a finding that Mr Montana is such a good fellow.

CHAIRPERSON: H'm.

MR MONTANA: I think such a finding in the final report, Chair, would help the country to ...[intervenes]

20 **CHAIRPERSON:** [laughs] Well, all I can tell you, Mr Montana, is that whenever findings I will make about anybody – I am not going to be dictated by whatever the public says about whatever happens outside the hearing. It is going to be based – those findings will be based on the evidence that I have heard, you know. And that – and I

will be looking at all evidence that has been placed before me.

So you are doing the right thing by coming to the Commission, putting your side of the story so that, one, the public knows your side of the story. Two, the Commission has your evidence. Whatever the Commission might find in the end, you must be able to say but they did have my evidence.

MR MONTANA: Thank you, Chair.

10 **CHAIRPERSON:** Ja, okay alright. Mr Soni.

ADV VAS SONI SC: As you please, Chair. So, Mr Montana, coming back to 14.1. We know that Ms Shunmugam sent you the letter on the 10th of June and you wrote a note on the letter. I just want to read, if you do not mind, for the record what is contained in part of the letter and in part of your response.

MR MONTANA: We are in MM ...[intervenes]

ADV VAS SONI SC: We are at page 138, Mr Montana. The black 138.

20 **CHAIRPERSON:** I am sorry. I did not hear the page, Mr Soni.

ADV VAS SONI SC: 138.

CHAIRPERSON: 138.

ADV VAS SONI SC: Yes, Chair. So Ms Shunmugam says and the letter is addressed to PRASA, for your attention

and it says in respect of piloting of Centre of Excellence Model and Learnership Implementation. It says:

“Further to discussions held from March 2010 with respect to the Centre of Excellence Model, Prodigy hereby confirms that it is able to provide PRASA with 300 funded learnership that will fast track the pilot of the Centre of Excellence Model...”

That is what that ...[intervenes]

10 **MR MONTANA**: That is correct, Chair.

ADV VAS SONI SC: Alright. And he(sic) saying in the second paragraph:

“Prodigy has been awarded bursary funding for 300 learnership from the Services Seta via the discretionary ground process...”

And then in the last – oh, sorry, the third sentence he(sic) says:

20 “The 300 learnerships will be learnerships that will reside with Services Seta and for which Prodigy has accreditation, a list of applicable qualifications accompanies this letter...”

Then she says:

“The value to PRASA... [This is in the last paragraph] ... of the 300 funded learnerships is of the order of R 28 800 000,00 in training

grounds and tax allowances.

PRASA will be able to claim the full R 60 000,00 and tax allowance per learner totalling R 18 million for the 300 learners...”

So that is how she is presenting this to you and then you inscribed on that – and as I said we – if you want to read then you can but I just wanted the gist of that. And you inscribed on that to Mr Holele and Mr Enkefu(?)

“The proposal from Prodigy is accepted.

10 We should enter in a partnership with Prodigy Business Proprietary Limited.

We need a former MOU to this effect.

Prepare – kindly prepare ...[intervenes]

MR MONTANA: Oh, the letter from my signature. Acknowledging receipt and confirming our acceptance of the proposal from Prodigy.

ADV VAS SONI SC: Alright. And you signed that on the 10th of June.

MR MONTANA: Indeed, Chair.

20 **ADV VAS SONI SC:** The same day that ...[intervenes]

MR MONTANA: [Indistinct]

ADV VAS SONI SC: [Indistinct]

[Speakers intervening each other – unclear]

MR MONTANA: Indeed Chair.

CHAIRPERSON: Let us confirm that is 10 June 2010?

ADV VAS SONI SC: 2010.

MR MONTANA: Yes, Chair.

ADV VAS SONI SC: Yes, Chair.

CHAIRPERSON: Ja, okay.

MR MONTANA: I confirm, Chair ...[intervenes]

CHAIRPERSON: Yes.

MR MONTANA: ...that this is the letter and those were the notes written by me, Chair.

CHAIRPERSON: Yes. Can I just ask you, Mr Montana, to
10 explain this proposal to me. I am not sure that I asked any
of the witnesses that gave evidence previously. Is the
position that Prodigy approached the Services Seta
...[intervenes]

MR MONTANA: [Indistinct]

CHAIRPERSON: ...and was granted money?

MR MONTANA: Chair, you are not granted actual money.

CHAIRPERSON: Yes, but ...[intervenes]

MR MONTANA: Ja.

CHAIRPERSON: You are told we are prepared to spend
20 so much but we give the money but you will provide
invoices or whatever.

MR MONTANA: Exactly, exactly Chair.

CHAIRPERSON: So granted money in that sense.

MR MONTANA: Exactly.

CHAIRPERSON: You do not get the cash but the effect of

the decision of the Seta is. You can go and train people in terms of learnerships to the value of this amount.

MR MONTANA: That amount.

CHAIRPERSON: And you will be training them for them to get the following kind of training or qualification and you will be paid by the Seta.

MR MONTANA: Chair, the – what would happen is that then once the training has happened ...[intervenes]

CHAIRPERSON: Ja.

10 **MR MONTANA:** ...then you are able to claim that money ...[intervenes]

CHAIRPERSON: Yes.

MR MONTANA: ...from that particular ...[intervenes]

CHAIRPERSON: Which they would have put aside for you.

MR MONTANA: Which they have put aside. So they will come and say we have entered into, let us say, a partnership.

CHAIRPERSON: Ja.

20 **MR MONTANA:** Whether with the SAPS or with PRASA.

CHAIRPERSON: Ja.

MR MONTANA: We are doing this training. Once you are satisfied and all of those things – and PRASA, even if you to pay, Chair, is able to recover that money from that claiming processes.

CHAIRPERSON: Oh, okay.

MR MONTANA: Ja.

CHAIRPERSON: Okay, okay, okay. So – but in terms of this proposal, PRASA would not pay for the training.

MR MONTANA: No, Chair, it was still paying.

CHAIRPERSON: Ja.

MR MONTANA: Because remember when you are – you enter into a partnership.

CHAIRPERSON: Ja.

10 **MR MONTANA:** You may – because you remember when we say we used the 300 to pilot that – what do you call it - Centre of Excellence and the Centre of Excellence was here. We built it there, just behind Park Station here.

CHAIRPERSON: H'm.

MR MONTANA: So then it provides training beyond that. So there would be costs that PRASA would carry as well in the process and if we increase and if you look at the addendum, for example, the addendums will say we think this is benefiting the company.

20 **CHAIRPERSON:** H'm.

MR MONTANA: Then let us add additional numbers. Then those – it will not come from the Seta. It will then come directly from us, Chair.

CHAIRPERSON: H'm.

MR MONTANA: So we will incur costs as well as PRASA.

CHAIRPERSON: But the money the Seta would have put aside in this case will be for the actual training?

MR MONTANA: Indeed, Chair.

CHAIRPERSON: Ja. Now as far as the people who would be trained are concerned, would PRASA – would the cost that PRASA would incur relate to the actual training or to something incidental, like, paying for the venue or something like that?

MR MONTANA: No, no. Even both, Chair.

10 **CHAIRPERSON:** Oh, okay.

MR MONTANA: If you look at it, for example - what happened, there was a big fight on this issue.

CHAIRPERSON: H'm.

MR MONTANA: After I have sighed, there was an agreement and then the initial 300 flew – I think that they flowed quite nicely.

CHAIRPERSON: H'm?

MR MONTANA: When the addendum was signed for the next group and I think the numbers would then increase in
20 that respect, there was quite a lot of disagreement between PRASA managers and Prodigy in respect of that particular contract.

In the first place, Chair, what happened is that Prodigy then paid – carried a lot of the costs because they said: Well, Seta had given it to you. You carry the cost

and you take back from them.

I do not know about the exact amount, as it were, Chair, right now but they then carried the cost but the later costs by additional numbers were paid for by PRASA and valued the addendums. I think there were two addendums that were signed by – I think one by two of our general managers, Chair.

CHAIRPERSON: H'm. So the terms and conditions under which Seta would set aside X amount for Prodigy to do this
10 training, would it be on the basis that if the Seta says a hundred rand per learner, for example, they are free if they agree with PRASA whatever – to charge more per learner and then PRASA tops up or they can only charge what the Seta – what they had agreed with the Seta?

I am just trying to see how come PRASA would still pay for the training. I can understand if it is other expenses. How come PRASA would still pay for actual training of the Seta has given this – is going to pay them for the training, Prodigy.

20 **MR MONTANA:** Chair, I think we decided to use the programme to train our entire customer services' teams.

CHAIRPERSON: Oh, you – so you ...[intervenes]

MR MONTANA: Throughout the country.

CHAIRPERSON: To widen the scope?

MR MONTANA: To widen the scope.

CHAIRPERSON: Yes, yes.

MR MONTANA: Because he said: Look, I – why in an organisation of 16 people, you are...

CHAIRPERSON: Ja.

MR MONTANA: The majority are working at stations.

CHAIRPERSON: Ja.

MR MONTANA: Why do you deal with only 300 people.

CHAIRPERSON: Yes.

MR MONTANA: And this had been well received by
10 employees who were trained who received the certificate.

CHAIRPERSON: Yes.

MR MONTANA: So we think that it is something we should go on with the programme.

CHAIRPERSON: Yes.

MR MONTANA: So that was not part of the original letter ...[intervenes]

CHAIRPERSON: Yes.

MR MONTANA: ...that was presented to us, Chair.

CHAIRPERSON: Ja.

20 **MR MONTANA:** So that, PRASA would carry for the training, Chair.

CHAIRPERSON: Yes. So which, I guess, means that insofar as the first 300 are concerned ...[intervenes]

MR MONTANA: Yes, Chair.

CHAIRPERSON: PRASA would not have paid anything in

regard to the actual training.

MR MONTANA: No, no Chair. No.

CHAIRPERSON: But insofar as you widened the scope
...[intervenes]

MR MONTANA: That is correct, Chair.

CHAIRPERSON: ...then you will pay because that is not
covered by the Seta.

MR MONTANA: It is correct, Chair.

CHAIRPERSON: Okay. Now I understand. Okay.

10 Mr Soni.

ADV VAS SONI SC: As you please, Chairperson. Now, I
just want to ask. If you look at these figures on page 138,
the amount per learner would be R 6000,00. Would that be
correct, Mr Montana?

MR MONTANA: You are on page?

ADV VAS SONI SC: Page 138. We are still at the Prodigy
letter.

MR MONTANA: Ja?

ADV VAS SONI SC: Because it is R 18 million for 300
20 hundred learners that would be R 6 000,00 per learner.

MR MONTANA: Ja, I think – it is correct, ja.

ADV VAS SONI SC: Now then ...[intervenes]

CHAIRPERSON: I am sorry. And 300 funded learnership
based on an amount to say 300 learners.

MR MONTANA: Ja, Chair.

CHAIRPERSON: Ja, okay.

ADV VAS SONI SC: Now in this case, was it a situation where PRASA paid Prodigy and then claimed from Seta because that is what the letter seems to say or was it that Prodigy claimed from Seta? I am just trying to – because that is what the letter seems to be say. Do you know or do you not?

MR MONTANA: No, Chair but what I know is that PRASA itself would claim from – because it is ...[indistinct] you
10 would recall. And I think in terms of our target at that time for the number of the people we train, I think it should be per annum 2% of the workforce for all the training that are subjected to, whether from the transport Seta or from the any other Seta who had done the training.

We had the right, Chair, to do that and even from a taxpayer perspective, Chair, we could do that. Of course, PRASA was not a tax paying entity. It is still not as far as I know. But two of its subsidiaries, Top Pax(?) and Intersite they can put that on – they can claim that
20 from the tax point of view.

The initial cost, Chair, when we were waiting and there was a still a lot of bickering – I know that Prodigy did want to claim from us but it had carried certain costs at the beginning but we said but those you can claim directly from the Seta but that was the briefing that I would get from the

team, Chair, as the project. It was doing – implemented over a period of time.

ADV VAS SONI SC: Or PRASA, obviously, the advantage was that it was getting still training for its employees. For Prodigy it was the fact that it was getting work through the tune of R 18 million.

MR MONTANA: Chair, I think if you look it for Prodigy, it offered that to us. I think that one of the things – you will see in the Dingiswayo affidavit was that this thing was
 10 supposed to go out on tender. But a partnership means somebody is bringing something to the table and you agree on the value of thereof. And if we agree to pilot the Centre of Excellence through using that learnership programme, Chair, it is quite that Prodigy will get the extra work as a result beyond the - that is the – so it goes – that is a business decision that you have to make, as it were, and I supported it on that basis.

ADV VAS SONI SC: And the time ...[intervenes]

CHAIRPERSON: Do you know whether – I am sorry, Mr
 20 Soni. Or let me first ask this question. I take it that in terms of how the SETAs operate, an employer such as PRASA is entitled to approach the relevant SETA and say I would like to have my stuff changed, can you make money available and then they can set aside some money with or without conditions. Do you know whether that is true, that

is correct?

MR MONTANA: Chair, what happens is that the – there may be programmes for example that the SETA may say – may initiate or PRASA may initiate in the fund but most of the training, Chair, we must budget for it. We budget for training as PRASA, we spend the money and then there is a time, there is a process where we then apply to get back part of the money we spent. I think there is a formula they use.

10 **CHAIRPERSON:** Okay.

MR MONTANA: So you train people and then they give you the money based on that, Chair.

CHAIRPERSON: Okay, okay, so normally as an employer you just go ahead and train people.

MR MONTANA: We train people.

CHAIRPERSON: And then afterwards go to the SETA and say this is the training that I provided to my staff, here is proof, these are the expenses I have incurred to carry out that training.

20 **MR MONTANA:** Indeed, Chair.

CHAIRPERSON: And then in that case – well, I guess when you say there is formula they apply what – probably that means is that you do not get everything back in terms of your course.

MR MONTANA: No, no, Chair, that is why even in the

letter there that you are able to get part of that allowance.

CHAIRPERSON: Yes.

MR MONTANA: And it depends also on the nature of the training, I mean, you get accredited programme.

CHAIRPERSON: Yes, ja.

MR MONTANA: But let us say a transport SETA is approved then they give you the full amount for that, Chair.

CHAIRPERSON: Oh.

MR MONTANA: And that is why it is aimed at
10 incentivising both public and private companies to invest in skills in the country, Chair.

CHAIRPERSON: Ja, okay, okay. Thank you. Mr Soni?

ADV VAS SONI SC: As you please, Chairperson. Then he says:

“A partnership agreement between Prodigy and
PRASA was signed on the 11 October 2010.”

And he annexures that as MMD4. You confirm that?

MR MONTANA: No, sorry, Mr Chair, you left me behind, I still busy with the letter.

20 **ADV VAS SONI SC:** Oh, sorry.

MR MONTANA: You left me behind, Chair, I do not know where you are going.

ADV VAS SONI SC: Oh, sorry.

CHAIRPERSON: To say – because I think he has gone back to the affidavit.

ADV VAS SONI SC: Oh, sorry, sorry.

MR MONTANA: Back at page 101?

ADV VAS SONI SC: We are back at page 101, yes.

CHAIRPERSON: Okay.

ADV VAS SONI SC: So if I can just go back so that we are all on the same lines, as it were, we started off on the 10 June. The letter was sent then you made the inscription on the letter. Those are the first three sentences of paragraph 14.1, Mr Montana.

10 Then he says:

“A partnership agreement between Prodigy and PRASA was signed on the 11 October.”

And he annexures the agreement. Do you confirm that that is in fact the agreement that ...[intervenes]

MR MONTANA: That is correct, Chair.

ADV VAS SONI SC: And he makes the point that – or in the agreement, it is noted that you signed on behalf of PRASA.

20 **MR MONTANA:** The partnership agreement, Chair, I signed, yes.

ADV VAS SONI SC: Yes. Then he says:

“Thereafter, on the 30 August 2011 an addendum was concluded with Mr Mpefo now signing on behalf of PRASA.”

And that is annexure MMD5. Do you confirm that?

MR MONTANA: Ja, I confirm that, Chair, that is correct.

ADV VAS SONI SC: And then on 31 October 2012:

“A further aspect was added to the agreement”

And again he says you signed that part and that appears at page 179.

MR MONTANA: 179?

ADV VAS SONI SC: Yes. Sorry, at page 177. That is your signature there, is it?

MR MONTANA: Indeed, Chair.

10 **ADV VAS SONI SC:** Okay.

MR MONTANA: What ...[intervenes]

CHAIRPERSON: I am sorry, his signature is at what page?

ADV VAS SONI SC: At page 177, Chair.

CHAIRPERSON: Okay.

ADV VAS SONI SC: Now he says as far as this part is concerned, you could go to page 174, Mr Montana. You will see that this tells you what the cost is and right at the bottom of page 174 this says the cost per learner is
20 R24 000 and the cost of 3 000 learners is R72 million.

MR MONTANA: I am trying to – ja, on page 174.

ADV VAS SONI SC: 174, right at the bottom.

MR MONTANA: Right at the bottom, okay.

ADV VAS SONI SC: Yes.

MR MONTANA: That is the agreement that we have been

looking at that was signed by you.

MR MONTANA: Exactly, Chair.

ADV VAS SONI SC: Right. Now I just have in relation to – remember I asked you in regard to the 300 learners we agreed that the cost was R6 000 per learner.

MR MONTANA: Indeed, Chair.

ADV VAS SONI SC: Now two things happened here and I am giving you the opportunity to explain. One is, the number of learners increases from 300 to 3 000. That is
10 correct, is it not? Now just in relation to that, as I understood your evidence earlier, PRASA could be able to claim from SETA for the 300 learners. Would it be able to claim in respect of these 3 000 learners as well?

MR MONTANA: All the training, Chair, PRASA would be able to claim for all the monies that – you remember this is now moving beyond the 300, Chair, that we spoke about earlier, ja.

ADV VAS SONI SC: So although the numbers increased it would still be SETA that pays.

20 **MR MONTANA:** No, no, no, Chair. It will not be SETA, it will be PRASA that pays and will claim the money from the skills lady, as it were.

ADV VAS SONI SC: But what amount will it claim?

CHAIRPERSON: I am sorry, so the regime, as I understand it, which you I think you explained to me is in

respect of the 300 learners that Prodigy and the SETA agreed upon, Prodigy would not claim anything from PRASA in respect of the actual training but they would claim from the SETA because that is the arrangement.

MR MONTANA: Chair, PRASA will claim – will still claim even ...[intervenes]

CHAIRPERSON: Sorry?

MR MONTANA: PRASA will still claim for anything. Any training that we do.

10 **CHAIRPERSON:** Ja.

MR MONTANA: PRASA will claim the money for that training.

CHAIRPERSON: No, no, no, let us take it step by step. I am saying based on what I understood you to say to me earlier on, as far as the first 300 learners are concerned, I think you did indicate that for the actual training Prodigy would be paid by the SETA.

MR MONTANA: No, no, Chair. What has happened here is that – let me explain, Chair. One of the DVD(?) they say
20 we want – we are giving you the learnerships. It means that money, Chair, that has been allocated for training is given to you.

CHAIRPERSON: That is Prodigy or PRASA?

MR MONTANA: PRASA, which is PRASA.

CHAIRPERSON: Ja, yes.

MR MONTANA: But let us say they have got their own list.

CHAIRPERSON: Yes.

MR MONTANA: The database of their suppliers who present different training programmes. They have approved some and no approved some and these service providers will decide, Chair. If you look in my, for example, affidavit, we deal with some of the training that Prodigy was doing for other agencies of the State. But
10 they went to the SETA, get that learnerships and they award and they allocate them. Now the training will happen, Chair.

Now in this particular instance I have said – the point I made was that Prodigy then because of what was happening, it carried the cost, the initial cost of the training programme and when they wanted to claim from us they said no, but you have got – we have not yet come to that point, you can carry the cost until such time that we are able to – because you recall, Chair, this is the middle
20 of the financial year. Not all the cost – we had to shift the cost for training from other training to allocate to this particular training.

So, Chair, each and every training we do, even if we end up we paid someone, it means therefore that we can claim that money from the SETA.

CHAIRPERSON: Yes, I understand that part, I am still looking at what it means for Prodigy and the SETA that this training has come about not because PRASA approached the SETA or PRASA decided to do the training itself and then claim but that it came about because of the arrangement between Prodigy and the SETA.

MR MONTANA: Indeed, Chair.

CHAIRPERSON: Ja. So my earlier understanding of what you had said was that as far as the fees for Prodigy, if you
10 can call them that, for the actual training, PRASA is not liable, the SETA is liable because of the arrangement Prodigy made with the SETA. But, even in regard to that, those 300, PRASA can put in its own claim – we did not go into the details – something that it can get but when it came to the additional learners outside of the 300, I understood that PRASA would pay – would conduct the training or get whoever to conduct it for them and then spend the money but claim from the SETA. But I think based on what you have just said, that understanding of
20 mine might not be accurate.

MR MONTANA: No, Chair, in both instances PRASA would spend the money.

CHAIRPERSON: Yes.

MR MONTANA: Knowing that there is an agreement.

CHAIRPERSON: Ja.

MR MONTANA: That letter that training has been ceded to it by Prodigy in this instance and that it goes on with the training knowing that there is 18 million in the kitty that it can claim back and to come back to PRASA.

CHAIRPERSON: So the process of Prodigy getting paid, how does it happen? What is the route.

MR MONTANA: Chair, you will see that in the first part but with the annexures, with the addendum rather, it is a completely different thing because we are dealing with –
10 and let me say the 6 000 per learner...

CHAIRPERSON: Ja.

MR MONTANA: You remember that it is for a specific approved programme.

CHAIRPERSON: Ja.

MR MONTANA: Now what has happened in the Centre of Excellence, PRASA and Prodigy then engage and agreed on the nature of the programme that needs to be done. Okay, so that goes far beyond what, for example, was initially provided in the SETA award.

20 Secondly, Chair, PRASA did not only train, it used that training to train also people outside of its own ranks. For example, we were working with a number of community organisations. So we say nominate people and bring them – let us also train them into part – so the numbers will go and they will get certification as well.

CHAIRPERSON: So when all is said and done is the position that whether an employer conducts the training of its staff itself without a third party or it brings in a third party, ultimately the cost of the training, the bill gets footed by the SETA minus whatever the employer will claim from the SETA.

ADV VAS SONI SC: Indeed, Chair, but they will have to verify whether the training did indeed take place.

CHAIRPERSON: Yes, yes.

10 **MR MONTANA:** It is in line with whatever was provided there.

CHAIRPERSON: Yes, yes.

MR MONTANA: Chair, but ultimately ...[intervenes]

CHAIRPERSON: Is the SETA then.

MR MONTANA: There are two types of things, Chair, that perhaps I should explain. There will be something like this where these guys will come and say we have got learnerships from SETA X, we have got this amount of money, can we use it at PRASA?

20 **CHAIRPERSON:** Yes, yes.

MR MONTANA: And then there is the ongoing targets that we have in terms of training. Now this is not a training – so over and above what Prodigy had proposed, PRASA had its own target in terms of training people which it also claimed from the Transport SETA as an example, Chair.

CHAIRPERSON: Yes, okay, okay. No, thank you. Mr Soni?

ADV VAS SONI SC: Now in regard to the contract we are talking about at page 174, I mean, where the figure is at 174, the figure for the learner is R24 000, the figure originally agreed with Prodigy was R6 000 per learner. That I can understand SETA would pay. Would SETA still pay four times that amount for each learner if you claimed that from SETA?

10 **MR MONTANA:** No, no, Chair, the SETA will still claim the money but remember, the 18 million is linked to 300 learners. The specific basic training – that is for basic training that is there. We took a decision that okay, we are going to have – we develop what you call My Station programme which was a programme to prepare our people. We said we are modernising PRASA, we need to have new employees, it cannot be only about new trains. Even the people at stations and all the things, they must people who can respond to the challenges of the time.

20 So we designed a completely new programme where employees will come from all over the country and train. So what happens is that the 3 000 and the 300, it is not one and the same thing, Chair, and now I realise that perhaps what we should have done, with hindsight, we should not have called that an addendum(?). It should

have been dealt with basically as a – to say let us build on the centre but we enter a completely different agreement because I understand, Mr Soni, when you ask that question, is that you initiated a programme based on the 300 and then you build on it, the numbers keep on increasing, the value keeps on going up but the amount, all of it, we are allowed to claim back from the SETA, Chair.

ADV VAS SONI SC: Well, this is what intrigues me, if I were the head of SETA, whichever SETA it is, I am told in
 10 the original agreement in 2010 that it costs R6 000 that they will claim for each person trained and then in 2012 they will claim R24 000 for each person claiming. Why should I, as the head of SETA, pay you R24 000 when two years ago a SETA was paying R6 000?

MR MONTANA: Indeed. I think that, Chair, if it is a same programme, it is the same basis training and that has been increased in that way, yes, I think as a head of the SETA I would be intrigued. But if it is a completely different programme I would say look, we are building on that, we
 20 are opening this centre, we are providing – I mean, one of the things that we did, for example, in our centre, Chair, was to, in respect of the training for train drivers, we brought in one of the sophisticated machines where are drivers were trained – I think the word will come back now in my head – where similar to what you do when you train

high loads or whatever, Chair, you create an environment where if drivers are driving a train, there is a lot of rain or whatever, so some of it highly advanced training programmes that comes into our Centre for Excellence.

So it was no longer the same training programme, we built onto that, it was a much more sophisticated detailed programme that is there. I think the word will come back, Chair, so that when you create a - what is the word, it disappeared again from me – so pilots, for
 10 example, Chair, when they are trained, there is an artificial situation created as part of that training. We did the same, for example, the Centre of Excellence.

It is not far, I have visited it quite a number of times I have addressed the employees who are attending that particular programme and the others took place around the country, as it were. So Mr Soni is correct, Chair, but if it is the same terms, same training, yes, it should not do but it is a different training, we used that programme to expand and bring as many people as possible and get the
 20 advanced training. That is what we chose to do, Chair, and that was the innovation and the award that we got for the programme.

ADV VAS SONI SC: Who determines the amount of R24 000 for each trainee?

MR MONTANA: So this was negotiated between Prodigy

and our HR department but because the numbers and the amounts were huge, required the approval of the CEO and that is why, Chair, you will see that when you see the work, what you referred to me, Mr Soni, the page 174, my signature. After ...[intervenes]

CHAIRPERSON: At the bottom, h'm.

MR MONTANA: 174, I think, Chair, ja, where I – no, 177, sorry.

CHAIRPERSON: 177.

10 **MR MONTANA:** 177, it is my signature there.

CHAIRPERSON: Yes.

MR MONTANA: As you can see, Chair, that there are PRASA who signed. Who signed but because there are numbers are not the same as the numbers that were part of that initial scheme, it then required the approval of the Group CEO, Chair, and I have accordingly approved that because it was within my delegation of authority.

CHAIRPERSON: You say I see that there are PRASA people who signed that, but I only see your signature.

20 Only your signature at 177.

MR MONTANA: Yes, Chair, but I think ...[intervenes]

CHAIRPERSON: Are you talking about another page?

MR MONTANA: Ja, Chair, but I can see that on page, for example, 176. So this was a memo. Let us check in the front page who would have – okay, this is the actual

agreement but there will be a memo accompanying this agreement.

CHAIRPERSON: Ja, yes.

MR MONTANA: Explaining to me.

CHAIRPERSON: Ja.

MR MONTANA: So but because it has budgetary impact beyond what was initially agreed, the team would motivate for me to sign and, Chair, that is why I accordingly approved.

10 **CHAIRPERSON:** Okay, okay.

MR MONTANA: Approved the ...[intervenes]

CHAIRPERSON: So you say there would have been a memo that accompanied the draft agreement?

MR MONTANA: The draft agreement, Chair.

CHAIRPERSON: Ja.

MR MONTANA: The draft – Chair, there are two main players here. Our HR department is the one that deals with the training issue. I am speaking as if, Chair, I am still at PRASA. At that time, Chair...

20 **CHAIRPERSON:** Ja.

MR MONTANA: So the – they will deal with the actual business of the training including the claiming from the scheme, that is an ongoing part of their functions. The drafting of this and the vetting of the agreement will then be done by our legal department.

CHAIRPERSON: Yes.

MR MONTANA: Which then both of them will be submitted to me, motivating – if I am unhappy of course I will not approve but if I am happy and I believe that there is value for money then I will approve like in this instance, Chair, I did approve.

CHAIRPERSON: Well, I think what I would like you to deal with, the 300 learners, the first lot, what were they – what skills were they being trained on or – I want to
10 compare that you later on tell me about the 3 000 because you have said that it is different programmes, that is fine, but I want to know what actually – what were the actual skills, were they being trained on or qualifications or whatever, I just want to get that, you know, like this one was – they were being trained to drive cars or they have been trained. When you get – when you are being trained to drive a car it cost 6 000 but when you are being trained to drive a train, that is 24 000, that is the difference, that is what I am looking at.

20 **MR MONTANA:** I was giving that as an example, Chair.

CHAIRPERSON: Yes.

MR MONTANA: For some of the trainings ...[intervenes]

CHAIRPERSON: Yes, yes, I accept that, ja.

MR MONTANA: Chair, the training for the initial group was what you call a basic training customer service for

people to understand the importance of customer services in the business and all of those things. I does not take you to the level where you acquire skills that could even take high in the organisation.

CHAIRPERSON: So I guess customer service would like, you know, how important it is to smile when you serve a customer.

MR MONTANA: No, Chair, during the ...[intervenes]

CHAIRPERSON: Or to follow up if there are complaints
10 and so on.

MR MONTANA: During the 2006 World Cup, you remember the Germans were trained how to smile because they were regarded as people who are very serious and we were going to their country for the 2006 World Cup. So, Chair, it will be basic about how do you treat your customers, your ...[intervenes]

CHAIRPERSON: Do not speak on the phone while you are talking to a customer, that kind of thing.

MR MONTANA: To a customer. But these were basic,
20 part of the initial learnerships that were there.

CHAIRPERSON: Ja.

MR MONTANA: So it was basic, basic training that was there.

CHAIRPERSON: Okay.

MR MONTANA: But the awards that we did, Chair, were

still accredited, though.

CHAIRPERSON: For the basic, for the 3 000.

MR MONTANA: For the 300.

CHAIRPERSON: Oh, the 300, ja.

MR MONTANA: Yes.

CHAIRPERSON: Okay.

MR MONTANA: So it is like someone who you are sending for a basic training course, they get their acknowledgement.

10 The second part, Chair, was a much more detailed one because it also teaches you about your business, the management of processes and all of those processes. So the entire value chain about customer services and some of the technical skills that you require, Chair.

CHAIRPERSON: The people who would be eligible get onto the programme involving 3 000 compared to the categories of people who got onto the basic programme. Were there categories to say, for example, for the basic one we need people who fall within the following
20 categories or who have got these qualifications, maybe Matric, but maybe once you get to the second one, which is more expensive, we are looking at maybe some managers and so on. Was there anything like that?

MR MONTANA: Yes, Chair, the - for example, access controllers, the people that you find when you come into a

station, the people who check your tickets, the first programme was targeted at those kind of people.

CHAIRPERSON: Yes.

MR MONTANA: When you look at the second part of the programme, some of them targeted management – oh, by the way, access controllers but also the unemployed people, Chair, they got on that programme, people who are unemployed, organisation like South African commuter organisations will nominate people let us say from Orange
10 Farm and everything and say we think that we will work with commuters, we want these kind of basic skills and our people get certificates. So that we will do, Chair, but when you look at the one that was costing on an average 24, you are even targeting higher people including those at the entry to management level, Chair, that were being trained. So that is why the cost would not have been the same, it would not have been the same level. Even the intensity, Chair, because a two week basic programme will not be the same where a programme you run over a period of six
20 months but again, it is dependent on releasing of people.

CHAIRPERSON: Yes.

MR MONTANA: Because one of the major things is that if you do it in modules because there are modules in these programmes, you find that one of the major things I remember was a big, big problem in this programme

between our HR team and our customer services team, was with Prodigy, was the fact that PRASA signed an agreement but it does not release the people that have been identified to require this kind of programme.

So they will say we, for example, have booked a place, we also secured facilitators who pitch up and sometimes there is half of the people that we require there and we have to do the programme twice or thrice because the same number of people instead of coming to one
10 session, they come to two or three different sessions that are there. So, Chair, they were not the same programme. So the first one targeted access controllers, Chair, mainly, within the Metrorail environment.

When I went to the Eastern Cape, Chair, for a road show with employees, I remember employees there who said why, we are part of Shosholozza Meyl, the intercity long distance, why are we not also being given the same kind of training? And I remember that as a result of that, they head of Shosholozza Meyl operations, not the CEO but
20 the guy who running operations, I think Mr Nelson Mphailane, then wrote a letter requesting that, no, we have got our own people who must – who should be nominated and participate in the programme, as it were. So, Chair, there is a – I think there were a lot of ups and downs in the programme but was it a great programme for

PRASA? I think, as CEO, I will say it was one of the best programmes that were further implemented and that is why when in fact I was to travel to Vienna at the time Chair but I could not travel and one of our many executives travelled there to receive the award because the impact of that programme on making sure that you do not only modernise, because the key thing Chair is modernisation, that you are modernising your operations but the employees are not prepared, they needed to create a new person, a new
 10 employee, to be able to match to merge all of that.

So the centre of excellence, my station program, and the centre of excellence was aimed at achieving that Chair. I do not know today as to whether PRASA is getting the benefit of those trainings, except that I did get a call from one of the Union saying you have trained our people, they did not get their own certificates. What is happening, can these service provider provide and deliver that to us?

But I said well that is a matter between PRASA and Prodigy to resolve, particularly with the disputes and the
 20 Court processes that are underway. Chair there was value for money, I was satisfied it was a good program for us.

CHAIRPERSON: Ja, did you say or was it just an example that the duration of the best program that is the program involving the 300 was for the two weeks and this one for the 3000 was six months or was those just examples?

MR MONTANA: No, no examples I have given you examples Chair that you have models that run over, for example over a two-week program, for example over six and you would not manage them the same Chair. But the first was for access controllers, basic training, and the other ones Chair moved to even the management excellence, entry level management excellence in our service, in our customer services part of the business.

CHAIRPERSON: Did you do you recall the duration in
10 regard to both or you do not remember?

MR MONTANA: No, no, Chair not off hand.

CHAIRPERSON: Not off hand.

MR MONTANA: But I know that when I visited, I was still given the files for training, and I still have them Chair and maybe it is something that I should share with the Commission to be able to evaluate this program Chair.

CHAIRPERSON: Ja, okay alright, Mr Soni.

ADV VAS SONI SC: Chairperson, I just want to clear three or four things, I know it is tea time but I thought I
20 would just clear them. Mr Dingiswayo says that in regard to this program at page 174, the duration of the training was five days. Do you agree?

MR MONTANA: Are you on page 175?

ADV VAS SONI SC: 174.

MR MONTANA: 174?

ADV VAS SONI SC: The same one we were dealing with, yes, it is cost per learner 24,000 and cost of 3000. You want to come back to that issue., after you...[intervene]

MR MONTANA: No, no I do not – no I am trying to see where in his affidavit is he saying, I am trying to...[intervene]

ADV VAS SONI SC: Actually, he says that - if you look at the second last line, on page 101, he says:

10 “In effect this part of the contract required PRASA
to pay R24 000, 00 per learner for a five-day
course.”

MR MONTANA: No, no Chair that that cannot be correct and I think Mr Dingiswayo is really trying to find fault in the program. When you go into my affidavit Chair one of the things that I did not share, for example, you will see that even there has been quite a lot of engagement, some of the PRASA HR people who wanted for example, this program to be linked with some of the more advanced programs that were there and I think I detail some of
20 those.

So the program Chair that was there was far bigger than that Chair and I am trying to find the specific part Chair on the - in my affidavit. For example, one of the things is that our HR department and something that I intervened and fight about wanted Prodigy to enter into a

joint venture with another company called Talent Institute, which was already doing work for PRASA and say let us consolidate these particular programs.

And that is why I am saying Chair if you apply the same principle, Mr Dingiswayo will say for example, we think let us say Talent Institute, which has been with PRASA doing work for PRASA for many years, which I actually questioned to say hey, are these people the only guys who are training in this environment? So there were
 10 part because - you know, businesses the way they run Chair, people create their own spaces, their own freedom because they get comfortable working with other people and they want to create all of that spaces.

But Chair, the program was far bigger and that is why I shared the program – I shared the material so that the Commission will be able to see that, I think that what Mr Dingiswayo was trying to get to, is to try to reduce everything to that entry level program, and not deal with the program in its entirety and its complexity, Chair.

20 But I think the training material that I provide, will prove that they in fact, the higher you go there the complex the program became, Chair.

CHAIRPERSON: And did you say when the training took place he had not joined...[intervene]

MR MONTANA: No, no.

CHAIRPERSON: ...he had not joined PRASA?

MR MONTANA: Chair, when we - when the first group of people graduated training, we were actually wearing gowns, because this was accredited - with 300 employees, I still have pictures, some of our employees there, they wrote letters to me Chair, which are employees who have never been to school, but were taken through this program, and they felt quite, you know, that they are – here is a business that is taking care of them, and that they even
10 them they throughout they can gain the experience to go through the system and be something else.

Because once you got the first one, it means Chair that he in fact, you can also be nominated for the higher forms. So it was aimed at ensuring that you do not become an access controller for the rest of your life, Chair. Let me say lastly Chair, that when I joined the SRCC and we incorporated Metrorail in 2006, one of the biggest problems we found was that there were a lot of employees who have worked for Metrorail, I think the numbers was plus minus
20 4000.

They have worked some of them for 10 to 12 years, they were treated as temporary staff. They never received this kind of training and most of those people became access controllers because I went to the Board and say here is the financial implications but these people can

never be access controllers, temporary employees for the rest of their life.

So we then incorporated, they became access controllers, and most of them became part of this program. When we made them a full time Chair, you would not believe how that changed people's lives. For the first time someone is able to go to a bank and say I am applying for a student loan for my kids, I am able to apply for a home. Fortunately, I was receiving those, those letters there and I
10 said, for me, that is what made me wake up Chair and look forward to going to work at PRASA because I knew that my employees - I mean, when I came here Chair on Friday, the messages they sent to me, some of them were saying [speaking in vernacular], whatever they say we have got a permanent job, we have got a roof over our heads for the first time, because you fought for us in that business.

So Chair, I think maybe anomalies will always be contradictions a source of development and we should not be afraid of that but I think for me the question and I was
20 not involved, because these people are not trained by me. I went to open maybe one or two of the sessions that were there. In the same way that when our employees for example, some of the senior managers we targeted we send them to Gibbs to be trained, because this is what we saying that we wanted you to become now the next level of

leadership in the organisation.

Now before Gibbs, take them through the business training, I come then tell them what is PRASA, what kind of business are we trying to do and Chair we dedicated a bit of time for that. So yes, anomalies may be there but was it a good program for our entry level staff at customer services and later for the management echelons at the entry level, I think Chair it was one of the best programs ever. I do not agree with Mr Dingiswayo's assessment but
 10 yes, I think his got the right to identify shortcomings that were there but it does not make them criminal. I think for him Chair his trying to link the training to Moodley and that is the problem.

If you start in that way, we are going part ways because there was no Moodley when I signed that letter. So I am taking responsibility that this program, ultimately, there are employees that passed, that GM's who approved certain things Chair but the overall program was endorsed by me as a Group Chief Executive and I am confirming that
 20 to you Chair, today.

CHAIRPERSON: Thank you.

ADV VAS SONI SC: Just one final question
 Chairperson...[intervene]

CHAIRPERSON: Yes, sure.

ADV VAS SONI SC: Because I do not want us

to...[intervene]

CHAIRPERSON: Yes.

ADV VAS SONI SC: This Prodigy contract was not linked to the World Cup at all.

MR MONTANA: No, no this came after the World Cup.

ADV VAS SONI SC: Yes, I just wanted to - because I heard you say something about the World Cup and then getting our...[intervene]

MR MONTANA: No, no.

10 **ADV VAS SONI SC:** I just did not want there to be a link between this...[intervene]

MR MONTANA: But this was linked to creating the new business. So remember before 2010 Chair, 2010 was very important for us, because we had invested a lot, but we did not create the new PRASA, Chair.

We were refurbishing and one of the major things post 2010 we took a very important strategic decision that we no longer want to refurbish old trains, we do not want to paint the old trains that we know that they do not
20 represent the future. We are going to capitalise this business, we want to recapitalise so we said we are moving away from refurbishment to recapitalisation, instead of refurbishing trains – it does not mean we are not going to refurbish at all but the key thrust we are going to invest in new trains, Chair, we took that decision.

The result of that is that factory that we see in Dunnottar in Nigel where you know Chair I was so proud when I saw His Excellency, our President, taking investors and say South Africa has got a manufacturing plant and I know Chair that I was the champion behind that, and when I see investors say, if you want to build a trains, not only for South Africa, but for even countries in the Southern Hemisphere like Brazil, like Australia, South Africa can actually build those trains in the factory that we built. You

10 know, one thing Chair why I defend PRASA so vehemently, I said people come in here and say money was paid, okay. It was paid even in advance but we do not see any value.

Chair, I want to assure you, there is no single PRASA project whether you deal with this new rolling stock, you deal with the farm boy, you deal with Prodigy, where you find that we spend money and you cannot show and say this is what we did. With Swifambo for example the country can say here are the locomotives we are using them, and other saying they are too tall. They are not

20 saying they are no locomotives; they're running in the tracks.

The commuter trains we spent R50billion, we can show them, we can point them - the training Chair, I took Minister Ndebele the first 300 of the employees that were trained by Prodigy. Minister Ndebele in Boksburg. He

actually was the main speaker, and he was surrounded – pictures are there, this is actual work we did not just take people and pretended and put down, this were our employees Chair who benefited from that particular program.

So I think Chair, that is the one difference about PRASA the point - as point the shortcomings, and there are probably many, but there are also many achievements that we have recorded, but we will never have an instance
10 where you say Chair, like you say but money has been spent and we do not know, at PRASA I can take you, you can walk with me Chair anywhere and say we spend R100million there here is the result of all of that and that is why I will always be an Ambassador for PRASA, even if I do not work for that organisation, Chair.

Even now with the difficulties, let me indicate Chair, now with the difficulties I have said to the Board of PRASA I am not looking for work but I have offered Chair I said I am prepared to give you two or three days, even if I do not
20 come to the office, sitting from home. If you want me to analyse some of your reports, and advise on the kind of strategies, I am available because this is our country Chair, I do not want to see PRASA going down because I am no longer CEO, I want to see PRASA thriving, because first and foremost, I am thinking about our Parkwood,

Woolworths.

So I keep on buying their Chair, the employees look at me and sometimes I take my daughter, they play with my daughter. One day as I was leaving Parkwood recently Chair, they all crowded, they were crowding me and I thought I was going to be beaten by these employees and they were saying but we live in Soweto and we used to take a train from Naledi to Park Station and then take a short taxi and that we could save a lot of money for our
10 families.

Trains are no longer there, we are paying even double more than our salary just to go to work. So, Chair those are the people that we - that I think about. So the country has given me some skills, I may be fighting with the leadership today but the skills I will use to the benefit of our people and I made that offer Chair not to the Minister but to the Board and say if one day you feel that I should assist you feel free to come and give me the material.

20 And for example now the infrastructure has gone Chair, we need to restore it and I think that is something that I am prepared – if you find and you may find serious findings against me Chair, I am not saying you would perhaps one of the of the things as a mitigating factors say had committed to continue working for the country, say,

five years, we sentence you, instead of hard labour, go and assist the country in railways, that is what I will do Chair.

CHAIRPERSON: Ja, but the point you were making about value for money is you are saying, we have heard of situations where people are given contracts to build houses, and you will find that the money has been given to them, they have been paid but when you say where are the houses, they cannot show you the houses they built.

So you are saying whatever difficulties or
10 challenges may be pointed out in regard to PRASA the one thing that cannot be said, as far as you are concerned, is to say, but where is what was supposed to be done with the money, that is the point you were making.

MR MONTANA: Chair, I put my head on the block, each and every manual project that we have done that were within my monitoring screen, all of them Chair have been done. They are not perfectly but I think that we have done tremendous work and part of me coming to this Commission is to ensure that the true story of PRASA is
20 told Chair and not to deny any shortcomings or weaknesses but to say the real PRASA known amongst our people should be the one that we present here today, Chair.

ADV VAS SONI SC: As you please Chair.

CHAIRPERSON: Let us take the tea adjournment it is

about twenty minutes past we will resume at quarter to twelve.

ADV VAS SONI SC: As you please Chair.

CHAIRPERSON: We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Okay let us continue.

ADV SONI SC: As you please Chair. Mr Montana I just want to finalise my concerns about the pro – the contract and I
10 want to go back to page 174. You will see there it is a R72 million contract right. You agree? Page 174.

MR MONTANA: 174.

ADV SONI SC: Yes on the left hand side you will see.

MR MONTANA: Answering the question (inaudible) R72 million Chair.

ADV SONI SC: Yes. Now that is not a small sum of money whatever goods or services one is procuring you agree?

MR MONTANA: I accept Chair I do.

ADV SONI SC: Now I have looked at the terms of the
20 contract because I accepted what Mr Dingiswayo had said that it supplied their program. Now this is the difficulty I have.

MR MONTANA: Which I rejected.

ADV SONI SC: Yes, no, no I understand. This is the difficulty I have I have looked at the – the agreement it does

not seem to reflect what Prodigy's obligations are in regard to the training that they would provide. Would the training be five days, would it be ten days, would it be twenty days? I am talking about the agreement itself. Would you agree with me?

MR MONTANA: Chair perhaps not in the – in that level of detail but I will tell you from where I was sitting some of the things other than the training of course. You remember there was also catering for all our employees that were there and
 10 Chair I think – I think maybe what Mr Dingiswayo confused I am not responding to him but I am just answering you in that way was the fact that there were some levels where we were doing a lot of theoretical training.

There were – and I think that is when we brought in people together into one place which I think the total days for example for that period we are training was – was in the order of twenty days. The – one of the things for example on this program Chair particularly where we were dealing with I think the management levels. If I remember well it was
 20 Level – Level 4 and 5.

Once they have gone through the program then Prodigy for example will assign what we call a mentor to be able to make sure that what this person has been trained is able to apply that in the work space. So – so the point I am making Chair I am saying that maybe his did not but I think

that for me I had an understanding of what this program needs to deliver. Whether they did that fully, completely Chair it is a different matter but – but when we approved this program and Chair let – by the way I am reminded of one thing or rather two things.

I was looking for a word at our centre 00:03:45 so we installed a simulator so that we could simulate some of this so that the drivers can see a 00:03:51 when for example there is fork and everything, different conditions. Part of
10 that in the centre of excellence even though there was no drunk done by Prodigy but the centre of excellence was meant to be a model that we use throughout the business for that purpose.

One of the main reasons why the discussion between PRASA and Prodigy was the fact that they were in fact at that time if I remember well the only entity that was accredited with the Passenger Rail training modules which they in fact they ended up doing for the Transport SETA as well. So there were reasons and I think Chair I was very
20 clear at an overall level what was their duty, what was Prodigy supposed to do? And most importantly I saw the great 00:04:40 with my own eyes. I gave them the certificate, I shake their hands and I think for me that was the most important thing – it was a proud moment for our employees Chair.

ADV SONI SC: Yes. Mr Montana I am asking an entirely different question and I understand that you are pleased with the program and I am not saying you are not entirely
00:04:58. The question I am asking is as one fifth year with a R72 million contract one says okay but if there is a dispute how is that dispute going to be resolved? So let me just tell you what I have looked at and I would like you to look at page 173 under the heading Phase PRASA My Station Customer Service Skills Program Implementation Agreement

10 – Engagement Phase and you will see there it says,

“Content phase, implementation of PRASA My Station Customer Service Skills Program training sessions. The theoretical session is five days. 149 groups of 20 learners each. We have accommodated – we have accommodated for more groups. This will be a ten day program conducted over a three to six month period.”

This is what I do not understand then what – how do
20 you say to them but you were supposed to do five days, ten days, twenty days? It is not written in the program do you – I mean in the – in the contract, do you agree?

MR MONTANA: Chair yes but if you look at the – if you look at the table Chair you have got the project activity, you got deliverables and at the end it tells you who is responsible.

Kadishe – that is Mr Soni where it says Prodigy is responsible for that, Prodigy is responsible for that then say Prodigy and PRASA so I think perhaps maybe Chair we – we – the way it has been captured it may not have been – I would concede to that – I will not take issue with that. But I think that from the table that Mr Soni is referring to it actually has got three sections activity, deliverables and the responsible party in that agreement.

ADV SONI SC: Mr Montana I have got no difficulty. This is
 10 – this is my difficulty. R72 million of tax-payers money now we say that Prodigy is responsible. PRASA says somebody in PRASA you or whoever you not delivering. How does one determine what in terms of the contract because this is not a – a – this is a contract that requires the production of certain things for payment of R72 million. Do you agree that it is not in the – in the agreement what Prodigy should do? I know it is responsible but if there is a dispute.

MR MONTANA: Chair maybe Chair I think for me it is very clear.

20 **CHAIRPERSON:** I am sorry before you respond I just want to make sure I understood the question. Just repeat the question Mr Soni.

ADV SONI SC: I say Chairperson that the – we know that Prodigy is to provide training. That is the deliverable as they call it in the business world. Now if there is a dispute

about whether it has delivered or not they – Mr Montana understood that they will have training for each person over twenty days in the six month period. But Prodigy provides training for twelve days and there is a dispute about it. One cannot turn to the – to the contract to say no but you are supposed to provide twenty.

CHAIRPERSON: I am – I see that in – at page 173 there is a column there that says this is – this will be a ten day program conducted over a three to six month period eish
10 then I must complete the program in a maximum of six months.

ADV SONI SC: Yes.

CHAIRPERSON: Now is the question that that is not said in the contracts it should have been in the contract or is the question a different one?

ADV SONI SC: Well the question is it says – it starts off by saying the theoretical session is five days.

CHAIRPERSON: Sorry.

ADV SONI SC: The – the sentence before that.

20 **CHAIRPERSON:** Ja.

ADV SONI SC: Says the theoretical session is five days.

CHAIRPERSON: Yes.

ADV SONI SC: Then it says this will be a ten day program.

CHAIRPERSON: Yes.

ADV SONI SC: Conducted over a three to six month period.

CHAIRPERSON: Yes.

ADV SONI SC: Each learner must complete the program in a maximum of six. But what it does not say is whether the five days the theoretical days is included in the ten days.

CHAIRPERSON: Yes.

ADV SONI SC: And I – so I...

CHAIRPERSON: So it is not about where – where the point is made – where the issue is covered it is about whether it is clear or vague.

10 **ADV SONI SC:** Well that is the only point I want to make.

CHAIRPERSON: That is the only point okay. Mr Montana.

MR MONTANA: Chair – Chair I think – look at the time when I look at the – I hear what Mr Soni is saying but at the time you it says the theoretical issue which means the theoretical part of the training.

CHAIRPERSON: Ja.

MR MONTANA: For – will take – it would be for five days and 149 groups of 20 learners each and Chair it tells you the kind of activity that is supposed to take place there and that
20 – and that that theoretical work Chair if so – if they are called for five days but over a period of six months Chair they do that training.

The point that I think Mr Soni is making that the contract maybe does not provide and I have said that there are disputes for example about the release of – of

employees by PRASA and you will see there is a grey area where PRASA said but it was her job to make sure that the – you ask for them. And this guy say but it was your duty to make sure that as an employer that they are released.

So yes there are those kinds of grey areas Chair but I think that in terms of clear deliverables I think that the – as far as I am concerned Chair they are quite detailed in this. And by the way let us not look at what we have in front of us Chair an isolation from the partnership agreement as well as
10 the thing because this is just a detailed activity now beyond what we – what I had signed.

Because the partnership agreement I signed did not have that level of detail Chair but if you go further down with the addendums and even the amounts those are detailed in the – in the contracts. Are they covered enough that if there is that kind of a problem I will concede Chair I would take up issues with that. I would not – I would not argue that it is that.

CHAIRPERSON: I will tell you what my initial understanding
20 is Mr Soni and of course if it becomes a serious issue one can look at it and so on. I understand the theory – the five days of theory to be part of the ten days because they say this will be a ten day program. So I understand that to say in total this program requires ten days.

ADV SONI SC: Yes.

CHAIRPERSON: So when in the earlier sentence they say the theoretical session is five days I take that to mean the ten day – the ten days is divided into two. The theoretical session and maybe what I would call the practical session.

ADV SONI SC: Yes.

CHAIRPERSON: That is – that is my initial understanding.

ADV SONI SC: That is what I understood as well Chair.

CHAIRPERSON: Yes.

ADV SONI SC: Because you know I am just trying in the
10 sense to say.

CHAIRPERSON: Yes.

ADV SONI SC: That – and it was in answer to matters Mr Montana raised.

CHAIRPERSON: Yes.

ADV SONI SC: Where he said well it was longer than five days. But we now know it is ten days and so we have 20 learners. 149 sessions and each learner to pay R24 000.00 for ten days. That is – that is effectively. So it may not be five days but nevertheless it is R24 000.00 for ten days.

20 **CHAIRPERSON:** Yes.

ADV SONI SC: And if we can put a figure on that.

CHAIRPERSON: Yes.

MR MONTANA: No, no, no Chair. No. no.

CHAIRPERSON: Yes.

MR MONTANA: No, no. Okay let us correct that. Chair I

think we are picking up.

CHAIRPERSON: Obviously Mr Soni is giving his understanding.

MR MONTANA: His understanding.

CHAIRPERSON: Yes.

MR MONTANA: Now I am giving my understanding.

CHAIRPERSON: Ja give us your understanding.

MR MONTANA: Chair no the program was not ten days for R24 000.00. We are talking about the theoretical path of –
10 your remember that talking about the number of other activities for examples those at Level 4 and 5. They will not do the stuff but they will do entry things to management as one example Chair.

So – so this type – this ten days we are referring to – we are referring to the groups – the 149 groups of 20 learners each which they can I think Chair you summarised it properly that the theoretical part could be less than ten days in five days.

So it means people must come together at one place
20 for that theory for that week and then come later on. But if you look at the entire activity we are talking about an activity of cause for specifically their theoretical session. They say it will take between three to six months.

Now that is not – that paragraph does not define the totality of the training Chair it is – it refers to a specific

aspect of the program. The program was – was if you look at that I mean people were – people were trained some of them for a period of over a year. So – so I am simply saying that do not reduce this training to that block. That block simply suggest a – one activity amongst many Chair.

That is why I was saying earlier on one of the things that I will do because I will not go through each one of them. I mean when you place a mentor you train Lucky Montana you place him back to his 00:16:17.

10 You know one of the things about this – this thing Chair when somebody travels let us say on a train he is dealing with customer service for he is at the station we require these mentors to be there with the people. You calculate the number of – now that is beyond – that is beyond the what is it called? The – the theoretical training around that. And then the guys where the higher level of management and Chair I think that is the much more advanced and it is like when you get to investigate to do a management size that is why we start – we will start you
20 from – and who are the people who evaluating and assessing these people Chair?

Those are not their managers it was actually resources that were brought in by Prodigy into the business to do exactly that. So – so I am saying the R24 000.00 covers a whole range of activities and not simply what you

were reading that – in that block Chair.

CHAIRPERSON: Well I – with what you have just said I am not sure that my earlier understanding as I articulated it is correct because you are saying to me the ten days mentioned here for the program is not the whole program. You say it is one – maybe one activity there were many others. So – so you say in other words you say this ten day program was one part of a larger program.

MR MONTANA: Yes this was a theory training part Chair.

10 **CHAIRPERSON:** Ja.

MR MONTANA: The theory only. And the other activities Chair you will see that they are...

CHAIRPERSON: But they say the theory is five days. So it cannot – the theory cannot be for ten days. Or at least this is what this says.

MR MONTANA: Yes they say that the – that – so which means a session – one session – so if we define that for five days so that will be a session. So it says that so it could be this would be a ten day program and I think you summarised
20 correctly Chair when you said it means one session could be five days and you come later on and do another five days.

CHAIRPERSON: Yes what I – what my understanding was is that program over which should take ten days would have a theoretical part and a practical part 00:19:02 just to contrast it with the theoretical part. The theoretical part was

allocated five days of the ten days and then the rest which is five days would be let us now do pod casts let us see whether you understood the theory and you go and do the work and then maybe we can observe or whatever. Or the simulation that you were talking about maybe to say now we have given you the theory now let us – show us how you do this following the theory that you have been taught. That – that was my understanding. You say that is still fine?

MR MONTANA: No Chair my understanding Chair is that you
 10 have the ten days the entire ten days even if you do them in two blocks of five days – five days is the theoretical part. It does not involve the practical part of the program.

CHAIRPERSON: Yes.

MR MONTANA: That is why I am saying to Mr Soni that that block – that box that he is referring to is not a totality of the program. For example if you deal with mentors and I think that there is a full range of activities Chair in the – you see Chair this addendum is actually trying to give effect to the partnership agreement. Because that detail you will not find
 20 it in the partnership agreement and I think Chair that the – so I am simply saying that you will see that when you go through each and every box you are find the project activity beyond the ten days for theory and that the – the other activities is not listed in that box. So the R24 000.00 does not relate to that box it refers to people would have been

trained over a period I will say between three months to a year into that program with a ten days only on theory particularly for those entry levels Chair.

CHAIRPERSON: What is going to be necessary because I think it is important particularly because I think Mr Soni was asking in order to assess the amount of R24 000.00 per learner in terms of – in relation to the content of the – of the training. So it is going to be important that we have – I have a full picture. So I do not know to what extent all the
10 documentation that is here – to what extent the documentation we have here is everything to what extent there might be documentation as well it would help us understand and obviously if Mr Montana you have documentation at home that could assist that would help me – helpful. Because the difficulty I have at the moment with what you are saying is that it seems to me to be not in accordance with what he says but it may be that that is because I am looking at this document only. Once I see other documents I might see the point you making.

20 **MR MONTANA:** Chair I provide some of those – that detail in my annexures.

CHAIRPERSON: In your – yes.

MR MONTANA: In my affidavit so I think that – I will send the things separately.

CHAIRPERSON: Yes.

MR MONTANA: To enhance that understanding Chair thank you.

CHAIRPERSON: Okay alright.

ADV SONI SC: Finally Mr Montana on this contract can I just ask you who drew up this contract PRASA or Prodigy?

MR MONTANA: Chair I think the contract was – was drawn up by Mr Lindikaya Zide who as the company secretary and was responsible for legal things in PRASA and that is the submission – that is where I got it Chair. So whether they
10 drafted it or vetted it I think – ja – but it came from there.

ADV SONI SC: Okay. I am going to suggest when one looks at this that it is a Prodigy document but that is neither here nor there because my next question is this. Before you signed did you take legal advice from the PRASA people?

MR MONTANA: Yes Chair. Chair I think let me actually give you the process that we follow because...

CHAIRPERSON: Oh I am sorry has he finished – have you finished your question?

ADV SONI SC: Yes.

20 **CHAIRPERSON:** Oh okay alright.

MR MONTANA: So the answer is yes but let me take this opportunity to indicate how we – how we – you see for me as CEO I deal with a lot of things and when somebody deals with a program they want to – to motivate for its approval. They write memos Chair.

They put together a memo motivating also the – put in for that wants a benefit for a business whether we have got a budget for it and all of those things Chair. And the legal advice you will you – the legal people will you tell you for example and say no we are not – we are not happy with it Chair. In some instances and I think when we deal maybe with the Siyangena matter you will see for example Chair that we for the later contracts we use a standard contract that is used for example in the industry. We sign that

10 contract.

Someone would say it does not come from PRASA but that is different Chair to – to – you know this one is different because we did it. If you look at when I deal with the Werksmans issue Chair when you look at the letter of engagement that PRASA signed that was signed by Mr Nathi Khena is a letter that is written by Werksmans on its letterhead.

It provides the time and everything and what PRASA did was say sign and the person who signed on behalf of

20 PRASA Nathi Khena he did not even sign it receiving it from the legal team. He signed it at the – at the restaurant in a shop. So – so Chair this is in my affidavit.

So I think that maybe what Mr Dingiswayo Chair was trying to say was that when he came he found this in place but I think it would be better if the commission were to

actually ask the former head of legal, the former company secretary Mr Linkiya Zide and say were you involved, did you draft this contract and all of those things? It came from there Chair and I am saying I am giving the commission a specific name.

This Mr Mphephu Ramuda who was our acting HR executive. Let us ask him Chair. There is a lady in Cape Town who was part of the customer services team Ms Valerie – I cannot recall her surname we were part of all of those
 10 things Chair and I think each of these employees can be asked to depose to an affidavit to the commission and they will see – you will see Chair that between the time we started and maybe the time that Mr Dingiswayo dealt with this matter it is a completely different worlds Chair.

So Mr Soni made Chair a very serious statement that it is a Prodigy document not a PRASA document and of course I am the one whose being asked questions I should not be asking questions but I thought it will be fair if Mr Soni were to tell me the basis of his statement Chair. Is he
 20 saying that I was – I was misled as CEO with this document? So we need to find out what exactly is a concern Chair because I am saying as a CEO I am taking responsibility for this.

CHAIRPERSON: Yes, no, no that is fine Mr Soni will mention but as I understand your position it should not

matter from your point of view whether it is a Prodigy – it came from Prodigy or from PRASA as long as the content was acceptable. In other words the terms and conditions were acceptable there is no issue with you because you say there were others which were signed like that or did I misunderstand?

MR MONTANA: Chair you know Chair my – part of the problem that difficulty with people working with me I like to get into detail and I write.

10 **CHAIRPERSON:** Ja.

MR MONTANA: And that is why when I come to the commission I cannot say hey it was junior employee who signed. I signed and that is why I can talk about it here. So Chair I will assure you that if it means I stay the whole night reading this thing that is what I will do and if I am not happy with it I will indicate change there and there and I am satisfied here Chair the Prodigy make business. They were not doing this thing for Mahala Chair. There is no doubt that Prodigy was doing business. Do you think we got – we are
20 getting the benefit of this program? I am saying that I am satisfied there that we did.

CHAIRPERSON: Yes but basically your answer to my question is yes.

MR MONTANA: Yes Chair.

CHAIRPERSON: Ja okay. Mr Soni.

ADV SONI SC: Mr Montana you – you heard Chairperson say at the end of the day it does not matter who drew it up. I am a lawyer I look at documents and I says between this company and this company who is likely to have drawn it up. It was not an indictment of you and that specific to why I asked you did you take legal advice because I have indicated to you that Prodigy's deliverables are not expressed and I – you have seemed to have conceded so when I ask you did you take legal advice it is simply on the
10 basis that a R72 million contract should not be concluded without legal advice whoever drew up the contract.

MR MONTANA: Mr Soni I did not concede that the deliverables – the deliverables are here Chair and I think that we have how many pages of deliverable? I have said that we have got a document which indicates one project activity deliverables and responsibilities. At the end...

CHAIRPERSON: I think what you – what you – what you conceded or may have conceded is there may be some vagueness about whether...

20 **MR MONTANA:** Absolutely – absolutely Chair.

CHAIRPERSON: Ja about the duration.

MR MONTANA: Absolutely Chair.

CHAIRPERSON: But I understood you also to say as far as you are concerned the deliverables are there.

MR MONTANA: Yes.

CHAIRPERSON: There is a column that says deliverables.
There is a column that says responsible.

MR MONTANA: Person ja.

CHAIRPERSON: Person ja. Okay Mr Soni we...

ADV SONI SC: Yes. Mr Montana we must move on. Can I
now ask you to look at 14.2 please on page 102?

MR MONTANA: 102?

ADV SONI SC: Yes. This is Mr Dingiswayo's affidavit.

MR MONTANA: Affidavit ja. Page 102. That is where I am,
10 Chair.

ADV VAS SONI SC: 14.2.

MR MONTANA: Ja.

ADV VAS SONI SC: Mister ...[intervenes]

CHAIRPERSON: Are we now moving away from that
partnership/agreement?

ADV VAS SONI SC: Agreement.

CHAIRPERSON: [Indistinct]

[Parties intervening each other – unclear]

ADV VAS SONI SC: Yes. Yes, Chair.

20 **CHAIRPERSON:** Yes. Then... I heard Mr Montana say
that Mr Dingiswayo suggests, maybe by implication, I am
not sure, that that training arrangement should have gone
out to open tender. Is that something that is an issue or
not?

ADV VAS SONI SC: I am going to come to ...[intervenes]

CHAIRPERSON: Oh, you will come to it?

ADV VAS SONI SC: Yes.

CHAIRPERSON: Okay alright.

ADV VAS SONI SC: Now he says at 14.2:

“In or about February or March 2015, I was asked by the Contracts Manager at SCM, Mr Sidney Khuzwayo to draft an agreement to reinstate and extend two earlier contracts...”

Are you aware of that?

10 **MR MONTANA:** Well, Chair, I was not but my – later on when I saw some of the documents in respect of this matter, I noted that point, Chair.

ADV VAS SONI SC: Alright. And you accept that he was asked to extend those two earlier contracts?

MR MONTANA: Chair, I am saying that I saw that in the documents. I do not know what was driving it but you will, for example, that when I answered that question later, I deal with it later. I think, in fact, Chair, I deal with it in my affidavit that what has happened here.

20 Mr Dingiswayo is describing a specific process with people at the SCM but I am suggesting that beyond that, there was something where they have identified and he said, certain entities and had then allocated to himself powers to block, for examples, contracts that were there that he felt were irregular and it was not doing that

consistently.

So the interaction – in fact, in one of my emails, I am not sure if they have attached – if it is attached here, Chair. I take up issues with him and with Mr Khuzwayo. And I will take you there. It is my email has been attached, Chair. Because already at that time, we were honestly ...[indistinct].

Things were happening that you would go to Legal or Legal would come and say we have reviewed this
10 contract and decided that this contract is irregular. Then Finance would then be told do not make payments. That is not how an organisation works, Chair. Legal is a supporting function. It does not run the business.

Legal, for example, they would advice business, the people who are running that particular project and in this particular case it will be Group HR, Human Capital Management. And if I am happy they will then elevate that to me and say: Group CEO, we think there is a problem with this particular contract and lease(?) those and then
20 make a recommendation.

Chair, in all these contracts that they will review and take decisions, there was never one instance where our Group Legal wrote a memo and said: Mr Montana, we think there is a problem. And then I reject what they were saying. Here they are attacking me and they cannot

produce one of evidence to say that we have brought that to the attention of the Group CEO and he did not support us. Or we picked up a corruption and he did not act on it. It never happened, Chair.

I am making that point very strongly in my affidavit that Mr Dingiswayo has a right to say I am picking up issues that makes me uncomfortable. But the process of dealing of that, do not fight political battles, do not target people. If you are a true professional, document
10 that, give them to an immediate supervisor. In this case it would have been Ms Ngoye.

And if that is not, then they elevate to the Group CEO. It was never done Chair. And what happens is that we have made commitments and that is why PRASA today is so involved in so many litigation precisely because of this approach, Chair.

CHAIRPERSON: But your response to 14.2, is that you do not know whether he was asked by Mr Khuzwayo to do what he says he was asked to do but you noted? Or you
20 say you do know that he was asked?

MR MONTANA: Chair, I did see the email exchanges ...[intervenes]

CHAIRPERSON: Yes.

MR MONTANA: ...between the – not only the two of them but a number of people. But who initiated it?

CHAIRPERSON: Ja ...[intervenes]

MR MONTANA: I would not say with certainty, Chair.

CHAIRPERSON: Okay alright.

ADV VAS SONI SC: Alright. He then continues and I am still at 14.2.

“After reviewing the matters, I raised a number of compliance issues...”

Were you aware of that?

MR MONTANA: No, Chair. No, he never raised with me.

10 **ADV VAS SONI SC:** Ja-no, I do not think he says he raised it with you. He was asked by the contracts manager and it seems that he raises it with them. And then he goes on to say:

“However, on the 1st of April, Prodigy sent an email to the office of the Trio(?) asking about outstanding payments...”

Is that correct?

MR MONTANA: Are you referring to the last sentence ...[intervenes]

20 **ADV VAS SONI SC:** Yes.

MR MONTANA: ...of 14.2?

ADV VAS SONI SC: Yes.

MR MONTANA: [No audible reply]

ADV VAS SONI SC: The answer is either yes or no, Mr Montana whether sent the email or not.

MR MONTANA: No, Chair. I cannot recall exactly Chair.

CHAIRPERSON: Yes.

MR MONTANA: I am not denying it but I cannot recall
...[intervenes]

CHAIRPERSON: Yes, okay.

MR MONTANA: [Indistinct] perfectly.

CHAIRPERSON: H'm.

ADV VAS SONI SC: And then at 14.3 he says:

10 "I later raised questions about certain issues
relating to the drafting of the proposed
agreement and said until these were
addressed I will not begin drafting the
agreement..."

Were you aware that that was his position?

MR MONTANA: Chair, I was not aware but let us assume
14.3 is correct, Chair.

CHAIRPERSON: H'm, yes.

MR MONTANA: It was not up to mister – it was not up to
him to decide whether to draft or not.

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

MR MONTANA: That is why he had a duty to elevate to
the right person and to engage business and if as a
business we come to the conclusion that we are agree with
what – the concerns you are raising, then it is fine. But
Mr Dingiswayo in his position as a General Manger did not

have the authority to say what he is saying in 14.3. It – if we are – we run a business that way, Chair, then we are going to have a problem.

CHAIRPERSON: You say he was not the right person to say whether he should draft or not without raising his concerns up to the highest level if necessary?

MR MONTANA: Well, Chair, I am saying firstly. He had a right to raise to those concerns ...[intervenes]

CHAIRPERSON: Ja.

10 **MR MONTANA:** ...that he said he had identified.

CHAIRPERSON: Yes.

MR MONTANA: But the decision is not his.

CHAIRPERSON: Ja.

MR MONTANA: He had to decide, for example to say: I am going to raise this with my immediate boss and I am also going to raise that with the Executive, Group Executive responsible for HR in the business.

CHAIRPERSON: H'm, h'm.

20 **MR MONTANA:** And if there is an agreement there, then that is the route to take.

CHAIRPERSON: That is where it ends.

MR MONTANA: That is where it ends. If they say: No, we agree with you. You do not draft an agreement. But if they say: No, no, no. We think you are wrong. We – this is a strategy that we are following as a business. It is not

up to you decide that I would not be just in the agreement. And there is a second matter, Chair, that I am raising, consistent with 14.3 and if I may raise it now? It is in my affidavit.

CHAIRPERSON: H'm?

MR MONTANA: Chair, when we – when the former Group Executive for Legal who was – who brought Fani Dingiswayo to the business, left the company. We said – we reached an agreement that we would part ways. We
10 had a separation agreement. This was facilitated by our HR, Group HR function together with Legal. So this was done. So we signed.

Then we reached agreement that should go – then we will part ways on certain terms. We signed and everything went... Then – she then came back, the Executive of Seta(?). She then said: Look, there are certain things that I thought are standard even if they are not in this particular contract that you signed. I was not leaving them out.

20 So the money that you want to pay for me – to me, okay. It should be declared a dispute with PRASA. Our Group HR brought to my attention at that time that: Look, they have asked Legal to help them with the case. Again, consistent with 14.3. He – she refused to assist business in this issue, Chair.

So here you got someone who believes that he has got the right to decide whatever he wants in the business. He is not accountable and he can – he is my former boss. I am not going to represent the interest of the business. Because his duty owes his loyalty to us. He has got a duty to protect the business.

And if business, in this case Group Human Capital, asks him and say: We want you to help us in this. He cannot say: I am not going to draft an agreement or I
 10 am not going to brief council or there to take up this issue. So Chair, I have a problem with that. And that is why when I called Dingiswayo to my office I said: You have done this not one issue but on a number of issues.

And the reason why you are doing it, Chair, and you will not understand the context, Chair. Can I ask for indulgence? Because I want to go a bit one step back, Chair, so that I can assist ...[intervenes]

CHAIRPERSON: Okay.

MR MONTANA: ..the Chair so that you understand what is
 20 my objection on this issue.

CHAIRPERSON: Okay.

MR MONTANA: Chair, when I went on leave in December 2014, Ms Ngoye acted in my position. But in January, before I came back there, I think I was coming back late in the middle or late January 2015. I was called

to Cape Town by the Minister of Transport. I was still on leave but they say: Look, we have got an event, a big event here. It was an ANC event, Chair. But there is a problem with transport. Can you help us to develop a transport plan so that we can move the masses of people around the Cape Metro and everything.

I flew to Cape Town. Sent two people to go and meet the Minister and later I joined to make sure that this big event is not – it runs smoothly. It was an ANC event,
 10 Chair. Now what happened is that during that time I met with the chairman of the board. We then agreed ...[intervenes]

CHAIRPERSON: Was that Mr Molefe?

MR MONTANA: Mr Molefe, yes.

CHAIRPERSON: Yes.

MR MONTANA: In 2018 it was Mr Molefe.

CHAIRPERSON: H'm?

MR MONTANA: During that time, Chair, we had a lot of discussions.

20 **CHAIRPERSON:** And the Minister that time was ...[intervenes]

MR MONTANA: Minister Dipuo Peters.

CHAIRPERSON: H'm.

MR MONTANA: So I said: No, let me talk to the chairman so that he know that I am – even though I am on leave,

that I have been called to assist in making sure there is a proper transport plan of the January an event of the ANC. So when I met with the chair – when I met with the Chairman of the board, Mr Molefe, he describes a number of issues.

To my surprise and even shock, Mr Molefe then raised a number of issues and he said: We will discuss them when you come back from leave. One of them was about another contract and this contract was about – and it
 10 is not a literal contract, it is like this Prodigy issue where PRASA employees would borrow money and the land that they will get – what is it called – authority ...[indistinct] we gave you R 15 000,00 or fifty – R 100 000,00.

PRASA agrees from its HR function to deduct the money and pay it over to us. He raised a number of issues. One of them was exactly that issue, Chair, and say: Ja, there is – PRASA is supposed to pay and she(sic) used the word [speaking vernacular] R 28 million. Now I am on leave, Chair. And he raised a number of other
 20 issues. So I said: No, no Chair. No, no, no. Please let us hold it Chair.

There is no much for me to say. There is a legitimate company which renders – it provides services to our employees. When an employee gets that money they sign that PRASA can deduct a certain amount and pass it

over to that company. PRASA deducted that money but did not pay to this company, Chair.

And the chair was – so I corrected the chair there and then. I said we will discuss it when I come back from leave but these are the facts. He even joke and said: But you seem to know everything about this business. I said: No, no Chair. But the people who provided, I was with you. I am on leave. And if everyone come and feed information like that and that company goes into dispute
10 with us precisely because it is part like Prodigy, like the issue about the Group Executive ...[indistinct] and this particular one, the Mashonisa(?), as it was called.

They decide that, no, it is irregular, *né*? They do not pay that company, Chair. It is a ...[intervenes]

CHAIRPERSON: Who decided?

MR MONTANA: It is our Group Legal under ...[intervenes]

CHAIRPERSON: Mr Dingiswayo.

MR MONTANA: Dingiswayo.

CHAIRPERSON: Okay.

20 **MR MONTANA:** So what I am trying to say is Chair is that they have identified ...[intervenes]

CHAIRPERSON: Ja.

MR MONTANA: ...a number of contracts or entities.

CHAIRPERSON: Yes.

MR MONTANA: Now, this company is not known to me

Chair. It is providing a service. Employees when they go and [speaking vernacular] They do not come to the Group CEO and say we are going to go to that company. I do not know this company. But here are people who then give themselves.

They are very in-checked with business which is Group ...[indistinct]. We are performing a payroll function as – on behalf of that company affected. What is the benefit, okay? Now part of why these companies play an
 10 important role, Chair. If the employees as highly indebted, it is a merger(?) assist you on how to manage your business and your employees.

It also – when you deal with increases in salaries and everything and the way you structured the whole package to employees because it – making sure that the employees are not highly indebted. A train driver who is highly indebted, when he gets – going to one accident scene and the train driver who clearly was involved in an accident will find that yet he is – what is called – this
 20 salary payslip there, okay? You can see this driver was in trouble. So the point I am making ...[intervenes]

CHAIRPERSON: Yes, I wanted to say let us stop the detour now.

MR MONTANA: Exactly, Chair.

CHAIRPERSON: I know you wanted to give a certain

...[intervenes]

MR MONTANA: So I can go through a number of things Chair, that all the entities that they are irregular are entities – when I went on leave they started to identify and they felt that they have got the authority, Chair, to say – and I will be ashamed, Chair, if I was Mr Dingiswayo, I will not say that and said until this are addressed I would not be drafting the agreement.

This is a very arrogant statement by someone
10 who does not have the authority. And when I dismissed Mr Dingiswayo, I said to him when I called him into the office. I realised that when I asked this company's complains or they bring issues to my attention and I asked business, they said Legal has stopped. So you are part.

And I used those words in an email – and I hope this email is here Chair. I did not mix(?) my words because I realised that this was part of a concerted effort to undermine the business and undermine my leadership in the business. And I would not accept that Chair. This
20 14.3, Chair, I thought that Dingiswayo would hide it and not be as blatant of where I stand, Chair. Now I think it is that.

CHAIRPERSON: Ja, okay alright. Mr Soni.

ADV VAS SONI SC: As you please, Chair. He then says at paragraph 14.4:

“O the 10th of April, Prodigy sent a further email, this time setting out what the thrust and purposes of the agreement were...”

Was that an email that was sent to you?

MR MONTANA: No, Chair.

ADV VAS SONI SC: Alright. Then let us turn to page 14 – well, I mean, paragraph 14.5.

CHAIRPERSON: And he does not attach the email, hey, Mr Soni?

10 **ADV VAS SONI SC**: Chairperson, the difficulty with that is, he did not have it.

CHAIRPERSON: Yes but you see ...[intervenes]

ADV VAS SONI SC: As you will see ...[intervenes]

CHAIRPERSON: Part of the – I have noticed, maybe it is three parts now. You say, for example, when he says: I raised questions in 14.3.

ADV VAS SONI SC: Yes.

CHAIRPERSON: He does not tell us he raised questions with whom.

20 **ADV VAS SONI SC**: Yes.

CHAIRPERSON: And now in 14.4 he said Prodigy sent a further email but he does not say who it was addressed to. He says it is set out, the thrust and purposes of the agreement but one would have thought that if he does not – one assumes that he has seen the email.

ADV VAS SONI SC: Chairperson, the difficulty and as you will see, he says that the email showed that Ms Shunmugam knew what was going on in PRASA. So it was obviously an important email.

CHAIRPERSON: H'm.

ADV VAS SONI SC: When I asked after the email, his answer to me was that he was on suspension at the time and he had no access to his email. So that is why he could not produce it.

10 **CHAIRPERSON:** Yes, well ...[intervenes]

MR MONTANA: Not – Chair, not being a ...[indistinct] not – I do not think Mr Dingiswayo was on suspension at that time, Chair.

ADV VAS SONI SC: No, no, no. I am talking about at the Commission now.

CHAIRPERSON: At the time or ...[intervenes]

ADV VAS SONI SC: At the time ...[intervenes]

CHAIRPERSON: You mean when he gave evidence?

ADV VAS SONI SC: Yes.

20 **CHAIRPERSON:** When he gave evidence in the Commission.

ADV VAS SONI SC: Yes.

CHAIRPERSON: Yes, one would have liked that if he did not attach the email, at least he says who it was addressed to and what it said.

ADV VAS SONI SC: Yes.

CHAIRPERSON: Ja, okay alright.

ADV VAS SONI SC: Then at 14.5 he says:

“On the 18th of April, I was provided with a draft service level agreement that had been sent to me by Ms Nonhlanhla Kondiwe(sic).

I set out my ...[intervenes]

CHAIRPERSON: Ms Kondowe.

ADV VAS SONI SC: Oh, Kondowe.

10 **CHAIRPERSON:** Yes.

ADV VAS SONI SC: Sorry.

“I set out my concerns in an email which I sent to, among others, Ms Kondowe.

I also sent this email to the then Group Procurement Officer, Mr Pongola...”

Are you aware of that emails?

MR MONTANA: No, I was not aware Chair but I think if that was the approach that was the correct approach.

ADV VAS SONI SC: Alright. Then at 14.6 he says:

20 “It appears that there was a general acceptance that the contracts were invalid but their view was put forward that Prodigy was innocent and that PRASA should therefore proceed with the transaction...”

Are you aware of that view, Mr Montana?

MR MONTANA: The one in 14.5?

ADV VAS SONI SC: 14.6. It is at the top of page 103.

MR MONTANA: Yes. No, no Chair, I read that. I do not know who was the general – and Chair that is where the problem comes.

CHAIRPERSON: Ja, he also does not say who put forward that view.

MR MONTANA: And the paragraph, when it goes down, it says but Mr Montana contended that there was nothing
10 wrong with the extension of... So there is a general agreement and so the general is the Chair. And the CEO has got a different view. Even that paragraph is problematic. Even all of these things, Chair, because there are people in meetings – you know these things are not dealt with by 18 000 employees. There are very specific people involved in this. Okay?

Ms Ngoye would be one person. The guy on training is – I cannot recall his name. Mr Allen. There is the Group Executive HR. There are the Procurement
20 people. Before it even comes as recommended to. Now this general view, Chair, who does it represents? And so I – what must I do as CEO? Because there is a general view, I must agree to it? You know...

So, Chair, you can see that it is not specific. It is making us actually to search for things that – I do not

think he is right, Chair. Unless if he tells us that who specifically said it is invalid. And that is the point I was making earlier on, that you have employees who decide that it is invalid. It is invalid.

And you see, Chair, I am interested in the annexure the end of that – because I think – I am hoping there is the email that I wrote to these chaps that I mastered into playing games with the business.

ADV VAS SONI SC:

10 **MR MONTANA:**

ADV VAS SONI SC: We will get to that in a moment. Let me just deal with this issue that you raised. Did you share the view that the contracts were invalid, you yourself?

MR MONTANA: No, I did not share the view, Chair.

ADV VAS SONI SC: Okay. And that the reason it should be proceeded with is because Prodigy was in this. You did not share that?

MR MONTANA: Chair, I do not know where that view – where this discretion ...[intervenes]

20 **ADV VAS SONI SC:** Okay but now we know – we read your criticism(?), Mr Montana. Let us move on. You have made your point that it is too vague. I am just asking you about yourself, about your state of mind. Then he says:

“On the 18th of May, Mr Montana sent an email contending there was nothing wrong with the

extension of the contract and alleged that certain contracts were being targeted and a dirty campaign was being waged against him.

A copy of this email is annexed as MMD-8...”

And can ask you to turn to – I will tell you in a moment what page it is. Page 187, Mr Montana.

MR MONTANA: 187?

ADV VAS SONI SC: Have you got that?

MR MONTANA: I have got that, Chair.

10 **ADV VAS SONI SC:** This is the email you were asking – you were hoping would be in the annexures. Am I right/

MR MONTANA: Indeed, Chair.

ADV VAS SONI SC: Alright. Let us just look at this email. This is an email sent from you. Is that correct?

MR MONTANA: Chair, that is my email Chair. It confirms what I have just said earlier on.

ADV VAS SONI SC: Yes. Alright. And it is dated the 18th of May at 15:14 p.m.

MR MONTANA: But that is my email, Chair.

20 **ADV VAS SONI SC:** No, no, no. I ...[intervenes]

MR MONTANA: Ja.

ADV VAS SONI SC: No, Mr Montana, you must accept that I have heard everything you say. I am asking a question so that the record will ...[intervenes]

CHAIRPERSON: No, Mr Soni. It is under control.

MR MONTANA: I am complaining ...[intervenes]

CHAIRPERSON: He is responding correctly. It is under control.

ADV VAS SONI SC: The email is addressed to Ms Kondowe. Is that right?

MR MONTANA: [No audible reply]

ADV VAS SONI SC: And Mr Dingiswayo and Mr Khuzwayo?

MR MONTANA: Indeed, Chair.

10 **ADV VAS SONI SC:** And it is CC'd to a number of people. And the subject matter... Oh, sorry. Including Ms Ngoye. The subject matter is: My Station Programme, Prodigy. Is that correct?

MR MONTANA: That is correct, Chair.

ADV VAS SONI SC: Now that is the contract we were talking about, the hundred and – I mean, the R 72 million contract. Is that right?

MR MONTANA: That is correct, Chair.

ADV VAS SONI SC: Now in the email you say:

20 "Dear Nhlanhla. There is nothing wrong with the appointment of Prodigy, nor the extensions of their contract.

I am not surprised because this is part of a much bigger agenda which is targeted at certain contracts and appointments and to

project these as being irregular.

Some of the contracts have already been leaked to external auditors and the media as part of their strategy to discredit the Group CEO and create a cloud before he steps down at the end of the year...”

Now this is a point you made much earlier this morning and a little while ago.

MR MONTANA: Indeed, Chair.

10 **ADV VAS SONI SC**: Right.

MR MONTANA: Indeed.

ADV VAS SONI SC: Then it goes on to say:

“This is a well-coordinated strategy that started in November 2012 when I went on leave.

I will at the most appropriate time act against all those who were involved in this dirty campaign.

20 The investigation they are starting is unlawful and part of their plot I am well-aware of...”

That is also part of what you were saying.

MR MONTANA: That is me, Chair. That is me speaking here.

CHAIRPERSON: And did that interest ...[intervenes]

MR MONTANA: ...trust my state of mind at that time.

CHAIRPERSON: Yes. And that investigation you are talking about there, which one is that?

MR MONTANA: The one that I reported about that were mandated(?) to the chair. I realised that he told me about a number of things ...[intervenes]

CHAIRPERSON: Oh.

MR MONTANA: ...in Cape Town.

CHAIRPERSON: Oh, okay.

MR MONTANA: That a number of things, Mashonisa.

10 **CHAIRPERSON:** Yes.

MR MONTANA: So it is not only Prodigy. It is not... There is a whole range of the - Chair, that they – when I went on leave, studies these things that popped up and are looked at, Chair. And you will see my conclusion in that email Chair to say what I regard as the basis for these activities.

CHAIRPERSON: Ja, okay. No, that is fine. Continue, Mr Soni.

ADV VAS SONI SC: As you please, Chair. The extent of
20 – the letter continues – sorry, the email continues:

“The extent of opportunism by some of our managers really amazes me.

A manager like Sidney Khuzwayo who starts first by cleaning the many irregular appointments he was party to with an SCM

which I have been trying to address and even explaining some of these to the Office of the Public Protector.

Some of the managers are excited by the new board and are feeding all sorts of wrong information so that they could carry favour with the board.

They were the biggest losers at the end of the process...”

10 And it goes on:

“The decision to partner with Prodigy on the Training Customer Services remains – and the extension of the contract is still in order.

Please allow them to continue with their strategy which is bound to fail...”

That is the text of your email.

MR MONTANA: Thank you, Chair.

20 **CHAIRPERSON**: Maybe it would help that, as we proceed, we know who you identified as being behind this company you are talking about. Maybe, as we proceed, that will help to know who you are talking about or who were the people that you say were behind the campaign.

MR MONTANA: Well, the main driver, of course, was the chairman of the board.

CHAIRPERSON: H’m?

MR MONTANA: Mr Molefe.

CHAIRPERSON: H'm?

MR MONTANA: And that is why I said that I corrected some of these things when I was in Cape Town and they became part of the major propaganda of this information being fed to the newspapers, some of the journalists were writing all these stories. There was a big offensive, Chair, the issue that I had is that all these employees did not have the authority. The authority resided with the
10 executives, resides with the Group CEO and in some instances with the board as to what we declare as irregular or not irregular and, Chair, in my affidavit I ...[intervenes]

CHAIRPERSON: Oh, okay, okay, Mr Montana, I understand. I just want us to know the personalities that you regarded as behind the campaign. So one, it was the Chairperson.

MR MONTANA: The Chair, it was Ms Ngoyi herself.

CHAIRPERSON: Yes.

MR MONTANA: It was Mr Dingiswayo.

20 **CHAIRPERSON:** Yes.

MR MONTANA: And I think Mr Sydney Khuzwayo was there, was party to the campaign.

CHAIRPERSON: Yes, those were the four people.

MR MONTANA: Ja.

CHAIRPERSON: Okay.

MR MONTANA: Chair, the person who raised all these issues, by the way, on Prodigy, I cannot recall Allan's surname but he was in our HR group in the department, Chair, and these were ones who wanted us to appoint some other people. So they had their own preferred people, Chair, and if it did not go their way, they started this campaign. They started feeding the board but more specifically Mr Molefe with this sort of information and they ran with this stuff and I was prepared to, Chair, to bring an
10 end to that.

CHAIRPERSON: You say you cannot remember his surname but his name was Allan.

MR MONTANA: Alan. I will remember the name as we continue, Chair.

ADV VAS SONI SC: Is it not Allan Ganghia.

MR MONTANA: Allan Ghanghia.

CHAIRPERSON: Allan?

MR MONTANA: Ganghia

CHAIRPERSON: Oh, okay, he was responsible for training
20 at PRASA and I think he used to sit on the board of the Transport Training Authority, TETA, on the side of PRASA, Chair.

CHAIRPERSON: But you say he was also part of the campaign?

MR MONTANA: He was part of particularly – more

specifically on issues related to Prodigy, Chair.

CHAIRPERSON: Prodigy, ja.

MR MONTANA: Chair, you will see in my affidavit, I actually detailed some of the files because all of these people were lobbying me to get the support.

CHAIRPERSON: Ja.

MR MONTANA: So I am aware of their battles.

CHAIRPERSON: Yes.

MR MONTANA: And when it comes to the Commission
10 after either losing battle inside or they put themselves as
holier than thou and that is not true, Chair.

CHAIRPERSON: Okay, alright. Mr Soni?

ADV VAS SONI SC: Yes. Then let us get back to the –
we have dealt with your email, Mr Montana.

MR MONTANA: Ja.

ADV VAS SONI SC: Now this is – in fairness to him, Mr
Dingiswayo's comment on your email and it appears at the
last line on paragraph 14.6 where he says:

“For the record I dispute the allegations.”

20 In other words, the allegations made in the email. That is
what I understood him to say, he disputes.

MR MONTANA: Okay. And I know that, Chair, except to
say one thing, Chair, that – you see, when you use
information selectively, you will see again, Chair, in my
affidavit and my annexures, where Mr Dingiswayo says the

Group CEO, when he approved the Prodigy partnership was misled, he says that in 2015. This thing happened in 2010. So five years he was not there, Chair, he cannot say he was misled.

Now when you look at what he is saying and what he said in his email in 2015, it will be part of my annexure, there is just no correlation, Chair. Okay? And you can see he is very vocal. What he is trying to drive at here, he is trying to get that there is a relationship between Prodigy,
10 Montana and one Roy Moodley.

If you analyse the affidavit, and that is why I am dealing with it in detail in my affidavit, because it has got nothing to do with facts, it has to do with pursuing an agenda and that was the basis for targeting contracts. Strawberry is targeted, Chair. Who signed the contract with Strawberry? Not Lucky Montana, it is signed by Martha Ngoyi.

She comes to the Commission and say Montana promoted Strawberry. Because why? It is linked –
20 because they say it is linked to Moodley. So it is narrative, Chair, that we must break with solid facts and that is what I am going to do throughout my testimony.

CHAIRPERSON: Ja. No, no, that is fine. I just want to say, Mr Soni, that I would have expected Mr Dingiswayo to have given his reasons for the view that the contracts were

invalid or the Prodigy contract was invalid before getting to the point where we are.

ADV VAS SONI SC: Yes.

CHAIRPERSON: But maybe he does that later.

ADV VAS SONI SC: He does not do that in so many words, he does that in regard to the SLA, Chair.

CHAIRPERSON: Because, you see, there may be something to be said for what Mr Montana says in relation to paragraph 14.6 namely that he says here was the
10 general view that everybody had mainly they accepted that these contracts were invalid. Here was an exception, Mr Montana, but one would have expected him to motivate to say it was invalid because of a, b, c, d so that when we come – so that we can then weigh Mr Montana's different view against the reasons given.

ADV VAS SONI SC: Chairperson, perhaps I can suggest why it is done that way.

CHAIRPERSON: Yes, yes.

ADV VAS SONI SC: Given what he says about the
20 contract.

CHAIRPERSON: Yes, yes, yes.

ADV VAS SONI SC: You asked earlier, Chairperson, whether there was a procurement policy and perhaps I should just ask Mr Montana the question now because that may...

CHAIRPERSON: Okay.

ADV VAS SONI SC: Reduce the sting of the question that you are posing to him.

CHAIRPERSON: Ja.

ADV VAS SONI SC: Mr Montana, may I ask you, we have been through how the agreement came into being. Was there procurement policy [inaudible – speaking simultaneously]

MR MONTANA: No, no, Chair.

10 **CHAIRPERSON:** I am sorry, I have not heard the question.

ADV VAS SONI SC: I say was there a procurement policies before first agreement was concluded between Prodigy and PRASA?

CHAIRPERSON: And the answer is no.

MR MONTANA: No, the answer is no, Chair.

CHAIRPERSON: Ja.

20 **MR MONTANA:** The nature of the partnership and the offer that we received, Chair, is not one that requires a – what is it called, a tender process or procurement process in that way but what will happen, Chair, though is that even in instances like those and that is why Mr Dingiswayo speaks of the Chief Procurement Officer because even if something does not go out on tender, it still has to serve through the structures and the committees when it is

recommended to me. That is very important, Chair.

But the nature of the programme, Chair, it is like somebody say did you go out on tender for the 2010 FIFA World Cup? No, it is a FIFA event, it is not our event, we partner with them, Chair, it is not – we cannot go out on tender for that. So there was none here, so the answer is no, Chair.

ADV VAS SONI SC: But I do not want to us to confuse this and this is why might remember just before tea I asked
10 you – I said to you the first contract is in October 2010, it could not be related to FIFA. So let us leave FIFA out of it.

CHAIRPERSON: No, but Mr Soni, I think he makes an example that appears to me to support the point he makes on the face of it. He is saying there are certain circumstances where you do not go out on tender and he says – one such example, I do not – it may well be that on the merits of FIFA you might not be so – you might not be correct, Mr Montana, because prior to FIFA awarding the 2010 World Cup to South Africa a lot of countries were
20 competing to be awarded this, so maybe that might not be such a good example but I think the point you are making is there are certain circumstances when PRASA or any government entity would not be required to go out on tender.

MR MONTANA: Indeed, Chair.

CHAIRPERSON: And rightly or wrong you believe that this one was one such a case.

MR MONTANA: That is correct.

CHAIRPERSON: As I say, you made the example about FIFA, might not back up that point, but ja.

ADV VAS SONI SC: I have got no difficulty, I just did not want that...

CHAIRPERSON: Yes.

ADV VAS SONI SC: Because it seems to be a – I do not
10 think Mr Montana intended or intends it that way.

CHAIRPERSON: Yes.

ADV VAS SONI SC: Just for record purposes I wanted – and because we are talking about 2010, I just wanted to draw that distinction.

CHAIRPERSON: Ja, okay.

ADV VAS SONI SC: But I accept both what you say and what Mr Montana says.

CHAIRPERSON: Yes. Yes.

ADV VAS SONI SC: Now, Mr Montana, within SCM
20 processes in organs of state, and PRASA is an organ of state, there is a mechanism to deal with what is called an unsolicited offer, is that correct?

MR MONTANA: Correct, Chair.

ADV VAS SONI SC: What that indication to enter into a partnership be what one would call an unsolicited offer?

MR MONTANA: Well, Chair, I saw that – I saw that there was a – you remember unsolicited offers so be it are dealt with through a treasury rule. I think treasury regulation. At that time it did not apply to this one, specifically, Chair. But there are instances where treasury rules, for example on unsolicited bids, would come into effect and what will happen, Chair, is that the Group Chief Procurement Officer of PRASA will then advise and say if you going on an unsolicited route the rules apply and this is how we should
10 go about doing it.

ADV VAS SONI SC: So you, as you sit here, cannot say whether this was treated as unsolicited – when you were given advice that we should accept it, you do not know whether your legal section was saying you could do it because it is an unsolicited bid and it fits the requirement or whether it was being done on some treasury regulation.

MR MONTANA: No, I cannot say anything here, Chair, because I may have then to read the treasury regulations. If it was elevated at that time it was not elevated to me
20 whether by the legal department that drafted the contract at that time or by our Group HR but the nature of the programme, I do not think, Chair, that it required that, no.

CHAIRPERSON: Well, maybe – well, let me ask this question. You have a recollection whether the legal department at PRASA had an input before the contract was

signed with Prodigy had an input because then that would have been the opportunity for them to raise issues if they thought there was something that was not right.

MR MONTANA: No, fair point, Chair, I think that when the matter came I referred it to two people, Tiro Holele and Mr Mpepa Ramoodwa(?). I did not specifically identify legal and that may have been that oversight, Chair, but when the contract was put together, it was the legal department that did all the work, Chair.

10 **CHAIRPERSON:** Yes. So the legal department got involved at the stage of putting together the agreement.

MR MONTANA: They put together the partnership agreement, Chair.

CHAIRPERSON: The partnership agreement.

ADV VAS SONI SC: This is the 2010 agreement.

MR MONTANA: That is the one, yes.

ADV VAS SONI SC: So, Chairperson, this set of questions was in relation to your question about the general acceptance and the reason I say that is generally
20 when it is an internal ...[intervenes]

CHAIRPERSON: Structure.

ADV VAS SONI SC: Well ...[intervenes]

CHAIRPERSON: Process.

ADV VAS SONI SC: If there was an internal process that was flawed then the contractor is regarded as innocent.

CHAIRPERSON: Yes.

ADV VAS SONI SC: And that is the only point I want to make.

CHAIRPERSON: Yes, yes, yes.

ADV VAS SONI SC: Which I suspect is what – I am not saying it is.

CHAIRPERSON: Yes, ja.

ADV VAS SONI SC: But it would justify that notion.

CHAIRPERSON: Yes, yes. No, that is fine, I just want – I
10 am just – I might not have seen this before, I might not
have picked it up, I am just saying that to the extent that
Mr Dingiswayo may - in his affidavit may be criticising that
the PRASA Prodigy agreement was invalid and should not
have been entered into, he should not just make a
statement it was invalid, he must tell us why was it invalid
and if, in his affidavit, he does not actually do that, that is
a defect in what he is telling us.

ADV VAS SONI SC: No, sure.

CHAIRPERSON: And – ja because, as I say, there may be
20 merit in what Mr Montana was saying about paragraph 14.6
that the picture given is everybody accepts this is invalid,
this is just a one out, is an exception. He sees it
differently. But then you – if you do not tell us why is it
invalid, number one, who was saying it was invalid because
he just says there was a view that was put forward. No,

no, he says there was a general acceptance that the contracts were invalid and then he says there was a view that Prodigy was innocent and so on.

So it may well be that Mr Dingiswayo needs to be asked to say why is he saying that but I think we can – oh, we are at one already.

MR MONTANA: Chair, can I add one small thing?

CHAIRPERSON: H'm.

MR MONTANA: We must also ask who is the authority in
10 terms of the SCM policy when, for example, there are any deviations and everything because the policy will clarify who is responsible for that because that is also very important about where does it take his concerns to.

But my point, a general one, Chair, it is very clear that this was no happening in isolation it was a number of a number of contracts that had been identified that were presented as being “irregular” and I would not accept that as CEO, Chair.

CHAIRPERSON: Okay. No, that is alright. Okay, let us
20 take the lunch adjournment, it is about three minutes, four minutes to one, we will resume at five minutes past two.

ADV VAS SONI SC: Thank you.

CHAIRPERSON: We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES:

CHAIRPERSON: Okay, let us continue.

ADV VAS SONI SC: As you please Chairperson. Mr Montana, we had just finished paragraph 14.6. We now go to paragraph 14.7 which is ...[intervenes]

MR MONTANA: What page is that again?

ADV VAS SONI SC: Oh sorry, page 103.

MR MONTANA: 103?

ADV VAS SONI SC: Remember looking on the left hand side, the numbers in black.

10 **MR MONTANA:** Okay.

ADV VAS SONI SC: At paragraph 14.7 Mr Dingiswayo says:

“At about 19H00 on the 19th of May, Mr Montana’s PA phoned me to say Mr Montana wished to see me urgently.”

Can you recall that happening?

MR MONTANA: That is correct Chair.

ADV VAS SONI SC: “I asked if it could wait until the following day. She phoned back to say he
20 wished to see me personally that evening.”

Is that correct?

MR MONTANA: That is correct Chair.

ADV VAS SONI SC: She says she spoke to Ms Ngoye in the meantime and he says at paragraph 14.8:

“I arrived at Mr Montana’s office and sat to

meet with him.”

Is that correct?

MR MONTANA: That is correct Chair.

ADV VAS SONI SC: “He thanked me for coming back to work from home and made light of this by chuckling.”

MR MONTANA: I do not know that part but we met that evening Chair.

10 **ADV VAS SONI SC:** “He then indicated that he had been told that I was one of the people who were working against the interest of PRASA on a number of matters and that I was abusing my position as one of the legal advisors of PRASA.”

Now that is the point you made earlier.

MR MONTANA: That is correct Chair.

ADV VAS SONI SC: But did you tell him that, that ...[intervenes]

MR MONTANA: No, no I told him directly Chair.

20 **ADV VAS SONI SC:** “He cited as an example that I had told PRASA employees to cancel some tender.”

Did you tell him that?

MR MONTANA: No Chair, I mentioned numerous tenders but they were not tenders, the contracts that were enforced that will be either stopped or terminated because of his

own actions Chair.

ADV VAS SONI SC: That is the issue you raise that he started from around November the previous year.

MR MONTANA: When I went on leave Chair, in December 2014.

ADV VAS SONI SC: “I indicated to him in my position that I had no powers to tell people to cancel tenders and that I had not given any such advice.”

10 Now obviously on your version that could not have happened because you did not allege that he had cancelled anything, or did you tell him that?

MR MONTANA: No Chair, I did not speak about a specific tender. You recall earlier on I mentioned a series of a number of these tenders that were, or not tenders, but contracts. Existing contracts that were either being stopped or investigated and that is what I discussed with him.

CHAIRPERSON: Okay, I think let us put it this way. Here
20 he suggests that you made, you sighted as an example that he had told PRASA employees to cancel some tender. Would that sentence be correct if we change tender to tenders?

MR MONTANA: No, no Chair. These are existing, these were existing contracts.

CHAIRPERSON: Contracts, ja.

MR MONTANA: Not new tenders ...[intervenes]

CHAIRPERSON: Yes, yes. If he said contracts there would that sentence be correct then?

MR MONTANA: Ja Chair, I told him about the number of, I mentioned the number of contracts.

CHAIRPERSON: Because he says you said as an example that he had told PRASA employees to cancel some tender. You are saying one, you did not talk about a tender. You
10 talked about not one contract but a number of contracts.

MR MONTANA: Existing contracts.

CHAIRPERSON: Existing contracts and your version is that you raised the issue that in respect of a number of existing contracts, he had said they should be cancelled. Is that your version? What you have said to him on that occasion?

MR MONTANA: Exactly Chair, the issue about and that is the point we were discussing before lunch.

CHAIRPERSON: Yes.

20 **MR MONTANA:** The issue about there is a general feeling.

CHAIRPERSON: Yes. General acceptance.

MR MONTANA: And you asked Chair, correctly ...[intervenes]

CHAIRPERSON: Yes.

MR MONTANA: Who is the general.

CHAIRPERSON: Yes.

MR MONTANA: Precisely, because that was the issue Chair.

CHAIRPERSON: Yes.

MR MONTANA: And I said he firstly did not have the authority to do so.

CHAIRPERSON: Yes.

MR MONTANA: But also you were applying it in a very selective way.

10 **CHAIRPERSON:** Yes.

MR MONTANA: You see Chair, let me provide one factual issue here.

CHAIRPERSON: Ja.

MR MONTANA: What had happened at that time, and this other than the, what I mentioned about the Cape Town meeting with the Chair. Subsequent to that there was an email which I do not have but I think some of the information presented here is very selective Chair.

CHAIRPERSON: Comes complete.

20 **MR MONTANA:** Mr Lindikaya who was the company secretary at that time, then sent a list of contracts, of existing contracts to Mr Joseph Hongulo, who was the chief procurement officer at the time and these were contracts that they wanted to investigate.

That list of course that email came to my

possession and was consistent with what we discussed with the Chair in Cape Town. So that is when I decided that I will act. So this thing about some contracts being invalid or void, is not an isolated thing.

It was part of a thing that certain contracts, not contract and Chair I give by the way in my affidavit examples of for example contracts almost similar to Prodigy, but they will not even be investigated or looked at. So they selected because what they were looking for, again
10 I deal with it in my affidavit.

They thought that there are some powerful forces relating behind these tenders and they found that that is not true. It is ordinary people who were doing work, and they just went on to destroy their lives.

CHAIRPERSON: So would it be correct to say you did accuse him on that occasion of telling PRASA employees to cancel certain existing contracts?

MR MONTANA: Yes Chair, they either ... the biggest thing that was happening Chair, they would then block payments
20 ...[intervenes]

CHAIRPERSON: Yes.

MR MONTANA: And say it is under investigation.

CHAIRPERSON: In the finance department.

MR MONTANA: And all of those things, indeed Chair.

CHAIRPERSON: Ja, okay. Alright. I hope that helps Mr

Soni to clarify.

ADV VAS SONI SC: No, it certainly does.

MR MONTANA: And Chair, it is consistent with the letter, with rather the email that the counsel read earlier on.

CHAIRPERSON: Yes.

MR MONTANA: Their own email to all the three people to say ...[intervenes]

CHAIRPERSON: About the campaign.

MR MONTANA: About the campaign that was happening

10 Chair.

CHAIRPERSON: Ja, okay.

MR MONTANA: And this is what destroyed PRASA.

CHAIRPERSON: Okay. Mr Soni?

ADV VAS SONI SC: Mr Montana, you said that there was an email that Mr Lindikaya had sent which had a list of contracts. Do you have that email?

MR MONTANA: No, no I do not have Chair, but at that time I did have. I could no longer access, after I had left I could no longer access my email Chair.

20 **ADV VAS SONI SC:** Can I ask you this, on that ... I mean there must be contracts that were on that, were listed in that email that you will remember. Was Prodigy one of those contracts?

MR MONTANA: Chair, I think Prodigy was one of them, ja.

ADV VAS SONI SC: You think or was it?

MR MONTANA: No, no it was.

ADV VAS SONI SC: Swifambo?

MR MONTANA: No, Swifambo ... Swifambo was on that list chair.

ADV VAS SONI SC: Siyangena?

MR MONTANA: Siyangena was on that list. Mashonisa was also on that list.

CHAIRPERSON: Oh, there was one called Mashonisa?

MR MONTANA: Well, the name Chair is still running away
10 from me.

CHAIRPERSON: Okay.

MR MONTANA: But in the course of our investigation, I put it on record Chair.

CHAIRPERSON: Okay. Alright.

ADV VAS SONI SC: Any other that you can remember?

MR MONTANA: Chair, there was one dealing with the introduction of a security system on the central line in the Cape. I think that was done by one Israeli company, which was putting new technology to protect the network there.
20 So we did a test on that.

I think there was the issue of a company called Sofinity if I remember well. There was quite a couple of companies Chair that were on the list of that email, where these companies, they needed information to look at.

ADV VAS SONI SC: And Royal Security?

MR MONTANA: Royal Chair, was not there. Royal was not there.

ADV VAS SONI SC: Strawberry Works?

MR MONTANA: Strawberry Works was there Chair.

CHAIRPERSON: So just to make clear what your concern was with regard to what you say Mr Dingiswayo was doing, what he and others were doing. with regard to Mr Dingiswayo your objection was that on your understanding, he was making decisions that he had no authority to make
10 in the company in terms of instructing people to cancel contracts, or is the position that on your understanding, he was giving advice as opposed to giving instruction to certain people in the company to cancel contracts in circumstances where that advice should go through certain channels and it was not going through certain channels.

I just want you to identify what it is that you found unacceptable in terms of what he was doing?

MR MONTANA: Chair, I have already formed the view at that time, a firm view that here is a Chair who is not
20 working with the interest of the company, who is pursuing a particular agenda, and for example finance will say we are not ... when a company writes to me and say we are not being paid or there is this problem, then finance will say but this contract has been flagged by legal for investigation.

I said but what is this investigation. Who authorised such an investigation? So Chair, so that view I formed and when I called him to say I think your time is up here, that was the matter. The other issue was the fact about when he says I will not draft the agreement, there was the issue about his ex-boss who had left and refused to represent the interest of the company.

All of those combined had given me a clear view that you are working with other people to undermine
10 PRASA. To create this thing of this massive, what is it called? The grant corruption in this company. When there is none, and Chair that is why I said earlier on that his right to identify shortcomings, witnesses or even irregularity, Chair it is proper.

That when you do that and you select, you target the company that is owned by Zondo and you jump the one that is owned by Montana with the same thing, the same company. Chair, in my ... for example in my submission on this specific issue, I list the companies that were in the
20 same position as Prodigy.

Mr Dingiswayo jumped that, and even Fast Forward, at the time when I had left, between that time I had left and his testimony to this commission, there were a lot of companies Chair, that Mr Dingiswayo did not even raise a hand and say Werksmans was appointed irregularly.

Why? Because it ... Chair, it is the same WhatsApp group. They are tied Chair. Those are the words he used. Let me give you another one. There is a company called Forefront, okay which Mr Molefe and his board handpicked for the work that they needed to do in terms of media and all of those things.

These were raised not by me, they were raised even by National Treasury as it were. Mr Dingiswayo, between the time I left, if indeed he was this champion to fight
10 against irregularity, or any form of corruption, why then did he jump those.

Why do you select, and that is the point that I am making and I realised that he is not working for this company. He is working for certain people in the company, and I said to him that look, the usual route is a disciplinary route.

But for someone like you, you and Mata in fact you have made it very clear, you have ... what is the word? You have confirmed where you stand on these issues and I
20 said you cannot work for me. You cannot do that. How do I sit with that?

Remember Chair, even though Fanie reported to Martha, the appointment and dismissal of GM's was the CEO's responsibility. So I took that decision. In that meeting I decided to fire him and after I have explained to

him I said you are not going to explain anything. You, I think you are not working in the best interest of the company and I formed a firm view around that.

CHAIRPERSON: Let me try and summarise what you are saying, as I understand it for you to say if that is a fair summary or not. You are saying prior to this meeting that you had with Mr Dingiswayo, you had come to the view that there was a campaign that was being waged by certain people against you, and you have named them.

10 I think they were five when you added, and Mr Dingiswayo was one of them.

MR MONTANA: Indeed Chair.

CHAIRPERSON: And when you called him to this meeting this particular evening, you had a discussion with him and you decided to fire him and you told him so.

MR MONTANA: That is correct Chair.

CHAIRPERSON: The reason why you fired him, is that you had concluded that he was working against the interest of PRASA.

20 **MR MONTANA:** Indeed Chair.

CHAIRPERSON: And you say that was evidenced by his participation in this campaign.

MR MONTANA: Indeed Chair.

CHAIRPERSON: And you say that he was in this campaign was also the conclusion that he was part of this campaign

was also shown by the fact that he or they were selective in terms of the contracts which they said should be cancelled or should be investigated.

There were other contracts which may have had similar problems which they were not investigating. That is why you dismissed him.

MR MONTANA: Chair, let me add there. I think you have summarised it correctly.

CHAIRPERSON: Ja.

10 **MR MONTANA**: I need to say Chair, that one of the things is that he has not given me the opportunity as the person who should make the decision on this matter. I have never received a single memo or message from Mr Dingiswayo ...[intervenes]

CHAIRPERSON: Yes.

MR MONTANA: Saying that, that is why my email that I sent, before I fired [indistinct] there was an email ...[intervenes]

CHAIRPERSON: Ja, that email.

20 **MR MONTANA**: There was the conversations that were taking place, and I did tell the Chair of the board Mr Molefe, these people that are briefing you and providing with information, they are going to mislead you and today we are paying the price Chair with PRASA that has collapsed.

CHAIRPERSON: Okay, alright. Thank you. Mr Soni?

ADV VAS SONI SC: As it pleases. Mr Montana, let me ask you this because the impression that I get reading Mr Dingiswayo's affidavit, is the reason you called Mr Dingiswayo on the 19th at seven in the evening is to inform him that you had decided to dismiss him.

MR MONTANA: Indeed Chair.

ADV VAS SONI SC: So you had made up your mind before the meeting and the purpose of the meeting was to
10 communicate ...[intervenes]

MR MONTANA: No, I have made up my mind Chair. I made up my mind, that is correct.

ADV VAS SONI SC: And the purpose of the meeting was to tell him that you are dismissed.

MR MONTANA: That is correct Chair.

CHAIRPERSON: Well, you said something about, you said the normal process would be a disciplinary inquiry.

MR MONTANA: Indeed Chair.

CHAIRPERSON: And you said to him but for people like
20 you, as I recall your evidence, in effect it is not even necessary to go that route. You are fired. Is my understanding correct?

MR MONTANA: Chair, I had taken a decision that ...[intervenes]

CHAIRPERSON: Ja.

MR MONTANA: Fanie should go.

CHAIRPERSON: Ja.

MR MONTANA: I have made that decision, and
...[intervenes]

CHAIRPERSON: Ja.

MR MONTANA: And yes, the normal process if it was a
border line issue ...[intervenes]

CHAIRPERSON: Ja.

MR MONTANA: Or factor to be established, but I was
10 convinced that here is a group of people working inside the
company, who were actually not even prepared to even
follow the direction that we have agreed upon, because
what PRASA was implementing, were not Montana's
decisions.

They were decisions that were made by our
executive committee and they were decisions made by
EXCO.

CHAIRPERSON: Mr Soni?

ADV VAS SONI SC: Mr Montana, let me ask you. When
20 had you firmly decided that you are going to fire Mr
Dingiswayo?

MR MONTANA: No Chair, if you read that email you can
see that, you remember Mr Soni I ... when you read that
email I emphasised that it gives exactly my state of mind.

ADV VAS SONI SC: Your state of mind.

MR MONTANA: My state of mind ja.

CHAIRPERSON: Your thinking at the time.

MR MONTANA: It captured, I cannot deny that Chair.

CHAIRPERSON: Yes, ja.

ADV VAS SONI SC: And the reason I ask is you do not say that in that email. I gather that that was on your mind when you wrote that email because you recall I asked you, do you confirm that the email was sent at 15H14 PM. You remember?

10 This is on the 18th.

MR MONTANA: Yes.

ADV VAS SONI SC: And now we are looking at 27 hours later, when you meet Mr Dingiswayo, say you are dismissed. The question I want to ask you is at the time you wrote the email, had you decided that you were going to dismiss ...[intervenes]

MR MONTANA: No Chair, I have made up my mind. I think that you can see that one of the sentences that I put there ...[intervenes]

20 **CHAIRPERSON:** Yes.

MR MONTANA: It is very clear. My mind was very clear ...[intervenes]

CHAIRPERSON: Ja.

MR MONTANA: That there are certain people that it is either I go or they go. But we are no longer going to find

any common ground, and that was the case Chair.

ADV VAS SONI SC: So at the time you wrote this email on the 18th you had already made up your mind?

MR MONTANA: I have made up my mind Chair.

CHAIRPERSON: Well, let me ask you the question. Did the disciplinary procedures of PRASA allow you to make that kind of decision before there could be a disciplinary hearing and the affected employee could be heard?

MR MONTANA: Chair, the disciplinary code and I think
10 that together with the, with parts of the Labour Relations Act ...[intervenes]

CHAIRPERSON: Labour Relations Act, ja.

MR MONTANA: I think that it is generally the principle that he must subject to someone give him a hearing, subject him to the disciplinary hearing. That is overall principle, but I do not think it exclude in some instances the issue of summarily dismissing someone when you think a lot is at stake.

I think that when you drive a wedge between board
20 and management, it is a serious issue Chair and it is something that in my view, and it is a choice that you make as a CEO because ultimately we are CEO's because we have to evaluate all the evidence and make a decision.

My decision was that the relationship between, and we saw how you asked the question, I think it was you

counsel who asked the question. The, why the relationship between myself and Mr Molefe even deteriorated Chair, other than the process of his appointment.

There was a lot of these things happening. When Mr Molefe asked me those issues about, raised those issues in Cape Town, it was quite clear Chair that there was a lot at play. That I go on leave, people feed the Chairman with all of those things.

He did not get them from me. He got them from
10 someone else. Someone else, and I knew Chair when I came out of that, that I am going to deal with it firmly and decisively.

CHAIRPERSON: Okay. Mr Soni?

ADV VAS SONI SC: As you please Chairperson. Mr Montana, I do not want us to debate. I am just going to present this and you must comment.

CHAIRPERSON: Ja, and I wanted to say of course we accept that we are not CCMA. We are not the Labour Court. We are not here to assess the fairness or otherwise
20 of the dismissal.

MR MONTANA: Yes.

CHAIRPERSON: But I just wanted to get that information.

ADV VAS SONI SC: There are two rules of natural justice. The one rule is hear the other side, *audi alterum partum*, and the other rule is you should not be a judge in your own

Court, [indistinct]. Now I am not trying to sound clever, but in this case you broke the rules.

You did not give him a hearing and you yourself took the decision.

MR MONTANA: Chair, look I think ... Chair, look we had processes at that time. I think that in most instances it is assumed that when we say we give you a chance we mean a disciplinary case. A consultation is part of that process Chair, and I think that that is what would have happened.

10 Secondly Chair, these matters are not about me. Maybe we are relating it to you, but they are about PRASA. That is about, if you come in and blow up the implementation of contracts, it is about PRASA, it is not about me.

I may be the CEO and the board asked me about the performance. I have got to act against that. So we did of course Chair deal with that issue. There was a meeting between myself and the Chair, because a day after the same thing happened with Martha Ngoye.

20 I think we will deal with it at a later stage.

ADV VAS SONI SC: Yes.

MR MONTANA: But the same process, because Martha then came to fight about the issue and I said here is the issue and you are part of it, and but at the next board meeting, I think they went and raised it with the Chairman

of the board.

We had a board meeting. I think that the board meeting was delayed for about two to three hours, because myself and Mr Molefe were fighting over these matters, and in the interest of progress we then agreed that no, let them be reinstated.

I then said to him it is fine, I am going to reinstate them but I am going to charge them in that case, which is what happened. So I called them back, I withdrew their
10 dismissal and then I immediately gave them the letter, suspending them pending a disciplinary case.

So we had discussions about that, but these matters were not personal matters as far as I was concerned. They were about PRASA. Someone sabotaging PRASA's decisions and programs.

ADV VAS SONI SC: Can I ask you at the time you wrote the email of the 18th of May, the one we have talked about, you said you had decided that Mr Dingiswayo must go. You had already made up your mind.

20 **MR MONTANA:** I have already made up my mind Chair.

ADV VAS SONI SC: And was that the same with regard to Martha?

MR MONTANA: Martha Ngoye.

ADV VAS SONI SC: So we know now ...[intervenes]

CHAIRPERSON: Just one second Mr Soni.

ADV VAS SONI SC: As it pleases.

CHAIRPERSON: Okay, thank you. You may proceed.

ADV VAS SONI SC: So we know now in relation to both of them at least you had decided on the 18th that they would go.

MR MONTANA: The 18th is the day I wrote my email.

ADV VAS SONI SC: Yes.

MR MONTANA: Yes, no I had already formed that opinion Chair, that they have to go.

10 **ADV VAS SONI SC:** Was that the same with Mr Khuswayo and Mr Denge as well?

MR MONTANA: Yes, and many others Chair, and many others.

ADV VAS SONI SC: But ...[intervenes]

MR MONTANA: Many others Chair, so yes.

ADV VAS SONI SC: Now we do not then need to read too much more of this part of Mr Dingiswayo's affidavit. He says that there was a debate, well I mean a conversation at 14.11. He says:

20 “Mr Montana went on to say the only thing we could discuss was how much I would accept for my contract to be terminated.”

Did you tell him that?

MR MONTANA: Well, I cannot remember that Chair, but it is possible that I have, because I wanted to be fair as well,

but I made it very clear. We cannot work together.

ADV VAS SONI SC: Okay, and he says he had said that if you are going to terminate my contract, I am not going to be a party to an unlawful termination. Did he tell you that?

MR MONTANA: No Chair, he signed ... it sounds like someone I know. They represent themselves as brave. No, that was ... he was unhappy Chair.

ADV VAS SONI SC: He was?

MR MONTANA: He was unhappy.

10 **ADV VAS SONI SC:** Yes.

MR MONTANA: He looked unhappy, but those words were not uttered as far as I remember Chair, no.

ADV VAS SONI SC: Then he says you told him that he could wait for his letter of termination or indicate where he would like it to be delivered did you tell him that.

MR MONTANA: I think, Chair if I recall well, I am not sure if his letter of dismissal was ready. I assumed that he - because the letter would have been drafted by the legal department, not by me and then - so the actual meeting
20 took place he got a letter, but I cannot recall exactly now Chair that was in that very evening, or it was the it was the next day, Chair.

CHAIRPERSON: I guess if he says he got it the following day you would not take one take issue with that.

MR MONTANA: No, no I will not take issue with that,

Chair no.

CHAIRPERSON: But you say it was prepared by the legal department would ...[intervenes]

MR MONTANA: Yes I think it was the legal department or the HR, our Group HR.

CHAIRPERSON: Okay, well, I am ...[intervenes]

MR MONTANA: On my instruction Chair.

CHAIRPERSON: No, no, I accept that. I am wondering whether seeing that you were dismissing him and him being
10 in the legal department. And you intended as I understand it, Ms Magoyi as well was the head of that department. I am wondering whether you would have asked the same department to prepare his letter.

MR MONTANA: Yes Chair, but the drafting of the letter, I think, yes I think it should have been the legal department, if I am wrong then it would have been our ...[intervenes]

CHAIRPERSON: The HR.

MR MONTANA: Our HR team that ...[indistinct].

CHAIRPERSON: Okay.

20 **MR MONTANA:** But I invited them.

CHAIRPERSON: Ja.

MR MONTANA: And I think I did explain the reasons, and say craft it for me, and then I signed the letter there.

CHAIRPERSON: Okay.

ADV VAS SONI SC: Before you had decided to terminate

their services or after? In other words, when you ask them to craft the letter was the crafting merely to say, I have made up my mind, just put it down in writing, to comply with whatever. Was that your state of mind?

MR MONTANA: Chair I decided on these issues.

CHAIRPERSON: Well as I understand the position Mr Soni I think at the time that he wrote that email, he had made up his mind.

ADV VAS SONI SC: Yes indeed Chair.

10 **CHAIRPERSON:** These were the people who were on this campaign. And he would get rid of those in regard to whom he had the power to get rid of them, and the rest that was happening load from there and I assume that your question may therefore be making the request or giving an instruction to the legal department or HR to prepare the letter, whether it would have been ahead of meeting Mr Dingiswayo that evening and telling him or after.

MR MONTANA: No Chair I think it would have been after my meeting with him.

20 **CHAIRPERSON:** After your meeting.

MR MONTANA: Because I think - I cannot recall. But something I think happened Chair and that is why I called him to say, because I asked for him, he was not in the office.

CHAIRPERSON: Yes.

MR MONTANA: I was told he left. I said no I want him to call me. And that's what we do of course with senior managers, sometimes you call them and I learned from the best Chair, when he said Mr Ollerman must come back even if he is gone.

CHAIRPERSON: Ja.

ADV SONI SC: Can I ask you and I just want to be clear about this before you had made up your mind you had not talked to legal or human resource to dismiss Mr
10 Dingiswayo, Ms Magoyi and the others.

MR MONTANA: Chair the - I think, if I recall well, because I used to have what also what to call a one on one meeting, and more specifically with the HR executive. I did mention because the situation in the business was deteriorating, there was a lot of tension. There was a lot of in-fighting, even our own executive meetings were split in between in the middle. And so - so I think, and I knew what would be the advisor to come to, and I think he summarised it so well, that suspend these guys, go through
20 a process, but I believe the job of a CEO is to evaluate, is it in the best interest of the company with the disciplinary case versus a further point of mobilisation for all these forces that were there?

And Chair you know when I met with the Chair of the Board we would discuss this matter two hours before,

and we had two three hours delay in the board meeting. I kept on asking the Chair, I shared the principle that we're making, but have you become a shop steward for some of these people in the business, so - so if you if you, if you look, if you look into where PRASA was Chair, I think that it was not normal, it was not the normal environment. And, and that it's unfortunate if you asked me if it was a different environment, but I have sat with executives Chair where I have asked some of them to leave and the way I do
10 it, I sit with them and say, look, we are going this way, and I think you're going that way. I'll give you an example with one of the ICT executives, I would sit with her all the time and say look we have employed as an executive, not as an ICT specialist. So we have put you in a leadership position. And you are not operating at that level, you keep on dropping. And so you can coach you can consult with people say, I want you to operate at that level for us, for us to achieve our goals. These are not junior employees Chair, these are people that are highly paid, and they
20 should operate at that particular level. And we need to be very careful that whilst the principle is important. I think the principle outlined in the law is - must be respected at all the times, but I think there is instances where when people don't – you know if Mr Dingiswayo's meeting states or was taking decisions that I do not like, his agenda, I

would understand. I am saying he was actively part of the process to undermine the company Chair, and why should he get the benefit of a good policy of PRASA about his disciplinary process? I don't believe in that. I believe that you must you must wake up these particular issues.

So I respect Chair what Mr Soni is saying, I don't dispute with that, but I think I am trying to convey as honestly as possible that I've taken a decision that these guys must - is there all the way. And maybe even the kind
10 of thing that was happening with the chairman of the board would even perhaps even change.

ADV VAS SONI SC: I - and this is my last question on this. You did consult the head of HR, they advised you against the ...[indistinct], you weighed the situation, you examined your duties as the CEO, and you decided that you were going to go through with the decision, with your decision, would that be a correct summation?

MR MONTANA: That is a correct summation Chair, I agree with that.

20 **ADV VAS SONI SC:** And he says at 14.12 on page 105:

"This meeting was very short. I had driven for 30 minutes one way for meeting of about five minutes."

That must be correct, I mean, and I - it's not in - I am just saying putting the hard facts down. That must be correct?

MR MONTANA: I don't think it took five minutes. But I

think the value of it was in our discussion, not on the - more than the – if I were to take the 30 minutes into account Chair it means I have to build a compound inside PRASA for these executives to sleep there, so that I know when I want to consult with them, they're immediately available.

ADV VAS SONI SC: No, no, no.

MR MONTANA: That's more or less the principle. I think there's Mr Dingiswayo is correct, it didn't take long.

10 **ADV VAS SONI SC:** How long did the meeting last?

MR MONTANA: Well 10/15 minutes Chair I think ja, more or less ja.

ADV VAS SONI SC: Alright then he deals with Ms Ngoyi and we'll deal with that when we deal with what he says about her because this is now ...[intervenes]

CHAIRPERSON: But I am sorry Mr Soni, something – I have just remembered something. You said you were looking for Mr Dingiswayo and you were told that he had left, and then you said he must call you. That raises the
20 question. Why couldn't you wait until the following morning? Is this something that had happened that was quite urgent for you to call him all the way back?

MR MONTANA: Chair I think he - I don't think there was something that - I think I had taken the decision that day.

CHAIRPERSON: That was the line ...[intervenes]

MR MONTANA: That was his last day that I was going to execute that task that very day, and I think I was probably in many meetings.

CHAIRPERSON: Okay.

MR MONTANA: And by the time I was looking for him, he had left for home and that is why I called Chair.

CHAIRPERSON: Okay, alright. Mr Soni?

ADV VAS SONI SC: As you please Chairperson. Let's leave 14.13 and 14.14 out, because as I say they deal with
10 Ms Ngoyi who we will deal with her tomorrow, or later this afternoon. At 14.15 he says:

“Mr Montana's reaction, and he gives three possible explanations. One is you will temporarily irrational, you were overly invested in showing that your word was final, or you were overly invested in the transaction, and was intolerant of anyone who saw the screaming irregularities in the Transnet ...[indistinct].”

Now I just - the only reason and we don't need to accept
20 the correctness of what he is saying, but what is quite clear if you look at the email of the 18th, that your email was in reaction to the project ...[indistinct]. That is correct?

MR MONTANA: That's correct Chair.

ADV VAS SONI SC: So in other words when he says there

is a possibility that you were invested in this transaction is not something we can exclude, we would have to put it on to the equation because we know now at the time you wrote your email that you were writing it in connection with questions that had been raised about Prodigy. I accept the general background you're given, but I am nevertheless saying that the chairperson when assessing if there is a link we have to take that into account, would that be correct?

- 10 **MR MONTANA:** Well Chair no, I think the let us be guided by evidence. Mr Dingiswayo wrote and said people were – people at the - and I said ...[intervenes]

CHAIRPERSON: General acceptance?

MR MONTANA: No, not the general acceptance, but in another one way he said when the CEO approved this thing some people misled the CEO, and so you can see Chair that there's a lot of tense and twists in all of these things.

CHAIRPERSON: That was in relation to the Prodigy matter?

- 20 **MR MONTANA:** The Prodigy matter Chair.

CHAIRPERSON: Okay.

MR MONTANA: Where he said, when he wrote in an email now, if we take it to its logical conclusion, and talk about Investec, so it meant therefore that some of the paragraphs that he - that we dealt with, they now get a

different meaning. We'll have to go back and you'll see it will actually mean that here's a man who is accusing his - the good CEO of something untoward. Okay, and it is dealt with so.

So Mr. Soni if we take it to its logical conclusion, we have – I assume that the Commission will be will be driven by evidence, will check for example, why Prodigy, why not 600 Companies and they're in my affidavit Chair, there are many other companies that were left, and why
 10 he's been silent on many others, and I am saying there's only one explanation is because it has to do with the list of companies that they've identified, not through structures of the company, not through the board of each member, but on the on the site and then try to try to give him, try to implement. Chair I think my responding affidavit to point 3 on Mr Dingiswayo actually, I am putting it actually in a very – in a light-hearted way. Actually I am putting it very strongly in the written word Chair, So yes, if the Commission evaluate, and I presented evidence to the
 20 Commission, and it takes that, of course Chair it means that I've got the right to go to court and say but I've given the Commission this evidence, and on what basis did the Chair of the Commission ignore this evidence, and exercise my right in that respect, and the same apply Chair to what, on Friday we discussed in respect to the contracts, you

remember saying that you've got judgments where, for example there's scathing statements about me by the courts, but I was also denied the right to - to put my view. So - so that if the Commission - the Commission will have to take that into account, it is the same principle.

But I, I respect that I don't think for the record Chair I was invested in any of these companies, and in fact, despite the fact that I was one of the most investigated people Chair ...[intervenes]

10 **CHAIRPERSON:** Sorry, the most?

MR MONTANA: Investigated in essence.

CHAIRPERSON: H'm.

MR MONTANA: And you'll see Chair this will become clear when we discuss particularly the - the Ollermans report that – that – that - that was here, and they still cannot find Chair, whether law enforcement agencies or whether investigations appointed the PRASA, they are struggling to find – I can point all day it was an irregularity, there Mr Montana made a mistake, but they cannot accuse me of
20 any form of improper conduct or corruption Chair, it cannot be.

ADV VAS SONIC SC: Now Mr Montana Mr Dingiswayo doesn't say, you know, as part of the investigating team and the legal team of PRASA – or sorry, of the Commission, investigating PRASA, we would have to take

into account all relevant facts. Can I show this to you?

If you look at page 138, you don't need to go to the that's the letter from Ms Shunmugum to you inviting the partnership between PRASA and Prodigy.

CHAIRPERSON: Did you say 138?

ADV VAS SONI SC: 138 Chair.

MR MONTANA: The one that I wrote on?

ADV VAS SONI SC: Yes, indeed, and you immediately on the same day said the proposal must be accepted.

10 **MR MONTANA:** Yes.

ADV VAS SONI SC: That's the 10th of June 2010 is that right?

MR MONTANA: Yes.

ADV VAS SONI SC: Now independently of this the Commission has evidence that Royal Security, who is a company owned by Mr Roy Moodley and we've been through that already, had between July 2007 and June 2009 paid an amount of R64 000 monthly to Mr Zuma as an employee of Royal Security. Are you aware of that?

20 **MR MONTANA:** No, not at all.

ADV VAS SONI SC: Okay, I am saying to you, we have the bank statements to established that, and one of the questions I want to ask you just arising from investment in this, and of course the allegations being made that you favoured Moodley. This contract that is now the subject

matter of the court application and that has caused the dismissal of few people in legal, namely Mr Dingiswayo, Ms Ngoyi comes a year after Mr Zuma becomes president, and Mr Moodley has stopped him giving him R64 000. Is - I am asking you to comment because there must be room to say there could be a link.

MR MONTANA: So I don't know about the relationship between former President Zuma and Mr. Moodley. You know, again, I deal with it in my affidavit, this specific
 10 issue of Royal Security. Royal was not appointed by us, by us I mean, when I became CEO and the board, ...[indistinct]. In fact there was an investigation done by I think it was Deloitte's, to look at the security companies that were involved in with PRASA, and it found that the majority of those companies were in fact appointed in the 1990s before that was even passed. So and more specifically Royal Security. It was involved in railways in 1991.

Now Chair, and how does it come to PRASA? It is
 20 because when Metrorail Shosholoza Mail were transferred in terms of Section 197 we had to take all the employees and we had to take all their contracts, all the Metrorail contractors, that is how – so we did not appoint Royal Security. It has already been there. And then who recommended for these security companies to be

extended? Our friend ...[indistinct] and people like ...[indistinct] in the PETA adjudication committee. Now because there's a fight Chair, because there's a fight between myself and the Chairman of the board, they are on the other side. What do they do? Then they tell the Chair this is Montana's corruption. They don't tell the Chair that we recommended this at this particular stage.

So I think there is no leg - even when I consulted the legal and the investigating teams of the Commission,
 10 one of the things they mentioned was that Mr Ollerman said, among the issues that you're going to touch Mr Montana is about is what we call the security syndicate that runs PRASA. Chair PRASA doesn't even have that. It's got so many security companies that are up and mainly regionalised. They're not actually operating at a national level, they are more regionalized, appointed at that level, and they attempt to elevate Royal and say that Royal – Royal was then getting paid by PRASA, and then to sustain or to support the former President Zuma is just so false,
 20 and so I found that it is not based on fact.

ADV VAS SONI SC: Okay, Mr Montana perhaps – this seems a bit clumsy, but I was not suggesting that Royal itself, Royal Security had been improperly appointed, there is no evidence. What we do have is Prodigy is irregularly appointed, I am saying that is the allegation.

MR MONTANA: No, no Chair I do not accept, I do not accept that. That is why I say that Prodigy, and that is why in my response to my email, I said Prodigy is properly appointed, it is within our rights to enter those partnerships.

We may not have gone out on tender like we don't do. You know Chair confinement is an integral part of the policy of PRASA where for specific reasons will they say we are confining business to that particular – to that particular entity or it is the only one that has got either the know how or need or some other reason so. So Prodigy was not improperly a appointed Chair. What has happened is that after as an afterthought I think people tried to find reasons where because Prodigy was part of a company that people believed belong to a network of Roy Moodley.

ADV VAS SONI SC: But Mr Montana, you must in fairness to me listen to the question. I said, there are allegations, I am not saying it was Prodigy, and you know because Mr. Dingiswayo has raised that already.

20 **MR MONTANA:** Not with me.

ADV VAS SONI SC: No, no, no I understand, but you have seen here, and I am merely saying that given that the Commission is obliged to consider is there a link? Not because Prodigy I mean, not because Royal Security was improperly appointed, but that a company linked to Mr

Moodley, who has been financing President Zuma is now given a contract over which a cloud has been put, I am not saying over which there is a cloud.

That's the only point I am making.

MR MONTANA: If we if we go that route, then I have another problem with - we are basically saying the criticism of this Commission that is targeting certain people that Zuma has been targeted. You see Chair in one of my submissions I deal with the ANC battles, particular from
10 the security companies, okay. I mentioned the company of Mr Spoyanda, okay GNS Security. I think that it was also mentioned here in Transnet, even at PRASA. But you will not hear Chair a lot of these things because people look at who stands where in the divide. But I don't think the Commission should approach this issue, if there are irregularities in the appointment of Royal let the Commission deal with those facts. If there is irregularity the appointment of Prodigy let's deal with that. They didn't I mean, is the link – I was trying to be linked even
20 President Zuma, you read too many articles of the stuff of the investigation done by for example Werksmans. They tried to link some of us to President Zuma.

They say no even Mr Molefe when he was sitting here he actually said in his evidence part of State Capture is that people are appointed to serve particular interests.

And you know what was my post on the Twitter Chair, I said well I was appointed by - under the cabinet of President Mbeke, I was appointed in 2007 as a CEO of the South African Rail Commuter Corporation, and I ...[indistinct] President Mbeki.

So, so I hear what Mr Soni - but I think it would be – we will be treading on some dangerous ground that actually may invite a lot of criticism to this Commission. And I don't think that's where we want to go Chair.

10 **CHAIRPERSON:** Well, let me say this, Mr Montana, we have as a Commission, we must keep an open mind. We must keep within our terms of reference. We must not try and manipulate any evidence to put certain people in a bad light, or to create a foundation for certain findings to be made against people, and we mustn't close our eyes if the investigation suggests that we should pursue certain people – and I am saying pursue certain people but investigates allegations against them. We mustn't do that.

20 You know in 2018, I think it was during the second half of the of the year, we started hearing of oral evidence in August 2018. There is a note or memo that I sent to the head of the legal team, Mr Pretorius and the head of the investigation team, Mr Nomgani, where I dealt with a number of things, but one of the things that I said in that letter was, it is very important for investigators of the

Commission and the members of the legal team that when they investigate, they investigate whoever, irrespective of what their position may be at the moment, irrespective of what their position may have been in the past, and irrespective of what the position is likely to be in the future. That is in black and white, which I said to them. That is what I always expected the investigation team and the legal team to do, it is in black and white.

Now, of course as the - as the - as we investigate,
10 sometimes people will accuse the Commission of certain things, even when they know that they cannot put any evidence before anybody if they are asked to put the evidence that sometimes there is no why they do that, like something like, you know, they commission inspection, it's assuming certain people and not other people. It's true. It's in the hope that the Commission will start not to do its job properly when it comes to certain people, because it is scared that people will say you see, we told you, they are scared now.

20 Now, my approach is that we must do what we are required to do. In doing so we must be fair but that doesn't mean we must agree to everything, but we must be fair you know. I told you last week that I am happy that you came, and you are putting your side of the story. I don't know what you think, but I think in all probability, you do feel

that you are being heard. You are being heard.

We don't say we don't make mistakes along the way, we may make mistakes, but it doesn't necessarily mean that we have certain agendas. And I am hoping that I wish you had come much earlier because maybe other people might have seen that. Well, if you go there, you're allowed to put your side of things, and you will be heard you know, whatever happens about what findings will be made, but the process you will have been heard and that has got its
10 own important basis. So ja.

MR MONTANA: Chair let – thanks very much for that I think there is also assuring words I think to many people out there. As you know the commission is being debated politically in many platforms in many circles and all of those things. Chair the – let me explain why I put it that way.

You know when you look and I think at some stage when we deal with the Werksmans investigations and reports you look at all of the – of what had transpired.

When the time comes you will actually see that there
20 has been this attempt to link former President with us. You know and for some reason I do not know why I cannot run away from President Zuma.

In 2007 my first year as a CEO of PRASA I had to write a letter explaining myself to the then Minister of Transport. There was an accusation Chair that I am using

PRASA to support a faction in the ANC – the Zuma faction against the Mbeki faction.

Chair I was so angry I wrote angry letters and the Minister had to counsel me and say calm down. We are in the middle of a political storm and do not get inside it let it pass.

But Chair can I assure you of one thing. I have checked all our major contracts. All the Werksmans reports have been leaked to particular journalists Chair and you will
10 see what they have written and what the report said. In some instances using the same words.

Because they have been trying to link Zuma to Swifambo, Zuma to Siyangena, Zuma to Rail Security. When you look specifically at PRASA Chair you know the only time we – anything that brought us closer even to the Gupta's would have been the SABC program in the morning. But other than that Chair we have never had that and that is why I said on Friday you will never find Zuma or the Gupta's lurking behind any of the programs that we have
20 implemented.

So I want to be hanged Chair for my seat I do not want to be hanged because I am linked to...

CHAIRPERSON: Ja.

MR MONTANA: People think I am linked to Zuma for some reason and that is why in 2007 as the CEO I had to produce

all the tenders that we have managed to prove that we have never funded a youth league or anyone else to propel President Zuma to office.

So Chair we have been subjected to all of those things.

CHAIRPERSON: Ja.

MR MONTANA: But I think moving forward we have to overcome that and also continue to forge.

CHAIRPERSON: Ja.

10 **MR MONTANA:** Unity amongst South Africans so that some of these divisions we overcome them Chair.

CHAIRPERSON: Ja. Mr Soni.

ADV SONI SC: As you please. Mr Montana can I just ask you because I want to finish now with contracts well and I have raised one partner that involved Mr Moodley and you. The question I want to ask you is do you know over the period of time that PRASA was in a contractual relationship with Prodigy what amount in total it paid to Prodigy?

20 **MR MONTANA:** So Chair I would not – I would not have the total amount. I do not know. I do not know Chair as I sit here.

ADV SONI SC: It is something we ought to look at do you accept?

MR MONTANA: Ja.

ADV SONI SC: Let me ask you a voluted question PRASA

would pay Prodigy because that was the complaint seemingly that was raised with your office whether you were aware of it and now that it had not been paid and PRASA would then as I understand what you have said claimed that money back from SETA. As PRASA – while you were there did PRASA claim back all the money it was entitled to from SETA?

MR MONTANA: Chair I would not – I would not know. One of the things for example that I am raising in my affidavit was that there was a time when Mr Allan Genge who was
 10 responsible for that in fact did not claim some of that money and actually I was chastising – I was responding to Mr Dingiswayo that if this one issue that is one issue where somebody neglected his duties and did not do the work. So if you change this issue – change all of them together.

So – so I do not know how much was – we got from both SETA's Chair. I would not have checked that but I think the annual report of PRASA of that time I could go and verify and check the numbers because they will give us a senses to how much was paid from the skills levy and – but we did
 20 include Prodigy Chair into our – into PRASA's skills plan that we submitted and once you submit a report then that is when you get paid. So – so ja but I will check Chair. I will check I am not sure how much was recovered by PRASA.

ADV SONI SC: Sorry it is just one final question on the contracts itself. I can get that in respect of training Prodigy

was not the only contractor who could provide the type of training that PRASA needed.

MR MONTANA: Prodigy was not the only company providing training services to PRASA but there are areas where Prodigy was the only accredited on some of the programs Chair and I deal with that in my affidavit. And there are instances where PRASA used Prodigy's work to apply for funding from SETA and allocate that money to other people. I also provide that in detail Chair.

10 So this matter is more complex than – we may be fighting Chair battles of managers at PRASA about whose better could we find better because that is my share of influence but I am actually dealing with the real issue. I highlight that in the centre. So it was not the only one but there are areas and there are certain competencies where other service providers were not accredited or vice versa as well Chair.

ADV SONI SC: Now the constitution and you must know this Section 217 says that when an organ of state procures
20 goods or services it must do so in terms of a system that is fair, transparent and equitable and cost effective. Was there any assessment of the cost efficacy of services that Prodigy was providing compared to other service providers?

MR MONTANA: Chair let me deal you quoted Section 217 which of the constitution and Chair I just want to draw

because I think ...

CHAIRPERSON: If you want to look at it a copy can be provided.

MR MONTANA: No, no I do not ...

CHAIRPERSON: Just in case.

MR MONTANA: No, no I do not need a copy Chair.

CHAIRPERSON: J.

MR MONTANA: I know – I know thanks very much Chair. I know it very well.

10 **CHAIRPERSON:** Ja. Ja.

MR MONTANA: And I will tell you why I know it very well because I was part of the Department of Public Works at the time when the constitution was drafted and we had a direct input into that process Chair. So unfortunate Section 217 the way it is being interpreted Chair has become an instrument to undermine transformation in the country.

I deal with that at length as well when it is used in broad brush in derailed it is used in that way Chair incorrectly. Okay.

20 So I think this reference to 217 as a country we need to be very careful because at the time when it was drafted Chair that is actually an on-going battle in the country particularly between within our National Treasury at that time Department of State Expenditure, Department of Public Works we have started implementing certain measures Chair

which later of course had to be incorporated. The PPPFA Chair was to give effect to some of the things that we are talking about.

It also became an instrument to undermine all of those things. This particular matter Chair and many others that are mentioned in the Public Protector report in no way undermine Section 217. And I deal with that for example when you look at the – at the Siyangena matter. I deal with that when I look at the Public Protector matter and I think
10 Chair the – it is being used in a way that does not assist – that does not assist us.

Both the constitution, the PPPFA as a law, the PFMA they recognise that entities will also have policies and these policies we give effect in one way or the other to what the constitution had intended to achieve.

And you will see Chair that the PFMA 00:08:53 recognise that there are instances where you may have for example procurement without – because when you say a system – a system that is fair, transparent and competitive
20 people have now reduced that to say you must go out on tender.

Now it does not mean that Chair and so that is how this broad brush and I think the Prodigy contract Chair even when I look back if I were at PRASA today and we had this kind of an offer of this nature would I sign it? Yes not

everything should go out on tender Chair and if this country does not understand that we are not going to going to make any – we are not going win a nation.

So Section 217 Chair in my application – my review application on Public Protector I actually where I deal with errors of law I deal specifically with how Section 217 tends to be misunderstood. Because of my background in Public Works at the time and our input into the constitution making process in 1996.

10 **CHAIRPERSON:** But let us – let us be more specific because you will recall that I was saying Mr Dingiswayo should have said why these contracts he was saying these contracts were invalid or certain people were saying these contracts were invalid letting close the Prodigy contracts.

You said earlier on the tender process was not applicable because this was a partnership. Now in effect is that the ground on which you say 217 did not apply? Is that correct?

MR MONTANA: Chair no, no. I – at that time 217 is raised
20 now it is a question Chair.

CHAIRPERSON: Yes, yes.

MR MONTANA: I never dealt with it in respect of Prodigy.

CHAIRPERSON: Oh okay, okay.

MR MONTANA: But I have raised it – I have dealt with 217

CHAIRPERSON: In a different context.

MR MONTANA: In relation to other matters.

CHAIRPERSON: Yes.

MR MONTANA: Specifically the Public Protector report.

CHAIRPERSON: Ja okay.

MR MONTANA: The point I made though at the beginning
Chair.

CHAIRPERSON: Yes.

MR MONTANA: Was that did we have to go out on tender?

CHAIRPERSON: Yes.

10 **MR MONTANA:** To an offer that we received and I say no.

CHAIRPERSON: Yes, ja.

MR MONTANA: And I still maintain that position Chair.

CHAIRPERSON: Ja, no, no that is fine.

MR MONTANA: And it is not in violation of 217 Chair from
where I sit Chair.

CHAIRPERSON: Yes. But – but that – I take it that that
because you say this offer was an offer of a partnership let
us partner together with this. I take it that that is what you
mean and you – you are meaning for part – offers of
20 partnerships you do not have to go out on open tender.

MR MONTANA: No not all of them Chair.

CHAIRPERSON: Ja.

MR MONTANA: Let us say you have an – I think at that time
we were discussing an unsolicited bid.

CHAIRPERSON: Yes.

MR MONTANA: If you have an unsolicited bid the company – your company is going to run that project, pay for it and all of those things. You may then have to look at what Treasury rules.

CHAIRPERSON: Ja.

MR MONTANA: Regulations says in that particular respect.

CHAIRPERSON: Yes, yes.

MR MONTANA: So I am not saying in general.

CHAIRPERSON: Okay.

10 **MR MONTANA:** And that is why Chair earlier on.

CHAIRPERSON: Yes.

MR MONTANA: We dealt with the issue of the 2010.

CHAIRPERSON: Ja.

MR MONTANA: And I think my point was misunderstood.

CHAIRPERSON: Yes.

MR MONTANA: I was not dealing with the award I am saying once Fifa for example comes into the country.

CHAIRPERSON: Yes.

20 **MR MONTANA:** When they contract with PRASA for train services and all of those things there is no tender process Chair.

CHAIRPERSON: Ja.

MR MONTANA: There cannot be a tender process.

CHAIRPERSON: Ja.

MR MONTANA: Fifa owns the world cup.

CHAIRPERSON: Ja.

MR MONTANA: It is their own event Chair.

CHAIRPERSON: Yes.

MR MONTANA: So you cannot go out on tender.

CHAIRPERSON: Yes.

MR MONTANA: The second report of the Public Protector Volume 2 of derail drafted by Advocate Mkwabane it dismissed all the matters but found on one Chair that and it says it – the complaint is sustained. It is saying PRASA and
10 Transnet when PRASA got Njangi Haus which is an old railway building PRASA should have gone out on tender.

Now Chair the law says you go out on – where it is not practical to do so we cannot – we want – we want Njangi Haus it is part of the railway station we want to run our operations there.

Now two state owned – state owned company cannot go to another and say let us transfer that building. We are told it does not actually create value Chair.

So I am simply saying there are instances where
20 either a partnership – for example we had a partnership with Elfa. We could not go out on tender Chair. But of course it – was it transparent? Yes it was transparent. Was the pricing a competitive one? Price yes was a competitive one.

So – so I am simply saying Chair not that everything we do we are reducing everything to tenders and that is why

there is all these big fights about tenders. But on this one Chair I do not hold a view that it was in violation of the PFMA or Treasury Regulations and most importantly Section 217 of the Constitution.

CHAIRPERSON: I think Mr Soni because I kind of read where you were going with the question – 217 question I think you need to just ...

ADV SONI SC: Now.

CHAIRPERSON: Put it on the table so that it can be dealt
10 with properly Ja.

MR MONTANA: We – yes. Mr Montana whatever it is you accept that their competitors to Prodigy who were pro – who could provide those services. Very same services and I know you say but there were some only Prodigy could provide but there were other services which – other services could provide. You have already said that is true.

MR MONTANA: No Chair let us not go into the world of speculation. Let us be very specific on this.

CHAIRPERSON: Ja maybe let us do it this way. Well
20 Section 217 talks about whenever you are going to procure goods or services what Prodigy was going to do was provide services or you say no? They were going to train your employees.

MR MONTANA: No, no Chair I am not going to change. I am not changing. I am not changing it.

CHAIRPERSON: No, no I accept that but I just want us to see – to go step by step. Do you accept that Prodigy was going to provide services to PRASA by way of providing training or you say no, no, no.

MR MONTANA: No, no Chair.

CHAIRPERSON: That is not services.

MR MONTANA: Prodigy is appointed or is given an award by a SETA and they decide with PRASA. Now – now Section 217 I want to link it. It requires us to put in place a – when
10 we buy goods and services a system that is fair, transparent, competitive, all that.

CHAIRPERSON: Ja.

MR MONTANA: And Chair the policy of PRASA it defines that system. Unless it is something – including of course where we do not go through competitive tender processes.

CHAIRPERSON: Ja exceptions.

MR MONTANA: It is part of – it is part of those systems – is part of that system.

CHAIRPERSON: Ja.

20 **MR MONTANA:** Therefore Chair unless if you say Mr Soni would say to me you as a Group CEO you did not put in place okay? A system of – a system of that is fair, competitive, that meets Section 217 and that I would challenge there Chair.

But – but a confinement on exception Chair does not

mean that that system is not in place. And so we – we are taking one contract to define the system.

CHAIRPERSON: Yes.

MR MONTANA: And that is where my challenge is Chair.

CHAIRPERSON: No, no I understand what you are saying. You see as I understand this procurement laws and regulations you have a general rule and that general rule is you are an organ of state and it seeks to procure goods or services you must go through a fair, cost effective,
10 competitive process okay.

MR MONTANA: Yes.

CHAIRPERSON: Now then you have the regulations or policies or Treasury instructions which say there are circumstances where you can – where you are entitled not to follow the general rule. So the exception is to the general rule.

One of those is if you are faced with an emergency – no I do not know if they use that term but if you are faced with an emergency there is no time to invite tenders or bids
20 so you can go to once service provider and say hey there was a storm here this is what has happened and they - that is accepted – it is permitted let me put it that way.

And then there is a situation where they say if a sole I think they call it a sole source situation where that provider of a product or service is the only one that provides those –

that kind of – type of product or service to say in other words it will not – it will not serve any purpose to invite bids because this is the only one. Okay. And there – there may be other exceptions okay.

So – so – but those exceptions kick in because you are trying to procure goods or services. If you are not trying to procure goods or services then they would not kick in and you would not even use the general rule you know because it falls outside what – what the 00:21;05 system is there for.

10 So when I was asking you whether you accept that what Prodigy was going to do in terms of this contract was to render a service it was meant to see whether if we take – go step by step where you are going to say yes I accept that price and then maybe you are going to say but there is an exception one of these exceptions to the general rule is what I rely on. That is what I was trying to do. You understand this?

MR MONTANA: No Chair I hear you clearly.

CHAIRPERSON: Ja okay, alright.

20 **MR MONTANA:** And I think in principle yes I agree with you.

CHAIRPERSON: You agree okay.

MR MONTANA: When we – when we take a decision Chair.

CHAIRPERSON: Yes, yes.

MR MONTANA: That we are going to go that route.

CHAIRPERSON: Yes.

MR MONTANA: And that must apply unless it has exception.

CHAIRPERSON: Yes.

MR MONTANA: Of course there are also where it is not practical.

CHAIRPERSON: Yes, yes.

MR MONTANA: To do that for apparent reasons.

CHAIRPERSON: Ja.

MR MONTANA: Chair if you look at – we go back to...

CHAIRPERSON: So maybe before you proceed therefore
10 what I am looking for and I suspect what Mr Soni

MR MONTANA: Soni

CHAIRPERSON: May be looking for too is which one of the exceptions that are known to the general rule you may be relying on or whether the position is that we do not even get to the exceptions because I say this is not goods or services. That is – that is what we are trying to do.

MR MONTANA: Chair I think – I think that the – for me the starting point because even that was not – I need to reflect to the commission what was the thinking at that time.

20 **CHAIRPERSON:** Of course yes.

MR MONTANA: And we debate.

CHAIRPERSON: Of course.

MR MONTANA: And that is why we call this a partnership. Because I say here are two organisations of course the starting point is whether Prodigy was properly appointed by

– because that is where the capacity or the skills – that is what different organisations for service providers and training compete to provide for that.

The money comes from this particular entity – this – what is called the services it is the one that says we appoint you, you are going to do this for us than they go and partner with whoever they do – they deem to table for that.

Now – now Chair that is why I was putting that in the realm of – of all other sorts of partnerships that we have.

10 And with what you are raising it actually raises a question that even some of the partnerships that we have or would define or that we had at the time I was there would we define them as goods and services in that sense and it may require a re-thinking Chair but where we stood at that time this was a partnership we did not require that kind of a root and I think of four or five other partnerships that we had entered into at that time that even though there was money there was some kind of service that was – was being used but I am not sure Chair that it takes you to a point where PRASA had
20 identified a need.

There is people – remember Chair part of the issues that we – we operate also in a commercial environment. People come with ideas, people come with proposals. And I think it is because – because of that that is sure Treasury trying to now regulate that in the form of unsolicited bids and

putting regulations to manage that.

My view Chair is that when I look at this I do not think that it falls into that and I think that maybe the fine line that we have been drawn between the partnership or – I mean look at how people for example abuse the issue of what – emergency procurement. Is there and everyone will try to find a reason for it to be an emergency when in fact it is not an emergency.

CHAIRPERSON: I know I have heard quite some evidence.

10 **MR MONTANA:** Indeed Chair.

CHAIRPERSON: Ja.

MR MONTANA: You know that in the PRASA environment when we deal with the issue of Siyangena we deal with the 2010 World Cup emergency in January 2010. So yes Chair I think that my view is that the commission will have to evaluate this in totality and say what was the thinking but from where I sit I think that there is a space the Public Protector ruled on one matter involving PRASA where there was a partnership and said that it should have gone out on
20 tender.

I am not sure if I agree Chair but I think we just have to evaluate the entire evidence and make a – and maybe that would be one the recommendations where the commission say you want to amend that part? Make it clear, structure it in that way so that there are no – there are no – you know –

grounds where people can either manipulate or there is no clarity 00:26:01.

At the time wherein that Chair and I think I will have to check there are certain things Chair and I do not want to say Prodigy will fit on one source because that is not what we discussed at that time.

But if you look at its capabilities and what it was able to do somebody was going to come and say but did you check it, did you test it in the market? So I do not want to
10 go to that extent Chair because that is not without let us enter it in a partnership and the written word is there Chair from me written in my own – it is my handwriting and I said look let us enter into a MOU. I am not sure Chair that that violates or the intention was even to violate 217 as it stands in the constitution.

CHAIRPERSON: So – I just want to summarise what I think you are saying and then you can say whether my summary is – is a fair summary or not.

You are saying at the time you took the view that this
20 was a partnership and that where an organ of state is getting involved into a partnership for something to be done there was no obligation to go into a tender process. Is that correct?

MR MONTANA: Chair you can – may repeat that.

CHAIRPERSON: Oh okay maybe – now I remember

something that you said.

MR MONTANA: Yes.

CHAIRPERSON: Earlier on. Okay. You – at the time you took the view that this project – this project that you – that Prodigy wanted to get involved in with PRASA was going to be a partnership.

MR MONTANA: Indeed Chair.

CHAIRPERSON: Is that right?

MR MONTANA: Indeed Chair.

10 **CHAIRPERSON:** That is point 1. Point 2 you took the view that this particular one did not require PRASA to go into a tender process.

So I must just clarify here whether your position was that all partnerships as long as it is a partnership you do not need to use an open tender or whether you are saying this – but it is some partnerships and this was one of them you do not have to go through a process of a tender process.

MR MONTANA: Chair if you recall earlier on I was talking about the – some partnerships depending on the conditions
20 under which they happen.

CHAIRPERSON: Yes.

MR MONTANA: For example here the deciding factor.

CHAIRPERSON: Ja.

MR MONTANA: Is Prodigy is not coming to PRASA and saying we want to do training.

CHAIRPERSON: Ja.

MR MONTANA: It is saying we are being awarded this thing.

CHAIRPERSON: Ja.

MR MONTANA: We want to – you to work with PRASA.

CHAIRPERSON: Ja.

MR MONTANA: Of course I think the issue that maybe Section 217 or the competitive fair process will come when we then move beyond a 300. For example I say...

CHAIRPERSON: To the 3000.

10 **MR MONTANA:** That it arise.

CHAIRPERSON: Yes, yes.

MR MONTANA: I think Chair there is a big question I never thought about it at that time.

CHAIRPERSON: Yes.

MR MONTANA: With hindsight I think that that question may arise.

CHAIRPERSON: Yes.

20 **MR MONTANA:** Is this is a – when PRASA bought Njangi Haus from Transnet PRASA made a conscious decision at that we are buying this building from Transnet because the process of a Section 54 of the PFMA they take long to transfer that business through getting government approval and all of those things.

And we knew that we are buying that building not from any other – we were not looking for any other building we wanted

Njangi Haus located where the main rail operations are which is historically a railway building. So we are not buying any other building. So Chair that decides we did Brexit development.

CHAIRPERSON: H'm.

MR MONTANA: The land belonged to the City of Durban plus – and it had, in fact, taken that land, entered into a partnership.

CHAIRPERSON: H'm, h'm.

10 **MR MONTANA:** Now when we wanted to build our station under the ...[indistinct] we could not go out and tender. It was not practical. We could not do that. But we need a phase linking Brick City to the entire railway line. We could afford to go out on tender because that was practical. That was possible. So you make decisions on that basis. So here, Prodigy says I have got this thing. I am offering it to PRASA.

Once you accept it, Chair, it is not any other. And it means, of course, that the Seta had its own process
20 on why they gave that to Prodigy and not to someone else but if PRASA decided to go we are going to train 5 000 people, PRASA decide and this is going to be our requirement. It is obliged to follow ...[intervenes]

CHAIRPERSON: [Indistinct]

MR MONTANA: ...to go out and tender and that would be

the case.

CHAIRPERSON: Yes.

MR MONTANA: So this are not the same.

CHAIRPERSON: Yes.

MR MONTANA: And that is the kind of explanation I am trying to provide.

CHAIRPERSON: Yes. No, no I understand your explanation completely. So the deciding factor seems to me from what you have said in relation to the first 300
10 ...[intervenes]

MR MONTANA: Ja.

CHAIRPERSON: ...was that Prodigy had been appointed or awarded, I am not sure what the correct term is ...[intervenes]

MR MONTANA: Ja.

CHAIRPERSON: ...by the Seta, had been awarded a certain amount of money ...[intervenes]

MR MONTANA: Yes.

CHAIRPERSON: ...that had been put aside and had been,
20 in effect, authorised to go and to training.

MR MONTANA: Ja.

CHAIRPERSON: Anything else, really, did not make any difference. That is what made it a difference to you. Is that right?

MR MONTANA: Indeed, Chair.

CHAIRPERSON: Yes.

MR MONTANA: Because I think I said they were bringing in not only the award ...[intervenes]

CHAIRPERSON: Yes.

MR MONTANA: ...but we also have to go and check.

CHAIRPERSON: Ja.

MR MONTANA: At that authority when we gave Prodigy this thing, Chair ...[intervenes]

CHAIRPERSON: Ja.

10 **MR MONTANA:** ...I think ...[intervenes]

CHAIRPERSON: Whether ...[intervenes]

MR MONTANA: ...there are certain competencies, there are certain things, Chair, how the companies were given to do one of those things.

CHAIRPERSON: Yes, yes.

MR MONTANA: Once you got all of that, Chair ...[intervenes]

CHAIRPERSON: Yes.

20 **MR MONTANA:** ...we were then able to come to a determination.

CHAIRPERSON: Ja.

MR MONTANA: To answer ...[intervenes]

CHAIRPERSON: The question.

MR MONTANA: ...the question that Mr Soni is raising.

CHAIRPERSON: Ja.

MR MONTANA: But as I see it right now, Chair.

CHAIRPERSON: Yes.

MR MONTANA: You ask me do I think and I think there is somewhere I wrote – I think there is an email where I said that – but how do you want the partnership? Because for me the partnership – we even regulated in terms of a different policy, not as SCM policy but the sponsorship policy maybe.

CHAIRPERSON: Ja.

10 **MR MONTANA**: But people have said, they have criticised us on the World Cup because they applied. And I think the SCM policy, Chair, is not an over policy of a business. It is one policy of a business. Sometimes you find conflict between some of that and we attend to reduce everything that no here is the standard. And I do not think that is – that should be the case, Chair.

CHAIRPERSON: Ja, okay alright. So you used the word partnership to say going out on tender does not apply because this is a partnership but in the end you say, you
20 know, the fact that Seta had given them Prodigy or awarded or appointed, that is what made the difference in my own mind as to whether we should go out on tender or not.

MR MONTANA: Because the bursaries, Chair, belong now Prodigy.

CHAIRPERSON: Ja.

MR MONTANA: So if it agrees to work with us, it is effectively that to us.

CHAIRPERSON: Ja, ja.

MR MONTANA: So it is bringing something to the party.

CHAIRPERSON: Ja.

MR MONTANA: What is it that the last word of business, the relationship starts.

CHAIRPERSON: Ja, ja.

10 **MR MONTANA:** When FIFA comes into the country, it runs the World Cup, Chair, and PRASA does not say we are going to advertise, this is for the World Cup. We entered into an agreement, a partnership with FIFA because they arrived, the branding belongs to FIFA.

CHAIRPERSON: Ja.

MR MONTANA: We want to become a party into that.

CHAIRPERSON: Ja.

MR MONTANA: The same happened in Brick City. There is – some of my executives were saying but PRASA is a
20 state-owned entity. Can... and it is appropriate land. I said but where do you see something like that? The land – the leading party in the partnership between the City of Durban and is a sphere of government. We cannot take that land over just...

So we could not build our railway line or rather

the station outside of a development. We could not bring a contract and say we are advertising services. Appoint a contractor who comes and dig in someone's land. We had to agree with that person and say part of the development of the mall, we wanted to include the station. So we will not go out on tender, that it is not practical, Chair.

You cannot bring contractors to build a mall and then bring contractor to build an underground station in that mall because – and even from a structural point of view, they are going to have a problem.

But if PRASA decides Chair on its own no offers of any kind from anyone that it wants to train a number of people it is obliged in terms of the procurement laws of the Republic to go out on that route.

CHAIRPERSON: Yes. and then just to complete because you have touched on the 3000. you already said that you didn't think about in that way at the time ...[intervenes]

MR MONTANA: At the time.

CHAIRPERSON: ...but when it comes to - when it came to PRASA expanding this scope of the arrangement with Prodigy to include the 3 000, maybe that is where PRASA ...[intervenes]

MR MONTANA: [Indistinct]

CHAIRPERSON: ...should not have gone out on tender. and you say it at that time you did not think of it that way

but now you think maybe that is what should have happened.

MR MONTANA: Chair, I think it arises ...[intervenes]

CHAIRPERSON: Ja.

MR MONTANA: And there are two ways of dealing with it.

CHAIRPERSON: Ja.

MR MONTANA: The first one they say: No, we think for this one let us go out on tender.

CHAIRPERSON: Yes.

10 **MR MONTANA**: You well lose the values and the benefit that you have acquired from that.

CHAIRPERSON: Ja.

MR MONTANA: Because they may not translate softly.

CHAIRPERSON: Ja.

MR MONTANA: From a cost point of view you are losing the benefits. Remember the issue is value for money at all times.

CHAIRPERSON: Ja.

MR MONTANA: The second option will be to say: No,
20 Seta(?) East transparent and is fair. Let us subject it to a ...[intervenes]

CHAIRPERSON: Process.

MR MONTANA: ...to the process.

CHAIRPERSON: Yes.

MR MONTANA: Now that doesn't mean a tender,

necessarily Chair.

CHAIRPERSON: Ja.

MR MONTANA: It means that, let the Adjudication Committee looks at it and say – because Chair this is very important. so you may go out on tender, you may want to ask for increasing the scope of that work and I think that these documents are telling us all about that Chair. So, yes, I accept what you are saying, Chair. It may - the extension of that scope and then the numbers naturally
10 invite that question Chair.

CHAIRPERSON: H'm, ja, ja.

MR MONTANA: Which at that time we are not dealing with
...[intervenes]

CHAIRPERSON: Ja.

MR MONTANA: ...but as you speak today, I do recognise
...[intervenes]

CHAIRPERSON: Yes.

MR MONTANA: ...that in fact the scope maybe big
...[intervenes]

20 **CHAIRPERSON:** Ja.

MR MONTANA: ...and that phase(?) may be different.

CHAIRPERSON: Yes.

MR MONTANA: And therefore you may want to go free that process, Chair.

CHAIRPERSON: Ja, okay alright. Mr Soni.

ADV VAS SONI SC: As you please, Chairperson.

CHAIRPERSON: I am hoping there is clarity that has emerged.

ADV VAS SONI SC: Indeed. There is Chairperson. I do not want to unnecessarily ...[intervenes]

CHAIRPERSON: Ja.

ADV VAS SONI SC: ...go into trivial matters.

CHAIRPERSON: Ja. No, no, no.

ADV VAS SONI SC: There are two matters that arises.

10 Can I ask you, Mr Montana, to please look at page 138?
That is the invitation to - from Prodigy to you.

MR MONTANA: Page 138?

ADV VAS SONI SC: 138, yes. That is MNG-3.

MR MONTANA: Ja.

ADV VAS SONI SC: Now in the second paragraph it says:

“Prodigy has been awarded bursary funding for
300 learnerships from the Seta – from the
Services Seta via the discretionary ground
process...”

20 That is what they say.

MR MONTANA: Yes.

ADV VAS SONI SC: Alright. Can I ask you this? You accepted this on the very same day. And I know there were discussions previously because they say that in paragraph – the first paragraph.

MR MONTANA: Ja.

ADV VAS SONI SC: Were you involved in those discussions?

MR MONTANA: No, not at all Chair.

ADV VAS SONI SC: Now were you aware whether it was only Prodigy that had been awarded that bursary funding? Because when I look at this it does not say it was the only entity awarded that fund(?).

MR MONTANA: Yes, Chair. I do not think it was the only
10 one but I think that Prodigy is the one that came to PRASA and say we want to use ours with you. the others may have used them in other environment's but yes I do not think it was the only company.

ADV VAS SONI SC: But then I am saying to you Mr Montana that it is not for us to water down the wording off the constitution. We are not talking about ordinary law. we are talking about the fundamental document that determines our public authorities conduct themselves.

Now if Prodigy was not the only entity which had
20 that facility, is there not - and I would like you to look at it now - is there not the necessity to say are the in entities and should be not look at Section 217 so that Prodigy is not unfairly given an advantage because it simply approached...?

MR MONTANA: Chair, I think and I want to build on the

conversation and the discussion that we had earlier on Chair because I think my comments on 217 in my review application which is part of my annexures to the Commission.

It is very clear Chair. We have to decide - the Constitution says that. The Constitution also says the organs of state will then implement these systems that we have because I do not think that it can be Chair that we say systems of - how do I put it - a fair transparent
10 competitive process.

ADV VAS SONI SC: Cost effective ...[intervenes]

MR MONTANA: Cost effective as well. Indeed. A process. And we say that the organs of state are required to put that in place. When they - and then we have the PFMA. We have for example the triple PFMA which both of them give exceptions and exemptions as well to what is happening.

Now Chair, I think what we should be because I think also - so that we do not also speculate about it. We
20 have got to do three things. The first one we need to assess to evaluate purpose which other companies were given and specifically for what competencies.

What are the areas where for example Prodigy have these competencies and we others did not or they were given the same thing Chair. That is the first issue.

But I think even if they were two three other companies – if two other companies also approached PRASA and PRASA then rejected them and take Prodigy, that would have been unfair. But we do not know of any other company Chair.

But I do not think because Seta a whole range of other things. My view would be that we have the Commission may want to raise that issue with the Services Seta and say give us an input. Tell us about this organisation. Who had this thing said that when you gave
10 - because that will help us Chair.

That is the first issue that is there. But I do not share the view that any offer of a service requires a tender Chair. And if you say it doesn't require a tender ...[intervenes]

CHAIRPERSON: I think you mean every.

MR MONTANA: Every ...[intervenes]

CHAIRPERSON: I think you ...[intervenes]

MR MONTANA: ...offer of a service.

CHAIRPERSON: Yes, yes.

20 **MR MONTANA:** Because some level of service is involved Chair.

CHAIRPERSON: Ja.

MR MONTANA: But it doesn't mean every time you buy ...[intervenes]

CHAIRPERSON: Ja.

MR MONTANA: ...you procure goods and services. At a time there is a route to go. and I do not think that was the intention of 217 either. So. but I think as a guiding principle it is correct. I support that but not in all instances Chair.

CHAIRPERSON: Ja.

MR MONTANA: And where organisations come to the party, not for you to buy services. To then say we want to work with you here. I think Chair ...[intervenes]

10 **CHAIRPERSON:** Ja.

MR MONTANA: Let me give you an example Chair. There is a school – there is an ...[indistinct] called Kukwano(?) It trains young people and in maths and such And we have partnered with them. No - And that is about, we choice - we want to position PRASA. Again this is regulated by our sponsor sponsorship policy, not by hour ...[intervenes]

CHAIRPERSON: SCM.

MR MONTANA: ...not by our SCM policy. and so as you raise it Chair, I realise that they may be instances of
20 conflict or that there is not a clear line between and we may have to look at that again.

CHAIRPERSON: Ja.

MR MONTANA: But for now I still maintain, Chair.

CHAIRPERSON: Ja.

MR MONTANA: I think that year we have got a better deal

with the ...[intervenes]

CHAIRPERSON: Yes. No, no, no. That is fine. I think what we should do - what should be done Mr Soni is this. I understand Mr Soni to be saying, at that time I didn't think there was an obligation on PRASA to go out on tender in regard to the first 300.

As I sit here I still have the same view but because of the discussion I think it may be that we should have but we did not think so. I think in that - in the light of
10 what should be done, we should just get all the facts that we can get. So the suggestion is that, let us establish how – from the Seta, how this so called bursaries ...[intervenes]

MR MONTANA: How are they ...[intervenes]

CHAIRPERSON: ...because they - and how they are awarded and the contracts because I see in this later Prodigy said they were attaching the copy of the bursary contract or they say a copy of the bursary contract. Ja. but it is not attached yet

MR MONTANA: Yet, Chair.

20 **CHAIRPERSON**: So. Because the terms of that contract which must be, I guess in the Seta and Prodigy, might affect these issues that we are looking at, you know. And you remember earlier on I was asking Mr Montana asked you the prices of payment because I was trying to see who is obliged to make the payments because on the one hand

Mr Montana was saying this meant that the Seta add set aside money for training but it had not given Prodigy the cash.

But at the same time I was hearing that PRASA would be paying and training back and so on. So It is important to just get the actual fact. How does it work and so on and so on. And then once we have got all of that as well as including what actually happened in this particular case when the Seta awarded Prodigy this so called
10 bursaries, the bursary funding.

And then once we have got all of those facts then we can - I think we can deal with the issue properly. And it would be important that at that stage we hear your comments Mr Montana because then you would also be having those facts.

But I think in regard to the 3000, you are much closer to making a concession then you are with the 300. I think you are closer to making the concession there.

MR MONTANA: No, but Chair, I think I am saying that
20 when you get it in the light of this discussion ...[intervenes]

CHAIRPERSON: Yes.

MR MONTANA: ...it may be – unless if there – and that is why I am saying there are two routes.

CHAIRPERSON: Yes.

MR MONTANA: If it was extended without any of those

processes, we are here to - an open tender.

CHAIRPERSON: Ja, ja.

MR MONTANA: And we are going through adjudication
Prodigy ...[intervenes]

CHAIRPERSON: Yes, ja, ja.

MR MONTANA: ...to get pass there. Then, of course
Chair, you did not follow process.

CHAIRPERSON: Yes, yes, yes.

MR MONTANA: But if the scope was dealt with by an
10 Adjudication Committee and it recommended that it be
approved, Chair ...[intervenes]

CHAIRPERSON: That would then ...[intervenes]

MR MONTANA: ...that will still be within the – that system
of governance ...[intervenes]

CHAIRPERSON: Ja, yes.

MR MONTANA: ...that we want to put in place.

CHAIRPERSON: But basically, you are dealing with this
two separate because the training might be the same,
different categories of people being trained but the process
20 is not exactly the same. So you are saying that it looks
like – well, you are saying, I think, you are not sure
whether in regard to the 3 000 the process that you
followed included taking this matter to the Adjudication
Committee of PRASA.

MR MONTANA: Ja.

CHAIRPERSON: And you are saying that if you did and that committee aid go ahead or something like that, you would say it was lawful.

MR MONTANA: Exactly.

CHAIRPERSON: But you are saying if that did not even happen then you would concede that then you did not follow ...[intervenes]

MR MONTANA: The issues ...[intervenes]

CHAIRPERSON: Ja, okay.

10 **MR MONTANA:** But even Chair, when the Adjudication Committee would have said yes.

CHAIRPERSON: Ja.

MR MONTANA: The Commission having taken all the evidence ...[intervenes]

CHAIRPERSON: Yes, and still ...[intervenes]

MR MONTANA: ...on the Seta/Prodigy ...[intervenes]

CHAIRPERSON: Yes, yes.

MR MONTANA: We still do not want to obtain an opinion ...[intervenes]

20 **CHAIRPERSON:** Ja, ja.

MR MONTANA: ...and say is this making the test of 217.

CHAIRPERSON: Ja, ja.

MR MONTANA: And then all of them at PRASA are considered.

CHAIRPERSON: No, no ...[intervenes]

MR MONTANA: But my fundamental point, Chair, is that where an entity private or public brings something – you cannot take out something to tender that does not belong to you.

CHAIRPERSON: Ja, ja.

MR MONTANA: And that is the point I am making.

CHAIRPERSON: No, no ...[intervenes]

MR MONTANA: Prodigy owned the bursaries.

CHAIRPERSON: Ja.

10 **MR MONTANA:** They are not PRASA's bursaries Chair.

CHAIRPERSON: Ja.

MR MONTANA: So could not take them out on tender.

CHAIRPERSON: No, I think the point you raise when you say what is the effect of the fact that the Seta awarded Prodigy these bursaries, this bursary funding, it is a legitimate point to look at. That is why it becomes important also to say if there were terms and conditions to which governed this award to Prodigy by the Seta, we ought to know.

20 I mean, I – if for example the Seta said to Prodigy: We are setting aside this funding for you to train staff falling within the following categories at PRASA and that company and that company, it may be that you say: Well, the Seta has chosen us. So how can you say let us go to tender?

MR MONTANA: Indeed, Chair.

CHAIRPERSON: So now I do not know because I do not know this contract between Prodigy and the Seta. I do not know whether that was the position or not.

MR MONTANA: Yes.

CHAIRPERSON: You know. I think it is a legitimate point you have raised. Let us look at it. Let us get all the facts and then we take it from there.

ADV VAS SONI SC: Mr Montana, just finally on this.
10 Pages 138 and 139 is Prodigy's letter and I am just dealing with the letter, not your inscription on the letter.

MR MONTANA: Ja.

ADV VAS SONI SC: You will see that the heading of the letter of is Piloting of Centre of Excellence Model and Learnership Implementation. If you go to page 139 in the middle of the second paragraph, they say:

20 "Should Prodigy be awarded the contract to pilot the Centre of Excellence Model, it would assist PRASA in accessing the aforementioned funding window..."

The point I want to make is. Nowhere here ...[intervenes]

MR MONTANA: Sorry, in which paragraph are you on?

ADV VAS SONI SC: Sorry. On page 139 ...[intervenes]

CHAIRPERSON: The second paragraph from the top.

ADV VAS SONI SC: Ja. It says in the second sentence:

“Should Prodigy be awarded the contract to pilot the Centre of Excellence Model, it would assist PRASA in accessing the aforementioned funding window...”

The point I want to make, Mr Montana, is just because you have raised the fact or the question that they were offering you a partnership. There is no offer of a partnership. The first mention of a partnership,
10 Mr Montana, is in the second sentence of what you write where you say:

“We should enter into a partnership with Prodigy...”

But the idea of a partnership comes from you, not from Prodigy.

MR MONTANA: Do you want my comment?

ADV VAS SONI SC: Yes.

MR MONTANA: No, Chair, I think let us read the first paragraph of that letter.

20 **CHAIRPERSON:** H’m?

MR MONTANA: Because I do not think there are any inconsistencies there. I think that we are dealing with the word. It says:

“It is further to discussion held from March 2010 with respect to the Centre of

Excellence Model, Prodigy hereby confirms that it is able to provide PRASA with 300 funded learnerships that will fast track the piloting of the Centre of Excellence Model...”

Now Chair, so this – they are giving us something. In return, we accept what they have given to us and say we will use that to start our Centre of Excellence. So I think Chair – I do not think that – maybe Mr Soni is trying to say Prodigy did not use the word
10 partnership as is used in my notes there, not – I do not see it in the letter that is there. And I then say we must enter into a formal MOU in respect of this matter.

So whether you call it – that call it there is a form of partnership. And I think the paragraph that – the sentence that Mr Soni read, it actually talks about if Prodigy should be awarded a contract to pilot the Centre of Excellence.

Again, even the word contract, Chair, in that particular respect, I do not know. In any agreement that
20 you formalise or is – you reach agreement on, even if it is verbal or written, it will be a contract. We have entered into partnerships. Real signed contracts. And we will refer to that in that way.

So Chair I think for me being – my handwriting notes, my notes there, are quite consistent with both the

letter and spirit of what Prodigy is offering there.

ADV VAS SONI SC: Well, Mr Montana, I do not want us to debate this. I am going to disagree with you. There is no consistency between what you have proposed and the proposal from Prodigy. We will disagree on it and at the end of the day, it is a question of interpreting what they have said, your response to it.

And I just want to point out that if you look at MNG-4 on page 141, you will see that what emerges is the
10 partnership agreement, not the contract to pilot the Centre of Excellence that they have proposed in their letter of 10 June.

MR MONTANA: But they have – if you again, Chair – again, we – I am happy that Mr Soni says it is a matter that we can debate and – well, I am using two words. I am using partnership and then later I use the word MOU. Now if we follow what Mr Soni says, it therefore means that the MMD-4, it could have been a contract, a partnership or it could have been an MOU but we are giving effect to one
20 and the same thing that is proposed in the letter.

And Chair, why did I write on top of it? Because this was not a secret. I did not even know that the five or ten years down the line I would be sitting here, debating and looking at my words. At that time, we have received this offer that 300 bursaries awarded by the Seta. Can it

be used at PRASA? And we used that to – as a springboard for our Centre of Excellence.

And Chair we have accepted that and I think for me, that is the essence of what you said of what we wanted to achieve. They did not need to go through a tender. I think Chair, I am saying ...[intervenes]

CHAIRPERSON: Ja, let us look into it.

MR MONTANA: Let us look at that. I think we will discuss the process.

10 **CHAIRPERSON**: Ja.

MR MONTANA: And I am quite – I think that is my view on the matter Chair.

CHAIRPERSON: Ja. Well, let me confirm this. When one reads this letter of Prodigy, when I read it at least, I get the impression that PRASA wanted to pilot its Centre of Excellence Model. That is what PRASA wanted to do.

It gives the impression that it so happened that Prodigy was looking for an entity whose employees it could train because it had been awarded this bursary funding. I
20 am saying that simply because of how the letter is worded.

“It is further to discussion held from March 2010 with respect to the Centre of Excellence Model, Prodigy hereby confirms that it is able to provide PRASA with 300 funded learnerships that will fast track the

piloting of the Centre of Excellence Model...”

So it gives me the impression that [word cut] wanted to pilot to this model and they happened to want an entity whose employees they would train and then there was – then they made this proposal which is if you let us train your staff you will benefit because then your project – then you will be piloting your Centre of Excellence. Is that what happened? Is that a fair reading or not really?

MR MONTANA: Chair, I think I will say yes and no. It is
10 quite clear to me, Chair, when I look at this letter that this letter was a culmination point, was not the beginning so we do not have, as we sit here, details of the kind of discussions that took place between PRASA and Prodigy.

CHAIRPERSON: Prior to the letter.

MR MONTANA: Prior to this letter because that is very important, Chair. And secondly, we do not have the details of the basis and the terms and conditions of the award by the SETA.

We are offered this thing, we think that we reached
20 an agreement, so we need to look at that because that will then tell us and answer Mr Soni’s question and ultimately the bigger question about is this in violation of 217 or not or should be dealt with differently.

So I think a more factual approach, Chair, will help us to come to a common determination of - but when we

approved it at that time, Chair, I think that Prodigy was giving us or putting something on the table and I stated earlier on that they were not giving to us just for *mahala*, Chair, because it is quite clear that their business is training. So if they link with our centre, of course that they are strategically go in a better position to even do more. So that is the nature of the animal, Chair.

CHAIRPERSON: But I – I may have asked this question before because I was trying at that time to establish who
10 actually ultimately and in effect paid Prodigy for the training services that it provided to PRASA employees?

MR MONTANA: It was PRASA, Chair.

CHAIRPERSON: It was PRASA?

MR MONTANA: Yes.

CHAIRPERSON: Even in regard to the 300 because I am talking about the 300.

MR MONTANA: No, I do not think in regard to – no, the rest of the other training, Chair, the first one I think it was – you will recall, Chair, was a model here. They offer you,
20 you train, you recover the money.

CHAIRPERSON: Yes.

MR MONTANA: So both for the 300 and the 3 000.

CHAIRPERSON: Ja.

MR MONTANA: PRASA would recover the money from the different SETAs. You remember the other money is not

only coming from the Services SETA it also comes from the Transport SETA.

CHAIRPERSON: And the SETA that they are talking about here is which SETA?

MR MONTANA: For the 300 [inaudible – speaking simultaneously]

CHAIRPERSON: The Services SETA, yes.

MR MONTANA: But the others were – the other, Chair, the other 3 000 was not part of that, that will come from
10 the ...[intervenes]

CHAIRPERSON: Yes, but I mean the SETA, the Services SETA put aside a certain amount of money.

MR MONTANA: Yes.

CHAIRPERSON: For Prodigy to conduct training. Prodigy ended up or rather conducted training in respect of initially 300 employees of PRASA. Now I would expect that they were paid through the money that the SETA put aside.

MR MONTANA: No, Chair, PRASA will spend the money but will still cover that same money from the SETA.

20 **CHAIRPERSON:** But will it spend the exact amount of money that the SETA has put aside or what?

MR MONTANA: No, no, Chair, it could exceed that amount.

CHAIRPERSON: Ja.

MR MONTANA: Remember, SETA tells you about what it

can find but that may not be the real total cost of training.

CHAIRPERSON: Yes.

MR MONTANA: So if it is beyond that, even what you claim, you are not going to get everything that you claim.

CHAIRPERSON: Ja.

MR MONTANA: But you can get a large chunk of what you spent on top of that project then.

CHAIRPERSON: Yes, so what is the difference between a company such as Prodigy coming to PRASA without going
10 to – without being awarded bursary funding by SETA and saying we would like to train your staff, we think that you can benefit from the training that we can give your staff and for that service we are going to charge R100 million or whatever. What is the difference between ...[intervenes]

MR MONTANA: Chair ...[intervenes]

CHAIRPERSON: Because in the later case obviously they must look to you for payment. Now if they have gone to the SETA and the SETA has put aside money for this training is it still PRASA that ultimately pays them? So
20 what is the need to go to the SETA?

MR MONTANA: With regard to – I think this is linked...[intervenes]

MR MONTANA:

CHAIRPERSON: The 300.

MR MONTANA: Ja, this is linked to skills mainly, Chair,

because you are raising an important issue. I mean, the other question linked to what you have just raised, Chair, why does SETAs not, for example, why does it have to go through service providers and not for example linked directly with PRASA and I think the question is who has got the skills? We run trains, we run buses, we run property and therefore we may not have the – what is it called, the necessary accreditation in those areas that are there so that is why we have got the service providers. Is it a more
 10 efficient model, Chair? I think that is another question.

Perhaps the SETAs should as a first line say public entities or other organs of state, here is money that you can access, you can apply and part of that is happening, Chair, when you can apply but I think that there are certain areas where you do that through the service providers. I do not know what is the rationale, the logic, Chair, that is not my space but I know that there will be offered – we will be offered to use the services. So we have to then check under what circumstances was this offered.

20 **CHAIRPERSON:** Ja. Ja, I think we ...[intervenes]

MR MONTANA: What were the times and then we clarify that question first.

CHAIRPERSON: I think we need to find more information because for me if you say you are granting some student a bursary, that means you will pay for it, you pay for their

studies.

So this says the SETA awarded Prodigy was refunding for training so I have difficulty understanding how it could come about that then PRASA must pay in full for the training. I can understand if the arrangement is the SETA will pay a certain percentage and then PRASA must maybe cough up whatever but we need to establish that because also in terms of who is going to make the – who will pay, who has the obligation to pay, that might affect the
 10 question of whether we are dealing with a tender situation or not if, in effect, PRASA is not going to pay or is going to pay a very small amount. So we will need to just get information on that. I certainly do not know much about how SETAs operate and [indistinct – dropping voice].

Okay, alright. We are at quarter past four. I have in mind that we will go up to five because there is an evening session but I must say already tomorrow there is space. Tomorrow there is space so to the extent that – because I think it is clear we are not going to finish with Mr Montana.
 20 There is a witness that is scheduled for tomorrow but he will not be long so we might have to decide whether he should come in the morning, finish with him and then Mr Montana continues, if available, or whether we ask him to come later in the day, we start with Mr Montana. Are you available tomorrow, Mr Montana? You say you are under

...[intervenes]

MR MONTANA: Chair, you put me in a very difficult position. Mr Soni had confirmed that ...[intervenes]

CHAIRPERSON: That we would finish today.

MR MONTANA: That by five we will be done.

CHAIRPERSON: Ja.

MR MONTANA: The Commission will not want to see me here again, Chair. Chair, I will be guided by you.

CHAIRPERSON: Yes, yes.

10 **MR MONTANA:** And then perhaps we can try to do the other two remaining matters tomorrow.

CHAIRPERSON: Ja, no, no, that is fine. So, no, no, I think that is good because we would like to try and finalise and I am sure you would like to get to the end of the process as well. So let us take a break now, ten minutes break, come back and continue until five and then we will adjourn until tomorrow and then hopefully we finish tomorrow. But I think what is important is that issues are being dealt with, we are doing justice to the issues and that is important. Okay, let us take
20 an adjournment, it is about seventeen minutes past four, let us resume at half past four.

ADV VAS SONI SC: As you please.

CHAIRPERSON: We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: You might too far from the mic, Mr Soni.

ADV VAS SONI SC: Sorry, Chairperson, sorry, yes.

CHAIRPERSON: Is it possible to bring that mic of yours more to the centre because I think you do move away from it and it is right at the corner.

ADV VAS SONI SC: Yes, okay.

CHAIRPERSON: Ja, okay, okay. If that will not interfere with your...

ADV VAS SONI SC: No, no, no.

10 **CHAIRPERSON:** Okay, alright.

ADV VAS SONI SC: Mr Montana, at paragraph 14.17 Mr Dingiswayo says that after he was dismissed the SLA that he had reservations about were signed on the 29 May, is that correct? This is at paragraph 14.17 at page 106.

MR MONTANA: Chair, I do not know the date but I know that second addendum was signed by Ms Koka but also I do not the specific concern that Mr Dingiswayo had, Chair.

ADV VAS SONI SC: Okay. He then raises certain questions about the enforceability of the contract. We do
20 not need to date them now because the only reason, Mr Montana, is that that whole matter is before court at the moment. We have agreed on that.

MR MONTANA: Ja.

ADV VAS SONI SC: Alright. May I then ask you to look at paragraph 14.21? September 2017, and he has been

corrected on this, it is in February/March 2017, that was the evidence. Ms Shunmugum – now she is the lady who wrote to you, you might remember, asked to meet Mr Holele to discuss the issue of payment. Says:

“However, it not Ms Shunmugum who attended but Mr Moodley. Mr Holele and Mr Rakgoathe, the general manager, represented PRASA.”

And he says Mr Holele will deal with that meeting. I do not know if you have followed the evidence given by Mr Holele, 10 in fact he was the first witness called in respect of PRASA and what Mr Holele said – I am just raising it for you Mr Moodley looms large in these proceedings. Mr Holele said that Mr Moodley said to him, you know, you had better be on the right side of history because there is going to be a change in the ministry and there is going to be a major change at PRASA. He used the term that has – is going to come up again or it certainly came up when we dealt with what happened on the 20 August 2015, he says that young man is coming back. Mr Holele saw that has a reference to 20 you, are you aware of any of that?

MR MONTANA: Mr Holele is younger than me, Chair, I do not know when there is a young man he assumes it should be me. He is far younger than me, Chair. So surely I thought he would be looking at someone else.

Chair, I do not know, I say Mr Holele’s testimony

where he called me a dictator and I have been making the statement but I had left PRASA by this time, I think two years earlier so I do not have direct knowledge of what was discussed in the meeting, Chair.

ADV VAS SONI SC: You see, what for the Commission is not without significance and I am not saying it is of extreme significance is that three months – I mean, three weeks after that meeting Ms Dipuo Peters is replaced as the minister and I am just saying that as a Commission
10 these are not matters we can ignore.

MR MONTANA: Okay.

ADV VAS SONI SC: Once that evidence is before us and so to the extent that you think Mr Moodley is being focused upon, the reason is because there is those pieces of evidence as against [indistinct – dropping voice]

Now in paragraph 15 he says that Mr Majola conducted the – an investigation into the Prodigy contracts and it is a report that is in fact annexed to his affidavit. Now I would just like you to turn to page 128 which deals with the
20 report. I do not want us to look at the whole report but just two parts of the report that – or three parts of the report. If I can ask you, the report starts at page 128 and I would like you to turn to page 135.

CHAIRPERSON: Did you say page 135?

ADV VAS SONI SC: Page 135, as you please,

Chairperson. In paragraph 5.1 Mr Majola in the report says:

“There is a number of witnesses who are yet to be interviewed and submit statements to this matter. From statements obtained it is clear that former PRASA technical CEO, Mr Saki Zamxaka’s statement would be critical to this matter.”

What was Mr Zamxaka’s role at PRASA?

MR MONTANA: No, Mr Zamxaka, Chair, was the – well, I do not know because here he was the CEO of our technical
10 division and I assume therefore that the part of the training happened with his team, Chair.

ADV VAS SONI SC: Part of the training...?

MR MONTANA: I am saying that PRASA Technical is one of the divisions of PRASA, he was the CEO.

ADV VAS SONI SC: Oh, I see. [indistinct – dropping voice] yes. Now just relating to Mr Zamxaka, I am going to go into something we are going to deal with tomorrow. One of the properties we are investigating is the Parkwood property. In that property there is – there was an addendum
20 to the sale – your sale to – that you [indistinct] of that property and it is recorded in the addendum that Mr Zamxaka was in fact a tenant in that property. Is that so?

MR MONTANA: Yes, Chair, it was my property, he was put there by me, Chair.

ADV VAS SONI SC: Okay, so he was renting from you?

MR MONTANA: Well, Mr Zamxaka, Chair, I do not want to discuss his personal matters but for some personal reasons he was going through a process and he rented a place in the City Centre of Johannesburg, in Pretoria, and I did not even know about that, Chair, because he did not tell, it was none of my – it had nothing to do with me. I meant to see him one evening, I could not find him and I knew that he lived in Pretoria, I was also in Pretoria, and I could only see him the following day. Then he told me and explained, you know, he
10 could not come and I realised that we have one of our CEOs was actually living in the middle of Johannesburg and I identified the risk and then I arranged – I said look, I have got a property that I have just developed, if you can stay there in the meantime whilst you are trying to sort yourself out, Chair. So there is nothing – it has got nothing to do with Mr van der Walt or anything, it was me offering a brother a place to stay whilst he was going through a particular phase in his life, Chair.

ADV VAS SONI SC: Okay. Can I ask you now to look at
20 paragraph 5.4?

MR MONTANA: Chair, before we move to there. Mr Soni, I see you are jumping 4.18, 4.18 above. Can I read it out to you:

“It is evident that former Group CEO Lucky Montana was determined to have Prodigy conducting training

for PRASA regardless of company policies and tendering procedure.”

Chair, here is a report. Someone has not even – I have left PRASA two earlier, I do not know who this Mr Majola is, he has not even interviewed me but he can make that kind of a statement. I mean, these are the type of things they are talking about. He does not know me but he knows that Montana is determined. When I look at the word determined, Chair, he does not even mention the fact that he did not
 10 even interview me, yet he can make the kind of statements about me which I think that – I mean, I look at the conclusion. He leave it at that, Chair, it is not even part of his conclusion, it is in the body of the report, he makes a finding. So I just wanted to bring that to that thing, it happened after I had left PRASA two years later, he never interviewed me but – and I will have a problem with a report like that, Chair, as a starting point.

ADV VAS SONI SC: Yes. And now that – I did not want to raise matters relevant to you but can I ask you to look at
 20 4.15 now that you have raised it? He says:

“It is evident from statements obtained that it was deliberate not to follow SCM tender process to employ services of Prodigy to conduct training for PRASA and there would be constant communication breakdown between PRASA managers and Prodigy

and that is the reason Mr Montana brought Nes
Konduwe(?) to rescue the process.”

I am just making the point that he does make some adverse
– but I did not refer to ...[intervenes]

MR MONTANA: No, no, Chair, I see that and that is what
conspiracies do, Chair. When you formulate these things in
your head and they become – you know, sometimes you
create this thing, Chair, with your own hand, your own labour
and it become a fetish, something you start to worship
10 because you think it has got power over you, yet you have
created it, it is product of your own labour. We are seeing it
in this report, Chair.

Ms Konduwe worked for PRASA for a very long time.
In HR, in fact I think she joined Metro Rail before it was even
PRASA. I think she was part of South African Airways, one
of the highly experienced HR executive or senior managers
in that environment, so why was she brought in to rescue
anything? So you can see, I am not surprised why 4.18
comes in, Chair, because here is a guy who does not even
20 know me. He has probably never even seen me, he only
knows my name from reading reports and he decided to right
something like that. What was she rescuing?

You see, Chair, I mentioned earlier on when we were
dealing with the affidavit of Dingiswayo, that there are
insinuations, but we are not told what it is. Now there it is, I

am saving – I am bringing her to save something. What is it that needs to be saved? I am asking myself, Chair.

So these are the type of things and unless if this chap is asked to elaborate and assist the Commission to understand what is he saying in his report? I think that is something that should not be taken lightly, Chair.

CHAIRPERSON: Ja. Well I was looking, you commented in respect of paragraph 4.18 which you read out. In regard to that paragraph you commented that what you are saying
 10 there was not even part of his conclusion but then I went back to see what heading it falls under. I see that it falls under findings. So what he is saying there, is a finding. I have not – I do not – I have not read this report recently so my memory is not fresh on it but from the markings that I have made on it, I think it would have been dealt with earlier but I see also that – I see it is a progress report but I see that in paragraph 4.2, which is at page 133, it says:

“It is evident that there was no tender process followed to bring Prodigy into the PRASA system for
 20 the training project and all decisions which were made and taken in respect of this project were in favour of a service provider.”

And then under 5, which has the heading Conclusion, 5.1 says:

“There is a number of witnesses who are yet to be

interviewed and submit statements to this matter. From statements obtained it is clear that former PRASA Technical CEO Mr Saki Zamxaka's statement would be critical to this matter."

5.2:

"There is a host of documents and records still to be retrieved from different offices or employees in order to complete this investigation as per the scope."

Ja, there are others. Well, it just – what attracted my
10 attention was that the investigation appeared not to be completed yet because he said there were still a number of statements or witnesses who were still to be interviewed but I see that he says a progress report but I was just noting that. Yes, Mr Soni?

ADV VAS SONI SC: As you please, Chairperson. Then at 5.4 he says:

"There is a general feeling from some managers that Prodigy training of PRASA employees was not worth the money which had been paid to them as it did not
20 benefit the business in any way."

So that is a view that has been expressed. You obviously hold a different view, you said so at the outset that they produced and they improved the business of PRASA, is that correct?

MR MONTANA: Well, I do not know, someone who has

been 2017, I do not know Majola to what extent he was involved with those processes, what he has, what evidence he has looked at. I was just noting, I do not even want to comment because I do not know what as the purpose of this report but I see attacks on me that are so unjustified that know that the basis – but, Chair, I do not want to take up on this report, I would just note in picking up points as we are speaking, Mr Soni.

ADV VAS SONI SC: Yes. And then just finally, I want to
 10 refer you to 5.5 which is – which reiterates what is said I think in 4.2 and it reads:

“Although the investigation process has not been completed, it is confirmed through the statements obtained that there was no SCM tender process followed to employ the services of Prodigy with this training programme.”

MR MONTANA: I think, Chair, that has been the subject of our discussion.

ADV VAS SONI SC: Yes.

20 **CHAIRPERSON:** Ja.

ADV VAS SONI SC: And the question, as I understand it, is whether given the nature of the relationship and the contract that ensued, Section 217 and the tender process was triggered. Would that be a fair summary of what we have been debating?

MR MONTANA: Well, Chair, I think the summary that we made earlier on particularly on getting the right information to enable to make – to enable the Commission to make an informed determination and come to 217. I think Majola's report, Chair, is – Jabuli Sam Majola, I do not think, Chair, is someone who probably was not senior enough or was not aware, is an investigator who looks at the – who probably wanted to know the facts without looking at the bigger picture but I would not dismiss it, I would allow it that we
10 can test everything he says.

CHAIRPERSON: Ja.

MR MONTANA: Once we have obtained that information, Chairperson, [indistinct – dropping voice]

CHAIRPERSON: Ja.

ADV VAS SONI SC: Finally, in regard to Mr Dingiswayo, Mr Montana, I just want us to look at paragraph 19. He says:

“Based on the foregoing, I submit that PRASA is under a duty to press for the setting ...[intervenes]

20 **MR MONTANA:** Which page are you on?

ADV VAS SONI SC: Oh sorry, page 110, back to his affidavit, sorry.

MR MONTANA: Oh, back to his affidavit?

ADV VAS SONI SC: Yes.

MR MONTANA: Okay.

ADV VAS SONI SC: 110, Mr Montana.

MR MONTANA: I am there, Chair, 110.

ADV VAS SONI SC: Right at the bottom, paragraph 19 he says:

10 “Based on the foregoing, I submit that PRASA is under a duty to press for the setting aside of the contracts and resisting Prodigy’s claim for payment from PRASA. I further submit that Prodigy was favoured because Mr Roy Moodley exercised such undue influence over Mr Montana and other senior employees, the support of the manner in which Mr Montana ran PRASA for the benefit of certain individuals and entities he was close to.”

MR MONTANA: Chair, I think throughout the day I went into details to show that Mr Dingiswayo’s affidavit, number one is based on hearsay but clearly that here is a man who is playing politics. I explained his role how selective he was. Now I would ask a simple practical question. When Prodigy engaged with the Group HR of PRASA, who was
20 involved in that discussion and under whose instruction were they taking those decisions because then that is what clarifies the issue. But when I look at this, I think it is devoid of truth, devoid of fact, it is playing – it is searching for Roy Moodley. I have said in my affidavit that they want – they could not find the Guptas at PRASA and they had to

find a new Gupta and that new Gupta is Roy Moodley.

Chair, I think that I have explained, people had thought even Moodley was appointed at PRASA. He was never appointed at PRASA, he was inherited from Transnet in 1991 and the very same people who make these kind of statements actually recommended, Chair, the list of security companies that needed to be extended that were recommended by the Bid Adjudication Committee, was done under the leadership of Tiro Holele and Dingiswayo's boss,
10 Ms Martha Ngoyi.

Now did they not know Roy Moodley at that time when they recommended? Now suddenly we have got state capture, they want to show that Moodley is so powerful. There was never a Gupta at PRASA, there was never a Moodley that dominated PRASA and I think that a lot of people may have their views about PRASA but, Chair, I said earlier on during the day – I said firstly, you will never find a single project at PRASA that we implemented that we spent money on and it was not done, where you say money
20 disappeared. Not a single one, Chair.

The second thing, Chair, you will not find the Guptas but you see, people who investigated PRASA, they thought they will find Jacob Zuma and the Guptas at PRASA and that is why they are trying to draw – create the links and all of those things. There is none, Chair. But when you are

CEO of an entity like PRASA, there are a lot of interest in this business including people who tell us that they are biggest fighters against state capture.

Chair, when I present my evidence, you will actually see that the people who have given us lectures in this Commission about state capture, were the forefront of the destruction of PRASA. For example, Minister Pravin said in his testimony here that one way state capture works is by changing boards, changing cabinets and other organs of –
10 but that is exactly what they did with PRASA and got it where it is, Chair.

So I think that ultimately you have to be guided by the facts, separate facts from fiction and look at these issues dispassionately, Chair, and we will find that Mr Dingiswayo is running away from the very issue. She was an instrument, Chair, I am not surprised that between his affidavit and the affidavit of Mr Molefe, which we dealt with on Friday and the affidavit of Martha Ngoyi, the affidavit of Tiro Holele, all of these affidavits shows people who were
20 actually articulating from the same position but they cannot give – my personal knowledge, Chair, I never spoke about – I heard somebody saying this, I wanted to focus on facts, on evidence that I present to this Commission.

So, Chair, Mr Dingiswayo, fired him, he was bitter, so he will not come here and praise me and say Mr Montana

did a good work. Ms Ngoyi, I removed her as CEO of Intersite and I fired her from the business. So I do not expect this – and, Chair, I am not in a beauty contest, I do not like the – I have never run an entity where people like me. In fact I love it when 90% of people I have managed do not like me and I only have ten. Ten good quality people and we make things happen, Chair.

So in short, Mr Soni, I do not think Dingiswayo seriously and I do not think this affidavit is worth the paper
10 written on.

ADV VAS SONI SC: Chairperson, I do not have any other matters arising from Mr Dingiswayo's affidavit.

CHAIRPERSON: So with regard to Mr Dingiswayo have you exhausted...?

ADV VAS SONI SC: I have exhausted everything I want to ask, Chairperson.

CHAIRPERSON: Okay, so tomorrow it would be ...[intervenes]

ADV VAS SONI SC: Mr Ngoli(?) and Mr Ollermann's
20 report.

CHAIRPERSON: Yes. Okay, alright. Okay, we are going to adjourn then this day session. Let us continue tomorrow and let us start at half past nine tomorrow as well, if we can. Is that fine, Mr Montana? Half past nine? Is fine?

MR MONTANA: No, Chair, I am in your hands except

when we discussed with Mr Soni you said the person who is coming was going to be very brief.

CHAIRPERSON: Oh, yes, yes, yes. Ja, maybe we should rather start with him. Okay, I think we should start with him. I think let us start – resume your evidence at half past ten.

MR MONTANA: Half past ten.

CHAIRPERSON: If we are not done with him you might have to wait a bit but we should not take too long with him.

10 Ja, okay. We are then adjourning the day session. I will take a ten minutes break and then we will start the evening session. I have been very bad, the staff and technicians, they just hear me saying we have an evening session and then do not always get to know well in advance. I am sorry about that. But they have been very good, they have been very cooperative and given the Commission the time to do its work in the evening. I will ask the secretary to be in touch with them so that where there may be some challenges we can see how we can sort those out. I am
20 hoping that this evening it would still be fine but if there are challenges in terms of [word cut] and that without whom we cannot proceed, they must just let us know in due course, the – I will ask the Secretary of the Commission to be in touch with everybody but I will take – we will take a ten minute adjournment and then we will – I will come back

and then we start with the evening session. I have in mind that we would go at least up to eight but if there's nobody who is complaining we might go to nine o'clock but I think that there are a lot of people here who are very committed to the work of the Commission. I will take a ten minute adjournment.

ADV VAS SONI: Chairperson may the PRASA team be excused.

CHAIRPERSON: Yes, you are excused.

10 **ADV VAS SONI:** As you wish.

CHAIRPERSON: Thank you.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Good afternoon Mr Pretorius, good afternoon everybody.

ADV PRETORIUS SC: Good afternoon Chair.

CHAIRPERSON: Yes, are you ready?

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

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

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

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

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

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

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

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

ADV PRETORIUS SC: I am being collegial Chair.

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

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

CHAIRPERSON: Yes?

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

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

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

CHAIRPERSON: Ja.

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

CHAIRPERSON: Why must they be struck out?

ADV RAMOGALE: The grounds are irrelevance.

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

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

CHAIRPERSON: Yes.

ADV RAMOGALE: To be objecting as such.

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

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

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

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

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

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

ADV RAMOGALE: Yes, yes.

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

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

CHAIRPERSON: Ja.

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

CHAIRPERSON: He was away on?

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

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

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

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

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

irrelevant.

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

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

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

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

20 **CHAIRPERSON:** Yes, yes.

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

CHAIRPERSON: You have done it in the same

application?

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

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

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

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

ADV RAMOGALE: In addition to that yes.

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

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

CHAIRPERSON: Okay.

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

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

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

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

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

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

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

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

CHAIRPERSON: Please administer the oath or affirmation.

REGISTRAR: Please state your full names for the record.

DR DINTWE: Setlhomamaru Isaac Dintwe.

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

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

DR DINTWE: No.

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

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

DR DINTWE: Yes.

CHAIRPERSON: Registrar you are whispering to me.

REGISTRAR: Should I start over Judge?

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

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

20 **DR DINTWE:** Yes.

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

DR DINTWE: So help me God.

SETLHOMAMARU ISAAC DINTWE: [d.s.s]

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

Yes Mr Pretorius?

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

CHAIRPERSON: Yes.

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

CHAIRPERSON: Yes.

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

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

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

CHAIRPERSON: Okay.

ADV PRETORIUS SC: In due course.

CHAIRPERSON: Okay.

ADV PRETORIUS SC: Dr Dintwe do you have Exhibit

YY15 before you?

DR DINTWE: I do have.

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

DR DINTWE: I can see that.

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

DR DINTWE: That is correct Chair.

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

DR DINTWE: I am on that page.

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

DR DINTWE: I confirm it is my signature.

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

DR DINTWE: I can certify that.

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

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

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

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

DR DINTWE: That is correct Chairman.

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

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

ADV PRETORIUS SC: Yes please I do.

CHAIRPERSON: As an exhibit? It would be Exhibit?

ADV PRETORIUS SC: YY15.

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

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

DR DINTWE: That is correct Chairperson.

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

DR DINTWE: With effect from the 15th of March 2017.

ADV PRETORIUS SC: And in terms of which piece of

legislation were you appointed?

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

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

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

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

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

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

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

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

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

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

DR DINTWE: That is correct Chairperson.

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

DR DINTWE: That is correct.

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

DR DINTWE: That is correct Chairperson.

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

DR DINTWE: That is correct.

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

other statutory bodies or officials.

DR DINTWE: That is correct Chairperson.

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

DR DINTWE: I will also deal with that Chairperson.

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

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

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

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

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

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

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

CHAIRPERSON: Sorry?

DR DINTWE: It is a binding document.

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

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

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

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

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

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

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

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

CHAIRPERSON: Yes.

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

CHAIRPERSON: Yes.

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

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

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

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

CHAIRPERSON: Yes.

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

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

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

MR DINTWE: That is correct Chairperson.

ADV PRETORIUS SC: Right. In paragraph 4 of your

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

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

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

MR DINTWE: I see that Chairperson.

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

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

And if we go to B:

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

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

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

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

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

MR DINTWE: I confirm that Chairperson.

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

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

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

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

That is as we understand the position.

MR DINTWE: That is my understanding also Chairperson.

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

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

CHAIRPERSON: Okay, alright.

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

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

ADV PRETORIUS SC: And was it successfully completed?

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

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

MR DINTWE: That is correct Chairperson. There is a

letter from the president confirming that.

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

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

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

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

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

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

Now those documents were gone for about two

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

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

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

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

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

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

MR DINTWE: Yes, there were three complaints.

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

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

CHAIRPERSON: Ja, yes okay.

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

10 **CHAIRPERSON:** Was the same?

MR DINTWE: Yes.

CHAIRPERSON: Okay, okay alright.

ADV PRETORIUS SC: And ...[intervenes]

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

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

CHAIRPERSON: I am sorry.

ADV PRETORIUS SC: I am sorry Chair.

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

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

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

CHAIRPERSON: Oh.

MR DINTWE: Coming from Minister Bheki Cele for instance.

CHAIRPERSON: Oh.

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

CHAIRPERSON: Ja, okay. Okay.

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

CHAIRPERSON: Ja.

MR DINTWE: That were also common.

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

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

CHAIRPERSON: Okay, alright.

MR DINTWE: Yes.

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

MR DINTWE: That is correct Chairperson.

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

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

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

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

ADV PRETORIUS SC: Joint Standard Committee on Intelligence.

MR DINTWE: Yes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CHAIRPERSON: Any other information, yes.

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

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

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

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

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

MR DINTWE: I was copied Chairperson.

CHAIRPERSON: You can refresh my memory.

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

CHAIRPERSON: Yes.

MR DINTWE: So ...[intervenes]

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

MR DINTWE: Minister Yanda Dlodlo of the state security.

CHAIRPERSON: Yes, okay.

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

CHAIRPERSON: Ja.

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

CHAIRPERSON: Hm.

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

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

CHAIRPERSON: Yes.

ADV PRETORIUS SC: That correspondence was addressed to yourself.

CHAIRPERSON: Yes, yes.

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

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

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

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

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

It is just that it is interesting.

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

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

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

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

CHAIRPERSON: Okay, alright.

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

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

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

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

emanating from state security agency witnesses.

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

MR DINTWE: I see that Chairperson.

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

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

10 Those are intelligent services:

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

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

MR DINTWE: That is correct Chairperson.

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

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

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

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

ADV PRETORIUS SC: Right.

MR DINTWE: Power 19 in other words.

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

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

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

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

MR DINTWE: I think ...[intervenes]

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

MR DINTWE: Departments, yes Chairperson.

CHAIRPERSON: You know, for ja.

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

CHAIRPERSON: Alright.

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

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

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

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

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

MR DINTWE: That is correct Chairperson.

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

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

MR DINTWE: That is correct Chairperson.

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

MR DINTWE: That is correct Chairperson.

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

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

50 plus one. This one is a two third.

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

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

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

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

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

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

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

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

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

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

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

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

MR DINTWE: That is correct.

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

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

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

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

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

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

DR DINTWE: That is correct Chairperson.

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

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

I take it that that committee is the Joint Standing

Committee of Intelligence?

DR DINTWE: That is correct Chairperson.

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

Section 7A.

DR DINTWE: It is 77A.

ADV PRETORIUS SC: Yes 77A.

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

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

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

ADV PRETORIUS SC: Right. Internal policies.

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

ADV PRETORIUS SC: So white paper?

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

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

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

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

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

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

ADV PRETORIUS SC: Right.

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

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

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

CHAIRPERSON: Yes okay. Alright.

ADV PRETORIUS SC: What does 77C say?

CHAIRPERSON: Well – well...

ADV PRETORIUS SC: Sorry Chair.

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

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

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

DR DINTWE: Yes.

CHAIRPERSON: Okay alright. Thank you. Mr Pretorius.

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

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

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

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

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

DR DINTWE: I then receive an investigate complaints from

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

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

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

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

DR DINTWE: That is correct.

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

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

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

DR DINTWE: That is correct Chairperson.

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

provide?

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

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

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

CHAIRPERSON: Sorry.

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

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

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

CHAIRPERSON: Okay so – so when you talk about a

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

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

CHAIRPERSON: Yes.

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

10 **CHAIRPERSON:** Ja.

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

CHAIRPERSON: Oh.

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

CHAIRPERSON: Ja, yes.

DR DINTWE: AB and C in the annexures.

CHAIRPERSON: Okay. Okay.

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

CHAIRPERSON: Okay.

DR DINTWE: Because we make one certificate per service.

CHAIRPERSON: Okay alright. Yes Mr Pretorius.

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

DR DINTWE: That is correct.

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

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

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

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

DR DINTWE: That is correct Chairperson.

ADV PRETORIUS SC: Security clearance.

DR DINTWE: That is correct Chairperson.

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

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

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

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

ADV PRETORIUS SC: Alright. Now –

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

DR DINTWE: Yes Chair.

CHAIRPERSON: Okay alright.

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

10 **CHAIRPERSON:** Okay.

ADV PRETORIUS SC: Yes we will get there.

CHAIRPERSON: We will get there ja.

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

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

Now that decision was made in relation to the

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

DR DINTWE: That is our submission Chairperson.

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

DR DINTWE: No not in all instances.

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

DR DINTWE: That is our submission Chairperson.

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

DR DINTWE: That is correct Chairperson.

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

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

capabilities.”

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

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

ADV PRETORIUS SC: You drafted this.

DR DINTWE: Yes. Chairperson yes independently so.

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

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

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

CHAIRPERSON: Ja.

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

CHAIRPERSON: Yes.

DR DINTWE: That was my junior degree.

CHAIRPERSON: Okay.

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

CHAIRPERSON: Yes.

DR DINTWE: It had a lot of law modules.

CHAIRPERSON: Yes.

DR DINTWE: Where eventually understood of law.

CHAIRPERSON: Okay. Okay no that is fine.

ADV PRETORIUS SC: But these are your submissions?

DR DINTWE: These are my submissions.

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

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

Is that again your submission?

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

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

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

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

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

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

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

DR DINTWE: Ja we start this a little bit earlier in 2004 but there will be some other arrangements that happened before that I did not think that they will be so much relevant but one of my predecessors was Mr Zolani Nakane who was 20 appointed as the IGI in 2004 and he remained in office until December 2009. The position was vacant from December 2009 to April 2010 when the late Ambassador Faith Radebe took over and then she held that position for five years until 2015 until 1 00:21:12 that office 22 months later which then will be 2017.

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

DR DINTWE: That is correct.

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

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

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

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

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

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

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

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

DR DINTWE: That is correct.

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

DR DINTWE: That is correct.

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

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

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

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

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

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

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

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

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

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

DR DINTWE: That is correct Chairperson.

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

DR DINTWE: I confirm that is my statement.

ADV PRETORIUS SC: And that state of affairs apparently

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

DR DINTWE: That is correct Chairperson.

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

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

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

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

DR DINTWE: Yes ...[intervenes]

ADV PRETORIUS SC: NESU ...[intervenes]

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

CHAIRPERSON: Okay, okay.

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

DR DINTWE: That is correct.

ADV PRETORIUS SC: Alright.

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

CHAIRPERSON: H'm.

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

DR DINTWE: That is correct.

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

CHAIRPERSON: [No audible reply]

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

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

ADV PRETORIUS SC: ...request.

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

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

20 **CHAIRPERSON:** [laughs]

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

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

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

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

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

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

ADV PRETORIUS SC: ...quite generally stated.

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

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

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

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

DR DINTWE: The first ...[intervenes]

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

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

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

CHAIRPERSON: There is the issue of capacity.

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

CHAIRPERSON: Yes.

DR DINTWE: Lack of independence.

CHAIRPERSON: Ja.

DR DINTWE: But also the vacancy.

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

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

CHAIRPERSON: Yes.

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

CHAIRPERSON: Yes.

DR DINTWE: And they are not really investigators.

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

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

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

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

CHAIRPERSON: Ja.

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

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

CHAIRPERSON: H'm.

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

was in this office, which makes perfect sense.

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

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

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

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

CHAIRPERSON: Yes.

DR DINTWE: ...the former one.

CHAIRPERSON: Yes.

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

CHAIRPERSON: Yes.

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

CHAIRPERSON: Yes.

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

CHAIRPERSON: Yes, yes. Okay.

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

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

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

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

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

20 obtaining your budget. Is that correct?

DR DINTWE: That is correct.

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

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

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

CHAIRPERSON: Yes.

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

CHAIRPERSON: Yes.

DR DINTWE: And they at least understood initially.

CHAIRPERSON: Yes, yes.

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

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

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

other departments.

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

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

DR DINTWE: That is correct, Chairperson.

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

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

CHAIRPERSON: Oh.

DR DINTWE: Ja, that is done by Treasury.

CHAIRPERSON: Oh, that is achieved?

DR DINTWE: Yes.

CHAIRPERSON: It has been achieved?

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

CHAIRPERSON: Yes.

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

CHAIRPERSON: Yes.

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

CHAIRPERSON: Yes.

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

CHAIRPERSON: Yes.

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

CHAIRPERSON: Ja.

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

CHAIRPERSON: Ja.

DR DINTWE: This amount belongs to IP.

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

DR DINTWE: That is correct, Chairperson.

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

DR DINTWE: Yes.

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

DR DINTWE: By SSA, yes.

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

DR DINTWE: That is correct, Chairperson.

CHAIRPERSON: Okay.

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

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

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

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

that you are basically dependent on them.

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

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

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

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

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

CHAIRPERSON: Ja, okay.

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

CHAIRPERSON: [No audible reply]

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

DR DINTWE: That is correct, Chairperson.

ADV PRETORIUS SC: Is that appropriate?

DR DINTWE: No, it is not appropriate.

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

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

CHAIRPERSON: Ja.

DR DINTWE: It is my infrastructure.

CHAIRPERSON: Yes.

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

CHAIRPERSON: Yes.

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

CHAIRPERSON: Ja, ja.

DR DINTWE: Just to check a few things.

CHAIRPERSON: Yes.

DR DINTWE: Yes.

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

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Okay, let us continue.

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

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

DR DINTWE: I say there, Chairperson, that:

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

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

This is further demonstrated in the other paragraphs.

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

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

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

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

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

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

DR DINTWE: That is correct.

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

DR DINTWE: That is correct, Chairperson.

ADV PRETORIUS SC: Then you say in paragraph 36:

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

To whom are you referring there?

DR DINTWE: I am referring to Mr Arthur Fraser.

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

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

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

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

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

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

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

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

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

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

ADV PRETORIUS SC: The Minister or the Director General?

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

ADV PRETORIUS SC: Alright, because you say in

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

You say:

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

Is that correct or must we qualify it?

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

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

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

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

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

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

CHAIRPERSON: Okay.

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

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

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

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

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

ADV PRETORIUS SC: How important were these posts?

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

ADV PRETORIUS SC: Critical posts.

DR DINTWE: And [indistinct – dropping voice]

ADV PRETORIUS SC: Yes.

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

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

ADV PRETORIUS SC: Alright, what was the response?

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

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

CHAIRPERSON: Okay, okay.

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

CHAIRPERSON: Yes, yes.

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

CHAIRPERSON: Yes.

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

CHAIRPERSON: Okay.

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

CHAIRPERSON: Okay. No, that is fine.

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

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

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

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

Do you see that, Chairperson?

CHAIRPERSON: What does that have to do with you?

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

CHAIRPERSON: Yes.

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

am done with my own restructuring.

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

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

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

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

who have to decide on that.

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

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

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

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

CHAIRPERSON: Ja.

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

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

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

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

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

DR DINTWE: That is correct, Honourable Chair.

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

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

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

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

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

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

ADV PRETORIUS SC: Okay.

CHAIRPERSON: Yes.

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

ADV PRETORIUS SC: And how does it affect your

independence?

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

CHAIRPERSON: Ja.

DR DINTWE: It is wrong for all reasons.

CHAIRPERSON: Ja.

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

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

DR DINTWE: That is correct, Chairperson.

ADV PRETORIUS SC: Is that your view?

DR DINTWE: That is my view.

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

DR DINTWE: That is correct.

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

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

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

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

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

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

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

DR DINTWE: That is correct, Chairperson.

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

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

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

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

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

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

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

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

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

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

ADV PRETORIUS SC: In paragraph 49?

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

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

Intelligence service.”

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

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

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

CHAIRPERSON: Registrar please...

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

CHAIRPERSON: Ja.

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

DR DINTWE: Yes.

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

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

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

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

DR DINTWE: Yes.

ADV PRETORIUS SC: It goes on to say:

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

And if you go over the page, it reads:

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

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

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

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

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

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

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

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

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

change in intelligence management in 2009.”

And then two paragraphs down it says:

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

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

DR DINTWE: Yes.

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

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

sense.

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

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

10 reads:

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

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

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

“The task team agrees that the office of the

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

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

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

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

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

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

ADV PRETORIUS SC: Sure.

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

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

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

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

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

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

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

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

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

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

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

DR DINTWE: Okay, I am there yes.

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

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

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

Is that correct?

DR DINTWE: Yes, I can see that.

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

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

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

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

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

10 “One of the key concerns of the panel is the long periods of time that the IGI post has been vacant.”
And then it specifies what you have already told the Chair but it was a concern expressed by the panel.

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

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

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

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

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

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

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

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

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

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

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

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

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

CHAIRPERSON: Ja.

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

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

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

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

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

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

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

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

CHAIRPERSON: Yes, yes.

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

versus remedial measures I think that it creates serious problems.

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

DR DINTWE: Yes it was most.

CHAIRPERSON: And maybe more, but certainly those?

10 **DR DINTWE:** Yes.

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

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

CHAIRPERSON: You would make a presentation.

DR DINTWE: A presentation.

CHAIRPERSON: Which is based on your annual reports?

DR DINTWE: Yes, yes.

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

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

CHAIRPERSON: Yes.

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

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

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

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

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

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

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

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

CHAIRPERSON: You are obliged to be honest.

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

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

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

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

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

that last consideration is perhaps decisive.

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

ADV PRETORIUS SC: I did.

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

ADV PRETORIUS SC: Yes.

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

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

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

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

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

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

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

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

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

DR DINTWE: That is correct Chairperson.

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

DR DINTWE: Yes, I have seen that report.

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

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

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

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

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

ADV PRETORIUS SC: To whom did it go?

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

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

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

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

MR DINTWE: It will have been presented to Minister

Siyabonga Twele, but when Minister Mahlobo came, it was presented to him. The information that was given to me during briefing, is that it was done twice but the documentary proof that I have is that it was only done once.

So I will have like a presentation with the date, but I also have an official in the office who says that I was part and parcel of that, and I do not have a problem to come up with an affidavit to confirm that it was presented.

10 **ADV PRETORIUS SC:** Right, well perhaps you could help us in that regard. Would the former president have been briefed?

MR DINTWE: Yes, no I really have to check that Chairperson.

ADV PRETORIUS SC: Alright, do not give an answer that you cannot substantiate later.

MR DINTWE: Ja.

ADV PRETORIUS SC: Then just finally in relation to this document, at the bottom of the page the high level review
20 panel state:

“The IGI noted that there were a series of legacy issues from previous certifications that remained unaddressed. These included the following.”

And the first bullet reads:

“The involvement of the Minister of State Security and Operational Work, an administrative decision making of the SSA.”

Over the page ...[intervenes]

CHAIRPERSON: I am sorry, before you go over the page. Mr Dintwe, do you know which Minister of State Security they are referring to?

MR DINTWE: It is Minister David Mahlobo.

CHAIRPERSON: Okay.

10 **ADV PRETORIUS SC:** And then halfway down, there are a number of bullets. I am not going to read them all. Halfway down there is a bullet which reads:

“There is a culture of non-accountability in the SSA.”

Was that a concern that you know was addressed to the high level review panel?

MR DINTWE: That is correct yes, it was our concern.

ADV PRETORIUS SC: Right, and then at the bottom of that paragraph:

20 “This long list of issues that remained unaddressed includes many of the issues identified by the panel and suggests that the IGI was not being taken seriously by the SSA.”

Is that a view that you share or disagree with?

MR DINTWE: It is a view that I share, that the office was

never, and even now taken seriously and Chairperson, these are the issues that I am comfortable addressing, because they belong to prior to, or they came to the fore prior to my tenure and it will be reports that I received and so forth, but again even evidence which just shows that we have since told you that ministers for instance should not involve themselves in operational matters, but you will have incidents where the minister would have you know, was involved in those issues.

10 So those are the issues that I based on what was given to me during the briefings, but it also materialised under my own tenure.

ADV PRETORIUS SC: Okay, and then finally our team has produced a document on the status and source of the MIST document, the minimum information security standards. The source is the public service regulations published or promulgated in terms of the Public Services Act of 1994.

20 Chapter 5 of those regulations deals with electronic government regulations. Part 2 of Chapter 5 deals with information security and Part B of Part 2 deals with the minimum information security standards, and there is a section which obliges the minister in consultation with the Minister of Intelligence to issue minimum information security standards for the public service in the form of a hand book.

That was adopted by cabinet on 4 December 2996. So in summary it is a standard for minimum information security measures that any institution must put in place for sensitive or classified information in order to protect national security and its source is in regulation and is therefore binding.

Chair, if I can just hand that up. We will include it in the bundle in due course.

CHAIRPERSON: Yes. Yes, no that is fine, and then the ...
10 then the MIST itself, if one could get, I do not know whether there are different MIST's or there is this document based on what Mr Pretorius has just read there. It looks like different ministers can produce different documents of this nature under their department.

MR DINTWE: No, there is a base document.

CHAIRPERSON: Yes, yes.

MR DINTWE: Yes.

CHAIRPERSON: Which applies to ...[intervenes]

MR DINTWE: Yes, which apply to all government
20 departments.

ADV PRETORIUS SC: We will provide it Chair.

CHAIRPERSON: Oh, okay yes.

MR DINTWE: Which happened to deal with information which is sensitive in nature.

CHAIRPERSON: How thick is that document?

MR DINTWE: It is very short. I remember that it runs up to about paragraph 46 or so. It is not a thick document.

CHAIRPERSON: Yes.

MR DINTWE: Yes, at least by my standards.

ADV PRETORIUS SC: We will provide that we put it in the bundle Chair.

CHAIRPERSON: Yes.

ADV PRETORIUS SC: It is available on the internet.

CHAIRPERSON: Okay, alright. Okay. Was that your last
10 ...[intervenes]

ADV PRETORIUS SC: Yes Chair.

CHAIRPERSON: Okay. Thank you very much. We are going to end here for the day. The arrangement of course as I understand it is that you will come back tomorrow evening Dr Dintwe.

MR DINTWE: That is correct Chairperson.

CHAIRPERSON: And to be here at four o'clock, but accepting that we might only be able to start at five, but if we are able to start at four, then that would be
20 ...[intervenes]

ADV PRETORIUS SC: Chair, I am informed that the MIST document is in the legal framework document that you have. It is at tab 3.

CHAIRPERSON: Oh, okay. Okay, thank you. Okay, we are going to then adjourn. Thank you to everybody, thank

you to the staff and the technicians and everybody. Thank you to you Dr Dintwe. Thank you Mr Pretorius and your team and the investigators for making it possible for the commission to sit until this time.

Mr Pretorius, if I could see you in chambers briefly after we adjourn?

ADV PRETORIUS SC: Yes Chair.

CHAIRPERSON: We adjourn.

INQUIRY ADJOURNED TO 21 APRIL 2021