

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

**26 JANUARY 2021**

**DAY 331**



**Gauteng Transcribers**  
Recording & Transcriptions

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TRANSCRIBERS:

B KLINE; Y KLIEM; V FAASEN; D STANIFORTH



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**PROCEEDINGS RESUME ON 26 JANUARY 2021**

**CHAIRPERSON:** Good morning Mr Pretorius, good morning everybody.

**ADV PRETORIUS SC:** Morning DCJ.

**CHAIRPERSON:** Are you ready?

**ADV PRETORIUS SC:** Yes we are ready to proceed however the Minister the relevant Minister is represented by Counsel Mr Moerane and he asked for an opportunity to address you.

10 **CHAIRPERSON:** Mr – the Minister is represented by Moerane?

**ADV PRETORIUS SC:** Yes.

**CHAIRPERSON:** Oh okay. By the way he is virtual. Mr Moerane.

**ADV PRETORIUS SC:** Sorry no I have got it wrong.

**CHAIRPERSON:** Mr Ntsebeza.

**ADV PRETORIUS SC:** Mr Moerane is present virtually indeed and is able to address you if required later; that is my instruction I have just received. My apologies.

20 **CHAIRPERSON:** Okay.

**ADV PRETORIUS SC:** The Minister is represented by Mr Ntsebeza.

**CHAIRPERSON:** Okay. Mr Ntsebeza. If – if you are comfortable to address me from where you are it is fine but if you need – want to go to the podium you can go to the

podium.

**ADV NTSEBEZA:** Can I do it from here?

**CHAIRPERSON:** That is fine. That is fine. That is fine.

**ADV NTSEBEZA:** Good morning Mr Chairman.

**CHAIRPERSON:** Good morning Mr Ntsebeza.

**ADV NTSEBEZA:** Withstanding my name is Ntsebeza Dumisane Ntsebeza and I am instructed by Maluleke Seriti Makume Matlala Incorporated and the instructing attorney here is Mr Nhlelo Mtlala of that practice.

10 As we have indicated we are for the Minister and...

**CHAIRPERSON:** That is the Minister of State Security?

**ADV NTSEBEZA:** Minister of State Security.

**CHAIRPERSON:** Ja.

**ADV PRETORIUS SC:** I am sorry to interrupt Chair but if social distancing is provided for perhaps we could ask or I could ask my learned friend to remove his mask so we can or I can certainly hear him. I would be grateful.

**CHAIRPERSON:** Ja I am just not sure whether you know there is enough social distancing between the person  
20 behind him and the person in front of him as well as his instructing attorney.

**ADV PRETORIUS SC:** Well they have duly scattered so Chair it would help.

**CHAIRPERSON:** Are you comfortable Mr Ntsebeza?

**ADV NTSEBEZA:** I – I...

**CHAIRPERSON:** In terms of – in terms of the mask?

**ADV NTSEBEZA:** Well no I mean.

**CHAIRPERSON:** Yes okay.

**ADV NTSEBEZA:** I did not want not to put it on.

**CHAIRPERSON:** Ja, no, no.

**ADV NTSEBEZA:** When the norm is that to be put on.

**CHAIRPERSON:** Ja, no, no it is just that sometimes when you are speaking the transcribers cannot hear; sometimes I cannot hear; sometimes I can hear.

10 **ADV NTSEBEZA:** Yes.

**CHAIRPERSON:** Yes, yes, ja.

**ADV NTSEBEZA:** No thank you Mr Chairman. Mr Chairman as I said well I think I properly place myself on record. I am instructed by the firm of Maluleke Seriti Makume Matlala Incorporated and Mr Nhlelo Matlala sitting next to me here is my instructing attorney.

20 We represent the Minister. The Minister is the Minister in charge of the State Security and the witness – the acting DG in the Department of State Security is – is somebody who is in the Ministry in which she has got executive authority.

Now the Minister was keen and is still keen that in the interest of National Security she should be satisfied that even as she wants to cooperate with the commission in its work she does not do so in circumstances where

National Security will be compromised.

She understands that you know in terms of the constitution and relevant legislation Section 209 establishes you know the – yes a security the intelligence community and Chair her function is to make sure that nothing happens that compromises that state of affairs.

May I hasten to add Mr Chair that the Minister is quite conscious of the fact that any power and duty that she may have in order to protect the National interest  
10 cannot and should not extend to her protecting the unearthing of criminality?

If anything because of the position she holds in the executive she wants to assist this commission in doing so.

Now we – as we were consulting yesterday she advised us that she would need to consider whatever it is that is own Director General – her own Director General is going to be testifying now.

And what she told us yesterday was that she was none the wiser. In fact we could have consulted on the  
20 basis of what you know the consulted if processes you know resulted in and whatever else there would be that would give us an indication as to what the testimony  
00:06:55 but as of yesterday that was not available to us.

She phoned me at about eight o'clock – half past seven thereabouts and she advised me that she has just

been served with an application. Even though it was our intention to work as we always do throughout the night so that by now as she told us that that was the view of the commission by now we have papers for a substantive application where we will be making a prayer of one or the adjournment of these proceedings pending the filing of those papers which would address whatever it is in the affidavit of Mr – of Loyiso.

**CHAIRPERSON:** Mr Jafta.

10 **ADV NTSEBEZA:** Mr Jafta. You will kill me 00:08:17 because we know each other for a long period of time.

**CHAIRPERSON:** Ja no I see you.

**ADV NTSEBEZA:** Yes.

**CHAIRPERSON:** You remember the first name then the surname.

**ADV NTSEBEZA:** Yes.

**CHAIRPERSON:** Better than the surname.

**ADV NTSEBEZA:** Ja. I suppose it is because I usually address her by her [African language]. Yes.

20 Now without being facetious about how things are the Minister's concern and I say so very guardedly and advising arising – arises from what it would be that the testimony would be about. And that was so up to when the - you know we – we left chambers yesterday and then she sent me an affidavit from Mr Jafta which I have read.

She still when I phoned her this morning she still was keen that we should consult because there are issues that she wants to avoid in that.

As I stand here I am not aware wherein that affidavit there are issues that she would like to raise that is the testimony.

Second thing I am not aware what extent they have 00:10:12 to what this commission is all about.

And therefore my – that is why I am in a position  
10 where it is a chicken and then the egg.

If we do not get the adjournment that we need in order for us to put before the commission on affidavit what it is that she would like could join issue with in the affidavit for Jafta I am disabled to address your Chairman as sufficiently as I would otherwise.

That is the one end of the provision. The other of course is that we appreciate and I appreciate and I think my client does appreciate that the life of the commission is not – is not forever and the – we are looking at what  
20 remedies would be available to her if there was no adjournment – if the commission insists on working but well when preparing papers – once you are doing your papers you know there are going to be proceedings and then she will say, oh why – what is the point then you know because my fears have not been accommodated.



I would have loved a decision where before Mr Jafta testifies I am in a position to have put in writing under oath before the commission the essence of what it is that I feel would not be in the best interest of National Security if you and I can testify.

That is - that is in a nutshell.

**CHAIRPERSON:** Ja. I am going to hear what Mr Pretorius has to say and what Mr Moerane might have to say on behalf of Mr Jafta. But as you say you make this request  
10 for an adjournment from a very disadvantaged position because all you are able to say is that the Minister says she has certain concerns that relate National Security. But you do not have any details.

She received the affidavit around eight o'clock last night. One would have thought that that was enough time for her to read it and to be able to say to you at least here are the concerns they relate to the following paragraphs in Mr Jafta's affidavit and these are the concerns which – which would put you in a good position at least and me to  
20 assess whether any claim that what Mr Jafta may be saying in his affidavit might compromise National Security whether there is a proper basis.

I have read Mr Jafta's affidavit and I am not the Minister of Security from my own point of view I did not pick up anything that struck me as something that could

possibly adversely affect State Security nor National Security.

But as I say I am not Minister of...

**ADV NTSEBEZA:** Yes.

**CHAIRPERSON:** State Security. She may be in a better position to understand certain things and – and so on. So – but let me hear maybe what Mr Moerane has to say before I hear what Mr Pretorius has to say and then we take it from there. Thank you.

10 **ADV MOERANE:** As the Chairman pleases.

**CHAIRPERSON:** Ja I mention again you said you are live and I am sure the Minister is alive to the fact that as things presently stand the commission has serious time constraints. It has got to finish its work by end of March. That is not a date we – we are choosing it is an order of court. It is an order of court. If we are to get more time we have got to go to court to get an extension. We are about to launch an application to do that but the time that we will get is not intended to be time for leading – the  
20 leading of oral evidence but for the preparation of the reports. All oral evidence must be finalised not later than March.

And everybody knows that last week we lost a whole week. So every hour counts with us. So there are those serious constraints and again from my side I

appreciate and I think Mr Pretorius also appreciates that when it comes to matters relating to Intelligence there is a certain level of sensitivity and there are certain matters that may need to be protected.

But at the same time I think from what you have said the Minister and I and the – that would be the stand of Mr Pretorius as well looks like we are on the same page that to the extent that there may be corruption and criminality within the State Security Agency within the  
10 Intelligence Committee that must be exposed.

So it is a question of where do you strike the balance in identifying the legitimate issues relating to Intelligence that need to be protected while being able to expose corruption. That – I think from what you have said it looks like we are all on the same page on that.

It is a question of how do we identify those things that need to be protected legitimately and – and leave corruption to be exposed without any hindrance. Ja. Okay. Mr Moerane

20 **ADV MOERANE:** Morning Chair.

**CHAIRPERSON:** Yes good morning Mr Moerane I hope you have been hearing us.

**ADV MOERANE:** Yes, yes Chairperson I have been hearing what has been going on.

**CHAIRPERSON:** Yes but I just want to...

**ADV MOERANE:** Chair I confirm that I – that I appear on – for the witness Mr Jafta together with my learned colleague Mr Ndabele.

**CHAIRPERSON:** Yes.

**ADV MOERANE:** I just have two things to say with regard to the application and the first one is that Mr Jafta is – is not aware how – and he does not believe that he is giving evidence today may in any way endanger or compromise National Security.

10 **CHAIRPERSON:** Yes.

**ADV MOERANE:** And the second thing that I am instructed to say on his behalf is that he is keen to discharge his responsibility to the commission by giving evidence today.

**CHAIRPERSON:** Yes.

**ADV MOERANE:** Those are our submissions.

**CHAIRPERSON:** Yes. Okay thank you. Mr Pretorius.

**ADV PRETORIUS SC:** Chair this morning my learned friend Mr Ntsebeza and I had a discussion as is the ethical practice between Counsels such discussions remain off the  
20 record. But as we stand here I think it is necessary to have clarity as to why the postponement is sought and what application is contemplated in due course.

Because that application may – it is now apparent have no prospects of success in which case the application for postponement would not have much merit.

I just place that on record to say that if the intention of the Minister is to bring an application that it is apparent now to you Chair has minimal or no prospects of success then there is no merit in the – what may be termed the interim exigency of a postponement to facilitate that.

The second point I want to make Chair is that the commission has a mandate. It is a statutory mandate and it must follow that mandate.

Statutory it is obliged to lead evidence in  
10 accordance with the Terms of Reference of the commission and in open. That is not a desired imperative or an exercise of a discretion by yourself Chair it is a constitutional and it is a statutory imperative arising from the Commission's Act.

If there is or should be an application to avoid or do it in a different way that application may have of course be brought in due course. The question is whether now a postponement is warranted to achieve that position.

Great care has been taken by the Director General  
20 in consultation with the commission to ensure that the interests be legitimate and I stress the legitimate interests of State Security will be protected in the evidence to come.

There is no question of method; legitimate method or the identity of operatives being released. Any reference to anything that happens beyond the borders of the country

has been redacted.

Of course we might have gone too far in that respect because if a foreign country and this country collude in an unlawful act we are judged by the standards of our constitution not theirs and – but in any event that question does not arise. You will have noticed that any reference to a foreign country has been totally redacted in all the documentation. So that could never be a cause for complaint.

10           It may be Chair that the real concern of the Minister and I stress it may be is less about the criminality line as you have made very clear and as I understand my learned friend's position to be the Minister in no way wishes to prevent evidence of criminality, corruption or the like or abuse of constitutional principles not being presented in the open before you. There is another concern.

          If that concern is the sensitivity of the information that is for the DD – DG to decide. The DG has statutory powers. He has statutory powers to declassify information  
20 and to release information and does that in an exercise of a statutory duty.

          The evidence now I can say so from here and the evidence that Mr Jafta will give will clearly be that he has considered very careful the concerns that may be raised about the legality of what he says and is satisfied having

considered the position and having redacted quite a great deal of evidence that the evidence before you is not only proper but it is his duty to give to you in his evidence.

I must say I have – and this I have not informed my learned friend about because I have only got instructions now from Mr Jafta that two Sundays ago he advised spoke to the Minister telephonically advised her and asked for an appointment saying he would give evidence and that meeting only occurred yesterday.

10           But that meeting has taken place. Two weeks' notice was not given to the Minister. The – their 3.3 position I will deal with separately.

So in short Chair we have a mandate to present evidence. The commission has a mandate to deal with the evidence. The law says and the constitution says it must be done in open. That position can only be disturbed on proper application. There is no evidence before you that that position can be disturbed by in camera application or the like.

20           Clearly if that must be brought in due course so be it. But then the duties of the commission to conclude its evidence must be weighed up against the prospects that will occur or the outcome that will occur if there is a delay.

If there is a postponement now for papers to be filed we will lose the week. We simply cannot afford to

lose the week. And that is not a matter of your preference Chair it is a matter of statutory and court import. We are obliged to finish our evidence within a limited amount of time; we cannot afford to lose the week. Those are our submissions.

**CHAIRPERSON:** Mr Ntsebeza. I just want to give you a chance to respond to what both Mr Moerane and Mr Pretorius have said in their addresses to me but I just want to say it seems to me that having received the affidavit  
10 around eight o'clock last evening the Minister has had enough time not only to read the affidavit but to be able to instruct you to say here are my problems or areas of concerns in Mr Jafta's affidavit.

That after ten this morning she has not given you those instructions to say, here are my concerns in Mr Jafta's affidavit that in my view compromise or may compromise National Security. It does not count in her favour.

But you might want to address that. Yes. Oh your  
20 microphone – just switch on your microphone ja.

**ADV NTSEBEZA:** We are a team of pre-counsel.

**CHAIRPERSON:** Yes.

**ADV NTSEBEZA:** And – and we are ably assisted and instructed by the attorneys.

**CHAIRPERSON:** Yes.



**ADV NTSEBEZA:** Now the – my two juniors are not here precisely because they are working on the papers.

**CHAIRPERSON:** Yes.

**ADV NTSEBEZA:** They were rushing against the time that was indicated by the court.

**CHAIRPERSON:** Yes.

**ADV NTSEBEZA:** In the interim there are certain I would not call them instructions.

**CHAIRPERSON:** Ja.

10 **ADV NTSEBEZA:** But

**CHAIRPERSON:** Some remarks.

**ADV NTSEBEZA:** Some remarks.

**CHAIRPERSON:** Ja.

**ADV NTSEBEZA:** Where the Minister for instance says, the acting DG raised in his affidavit Section 12 of the Intelligence Services Act as being problematic in that he says it creates an opportunity.

**CHAIRPERSON:** Just raise your voice - just raise your voice.

20 **ADV NTSEBEZA:** If I may she – she says you see Mr Jafta raising his affidavit Section 12 of the Intelligence Services Act as being problematic in that it – he says it creates an opportunity for the Minister to this right to enter the operational terrain to recruit to handle agents or recruit members the Agency and to instruct members of the

Agency's Fund Operations conducted by the Minister and persons in the Ministry acting in his or her behalf.

My probe is that it is probably based on factors where the section has either been abused or misrepresented or misinterpreted.

And then she says...

**CHAIRPERSON:** Your voice is going down.

**ADV NTSEBEZA:** Then she says this section should not be read in isolation or the PFMA.

10 **CHAIRPERSON:** Maybe I should stop you there.

**ADV NTSEBEZA:** Yes.

**CHAIRPERSON:** It seems at least from what you have read from her remarks that she has sent to you it seems that at least what you have read so far is not necessarily something that compromises National Security. She wishes to put her side and understanding of maybe certain matters that Mr Jafta deals with including what a certain section means or what the corrects interpretation is.

20 So that is different from National Security as I see it. She will be given an opportunity to – to file an affidavit or give evidence about any matters that you know Mr Jafta raises that she may be entitled to respond to. That is separate.

**ADV NTSEBEZA:** I hear you Mr Chair. The problem there is that if – which is why the nature of this application is

one of indulgence because it can go one or two ways. As the Chair indicated you can get an application for instance I did say if Thursday is a bridge too far we would be prepared to let the papers be filed instead tomorrow. And I do not think we would lose a week by Friday we will be able to argue – we will – all of us.

**CHAIRPERSON:** By then we would have lost a whole week.

**ADV NTSEBEZA:** It is not as worse as it could have been  
10 if we had said we are only going to serve on Friday.

**CHAIRPERSON:** I can tell you once we have lost this week it is difficult for me to think where we would fit in this evidence again within the lifespan of the commission between now and end of March.

I have already scheduled a number of witnesses up to about mid-March. There is a long list of outstanding witnesses and I do not know where to fit them in. I was telling Mr Pretorius yesterday that we – we might have to intensify having day and evening sessions. Actually I think  
20 I have asked somebody to look at the Covid Regulations and see whether we can – we can – there is any exception that would allow us to sit beyond nine o'clock whether we should ask the President to amend the regulations to allow the commission to sit beyond nine o'clock to try and fit in all these witnesses and implicated persons that we must

hear.

So – so you would have seen already last year second half of the year many times I would be sitting during the day and when we finish at four or five o'clock another team comes and I sit until seven, eight, nine. So we are under tremendous pressure.

So if we lose this week I do not know where I could fit every – this very important evidence. But I come back to the question – I come back to the question. It seems to  
10 me that the Minister has had enough time from eight last evening to read the affidavit of Mr Jafta and be able to instruct you to say, these are the areas in his affidavit that in my view compromise National Security. And I cannot see why she would not have been able to do that up to now.

And from...

**ADV NTSEBEZA:** Except that my – my juniors are working.

**CHAIRPERSON:** Yes.

**ADV NTSEBEZA:** Ja as we..

20 **CHAIRPERSON:** Well and of course I would have imagined that if she said to you last evening I would like you to ask for an adjournment obviously first question is what are the grounds for asking the adjournment? If she says this evidence will compromise National Security okay we will need to have that or to hear what is the problem. And if

she did not tell you last night one would have expected you had to tell you quite early this morning so that by the time you stand here you are able to say, it is not in the papers yet because the papers are being prepared but I know what is going to be in the papers and what is going to be in the papers is that the following paragraphs in Mr Jafta's affidavit in the view of the Minister compromise National Security.

10 That is the basis for a postponement. As far as you are aware you are not aware of that part. Maybe your juniors have wherever they are working on the papers or are already aware but you the one who should – who should have been informed because you were the one who was going to move the application.

**ADV NTSEBEZA:** Mr Chair can I seek an indulgence or can we have a stand down?

**CHAIRPERSON:** Ja.

**ADV NTSEBEZA:** Because I would like to give some instructions.

20 **CHAIRPERSON:** For ten minutes only.

**ADV NTSEBEZA:** Ja.

**CHAIRPERSON:** Is that right.

**ADV NTSEBEZA:** Ten to fifteen.

**CHAIRPERSON:** Mr Pretorius.

**ADV PRETORIUS SC:** No objection.

**CHAIRPERSON:** Ja I am going to stand the matter down for let us say up to twenty past – up to twenty past ten on my watch it is eight minutes past. Ja and then we will resume. We adjourn.

**REGISTRAR:** All rise.

**INQUIRY ADJOURNS**

**INQUIRY RESUMES**

**CHAIRPERSON:** Okay let us continue. You may be seated.  
Yes, Mr Ntzebeza.

10 **ADV NTSEBEZA:** [Microphone not switched on]

**CHAIRPERSON:** Yes.

**ADV NTSEBEZA:** [Microphone not switched on]

**CHAIRPERSON:** Yes.

**ADV NTSEBEZA:** [Microphone not switched on]

**CHAIRPERSON:** I am sorry. Ja, okay.

**ADV NTSEBEZA:** Ja, I will get used to it.

**CHAIRPERSON:** [laughs]

**ADV NTSEBEZA:** Ja, Chairman. When we adjourned, we were indicating to the Chair why it is critically important for  
20 us [microphone not working – speaker’s voice disappears.]  
Because already – I will address later on the question of why we did not deal with it last night.

**CHAIRPERSON:** Ja.

**ADV NTSEBEZA:** You know.

**CHAIRPERSON:** Ja.

**ADV NTSEBEZA:** But there are critically important points that we would like to raise and that is innovation to just the factual basis. We believe, as is commanded by the act, that there should have been a consultative process. In fact, in terms of Section MO, the DG is enjoined ...[intervenes]

**CHAIRPERSON:** Just complete ...[intervenes]

**ADV NTSEBEZA:** The MO ...[intervenes]

**CHAIRPERSON:** ...to say of what act.

**ADV NTSEBEZA:** ...of the Intelligence Act ...[indistinct]

10 [Speaker is unclear.]

**ADV PRETORIUS SC:** Chair, may I interrupt?

**CHAIRPERSON:** Ja.

**ADV PRETORIUS SC:** For the sake of the record. I am informed that the transcriber is having difficulty in picking up my learned friend's voice. So either he should come to the podium ...[intervenes]

**CHAIRPERSON:** Yes, I think so.

**ADV PRETORIUS SC:** ...or to stand much closer to the microphone.

20 **CHAIRPERSON:** Ja, he maybe he should ...[intervenes]

**ADV PRETORIUS SC:** And speak a little louder ...[intervenes]

**CHAIRPERSON:** Okay. Your choice Mr Ntzebeza.

**ADV NTSEBEZA:** I will ...[indistinct] nearer to the ...[indistinct] ...[intervenes]

**CHAIRPERSON**: If – because of the... [laughs]

**ADV PRETORIUS SC**: Perhaps he should come to the podium.

**CHAIRPERSON**: No, he seems much more comfortable where he is. It is your choice whether you ...[intervenes]

**ADV NTSEBEZA**: Well, unless my attorney who is going to be able ...[intervenes]

**CHAIRPERSON**: Oh, to be scribbling. Ja. Well, maybe you can be there. Just raise your voice and we will – the  
10 transcribers will tell us if they still cannot hear you.

**ADV NTSEBEZA**: Am I audible now?

**CHAIRPERSON**: Yes, they say it is fine.

**ADV PRETORIUS SC**: It is a loudspeaker.

**ADV NTSEBEZA**: Oh, okay. Alright, yes.

**CHAIRPERSON**: Okay alright.

**ADV NTSEBEZA**: Yes. Now, the plea we are making  
Mr Chair for indulgence to be able to commit on paper what  
the basis is that the minister is uncomfortable about in the  
matter proceeding today to hear the evidence of the DG is  
20 because already from just what has been said between us,  
there is a dispute of fact, which therefore falls upon the  
parties to ventilate those issues in the manner that had been  
suggested, come on paper.

Let us have the benefit, full benefit of what you are saying. Reasons on this whole question of whether or not



there was a consultation. In the brief period that you gave us, indulging us with an adjournment Mr Chair, we have established that there was a foundation. There was no consultation 14-days ago.

**CHAIRPERSON:** And how does that compromise National Security, the absence of consultation?

**ADV NTSEBEZA:** The consultation is a process that is required in terms of the legislation.

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

10 **ADV NTSEBEZA:** Because some of the issues ...[intervenes]

**CHAIRPERSON:** What does the section read? Let me just me hear. I do not – I am sure there is a file that has got all the legislation that we have. Registrar? Or maybe you can just quickly read the section Mr Ntzebeza.

**ADV NTSEBEZA:** The section from my notes is Section 10(4) of the Intelligence Services Act 65.

**CHAIRPERSON:** It says there:

20 “There should be consultations between the DG and the minister if there is going to be what?”

**ADV NTSEBEZA:** It says:

“The National Security Intelligence collection matters, sources of information and the identity of members of the agency are protected from unauthorised disclosure.”

And C says:

“The ...[intervenes]

**CHAIRPERSON**: Repeat and raise your voice.

**ADV NTSEBEZA**: The National Security ...[intervenes]

**CHAIRPERSON**: I am sorry. Can I have the file that has got that act? Because we have got that file.

**REGISTRAR**: [No audible reply]

**ADV PRETORIUS SC**: Chair, the section is at page 117, black numbers.

10 **CHAIRPERSON**: Thank you. Yes, Mr Ntzebeza.

**ADV NTSEBEZA**: Thanks Mr Chairman. Now 10(4) over that Mr Chairman.

**CHAIRPERSON**: It is 10 sub-section ...[intervenes]

**ADV NTSEBEZA**: Four.

**CHAIRPERSON**: And which sub?

**ADV NTSEBEZA**: Sub-section A.

**CHAIRPERSON**: Ja?

20 “The Director-General must, as far as reasonable possible, take steps to ensure that National Security Intelligence, intelligence collection methods, sources of information and the identity of members of the agency ...[intervenes]

**ADV NTSEBEZA**: Are protected ...[intervenes]

**CHAIRPERSON**: “...unauthorised disclosure.”

**ADV NTSEBEZA**: Yes.

**CHAIRPERSON**: It says nothing about consultation.

**ADV NTSEBEZA**: And then right at C.

**CHAIRPERSON**: H'm?

**ADV NTSEBEZA**: Oh, no, no. I want to read all of the sections I want to rely upon.

**CHAIRPERSON**: Well ...[intervenes]

**ADV NTSEBEZA**: A of that ...[intervenes]

**CHAIRPERSON**: Read one at a time and tell me what – how it advances the minister's case.

10 **ADV NTSEBEZA**: It... Well, the point here is that the DG who is enjoined by that section to ensure all of those things.

**CHAIRPERSON**: Well, the paragraph A says the DG must ensure that the – certain things, certain – National Security Intelligence, intelligence collection methods, sources of information and the identity of members of the agency are protected from unauthorised disclosure. Who has the power to authorise disclosure? Is it not the DG?

**ADV NTSEBEZA**: Well, I...

**CHAIRPERSON**: H'm?

20 **ADV NTSEBEZA**: I do not understand?

**CHAIRPERSON**: I am saying, who has the power to authorise disclosure?

**ADV NTSEBEZA**: [No audible reply]

**CHAIRPERSON**: So what this point did is unauthorised disclosure.

**ADV NTSEBEZA:** Yes.

**CHAIRPERSON:** So there must be someone who has the power to authorise disclosure.

**ADV NTSEBEZA:** Yes.

**CHAIRPERSON:** H'm. An authorised disclosure is not prohibited.

**ADV NTSEBEZA:** No, it is not.

**CHAIRPERSON:** Yes.

**ADV NTSEBEZA:** But the point I am making is that the DG  
10 being the Executive Officer in the Ministry Of Intelligence  
pose a duty to the Minister to disclose. I mean, to have a  
consultation with her as to whether she can be comfortable  
that those, you know, imperatives ...[intervenes]

**CHAIRPERSON:** Well, that may be the minister and the DG  
but it looks like we – you have moved from relying on saying  
that Mr Jafta's evidence or the Minister has moved from  
saying Mr Jafta's evidence may or will, I am not sure which  
one, compromise National Security.

To now saying there is consultation which did not take  
20 place which is just a procedural thing. And obviously, it may  
be that during the consultation she would be told information  
that she could think might compromise security. But  
obviously, that is separate from the process. At this stage,  
you are talking process as I understand it.

**ADV NTSEBEZA:** Yes.

**CHAIRPERSON:** Yes. So I am suggesting that that might be between the two of them but not the Commission.

**ADV NTSEBEZA:** Yes, but the Commission can also not proceed when it is clear that some of the – this dealings that the Minister does have ...[intervenes]

**CHAIRPERSON:** Where is the provision in Section 10(4) that talks about the consultation between the minister and the DG?

**ADV NTSEBEZA:** No, there is not ...[intervenes]

10 **CHAIRPERSON:** I do not see it.

**ADV NTSEBEZA:** There is no injunction there that they must have consultation.

**CHAIRPERSON:** Ja.

**ADV NTSEBEZA:** But if you read that, you know, together with Section 12(1) of that act where the Minister made do or request to be done, all things done, all things which are necessary for this – efficiency or attendance component functions of the Intelligence Service. If you read that, then you read it with the section.

20 Then the submissions is being made that when the DG comes to testify in a commission, an open commission about matters in relation to which the Minister, let alone the Minister having to consult with the President, is unaware of. Then – as I say, I do not want to make the argument on my feet.

**CHAIRPERSON**: Yes. Okay.

**ADV NTSEBEZA**: I need to cultivate it by way of, you know ...[intervenes]

**CHAIRPERSON**: Okay. I am going to try and get us to end of this argument. As things present stand. Firstly, you said the Minister had a concern that Mr Jafta's evidence, I do not know whether she was saying will or may, compromise National Security. Nothing that you have said so far appears to me to support that.

10 I have read Mr Jafta's affidavit. I cannot see any – I did not see anything that I think would be said to threaten National Security. Either Mr Pretorius or Mr Murano has said Mr Jafta is satisfied that there is nothing in his affidavit that threatens National Security. And the Minister has not said anything through you that seems to support that.

The argument then moved to – in terms of the act, there was a consultation that was supposed to take place between the DG and the Minister and I was referred to Section 10.

20 In Section 10, there is no reference to any consultation that should take place between the Minister and the DG before she comes and testifies. Even if there was, I would be inclined to think that is a matter between them.

And you have now referred to Section 12(1) and says the Minister may, subject to this act, do or cause to be done all things which are necessary for the efficient superintendent's

control and function of the agency.

Nothing there says anything to me that supports any notion that Mr Jafta's evidence may threaten National Security.

I would like to give you the next five minutes to address to me any other argument that you may have wish to address. I will give you ten minutes if you complain that five minutes is too little. So that I can make a ruling. But so far everything – nothing that has been said seems to support the  
10 Minister's concern about National Security.

**ADV NTSEBEZA:** As the Chair pleases. Chairman, I will only this point with respect to consultation and that is the factual inquiry. The Minister wants to record to the extent that there is a submission that there was a consultation between her and the DG 14-days ago. That is the thing.  
[Speaker's voice trails off – unclear]

**CHAIRPERSON:** I think – I do not know if – I did not understand Mr Morane to say there was a consultation 14-days ago. I understood that Mr Jafta had called the Minister.  
20 I understood the point that was being made as if the purpose of the call was to arrange a meeting with the Minister. That was my understanding.

**ADV PRETORIUS SC:** Correct Chair.

**CHAIRPERSON:** Yes.

**ADV NTSEBEZA:** As far as that goes Mr Chair. The

Minister – in the application we would hope to make which has been the subject matter of our discussions here - would like to inform you that she did write letters to the DG precisely because she wanted to be appraised of what it was that she was coming to testify about so that she can see to what degree it – while she does not become obstructive to the work of the Commission nonetheless takes into account the penny skills such as they may be.

Now from what you would read, if you grant us the  
10 intentions, you would be told that in her letter of the – there is a date. The Minister wrote to the DG to which he has not responded. And with your permission Mr Chair, the letter it can be discovered in ...[intervenes]

**CHAIRPERSON:** Does the letter say anything about supporting the concern that Mr Jafta's evidence may threaten National Security or compromise it?

**ADV NTSEBEZA:** Those are exactly what she had wanted to have this consultation with Mr Jafta. If I may, you know ...[intervenes]

20 **CHAIRPERSON:** But she wanted to find out? She has had an opportunity since eight p.m. last night to read the affidavit of Mr Jafta and form a view whether there is anything in that affidavit that she thinks may compromise National Security.

With the time that you have had, I take it that she has not been able to say to you: Here are paragraphs in



Mr Jafta's affidavit that in my view threaten National Security.

Because if she had told you that, surely, that would have been the first thing you would have told me. So I suspect that she has not told you that.

**ADV NTSEBEZA:** For purposes of testifying here. In relevant parts, for instance, she says:

“I reiterate the request in my letter dated 20 August. As a matter of urgency, I request you to provide me with the following...”

10

And this has not been responded to.

**CHAIRPERSON:** But my concern Mr Ntzebeza is ...[intervenes]

**ADV NTSEBEZA:** I am getting there. I am getting there.

**CHAIRPERSON:** ...before she got the affidavit. She got the affidavit yesterday, last night. She has not been able to say: Here are my concerns in this affidavit. It is this paragraph and that paragraph.

20

**ADV NTSEBEZA:** But one of the concerns is what I am proposing to you Mr Chairman.

**CHAIRPERSON:** Okay.

**ADV NTSEBEZA:** And that is. She would – she wanted to find out from the DG, for instance:

“I would like to get from you a list of all current and former members that had been implicated by the

Commission.

I would like to get a list of all current and former members that have been requested to appear before the Commission.

Their dates of appearance, affidavits submitted to the Commission and/or subpoenas. Documentation from the Commission pertaining to each case.

I request the above with the interest of endeavouring to safeguard National Security and interest.

10

My request is further empowered by Section 12(1) of the Intelligence Services Act 65 of 2002 as amended which states that the Minister may subject to this act, draw a cause to be done all things which are necessary for the efficient superintendent's control and functioning of the agency."

Now ...[intervenes]

**CHAIRPERSON:** Yes, I hear what it says.

**ADV NTSEBEZA:** Yes, Chairman should - may well take that... You know, you have not said anything to me that says National Security is going to be ...[indistinct] [Speaker's voice trails off – unclear]

20

**CHAIRPERSON:** H'm.

**ADV NTSEBEZA:** But she says to her own DG: Let me have it. Let me consult. Let me be sure ...[intervenes]

**CHAIRPERSON**: But she ...[intervenes]

**ADV NTSEBEZA**: But I will decide my own responsibilities  
...[intervenes]

**CHAIRPERSON**: Yes, yes.

**ADV NTSEBEZA**: ...obligations and human functions.

**CHAIRPERSON**: Yes.

**ADV NTSEBEZA**: ...[indistinct] constitution. If you allow  
me to do so.

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

10 **ADV NTSEBEZA**: And you can allow me to do so if you let  
me.

**CHAIRPERSON**: H'm. Are those your submissions?

**ADV NTSEBEZA**: Well, there is just the mundane.

**CHAIRPERSON**: Ja.

**ADV NTSEBEZA**: There is a submission that we will not  
make that, even when she got the affidavit, it was last night.  
It was an unsigned affidavit. And I do not know to what  
extent that ...[indistinct] [background noise interference –  
cell phone ringing.] Because the affidavit was unsigned.

20 And...

Now, His Lordship has asked pertinent questions about  
what did she do at eight o'clock ...[indistinct] [Speaker's  
voice trails off – unclear]

She was going to be there but there was no way we  
would have wanted ...[indistinct] [Speaker's voice trails off –

unclear] And I have made the submission because I have been, like I said ...[intervenes]

**ADV PRETORIUS SC:** Ja. Chair, once again. My learned friend is ...[intervenes]

**CHAIRPERSON:** His voice drops.

**ADV PRETORIUS SC:** If he can speak into the microphone.

**CHAIRPERSON:** Okay.

**ADV NTSEBEZA:** I made the submissions without being facetious.

10 **CHAIRPERSON:** Ja.

**ADV NTSEBEZA:** There is a curfew that is currently in operation. And by nine o'clock we are rushing. In fact, I left my chambers at twenty past eight. And it is not because she was laying on hands. That is why I keep on reading to you Whatsapp messages but Whatsapp messages can never substitute for a proper consultation.

**CHAIRPERSON:** Ja.

**ADV NTSEBEZA:** So that we may even answer those questions which is His Chairmanship has asked.

20 **CHAIRPERSON:** H'm.

**ADV NTSEBEZA:** And it is in that process where say to her but the law says. And we may end up saying that there is only one narrow way. That is one narrow approach.

We discussed all the other approaches and this is our basis for seeking to get the indulgence to make sure that

your concerns is being addressed by a testimony or by...

We are not saying Mr Jafta must not testify. Not by a long shot. We are even prepared, as we said to file our papers by no later than tomorrow.

**CHAIRPERSON:** Are those your submissions?

**ADV NTSEBEZA:** Those are my submissions.

**CHAIRPERSON:** Yes. Well, you know, it is precisely because I am very alive to the sensitivity of National Security and matters relating to National Intelligence on that.

10 I have really allowed as much time as I have to hear what the Minister has to say what her concerns are.

And once you said to me her concerns relate to National Security, immediately I said: Well, I must hear because the Commission certainly would not like to do anything that would compromise National Security. But obviously, there has got to a factual basis.

It seems to me that there has been enough time from the time that she got the – Mr Jafta’s affidavit last evening, after this morning, for her to have been able to say my concern  
20 that Mr Jafta’s evidence may threaten National Security is based on the following which is in the affidavit. 1,2 ,3, here are the paragraphs that I consider. That has not been done.

And you have made reference to certain other points including Section 10(4) and 12(1). I do not think that they assist in any way.

So as things stand, I am going to dismiss the application. I am not preventing you if later on you have substantive papers that showed or rectified or remedied the deficiencies that are there now. To bring that application and I would look at it at this stage.

But as things stand and on what you have told me in your address, there is nothing that would justify the adjournment of the proceedings and the hearing of Mr Jafta's evidence. So the application is dismissed.

10 **ADV NTSEBEZA**: As the Chairman pleases.

**CHAIRPERSON**: Thank you. Mr Pretorius.

**ADV PRETORIUS SC**: Chair, I hear you and I do not want to reopen the argument but I do think it is important to put certain sections of the act on record in support of the ...[intervenes]

**CHAIRPERSON**: Yes, yes.

**ADV PRETORIUS SC**: And this issue of consultation because it may affect the future conduct.

**CHAIRPERSON**: Yes, yes.

20 **ADV PRETORIUS SC**: Section 12(1) on which my learned friend and the Minister appeared to rely is very clear. It says that:

“The Minister may, subject to this Act, do or cause to be done all things necessary for the efficient superintendent's control and functioning with the

Agency.”

But she has subject to the provisions of the Act.

Section 10(4) which is important, Chair, places the power to take steps to ensure that issues named by my learned friend and listed in this section are protected from unauthorised disclosure rests solely in the hands of the Director General and I solely.

And then Section 27, which is also important, says that:

10 “The disclosure of classified information or material by former members...”

And there will be former members who will testify.

“ is entirely a matter in the charge of the Director General.”

So any powers afforded to the Minister under Section 12 are subject to the direct exclusive powers of the Director General in those sections.

20 “There is a provision for consultation when directives and regulations to are issued by the Minister and the minister’s own regulations...”

Perhaps not this minister, but a minister’s own regulations make it quite clear, okay, and this is very important for the proceedings that:

“A document that continues to meet classification requirements must be continue to be protected from

unauthorised disclosure. A document must be declassified if it no longer complies with the standards for classification.”

But most importantly, Chair:

“Classification may not be used in instances to conceal violations of law...”

That is criminality.

“...inefficiency or administrative errors.

10 (b) Prevent embarrassment to a person and/or organisation, prevent or delay the release of information that does not require protection in the safety or interests of the Republic of South Africa any other information that does not fall within and the prescribed category.

So the powers of the Director General are unqualified in regard to evidence and releasing evidence, firstly.

**CHAIRPERSON:** Ja.

20 **ADV PRETORIUS SC:** And secondly, the scope for classification is in fact very narrow. And fortunately, those are secret regulations.

**CHAIRPERSON:** Ja. Okay, we have lost two hours but it was necessary that I hear what the – what counsel for the Minister had to say so but now let us proceed. The registrar must administer the oath or affirmation.

**ADV MVUMBI:** Chairperson?



**CHAIRPERSON:** Who? Oh yes, ah huh?

**ADV MVUMBI:** Chairperson, thank you.

**CHAIRPERSON:** Yes?

**ADV MVUMBI:** Chairperson, earlier on at your chamber when I availed myself I had certain issues that I wanted to raise with Chairperson.

**CHAIRPERSON:** Yes.

**ADV MVUMBI:** And I feel that those issues, they are not raised, it will not be at the best interest of my client.

10 **CHAIRPERSON:** Ja.

**ADV MVUMBI:** And probably some of my learned colleagues.

**CHAIRPERSON:** Yes.

**ADV MVUMBI:** Chairperson, I think it is very much important that we do ground check and I am glad my learned colleague started in terms of these proceedings to make his submission.

20 Even though our issue is not closely related to the issue of my learned colleague but for somehow they have got characteristics.

**CHAIRPERSON:** Yes, do you want to just remind me which – who is your client? Obviously I do not want you to disclose the identity if you are supposed to use a pseudo name.

**ADV MVUMBI:** Yes. Chairperson, yesterday, Chairperson,

we when we were placing ourselves on record we had housekeeping to do in terms of that.

**CHAIRPERSON:** Oh, okay, okay.

**ADV MVUMBI:** But that was done, Chairperson.

**CHAIRPERSON:** Okay, alright.

**ADV MVUMBI:** And for the purpose of record in fact I must say I am Advocate Mvumbi I am on brief from P G Maseka, I am not alone, I am with my attorney of record, Palesa Maseka.

10 Chairperson, we have agreed with Advocate Pretorius in terms of the name to be used going forward with our client and for the purpose of record that name will be Dorothy.

**CHAIRPERSON:** Dorothy?

**ADV MVUMBI:** Correct.

**CHAIRPERSON:** Okay.

**ADV MVUMBI:** Chairperson, if I may proceed, Chairperson I ...[intervenes]

**CHAIRPERSON:** Ms Dorothy or just Dorothy?

20 **ADV MVUMBI:** Ms Dorothy.

**CHAIRPERSON:** Ms Dorothy. Okay, alright.

**ADV MVUMBI:** Chairperson, as I was saying, of paramount importance that we do not ignore the rules of this Commission and at the time wherein the rules are changing the Commission must see it of importance that all

legal teams are being involved and we are in solidarity there together and we are trying to assist the Commission the best way possible.

Chairperson, if this Commission is saying it has constrained time the Commission must involve each and every legal representative that is available to represent their implicated parties in this Commission.

By so doing, this while minimise the situation of these two hours that has been lost this morning and  
10 ...[intervenes]

**CHAIRPERSON:** Do you want to start by telling me what the issue is and then you can elaborate?

**ADV MVUMBI:** Now the issue is yesterday Chairperson introduced the witness, which is the ADG, Acting Director General. Now that came as a surprise for many of us. I do not know if there were others in secret who were aware of that situation but we then went to write a letter.

As soon as we get to our offices we come together and we say our minds. We wrote a letter which till now the  
20 secretary of the Commission – in that letter with attention to Chairperson – have not responded to us and I do not know if, Chairperson, is also informed of the letter that we have written.

**CHAIRPERSON:** What is the issue? What is the letter about? Tell me what is the issue.

**ADV MVUMBI:** The letter is about should the Acting DG today be coming here and testifying or giving evidence which implicates not just my client but any other person without having proper notice in terms of Rule 3.3 served on. That, we believe it will be of prejudice to our client.

**CHAIRPERSON:** Yes but as things stand you are not saying you have a client who is implicated by the DG's affidavit and your client has not been given a 3.3 notice, so ...[intervenes]

10 **ADV MVUMBI:** Correct.

**CHAIRPERSON:** ...the issue has not arisen. The legal team is aware of the rules of the Commission and they always ensure that Rule 3.3 notices are issued or where they are not issued and there are reasons, those are stated.

So unless you say your client is implicated in Mr Jafta's affidavit but he or she did not receive or she did not receive 3.3. notice ...[intervenes]

**ADV MVUMBI:** Yes.

20 **CHAIRPERSON:** You do not have – unless you say that you do not have a complaint.

**ADV MVUMBI:** No, I do agree with Chairperson on what Chairperson is saying but be that as it may be, we stand here not informed of what the affidavit ...[intervenes]

**CHAIRPERSON:** Yes but if you are not implicated you are

not going to be informed.

**ADV MVUMBI:** But, Chairperson, if ...[intervenes]

**CHAIRPERSON:** If he is not going to implicate you, why should you be informed?

**ADV MVUMBI:** Chairperson, having looked at the situation that happened yesterday and my learned colleague is going to also address Chairperson on this issue, the same thing yesterday was made clear ...[intervenes]

10 **CHAIRPERSON:** No, let us talk about this one. What right do you have to be given a 3.3 notice if your client is not implicated?

**ADV MVUMBI:** The DG sits at the highest structure in terms of administration of the SSA.

**CHAIRPERSON:** What does that have to do with why you should be given notice?

**ADV MVUMBI:** My client, Chairperson is ...[intervenes]

**CHAIRPERSON:** She thinks she will be implicated?

20 **ADV MVUMBI:** We have – Chairperson, it sounds – I know, I know, I know and we are trying to work with Chair. It sounds like we are maybe not being reasonable but if we do not raise this issue [inaudible – speaking simultaneously]

**CHAIRPERSON:** Okay, no, no, this particular point has no merit. Is there another concern?

**ADV MVUMBI:** Chairperson, I thought we must just stand up and make that – and place that on record.

**CHAIRPERSON:** Okay, alright, you have placed it on record.

**ADV MVUMBI:** In case in future we need to raise it.

**CHAIRPERSON:** Okay, alright, you have placed it on record.

**ADV MVUMBI:** Thank you, Chairperson.

**CHAIRPERSON:** Mr Pretorius, proceed.

10 **ADV PRETORIUS SC:** Chair, Dorothy ...[intervenes]

**CHAIRPERSON:** Oh, I am sorry, somebody else wants to say something.

**MR NTSEBEZA:**...(inaudible – microphone switched off]

**CHAIRPERSON:** Sorry, I think you are too close to me for social distancing. I think try to be somewhere else.

**MR NTSEBEZA:**...[inaudible]

**CHAIRPERSON:** No, Mr Ntsebeza was fine.

20 **MR NTSEBEZA:**...Ja, thanks, Chair, I was saying I will be failing my clients and in fact the Commission itself if I do not put this on record. It is common cause that our clients were not provided with a...[intervenes]

**CHAIRPERSON:** When you are saying – oh, you have a number of clients?

**MR NTSEBEZA:**...We have a number of clients, that is correct.

**CHAIRPERSON:** Okay.

**MR NTSEBEZA:**...None of them were provided with a copy of the DG – or rather, a Rule 3.3 notice or the copy of the DG's ...[intervenes]

**CHAIRPERSON:** But are they implicated?

**MR NTSEBEZA:**...It would be easy, Chairperson, for us to say they were not provided because they are not implicated but then ...[intervenes]

**CHAIRPERSON:** Do they think they would be implicated?

10 **MR NTSEBEZA:**...But then yesterday, Chair, when we learnt that the DG would be testifying we asked the evidence leaders whether – in fact, why we were not provided with any Rule 3.3 and whether any of our clients have been implicated.

They could not deny or confirm, nor deny same leaving us to our own devices.

**CHAIRPERSON:** But unless you ...[intervenes]

**MR NTSEBEZA:**...This is concerning, Chairperson.

20 **CHAIRPERSON:** You see, unless you say to me, Mr – the witness' affidavit reveals that your client is implicated but your client was not given a Rule 3.3 notice, I do not think that is any concern relating to being given a notice really has any merits.

**MR NTSEBEZA:**...Chairperson, you ...[intervenes]

**CHAIRPERSON:** Unless I misunderstand what you want to

say.

**MR NTSEBEZA**:...Clearly. We have already indicated I do not have that statement ...[intervenes]

**CHAIRPERSON**: And you are [inaudible – speaking simultaneously]

**MR NTSEBEZA**:...And for that matter, Chairperson ...[intervenes]

**CHAIRPERSON**: You are not entitled it until you are ready to [inaudible – speaking simultaneously]

10 **MR NTSEBEZA**:... That is correct. But we have asked the Commission, we have asked evidence leaders whether any of our clients would be implicated and the kind of – we do not get any response.

**CHAIRPERSON**: Ja.

**MR NTSEBEZA**:...If anything, we are treated with contempt.

20 **CHAIRPERSON**: No, being treated with contempt, if it is true, would not be acceptable but until you hear evidence that implicates your client you should not worry about anything.

**MR NTSEBEZA**:...But, Chairperson, with regards to at least one of my clients, this kind of conduct is not unprecedented.

We have a client who has been implicated by at least three witnesses and during – before those witnesses



were called we were never given any notice. So the Chairperson must understand the situation that we have.

**CHAIRPERSON:** Are you talking about some time back?

**MR NTSEBEZA:**...Well, it is ...[intervenes]

**CHAIRPERSON:** Or about this week?

**MR NTSEBEZA:**...Well, it is not this week but it is evidence relating to State Security Agency.

**CHAIRPERSON:** Ja.

**MR NTSEBEZA:**...So there is that commonality.

10 **CHAIRPERSON:** Look, let us say the legal team knows the rules of the Commission, they do the best they can to comply.

I accept that sometimes they do not comply but I think that if they know who your clients are, even if – I do not know how to – how you handle the issue of pseudo names when you talk to them but if they know who your clients are they will be able to tell you whether they are implicated or they are mentioned and normally they would – you would get a Rule 3.3 notice.

20 If you have not, I think if you are going to sit around, you will wait until you hear whether Mr Jafta implicates your client.

**MR NTSEBEZA:**...You see, Chair, we cannot – we have no reason to accept and, with respect, the legal team's *bona fides*, and this is informed by at the very least what

happened yesterday.

We were told that for instance the statement or the report by Dr Mufamadi would be as soon as it is placed on record we would have provided with copy thereof or access thereto. It has never happened.

If anything, Chairperson, the evidence leaders are treating us as spectators. The impression that we get is that if this was court they would prefer us to sit in the gallery. We are not treated as legal practitioners in the  
10 same manner as they are.

So we have no reason to accept their *bona fides*. If anything, found themselves to be *male fide*.

So we wonder, I mean, given the experience that we have had, that three witnesses that implicating my clients – our client did not get any notice and we were promised subsequent to that testimony of one of those witnesses that we would be given a copy of that witness' affidavit. That was in August.

We are still waiting for the same affidavit today, so  
20 cannot accept their *bona fides*. So it is quite clear...

**CHAIRPERSON:** Ja.

**MR NTSEBEZA:**.....that there is a concerted effort on the part of the evidence leaders to deny us what is due to us.

**CHAIRPERSON:** Okay ...[intervenes]

**MR NTSEBEZA:**...So unless if we can get a guarantee that

our clients today are not going to be implicated then there is no point for us being here today.

**CHAIRPERSON:** Yes. Okay, just – were those your points?

**MR NTSEBEZA:**...Those were, yes.

**CHAIRPERSON:** Then I can – ja, Mr Pretorius, do you want to say anything?

**ADV MVUMBI:** Chair, before Mr Pretorius may be given an opportunity to reply ...[intervenes]

10 **ADV PRETORIUS SC:** Sorry, Chair, can I have an opportunity to answer one by one rather than an army of ...[intervenes]

**CHAIRPERSON:** Yes because you – ja, it is going to be better. Mr Pretorius is going to respond to this one first and then if you are going to – when you stand, when you rise, you are going to say it is the same, you wanted to add something, let us deal with it at that stage. Let us just deal with this one.

20 **ADV MVUMBI:** Chair, I take cue from you. However, as my learned colleague said, already almost submitted, to an extent our applications and reasons are almost the same.

**CHAIRPERSON:** Okay.

**ADV MVUMBI:** Bar the fact that they are different on the basis that we hold different instructions.

I cannot take further argument raised by learned

colleagues of being treated otherwise and also having *male fide*. But mine is also predicated on the different argument, maybe taking cue and a plea from my colleague to then address you.

**CHAIRPERSON:** Ja.

**ADV MVUMBI:** Let me stand down for now and then I will advocate my point.

**CHAIRPERSON:** Okay, alright, thank you. If that mic can be switched off? Ja, Mr Pretorius?

10 **ADV PRETORIUS SC:** In relation to the first “application” I did not understand it to be an application but merely a complaint. Dorothy is not implicated by the evidence of Mr Jafta and that is the end of that story.

**CHAIRPERSON:** Ja.

**ADV PRETORIUS SC:** My learned friend was told, and I quote, in answer to a query:

“If your client was to be implicated your client would have received notice.”

Precisely in terms that you have outlined, Chair. That  
20 deals with the first application.

Second application, I am not going to accept the invitation to litigate through insult and invective, I think it is unbecoming of colleagues to do that, I will stick to the facts.

None of the clients of my learned friend who

addressed you second are implicated by the evidence of Mr Jafta.

If I am in bad faith and I am not being honest before that will be clear and my learned friend is free to take whatever steps he may wish to do but it is offensive of that to be made before the facts are known, that accusation to be made before the facts are known. So both applications are without merit.

As to historical complaints, if those are raised with  
10 us in writing in a proper forum, I will raise them with the secretariat and we will answer.

**CHAIRPERSON:** The issue of Mr – the high level panel report, he raised the issue that they were promised that as soon as [inaudible – speaking simultaneously]

**ADV PRETORIUS SC:** He was given that. According to my instructions he was given that at the beginning of evidence. Well, certainly one person was.

**CHAIRPERSON:** Yes but he can get it on the link.

**ADV PRETORIUS SC:** Yes, it will be available on the link.  
20 I do not know, Chair, what technological issues arise about uploading evidence, it is not an easy matter but it will in due course or has been uploaded on the website.

**CHAIRPERSON:** Yes.

**ADV PRETORIUS SC:** That is the end of our remit, is to in fact ensure that the instruction is given to do so.

**CHAIRPERSON:** Ja.

**ADV PRETORIUS SC:** The execution of that is not within our hands.

**CHAIRPERSON:** Ja. Well, obviously it does not assist him if he is told the legal team gave instructions, whether those instructions are carried out, the legal team does not know ...[intervenes]...[intervenes]

**ADV PRETORIUS SC:** Well, my instructions ...[intervenes]

**CHAIRPERSON:** Because his complaint is the  
10 Commission is not giving me, so we need to – somebody needs to make sure ...[intervenes]

**ADV PRETORIUS SC:** Chair, if I may just intervene, the affidavit is on the website, the report is on the website, was uploaded last night.

**CHAIRPERSON:** Of the Commission?

**ADV PRETORIUS SC:** Yes.

**CHAIRPERSON:** Website of the Commission?

**ADV PRETORIUS SC:** Yes, yes, yes.

**CHAIRPERSON:** Okay, then you should be able to get it  
20 there as soon as you can.

**ADV MVUMBI:** [inaudible – mic switched off]

**CHAIRPERSON:** Yes. Okay, alright, it has been cleared that your cleared that your clients are not implicated, Ms Dorothy Is not implicated. I think counsel at the end there still wanted to say something, let us here.

**ADV MVUMBI:** Thank you, Chair, and to an extent I think maybe I am answered.

**CHAIRPERSON:** You are covered.

**ADV MVUMBI:** But I do not want to leave in that pool of confusion because we stand here for different clients.

**CHAIRPERSON:** Yes but if you are covered I am happy because we are losing some time.

**ADV MVUMBI:** Yes, Chair, I am ...[intervenes]

**CHAIRPERSON:** But obviously if there is still something  
10 that you need to address you must address, if it is important.

**ADV MVUMBI:** Yes, mine might not even be an application but a clarification from the Chair and this comes from almost to the same reasons what my learned colleagues have advanced and I hear the predicament that Mr Pretorius might have because his most of the day standing here arguing points but supported by a particular structure.

I want to place it on record, Chair, that he has not  
20 so far – and I have not heard him probably because I was stopped to say whether or not my client is implicated.

And I am also guided by the Chairman who is going to say if you did not receive a notice, therefore it can be presumed that you are not implicated but I do not take comfort because on the past experiences and with to an

extent the Chair has conceded to the fact that some witnesses and ever to the team has been able to tender evidence without such notice been given and that is not also unfounded of what has transpired yesterday.

For instance I have guided the Chair before yesterday to a notice that was given to us on three projects, it was almost three pages, that was not significant, but when Dr Mufamadi gave testimony he gave a lengthy – which is obvious from affidavits it might be  
10 expatiated by oral, to an extent Mr Mufamadi then said and to the evidence leader's comments an propositions that were put to the witness, to the extent it was implied that my client, in particular whom I am representing, the Minister, for that particular time had at least transgressed his powers, had at least done something that has not been founded, certain allegations of misconduct to an extent of corruption has been [indistinct] 24.06.

To the conclusion of the evidence of Dr Mufamadi it was agreed that yes, will be expatiated by the evidence of  
20 the DG. That is what then we got to know that the DG is coming tomorrow.

So I will not then sit here and think that without even an undertaking and immediately when I left here I wrote a letter to the contact person that I have been provided with. Until today, what I was responded to was



that we have taken your correspondence to the team, will revert.

That leaves me and my client hanging to an extent that we cannot even make any election of whether or not do we sit here and become observers, as my learned colleague called it spectators.

**CHAIRPERSON:** Yes ...[intervenes]

**ADV MVUMBI:** Not only that, Chair, if I may finish this point?

10 **CHAIRPERSON:** Ja.

**ADV MVUMBI:** I know – I am sure and we are all alive to the fact that the Commission has a lifespan, very short, but we are almost the accounting authority to the parliament joint committees and implications were made that during that time we were almost asleep and we did not execute those functions and that is the proposition that – at least the narrative that has been [indistinct] 25.24. There is no way from where I am sitting that the DG to an extent if I listen to my senior addressing this, to the extent that the  
20 affidavit was – of the witness was quoted to an extent of including the powers and separation of powers which became an issue yesterday.

So there is no way that I can therefore assume that my client will not by implication be dragged into answering.

Not only that, Chair, finishing the point, the other

point that I – Chair has instructed us and I stood on this point yesterday. Chair, we were directed to consult with the team and to an extent give you what will be the way forward. Nothing, with respect, I can say out of that consultation came out.

We came before the Commission yesterday not being sure, we have correspondence that we have given after receiving the 3.3 notice.

We were ignored, literally ignored. So we came in  
10 having not been able to know whether do we elect to participate or bring an application. And, Chair, when my learned colleague made submissions, suggested that if there is a need for you to make any substantive application we will hear it and that is how we somehow concluded the morning.

We still are not sure today and I am seeking your indulgence on this one because it might be an [indistinct] 26.55 point, that we need to hear from you, Chair, by yesterday I was heavily implicated, my client, that is, so I  
20 seek your indulgence within the timeframes that the Commission has to know because we indeed received the notice, we at least to a minimum knew what was going to be but we thought because of the engagement we will know what steps will be taken.

But until now we have not had any responses, it

therefore leaves us with no alternative but to file an application, one.

Two, to cross-examine the witness that [indistinct] 27.31. So I seek your directive on that point.

**CHAIRPERSON:** Ja. Well, I think what should happen is while Mr Pretorius leads the evidence of Mr Jafta, members of his team should meet with you and with whoever else among the lawyers wishes to find anything from Mr Pretorius' team. Let there be discussions outside the  
10 venue.

Ask whatever questions you want to ask, they should do the best they can to answer them. Maybe at the end of that discussion you will be satisfied with the answers, maybe you might not be, but I am sure it will achieve something.

I think while Mr Pretorius leads Mr Jafta, that is what should happen. Mr Pretorius, what do you think?

**ADV PRETORIUS SC:** Well, that can happen, Chair, engagements have taken place, correspondence has been  
20 sent.

**CHAIRPERSON:** Ja.

**ADV PRETORIUS SC:** Correspondence has been answered.

**CHAIRPERSON:** Ja.

**ADV PRETORIUS SC:** My concern is that the rules are

clear.

**CHAIRPERSON:** Ja.

**ADV PRETORIUS SC:** My learned friend's client received a 3.3 notice or 3.3 notices.

**CHAIRPERSON:** Ja.

**ADV PRETORIUS SC:** And has capacity and rights in terms of the rules to answer.

**CHAIRPERSON:** Ja. Yes.

**ADV PRETORIUS SC:** It is not for us to give legal advice.

10 **CHAIRPERSON:** Yes.

**ADV PRETORIUS SC:** In relation to what the party should or should not do.

**CHAIRPERSON:** Ja.

**ADV PRETORIUS SC:** The rules are clear, if my learned friend wishes to file an application under 3.4 to cross-examine or to put up a version, he must do so.

**CHAIRPERSON:** No, that is fine.

**ADV PRETORIUS SC:** It is not our job to interfere in that.

20 **CHAIRPERSON:** We will continue with Mr Jafta's evidence but one or more members of Mr Pretorius' team should have a discussion with you and whoever other lawyers among the lawyers who may want to ask some questions or whatever, talk to – let them talk.

**ADV PRETORIUS SC:** We will put that in motion, Chair.

**CHAIRPERSON:** Yes, okay.

**MR NTSEBEZA:** ...Thank you for that directive, Chair.

**CHAIRPERSON:** Okay, alright, thank you. Okay, at long last, let us get going with Mr Jafta's evidence, he has been sitting there for a long time waiting. Yes, Mr Pretorius.

**ADV PRETORIUS SC:** Has he been sworn? May he be sworn?

**CHAIRPERSON:** Oh by the way yes, please administer the oath or affirmation.

**REGISTRAR:** Please state your full names for the record.

10 **MR JAFTA:** Loyiso Mhlobo Thando Jafta.

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

**MR JAFTA:** No.

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

**MR JAFTA:** Yes.

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

**MR JAFTA:** So help me God.

**CHAIRPERSON:** Thank you, you may proceed.

**LOYISO MHLOBO THANDO JAFTA:** [duly sworn, states]

**ADV PRETORIUS SC:** Thank you Chair. Mr Jafta you have before you an affidavit, the cover page is marked

Exhibit YY3, do you see that? The cover page we've just looked at.

**MR JAFTA:** Yes.

**ADV PRETORIUS SC:** If you go through to page 52 of Exhibit YY3 ...[intervenes]

**CHAIRPERSON:** Well Mr Pretorius let's – you want to first announce that we will be using bundle SA – or SSA Bundle 02 most of the time?

**ADV PRETORIUS SC:** Yes, same one as yesterday.

10 **CHAIRPERSON:** Yes, same as yesterday. Yes, you can then proceed.

**ADV PRETORIUS SC:** Right so Bundle SSA02 if we go to Exhibit YY3, page 52 is that your signature there Mr Jafta?

**MR JAFTA:** Yes it is.

**ADV PRETORIUS SC:** Your affidavit then which begins at page 35 is that the affidavit you have submitted to the Commission?

**MR JAFTA:** Yes it is.

20 **ADV PRETORIUS SC:** And are you satisfied that the contents are insofar as you are aware true and correct?

**MR JAFTA:** Absolutely ja.

**ADV PRETORIUS SC:** Right, it does have certain annexures which go through to page 29, we will probably not refer to them in any detail but Chair may Exhibit YY3 be admitted on the record.

**CHAIRPERSON:** The affidavit of Mr Loyiso Jafta which starts at page 35 will together with its annexures be admitted as Exhibit YY3.

**ADV PRETORIUS SC:** Mr Jafta you are the Acting Director General and Accounting Officer of the State Security Agency, is that correct?

**MR JAFTA:** That's correct.

**ADV PRETORIUS SC:** In preparing this affidavit and in interactions with the Commission you have had the benefit  
10 of legal advice from senior and junior counsel and an attorney.

**MR JAFTA:** Yes that is correct.

**ADV PRETORIUS SC:** In paragraph 4 you make some comments about the considerations that informed you in the preparation of this affidavit, could you place that on record please. You can read it if you wish but in your own words would be preferable. Paragraph 4.

**MR JAFTA:** Can I read it?

**ADV PRETORIUS SC:** Yes you can read it.

20 **CHAIRPERSON:** You can read it ja.

**MR JAFTA:**

“I limit this affidavit in terms of its contents to narrow issues of the State as I am conscious of the need to respect matters of national security, that a General of the Agency is compelled in terms of

Section 10[4] of the Intelligence Services Act 2002, Act 65 of 2002, to as far as reasonably practical take steps to ensure that National Security Intelligence, Intelligence connection methods, sources of information and the identity of members of the Agency are protected from unauthorised disclosure. Consequently all information contained herein and matters that I deal with at this stage and the identities of the persons involved are that are  
10 already in the public domain.”

That is paragraph 4.

**CHAIRPERSON:** Yes Mr Pretorius.

**ADV PRETORIUS SC:** When did you become Director General, or Acting Director General of the SSA?

**MR JAFTA:** On the 17<sup>th</sup> of April 2018.

**ADV PRETORIUS SC:** Did you then ...[intervenes]

**CHAIRPERSON:** Do you remain Acting DG or are you already DG?

**MR JAFTA:** I remain Acting, but in essence the  
20 responsibilities are not for acting.

**CHAIRPERSON:** No, no I accept that when you are acting you have the same powers as the full DG, I was just checking whether ...[intervenes]

**MR JAFTA:** Yes I am still acting Chair.

**CHAIRPERSON:** You are still acting, ja okay.



**ADV PRETORIUS SC:** As you say you became the acting Director General on the 17<sup>th</sup> of April 2018.

**MR JAFTA:** That is correct.

**ADV PRETORIUS SC:** You would then have familiarised yourself I presume with your powers under the Intelligence Services Act and you would have called for information concerning the activities of the State Security Agency?

**MR JAFTA:** That is correct.

**ADV PRETORIUS SC:** What did you discover or what did  
10 you become aware of?

**MR JAFTA:** It is a bit of a process, I am going to take a bit of time but not too long, a lot of time. One of the things I became aware of immediately after assuming responsibilities of being Director General of the State Security Agency was that the systems for proper management, particularly of the finances and their expenditure were not adhered to. One of the things I believe in is that any organisation one of the indicators for determining the health of an organisation is to follow the  
20 money. It is to a degree what that ...[indistinct] money doesn't lie.

So one of the things that immediately became apparent was that there was quite a number of officials of the State Security Agency who were registered in the if you will in the register of debtors, in other words members who

owe the organisation money and these were fairly large amounts of money, often running into millions of Rands, and I could not but seek to understand how it could be that members would owe a State organisation so much money.

It then became apparent in the explanations given to me that in fact the systems for corporate governance both in respect of the management of financial resources and the prosecution of operations was done parallel to the prescripts that were there and that obviously led to me  
10 discovering that as a matter of fact the monies were being expended often or in some cases on projects that were outside the boundaries of our legal mandate.

There were also commitments that we had, obligations that we had to several parties and then when you want to understand but why do we have this obligation to this person you then realise that as a matter of fact if the constitution might have been disregarded in the pursuit of those operations.

I will go into it with a bit more detail, but Chair what  
20 became very clear was that the constitution and the law of the Republic as it applies to the State Security Agency and other entities of the State whilst I don't know how to put this politely but it was elective adherence you know, sticking to the prescripts of the law, this was elective, when the law or the constitution barred one from doing

certain things, creative ways were conjured up to go around the constitution, to go around the law and do things that were unlawful, were outside the constitution.

I don't want to belabour the point, I do presume that Dr Mufamadi spoke to it yesterday. The very foundation of the State Security Agency from the amalgamation of the National Intelligence Agency, the South African Secret Service and the other entities in that environment was established in terms of the proclamation and not in terms  
10 of further constitution required, and then from that it is not theoretical exposition, it is factual and a lot of other infractions followed, so I don't know I could go on and on but suffice for me to add just a few other points Mr Pretorius and Chair.

The other witnesses that are systemic and perhaps my view is that these are not just within the SSA, they are in government, State Owned Enterprises and maybe even in the private sector and one of those is compliance assurance institutions and processes. These typically are  
20 subordinated to the accounting officer and they become only robust after the fact, or rather they become robust only after things have happened.

So there isn't a system yet where we have compliance assurance instruments that run parallel with the conceptualisation, the development and the approval of

projects. You see an accounting officer with the people below him are biased towards achieving the goals, they are biased towards carrying out the activities and completely without any malevolence they might overlook certain requirements because of this bias to do certain things but if you had a compliance assurance instrument that is not subordinated and sufficiently autonomous of the accounting officer that would help. It is quite another matter where such instruments must report to, that is another thing I  
10 picked up that there was a systemic gap in the management of the intelligence environment and naturally my last point Mr Pretorius is that quite clearly there was executive overreach, there was quite clearly instances of manifestly unlawful or illegal instructions and that is something that I determined, I could with time go into this, and obviously oversight was extremely uneven and ineffective.

**ADV PRETORIUS SC:** And this was over a long period of time I presume ...[intervenes]

20 **CHAIRPERSON:** I am sorry Mr Pretorius, you say oversight was?

**MR JAFTA:** It was very uneven.

**CHAIRPERSON:** Oversight on the part of ...[intervenes]

**MR JAFTA:** Oversight to give an example Chair ...[intervenes]

**CHAIRPERSON:** DG giving oversight, Minister giving oversight, Parliament giving oversight, that is what I am trying to establish.

**MR JAFTA:** Okay there is oversight Chair by the Accounting Officer, there is oversight by the Minister.

**CHAIRPERSON:** Ja.

**MR JAFTA:** The Inspector General and the ...[intervenes]

**CHAIRPERSON:** Ja, yes.

**MR JAFTA:** That was extremely uneven.

10 **CHAIRPERSON:** So when you say it was uneven you say, you mean that coming from a certain power source it might be quite strong but another source who is supposed to also provide oversight it might be very weak.

**MR JAFTA:** Yes.

**CHAIRPERSON:** Maybe almost non-existent.

**MR JAFTA:** Yes.

**CHAIRPERSON:** And so that is what you mean?

**MR JAFTA:** Yes.

**CHAIRPERSON:** Okay, right.

20 **ADV PRETORIUS SC:** And these issues relating to oversight, executive overreach I presume took place over a long period of time?

**MR JAFTA:** Yes when ...[intervenes]

**ADV PRETORIUS SC:** We are not talking of a particular incident?

**MR JAFTA:** Yes, yes.

**ADV PRETORIUS SC:** You say that on arrival you would have discovered these matters, did you call for briefings?

**MR JAFTA:** Yes, I called for briefings from various entities within the State Security Agency and it is in processing and analysing those reports that – and obviously validating that you determine that but there is a weakness here, there is a weakness here, why are things done this way and not done that way.

10 **ADV PRETORIUS SC:** Can you recall what the Chief Financial Officer told you on your arrival?

**MR JAFTA:** It was one of the very first things I called for because as I indicate a moment earlier you follow the money. A distinct one I remember Mr Pretorius and Chair is that – and it arose from the fact that most people owed the Agency money, it was that when a member, and I suppose this is true throughout the Public Service, when you ...[indistinct] you are given a temporary advance, that is for accommodation, food and, and, and. What then  
20 happened in our instance was that they would take a funding instrument for – they would take the temporary advance and use it as a funding instrument for projects, so in essence what that means is that you come up with a project, you cost it, the project is worth R10million. Through using the temporary advance instrument they

would give you R10million in cash.

Now you implement the project over a period of time and you settle at the end, and that is why then once they Loyiso R10million my name would be immediately on the register, now I owe the organisation R10million, whereas the proper approach, which has always been there since 1995, is that you cost your project as you build the foundation you tender an invoice, we give you money for the foundation, you erect the walls, you tender an invoice,  
10 you pay for it and so on and until the house is fully built up, you don't give Loyiso R10million to walk out the gate with a sum of R10million cash and you have no control. It is just a wrong way of doing things, that is ...[intervenes]

**ADV PRETORIUS SC:** We may hear more evidence of that in due course, but I think as I understand it you are saying there was insufficient recording and documentation to justify the release of cash monies within the system, is that correct?

**MR JAFTA:** That is correct ja.

20 **CHAIRPERSON:** But I think you say more than that, you say the correct principles were not followed, or were not complied with, the principle in the example that you are giving was you should not be given the whole amount for the whole project at a time, you should be given on stages in accordance with the progress that you are making in

your project and this principle was being breached, ja, okay.

**MR JAFTA:** I think Chair it is what I said right at the beginning that complying with the law, with the Constitution was elective, if it is ...[intervenes]

**CHAIRPERSON:** If it is inconvenient ...[intervenes]

**MR JAFTA:** If it is inconvenient to go around it.

**CHAIRPERSON:** Ja.

**MR JAFTA:** It is not that the constitution it is not there.

10 It is not that the constitution doesn't provide that you can only establish intelligence by legislation, just put that clause, it is like a work document, you delete that clause.

**CHAIRPERSON:** So it is just that this constitution and this law is not helping us.

**MR JAFTA:** It is a work document and you can amend as you go along.

**CHAIRPERSON:** [laughing]. Ja.

**ADV PRETORIUS SC:** Did you institute or order that any investigations take place after you learnt of the situation  
20 on your arrival?

**MR JAFTA:** Most definitely I did, I did.

**ADV PRETORIUS SC:** And we will come to those in a moment. In paragraph 6 you refer to the report of the high level review panel, that's the panel chaired by Dr Mufamadi, and you referred to five high level answers to



the questions that the panel raised what went wrong. From your own knowledge and experience you highlight five issues or high level answers that the panel identified, what is your own view of those five points that appear at paragraph 6 of your affidavit?

**MR JAFTA:** The first point is around the politicisation of the State Security Agency. This is fact, there are – and this is how I understand it was manifested itself and you see it in the projects that were being run. There are  
10 monies that left the agency for the purposes of funding political activity principally within the African National Congress, and often when you drill into it, it is not funding the African National Congress credibly, it is to fund activities authored by a particular faction within the African National Congress.

So there would be monies disbursed for that purpose, there would be operations intended to if you will to drill into the credibility of those who were not on the faction, but that is within the African National Congress.

20 You then have another situation where particularly whenever we go towards an election there would be projects that would be intended and funded to enhance the political fortunes of the ANC and these projects were prosecuted. Now if you go to – this is a matter of public record once again, there's ample which at the time

appeared to be quite strong compared to the NUM and the State Security Agency is used, is employed to found an alternative union that would weaken CAMCU around the platinum belt and then there's – so what I am saying Chair is there is politicisation that manifests itself on participating in inter-ANC activities and now I am into civil society and then you have got projects that talk to, and some of these things ...[indistinct] they talk to the ...[indistinct], they talk to the point I was talking about  
 10 earlier the uneven effectiveness of compliance assurance instruments.

Then you have got projects where a media, and it is established, and the State Security Agency is employed to fund that. Now nowhere in the mandate of the State Security Agency do you find that the lawmaker anticipated that this entity would also fund a media entity within South Africa, towards what end? There must be a political objective.

Then there is – I am sure Dr Mufamadi spoke to  
 20 this, there is a project Justice intended in part to influence the judiciary. I put it in this category on purpose because by the time you have a project intended to influence the judiciary it presupposes that there is other work that has been done and the determination has since then been made that to ...[indistinct] whatever in there is with the

judiciary you need to influence the judiciary. I don't know if I am putting this thing across well.

So it is quite okay to be quite shocked at the fact that there is project justice intended to influence the judiciary by an intelligence agency but then the question is what did – what happened to arrive at this solution that is being implemented in this fashion. So you have to assume that the judiciary was a target for intelligence operations.

10           Now that can only be political. The constitution provides measures, processes, institutions to deal with eloquence centred around the judiciary, be it court rulings or *juris* behaviour of whatever nature by those on the bench. It is nowhere anticipated in our constitutional construct that intelligence would be employed to influence the judiciary. If anything intelligence should alert the judiciary to say Deputy Chief Justice Zondo your distant  
20           cousin or a friend to your son is in fact a member of a syndicate, you ought to be careful about this, that conversation with the Ambassador of Amazon is not a good intention person, that sort of thing, but to influence the judiciary in the manner in which this was done, this is how politicisation manifests itself.

The ...[indistinct] Chair these examples straddle these things.

National Security has outlined at least in the values and the principles in the constitution doesn't sit comfortable with a definition of the entity as a State Security. The emphasis is on safeguarding and advancing the interest of the nation and not necessarily of the State. Theoretically the State exists for the nation, but the emphasis must not be on the State, it must be on national interest, and you do that well if you locate it in absolute respect and adherence to the letter and the spirit of the  
10 constitution.

And so for me several of the wrongs that were witnessed derived from moving from National Security to State Security.

Now once you say State Security by definition you are gravitating close to the person of the Head of State and that is always the risk, so if there is politicisation and there is this shift inevitably and maybe even inadvertently you could easily end up with regime security instead of national security, so you exist to protect the fortunes of the  
20 regime and not national security, so it is a construct that is – it appears as an academic construct or level of obstruction but these are important principles.

The third point raised in that paragraph Chair is around amalgamation. The situation got obtained after 95, this aggregated responsibility and authority/power over the

conduct of intelligence, for National Intelligence, National Intelligence Agency with a domestic mandate, South African Secret Service with an external mandate and the signals intelligence which is focused outside the country and there is office for interception centres, which is – bring interceptions on the basis of an authorisation.

What happens with 2009 is that all of that authority which had been disbursed is now concentrated in one pair of hands. The best democracies in the world, viewed from  
10 the point of view of ...[indistinct], the spirit of our constitution don't have that construct of having all of this authority located in one pair of hands, because of the inherent risk and I suppose this is something that we will talk to Mr Pretorius, secrecy. To work in secret as is absolutely necessary for intelligence. If you have that in one or two or three places with this kind of a construct ...[indistinct] become easy to do, and the risk here is that  
Chair this is real authority, this not abstract, this is not theoretical, this is real authority, you can or I can  
20 destabilise South Africa, and destabilise other countries in the region by virtue of the fact that I have the authority over all intelligence operations of the State Security Agency within and without ...[indistinct] and that makes it difficult for effective oversight.

Secrecy we can't do without secrecy, it is absolutely

necessary. The problem is not the secrecy, not at all, the problem is when there is no effective oversight over elements of that secrecy then secrecy is not transparent, in the eyes of those responsible for oversight and because there is no transparency accountability is going to be subtracted from quite considerably, so secrecy requires a very measured degree of transparency and very robust accountability. When those two are not rigorous enough secrecy becomes a problem, but of itself it is not a  
10 problem.

The last point Mr Pretorius is resource abuse. Resource – my experience tells me that all ...[indistinct] talks about money. Yes to be sure I believe money was stolen, people enriched themselves, very fictitious projects could have been implemented, and we have got evidence to prove that, but there is other resources that were abused, and this talks to assets, firearms, these are resources of the State Security Agency, of the State, the State gives us these firearms in order for us to discharge  
20 our responsibilities, from the defensive point of view, I must clarify and because our members if they operate in a very rude environment they have got to be able to protect themselves, but when you are in a situation where firearms of the State are then given out to non SAA members in a manner that is completely outside the relevant prescripts

that constitute resource abuse.

When you have got personnel of the Agency being deployed to carry out responsibilities that fall outside the mandate of the State Security Agency that is an abuse of those resources, of such personnel. When you have got fixed assets or immoveable assets that get registered in the name of Advocate Ntsebeza, and they become part of his estate, that is resource abuse and we have got those, I am by no means suggesting that he is sitting with an asset  
10 base that was funded by the SSA.

**CHAIRPERSON:** You thought you should clarify that lest you may be sued.

**MR JAFTA:** Yes.

**CHAIRPERSON:** [laughing]

**MR JAFTA:** But over and above that Chair those five bullet points I would plead that they be understood together with the input I made about which is systemic this compliance assurance instruments, the spectre of illegal instructions, executive overreach, all of those have got to  
20 be, they have got to be added together with these five bullet points on paragraph ...[intervenes]

**ADV PRETORIUS SC:** We will deal with those and perhaps this is a convenient time to take the long adjournment.

**CHAIRPERSON:** Yes, we will take the lunch adjournment

now, it is five past one, ordinarily we would resume at five past two, but I am just going to add a little bit more time to enable me to attend to something, so let us resume at twenty past two.

**ADV PRETORIUS SC:** Thank you Chair.

**CHAIRPERSON:** We adjourn.

**REGISTRAR:** All rise.

**INQUIRY ADJOURNS**

**INQUIRY RESUMES**

10 **CHAIRPERSON:** What I needed to attend to took longer than I thought. So we are starting much later than twenty past. Okay let us proceed thank you.

**ADV PRETORIUS SC:** Thank you Chair.

**CHAIRPERSON:** Hm.

**ADV PRETORIUS SC:** Mr Jafta in paragraph 7 of your affidavit you deal in a little more detail with the issue of the doctrinal shift. Do you have anything to add in that regard?

**MR JAFTA:** No nothing else to add there thank you.

20 **ADV PRETORIUS SC:** Would you deal with the evidence in paragraph 8 please Mr Jafta particularly where you set out the tasks that you had to undertake? I am taking off as Director General or acting Director General you deal with in paragraph 8.

**MR JAFTA:** Yes. Would that be the paragraph dealing with corrective measures?



**ADV PRETORIUS SC:** Yes you – well perhaps we should just go back to paragraph 7.

**MR JAFTA:** Yes.

**ADV PRETORIUS SC:** And you highlight there the features of a reversion to a doctrine of State Security.

**MR JAFTA:** Yes.

**ADV PRETORIUS SC:** And what you describe there as State Security serving or whose interests you describe there as State Security Serving – what are those?

10 **MR JAFTA:** I would – I would be repeating what I had said earlier about the State Security Agency being involved in political activities of the African National Congress particularly factions aver in and in civil society organisations, media entities etcetera. Because those were intended to enhance the political fortunes of the – of the party.

Then there is the issue referred to in respect to the person of the President. I would like to make...

20 **CHAIRPERSON:** I am sorry just – just repeat that if you face this side.

**MR JAFTA:** Oh.

**CHAIRPERSON:** It will make it easy for me to hear you.

**MR JAFTA:** Sorry. Yes I am very, very sorry about that.

**CHAIRPERSON:** Okay. Ja I did not hear the part where you said with regard to the President or something.

**MR JAFTA:** Oh yes I was – I was getting to that point Chairperson my apologies. The issue around the person of the President I would like to split it into his or her – his capacity as a private citizen and his public personality as the President of the Party and the President of the Republic.

And these can be quite interchangeable. Now most definitely when you – when you assist advance the political agenda of a faction associated with the President you – you assist in a sense his personal ends and his private person.

10 But there are instances where most definitely our activities really responded to the personal interest of the President in his private capacity.

And ...

**CHAIRPERSON:** And of course it becomes important to – unless the context makes it clear which President you are talking about it is important to indicate. You might be talking about the current President who has been President from 2018.

**MR JAFTA:** Yes.

20 **MR JAFTA:** You might be talking about the period before that during Mr Jacob Zuma's Presidency. You might well be talking about the period before. So it becomes important so that it is clear which President we are talking about at any particular time.

**MR JAFTA:** Thank you Chair. I am talking specifically about

President Jacob Zuma the then President Jacob Zuma. There was – there was even reported in the media an attempted murder I will call it of former President Zuma allegedly by his wife. And this matter was investigated by among others the State Security Agency.

It is a private through public matter because he is President you do not know whether he is being poisoned for being President or he has been poisoned because of domestic considerations.

10 But anyway the State Security Agency then was involved in that investigation. And in essence then Ms Zuma then was in essence put in the custody of the State Security Agency. In simple terms ...

**CHAIRPERSON:** That is Ms Manthule Zuma.

**MR JAFTA:** Yes Ms Manthule Zuma yes.

**CHAIRPERSON:** Okay.

**MR JAFTA:** In essence then he was – he was not in remand detention so to speak without having gone through the due processes that lead one to being remand...

20 **CHAIRPERSON:** She was kept there against her will.

**MR JAFTA:** I absolutely believe against her will.

**CHAIRPERSON:** Was that – yes. Yes.

**MR JAFTA:** I absolutely believe against her will.

**CHAIRPERSON:** Yes.

**MR JAFTA:** And there is sufficient evidence at – that points

at her being disagreeable to the circumstances she found herself in. And this is an example I am making about him as a private individual and as President of – of the Republic.

**CHAIRPERSON:** I know I am interrupting you and you must not lose your train of thought. If she was kept there against her will that would be quite serious. That would be quite a – because then it would be detention.

**MR JAFTA:** Yes.

**CHAIRPERSON:** By an organ of state in circumstances  
10 where no law allowed the organ of state to detain her. It would be quite serious.

**MR JAFTA:** Yes.

**CHAIRPERSON:** Yes. Okay continue.

**MR JAFTA:** It is – it is that example and I am saying Chair it straddles if my attempt is legitimate it straddles both the private and the public person of President Zuma.

I may say – I have to say not may I have to say in general Chair it is very difficult to determine in absolute – with absolute certainty that a President has actually said  
20 Loyiso go and do this.

**CHAIRPERSON:** Sorry just repeat that.

**MR JAFTA:** That a President has actually given an instruction that.

**CHAIRPERSON:** Yes.

**MR JAFTA:** Do this.

**CHAIRPERSON:** Ja, ja, ja.

**MR JAFTA:** It does happen quite a lot and it must have happened that functionaries at various levels would anticipate what would be agreeable to the person of the President.

**CHAIRPERSON:** What would please the President.

**MR JAFTA:** What would please the President and take such initiatives.

**CHAIRPERSON:** Yes.

10 **MR JAFTA:** Regardless of what the law says. So I do not want to create an impression that former President Jacob Zuma was always aware and consented to many of the things that were done presumably for his benefit either in his private capacity or in his public capacity.

And I am for – I am putting this by – I am foregrounding the point I am going to make by making the statement I have just made. There is an intervention that gets instituted within the State Security Agency to establish a parallel vetting entity and exercise.

20 The logic behind it is that the formal vetting infrastructure takes rather too long to respond to emergent appoint – emergency appointment or appointments that need to be made rapidly by the President. And therefore you sort of need a drive through process if you will to vetting.

And this gets said quite explicitly. We were

responding to a frustration that the President has experienced. I am absolutely certain President Zuma I have not seen – I have not heard anybody saying he instructed that this drive through process must be put in place.

But what that parallel vetting exercise does is that it – it subtracts quite substantially from the integrity and the purpose of vetting.

So as a consequence there are people who get processed and I am not exaggerating within three days which  
10 is – which is an absurdity.

**CHAIRPERSON:** Too quickly.

**MR JAFTA:** It is literally a drive through process.

**CHAIRPERSON:** Hm.

**MR JAFTA:** Too rapidly. And therefore the appointments by the President real or perceived will happen but they will not be underpinned by proper vetting. And this is done as I indicate for the benefit of the President certainly in this instance in his public capacity.

Those are the examples I am – I am making in these  
20 instances.

**CHAIRPERSON:** Would that vetting – parallel vetting be against the law? I ask that question because I imagine that you could have let us say a unit that is supposed to provide vetting and that is the official unit and they have got different desks.

**MR JAFTA:** Yes.

**CHAIRPERSON:** And then having had this concern of frustration on the part of the President they might just create another desk within the same unit.

**MR JAFTA:** Yes.

**CHAIRPERSON:** And say whenever there is a request from the President for somebody to be vetted they will be channelled to this desk and those who help in this desk must know that those requests must be dealt with expeditiously.

10 So that you – there might not be a law that is being breached.

**MR JAFTA:** Yes.

**CHAIRPERSON:** But it is a special dispensation

**MR JAFTA:** Yes.

**CHAIRPERSON:** Maybe on other grounds other than law one may criticise it but maybe one can say it is understandable. Is – the one you are talking about would it be against any particular law?

20 **MR JAFTA:** The one I am talking about Chair is if – if the construct agreed to have been in accordance with your example that would have been fine. The problem is when you – when you created within Special Operations.

**CHAIRPERSON:** Yes.

**MR JAFTA:** And not within the vetting outside.

**CHAIRPERSON:** Outside of.

**MR JAFTA:** Outside of this.

**CHAIRPERSON:** Ja okay.

**MR JAFTA:** And the prescripts that govern this exercise within the Special Operations environment.

**CHAIRPERSON:** Are different.

**MR JAFTA:** Are completely different from ...

**CHAIRPERSON:** The ones that...

**MR JAFTA:** From the norm.

**CHAIRPERSON:** Are supposed to be applied.

10 **MR JAFTA:** Yes.

**CHAIRPERSON:** Ja okay.

**MR JAFTA:** But that is why I said parallel.

**CHAIRPERSON:** Yes okay.

**MR JAFTA:** It is not – it is not...

**CHAIRPERSON:** It is an extension of the existing one.

**MR JAFTA:** No, no. It is completely parallel.

**CHAIRPERSON:** ja.

**MR JAFTA:** The Clearance Certificate.

**CHAIRPERSON:** Ja.

20 **MR JAFTA:** Is not the same as this one.

**CHAIRPERSON:** Ja.

**MR JAFTA:** This is completely fake. This is completely fake.

**CHAIRPERSON:** Okay.

**MR JAFTA:** Yes.



**CHAIRPERSON:** Okay.

**ADV PRETORIUS SC:** You say in paragraph 8 Mr Jafta that during your tenure at the helm of the Agency you have been seized with curing the systemic ills that underlie the challenges identified in correcting the governance failures by putting in place systems and processes and controls to support clean governance. And you then refer in that context to the Office of the Director General and to certain steps that you have taken at the bottom of paragraph 8.1 and  
10 in paragraph 8.2 could you deal briefly with that please?

**MR JAFTA:** The – I will deal with paragraph 8 together with what is also outlined in a fair amount of detail from 17.1 because those speak to the interventions.

The first thing to do obviously was to restore the systems for corporate governance. And in that regard one of the very first instructions – directives was everybody who owed money consequent to the process I had outlined earlier had to return money to the organisation.

That was the first thing.

20 And then the second thing was to say we shall henceforth fund activities in accordance with approved prescripts. Temporary advance would be temporary advance. Instruments for funding projects would – that were approved and in place were going to be restored and everybody was going to operate in accordance with those –

with those prescripts.

The third directive was to institute an investigation into these wrongs with the particular emphasis not so much at establishing the what but how it happened and what possible solutions could be put in place to – the better to ensure that the problems do not recur.

It is in that context then that we – I arrive at the determination that in fact the compliance assurance instruments are defective in the manner in which they exist  
10 and function and function now.

There is another matter which is – which is quite important which we also implemented and this Chair has to do with the fact that the rennet of the Auditor General did not include conducting audits on covert – on the covert side of our existence and business.

And there were good reasons for that but that was a material defect. And therefore we sought to cure that defect by engaging internal people operational and administrative particularly in the realm of finance, the external auditors,  
20 officials from the Office of the Auditor General to do a benchmarking visit abroad comparative – comparable agencies that have – that are more mature.

The purpose was to make sure that we respond to the recommendation of the high level review panel to expand the rennet of the Auditor General so that the Auditor General

also scrutinises all activities in the covert space of our business and existence.

And as of this past financial year the fact is the Auditor General has already audited us in respect to the A-Z of our existence including the covert environment.

So those are some of the systemic – the systemic challenges that have been – that have been attended to. Obviously the one that is outstanding is this one about the compliance assurance instruments. That has to be – that has  
10 still to be crafted and approved in terms of what would be the ideal extent of autonomy of such relative to the executive and the Accounting Officer and would do their report too.

**CHAIRPERSON:** Does what you have just tell me in respect of the Auditor General mean that maybe for the first time this year or last year – the last financial year that the Auditor General has now – is now able to audit as much as needs to be audited?

**MR JAFTA:** Yes.

**CHAIRPERSON:** Under SSA.

20 **MR JAFTA:** Certainly Chairperson.

**CHAIRPERSON:** Would now be kind of hindrances that we heard about yesterday.

**MR JAFTA:** Certainly Chair in respect to the financial year 1920 the Audit exercise also went into the covert area of our business.

**CHAIRPERSON**: Okay. Okay.

**MR JAFTA**: Yes.

**CHAIRPERSON**: Okay.

**ADV PRETORIUS SC**: And is that regime in accordance with at least some international precedent?

**MR JAFTA**: Absolutely.

**CHAIRPERSON**: Yes.

**MR JAFTA**: This was done after the benchmarking visit. I may – I may just add as well that but for the novel Corona  
10 Virus Pandemic we would have visited three or more other jurisdictions for that same purpose so that when we craft an approach that would be suitable for our jurisdiction we would have sufficient comparable experience of how these things are done elsewhere in the world.

The point about it Chair is to recap what I said earlier in respect to the bullet point on secrecy. You have to strive for transparency to the oversight entities the better to ensure more robust and rigorous oversight. Those two most definitely better effectiveness. The more oversight the more  
20 rigorous and robust it is the more transparency there is in respect to the relevant oversight structures the better you are going to be.

Because it provides clarity about what you should and what you should not do. There should not be any ambiguity about that.

**CHAIRPERSON:** Okay, okay.

**MR JAFTA:** Yes.

**ADV PRETORIUS SC:** You then deal in paragraph 9 Mr Jafta with the policy and architecture that occurred firstly in 2009 and then has been built with at least to a certain extent and you can describe to the Chair how in 2018. In paragraph 9 you talk about what happened in 2009 and in paragraph 10 you describe the position that was in accordance with the White Paper on Intelligence prior to 2009. I think you have  
10 described that already in your evidence do you have anything to add?

**MR JAFTA:** No I do not have anything else to add on the architecture that obtained before 2009.

**ADV PRETORIUS SC:** Yes. I think the important point that you make in paragraph 10 perhaps if I can suggest Mr Jafta is that the architecture of the Civilian Intelligence Structure prior to 2009 was in fact based on the White Paper on Intelligence and therefore on the constitution as well.

**MR JAFTA:** Yes absolutely. Yes.

20 **ADV PRETORIUS SC:** Apart from the principled approach to the structures pre-2009 and post 2009 what did you notice in relation to the amalgamated Intelligence Service that you came across in 2018? You deal with that in paragraph 11.

**MR JAFTA:** The – the major difference between before 2009 and post 2009 is the concentration of considerable authority

in the eyes of the Accounting Officer of the State Security Agency.

And personally I cannot overemphasise the magnitude of that authority to conduct operations within and without the Republic and to have direct authority over all of the branches.

The 2000 – the pre-2009 architecture had a distinct Domestic Intelligence Agency with its own Accounting Officer. The Accounting Officer for the Foreign Intelligence  
10 Agency with the South African Secret Service. The two respective heads coordinated in the greater their activities the assessments and everything else but one was not subordinated to the other and from an oversight point of view you knew where to go to in respect of Domestic and you knew the A-Z about Domestic as distinct from Foreign.

And you could not move resources between the Foreign Agency and the Domestic Agency nor could you have an official in the Domestic realm operating without the Republic.

20 Further to that the two heads had no direct authority over the Signals Agency. There was a separate head for that entity who coordinated particularly with a foreign branch because signals operates without the Republic.

**ADV PRETORIUS SC:** And signals is really interception of communications.

**MR JAFTA:** Signals is interceptions yes. Yes. So has to coordinate closer with the Foreign branch because both of them are operating outside the Republic.

The office for Interception Centres which also is into interception only gets activated once the designated Judge approves that an interception can take place. So that is not a problem.

The risk with the current architecture is that one DG has authority over the Domestic, the Foreign and the Signals  
10 and that concentration of authority is prone to abuse. It is not – it is prone to abuse. It is conceptually you cannot say by definition it is going to result to abuse but you leave it like that there is going to be abuse.

I simply ascribe to the principle of separating which is what the high level review panel proposed and was agreed to by the President.

The current architecture problems with it are no different to a degree from the problems that existed prior to 1994 where you had the National Intelligence Service that  
20 had both the Domestic and the Foreign mandate and the Signals mandate under the one – under one Director General.

And we sought of know what can happen and what happened with that kind of an architecture. And I am drawing the attention of the Chair to that pre-'94 architecture

to illustrate the point that some of the exercises we experienced cannot be viewed outside the context of this architecture. To be sure there are very material differences in terms of the adverse consequences of this – of this design post 2009 and pre-1994. There is no question about it. But the architecture itself has got very, very big systemic problems.

**ADV PRETORIUS SC:** Then Mr Jafta you say in paragraph 11 that the amalgamation and the abolition of the two  
10 separate positions of directors or Domestic and Foreign branches that occurred as a result of the implementation of the strategic development plan. Was that plan stopped?

**MR JAFTA:** The plan was stopped in rather very curious circumstances because when we had the occasion to meet with the then Joint Standing Committee on Intelligence and there was reference made to that it is called the Joint Standing Committee on Intelligence unequivocally said they had received the briefing conduct. They had yet to comment on it and give approval to it or in respect thereto. And  
20 because they have not, if you will, approved it, it could not be proceeded with. And as a consequence thereof, the STB was stopped.

**ADV PRETORIUS SC:** Right.

**MR JAFTA:** But there were other reasons for it being stopped.



**ADV PRETORIUS SC:** You deal in paragraph 12 with oversight. And in dealing with what you say in paragraph 12. Would it be fair to ask you to comment on why the Joint Standing Committee of Intelligence did not see or learn of what was happening with the State Security Agency in the period that we are reviewing and take steps to halt it?

**MR JAFTA:** Yes. I will only give, if there is such a thing Chair, an educated guess. One, I am of the view that some of the oversight committees of the legislature, the National  
10 Assembly and the Council of Provinces and in our case, the Joint Standing Committee of Intelligence, are not appropriately equipped with research capacity.

You do not find assisting the JSCI capacities that knows enough about signals intelligence. What configurations are possible. How it operates. How it should or should not interact and integrate with the other intelligence agencies. So my experience is that, there is a problem with the resources available to the oversight structures.

And I have an opinion that this opinion of mine is true to  
20 a considerable degree of other committees and oversight bodies. That is one.

Two. When you have got activities of the nature I am talking to where, for instance, a parallel vetting entity is established. It is unlikely for the accounting officer to sight the oversight committees of such an undertaking.

And therefore we are back at secrecy if you will. Now that is one problem. Then there is the absence of the uneven effectiveness of the compliance assurance instruments. And I keep going back there Chair because it is an important issue.

I do not want to comment on whether there was political will on the part of the JSCI. I do not know. But I suspect that perhaps somebody in the Commission can assist the Commission with this.

10 I do seem to remember, I think it was the Speaker of the National Assembly, Max Sisulu, at the time, the morning or reporting that the JSCI had failed to tender a report to the National Assembly as required by law for more than one year.

I do not know for certain for how many years but I know for a fact that it is a couple of years wherein the JSCI did not tender reports. The question then would be. Had they been robust enough in exercising oversight?

**CHAIRPERSON:** Yes.

20 **MR JAFTA:** If they could not tender reports to the National Assembly.

**CHAIRPERSON:** Yes. And ultimately, if they did tender it, even if late after the expiry or whatever time, what explanation was given for them failing to do that at the appropriate time. So it raises all of those questions.

**MR JAFTA:** Yes. But the point I want to emphasise Chair is, in my view, they need to be better resourced. You cannot exercise ...[intervenes]

**CHAIRPERSON:** Well, your point about resources for Parliament for portfolio for various committees of Parliament is probably correct. I have those suspicions and I may have been told by one or other member of Parliament who has testified here, that there are those problems.

But there are – you can see a committee or a body that  
10 might not have enough resources but is trying the best they can to do the best they can with what they have.

So the question would always be that yes there may be a challenge about resources and maybe those should be improved but let us see what you could have done with what you have. What did you do? Did you do it? You know. So. Ja, okay.

**ADV PRETORIUS SC:** Yes. Perhaps we should not assume that everybody is aware of who sits on the Joint Standing Committee of Intelligence. Who does sit on the Joint  
20 Standing Committee of Intelligence?

**MR JAFTA:** It is elected public representatives of the National Assembly and the ...[intervenes]

**ADV PRETORIUS SC:** They are members of various political parties?

**MR JAFTA:** Yes, it is a multi-party.

**ADV PRETORIUS SC:** And if they believe they are under resourced. Would you agree that they have a responsibility to resource themselves to research their issues and to deal with their duties in an oversight committee early and responsible?

**MR JAFTA:** Yes, I would agree with that.

**ADV PRETORIUS SC:** And that goes for all political parties?

**MR JAFTA:** Yes.

10 **ADV PRETORIUS SC:** Yes. You have dealt with the position of the ITI. There is just one question. I presume that given the importance of the role of the ITI, that post should always be filled.

**MR JAFTA:** The presumption Chair is I think good intentions but unfortunately not, not factual. There is a period of two years I think even 2015 and 2017 when the post was vacant.

**ADV PRETORIUS SC:** That is a matter of concern, I take it?

20 **MR JAFTA:** Absolutely, yes.

**ADV PRETORIUS SC:** Yes.

**CHAIRPERSON:** I think I have lost you Mr Pretorius whereabouts are you now in his affidavit.

**ADV PRETORIUS SC:** We are at paragraph 12.

**CHAIRPERSON:** Oh, okay.

**ADV PRETORIUS SC:** And about to move to paragraph 13 where Mr Jafta draws a conclusion and describes as what he regards as the outcome of this amalgamation that occurred in 2009. Do you have anything to add there?

**MR JAFTA:** No, I do not have anything to add to paragraph 13.

**ADV PRETORIUS SC:** In paragraph 14, you talk ...[intervenes]

**CHAIRPERSON:** I am sorry Mr Pretorius. I do not want to  
10 forget this Mr Jafta. I am going to take you back considerable to in your evidence. Just one question. Where you were telling me about funds of the State Security Agency were used for a political party, the African National Congress of factions within the political party.

In terms of the records of the agency, the records in relation to what this money was taken for and was used for would, I take it, be vague or incorrect or misleading. They would not reveal that they were used for assisting a particular political party or factions or individuals within a  
20 political party.

**MR JAFTA:** Yes, Chair. They were appropriately or suitable disguised.

**CHAIRPERSON:** Ja.

**MR JAFTA:** But some of the disguise was – excuse the term ...[intervenes]

**CHAIRPERSON**: Not so smart.

**MR JAFTA**: It was comical.

**CHAIRPERSON**: [laughs]

**MR JAFTA**: It is almost like you are the project that starts with – I am just making an example.

**CHAIRPERSON**: H'm.

**MR JAFTA**: [Speaking vernacular] [00:10:37]

**CHAIRPERSON**: Sorry?

**MR JAFTA**: [Speaking vernacular] [00:10:39] I am making  
10 an example.

**CHAIRPERSON**: Yes, ja, ja.

**MR JAFTA**: So [Speaking vernacular] [00:10:44] and then the project [Speaking vernacular]

**CHAIRPERSON**: Ja, ja.

**MR JAFTA**: So you can draw a link.

**CHAIRPERSON**: Yes.

**MR JAFTA**: Or this was the ultimate objective.

**CHAIRPERSON**: Yes, yes.

**MR JAFTA**: Yes. We started here. This was a phase. And  
20 then ...[intervenes]

**CHAIRPERSON**: Yes, yes.

**MR JAFTA**: It creates some confidence that perhaps there would never have been any accountability.

**CHAIRPERSON**: Yes.

**MR JAFTA**: For the activities.

**CHAIRPERSON**: Yes.

**MR JAFTA**: Yes.

**CHAIRPERSON**: I think for the benefit of those who might not be conversant with isiZulu/isiXhosa. You might just have to give the Zulu or Xhosa meaning of [Speaking vernacular]

**MR JAFTA**: Chair, I must confess. You got me there. I would hope you would help me.

**CHAIRPERSON**: [laughs] Well, I it has got something to, it must come back.

10 **MR JAFTA**: It must come back and now ...[intervenes]

**CHAIRPERSON**: Ja, whatever it is.

**MR JAFTA**: Whatever it is, it must come back.

**CHAIRPERSON**: Ja.

**MR JAFTA**: And then ...[intervenes]

**CHAIRPERSON**: [Speaking vernacular] is about completing something.

**MR JAFTA**: Completing. Yes.

**CHAIRPERSON**: Ja.

**MR JAFTA**: Ja, something to that effect.

20 **CHAIRPERSON**: Okay. So Mr Pretorius, that is the idea that should give you ...[intervenes]

**ADV PRETORIUS SC**: Thank you. Noted Chair.

**CHAIRPERSON**: Ja. [laughs]

**ADV PRETORIUS SC**: In paragraph 14 you make a submission about a possible cure to the problems that you

have highlighted in relation to the architecture and amalgamation. What is that?

**MR JAFTA:** The proposal is what was agreed to by the president as a recommendation off the high level review panel which is to speed up the state Security Agency along the lines of what existed before 2009.

And that would be do you have a distinct - to you have one agency for a domestic environment and it must be very distinct from the one for foreign.

10 And the signals should also be distinct by working closely or more closer with the foreign than the domestic but that is what is referred to in paragraph 14.

**ADV PRETORIUS SC:** If I may just go back to the do you role of Parliament and the Joint Standing Committee of Intelligence. That issue is dealt with in the report of the High Level Review Panel. And at page 141 of YY2.

Chair, you need not go there unless you wish to. We can put it in front of you.

**CHAIRPERSON:** [No audible reply]

20 **ADV PRETORIUS SC:** The report reads and I will deal with just one paragraph. It reads:

“The JSCI Was unable to engage substantively with the panel. The panel was told that most of the committee members were new and have no institutional memory.”



**CHAIRPERSON:** I think, hang on. Let us your junior assists Mr Jafta.

**ADV PRETORIUS SC:** Do you have the passage there?

**MR JAFTA:** Yes, yes.

**ADV PRETORIUS SC:** It is the third paragraph on page 141. I will start again.

10 “The JSCI Was unable to engage substantively with the panel. The panel was told that most of the committee members were new and have no institutional memory.

In addition, the chair of the committee was changed thrice since 2014 and the process of replacement took time, rendering he committee wither less.

Members of the committee further pointed out that they do not serve on the committee on a full time basis and were only able to meet once a week for few hours.

20 The accumulative effect of these issues was aptly captured by one member who admitted that the committee had lost control of their oversight role and that three of their annual reports had not been presented to Parliament.”

I presume that you might have some knowledge of that or is that not so? It is a matter of concern that state of affairs, is it not?

**MR JAFTA:** Yes, it is. And thanks for that Mr Pretorius and Chair. I did indicate that a couple of years that the committee had failed to submit his reports to Parliament.

**ADV PRETORIUS SC:** I see.

**MR JAFTA:** And this excerpt confirms that for three years and that just indicates to a degree the magnitude of the problem.

**ADV PRETORIUS SC:** In paragraph 15, you talk of the limited remit of the Auditor-General of South Africa. You  
10 have dealt with that in some detail. Do you have anything to add?

**MR JAFTA:** No, I do not have anything more to add to this.

**ADV PRETORIUS SC:** Yes. But you do stress in paragraph 16 and you have told the Chair that the expansion of the oversight capacity or purview of the Auditor-General of South Africa is being implemented subject to reasonable considerations so as not to compromise operations.

**MR JAFTA:** [No audible reply]

**ADV PRETORIUS SC:** And as I understand it. That is one  
20 of the recommendations that came from the High Level Review Panel and was approved by the President. Is that correct?

**MR JAFTA:** That is correct.

**ADV PRETORIUS SC:** And that has been put into place?

**MR JAFTA:** Yes, yes.

**ADV PRETORIUS SC:** And in accordance to international –  
to some international president?

**MR JAFTA:** Yes, yes. It is an ongoing exercise Chair. Yes.

**ADV PRETORIUS SC:** Then in paragraph 17, you talk about  
administrative systems and processes for good and  
accountable governance. And in paragraph 17, you seem to  
suggest that the problem is not the absence of rules but  
rather the evasion of rules.

Do you have some comments to make in relation to  
10 paragraph 17 and particularly over the page, those three  
bullets?

**MR JAFTA:** I made an example earlier or earlier I referred  
to the abuse of funding instruments. This talks to that. But  
there is another important point to be made here Chair and I  
do not know how we can illustrate this point. There are two  
funding instruments, temporary advanced and the other one  
for operations.

Now we fund and we approve funding of operations on  
the basis of a detailed project plan, hear motivations, clearly  
20 outlined objectives and all of those things that should be on  
a project plan.

However, you then find a situation where – may I call  
this Chair a certificate – wherein a member would in the form  
of a certificate say something approximating the following.

I hereby request to be given a sum of R 10 million,

R 20 million to prosecute Project Symptoms. The costs thereof is R 20 million. Project Symptoms is consistent with the prescripts of the Constitution, the law. And the annual stamps of the organisation.

Something approximating that. And on the basis of the certificate, R 20 million will be given to me in hard cash and I will walk out of the gate with R 20 million in my bag or in the boot of my car.

I would then show up - the times vary, it could be two weeks, it could be two months, it could be six months. I would show up and draw up another certificate.

Project Symptom was duly prosecuted and the sum of R 20 million was expanded. The objectives have been satisfied. Full stop.

Alternatively say: However, the budget of R 20 million proofed to be small. I need an additional R 2 million. And on that basis, I will get an additional R 2 million and out the gate I walk.

And then tender another addendum of a similar nature that the additional R 2 million was expanded in accordance with this, that and the other. And this would suffice for dispersing funds and accounting for disbursed funds.

Chair, I kid you not. This is a reality. So stopping the abuse of the temporary advance and reverting back to the proper funding instrument immediately stopped the abuse of

at least financial resources.

And the intended operations that would be funded by that because the method I have just explained to the Chair would not suffice for any corporate entity under any circumstances. I do not know if ...[intervenes]

**CHAIRPERSON:** What is... Well, you see. A dispensation that allows taxpayers' money to be used like that, where the piece of paper that remains within the organisation which is supposed to reflect the justification for the money that has  
10 been given to somebody, that kind of dispensation which allows for the vaguest terms you can think of, cannot be allowed.

I can understand within the context of intelligence the idea that certain information must only be known by certain people but then it must be adequate information.

And certainly ought to be known to people, I would imagine, to the accounting officer because he or she must account, I would imagine.

So a system that allowed that, I struggle to think how  
20 anybody at anytime who may have been in charge would have though it is acceptable to have that dispensation.

Are you able to throw light, say maybe I am being too unfair to those who may have been in charge when that system was going on?

**MR JAFTA:** You are not being unfair Chair. You are

absolutely being very, very fair. The picture – I want to remind the Chair that very early on I did say compliance with the law, with the Constitution, in my view, with that I have seen and experienced was elective.

**CHAIRPERSON:** H'm.

**MR JAFTA:** I even used the dramatic expression that this was – whenever the Constitution and the law was proving an inconvenience, you will simply walk around it.

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

10 **MR JAFTA:** There are prescripts in place to fund projects but they are determined to be a nuisance in this instance.

**CHAIRPERSON:** H'm.

**MR JAFTA:** And people just walk around those. And permit for this method I have just explained which once it is adopted pleased everybody in the organisation who good corporate governance and political accountability.

Matter of fact Chair. Once you have systems of the nature I have just spoken to, by definition you have to hide that from the oversight entities. You have to hide it.

20 And you must massage. You must manipulate reports so that the oversight structures are none the wiser about the reality of what is going on.

And if they are under resourced and all the other reasons that were read out by Mr Pretorius the oversight structures are not likely to up this level of detail because

they just have to follow the money.

And alert oversight board would say but why is expenditure like this. and very, very quickly you will get to the source that the problem lies here.

My own sense Chair is. It was done on purpose. It was expedient for it to be done and it was done so brazenly that in fact I do not believe the people involved ever thought they would have to give accountability.

But more than that, it most definitely undermined our  
10 own integrity as an organisation in the eyes of the banking environment that we have to work with because you cannot have a relationship with a bank with money moves in that fashion, in that reckless fashion. It actually poses a risk to operations.

But Chair, this was done and it was not done for a week, it was not done for a month, it was done over a long period of time. And my submission ...[intervenes]

**CHAIRPERSON:** For a number of years.

**MR JAFTA:** It was done on purpose. The PMFA or any  
20 other law with common sense cannot reconcile with that kind of conduct.

**CHAIRPERSON:** But oversight bodies, maybe not so much those that may be outside of the department but I am thinking that the leadership of the organisation certainly at the level of DG, you cannot have a situation in your

organisation, I would imagine, where...

Because here from what I have heard and I am still to hear quite a lot I think, we are talking about large amounts of money, leave the organisation.

And it looks like you had to rely on somebody's word whether they were used for the purpose for which they were supposed to be used.

**MR JAFTA:** Yes.

**CHAIRPERSON:** Now it is just difficult to think of that, one,  
10 as the account officer you would not pick that up over  
sometime and you have picked him up, you would think it is  
okay. You understand what I mean?

**MR JAFTA:** Yes, yes.

**CHAIRPERSON:** Ja, ja. But you might – You have been in  
the position for about three years.

**MR JAFTA:** Just three years.

**CHAIRPERSON:** you might be able to say it is not so easy  
when you - so in terms of your predecessors, whoever they  
may be, you might be able to say: Well, it is not so easy to  
20 pick these things up. Are you able to comment?

**MR JAFTA:** Yes, it is very easy Chair to pick it up and to  
stop it.

**CHAIRPERSON:** Yes.

**MR JAFTA:** And I am speaking at least from experience.

**CHAIRPERSON:** Yes.



**MR JAFTA:** You just say one, we used the appropriate funding instrument.

**CHAIRPERSON:** Yes.

**MR JAFTA:** You stop this thing.

**CHAIRPERSON:** Yes.

**MR JAFTA:** We only fund in accordance with the organisational prescripts.

**CHAIRPERSON:** Yes.

**MR JAFTA:** And it stops.

10 **CHAIRPERSON:** Yes.

**MR JAFTA:** And it stops, Chair.

**CHAIRPERSON:** Yes.

**MR JAFTA:** May I say, Chair, and maybe we have to favour the Commission with that annual report. For the financial year '17/'18, R125 million could not be accounted for because ...[intervenes]

**CHAIRPERSON:** Yes, I have seen that in one of the affidavits, sir.

20 **MR JAFTA:** Because of this funding, because of this approach.

**CHAIRPERSON:** Yes.

**MR JAFTA:** To accounting.

**CHAIRPERSON:** Yes. Actually there is another figure, I think it is – I do not know if it is 1 billion or 2 billion that I have read in one of the affidavits which could not be

accounted for.

**MR JAFTA:** Yes.

**ADV PRETORIUS SC:** That is in relation to assets.

**CHAIRPERSON:** That is in relation to asset.

**ADV PRETORIUS SC:** 9 billion.

**CHAIRPERSON:** R9 billion. I mean, that is a lot of money. How could you have – or could government department not be able to account for R9 billion and I have a suspicion no heads rolled and – I mean, whatever the position is, this kind – this state of affairs simply cannot be allowed to continue. Whatever arguments there can be, this state of affairs were R9 billion of taxpayers' money and just disappear and government and the department cannot put anything on the table to say this is what it was used for, we are sure about that, because that money could have gone into a number of peoples' pockets who were not entitled to it and with R9 billion, imagine what you can do for people. Yes, thank you.

**ADV PRETORIUS SC:** Two issues arise out of your evidence in relation to paragraph 17. The one, Mr Jafta, is the problems which arise for legal accounting purposes, financial accounting purposes through the use of cash. Was this a problem that you identified?

**MR JAFTA:** Yes, absolutely.

**ADV PRETORIUS SC:** And what has been done about it?

**MR JAFTA:** Unavoidably we still have to use cash in the operational environment and please permit me, Chair, not to go into detail on why but we have to use ...[intervenes]

**CHAIRPERSON:** Ja, that is fine.

**MR JAFTA:** We have to use cash.

**CHAIRPERSON:** No, I understand.

**MR JAFTA:** Yes, yes. But what we most definitely do not do is to bring to our environment large amounts of cash that we hand over to people, we do not do that. We do not  
10 do that, ja.

**ADV PRETORIUS SC:** And you mentioned the documentation in the reporting chain in relation to a certificate which would evidence the receipt of cash, the handing over of cash to a certain project. Can I refer you to bundle SSA1 page 465?

**MR JAFTA:** Page 465.

**ADV PRETORIUS SC:** You asked that we show a certificate.

**MR JAFTA:** Yes, please.

20 **ADV PRETORIUS SC:** To the chair.

**CHAIRPERSON:** Registrar, get my bundle as well so I can see.

**ADV PRETORIUS SC:** Bundle 1, perhaps page 464.

**CHAIRPERSON:** Get the page – what is the page number, Mr Pretorius?

**ADV PRETORIUS SC:** 464.

**CHAIRPERSON:** 464.

**ADV PRETORIUS SC:** Now it would be useful and illustrative to put this on our overhead, Chair, but if I may just put on record what the certificate says.

**CHAIRPERSON:** Ja, that is fine.

**ADV PRETORIUS SC:** And then Mr Jafta can comment. It is a certificate of receiving cash, it has a document which has been declassified.

10 "Name of person giving cash"

And then you have a name.

"Amount R1.4 million, One Million Four Hundred Thousand Rand. Reason for giving cash ...[intervenes]

**CHAIRPERSON:** I am sorry, Mr Pretorius, it looks like you are reading from a page that is different from mine. Did you say 467 ...[intervenes]

**ADV PRETORIUS SC:** Have you got 464, black numbers, Chair?

20 **CHAIRPERSON:** Ja, 467.

**ADV PRETORIUS SC:** No, 464.

**CHAIRPERSON:** 464.

**ADV PRETORIUS SC:** Sorry, Chair.

**CHAIRPERSON:** Okay, I have got it.

**ADV PRETORIUS SC:** Alright, amount in words and then:

“Reason for giving cash: Project Maybuya,  
Ops:Justice.”

There is a signature, there is date, there is a name of recipient and a declaration:

“I declare that I am recipient of the above”

And there is a signature. So it seems to me that in the reporting chain, Mr Jafta, there would be other documents perhaps before and after but at this link in the chain at least this is the type of information that would justify  
10 handing over R1 400 000 in cash. Would you like to comment?

**MR JAFTA:** Yes, this is exactly, Chair, the kind of a certificate that would suffice for somebody to get ...[intervenes]

**CHAIRPERSON:** And this would be in the dispensation before you made whatever changes you made.

**MR JAFTA:** Yes, yes, yes.

**CHAIRPERSON:** Ja, okay.

**MR JAFTA:** Yes.

20 **CHAIRPERSON:** It is just broad in terms of the reason.

**MR JAFTA:** Yes.

**CHAIRPERSON:** It is just very broad.

**ADV PRETORIUS SC:** Well, let me put it to you, does that type of documentation with such sparse detail allow proper financial controls to be implemented?

**MR JAFTA:** It does not. It is not possible to account not just for the expenditure of monies but also for the proper management of operations and projects. Yes.

**ADV PRETORIUS SC:** Then if one looks at paragraph 18, you deal with a new issue and that is operations being conducted through the involvement of or from – as you say, from the office of the accounting officer. That is the DG's office. What do you have to say about that?

**MR JAFTA:** The point about it, Chair, is that ideally you  
10 should not have operations that are prosecuted from the office of the accounting officer for the simple reason that who is going to approve the projects that are run from the office of the accounting officer?

Elsewhere in the organisation there are very good systems in place for processing and recommending and approving projects.

Now when the accounting officer initiates a project and approves it, there is a risk of bias and because it is the accounting officer, the other compliance assurance  
20 instruments may not as robust as they otherwise would have been if the operation was conducted elsewhere in the organisation in the operational environment.

There will be instances where the accounting officer has to ensure proper coordination and that operations are given effect to but it is very risk when such operations are

conducted from the office of the accounting officer.

Part of the problem with it, Chair is that you possibly have a situation where the accounting officer determines a need, approves a project, the output of the project in the form of information serves before the accounting officer and possibly involves himself or herself in the analysis and the processing and the evaluation of the information that comes from his own office and possibly is likely to add on his own intelligence whereas properly  
10 you have to disaggregate the responsibilities, those who collect are not the same as those you do the analysis, the processing, the evaluation and then the information comes to the accounting officer for onward-forwarding to other relevant authorities in the apparatus of government or the state.

So there is that real risk with having operations being run from the office of the accounting officer. I may just also say that proof of this anxiety I am expressing lies in the fact that the R125 million that could not be  
20 accounted for in fact could not be accounted for are in respect to operations that were conducted from the office of the accounting officer.

**CHAIRPERSON:** So the amount related to operations that were run from the office of the accounting officer?

**MR JAFTA:** Yes, yes.

**CHAIRPERSON:** So – but, of course, the accounting officer is responsible for that.

**MR JAFTA:** Yes.

**CHAIRPERSON:** But you make the point that if the operation was not run from the office of the accounting officer and was being run from another unit there may have been enough checks.

**MR JAFTA:** Yes.

**CHAIRPERSON:** Which may well have made sure that the  
10 money was not – did not disappear without being accounted for.

**MR JAFTA:** I agree. Absolutely, Chair.

**CHAIRPERSON:** Ja, okay.

**MR JAFTA:** Yes.

**CHAIRPERSON:** Well, maybe I should ask the question, since – if the R125 million that disappeared without being accounted for related to operations that were run from the office of the accounting officer it ought to have been easy for action to be taken against the accounting officer to hold  
20 him accountable.

**MR JAFTA:** Yes.

**CHAIRPERSON:** Was that done, do you know?

**MR JAFTA:** I do not think that was done, Chair.

**CHAIRPERSON:** You do not know.

**MR JAFTA:** No.



**CHAIRPERSON:** Okay, alright. If action was taken would you not as somebody who goes into that office have had access to documentation or records that show that action was taken or is the position that you might not have checked?

**MR JAFTA:** The holding accounting officers is outside my province.

**CHAIRPERSON:** Falls outside.

**MR JAFTA:** Yes, yes, it falls outside my province.

10 **CHAIRPERSON:** Okay.

**MR JAFTA:** Yes.

**CHAIRPERSON:** Of course you would be entitled as the next accounting officer – I do not know whether it is the next or there may have been another one in between but, for what it is worth, I guess you would be entitled to say well, as the accounting officer of this department in 2021 I still want to know what action was taken, if any, about this money that went missing in this department. Would you not be able – entitled to...?

20 **MR JAFTA:** I would be able to ...

**CHAIRPERSON:** You would be entitled to.

**MR JAFTA:** I would be able to make that enquiry.

**CHAIRPERSON:** Okay, okay, alright.

**MR JAFTA:** But I will also, even far more importantly, spend a bit of time in trying to know definitively what was

the money used for, it is a lot of money.

**CHAIRPERSON:** Obviously, what the money was used for and recovering it.

**MR JAFTA:** Yes, yes.

**CHAIRPERSON:** Because it seems obvious that it was not used for an acceptable purpose.

**MR JAFTA:** Yes.

**CHAIRPERSON:** So then you would be wanting to take steps to recover but you would also be wanting to say what  
10 do we need to do to make sure that this kind of thing does not happen again.

**MR JAFTA:** Yes.

**CHAIRPERSON:** And to decide on those steps you might want to know what steps were taken last time because maybe steps that were taken are enough to deter others.

**MR JAFTA:** Yes.

**CHAIRPERSON:** So it looks to me you would be fully entitled to know.

**MR JAFTA:** To do that, yes.

20 **CHAIRPERSON:** Was any action taken.

**MR JAFTA:** Yes.

**CHAIRPERSON:** Ja, okay, Mr Pretorius?

**ADV PRETORIUS SC:** Perhaps another example – and the documentation in the bundle, Chair, will be dealt with in detail but by way of an illustration, if I can refer you to

bundle SSA1 at page 884 which is another document purporting to authorise the grant and receipt of monies, presumably cash.

**MR JAFTA:** Page? What page is it?

**ADV PRETORIUS SC:** 884. Perhaps we should not go there at the moment. Let us just go to 887.

**CHAIRPERSON:** That will not be recorded, Mr Pretorius, go closer to the mic.

**ADV PRETORIUS SC:** Yes, no I do not want to go to 884  
10 because a name appears there that has not been foreshadowed. If you would go to 887. That is the last page in the file.

**MR JAFTA:** Ja, ja, I am on it.

**ADV PRETORIUS SC:** Again part of the accounting trail, as it were. It is a handwritten document with amounts scribbled amounting to several million rand.

**CHAIRPERSON:** Well, this is one document that if there is no information there that is sensitive that could be shown on the screen.

20 **ADV PRETORIUS SC:** Yes, the evidence says that this is part of the paper trail, the accounting paper trail.

**CHAIRPERSON:** Yes.

**ADV PRETORIUS SC:** In accordance with which monies are handed over.

**CHAIRPERSON:** Yes. Yes, continue.

**ADV PRETORIUS SC:** Do you have anything to say about that?

**MR JAFTA:** No.

**ADV PRETORIUS SC:** Would it be an adequate justification of record of receipt or obtaining of monies?

**MR JAFTA:** The organisation in terms of standing prescripts for financial accounting would never accept this form for accounting for monies.

**CHAIRPERSON:** Yes.

10 **MR JAFTA:** Even if we are talking about R150, we would not accept accounting for a sum such as – at the top of that page, R19 million accounted for in this fashion.

**CHAIRPERSON:** Yes, I mean the top part, the date is given, it is – I think there is no harm in reading the date, 15 December 2017:

“Collected R19 million”

And then there is R5 million and there is R1,9 million, there is 900 000 and there is R360 and I do not know whether it is the names of the operations that appear  
20 against some of the amounts and then below on the second half of the page two dates are given, 13 December 2017 and 8 December 2017 and there is R2,5 million received, there is R2 million received, there is R2,4 million. I think the next one is R1 million, R30 000, R1,3 million. Ja, it is like money – cash just gets dished out to different people.

**ADV PRETORIUS SC:** That is an illustrative example but there will be more detailed evidence.

**CHAIRPERSON:** Yes, it like you can have R19 million, you can have R5 million, you can have R3 million and people take the cash and go and - I guess maybe some use it for legitimate purposes, others might not use it for legitimate purposes but the point is the financial controls, this is not the way to ensure that there is – that money is accounted for. Ja. Okay, Mr Pretorius?

10 **ADV PRETORIUS SC:** Perhaps you can assist the Chair in relation to an issue that arose in your evidence earlier. The Chief Financial Officer under whose jurisdiction many of the controls would have resided, was that office always permitted to fulfil his or her duties fully?

**MR JAFTA:** As far as I am aware yes and no, Chair. Some responsibilities were fulfilled in accordance with the prescripts, certainly on the non-operational side of our business but on the operational side of the business, I do believe that financial controls particularly at the level of  
20 the Chief Financial Officer, somebody with authority must have leaned on them and they possibly did not have an escape route the way it must have been – and they just allowed these things to happen. Ja.

**ADV PRETORIUS SC:** You talk at paragraph 19, Mr Jafta, of corrective measures and what you have done to rectify

the problems you came across. What were or are those corrective measures?

**MR JAFTA:** The first one, Chair, was an instruction that, as I had indicated earlier, that whoever appeared on the register of debtors must return money that belongs to the SSA and that happened ...[intervenes]

**CHAIRPERSON:** What would fall under that? What money would fall under that, was contemplated in terms of money to be returned. It was not loans, is it not?

10 **MR JAFTA:** Let me explain, Chair. If I travel to another country, to country miles, there is a framework that determines what my temporary advance should be in miles. So I would be given a temporary advance and then I come back after four days, the regulation is that within reasonable point of time, I think it is a day or two, I should have tendered invoices and account for all expenditures.

**CHAIRPERSON:** Ja, ja.

**MR JAFTA:** Accommodation and everything. I took a taxi, I account for that. Now to that extent because I have  
20 money of the organisation I am captured as somebody who is owing the organisation and once I tender all the invoices I have settled, now I do not owe anything. The problem then arises when, as I have indicated, when you fund projects through the temporary advance instrument. Then now, as we have just illustrated, I am in possession of R20

million that belongs to the state.

So when the CFO briefs me and we get to this item or this chapter in the briefing on debtors, I am astounded as to how anybody can owe a state department a some of R20 million.

It is at that point that then I get to know that a proper funding instrument was ignored and the temporary advance was employed for funding projects. So the instruction then was, everybody who owes the organisation  
10 money, because of this irregular arrangement, must return the money back to the organisation.

A bit of a painful exercise because now I have given Mr Pretorius R12 million twelve months ago for a project of 24 months. Now where is the money, the invoices cannot be reconciled and then he tells me no, my wife and I use one account, we settled the bond, we did this, we did – meanwhile I have said return all the money.

Now when I say return all the money it is with the proviso that we will continue to fund legitimate projects but  
20 the money must come back to the SSA.

So that is the first thing that we did. So I gave a directive, I think it was the second week or so of May 2018.

**CHAIRPERSON:** So returning the money included providing - accounting for the money by way of providing

receipts and so on.

**MR JAFTA:** Yes.

**CHAIRPERSON:** So it was not just about returning cash.

**MR JAFTA:** Yes, yes.

**CHAIRPERSON:** But it included returning cash where somebody might be in possession of cash that belongs to the organisation that should not be with them.

**MR JAFTA:** Yes.

**CHAIRPERSON:** Ja. Okay and then of course if I cannot  
10 account for the money, for the R2 million, R5 million or 10  
or even 20, that means I cannot return the money.

**MR JAFTA:** Yes.

**CHAIRPERSON:** And then what happens?

**MR JAFTA:** In that instance, Chair, the following  
happened and that is why I said it was a painful exercise,  
there are colleagues who obviously had used the money for  
purposes other than those for which the money was given  
to them. Now if you owe us a sum of money, in policy we  
can deduct up to an x percentage of your income per month  
20 towards settling your debt.

Now we would work it out with you that in fact  
Loyiso, now you are 53 years, you have left with 7 years  
before retirement, you can count how many more pay  
cheques are due to Loyiso and we will work out that listen,  
if we continue to deduct 15 000 from your salary, you



would not have paid this R1.5 million that you owe. In that case, because we were quite determined to get the money, we would agree that but it looks like your pensions have got a bit of fat relative to what you owe us, so it is prudent that you resign and then we access our money and bring it back to the fiscus.

And what you do should not really concern us because you have used that money, you are a million rand richer in any event, it should not be – and I must  
10 emphasise this point, it should not be that we were cruel with people, they have used 1 million, now they cannot pay it back, so they give us from their pensions because they are a million rand richer and then we will get our money in that fashion.

**CHAIRPERSON:** And has that largely worked or is it still too early to say?

**MR JAFTA:** It has worked, there are outstanding cases.

**CHAIRPERSON:** Yes.

**MR JAFTA:** Yes.

20 **CHAIRPERSON:** But it has worked in some cases.

**MR JAFTA:** It has worked, yes.

**CHAIRPERSON:** Okay.

**MR JAFTA:** The one thing we do not do is to write-off the debt and say - we do not write off the debit and say, you know, we do not write off the debt, yes.

**CHAIRPERSON:** Yes, ja, ja, ja.

**ADV PRETORIUS SC:** In paragraph 19, first bullet, you say illegal operations were terminated and you deal with that in detail in paragraph 19.1. If you will give some examples of the operations terminated please?

**MR JAFTA:** There is numerous of them, Chair, but one of them, for instance, would have been the protection services provided to Mr Collen Maine, Ms Dudu Myeni, the services that were put around Ms Ntuli-Zuma, that was  
10 terminated and several other ...[intervenes]

**ADV PRETORIUS SC:** The protection services to the President and Deputy President.

**MR JAFTA:** Obviously those were terminated.

**ADV PRETORIUS SC:** No, no, of the country.

**MR JAFTA:** Come again?

**ADV PRETORIUS SC:** You do not mention the security services to the President and the Deputy President provided by the SSA. I believe those have been terminated.

20 **MR JAFTA:** Of President of the Republic?

**ADV PRETORIUS SC:** Yes.

**MR JAFTA:** No, those would be provided by the South African Police Services.

**ADV PRETORIUS SC:** Yes but the SSA services ...[intervenes]

**CHAIRPERSON:** I think Mr Pretorius is talking about, the protection services that Mr – or Dr Mufamadi told us about yesterday in respect of the era of Mr Jacob Zuma, I think he said the State Security Agency appeared to be running some kind of protection services.

**MR JAFTA:** Oh.

**CHAIRPERSON:** Which were in addition to the protection provided by SAPS to the President.

**MR JAFTA:** Oh, ja, ja.

10 **CHAIRPERSON:** I think he is talking about that, whether that additional protection to the President and Deputy President – I do not know if there was Deputy President protection give.

**MR JAFTA:** Okay.

**CHAIRPERSON:** Whether that was terminated. I think that is what he is asking.

**ADV PRETORIUS SC:** Yes.

**MR JAFTA:** No, then that element of it was terminated.

20 **ADV PRETORIUS SC:** And then the second bullet in paragraph 19.1, what was terminated there?

**MR JAFTA:** The ...[intervenes]

**CHAIRPERSON:** But let us clarify this. Mr Pretorius might know better, he is the evidence leader, I did hear about that type of protection having been provided by the State Security Agency to Mr Zuma when he was President

in addition to the SAPS protection but I did not hear about such protection being provided by the State Security Agency to the Deputy President, whichever Deputy President Mr Pretorius may be talking about.

**ADV PRETORIUS SC:** What was the position, do you know?

**MR JAFTA:** The detail of it, Chair, is as follows. I cannot recall the precise date now but there was a project whereby members of the SSA would provide protection to  
10 the Presidential Jet Inkwazi.

**CHAIRPERSON:** Sorry, just say that again?

**MR JAFTA:** They would provide protection to the – they would secure the Presidential plane. Yes. Now the jet that the President uses is the property of the South African National Defence Force, the Air Force, in particular, but we had these members who would then be deployed to watch over the aircraft within the country and without the country and that is what was terminated without leaving the aircraft exposed. That is what was terminated, most definitely,  
20 yes.

**ADV PRETORIUS SC:** The evidence given by Dr Mufamadi was a little more detailed and he spoke of the training of security services personnel in a foreign country and he is being deployed for, amongst others, the President and the Deputy President. Do you know anything

about that? And I am talking about President Zuma and the Deputy President.

**MR JAFTA:** There are ...[intervenes]

**CHAIRPERSON:** Deputy President who?

**ADV PRETORIUS SC:** Well, it depends on the time.

**CHAIRPERSON:** It depends on the time, that is why it is... Well, before 2014 the Deputy President was President Motlanthe. From 2014 up to beginning of 2018 the Deputy President was Mr Ramaphosa. So it is important if we talk  
10 about the Deputy President having been provided with protection from the State Security Agency in addition to SAPS protection, we need to know which one we are talking about.

**ADV PRETORIUS SC:** Chair, may I intervene? This is not in the statement.

**CHAIRPERSON:** Oh.

**ADV PRETORIUS SC:** And it may be a legitimate question but no 3.3s have been issued to any Deputy President of whatever era.

20 **CHAIRPERSON:** Okay. No, I just wanted to make sure that we do not have a situation where somebody says you have implied that I received this protection when I did not because you did not explain which Deputy President or when, you know, but – we will clarify that.

**ADV PRETORIUS SC:** Ja, okay.

**CHAIRPERSON:** The issue of community-based organisations, what projects there were terminated?

**MR JAFTA:** There were projects particularly in the Western Cape where community-based organisations had been employed ...[intervenes]

**CHAIRPERSON:** I am sorry, Mr Pretorius and Mr Jafta, I would like us to take a short break and then we will continue afterwards. I meant for us to take a break at four. How long will we need when we come back, Mr Pretorius?

10 I am not putting pressure, I just want to have an idea. An hour?

**ADV PRETORIUS SC:** Less than an hour.

**CHAIRPERSON:** Ja, okay. No, that is alright. So we will just take a fifteen minutes break. We adjourn.

**INQUIRY ADJOURNS**

**INQUIRY RESUMES**

**CHAIRPERSON:** There was a small mishap.

**ADV PRETORIUS SC:** Yes, we understand.

20 **CHAIRPERSON:** But that is the risk of using old buildings.

**ADV PRETORIUS SC:** And old lifts.

**CHAIRPERSON:** Yes, but let's continue and ...[intervenes]

**ADV PRETORIUS SC:** Thank you Chair, I hope that is all in order.

**CHAIRPERSON:** No, no everything is in order, thank you.

**ADV PRETORIUS SC:** Paragraph 19.1 you talk of community based organisations established as a cover to influence political developments in the country, those projects being terminated?

**MR JAFTA:** Yes, yes, those projects it is a wide range of illegal what we have judged to have been illegal projects that were run, some of them using the format of community based organisations for party political ends, those were  
10 terminated...[intervenens].

**ADV PRETORIUS SC:** Give us one example without naming the perpetrators names but the – maybe those parties affected?

**MR JAFTA:** It would be – it would be, for instance, the example I made mention of around Rustenburg and the Platinum Belt establishing a union that would be terminated – it would be a project, I can think of one in the Western Cape where that was explicitly provided to improve the fortunes of the ANC within various  
20 communities around the Western Cape, that was terminated...[intervenens].

**ADV PRETORIUS SC:** And anything to do with the EFF?

**MR JAFTA:** No, nothing to do with EFF at all, ja and then there will be other forms of community based organisations or NGO's that we terminated, simply because they didn't –

they were not consistent with our legal mandate...[intervenes].

**ADV PRETORIUS SC:** They were not concerned...[intervenes].

**MR JAFTA:** They were not consistent with – the purposes were not consistent with our legal mandate, and those were terminated as well.

**ADV PRETORIUS SC:** Then – well, let’s just clarify one aspect. You say community based organisations  
10 established as a cover, did the SSA involved itself in the establishment of community based organisations?

**MR JAFTA:** Can you repeat that sir?

**ADV PRETORIUS SC:** You say – the second bullet in paragraph 19.1, you say,

“Amongst the operations terminated, was an operation or were operations involving community based organisations established as a cover to influence political developments in the country”.

**MR JAFTA:** Yes.

20 **ADV PRETORIUS SC:** Established by the SSA?

**MR JAFTA:** Yes.

**ADV PRETORIUS SC:** Right and then the next bullet says,

“Political Intelligence operations conducted outside the legal mandate of the agency”.



Would those be Intelligence operations in relation to political organisations or what operations were terminated?

**MR JAFTA:** There's intelligence – the operations that were – as I'd indicated, Chair, before lunch, within – dynamics within the ANC for an example would invariably lead to the SSA being or undertaking a project whereby they would conduct operations against other members of the ANC. Now, that would be Political Intelligence within  
10 the ANC and those are the kinds of projects that were, most definitely terminated.

**ADV PRETORIUS SC:** Terminated because they fell beyond the mandate of the SSA?

**MR JAFTA:** Yes.

**ADV PRETORIUS SC:** And, therefore, you're quite justified in talking about them?

**MR JAFTA:** Yes.

**ADV PRETORIUS SC:** Then in paragraph 19.2 you deal with terminating relations with persons utilised by the  
20 agency. You had mentioned this before, but do you have anything to add there?

**MR JAFTA:** There's a whole group of people who emerged, Chair, when I say we said people must return monies but will continue to fund projects, you'd find that there's a group of people in some part of the country and

this predominantly happened in Kwa-Zulu Natal and Gauteng, there would be a group of people – and obviously other provinces, there would be a group of people who would emerge and say, we have not been paid, you owe us this amount of money we are going to take you to court, we were working as a team because funding would have dried up and then it would be explained what the purpose of a particular project would be and if it does not satisfy the framework provided by the law, then funding would stop

10 and then these people would emerge one after the other and we would listen to each one of them. The Inspector General for Intelligence also listened to some of them. A great degree of coincidence between those that were listened to by the Inspector General for Intelligence and ourselves and in most of those cases we came to the correct decision that, whereas there has been some form of a relationship between the agency and such a relationship was unlawful or irregular and therefore we would find a way of parting ways with several of those people and then

20 there'd be people who would come up and say, we were taken to country X and we received this kind of training, we were awaiting integration into the SSA – employment to the SSA. I must say, Chair, it was quite painful because some of them had been recruited from permanent jobs and they came in some foreign jurisdictions but there are certain

processes that would not have been satisfied and then we would win them off and terminate the relationship with such people. So, it's that category, Chair, of people that – among others, those are the categories of people that we terminated relations. As a matter of fact, one even had a suspicion that, possibly, word had gone around that show up at the SSA, certain litigation, SSA will pay you. Such was the extent to which this problem presented itself of these groups of young people, yes.

10 **ADV PRETORIUS SC:** In 19.3.1 and 19.3.2 of your affidavit you talk of attempts to recover operational funds that had been given to members or people outside the agency and you say that, that process is ongoing, you've given extensive evidence in that regard, do you have anything to add?

**MR JAFTA:** No, I don't have anything else to add on that.

**ADV PRETORIUS SC:** You deal in, 19.3.3, with the problem of recovering firearms, that's pistols and assault rifles which members had kept in their custody in breach of  
20 Corporate Policy and you say that, for a number of years, no one within the agency Management knew where the firearms were stored and what they had been used for. Do you have any comment on that and in particular to say to the Chair, whether you were confident that all the firearms that were distributed as part of lawful or unlawful projects,

have now been recovered?

**MR JAFTA:** Chair, earlier when I was talking to abuse of resources, I made a distinction between abusing monies, abusing personnel and abusing assets such as firearms, cars and immovable assets, this relates to that but it is specific to firearms. There are prescripts in place that govern the management of firearms and ammunition in our possession. Notwithstanding, the existence of such prescripts which have not lapsed, firearms were taken out  
10 of our custody and these firearms were given to people in many instances or in some instances to non-members of the SSA. We tried, the best we could – this is, again, within, predominantly the special operations environment. We tried to get those firearms back into our custody and we did receive – or we collaborated with the office of the Inspector General and various entities within the agency. We were able to recover some firearms but we – in respect to ammunition, some of the ammunition that we recovered had clearly never belonged to the SSA and there is an  
20 ongoing investigation into, why – what happened to the ammunition of the SSA why are we receiving back ammunition that doesn't belong to us but in respect to the firearms that we've since recovered, all of them were surrendered for proper investigations – ballistic investigations within the South African Police Services, the

better to determine and satisfy ourselves that none of those had been used in any criminality in the country. To be sure, Chair, we have not recovered all of the firearms, there are firearms that remain outstanding and there are efforts in place, despite difficult to recover such firearms and as I say to determine what happened to our ammunition and why we get back ammunition that was never ours in the first place.

**ADV PRETORIUS SC:** Alright, would it be correct to  
10 conclude then that, at least in some cases, firearms issued under the rubric of unlawful projects or alleged unlawful projects may still be “out there”?

**MR JAFTA:** As I’m sitting here, Chair, I cannot give any absolute guarantees about what those firearms were used for. I have anxiety about a possibility that they may have been used for – in prosecution of criminality but most definitely not – it will be, again, one of those abuses of due process and assets of the SSA.

**ADV PRETORIUS SC:** Then in paragraph 19.3.4 you talk  
20 of investigations that are underway with respect to movable and immovable property, briefly what are those and what is the state of those investigations?

**MR JAFTA:** The – this is when I made this jest about Advocate Nzabeza. We have instances where, within the context of the Covid environment, movable and immovable

assets were procured but in order to provide and sustain cover, they would be registered in the names of members or non-members, certainly operatives in that environment or former members and those assets, because it's an illegality, Chair, you procure an immovable asset as SSA and then you register it in the name of Loyiso. In essence that asset belongs to Loyiso. Now, how does the agency and the State, therefore, recover that which belongs to it, to itself when, in law – in the eyes of the law these assets

10 is part of the estate of Loyiso. There are instances where some of the people to whom – or against whom these assets were registered, have since passed on and in those instances such assets remain, in law, part of the estate of the deceased and we have very little recourse to go to the – to the surviving members of the deceased to say, by the way whereas your father or your other owns this register of assets, asset three and asset seven and asset eight actually belongs to the SSA because it was done, rather recklessly.

20 **CHAIRPERSON:** I would imagine that, at least in some cases, you ought to be able to recover it if you can show that it was bought with money provided by SSA for certain purposes or it was bought with money that was meant for certain legitimate purposes but was abused, basically the money was stolen from the agency to buy this property

which was registered in the name of somebody that actually, in reality it belongs to SSA or were you are able to explain that, because of the nature of some of the operations of SSA it sometimes happens that property is registered in the name of somebody, and employee of SSA but both the employee and SSA know that it's not his personal property but in terms of war that's what will happen but of course, there might be others where you might not have enough information to place before or  
10 represent at court to convince the court that, legitimately its SSA's property, yes. Ja so there may be situations where SSA can recover those properties but I'm sure there will be others where it's difficult.

**MR JAFTA:** Yes.

**CHAIRPERSON:** Ja, okay, Mr Pretorius?

**ADV PRETORIUS SC:** If you'll bear with me a minute, Chair. In paragraph 20 you deal with the issue of executive overreach and you deal with it at a policy level. Without naming or implicating any particular executive  
20 member, would you just tell the Chair, please, what your view is in relation to the relationship between the agency and the executive and what your views are in that regard? It's important because the Chair has to consider these issues.

**MR JAFTA:** The relationship between the Accounting

Officer within the Civilian Intelligence Agency and the Minister is provided for in law, the administration must account to the executive, the executive determines policy, determines priorities, the legislature the resources and then there's accounting for the activities that have to be undertaken. During the period under review, there is – there's a very strong body of evidence and circumstantial evidence that...[intervenes].

**CHAIRPERSON:** And when you say, under review, you  
10 mean the period that was reviewed by the executive panel?

**MR JAFTA:** This would be the period, Chair, particularly after 2009.

**CHAIRPERSON:** 2009 to early 2018?

**MR JAFTA:** Yes, there is evidence of – certainly presented to me where members of the National Executive or at least the Ministers responsible regularly ran operations that would mean they ran – they handed sources, they tasked them, they'll debrief them, they must obviously generate reports, analyse and all – and do all  
20 the processes that are done in the Intelligence cycle and then possibly advise themselves because they are in the policy realm and possibly advise the President and/or their colleagues. There's no question in my mind that this did happen. Now, in my experience that inherently contains in it an unlawful instruction, a manifestly unlawful or illegal



instruction because the Executive should not be involved in operations. Now, in this instance, Chair, I'd like to express this opinion that this problem is not unique to the SSA, State Security, it's a problem which is fairly widespread. It would attend State owned enterprises where the representative of the shareholder would exert the powers of the Board and the Board or the Chair of the Board would use their powers of the Accounting Officer in the instance of – so this notion of Executive overreach is not something

10 unique to the SSA and as I say, inherent in it is this problem of manifestly unlawful or illegal instructions. Now, in my view, it should be that – because the problem, I believe, is widespread it goes beyond the SSA. Policy instruments should be put together to prevent this thing from happening to have an auditable system and you can design something like a requirement that instructions from the Executive must always be in writing put together or communicated in accordance with a prescribed form. So you can say, I'm Minister for this portfolio, consistent with

20 the provision of this clause or that clause of the law and I'm giving this instruction and it is in pursuance of this objective, carry out, it's possible to work out a framework for instructions to be in writing because that profile is for certainty then instructions are auditable but further to that, the – presently all that the law says is that nobody shall

obey a manifestly unlawful or illegal instruction, there's nothing else that's being said. So, it might very well be that there is a need to expand on that to create an obligation, as an example on her or she who receives such an instruction, to report it to some authority whether in the Executive or in the Legislature and that maybe, theoretically you can even say the Auditor General must have sight and satisfy himself or herself about the property of instructions by the Executive and so should the case be  
10 with the Legislature. It might be a different detail in respect of State owned enterprises but I believe, Chair, that this is it is supreme challenge of Executive overreach and illegal instructions require attention. By the way, and I'm by no means suggesting that, particularly in respect to manifestly unlawful and illegal instructions, this is – this only obtains within the province of the Executive. Within the administration, you need similar measures so that no Accounting Officer or DDG or Chief Director can give manifestly unlawful or illegal instructions and there must  
20 be censure that is quite serious and severe for those who breach such prescripts but it is a problem and I'd like to reiterate, Chair, that I don't believe that this is a problem you need to Intelligence.

**ADV PRETORIUS SC:** If we may go back, briefly, to paragraph 19.4, you've told the Chair already and you

repeat here in this paragraph that you caused a number of investigations to be conducted, is that correct?

**MR JAFTA:** Yes, that's correct.

**ADV PRETORIUS SC:** You also say that these investigations that yielded evidence of what you term, flagrant contraventions of the law.

**MR JAFTA:** That's correct.

**ADV PRETORIUS SC:** And you also say that in such instances, the matters have been referred for criminal  
10 investigations to Law Enforcement and prosecuting authorities, namely the Directorate at Priority Crime Investigations, that's the HAWKS and the National Prosecuting authority as well as the South African Revenue Service, has that been done?

**MR JAFTA:** That's correct, that has been done.

**ADV PRETORIUS SC:** Has anyone been prosecuted as a result?

**MR JAFTA:** No, no not as far as I'm aware.

**ADV PRETORIUS SC:** Do you know why?

20 **MR JAFTA:** I do not know, Chair, why but it's quite a wide – this body of evidence has been handed over, particularly to the HAWKS, yes.

**ADV PRETORIUS SC:** Again, there will be further evidence in this regard. Could we go then to paragraph 21, there you refer to a decision of the Gauteng High Court

in the AmaBhungane Centre for Investigative Journalism versus the Minister of Justice and Correctional Services and others, we learn that, that decisions on appeal so that it – literally the jury is out on the content of that judgment but do you have, from your own knowledge and experience any comments to make about signals and cyber capabilities of the country and the involvement of the SSA in that sphere?

**MR JAFTA:** Yes, I do have comments, Chair, on this  
10 matter. The world we live in is exceedingly difficult and dangerous and very messy and it requires, on the basis of some of the things I said about secrecy, transparency, accountability, as I explained, it requires that all available tools are employed with great circumspection to determine, first the national security. Now, the world we live in is – there are certain things that are there in place today that were not there 20/30 years ago. The reality is that, if you are talking about terrorism you couldn't have a decent conversation without talking about the dark web, without  
20 talking about recruitment online, without talking about communication online, giving instructions, command and control and all of those things. Now, we need instruments in law that would enable us to scan the environment, the better to detect any risks to national security. In other jurisdictions, and I don't want to mention names, if the

Chair permits, there is a requirement, for instance that – or there are views that say, Signals Intelligence and signals Intelligence outside the republic, in the main, it's bulk interception, it's scanning the environment. You then employ certain tools to determine if there is something worth following. Now, when you hear ideas that, Signals Intelligence, and this is what's happening in other jurisdictions, Signals Intelligence without a country of origin is definitionally, illegal. That immediately ties

10 Intelligence hands behind their backs because they can't scan the environment. They can't scan the environment where they operate it could be terrorism, it could Trans National Organised Criminal Syndicates and these are real risks.

On the other hand there has to be emphasis on control appropriate and suitable for the environment but there is also another aspect which is critical for that specific area which is ethical conduct of Intelligence in the – in that realm of Signals Intelligence and in Cyber.

20 Now Chair with your phone back in the day late '90's early 2000's your phone predominantly was useful only for sending a sms and talking. But now you basically do everything with your phone. So if I tap onto your phone I can – I know everything there is to know about you literally everything including your house and those who are related to

you and everything. So there must be sufficient checks and balances ethical but very effective checks and balances to prevent abuse.

But preventing abuse should not mean inadvertently disabling Intelligence from scanning the environment because the risks are real and if you miss an opportunity the consequence would be to – can be too dire.

Now in other jurisdictions you have a situation where you are required in law if you tapped on somebody you are  
10 required in law to alert them that – oh by the way I listened to your conversations for the past three months please pardon me because you know I was scanning the environment I did not find anything.

Now you know Chair in the real world there are things called sleeper agents. These are people who sit there do not attract attention to themselves. They are underground operatives of MK the Special Branch misses them.

Now you have a good sense that there is something worth following up on this person. Now if you are going to  
20 go back and confirm to them that you are listening to them and meanwhile the person is part of a sleeper serve or a sleeper agent or operative you are basically giving away what your truest intentions are.

These are the issues that have to be canvassed by the country. The balance between privacy and the

imperatives of National Security. How do we strike the balance so that we preserve the rights to privacy; we do not infringe on those but at the same time we are still able to do our work. It is by no means easy because Chair and I do not mean to be too long.

I have just said a moment ago Signals is focussed outside of the Republic. What that means is that when the Chair is outside the Republic through that bulk interception exercise I would also suck in your communications as a  
10 South African.

So the issues are not – are not easy. The converse of it is that now the terrorist has moved from country A is inside the Republic. A different set of rules now applies. So – so the issues are not easy. I am raising them rather rapidly but these are issues that require serious and careful consideration; yes with emotions but balanced and take into consideration Chair that the world is a very, very messy place.

I nearly said something undignified for this occasion  
20 but the world is a messy place Chair. Yes.

**CHAIRPERSON:** Thank you. Mr Pretorius.

**ADV PRETORIUS SC:** Paragraph 22 you reach certain conclusions. Would you place those on record please?

**MR JAFTA:** Come again Mr Pretorius.

**ADV PRETORIUS SC:** Paragraph 22.

**MR JAFTA:** Yes.

**ADV PRETORIUS SC:** You reach certain conclusions.

Would you place those on record please?

**MR JAFTA:** Meaning I should read paragraph 22?

**ADV PRETORIUS SC:** Yes please or speak to it.

**MR JAFTA:** Okay. I will just read it.

**ADV PRETORIUS SC:** I am sorry?

**MR JAFTA:** Can I just read it?

**CHAIRPERSON:** Ja.

10 **ADV PRETORIUS SC:** You may. Well the DCJ I am sure will allow that.

**CHAIRPERSON:** Okay you can read ja.

**MR JAFTA:** Okay.

“In similar vein the National Security doctrine that is espoused in the White Paper on Intelligence promotes the creation of a societal environment that is free from violence and instability while engendering respect for the Rule of Law and human life.

20 It is mandatory for members in the performance of their functions to obey all lawful directions received from a person having the authority to give such directions. In terms of Section 11(1) of the Intelligence Service Act 2002 Act 65 of 2002 the White



Paper advocates the utterance to a code of conduct for Intelligence Officers premised on loyalty to the state and the constitution obedience to the laws of the country and compliance with domestic values and ethical norms and standards. It is therefore imperative that the intelligence community instil ethical intelligence practices through the establishment of an autonomous ethics of this within the office of the Director General of the Agency and the institutionalisation of integrity testing on members.”

**ADV PRETORIUS SC:** Yes that ethical intelligence office or ethics office has that been established – is there any plan to establish it?

**MR JAFTA:** Yes there are plans to establish it but not yet.

**ADV PRETORIUS SC:** But not yet it is 00:06:56.

**MR JAFTA:** Yes.

**ADV PRETORIUS SC:** And in relation to Cyber Security the balance that you talk about between intelligence demands and private security or private privacy really. Has that yet been attained or is it something you hope to attain?

**MR JAFTA:** There is a process in place that we are engaged with together with the Department of Justice. Yes. And we are giving due regard to best international practice yes.

**ADV PRETORIUS SC:** Yes thanks. One last issue at least as far as the legal team is concerned. We have learnt as part of our investigations and also from the evidence of Dr Mufamadi that it is not clear to the SSA whether certain projects were carried out in accordance with their intention where the monies aimed at executing a particular project were actually delivered and received. One such example is Project Justice. And the question that I have in that regard is why those investigations have not gone that far to  
10 establish whether the projects have been carried out to their conclusion?

**MR JAFTA:** The investigations Chair have yielded a fair amount of evidence. I should say a 00:08:41 amount of evidence. That is not to suggest that as I indicated earlier we have recovered all the fire arms. That is not to suggest that we know where all of the money went to; what it was used for.

I will give you an example why it is difficult to – to conclude the investigations to their logical conclusion. Right  
20 at the beginning we detected that factually one of the members in the investigative team was actually whispering to some of the people we were investigating that this is where we are; this is their thinking; we are coming for you.

Because it is not a very large community and that frustrates the investigation. We do rely on our members and

their good faith to come forward and tell us what happened. It is one thing to receive an undertaking that that will be done. It is quite another whether such members actually do – do follow up on their commitment.

The other reality Chair is that these activities particularly those that are illegal do not cover one in glory and therefore the incentive you almost have to incriminate yourself. You almost have to incriminate yourself; you are too embarrassed at the fact that you have gone so far down  
10 the low road so to speak.

Let me – let me illustrate the point I am making. You would have a member through whose hands literally north of R200 million has passed through. So in other words there is member who has cumulatively taken into his or her custody R200 million plus.

Now when you sit down with that member and you say, let us start talking about this money. It is too embarrassing; it is too overwhelming for such people to talk. That is my opinion.

20 But at the same time it is too onerous a task to ask of anybody to account for R200 million.

**CHAIRPERSON:** Just repeat that.

**MR JAFTA:** It is too onerous a task to ask somebody to account for R200 million because – and this has been my experience when you – when you look a person eyeball to

eyeball just where do you start?

**CHAIRPERSON:** Well I want to find out it is too onerous for who?

**MR JAFTA:** For the one who has to account.

**CHAIRPERSON:** Ja, ja the one who must call for explanations it is not difficult.

**MR JAFTA:** No the one who calls for explanation it is not difficult but the one who has to give the explanation it is very difficult.

10 **CHAIRPERSON:** Ja.

**MR JAFTA:** Now here is the difficulty in some instances. The person will tell you no we ran this project, we costed it, that is my signature. And then we say okay fine. Say – argument sake Chair R5 million. Okay you travel to Mars and then you went to Venus and then you went to Mercury. The distance between the three is actually 500 kilometres.

Now explain to me you stayed in Bloemfontein – downtown Bloemfontein what was the cost per night? R1000.00. Where are we going with this conversation – we  
20 are going towards R5 million and it becomes – it becomes a very – I have experienced it; it becomes a very awkward conversation on the part of those who have to give explanation.

We keep trying it is not easy. It is not easy that I must say. There is pushback. There is pushback no

question about it and Chair.

**CHAIRPERSON:** In groups – in groups or at individual level or both?

**MR JAFTA:** At individual level pushback will be for instance in the form of somebody meeting one of the investigators and say, no Jafta will go one day we are going to sort you out. Jafta is going – he is not going to be forever. Once he goes we are going to remain here.

**CHAIRPERSON:** Intimidation.

10 **MR JAFTA:** Or remarks like, oh so now you are working with Jafta you are a sell-out. And those have an impact. Those have an impact they do embolden those who have to account. It is desperate. It is not that sometimes people have got away with all to do anything but it is still has an impact at the level of the.

**CHAIRPERSON:** Well I guess that the fact that people make threats does not mean that if there is action that must be taken against them it is not taken or will not be taken particularly to recover taxpayers' money. But maybe what  
20 you are saying is you have to work with certain people within the organisation and if they get threatened and intimidated it does make the job not easy. That is – is that what you mean?

**MR JAFTA:** Yes that is what I mean Chair.

**CHAIRPERSON:** Ja.

**MR JAFTA:** That is what I mean yes.

**CHAIRPERSON:** Ja okay.

**MR JAFTA:** But – but to be absolutely certain Chair somebody I know and I have known for a while we had a very difficult conversation. He had to leave on the eve of his retirement because we wanted our money and we got our money back. We got the money that belongs to the state back.

10 So we do not – we do not hesitate to do the right thing.

**CHAIRPERSON:** Ja.

**MR JAFTA:** We do not hesitate to do the right thing.

**CHAIRPERSON:** Yes.

**MR JAFTA:** It is the other side.

**CHAIRPERSON:** Yes.

**MR JAFTA:** Where there are difficulties to get things. Ja.

**CHAIRPERSON:** Okay.

20 **ADV PRETORIUS SC:** This evidence may yet be forthcoming but we do not have it as yet but in relation to the most recent questions and answers this afternoon and by way of example Project Justice we were told by Dr Mufamadi that there was no evidence that the money allocated for the project reached its final destination to put it bluntly bribery of Judges. The question is why do we not know that? Or do we know that and it is just too sensitive a matter to place

before the Chair? And either could be logically an explanation.

**MR JAFTA:** Chair the – that in respect to that specific example we have – we have very strong circumstantial evidence. What we do not know – what we do not have and it is because – let me not go into that because Chair. We have very strong circumstantial evidence that some of the money went into the hands of some of the members or a member of the Judiciary. But I do not have sitting here now  
10 is absolute concrete evidence of that.

Remember Chair all of these things that we are talking to and I am sure you might hear I do not know who else is coming here. We are talking about cash transactions. It is money that gets delivered to A and A delivers it to B.

**CHAIRPERSON:** And there is no receipt.

**MR JAFTA:** And there are no receipts. To give you an anecdote Chair to illustrate the point. One member says to me – two actually say they had a very wonderful – there was a wonderful period in their lives where I do not want to  
20 implicate people Chair so I will speak in these terms.

They took money to A and A helped himself to some of the money that was in the bag. But from head office the money was almost as even as – as this page is. But A then took some money so that by the time they went to B the money was not as even as it had been – and they evened it

up themselves.

**CHAIRPERSON:** Now when you say you mean in terms of the pile?

**MR JAFTA:** Yes how high it is yes.

**CHAIRPERSON:** Ja.

**MR JAFTA:** Because then he wanted to remove doubt by the time they get to B the bag had been tampered with.

**CHAIRPERSON:** Or it might be even but lower.

**MR JAFTA:** Yes. So these two members said to me, no we  
10 had a wonderful time when we delivered that consignment of money. Now they will tell me they did but where is the evidence of it? It is very difficult. I believe them because whenever else they talk about – they share information it is always accurate – it is always authentic. But I do not have the evidence. I do not have the evidence.

**CHAIRPERSON:** You said the – the strong circumstantial evidence that you I guess are aware of in pointing towards some money having been given to a member of the Judiciary.

**MR JAFTA:** Yes.

20 **CHAIRPERSON:** Can – would it be fair to say to the extent that Project Justice seems to have talked about Judges you are not aware of any other case involving a member of the Judiciary where there seems to be some strong evidence? In other words were you aware of strong and you emphasise circumstantial is it not? It is in respect of one.



**MR JAFTA:** Absolutely Chair.

**CHAIRPERSON:** So that is the position?

**MR JAFTA:** Yes.

**CHAIRPERSON:** Okay. Mr Pretorius.

**ADV PRETORIUS SC:** Are you satisfied then that the circumstantial evidence that you have has been fully investigated? Have you asked the Judge concerned?

**MR JAFTA:** No, no we have not – we have not asked the Judge.

10 **ADV PRETORIUS SC:** Do you intend to do so? Have you investigated the Judge?

**MR JAFTA:** It is unavoidable that we have to at some point.

**ADV PRETORIUS SC:** So investigations are on-going?

**MR JAFTA:** Investigations are on-going.

**ADV PRETORIUS SC:** Well then I will not ask my further question because that may disrupt those investigations. Then if I could just finally ask you about Project Veza I hope I have the pronunciation right?

**CHAIRPERSON:** Is that Project Veza?

20 **ADV PRETORIUS SC:** Veza.

**CHAIRPERSON:** Veza ja.

**ADV PRETORIUS SC:** Yes. You have a small functioning investigation which is on-going.

**MR JAFTA:** Yes that is correct.

**ADV PRETORIUS SC:** And we will lead evidence as to

whether persons who might be implicated or might have assisted the investigation have cooperated fully with that investigation. It appears there has not been full cooperation and you may confirm that or not as you please but we will deal with that with Project Veza. Are you happy with the integrity and skills of the Veza team? Can we rely on them to assist us in the commission with their evidence?

**MR JAFTA:** Yes Chair I am – I am quite happy with the skills, with the integrity of the people and I am also happy  
10 with the output of the investigative work that they have done. If it is necessary Chair I should add it has not been an easy exercise. Yes.

**ADV PRETORIUS SC:** Then finally then Mr Mufamadi that investigation is on-going but you have given your...

**CHAIRPERSON:** Mr Jafta.

**ADV PRETORIUS SC:** Your permission. Sorry Mr Jafta.

**CHAIRPERSON:** It has been a long day Mr Pretorius.

**ADV PRETORIUS SC:** Ja okay yes. And I try not to but I do have senior moments Chair. Mr Jafta the Veza personnel  
20 who are due to give evidence you have given your permission and leave for them to do so.

**MR JAFTA:** Yes I have.

**ADV PRETORIUS SC:** And then finally the issue arose early this morning Mr Jafta that you have taken some trouble in consultation with the investigators and the legal team to look

carefully at all the information at your disposal. Its declassification and taking care as to the line between evidence that can be given and evidence that should be protected legitimately under this veil of secrecy. Are you satisfied that – that job between the Agency and the legal team has been satisfactorily done?

**MR JAFTA:** I am – I am – I am confident with what we have done. I then right at the beginning I profess my input by stating my responsibilities to protect the names, the names  
10 of members, associates, our methods and part of the reason why I framed my own input in this way was to avoid talking about people but to talk about issues of principle and policy.

**ADV PRETORIUS SC:** Yes.

**MR JAFTA:** But in general I am very confident that we have taken every possible step to make sure that we do not jeopardise that which we have to protect.

**ADV PRETORIUS SC:** Yes and it is a task that is taken with the assistance of your lawyers and staff several months.

**MR JAFTA:** Yes, yes, yes.

20 **ADV PRETORIUS SC:** Thank you Chair.

**CHAIRPERSON:** Just one question Mr Jafta. The amounts that were given to members of the State Security Agency for projects but were accounting for those was unsatisfactory. The documentation that was kept not good enough such as the documentation we looked earlier. But I am more

interested in terms of those were maybe there is a reasonable strong feeling that funds were not really used for legitimate purposes. Do you have an idea – an idea or do you know how much in the past X number of years per year those amounts amounted to? Is it – or if you do not know is it something that you can establish easily and furnish to the commission later?

**MR JAFTA:** Chair it is something that I would rather for purposes of certainty given due regard to the Terms of Reference or Terms of Reference of the Commission.

**CHAIRPERSON:** Ja.

**MR JAFTA:** I would need to be very firm on it.

**CHAIRPERSON:** Ja.

**MR JAFTA:** But ja let me commit to doing that.

**CHAIRPERSON:** Ja no that is fine.

**MR JAFTA:** The answer though it – though it might appear finite the investigations are continuing.

**CHAIRPERSON:** Yes.

**MR JAFTA:** And therefore ...

20 **CHAIRPERSON:** Okay.

**MR JAFTA:** The figures might change.

**CHAIRPERSON:** I – obviously – well certainly what I would like is to be able to have an idea that given that year the kinds of funds.

**MR JAFTA:** Yes.

**CHAIRPERSON:** That fall under this category.

**MR JAFTA:** Okay.

**CHAIRPERSON:** It is about so much during that year it is about so much and obviously I am not – I am just looking at the past few years.

**MR JAFTA:** Okay.

**CHAIRPERSON:** If it is not possible to give exact amounts but at least if I have reasonable estimates or as close an estimate as possible that – but obviously the first prize is  
10 exact amounts.

**MR JAFTA:** Yes.

**CHAIRPERSON:** Okay so – so...

**MR JAFTA:** Thank you Chair.

**CHAIRPERSON:** And then you can arrange with Mr Pretorius or the legal team when you might be able – when you are ready to – to give us maybe a supplementary affidavit or that just deals with that. Ja. Okay thank you very much. You are done Mr Pretorius?

**ADV PRETORIUS SC:** Yes unless Mr Jafta has anything to  
20 add.

**MR JAFTA:** No I do not have anything else.

**CHAIRPERSON:** Mr Moerane did you intend to ask for an opportunity to re-examine? Is he still listening Mr Moerane? Or has he gone? Okay I think he is – he is not hearing us. No that is fine. I am sure that means he did not intend to re-

examine. Okay thank you very much Mr Jafta for coming to assist the commission and to give evidence. I can confirm that there is nothing in your evidence that I think posed any threat to National Security so certainly as far as I am concerned thank you very much. If we need you again we will ask you to come back. But thank you very much you are now excused. We are going to adjourn for the day. Tomorrow will I be listening to Ms Y?

**ADV PRETORIUS SC:** Mr K.

10 **CHAIRPERSON:** Ms K?

**ADV PRETORIUS SC:** Yes.

**CHAIRPERSON:** Okay will she take – will it be one witness the whole day or?

**ADV PRETORIUS SC:** Probably more than one day Chair.

**CHAIRPERSON:** Oh probably more than one day okay alright. So that is alright. And you will move the – the application in regard to her tomorrow morning?

**ADV PRETORIUS SC:** Yes if I may discuss that with you.

20 **CHAIRPERSON:** Okay no that is fine. We are going to adjourn. So tomorrow we should – should we start a little earlier?

**ADV PRETORIUS SC:** There are logistical arrangements that involve a number of people.

**CHAIRPERSON:** Oh okay.

**ADV PRETORIUS SC:** Given that her identity will be

protected hopefully.

**CHAIRPERSON:** Ja so...

**ADV PRETORIUS SC:** After the application.

**CHAIRPERSON:** We can start at ten?

**ADV PRETORIUS SC:** And those arrangements are quite complex so if we may start at ten Chair?

**CHAIRPERSON:** Okay no that is fine. So we will adjourn for the day and tomorrow we will start at ten. We adjourn.

**REGISTRAR:** All rise.

10 **INQUIRY ADJOURNS TO 27 JANUARY 2021**