



STATE SECURITY AGENCY

EXHIBIT YY 3

LOYISO JAFTA



**JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE,
CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE**

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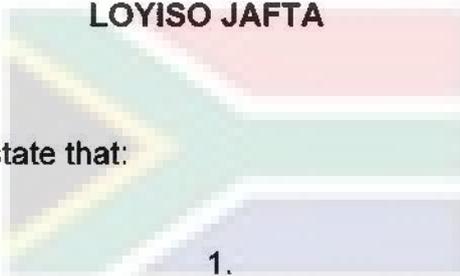
#	Description	SSA Bundle	Bundle Page	Exhibit Pages
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SUBMISSION OF MR L JAFTA, ACTING DIRECTOR-GENERAL OF THE STATE SECURITY AGENCY, TO THE JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE, CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE

AFFIDAVIT

I, the undersigned

LOYISO JAFTA



do hereby make oath and state that:

1.

I am the Acting Director-General and Accounting Officer of the State Security Agency ("the Agency") referred to in section 3 of the Intelligence Services Act, 2002 (Act No. 65 of 2002).

2.

The contents of this affidavit are, unless the context indicates otherwise, within my own personal knowledge and are, to the best of my belief, both true and correct.

3.

Where I make submissions of a legal nature, I do so on the advice of my legal representatives, whose advice I accept.

4.

CG VAN SCHANKE
CAPTAIN
0530690-8

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I limit this affidavit in terms of its contents to narrow issues at this stage, as I am conscious of the need to respect matters of national security. The Director-General of the Agency is compelled in terms of section 10(4) of the Intelligence Services Act, 2002 (Act 65 of 2002) to as far as reasonably practicable, take steps to ensure that national security intelligence, intelligence collection methods, sources of information and the identity of members of the Agency, are protected from unauthorised disclosure. Consequently, all information contained herein and matters that I deal with, at this stage, and the identities of the persons involved, are those that are already in the public domain.

5.

On assuming office as the Acting Director-General and responsibilities as the Accounting Officer for the Agency on 17 April 2018, I soon became aware of some of the challenges that this department of the state had faced. I will not elaborate on these in detail, because the nature and extent of those challenges has been adequately covered in the Report of the High Level Review Panel on the State Security Agency ("the Panel") appointed by the President of the Republic of South Africa in June 2018, by the submissions of Dr SF Mufamadi, the Chairperson of the High Level Review Panel, and those of Messrs Maqetuka, Njenje and Shaik.

6.

On page 2 of the Report of the Panel released in December 2018, the Panel apart from its specific findings and recommendations asked itself the question "What went wrong?" In answering this question, it must be emphasised that the findings of the Panel do not impugn every member of the SSA and its management, but focus on

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the things that went wrong. The Panel identified five high-level answers to this question:

- **Politicisation:** The growing contagion of the civilian intelligence community by the factionalism in the African National Congress (ANC) progressively worsened from 2009;
- **Doctrinal Shift:** From about 2009, there was a marked doctrinal shift in the intelligence community away from the prescripts of the Constitution, the White Paper on Intelligence, and the human security philosophy towards a much narrower, state security orientation;
- **Amalgamation:** The amalgamation of (the) National Intelligence Agency (NIA) and the South African Secret Service (SASS) into the SSA did not achieve its purported objectives and was contrary to existing policy;
- **Secrecy:** There is a disproportionate application of secrecy in the SSA stifling effective accountability;
- **Resource abuse:** The SSA had become a 'cash cow' for many inside and outside the Agency.

7.

It has also been my observation from my experience as the Acting Director-General that there was a doctrinal shift in the civilian intelligence agency from serving the national security of the citizens of the country to a state security doctrine, and in that respect predominantly serving the interests of the governing party and the person of the President of the Republic and of the party. This was particularly evident in the subversion of systems and processes for good and accountable governance; and

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enabling the Agency to carry out projects and activities that broadly fell outside its legal mandate.

8.

During my tenure at the helm of the Agency, I have been seized with curing the systemic ills that underlie the challenges identified and correcting the governance failures by putting in place systems, processes and controls to support clean governance.

8.1 Firstly, the office of the Director-General plays an oversight rather than an operational role and is not directly involved in operational matters. The DG has a birds-eye view over the workings of the Agency and should ensure that it functions in a synergistic manner and in synchrony with other national intelligence structures to achieve the policy imperatives of government. I am mindful of the government priority to eradicate corruption in the 2019-2024 Medium Term Strategic Framework and the role of the Agency to address the scourge of corruption. To this extent, the Agency has implemented several initiatives to address the systemic issues that enable corrupt practices, and is implementing appropriate systems, processes and controls to prevent its occurrence and recurrence.

8.2 Secondly, I was seized with the responsibility to deal with malfeasance within the Agency, and with regard to which we are steadily making progress.

Policy and Architecture

9.

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The creation of the State Security Agency in 2009 resulted in an architecture in which all the authority and power over the civilian intelligence architecture was concentrated into the hands of a single Director-General, subject to the Executive oversight of a single Minister of State Security in accordance with section 12 of the Intelligence Services Act, 2002 (Act 65 of 2002). The provisions for the Agency's establishment in terms of which the National Intelligence Agency, the South African Secret Service, Electronic Communications Security (Pty) Ltd (COMSEC) and the South African National Academy of Intelligence were absorbed into and make up the Agency, were legislated in section 3 of the Intelligence Services Act, 2002 (Act 65 of 2002). The functions of the Agency are set out in the National Strategic Intelligence Act, 1994 (Act 39 of 1994) and its governance processes are regulated in terms of various regulations and directives issued by the Minister of State Security. The civilian intelligence architecture created in terms of the above-mentioned legislation and which obtains presently is represented on **Annexure A**.

10.

By comparison, the civilian intelligence architecture that obtained prior to 2009 and was based on the White Paper on Intelligence, disaggregated power into the hands of two Directors-General of three Schedule 1 National departments, namely the National Intelligence Agency, the South African National Academy of Intelligence and the South African Secret Service. The mandates of the intelligence services were distinguished between the domestic mandate of the National Intelligence Agency and the foreign intelligence mandate of the South African Secret Service and they reported independently to the Minister for Intelligence Services. Under this structural configuration, the Directors-General of these two last mentioned

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Departments had no direct authority over other centres that performed a support function to them viz. the National Communications Centre, the COMSEC, the South African National Academy of Intelligence and the Office for Interception Centres. As a result, they were only in very regulated circumstances empowered to request the use of such capabilities for intelligence gathering. These structures were overseen individually by the Minister, the Joint Standing Committee on Intelligence (JSCI), the Inspector General of Intelligence (IGI), Chapter 9 institutions and the judiciary. The structural configuration is illustrated on **Annexure B**.

11.

The amalgamation of the intelligence services in 2009 promised enhanced integration and co-ordination of functions in the intelligence community with Directors heading each of the Domestic and Foreign Branches and a single Accounting Officer viz. the Director-General. However, upon my arrival at the Agency in 2018, I was greeted by the over-concentration of power in the hands of the Director-General, because the two positions for the Directors of the Domestic and Foreign Branches were done away with as a result of the implementation of the Strategic Development Plan (SDP) on 1 April 2018. As a result, the Director-General was:

- singularly informed of all operational and strategic intelligence pertaining to the national security of the country;
- had the authority to direct all the intelligence activities conducted by civilian intelligence inside and outside the country;
- exercised command and control over all the civilian intelligence capabilities and all resources of the various components of the civilian intelligence architecture.

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The SDP was stopped in July 2018 and two Directors of the Domestic and Foreign Branches were subsequently appointed.

12.

In the performance of its functions, the Agency is subject to a host of oversight structures as a safeguard against abuse of power:

- 12.1 The Minister and Director-General account to the JSCI which oversees the performance of the intelligence and counter-intelligence functions of the Agency in accordance with section 3 of the Intelligence Services Oversight Act, 1994 (Act 40 of 1994);
- 12.2 The JSCI reports to Parliament on the intelligence and counter-intelligence functions of the Agency, which include the administration, financial management and expenditure of the Agency in accordance with section 2(1) of the Intelligence Services Oversight Act, 1994 (Act 40 of 1994).
- 12.3 The Agency is overseen by the IGI established in terms of section 7 of the Intelligence Services Oversight Act, 1994 (Act 40 of 1994) who conducts compliance inspections of the work of the Agency and investigations into its activities, *inter alia*, complaints of maladministration and corruption against the Agency.
- 12.4 The Agency is also subject to oversight by Institutions Supporting Constitutional Democracy provided for in Chapter 9 of the Constitution of the Republic of South Africa, 1996, especially by means of audits conducted by the Auditor-General of South Africa.

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12.5 Finally, the Agency is subject to judicial oversight with regard to the performance of its functions and labour relations matters.

13.

It is submitted that the corrosion of governance in the Agency and systemic breakdown of governance systems and processes that obtained in the Agency and is reported on by the Panel, is enabled considerably by the intelligence architecture. The over-concentration of power in the hands of a single Director-General resulted in a span of control and authority that is too wide, and such authority consequently enabled that resources could be hidden or moved so that there is no or limited concomitant or robust oversight.

14.

It is further submitted that the cure is to disaggregate the authority and split or separate the powers and functions so that it makes for better, more effective and transparent control, accountability and oversight.

15.

There are several reasons, however, for the abuses reported on by the Panel. Another factor is the limited remit of the Auditor-General of South Africa (AGSA). In terms thereof, all areas of intelligence activity, bar covert operations, fell within the remit of the AGSA. This meant that activities that fall within covert operations did not receive the same level of scrutiny that other aspects of the SSA receive from the

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AGSA. One of the recommendations of the Panel that was approved by the President, was that the remit of the AGSA in the Agency should also cover covert operations. This recommendation obtains in various jurisdictions the world over, particularly where oversight and control instruments and systems have matured.

16.

The expansion of the purview of oversight of the AGSA is being implemented, subject to reasonable considerations so as not compromise operations. The Agency has already embarked on a review of the auditing process with the office of the Auditor-General with the goal to improve the combined assurance conducted between the Agency's Internal Audit and the Auditor-General's office. They have, with Finance, conducted benchmarking with comparable jurisdictions in 2019 to study compliance and auditing measures that have been implemented in intelligence structures nationally and internationally with a view to enhancing auditing practices in the Agency.

Restoring appropriate administrative systems and processes for good and accountable governance

17.

The Agency always had in place adequate systems for corporate governance underscored by sound policies, procedures and processes set out in comprehensive directives. Upon my arrival in April 2018, I found that these were systematically subverted and bypassed, and in their stead, new systems were installed that did not

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comply with legal requirements. This was particularly evident in the running and management of operations in relation to:

- The use of funding instruments for operational purposes:

The approved funding instrument for operations was not applied consistently across the Agency. Where the approved instrument was no longer utilised, a separate instrument, that serves a different purpose, was employed to fund operations. This resulted in some operational members taking into their possession the full amount of money for a project, for example R 20 million on the day that a project is approved.

- Reporting and record-keeping of operational expenses:

Where the Operational Directives required that regular reports must be generated and submitted, and records updated, these were not always complied with.

- Accounting for operational expenses:

Monies were taken on the basis of a certificate, and accounting for operational expenditure was similarly reconciled on the basis of a certificate.

In respect to the above, the appropriate funding instrument was restored and all legal protocols governing the conduct of intelligence operations were applied.

18.

Furthermore, operations were also conducted from the office of the Accounting Officer. While this approach may be justified under certain circumstances, it is an approach fraught with risks for it puts the Accounting Officer in the middle of operations. It begs the question: who scrutinises the projects that are run from the

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office of the Director-General for probity and who approves the projects and the expenses? It is not optimal for the Accounting Officer to be the originator of projects and their implementer, because his or her objectivity could be compromised when having to ensure that proper controls are being implemented in projects in which she or he is directly involved. The safeguards against abuses are also significantly weakened when there is less or a lack of transparency in the utilisation of resources. In this regard, the remedial measure that was implemented is that entities in the office of the Accounting Officer that conducted operations were reassigned to operational entities within the Agency. In this way, the office of the Accounting Officer is no longer conducting intelligence operations.

19.

The following corrective measures were implemented in the management and administration of operations after my arrival:

- illegal operations were terminated;
- 'relations' with a large number of people outside the Agency who had been utilised in various projects, often unwittingly, were terminated;
- members who were in possession of resources of the Agency, *inter alia*, funds, firearms, cars, leases, and immovable property were instructed to return them, with the assurance that all of it is properly accounted for; and
- an investigation was commenced in respect of the relevant infractions, so that, where appropriate, consequence management could be implemented with respect to the responsible persons.

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19.1 Terminating Illegal Operations

Operations that the Agency sustained up to April 2018 of the following description were terminated immediately:

- security services provided illegally to public figures such as protection services for Messrs Eugene De Kock and Collen Maine, as well as Ms Dudu Myeni under Project Tin Roof;
- community based organisations established as a cover to influence political developments in the country; and
- political intelligence operations conducted outside the legal mandate of the Agency.

These projects were terminated one by one, with the result that funding to these projects was also terminated and redirected to legitimate operations.

19.2 Terminating Relations with Persons utilised by the Agency

19.2.1 The termination of the projects and the attendant funding triggered calls and threats of litigation by approximately two hundred people who had been utilised by the Agency in various roles. The majority of these people had been recruited by the erstwhile Deputy Director-General: Special Operations under very dubious circumstances. In the majority of cases, there were no written contracts concluded; some people had been promised permanent employment in the Agency; and the majority were paid in cash, which meant that they did not pay tax on their monthly income. Some of these individuals were

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trained in South Africa and abroad in various elements of intelligence and other security-related skills.

19.2.2 An extensive exercise was undertaken to investigate cases on a case-by case basis, and to close them after assessing their individual merits. There were instances where the organisation, taking into account various considerations and based on the merits of the matter, elected to sustain relations with the parties involved.

19.3 Directing that officers who were in possession of resources of the state surrender those to the state

19.3.1 Members who had taken operational funds and retained them in their personal possession were instructed to return such funds to the Agency, with a proviso that the relevant operations will continue to be funded. It is self-evident that it did not extend to irregular or illegal operations.

19.3.2 In this way, all the monies that were taken for operational expenses were accounted for and where members had outstanding balances owing to the Agency, the relevant directive authorising the Agency to recover debt from the member's salary was instituted. The recovery of monies owing to the

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Agency was not restricted to the above circumstances, as efforts were made to recover all funds that was owed to the fiscus. The process is on-going.

19.3.3 There are several firearms, namely pistols and assault rifles, which some members had kept in their custody in breach of corporate policy. For a number of years, no-one within the Agency management knew where the firearms were stored, what they had been used for, or if they had been used at all. Investigations in this regard resulted in the Agency confiscating all the firearms, and immediately surrendering them to the South African Police Services to conduct ballistics examinations to determine whether any firearm had been used in the commission of a crime and to hold the responsible person(s) to account. This process is yet to be completed and the Agency is awaiting feedback from the South African Police Service in this regard.

19.3.4 Investigations are underway with respect to movable and immovable property that may have been registered in the names of members or external contacts of the Agency. There were instances where the ownership of movable property, such as motor vehicles, was irregularly transferred from the Agency to members and contacts who had been utilising it. In this regard,

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the relevant investigations will extend to the other law enforcement authorities of the state.

19.4 Directing that an investigation is pursued on all of the above

Subsequent to my appointment, a number of investigations have been initiated from May 2018 into a wide range of legal infractions. As a result, several members of the Agency have been suspended from official duty pending the finalisation of the investigations. The investigations have yielded evidence of flagrant contraventions of the law. In such instances, the matters have been referred for criminal investigations to law enforcement and prosecuting authorities, namely the Directorate of Priority Crime Investigations and the National Prosecuting Authority, as well as the South African Revenue Service. Where appropriate, disciplinary steps are being instituted against errant members. It is the aim that where members unduly benefitted from the abuse of state funds, that such funds and the proceeds of crime should be repaid to the state.

20.

In addition to the reasons advanced above for the systemic erosion of corporate governance in the Agency, I submit that Executive overreach into the operational domain and the absence of a framework that governs illegal instructions contribute to create conditions that undermine compliance with prescripts in the civilian intelligence community. The Minister for State Security is empowered in terms of section 12 of the Intelligence Services Act, 2002 (Act 65 of 2002) to "**do or cause to**

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be done all things which are necessary for the efficient superintendence, control and functioning of the Agency". In a real and practical sense this creates the opportunity for the Minister to assert this right to *inter alia* enter the operational terrain, recruit and handle agents, recruit members to the Agency, and instruct the Management of the Agency to fund operations conducted by the Minister and persons in the Ministry acting on his or her behalf. These activities undermine the governance systems and processes as compliance measures are flouted. It is submitted that a framework that governs instructions given by the Executive to Heads of Departments should be instituted for the public service which will provide for all instructions to the Directors-General to be recorded in writing and even tabled with the Annual Report of the Department.

21.

The scrutiny over the intrusive measures used by law enforcement and intelligence services in the matter of ***Amabhungane Centre for Investigative Journalism NPC and Another v Minister of Justice and Correctional Services and Others*** 2020 (1) SA 90 (GP) provides the opportunity to better refine controls and management of signals and cyber capabilities of the country. Such an assessment of the intelligence gathering capabilities must take into account the reality of the threats to the country and its people and the stability that is necessary for the attainment of national security articulated in section 198 of the Constitution viz.

“(a) National security must reflect the resolve of South Africans, as individuals and as a nation, to live as equals, to live in peace and harmony, to be free from fear and want and to seek a better life.”

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The doctrine of human security is central to the national interest and it is premised on the creation of a secure environment and economic prosperity, but does not negate the role of the security services to protect and preserve national security.

22.

In similar vein, the national security doctrine that is espoused in the White Paper on Intelligence promotes the creation of a societal environment that is free from violence and instability, while engendering respect for the rule of law and human life. It is mandatory for members in the performance of their functions to obey all lawful directions received from a person having the authority to give such directions in terms of section 11(1) of the Intelligence Service Act, 2002 (Act 65 of 2002). The White Paper advocates the adherence to a code of conduct for intelligence officers premised on loyalty to the State and the Constitution, obedience to the laws of the country and compliance with democratic values and ethical norms and standards. It is therefore imperative that the intelligence community instil ethical intelligence practices through the establishment of an autonomous Ethics Office within the Office of the Director-General of the Agency and the institutionalisation of integrity testing for members.

I know and understand the contents of this declaration.

I have no objection to take the prescribed oath.

I consider the oath to be binding on my conscience.

So help me God.

AFFIDAVIT OF MR L JAFTA, ACTING DIRECTOR-GENERAL OF THE STATE SECURITY AGENCY, TO THE JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE, CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE

LOYISO JAFTA

I certify that the deponent acknowledged that he knows and understands the contents of this affidavit, that he has no objection to taking the prescribed oath and that he considers this oath to be binding on his conscience. I also certify that this affidavit was signed in my presence at Pretoria on this the 30 day of **NOVEMBER 2020** and that the Regulations contained in Government Notice R1258 of 21 July 1972, as amended by Government Notice R1648 of 19 August 1977, have been complied with.

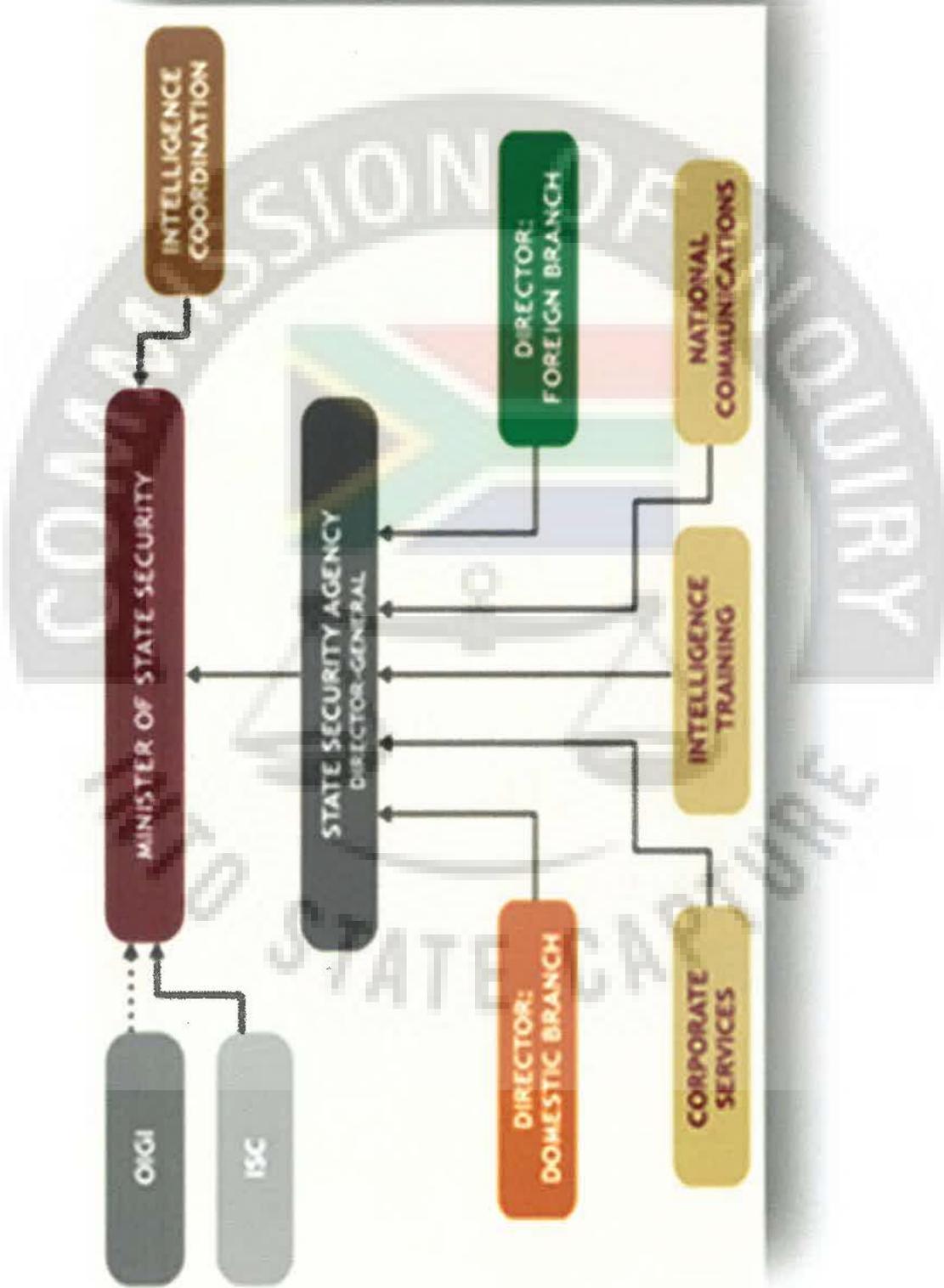
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SOUTH AFRICAN POLICE SERVICE
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ANNEXURE A



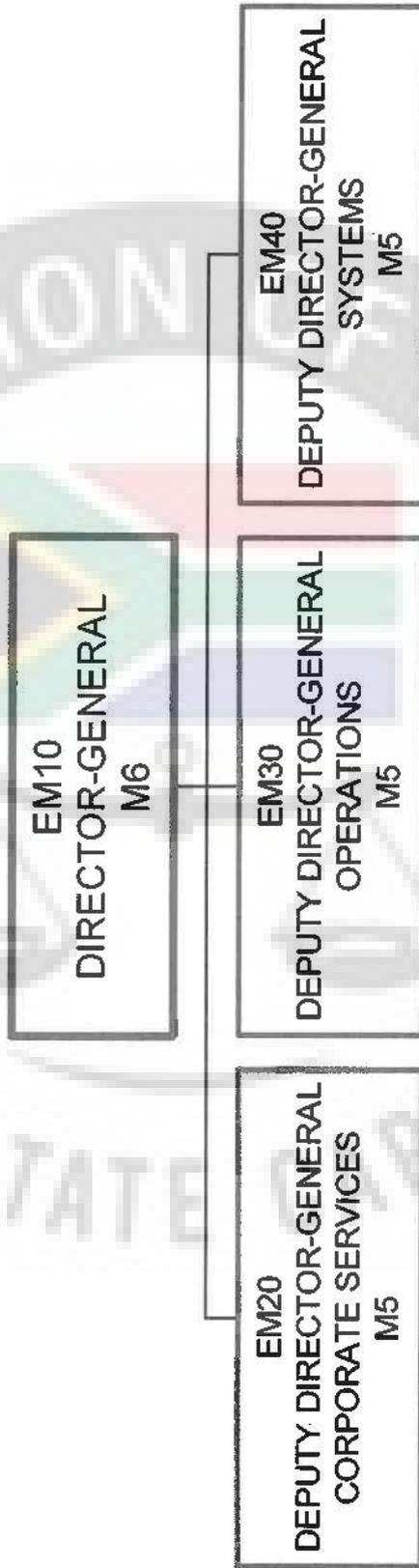


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ANNEXURE B

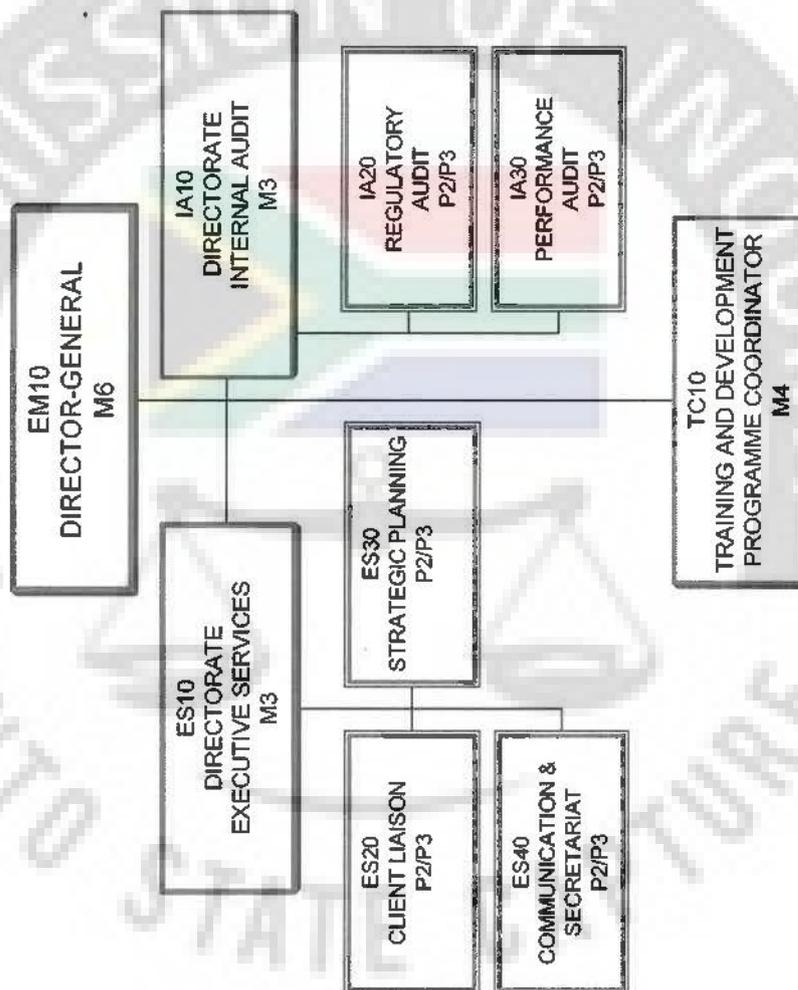


NATIONAL INTELLIGENCE AGENCY
Executive Management



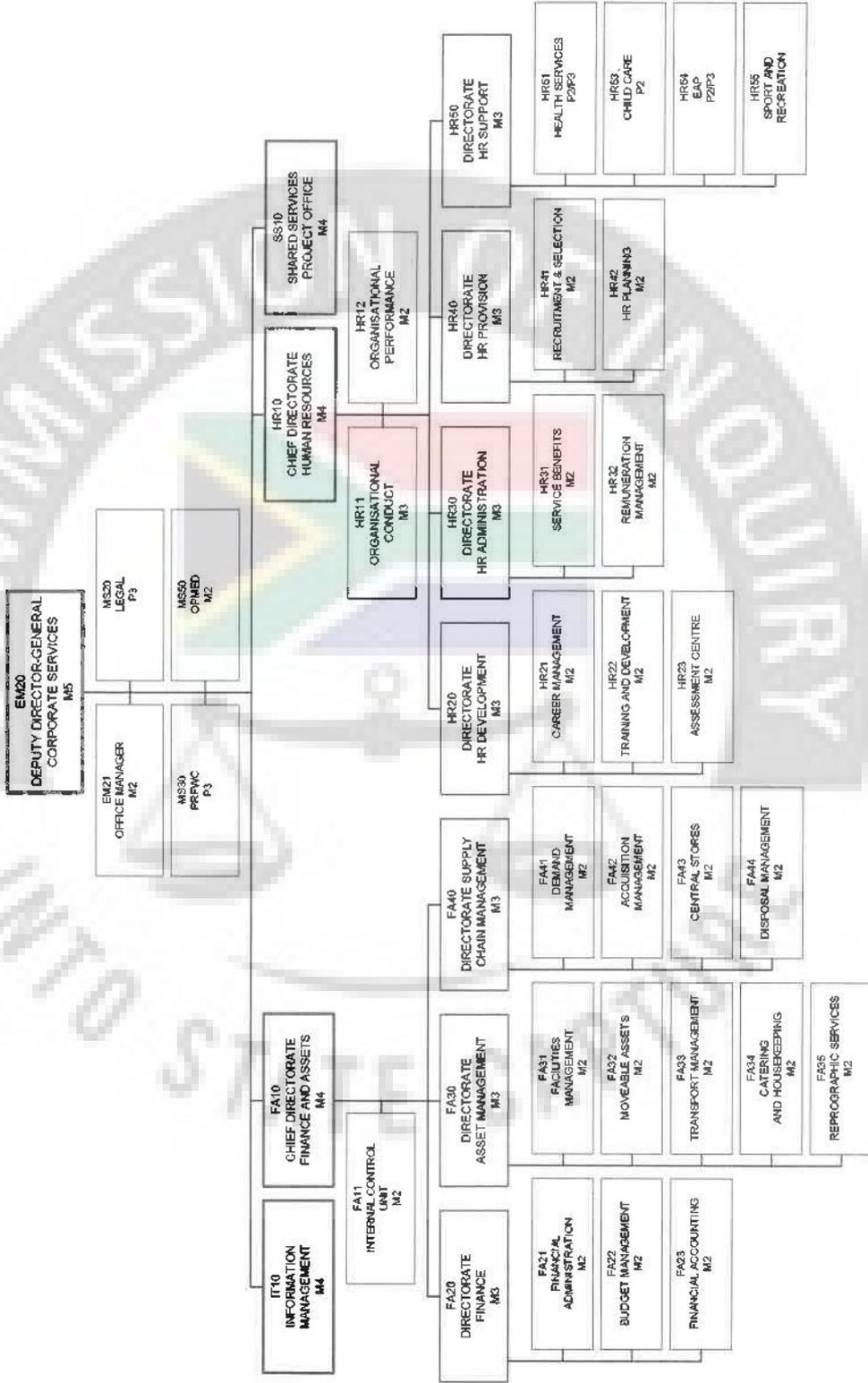
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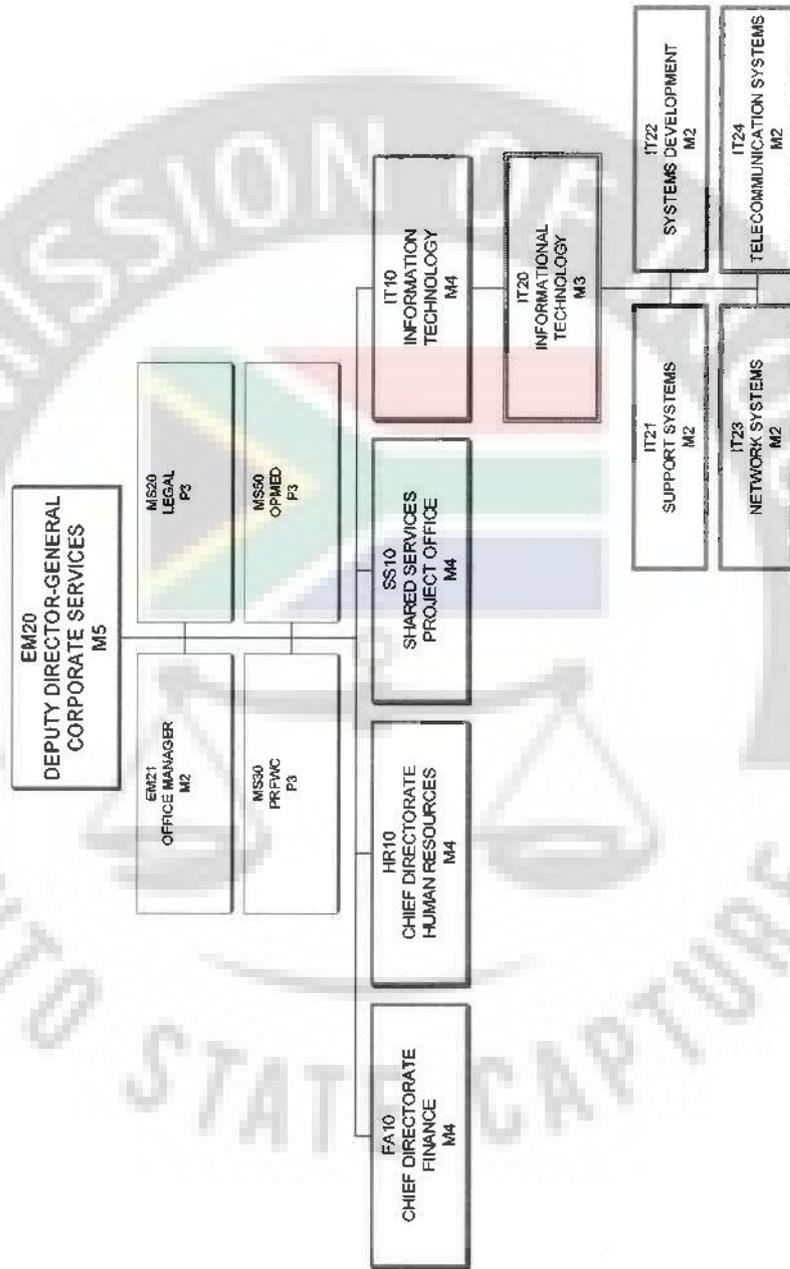
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DEPUTY DIRECTOR-GENERAL EM20



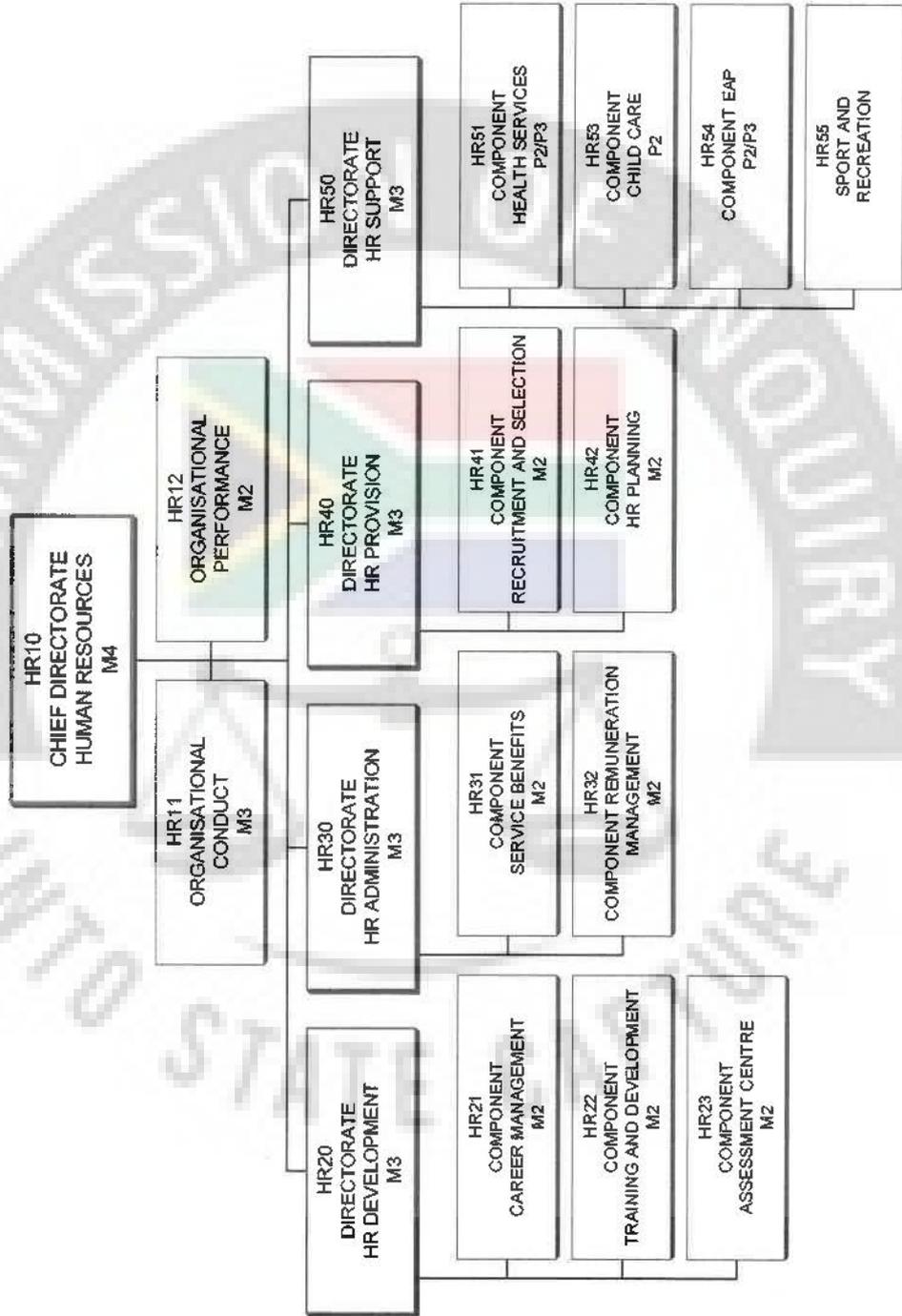
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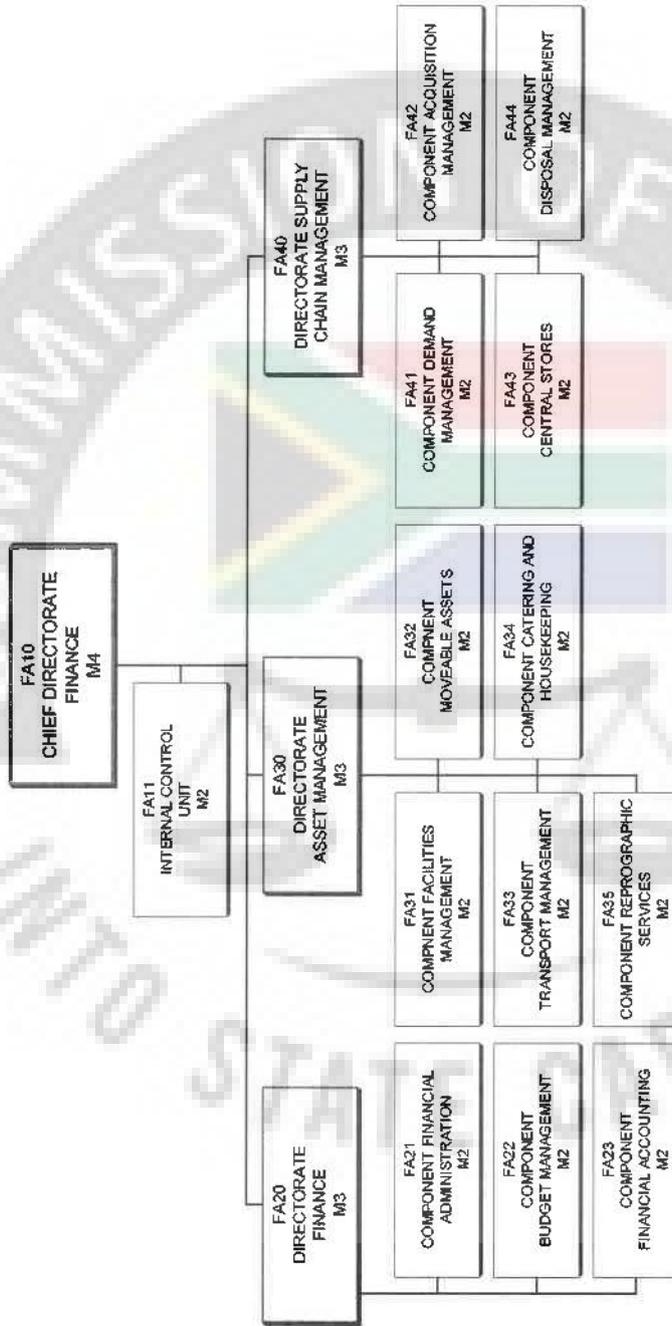
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HUMAN RESOURCE HR10



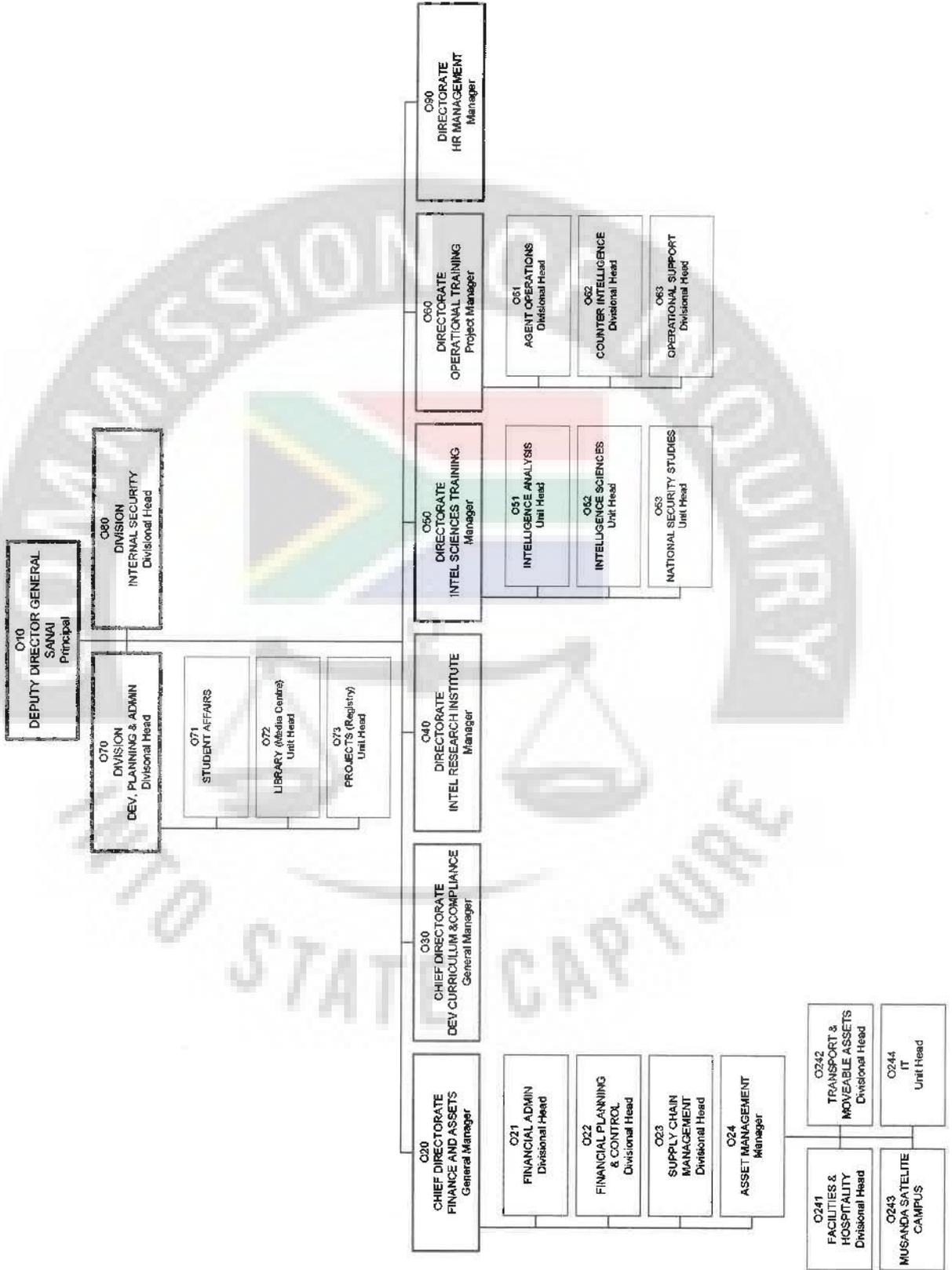
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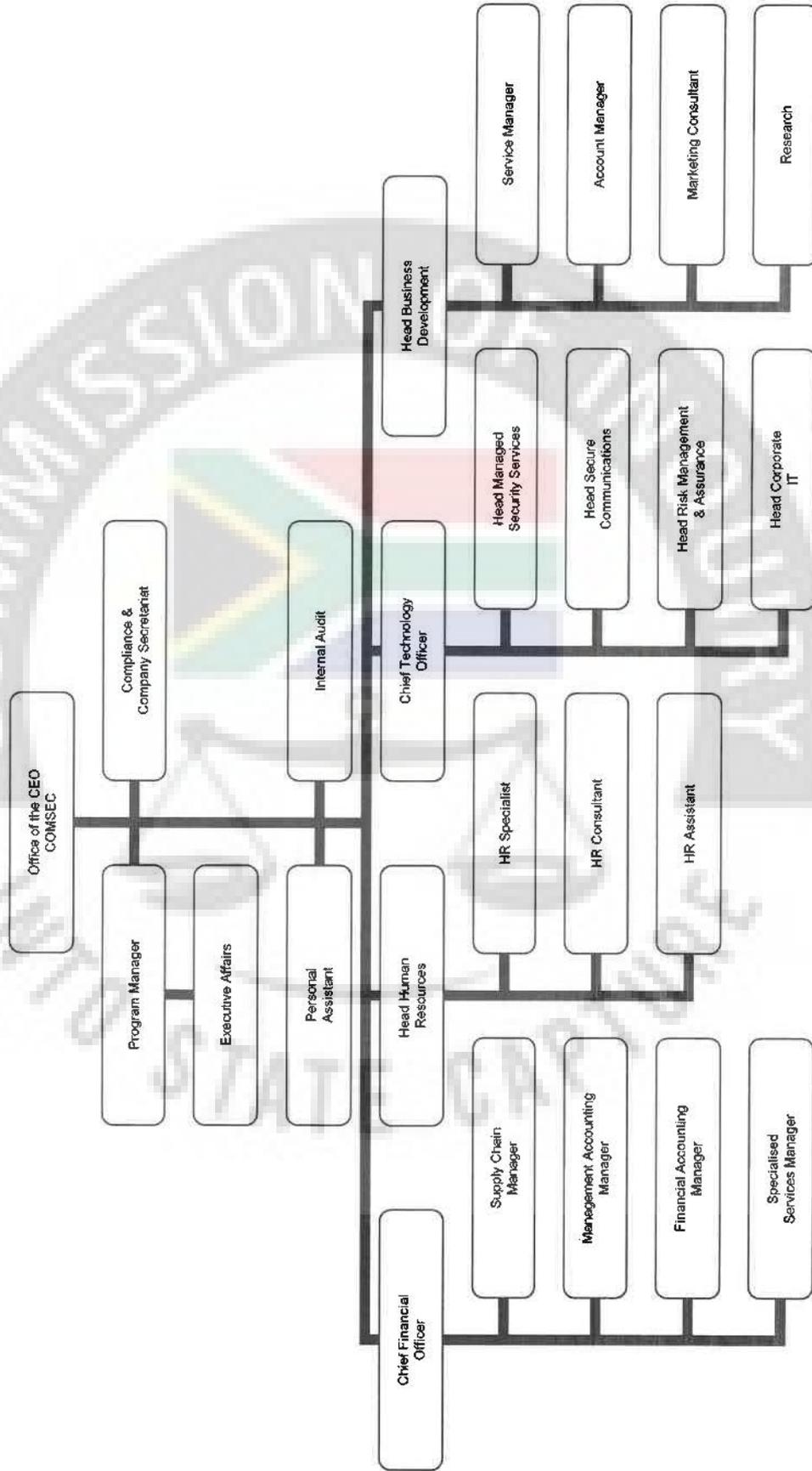
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SANAI



CONFIDENTIAL

COMSEC



CONFIDENTIAL

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