

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

25 JANUARY 2021

DAY 330



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Recording & Transcriptions

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TRANSCRIBERS:

B KLINE; Y KLIEM; V FAASEN; D STANIFORTH



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PROCEEDINGS RESUME ON 25 JANUARY 2021

CHAIRPERSON: Good morning Mr Pretorius, good morning everybody.

ADV PRETORIUS SC: Morning Chair.

CHAIRPERSON: Are you ready?

ADV PRETORIUS SC: Yes we are ready Chair to proceed with the events of the day but to begin with there are present at least ten legal representatives; some representing the same party; others representing others
10 but as discussed in chambers Chair may they place themselves on record?

CHAIRPERSON: Yes please they can do so. You may do so from where you are seated if your microphone works. If your microphone does not work you might have to go to the podium then but they will sanitise the podium before you use it.

ADV KGOROEADIRA: Thank you Mr Chairperson.

CHAIRPERSON: Yes.

ADV KGOROEADIRA: I beg leave to remove my mask

20 **CHAIRPERSON:** Yes okay.

ADV KGOROEADIRA: Thanks. Chairperson my name is Rapulane Gaositwe Michael Kgoroadira from Kgoroadira Mudau Incorporated. I represent Mr Fraser [?], Adv [?] Bongo, Mr Venematuma, Mr Graham Engel, Mr Prince Makwatana, Ms Martie Wallace, Ms Moliem Mnana and Ms

Roxanne Human who are likely to be implicated today.

One has to add Chairperson that our counsel – or before getting to our counsel I will be appearing with two of my colleagues Chris Mudau and Tshepo Gomomo [?]. They will be joining us a bit later.

CHAIRPERSON: Yes.

ADV KGOROEADIRA: Our counsel is Advocate Moses Skhikhane and Advocate P [?] Motsepe who are unfortunately not able to join us today. With your
10 permission Chairperson I would like to address on a few other issues.

CHAIRPERSON: Let us finish the introductions first and then when everybody has introduced themselves and placed themselves on record then you can address me on the other issues.

ADV KGOROEADIRA: Thank you Chairperson.

CHAIRPERSON: Okay alright.

ADV RENDANI: Chairperson.

CHAIRPERSON: Yes.

20 **ADV RENDANI:** My name is Advocate Brumbi Rendani. Chairperson I am on instruction from PG Matseke Attorneys. I will be appearing herein with my instructing attorney Ms Palesa Matseke.

CHAIRPERSON: I am not sure whether with the mask on the transcribers would have heard everything you say. I

want to see if there is an indication that – ja they say they did hear. Okay alright. Thank you. Okay thank you.

ADV RENDANI: Chairperson I do not know if for the purpose of recording if I should say my client in terms of who I am representing?

CHAIRPERSON: I am sorry just raise your voice I am struggling to hear you.

ADV RENDANI: Chairperson I was saying for the purpose of record I do not know if it is permissible to say to my
10 client who I am representing.

CHAIRPERSON: Well you – you know best what it is that might militate against you saying who you represent. You might wish to – I do not know if you might have had a discussion with Mr Pretorius on the issue

ADV PRETORIUS SC: Chair certain persons who will testify or may be implicated have been given pseudonyms to protect identities for various reasons related to state security.

CHAIRPERSON: Ja.

20 **ADV PRETORIUS SC:** If the person being represented is such a person you may use the pseudonym.

CHAIRPERSON: Yes what – because the intelligence community has got its own special features and there is legislation.

ADV PRETORIUS SC: Quite correct.

CHAIRPERSON: To that certain people their identities need to be protected. So – so I guess that if your client is one such person then there will have to be some alphabet given to him. Maybe Mr Pretorius may assist because he knows up to what alphabet he has used so far.

ADV PRETORIUS SC: No in the documentation each such person whose identity requires protection has been given a pseudonym and so ...

CHAIRPERSON: In he...

10 **ADV PRETORIUS SC:** So representatives would know.

CHAIRPERSON: Ja. Oh okay.

ADV PRETORIUS SC: So their legal representatives then are invited certainly by us Chair it is in your hands.

CHAIRPERSON: Yes.

ADV PRETORIUS SC: However.

CHAIRPERSON: Yes.

ADV PRETORIUS SC: To use that pseudonym.

CHAIRPERSON: Okay.

20 **ADV RENDANI:** Chairperson thank you for that. We had a serious issue with the pseudonym that was used for our client that is why which I started by asking permission in terms of if I should – if it would be necessary for me to say the name because the pseudonym that is used is closely if not same in terms of pronunciation to our client.

CHAIRPERSON: Well – I think I would suggest that you

get an opportunity to discuss with Mr Pretorius – to discuss that issue with Mr Pretorius to see if you cannot reach agreement and then once there has been that discussion then I can be told what the position is.

ADV RENDANI: I think I will agree with that Chairperson.

CHAIRPERSON: Is that alright?

ADV RENDANI: Thank you.

CHAIRPERSON: So for now I am not going to know who you represent but I know you represent somebody.

10 **ADV RENDANI:** Thank you Chairperson.

CHAIRPERSON: Okay alright.

ADV [?]: Good morning Chair.

CHAIRPERSON: Good morning.

My name is 00:07:09 I will be in these proceedings or from Sikeya Attorneys I will be in these proceedings representing the former Minister Mr David Mahlongo.

CHAIRPERSON: Thank you. Okay alright. Now if everybody – if all the legal representatives – oh there is still another one. Oh I am sorry okay.

20 **ADV GAWULA:** Good morning Chair, good morning everyone.

CHAIRPERSON: Good morning.

I am Neville Gawula from Gawula Incorporated on behalf of Ms Mokwena. Thank you Chair.

CHAIRPERSON: Thank you – thank you. Just sanitise

before passing it on to somebody..

ADV SAULI: Good morning Chairperson.

CHAIRPERSON: Good morning.

ADV SAULI: Yes Chairperson. My name is Puseletso Sauli I am here on behalf of Abrahams Kiewits Attorneys. Our clients name has been used as Apricot the pseudonym but they are not a member of the intelligence community or anything but we – to follow what has been done.

CHAIRPERSON: Okay I think there is something wrong
10 either with your voice or with.

ADV SAULI: Can you hear me now?

CHAIRPERSON: Or with the microphone.

ADV SAULI: Oh okay yes.

CHAIRPERSON: I think it is your voice or how you are holding the microphone.

ADV SAULI: Okay thank you.

CHAIRPERSON: Just start afresh.

ADV SAULI: Oh yes morning Commissioner.

CHAIRPERSON: Good morning.

20 **ADV SAULI:** My name is Puseletso Sauli on behalf of Abrahams Kiewits Attorneys. Our client's name has been used as the pseudonym Apricot in the documents and so we – we will stick to that for now. Thank you.

CHAIRPERSON: Okay.

ADV LAMOLA: Good morning my name is Madimetja

Lamola am I audible Deputy Chief Justice?

CHAIRPERSON: Just start afresh please.

ADV LAMOLA: My name is Madimetja Lamola.

CHAIRPERSON: Yes.

ADV LAMOLA: From Lamola Attorneys in Pretoria.

CHAIRPERSON: Yes I can hear you.

ADV LAMOLA: Yes. We are here on behalf of Dr Siyabonga Cele. We are already on record in this matter.

CHAIRPERSON: Okay.

10 **ADV LAMOLA:** Thank you very much.

CHAIRPERSON: Thank you very much.

ADV NDEBELE: Morning Deputy Chief Justice.

CHAIRPERSON: Good morning.

ADV NDEBELE: My name is Advocate Bheki Ndebele from the Pretoria Bar representing Dr Mufamadi and the State Security Agency. I am with my senior colleague Marumo Morane who is joining the commission virtually. Thank you.

CHAIRPERSON: Okay, okay thank you.

20 **ADV NDEBELE:** Thank you.

ADV MORANE: Morning Chair.

CHAIRPERSON: Where is the...

ADV MORANE: Can you hear me?

CHAIRPERSON: That is Mr Morane's voice but I cannot see him.

ADV PRETORIUS SC: He is present remotely Chair.

CHAIRPERSON: Yes, yes Mr Morane. Good morning.

ADV MORANE: Good morning Chair. Good morning Chair.

CHAIRPERSON: Good morning.

ADV MORANE: As my colleague has said Mr Ndebele I represent Mr Mufamadi instructed by the State Attorney in these proceedings.

CHAIRPERSON: Okay no thank you Mr Morane – thank
10 you.

ADV MORANE: Thank you Chair.

CHAIRPERSON: Yes well was that the last one of the
legal representatives to introduce themselves and place
themselves on record? It looks like. Now I think one of
them wanted to raise some preliminary issues. I am giving
you a chance to indicate now what those are before – what
they are – I am not saying that we must discuss them I just
want to know what they are and then we will – I will indicate
where in the sequence of events they may need to be dealt
20 with.

ADV KGORO EADIRA: Thanks Chairperson. The issues I
want to raise one is to do with our appearance.

ADV PRETORIUS SC: Chair may I ask.

CHAIRPERSON: Ja.

ADV PRETORIUS SC: If he is sufficiently distanced my

learned friend is sufficiently distanced from everybody else that he be permitted to remove his mask so that we can hear.

CHAIRPERSON: Yes, yes so we can hear clearly yes.

ADV KGOROEADIRA: I had forgotten your permission Chair.

CHAIRPERSON: Yes, yes.

ADV KGOROEADIRA: My apologies.

CHAIRPERSON: Yes.

10 **ADV KGOROEADIRA:** The one issue that we want to raise Chairperson has to do with our appearance on behalf of – or the...

CHAIRPERSON: The number of clients you are appearing for?

ADV KGOROEADIRA: Yes there are issues with regards to their appearance.

CHAIRPERSON: Ja.

ADV KGOROEADIRA:

20 2. We would also want to bring an application for the proceedings to be held in camera.

3. Want to – would like to request or rather to address Chairperson on a request or requests that we have made for documentation and finally on the inability. of our clients to elect whether ...

CHAIRPERSON: On the what of your clients?

ADV KGOROEADIRA: Inability.

CHAIRPERSON: Oh okay.

ADV KGOROEADIRA: Of our clients to elect whether they would want to give evidence, call any witnesses or cross-examine any of the witnesses against them.

CHAIRPERSON: Hm. Hm. Well

1. As far as you wish to bring any application you – you would have read the rules you know what to do to comply with them.

10 **ADV KGOROEADIRA:** Well Chairperson the rules provide for the application to be a substantial kind of an application but they do not exclude a possibility of an application being made from the Bar as we intend doing.

CHAIRPERSON: Well if it is an application for evidence to be heard in camera I think it should need to be a substantive application.

ADV KGOROEADIRA: Okay – well Chairperson in the case...

20 **CHAIRPERSON:** It is quite a serious matter it is not one of those just procedural and simple things.

ADV KGOROEADIRA: Well we – we are probably willing to at least leave out that application but I just move in on other issues.

CHAIRPERSON: Yes. Okay well I am not sure about the other – you – the other issues you said is the inability of

your client's to elect – to exercise one or more of their rights in terms of rules. Can you elaborate on that I am not sure what that is?

ADV KGOROEDIRA: This is related to their rights to legal representation. As things are Chairperson my instructions in respect of all my clients except Mr Fraser and today but what we would like perhaps the assistance of the commission and going forward. Ja.

CHAIRPERSON: You do not need – you do not mean you
10 are asking the commission to provide financial assistance for his to employ a...

ADV KGOROEDIRA: No not at all. Not at all.

CHAIRPERSON: So..

ADV KGOROEDIRA: Well – but if the commission is willing to work with.

CHAIRPERSON: Well what kind of assistance do you ask for the commission?

ADV KGOROEDIRA: Chairperson in keeping with Rule 3.3.5 of the Commission's Rules the notice advised our
20 clients that they are entitled to be assisted with – by a legal representative of their choice. Consequently apart from Mr Fraser who was already represented all other clients upon receipt of the Rule 3.3.5 Notices or Rule 3.3 Notices applied to the State Security Agency for confirmation that the agency would be responsible for their

fees. The application to the agency is informed by the fact that the activities forming the basis of the evidence implicating them – official activities of the agency or rather they relate to official activities of the agency and in the – well as members and in the case of Advocate Bongo in his capacity then as the Minister of State Security. Such a request we submit Chairperson to the agency is not unprecedented. As we know...

CHAIRPERSON: I can understand the request to the
10 agency but I am trying to understand where the commission comes in. So what is – what relief are you asking from the commission in regard to that?

ADV KGOROEADIRA: Well the relief that we seek from the commission is that to the extent that the agency has to date failed to respond to our clients applications. We request then that the commission at the very least I suppose at all...

CHAIRPERSON: Interferes.

ADV KGOROEADIRA: No not interfere.

20 **CHAIRPERSON:** Do you want the commission...

ADV KGOROEADIRA: At the very least to – to 00:16:41 the agency to at the very – to respond to the application. They do not have to say yes as per the direction of the agency – of the commission but there must be a response. There has been no response whatsoever and it affects our

clients' right to representation.

CHAIRPERSON: Ja I thought attorneys have quite some weapon that they normally do when somebody is not responding. They threaten litigation.

ADV KGORO EADIRA: Well at...

CHAIRPERSON: And in a number of times then there would be a response either favourable or not favourable.

ADV KGORO EADIRA: Chairperson you know there is no point in making threats that you cannot carry out.

10 **CHAIRPERSON:** Surely definitely.

ADV KGORO EADIRA: My clients do not have the money.

CHAIRPERSON: Yes.

ADV KGORO EADIRA: To bring an urgent application to compel the agency to – at the very least to respond.

CHAIRPERSON: Yes. Yes.

ADV KGORO EADIRA: We – it is our submission that the Chairperson is better placed at the very least to – to request the agency to respond to our application.

20 **CHAIRPERSON:** I would have liked to assist but I do not think that I have got any power to get involved in those matters.

ADV KGORO EADIRA: But when you see that...

CHAIRPERSON: And of course – and of course you are not pointing to anything in any instrument that gives me that power. Of course – of course it would be good that

though everyone who needs legal assistance should get legal assistance in order to – to be here but I – we cannot get involved in under what circumstances he should be granted or should not be granted you know. We cannot – we do not – that falls outside our jurisdiction. You understand that.

ADV KGOROEOADIRA: We cannot take the matter any further Chairperson.

CHAIRPERSON: Yes. Okay alright. But ...

10 **ADV KGOROEOADIRA:** And I suppose...

CHAIRPERSON: And we hope the security – the agency will – will at least respond one way or another.

ADV KGOROEOADIRA: Given what you know about the agency they are not going to respond.

CHAIRPERSON: Yes okay. Okay thank you very much.

UNKNOWN COUNSEL: Chair with your permission.

CHAIRPERSON: Yes.

UNKNOWN COUNSEL: I am not sure whether I – while Mr Kgoroeadira was on this point also point out – point out to
20 the commission we also have almost a similar points to raise with the commission. I cannot take it further.

CHAIRPERSON: But at least you know exactly what I have said to your colleague.

UNKNOWN COUNSEL: That is correct. I am just noting for the record.

CHAIRPERSON: Yes.

UNKNOWN COUNSEL: That we have a similar situation.

CHAIRPERSON: Okay. Okay alright thank you. Okay alright. Mr Pretorius I now give you a chance to – you want to do your opening or to explain certain issues?

ADV PRETORIUS SC: May I just for the assistance of my learned colleagues just enumerate the four applications. The first and I will deal with them in a reverse order. The first in relation to legal representation what may be termed
10 an application for cajolement you have made your position clear there Chair.

The second is the availability and the time when a person can appear that can be part of the substantive application. It is not an urgent application to be made now and you will no doubt deal with such applications as you have dealt with others when they come.

The third is an application for documentation. That too can be properly motivated and set out and properly responded to. Much of the information we have received in
20 correspondence deals with documents which have not been declassified and that would take a process if the production of the documentation is warranted.

And the application to hear evidence in camera Chair must be brought properly – properly motivated on behalf of specific people. I can just give you the

assurance Chair that the evidence to be given at least by the first two witnesses this week does not go further than what has been officially declassified by the Director General and consultation with the President's office and what is already in the public domain.

May I proceed then?

CHAIRPERSON: Yes. Yes.

ADV PRETORIUS SC: Chair you – you have before you a printed copy of the opening address. It is necessary with
10 respect to place certain matters on record to place the evidence in its proper context.

It is a document in a red plastic folder. Chair the evidence to be given this week at least orally deals with evidence in regard to the conduct of the State Security Agency and that evidence is given in the context of the evidence that the commission has heard in relation to Law Enforcement Agencies as a whole.

The evidence given to date has focussed principally on the prosecutorial arm of the state particular the
20 National Prosecuting Authority and the policing arm of the state.

We have dealt with the South African Police Service, the Directorate for Priority Crime Investigations, Crime Intelligence and the Independent Police Investigative Directorate. So it is in that context that the

evidence of this week will be given where we will focus on the intelligence arm of the state.

Intelligence functions Chair are shared in this country under our constitution by three main Law Enforcement Agencies.

The first is the Intelligence Division of SAPS – South African Police Service. That is Crime Intelligence.

The second is the Intelligence Division of the Defence Force and the third is the State Security Agency.

10 You have heard evidence concerning Crime Intelligence. We will deal this week with the State Security Agency.

What we will deal with Chair are the features of the State Security framework which deal with vulnerabilities in the regulatory framework and which make the Intelligence Services particularly or especially susceptible to appropriation of capacity resources and financial resources for improper political and personal gain.

20 What the evidence will deal with is the appropriation and I use that word deliberately it is not to foreshadow any findings you may make on them – meaning of the word capture in the context of the evidence as a whole. But the appropriation of state resources in contravention of the constitutional framework for improper political and personal gain.

Of course what makes matters difficult is that the sensitive and secret nature of intelligence operations and in our evidence we will respect legitimate secrecy requirements and I stress legitimate secrecy requirements of the Intelligence arm of the executive.

It carries a heightened risk because it is in secret and because it is largely unaccountable there is a heightened risk of corruption as operational funds and operational activities are not subject to the same level of
10 scrutiny as other public budgets.

The evidence will also deal with oversight bodies. The Inspector General of Intelligence will testify. The Joint Standing Committee on Intelligence – a Parliamentary Committee will be dealt with in evidence and matters related to the Auditor General of South Africa will be dealt with in the evidence.

We will also deal with the role of Law Enforcement Agencies in relation to the alleged criminal activities of the State Security Agency.

20 For example you will hear Chair that much of the evidence of the alleged criminality to be led this week was actually handed over to the Hawks as early as 2019 and more recently handed over to the NPA.

We will also address certain other questions as to in relation to the Law Enforcement Agencies and in relation

to the State Security Agency itself had they been operating properly under the proper supervision of the Parliamentary Committee the Joint Standing Committee on Intelligence and the Law Enforcement Agencies themselves whether much of the work that this commission is doing would have been necessary had the Law Enforcement Agencies played their part and you have heard much evidence about that and we will deal with that again in relation to the State Security Agency.

10 Chair the approach that this commission has taken consistently throughout is to ask the question firstly what happened and that is part of the public nature of this inquiry – this inquiry must investigate and the public is entitled to know precisely what happened and that is the basis upon which the evidence this week will be led.

 But more – perhaps just as important the commission has focused on why this would happen – how could it happen that these acts of corruption alleged state capture, fraud could occur and we will deal with that issue
20 as well.

 And thirdly in relation to steps that can be taken to put matters rights is that we are to ensure that these things do not happen again.

 Now in relation to those three questions we must stress Chair that we have had a great deal of cooperation

both from the President's office and from the office of the Director General of the SSA and steps have been taken and we will detail those steps. Whether the investigations have gone far enough; whether everything that should be dealt with has been dealt with is another question and that is a matter that you will adjudicate at the end of the day.

But what the SSA evidence will show we know that in relation to Law Enforcement Agencies their inaction contributed to a great deal in accordance with the evidence
10 given should you accept it to what occurred and that is one of the reasons why it was allowed to happen.

But the evidence in relation to the State Security Agency goes further. Not only were the surveillance or intelligence functions which should have seen what was going on and taken steps to deal with and we know of evidence given previously that warnings were given to the former President.

What not only did the SSA not do its work – that is what the evidence will be. But the SSA embarked upon
20 projects itself in a manner which was completely in contravention of constitutional principles and constitutional dictates to appropriate the capacity and the resources of the Intelligence Agency to favour political interests, factional political interests and other beneficiaries who were not entitled to those benefits and that is what you will

hear about this week.

So, firstly Chair, State Capture has an intelligence failure. In other words, the allegations that had been made before you that are alleged to constitute State Capture to what extent the address the question will be addressed was this as a result of or contributed to by a failure of the intelligence arm. You have heard some evidence there already Chair.

Secondly. To what extent were factual interest that
10 enabled corruption, allegation of State Capture protected by the State Security Agency or capacitated by parts of the State Security Agency to protect.

Thirdly. To what extent was the SSA itself involved in corruption and the abuse of state resources. And so, the evidence may show and certainly there will be evidence to the effect that the State Security Agency itself by appropriating state resources for illegitimate means including corruption may itself constitute the unconstitutional and unlawful appropriation of state resources which may well
20 when you finally decide on the definition of State Capture constitute a direct project of State Capture.

And of course Chair, the secrecy and unaccountability that places a veil of secrecy over the activities of the State Security Agency compound the problem unless there is strict legislative financial and supervisory control particularly at

the level of the Inspector-General and the Parliamentary Committee and questions will be asked about the effectiveness of these bodies at the relevant time.

We will also deal and today's evidence will deal with it to a certain extent Chair with the perceptibility of intelligence agencies to politicisation.

You will have heard evidence in relation to the white paper and how attempts were made in 1994 to transform the intelligence arms of the state so that they could comply with
10 a very carefully thought out constitutional dispensation.

And one of the primary objects of the new intelligence dispensation was that it should not be used for political purposes let alone factional political purposes.

Unfortunately, that was not carried out in the period under review and the susceptibility of the intelligence agencies to politicisation was in fact realised to a great degree over that period.

If I may take the time because I think it is important Chair to place this in its proper context as a matter of
20 principle.

In paragraph 43 we quote – in fact, a member of the Mufamadi Panel, Professor Laurie Nathan, who says:

“Intelligence agencies the world over have special powers that permit them to operate with a high level of secrecy and acquire confidential information

through the use of intrusive measures.

Politicians and intelligence officers can abuse these powers to infringe civil liberties, favour of prejudice political parties and thereby subvert democracy.

Because of their proximity to the country's rulers and their capacity to fair it out personal and party secrets, intelligence agencies have the means to wield undue influence within the state and political arena.

10 In the light of these dangers established a new democracy the like are confronted by the challenge of ensuring that the intelligence services respect the democratic system and are subject to democratic control.

The failure to achieve this in countries freshly unshackled from the authoritarianism can retard the consolidation of democracy.

The obstacles to intelligences reform in these countries are formidable, however.

20 They typically include an institutional culture steeped in the repression of decent, the historical politicisation of the intelligence agencies, a pervasive believe that democratic controls will reduce the agencies effectiveness and the lack of expertise and confidence on the part of the new

executive in parliament.

Above all, reform is inhibited by the extreme secrecy and political sensitivity of the intelligence community.”

And those are precisely the challenges that had been faced and are continued to be faced by our intelligent agencies.

There was a second important shift Chair that took place when the constitutional dispensation was set in motion in
10 1994 and that was dealt with in the evidence of Shaik and others last year Chair, where the reform of our own intelligence services coincided with the paradigm shift in global thinking on security.

So to put it starkly and simply. Under the previous dispensation prior to 1994, security was associated with a restriction of human rights, detention without trials, banning's and the like and that was the front role and function of the security agencies in the Cold War context.

The philosophy of intelligence agencies is to protect
20 rights. Now to expand rights, to ensure that citizens of a country are protected by the intelligence agencies rather than their rights removed.

And it seems that that principle too has fallen by the wayside in the period under review. But that was the essence of the white paper.

And so Chair the notion that the intelligence community should be there to restrict or to partake in political factional struggles as it were or to ought to go beyond their mandate which is a protection of human security as a whole rather than state security or parts of the state for example the former president is fundamental to the evidence that will follow.

Another issues arises which is an issue of principle Chair and that is the evidence that will be given makes it
10 very clear that there should be a division between the powers and functions of the executives the one hand and the operations of state security agencies on the other.

To preserve the independence and the capacity of the intelligence agencies to do their job. That principle too has been eroded and we will place before you the relevant legislation that deals with the role of the minister and the powers of the minister and the duties of the minister in terms of 2013 amendments to the legislation and the constitutional principle which is set out in paragraph 51 that it is only the
20 political responsibility that rests and not the functional and operational responsibility that rests with the minister.

However, that does not seem to be reflected in the current legislation and it is something that you will be addressed on in due course.

So the high level review panel chaired by Dr Mufamadi

who will give evidence, itself made the observation that the legislative powers relevant to the operations of the state security agency under the control, in fact, of – and supervision of the minister, seemed to cut through the necessary boundary between political and administrative management and that their delegation downwards may be at the whim of a particular minister. But you will hear detailed evidence about that in due course.

And then the third weakness that has given rise to much
10 of what you will hear about in evidence is the weakness in the regulatory framework and financial controls and some evidence will be given there as to the frustration that the Auditor-General's office has suffered in the past and in due course steps taken to remedy that situation.

And then of course secrecy, the use of classification and covert operations. Now quite interestingly Chair. The legislation empowers the minister to make regulations including regulations regarding classification, declassification and the like.

20 And that same act says that the minister need not publish these regulations. So one has the result that regulations which governs secrecy and the extent and the ability of the minister and the law enforcement agencies to keep matters secret is itself secret which is completely contrary to our constitutional principles.

So for example – and there has been recent litigation where members of the public, Chapter 9 institutions or non-governmental organisations with an interest of promoting and preserving democracy have an interest in whether a matter is classified or declassified.

Has an interest or have an interest in ensuring that the weapon of classification is not abused to conceal criminality, is not abused to conceal governmental inefficiency or is not used to prevent an embarrassment to any interested
10 government party.

But despite the fact that the citizen and citizen bodies have an interest in knowing those boundaries, that regulation is concealed from it. They are not entitled, as we understand the approach, at present being conducted by the ministry. We are not entitled to see the law which governs the very law that affects us. But we will deal with that Chair in due course.

And I am referring there particularly Chair to Chapter 25 of the regulations issued by the minister in terms of
20 Section 37(1) of the Intelligence Services Act. That material is in the files.

We deal in more detail at page 12 – it is not necessary for present purposes to go into too much detail but we deal in detail in the opening at least and will in due course deal with the powers statutory and otherwise, and in many

instances abuse of those powers to keep documentation secret.

So the white paper on intelligence in this regard says the following Chair:

10 “The development of a more open intelligent community will go a long way towards demystifying and building trust in the national intelligence community where legal limited secrecy including criteria and timeframes for classification are clearly understood and accepted by society, the dangers of the intelligence system becoming self-serving are reverted.”

But of course Chair, the irony is that those legal limits dealing with classification at least are also secret. And then Chair we will deal in evidence with Covid operations.

The evidence in regard to what was actually done in the period under review is to put it at its least disturbing term. And one of the difficulties, of course, that an intelligence agency will face is what is lawful and what is unlawful.

20 But many of the projects, in fact most of the projects about which you will hear, were manifestly unlawful and they will be dealt with at least in summary and to a high level degree by Dr Mufamadi.

We will also deal with the high level conditions which gave rise to the evidence of the unlawful projects about

which we will hear. You have heard about the centralisation of authority within the SSA in 2009 through the proclamation which was then issued and regularised by legislation only in 2013 and detail about that has been given in evidence and will be expanded upon by Dr Mufamadi and others.

But again, the centralisation which was done by proclamation in 2009 is, it highlights one very important failure in oversight mechanism. Parliament knew in 2009 that to change the structures and amend security legislation
10 on the basis that was purported to be done in terms of the proclamation had to be done by Parliament, had to go through the consultation process in Parliament.

When this happened Parliament remained supine until 2013 when the act was finally put into position “regularising” what was done quite improperly and unconstitutionally by proclamation in 2009.

So quite apart from the direct actors there was a complete failure on the part of Parliament in relation to that. The weakening of oversight therefore is a fundamental factor
20 in answering the second question that you addressed Chair and that is: How could this have happened? Why was it not picked up? Why was it not dealt with when it should have been dealt with?

Chair, if I may just mention two things that will arise in evidence. In 2006, a principle agent network was

established. It was terminated in 2011. Arising out of what were quite clearly unlawful activities, there were a number of investigations. Those were the Pan Investigation. That investigation was initiated in 2009 and finished in 2012.

However, the unlawful activities did not end and why that happened and at whose instance that happened will be dealt with in evidence.

So that during the period 2012 to 2018, further activities took place about which you will hear in some detail which
10 were manifestly unlawful and undermining of our constitutional democracy.

That period has been and is being investigated by the SSA internally itself. The problem is that that investigation does not have the powers, ironically, that a thorough and proper investigation should have. And you will hear of many projects which have yet to be fully investigated, projects of great concern and that is Project Veza.

So you have Pan on the one hand dealing with the principle agent network and activities and investigation
20 dealing with an earlier period and Project Veza dealing with investigations of activities in a later period.

CHAIRPERSON: I think the v-e-z-a is probably isiZulu and would be Veza. Project Veza.

ADV PRETORIUS SC: Veza. Okay Chair.

CHAIRPERSON: Which means something along the lines

that you must show or abrupt(?) something.

ADV PRETORIUS SC: Yes, we have adopted the pronunciation that we were told.

CHAIRPERSON: Ja, Veza. Project Veza.

ADV PRETORIUS SC: But the point is taken Chair.

CHAIRPERSON: [laughs] Project Veza.

ADV PRETORIUS SC: Yes.

CHAIRPERSON: Project Veza. Ja.

ADV PRETORIUS SC: Chair, so the evidence that will be
10 placed before you will begin with the evidence of
Dr Mufamadi. Dr Mufamadi was appointed by the President,
the sitting President in 2018 to chair a high level review
panel. And he produced a report.

They finished their work in 2018. You will hear about
the panel and its expertise and its work. They produced a
report in 2018, redacted version of the report.

One of the concerns that Dr Mufamadi will raise is that
people seem to have been asleep when the report was
released. The reaction that should have emanated from the
20 release of that report just was not there and that is a matter
that Dr Mufamadi will testify to.

The release of the report was conditional. It was
released in a redacted form. In other words, certain
sensitive areas of investigation and the outcome was
redacted from the report.

In cooperation with the Director-General, the office of the SSA and the President's office, the Commission was given access to the full report and was able to consider that full report.

However, that full report is classified or was classified. Then there was a process of interaction between the Commission and the state security agency and the President's office.

Of course, this Commission is duty bound to protect
10 what legitimately and I stress the word legitimately should be protected, names of operatives and legitimate intelligence methods. Those are entitled to take place to a degree of legitimate or under a veil of legitimate secrecy.

But what is not, for example criminality, cannot ever be covered legitimately through any classification process and the Secret Regulation say so.

Chair, but we have now a further version of the report which contains far more or a greater degree of information than the redacted version released to the public originally
20 contained.

So the President and the SSA itself have cooperated in an endeavour principle conducted by the Director-General of the SSA who has the powers to declassify to produce a further version of the report which is in the bundle.

The Project Veza Investigation will be dealt with in detail

in evidence this week and the fruits of that investigation. For that purpose the Director-General has given permission for persons who otherwise would be precluded by law from speaking to communicate with the Commission and to give evidence.

So much of the evidence – in fact all of the evidence that is given this week Chair and that should be a matter of interest to legal representatives here, is either evidence already in the public domain.

10 Much of the evidence, in fact, is already in the redacted version released by the President in 2018, let alone the expanded version now available to the Commission for public release.

Or it is evidence which the Director-General himself on consideration has determined may be released in the hearings of this Commission. So anything of a sensitive nature has the stamp of approval. We have been very careful to clear that.

20 Importantly Chair, there has not always been agreement and to the extent that there is disagreement that matter may be canvassed in evidence or determined by yourself if it comes to that but for the moment we have cooperated to release most of the information, not all. And the differences in approach between the legal team and the SSA will become apparent in due course.

So Chair, there are two reasons why the evidence that will be given this week must be given. The first is that it is within our Terms of Reference. That is not a difficult issue to determine. We have statutory terms of reference as directed under the Constitution by the President.

Quite simply, we must do our work. The law enjoins us to give that evidence public. People can respond, answer and implicated persons can put up concrete versions or cross-examine if necessary but the fairness aspect is dealt
10 with.

The second is that the restoration of a proper intelligent service also demands the attention of this Commission. We are obliged by your mandate to deal with it.

Importantly Chair, as we know from Constitutional Court decisions and we know from the act under which we operate, the public have a right to know and that right to know must be respected.

If there has been a threat to the institutions of our democracy through the operations covert and unlawful
20 operations of the SSA, the public have a right to know.

That it is sensitive. There are certain restrictions that we will respect but unlawful activity must be dealt with. And so we will really address this week and in submissions before you in due course Chair or in evidence analyses before you in due course, answer the question as I stated

earlier: Were the capacity and resources of the state afforded to the SSA unlawfully appropriated under a veil of secrecy and unaccountability for personal, political and factional political gain Chair? That is really what the evidence will deal with.

CHAIRPERSON: Okay. Thank you Mr Pretorius. We are at eleven. I take it from you side you are ready to start leading?

ADV PRETORIUS SC: Yes, Chair we are ready to begin.

10 **CHAIRPERSON:** There are some housekeeping matters that need to be attended before you start with Dr Mufamadi. I think it will be convenient that we take the tea adjournment now so that when you start, then we can carry on until lunch time.

ADV PRETORIUS SC: Thank you, Chair.

CHAIRPERSON: We will take the tea adjournment. I hope that the preliminary or housekeeping issues to be dealt with can be finalised by quarter past but if they are not finalised there might be a delay before we resume. We adjourn.

20 **INQUIRY ADJOURNS**

INQUIRY RESUMES

CHAIRPERSON: Well, I have been ready from quarter past, I understand that you needed more time. Are you ready now?

ADV PRETORIUS SC: Thank you, Chair.

CHAIRPERSON: Are you ready now?

ADV PRETORIUS SC: Yes, we are ready, Chair.

CHAIRPERSON: Okay, alright. Please administer the oath or affirmation.

REGISTRAR: Please state your full names for the record?

CHAIRPERSON: Hang on one second, if you are going to remove the mask later on you may as well remove it now. Ja. Okay, alright, thank you. Okay, alright.

UNKNOWN COUNSEL: Chair, I am sorry to be doing this,
10 with your permission, if we may?

CHAIRPERSON: Ja.

UNKNOWN COUNSEL: You directed us before the adjournment that we have a housekeeping discussion before we proceed with this witness. May I bring to bring to your attention that we indeed engaged what my colleague have asked from the lead team. The evidence that is going to be led partly will also implicate my client and there were notices that were provided to us, about three pages of it, and we have heard from the evidence
20 leaders, Mr Pretorius, suggesting that there is at least three reports, or at least ...[intervenes]

CHAIRPERSON: At least they...?

UNKNOWN COUNSEL: There is three reports, Chair, and particularly there is a final version that has recently been discovered which will be used as this witness lead

evidence. We have not been provided with these documents and part of us placing us placing on record on last week and as and when we were briefed, we have been in engagement with the Commission, however we have not been responded to, at least to an extent of being provided all the necessary documents. It might be so, Chair, that my colleague, Mr [indistinct] 02.25 had pointed preliminary issues which I think, Chair, we need your guidance and direction because to me it is not clear. Maybe it is just my
10 lack of understanding. Chair, there is ...[intervenes]

CHAIRPERSON: Okay, I think let us do the oath first and then after you can continue.

UNKNOWN COUNSEL: Thank you.

CHAIRPERSON: Ja, okay.

REGISTRAR: Please state your full names for the record?

FHOLISANI SYDNEY MUFAMADI: My name is Fholisani Sydney Mufamadi.

REGISTRAR: Do you have any objection to taking the prescribed oath?

20 **DR MUFAMADI:** I have no objection.

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

DR MUFAMADI: I do.

REGISTRAR: Do you swear that the evidence you will give will be the truth the whole truth and nothing else but the

truth. If so, please raise your right hand and say so help me God.

DR MUFAMADI: So help me God.

REGISTRAR: Thank you.

CHAIRPERSON: Thank you. Let me check whether the transcribers could hear the registrar? You could not hear her? Ja. No, I think you must take off your mask so that they can hear you. I am sorry, Dr Mufamadi, the oath has to be repeated, they did not hear her.

10 **REGISTRAR:** Please state your full names for the record?

FHOLISANI SYDNEY MUFAMADI: Fholisani Sydney Mufamadi.

REGISTRAR: Do you have any objections to taking the prescribed oath?

DR MUFAMADI: No.

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

DR MUFAMADI: I do.

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

DR MUFAMADI: So help me God.

REGISTRAR: Thank you.

CHAIRPERSON: Okay, thank you. You may be seated, Dr Mufamadi. Thank you very much, Dr Mufamadi, for coming

to assist the Commission and to give evidence. Thank you.
Mr Pretorius, you may proceed.

ADV PRETORIUS SC: Thank you. If I may just say,
Chair, the document that has been requested
...[intervenes]

CHAIRPERSON: I am sorry, counsel had something that
he had started dealing with and I said I would give him a
chance to deal with it after the oath. Do you want to
confer with him? Ja, ja, okay. It looks like the matter is
10 settled. Ja. Okay, alright.

ADV PRETORIUS SC: Chair, just for transparency sake,
the 3.3 notice that is issued in terms of the rule to persons
who are implicated or may be implicated contains full detail
of the implicating evidence. Supporting documentation or
documentation which may be considered relevant to
evidence to be given in rebuttal or used in cross-
examination should such an application be granted is
normally dealt with between the parties. We have issued
well over a hundred 3.3 notices, we are dealing with
20 volumes of correspondence over the weekend and the truth
of the matter is once the document is tabled it becomes
public domain and will be made available to my learned
friend and it is going to be tabled now.

CHAIRPERSON: Okay, alright.

ADV PRETORIUS SC: Mr Mufamadi, would you go please

to EXHIBIT YY2?

CHAIRPERSON: Well, Mr Pretorius, you confirm that we will be using mainly if not exclusively SSA bundle 02?

ADV PRETORIUS SC: Yes, Chair.

CHAIRPERSON: For the duration of Mr Mufamadi's evidence.

ADV PRETORIUS SC: For Dr Mufamadi's evidence we will be using SSA bundle 02.

CHAIRPERSON: Ja, okay.

10 **ADV PRETORIUS SC:** Which contains the statements of a number of witnesses.

CHAIRPERSON: Yes.

ADV PRETORIUS SC: But the moment we would just like to place on record EXHIBIT YY2.

CHAIRPERSON: Ja.

ADV PRETORIUS SC: Which is the statement of Dr Mufamadi together with the high level review panel report and it is the classified version before you.

CHAIRPERSON: Ja, okay.

20 **ADV PRETORIUS SC:** Dr Mufamadi, do you have EXHIBIT YY2 before you?

DR MUFAMADI: Yes, I do.

ADV PRETORIUS SC: That is your affidavit and annexure but if we go please to page 32 and we are dealing with the black numbers in the top left hand corner.

DR MUFAMADI: Page 32 you say?

ADV PRETORIUS SC: Yes please.

DR MUFAMADI: Okay. Okay.

ADV PRETORIUS SC: Is that your signature there?

CHAIRPERSON: The one just above the word deponent because there are two signatures ...[intervenes]

ADV PRETORIUS SC: If you look at the top left hand corner, Dr Mufamadi, of that page.

DR MUFAMADI: Yes.

10 **ADV PRETORIUS SC:** Of the page.

DR MUFAMADI: Yes, that is my signature, yes. So you are using the black numbers.

ADV PRETORIUS SC: The black numbers.

DR MUFAMADI: Fine.

CHAIRPERSON: Ja, you can disregard the red numbers on the pages.

DR MUFAMADI: Okay.

ADV PRETORIUS SC: So happily ignore the red numbers, they are for administrative purposes only.

20 **DR MUFAMADI:** Okay.

ADV PRETORIUS SC: And the statement that you have made for the purposes of your evidence begins at page 3 of SSA2, do you see that?

DR MUFAMADI: Yes.

ADV PRETORIUS SC: That is your statement.

DR MUFAMADI: This is my statement.

ADV PRETORIUS SC: Are you satisfied that the contents of that statement are true and correct?

DR MUFAMADI: I am satisfied, sir.

ADV PRETORIUS SC: Thank you. What is your current position, Dr Mufamadi?

CHAIRPERSON: Mr Pretorius, sorry, do you ask me to admit this - - his affidavit as an exhibit?

ADV PRETORIUS SC: Yes please, Chair, if you would
10 admit it, it is EXHIBIT YY2, the affidavit and the document annexed which we will deal with in evidence, to a degree.

CHAIRPERSON: The affidavit of Fholisani Sydney Mufamadi, which starts at page 3 is together with the annexures to be admitted at EXHIBIT YY2.

**AFFIDAVIT OF FHOLISANI SYDNEY MUFAMADI
TOGETHER WITH ANNEXURES HANDED IN AS EXHIBIT
YY2**

ADV PRETORIUS SC: Thank you, Chair. Your current position, Dr Mufamadi?

20 **DR MUFAMADI:** I am currently employed by the University of Johannesburg as Director of the school. Well, it is now called the Centre for Public Policy and African Studies.

ADV PRETORIUS SC: Right. The content of your evidence today, Dr Mufamadi, will deal with state security

and the events over a period of review that we will come to in a moment. Your background in this field, would you briefly place that before the Chair?

DR MUFAMADI: Yes, I have been in public life for over 45 years now. Just to give you the relevant highlights, relevant to what we are about to discuss, during the transition from the apartheid dispensation to the new dispensation, I became one of the [indistinct] 11.10 of activists who were charged with the responsibility of
10 managing that transition. Those were difficult times when one of the single biggest threats facing the transition was the politically orchestrated violence and needless to say, ending that violence was an important element of the equation of change.

So I was one of the people who conceptualised what came to be known as the National Peace Accord involving all the politically interested parties in the country and therefore I even served on the National Peace Committee, which was a multi-party formation which sought
20 to level the political playing field in the country at the time.

At some point in that transition, a transitional executive council was formed which really was a manifestation of a situation of dual power in the country because the elected bodies lacked the necessary legitimacy to see that transition through. So the

transitional executive council was formed and I served on one its sub-councils and that sub-council was called the sub-council on law and order and again, our responsibility was to ensure that there is effective governance of the conduct of people in the security establishment during that interregnum.

This was really a period which required a lot of rethinking, reimagining because you could not do things in the same old way if you were going to have a thorough
10 going process of transition in the country.

So one of the things we did in the sub-council on law and order was to conceptualise the normative framework with the practice of state craft in the functional area of security broadly defined to include even civilian intelligence. So from that point of view I have been, I will say, a policy practitioner even before the new dispensation was instituted.

I then participated also in the process of formulating the programme of demilitarising policing
20 culture in the country. I think the Chairperson will recall the period during which a piece of legislation had to acted, it did not emanate from parliament, some people used to call it colloquially the Goldstone Act which talked to the issue of public order policing. I was party to the process of conceptualising that whole framework and the legislation

itself.

So for sure from the point of view of practice I can lay some modest claim to having acquired some knowledge which I think the President recognised when he asked me to participate in this high level review panel on SSA. Thank you.

ADV PRETORIUS SC: Thank you, Dr Mufamadi, if you would then tell the Chair – and you deal with that in paragraph 2.1 of your statement of the high level review panel and your appointment and what its key objective was in 2018. You deal with that in paragraph 2.1.

DR MUFAMADI: Yes. Well, really the objective, as the name implies, review panel, it was to be involved in a process of looking at the rear view mirror what happened in the period under review. The role that was played by SSA and actually to look at okay, these are the functions of the civilian intelligence agency in the system of government, does the agency have the requisite capacity skilled personnel to executive the task it has? That was one.

20 The other the was to look at you do have oversight mechanisms, since we are a constitutional democracy, which must be relied upon to ensure that organs of state act in accordance with the dictates of the law. Are they adequate? In instances where they may have been circumvented, why was it possible to circumvent this? And

the President was concerned that we should have really a professional security agency or intelligence agency and the question then would have been in instances where we find evidence which suggests otherwise what recommendations do we make to help the President to reconstitute a professional and national intelligence capability for the country that will respect and uphold the constitution and the relevant legislation. In a nutshell that was the task given to the panel.

10 **ADV PRETORIUS SC:** You were assisted, Dr Mufamadi, by a number of people, we do not need to name them, but just very briefly, what was their level of experience and competence in the field?

DR MUFAMADI: Well, that panel brought together people with skill sets that were sort of sufficiently complementary to enable the collective to discharge the task given. Amongst the members of the panel you had practitioners of a craft itself who were no longer in the employ of the agency, you had progressive scholars who belonged to
20 disciplinary communities whose occupations are germane to the craft and therefore appropriate for the task at hand and, as I say, in their combination, the people on the panel, who I think were sufficiently equipped, to carry out the task.

ADV PRETORIUS SC: If we may go back to paragraph 1.4

of your statement, Dr Mufamadi, there you deal at a high level with at least four key findings of the panel. Would you just talk to the contents of that paragraph please and we will come back to the panel in a moment.

DR MUFAMADI: Yes, the key findings of the panel were that there had a been a serious politicisation and factionalisation of the intelligence community over what the we referred as the past decade, that period under review and this factionalisation actually refracted or reflected the
10 factions that existed within the ruling party in the country and we were presented with allegations which I am choosing to call evidence of disregard for the Constitution of the Republic, policy, legislation and other prescripts and part of the evidence given to us was indicating that the civilian intelligence community had been turned into a private resource to serve the political and personal interests of particular individuals. We also noted that during the period under review there had been a doctrinal shift which was given effect to by the proclamation that
20 was issued by the President in the year 2009.

CHAIRPERSON: Well, I think you might have to specify, I assume that was President Zuma. You know, in 2009 there were two Presidents. In the first few months of the year it was President Motlanthe and later on President Zuma. So which one?

DR MUFAMADI: I need to be assured that I should not hide the name of a President. No, the proclamation was issued by President Zuma in 2009 and the essence of it was in contradiction to the doctrines and outlined in the constitution and in the White Paper on intelligence and other prescripts.

So the effect of it, the effect of it that it was a – rather let me say it, runs ...[intervenes]

CHAIRPERSON: I am sorry, Dr Mufamadi, I see most of
10 the time you have your hand here, is that light giving you a problem?

DR MUFAMADI: Yes.

CHAIRPERSON: One of the lights, is it giving you a problem, I see you have your hand here most of the time.

DR MUFAMADI: Yes, it is giving me some problems but I did not want to go to war about that.

CHAIRPERSON: No, no, I am just thinking that for television and so on, put your hand here they might be complaining.

20 **DR MUFAMADI:** Oh yes.

CHAIRPERSON: So I think the technicians can just see what they can do but as we proceed, do indicate if there is no improvement.

DR MUFAMADI: Yes.

CHAIRPERSON: And I think they will try and see what

you can do. But if necessary you can continue protecting yourself with your hand until they have sorted it out if – ja.

DR MUFAMADI: Thank you, Chair.

CHAIRPERSON: Okay, alright.

DR MUFAMADI: Yes, Chair, so I was saying that proclamation, as we saw it, runs counter to the basic tenets of our constitutional democracy, it rides roughshod over the principle of separation of powers because proclamations have more or less the same status as
10 regulations that get issued by ministers of government. They cannot trump the constitution which is the supreme law of the land.

So when you have a proclamation which establish a department called State Security and the ministry of State Security when the philosophical foundation of your security establishment is that here we are talking about National Security and not State Security, then you are usurping the role of the legislature but also, you see, that principle of separation of powers, what it is does is that it limits and
20 constrains executive authority and I think as we go on you will realise that there have been instances where the fetters on executive authority in practice were removed because there was this framework which was a deviation from the provisions of the constitution which promoted that kind of practice.

But also, the concept of State Security, Chair, has got really ominous connotations, it is anti-democratic. As a country we cannot have suddenly forgotten where we come from before 1994 where we had an intelligence service which was in the service of war techniques because that was a warfare state which could only be maintained through suppression of the will of the majority of the people.

10 So without that, the proclamation, besides issues of usurping the role of the legislature, was creating a situation which once more ran the risk of bringing the security establishment back into the cockpit of our political system and with the possibility to re-choreograph the theatre of wrong deeds that we saw in the past, either political partiality or weaponisation of the intelligence community for purposes other than those which the agency existed for.

ADV PRETORIUS SC: In paragraph 1.4, Dr Mufamadi, you talk about the politisation and the factionalisation of
20 the intelligence community. You talk about it becoming a private resourceful, personal and political gain. You talk about the doctrinal shift away from what was conceived in 1994 at the time of transition and the conclusion you lead to is the conclusion that there was a deliberate repurposing of the SSA, those are your words at the end of

paragraph 1.4.

DR MUFAMADI: Yes, as I was saying, you know, the repurposing meant in this instance that, as I say, there was no – there could not have been any confusion as to what the agency exists for. You just look at the constitution, you look at the founding legislation of the civilian agency and I referred to it earlier on, the expectation that the Agency will be politically neutral, the expectation that the Agency will uphold the laws of the land, and as I am saying
10 as we go forward you will see the basis on which we made findings ...[intervenes]

ADV PRETORIUS SC: Yes.

DR MUFAMADI: ...of non-adherence to those prescripts.

ADV PRETORIUS SC: Yes.

CHAIRPERSON: Before you proceed Mr Pretorius it may be that this is not the right time, but maybe later, when you might be going into details on some of the findings. I would be interested in knowing whether - having regard to everything about the issuing of a proclamation to do
20 something that should not be done by way of proclamation and the proclamation being inconsistent with what is contemplated in the constitution.

Whether having regard to everything at the review panel and did take a view or whether if the review panel did not necessarily take a view. Whether you think that the

- what seems like a breach of the constitution may have been oversight, or whether it was deliberate.

You might not be able to say but I make an example about the Commission, if Dr Mufamadi has been watching the proceedings of the Commission for a long time and knows from that, that witnesses come in and sit there and give evidence from there and when his supposed to come and give evidence, he comes and sits here you would say, but he knows where the witnesses sit. What happened?

10 You know, it can be because he did not know.

So I wonder whether the panel dealt with that but if the panel did not deal with that, whether having regard to what was available was known, you might be able to say something. If you are not able to say anything about it, that is fine but you can deal with it later on, if that is convenient.

DR MUFAMADI: Chair, well, as I say, the manner in which the matters that are contained in the proclamation were introduced was manifestly unconstitutional. Now in
20 general, we ought to know what it is that the constitution sought to avoid. So if between the time or let me say, after the proclamation was introduced the things that the constitution sought to avoid, including what we are referring to as doctrinal shift.

It is not just theoretical postulates it has some

materiality. So, after the proclamation has been introduced, you see things happening at least for a period of four years because the relevant legislation so to speak which grounded – let me call it the new dispensation.

If it took four years after the proclamation was issued, for the law to come into place, and so many things happened, which were untoward from the evidence given to us. It becomes difficult to believe that the wrong things were not of proclamation provenance, yes.

10 **CHAIRPERSON:** In other words, are you saying it becomes difficult to say to the extent that the proclamation went against the constitution. This was because of oversight on the part of those who do - I mean, we know government functionalities, Ministers make decisions that are later found by the courts to be unconstitutional all the time, sometimes that constitutional or sometimes they are not constitutional and it does not always mean they deliberately decided to do something unconstitutional.

20 It does not necessarily mean they deliberately went against the constitution, knowing what the constitution says but there could well be a situation where for whatever reason somebody decides, well this is what we will do. Obviously, if it is oversight one looks at it in a certain way but if it was, is like, deliberately a decision was taken, we will do this even though we know it is against the

constitution, then one looks at it in a much more serious light.

So what you are saying does it go anywhere towards any of this or is it difficult? As I said, if you cannot say.

DR MUFAMADI: No, no Chair what I am saying is, it is difficult for anybody to say if the act of introducing the proclamation is an enabler for wrongdoing and then in this instance, wrongdoing ensued, after the introduction of the
10 proclamation.

CHAIRPERSON: Yes.

DR MUFAMADI: It will be difficult for anybody to argue that there is no causal link between the two.

CHAIRPERSON: Okay. Thank you.

DR MUFAMADI: Of course, there is the added consideration Dr Mufamadi which you made in response to the Chair also, perhaps deal with the matters to answer the question why parliament with its several 100 representatives sat by and watched what appears to be
20 face value participation of its powers on a non-constitutional basis.

DR MUFAMADI: Ja, maybe I must rephrase my answer to this question by saying that I find it astounding, and I am speaking on my personal behalf and on behalf of the panel that we are not appearing to be ready to part company with

the obsession with secrecy, undue secrecy. Because if you could have an unconstitutionality to persist for that long usurpation of parliamentary power and we pay the price that I think we paid as a nation.

Why was Parliament sleepwalking if we are not safe in the hands of the body as important as that, I am sorry to bring in even the judiciary because I mean, I believe that being proactive does help sometimes. So the whole nation went to sleep for that long period. The moment this letter
10 is raised in such a manner as it was raised following the release of this report by the President one expected to hear a lot of public discourse around it because our democracy and our own lives depends on our own vigilance. So it is a matter that gives me sleepless nights up to now.

CHAIRPERSON: Well, I will not defend the judiciary when they do not deserve to be defended but I think in this case, I must defend them. Remember that the judiciary cannot give a directive say bring that case here to us, somebody
20 must bring the case.

Even if they read in the newspaper about some unconstitutionality unlawfulness, that whether it is parliament or the President is doing they are not supposed to say bring that case. Somebody must bring the case and once they have brought the case, then it is the duty of the

judiciary to do its job. So unless of course, you have knowledge that it was brought and the judiciary did not do his job.

DR MUFAMADI: No, no I think this is part of, Chair this is part of the discourse we should have in the public domain.

CHAIRPERSON: Yes.

DR MUFAMADI: Yes, because I think the lessons that come from this experience are so profound that we may have to rethink quite a lot of things.

10 **CHAIRPERSON:** No that is fine. It is quite important nobody says we should not include you in the debates things that we might not have for some time that should be done. We are faced with serious challenges that may require things to be done differently from how they have been done before. So but I think part of what you are saying is, you are astounded by the fact that the relevant parliamentary committee and parliament's seemed to do nothing for about four years, when there was this situation, which as far as you are concerned, was quite a clear
20 unconstitutionality.

Ja, okay Mr. Pretorius.

ADV PRETORIUS SC: Yes, thank you and you go on and paragraph 1.5 to place the findings of the high level review panel, in the context of the work of this commission. And you asked the question whether the capture and

repurposing of the SSA as indicated in your report was designed to facilitate and protect the project of state capture or image that capture that is the question which we will deal with in your evidence.

I may rephrase so it is not to include terminology that might foreshadow the findings of the Chair to say that what your statement will deal with is the question whether there was an appropriation of State institution and its resources under the veil of secrecy, or private and political gain. Would that be a fair summary of the question you put there?

DR MUFAMADI: Some and I think these, we can explain why we were puzzled. We can explain it on the basis of some evidence that was put before us.

ADV PRETORIUS SC: If we could go back then to the high level review panel, it is formation and it is activities. In paragraph 2.3 you say, to the Commission to the Chair how the panel went about its work. Could you just tell us something of that, please?

20 **DR MUFAMADI:** Well, what the panel did was that we requested documents from the SSA, which we thought were going to assist the panel to better understand its own task. So an extensive number of documents including policies, legislation, regulations and directives, previous review reports because there had been review reports before and

discussion documents as well as investigative reports. We asked for those documents to be made available to us.

We invited submissions from various units of the State Security Agency and from other sectors of the intelligence community that would include crime intelligence in the South African Police Service, Defence Intelligence, Financial Intelligence Centre.

We invited the Inspector General for reasons which should be obvious, given that we needed to understand the efficacy of the oversight mechanisms that are in place. We interacted with the Auditor General. We invited practitioners, past and current individuals from members of the community and not only the ones who were operating at national level, but as well as those who are operating at provincial levels and so on. So that is how far we went we interacted with the relevant committee of parliament, yes.

ADV PRETORIUS SC: The panel also interviewed a number of senior executive members and senior administrative personnel and those interviews were recorded, correct?

DR MUFAMADI: Yes.

ADV PRETORIUS SC: The documentation and the recordings in fact, all the record of the panel are lodged or have been lodged with the SSA and are under the control of the SSA.

DR MUFAMADI: Yes, they are under the control of the SSA.

ADV PRETORIUS SC: And we have been given access to those particularly changes become relevant later, transcripts or recordings rather of certain implicated parties. Unfortunately, at least one of the transcripts has been totally corrupted, and we cannot hear a word, one can make of that what one will but that will in due course will be placed, relevant portions will be in due course be
10 placed.

But that process of going through the transcripts is not with the recordings is not yet complete. If we could turn, please, because I would like to introduce the document annexed to your exhibit at page 32.1. That is the annexure to your statement at black number, top left hand corner 32.1.

DR MUFAMADI: Okay.

ADV PRETORIUS SC: You will recognise...[intervene]

DR MUFAMADI: You say 32.1?

20 **ADV PRETORIUS SC:** Yes, black numbers in the top left hand corner of the page.

DR MUFAMADI: Okay.

ADV PRETORIUS SC: There.

DR MUFAMADI: Yes.

ADV PRETORIUS SC: You have it? You recognise that

document?

DR MUFAMADI: I do.

ADV PRETORIUS SC: So that is the high level review panel report.

DR MUFAMADI: Yes.

ADV PRETORIUS SC: But it is important to place on record what we see there. You know that you presented because you say so in due course. The high level review panel report in its full un-redacted version to the President

10 in December 2018. Correct?

DR MUFAMADI: Yes.

ADV PRETORIUS SC: A redacted version was then released to the public by the President's office.

DR MUFAMADI: Yes, on our recommendation.

ADV PRETORIUS SC: On your recommendation?

DR MUFAMADI: Yes.

ADV PRETORIUS SC: So certain portions were excluded for security reasons.

DR MUFAMADI: Yes.

20 **ADV PRETORIUS SC:** Since then, and in cooperation with the Commission a declassified version of the whole report was given to us subject to certain conditions. That is the un-redacted version.

Now the complete version was afforded or the Commission was given access to it subject to certain other

redactions, but of a lesser import than had been redacted originally. Now, the declassified and the report was declassified by the Director General.

DR MUFAMADI: Yes.

ADV PRETORIUS SC: To the knowledge of the President's office. Subject to those conditions a declassified version of the high level review panel report, which includes certain redactions is now available by direction of the Director General and that is the document
10 that appears at page 32.1 and following. Am I correct?

DR MUFAMADI: Yes.

ADV PRETORIUS SC: Right. Paragraph 2.4 of your statement, or your affidavit, Dr Mufamadi you deal with the operations or the investigations of the panel in a little more detail. Would you deal with that please?

DR MUFAMADI: 3.4, 2.4?

ADV PRETORIUS SC: 2.4.

DR MUFAMADI: Let me just look at it.

ADV PRETORIUS SC: And 2.5 and 6.

20 **DR MUFAMADI:** Okay, I will have to spend a little bit of time looking at it.

ADV PRETORIUS SC: And in particularly in 2.4, you mentioned investigation into operations and funds in relation to the operation?

DR MUFAMADI: Yes. Ja, what about that? You want me

to say something about it?

ADV PRETORIUS SC: Well, perhaps I could just put it to you because it is not controversial. The panel examined a unit called the Special Operations unit. It is a chief directorate special operations.

DR MUFAMADI: Yes.

ADV PRETORIUS SC: Those are covert operations.

DR MUFAMADI: Sure.

ADV PRETORIUS SC: And you looked at certain
10 operations conducted by the chief directorate of special operations, and you examined how funds in relation to those operations were spent, and how they were accounted for and not accounted for. Am I correct?

DR MUFAMADI: Yes.

ADV PRETORIUS SC: And the general manager Special Operations and later the Deputy Director General counterintelligence was also interviewed by you in relation to those topics, is that correct?

DR MUFAMADI: Yes.

20 **ADV PRETORIUS SC:** You also engaged with the joint Standing Committee on Intelligence, the parliamentary committee, the Inspector General and the Auditor General as you have said. Is that correct?

DR MUFAMADI: Yes.

ADV PRETORIUS SC: And you have also mentioned that

your terms of reference were limited to the State Security Agency but nevertheless, you invited submissions from its sister organisations. Crime intelligence, that is the Intelligence Division of the South African Police Service, and the Intelligence Division of the South African National Defence Force. Why did you invite those representations or submissions? You deal with that in paragraph 2.6.

DR MUFAMADI: Yes, we invited what you are referring to as sister organisations, because of the similar environment
10 in which these intelligence divisions work and after all, even their work, the work of Defence Intelligence, crime intelligence, the civilian intelligence community is coordinated through a structure called UNICOC.

So, it is not easy to make the determinations that we were being asked to make. If we were just looking at the operations of SSA, in isolation from the entirety of the intelligence community. So, that is the reason why we looked at it, at these others but again the general point really to make is that intelligence State craft has the
20 possibility to invade for reasons that all of us have been referring to secret nature of your operations and so to invade regular governments.

So, it was also important for us coming back to that question Chair as to whether there was a deliberate intention to do wrong and so on. Also to try and

understand whether some of the things that we were seeing which were untoward with a peculiarity of SSA or to what extent has this intelligence work lent itself to these issues of invasion of irregular governance. So that was a necessity for us indeed we thought to try and have a broader base from which to come at this issue.

CHAIRPERSON: Has the lights improved anything?

DR MUFAMADI: Ja, I think it is a bit more comfortable.

CHAIRPERSON: Okay, alright.

10 **DR MUFAMADI:** Ja, sorry I will try also - my hands just remained where it was.

CHAIRPERSON: No, that is alright.

ADV PRETORIUS SC: Dr Mufamadi you say in paragraph 2.6 that you actually made or the committee made a recommendation in relation to the activities of crime, intelligence and Defence Force intelligence. Do you recall that?

DR MUFAMADI: Yes, we did.

ADV PRETORIUS SC: What was the recommendation?

20 **DR MUFAMADI:** The recommendation was that the President should consider having a similar process of review directed at these other agencies that are part of the community to which SSA belonged because we thought that there may well be takeaways from what came out of the review that the panel conducted, which can give some idea

as to what needs to happen to the entirety of the intelligence community going forward.

ADV PRETORIUS SC: If one then goes on to paragraph 3, you there set out in paragraph 3.1.123.1.12 the terms of reference of the panel. The terms of reference, it is apparent, were very wide and covered a range of topics. We do not need to go into them all they are there as a matter of record. But I would like to just draw the Chair's attention to the term of reference 3.1.5, the effectiveness
10 of controls to ensure accountability. How did you understand that term of reference?

DR MUFAMADI: Ja, you see in any organisation besides the service which the organisation renders to its clients, in this case, to the people of South Africa. You must have what you call internal environment control. Very important in a situation where you, you use public resources in your work. Also resources must be fully accounted for. I think as we go on you will see why we thought there was a problem with the internal controls.

20 **ADV PRETORIUS SC:** Yes. And if we could also mention 3.1.7 one of your Terms of Reference was the involvement of members of the National Executives in Intelligence Operations and measures to prevent this. What was the underlying principle which gave rise to that line of enquiry and Term of Reference?

DR MUFAMADI: Ja well as I said you see the constitution is very clear as to how to limit and constrain executive authority so that a member of the executive does not end up getting involved in operational issues and so on.

That would then constitute an executive over-reach. You could not have a review process of this kind without trying to understand whether such a transgression happened or not.

10 So this Term of Reference was directing us to look at that issue.

ADV PRETORIUS SC: Right. And then in 3.1.9 you refer to a Term of Reference which asks for the investigation and development of guidelines that will enable the members to report...

CHAIRPERSON: I am sorry – I am sorry Mr Pretorius 3.1.8 is quite interesting it does seem to relate to is it 3.1.7?

DR MUFAMADI: Yes.

ADV PRETORIUS SC: Yes.

20 **CHAIRPERSON:** How did you understand that one.
“The Policy framework including legislation that governs operational activities conducted by members of the National Executive.”

DR MUFAMADI: Okay. Ja, no, no, no.

CHAIRPERSON: You can see that it is interesting.

DR MUFAMADI: Ja, no, no we understand – we understood

that if you act the word nod you will have understood what your brief was. But it was in a situation where the nod was always neglected – was often neglected.

CHAIRPERSON: Ja.

DR MUFAMADI: Yes.

CHAIRPERSON: Okay. Okay.

DR MUFAMADI: Ja.

CHAIRPERSON: Alright. Continue Mr Pretorius.

ADV PRETORIUS SC: Yes. In due course Chair we will
10 refer to Provisions of the current legislation that deals with the role of the executive in relation to the operations.

CHAIRPERSON: Yes.

ADV PRETORIUS SC: Of the SSA and we will deal with that through Mr Japhta the Director General.

CHAIRPERSON: Yes.

ADV PRETORIUS SC: The Provision in 3.1.9 the
development of guidelines that enabled members to report a
manifestly illegal order as envisaged in Section 119(6) of the
Constitution. The evidence perhaps not directly given by
20 you Dr Mufamadi but certainly other evidence will reveal that
manifestly illegal projects were carried out; devised at a
higher level and executed by subordinates.

We know that the constitution makes it very clear and that is borne from the history of State Security in South Africa the many decades that illegal orders simply may not

be obeyed. The constitution takes the trouble to say that expressly and in detail.

Do you have any comments there as to the Term of Reference and why that should be there?

DR MUFAMADI: Ja well as you correctly said I think you know we are all South Africans here we know what happened in our country before 1994 when we saw people coming before for instance forums like the Truth Commission and saying I was obeying orders.

10 And those orders all of us would have agreed then that they were manifestly illegal. So you needed something that does not put your operatives at the mercy of people who are warned to do illegal things but they are sitting in positions of seniority you know giving you orders that are illegal.

Something that gives the operatives the – that empowers them to say, no I am not going to do this because it is illegal.

20 So maybe this – I am saying one would have – will have understood this Term of Reference against that background. And indeed when people became – came before the panels some of them were saying, I did not know that it was illegal because I was expected to deliver on this matter.

So we do make recommendations about what we

thought needed to be done that you needed to have something that protects the operatives and that should be guidelines that are very clear on this issue.

ADV PRETORIUS SC: Right. Then finally in relation to Terms of Reference if we could go to the end 3.1.12? The effectiveness and appropriateness of the existing oversight mechanisms in ensuring accountability and transparency. You have dealt with that to a degree. Is there anything you wish to add?

10 **DR MUFAMADI:** Ja the general point maybe to make here is that on paper the oversight mechanisms were good on paper which then makes it difficult to easily understand why some of the things that happened actually happened despite the existence of these oversight mechanisms.

And when we interacted with members and we interacted member of the Agency and we interacted with even the relevant Parliamentary Committee we thought that it will be important. There is a recommendation we make I – I am not quoting the exact words which was sort of saying
20 that meritocracy in the deployment of people into some of these oversight organs will go a long way towards avoiding a repeat of some of the wrong things that we saw happening.

Also you know you have got an academy of intelligence. I remember when I was growing up as a youngster we were at primary and higher primary school and

the teachers would sometimes be away from school they were attending a refreshing course. We thought that you know things like those were a necessity in order to make sure that the necessary capabilities are in place to ensure that this oversight mechanisms do not just exist in name.

ADV PRETORIUS SC: Thank you. You then in paragraph 4 deal with something you have also dealt with in – you are of course free to deal with it in such detail as you think appropriate but you have touched on an essential aspect of
10 your evidence and of the evidence to follow that there was complete mind shift and policy shift and philosophical shift in relation to intelligence operations that took place in 1994 not only in South Africa but in other countries as well which distinguished intelligence during the Cold War period and distinguished intelligence under a democratic and constitutional dispensation.

Do you have anything to add in that regard? You deal with it in paragraph 4.1.1 and following.

DR MUFAMADI: Yes I think as you correctly point out the –
20 the demise of apartheid in this country happened in a world historical moment where we were seeing serious shifts from what defined the Cold War.

Where many states were fashioned themselves as warrior states placed intelligence or assigned the intelligence community with the role of identifying enemies of

the state. In other words it was really an anti-people outlook adopted by warfare states then and the apartheid state was one such state.

So when change happened in 1994 there was talk of the need to move away from the mind-set of State Security to one of human security so that you sensitise government as a whole to the need for state power to be exercised in the interest of securing your population what I will all human centricity.

10 But once if state – state security it is a reversion to what we had before 1994 which I think it was a very unfortunate development. So it has hit us in the face as a panel the fact that we were dealing with SSA which was not called SSA before the proclamation of course.

ADV PRETORIUS SC: Yes. All this is contained in the white paper which is before the Chair and may be referred to in due course as well. There are several principles embodied in the white paper some of which we have dealt with but one of these that bears mention because it is relevant to the
20 evidence that you are going to give Dr Mufamadi is the Principle of Political Neutrality. Do you have anything to say in relation to what you say in 4.1.2 and 4.1.3 of your affidavit?

DR MUFAMADI: Well I can only say that I think as we go on there is some evidence that will be – we will speak to which

was put before the panel which suggested that these principles you know Political Neutrality treating National Intelligence as a national asset that is politically non-partisan. There is some evidence that was put to us which flies in the face of these principles.

ADV PRETORIUS SC: Right and then in paragraph 5 you deal with the Proclamation issued by the former President Mr Zuma on the 11 September 2009. You have dealt with that already in your evidence. It is not necessary to go back to
10 there as far as we are concerned but if you have anything to add to what you say in paragraph 5.1 to 5.3 please do so.

DR MUFAMADI: Nothing to add really except to say that these – you see the – the intelligence – civilian intelligence community existed in more than one unit. You had civilian – I mean you had NEA which was domestic – for domestic intelligence. You had SASS – SASS South African Secret Service and the – the amalgamation of these as a result of the issuance of the Proclamation had the effect of creating a situation where some people sat in positions which were not
20 existent for too long. That does happen in a situation of transformation and so on but for too long.

But also it was a transformation which was happening after the transformation that happened in 1994 up to that point. We thought that the operational efficiency generally speaking was somewhat undermined and that is why we

made a recommendation of the amalgamating the service but I think the Director General will explain more in detail what then happened.

ADV PRETORIUS SC: We go on then to paragraph 6 where you deal with some findings that were made. It is perhaps important to understand the role of the panel. It was not a commission or a court that made definitive findings of guilt or innocence as I understand it but you received a number of submissions and you received evidence which you felt
10 relevant to make findings on in your report, is that correct?

DR MUFAMADI: Yes.

ADV PRETORIUS SC: The – there are two phases of intelligence activity that are relevant to the evidence before the commission and that – or those phases constitute firstly the activities of and allegations relating to the principle agent network. I dealt with that briefly in opening. The principle agent network conducted its activities between 2006 and 2011 and was subject to investigation thereafter. Is that in accordance with your recollection?

20 **DR MUFAMADI:** Yes.

ADV PRETORIUS SC: And then the Special Operations Unit.

DR MUFAMADI: Yes.

ADV PRETORIUS SC: Conducted its activities in a period thereafter and you had regard to both sets of activities, is

that correct?

DR MUFAMADI: Yes.

ADV PRETORIUS SC: And you summarise the categories – the nature of the factual evidence that was placed before you in paragraph 6.2.1 to 6.2.3 would you just deal with those very briefly please? Just place them before the Chair.

DR MUFAMADI: Yes. Maybe I must say that there is a bit of a distinction to be made between what he heard about the Principle Agency Network and Special Operations.

10 We were made to understand that there is – there was an investigation that was underway looking at what happened in the context of the Principle Agency Network pan.

A key point that was under investigation as we were told was the allegations of abuse of State Resources which then raised the question of the audit-ability of activities of the agency as well as spend to finance those activities.

20 Now as the evidence leader is saying our task was not to take over those investigations but we thought we needed to record what we were told because that read together with other evidence that was given to us would form an important backdrop for some of the recommendations relating to say financial control. And also how to make sure that you do not have Special Operations being used as a ruse for hiving off resources from state coffers.

So that is about now pan. But with respect to Special Operations we found that Special Operations appeared to be a catch all phrase for certain things to be done by SSA which do not fall within the realm of SSA.

For instance protection of political office bearers. I am just giving that as an example. And other people who do not ordinarily warrant whose positions do not ordinarily warrant that they be provided with protection as at state expense.

10 That is the constitutional function of the SAPS. I am just giving that as an example. So we found that there had been things like that and instances of clear weaponisation of – of intelligence capability for ends other than those for which the SSA exists partisanship intra-organisational and inter-organisational and I think when we move forward we will talk about some of the operations which are somewhat dubious that you could only justify if you place them under the rubric of Special Operations. Yes.

ADV PRETORIUS SC: Yes we have heard many under-
20 statements.

DR MUFAMADI: Sorry.

ADV PRETORIUS SC: We have heard many under-statements over the past three years and somewhat dubious is perhaps one of them.

DR MUFAMADI: Well I – I take that we are not at a stage

yet where we will elaborate.

CHAIRPERSON: Yes.

DR MUFAMADI: So I can assure you that by the time we leave here the commission will know what I mean by that. The commission will know what I meant by that.

ADV PRETORIUS SC: Yes.

CHAIRPERSON: So – but from what you say it looks like you are saying that there would have been different categories of operations or units and it looks like whenever
10 anything could not fit into any of the other units or operations then Special Operations was where things would be put under.

DR MUFAMADI: Yes but also as I was saying those could be projects whose legitimacy ...

CHAIRPERSON: Is dubious?

DR MUFAMADI: Is dubious yes.

CHAIRPERSON: Ja.

DR MUFAMADI: Yes.

CHAIRPERSON: Okay.

20 **DR MUFAMADI:** Yes and as I said we will talk about them.

CHAIRPERSON: Ja.

DR MUFAMADI: We will just need a little bit of patience.

CHAIRPERSON: Okay.

ADV PRETORIUS SC: But at a high level Dr Mufamadi you say that the investigations of the panel and the information

received by the panel covered three broad areas.

The first is what you refer to as the weaponisation of Intelligence Services for Partisan or Factional purposes.

DR MUFAMADI: Yes.

ADV PRETORIUS SC: The second is the opening up of the resources particularly financial resources – money of the SSA to those who wish unlawfully to appropriate that money.

DR MUFAMADI: Hm.

ADV PRETORIUS SC: And the third is the abuse and
10 bypassing of proper financial and procurement controls and the projects that we are going to talk about will fall in one or more or under all of those headings.

DR MUFAMADI: Ja in one or more but I think the – maybe the point to make up front is that take Special Operations to the extent that you had projects that legitimately resorted under SSA. SAA did not need to recruit people other than those who were fulltime employ of SSA to carry out those tasks.

But Special Ops enabled the employment initially on
20 temporary base – well on temporary basis of people who went outside SSA and in the course of our interaction with permanent members you would hear complaints about the governability of these non-members because they considered themselves special because they were run – they were involved in special operations. They considered

themselves to be accountable to members of the executive rather than to these – the management structures of the SSA.

And that included them coming forward with requisitions for funding because they are going to carry out these operations and so on and when they have to account they say but we do not account to you.

One of the problems we faced as the panel was that at the point at which we were established the members of that Special Operations were now aggrieved because they were promised that at some point they will be absorbed into SSA permanently and the system was refusing to absorb them. I am just giving that as an example.

So you – you then in a sense have a unit which is I do not want to use notions of rogue unit but whose legitimacy to exist in the first place is dubious. And then as we will go into some operations you will see that those operations some of them could be justified but done by permanent members of SSA and others it was difficult to justify them.

ADV PRETORIUS SC: Yes. We will come to those projects in a moment Dr Mufamadi. The – what you say in paragraph 7 is important by way of background. The notion of a Special Operations Unit that operates covertly is that unusual in intelligence circles internationally?

DR MUFAMDI: Yes. Oh ...[intervenes]

ADV PRETORIUS SC: It deals – para(?) 7.2.

DR MUFAMDI: Ja. So it is not unusual. But how you constitute matters. I have already spoken to that issue. It is brief also matters. The fact of it being special does not legitimise illegitimate activities that it may undertake.

ADV PRETORIUS SC: Yes.

DR MUFAMDI: Yes. And I think that has to be underlined.

ADV PRETORIUS SC: Yes. And you say in paragraph 7.3
10 that much of your work was directed at understanding what happened under the rubric of Special Operations. Is that correct?

DR MUFAMDI: Yes.

ADV PRETORIUS SC: Alright. And what you are going to tell the Chair about in due course is what occurred under the heading or the rubric of state Special Operations.

DR MUFAMDI: Yes.

ADV PRETORIUS SC: But just to place it in its context. You say in paragraph 7.1:

20 “From accounts provided to the panel, the Special Operations Unit, the SSA was rekindled in about 2011...”

I take it that that is a reference to the Pan Investigation that we know took place in relation to activities of the State Security Agency in an earlier period. What you are speaking

about here is what happened in the second period.

DR MUFAMDI: Ja, sure. I think what we are saying there is. To the extent that the notion of Special Operations by whatever name, is not strange to the work of civilian intelligence.

ADV PRETORIUS SC: Yes.

DR MUFAMDI: It has existed before. Now you could say that was a reincarnation of what existed before but it comes with new features that I spoke to earlier.

10 **ADV PRETORIUS SC:** Right. But what is significant perhaps is that what occurred in the earlier period between 2006 and 2011 under the heading Principle Agent Network, was terminated and investigations were conducted. But it seems that the powers that be were unable to or complicit in reviving those types of activities or unlawful activities in the second period from 2011 onwards. Is that correct?

DR MUFAMDI: Ja, well to the extent that the investigation of Pan was occasioned by the sense that something went wrong. You will have expected that the powers that be would
20 be really(?) concerned(?) about a repeat of that. And when you come up with Special Operations, later you would take care to avoid, as I say, a repeat of that.

But what we saw was a repeat of some of what they were investigating in the context of Pan. And more serious manifestly illegal activities. H'm.

CHAIRPERSON: I think it is a convenient time to break for lunch Mr Pretorius.

ADV PRETORIUS SC: Thank you, Chair.

CHAIRPERSON: H'm. We will take the lunch adjournment. We will resume at two. We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Oh, there is a problem with the light as well? This one?

10 **DR MUFAMDI:** [No audible reply] [Mic muted]

CHAIRPERSON: If they can move it? They can shift it a little bit.

DR MUFAMDI: [No audible reply] [Mic muted]

CHAIRPERSON: Okay. Did they interfere with it during the lunch break or was it always – was it like that before lunch or did you not notice?

DR MUFAMDI: No the fact that I did not complain, speaks to my resilience Chairman. [laughs]

20 **CHAIRPERSON:** [laughs] Okay. Okay they will try and attend to it but we – I must just make sure they understand what you suggest should be done. Should it look – should it point this way, a little bit to the left or...?

DR MUFAMDI: Yes.

CHAIRPERSON: Okay. Okay alright.

DR MUFAMDI: Okay.

CHAIRPERSON: Okay. Let us make sure it is fine first.
How does it look like now?

DR MUFAMDI: Ja, it is okay. It is okay Chair.

CHAIRPERSON: It is okay. Okay alright.

DR MUFAMDI: Ja.

CHAIRPERSON: Okay. Let us continue then.

DR MUFAMDI: Okay.

ADV PRETORIUS SC: Thank you, Chair. We are at
paragraph 7.3.

10 **DR MUFAMDI:** 7.3...

ADV PRETORIUS SC: Of your statement Dr Mufamadi,
where you say that the panel probed deeply and widely into
the issue. And I presume the activities of Special
Operations.

DR MUFAMDI: Yes.

ADV PRETORIUS SC: And you also referred to an
investigation conducted by the Inspector-General of
Intelligence into the activities of this Special Operations
Unit.

20 **DR MUFAMDI:** H'm. Yes.

ADV PRETORIUS SC: Who was the head of Special
Operations at the relevant time?

DR MUFAMDI: [Indistinct] ...[intervenes]

ADV PRETORIUS SC: Or you refer to him as the key-
player.

DR MUFAMDI: Yes, during the period under review, the Special Operations was led by Mr Dlomo.

ADV PRETORIUS SC: Is that Thulani Dlomo? They have Dlomo's.

DR MUFAMDI: Ja, Mr Thulani Dlomo.

ADV PRETORIUS SC: Right.

DR MUFAMDI: Thulani Dlomo.

ADV PRETORIUS SC: And then in paragraph 7.5 you say a little of his background. I do not think we need to go there
10 unless you feel it is important to do so?

DR MUFAMDI: Sorry?

ADV PRETORIUS SC: In paragraph 7.5 you deal with Mr Dlomo's background.

DR MUFAMDI: Yes.

ADV PRETORIUS SC: I said it is not necessary to go there unless you feel it is important to do so.

DR MUFAMDI: No, it is not necessary.

ADV PRETORIUS SC: Right. Did Mr Dlomo testify before the panel?

20 **DR MUFAMDI:** Yes, he did.

ADV PRETORIUS SC: Was he a good witness?

DR MUFAMDI: In our reckoning, he was the most difficult witness because he was uncomfortable to answer some of our questions and justify his reluctance to answer those questions, he invoked *the need to know basis*. And we

thought he did not quite understand. But this is – a department established by the President.

CHAIRPERSON: H'm.

DR MUFAMDI: You cannot be an operative of the state organ and when the state wants to do some intro spectrum in an area you are operational, you invoke *the need to know basis*.

CHAIRPERSON: It is like you are doing your operation for yourself.

10 **DR MUFAMDI**: Yes, it is as if you are doing your operations for yourself.

CHAIRPERSON: H'm.

DR MUFAMDI: Yes.

ADV PRETORIUS SC: To put it differently. Did Mr Dlomo give a full and frank account of the activities of Special Operations?

DR MUFAMDI: Well, by the time he came to the panel, we had already other members of the Special Operations Unit who appeared before us. And when we were trying to test
20 some of the things that were said to us before he came, his *need to know* defence, so to speak, stood in the way we think of him fully cooperating with the panel.

ADV PRETORIUS SC: Alright.

DR MUFAMDI: Yes.

ADV PRETORIUS SC: Paragraph 7.7 ...[intervenes]

CHAIRPERSON: Well, I do not know whether you, Dr Mufamadi, whether you actually did not want to be categorical in terms of the answer to the question as formulated by Mr Pretorius.

DR MUFAMDI: Yes.

CHAIRPERSON: But if that is the case. But he was effectively asking whether he gave his evidence before the panel in your view or in the view of the panel – in your view, frankly and candidly and cooperative fully.

10 **DR MUFAMDI:** No, we did not get his full cooperation.

CHAIRPERSON: Yes.

DR MUFAMDI: Yes.

CHAIRPERSON: Okay.

ADV PRETORIUS SC: In paragraph 77.

DR MUFAMDI: 7.7?

ADV PRETORIUS SC: Sorry, 7.7. Yes.

DR MUFAMDI: Okay.

20 **ADV PRETORIUS SC:** You say certain matters became clear to the panel on reviewing the evidence and you drew certain, at least preliminary conclusions. What do you say in paragraph 7.7 in regard to what you discovered about the operations of the State Security Agency, Special Operations Unit?

DR MUFAMDI: Yes. What we say in that operation... Oh, the next(?) paragraph. Is that the Special Operations, in our

view, carried out some operations which were unconstitutional and illegal.

And that there is a sense in which that unit was a law unto itself that is relative to the management structures of the SSA. Because they were not reporting – following the reporting line from what we were told.

Some of the senior – most senior people than Dlomo, for instance, would say: We were not getting reports from Special Operations. We were told that, you know, report as
10 Special Operations to the executive and therefore we cannot report to you.

The money that was disbursed on request for operations, according to the relevant people in the chain of management – you know, they used to have what they call a TA System. I am trying to recall what TA stands for.

CHAIRPERSON: Yes.

DR MUFAMDI: But it is an advanced ...[intervenes]

ADV PRETORIUS SC: It is Temporary Advance Systems.

DR MUFAMDI: Temporary Advance Systems.

20 **CHAIRPERSON:** H'm.

DR MUFAMDI: There was cash intensive transaction based work. But besides that, you would then have huge amounts of money which we will talk to later which were allocated on a regular basis for projects.

And the financial accounting people would say: We did

not get reports in which people were accounting for that money.

Then as you will see, some of the operations were sort of really misdirected in that they were looking at things to do with, I will call it political intelligence, running the projects in inappropriate manner in that principle such as political neutrality and so on, were not observed.

To the extent that we kept on talking about the findings which relate to the weaponisation of intelligence for wrongful
10 political reasons.

Those had to do mostly, as we were investigating, with what the Special Operations Unit was doing.

ADV PRETORIUS SC: Alright.

CHAIRPERSON: The management that was saying there are these individuals who, as far as we are concerned, are supposed to account to us, to report to us, who are refusing to report to us or who are saying we cannot ask them certain questions because they report directly to the executive.

As a result, we do not know what they are doing or we
20 do not know what they are doing with the money that they get given. Did they say that they raised those issues with the executives?

And if so, did the executive sight with those people and said there was nothing wrong? Or was there something that your panel did not explore?

DR MUFAMDI: We did not explore. But you know in general, you would have expected people to say: We made representations to the executive. But see, if people do not say: We made representations to the executive. And they were coming to us to tell us about how helpless they felt. Then you realise that there was something wrong there.

CHAIRPERSON: You see, why it is important to establish that is because sometimes you could have a situation where those people who, as far as they know, are the people to whom reports should be coming from certain people. See
10 this and see that it is wrong as far as they know in terms of how the organisation is supposed to work or operate.

DR MUFAMDI: Yes.

CHAIRPERSON: But they are scared to raise it with the executive. So they just sit. And when the panel comes, they pour out their frustrations but they have never raised it. But you could have a situation where they have raised it. And if they have raised it, it would be interesting to know whether – what the response of the executive was. So that is why I
20 was asking.

DR MUFAMDI: Ja, sure. I think this matter must be read together that terms of reference we were talking to.

CHAIRPERSON: Yes.

DR MUFAMDI: About the directives relating to manifestly illegal instructions.

CHAIRPERSON: Yes.

DR MUFAMDI: Because it is difficult then to expect people to raise questions when they see wrong things being done when they did not raise these questions when the step that is... Ja, they – the initial steps which leads to this, was not questioned.

CHAIRPERSON: Yes.

DR MUFAMDI: Yes.

CHAIRPERSON: Because if for example they did not raise
10 those issues, one might ask the question why they did not. It may be that when they are get given a chance they could give reasons that one understands.

But it may well be that they give reasons and one says but this is not the type of leadership in an organisation that should be there.

So going forward, maybe certain characteristics of leadership should be looked for, for this type of positions. We do not want people who are not going to raise issues they should raise.

20 At least, they should raise them and see whether they are not being helped or not. Ja.

DR MUFAMDI: Ja, sure. But you see, I think that – now we are talking with the benefit of hindsight.

CHAIRPERSON: Yes.

DR MUFAMDI: We realise that they did not raise this.

CHAIRPERSON: H'm.

DR MUFAMDI: The question is whether there was enabler in place.

CHAIRPERSON: H'm.

DR MUFAMDI: So if we are recommending that there should be directives that address these issues.

CHAIRPERSON: H'm.

DR MUFAMDI: We are really raising issues of empowerment.

10 **CHAIRPERSON**: H'm.

DR MUFAMDI: Where people can say... I mean, I heard the Chair saying: Can you give me an instrument I could have used to help you?

CHAIRPERSON: H'm, h'm. Yes, yes.

DR MUFAMDI: In absence of such an instrument ...[intervenes]

CHAIRPERSON: Yes, yes.

DR MUFAMDI: ...people are disempowered.

CHAIRPERSON: Yes, yes.

20 **DR MUFAMDI**: Yes.

CHAIRPERSON: Yes. But the point I am making is. The first step is to talk to them to say: You are telling me that you have had these problems. Were there people that you know to be under you and are supposed to report to you?

When you ask questions about what they are doing, they

tell you that they do not report to you. They report to the executive.

So I am saying, the first thing is to ask them: If you did not raise it with the executives, why did you not raise it?

Then they can say: Here was the environment that I found myself in. Maybe I found it intimidating or the minister was this type of person or whatever.

Or, they might say: Well, I actually did raise it and this was the reaction. Or, I raised it a number of times. He kept
10 on saying we will talk about it. After some time, I realised that he was never going to engage with me on it.

So that is the level to say, the start is just to find out whether there was a desire or a commitment or courage to raise but maybe the environment was not good or there were other reasons.

DR MUFAMDI: Ja. Well, maybe I need to say which is really outside this report.

CHAIRPERSON: Yes.

DR MUFAMDI: That the establishment of the panel seemed
20 to be have been received roundly within the SSA very well.

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

DR MUFAMDI: So you know, people would say to you informally: We welcome this initiative. And then they tell you what they have seen which they hope this initiative will help. So.

CHAIRPERSON: H'm.

DR MUFAMDI: You know, we are afraid to raise issues and so on.

CHAIRPERSON: Yes, yes, yes.

DR MUFAMDI: But you could not put that in the report.

CHAIRPERSON: Ja.

DR MUFAMDI: These things that I said to you and Thomas(?).

CHAIRPERSON: Yes, yes.

10 **DR MUFAMDI**: But we were sufficiently sensitive to the fact that people would not just voluntarily just come forward and say: I do not think it is the right way to do this.

CHAIRPERSON: H'm, h'm.

DR MUFAMDI: And generally, you would know Chair as a labour lawyer.

CHAIRPERSON: [laughs]

DR MUFAMDI: [laughs]

CHAIRPERSON: Once upon a time. [laughs]

20 **DR MUFAMDI**: Once upon a time, yes. That workers would always want to protect their job security and things like that.

CHAIRPERSON: H'm, h'm. And I would not be surprised if the environment in the intelligence community which seemed to be dominated by secrecy might not be very empowering or might not be very conducive to people maybe ascertain certain rights. I do not know, you know.

DR MUFAMDI: Sure.

CHAIRPERSON: Because I do not know whether things can happen and it is difficult to get addressed(?) elsewhere, you know. I do not know. But I would not be surprised if that environment is not the best environment for people. Ja, okay alright.

DR MUFAMDI: Sure.

CHAIRPERSON: Thank you. Mr Pretorius.

ADV PRETORIUS SC: So by way of introduction to the
10 evidence to come Dr Mufamadi, you say in paragraph 7.7 that it became clear to the panel that the Special Operations Unit was a law unto itself and directly served the political interest of the executive and that is what you mean by weaponisation of the service.

DR MUFAMDI: Yes.

ADV PRETORIUS SC: You also say that the Special Operations Unit undertook Intelligence Operations which were clearly unconstitutional and illegal and we will deal now with some of them. Obviously, these are not all as you say,
20 but the first is Project Çonstracao(?). It is a Portuguese word with Portuguese spelling. And we will inform the stenographer accordingly Chair.

CHAIRPERSON: Well, I thought Mr Pretorius you would – I thought on a lighter note, you would see whether the Chairperson could give you the correct pronunciation of this

one. [laughs]

DR MUFAMDI: [laughs]

ADV PRETORIUS SC: I am sure you could give the correct pronunciation. [laughs] But I even took the trouble of asking our researcher to tell us what that C was with that squiggle underneath. It is a cedilla (or cedilha or cédille).

CHAIRPERSON: H'm?

ADV PRETORIUS SC: And the A with squiggle on top.

CHAIRPERSON: Ja?

10 **ADV PRETORIUS SC**: Is a tilde. (also “til” in Portuguese).

CHAIRPERSON: Oh. [laughs]

ADV PRETORIUS SC: If that is of any interest to anybody. That is the spelling of Constracao

CHAIRPERSON: H'm, h'm.

ADV PRETORIUS SC: What did that project involve?

DR MUFAMDI: Yes. Maybe it is another illustration of what is meant by the unit being a law unto itself. You see, it is the constitutional responsibility of the South African Police Service to provide what is called VIP Protection. Protection
20 for political office bearers. Then the first thing that was wrong that was done by this unit was to organise the training of undercover agents in VIP protection.

ADV PRETORIUS SC: Before you go there.

DR MUFAMDI: Ja.

ADV PRETORIUS SC: And if we can just take a step back

to what you said about the duty of the South African Police Services to provide the VIP protection.

DR MUFAMDI: H'm.

ADV PRETORIUS SC: To whom would the person providing that protection be accountable?

DR MUFAMDI: Ultimately it is to the commissioner of police.

ADV PRETORIUS SC: Yes.

DR MUFAMDI: Yes.

10 **ADV PRETORIUS SC**: And in this case that would have been avoided. That accountability line would have been avoided.

DR MUFAMDI: Ja, once this function is being carried out elsewhere, then it means you are bypassing the structures, the reporting structures of the police.

ADV PRETORIUS SC: And they become accountability to SSA operatives and the person receiving the benefit of the protection, as I understand it.

20 **DR MUFAMDI**: Yes. Firstly, as you say, they are then accounting to the structures of the SSA and the SAPS is out of the loop. But also, you need resources to carry out that function.

The budget of the SSA ought not to provide for that function because there is a sense in which there is double-dipping.

Whatever these undercover agents do, may well be a duplication of what the SAPS believes itself to be doing. But also, you can imagine that sort of stampede that happens when there is a parallel provision of VIP protection service.

ADV PRETORIUS SC: Yes. In any event. I interrupted you. My apologies Dr Mufamadi. You say undercover agents were trained.

DR MUFAMDI: Yes.

ADV PRETORIUS SC: We need not mention but in a foreign
10 country. Did you know that?

DR MUFAMDI: Yes, that is what we were told that they were trained in a foreign country.

ADV PRETORIUS SC: Why would there be a need to train undercover agents in a foreign country to protect the beneficiaries? And we will come to them in a moment.

DR MUFAMDI: Well, maybe let me put it this way. There is an operational discretion on the part of the leadership of an organ which had got that responsibility to determine whether the people are to be trained and by whom. And I am saying,
20 as I – I am emphasising this. That is the responsibility of the police.

ADV PRETORIUS SC: Yes.

DR MUFAMDI: They may feel ...[intervenes]

ADV PRETORIUS SC: For which training is available in South Africa, I presume.

DR MUFAMDI: Well, they may feel that in some cases that there is a benefit to be had from accessing elements of training which they may not have. I say, they may feel that way. But I am saying it is not within the competence of the SSA to make that determination.

CHAIRPERSON: But just to go one step on what you were saying earlier on. One, that it is the responsibility of SAPS to provide the VIP protection to, for example, political office bearers.

10 And saying when somebody else provides VIP protection without being under SAPS, then they are bypassing the structures of SAPS to which there should – they should account.

But of course, you could have a situation, I would imagine, where SAP members are being used to provide protection to certain individuals, maybe who are not entitled to that protection but it is SAPS members that are being used.

And whoever is instructing them who is outside of SAPS,
20 make sure there is no reporting to the top structure of SAPS. That is one scenario.

Another scenario is where, the people who are providing protection are not SAPS people in the first place. Obviously, in that scenario you cannot even talk about bypassing to the SAPS. They should not be there. They should not be doing

that at all.

DR MUFAMDI: Sure.

CHAIRPERSON: Is that right?

DR MUFAMDI: No, sure. They should not be there.

CHAIRPERSON: Ja. Because they are not SAPS.

DR MUFAMDI: Because they are not SAPS.

CHAIRPERSON: Yes.

DR MUFAMDI: But as you say Chairperson. There may well be people who are provided with VIP protection services
10 and they are not – they do not fall within, shall I say the ...[intervenes]

CHAIRPERSON: Approved categories.

DR MUFAMDI: Approved categories.

CHAIRPERSON: H'm.

DR MUFAMDI: It is still the responsibility of the SAPS on the basis of threat analyses.

CHAIRPERSON: H'm, h'm.

DR MUFAMDI: To make a determination of who are these people that are brought within the defined category who
20 should be given protection.

CHAIRPERSON: Yes, yes.

DR MUFAMDI: Now you will see that there are people who do not ordinarily fall within this defined categories who were provided with protection by a special ops unit.

CHAIRPERSON: H'm.

DR MUFAMDI: Which is another transgression of basically the law.

CHAIRPERSON: H'm.

DR MUFAMDI: I mean, when a law govern society, you cannot have a function as sensitive as this one being a free for all activity.

CHAIRPERSON: H'm. Ja, okay.

ADV PRETORIUS SC: Well, you make two points in paragraph 7.8 and we will come to the detail in a moment.

10 **DR MUFAMDI:** The first is that undercover agents were trained under the auspices of the SSA in VIP protection. And these were then assigned not to everybody across the board but to only certain select individuals.

DR MUFAMDI: H'm.

ADV PRETORIUS SC: Some of whom fell within the category of those deserving of VIP protection in the ordinary and proper course and some who did not.

DR MUFAMDI: H'm.

ADV PRETORIUS SC: That is the second point you make.

20 **DR MUFAMDI:** H'm.

ADV PRETORIUS SC: Who benefited from these private protection services or perhaps let us not use the word private but Special Operations Protection Services?

DR MUFAMDI: Well, we were told by people who came from the SAPS to meet with us, that they received reports that to

the effect that you would have instances where the President of the Republic was troubling.

Now when a person who falls within these defined category travels from, say from one province to the other, or sometimes going out of the country, particularly the President. You will have what is called an advanced party.

People who go ahead and look at this situation and make sure that everything is in order. Who were told that there were instances where they would...

10 These people who are going from the SAPS as the advance party, they would collide into people who say we are from SSA, Special Ops. We are here to look out for the interest of the President. That is one.

Then you also had, and this was confirmed now by the Special Ops people that we also interviewed, you would also have people who did not ordinarily fall within the defined category, who were provided with this protection services. I do not know if in terms of your agreement you can ...[intervenes]

20 **ADV PRETORIUS SC:** You can - this has been approved.

DR MUFAMADI: I can mention the names.

ADV PRETORIUS SC: Mention the names.

DR MUFAMADI: Yes, I have seen the Chair dealing very harsh with people who do not ask whether they should mention names. Okay. You had people such as the former

Chairperson of the Board of South African Airways, Ms Dudu Myeni, the former National Director of Public Prosecutions, Mr Shaun Abrahams, the ANC Youth League President Mr Collen Maine and the former Acting Head of the Directorate for Priority Crime Investigations, General Yolisa Matakata.

Now I am relying on memory because I do not know why this does not appear here, they spoke about the president then of the ANC Youth League, his services was
10 apparently provided also to the then Deputy President of the ANC Youth League. The SAPS was not able to tell us that they had a threat analysis which justifies protection by the state of these individuals. You can say on the face of it maybe the Director of Public Prosecutions but who makes that determination matters, yes.

ADV PRETORIUS SC: Yes, there will be further evidence regarding this project but we understand it has been terminated. Paragraph 7.9, Project Commitment, what was that about?

20 **DR MUFAMADI:** Yes, your records will show, the ones that will have been provided to you by SAA because I do not have the name offhand of an operative from Special Operations who – or maybe let me put it this way. For each of the projects, there was identifiable individual who went to the window, as it were, to receive money it is

based for that project.

CHAIRPERSON: And it would always be the same individual or one individual.

DR MUFAMADI: No, one individual per ...[intervenes]

CHAIRPERSON: Per transaction.

DR MUFAMADI: Per project.

CHAIRPERSON: Yes, no what I mean is, you have for example here Project Commitment, so what I am asking is whether Project Commitment would have one individual
10 who would be responsible to collect funds.

DR MUFAMADI: Yes.

CHAIRPERSON: For all operations of Project Commitment and you have Project Veza.

DR MUFAMADI: That is right.

CHAIRPERSON: And there you have one person who would have that responsibility, it would not be different people.

DR MUFAMADI: That is right.

CHAIRPERSON: Okay.

20 **DR MUFAMADI:** So once we had the possibility to talk to – or let me put it this way, we were given documents before we started our work in terms of interaction with people. So by the time we started our work we knew about these projects, we knew who was receiving money on behalf of what project and we were interested at least

without asking them to give us documentary evidence in –
we were interested to know what did he do with this money.

And then with Project Commitment, we were told
that that project involved providing then President with
R2,5 million per month ...[intervenes]

ADV PRETORIUS SC: Then President Zuma?

DR MUFAMADI: Ja, well you will see the year, per month
in the 2015/2016 financial year. That is President Zuma.
And this amount was increased to R4.5 million per month in
10 the 2016/2107 financial year and the allegation there, at
least to the extent that we were just told this, apparently
this money was provided via then Minister Mahlobo.

The person who gave this information was saying
yes, I am certain that the money was giving to Minister
Mahlobo, but I cannot prove that it was received by
President Zuma.

CHAIRPERSON: But was his evidence before your panel
that the understanding in the money being given to
Minister Mahlobo that he would pass it on to President
20 Zuma?

DR MUFAMADI: Yes, ja.

CHAIRPERSON: Was that money ...[intervenes]

DR MUFAMADI: He understood that this was the final
destination.

CHAIRPERSON: Yes, okay.

DR MUFAMADI: Without claiming to have witnessed.

CHAIRPERSON: Yes, ja.

DR MUFAMADI: Yes.

DR MUFAMADI: Ja, okay.

ADV PRETORIUS SC: Two issues arise out of that, that the panel was told. The first is that a minister appeared to be involved in the operations of the State Security Agency to the extent that it was intended that money handed to the Minister would be handed on to President Zuma, correct?

10 **DR MUFAMADI:** Ja.

ADV PRETORIUS SC: I take it we do not need to debate the propriety of that.

DR MUFAMADI: No, we do not have to debate the propriety of that.

CHAIRPERSON: Yes but let – maybe it might not be as obvious to everybody listening as it might be to Mr Pretorius and you, Dr Mufamadi.

ADV PRETORIUS SC: Point taken, Chair.

20 **CHAIRPERSON:** You were a minister in cabinet for many years.

DR MUFAMADI: Yes.

CHAIRPERSON: Would you know of any circumstances where monthly – because that seems to be what you say this person told you, as the panel, monthly a minister was given such large amounts like R2,5 million for a whole

financial year, 2015 to 2016 and then 2016/2017 it increased to R4.5 million every month. Would that be circumstances when a minister needs to be given any money other than his salary?

DR MUFAMADI: I must say that is unthinkable.

CHAIRPERSON: Yes.

DR MUFAMADI: Ja, that is unthinkable and I do not know of such an instance.

CHAIRPERSON: Yes.

10 **DR MUFAMADI:** I can cite my own experience, I never received such money.

CHAIRPERSON: Yes.

DR MUFAMADI: Yes.

CHAIRPERSON: And you never had throughout all those years that when you were Minister you never heard of a minister who received ...[intervenes]

DR MUFAMADI: Maybe I was in government for too short a time because it was just 14 years and eight months, so...

20 **CHAIRPERSON:** But now did this person who gave this evidence to your panel say – I see here that it says per month but was your understanding that he was saying actually every month during these two financial years he was the person who took during the 2015/2016 year R2,5 million every month and gave it to Minister Mahlobo for onward passing, as he understood it, to President Zuma.

Was it an every month occurrence as you understood it?

DR MUFAMADI: Maybe let me put it this way. I suppose the Commission will be able to find someone at SSA who says he made this disbursement.

CHAIRPERSON: Yes, yes.

DR MUFAMADI: And the person who says they received it, indeed they received from us.

CHAIRPERSON: Yes, yes.

DR MUFAMADI: But again, coming back, they did not tell
10 us what happened to the money.

CHAIRPERSON: No, I accept that.

DR MUFAMADI: Yes.

CHAIRPERSON: But I am just talking because from what you say here it looks like the person that gave evidence before the panel that you are talking about, from whom you got this information, seems to have been clear before the panel that he or she knew that the money was given to Minister Mahlobo.

DR MUFAMADI: Yes.

20 **CHAIRPERSON:** And he says R2,5 million per month in the 2015/2016 financial year. That seems to suggest to me that it must have been monthly but that is my understanding.

DR MUFAMADI: Sure.

CHAIRPERSON: So – and then in the 2016/2017 financial

year it kind of doubled, it was R4.5 million again per month. So at least as far as – that was your understanding of his evidence or her evidence, whoever.

DR MUFAMADI: Yes.

CHAIRPERSON: Ja. Okay, alright. And was the – do you say this was cash?

DR MUFAMADI: Yes, it is a cash ...[intervenes]

CHAIRPERSON: It was cash - these were cash transactions.

10 **DR MUFAMADI:** It is not these things that they call electronic transfer.

CHAIRPERSON: Ja, it is not electronic transfer or a cheque, ja.

DR MUFAMADI: No, no, it was cash.

CHAIRPERSON: It was cash.

DR MUFAMADI: Ja.

CHAIRPERSON: Okay, alright.

ADV PRETORIUS SC: Yes, the second point that is evidence from what say in paragraph 7.9 is that no proof
20 that was given to you that the funds were actually given by Minister Mahlobo to President Zuma. So at a very basic level the project could have been, as far as you are concerned, executed as per its intention and the money given to President Zuma or the money would have – the money trail would have stopped with Minister Mahlobo with

all the implications that arise from that, equally serious.

DR MUFAMADI: Yes, we have no basis to say it was given to President Zuma or it was not. Yes.

CHAIRPERSON: But I see that apparently you were told that there were acknowledgements of receipt of these funds by Minister Mahlobo.

DR MUFAMADI: Sorry?

CHAIRPERSON: I see that you say in paragraph 7.9...

DR MUFAMADI: Yes.

10 **CHAIRPERSON:** ...that I think the person who gave evidence before your panel seems to have said that there were acknowledgments of receipt of these funds by Minister Mahlobo.

DR MUFAMADI: Yes.

CHAIRPERSON: Yes and do you have recollection whether these may have been made available to you to see or not really?

DR MUFAMADI: No, no, they were not.

CHAIRPERSON: Oh but he said the receipts were there.

20 **DR MUFAMADI:** Ja, they were not and, as I said, we were really not extending the investigations.

CHAIRPERSON: Yes, you were high level.

DR MUFAMADI: Yes, we were high level.

CHAIRPERSON: No, no, that is fine.

ADV PRETORIUS SC: There will be further evidence.

CHAIRPERSON: There will be further evidence.

ADV PRETORIUS SC: But I presume you would agree that in either case, whether the monies were kept and withheld by Minister Mahlobo, contrary to the intention of the project, or whether they were given to President Zuma in accordance with the intentions of the project, it is a matter worthy of investigation.

DR MUFAMADI: Oh, it is a matter worthy of investigations. As I said, these kind of practices unheard
10 of in government, ja.

ADV PRETORIUS SC: Let us deal with the next project, Project Justice, what was involved here?

DR MUFAMADI: Well, this is a project which ostensibly involved recruiting and handling sources in the judiciary in order to influence the outcome of cases against President Zuma.

ADV PRETORIUS SC: Right, now before you go on, recruiting and handling sources, would this have been payment of monies?

20 **DR MUFAMADI:** Sorry?

ADV PRETORIUS SC: Would this have involved payment of monies?

DR MUFAMADI: Well, information provided to the panel indicated that amounts of R1,2 million and R4,5 million were routinely given from SSA and provided to Minister

Mahlobo whom, it is said, was responsible for handling these sources.

ADV PRETORIUS SC: And these sources were whom, what category of person?

DR MUFAMADI: The panel was told that this project was motivated, as I said, by a specific need to counter the influence of judges hostile to President Zuma. Allegations made were to the effect that judges were bribed to achieve this purpose. This should, however, we thought be treated
10 with extreme caution as one would not want to be party to the destruction of public confidence in the judiciary. That is what we thought and I will explain what I mean by that, because we were not provided with any actual evidence that the operation was actually carried out to conclusion. And if you want me to elaborate, I will.

ADV PRETORIUS SC: Well, there will be further evidence. But let us just deal with the issue of sensitivity.

DR MUFAMADI: Yes.

ADV PRETORIUS SC: One acknowledges, without
20 qualification, that this is a sensitive issue.

DR MUFAMADI: Yes.

ADV PRETORIUS SC: And that it should be handled with caution.

DR MUFAMADI: Yes.

ADV PRETORIUS SC: Because public confidence in our

judiciary and the independence of our judiciary is of prime importance to our constitutional democracy.

DR MUFAMADI: Sure.

ADV PRETORIUS SC: All that one can accept but if there is an attack on what might be termed the most valuable element of our constitutional democracy, that is an independent judiciary, this Commission is obliged to deal with it and the public have a right to know. Would you agree with that?

10 **DR MUFAMADI:** Absolutely.

ADV PRETORIUS SC: And what must occur then is that to the extent that it has been investigated, this matter should have come before this forum in public and secondly, if investigations have not been concluded, they should be. Do you agree with that?

DR MUFAMADI: I agree but I must add this caveat, that on a matter of this gravity, we must refuse to be gullible. Even everything that we have said about this unit and it work because if we run ahead of ourselves we will put the
20 house on fire and one Afrikaans-speaking friend of mine used to say that they have a saying in their community which says do not start a fire which you may not be able to put off.

CHAIRPERSON: Yes.

DR MUFAMADI: Ja.

CHAIRPERSON: Ja.

DR MUFAMADI: So very important that we approach this matter with circumspection.

ADV PRETORIUS SC: And obviously one should not let a fire rage behind closed doors.

DR MUFAMADI: No, no, no, sure but also do not go public and put out – put fire ...[intervenes]

ADV PRETORIUS SC: No, I understand that, yes. But if the matter was before the panel.

10 **DR MUFAMADI:** Yes.

ADV PRETORIUS SC: This was contained in the unredacted or the redacted report, as I understand it. No.

DR MUFAMADI: I do not ...[intervenes]3

ADV PRETORIUS SC: Or certainly the unredacted report.

DR MUFAMADI: Ja.

ADV PRETORIUS SC: But be that as it may, I do not want to go down that side, Chair.

DR MUFAMADI: Okay.

20 **ADV PRETORIUS SC:** Let us just while the matter is before the Commission, it is a matter of sensitivity but it is a matter of utmost importance that it be dealt with and thoroughly investigated and that is perhaps something we would present to the Chair in due course. You would agree with that?

DR MUFAMADI: Yes but I hope you also agree with me

when I say approach this matter with an open mind because I think – we had a sense that some of the operations could have been a ruse for moneymaking undertakings.

ADV PRETORIUS SC: Yes, we will come to that in a moment.

DR MUFAMADI: Okay.

CHAIRPERSON: I think I understand completely what you are saying in terms of how it should be handled. I think
10 you are saying while obviously anything that deserves to be investigated should be investigated. At the same time, we must not fall into the trap of giving credibility and credence to something that might have no credibility or credence whatsoever.

DR MUFAMADI: Sure.

CHAIRPERSON: It is a balancing of the two considerations.

DR MUFAMADI: Sure.

CHAIRPERSON: You do not want not to investigate what
20 may be genuine but at the same time you do not want to give credence to something that has no credence at all. It is just how you strike the balance.

DR MUFAMADI: And it is a delicate balance.

CHAIRPERSON: It is a delicate balance.

DR MUFAMADI: Yes.

CHAIRPERSON: Okay, alright. Mr Pretorius?

ADV PRETORIUS SC: Let us assume for the purposes of the next questions then, Dr Mufamadi, that this project was not carried out, right? It was conceived, we know that.

DR MUFAMADI: Yes.

ADV PRETORIUS SC: It was thought of by operatives and perhaps senior people within the SSA and money was attributed or given to this project. That in itself would be serious.

10 **DR MUFAMADI:** No sure, I mean, if you have a person whose imagination carries them that far and they are in the SSA then we are trouble. That is the imagination, then I am saying we are in trouble and you therefore need to get to the bottom of it whichever way.

ADV PRETORIUS SC: Yes, yes. And there will be further evidence and we will explore whether there has been a full investigation.

DR MUFAMADI: Sure.

20 **ADV PRETORIUS SC:** Or whether the fruits of the investigation have been disclosed to the Commission but that is another issue that will be dealt with in due course but let us go to the proposition that you raised. On the assumption that the project was not carried out ...[intervenues]

CHAIRPERSON: I am sorry, Mr Pretorius, I am sorry, I

should have raised this while we were dealing with 7.9. So, in terms of arithmetic, so in the 2015/2016 financial year it would therefore appear that, if the evidence of the person who gave evidence to the panel that Minister Mahlobo was given R2,5 million every month, so over 12 months that would have been around what? Over 20 million?

ADV PRETORIUS SC: Over 60 million, 4.5 times 12.

CHAIRPERSON: No, no, I am looking at the first one, 2.5.

10 **ADV PRETORIUS SC:** 30 million. You are testing my maths.

CHAIRPERSON: Yes, so then the 4.5 would probably be 60 million or ...[intervenies]

ADV PRETORIUS SC: 54.

CHAIRPERSON: 54.

DR MUFAMADI: Yes but, Chair, it depends, particularly with the first year.

CHAIRPERSON: Yes.

20 **DR MUFAMADI:** On when exactly in that year did this practice start.

CHAIRPERSON: Of course, of course.

DR MUFAMADI: Yes.

CHAIRPERSON: Yes, yes, one would have to check, ja. But nevertheless, large amounts.

DR MUFAMADI: Sure.

CHAIRPERSON: Large amounts. Okay, I am sorry, Mr Pretorius.

ADV PRETORIUS SC: Yes and the totals are on the assumption of the full year.

CHAIRPERSON: Yes, yes, ja.

DR MUFAMADI: Sure.

ADV PRETORIUS SC: Let us just go back before we summarise Project Justice, Dr Mufamadi. You raise the possibility in paragraph 10.2 that this whole project was a
10 ruse, albeit a very imaginative and create ruse, to obtain state resources. In other words, it was merely a cover for the theft of money from the fiscus, is that correct?

DR MUFAMADI: Yes but as you say it is speculation, yes.

ADV PRETORIUS SC: Speculation and it its probabilities ...[intervenes]

DR MUFAMADI: Ja, sure.

ADV PRETORIUS SC: ...can be debated.

DR MUFAMADI: Ja.

ADV PRETORIUS SC: But it would seem a rather
20 elaborate and dangerous ruse to conceal the theft of money. But that would be equally serious allegation – well, not an equally serious allegation because it does not have the constitutional implications that the project would have if it had been carried out but it is serious in the sense that we are instructed that at least R24 million was

involved here. You create a cover and you steal R24 million and you hand it in cash to Minister Mahlobo. That is a...

DR MUFAMADI: Ja, there are many elements of...

ADV PRETORIUS SC: That is a rather far-reaching, I would say, proposition.

DR MUFAMADI: Ja, no, sure, sure, but as you say, I mean, the illegality of money – first illegality of just the action itself but also the principle of the separation of
10 powers.

ADV PRETORIUS SC: Yes, could you say a bit about that, please?

DR MUFAMADI: Sorry?

ADV PRETORIUS SC: Could you explain to the Chair?

DR MUFAMADI: Yes, I am saying the independence of the judiciary, you forget about it if this project was indeed implemented. So it is not just whether there was an illegality, there is a more fundamental issue of whether we can – our system can still be relied upon to deliver on what
20 it exists for if an arm of state, the judiciary loses its independence.

ADV PRETORIUS SC: Yes, the point I think that you are making, if I can put it to you, is that broadly speaking there are a number of constitutional checks and balances built into the Constitution that deal with the judiciary.

DR MUFAMADI: Sure.

ADV PRETORIUS SC: And make the judiciary itself accountable in many ways.

DR MUFAMADI: Ja.

ADV PRETORIUS SC: To have a secret agency of government funded by the fiscus to interfere in the independence of the judiciary in a manner which is unaccountable is simply unconscionable. Would you agree with that?

10 **DR MUFAMADI:** Well, unconscionable but there, you know, our brief was to try and understand if we find that there are things that went wrong, how did they go wrong, when? You have got such checks and balances provided for in our system of government, our constitutional democracy. Anything that suggests that there was a subversion of independence of any one of these organs of state or even just contemplation of that subversion, it is a matter of grave concern.

20 **CHAIRPERSON:** Well, this evidence that the panel was told is quite concerning in terms of if these things are true, if they did happen. I mean, I have been sitting here – well, not all the time but we were sitting in another venue in 2018 and 2019 as the Commission but I have been hearing a lot of evidence of the past two and a half years and so from what you are saying here and I get the sense from Mr

Pretorius that maybe there will be other evidence, it is not the first time that I hear evidence or that I may be hearing evidence to say so and so says he used to give money to so and so to pass on to President Zuma. I heard evidence like that from Mr Agrizzi saying that monthly BOSASA or Mr Gavin Watson gave money to Ms Dudu Myeni to pass on to Mr Zuma. I do not whether it was R100 000 or R300 000 but some money. There was no evidence – there has been no evidence that that money was received by Mr Zuma.

10 But I am just saying, you know, when I sit here, I remember other evidence that I have heard. So here I am saying that this would be the second time I hear evidence of that nature. Okay, Mr Pretorius?

ADV PRETORIUS SC: Is the reading of paragraph 7.10 correct, that the sources referred to in the judiciary are in fact judges?

DR MUFAMADI: Yes.

ADV PRETORIUS SC: And that allegations were made to the effect that judges were bribed to counter the influence
20 of judges hostile to President Zuma, that was what you were told?

DR MUFAMADI: Yes.

ADV PRETORIUS SC: But you say there was no actual evidence that the operation was carried out and we have dealt with it to an extent at least on the basis that such a

project could ever have been conceived?

DR MUFAMADI: Yes but as I say it was not our place to dig deeper than that.

ADV PRETORIUS SC: And we are *ad idem* are we that this is a serious matter warranting the fullest investigation.

DR MUFAMADI: Sure.

ADV PRETORIUS SC: We know that Minister Mahlobo gave evidence or spoke to or was interviewed by the panel, correct?

10 **DR MUFAMADI:** Yes.

ADV PRETORIUS SC: And we have been given access to a recording of the interview he had with the panel. Unfortunately, that recording is entirely corrupted and we're trying to see what we can do about it but perhaps you can help us. Do you recall whether this series of actual allegations under the head project Justice were put to Minister Mahlobo?

20 **DR MUFAMADI:** Ja, as you say, it's really unfortunate that the part of our hearings with – was covered – was recorded and it's not possible to record it and I'm talking about technically was – the line was corrupted because I would have asked for that myself so that I could then, without relying on memory say, these are the questions which we put to Mr Mahlobo and this is how he responded. So, I have no recollection of questions we put to him in

this regard and how he responded. I would rather suggest that the Commission find a way of taking these matters further within.

ADV PRETORIUS SC: Let's move on then, to, operation Lock paragraph 7.11 of your statement. As I say, Chair, there will be further evidence in this regard. Operation Lock, what did this project involve, at least insofar as you were told?

DR MUFAMADI: The name, Eugene de Kock, depending
10 on where you see it, it's famous or infamous. Now, Mr Eugene de Kock spent some time in prison and he was, subsequently released, apparently on the basis of a memorandum of understanding with the Department of Correctional Services. I don't want to go into details about what – actually occasioned that, is not – was not a matter within the brief of the panel ...[intervenes].

ADV PRETORIUS SC: We needn't go in too much detail here, there are sensitivities around it.

DR MUFAMADI: Sorry?

20 **ADV PRETORIUS SC:** I say, we needn't go in too much detail in relation to this project.

DR MUFAMADI: Yes.

ADV PRETORIUS SC: Save to say that, SSA provided him with a safe house and protection.

DR MUFAMADI: Sure.

ADV PRETORIUS SC: And on release from prison, who would normally bear the responsibility for the protection and provision of safe houses, if necessary, to a former prisoner, would it be SSA?

DR MUFAMADI: Well, I did not have sight of the memorandum of undertaking to start with, but logic would say to me, if the memorandum of understanding was between Mr de Kock and the Correctional Services, they would have committed themselves to ensuring that he's
10 protected. That he has got a place to stay, if he did not have one himself, that is Correctional Services. If they needed the assistance of a sister Department as far as protection is concerned, one would have thought that the appropriate Department to ask for assistance from, is SADS. So, we don't know why it was SSA, but we came, also, to understand that – I don't see the exact amount here but there was an amount of money that was advanced to Mr de Kock for his upkeep, whilst he was out of prison, protection afforded and if that was the case, the question
20 is, then, why was that money provided for by SSA but I guess the appropriate person from SSA will answer this question.

ADV PRETORIUS SC: Yes, ja, I won't say anymore but we are operating in consultation with the SSA in regard to the extent of the evidence that is given.

DR MUFAMADI: Yes.

ADV PRETORIUS SC: 7.12 Project Wave, would you tell the Chair what that project involved, as far as you learnt and was told?

DR MUFAMADI: Sorry?

ADV PRETORIUS SC: Paragraph 7.12 Project Wave, would you tell the Chair please what that project involved as far as you became aware?

DR MUFAMADI: Yes, we were told that this project
10 involved infiltrating and influencing the media at home and
abroad in order, apparently to counter bad publicity for the
country and the, then President and the SSA, in other
words in the opinion of SSA there was bad publicity in the
country – within the country and beyond, about the country,
about the President and about the SSA and – which then
necessitated using filtration and influencing of the media.
So, they say the project was launched in the 2015/2016
financial year with a budget of R24million and they say one
of the largest amounts issued for this project was
20 R20million given to a media agency. Apparently, therefore,
for services rendered for eight months.

ADV PRETORIUS SC: Yes, it was originally intended that
the name of the agency would be redacted, but you've had
discussions with the SSA in that regard and it's not
necessary to redact the name, what is the name of the

Agency?

DR MUFAMADI: The Agency we were told, is Africa News Agency.

ADV PRETORIUS SC: Then paragraph – well, and we know, don't we, that there is already a legitimate arm of Government that deals with publicity in relation to Government and Government activities, correct?

DR MUFAMADI: Sure.

ADV PRETORIUS SC: Yes, paragraph 7.13, Project
10 Accurate or Project Khusela, what was this project about?

DR MUFAMADI: We were told that this was a project to recruit toxicologists to test the food and bedding of then, President Zuma. This project had then initial location of R500 000 per month which increased to R1,5million per month in the 2015/2016 financial year and again, we did not understand this to be the responsibility – as the panel of the SSA to deal with issues of that toxicology and related issues.

ADV PRETORIUS SC: Yes, one doesn't want to make
20 light of this but we do have evidence which may well be presented to the Chair that, one of the fruits of this toxicology unit's effort was to discover, expired cool drinks in the panty of the former President. Do you know anything about that?

DR MUFAMADI: No, we were not told about expired cool

drinks and that it cost so much to discover...[intervenes].

ADV PRETORIUS SC: Well, exactly, that's the point I think, and that evidence will be ...[intervenes].

DR MUFAMADI: The expired cool drinks – I always, check, also myself, whether cool drinks have expired and I don't spend money...[intervenes].

ADV PRETORIUS SC: Perhaps you won't need so much money to check that.

10 **DR MUFAMADI:** I don't have it, maybe it's because of that, yes.

ADV PRETORIUS SC: Yes, but I think the point is, although lightly put, the point is that it was an expensive project.

DR MUFAMADI: It was an expensive project indeed.

ADV PRETORIUS SC: And then Project Tin Roof, what was that project about?

20 **DR MUFAMADI:** This, we were told, involved in an investigation into the alleged attempted poisoning of President Zuma by his wife, Ntuli but it also involved acquiring a safe house for Ntuli and seemingly, maintaining her, even the quantum of the project budget of R5.2million with a monthly withdrawal of R800 000.

ADV PRETORIUS SC: Right, so just to summarise so far in relation to the former President Zuma, we have evidence of a project to provide a security force for his benefit, we

have evidence, at least *prima facie* evidence that amounts were allocated for his benefit of between R2.5 and R4.5million per month. We have evidence of a toxicology unit being created and paid for, for his benefit and we have the amounts expended in relation to his wife Ntuli. There's further evidence that you will deal with, where he benefited from certain projects conducted under the auspices of SSA but what would you say to that collection of evidence in relation to the state security/human security
 10 divide?

DR MUFAMADI: Well, I think, the point that you were making – the observation you were making, I concur with it, these are extraordinary expenses. Financing extraordinary undertakings on the part of SSA. Now, to the extent that some of them come up as – for the protection of the President and this you correctly said, Chair, I was Minister of Safety and Security for a period of five years, I was not involved in operational issues but these issues that are being heard here are not just operational they've got
 20 strategic implications and faced with such issues or similar issues, the Commissioner of Police would have deemed it necessary to bring these issues to my attention. At no point were we told that these issues were brought to the attention of a Minister of Police because that would have been the relevant Minister and the Department for which he

has got political responsibility would have been the appropriate Department and issues about toxicology and so on would have involved consultation between the SAPS and possibly the Department of Health or some such Department. So, you can see why I am saying, there are many questions that is being – begs quite a number of questions which possibly will come out in the wash.

CHAIRPERSON: Were you told what the justification was, at least from the point of view of SSA for giving – or
10 arranging for a safe house for Ntuli, she was not an agent, was there anything – anything really, advanced to the panel to say, well, as the relevant unit of the SSA which did this, this is how we see it as justified, we think it's justified because of A, B, C, D?

DR MUFAMADI: Like with other project, we were not provided with, what I'll consider a cogent logical explanation.

CHAIRPERSON: Yes, yes.

DR MUFAMADI: For why, if there were challenges in this
20 sort of areas, it was then the responsibility of SSA to step in, yes.

CHAIRPERSON: Yes, but as you recall you were given some – you were told something that they considered to be justification, but you didn't consider it sound or you might not have been given an answer at all?

DR MUFAMADI: Ja, we might not have been given an answer at all, as I said, on the proper recollection of that but also...[intervenes].

CHAIRPERSON: Yes, but nothing sound as far as you are concerned.

DR MUFAMADI: Ja, there also – Chair, you will appreciate that if we tried to follow everything...[intervenes].

CHAIRPERSON: No, I accept, I accept ja.

10 **DR MUFAMADI:** We were given, actually, six months.

CHAIRPERSON: Yes, no, no I accept ja.

DR MUFAMADI: To complete this task.

CHAIRPERSON: Ja, you had to be careful about not spending too much time on individual items.

DR MUFAMADI: Yes.

CHAIRPERSON: You needed to get a globular picture.

DR MUFAMADI: Yes.

CHAIRPERSON: Ja, okay.

20 **ADV PRETORIUS SC:** In paragraph 7.15, Dr Mufamadi, you deal with certain information you were given and things you were told in relation to particular projects involving civil society and you mentioned at least two here, what were they?

DR MUFAMADI: Yes, there are two issues here, interrelated. The one we were told about was a testimony

and there were legal papers that were provided which speak to that issue about a union called The Worker's Association Union. Workers Association Union which was a[intervenes].

CHAIRPERSON: Your background, as a trade union is coming back now to give you a certain perspective about this name?

DR MUFAMADI: Yes, you can imagine, I couldn't stop laughing just at their attempt.

10 **CHAIRPERSON:** [Laughter].

ADV PRETORIUS SC: Similar to that other trade union called, The General and Allied Worker's Union.

CHAIRPERSON: [Laughter].

DR MUFAMADI: That was a proper union which gave rise to what is today Cosatu's largest affiliate now, not this one. So, I am saying, we were told that this union was established with the support of this Special Operations Unit of the SSA...[intervenes].

ADV PRETORIUS SC: And its purpose?

20 **DR MUFAMADI:** The purpose ostensibly to neutralise instability in the Platinum Belt and counter a growing influence of ...[indistinct]. The related operation or activity was the putting under surveillance of unions that broken ranks with Cosatu which were critical of the President, that's what we were told.

CHAIRPERSON: I think, General Worker’s Union of South Africa would have been much more imaginative.

DR MUFAMADI: Ja, I think...[intervenes].

CHAIRPERSON: Than Workers Association.

DR MUFAMADI: There was a shortage of listing intellectual property.

CHAIRPERSON: [Laughter].

DR MUFAMADI: Yes.

ADV PRETORIUS SC: Yes, we know that the Labour
10 Relations Act, deals extensively with the powers and
functions of the Registrar, the conduct of trade unions and
that is all left to the Judiciary and the Labour Court to deal
with. The idea that a secret and secretively financed
project should be dealing with trade unions and the
conduct of trade unions by supporting new trade unions,
presumably at their instance, what does that say about the
separation of powers principle?

DR MUFAMADI: Well, freedom of association, that’s the
20 issue. If people joined the union which is considered to be
creating instability in the economy is the responsibility of
corporate leaders who find creative ways of relating to that
reality, that’s the first point and workers have got a right to
associate with a union of their choice. Now, again, you
will recall that this practice is not new. Whoever
introduced this idea of forming a rival union, using State

funds must have been reading from the script of the apartheid times. You know I was part of the leadership of the Congress of South African Trade Unions, I was working, amongst others, with the late President of Cosatu, Elijah Barayi and Jay Naidoo and we were shown their coffins whilst they were still alive. All these was brought about in the same way as this thing that we are reading about associate – well it's called Association of Union or something like that. A project which is designed to
10 undermine freedom of association, to create a ...[indistinct] union – and by the way this is not speculation because you know for a fact that when the matter came before the Courts, there was a settlement between the Union and the SSA but again, I don't think Cosatu itself would have appreciated having to be protected in this kind of way, from competition.

CHAIRPERSON: You know, what I'm really not sure I understand in regard to this – you were saying, we are aware that there was a settlement because – that's
20 because – or Mr Pretorius and I have read some affidavits that the public hasn't heard. It just seems strange to me, why a State institution such as SSA or maybe a politician who is in Government, if that is factually true, would say, let's take taxpayers money and go and establish a union that must abide with that other union. I can understand if,

maybe there was some connection with a Cosatu rival union but from what one has read, it doesn't look like there was any connection, it looks like it was something that just came from, either some politician or politicians or with or State Security Agency or State Security Agency, it just seems to be something that's just so far away, you know. You know, when you read your affidavit where it is said that State Security – SSA or some operation under SSA approached the media to say, we are concerned about how
10 the President is portrayed or the Government is portrayed, we want to enforce the media to put the President or the Government in – or the country in a positive light. One can understand that, it may be wrong, but one can understand why somebody would want that but it's difficult to understand why SSA or some politician would want to say, let's use taxpayer's money to create a union that will fight with that union. I'm not sure – so there is that aspect, I don't know if, whether it's something you share as well or not?

20 **DR MUFAMADI:** Ja, well, you know, unions exist because there is a particular Labour Relations framework provided by Government. So, if there is serious instability on that front, just like on any other front, in the final analysis, Government will be expected to do something.

CHAIRPERSON: From the context from the perspective of

not wanting instability?

DR MUFAMADI: Yes.

CHAIRPERSON: Okay.

DR MUFAMADI: Yes.

CHAIRPERSON: Okay.

DR MUFAMADI: But that something has to be imagined, so if your imagination does not take you beyond thinking about causing the formation of a rival union, that's what he will do. As I was saying, it was done before, it is
10 unfortunate that you could see a repeat of that in the post-apartheid South Africa, that is the problem.

CHAIRPERSON: Ja, okay thank you, Mr Pretorius?

ADV PRETORIUS SC: Paragraph 7.16, Project Academia, what did you learn, or what were you told about that project?

DR MUFAMADI: Well, we were told that the project was designed to intervene in the Fees Must Fall protests and influence the direction of the student movement.

ADV PRETORIUS SC: So, the name there has been
20 redacted?

DR MUFAMADI: The name has been redacted and...[intervenes].

ADV PRETORIUS SC: And replace by a pseudonym.

DR MUFAMADI: Ja.

ADV PRETORIUS SC: But you can proceed.

DR MUFAMADI: Yes, and the idea was to support what was called Young Bright Minds to be ...[indistinct] and to be strategically deployed to institute counter measures and then show stability in our universities.

ADV PRETORIUS SC: Alright, so – let’s just pause there a moment. The main agent in the project whose name is redacted for security reasons, was sent on training, destination of that training has also been redacted.

DR MUFAMADI: Yes.

10 **ADV PRETORIUS SC:** The object or purpose of the project was to influence the direction of the student movement.

DR MUFAMADI: Yes.

ADV PRETORIUS SC: And it was to support “Young Bright Minds” to be patriotic and to be strategically deployed to institute counter measures and ensure stability and peace in our universities. Now it may be quite legitimate to be concerned about peace and stability in universities, but the method used here, do you have any comment in relation to
20 that and the freedom of association principle?

DR MUFAMADI: Well, what I said about freedom of association principle applies here. No need for the State to intervene in the manner that we were told this project was designed to do and again, you know, the ...[indistinct] of the conflict that took place in our country before we

came to 1994 will tell us how undesirable this practice is. Again I happened to know evidence leader that you were part of the leadership of NUSAS ha?

ADV PRETORIUS SC: Yes I was.

DR MUFAMADI: So Craig Williamson is not somebody you do not know.

ADV PRETORIUS SC: Correct.

DR MUFAMADI: You will – you know what role he played in Student politics.

10 **ADV PRETORIUS SC:** Yes. And I know the impact it had on the lives of people.

DR MUFAMADI: Ja and the impact it had on the lives of people. So this question goes to the heart in what sense of newness is this new South Africa new?

And again it is a matter as I say which I think is experience it is saying to us we must not think that we have arrived and therefore we can sit back and everything good is preordained to happen.

20 And I – I hope that some of the recommendations we made will help to refocus once more the work of the decision makers in this regard.

ADV PRETORIUS SC: The – yes the counter-proposition that may be put in fact that you know the fact that this commission is sitting here deal with these issues of extreme sensitivity is an indication of the strength of democratic

institutions and our constitution. But you were going to make some remarks about that at the end of your testimony.

DR MUFAMADI: Please remind me.

ADV PRETORIUS SC: Yes I will.

CHAIRPERSON: Because I think it is important. Yes.

ADV PRETORIUS SC: But that is a remark that you wish to make and I will remind you at the end of your testimony.

DR MUFAMADI: Yes.

ADV PRETORIUS SC: Paragraph 7.1 Chair there will be
10 evidence in due course of a report prepared by a – an
operative during this period which has become known
colloquially as the Boast Report in which the author records
certain activities of Special Operations under his or her
watch. And we have been given access to the report and the
State Security Agency have permitted release of that report
without redaction. Initially it was intended to redact certain
clauses of the report but after discussions it was agreed that
the whole of the report could be released and four issues
emerging from that report are dealt with in paragraph 7.17 Dr
20 Mufamadi if you could just deal with them please? It was a
report made to the SSA DG at the time Mr Fraser in February
2017 dealing with certain activities of the Special Operations
Unit during 2016/2017. There are four issues that arise in
your statement what are those?

DR MUFAMADI: Ja well this was called the Boast Report

because the author was exposing the achievements of his group or unit.

So he talks about what was – what were called countering operations that were initiated during the 2016 ANC general - I mean January AIDS statement in Rustenburg.

So the units says:

10 “We initiated three countering operations to impede the distribution of CR17 Regalia impede transportation system of dissident groups from Gauteng Province.”

ADV PRETORIUS SC: So ja 17 is a reference to the current President.

DR MUFAMADI: Yes the campaign for the 00:05:10 including Presidents of the ANC. Then it also says:

20 “During the February 2016 State of the Nation Address the unit was ‘able to infiltrate and penetrate the leadership structure of the Zuma Must Fall movement.’ The initial Zuma Must Fall indicated that more than 5000 people would embark on Parliament but with efficient and effective countering actions and the dissemination of this information to supporters of Zuma Must Fall only appropriately 50 Zuma Must Fall supporters

attended the march”

It is in the report that was tabled or filed by the – the member of the Special Operations Unit. It also says:

“During the ANC’s manifesto launch in Port Elizabeth in 2016 a unit initiated – a unit “initiated a media campaign to provide positive media feedback through the placement of youth of various ethnic groups in photographic vision of media personnel thereby promoting social cohesion.”

10

Chair if you ask me what this last one means I will tell you I do not understand. So the report boasts of various other similar operations including the “Active Monitoring of the South Africa First Right to Know Savesa.”

ADV PRETORIUS SC: Savesa.

DR MUFAMADI: Yes. CASAC and Green Peace was done due to the penetration ability of the group.

ADV PRETORIUS SC: Right. In due course if it arises in evidence of the Director General the debate as to what is legitimate and illegitimate surveillance activity one accepts that if there is a perceived threat to the country on any front it is the duty not only the right of surveillance organisations such as Intelligence to see what is going on. Infiltration and influence is another story but – but that is for another debate for another time. But the first three paragraphs the

20

interference in the CR17 campaign, the infiltration and neutralisation of the Zuma Must Fall movement and whatever is said about the ANC Manifesto launch in Port Elizabeth whether clear or unclear is that an example of political interference that would be prohibited by the Principles in the white paper?

DR MUFAMADI: Yes I think I will put this in Zulu because I am addressing the Chair.

CHAIRPERSON: Ja.

10 **DR MUFAMADI:** The organ of state such as the SSA has no business to seek to influence or to [African language].

CHAIRPERSON: You will have to give the gist of that in English.

DR MUFAMADI: No I have read it.

CHAIRPERSON: I understand it.

DR MUFAMADI: You understand it.

CHAIRPERSON: I understand it.

DR MUFAMADI: That is right.

20 **CHAIRPERSON:** But I think – I think Mr Pretorius wants to understand it too.

DR MUFAMADI: Yes you see issues of incumbency influencing who ascends whether it is within political parties or even state organs it is not the responsibility of the SSA.

ADV PRETORIUS SC: Yes.

DR MUFAMADI: And as you say the monitoring happens if

you have got reason to believe that there is an intention on the part of the people you are – want to monitor to do unlawful things.

And even for that there are permissions that need to be sought if part of the monitoring include listening in to people's conversations and so on.

So else you say evidence leader I think the DG will have to spend some time indicating to this commission what exactly is within the realm of the permissible with respect to
10 surveillance. But influencing things that happen in civil society particularly organised formations that should be no no yes.

ADV PRETORIUS SC: Dr Mufamadi in paragraph 8.

DR MUFAMADI: Yes.

ADV PRETORIUS SC: You refer to evidence that has also been presented directly to the Chair.

DR MUFAMADI: Yes.

ADV PRETORIUS SC: In relation to the persons there named.

20 **DR MUFAMADI:** Yes.

ADV PRETORIUS SC: Matlatuka, Ngentle and Shaik.

DR MUFAMADI: Yes.

ADV PRETORIUS SC: In relation firstly to a report given to the then Minister of State Security Dr Cele and evidence in relation to a meeting that took place in the study of the

President's – President Zuma's private home in Pretoria involving Ms Susan Shabango = Shabangu and Mr Ajay Gupta. You confirm that you were told and learnt of the events as you set them out in paragraph 8.1?

DR MUFAMADI: Huh-uh.

ADV PRETORIUS SC: We do not need to repeat them.

CHAIRPERSON: Ja I have heard the evidence.

ADV PRETORIUS SC: Yes you have heard the evidence.

10 Then a matter that may not be a minor matter that the oath of allegiance that SSA members are expected to take changed during the period under your investigation. Just briefly describe how it changed? How were members of the SSA expected to swear allegiance and it may be more than symbolic?

DR MUFAMADI: Yes. Speaking from experience I did take an oath of office. You are being sworn in as a Minister. You swear an oath of allegiance to the Republic of South Africa, its constitution and any law that is duly passed by Parliament. That kind of oath.

20 And that is the oath you would expect not only Ministers to take but people who find themselves doing this kind of sensitive work and as I understood it it was really a similar oath that historically members of SSA took.

But at some point during this period that was under review by the 00:13:43 the members were expected to take

an oath which also binds them to profess allegiance to the Minister of State Security and the President.

ADV PRETORIUS SC: Sorry if I can just interrupt there. It would be to swear allegiance to the Constitution laws of the country as per the original oath but also now to the President.

DR MUFAMADI: And the Minister.

ADV PRETORIUS SC: Yes and then to recognise the authority of the Minister of State Security.

10 **DR MUFAMADI:** Ja sure – oath allegiance to the President and recognise the authority of the Minister.

CHAIRPERSON: So – so this change in terms of the oath did not happen during the period that your panel was in operation but it happened during the period ...

DR MUFAMADI: Under...

CHAIRPERSON: Which you were reviewing.

DR MUFAMADI: Yes.

CHAIRPERSON: Yes. Was this a situation where this oath the one you are talking about here the new one was it just
20 additional to an existing oath? Normally an oath might be scheduled to an act of Parliament or something. Was this a separate thing in addition to an existing official oath or was this the oath that SSA members took?

DR MUFAMADI: I will seek also the help of ...

DR MUFAMADI: Oh.

DR MUFAMADI: Because there is a copy that was shared with.

CHAIRPERSON: Yes.

DR MUFAMADI: Both the evidence leader and.

CHAIRPERSON: Yes.

DR MUFAMADI: Our side.

ADV PRETORIUS SC: I can give you a copy of the old oath.
Chair both of these – the new oath.

CHAIRPERSON: Yes.

10 **ADV PRETORIUS SC:** Is in the bundle.

CHAIRPERSON: Registrar please assist.

ADV PRETORIUS SC: I will give you a reference and I just want to hand to you the old oath.

CHAIRPERSON: Alright.

ADV PRETORIUS SC: Sorry.

CHAIRPERSON: Sanitise before.

DR MUFAMADI: I think I will...

CHAIRPERSON: Yes but it is for him or has – have you got – ja first and foremost.

20 **DR MUFAMADI:** Okay.

ADV PRETORIUS SC: This is the sanitised oath.

CHAIRPERSON: Thank you. This is the – the old one.

ADV PRETORIUS SC: Yes Chair

DR MUFAMADI: Ja this is the old one which talks about the constitution and...

CHAIRPERSON: Yes.

DR MUFAMADI: Yes.

CHAIRPERSON: If you do not mind without mentioning the name of the person who – that appears there would you just read it into the record please as being the old one. I see that this was in July 2003 when it was taken according to what is at the bottom. Do you just want to read into the record so we have got it there? Dr Mufamadi.

DR MUFAMADI: Sorry.

10 **CHAIRPERSON:** Do you want to just read it into the record this oath.

DR MUFAMADI: Okay.

CHAIRPERSON: Yes.

DR MUFAMADI: It reads:

CHAIRPERSON: Without the name of the person.

DR MUFAMADI: Yes.

20 “I solemnly and sincerely declare to be loyal to the Constitution, The Republic of South Africa and the South African Secret Service above personal interests and promise to endeavour to maintain and promote in my work at all times the security of the Republic. Subject myself to the Constitution; to do my work faithfully with all my strength and using all my talents to the best of my ability.

Conscientiously carry out the corporate policies and procedures applicable to the South African Service. Promote the interest of the South African Secret Service at all times and above personal interests.”

CHAIRPERSON: Okay. Thank you.

DR MUFAMADI: It is actually dated July 2003.

ADV PRETORIUS SC: Yes I see that.

CHAIRPERSON: Yes.

10 **ADV PRETORIUS SC**: It is trying to get the...

CHAIRPERSON: It will be good to have ...

ADV PRETORIUS SC: The new oath.

CHAIRPERSON: Yes.

ADV PRETORIUS SC: They will be placed in the bundle next to one another.

CHAIRPERSON: Yes.

ADV PRETORIUS SC: In due course. The new oath is in Bundle YY2 page 32.177 and perhaps that can be read onto the record.

20 **CHAIRPERSON**: You said 32.?

ADV PRETORIUS SC: YY2 – 32.177.

CHAIRPERSON: Oh.

DR MUFAMADI: It reads:

ADV PRETORIUS SC: Just one second. I am sorry I – yes I have got it yes you can read it.

DR MUFAMADI: It reads:

“Oath of Office. I solemnly and sincerely declare my allegiance to the Constitution and the laws of the country, the President and Government of the Republic of South Africa. I sincerely and at all times undertake to maintain and promote the security and safety of the Republic and its citizens to the best of my ability and knowledge. I undertake to contribute positively to the Government’s key outcomes of ensuring that South Africans are and feel safe and that South Africa contributes to building a better Africa and a better world. Furthermore I shall adhere to the principles of my profession as an intelligence officer as well as the norms and values of a democratic society. I hereby recognise the authority of the Minister of State Security and undertake to promote the interest of the Civilian Intelligence Service of my country above personal interests and to guard and promote the integrity of my profession as an Intelligence Officer as well as its methods and sources. I consciously undertake to carry out the rules, regulations

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and directives applicable to the Civilian Intelligence Service.”

CHAIRPERSON: Thank you.

ADV PRETORIUS SC: And in essence what you say in paragraph 83 is that the panel was surprised by the introduction of the ...

CHAIRPERSON: That is paragraph 8.3?

ADV PRETORIUS SC: 8.3 yes.

CHAIRPERSON: Ja.

10 **ADV PRETORIUS SC:** Yes I am sorry Chair. Paragraph 8.3 you say the panel was surprised by the introduction of the oath of allegiance to the President and the requirement that the authority of the Minister of State Security be recognised.

DR MUFAMADI: Yes we were surprised because we thought that it – this was superfluous to the needs of a democratic republic and we thought also that it has introduced elements that lend themselves to a disturbance of the balance of power and authority between the legislature and the executive.

20 You know it is to insist that employees of the state must swear this kind of allegiance is tantamount to saying you know you must express loyalty to your God, your Creator and immediately after your God me. You know what I – this is worrying.

CHAIRPERSON: Yes.

DR MUFAMADI: Yes.

CHAIRPERSON: Yes. The – the original or the old oath did not it seems include an allegiance – pledging allegiance to any individual whereas the second one.

DR MUFAMADI: Yes.

CHAIRPERSON: Had included or introduced pledging allegiance to the President and recognising the authority of the Minister of State Security.

DR MUFAMADI: Yes but then you see it take us back Chair
10 to what we were saying about if an individual in the position of authority gives me an instruction which in manifestly illegal if I question that instruction I will be reminded of the fact that I swore allegiance to that individual.

CHAIRPERSON: Hm.

DR MUFAMADI: This is the distortion to the relationship which it introduces. It then helps us to answer the question you were asking.

CHAIRPERSON: Hm. Hm.

DR MUFAMADI: Where operatives, members of the SSA
20 operating in an environment which empowered them to consider and respect the laws of the Republic as Sacrosanct yes.

CHAIRPERSON: Hm. And – and which – did the environment empower them to raise issues that they might think certain individuals did not like to be raised.

DR MUFAMADI: Yes.

CHAIRPERSON: Ja.

ADV PRETORIUS SC: Yes and of course as you say Dr Mufamadi the injunction not to obey an unlawful order is in the Constitution itself.

DR MUFAMADI: Sure.

ADV PRETORIUS SC: Against that background in paragraph 7.1 Dr Mufamadi you summarise the considerations which influenced the panel arising out of the evidence of projects placed before it. Would you place those conclusions on record please? Para 7.18.

DR MUFAMADI: 7.18 sorry I am going back to it.

CHAIRPERSON: Oh are you going back?

ADV PRETORIUS SC: Yes to para 7.18 it is back a page or two pages. One page back.

CHAIRPERSON: Huh? Is it something you had overlooked I thought we were at page.

ADV PRETORIUS SC: No I just want to deal with the oath first.

20 **CHAIRPERSON:** Oh okay no that is fine.

ADV PRETORIUS SC: And then to...

CHAIRPERSON: To then continue.

ADV PRETORIUS SC: To deal with the conclusion reached because it stands in stark contrast to the oath.

CHAIRPERSON: Okay.

DR MUFAMADI: Ja but to the extent that we – we pointed to evidence pointing to the existence of Special Operations Unit as a parallel intelligence structure serving interests of a faction of the ruling party and the personal political interests of incumbents this would have been a direct breach of the Constitution the white paper the relevant legislation and plain good government intelligence function which would then be an appropriation of a state entity in ways or for ends that run countered what is contained even in the second oath
10 of allegiance. In other words I am saying even the second oath of allegiance it is internally contradictory to the extent that it correctly shares allegiance to the Constitution and it places individual incumbents at par with the Constitution. Yes.

ADV PRETORIUS SC: Dr Mufamadi in paragraph 9 and the – all the sub-paragraphs under that head you deal with the failure to implement financial controls in the SSA and importantly you deal with the absence of consequence management as you refer to it. You did express some
20 reservation that this detail of evidence should perhaps or would be better perhaps given by someone closer to the SSA and that evidence can and will be given in due course. But could you have a look at the evidence you give under this head in paragraph 9 and there are certain redactions necessary from paragraph 9.20 and I will explain those in

due course. But between paragraph 9.1 and 9.19 could you summarise that please? But perhaps dealing with the failure to implement financial controls, the use of cash and consequence management and finally the Auditor General's role and your concerns in relation to that?

DR MUFAMADI: Yes as we indicated earlier that we were told that it was very difficult to implement financial controls in a situation where the movement of money was actually cash based and you had also this temporary advance where
10 you are given money; you go and use it as you are implementing the project and you come back later and say well I have done what I needed to do. You do not have to explain to the people who give you the money I want more money. And there were many – there was no documentary evidence submitted to show what exactly the money was used for.

And this matter was also corroborated by the Auditor General who said the agency was not always able to provide documentary support for money used in operations.

20 And it was very uncomfortable with having to write a report all the time which starts with a disclaimer of this kind because you are – you first look and see you are not talking about two cents.

So this is what we were told. But as I said to the evidence leader I think the operational people are best

placed to give you the necessary details having regard to the actual controls that they put in place. To start with their own assessment whether those controls were effective and if they were effective how come they were subverted.

CHAIRPERSON: Hm.

DR MUFAMADI: Hm.

CHAIRPERSON: You might not have looked into this because of the nature; high level nature of your review and the limited time that you had.

10 **DR MUFAMADI:** Sure.

CHAIRPERSON: But it would be interesting to see whether in other jurisdictions SSA equivalents whether this problem of using cash so much whether they suffer from the same situation.

DR MUFAMADI: Sure.

CHAIRPERSON: As well.

DR MUFAMADI: Sure.

CHAIRPERSON: You know. I – I suppose that the first point they would make to try and justify is for example certain
20 people that we deal with must not be known and they must not be known that they are doing something for us. Or they are giving us information. They are collecting information from us. And so that is why we – we cannot – we have to – got to give them cash and so on because there must not somewhere be proof that we are giving them something.

Maybe that is where it would start but the question is how do you stop abuse? Because obviously a situation like that you know is fertile ground for abuse because somebody can keep on coming back and say I have given him – I have given – I have done what I am supposed to do with the money give me more. You give them more.

CHAIRPERSON: Yes.

CHAIRPERSON: They come back say I have done what I was supposed to do with the money give me more. Or they
10 can end up saying well every month you are going to have to give me X amount and – because I am supposed to do certain things and I cannot tell you what those things are for the organisation and then every month they get this money. But they could be pocketing the money.

DR MUFAMADI: Yes. But as you say Chair our responsibility is to prevent abuse. Looking at examples in other jurisdictions it is – and something advisable to do. But if we find nothing that helps there we still have an obligation to think. You see the late Auditor General was saying to us
20 you see we get told that yes you can audit but you do not have people in the Auditor General's office with the necessary level of security clearance to – to...

CHAIRPERSON: Look into certain matters yet.

DR MUFAMADI: To look into certain matters.

CHAIRPERSON: Only those people – only people with that

clearance can look into...

DR MUFAMADI: That is right.

CHAIRPERSON: Can see certain things.

DR MUFAMADI: That is right.

CHAIRPERSON: Yes.

DR MUFAMADI: So the Auditor General says, no look if this – if such people exist on earth then between us and SSA we need to find a way of getting such people into the Auditor General's office and we then said, no we think this is
10 eminently reasonable.

So we need to – to put this question of intelligence work beyond mystification. Because the best way to evade scrutiny is to suggest that the person who can do that is not yet born.

CHAIRPERSON: Because it seems to me that the country could easily have a situation where large sums of money are going to individuals who are not really doing anything for the country and the country cannot get to know that because of – of these excuses.

20 And basically you know large scale theft could happen. Large scale theft can happen.

DR MUFAMADI: Sure.

CHAIRPERSON: And we are not supposed to – to know and we are not supposed to – because if we do not know we will not be able to – we might not be able to put measures in

place to make sure it does not happen again you know. You – ordinarily you want to know what happened; why it happened and what kind of involvement gave rise to it – make it possible for it to happen. So that you can then say what does not – what needs to be done to make sure it does not happen in the future.

DR MUFAMADI: Sure.

CHAIRPERSON: Ja. Ja. Okay Mr Pretorius.

ADV PRETORIUS SC: Well even where the theft of money
10 was known there seems to be a lack of consequence management. Perhaps you could refer to the Chair to the events described in paragraph 9.7?

DR MUFAMADI: Must we keep shifting my paragraphs are getting mixed up.

CHAIRPERSON: Page – page 21 black numbers.

DR MUFAMADI: Yes. Chair I – is it 9.7?

CHAIRPERSON: 9.7 ja.

ADV PRETORIUS SC: 9.7.

DR MUFAMADI: Okay I think I am getting there now. Sorry.
20 Yes. Yes you – one of the briefings we received as the panel was a briefing on the theft of over R17 million from a safe inside the SSA complex in December 2015. We were told that in spite of video footage of the perpetrators and the outcome of internal investigation there appears to have been no consequence management because we kept on saying

okay with these capabilities you have but did 00:08:44. And of particular concern to us was the report the panel received that they had of the Hawks at the time – am I allowed to mention the name – General

CHAIRPERSON: Well...

DR MUFAMADI: Was only one had Berning Ntlemeza failed to take the investigation of the burglary to its logical conclusion.

ADV PRETORIUS SC: Well that is what you were told.

10 **DR MUFAMADI:** Yes.

ADV PRETORIUS SC: We do not know that that was finally the outcome and perhaps we can hear more about that.

DR MUFAMADI: Ja possibly you will hear more about it.

ADV PRETORIUS SC: Yes.

DR MUFAMADI: Because as at the time this is what we were told it is possible that the matter had been progressed beyond what was at the time.

ADV PRETORIUS SC: Yes but it was a matter of concern to you.

20 **DR MUFAMADI:** It was a matter of concern it was because at that stage we were saying this matter cannot just end there yes.

ADV PRETORIUS SC: Yes the detail of internal financial controls firstly whether to the extent that they existed were followed and secondly whether the financial controls were

operationally sufficient to prevent theft and misappropriation. That will be dealt with in due course by witnesses before the Chair.

But and it is important for him to consider what findings he might wish to make about what he hears in evidence. But just by way of summary perhaps 9.13 of your statement to 9.16 would summarise the financial situation. If you could just consider that and perhaps place that on record?

10 **DR MUFAMADI:** Chair point of exigency is it possible to be granted a senior moment?

CHAIRPERSON: Well I was actually thinking about that.

DR MUFAMADI: Oh.

CHAIRPERSON: I think let us take a short adjournment because we have just gone past four o'clock. Maybe there is also – let me just make sure that we – we all agree that we will try and finish with Dr Mufamadi.

ADV PRETORIUS SC: Yes we should finish with him.

CHAIRPERSON: We should finish at quite...

20 **ADV PRETORIUS SC:** Twenty minutes to half an hour.

CHAIRPERSON: Ja. Okay – okay alright. Let us take a short adjournment – fifteen minutes and then we return. We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Okay let us continue. You may be seated.
Yes.

ADV PRETORIUS (SC): Sorry, Chair. If I could just ask you Dr Mufamadi to look at paragraph 9.6. And given the details and the constraints of time, I do not think the Chair will have an objection if you read that. Obviously, one name there has been redacted.

CHAIRPERSON: Please switch on your mic Dr Mufamadi.

DR MUFAMDI: Thank you, Chair.

10 **CHAIRPERSON**: H'm.

DR MUFAMDI: You say the name has been redacted. I notice that.

CHAIRPERSON: You wanted him to read from what paragraph Mr Pretorius.

ADV PRETORIUS (SC): Just 9.6. [Indistinct] [speaker moves away from speaker – not clear] ...post the redaction, and perhaps he should also not mention the position because the redaction may be useless without ...[intervenes]

20 **DR MUFAMDI**: And there is only one name that has been taken out of that paragraph.

ADV PRETORIUS (SC): The name in red. You can use the name in red. That is ...[intervenes]

DR MUFAMDI: Okay, okay.

“If the panel received the submission from several members working in the finance department, they

allege that Dwayne ...[intervenes]

ADV PRETORIUS (SC): Yes, and do not reveal the position.

DR MUFAMDI: Ja.

“...restructured the budget process leading to the collapse to the budget structure for Domestic Intelligence.

The DG at the time was Ambassador Sonto Kudjoe.

Dwayne removed all divisional heads and concentrated authority in his hands.

10 These concentrations stripped further powers from the chief financial officer and effectively made Dwayne the budget controller for all the SSA including the provinces.

This concentration of power reduced transparency and enabled the movements of funds to areas of the SSA favoured by the SSA leadership such as Ambassador Kudjoe and Mr Dlomo.”

ADV PRETORIUS (SC): Yes. Now that may be the subject of furthermore detailed evidence but that is as far as the
20 panel is concerned.

DR MUFAMDI: Panel?

ADV PRETORIUS (SC): No.

DR MUFAMDI: You said the panel.

ADV PRETORIUS (SC): The panel.

DR MUFAMDI: Yes?

ADV PRETORIUS (SC): That I am saying that there may be further evidence dealing with these issues.

DR MUFAMDI: Okay.

ADV PRETORIUS (SC): But as far as the panel ...[intervenes]

DR MUFAMDI: Yes.

ADV PRETORIUS (SC): ...the high level review panel is concerned, that is what you learnt and recorded.

DR MUFAMDI: That is what we noted and recorded.

10 **ADV PRETORIUS (SC)**: Yes.

DR MUFAMDI: Yes.

ADV PRETORIUS (SC): And then, if you could just please – and again I am sure that the DCJ or the Chair will have no objection, if you just place on record your observations in relation to the role of the Auditor-General and what you were told by the Auditor-General when you interviewed him. Paragraph 9.1.3 and following. And I will stop you because there is a part at which redaction has once again entered the scene.

20 **DR MUFAMDI**: Yes.

“The Auditor-General informed us that every year he is forced to automatically provide a qualified audit of the SSA

Firstly, this is because he is not provided with access to information to allow him to verify the

finances and assets of the SSA.

Secondly, he is not able to determine the extent to which performance started have been met.

This situation pertains, notwithstanding attempts by the Auditor-General and the SSA, to develop mechanisms to enable a thorough audit process to be conducted.

10 The AG's report on the SSA for the financial year 2017/2018 provides a useful example of why the AG is forced to qualify his audit.

He noted the high-risk environment within which the agency functions and yet the manner in which expenditure and assets were recorded, did not sufficiently mitigate the risks.

He noted the extensive use of TA's temporary advance...

ADV PRETORIUS (SC): Yes.

DR MUFAMDI: Yes.

20 "...for operations which were required to be certified for surety.

However, during the audit management was unable to provide documentation to verify operational expenditure of R 125.6 million or that the money was used of the intended purpose.

The AG was unable to confirm redundant assets in

excess of R 9 billion as there was insufficient audit evidence and the assets could “not be located by the agency”.

He, that is the AG, was unable to confirm the reported irregular expenditure of R 31.3 million as stated in the financial statements.

In addition, the AG has regularly findings on the internal control environment.

10 In this report on the 2017/2018 he noted, for example, lack of consequent management and not holding staff accountable for poor quality of financial and performance reporting.

Inadequate internal review processes by management leading to material misstatements as required in Section 14(1)(a)and(b) of the Public Finance Management Act.

Non-compliance with supply chain processes going unnoticed.

20 Absence of approved standard operating procedures to guide collection, collation, verification, storing and reporting of actual performance information.

Numerous senior acting positions have been created or that they have created instability which resulted in delays in the audit of performance management.

Lack of monitoring and implementation plans by the

accounting officer and senior management to address key-control deficiencies.”

ADV PRETORIUS (SC): And then 9.18.

DR MUFAMDI: Yes.

“The panel recognised ...[intervenes]

ADV PRETORIUS (SC): Or perhaps we should not admit 9.17. My apologies Dr Mufamadi.

DR MUFAMDI: Yes.

ADV PRETORIUS (SC): Let us deal with 9.17 as well.

10 **DR MUFAMDI**: Deal with 9.17?

ADV PRETORIUS (SC): Yes, please.

DR MUFAMDI: Yes.

“The AG’s report also complaint about the incomplete assessment of the useful life of assets which have recurred year after year as a result of information being withheld.

20 While is assumed to be because of SSA’s reluctance to disclose this information because of the covert nature of the assets, it could also be the agency is intent on hiding indications of serious mismanagement or the serious management weaknesses.”

ADV PRETORIUS (SC): And 9.18.

DR MUFAMDI: Yes.

“The panel recognised that the AG, as a result of

limited access to information, could only provide a qualified audit and could not publish its annual report...”

And this was really a matter of serious concern.”

ADV PRETORIUS (SC): Right. Now from paragraph 9.20 Dr Mufamadi to paragraph 9.22. We are informed that that information is restricted and should not be disclosed to the public.

DR MUFAMDI: Yes.

10 **ADV PRETORIUS (SC)**: Of course, the irony is that the very budgetary arrangements that informed the grant of money to the SSA and how those are arrived at, they are secret.

DR MUFAMDI: H’m.

ADV PRETORIUS (SC): So now, of course, the irony arises in relation to supervision and accountability. Certainly public accountability. But there it is Chair. Those arrangements, for the present at least, are classified.

CHAIRPERSON: Ja, well... I mean, what, at least, seems to be clear to me is that some of the things, you know,
20 should not be allowed to go on like this. They should be steps taken to stem the tide to say: Well, we are aware of this and it leads to abuse of taxpayers’ money.

A way must be found that will strike a balance between ensuring that legitimate work of this institution will be able to be done but abuse and theft of taxpayers’ money will be

prevented. It will not be allowed.

ADV PRETORIUS (SC): Yes. But let us take for example the notion that extraordinary high amounts of the state's coffers are expended on National Security Project or Special Operations. That would not be known. One need not reveal the detail of each project in such arrangements insofar as operatives and operations were revealed. But perhaps Dr Mufamadi could comment on that Chair.

CHAIRPERSON: Yes.

10 **DR MUFAMDI**: Yes.

ADV PRETORIUS (SC): Why budgetary arrangements be secret?

DR MUFAMDI: Yes, why should budgetary arrangements be secret.

ADV PRETORIUS (SC): Yes.

DR MUFAMDI: They ought not be secret. As we were saying earlier. A way has to be found, at least for the Auditor-General to verify that the purported use into which this money was put, it is indeed what it was put into.

20 **CHAIRPERSON**: Ja, I mean it cannot be that – except those involved in using it were abusing it. Nobody else can or should know it cannot be. There should at least be a category of persons or officials who can or even if it is one category namely the Auditor-General.

But it cannot be that nobody has access to documents

and information to say: Was this money used for legitimate operations or legitimate purposes of the organisation? It cannot be.

And one can see that one talks of large amounts that – it just looks like somebody can just go and take, go away, come back and take. It is... There has to be a way.

ADV PRETORIUS (SC): Yes. There are certain qualifications to the absolute rule of secrecy but the position that I put in is that I have been told that the whole of the
10 paragraphs should not be placed before you. I think that this requires another intervention with the SSA.

CHAIRPERSON: Yes.

ADV PRETORIUS (SC): And we will do that and deal with it insofar as we have or later.

CHAIRPERSON: Ja.

ADV PRETORIUS (SC): But I cannot put the absolute secrecy or the relative secrecy because I am entering into paragraphs that I am told that I should not.

CHAIRPERSON: Yes.

20 **ADV PRETORIUS (SC)**: But be that as it may. At 9.2.3, you can place on record because it deals with legislation.

DR MUFAMDI: Yes. And of course, there is a Section 2A of the Secret Act, Secret Services Act which allows the SSA to keep any unused funds at the end of the financial year instead of disclosing and ...[intervenes]

CHAIRPERSON: I am sorry Dr Mufamadi.

DR MUFAMDI: Yes?

CHAIRPERSON: I do not want to forget this because I thought I was going to ask you a few minutes ago and I forgot. Did you get information as to whether, for arguments sake, the position is that since inception or since it was established SAA – these problems that the AG was talking about have been there all the time year in and year out?

Of course, even before the establishment of the SSA one
10 would be interested in knowing whether the same problems existed with regard to the predecessor of SAA, the different organisations or whether this was new because these problems that the AG was meeting when seeking to do their job.

Did you get any sense about how long these problems may have been going? And once again, I accept that you had to deal with these matters at high level and did not have much time to go into certain issues.

DR MUFAMDI: Relying on memory. The impression we had
20 was that these problems were as old as the Intelligence Services.

CHAIRPERSON: H'm.

DR MUFAMDI: You know, it is this situation in which where I was talking earlier about, rethinking, reimagining things.

CHAIRPERSON: H'm.

DR MUFAMDI: And the rethinking and the re-imagination does not go far enough.

CHAIRPERSON: H'm, h'm.

DR MUFAMDI: So you leave with things which could be done better.

CHAIRPERSON: H'm, h'm.

DR MUFAMDI: That is the one point.

CHAIRPERSON: H'm, h'm.

DR MUFAMDI: But it seemed to us that Special Operations
10 and to some limited extent Pan brought to this defect into sharp relieve.

CHAIRPERSON: H'm, h'm.

DR MUFAMDI: Otherwise, the problem had been there.

CHAIRPERSON: Yes, ja.

DR MUFAMDI: A low-intensity problem.

CHAIRPERSON: Ja, they just grew.

DR MUFAMDI: Ja, it just grew.

CHAIRPERSON: Yes.

DR MUFAMDI: Yes.

20 **CHAIRPERSON:** And did you get the impression that somebody who was supposed to have started the AG's report in relation to SAA every year and who was supposed to have said: Look, there is a problem here. Something needs to be done. May not have done that.

DR MUFAMDI: Yes. You know, I was saying earlier that

there are these things that we do by way of convention.

CHAIRPERSON: H'm.

DR MUFAMDI: That is a no-go area.

CHAIRPERSON: H'm, h'm.

DR MUFAMDI: And it indeed becomes a no-go area.

CHAIRPERSON: Yes, Yes, Yes. And then, and that is worse if nobody is going to ask you whether you are doing your job in regard to that.

DR MUFAMDI: Yes.

10 **CHAIRPERSON**: Because everything is secret.

DR MUFAMDI: Yes.

CHAIRPERSON: Ja.

DR MUFAMDI: Which then also, I think when we come back to me saying what I want to say. It is important that the secret crows are becoming less secret.

CHAIRPERSON: H'm.

DR MUFAMDI: And I think we could take solace out of that.

20 **CHAIRPERSON**: H'm. Because I would have imagined that the AG's report in regard to SSA would definitely go to the relevant Committee of Parliament. I would imagine. But obviously the minister concerned should know as well.

DR MUFAMDI: Yes, but you would have noticed in my earlier evidence that the AG by way of complaint was saying: I always started my report with ...[intervenens]

CHAIRPERSON: A disclaimer.

DR MUFAMDI: Yes, a disclaimer.

CHAIRPERSON: Ja. [laughs]

DR MUFAMDI: Ja. [laughs] And he did not say there was a response to the disclaimer.

CHAIRPERSON: Yes.

DR MUFAMDI: Ja.

CHAIRPERSON: Yes. So the disclaimer became like a normal. So ...[intervenes]

DR MUFAMDI: Ja, nobody ...[intervenes]

10 **CHAIRPERSON**: ...the disclaimer. Really, it is fine. That is how it is.

DR MUFAMDI: Nobody could believe. In fact, it was regarded – it seems to have been regarded as: Well, this is what is to be expected from a report in this functional area. [laughs] You know.

CHAIRPERSON: Yes.

DR MUFAMDI: Ja.

CHAIRPERSON: Mr Pretorius.

20 **ADV PRETORIUS (SC)**: Thank you, Chair. Paragraph 9.2.3. Would you just place that on record, please?

DR MUFAMDI: Yes, I am saying in terms of Section 2(a) of the Secret Services Act:

“The SSA may keep any unused funds at the end of the financial year instead of disclosing and retaining this to the fiscus as all other departments must do.

This means that unused funds from the previous year can be utilised the following year off budget.

If funds are underutilised over time, a sizable port may develop and has developed which can be used without any disclosure.”

ADV PRETORIUS (SC): This too is a matter of concern for the panel or was a matter of concern for the panel.

DR MUFAMDI: Yes, in the same order of what we have just discussed now. I mean, if I want to play true and – I just
10 make sure that a big chunk of the funds is unused. And therefore it will not be accounted for. Yes.

ADV PRETORIUS (SC): You then in your affidavit Dr Mufamadi deal with the Principle Agency Network Programme. Now we know that that programme was terminated or suspended in 2011.

DR MUFAMDI: Yes.

ADV PRETORIUS (SC): You say that in paragraph 10.1.

DR MUFAMDI: Yes.

ADV PRETORIUS (SC): And you say in paragraph 10.2:
20 “The essence of that programme was the recruitment of principle agents outside the agency and they in turn were trained in capacitated to recruit and handled sources who were of legitimate interest to the agency or could provide information to the agency.”

Do you see that in paragraph 10.2?

DR MUFAMDI: H'm.

ADV PRETORIUS (SC): And then you say:

“It appeared to the panel that Pan involved into a methodology designed to avoid or bypass the procedural requirements for recruitment of staff, disbursements of funds and procurement.”

You wish to expand on that or is that sufficient as far as you are concerned?

10 **DR MUFAMDI**: Well ...[intervenes]

ADV PRETORIUS (SC): What went wrong with Pan?

DR MUFAMDI: Sorry?

ADV PRETORIUS (SC): What went wrong with Pan, the Principle Agent Network?

DR MUFAMDI: Ja, well I can just give an example of something we became aware of namely that the panel became aware that one person was recruited into the plan to provide analysis support. The analysis function does and should reside in the agency itself. So there was no need to
20 get a temporary employee when there are full-time employees of the agency which should have the capacity and to deal with that function.

ADV PRETORIUS (SC): Now there are several investigations who say that were conducted into the Pan programme and the results of those will be available and we

can make available. But if you were just to place on record 10.4 over the page, please? And perhaps 10.5 and 10.6.

DR MUFAMDI: Yes. Yes, you see:

“The panel noted that the nature of allegations or accusations and the evidence collected during the various investigations painted a disturbing picture.

Allegations of malfeasance, procedural transgressions and criminal behaviour were placed before the panel.

10 This included, for example, the procurement of assets without adherence to formal procedures, a signing of fraudulent contracts and payments to persons without valid contracts having been signed, the employment of family members and close associates outside of formal processes, the abuse of assets and missing funds and assets.”

ADV PRETORIUS (SC): Perhaps we should for the sake of transparency go on. I do not want to omit anything deliberately. 10.5, 10.6 and 10.7.

20 **DR MUFAMDI**: Yes, I was advised that there was a... That one there?

ADV PRETORIUS (SC): Yes, the last name in 10.5.

DR MUFAMDI: Yes. Okay.

ADV PRETORIUS (SC): ...is a hidden name. So you can read what you see.

DR MUFAMDI: Yes.

“In these interactions with the panel, Mr Arthur Fraser confirmed the appointment of his son as an employee of a warehouse that was a front company for the SSA.

He also confirmed initiating the employment of a relative of an employee of the SSA.”

ADV PRETORIUS (SC): Okay. Well put.

DR MUFAMDI: Okay, ja. [laughs] I had to make sure that I
10 avoid...

CHAIRPERSON: Ja, I see there is a position mentioned there.

DR MUFAMDI: Yes.

ADV PRETORIUS (SC): Yes.

CHAIRPERSON: And that could lead to the identification maybe.

DR MUFAMDI: H’m.

ADV PRETORIUS (SC): And ten 10.6.

DR MUFAMDI: Yes.
20 “It appeared to the panel that there had been instances of serious criminal behaviour which had taken place under the guise of conducting covert work and that this behaviour may have involved theft for uttering fraud corruption and even bordered on organised crime and transgressions of the

Prevention Of Organised Crime Act 121 of 1998.”

ADV PRETORIUS (SC): Then you make an important observation in paragraph 10.7.

DR MUFAMDI: Yes.

“The panel was concerned whether the reporting requirements were followed by the responsible individuals in management when the allegations were discovered.

10 This includes reporting of fruitless and wasteful expenditure to the National Treasury in terms of the PFMA and to SAPS under Section 34 of the Prevention and Combating of Corrupt Activities Act, Act 12 of 2004.”

ADV PRETORIUS (SC): And then 10.8 to 10.10. If you would place that on record. You deal again with consequence management in paragraph 10.8.

DR MUFAMDI: 10.8 to ten point...?

ADV PRETORIUS (SC): Ten.

DR MUFAMDI: Yes.

20 “Of particular concern for the panel was that apart from suspending the Pan programme in 2011, it appears that no formal action or consequence management has taken place by the executive or the agency management.

The absence of consequence management has

become a theme running throughout the agency over several years.

The panel received the report that members of the agency's Internal Investigations Team into the Pan Project had been subjected to various forms of intimidation and some had their offices broken into.

The Pan programme has had other consequences which seemed not to have been addressed with the seriousness warranted.

10 Once those consequences, the large number of claims made against the agency and the Minister of State Security by former Pan members involving allegations of breaches of contract by the agency.

This has amounted of hundreds of millions of rands.”

ADV PRETORIUS (SC): Yes. We have collected some of these applications and their outcomes for the investigation files Chair. But it is worth noting Dr Mufamdi as you informed us that where the contesting of a claim in open court may reveal irregularities or even secret operations, the
20 only real option for some would be to settle.

DR MUFAMDI: Yes.

ADV PRETORIUS (SC): And to pay.

DR MUFAMDI: Yes.

ADV PRETORIUS (SC): And that has cost the fiscus millions of rands. Before we get to the conclusions that you

wish to raise. May I ask you to look at paragraph 11? You make certain conclusions there that are important to place on record.

And you also wish, I understand, to deal with the issue of public accountability and transparency. We have dealt today with many sensitive issues which I am sure many people would argue should not have been made public and yet in your evidence, they have been made public. That is a debate that may well take place in coming days.

10 But if you could just tell the Chair what your views are in that regard, quite apart from our duty to deal with our Terms of Reference which is not negotiable but from your view what are your observations and any other concluding remarks you may wish to make.

DR MUFAMADI: Well, Chair, just to point out that the conclusions that are covered under paragraph 11 I actually dealt with them in the opening so if ...[intervenes]

CHAIRPERSON: There is no need to repeat them.

DR MUFAMADI: There is no need to repeat those.

20 **CHAIRPERSON:** Yes.

DR MUFAMADI: But, as I indicated to the evidence leader, I think notwithstanding everything that we are discussing here, which is quite disconcerting, it is important to remind ourselves that, as I said, this was a review of things that happened during a period that we

were asked to review, so that what we are saying happened, it is not what we are saying it is happening.

But I think it would be instructive to wait for Director General to indicate what it is that they did in response to the recommendations that were made by the panel.

ADV PRETORIUS SC: And that evidence is to a degree comforting.

DR MUFAMADI: Sorry?

10 **ADV PRETORIUS SC:** That evidence is to a degree at least comforting from the DG that will come.

DR MUFAMADI: Oh, he says it is comforting.

CHAIRPERSON: It is not clear whether you are commenting that it is comforting or whether you are asking him.

DR MUFAMADI: Oh, you are asking me if I ...[intervenes]

ADV PRETORIUS SC: No, I am commenting, I am not asking.

20 **DR MUFAMADI:** Okay because I am not privy to that evidence unless you will have noticed I tend not to seek to be privy to things that I should not have ask, the need to know basis, you remember?

Ja, so – but I think we are lucky that we still have what I call a residue of the will to introspect on the part of the powers that be.

This is not an introspection for its own sake and I think the report shows basically an admission that certain things went wrong and to the extent that we were asked to make recommendations about how to avoid a repeat of those wrong things that happened, we must read in that a commitment to self-correct.

But I think it will be wrong for the nation beyond the executive to sit back and watch whether that self-correction will happen. As I said, the legislative branch of
10 government has not right to lower its guard and perhaps we need to ask ourselves particularly those of us who belong to various organisational formations in civil society as to what kind of role should be played by the generality of the public in assisting the state to self-correct which is why I thought that it would have been the right thing to do for members of the public to say there is the – they call it the Zondo Commission - Zondo Commission is having this hearing, we are happy that it is being aired in public because it is when we become obsessed with secrecy,
20 secrecy, that we actually disempower our people from playing the role they must play to protect their own dispensation which came at a heavy price. It is a price that those of us who know exactly how it was paid do not want our democracy to be taken for granted. Thank you, Chair.

ADV PRETORIUS SC: Thank you, Dr Mufamadi.

CHAIRPERSON: Thank you, Dr Mufamadi. Yes.

ADV PRETORIUS SC: Chair, that is the evidence. I must place two things on record, however, of a formal nature. I said in opening that Mr Laurie Nathan was a member of the high level review panel. In fact he was a member of a previous panel, not the high level review panel.

CHAIRPERSON: Okay.

ADV PRETORIUS SC: And secondly, I also placed on
10 record that the tape of the interview that the panel conducted with Minister Mahlobo was corrupted. I have been corrected – well, that was the information I received from the investigators last night. That has been corrected and the correct situation apparently is that the interview was not recorded at all, as others were, but that notes were taken and I am sure the SSA will make those notes available to us in due course.

CHAIRPERSON: Okay. Thank you very much Dr Mufamadi for coming to give evidence and to highlight
20 important features of your review and the report. I know that I am still going to hear quite a lot of details about some of the matters that you have touched on today but thank you very much. It is unlikely that we will need you to come back. I normally say to every witness if we need you to come back we will ask you but I think it is unlikely with

you. But if the need arises I have no doubt you will have no problem. Thank you very much for coming and you are now excused.

Tomorrow, Mr Pretorius, do we have one witness for the whole day?

ADV PRETORIUS SC: Yes, Chair, Director General.

CHAIRPERSON: Okay, so we will start at normal time, ten.

ADV PRETORIUS SC: Yes, Chair.

10 **CHAIRPERSON:** Ja. Okay, alright. We are going to adjournment the proceedings for the day. Tomorrow we will – I will hear the evidence of the Director General of SSA. We adjourn.

INQUIRY ADJOURNS TO 26 JANUARY 2021