

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: 34476/18

In the matter between:

DEMOCRATIC ALLIANCE

APPLICANT

AND

PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA

FIRST RESPONDENT

ARTHUR FRASER N.O

SECOND RESPONDENT

ARTHUR FRASER

THIRD RESPONDENT

**MINISTER OF JUSTICE AND CORRECTIONAL
SERVICES**

FOURTH RESPONDENT

**DEPUTY MINISTER OF JUSTICE AND
CORRECTIONAL SERVICES RESPONSIBLE
FOR CORRECTIONAL SERVICES**

FIFTH RESPONDENT

FILING SHEET

DOCUMENTS:

**FIRST RESPONDENTS ANSWERING
AFFIDAVIT**

FILED BY:

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**TO: THE REGISTRAR OF THE ABOVE
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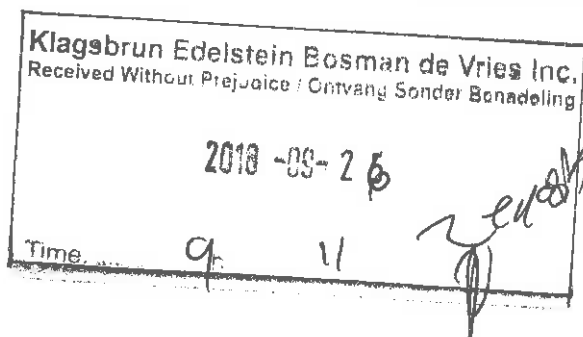
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**THE DEPUTY MINISTER OF JUSTICE AND CORRECTIONAL
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**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG PROVINCIAL DIVISION, PRETORIA**

Case No. 34476/2018

In the matter between:

DEMOCRATIC ALLIANCE

Applicant

and

PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA

First Respondent

ARTHUR FRASER N.O.

Second Respondent

ARTHUR FRASER

Third Respondent

**MINISTER OF JUSTICE AND CORRECTIONAL
SERVICES**

Fourth Respondent

**DEPUTY MINISTER OF JUSTICE AND
CORRECTIONAL SERVICES**

Fifth Respondent

FIRST RESPONDENT'S ANSWERING AFFIDAVIT

I, the undersigned,

MATAMELA CYRIL RAMAPHOSA

state the following under oath:

RJ

[Signature]

- 1 I am the President of the Republic of South Africa, having been elected on 15 February 2018 as President by the National Assembly. I am the first respondent in this application.
- 2 The contents of this affidavit are within my personal knowledge, unless stated otherwise or apparent from the context. I believe the contents to be true and correct.
- 3 I have read the founding and supplementary affidavits of Mr James Selfe in support of the applicant's (the Democratic Alliance's) application to set aside the appointment of Mr Arthur Fraser (cited as the third respondent) as National Commissioner: Department of Correctional Services. In this answering affidavit, I deal first with the main themes of the founding and supplementary affidavits. Thereafter, I deal with specific paragraphs in the affidavits. Any allegations in the affidavits that I have not dealt with specifically are denied.
- 4 The Democratic Alliance ("the DA") maintains that the appointment of Mr Fraser as National Commissioner is irrational, unconstitutional, unlawful and invalid, because there were *prima facie* allegations of impropriety against him that made him ineligible for such appointment.
- 5 It is important at the outset for me to state the nature and extent of my decision. I decided, in terms of section 12(3) of the Public Service Act, 1994 to transfer Mr Fraser from his position as Director General of the State Security Agency ("SSA") to the position of National Commissioner

R-1


in the Department of Correctional Services. I did not appoint Mr Fraser in terms of section 12(1) of the Public Service Act.

- 6 The allegations of impropriety, alleged by the DA, relate to Mr Fraser's role in the Principal Agent Network ("PAN") project, initiated by the SSA (formerly the National Intelligence Agency ("the NIA") during 2008, and also to his decision to withdraw the security clearance of the Inspector General for Intelligence on 5 April 2018.
- 7 I deny that my decision to transfer Mr Fraser to the position of National Commissioner is irrational, unconstitutional, unlawful and invalid, and/or that it falls to be reviewed and set aside.
- 8 I explain below the background to my decision to remove Mr Fraser from his position as Director General of the SSA and to transfer him to the position of National Commissioner. Given the circumstances existing at the time and the facts available to me, I further explain why I held the view that, while the national interest was best served by removing Mr Fraser from his position, I did not have sufficient facts to suspend him from the public service.

The relevant background

- 9 Shortly after my election as President of the Republic, I appointed Ms Dipuo Letsatsi-Duba as Minister of State Security ("the Minister"). The incumbent Director General of the SSA was Mr Arthur Fraser. Former

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President Zuma had appointed Mr Fraser as Director General of the SSA on or about 26 September 2016. There were no legal challenges from any person or entity arising from this appointment.

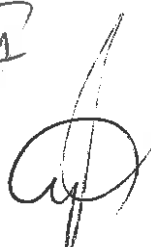
- 10 After my election, I decided to re-shuffle the existing Cabinet. I made a number of new appointments, including Minister Dipuo Letsatsi-Dube, in place of former Minister Mahlobo.
- 11 In consultation with the various Ministers that I had appointed to my new Cabinet, I decided to review all existing Director General appointments across government departments. My intention was to evaluate whether the skills of all incumbent Directors General were properly suited to the Departments of which they were in charge.
- 12 I did not set a time frame for this to happen. I had decided to take the necessary time to complete the review in a comprehensive manner, so that all options were considered and relevant information was factored in. The review has since started and is currently underway.
- 13 Shortly after her appointment, from 5 to 16 March 2018, the Minister held consultations with various members of the SSA, including Mr Fraser. She did this as part of her orientation into the SSA and to gain insight into the challenges facing the SSA.
- 14 On 22 March 2018, after the conclusion of her consultations, the Minister informed me that she was of the view that the SSA was not functioning

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as effectively as it should. She proposed that an independent Review Panel be established to provide guidance on the re-engineering of the intelligence services. She further proposed that the Review Panel report to her concerning the quality and adequacy of intelligence collection, analysis and estimates, counter-intelligence, and other intelligence activities, with the view to streamlining the operations of the SSA.

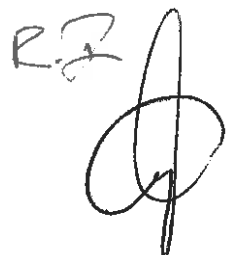
15 The Minister did not regard the problems in the SSA as having been caused solely by Mr Fraser, but she was concerned that his strong personality might inhibit the work of the Review Panel. In her view, it would be better if Mr Fraser were to be transferred out of the SSA before the Review Panel began its work. The Minister wanted the Review Panel to be able to start its work without hindrance from Mr Fraser. She asked me to consider transferring Mr Fraser out of the SSA.

16 I accepted the Minister's view and agreed to transfer Mr Fraser, although I did not immediately consider to which post I would transfer him. It was not urgent for me to do so because the process of establishing the Review Panel had not been finalised. Also, I had not yet identified a suitable post for the transfer. However, before I could transfer Mr Fraser, I required his consent. I also had to make sure that the relevant Cabinet Minister would be happy to have Mr Fraser as his or her Director General. All of this would take some time.

R.J.


- 17 On 5 April 2018, Mr Fraser withdrew the top-secret security clearance of the Inspector General for Intelligence ("the Inspector General"), thereby rendering him unable to perform his functions as Inspector General.
- 18 The Minister advised me of this shortly thereafter. The Minister further advised me that Mr Fraser claimed that he had withdrawn the security clearance because the Inspector General unlawfully disclosed classified information. The Minister said that the Inspector General denied acting unlawfully and claimed that Mr Fraser withdrew his security clearance to undermine an investigation that the Inspector General was conducting into Mr Fraser.
- 19 The Minister further advised me that it appeared to her that Mr Fraser and the Inspector General had been in dispute for some time. She told me that Mr Fraser questioned the security competence of the Inspector General. Mr Fraser claimed that the Inspector General was obliged in terms of section 26 of the Intelligence Services Act 65 of 2002 to notify the SSA that he had disclosed classified information, but had failed to do so.
- 20 The Minister advised me that the investigation the Inspector General was conducting into Mr Fraser related to allegations of wrongdoing some years before Mr Fraser was appointed Director General of the SSA, in the context of a project known as the Principal Agent Network ("PAN"). She further advised me that the PAN project had been investigated by the former Inspector General for Intelligence, Ms Faith Radebe.

- 21 In my view, the withdrawal of the Inspector General's security clearance and the dispute between the Inspector General and Mr Fraser had given rise to a constitutional crisis. Without his top-secret security clearance, the Inspector General could not perform his oversight functions in terms of the Constitution. He also could not complete his investigation into Mr Fraser.
- 22 I was advised that there is no provision in our law for the appointment of an acting Inspector General. It was also apparent to me that the dispute between Mr Fraser and the Inspector General threatened the stability of two strategic organs of state in the security cluster.
- 23 I therefore directed the Minister to speak to Mr Fraser and the Inspector General and to seek a resolution of the impasse. However, before she was able to resolve the dispute, on 11 April 2018 the Inspector General launched an urgent application in the Pretoria High Court (under case number 25121/18) primarily to review and set aside Mr Fraser's decision to withdraw his security clearance.
- 24 The Inspector General's founding affidavit in that matter confirmed that he believed Mr Fraser was victimising him because of his investigation into Mr Fraser. It was also apparent from his affidavit that the Inspector General was investigating matters that had previously been investigated and finalised by his predecessor.

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25 Moreover, according to the Inspector General's affidavit, the catalyst for his investigation was a complaint lodged by the Democratic Alliance that relied on allegations against Mr Fraser, contained in a book by Jacques Pauw entitled "*The President's Keepers*", published in October 2017. At paragraph 34 of his founding affidavit, the Inspector General stated:

34. *It is my sincere belief that the intimidation I have been facing from the Director General is occasioned by the investigations I am undertaking into the complaints laid against him. To the extent that these allegations are in the public domain, they are recorded by investigative journalist Jacques Pauw in his book The President's Keepers. I attach copies of the relevant portions of Mr. Pauw's book to this affidavit marked "SD1", which set out various allegations of corruption by Mr Fraser at the SSA between 2007 and 2009. These allegations include forgery, fraud and various offences in terms of the Prevention and Combating of Corrupt Activities Act. The following specific allegations are made in the book:*

34.1 *Mr Fraser is alleged to have established an illegal rogue intelligence programme, known as the Principle Agent Network, by allegedly copying the signature of the then-minister Ronnie Kasrils;*

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34.2 Mr Fraser is alleged to have improperly influenced the awarding of contracts to his family members and other individuals through the Principle Agent network; and

34.3 Mr Fraser is alleged to have created an alternative intelligence capacity, which constitutes a criminal offence."

- 26 I requested the Minister to contact the Inspector General and Mr Fraser, and to see if it was possible to resolve the dispute between them without having to go to court.
- 27 On 13 April 2018 the Minister wrote to the Inspector General. A copy of the Minister's letter is annexed hereto, marked "**MCR1**". The Minister urged the Inspector General to withdraw his application as a public airing of the dispute was not in the interests of national security. She said that she would request Mr Fraser not to file papers and that she and I were committed to resolve the dispute.
- 28 The Inspector General was not prepared to withdraw his application. Mr Fraser was not prepared to back down and filed his answering affidavit in which he stated that he had withdrawn the security clearance of the Inspector General because he had formed the view that he was a threat to national security. He denied that he was attempting to interfere in an investigation into his past. He said that he had been investigated and cleared well before the Inspector General had assumed his duties. The

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Inspector General filed his replying affidavit in which he again took issue with Mr Fraser.

- 29 It turned out that the application was neither argued nor subsequently pursued. On the day the matter was to be argued, the Judge presiding withdrew the matter from the roll because the urgent relief sought had become moot. I was kept advised of developments.
- 30 I could not determine the dispute between the Inspector General and Mr Fraser. It was however necessary that I establish the true facts so that the allegations and counter allegations could be tested.
- 31 I therefore decided to expedite the Minister's recommendation that Mr Fraser be transferred out of the SSA. I reasoned that with Mr Fraser out of the SSA, the Inspector General could resume his investigation and the SSA could investigate the veracity of Mr Fraser's allegations against the Inspector General. I was aware that the Inspector General required his security clearance to be restored to resume his investigation, but that was a matter for the Minister to consider.
- 32 I was aware that I had no authority to intervene in that process. Only the Minister could intervene. She is the appeal authority in terms of section 14(8) of the Intelligence Services Act 65 of 2002, which provides in sub-section (a) that a *"person whose security clearance has been degraded, withdrawn or refused by the Director-General may, in the prescribed manner, appeal to the Minister."*

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- 33 The Minister kept me informed about her discussions with the Inspector General and Mr Fraser. She advised me of her attempts to resolve the impasse between them. Her view was that the Inspector General should lodge an appeal against Mr Fraser's decision to withdraw his security clearance. That would give her the necessary authority to investigate the reasons for Mr Fraser's decision.
- 34 In expediting Mr Fraser's transfer out of the SSA, I considered whether I should suspend him and not transfer him to another department. In my view, there was no basis for me to suspend him at that time. He was an incumbent Director General. During his tenure as Director General, he had not faced any charges of misconduct. There was no new allegation of wrongdoing against him. The Inspector General's investigation was a re-visiting of old allegations, which pre-dated Mr Fraser's appointment as Director General of the SSA, and which had been investigated by the previous Inspector General.
- 35 The Minister and I agreed that the best solution was to create a climate where the Inspector General could continue his investigation. We could not, and did not want to, interfere in the Inspector General's investigation.
- 36 I was advised that the position of National Commissioner of Correctional Services was vacant. I was further advised that Mr Fraser was prepared to accept a transfer to that position as it was within the security cluster.

- 37 I was aware of the requirements in section 10 of the Public Service Act, 1994 ("the PSA") that any person permanently appointed to any post in a department of the public service had to be a South African citizen or a permanent resident, and a fit and proper person. I accepted that, while Directors General are appointed on fixed term contracts, and are therefore not permanently appointed, they must nevertheless be fit and proper. I knew that this applied across the board, and included the post of Director General of the SSA and the post of National Commissioner of Correctional Services. On the facts then available to me, I accepted that Mr Fraser was a fit and proper person to continue serving as the head of a department in the security cluster, in particular as the head of the Department of Correctional Services.
- 38 I consulted with the Minister of Public Service and Administration, and the Deputy Minister of Justice and Correctional Services, regarding my proposed transfer of Mr Fraser to Correctional Services. I consulted with the Minister of State Security again. They all concurred with my views.
- 39 On 15 April 2018, I decided that Mr Fraser be transferred from the post of Director General: State Security to the post of National Commissioner of Correctional Services.
- 40 Accordingly, on 17 April 2018 the SSA issued a statement recording my decision. A copy of the statement is annexed hereto, marked "MCR2".

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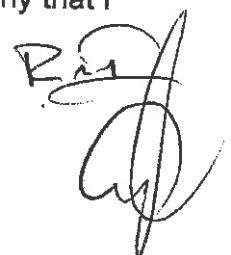
- 41 The Minister was mindful that the Inspector General required a security clearance to continue with his investigation against Mr Fraser and, on 18 April 2018, decided to set aside the withdrawal of the security clearance, pending an investigation by the Acting Director General of the SSA into the security competence of the Inspector General. A copy of the letter sent by the Minister to the Inspector General, setting out the reasons for her decision and the process going forward, is annexed hereto, marked "MCR3".
- 42 I specifically deny that I failed to apply my mind, either to the *prima facie* allegations of dishonesty against Mr Fraser, or to the implications of Mr Fraser's withdrawal of the Inspector General's security clearance.
- 43 The *prima facie* allegations of dishonesty against Mr Fraser relate to old matter that had been previously investigated. The previous investigation was concluded well before Mr Fraser's appointment as Director General of the SSA. The only reason the allegations resurfaced in the public domain is because Mr Pauw wrote about them in his book. They did not become new allegations simply because they were contained in the book. The DA has produced no evidence of new allegations against Mr Fraser. In the absence of such new allegations, it is unreasonable of the DA to expect me to have suspended Mr Fraser from the public service.
- 44 Regarding the withdrawal of the security clearance, there were no facts available to me to determine whether Mr Fraser was justified in acting as he did. Nor was I in a position to doubt the Inspector General's denial

that he had acted unlawfully. I was mindful of the fact that the Inspector General and Mr Fraser had made counter allegations against each other. The relevant facts had to be established. In the interim, the Minister had taken steps to remedy the situation, and Mr Fraser had been moved out of the SSA.

- 45 Although I did not have sufficient facts to make a decision as to who was correct, I considered the constitutional imperative of ensuring that the Office of the Inspector General functioned effectively. My decision, after consultation with the Ministers and Deputy Minister, was to transfer Mr Fraser from the SSA to the Department of Correctional Services, so that both investigations could continue in an appropriate climate. In doing so, I believed that the investigation into Mr Fraser's past conduct would be able to continue, and the Acting Director General of the SSA would be able to investigate Mr Fraser's contention that the Inspector General had unlawfully disclosed classified information.

The legal and constitutional framework

- 46 The DA sets out the legal framework within which the exercise of public power, including the exercise of executive power by the President, is to be reviewed.
- 47 I dispute the DA's contention that my decision to transfer Mr Fraser to the position of National Commissioner of Correctional Services fails to meet the standard required for the exercise of public power. I deny that I

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have failed to act in accordance with the provisions of the Constitution listed by the DA, or that I have acted contrary to any other provision of the Constitution or applicable legislation.

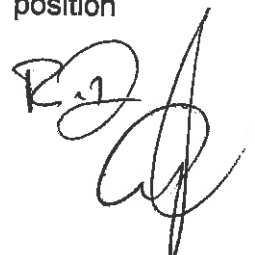
48 My decision to transfer Mr Fraser was made in terms of section 12(3)(a) of the PSA, which provides that: *"The President may transfer the head of a national department or national government component before or at the expiry of his or her term, or extended term, to perform functions in a similar or any other capacity in a national department or national government component in a post of equal, higher or lower grading, or additional to the establishment, as the President considers appropriate."*

49 Contrary to the DA's contention, Mr Fraser's assumption of his duties as Commissioner of Correctional Services was not an appointment in terms of section 12(1) of the PSA.

50 Section 3(3) of the Correctional Services Act 111 of 1998 provides that: *"The National Commissioner of Correctional Services is appointed in terms of the Public Service Act, but the conditions of service of the National Commissioner are governed by this Act and he or she is also entitled to the privileges of a head of a department which are conferred by the Public Service Act."* In the view I held at the time, and still hold, the post of National Commissioner of Correctional Services is equivalent in rank to the post of Director General of a department.

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- 51 I considered it appropriate, in the circumstances prevailing at the time, to transfer Mr Fraser to the post of National Commissioner of Correctional Services. It was important to stabilise the security cluster. The post of National Commissioner is an important post in the security cluster. So are the positions of Director General of the SSA and Inspector General for Intelligence. I was satisfied that the transfer of Mr Fraser was in the national interest, that it would remove the tension between the SSA and the Office of the Inspector General, that it would allow the investigations to proceed unhindered, and that it would relieve the leadership vacuum in the Department of Correctional Services.
- 52 As I have stated above, I accept that persons permanently employed in the public service, and Directors General, must be fit and proper. The requirements for what constitutes a fit and proper person have been elaborated at length by our courts, including by the Constitutional Court in *Democratic Alliance v President of South Africa* 2013 (1) SA 248 (CC) ("*Simelane*"). The DA quotes at length from the case, and no purpose would be served by repeating what has already been stated. Naturally, I consider myself bound by everything that was said in *Simelane*. But, the DA's reliance on *Simelane* is misplaced. The facts of that case differ significantly from the facts in this case.
- 53 Mr Simelane was the Director General of the Department of Justice and Constitutional Development before former President Zuma appointed him National Director of Public Prosecutions ("NDPP"). The NDPP is not the equivalent of a Director General of a Department. It is a position

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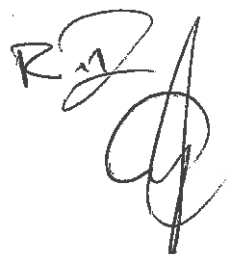
created by section 179 of the Constitution. Mr Simelane was not, and could not be, transferred from his position as DG to the post of NDPP.

54 Mr Fraser, on the other hand, occupied the post of Director General of the SSA. Having served as Director General of the SSA from September 2016, without any legal challenge to his position, he was transferred to an equivalent position, namely the position of National Commissioner, in terms of section 12(3) of the PSA.

55 In the case of a transfer from one government department to another, unless there is compelling evidence to the contrary, it is reasonable to presume that the incumbent is fit and proper. That was my view when I decided to transfer Mr Fraser. It remains my view.

56 Another significant difference is that in *Simelane* there were findings, made by the Ginwala Commission of Inquiry, that during the course of his evidence to the Ginwala Commission and his presentation of the government's case, Mr Simelane had been dishonest. There is no similar finding, or finding of any sort, against Mr Fraser.

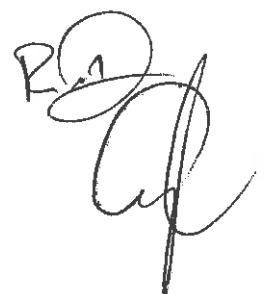
57 It is so that allegations of impropriety have been made against Mr Fraser, but investigations into these allegations were completed before he was appointed as Director General of the SSA. That much is apparent from the founding affidavit of the Inspector General in his urgent application and from the extract of Mr Pauw's book, attached to the DA's founding

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affidavit in this application. There are no new allegations of impropriety against Mr Fraser.

The DA's demand for explanations and reasons

- 58 On 18 April 2018, Mr Maimane, the leader of the DA, addressed a letter to me concerning Mr Fraser. A copy of the letter is annexure "JS10" to the founding affidavit of Mr Selfe. Mr Maimane posed certain questions to me regarding the transfer of Mr Fraser to the Department of Correctional Services and demanded that I answer him by 16h00 on the following day. The questions the DA required me to answer are repeated in paragraph 78 of the DA's founding affidavit.
- 59 Mr Selfe states that I did not respond to Mr Maimane's letter. That is not true. On 24 April 2018, Ms L Mxenge, the Acting Director General and Secretary of the Cabinet, responded on my behalf. A copy of the letter sent to Mr Maimane is annexed hereto, marked "MCR4".
- 60 At the time of Mr Maimane's letter, I was attending the Commonwealth Heads of Government meeting in London. Thereafter, I attended the Extra Ordinary Summit of the SADC Troika in Angola. Mr Maimane was, or should have been, aware of this since my attendance was widely covered in the media.
- 61 In the circumstances, Mr Maimane's demand for me to respond to a list of questions by the following day was unreasonable.

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62 The fact that the DA sees fit to include this allegation in their founding papers is curious.

Semi urgency

63 There is no merit in the DA's contention that its application should be dealt with on a semi urgent basis.

64 As I have stated above, Mr Fraser was appointed as Director General of the SSA during September 2016 without any legal challenge. It is clear that the DA was aware of the appointment.

65 In fact, on 3 November 2016, the honourable Mr Mike Waters placed on record in Parliament the DA's alarm at the appointment of Mr Fraser as Director General of the SSA. An extract from the recorded proceedings in the National Assembly on the day, recording the honourable Waters objection on behalf of the DA, is annexed hereto, marked "MCR5".

66 Other than to record its objection to the appointment of Mr Fraser as Director General of the SSA by former President Zuma, the DA has not taken any further action to challenge the appointment.

67 The DA has had ample opportunity to take action to review Mr Fraser's appointment as Director General of the SSA. It has not done so. The DA has never been slow to take matters to court when it believed such

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action was warranted. It is clear that the DA did not believe legal action was warranted to review and set aside Mr Fraser's appointment.

68 The publication of Mr Pauw's book during October 2017 does not make the matter urgent. The allegations in the book concerning Mr Fraser had long since been in the public domain.

69 Mr Fraser's decision to withdraw the security clearance of the Inspector General also does not make the matter urgent. I have explained the circumstances that led to the withdrawal of the security clearance and the corrective action taken by the Minister in that regard. The Inspector General's security clearance has been restored and, with it, his ability to perform his constitutional and statutory functions without restriction. That includes completing his investigation into the allegations against Mr Fraser.

70 Given what I have outlined above, there is no evidence that Mr Fraser will not discharge his duties as National Commissioner of Correctional Services in accordance with the law and with due diligence. In the event that allegations against him surface that warrant action being taken, that will be done. But until then, the DA cannot expect this Court to intervene on the basis of hearsay allegations made in Mr Pauw's book.

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The Rule 53 record

- 71 The DA has called upon me to explain why I did not file a record in terms of Rule 53(1).
- 72 After being called upon to file a record, I instructed the State Attorney to inform the DA that no such record exists. A copy of the State Attorney's letter, dated 15 June 2018, confirming this is annexed, marked "MCR6".
- 73 I respectfully submit that it is apparent from the contents of this affidavit that no record in terms of Rule 53(1) exists. I further submit that if the DA wished to pursue this issue, it was incumbent on the party to launch a properly motivated application to compel production of a record. This has not been done.


The founding affidavit

74 Ad paragraph 6

- 74.1 I deny that there are *prima facie* indications of serious dishonesty concerning Mr Fraser. As I state above, the Inspector General confirmed in his founding affidavit that he was investigating old allegations that had resurfaced in Mr Pauw's book.

75 Ad paragraph 8

- 75.1 I admit the contents of this paragraph.

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76 **Ad paragraph 9**

76.1 I admit that the National Commissioner plays an important role.
For the reasons set out above, I deny the remaining allegations in
this paragraph.

77 **Ad paragraph 21**

77.1 I deny that my decision to transfer Mr Fraser had any negative
consequences for the rule of law and democracy. I have set out
the reasons for my decision above.

78 **Ad paragraphs 24 - 42**

78.1 For the reasons set out above, I deny that there is any evidence
that Mr Fraser is not of good character and not fit to hold office as
the National Commissioner.

79 **Ad paragraph 43 – 51**

79.1 I deal above with the founding affidavit of the Inspector General.
Significantly, the DA has failed to attach the answering affidavit
filed by Mr Fraser in the Inspector General's application. I will
ensure that the full application is made available to this Court
when this application is heard.

79.2 As I state above, I could not determine the dispute between the
Inspector General and Mr Fraser at that time.

A handwritten signature in black ink, consisting of a stylized 'R' followed by a large, loopy 'A'.

80 To the extent that the remaining allegations in the founding affidavit are inconsistent with the contents of this affidavit, they are denied.

The supplementary founding affidavit

81 **Ad paragraph 7**

81.1 I deny that the reasons filed in terms of Rule 53(1)(b) evidence that I acted unconstitutionally in transferring Mr Fraser. The purpose of this affidavit is to amplify the reasons. I deny that I have acted unconstitutionally.

82 **Ad paragraph 17**

82.1 It is apparent from the papers in the Inspector General's urgent application that the allegations against Mr Fraser were previously investigated, and that no action was taken against him.

82.2 This is also apparent from the chapters of Mr Pauw's book that are attached to the Inspector General's affidavit.

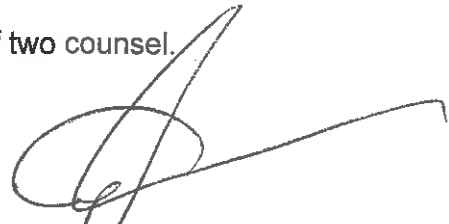
82.3 As stated above, it was Mr Pauw's book that motivated the DA's complaint to the Inspector General.

83 To the extent that the remaining allegations in the supplementary founding affidavit are inconsistent with the contents of this affidavit, they are denied.

A handwritten signature in black ink, located in the bottom right corner of the page. The signature is stylized and appears to be a combination of letters, possibly 'VJ' or 'VJF'.

Conclusion

84 Accordingly, I request that this Court dismiss the DA's application with costs, such costs to include the costs of two counsel.



MATAMELA CYRIL RAMAPHOSA

I hereby certify that the deponent knows and understands the contents of this affidavit and that it is to the best of his knowledge both true and correct. This affidavit was signed and sworn to before me at PRETORIA on this the 21 day of SEPTEMBER 2018. The Regulations contained in Government Notice R.1258 of 21 July 1972, as amended, and Government Notice No R1648 of 19 August 1977, as amended, have been complied with.

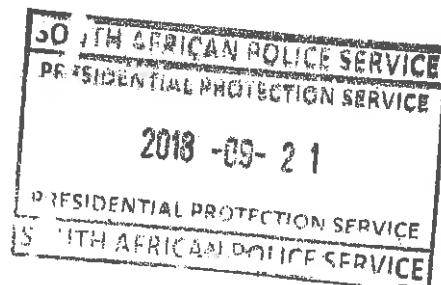


COMMISSIONER OF OATHS

Full names: MURWEUNO ZINAE ISHMAEL

Address: 01 government Avenue.

Capacity: CST



MCE 1



**MINISTER
STATE SECURITY
REPUBLIC OF SOUTH AFRICA**

PO Box 1037, Menlyn, 0077, PRETORIA, Ruth First Building, Bogare, Cnr Alterbury Road & Lois Avenue, MENLYN Tel: (012) 367 0757 Fax: (012) 367 0751
PO BOX 51278, Waterfront 8002, CAPE TOWN 18th floor 120 Plain street Parliament CAPE TOWN Tel: (021) 401 1802 Fax: (021) 461 5878/4644
www.ssa.gov.za

MIN/M1/1/5/1

13 April 2018

Dr Sethlomamaru Dintwe
Inspector General of Intelligence
Private Bag X1037
Menlyn
PRETORIA
0001

Dear Dr Dintwe

This correspondence follows my earlier discussion with you regarding the issue of the withdrawal of your security clearance.

Following our earlier discussion, I deem it fit and proper to communicate my position.

I request that we keep this matter outside of the court processes and for the matter to be addressed within the appropriate structures established by the Constitution and relevant legislation.

It will not be in the interest of national security to have a matter of such nature brought to public scrutiny through the court process.

The President and I are committed to resolve this matter within the next few days.

I therefore ask you to withdraw the urgent court application and I will also request the Director-General not to file a replying affidavit.

Yours Sincerely

Ms Dipuo Letsatsi-Duba, MP
Minister of State Security



MINISTRY
STATE SECURITY
REPUBLIC OF SOUTH AFRICA

MEDIA STATEMENT

TRANSFER OF THE DIRECTOR-GENERAL: STATE SECURITY AGENCY TO CORRECTIONAL SERVICES

17 April 2018

For Immediate Release

A decision has been taken to transfer the Director-General of the State Security Agency, Mr Arthur Fraser to the Department of Correctional Services.

The transfer follows consultation between President Cyril Ramaphosa, the Minister of State Security, Ms Dipuo Letsatsi-Duba and Mr Fraser on the suitable location of the Director-General. The transfer has been agreed upon with Mr Fraser and will be effective with immediate effect.

Mr Loyiso Jafta has been appointed to act as the Director-General of the State Security Agency until the appointment process for the post is finalised. Mr Jafta holds a B Luris degree from the Walter Sisulu University and has extensive experience in the intelligence field which dates back to his days in Umkhonto WeSizwe where he served as an analyst in the Department of Intelligence and Security (DIS).

Mr Jafta has served in numerous roles which include as an analyst within the Counter Intelligence division of the former National Intelligence Agency (NIA), Client Liaison Officer at the National Intelligence Coordinating Committee (NICOC), Convenor of the Provincial

R.I. *af*

Intelligence Coordinating Committee (PICOC) for KwaZulu Natal and has been tasked with responsibility over the Justice, Crime Prevention and Security (JCPS) and International Relations, Peace and Security (ICPS) clusters as a member of the Policy Coordination and Advisory Services (PCAS) unit in the Presidency. Furthermore, Mr Jafta has served as head of the National Communication Centre (NCC), a signals intelligence entity that fell under the National Intelligence Agency and has led the policy framework on matters incidental to persons in remand detention.

The President and Minister are confident that Mr Jafta is a suitable candidate to provide guided focus to the practical implementation of the institution's legal mandate and that he will capably lead the State Security Agency in the period in which he serves as the acting Director-General.

Issued by the Ministry of State Security

Enquiries:

Mr Brian Dube (Ministry of State Security) - 0824183389

A handwritten signature in black ink, appearing to be 'R. Jafta', located at the bottom right of the page.



MINISTRY
STATE SECURITY
REPUBLIC OF SOUTH AFRICA

P.O. Box 51276, Waterfront, 8002, CAPE TOWN, 18th floor, 120 Plein Street, Parliament. CAPE TOWN Tel: (021) 401 1600 Fax: (021) 461 4644
PO Box 1037, Menlyn, 0077, PRETORIA, Ruth First Building, Bogare, Cnr Alibury Road & Lois Avenue, MENLYN Tel: (012) 367 0700 Fax: (012) 367 0749
www.ssa.gov.za

MIN/M1/1/5/1

18 April 2018

Dr Setlhomamaru Isaac Dintwe
Inspector General of Intelligence
Private Bag X1037
Menlyn
PRETORIA
0001

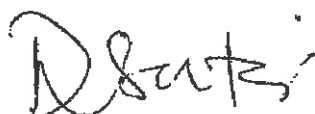
**Re: YOUR APPEAL AGAINST THE WITHDRAWAL OF YOUR SECURITY
CLEARANCE**

1. I refer to the letter received from your attorneys, Adams & Adams, dated the 18th April 2018.
2. Since you set out in your letter grounds upon which you rely in your request that I set aside the decision to withdraw your security clearance, I consider your letter as constituting your appeal as per my invitation in the letter from our attorneys dated the 17th April 2018.
3. You will appreciate that I have had limited time to consider your grounds and all the circumstances that surround the impugned decision.
4. Accordingly, it is only fair that I afford the Acting Director-General of the State Security Agency time to familiarise himself with the different versions in this unfortunate dispute. Although I do not necessarily agree with your legal

RJ

contentions, I have, in the meantime, and in the interest of fairness, deemed it appropriate that I make the following decisions:

- 4.1. I set aside the withdrawal of the your security clearance and the subsequent decision that denies you access to classified information, restricts you from carrying out your functions and restricts your access to the premises;
- 4.2. I have also instructed the Acting Director-General of the State Security Agency to, without delay, collect all information relevant to your security competence, including, but not limited to, your account of the events leading to the withdrawal of your security clearance, the reasons for the withdrawal of your security clearance, and all other information relevant to vetting as set out in the Intelligence Services Act (Act 65 of 2000) and the National Strategic Intelligence Act (Act 39 of 1994), in order to re-determine your security competence.
5. The above interventions notwithstanding and in accordance with the injunctions of relevant legislation, I still invite you to consider lodging a formal appeal as provided for in legislation.
6. I trust that you will co-operate with the Acting Director-General of the State Security Agency in the resolution of this matter.



Ms Dipuo Letsatsi-Duba, MP
Minister of State Security





THE PRESIDENCY: REPUBLIC OF SOUTH AFRICA
Private Bag X1000, Pretoria, 0001

Mr M Maimane, MP
Leader of the Democratic Alliance
PO Box 15
Cape Town
8000

Dear Mr Maimane

**APPOINTMENT OF MR ARTHUR FRASER AS A NATIONAL COMMISSIONER
OF THE DEPARTMENT OF CORRECTIONAL SERVICES**

1. Reference is made to your letter dated 18 April 2018 addressed to Mr Cyril Ramaphosa, the President of the Republic of South Africa.
2. Your letter was only brought to my attention yesterday the 23rd April 2018. I have not yet had an opportunity to discuss your letter with the President. As you might be aware the President is in Angola attending the Extra Ordinary Summit of the SADC Troika.
3. We respectfully request that you give us indulgence to consult with the President on the matter.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'L Mxenge'.

Ms L Mxenge
Acting Director-General and Secretary of the Cabinet
Date: 24/4/2018

A handwritten mark in black ink, possibly initials 'RZ' followed by a large, stylized flourish.

3 NOVEMBER 2016

PAGE: 1 of 184

THURSDAY, 3 NOVEMBER 2016

PROCEEDINGS OF THE NATIONAL ASSEMBLY

The House met at 14:01.

The Speaker took the Chair and requested members to observe a moment of silence for prayer or meditation.

ANNOUNCEMENTS, TABLINGS AND COMMITTEE REPORTS - see col 000.

LEAVE OF ABSENCE FOR MEMBERS OF PARLIAMENT

(Draft Resolution)

The CHIEF WHIP OF THE MAJORITY PARTY: Speaker, I move without notice:

That the House, in terms of National Assembly Rule 36 read with Item 7 of Appendix A to the Rules, and notwithstanding any provisions to the contrary, grants the following members leave of absence from the House due to ill health, as follows:

R.D.
A

him R3 000 provided the official checked, processed and authorised the passport of his brother.

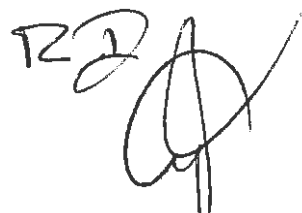
The officer alerted the Pretoria Serious Corruption Unit of the Hawks and an operation was conducted swiftly. The man was nabbed in the act of offering the bribe and subsequently the investigation led the Hawks to the OR Tambo International Airport. His 36-year-old brother was already boarding the flight but was caught with the fraudulent passport and many other illegal items to the value of R6 million.

The government and the Department of Home Affairs are intensifying the fight against corruption. The Department of Home Affairs is cleaning the rot and getting rid of officials who continue to engage in corrupt activities within the department. We call upon all the employees to follow the example of the dedicated official and reject all forms of bribery. Thank you. [Time expired.] [Applause.]

APPOINTMENT OF ARTHUR FRASER AS DIRECTOR-GENERAL OF STATE

SECURITY AGENCY RAISES ALARM

(Member's Statement)

RZ


Mr M WATERS (DA): The DA wishes to place on record its alarm at the recent appointment of Arthur Fraser as the Director-General of the State Security Agency, SSA. Fraser left the SSA under a dark cloud in late 2015 only for the company founded with fellow SSA washed out Mandla Manzini to enjoy remarkable success providing security services to a host of state entities.

We believe Fraser's appointment is highly inappropriate considering the allegations levelled against him during his previous stint with the SSA. The timing of his appointment is similarly questionable considering that the post of Inspector-General of Intelligence has been vacant since March 2015. With no Inspector-General to turn to, we are forced to appeal to Parliament to have Fraser's appointment reviewed and hopefully reversed.

Chair, we ask the Minister of State Security, David Mahlobo to appear before this House and explain why Fraser has been appointed to this critical position. Our intelligence agencies are not a law unto themselves and we cannot allow them to operate with zero oversight and complete impunity. I thank you.

**EFF THANKS SUPPORTERS AND LEADERSHIP FOR RESPONSE TO CALL FOR
DAY OF ACTION IN PRETORIA**

R.12





Office of the State Attorney Pretoria

Private Bag X 91
PRETORIA
0001

316 Schoeman Street
Salu Building
Entrance Andries Street

Tel: (Switchboard): (012) 309 1500
Direct (012) 309 1568

Fax2e-mail (direct) 0864121356

Enquires: Mr. Ntopane Mashabela
Email: NtoMashabela@justice.gov.za

My ref: 2327/18/Z13
Your ref: Elzanne Jonker

15 June 2018

MINDE SHAPIRO & SMITH

Building number 2

Tyger Valley Office Park

Belville

By e-mail: Elzanne@mindes.co.za

Dear Elzanne

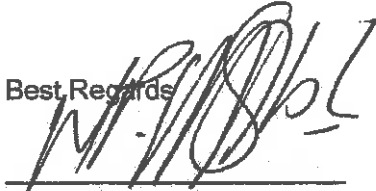
DEMOCRATIC ALLIANCE Vs PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA & 4 OTHERS

1. The above matter as well as your electronic mail of 08 June 2018 refers.

R. J.

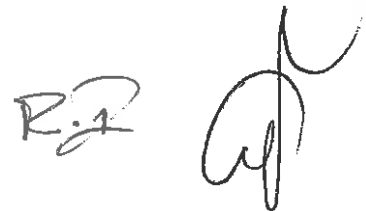
2. Kindly note that there is no record within the meaning of Rule 53, accordingly, none will be provided, however, we will provide your office with reasons as required in terms of Rule 53 during the course of the next two weeks.

Best Regards



NP Mashabela

For: State Attorney Pretoria



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG PROVINCIAL DIVISION, PRETORIA**

Case No. 34476/2018

In the matter between:

DEMOCRATIC ALLIANCE

Applicant

and

PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA

First Respondent

ARTHUR FRASER N.O.

Second Respondent

ARTHUR FRASER

Third Respondent

**MINISTER OF JUSTICE AND CORRECTIONAL
SERVICES**

Fourth Respondent

**DEPUTY MINISTER OF JUSTICE AND
CORRECTIONAL SERVICES**

Fifth Respondent

CONFIRMATORY AFFIDAVIT

I, the undersigned,

DIPUO LETSATSI-DUBA

state the following under oath:

- 1 I am the Minister of State Security of the Republic of South Africa. My place of work is at Bogare Building, 2 Atterbury Road, Menlyn, Pretoria.
- 2 I have read the answering affidavit deposed to by the President of the Republic of South Africa. I understand that this affidavit will be served and filed together with the President's answering affidavit.
- 3 I confirm that the contents of the President's answering affidavit are true and correct in so far as they relate to me.



DIPUO LETSATSI-DUBA

I hereby certify that the deponent knows and understands the contents of this affidavit and that it is to the best of her knowledge both true and correct. This affidavit was signed and sworn to before me at PRETORIA on this the 21ST day of SEPTEMBER 2018. The Regulations contained in Government Notice R.1258 of 21 July 1972, as amended, and Government Notice No R1648 of 19 August 1977, as amended, have been complied with.



COMMISSIONER OF OATHS

Full names: JOHANNES NGAKA MAKUA
Address: 218 YISAGIE STREET, PRETORIA
Capacity: LT. COLONEL

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG PROVINCIAL DIVISION, PRETORIA**

Case No. 34476/2018

In the matter between:

DEMOCRATIC ALLIANCE

Applicant

and

PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA

First Respondent

ARTHUR FRASER N.O.

Second Respondent

ARTHUR FRASER

Third Respondent

**MINISTER OF JUSTICE AND CORRECTIONAL
SERVICES**

Fourth Respondent

**DEPUTY MINISTER OF JUSTICE AND
CORRECTIONAL SERVICES**

Fifth Respondent

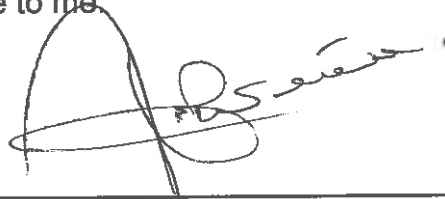
CONFIRMATORY AFFIDAVIT

I, the undersigned,

THABANG MAKWETLA

state the following under oath:

- 1 I am the Deputy Minister of Justice and Correctional Services of the Republic of South Africa. My place of work is at 124 WF Nkomo Street (corner WF Nkomo and Sophie De Bruyn Streets), Poyntons Building, West Block, Pretoria.
- 2 I have read the answering affidavit deposed to by the President of the Republic of South Africa. I understand that this affidavit will be served and filed together with the President's answering affidavit.
- 3 I confirm that the contents of the President's answering affidavit are true and correct in so far as they relate to me.



THABANG MAKEWETLA

I hereby certify that the deponent knows and understands the contents of this affidavit and that it is to the best of his knowledge both true and correct. This affidavit was signed and sworn to before me at PRETORIA on this the 21st day of SEPTEMBER 2018. The Regulations contained in Government Notice R.1258 of 21 July 1972, as amended, and Government Notice No R1648 of 19 August 1977, as amended, have been complied with.



COMMISSIONER OF OATHS

Full names: RAMAN GOVENDER

Address: 124 WF NKOMO STREET, PRETORIA

Capacity: DEPUTY DIRECTOR

OFFICE OF THE NATIONAL COMMISSIONER CORRECTIONAL SERVICES
2018 -09- 21
PRETORIA
KANTOOR VAN DIE NASIONALE KOMMISSARIS KORREKTIEWE DIENSTE

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG PROVINCIAL DIVISION, PRETORIA**

Case No. 34476/2018

In the matter between:

DEMOCRATIC ALLIANCE

Applicant

and

PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA

First Respondent

ARTHUR FRASER N.O.

Second Respondent

ARTHUR FRASER

Third Respondent

**MINISTER OF JUSTICE AND CORRECTIONAL
SERVICES**

Fourth Respondent

**DEPUTY MINISTER OF JUSTICE AND
CORRECTIONAL SERVICES**

Fifth Respondent

CONFIRMATORY AFFIDAVIT

I, the undersigned,

AYANDA DLODLO

state the following under oath:


AD

- 1 I am the Minister of Public Service and Administration of the Republic of South Africa. My place of work is at Batho Pele House, 546 Edmond Street, Arcadia.
- 2 I have read the answering affidavit deposed to by the President of the Republic of South Africa. I understand that this affidavit will be served and filed together with the President's answering affidavit.
- 3 I confirm that the contents of the President's answering affidavit are true and correct in so far as they relate to me.



AYANDA DLODLO

I hereby certify that the deponent knows and understands the contents of this affidavit and that it is to the best of her knowledge both true and correct. This affidavit was signed and sworn to before me at PRETORIA on this the 21st day of SEPTEMBER 2018. The Regulations contained in Government Notice R.1258 of 21 July 1972, as amended, and Government Notice No R1648 of 19 August 1977, as amended, have been complied with.


COMMISSIONER OF OATHS
Full names: **SANDHRI NAIDOO**
Address: **COMMISSIONER OF OATHS**
Capacity: **Attorney of the High Court of South Africa**
COMMISSIONER OF OATHS (EX OFFICIO)
Department of Energy
192 Visagie Street
Cnr Paul Kruger & Visagie Street
Pretoria. 0001