JUDICIAL COMMISSION OF INQUIRY INTO CRIMINALITY, POLITICAL INTERFERENCE AND CORRUPTION IN THE CRIMINAL JUSTICE SYSTEM

HELD AT

BRIGITTE MABANDLA JUSTICE COLLEGE

12 NOVEMBER 2026

DAY 193

PROCEEDINGS ON 12 NOVEMBER 2026

CHAIRPERSON: Good morning, Mr Chaskalson.

ADV CHASKALSON SC: Morning, Mr Chair. Morning, Commissioners.

CHAIRPERSON: Good morning, Doctor. I wanted to hear you pronounce your surname before I butcher it.

DR SIFOLO: Good morning, Chairperson. The name is Ntandazo Sifolo.

CHAIRPERSON: Sifolo.

DR SIFOLO: Yes.

CHAIRPERSON: I would have butchered it. I would probably have said Sifolo. Good morning, Doctor Sifolo.

DR SIFOLO: Good morning, Chairperson and Commissioners.

CHAIRPERSON: Thank you very much.

ADV CHASKALSON SC: Chair, you have just set me up. I wonder. Good morning, Doctor.

CHAIRPERSON: Let me, the oath, the oath. Will you be swearing or affirming, Doctor?

DR SIFOLO: I will be swearing, Chairperson.

CHAIRPERSON: Do you swear that the evidence you are going to give is the truth, the whole truth, nothing but the truth. If so, please raise your right hand and say, “So help me God”.

DR SIFOLO: So help me God.

NTANDAZO SIFOLO (duly sworn states)

CHAIRPERSON: Thank you.

EXAMINATION-IN-CHIEF: Doctor, you should have two, possibly four files in front of you. There are two that say in-camera file 1 and in-camera file 2. But what you should have in front of you is a statement file that says file 1 and an annexure file that says file 2. You have both of them?

DR SIFOLO: Yes, I confirm, sir.

ADV CHASKALSON SC: Now, we have discussed a minor typographical error to your statement. It is on page 29, paragraph 46. Can you just tell the Commission the error that needs to be changed there?

DR SIFOLO: Do we start to paragraph 49?

ADV CHASKALSON SC: 46, I think it is.

DR SIFOLO: 46.

ADV CHASKALSON SC: Page 29 in the file 1.

DR SIFOLO: All right. Thank you, Chairperson. I would like to change a minor typo, which is under paragraph 46, the last sentence. It reads as follows, Intelligence later revealed the witting or unwitting role of the IG and the investigative directorate against crime, against corruption, in frustrating the strides of, not on. That is what I would like to change there, and I apologize for the typo. Thank you very much, Chairperson.

ADV CHASKALSON SC: And then, Doctor, if you can go

down to page 32 and just confirm that it is your signature that appears as the signature of the deponent.

DR SIFOLO: Yes, I confirm.

ADV CHASKALSON SC: And subject to that correction that you have just made, you confirm the correctness of the contents of your statement.

DR SIFOLO: I confirm.

ADV CHASKALSON SC: Thank you. Now, before we get to the statement itself, there is a preliminary statement that you have made ahead of your statement, and possibly if you could just read out that preliminary statement.

DR SIFOLO: Thank you very much, Chairperson.

> "I appear before this Commission with a profound appreciation of the responsibility entrusted to it, the constitutional significance of its work, and the importance of the issues that have arisen concerning the protection of classified intelligence and the public's right to know. At the outset, Chairperson, I wish to express my sincere appreciation to yourself and the Commissioners for the frank, intellectually rigorous and constitutionally grounded manner in which the question

of media access to my anticipated testimony has been debated. I particularly appreciate that the Commission afforded the media an opportunity to advance its arguments, that those arguments were subjected to proper legal scrutiny and that the Commission sought a principled accommodation between the demands of public accountability and the imperatives of national security. In my respectful view, the significance of this engagement extends well beyond my appearance before this Commission. It raises a fundamental question about the character of our constitutional democracy. How do we preserve the openness that gives democracy its legitimacy without compromising the security that enables democracy to survive? Chairperson, I submit that this question deserves serious national reflection. I turn to the heading that the constitutional foundation of our national security. Section 198 of the Constitution of the Republic is of

particular importance to my understanding of national security. It establishes that national security must reflect the resolve of South Africans to live as equals in peace and harmony, free from fear and want, and in pursuit of a better life. It further requires that national security be pursued in compliance with the law, including international law, and that it remains the subject to the authority of Parliament and the National Executive. Chairperson, these principles are neither incidental nor merely aspirational. They constitute the constitutional foundation upon which the legitimacy of national security architecture rests. National security is therefore not the private preserve of intelligence practitioners, nor is it an instrument through which the State may insulate itself from legitimate criticism. It is a constitutional responsibility exercised in the interest of the people of South Africa. Equally, Chairperson, national security cannot be reduced to an

abstract political expression stripped of its operational meaning and the legal responsibilities that accompany it. The Constitution does not demand that the State choose between accountability and security. It demands that both be pursued within the framework of constitutional governance. I want to touch on the historic contribution of the media to our freedom Chairperson. It would be historically unjust, I must say, and constitutionally inappropriate to discuss the role of media in contemporary South Africa without acknowledging its contribution to the liberation of our country. During the darkest years of apartheid, courageous journalists, editors, photographers, and independent publications exposed the brutality of an oppressive state, documented violations of human rights, challenged official propaganda, and gave visibility to the struggles of ordinary South Africans. At considerable personal and professional risks, sections of media

helped ensure that the truth about apartheid could not be permanently concealed behind the machinery of State secrecy. The media contributed to the preservation of political consciousness, the mobilization of international solidarity, and the eventual triumph of constitutional democracy. We must never forget that the freedom of expression enjoyed today was secured through enormous sacrifices. It is precisely because of that history that I hold the institution of a free and independent media in high regard. The media must report wrongdoing. It must question public authority. It must expose corruption, incompetence, and abuse of power. It must challenge those entrusted with the security of the republic when their conduct is inconsistent with the constitution. Indeed, Chairperson, a security establishment that is entirely insulated from scrutiny risks becoming a danger to the very democracy it is mandated to protect. However, the

historical legitimacy of media freedom does not eliminate the constitutional and legal responsibility accompanying its exercise. The media's distinguished role in our liberation history should inspire an equally distinguished commitment to protecting the democratic republic that emerged from the struggle. So it is in this regard, Chairperson, that I want to make a distinction that I consider very fundamental. There is a difference between exposing wrongdoing within the intelligence services and exposing intelligence capabilities upon which the security of the republic depends. There is a difference between reporting that the state has failed in its constitutional obligation and publishing operational information that could enable hostile actors to exploit those failures. There is a difference between holding intelligence institutions accountable and inadvertently rendering those very institutions incapable of protecting the public. These distinctions are not arguments against

transparency. The arguments for responsible constitutionally informed transparency. The Protection of Information Act, as amended, remains relevant to the protection of certain categories of sensitive information, and I am glad that this matter was ventilated quite a bit during the debate about my testimony. Its provisions must, of course, be interpreted and applied consistently with the Constitution and the rights protected by the Bill of Rights. In particular, Chairperson, Section 4 addresses specific forms of unauthorized disclosure, prejudicial publication or use and unlawful retention of protected information. The possession of sensitive material, however acquired, should therefore occasion careful legal and ethical consideration. I respectfully submit that where journalists receive material that appear to contain classified operational intelligence, they should consider not only its potential newsworthiness, but also its authenticity,

provenance, legal status, and the reasonable foreseeable consequences of its disclosure. Where circumstances such as that classified information has been unlawfully removed, leaked, or distributed, there is considerable public value in investigating and reporting the possible compromise itself, including bringing credible evidence of unlawful conduct to the attention of competent oversight or investigative authorities. Chairperson, such responsible conduct need not require publication of operational contents of the material. This does not mean that every journalist is automatically obliged to identify, reveal a confidential source to the State, nor does it mean that classification by itself defeats a legitimate public interest enquiry. Questions of source protection, unlawful disclosure, and the public interest must be resolved in accordance with applicable law. Nevertheless, the public interest in knowing that national security information has been

compromised is not necessarily the same as the public interest in knowing the contents of that information. That distinction deserves far greater attention in our national discourse. A classified document may contain information about intelligence sources, methods, operational priorities, vulnerabilities, investigative strategies, or assessments of threats that have not yet materialized. Its publication may reveal more than the journalist intends to communicate. It may expose individuals who have placed their lives at risk in the service of the Republic. It may compromise investigations, enable suspects to evade detection, or provide hostile actors with an understanding of the State's capabilities and limitations and once such information enters the public domain, the consequences cannot always be reversed. A free press must never become, however unintentional, an intelligence collection platform for those who seek to undermine the Republic.

There is another dimension to this matter that warrants particular attention. Not every person who provides information to a journalist does so in a public interest. Some disclosures are motivated by genuine concerns about corruption and abuse of power. Such disclosures may serve an indispensable democratic purpose. Others may be motivated by personal grievances, institutional rivalries, attempts to obstruct investigations, criminal interests, or the deliberate manipulation of public opinion. In the intelligence environment, Chairperson, information can itself become an instrument of conflict. A malicious actor may selectively release authentic documents, remove their operational context, combine accurate information with misleading allegations, or exploit the credibility of a respected media institution to advance an undisclosed objective. The result may be that the media, without intending to do so, becomes a vehicle through which

insensitive intelligence is exposed, public confidence is manipulated, or lawful security operations are disrupted. This is not a hypothetical concern about the nature of intelligence work. It is a recognized problem associated with information manipulation, hostile influence, and the exploitation of legitimate institutions. The critical question is therefore not simple whether information is authentic or newsworthy. It is also whether its disclosure may advance the objective of those who seek to weaken the State's capacity to protect its people. Transparency must not become a vulnerability that malicious actors can deliberately exploit. Chairperson, our country has experienced public controversies in which sensitive intelligence related material has entered the public domain alongside demands for criminal accountability. Such circumstances illustrate the importance of distinguishing allegations from proven misconduct, the

recommendations of oversight bodies from judicial findings, and the legitimate pursuit of accountability from premature conclusions about criminal liability. There are circumstances in which the public disclosure of sensitive information, particularly when accompanied by calls for prosecution, may create risks for officials, witnesses, informants, and other individuals whose identity or responsibilities intersects with national security operations. I appreciate that this Commission also has in-camera testimonies for such reasons, Chairperson. Those risks must be evaluated. At the same time, Chairperson's decision to institute or discontinue prosecution belongs to the competent prosecuting authority, acting independently and in accordance with the law. It is not for public commentary, however forcefully expressed, to substitute itself for the constitutional and evidential standards governing prosecution. I recognize the importance

of independent prosecutorial judgment, including the responsibility to discontinue proceedings where their continuation is not legally or evidentially justified. We should resist the temptation to turn allegations into convictions through the court of public opinion. The protection of national security must never provide immunity for wrongdoing. Equally, the pursuit of accountability must never become a license to disregard the safety of individuals, the integrity of investigations, or the constitutional interests of the republic. Chairperson, in my second doctoral research titled "Elusive Accountability", examining the complexities of governance within the civilian intelligence services of South Africa, I examined the persistent tension between secrecy, governance, oversight and accountability in the intelligence environment. These questions bring to mind the celebrated challenge attributed to the Roman satirist, Juvenal, although others tend to attribute it to Plato or

Aristotle, *Quis custodiet ipsos custodes*, who will guard the guards themselves? The enduring importance of this question lies in its insistence that those entrusted with authority must themselves remain subject to scrutiny. For intelligence institutions, this is particularly significant because secrecy, although sometimes operationally indispensable, can also create conditions in which wrongdoing escapes detection. The existence of independent oversight institutions, parliamentary accountability, lawful investigative processes, and a vigilant media is therefore essential. Yet I submit that the question must also be understood in its broader constitutional context. If those who guard the Republic must be held accountable, then institutions exercising oversight and public scrutiny must themselves remain faithful to the Constitution. the law and the responsibilities accompanying their authority. The question is not who should be exempted from accountability.

It is how accountability can be exercised without destroying the very public interest it is intended to protect. The guardians must be accountable. Those who scrutinize the guardians must act responsible and the Republic must remain secure. These in our understanding are mutually reinforcing obligations. Now I turn to appreciation of the Commission's constitutional leadership in discussing my matter. Chairperson, I am particularly encouraged that the matter was not treated as a simplistic contest between secrecy and openness. The Commission allowed competing constitutional arguments to be advanced, examined the legal and practical implications of disclosure, and pursued a process through which material suitable for public consideration could be distinguished from material requiring continued protection. I regard this approach as meaningful contribution to the development of a more mature national understanding of

intelligence accountability. I also appreciate the participation of the media organizations that approach this matter through lawful proceedings rather than simply disregarding the concerns raised about classified information. Their intervention demonstrated the importance of public scrutiny. The Commission's engagement demonstrated the importance of constitutional adjudication and procedural fairness. My cooperation in making material available for appropriate public use should be understood in that spirit. I have not approached this Commission with the intention of withholding information necessary for its investigation. My responsibility has been to cooperate fully while ensuring that the disclosure of information entrusted to the national intelligence architecture is undertaken lawfully, responsible and with due regard to the security interest of the Republic. I submit that these obligations are entirely compatible, Chairperson. South Africa

did not struggle, in my conclusion, Chairperson, for freedom so that secrecy could replace accountability. Neither did South Africans struggle for freedom so that the institutions entrusted with protecting their democracy could be weakened through uncontrolled exposure of sensitive national security information. Our constitutional democracy requires a free media. It requires independent oversight, it requires accountable intelligence services, and it requires an effective national security architecture capable of protecting the Republic against organized crime, corruption, hostile intelligence activity, and other threats to the constitutional order. These responsibilities must not be presented as irreconcilable. I therefore appeal for a national conversation in which media freedom and national security are understood not as adversaries, but as complementary responsibilities in the service of the people. Let us defend the right to know while recognizing that there

are circumstances in which the manner of disclosure matters as much as the information itself. Let us expose corruption and unlawfulness without exposing those whose lives depend upon legitimate operational confidentiality. Let us demand accountability without inadvertently providing strategic advantage to those who seek to undermine the republic and let us ensure that the pursuit of transparency strengthens rather than diminishes the security of our constitutional democracy. For national security without accountability risks becoming an instrument of oppression, but transparency exercised without regard to its foreseeable security consequences risks becoming an instrument of national vulnerability. Neither outcome serves the people of South Africa. I thank the Commission for its considered handling of this important constitutional matter. I remain committed to assisting it in fulfilling its mandate within the framework

of the Constitution and the laws of the Republic."

I thank you, Chairperson.

ADV CHASKALSON SC: Thank you, Doctor. If we can now move to your statement proper. From pages 10 to 13, you deal with your qualifications and your experience. We do not need to repeat all of that, but is there anything in paragraphs 5 to 7, which is a very long paragraph, that you would want to emphasize or are you happy just to confirm is correct?

DR SIFOLO: No, I can just confirm that it is accurate, sir.

ADV CHASKALSON SC: Thank you.

CHAIRPERSON: So is there a reason why the statement is not flighted? And before you, I do not know if you responded to Mr Chaskalson. I just want to say that you use many acronyms. Yes, of course, when you mentioned the name concept for the first time, you will bracket the acronym, but I tell you now, when you mention it later, I have clearly forgotten what this was. I know it may be quite boring or worrisome to you, but if you could just keep saying the whole thing unless for whatever reason it is fairly clear what it means.

DR SIFOLO: I shall do, Chairperson.

CHAIRPERSON: Please. Thank you.

ADV CHASKALSON SC: At the foot of page 13, you

mentioned the position in which you currently act, which is Coordinator of Intelligence, and can you just describe to the Commission what that position entails and how you came to assume that position, essentially amplifying what you say in paragraph 8.

DR SIFOLO: Yes, thank you very much, Chairperson. Chairperson, the National Strategic Intelligence Act, 39 of 1994, establishes the National Intelligence Coordinating Committee in Section 4. The National Intelligence Coordinating Committee ...[intervenes]

CHAIRPERSON: You may use NICOC, we have come to get used to that at least.

DR SIFOLO: Okay. Okay, Chair. The NICOC, the committee is comprised of the Coordinator for Intelligence who is also the Chairperson of the committee and the Coordinator for Intelligence is appointed in terms of Section 5 of the very same act, the National Strategic Intelligence Act, and is appointed by the President and subject to the direction and supervision of the Minister. In terms of the composition, it is the Head of the Crime Intelligence, the Chief of Defence Intelligence, the Director General of the State Security Agency, the Director of the Domestic Branch of the State Security Agency, as well as the Director of the Foreign Branch of the State Security Agency. That is how the act envisages the composition.

However, the State Security Agency has undergone quite a number of restructuring phases, leading to a situation where the directors of domestic and foreign branches were done away with. So that leaves then the composition of NICOC only with the Director General of the State Security Agency. and the Crime Intelligence Head, the Chief of Defence and the Coordinator, essentially bringing four people together. Their core responsibility is to coordinate the intelligence that is supplied by the intelligence services, and that is given its mandated functions through Section 4(2) of the Strategic Act, which says that coordination of intelligence must be for use by the State or Cabinet and you must also ensure that you prioritize the intelligence for the National Intelligence Structures.

You must also provide departmental intelligence where necessary and you must compile the National Intelligence Estimate. And you do all of this, just to sum up what the Act is about. You do all of this to detect threats to national security, promote national security and protect national interest. So essentially, that is what this committee does. It is entrusted with that responsibility. I do not know if you would want me to elaborate more, but I think that will suffice, Chairperson.

ADV CHASKALSON SC: Thank you, Doctor. In your

statement, you give a bit more detail later on, and I might refer you to specific provisions. For now, I just want to follow up on a couple of points that you have just made. You made the point that the composition of NICOC is determined by Section 4(1) of the National Strategic Intelligence Act.

DR SIFOLO: Yes, sir.

ADV CHASKALSON SC: And that two of the officers who *ex officio* should be on NICOC or officers in respect of which, or officers which essentially have been disestablished, the Head of the Domestic Division of the agency and the Head of the Foreign Division of the agency, when were those, when, how long has there been no Head of either of those divisions or has that position not existed?

DR SIFOLO: It would have been in 2017.

ADV CHASKALSON SC: 2017?

DR SIFOLO: Yes, it would have been in 2017. There was a process that was undertaken. This is quite elaborated in the high-level panel review, which was investigating or maybe looking into the matters pertaining to the State Security Agency following the Zondo Commission. So what would have happened, maybe if I give a bit of a background of how the challenges would have been occasioned in terms of how we balance the NICOC composition.

In 2009, there was a proclamation, Proclamation 59

of 2009, which did away with the National Intelligence Agency, the NIA, and the South African Secret Service and amalgamated those two services into the State Security Agency. And in that, it also gave birth to the Director of the Domestic branch as well as the Director of the Foreign branch at the same level of the Director General. So it meant that in one agency you had about 3 superiors that are supposed to talk among themselves and resolve the matters of intelligence.

However, what would have been challenging at the time would be the act of, before it was amended in 2013, the National Strategic Intelligence Act, did not have the provision for the directors in the Act. It only had the provision for the Director General of the Secret Service as well as the Director General of the NIA, the National Intelligence Agency. So what it means then, effectively, you have a structure that gives a problem to the composition of a legislative entity, which is NICOC.

So that is where we must start looking into how this has been a challenge. So what then happened, especially through the insistence of a number of parliamentary questions, including the then Inspector General, Advocate Faith Radebe, may her soul rest in peace, was that you cannot have an intelligence service established through a proclamation. The Constitution in Section 209 says any

intelligence services other than the Crime Intelligence or Defence Intelligence may be established by the President and only in terms of the legislation. So a proclamation itself is not a legislation. Therefore, you need to amend your legislation and give birth to this State Security Agency. The amendment then happened as it happened in 2013 and then State Security Agency became legitimized in terms of the Constitution and the Strategic Act.

So in 2017, there was a new restructuring. It is quite elaborated in the high level review panel report, which was called Strategic Development Plan, Vision 2013. The unintended consequences of that strategic development plan was the mistake of doing away again with the Directors of the Domestic and the Foreign branch without any legislative support. So it meant that there was this institution which no longer has the requisite bodies or persons that should contribute to the work of NICOC. That is why we found ourselves in this current state.

But the important aspect as asked is that has since been ratified. There was the recent amendment, it is called the General Intelligence Laws Amendment Act, which was signed I think in 2025, 28 March, but it is not yet operational. What it envisages is that it is going to implement the recommendations of the high-level review panel by ensuring that there is a distinct domestic service

and a distinct foreign service under a DG. And in terms of the Act, those entities would be the South African Intelligence Service, which will be a foreign forecast intelligence service, and it will be under the DG, and then the South African Intelligence Agency, which will be focusing domestically under a DG as well, reminiscent of what used to be NIA and SASS. And why I am raising this, Chairperson, is that those DG's will then come back and become the NICOC members because the Act suggests that they must then form part of the NICOC members. I hope I have clarified, Chairperson.

ADV CHASKALSON SC: You have. The high level review panel report is quite emphatic on what a mistake it was to try and merge NIA and SSA into the same body. In fact, in its summary it says the amalgamation of NIA and SASS into the SSA was a monumental blunder. So the plan of the new regime of the new law, the amendment, is to separate and to go back to the position as it was before amalgamation.

DR SIFOLO: Indeed.

ADV CHASKALSON SC: Now, that law, as you say, was enacted and promulgated in March last year.

DR SIFOLO: Yes.

ADV CHASKALSON SC: Do you know why it has not been put into force? What is delaying the process?

DR SIFOLO: Chairperson, the challenge of restructuring

intelligence, if you go to the theories about the security studies and intelligence itself, they will always caution against restructuring intelligence unnecessarily because it takes a minimum of 15 years to at least get normalcy in an intelligence environment. So there has been a perpetual restructuring which now we need to ensure that there is existence of the structures, strategic structures, both domestic and foreign.

So until such structures have been approved and ratified in terms of the law, then it is, I think it will not be serving any of us to have the law that already pronounces on the structure that does not exist. So that is what is the holdup. But I must indicate that we are at an advanced stage in terms of that. I have seen what the Minister is doing. We are invited now and again as the Acting Coordinator of Intelligence to the workshops where they are trying to resolve that problem. So there is hope. The anticipation was that by now that structure would have been operational, but certain things were not happening.

As you would have known in a number of the budget speeches that the Minister would have made, there would be emphasis on how they were dealing with reforms of the OIC, for instance, and the National Intelligence Coordinating Committee, and to this extent, and as you had indicated, as the Chairperson, as the Advocate has

indicated, that deeper in my statement, I do talk about what is going on. But it is important to place it right now that the NICOC itself needed to also be given attention because since 1994, there has never been an office of the Coordinator with the identity. It has always been referred to NICOC, NICOC, whereas it was NICOC is a committee of persons, not the office of someone.

So that needed to be done and there was a structure for that which was signed in terms of the National Strategic Intelligence Act, Section 5, which gives the Minister the powers to assist in that respect. So there was something that was done. As we speak now, on the 14th of April, we launched the National Centre for Intelligence Coordination, which is essentially the office of the Coordinator with the logo and everything. And we got the structure approved in 2025, 30th of June, which almost doubled the capacity of the office of the Coordinator.

So that is part of the reforms in order to ensure that everything falls in place by the time the Act has been operationalized. Part of the reason why I am giving this a background, Chairperson, is because in the Act itself, it does talk about the structure of the coordinating environment, as well as how the budget must now be reinvested and appropriated by Parliament. So I thought I should just indicate all of that. Thank you very much,

Chairperson.

ADV CHASKALSON SC: Thank you, Doctor. There is a concern, I do not want to speak on behalf of the Commission, but it is a concern that I have about a problem of instability across the criminal justice system, and my concern in relation to the intelligence services is if you look at NICOC, there are six statutory positions in NICOC. There will be five when the new Act comes into effect. Two of those positions do not exist, so we are down to four. We know from your statement you are not permanently appointed as Coordinator, you act as Coordinator. That is three of the six positions. In relation to the Director General of the agency who is one of the remaining three, is that position occupied by permanent appointment or an acting appointment at the moment?

DR SIFOLO: It is a bit difficult to answer that question outright because our environment is quite unique, Chairperson. It may be called it is an acting incapacity appointment, but the person who is occupying that position is at the rank of the DG as it is supposed to be. So it is an acting, but we understand it to be, it may as well be permanent because it is done by the President.

CHAIRPERSON: It is done by?

DR SIFOLO: By the President, the person who ...[intervenes]

CHAIRPERSON: You mean the appointment of the Acting President?

DR SIFOLO: The appointment of a DG.

CHAIRPERSON: Of the Acting DG, I am sorry.

DR SIFOLO: The appointment of the DG is a presidential prerogative in terms of the Act.

CHAIRPERSON: But, or maybe let me hear Mr Chaskalson a little bit more.

ADV CHASKALSON SC: I take your point that this is not someone who can be removed at the whim of the Minister. It is a presidential appointment.

DR SIFOLO: Yes.

ADV CHASKALSON SC: But there is still less security of tenure for someone in an acting position whose acting appointment can be withdrawn than for someone who is in a permanent appointment who can only be removed from that appointment for cause, as it were. You are nodding. Do you agree with that ...[intervenes]

CHAIRPERSON: Please vocalize your responses, Doctor.

DR SIFOLO: Yes, Chairperson. My nodding was just to indicate that I do follow what is being asked.

CHAIRPERSON: Do you agree?

DR SIFOLO: I think I might be doing justice to the question if I just say I agree or I do not agree. I would like to unpack what this means. The context within which this

acting is happening is different.

CHAIRPERSON: Please do not be afraid of the incumbent. Just speak your mind.

DR SIFOLO: Yes, I am going there. I am going there, Chairperson. I was not even thinking about it, Chairperson. The context is a bit different because there is a clear mandate in terms of why you are going to take that particular position, and the mandate is ensure that we operationalize the Act. So you are there to ensure that there is a separation. So it is like you are going to a position that will soon not exist.

That is the background and the context that needs to be taken into consideration. And as such then, that appointment does not make you any less of a decisionmaker in terms of what needs to be done because you are signing a performance agreement that gives you the powers to do everything that is entrusted with the responsibility of that department.

CHAIRPERSON: That applies to any person who is acting, and the point you are making is that the present incumbent happens to be what, a Director General?

DR SIFOLO: Yes, Chairperson.

CHAIRPERSON: But what you say would apply even to people who are not at the level of a Director, but who are acting, and then are as good as being in that position

because of the acting capacity. So what you have just stated and which you say ameliorates the risk that Mr Chaskalson is referring to, that should apply. If there is cogency in what you say, that should apply equally to someone of a lesser rank but who is at the relevant rank purely because of the acting status or capacity. So I am not quite sure that I get your reasons.

DR SIFOLO: Perhaps I must, I do take your point, Chairperson, unreservedly so. Perhaps I must clarify one thing, that the Coordinator for Intelligence himself, which is me in this case, I am acting at a Director General level and the acting is not the one that is very much temporary. It is like a short term contract because it is prescribed to say you are going to act from the beginning of the financial year to the end of the financial year and you are going to sign a performance agreement with the Minister with these key performance areas that you must deliver on. So it is the same thing with the DG of the State Security Agency who has been given the performance agreement to do that.

Normally in other acting positions in our environment and even in the public sector, it would be you are just given some delegation and you act for a shorter period. This one is almost like a short-term contract where you are acting, knowing full well that this is about this period and these are the key performance areas that you

are expected to deal with. But I do take the point that the Chairperson has raised.

CHAIRPERSON: Thank you. Before you continue, Mr Chaskalson, you said something like two of the positions, I am paraphrasing, do not exist. Did you mean by that the positions themselves do exist, but there are no incumbents at present?

ADV CHASKALSON SC: Well, the law makes provision for two occupants of two positions, *ex officio*, to be on the NICOC.

CHAIRPERSON: Yes.

ADV CHASKALSON SC: But what I understand the position, and, Doctor, please correct me if I am wrong, those two positions no longer exist. It is not that there are not incumbents, it is that they have been removed from the structure.

CHAIRPERSON: Oh, so the people who would be there because of whatever capacity, who would then come on to these positions automatically because of the positions they hold, the positions that they would be holding no longer exist and therefore they cannot come on board.

ADV CHASKALSON SC: Well, there is no one to come on board.

CHAIRPERSON: There is, there can be, there can be nobody to come on board.

ADV CHASKALSON SC: Indeed.

CHAIRPERSON: All right. All right.

ADV KHUMALO SC: Is it then lawfully constituted, Mr Chaskalson, if that is the position under Section 4(1)? If it is supposed to be constituted by those people and those people are not there, is it lawfully constituted?

ADV CHASKALSON SC: Well, it, I mean, it is not something that I have applied my mind to and I do not, and it is an issue that will be resolved hopefully very quickly with the amendment, when the amendment comes into effect, because the effect of the amendment will be to separate the Foreign Intelligence Service from the Domestic Intelligence Service and to provide that the Heads of both of those services are *ex officio* members of NICOC and then there will be incumbents and there will be people on NICOC.

I do not, but the short answer is I cannot immediately give a view on whether there is a lawful composition or not. My broader concern, Doctor, is It does seem we are in a period of flux at the moment, or a period of transition, let me call it that, in relation to the Intelligence Services pending the implementation of the 2025 amendment.

And my concern is in that period of transition, there is instability because there are certain positions that are

not occupied, other positions that are occupied by acting appointments because the structure is going to change and you do not want, you want your permanent appointment to be in the new structure, not necessarily in the old structure. I understand it goes even further than that because if one goes down to SSA itself, I understand that the internal, obviously the internal structures of SSA are going to have to change because SSA is going to be separated into two, the current SSA is going to be separated into two new bodies with two different structures. And I understand that at present most of the leadership of the current SSA is in acting appointments as well. Is that correct?

DR SIFOLO: I think, perhaps, let us do this, Chairperson. There was a question that was put to the Advocate about the constitution of NICOC. The Act itself does give a caveat that you may co-opt certain members. And in terms of paragraph 14 of my statement, we do list a number of those individuals that would have been co-opted when we do our work so to try and ensure that we are not hamstrung by the challenges of one department. And it would not be very prudent of me, nor will it serve the Commission, to delve into the structural configurations of a particular department of which I am only responsible for the coordination of its Head.

So it may as well mean that I should be responsible

to probably respond to the questions that pertain to the internal mechanisms of Crime Intelligence as well as the Defence Intelligence and that in that manner, it does not give me the legislative mandate to do that. So I would not be able, I might know things, but those are things that are shared with me in order for me to understand if there are any challenges to the coordination that we find ourselves doing. Therefore I would not be able to whether comment if the people in positions are enacting or not because that is not my mandate and that is outside the scope of the coordination. Thank you very much, Chairperson.

ADV CHASKALSON SC: But I take your point, Doctor. I do not want to push it further. Can I ask you, you pointed at paragraph 14 to the range of Departmental Heads who have been co-opted onto NICOC. As I understand it, most of these co-options would be on an *ad hoc* basis.

DR SIFOLO: Yes.

ADV CHASKALSON SC: You are agreeing with that?

DR SIFOLO: Yes, they would be on *ad hoc* basis.

ADV CHASKALSON SC: So when you have a NICOC meeting that will concern a particular department, in those cases, that Departmental Head may be co-opted onto the meeting.

DR SIFOLO: I would elaborate this way, Chairperson, that some of these departments, Departmental Heads that are

listed here, have matters that pertain to national security in their departments, therefore, we had adopted a principle of calling NICOC principles, and we know that it is extended. So this is where we discuss a whole range of national security matters which have impact on these departments. So we have the monthly meetings with them.

But where we are very much concerned with intelligence matters, we do not invite these individuals because we are purely dealing with the issues that pertain to Intelligence. The good thing, even though you may have the directors having been removed, the DG of SSA, the State Security Agency, has got both the Domestic and the Foreign mandate because they are DDG's that report directly to him, both Domestically and Foreign. So when you bring him there, he is able to speak in a variety of fields both Foreign and Domestic. So it is not really hampering our work that much. That is how I can respond to that question. Thank you.

ADV CHASKALSON SC: Then on page 17, paragraph 17, you set up the functions of NICOC. Can you, I do not need you to read it, I mean maybe you should read it, but if you could just elaborate on what the primary functions of NICOC as set out in Section 4(2) are.

DR SIFOLO: Like I said in my summary earlier on, that the mandate of the NICOC is to coordinate the intelligence

supplied by members of National Intelligence Structures to NICOC and interpret such intelligence for use by the State and the Cabinet for the purpose of detection and identification of any threat or potential threat to the national security of the Republic and the protection and promotion of the national interest of the Republic. Coordinate and prioritize intelligence activities within the National Intelligence Structures.

This means you then have to provide national intelligence priorities to the National Intelligence Structures. Prepare and interpret intelligence estimates. So on this one, we would also like to submit that in the bunch of the documents that I submitted, I submitted National Intelligence Estimate, as well as the accompanying priorities. This is essentially talking to this point that is in the Act. Coordinate, gather, and ...[intervenes]

ADV BALOYI SC: Sorry, Doctor, can I just take you back to bullet 2 ...[intervenes]

DR SIFOLO: Yes.

ADV BALOYI SC: Where you speak about prioritizing intelligence activities. Is this, and what do you do with that? You give them to intelligence structures to do it, to operationalize, or you just inform?

DR SIFOLO: It works this way, Chairperson. Thank you very much, Commissioner. Chairperson, it works this way.

You cannot do bottom bullet 2 without bullet 1. So first you must have coordinated the intelligence that has been supplied by the members and then you must have gone through the mechanics of interpreting, weighing probabilities, possibilities and facts that are disclosed there to assess the national security environment and then you make the National Intelligence Estimate.

So once you have given the picture, then the national intelligence priority serves as a what to be done question, that now in order for us to respond to the picture that is painted by the estimate, we need to have national intelligence priorities that we are going to operationalize in our intelligence environment in order to arrest any possible threats that have been provided in the estimate. So that is how it works. But as we move on, I hope maybe we will be able to clarify in the statement in terms of what each NIE, National Intelligence Estimate said and what was the priority in terms of those areas. Thank you very much, Chairperson.

ADV CHASKALSON SC: And then can you explain what the NCIC is? I understand it has been formally established in terms of the regulations that have recently been made.

DR SIFOLO: Yes, thank you very much, Chairperson. The National Centre for Intelligence Coordination is what Advocate refers to it as NCIC. It is established as a

support structure to assist the Coordinator in the execution of his or her functions as provided in terms of Section 5(a) of the National Strategic Intelligence Act. Section 5(a) is the one that gives the Minister to do anything necessary in order to ensure that the intelligence is coordinated properly. The coordinator is responsible for the management and administration of the activities of NICOC, chairing NICOC and approving authority on all matters relating to the functions of NICOC, exercising command and control over his or her office and the National Centre for Intelligence Coordination, issuing of functional directives applicable to any matter that is necessary for the efficient management and functioning of NICOC as well as the National Centre for Intelligence Coordination. Why is this important, Chairperson? It is because under Section 5, you have the provision that says, if I may just quickly go to my Act so that I read it properly. Section 5 is about the appointment of the Coordinator. It says:

> "The President shall appoint a person as Coordinator for Intelligence. who shall, subject to the directions and supervision of the Minister, (a) manage and administer the functions of NICOC referred to in Section 4(2)."

Meaning the committee, as much as it is

established, but it is not expected to be 24-7 within the environment of NICOC, because these are the Heads of their separate entities. So the Coordinator is entrusted with that responsibility of managing the functions of the committee, meaning everything that is in the mandate of 4(2) is a responsibility of the Coordinator. Then the Coordinator needs to have an environment to be able to exercise that function. This is where the National Centre for Intelligence Coordination is then born to ensure that that mandate function is appropriately executed. Thank you very much, Chairperson.

ADV CHASKALSON SC: So is it, as it were, the coordinator's administration, the NCIC? It is the people who work under you who assist you to perform the functions of NICOC.

DR SIFOLO: I would make it this way, Chairperson, in order to provide a little clarity. In 2006, there was a legislative review which was done under the stewardship of the former Coordinator for Intelligence, who is now Ambassador ...[indistinct] and recommendations that were made there was that you need to have a distinction between that which is supposed to be the office of the Coordinator and the NICOC, which is the committee, in order to ensure that the Coordinator is not swallowed by the name NICOC, because what became the norm was that where the

Coordinator sits the premises, everyone who goes there, they would say it is NICOC, so I am going to NICOC, even though you are not going to the committee because the committee is not sitting on that particular day, but you are going to the office of the Coordinator.

So what they were trying to do in that legislative review report, they were saying you need to emulate what you have in the office of the Inspector General. You have the Inspector General, but you also have the office of the Inspector General. That is where the staff of the Inspector General is, and that is where the Inspector General does his work. So similarly to that, the National Centre for Intelligence Coordination is purely the office of the Coordinator, where the staff and personnel and all other activities relating to the function of NICOC are residing. That is how I can respond to that question. Thank you very much, Chairperson.

ADV CHASKALSON SC: Then, Doctor, you briefly describe the roles of Defence Intelligence, Crime Intelligence, the SSA, and the Joint Standing Committee. I would like us to get into detail in relation to the National Intelligence Estimates, but if there is anything that you want to emphasize in the paragraphs from 19 to 22 where you deal with Defence Intelligence, Crime Intelligence, SSA, and the Joint Standing Committee, please feel free.

DR SIFOLO: Thank you very much, Chairperson. What is important for us to understand how the mechanics of NICOC work is to go back to the Act itself. The Act has separate mandates for separate entities. So the Act directs to the services. It then talks about what the State Security Agency must do and it says you must collect, gather, correlate, analyse, and evaluate intelligence and supply that intelligence to NICOC, meaning supply that to the committee. Of course, we have now established that NICOC, the person that is in charge of management and administering the functions, is the Coordinator, therefore, it means you must supply that to the Coordinator.

And then similarly, the Crime Intelligence is still mandated, now not the Head of Crime Intelligence, the department itself is mandated to do what is necessary and supply the intelligence to NICOC. The Defence Intelligence is given the same function, Military Intelligence, Domestic and Foreign, supply that to NICOC. Then in terms of oversight, the Joint Standing Committee is the oversight body, parliamentary body, that is responsible for ensuring that we are complying in terms of our intelligence coordinating mandate.

And of course, I did touch on the issue of how the Constitution envisages the establishment of NICOC, which means, just to come to the question that was raised earlier

on, it is inconceivable in the current configuration of the Constitution that there will never be NICOC, because the Constitution itself says in Section 210 that you must have a coordinating body that must coordinate all the intelligence services of the country or of the Republic. Now what that means is that it distinguishes itself from the provisions of Section 209 which says any intelligence service may, which is discretional, may be established by the President only in terms of the law.

We read it as meaning that there could be a time where the President does not feel obligated to establish the Civilian Intelligence, but the President cannot not have the intelligence services in the country because already the Constitution has made it mandatory that the country must have the Police Intelligence and the Defence Intelligence. Therefore, when you go to Section 210, 210 then envisages that there must always be coordination of those intelligence services of the country. That is what I would like to end up on. Thank you very much, Chairperson.

ADV CHASKALSON SC: Then from paragraph 23, you speak about the National Intelligence Estimates. Can you take the Commission through paragraphs 23 to 25 and elaborate on anything that you want to elaborate as you go along?

DR SIFOLO: Thank you very much, Chairperson.

"As indicated, the coordinated intelligence is utilized to, amongst others, develop and prepare the National Intelligence Estimate as a legislated flagship document of the intelligence community. Section 4(2)(b)(ii) of the National Strategic Intelligence Act requires NICOC to prepare and interpret intelligence estimates and according to Section 4(2)(f) to make recommendations to the Cabinet on intelligence priorities.

The National Intelligence Estimate ..."

I am on paragraph 24.

"... considers and weighs the possibilities, probabilities and facts disclosed by the national intelligence structures relating to any situation and draws conclusions from such possibilities, probabilities and facts. The National Intelligence Estimate serves as a forecasting and prevention tool on threats to national security. Therefore, the National Intelligence Estimate seeks to contribute towards the protection of the people and the territorial integrity of

the Republic against threats that include acts directed at undermining the capacity of the Republic to respond."

Then on paragraph 25:

"On annual basis, the National Centre for Intelligence Coordination assists in developing and preparing the National Intelligence Estimate and the National Intelligence Priorities and accompanying Implementation Plan with strategic support of and in consultation with the National Intelligence Structures. The objective of the National Intelligence Priorities and Implementation Plan in strategic detection, identification and analysis of threats and potential threats to the national security of the Republic and is presented to the NICOC Principals for consideration."

Chairperson, I was asked to read up until paragraph 25.

ADV CHASKALSON SC: Yes.

DR SIFOLO: But I would have wanted to elaborate, but I see that my elaboration is already put in paragraph 26 in order to clarify it.

ADV CHASKALSON SC: Please go ahead.

DR SIFOLO: We have Proclamation 13 of 2020 by the President of the Republic, which established the National Security Council, and it follows, of course, the high level review. So why am I bringing this matter? It is because the National Intelligence Implementation Plan, the National Intelligence Implementation Plan, was never an issue that we considered because we were looking at the priorities, the National Intelligence Priorities.

But as soon as the National Security Council was constituted, there was wisdom from the members of the National Security Council to say if the National Intelligence Estimate is a legislated document, we need to have a mechanism of holding each other accountable, so you need to begin to think about ways of having a National Intelligence Implementation Plan.

So this is a new invention, the National Intelligence Implementation Plan. We have tried to do it, but we are still trying to get it done in the appropriate manner. It is not to say it does not exist. It exists, but how we were dealing with it was that you need to have the reporting line in terms of who is going to monitor the implementation. So in our country we have got the Department of Monitoring and Evaluation. So we did engage the Department of Monitoring and Evaluation to say how about we were to work on giving

you the National Implementation Plan only on the issues that are outside the ambit of National Intelligence Structures, reason being we already have National Intelligence Priorities which intelligence structures incorporate in their annual operational plans.

So there is already work in that. But because we have got other matters that are outside the ambit of intelligence, let us look at ways of how we can operationalize that utilizing your mechanism. So part of us trying to do that, at least this year, we even gave the National Implementation Plan to the forum of the South African Directors General so that they can have appreciation of what each portfolio is required to do.

And then we are hoping that we will get it right in terms of the Department of Monitoring and Evaluation, because it is also difficult for us from the NICOC point of view to talk about something that is not in our mandate. So we are trying to have those, how do I put it, cooperative mechanisms with other entities that can assist us to ensure that there is national security. That is all I wanted to elaborate.

ADV CHASKALSON SC: Maybe if you can jump ahead to paragraphs 29 to 31, because it seems that what you have been speaking to is really what you describe in those paragraphs.

DR SIFOLO: Yes.

ADV CHASKALSON SC: I would just ask you to give a little bit more detail. What role does NICOC itself play in this coordinated planning process with the Department of Planning, Monitoring and Evaluation?

DR SIFOLO: Would you like me to go through paragraph 29 too?

ADV CHASKALSON SC: I would, but my specific question is, I am just trying to understand how that coordinated planning takes place, how the monitoring takes place in particular.

DR SIFOLO: Essentially, this is how we are envisaging this working. One, the National Security Council serves as the ultimate body that endorses the National Intelligence Estimate. And once they have done that, they also approve the National Intelligence Priorities. And one of the recommendations they make after each approval is that the National Intelligence Estimate must go to Cabinet. So once it goes to Cabinet, it is got far-reaching implications for various portfolios that are represented by various Ministers in the Cabinet, which then leads to us having to come up with a National Implementation Plan where we say these are the recommendations that have been made in the National Intelligence Estimate.

You must have seen that in the National

Intelligence Estimate that we provided under each theme there will be recommendations and those recommendations will require certain departments that will look into the operationalization of those recommendations. So what then you do, you put those recommendations and you identify the respective departments that ought to look into that and you take that document to the Department of Monitoring and Evaluation to say you need to also look for these other recommendations as you evaluate the work of each respective department, because the Cabinet has endorsed that these recommendations indeed will form part of their planning or their working.

So this is how it works, so that instead of us going to these departments and wanting to understand if they have affected the National Intelligence Implementation Plan, we just take the Implementation Plan and give it to the Department of Monitoring and Evaluation so that they can also identify gaps. Say, for instance, if you had said it is one of the cross-cutting matters in one National Intelligence Estimate that was identified, there was a time where there were certain departments that were complaining about challenges of budget and infrastructure. So what you will do, you will then put a recommendation in terms of ensure that there is requisite infrastructure and requisite financial resources and you will then put the

Department of National Treasury as well as probably the Department of Infrastructure.

So in that respect, you send that to the national, to the monitoring and evaluation in terms of the document itself so that when they say departments, what are you doing in implementing the priorities of the Government. We align the National Intelligence Estimate, that is a point I probably forgot to mention, you align the National Intelligence Estimate to the term of the administration. So previously we had what was called medium term strategic framework, which would be 5 years.

So those priorities are then assessed by the intelligence in terms of what could possibly go wrong in the achievement of those priorities. Currently, we have got what is called the medium-term development plan. Similarly, the National Intelligence Estimate assesses what could go wrong in terms of achieving those three priorities of the national development, what we call medium-term development plan.

And then in so doing, then you provide the guidance on what needs to be done in order for those departments to assist in the achievement of those goals. So this is how we fit in the nexus. Thank you very much, Chairperson.

ADV CHASKALSON SC: Can we then go to some of those

estimates that are relevant to the subject matter of this Commission, and if we start on page 23 at paragraph 33, you start with the estimates of 2022. And maybe if you can read the extract that was included in those estimates that you have quoted in 33 and the Intelligence Priorities flowing from that that you quote in 34.

DR SIFOLO: Okay, thank you. Thank you very much, Chairperson. Chairperson, this will also assist in the earlier questions that were asked. In 2022, we had the National Intelligence Estimate. It is structured in such a way that there will also be the same setting in terms of assessing what is the situation on the ground. And in that National Intelligence Estimate, we had in page 4, there was this ...[intervenes]

ADV CHASKALSON SC: Sorry, if I can just give a cross-reference there. That is in the annexure bundle at page 10.

DR SIFOLO: Okay.

> "So a matter of concern to the national intelligence structures has been the intertwine between politics and the criminal underworld, leading to high levels of insecurity in the country. This threat became more pronounced during the local government election of 2021, where murder and intimidation in the

> name of politics threatened to become a norm. It remains the duty of national intelligence structures to assure the conditions of safety and security in order to allow a thriving economic and stable environment."

So this is the assessment that is made. So then the question would be, you have diagnosed the problem, so what? Then this is where the National Intelligence Priorities come in and they are also categorized in terms of you prioritize the priorities themselves. You will have Band 1, you will have Band 2, you will have Band 3. So Band 1 being those priorities that are critical and you must ensure that you concentrate on them. So this is what was then given as a priority for those remarks that were made there in terms of diagnosis.

> "Investigate and neutralize politically motivated crimes and killings.
>
> Investigate and neutralize killing of police officers and other law enforcement members."

So because this is a statement, the Chairperson and Commissioners might not have appreciation of how does this become operationalized. So in the actual intelligence estimate, as soon as you finish providing the

priority, you put brackets where you say which entity must be responsible for this. For instance, you are likely to say Crime Intelligence, State Security Agency or Defence Intelligence, they must all participate in ensuring that this is done. So they will put it in their operational plans and make sure that during that course of the year they are fulfilling the request of the National Intelligence Priority. Thank you very much, Chairperson.

ADV CHASKALSON SC: Maybe if you can just illustrate that in file 2 at page 11.

ADV BALOYI SC: Sorry, maybe before he does that. Doctor, is there any significance to that before us now, we have, we start your NIE's at 2022. There is nothing before that. Is there significance to it?

DR SIFOLO: I am sorry, Chairperson, I could not catch you?

ADV BALOYI SC: Is there significance to that before us and in your statement you discuss the estimate starting from 2022. You have nothing before 2022. Is there an explanation for that?

DR SIFOLO: Oh, yes, Chairperson. Thank you very much, Chairperson. The reason for that, we were given a request that confined us to the time frame of 2022 to 2025. So we were simply responding to that.

ADV BALOYI SC: Right, so it is not that the estimates

started only in 2022. It does not mean that at all.

DR SIFOLO: Not at all, Chairperson.

ADV BALOYI SC: Okay.

DR SIFOLO: From the inception of NICOC, there has always been estimates.

ADV BALOYI SC: Thank you.

DR SIFOLO: I was asked to illustrate what I am talking about in terms of the annexure file. So I am going to look at probably page, do I talk about the paginated ...[intervenes]

ADV CHASKALSON SC: Paginated, paginated 11 for 2022.

DR SIFOLO: Is it 11? Okay, let me check. Yes, 11. Yes, just at the bottom there of page 11, there is in green the word "Crime" and then in red you have "Band 1". And in Band 1, it then says, as I have said in the statement, investigate and neutralize all violent and serious crimes, crime types. Oh, sorry, this one is not in the statement, but this is one of the priorities that we had. So jumping to the one that is in the statement, it says investigate and neutralize politically motivated crimes and killings. So on bullet number 3 highlighted in yellow. And then in brackets there, you have SAPS CI, that is the Crime Intelligence, SSA and the DPCI, which is the Directorate for Priority Crime Investigation. So what it means then is that those

highlighted entities, the SAPS Crime Intelligence, as well as SSA and the DPCI, will have the responsibility of addressing that priority.

Similarly, the next priority, which talks about the killings of police officers and law enforcement, you have the responsibility being given to the police Crime Intelligence, the SSA and DPCI. So in the course of the year 2022, they would have been expected to ensure that they prioritize that matter of political killings as well as the issue of the killings of the law enforcement. So it does not surprise us, for instance, if I were to elaborate, that you will have the Crime Intelligence having a task team that will be called Political Killing Task Team because essentially it is their response to what the National Intelligence Priority has given them. We do not tell them how to do it, we just say, go do this. Thank you very much, Chairperson.

ADV CHASKALSON SC: And then who, does NICOC get involved in any monitoring? I mean, presumably the individual agencies go back, design their plans to give effect to these priorities, who is responsible for monitoring, implementation of those plans and does NICOC have any role there?

DR SIFOLO: Certainly, Chairperson. Certainly, if I may indicate that I said earlier on that we have regular meetings. So those meetings are not administrative. Those

meetings are to look into how far away with addressing the National Intelligence Priorities and what obstacles if we have and how do we address them. So they always come in terms, in a form of a report. So each and every month you are likely to have presentations from the Coordinator's office to the Principals indicating that we have got this thing we are bringing to you and it is related to the National Intelligence Priorities of that particular year.

So, just to give an illustration in terms of the monitoring, as asked by Advocate Chaskalson, if we go, if I may kindly request the Chairperson and the Commissioners to illustrate the point, there is a paginated 15 in the other bundle of annexures. In that page there is a chart that says 60 National Intelligence Priorities for 2023. And then it shows you Band 1, it gives you 27%, Band 3, 40%, Band 2, 33%. This is a sign that you, before you go to the next priority session, you must have checked how many priorities did you have under Band 1 and how many priorities did you have under Band 3 and Band 2 as such.

So the colour significance shows that you need to have as many priorities as possible under Band 3 because these are less serious threats. And you need to have very few priorities under Band 1 because these are quite serious threats. So you cannot have the country being almost like in a state of emergency. So this is how you continue to

monitor what has happened. So the more the threat is addressed, the more the threat graduates to lower bands, either to Band 2 or to Band 3. In the other National Intelligence Estimate, as we go, you will realize that there is an improvement in terms of Band 1 and Band 2 and Band 3, where most of the priorities find themselves in the Band 3, which is the state that we would always want to prevent. If it was possible for our country, we would enjoy a situation where you only have 10% of priorities under Band 1, and then Band 2, maybe you have got 20 or 30, and then under Band 3, you have got 60%.

So that is how we keep monitoring. So there is a mechanism that assists in monitoring. And when we present to the National Security Council, we also take them through the state of affairs, how did we do the previous year and what we have done this following year. So that is how we are dealing with it. Thank you very much, Chairperson.

ADV CHASKALSON SC: Now, running down from where we are all the way through to paragraph 42, 43, you take us through in your statement to the various statements in the estimates and in the priorities that relate to the subject matter of this Commission. They are at a relatively general level and I am not sure that I want you to read them all because we can read them ourselves. But there is, is there

anything that you want to emphasize specifically about these statements in the estimates and the associated priorities?

DR SIFOLO: Yes, Chairperson, thank you very much. The reason for this statements that are put here is to underscore the instructions that would have been given to the Intelligence Services based on what was being monitored. For instance, one of the issues just under paragraph 35 would be towards the end where the statement reads as follows:

> "The major contributor to the malaise has been the weakness within the state security apparatus to actively prevent, protect, and sanction those associated with malfeasance."

And then it goes on to say:

> "The involvement of law enforcement in various syndicated crimes such as cash in transit, heists, illegal mining, human smuggling, contraband, et cetera, adds impetus to the hopelessness of the public and widening trust deficit."

So then from there you then have to say, so what? This is why then you will see Crime Intelligence and SSA to a lesser extent and others including the Military Intelligence

when it is investigating and mitigating all forms of organized or syndicated criminal activities. That is a priority that is given to them and investigate and mitigate all forms of corruption. Similarly, you would have noticed that there was a particular report that was done, which is not the National Intelligence Estimate. It was done specifically for the National Security Council. When you are going for the national elections, national and provincial elections, you cannot afford to just allow such event, which is a national security event, to go without giving the Executive or the National Security Council, the scenarios in terms of how the alternative futures of the country will look like.

So there was that assessment that was done, which then also underscored that the mingling of political and criminal activity has created a concerning complex of mafia-like operations in the State. This has seen the normalization of criminal extortion at economic sites which has spread to the transport sector. Law enforcement agencies have struggled to effectively address this growing phenomenon, largely due to the corruption, infiltration and contamination of the law enforcement services.

So also there is another part that was underscored at that particular moment, that there is a growing encroachment by the private security sector on the lawful mandate of the law enforcement agencies, which has

affected the security equation in the country. Then the recommendations which were then endorsed by the Security Council, National Security Council, to say go ahead and do your work, where the recommendations that were saying strengthening of the investigative capacity directed at serious organized and commercial crime. You need to also have a dedicated approach to investigate and address the scourge of embezzlement in municipalities and state-owned companies and entities and you must expedite investigations and prosecutions relevant to the state capture ...[intervenes]

CHAIRPERSON: Sorry, just a minute. Is the recording not affected? May I during this request that you scroll very slowly. I think Mr Chaskalson said up to estimate 42. So please just continue scrolling slowly all the way to 42. You stopped around paragraph 36 and you just stopped there. Just scroll all the way to the last one and I think that goes up to, up to page 28, so that all of that is captured. Perhaps just to, it is tea time anyway, just to make sure over the tea break that we are fine. So when we come back, you will scroll from paragraph 36 all the way to the end of estimate 42, which is at page 28. Let us adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Yes, Mr Chaskalson.

ADV CHASKALSON SC: Thank you, Chair. Doctor, before we broke, you were taking us through some of the relevant extracts from the intelligence estimates that provide the context for what we are going to discuss in more detail later relating to the specific focus of this Commission. Can you pick up again where you left off?

DR SIFOLO: Thank you very much, Chairperson. I was going to touch on paragraph 39.

ADV KHUMALO SC: Before you get to 39, you were reading the recommendations in 38, and then we were interrupted. So maybe complete that, then you can go to 39.

DR SIFOLO: Thank you very much, Commissioner.

> "Based on the assessment that was made, the following recommendations were then proffered:
>
> That there must be strengthening of the investigative capacity directed at serious organised crime and organised and commercial crimes.
>
> A dedicated approach to investigate and address the scourge of embezzlement in the municipalities and state-owned companies or entities.
>
> And then expedite investigations and

> prosecutions relevant to the State capture findings.
>
> And there was a need for dedicated focus on organised crime and corruption, violence and infrastructure crime, including economic subversion."

So this was the recommendation that was put forth to the National Security Council in July 2024. 2023, I am sorry, 2023, in anticipation of what was going to happen in the 2024 elections. And then:

> "The NSC, the National Security Council, which is chaired by the President, supported the recommendations contained therein and directed that the responsible departments and government entities should embark on ensuring that the recommendations are implemented and the situation is arrested."

So this was a direct instruction from the NSC, National Security Council. Meaning they were in agreement with what has been proposed, and therefore they directed it this way. In fact, this is supposed to be almost a verbatim decision of that meeting when they were discussing this matter. Then in 2024, this, I must indicate, Chairperson, that the 2024 intelligence estimate was done before the

elections of 2024. So it was already anticipating what was going to happen. And one of the fundamental points that was raised in that 2024 National Intelligence Estimate was that:

> "Although crime and corruption persist, contamination of the criminal justice system value chain is the greatest threat to national security. Similarly, the intertwining of organised criminal underworld and politics leads to subversion of government's programme of action. Since 2019, the struggle to attain levers of political power as means of dispersing patronage, as well as blocking corruption and criminal investigations of those that are implicated in wrongdoing, has intensified."

And then there was also a warning about social media that has become a critical tool of psychological or cognitive warfare, thereby undermining the independent thinking of citizens. So, in paragraph 40, because I do not want to read everything, just those that are relevant to the work of the Commission:

> "The National Intelligence Priorities that were given then to the National

> Intelligence Structures, Crime Intelligence, this is a State Security Agency, and Defence Intelligence included, was that they must dismantle criminal networks, as well as syndicates, and swiftly act against corruption within the criminal justice value chain. They must intensify monitoring of disruptive social media and neutralise incitement of violence and unrest via all forms of communication. They must also conduct specialised and dedicated operations against all forms and types of organised, syndicated and transnational criminal activities."

So this was an undertaking that was submitted to the NSC that this is what we have prepared as priorities for the upcoming year, so that the National Intelligence Structures can do their work. Again, once the NSC approves, they approve with the proviso that you do not only give this document to us, go ahead and brief the Cabinet. The Cabinet, remember Chairperson, if I may, and Commissioners, in our discussion of the mandate of NICOC, we did highlight that you must give it for use to Cabinet and the State. So we were doing that intelligence to Cabinet

and the State.

So you go to Cabinet, then you indicate to them that this is what the NSC, the National Security Council, has approved. So it is incumbent upon the Cabinet to then ensure that they are not surprised when we are implementing this and where the National Intelligence Structures are unable to deal with the matters because of them falling within particular departments, then the Cabinet members of that particular institution might be aware that there will be an expectation. That is why the National Implementation Plan comes in.

But what is most important, Chairperson, is that in December 2024, as indicated in paragraph 41, there was a workshop that was conducted by the cluster of DGs, Directors General, of the JCPS, which is the Justice, Crime Prevention and Security cluster. And in that workshop, there was a request that the NICOC report should be presented so that there is an assessment of how far we are in terms of national security challenges and addressing them.

So within the report, it has got quite a lot of things there. Some are even redacted. Within the report, I would like to just underscore the following part, which was talking about the JCPS strides in crime prevention and promoting justice. It is under paragraph 41. It said:

> "However, the most disheartening aspect pertains to the blemish by few members of the cluster departments. Thus the contamination of the few tends to taint the image of the entire cluster. For instance, the intelligence structures are constantly perceived to be politicised, and the July 2021 expert panel report fell short of calling the structures inept. The State Capture Commission revealed the extent to which the intelligence structures were corrupt, especially SSA, and abused the intelligence structures to further sinister ends, amongst others. However, to date..."

That was then, Chairperson, I must put a disclaimer, that is work that is being done, but that was then, in 2024. Saying:

> "However, there has been no arrest of the most senior individuals who once presided over SSA, including their proxies within and outside the SSA. SAPS members are constantly reported in the mainstream and social media as prone to committing various crimes, e.g. extortion, corruption, colluding with gangsters, docket

tampering, et cetera."

It went on to say:

"Furthermore, some Correctional Service officers are regularly reported to be key enablers of criminal activities conducted inside and outside prison by incarcerated individuals, including abetting inmates to escape. The matter is also compounded by heinous crimes that tend to be committed by parolees. Of course, the Department of Home Affairs, Border Management Authority, South African Revenue Services, the South African National Defence Force and South African Police Services, amongst others, are all tainted by corruption and fraud that is prevalent within the border environment."

The report went on to say in paragraph, in the second paragraph:

"The NPA is equally implicated in wrongdoing, with a particular focus on various prosecutors, who collude with investigating officers and the accused to either tamper with the evidence or partake in doctoring of dockets, as well as

> deliberately procrastinating decision-making, enrolment of cases, albeit investigating arms, having finalised investigations. Similarly, the judges and magistrates are implicated in the corruption and related activities, including undue influence of outcomes of profile cases, bribery, fraud, as well as deliberate imposing lenient sentences to serious offenders. Although these misdemeanours are carried out by the few in the JCPS departments, the media tends to paint everyone in the department with one brush, and thereby ignoring the critical work done by cluster in crime prevention and fighting as well as in assuring of national security."

So this is a report that was given to the practitioners themselves to say, as technocrats, you need to be aware of how you look, and you need to begin to get your house in order. So there is a pervasive message that is being given that we are the weakest link as far as the criminal justice system is concerned. That is the message that was being put there. And then in 2025, under paragraph 42, Chairperson, just the last sentence there, I think it is

relevant to just indicate that:

> "The pervasive issue of corruption within the public sector and law enforcement agencies is a critical vulnerability in building a capable state. Corrupt government officials and National Intelligence Structures undermine state sovereignty, obstruct justice, and continue to impede state-building efforts. Moreover, a lack of accountability in critical institutions will lead to inefficiency and may result in increased criminality and state capture while also weakening institutional integrity."

So then, because that was the assessment made under the National Intelligence Estimate, the so-called question came again, how do you then deal with this? There came the National Intelligence Priority, which indicated as follows, Chairperson, under paragraph 43.

> "Countering transnational organised crime and disrupt criminal syndicates that constantly infiltrate the State.
>
> Disrupt cooperation between corrupt officials, politicians, and transnational crime networks involved in organised

crime and criminal activities.

Combat illegal mining and smuggling rings to prevent the infiltration of enforcement agencies that enable illicit trade in gold, platinum, and rare earth minerals, amongst others.

Counter activities of private security companies that provide protection to criminal syndicates.

Identify private security firms used as enforcement arms for corrupt politicians, criminal syndicates, and illicit business operations, amongst others."

So this is as far as the National Intelligence Estimate kept on bringing the message of what needed to be done, with the support of the National Security Council, and with the prioritisation to all those relevant structures that were given the mandate. Thank you very much, Chairperson.

ADV BALOYI SC: In an environment such as you describe in these estimates of corruption internally of the JCPS cluster, these priorities and then recommendations, their effectiveness depend on implementation by the people in that same environment where you have identified corruption, criminal conduct. What does, if anything, what does NICOC have that enables you to follow up and ensure

compliance with recommendations?

Because you state quite obvious things. You know, let us strengthen the investigative capability that we have. And failure to do so may well be a result of malfeasance, malicious, or even corrupt conduct, failure to implement that kind of recommendation. But it may well be also that there are budget issues. We have had in some cases that some of SAPS' capability, for example, is affected by budget constraints.

Does NICOC have the capacity to escalate to see through that there is a consequence to failure to comply with recommendations, and at which level do you escalate this?

DR SIFOLO: Thank you very much, Commissioner. Thank you very much, Chairperson. The reports that I alluded to earlier on, the high-level review report, in fact, let me start in the 2006 report, which was the legislative review. Then after that, there was a report, Ministerial review, on the intelligence community, which was in 2008 under the former Minister Ronnie Kasrils. Then in 2018, there was the high-level review, a panel report under Professor Mufamadi.

Then in 2021, there was a report that was issued by the expert panel led by Professors Sandy Africa. The common thread in all those reports was the issue of lack of consequence management. And what was then

recommended for NICOC was that there needs to be regulations that will operationalize that which is given in the under section, I think it is section 6. If I am allowed, Chairperson, I can just go straight to the exact... if its section 6(5).

It is the National Strategic Intelligence Act, you may not have it in front of you, Chairperson, so I am going to be your reliable source of information. It says:

> "A regulation made under this section may provide that any person who contravenes a provision thereof or fails to comply therewith shall be guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding five years."

Now, why do I read this, Chairperson? It is because since the inception of the democracy and the formation of the National Intelligence Coordinating Committee by that Strategic Act of 1994, there has never been regulations that operationalize that legislative injunction. So what it meant was that whether you give intelligence to NICOC or you do not give intelligence to NICOC, nothing will happen. So it is more of the inherent goodness of mankind. So NICOC must just accept what you give them.

So with the reports coming in and making the same

finding, that you need to have regulations, so it is only in 2024, yes, in 2024, that the Minister in the Presidency, in her capacity as the Minister that is responsible in terms of section 5(a), sought to complete the work that has been started but never gotten finalised of coming up with the regulations. There were regulations for intelligence coordination, and within those regulations, certain offences were identified.

Because to answer the question of what then would you have done in terms of monitoring, it means if there has been an intelligence failure, you will be able to see what really happened because you have the tool to take people to task. So you would not be able to do that if you did not have regulations because they will just say, we did not have intelligence. But if you knew that they had intelligence and opted not to supply that intelligence, and therefore the State was not apprised of what was supposed to have happened, and therefore you can just leave it like that, but with the regulations, you have to have that stick.

So in the regulations, there is a list of offences. We have supplied the regulations for the benefit of the Commission so that the Commission can see what improvements have been made. And because that was such an important process, I think it is also, it was advertised even by the President himself and was also in the social

media just to indicate that this was an important aspect which was a missing link before.

And I must indicate that because of those regulations and how things have happened, certain things, including the work of this Commission, would have found relevance in our environment where we were working together with the National Intelligence Structures to address the situation and ensure that the National Intelligence Priorities are implemented. Thank you very much, Chairperson.

ADV KHUMALO SC: Can I just follow-up on that?

ADV CHASKALSON SC: Can I just quickly give a cross-reference? The relevant regulation that Dr Sifolo is referring to, is at page 493 of the *in camera* bundle, not the public bundle. That is 17-2-H.

CHAIRPERSON: Can I ask my question now? Doctor, the recommendations, if you look at paragraph 38 and then you look at paragraph 40 accompanying NIPs on domestic priorities directed as follows. So those are directives and then you go to the observations in paragraph 42. Who is responsible for ensuring that those recommendations are implemented? Whose responsibility is it?

DR SIFOLO: It will depend, thank you very much, Chairperson and Commissioner, it will depend what the recommendation is, but in this case, these were National

Intelligence Priorities, so National Intelligence. So National Intelligence Priorities are within the ambit of NICOC, which is why earlier on I even tried to demonstrate the pie chart, to show that because you are addressing these priorities, this is how the picture is changing.

So the regular meetings where we present reports, there are quite a number of reports that you may have which are going to be discussed *in camera*. They are precisely part of implementation of what is happening and what was recommended. That is why there are so many reports because they are checking is the picture changing? Are people doing what they are doing? What is obstructive in their work? And then you identify the bottlenecks.

As soon as there are bottlenecks that are identified within the NICOC environment, the next step would be to look for the best remedy, which in my case would be to go to the Minister in charge and indicate that in the NICOC environment, this is the challenge that we are unable to address within our parameters. It means it needs an executive intervention and we have done that and I hope in the testimony as we move forward, it might be reflected how we have done it and what transpired out of that. Thank you very much.

ADV CHASKALSON SC: If I can just pick up on Commissioner Baloyi's question. What the regulation

essentially criminalises is a failure by any co-opted head of department to provide intelligence required by NICOC or demanded by NICOC. Is there any, beyond that obligation, is there any way that NICOC is able to monitor implementation of the recommendations that it puts out? And maybe beyond monitoring also take that one step forward to say you are supposed to do X, Y and Z, you have not done X, you must now do X.

DR SIFOLO: Thank you very much, Chairperson. Perhaps maybe one point that I would like to clarify is that the co-option aspect that Advocate Chaskalson referred to, that it is not only, that those regulations do not criminalise the co-opted departments, it is actually the heads of those entities, meaning you are then supposed to go to your department and show that we receive intelligence as the committee and failing which the coordinator will have to issue you with the necessary sanctions which might even lead to the criminalisation and opening of the case.

But of course there will be the involvement of the Inspector General in terms of investigating because NICOC does not have investigative powers but the oversight structure that does that is the Inspector General for Intelligence. Then the matter of monitoring, it must be looked at this way. The reason why there are meetings in the first place, it is because the Office of the Coordinator

would have looked at the National Intelligence Priorities in totality and what structures are supposed to do.

During the course of the year, the staff in the office then compile what we will call the tasking through departments. Where you want them, you force them to respond to the National Intelligence Priorities by requesting them to give inputs. So as soon as they give inputs, they are also likely to tell you why they are unable to give you inputs when they were addressing this matter. Then you will have the committee sitting to look at what is it that has not been done.

It makes them easy because it is a collective mechanism of ensuring that we are taking each other to account. So in that way you are able to say this is how you look, this is what you have failed to do and this is what you need to do. That is why I made reference to the point of where there is a failure or an obstruction, you must come forward and say I am unable to deliver on this particular priority. Either as it was indicated earlier on that there is an issue of budget or I am being obstructed or I have got a very contaminated system or I am understaffed.

Things like that do come out and you are able to find ways of making the message across to those who are responsible to address such matters. So there is sufficient mechanism to ensure that there is that. So this is done

monthly. And then from there you are going to have a structure that we have not spoken about which is the Secretariat of the National Security Council. In the testimony is called SANS, the South African National Security Secretariat, yes, SANS.

Now what it does, it receives the reports that would have been done under the tutelage of NICOC. And those reports get to be recommended to the NSC to say your national security threats have been looked at by the structures that are supposed to look at and this is what they have done with them. Here is the report. And if there is guidance that we seek, we get the guidance from that National Security Council.

So National Security Council meets quarterly. But there are special occasions where you say we need the National Security Council to sit, we cannot wait for their quarterly meetings. So there is also that layer which assists in terms of ensuring that the NIE and the priorities, they are forever looked at and implemented. So it is not surprising that you will find that I am going to speak about the relevant body that is dealing with this matter.

Crime Intelligence would have constantly featured in terms of dealing with the criminal networks in the reports that we will be providing to ourselves to say this is what the Crime Intelligence is experiencing, how do we assist Crime

Intelligence because the priority has been given and it must be addressed. So this is the result of monitoring. Otherwise we would not have known that there are challenges in the country, if you did not have those regular monitoring mechanisms of ensuring that the work is done before you move.

Because it is embarrassing to go to the National Security Council, you present the same picture that you presented in terms of the priorities. They have no reason for even considering your meeting invitation if they know that you are not going to bring anything new. So that is how the issue works. So the more we go to the National Security Council, the more we have confidence in our systems that we have also been given this permission by the National Security Council to go do our work.

And when we do our work, then the strategic matters that need intervention get lifted and they get to be decided upon by the National Security Council. Thank you very much, Chairperson.

ADV BALOYI SC: Can I just ask with direct reference to evidence that has come before us, just so that I am trying to understand the answer to both my question and Mr Chaskalson's question. So we have heard evidence, for example, about the constraints on the forensic laboratories, the ability or the capacity to run your ballistics systems.

We have had that evidence and constraints and our understanding, at least my understanding, is it is largely budgetary issues at play.

We have also heard evidence about the constraints of laboratories to keep exhibits. You probably know better than we do that some exhibits have gotten lost in laboratories, others have been inappropriately stored, ended up stolen. My question is, does those kind of issues serve at NICOC? Should they serve at NICOC? And what can NICOC, within its powers, do to assist resolving that?

So, for example, if it is budgetary issues, does NICOC's mandate and the way that it operates allow you to then make inputs to either the relevant department and treasury, for example? If you are told, if we are told this is all the money we have, that SAPS tells you this is all the money we have been allocated and within that we can only do so much so we cannot solve the laboratory constraints for the next five years.

Is that a matter that concerns NICOC as in it does serve before NICOC and within its powers? Does NICOC have the ability and the power to act in a way that seeks to unlock that problem?

DR SIFOLO: Thank you very much, Commissioner. Thank you, Chairperson. The manner in which you have framed the question has actually helped me to distinguish

something. We stick to the mandate. If we assess and realise that this has got the potential to threaten national security, then it invokes our involvement. There was a time when the issue of illegal mining was a problem in the country.

There were cases where there were people that were very, I think, in the Krugersdorp area. There were challenges there where there were violations of the rights of citizens and there were other areas where the safety of citizens was put in jeopardy because the illegal mining gangs are fighting among themselves. And the directive then was that perhaps it is about time that we have a plan of how to address this.

So it was given to the National Intelligence Coordinating Committee, NICOC. And in driving that plan, what one was expected to do was to get constraints from various departments that have been made to participate in this. Whether it is DMRE, whether it is, whether it is the police themselves, the Border Management Authority, because quite a number of those were involved who were also not from the country, whether it is, what was the other one, human settlement, for instance.

So you bring all those departments together, because the illegal mining was elevated to a national security problem. And the issue of budget then came. It is

when in the planning, as you are coordinating the plan, you then want to understand how much would you need for you to get this. Then they gave their aspirations. Fortunately, I was the person who was coordinating that plan at the time.

And it is then during that coordination that you then have to provide a recommendation, a recommendation that says National Treasury does not have money, but we do have an account that is called Criminal Assets Recovery Account. So why do we not fight this scourge with the same account that has got some funds which come from the criminals? So that is what was done.

So you would have had probably issues of a specific billion that was set aside for the fight against illegal mining. There were buses that were even bought for Home Affairs during that time. And there were even vehicles and certain equipment that was bought for the SAPS during that time. And all of that came out of a coordinated plan which had been elevated to a national security, and then NICOC was given that responsibility of implementing, but of coordinating, not implementing, of coordinating.

Then when it comes to implementation, there is that structure which became very active and we must always acknowledge its work because it was even the structure that was busy with the elections now. It is called the NATJOINTS, the National Joint Intelligence Operations and

Security Structures. So that is what it is, NATJOINTS. So it is a body that becomes operations. It is an amalgamation of quite a number of entities, but led by SAPS, the defence, and SSA.

So then they go on with operations. Ours is just at a strategic level and unlock where there is a need. So the illegal mining is one, but an example of that. The other example, we would have participated in the National Anti-Corruption Strategy. If you check at the back there, you will find that there was a lot of NICOC that was doing a lot of work in terms of that National Anti-Corruption Strategy.

So everything that is laid there also comes from the input of national security aspect in terms of the anti-corruption. So we do have those activities that we embark on. Thank you very much, Chairperson.

ADV CHASKALSON SC: Doctor, we are now going to get to some very specific briefings that you gave to the Executive in relation to matters that are the subject matter of this Commission, which is the infiltration of the criminal justice system by organised crime. You address this topic from paragraph 44 of your statement, maybe if you could read paragraph 44, then I am going to have a series of follow-up questions.

DR SIFOLO: Thank you very much, Chairperson. Paragraph 44 reads as follows:

> "Apart from the NIEs, there were some reports on matters for organised criminal networks and infiltration of the criminal justice system, that served as basis for verbal briefing to the President prior to the July 6, 2025, media briefing. Particularly on 30 June 2025, as well as post the establishment of the Commission. Verbal briefings to the President, were approved by the Minister in the Presidency, Ms Khumbudzo Ntshavheni, following her principled position of recusing herself when it comes to briefing the President on intelligence matters that may implicate her Cabinet colleagues or their portfolios."

I must clarify two things here, Chairperson. That the scope within which one was required to respond was up to 2025. So when I say post-Commission, I am talking about a briefing that would have occurred in 2026. But it is not within the scope. So you would have had another verbal briefing because you cannot just keep seeing the President any time. You only get an appointment like any other person.

So we got an appointment on the 6th of July. We

went as the committee. We briefed the President. And then we also got an appointment I think sometime this year. And we then had a briefing. But it falls outside the scope of what I was given. So that is why I did not talk about it. And then the issue of the principal position where the colleagues may be implicated. Sometimes the briefings are quite sensitive.

And with the history of how intelligence has been perceived, it makes sense to us when a Minister says, I have seen the report, but I am not going to brief the President on that, I am giving you permission as the committee to go yourselves and brief the President because you are likely to even have answers to the follow-ups that may come. I just see this thing and for me it might just implicate colleagues and tomorrow it might look like I used the powers that I have and the intelligence reports that are at my disposal to address a matter with a colleague in Cabinet.

So it is always better that you go directly to the Head of State as a committee, not as a fall. So we went as a committee and we then briefed in that manner. Thank you very much, Chairperson.

ADV CHASKALSON SC: Now, Doctor, the reports themselves in Annexure FR are not going to be canvassed in open session. I do not want to get into details of the

reports, but I need to just clarify. The reports themselves, were they provided by NICOC to the Minister or to the President?

DR SIFOLO: I wonder if you can repeat, sir?

ADV CHASKALSON SC: The reports, the intelligence briefs, the written intelligence briefs.

DR SIFOLO: Yes.

ADV CHASKALSON SC: Did NICOC give them to the Minister or to the President?

DR SIFOLO: We must go back to the questions that were asked, Chairperson, through you, the questions that were asked in terms of how do we hold each other accountable. The reports that you have in your disposal, quite a number of them would be reports that we will see as NICOC, because they would have provided intelligence to the Office of the Coordinator.

The Office of the Coordinator then compiles the picture, because what comes from Defence Intelligence may not be the same as what comes from Crime Intelligence or from the State Security Agency. So they would have submitted various reports to our custody. What we will do is to synthesise and tease out matters to bring a picture. Then we will call each other, let us come, let us have a meeting. Let us look at what is happening. This is the report, this is what we have.

So those reports, if there is no strategic decision that is required, there is no need for those reports to go to the Executive, either the President or the Minister, because it is within us. So we have been told that we have done, we must go to our work, we are still responding to the National Intelligence Priorities, we will brief the NSC as and when the time comes. It must be indicated, Chairperson, that the Act itself does not give NICOC, the committee, the leeway to just go and brief the President anyhow.

So there is an indication and an envisaged factor where it says SSA shall brief the President. There is only on counterintelligence matters. So it is clear there, but the NICOC has got a responsibility to the Cabinet and the State. Now, in an exceptional circumstance, that is when you will then be directed by the Minister that this does not even need for you to go to Cabinet. You can go to the President, reason being section 5(a) allows the Minister to make everything possible to ensure that we are able to coordinate intelligence.

And also, the coordinator is under the supervision and direction of the Minister. So that then makes sense when some of the reports, if they do not carry any other, what you call, any other strategic direction that is required at the top level, they need not to go. But there are those, if I may come back to the question, there are those reports

that would have formed, as I say in the statement, a verbal briefing. That is, we sit together, we say, this is what is at our disposal. Let us go and brief the President about what is happening.

So that is what we do with those reports. That is the answer, Advocate. Thank you very much.

ADV CHASKALSON SC: But we see on some of the reports a distribution list, which refers to principals that, well, let me not get this wrong. It refers to, I am just looking at one randomly, obviously this is not a public document. One copy of this intelligence brief went to the coordinator, one went to NICOC principals, and one went to NICOC file. And it says client distribution list. So would that report not have gone to anyone in the Executive or to the Minister, if that is what the distribution list says?

DR SIFOLO: Yes, if the report does not have a specific distribution list, it will not. I would, through the Chairperson, request that we go to the 2023 report, which was the scenarios for the upcoming national and provincial elections. And if you go through that distribution list, through the Chairperson, I am not instructing the Advocate. If we go to that report, which talks about alternative futures for South Africa, it has a distribution list. And that distribution list is as it is. And those individuals that are there are the individuals. And it is not a problem, you can

mention the individuals that are there.

ADV CHASKALSON SC: Sorry, I do not have it readily to hand, so I will do that in due course.

DR SIFOLO: Can I assist you with it, Chairperson?

ADV CHASKALSON SC: I think it is going to be A17 of the annexure bundle.

DR SIFOLO: It is in the items that I have here. It is Annexure C2. It is titled NICOC Stability Assessment Scenarios Alternative Futures for South Africa, dated 19 July 2023. It should be on page 17 to 31, under Annexure C1. I do not know if...

ADV CHASKALSON SC: Page 31 is where the client distribution list...

DR SIFOLO: Oh, we do not have the distribution list in there.

ADV CHASKALSON SC: Page 31 is the distribution list.

DR SIFOLO: Page?

ADV CHASKALSON SC: 31.

DR SIFOLO: 31, paginated 31.

ADV CHASKALSON SC: Paginated 31.

DR SIFOLO: Thank you. I am learning to navigate this. There is the distribution list. The distribution, the client distribution list there, Chairperson, one is the President of the Republic, Deputy President of the Republic, and the NSC members. The NSC members are listed in my

statement in terms of which departments are there.

Then the SANS members means the South African National Security Secretariat members. And then NICOC file copy. So it did go to those individuals because it was intended to brief those individuals. So that is where... And there is a decision that was taken. I did allude to it, that it directed that appropriate steps must be taken in order to ensure that the situation is arrested. Thank you very much.

ADV BALOYI SC: It is a kind of follow-up, if you like. And it is just trying to understand what safeguards – it is a safeguards question, really. What safeguards are there? You, in that paragraph 44, you speak about the Minister accusing herself from the matter and then directing you to, from having to brief the President, and directing you to rather brief the President directly.

What is in place, if anything, to counter the possibility where you have submitted your report to the Minister, she has seen the report, he, she sees the report and sits on it. Does not give you permission to go report to the, go brief the President. Gets the report and sits on it because of an interest that is personal to her. Maybe because she does not want to confront or to have her Cabinet colleague confronted with this or for that matter, simply does not want you or the relevant structures to deal with what is in that report.

Is there anything in place by way of safeguards that protects against that and that would enable you to, in any event, escalate this report to the next appropriate authority?

DR SIFOLO: Thank you very much, Chairperson. Yes, indeed there is. If I may go back to my introduction of how we are layered, there is the National Security Council quarterly meetings. So a matter that is not reported directly to the President but to the Minister will find itself featuring in the report that will be given during that National Security Council briefing if there was a matter that was worth indicating.

Because not all intelligence reports require the executive decision. And those that require the executive decision, say for instance, it was a matter that could have been counterintelligence. If that matter was counterintelligence, definitely NICOC will ask the coordinator to say, you have given me this report, because some of these reports are supposed to be counterintelligence anyway. So if it says you give to the President, in fact I must go to the Act so that it is clear.

It can be a bit complicated even for me to explain, Chairperson. The Strategic Act, the National Strategic Act 39 of 1994, under section 2(a), it says:

"It shall be the function of the intelligence

to fulfil the national counterintelligence responsibility and for this purpose to conduct and coordinate counterintelligence and to gather, correlate, evaluate, analyse and interpret information regarding counterintelligence in order to:

[i.] Identify any threat or potential threat to the security of the Republic or its people.

[ii.] Inform the President of any such threat."

And then from there, we just skip, we run to the same Roman figure, what you call, line, we will find Roman figure 5. Roman figure 5:

"Supply intelligence relating to National Strategic Intelligence to NICOC."

So this then means that by the time it even reaches you, there may have been important intelligence that was dispatched to the President by the entity that is directed. So that is why we do not really have a problem when we do not get to brief the President alone, but we get comfort to brief the President during the NSC and the Cabinet because we know that our Act does not explicitly put us to a position where we go and brief the President, unless the Minister

feels so. That is how we deal with it, Commissioner, thank you.

ADV CHASKALSON SC: I am still trying to get clarity here because if we, I had assumed that all of these intelligence briefs that we have seen were documents that were provided either to the Minister or to the President, but you are saying that is not necessarily the case.

DR SIFOLO: If I may be clear, that is not always the case. I am not saying that is not necessarily the case. That is not always the case. Within the reports that I have supplied, there will be those that would have been there and there will be those that would not have gone up to there unless there was really a need for strategic intervention. Why am I saying that?

One would ask, you have already gone to the National Security Council. You have already shown them what you are going to do in terms of priorities. Now it is counterproductive for you to go and complain to the President and say I am unable to do my work. So you must first do your work. Go only there in order to say we are winning the battle but we have got this obstruction or there is something major that is going to happen.

For instance, if we look at the events prior to the 6th of July, there was something combustible that was coming to the country and there was no way you would not

brief the President about what was coming to the country. So that is why you find that on the 30th of June, we were given an audience and we met the President and we briefed the President as a committee.

The significance of that is that it was after certain members of Crime Intelligence had been arrested and we knew the reasons why and we had the intelligence that was going to be of importance for the Head of State to know that there is this. So do not be surprised when there is this domino effect in the country. It would have been because of what we know at our disposal. So that is a critical aspect of what happens.

So you will have now and again matters of that nature. Also, it is not always the effect that you will go to the Minister with the reports. Sometimes you will brief the Minister on the, verbally on something. Sometimes you will just give the Minister one liner that, do not worry, the matter is receiving attention. Why am I bringing this to the Commission?

The reports of 2008 as well as the reports of 2018, it is very interesting because it is like 10 years apart, gave the same finding about the Ministers that the Ministers of Intelligence tended to find themselves in an operational space. So you need to be very circumspect not to unwittingly find yourself giving the Minister the reason to

embark in an operational space. So if something is operational, you would not need to brief the Minister because intelligence is not evidence.

And you do not know what would happen to that executive authority if you have given them information that is not complete and you find that the picture changes. You will have to go back to the executive authority and say, you may have acted prematurely on the information I gave you, on the intelligence, I must be specific, on the intelligence I gave you. I have since collaborated with others and even got information maybe from across the borders of the country and realised that that which I was unable to find, I have found and the picture is actually different.

So we had also to take that responsible position of not always giving the Minister intelligence that is still at operational stage. That is why we would say, let us meet, let us give you the report, this is what your information is saying, it is now intelligence in this way and that way, what do we do? Then we work among ourselves before we can go and make a crisis call to the Head of State or the Minister.

That is the rationale behind all of that. And this rationale is actually based on the findings of those various reports that Ministers found themselves. And it is not because Ministers would have said, I want to be in

operations. It is because we would have inadvertently given the Minister briefings that were not necessarily strategic, but were more tactical in nature. And then you get guidance maybe saying, you need to call so and so to do A, B, C and Z. Now the Minister is operational. Thank you very much, Chairperson.

ADV CHASKALSON SC: Last, well not last, second to last question on this front. There are some reports that end with a conclusion that says NICOC will continuously share the intelligence reports with the relevant clients. Now presumably in respect of those reports, the reports get shared either with the President or the Minister. And if I understand you correctly, the first port of call is the Minister. But at a later stage the Minister said she wanted to recuse herself and you then got an audience with the President on the 30th of June 2025. Is that correct?

DR SIFOLO: May I clarify?

ADV CHASKALSON SC: Certainly.

DR SIFOLO: The first point of call is not the Minister. The first point of call is the Coordinator and the Committee. Because this intelligence would have come from the intelligence services first before it even goes to the Minister. So what you do with the intelligence might not always need the intervention of the Minister. It might be a question of saying we have put our heads together. You

Defence Intelligence have brought a situation of this nature. You Crime Intelligence have brought a situation.

In fact if you look at paragraph 46, I tried to elaborate a situation of what the committee did. That had nothing to do with the President or the Minister. But the only thing that was given to the Minister, the Minister did not say coordinate this. We decided to do that. But the only thing that led the Minister to be called was because we were seeing an obstruction and we requested the Minister's intervention.

But we did not give the Minister the operational reports. We just requested that Minister we have got this challenge and we would request that you intervene on our behalf because we are busy with something that is very critical and you shall be briefed when we believe that we have finalised the cooking of whatever we are cooking. And I hope we will get to that point of showing what then transpired when we embarked on that. Thank you very much, Chairperson.

ADV CHASKALSON SC: We certainly will. But I still need clarity because we see the statement NICOC will continuously share the intelligence reports with the relevant clients in several of these reports. Does that mean that where that statement appears in a report, the report was one of the reports that was shared with the Minister?

DR SIFOLO: It would depend. It would depend, Chairperson, in terms of who the client at that time of determination was. So we will then give that statement in terms of NICOC will continue. Where you might have a challenge, I think I see what might be challenging to the evidence leader.

In the course of us dealing with the challenge that we had, we had to be innovative. One of the things that we had to protect was who the report has gone to. Because we were beginning to see that we were fighting a very insidious challenge here. So you needed to even conceal the distribution list. So that is why some of the reports that we have do not have the distribution list, but they have that statement.

So in our disposal, in our custody, you will find that we have the distribution list. We know at that particular moment who the client might have been. So that statement that says we will continue, we will continue indeed. But we shielded this because we had a serious problem of compromise. When we talk about being infiltrated as the criminal justice system, you also need to change your methods, change your ways, and conceal certain challenges, certain strategies that you may employ in regular operations.

So I think I understand where the problem must be.

And maybe one might even unpack it in the *in camera* session. Thank you very much.

ADV CHASKALSON SC: Let us then for now move on to your paragraphs 45 and 46. Starting maybe with 45. And maybe if you could read 45, 46, and elaborate.

DR SIFOLO: Thank you very much, Chairperson. Paragraph 45 reads as follows:

> "Developments relating to the infiltration of the criminal justice system by criminal syndicates were often presented by intelligence structures in a fragmented, piecemeal manner, manifesting across disparate threat areas, including kidnappings, targeted killings, drug trafficking, extortion, gun running. We also had the cash-in-transit heist, among others. This required analysis to synthesise the information in order to form a coherent picture."

Paragraph 46:

> "It is against this backdrop that in February 2025, NICOC decided to coordinate efforts on the South African Police Service Crime Intelligence, the Defence Intelligence and SSA in

addressing the priority of decontaminating the criminal justice system. The Minister was duly informed of the decision of NICOC, including the request then to implore the Inspector General of Intelligence to postpone oversight investigations on active and ongoing operations until such time that the project is concluded. However, the Inspector General of Intelligence did not accede to NICOC's request that had been conveyed by the Minister on the 11th of February 2025. Intelligence later revealed the witting or unwitting role of the Inspector General and the Investigating Directorate against Crime, IDAC, in frustrating the strides of the intelligence services in addressing the priority of decontamination of the criminal justice system."

So here, the point that we would want to drive home is that having received these different reports, we look at what each entity was bringing and we said as the NICOC principals to say what is it that the picture is telling us. We said the picture is telling us that there is a need to decontaminate the criminal justice system because you are

bringing various intelligence reports that point to the enemy within. So let us look into ways of dealing with that.

Then we got a response from the Crime Intelligence. In fact, even the State Security Agency had a similar concern and the Defence Intelligence Agency, they had a similar concern. But what was more pressing at the time was that we were questioning Crime Intelligence as to how far are they with the project of ensuring that we are dealing with this. I understand it may have been ventilated here as the GCI Ops project.

So in their response was that we have got institutional challenges. We are sitting with letters and requests that want us not only to subject ourselves to oversight but also to surrender the operations that are ongoing for investigation and scrutiny, which then we know that in the situation where we are, we are afraid that they could be compromised.

The question that was put by the NICOC principals to the Crime Intelligence was that in the project is there anything that is malicious, that is warranting oversight, or it is the project that we know about, including certain matters that needed to be done for the intelligence community at large. So they indicated that no, you will not find anything. Is the project going to be subjected to oversight when it is done? Yes, we will provide everything, we will surrender

everything, even the finances.

All right, therefore it is incumbent upon us to protect the project because it is a national security aspect that we are trying to deal with. So we will request the Minister to go to the Inspector General and request the deferment of oversight on a particular project, not everything. Crime Intelligence will surrender everything that you can, but on this one we cannot afford to compromise the operations by providing it to a scrutiny that we do not think it is relevant now.

So that is what we did with this one, but unfortunately there is a letter that shows that that request was not acceded to. We have supplied the letter, in fact we have even supplied the letter of the Minister that was sent to the Inspector General.

ADV CHASKALSON SC: Sorry to interrupt because we will get there.

DR SIFOLO: Okay.

ADV CHASKALSON SC: But I think the first point to get to is the NICOC meeting of 11 February. We are not going to flight it, the minute is one of the documents that has been declassified for being referred to here, but not being displayed here. Now that is at page 60 of the annexure bundle.

DR SIFOLO: I am there, Chairperson.

ADV CHASKALSON SC: Now just to clarify, you point out in your statement that you became acting coordinator on the 14th of April 2025, so this was before you were the acting coordinator, but you nonetheless attended this meeting and the minutes record that you are present as the scribe, a less auspicious capacity, but you can speak to what happened at that meeting, probably better than anybody else because you were actually taking the notes.

So there is reference to the project which you have correctly pointed out is the project that has been referred to in this Commission as the GCI Ops project. And in the decision column, the first decision taken by the meeting is that NICOC, under the direction of the coordinator, will be seized with the coordination of the project until such time that it is finalised. What did that mean?

DR SIFOLO: Chairperson, I think it will be appropriate for me to be very much awake with how I respond to this question, because ...[intervenes]

ADV CHASKALSON SC: Sorry doctor, if there is an answer that is more appropriate to a closed session, you must always say so and motivate that.

DR SIFOLO: No, there is an answer and there will be examples that will be given, but in a closed session, I would not want to divulge what was the coordination entailing. If I am allowed, thank you. In fact, if I may, it is more at the

heart of why the project then ended up becoming successful. Thank you.

ADV CHASKALSON SC: Then there is...

ADV BALOYI SC: Can I just ask – if my question invokes the same kind of answer that you have given, I am happy to leave it. In general terms, without being specific to this project, if considering NICOC's mandate, if a decision such as this is made on a project that NICOC would coordinate, would play the role of coordinating, is that, strictly speaking, easily within the mandate of NICOC? Does it sit comfortably? And in general terms, what would it entail?

DR SIFOLO: Thank you very much, Chairperson, thank you very much, Commissioner. The mandate is within, because the mandate of protecting and promoting national security is a NICOC mandate. So the project was elevated to a national security status, bearing in mind that it has been raised even within the National Security Council and other matters.

So it meant that there needed to be that protection. So it was part of protecting the national interest and protecting national security. So the operational part of it was not NICOC. But when we go to the other side, you may get to understand how many role players would have been there. But the coordination of the project itself was not coordinating the operations, but the strategic direction and

guidance and protection of national security. Thank you. But I will elaborate.

ADV BALOYI SC: Ja, I was about to say, hopefully, in the other forum.

DR SIFOLO: Yes.

ADV BALOYI SC: I hear what you are saying. Thank you.

DR SIFOLO: I will and I am sorry that I might not satisfy the South African public, but this is one of those matters you would want to at least not expose unnecessarily. Thank you.

ADV BALOYI SC: Thank you.

ADV CHASKALSON SC: Then the second decision is for the Chairperson to urgently brief the Minister in the Presidency on the resolution of NICOC. And we know that that was done because we saw that the Minister acted on it with her letter I think on the same, very same day.

DR SIFOLO: Yes.

ADV CHASKALSON SC: The third says:

> "It is resolved that the Chairperson will ensure that the Minister and the President are collectively briefed on the progress regarding the project as and when deemed necessary."

And that presumably was already, was also implemented.

DR SIFOLO: That is, Chairperson, if I may respond, sorry

to just respond without recognising the presence of the Chair. That is the reason why there was the briefing of 30th June. It is because we had taken that resolution. That is why we had to go then to the Minister and say we would want to brief the President, but we would also want to brief you if you want to brief the President on our behalf. Then she gave us a go ahead that leave me away, leave me out of it, go yourselves and brief the President, it is the decision you took. Thank you very much, Chairperson.

ADV CHASKALSON SC: So the first briefing to the President was the 30th of June.

DR SIFOLO: Yes. Thank you very much.

ADV CHASKALSON SC: If we then go to page 63, again we will not flight the document. This is the letter that the Minister sent to the Inspector General on the 11th of February. And she refers to the project having been elevated by the NICOC principals to a NICOC level in line with the provisions of the NSIA. Mentions that the project file has been requested by the Inspector General with a deadline of 11 February.

And says that she has informed NICOC that she will communicate with you, namely the Inspector General:

> "...the need for your office to extend the duration of your investigation and allow work on the project to be concluded

> before the project file can be submitted to you. I wish to extend my sincere appreciation for your continued support and understanding."

Then the following day the Inspector General responds. That is on page 64. He writes back to the Minister referring to the letter of 11 February and says he was:

> "...requested by the Minister of Police to investigate amongst others..."

And he identifies the acquisition of a property by Crime Intelligence. And he says he appreciates the correspondence and advises that his office:

> "...is in communication with the Minister of Police and has advised that Minister of recent developments, notably the response from the Divisional Commissioner of Crime Intelligence, the National Commissioner, as well as yourself. Furthermore, the National Commissioner and myself have agreed to meet on 15 February to address pertinent issues regarding the matter. It is trusted that you find this in order."

Was this letter made available to NICOC when the Minister received it? I mean, were you aware of this response from

the Inspector General?

DR SIFOLO: Chairperson, yes, we were aware because we did communicate to the Minister that we requested your intervention with the Inspector General. What was the response? Then we were given the letter that this was the response and we looked at it from the point of view of what it meant. And subsequent to that we had a meeting with the National Commissioner, General Masemola at the time, to understand if the meeting that was spoken of, of the 15th of February did take place and what would have been the outcome. And the rest might be ventilated in the other platform. But there are certain matters that we would like to share in the public in terms of what then transpired after that. Thank you very much, Chairperson.

ADV CHASKALSON SC: Well, what then transpired is reflected in a report that NICOC produced ultimately on the 25th of May, if I am correct, it is at page 66, is that correct? Does that report summarise what followed this exchange with the request to defer?

DR SIFOLO: Yes, I am sorry to interject.

ADV CHASKALSON SC: Not a problem.

DR SIFOLO: But I would need to clarify first before the report to indicate that already at that particular moment, the understanding was that the operations are not part of what the Inspector General should be doing. It is the oversight

and the compliance with the law. So it then means that the project continued without having been handed to the Inspector General. So it must be clear that the Inspector General was never given the project. So that is the part that I wanted to clarify.

ADV CHASKALSON SC: He was never given the project file?

DR SIFOLO: No, he was not given the project file.

ADV CHASKALSON SC: Which essentially would be the investigation file of the GCI Ops project.

ADV CHASKALSON SC: Yes, yes.

ADV CHASKALSON SC: What broadly did the Inspector General do?

DR SIFOLO: Sorry?

ADV CHASKALSON SC: What broadly did the Inspector General do in that respect? Did the Inspector General come back to NICOC and say, well, let us take it step by step, did the Inspector General ever come back to NICOC and say, I have seen your request for this matter to be held over until the operation is concluded, but I do not accept it, give me the operation file?

DR SIFOLO: Chairperson, thank you. The meeting of 11 February 2025, I was the Programme Manager for Domestic Intelligence within the NCIC environment. At the time, the coordinator was Ambassador Msimang. So at no stage, we

had a meeting that was called by him and for me to take the record of where we were going to engage the IGI. And two months later, I became the acting coordinator and the IGI never reached out to me to indicate that there is this that I was looking for, but you never gave me the opportunity to explain myself what is it that I wanted.

So I must indicate that this is part of the reason why we then had to come up with this report, because we started looking why, what would make somebody not to then come back to you and request the file when you have made it – we sit in the same environment, you can walk across. So you could have just gone across and asked, but it did not happen. But we then later on discovered that there could be other things that might lead to the reason why it did not happen.

So the briefing of 25 May is premised on that. Thank you very much, Chairperson.

ADV CHASKALSON SC: Well, let us go back before May. The IGI reported to the Minister on the 24th of April. And that...

ADV KHUMALO SC: Sorry, which Minister?

ADV CHASKALSON SC: The Minister of Police, not the Minister of Intelligence. And that document, the covering, well extracts from that report are at page 105 of the annexure bundle. And broadly, what did the IGI's report

say? If you want to take us, if you want to highlight.

DR SIFOLO: Okay. If you can just bear with me, I am looking for a certain clue in terms of November. We, at first, were not aware of what was going on. And then on the 23rd of April, the Inspector General signed a Memorandum of Understanding with the IPID, the Independent Police, is it Investigative Directorate? Yes. And after that, the memorandum was kept classified.

We can only assume, we do not know the reasons, we can only assume that part of the reason for it to be kept classified because the Sixth Parliament had requested that the IGNORE must not enter into a Memorandum of Understanding with IPID. The reasons are very obvious. These are different entities and the oversight is different. So it means if you wanted to have a Memorandum of Understanding with IPID, you must also inform the structures that supply intelligence to you that I am going to also share this intelligence with a third party.

So without even your knowledge or without even the knowledge of the JSCI, the criticality of that, Chairperson, is that the structures will be aware of what information to share with you when you are going to share it with other parties, to avoid compromise. So the IGI then assigned this Memorandum of Understanding and then in retrospect ...[intervenes]

ADV CHASKALSON SC: Sorry, maybe we should display it. It is at page 118.

DR SIFOLO: 118.

ADV CHASKALSON SC: And if we go to 126, we see it was signed on the 23rd of April.

DR SIFOLO: Yes. I hope it is flighted. Yes, this is the Memorandum of Understanding that was signed. And as soon as the Memorandum of Understanding was signed, then the following day, which is the 24th of May, I mean the 24th of April, that is when the report of the IG was then submitted to the Minister of Police. So the IG wrote a letter to the Minister of Police and indicated that he has finalised the investigation into whatever that the Minister would have tasked him to do. It is under 105, paginated 105. Just towards the end, the paragraph 3, it says:

> "Given the above, I wish to apprise the Minister that we have concluded our investigation and enclosed herewith is a report containing findings mentioned in below for a range of acts of misconduct perpetrated by..."

The detail is not very much important. But what is important is the date of the completion.

ADV CHASKALSON SC: Can I just clarify? This report of the IGI, it was in the context of this report that the IGI had

sought the operation file or this investigation, not this report. In context of this investigation that led to this report that the IGI had sought the operation file for the GCI Ops project.

DR SIFOLO: Yes, it is correct, Chairperson.

ADV CHASKALSON SC: And I am sorry to jump around again, but I understood you to say that the MOU between IPID and the IGI was not publicised.

DR SIFOLO: No, it is not publicised, Chairperson, I can confirm.

ADV CHASKALSON SC: But there seems to have been a signing ceremony, if you go to page 68.

DR SIFOLO: Yes, there was a signing ceremony. In Intelligence, we have a way of seeing things, Chairperson, that might not be seen by others. So we saw the signing ceremony and we have it in pictures. But there is a distinct image that caught our attention and made us to also be resolute in the protection of the national security project.

ADV CHASKALSON SC: Well, let us first look at the signing ceremony. I mean, there are photographs of people posing for pictures, signing, posing for pictures, exchanging contracts. Is there anything else you would want to draw attention to on this page 68?

DR SIFOLO: Yes, yes. I must also indicate, Chairperson, before I do, that the IG's report was classified. We did not

have access to the report. Not because we could not, it is because we were respecting the of the IG. It would have been highly unethical for Intelligence to pursue the report of the IG using our methods, just so we can see what is contained in the IG's report. So we did not bother ourselves with that report of the IG.

But in our analysis of the signing ceremony, we got interested. If you look at the picture right at the right-hand side below there, I wonder if it can be expanded so that, enlarged so that it is clear. The picture there, yes, that picture, yes, from an unsuspecting person who is not trained in looking for things that are out of place like ourselves, Commissioner and Chairperson, it might look like a selfie. It might look like someone is just taking a selfie of himself because it was a very small picture.

But when you look closer, you realise that actually the target of the photograph is the signature. And you ask yourself, why would I need a picture of the signature for my phone if I am satisfied with what I am doing? Because I am in this signing ceremony and the issue is not about signing ceremony, it is the Memorandum of Understanding. Is it possible that someone else needed to get proof that a memorandum of understanding has been signed?

And thereby, meaning that the information that you would not have gotten from the Crime Intelligence, you will

now have the Memorandum of Understanding with IPID, where you might get some information that might assist you in your report, which then is not surprising later on when we analyse the date of the report, that the report then gets to be finalised the next day and then it is transmitted. So that is something that I wanted to just share with the Commission. Thank you very much, Chairperson.

ADV CHASKALSON SC: I mean, presumably, the IG would have had a copy of the contract himself and he could have sort of copied it whenever he wanted to, if he wanted to share it. I do take your point that it is a strange picture, but there are at least a range of possible explanations for it, would you not accept?

DR SIFOLO: That is why, Advocate Chaskalson, we said, is it possible, because now it drew the attention of Intelligence eyes to say, what is it that we are not seeing here? And then when you then follow the events doing a retrospective analysis, then you begin to see certain things, including the date of the report itself that was issued. At that time, we did not even know that there was the report, what date the report was going to be issued. Hence, if you see our coming into play with the report, it is on the 25th of May, very late. That is when we are beginning to see that something is amiss here. We are not understanding what is going on.

ADV CHASKALSON SC: Now, there was a previous MOU between IPID and the IGI in 2017-18 that was a public document. One can find it online and it was referenced in the 2017-18 IPID report. Why was this different?

DR SIFOLO: At the risk of answering for the people that presided over NICOC at the time and not myself, here, the difference was the vigilance of the Parliament, the Oversight Committee, who saw that it is very much challenging to have two entities that have different oversight portfolios to be having a Memorandum of Understanding on information sharing.

And they then, because the IG accounts to the JSCI, they specifically informed the IG that, please do not sign a Memorandum of Understanding with the IPID. So, the one that would have been between, I presume you are talking about the Memorandum of Understanding between Dr Dintwe as well as Mr McBride. We would not know what would have been the reason for that during that time, but this time, we have our certain misgivings in terms of why this and why the timing.

So, those are some of the things. Of course, there are certain matters that one can ventilate in terms of what was being said for the reason for the signing of the Memorandum of Understanding, but it is not good for the public because it might be speculative and it might lead to

conclusions that are unfair to the IGI. Thank you very much, Chairperson.

ADV CHASKALSON SC: Now, we know that the 2017-18 Memorandum of Understanding was never clandestine. In fact, it was publicly advertised in the annual report of IPID. Was this Memorandum of Understanding ever disclosed by the IGI? Sorry, let me clarify. Was the 2025 Memorandum of Understanding ever disclosed by the IGI?

DR SIFOLO: Chairperson, the Joint Standing Committee on Intelligence was not aware of the Memorandum of Understanding, until we brought it to them on the 9th of July when we were bringing a whole lot of challenges that we were beginning to see and we went to the JSCI for them to intervene because the IGI accounts to the JSCI, and this was one of the things that shocked the JSCI, that we were not aware that there is such a Memorandum of Understanding existing.

So, it was not disclosed. It was not disclosed to the structures. The reason why we will feel aggrieved as the Intelligence Structures, is because you are then blindsided. You can open yourself and give someone so much information, but that very same person has got an obligation through a Memorandum of Understanding to share what is in their custody, and had you known, you would have been circumspect and gave the IGI that which

may be shared.

So, it would have been prudent for the IGI to take the Structures into confidence and say, I have these challenges when I am conducting oversight and I am going to do A, B, C, and Z in order for me to ensure that my investigations are thoroughly corroborated. That would have been a fair thing to say. We would have looked at it as it is done in good faith, but the manner in which it was classified and no one knew about what was going on made us to also have misgivings in terms of what was happening. Thank you very much, Chairperson.

ADV CHASKALSON SC: Now, in your report, or in the NICOC report of 25 May, there is a section from the bottom of page 70 saying, headed with the Real Reason for the MOU. Are you able to read that section out? Are you happy to read it out?

DR SIFOLO: Page number, Chairperson?

ADV CHASKALSON SC: Foot of page 70.

CHAIRPERSON: I see that it runs almost to the end of the next page, page 71.

ADV CHASKALSON SC: Maybe not the whole of it, but certainly the first.

CHAIRPERSON: I actually wanted to say, should the doctor not read it when we come back from lunch?

ADV CHASKALSON SC: Sorry, Chair, would this be a

convenient time to take the lunch adjournment?

CHAIRPERSON: Thank you. Let us adjourn and resume at 2.00 p.m.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Yes, Mr Chaskalson.

ADV CHASKALSON SC: Thank you, Chair. Doctor, when we broke, we were at page 70 of the annexure bundle, and I had asked you just to read or at least comment on the passage in the report of 25 May describing the real reason for the MOU between the IGI and IPID. Can you pick it up there?

DR SIFOLO: Thank you very much, Chairperson. I need to also highlight one critical aspect, that the subheading is under the main heading called analysis, which must then indicate that this is what the intelligence would be reading out of the situation. So it is not somebody who would have come and told you that this is the real reason, but when you analyse, then you then come to the conclusion that might lead you to say the real reason for the MOU were as follows:

> "The National Intelligence Structures have expressed serious concern about the IG's unorthodox methods of wanting exposure of operations and related

intelligence without clarity on the relevance of such information to the oversight work of the IGI. This resistance has not only created frustrations on the part of the IGI, but has resulted in desperation to seek information through various means. The target of the IGI is the SAPS Crime Intelligence and certain information pertaining to an ongoing investigation on criminal networks within the SAPS high echelons. SAPS CI has vehemently registered the IG's threats to coerce the revelation of the noted information. The NICOC has also had to take custody of one of the projects that was a target of the IGI in order to protect it from premature exposure. The Divisional Commissioner of SAPS CI indicated to the IG that NICOC has since resolved to protect the project until it reaches fruition. However, the IGI has been unrelenting, hence he has decided to explore an MOU with IPID. The terms of the MOU are such that the IGI will be at

> an advantageous position of receiving information from IPID, but may not be able to reciprocate in time due to legislative impediments."

And I do not know if I would have to read what is already in the MOU. Thank you, Chairperson.

ADV CHASKALSON SC: No, I am happy to stop at that point. So the concern of NICOC was that the IGI was perceived as targeting this GCI Ops project, and in the face of the Minister's letter, General Khumalo's communication to the IGI that NICOC as a full committee had resolved to protect the project, the IGI had been pushing forward still demanding that information, that project file.

DR SIFOLO: That is our reading, Chairperson.

ADV CHASKALSON SC: There was one further report from NICOC in relation to the IGI. This was after the IGI had been suspended. It is a report dated 13 October. It starts at page 80. And the starting point and the key developments is the fact that the IGI's report had been leaked to a City Press journalist, Mr Mashego. Can you describe what the concerns articulated in that brief were?

DR SIFOLO: Chairperson, the IGI's report, which had been talked about so much on social media and others, was never really dealt with in detail in the media. People would just indicate that there is this report, it exists, it was given

to the Minister on this particular date, and other matters. But we got intelligence that this report was about to be leaked, and the journalist in question was Mr Abram Mashego, and he had asked questions.

There is a WhatsApp that shows that this was a deliberate reporting. In the WhatsApp, he then says I am causing trouble for both camps, so meaning there is already an understanding that exists out there that there are two camps within the Crime Intelligence or the SAPS environment, and there is the WhatsApp. So we were reporting on that. That report is an attachment that we put as an annexure.

So the relevance of this is that we only got to see even the contents of the report after we got to see this WhatsApp, and we then unpacked the report and understood what was saying. But the danger of that, as it happened, the report was indeed published on the date that we had said it was going to be published, and it had very funny language. We had never seen that even the previous IGs, they would never make recommendations that go as far-reaching as saying charge so-and-so, charge so-and-so, charge so-and-so. It was a very odd report, and we were very concerned about that because the report was going to be looked at.

It even had – I have attached the City Press article

somewhere, Chairperson. It is under paginated 90, and we saw the topic there as misleading because it was saying intel report, and then SIU must charge top cops, recover 121. We could tell that this is just a masking because they are not saying the IG's report is this and this. It is just saying SIU must charge top cops.

So we looked at the report and we compared, and we realised that this is indeed the report, and it has been leaked. But the implications of that was that this report is making far-reaching recommendations to the lives of individuals without verified facts because we have not yet submitted the project file, which will complete the picture for the IGI to understand what is happening. So that was a concern for us.

And as you would have noted then that we saw General Masemola being arrested at some stage. We saw even the matter of Brigadier Mokoena and others. So it was concerning to us because we understood the implications of that, that the public opinion will be influenced. And the unfortunate thing is that Intelligence cannot go out there and say, hang on, the story is different.

So we say it was incomplete, Chairperson, because on the 24th of April, the IGI had sent a letter to the Minister saying I am done with the report and my investigation, and here is the report I am submitting to you. So we do not

want to believe that the IGI was not aware that the report was not complete, because on the 28th of August, the IGI writes to the Acting Divisional Commissioner, I think it is General Makgato, requesting information. We have attached that as well.

ADV CHASKALSON SC: P0age 88.

DR SIFOLO: Page 88, requesting information on the very same project and the very same matters that he himself had said to the Minister, I am done. So we were saying if you were done, why would you wait for General Khumalo to be suspended and then you begin to go and request this information?

What also brought alarm to us, Chairperson, was that there was a concerted effort in the social media where the issues of what General Khumalo was doing after the judgment that said he must not go anywhere, the bail conditions that were saying he must not go anywhere near Crime Intelligence offices. We saw that whatever he would be doing, it would be reported and people would be putting the, what you call, the classified material there.

There was one particular account that was very much vocal. It was under the lady called Madam Patricia Mashale. And in terms of us looking at that activity, we then got shocked when the Minister of Police goes to the Ad Hoc Committee and is asked the question about the role of

Madam Mashale in the process. Then he says, I actually asked the IG to profile this person.

Now, the IG does not have a mandate to profile private citizens. And the IG then went ahead and profiled, as it was confirmed in this room again by the Minister. We have the video, and if the Commissioners allow, we would like it for record. It is played that this is what the Minister said in the Ad Hoc Committee, this is what the Minister said in the Commission.

And what was very concerning to us is that if, let us suppose that the IG was oblivious to his mandate of not profiling citizens, when you get to this person and to this account, you are then supposed to say, I went there, Minister, and I realised that this person indeed has got a lot of classified information that he is sharing via social media. And that for me, as the Inspector General, is a finding, because it looks like your portfolio does not have the necessary safeguard to protect classified information.

What is the classified information doing in the media? No, it was not like that. Instead, the IG came to confirm that yes, indeed, this person has got some knowledge of what is going on in the Crime Intelligence. That for us was disheartening, that an IG who was interested in oversight should have looked at it differently and ...[intervenes].

ADV CHASKALSON SC: you have referred to classified information that she is posting. You refer in that regard to a document that is at page 129. Do you want to describe that document to the Commission?

DR SIFOLO: Perhaps if the Chair allows, I just see 128, and I think I must just quickly dispose of that one, if it is possible.

ADV CHASKALSON SC: Certainly.

DR SIFOLO: Thank you very much, Chairperson. When we look at that post, this is the post that was on the day when General Khumalo and the rest were arrested. But it lists a number of people and then puts a wrong person there, Brigadier Van Vuuren. There was never Brigadier Van Vuuren in the list of the people that were arrested on that day, but where was Brigadier Van Vuuren? Brigadier Van Vuuren is in the IG's report. He is the one who is recommended to be arrested as well for the matters that are found in the report.

From the intelligence reading, then you then get to say it looks like this person was given a brief, but when it was time for them to publish things, did not publish the right thing because on that day there was never Brigadier Van Vuuren who was arrested on that day. It was the other ones that were arrested. And then, of course, there is the attribution there to a parliamentary person that, Fadiel

Adams, we did it. So it shows that this is a coordinated effort to ensure that something is happening. And if I go to, you said I must go to page 120?

ADV CHASKALSON SC: 129.

DR SIFOLO: 129. I see the report there. This is a report pertaining to a request that would have been given to the Crime Intelligence to render services in terms of a threat assessment, so that you can either make a decision of providing protection to the entity or not, or to the individuals. But that report did not need to be put there because it is classified secret, and it is not the only report. There are also others where they were talking about the call-up instruction for a project, which I think was going to deal with the illegal firearms, and it was there in the social media, but that is not all, Chairperson.

What is alarming, it is good that there was also the Ad Hoc Committee and this Commission. We must really admit. The member of Parliament, Honourable Collardian [sic]...

ADV CHASKALSON SC: Kohler Barnard.

DR SIFOLO: Kohler Barnard, yes. I was trying to understand why, what am I getting wrong here? Yes, Dianne Kohler Barnard, Honourable Dianne Kohler Barnard. She puts a question to Ms Mashale that:

"Have you ever leaked classified

information in your social media platforms and things like that?"

And the response that comes from the person says, I have never, and then is qualified, because I understand the implications of that. But this person is under oath, saying I have never leaked classified information because I understand the implications of that.

Of course, by that time, there was the assumption from the person that that which I had deleted cannot be undeleted. So as Intelligence does, when they look for something, they will find it. So we looked for everything that was ever posted by her which was very classified, especially after we heard what she had said there, and we have got the videos as well. So we have got three videos that pertain to that fact.

So it then showed us that there was indeed a problem, and this matter looked like it was very much orchestrated. And now, just to complete the picture, we have three institutions of our country whose integrity has been put to question so badly because of even the report itself.

We have got the IDAC, which would have done things that were very much funny in terms of arresting innocent individuals. We also have the Inspector General's office itself, which can no longer be trusted to conduct

oversight in an impartial manner purely for oversight reasons.

And then on top of that, we also have the IPID, which had signed the memorandum of understanding. We do not know whether wittingly or unwittingly or knowing the implications or not, but when we read it from an intelligence point of view, institutions are a critical pillar of constitutional democracy, and if they are weakened and their integrity is threatened in that fashion, then we look at it as a national security challenge. Thank you very much, Chairperson.

ADV CHASKALSON SC: Sorry, Doctor Sifolo, I just wanted to go back to the issue of Brigadier Van Vuuren, Janse Van Vuuren. If you go to page 128.

DR SIFOLO: Yes, Chairperson, I am there.

ADV CHASKALSON SC: You will see that Brigadier Janse Van Vuuren is mentioned in the IG's report, and the IG recommends a series of charges against him. There are then a series of other people who are mentioned in the IG's report, all of whom end up being charged with General Khumalo in June of that year. But if we go to the post on page 128, on the day of the arrests, the post from Ms Mashale, she lists everyone who has been charged, as well as Brigadier Van Vuuren. Now, was Brigadier Van Vuuren charged?

DR SIFOLO: Chair, if I may, she is not saying charged. List of SAPS senior management in Crime Intelligence who has been arrested alongside Khumalo. So she says has been arrested already, which then gives us the inclination that she did not need to see the arrest or the list of people there. She already had a list of who would have been arrested, hence publishing this list without verifying who is actually appearing in court. That is the reason why we put that matter there. Thank you very much, Chairperson.

ADV CHASKALSON SC: Thank you. I apologise for charged. She does say arrested, not charged.

ADV BALOYI SC: Can I just ask, arising from your testimony on the evidence, on the report, the IGI's report, and pardon me for asking what is a pedestrian question on the face of it. The IGI's oversight mandate, what does it entail? What does it mean that he has got an oversight mandate?

And I ask because of some of the issues that he has dealt with in the report, the request for certain information in the letter that you have referred to relating to the operations. I am just trying to understand at which point does he breach that mandate, that line, if he has breached it at all.

DR SIFOLO: Chairperson, thank you very much. We have the Intelligence Services Oversight Act 40 of 1994, and

under section 7, it lists the mandate of the 7(7), it lists the mandate or the functions of the IG as follows:

> "To monitor compliance by any service with the Constitution, applicable laws and relevant policies on intelligence and counterintelligence; to review the intelligence and counterintelligence activities of any service; to perform all functions designated to him or her by the President or any Minister responsible for the service; to receive and investigate complaints from members of public and members of the service on alleged maladministration, abuse of power, transgression of the Constitution, laws and policies referred to in paragraph…"

So I will leave it there. And then I would also want to go further, Chairperson, and say if we go to the next subsection 7(a), we have got 7(a)(d), it says:

> "Provided that the Inspector General shall not have access if such intelligence or information is not necessary for the performance of his or her functions."

Now, because I am quite aware of what transpired there, the audit report itself was given to the IG, to say we want an

audit report on this matters, here are the audit reports. And what then became a problem was when the IG began wanting to get into the operational file itself. The operational file would even tell you who is being investigated, what is the investigation about, who is the lead investigator, who the sources might have been, because the IG was also asking about sources, who the sources might have been and all those sorts of things. So that information, the Act does protect, gives a caveat that if it is not necessary for your operations, you need not to get access to that information.

And in this instance, Chairperson, there was no blanket refusal. There was still respect of the institution by saying, can you allow us to finish? Once we are done, we will give you the results of the project, that out of the project that we are looking for, this is what we did, and we did A, B, C and Z. Here is the project. This is the exact, what you call, operational cost that we were looking for. So these are the things that we were concerned about. Thank you very much, Chairperson.

ADV BALOYI SC: I mean, one example for me of a point of curiosity and maybe understanding from your explanation, if you can explain, is the investigation into the appointment of now Brigadier Mokwele. Is that a matter typically that falls within the oversight mandate of the IGI?

DR SIFOLO: Chairperson ...[intervenes].

ADV BALOYI SC: And it is only one example. I mean, in his letter, for example, he also asks for collab instructions in relation to members. I am just trying to understand practically what can he look into.

DR SIFOLO: Chairperson, we do submit that the IG does have that mandate because it says here if there is a complaint from the public, you must investigate. So in this case, there were complaints from the public about the appointment of Brigadier Mokwele. There was even a televised interview of Mr Paul O'Sullivan indicating that he was the one who also conducted his investigation and then had the members of the IG in his office, which again gave us a bit of a problem because he says it out loud that I had them in our offices and I gave them everything.

We thought that it was supposed to be the other way around. You go to the IG's offices so that there is no bias in terms of what the investigation is all about. So there is that. But in that matter, fortunately, we did ask the Divisional Commissioner, can you take us to confidence about this thing? We asked this question, Chairperson, directly: are you corrupt? Have you done something that would warrant the IG to investigate you? Because we do not want to taint ourselves ...[intervenes].

CHAIRPERSON: And were you seriously expecting yes, I

am corrupt?

DR SIFOLO: We were expecting an undertaking so that one day when we come back and we find that you misled us, we will be able to take actions against you, because we were saying if indeed we take this and we support you in this particular endeavour, we are tainting the integrity of the committee. So can you take us to confidence?

Then he did say that we submitted everything that was required, and we were the first ones, by the way, Chairperson, to know that the lady in question was actually not a clerk but a specialist in mechatronics. And we then went to understand operationally how does that help us and how far has it helped us, and we were very much excited to know what was going on. So those are some of the things that I think, Chairperson, I would clarify. Thank you.

ADV CHASKALSON SC: Can I just pick up from this line, because it seems to me that your reading of section 7 may not be right, for two reasons. The first is 7(c) clearly does not apply in this case, because 7(c) does not apply to information or intelligence under the control of a service. It applies to information or intelligence which is not under the control of a service, so in other words third-party information, third-party intelligence, and the proviso in 7(c) relates to that information. The critical provision is 8(a), which says, and which has to be read with 9.

DR SIFOLO: 8(a), you say, Chair?

ADV CHASKALSON SC: 8(a) and 9.

DR SIFOLO: All right.

ADV CHASKALSON SC: And 8(a) says:

> "The Inspector General shall have access to any intelligence..." ...[intervenes].

CHAIRPERSON: I kept looking and hoping that it was going to be highlighted.

ADV CHASKALSON SC: Chair, I can possibly take my copy. It has got highlights on it, but I do not think that is too much of a problem.

DR SIFOLO: We do have an extra copy, Chairperson, but it is here. We do not know if you will trust our gadgets.

CHAIRPERSON: The question is more whether you can trust us.

DR SIFOLO: You have got that, okay. Maybe we can give you the ...[intervenes].

ADV CHASKALSON SC: We will have it flighted in a minute.

CHAIRPERSON: Thank you, Doctor, and your team.

DR SIFOLO: You are welcome, Chairperson.

ADV CHASKALSON SC: So, if we start with 9, sorry, 8, 8(c), which was where you started. 8(c) relates to information or premises which is not under the control of any service.

DR SIFOLO: I concede.

ADV CHASKALSON SC: And the proviso, which is quite significant because it is an express proviso which we do not see in (a), is that it says the IG shall not have access if the intelligence or information is not necessary for the performance of his functions. If we go to (a), there is not that proviso, but the entitlement is itself, like (c), limited by information required for the performance of his functions. So (a) says, and this is dealing with information in the possession of a service:

> "The Inspector General shall have access to any intelligence information or premises under the control of any service if such access is required by the Inspector General for the performance of his or her functions, and he or she shall be entitled to demand from the head of the service in question and its employees such intelligence information, reports and explanations as the IG may deem necessary for the performance of his or her functions."

So he can demand anything that he considers necessary for his functions. And then if we read that with 9, sorry, (9), it says:

> "No access to intelligence information or premises contemplated in (8)(a) may be withheld from the Inspector General on any ground."

Now, so on its face, it makes the Inspector General the officer who decides what is necessary for his functions and says no one can refuse, and there is no dispute resolution mechanism. And what struck me when I looked at this Act is that if we look at the comparable provisions that relate to the powers of the committee, the Joint Standing Committee, in section 4:

> "If a committee has the power to demand information, access to intelligence information and documents in the possession or under the control of a service on condition that such access is necessary for the performance of its functions, such intelligence information and documents shall be handled in accordance with written security guidelines, and such documents shall afterwards be returned."

And then (2) entitles a service not to disclose certain types of information and 2(b) says if there is a dispute, which there was in this case, between the IG and the service,

there is a mechanism for resolving that dispute when it comes to the committee. So 2(b) says:

> "In the event of a dispute arising from the provisions of paragraph (a), whether or not the disclosure of any intelligence information or document may reveal the name or identity of a person or body engaged in intelligence or counterintelligence, or intelligence or counterintelligence methods, or the identity of a source of intelligence information or document, or whether the provisions of (1)(a) as to whether access of certain intelligence information or document is necessary to perform the functions of the committee, the dispute then gets referred for determination to a committee."

And that committee is composed of the Inspector General, the head of the service, the chairperson of the committee and the Minister. So when the Parliamentary Committee asks a service for information and there is a dispute over whether it is appropriate or not, the Act provides a dispute resolution mechanism. But when the Inspector General does, there is no dispute resolution mechanism, and it

seems to me that this is something that should be addressed in an amendment to the Act, because there is always the possibility of a rogue Inspector General. I am not saying that we have had one in the last year, but there is that possibility.

And there should at least be some mechanism where a service is worried about a request from an Inspector General, which seems to them to be unreasonable, for a third party to determine whether that information should be made available or need not be made available. What is your response to that?

DR SIFOLO: Thank you very much, Chairperson. First, I must concede that my interest was more about the relevance to the operations of the IG, and I then read a wrong passage. But I should have wanted to say, just like Advocate Chaskalson is saying, that you get that information if such access is required by the Inspector General for performance of his or her functions and not other challenges. And it also says that he may also get the explanation, meaning our assumption is that we can explain why maybe that access you are not going to get it now.

I agree that there is no dispute mechanism, but there is something that the IG did not amend or has been in the Oversight Act for a very long time, and you will find it under 7(10). Any Inspector General that is appointed in our

country shall comply, as 10(a) says:

> "...shall comply with all security requirements applicable to employees of the agency, and shall serve impartially and independently and perform his or her functions in good faith without fear, favour, bias or prejudice."

Now, the security requirements of employees of the services are such that if you have been made to be aware that something is on need-to-know basis, you have to comply with that. So if there is an Act that says shall, it is not discretionary; it says you shall. So my thinking with that is that perhaps this is probably the caveat that once there is that aspect of saying we have a bit of a challenge for now, you will need to treat this as need to know until such time that we are able to give you that.

And we also assume, Chairperson, that if you are not satisfied, you have got your accounting authority, which is the JSCI, and the JSCI will intervene to find out why are you unable to help the IGI. It is the reason why then, when we were no longer satisfied with the manner in which the IGI was conducting his oversight, we went to the JSCI. And when we went to the JSCI, it must be recorded, Chairperson, that we started with the Minister, and we indicated that we have a report, and this report we have

compiled specifically on some of the things that are concerning to us, including material that ought to only have been known by the IGI, but we see it on social media and other matters and we are now going to request that the JSCI must intervene.

The Minister took the report, gave it to the IG with the letter saying NICOC has got this report at their disposal, and they have requested to go to the JSCI and report this matter, present this report on the 9th of July. And during that time, the IGI was travelling abroad to conduct his work, his oversight work, and there was a certain undertaking that had been done between him and the service with which he was supposed to conduct oversight.

He was told that we are not comfortable with you looking for particular information in an environment that is not as controlled as our Republic. But instead of the IG saying, hang on, I am going there, I have had this strange request from the service, is it not better for me to act in good faith and say, sit down, what is your problem? Does it really have to go to the JSCI, or maybe it was misunderstanding? Instead, he just continued and came back after the 11th, if I am not mistaken, of July.

So while we were busy reporting him, he was okay with us reporting the matter to the Joint Standing

Committee on Intelligence, but not only being okay, continuing with the complaint that we had registered to him, and we were going to register with the JSCI. So that has always been our assumption, that where there is a dispute, the JSCI will step in. Thank you very much, Chairperson.

ADV CHASKALSON SC: I do need to come back because I have a real concern about the current legislative framework. The first is I do not think it is an answer to say that because there are security protocols that apply to everyone inside the services and that they only get information on a need-to-know basis, that means if you decide that the IGI does not need to know, that is the end of the matter because the whole function of the IGI is to exercise oversight over the services, and you cannot have a situation where the services decide what is and is not appropriate for the IGI to know.

That is the first issue, but it ties in with a second issue, which I think is a much more fundamental problem, which is that as things stand, the future of any IGI in the position is contingent on a security clearance that has to be issued by one of the agencies over which the IGI exercises oversight.

And if we go to page 85, which is the recommendations at the end of this report of 13 November, we see that one of the recommendations is that the SSA

should urgently determine the eligibility of IGI for clearance after all the noted compromises and inform the Joint Standing Committee on Intelligence.

Now, I am not suggesting that anybody was not acting in good faith and in what they perceived to be the best interests of the country, but it seems to me that there is a fundamental problem. There are two fundamental problems in the current structure. The one is, if you potentially have a rogue IGI, the law does not have a mechanism that protects the Intelligence Services from having to give up information that should not be given to the rogue IGI, and there needs to be a mechanism for that.

The second is, if you have a rogue Intelligence Service in the SSA, and, I mean, we know that historically that has happened in this country, that rogue Intelligence Service controls the eligibility of the incumbent IGI to exercise oversight over it, because it can withdraw the security clearance.

And I think both of those problems, which deal with the same, essentially the same conflict of interest, need to be resolved by legislative amendments, which, one, will take out the absolute decision-making power over what information the IGI is entitled to, take it away from the IGI and have a dispute resolution provision, so that there is an appropriate dispute resolution mechanism.

And then on the flip side, there needs to be some provision for someone other than an agency that the IGI is supposed to oversee to control the security clearance of the IGI. Otherwise, when something goes wrong at an agency and they want to get rid of the IGI, they can just get rid of his or her security clearance. I am certainly not saying that is what happened in this case, but it is a real problem and one that is not beyond the realms of imagination, having regard to our history. So would you like to comment on either of those propositions that I am putting to you? Do you think that a dispute resolution mechanism would be desirable? If not, why not? Let us take that one first.

DR SIFOLO: Certainly, Chairperson. There is always a motivating factor when a legislative framework is conceived. So if there is a challenge that is being noted with the current legislative framework, of course the parliamentarians will do what they need to do. We are just the creatures of statutes. We do what the legislation says. The other aspect, the recommendation there needs to be put in context.

The context matters. It is not to say the prescripts, the security prescripts that exist are the need-to-know. Need to know actually is more on the minimum information security standards. So I just put it broadly. So in this respect, we had an Inspector General whose report was

talked about in social media and what it contains. And to an extent that at some stage the report itself found its way to us, and we did not get it from the authorised individuals. Instead, we got it from a journalist.

Now, in this respect, the rules or the prescripts, legislative prescripts of the agency, Intelligence Services Act 65 of 2002, are such that if you were to be aware that a classified information has been given to unauthorised hands, you ought to report that.

So we did ask SSA, SSA, we hear about this matter. Have you received a report to conduct an investigation where the IGI says, SSA, I am in trouble? My report, which was only meant to be seen by so-and-so, has been seen by others. It is not there. And I personally received a complaint, but the complaint did not come from the IGI. It came from the Minister of Police, the current acting Minister of Police, through the advisor, Mr Advocate Vusi Pikoli.

After he had received a message from the Presidency indicating that we know that the IGI might have had a discussion of a report of this nature with the President, what was being discussed and what was the outcome? What are the recommendations? So the spokesperson of the President sent a message to the Minister of Police, acting Police, alarmed by the questions

from the very same journalist. The journalist asking questions.

The issue is now, even the meetings of our President are a subject of discussion, that the President has met so-and-so and they discussed so-and-so. It is not only the meeting time, it is also what was discussed, if it was discussed. So Advocate Pikoli came to our offices to report this matter, and it was not the IGI who was reporting that the report has been leaked. It was the office of the Minister of Police, acting Minister, who said, We have heard that there was this question, and it was about the acting Minister who would have taken a report and went to discuss it with the President.

So that on its own is something that would have warranted somebody to do that, but it was done not by the IGI, because that report was not the report of the police; it was the report of the IGI. So those are some of the concerns. There are other matters which, in terms of context, we might not be able to put here, but we also observed and agreed with the Crime Intelligence that this is the challenge that we are experiencing.

But I cannot differ with you, Advocate Chaskalson, through you, Chairperson, that indeed there could be some lacuna in the legislative framework that might need balancing and encourage the dispute resolution mechanism,

precisely because when the drafters of the legislation were drafting, they did not envisage people that will have malicious intentions to deal with the institutions.

So in that respect, perhaps there need to be loopholes that are closed. But again, it will be important to ensure that the issues of security clearance, the withdrawal and everything, maybe as you are indicating, could be things that could be dealt with in a different platform. But in the high-level review panel report, we have been through this. The matter of the IG security clearance having been withdrawn by the previous DG was highlighted, but there was a recourse for the IG. The IG had to go to the Minister and appeal, and the Minister upheld the appeal of the IG, and then he was granted the security clearance. So there was that mechanism. So we would have thought that this is something that could be done, but I take the point that maybe the legislation must be clearer and must close all the loopholes. Thank you very much, Chairperson.

CHAIRPERSON: Does this mean you have addressed the second question as well, and that in respect of both aspects you accept that there should be legislative reform?

DR SIFOLO: Yes, yes, Chairperson.

CHAIRPERSON: I am sure you saw earlier that my light was on. I wanted to come in and say you are not answering the question. It was towards the end that you answered Mr

Chaskalson's first question.

DR SIFOLO: I did not see it, Chairperson. I am sorry, but ...[intervenes].

CHAIRPERSON: No, no, no, no, no. I would have spoken if I wanted to. I thought, let me give you an opportunity to continue.

DR SIFOLO: Yes, Chairperson.

CHAIRPERSON: Mr Chaskalson?

ADV CHASKALSON SC: Chair, I have reached the end of what we can canvass in open session.

ADV KHUMALO SC: So do we stop at 47? We will not complete this statement. Is there balance of it for the closed session?

ADV CHASKALSON SC: The balance of it, I mean, we can actually run through. We may have to traverse similar ground after the closed session, but there is no real reason in terms of content. Not to a first take now, so I am happy to proceed it ...[intervenes].

ADV KHUMALO SC: Can I ask a general question? I think before we go to the closed session, South Africans are interested to know whether our Intelligence cluster, including NICOC, whether they had their eyes on the ball. I mean, if there is a suggestion or there are allegations that our criminal justice system, from the police to Correctional Services, possibly the judiciary, have been infiltrated by

criminal syndicates, where is NICOC in all of this? Are they not on the ball? Are they not doing their job? And I think I am alive to the fact that some of the reports you may not share in public, but I think South Africans deserve an assurance that the Intelligence cluster is doing its work and they are on the ball and they are not allowing criminals to run our country. So you can deal with that question as you see fit, but I think it is only fair that South Africans should hear from you what the situation is, and as you do your conclusion, then you can cover that aspect as you wish.

DR SIFOLO: Thank you very much, Chairperson. Chairperson, the term decontamination of the criminal justice system was coined at NICOC. So the term, the infiltration of the criminal justice system was coined at NICOC. It is out of that being alive to the realities that makes us to even have projects of this nature that will be sought so much because people do not want us to do what we wanted to do, to clean.

And we were given the assurance by the executive in terms of the National Security Council that you have diagnosed the problem, now go back and solve it. And we did solve it. In fact, if I may be extravagant to an extent that when you realise that you no longer have any other way to deal with this matter because the institutions are so compromised to an extent that the public is beginning to

believe, and innocent people who are doing the real work of national security are being targeted, then you had to kick the chess table. We start from scratch.

So the July 6 is not something that happened by chance. It was out of realisation that we cannot win the public opinion and the more we try to work, the more whenever we are trying to come out, we are told that it is because these ones are corrupt, that is why they are doing this thing. So is it not about time that we get South Africans on our side? Let us fight together. Let us rather be told that tomorrow all of you no longer have a job.

So if you listen to the statement itself, it does not say the July 6 was a work of one person. It says those who have sent me. So it is more to say we were working, but there were also other challenges, and where we had obstruction, we had to also employ the same methods that were being employed by those that were being pursued. I would like to leave it there. The others will be in details. Thank you very much, Chairperson.

ADV CHASKALSON SC: Can I ask a follow-up question, because I must say I have found the information that I learned through my interactions with you quite illuminating. But the follow-up question is this: what do you think would have happened if NICOC had not taken control of the GCI ops operation in February 2025?

DR SIFOLO: The country was gone. And in fact, the head of the Crime Intelligence had surrendered, had said on that particular day, it was the day he had a deadline to give the project. And in the project it had all the layers, the layers that you may have ventilated somewhere, somehow here in this Commission. So there was a clear picture that if we do not do anything now, the country is gone. That is just the long and short of it. Thank you very much, Chairperson.

ADV BALOYI SC: Mr Chaskalson, I do not know the significance of it, but Doctor Sifolo had said there are clips that he wanted, and I thought you were asking your ...[intervenes].

ADV CHASKALSON SC: Yes, if we can start with the two clips of Minister Mchunu? Chair, we have a problem with audio, which is ...[indistinct] make these clips very useful. Let us see if we can...

[AUDIO PLAYED BACK]

> "2024. No, the house and Mashale, they wrote these things, the bulk of them last year, and I did have a discussion with the National Commissioner about them, and I think they wrote letters to the Portfolio Committee last year already. And remember that I also said about Mashale, I even referred some matters, no, her

profile to the IGI to say I keep on getting correspondence from this lady shortly after I got appointed, so I was aware. And National Commissioner did say, no, this lady I am aware about, she has also shared things with me, but she complains and complains, and we look at what she is complaining about, and so on. So I was aware of all these things that I included. I was aware, and the Department National Commissioner would have been aware of all these things. I may not have shared everything with him, but they were aware of them. That includes my reason, my main reason, my argument that we may be dealing with something that is outside the PFMA."

ADV CHASKALSON SC: Now, that clip does not mention the request to the IGI to vet her. Maybe the other one will. Let us just play the other one first.

DR SIFOLO: Sorry, Chair, through you, it was, I think it was not started from the beginning, but we have the clips both in the ...[indistinct]. That is why he says the profile. He is repeating it because he has already asked for the profile of the person.

ADV CHASKALSON SC: Let us just play it again from the beginning then.

DR SIFOLO: All right.

[AUDIO PLAYED BACK]

> "But some of the other reasons, like the budgetary constraints, the house, Mashale ...[indistinct], Fadiel Adams, further complaints, you would not have shared those with him. With? You would not have shared these reasons with the National Commissioner before the 31st of December 2024. No, the house and Mashale, they wrote these things, the bulk of them last year, and I did have a discussion with the National Commissioner about them, and I think they wrote letters to the Portfolio Committee last year already. And remember that I also said about Mashale, I even referred some matters, you know, her profile to the IGI to say I keep on getting correspondence from this lady shortly..."

ADV CHASKALSON SC: I missed it. If we can play the next one?

[AUDIO PLAYED BACK]

"But some of the other reasons, like the budgetary... do you see that? Yes. Were you aware of those circumstances? Yes. Do you have any comment as to that? Yes. Were you aware of those circumstances? Yes. Do you have any comment as to the propriety of her conduct in that regard? Not only a comment. When I received a series of, or when I came across a series of things that she writes about the SAPS, I asked the – because she was writing more on Crime Intelligence at some point, and I asked the IGI just to do a check about her and all of that. That is how I got to know some of the things about her. And now, I wanted to find out, now that you have learnt some things about her, when did you so learn them? When did I? When did you learn those whatever ideas about her? It was during that period that is indicated after we got appointed. Okay. Yes. And even then, that did not create a concern for you and demanded

of you to subject her allegations in Facebook of the magnitude that they are to some serious interrogation. That was still not enough for you? I would plead with Commissioners that your voice be raised a little bit. Oh, I apologise. Ja, I have lost use of this. I think there must be a problem of the battery or something. No, I think we should stand down. So I am doing with my hearing aids. No, no, no, no. No, Minister, we will stand down and we will seek to resolve the problem. We will come back as soon as we have been advised to. Thank you, Chair. Thank you very much, Chair. Good afternoon, good evening I should say ...[indistinct] Ms Mashale. Could you please confirm whether or not you have released any confidential or Crime Intelligence-related documents into the public domain, and if so, what consideration you gave to the potential risk this posed to the lives of investigators involved in organised crime, hitman and drug cartel investigations? I

can confirm that I never released any Crime Intelligence information on my social media platforms, because I know I was accused that I shared classified information. I do not share classified information because I know what is the implications of sharing classified information publicly. Thank you. What formal qualifications or training, if any, do you hold in criminal investigation or?"

ADV CHASKALSON SC: Commissioner, those were the three videos.

CHAIRPERSON: And who did we see just now?

ADV CHASKALSON SC: That was Ms Mashale.

CHAIRPERSON: Thank you. We resume back here tomorrow at 09:30. No, no, no, I am not talking about the other resumption, Mr ...[intervenes].

ADV CHASKALSON SC: Yes, we do.

CHAIRPERSON: Yes. Let us adjourn, and for purposes of the public hearing, resume at 09:30 tomorrow. Let us adjourn.

MATTER POSTPONED TO 13 NOVEMBER 2026

HEARING ADJOURNS

- - - - - - - - - - - - -