

**THE JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS
REGARDING EFFORTS OR ATTEMPTS TO STOP THE INVESTIGATION OR
PROSECUTION OF TRUTH AND RECONCILIATION COMMISSION CASES
(TRC CASES INQUIRY)**

HELD AT:

Sci-Bono Discovery Centre, Corner of Miriam Makeba & Helen Joseph Street
Newtown, Johannesburg

BEFORE:

COMMISSIONERS:

The Honourable Ms Justice Sisi Khampepe (Judge Ret.) – Chairperson
The Honourable Mr Justice Frans Diale Kgomo (Judge President Ret.)
Adv Andrea Gabriel (SC)

EVIDENCE LEADERS:

Adv Ishmael Semanya (SC)
Adv Vas Soni (SC)
Adv Fana Nalane (SC)
Adv Nompumelelo Seme
Ms Baitseng Rangata

REPRESENTATIVES

Adv KD Moroka (SC) – DoJ representative
Adv Varney (SC) – The Calata Group
Adv D Pillay – The Calata Group
Ms A Thakor – The Calata Group
Mr Siphon Tlhaole – The Calata Group
Adv Irene de Vos for President Cyril Ramaphosa
Adv Nwabisa Ntshizana (for Ex-NDPP's Officials)
Adv Bridgette Nthambeleni (for Adv Jiba)

1 JULY 2026

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PROCEEDINGS ON 1 JULY 2026

CHAIRPERSON: Good morning. Adv Semenya?

ADV SEMENYA: Chairperson, good morning and so to the other commissioners. The business of today is to hear the witness, Mr Jafta, and the programme is to have his evidence-in-chief, which would be led by Ms Seme, but regarding the cross-examination of whatever kind, given that the documents are voluminous and he has received them quite recently.

CHAIRPERSON: Quite recent as yesterday.

- 10 ADV SEMENYA: That recent. The proposal is to have any cross-examination on the Monday 13th. That should stay over until that time. That would give the witness an opportunity to go through the documents and familiarise himself with those documents. The next witness would be Mr Nel, whose evidence we are going to receive virtually, and the evidence will be also led by Madam Rangata, who tells us that Mr Nel wants to do his evidence-in-chief as well as the cross-examination today.

CHAIRPERSON: Thank you, thank you. Mr Jafta, are you going to give your evidence under oath or affirmation?

- 20 MR JAFTA: Good morning, Commissioners, it will be under oath.

CHAIRPERSON: Yes. Do you swear that the evidence that you will give will be the truth, the whole truth and nothing but the truth? If so, raise your right hand and say 'so help me God'.

LOYISO MHLOBO THANDO JAFTA: duly sworn states

CHAIRPERSON: Thank you, Mr Jafta. Ms Seme?

EXAMINATION BY ADV SEME: Good morning, Chair, good morning, Commissioners. Mr Jafta, there is a statement that you have provided to the commission. Is this statement your statement?

MR JAFTA: Yes, it is. It is my statement.

ADV SEME: Do you stand by the averment in your statement or do you want to make any corrections?

MR JAFTA: Yes, I stand by them.

ADV SEME: Mr Jafta, you received a Rule 3.3 notice to respond to certain allegations, and you have responded in your statement. The
10 theme, Commissioners of Mr Jafta's statement is that first we are going to deal with what his role was in relation to advising the presidency and how he ended up being part of the inter-ministerial task team that was dealing with the investigation and prosecution of TRC cases.

Then he will deal with the meeting in the Skweyiya home and how that came about and how it touches to the issues that we are dealing with here, the investigation of TRC cases and the prosecution of TRC cases, particularly the Reverend Frank Chikane incident and how the politicians who were involved in that perceived the situation.
20 He is also going to deal with his averment that the investigation and prosecution of apartheid-era crimes was always complex and his explanation as to why there were these delays and why there is such a dismal failure, a record in respect of the investigation and the TRC cases.

Mr Jafta, can you explain to us, to the Commission, what was

your role in the presidency and within the advisory portfolio that you occupied?

MR JAFTA: Thank you and good morning once again.

COMMISSIONER KGOMO: Good morning, Mr Jafta.

MR JAFTA: In 2001, I joined what was then called the Policy Coordination and Advisory Services Unit in the Presidency, responsible specifically for the cluster of departments referred to commonly as the Justice, Crime Prevention and Security cluster.

In essence, that is a cluster of departments that deal, in the
10 first instance, with matters related to the administration of justice. That would be the criminal justice system and the civil justice system, law enforcement that would relate in particular to all matters related to law enforcement, investigative work by the police, transmission of dockets to the Prosecuting Authority and then the matters being ventilated and adjudicated over by the magistrates and the judges in the case of the high courts of the land.

Lastly, the cluster was responsible for national security; hence it is called the JCPS. The functions of the policy unit, briefly, related to facilitating integrated policy development within clusters and
20 between clusters and between and across the various spheres of government; national, provincial and local. This is important because, in essence, no crime takes place in anything called conceptually a capital or a national government. Most issues happen at a local area and the administration of justice takes place at that level.

So you have to develop policy in an integrated fashion. You have to advise on priority setting and the sequencing of priorities. You have to facilitate that one cluster must agitate another cluster to give priority to its priorities. So, for instance, if you are talking about crime prevention in a specific locality, the crime prevention measures would be within the remit of local government and therein arises the need for coordination across the various spheres of government.

Then it would be monitoring of the implementation of the programmes and the policies, the priorities. That monitoring would entail being able, because you have to put your finger on the pulse of the activities of the cluster and various other government entities. You have to know what works and what does not work. You have to be alert to emerging priorities, either because of failures or a crisis arising from success, because success can yield its own challenges.

And so that was one's responsibility, monitoring and evaluation. And then on all of those you provide advice to the political principles in the presidency. And that would be through the head of the policy unit, then Joel Khathutshelo Netshitenzhe and Reverend Chikane as the head of the office of the president, the DG in the presidency. Then you advise the political principles, that being the president and the deputy president, but primarily the president.

Now, I need to indicate at this point that policy development and priority setting is always going to be attended by fierce and very robust debates. And I can state quite categorically that many of those debates are still ongoing many, many years later since I left the

presidency in 2007. And the debates arise often because of systemic tensions between the mandates of the various departments and often within one department.

I should also add that the fact that there is robust and fierce debates at the level of ministers and the accounting officers to the directors general, that should, at least in my experience, not translate to, suggest or mean that one department was trying to persuade another department not to carry out its legal mandate.

10 A few examples would suffice for the Commission to understand what I am talking about. The Department of Correctional Services, I am giving an example, would have raised objections about the manner in which the detective branch within the South African Police Services would arrest suspects who would have been alleged to have committed an offence, take them to court, and then those suspects would be remanded in custody for one reason or the other. And then, in the view of Correctional Services, the police then would pursue investigations substantively or more substantively.

20 This would have caused a problem for Correctional Services because it led, quite logically, to overcrowding, at least in respect to the population of remand detainees in the custody of Correctional Services. And so this raised a huge debate between Correctional Services and the South African Police Services.

Related to that would be the view, still by Correctional Services, that for instance the magistrates and the judges would, for whatever reason, set the bail money in this instance too high to be

affordable by inmates granted bail for them to raise the necessary funds to deposit with Correctional Services and therefore secure their liberty as remand detainees who are released from the custody of Correctional Services. And so Correctional Services would bemoan the insensitivity of presiding officers that the way they would set the bar too high was prejudicial to the interests of inmates who come from poor backgrounds.

Another example; there was over a period of time a lot of agitation for the imposition of prescribed custodial penalties.

10 Whereas it is an interesting proposition, caution was raised relating to the fact that if you become too excited about introducing a whole raft of prescribed penalties, by default you are subtracting from the doctrine of the separation of powers and the independence of the judiciary to the extent that the judiciary must reserve the discretion to determine what penalty to impose. And this obviously attracted a lot of debate within the cluster.

I suppose I would not be too wrong in suggesting that that debate every now and again gets raised because of the pressures that are faced by the cluster. I am just citing these as examples.

20 There are numerous other examples ...[intervenes]

ADV SEME: Perhaps to just take you to the debates around these particular issues that we are dealing with here around the investigation and prosecution of TRC cases. You give us an example of how those debates were taking place within the cluster.

MR JAFTA: Thanks for that. The debates about matters arising

from the TRC permit me to put it like this, figuratively. This is, if you will, a river with many currents. The one stream or current puts emphasis on prosecutions, correctly so, in accordance with the laws governing the Prosecuting Authority. The other parties in the cluster, acting in accordance with their mandates, legal mandates, would have evidently wanted to assist the Prosecuting Authority, but they would have had another interest, for instance, uncovering the networks that were established by the security apparatus of the apartheid regime.

10 And so, systemically there would always be tensions between, for instance, the intelligence agencies who have got a particular mandate; and in accordance with that mandate, would be very keen to know what information typically would be available to the investigators and the police, as an example, so that they could give an interpretation or close whatever gaps are in that environment. So, the issues related to the TRC were attended by those systemic tensions between the mandates of the various departments that made up the task team.

20 I should maybe state this categorically. Within the context of what I referred to earlier as robust and fierce debates, I really am unaware of any instance where any department, in any shape or form, tried to persuade another department not to carry out its activities in accordance with its legal mandate. And therefore, even in the case in respect to matters arising from the TRC, I really am unaware of an instance where anybody in another department tried to

persuade the Prosecuting Authority not to proceed with prosecutions.

I may add as well that, as far as I am aware, I am absolutely certain that within the police who do the investigations, there was never an instruction by any member of the executive or the leadership of the police for the investigative officials of the South African Police Services not to carry out investigations arising from matters that relate, that arose from the processes of the TRC. And in a similar vein, there was, to my knowledge, no instruction or attempt to persuade the NPA not to proceed with prosecutions arising from those investigations.

ADV SEME: Thank you, Mr Jafta. Just on that point; in respect of the Chikane matter, you are of course aware that evidence has been led here that there was interference, at least allegedly, to prevent the prosecution or the arrest of those who were meant to be prosecuted at that time in the Chikane matter. Can you take the Commission into confidence around that specific incident relating to the Chikane matter?

MR JAFTA: The poisoning of Reverend Chikane would have happened, I think, around 1989 while he was in Namibia. The matter related or arose to a great extent from the work of the TRC. The investigation, as far as I am aware, into that poisoning was proceeded with. And I am saying this, because Reverend Chikane tells me that Mr Vusi Pikoli had called him the previous day to request for an audience with him, which Reverend Chikane granted.

But instead of Mr Pikoli arriving for the meeting that he had

requested, that is what Reverend Chikane told me, Adv Ackermann and I think together with Mr Mthunzi Mhaga of the NPA, arrived. And Reverend Chikane was somewhat perturbed or did not understand why Mr Pikoli had not informed him ahead of time that he was not going to make it to the meeting; and therefore Adv Ackermann and Mhaga were going to show up at the meeting.

In the meeting, Adv Ackermann, as far as Reverend Chikane told me, then berated Reverend Chikane about attempts that Reverend Chikane was making in his private capacity to engage with
10 the specific officials who had administered the poison on his clothing while he was in Namibia, enquiries that led Reverend Chikane to start engaging with the seniors of those junior officials. And it was this exercise that the NPA sought to stop from taking place or being proceeded with. As far as my recollection goes, Reverend Chikane was told that if he did not stop with those initiatives, he was going to be dealt with. And he was very, very aggrieved with that.

Now, it is in light of what I have just stated about this matter that I just believe that the investigation into the poisoning of Frank Chikane was proceeded with because there was this engagement on
20 the poisoning that he had, at least the attempt on his life that he had experienced.

I perhaps should add something else at this point. The fact that that matter was proceeded with, theoretically you can say it was proceeded with notwithstanding the misgivings of people who were anxious about it. Theoretically, you could make that point. But

substantively, I do not believe that there were any obstacles erected by anybody into the investigation of that matter.

In fact, you could make the point that instead of trying to pressure Reverend Chikane to stop engaging with the people who tried to poison him, the Prosecuting Authority should have or could have sought to understand from him what were the material facts that he had gleaned from such engagements in order to improve whatever docket they had before themselves. But as far as I am aware, no such request was ever presented to Reverend Chikane.

10 ADV SEME: In respect of the prosecution of those who sought to harm Reverend Chikane, can you comment on how that prosecution went, as far as you are concerned, from a policy directive and how the policy directive looked at the conduct of Mr Pikoli and his colleagues in the prosecution?

MR JAFTA: I do not have sufficient detail on this. Suffice to say that I do not think in a classical sense of the word there was a prosecution. Rather, there was a plea bargain, which is permissible in law; a process that would have required that the Prosecuting Authority should have conferred or consulted with the victim, in this
20 case Reverend Chikane.

My recollection again here, and it can only be confirmed or refuted by Reverend Chikane, is that no such a consultation was done and he was the victim. Was that a once-off thing? I do not know. But all I know is that in terms of the prescripts, and I am not able to point to you now precisely which article in the Prosecuting

Authority or in the Criminal Procedure Act, which specific article was not adhered with, so that Reverend Chikane was not consulted with before a plea bargain was struck with the people who had poisoned him.

ADV SEME: And apart from Reverend Chikane specifically, there are concerns around these plea bargains, as you say, generally, some of which were uncovered by Director-General Simelane at some stage.

10 MR JAFTA: Yes, that is correct. I think he can, he will be best placed to be invited to speak with more authority on that, but I am aware and I am not, I pray that the commissioners do not force me to disclose the detail.

There was a case relating to one department and there were people who were investigated, dockets were finalised. As far as I am aware, there was sufficient ground to believe that there was evidence that was prosecutable in respect to all the people involved in the matter that was investigated. And Adv Simelane was presented, this is what he told me at the time, presented with an option that some of the people who ought to have been accused should have been
20 accorded this plea bargain so that they could then testify against one or two of the other accused.

In his view, this was an abuse of process because there really was no need for the people who were earmarked for a plea bargain to be so given such for the state to win its case. And for him this was an indication of how this process was prone to being abused. But as I

say, Adv Simelane can take the Commission into confidence about that specific matter and any other such a case.

ADV SEME: I raise this of course, Commissioners, so that we can understand the complexities within the National Prosecution Authority and for us as evidence leaders to further probe what occurred in respect of the prosecution of TRC cases and plea bargains in that context. And you make a point at paragraph 10 of your statement and you say that the failure to investigate and prosecute apartheid-era crimes must be understood as multi-layered and complex.

10 Can you just explain what was complex to the extent that there were in effect no investigations and prosecutions until 2019 of the TRC cases and with particular reference to the fear or the alleged fear that hung over the government at that stage, that when they prosecute the members of the Security Branch, that would then cause a threat to the prosecution of leaders of the African National Congress?

MR JAFTA: Maybe let me start off with this, the latter part of your question. The war against or the liberation effort predates the institutionalisation of apartheid in 1948. And apartheid, in a sense,
20 sustained and intensified the pain that the colonial project had visited upon South Africans over a period of time, centuries.

 The Security Branch, the NIS, military intelligence, coordinated their activities. I am just talking now about the security apparatus of the apartheid regime. They had committees that coordinated priority setting in terms of who were to be killed, who

were the prime priorities for kidnapping, and what to do with some of the people who were kidnapped. This was coordinated, which does not mean this was not compartmentalised.

So the doctrine of need to know was present, even in that coordinated or coordinating mechanism. Investigating those cases would therefore require very deliberate and energetic collaboration by those who participated in those meetings, those who prosecuted the operations that led to the kidnapping of people and the killing of people. As far as I am aware, I did not get the impression that the
10 investigators in the police or in the NPA had the wherewithal to know who to talk to and to entice them sufficiently for such people to come forward with the information relevant for investigations and subsequent prosecutions.

Now, that is one of the problems. Is it very different from general ineffectiveness of the police and the detective services of the police to investigate crime? To a degree, it is not very different. So if you were to look, for instance, at the average case cycle time in the police, you might find that it is no different from the case cycle time of investigative work that is done in respect to matters arising from the
20 TRC.

Let me then come back to the issue of the ANC. The apartheid regime had more resources to infiltrate the ANC and its associated structures and functionaries. It would have had quite an impressionable number of sources within the ANC. If a decision was to be taken, say, by the NPA to prosecute leaders of the ANC,

immediately that means the sources of the apartheid regime must reveal themselves and depose to statements that link specific individuals who were in leadership positions in the ANC to specific activities of its military wing, uMkhonto we Sizwe.

Would it have been permissible to the handlers and the supervisors of those sources to expose them with the promise of the price of convicting any of the leaders of the ANC? I am not sure that that was going to be possible, because under cross-examination such members of the ANC would then have to reveal themselves to have
10 actually been sources of the apartheid regime. So I am not sure this was an easy proposition that ...[intervenes]

COMMISSIONER GABRIEL: Mr Jafta, were these debates actually held or are you speaking academically and theoretically? Were these concerns real?

MR JAFTA: The concerns were real and were canvassed. The other concern was that you could be adventurous and go, for instance, after one Thabo Mbeki, who was President of the Republic. If you prosecuted him on matters arising from the TRC because he would have sat in one or another meeting of the ANC, that would
20 mean you would have to step down from office. The issue would not have been whether or not you can succeed in securing a conviction, but the anxiety was that such adventures could actually paralyse governance and government.

COMMISSIONER GABRIEL: Was this an actual threat, to your knowledge?

MR JAFTA: I think it was not just a threat. I think it may remain a threat to this day. As much as it is not the only threat, it is not a conceptual anxiety, the issue of sources of the former regime, not just within the ANC, but throughout the country, because those can always be used to undermine democracy, governance and a whole range of other issues.

ADV SEME: And perhaps to link this with your presence from the presidency in the inter-departmental task team that was dealing with the investigation and prosecution of TRC cases. Can you explain?

10 COMMISSIONER KGOMO: Your voice drops off, Ms.

COMMISSIONER GABRIEL: Come closer.

COMMISSIONER KGOMO: Your voice drops off, if you can speak up a bit.

ADV SEME: I am so sorry, Commissioner. Did you hear my last question?

MR JAFTA: I am not sure I did.

ADV SEME: Okay, I will repeat my question. May you link what you have just explained about these various debates and pulls and push and concerns with the composition of those who sat in the inter-
20 departmental task team that was meant to assist the NPA and SAPS to deal with the investigation and prosecution of TRC cases?

MR JAFTA: Maybe let me start with the initial part of the question, perhaps the one that was not heard properly by the Commissioner. In discharging my responsibilities, I attended meetings at various levels with ministers, with accounting officers, with task teams,

meetings between the cluster, with provincial government officials, MECs and local government.

And I also attended meetings of some of the cluster departments abroad, engaging with foreign jurisdictions. The purpose was always centred around one fulfilling his task, as I explained right at the beginning, as a member of the policy unit. It served absolutely no other purpose. And so I would have attended the constitutive meeting of the setting up of the ITT for purposes of satisfying myself and providing advice to the presidency that the task
10 team that was agreed to, in fact, has been set, has been established and it will function.

Now, I have just said I attended many meetings. Does that mean I was operational? No. But I was close enough to know what works and what does not work. I hope I have ...[intervenes]

COMMISSIONER KGOMO: And to advise.

MR JAFTA: And to advise, yes, yes.

ADV SEME: Contextualise your role against the independence of the NPA, the fact that the National Prosecution Authority must operate independently and without fear or favour of prejudice, and it
20 must ultimately bear the responsibility to prosecute. Surely, in every crime that happens, in every instance or robberies or whatever. You did not get involved that much. Why TRC cases in particular?

MR JAFTA: On the contrary, I was just as involved; and I will give an example. One specific example that jumps out in my mind now; there was a particular problem around maintaining law and order, if you can

call it that, along the borderline between South Africa and Mozambique. I was in that borderline. I was in that informal port of entry where Mozambicans and South Africans were trading. I think it was every Tuesday or Wednesday where they would go into the market; and this is the same community divided by a fence. And consequently, therefore, they are off. It is that they are South African Mozambicans. So I would have gone there.

And so, that is conceptually no different from... So being in that borderline with the police did not translate to me being involved operationally, to the extent that the members of the police and the defence force were actually doing the operational work in that
10 borderline. And I do not think the task team was established to control or influence what prosecutions the NPA could proceed with and which cases the NPA could not proceed with in terms of prosecutions.

And certainly, being in the constitutive meeting of that task team, I do not think... and maybe I would have to relook or look again at the minutes. I do not think there was a sense that this was the purpose of the task team. I do not know what happened in
20 subsequent meetings.

ADV SEME: And you do not know what happened because?

MR JAFTA: Because I did not attend the operational meetings of that task team.

ADV SEME: How many meetings of that task team did you attend?

MR JAFTA: I only attended, I think, the constitutive meeting, the first

meeting that was convened and chaired by Adv Pikoli, as far as I am aware.

COMMISSIONER GABRIEL: And what did you understand from your attendance at that constitutive meeting? What did you understand was the purpose of the ITT?

MR JAFTA: The purpose of the ITT was to facilitate and ensure that the departments of the state, with a mandate that coincided with what was intended, with investigating and prosecuting cases arising from the TRC should have collaborated. So the constitutive meeting, my
10 understanding is, to this day, we are the task team that should discharge this responsibility. These are the mandates from which we are operating.

And therefore, if you will, these are the standard operating procedures and it could zero down to minute details, such as who is going to be the nodal point for transmitting a report from one department to another department; and like I said a moment ago, what if, in the event one department wanted to gain more insight to information available in another department, how such access would be provided for. That is my understanding, the responsibility of the
20 task team.

COMMISSIONER GABRIEL: So was this a decision-making body?

MR JAFTA: In respect to prosecutions in particular? No, not as far as I am aware.

COMMISSIONER GABRIEL: How would you describe it? Was it an advisory body?

MR JAFTA: It is. Who are the departments that are there? It is the NPA, National Prosecuting Authority, it is the Department of Justice, it is the National Intelligence Agency at the time, it is the South African Police Services. The mandates in a sense ...[intervenes]

COMMISSIONER KGOMO: What about the Department of Social Welfare?

MR JAFTA: I am not aware that it would have played a role in respect to generating information that would assist investigations and prosecutions. There are other matters arising from the TRC that
10 would fall within the remit of the social cluster. Housing, healthcare, and a whole range of other services that ought to have been provided and were provided, to what extent I am not sure, to people who had been processed by the TRC by the task team itself.

If I look at the membership of that task team, it is about those departments that would have and should have, deriving from their legal mandate, assisted the government for investigations to be carried out and for the reference of the output of those investigations to the Prosecuting Authority for purposes of determining whether the case was prosecuted or not prosecuted. That is my understanding of
20 what was the responsibility of the task team.

And I may add, this was not the only task team. In respect to various other issues of government, you would find the same mechanism where there will be a task team. And in fact, you might even find an inter-ministerial committee of the ministers corresponding with the departments who would make up a task team

to make sure that, to the extent that superintendents must be exercised by the relevant ministers or members of the executive, such is done by an inter-ministerial committee, which is not a committee of cabinet, but a subcommittee that would then subsequently report to a cabinet committee and then to a full sitting of cabinet.

ADV SEME: Perhaps Commissioner Kgomo is trying to lead us to this meeting that took place at the Skweyiya Household, discussing matters around the prosecution and investigation of TRC cases. Can
10 you tell us about that meeting?

MR JAFTA: I have got to be very careful with how I phrase this, so that I communicate what I truly understand from my experience. Meetings of government would involve meetings, formal meetings of cabinet and its committees. In the ordinary space of discharging its responsibility, ministers and the instances that would cause this are numerous and varied; would convene, but informally. So you could not say a meeting or a gathering, let me call it that, taking place at the residence of the late Dr Zola Skweyiya's residence. That is more a gathering than a meeting.

20 Now, what does it mean in real terms? Substantively, there could be discussions and there were several cases where there were discussions, not just in these particular instances, in other instances, where policy differences or differences around priority setting, sequencing of priorities, *et cetera*, *et cetera*, allocation of budgets, would have been discussed and canvassed in such informal

gatherings.

And I characterise that meeting in that fashion. It was not a meeting in the context of a formal meeting of government, but definitively an informal gathering of officials at the level of the executive and the level of the administration taking place at the residence of the late ...[intervenes]

CHAIRPERSON: At whose instance was it called, Mr Jafta?

MR JAFTA: I honestly cannot recall at whose instance. I am aware that the correspondence forwarded to me suggests that this was at
10 the instance of the then Acting Minister of Justice and the current speaker, Ms Thoko Didiza. It is possible. What I find difficult to digest in what is in front of me is to say Minister Didiza convened this meeting because the Minister of Justice was indisposed.

And then in the recollection of what took place, the convener of the meeting is silent throughout the meeting, is not quoted to have said anything apart from the fact that she was present. I just find that part a little odd or curious. And I am not suggesting that I am casting aspersions on the recollection of Adv Pikoli in this instance, but definitively there were many of such. This was not a unique informal
20 gathering of functionaries of government at the level of the executive and the administration.

COMMISSIONER GABRIEL: And to your knowledge, such informal gatherings, in this case at the home of former Minister Skweyiya, do they often include or do they ever include summoning the head of the National Prosecuting Authority to attend such a meeting?

MR JAFTA: I have got to be careful with the word 'summoning'. And I would say definitely an informal gathering could not summon an official such as ...[intervenes]

COMMISSIONER KGOMO: Could invite, could invite?

MR JAFTA: Yes, invited, most definitely, most definitely invited, ja. And there is a reason for it. And again, I have got to be careful with how I put this across. These are people who have been together minimum or at least for about 30 years.

COMMISSIONER KGOMO: In the trenches.

10 MR JAFTA: In the trenches, and then they get assigned responsibilities that are mutually supportive. So, for instance, Zola Skweyiya would have been in the legal department in exile in Lusaka. So he knew a thing or two about, for instance, the evolution of the Harare Declaration. And so having a conversation on these matters in his presence, I do not know for a fact, but he possibly was involved in negotiations, Penuell Maduna and such other people.

And so it is not, it is not unexpected that such a gathering would take place at his residence. And as I say, categorically, I have been... I cannot tell you how many such informal gatherings I have
20 attended with ministers and with directors general. And there are benefits. There are matters that could be resolved, ventilated and resolved, and there are matters that could not be resolved.

ADV SEME: In your statement at paragraph 11 ...[intervenes]

COMMISSIONER GABRIEL: You have gone far away from the mic.

ADV SEME: Thank you. Paragraph 11 of your statement where you

address issues raised in the Rule 3.3 notice. To take you to 11.1.2 where you are dealing with the proposal or idea that in order to finalise cases arising from the TRC, two prominent individuals, one from the apartheid regime and the other from the ANC, could be identified for prosecution; and in this way, the matter would be resolved. Can you comment on that?

MR JAFTA: There was; now permit me or pardon me for this. I do not recollect how this matter arose, but I remember distinctly discussions about a proposal that was evidently out there, that in
10 order to conclude matters arising from the TRC, it may have been prudent to prosecute two prominent people from the apartheid regime and two prominent people from the ANC; and this attracted a lot of consternation, both political and practical. Political because an approach such as that, one, would put those who were fighting for apartheid and those who were fighting against apartheid on the same pedestal.

Two, it would characterise to a degree the liberation effort into a mere political conflict with violence in it between the ANC and the Nationalist Party; and there was objection to such an idea for these
20 reasons and for reasons that I stated earlier. And this approach, I may add, was part of the reason why there was consternation in respect to how matters arising from the TRC were proceeded with; and this was found to be objectionable.

COMMISSIONER KGOMO: And you cannot give a time frame. I know you said you started in 2001; time frame there?

MR JAFTA: This would have been more or less over a period of time. Dare I say, and I am taking a risk here, up to the time when there are meetings or informal gatherings at Dr Skweyiya's house and such other engagements, that definitively there was this idea that maybe to seek parity so that nobody can say ultimately we were prejudiced, because everybody would have been dealt with, and then you can close your books on the matter.

CHAIRPERSON: Mr Loyiso, was this notion of having two prominent members of the ANC and two prominent members of the apartheid regime having to be prosecuted conceived at the meeting in which you attended at Mr Skweyiya's house?

MR JAFTA: I cannot, Commissioner be specific and say it was canvassed, but I do know; that is why I started off by saying do pardon me, because my memory fails me in terms of the specifics, but this is a matter that definitively received attention.

CHAIRPERSON: Yes.

ADV SEMENYA: Yes, but I do not know if it was discussed specifically in the residence of Dr Skweyiya.

CHAIRPERSON: Okay.

20 ADV SEMENYA: Yes.

ADV SEME: You may not know at what venue it was, but you may know at what level and who would have participated in such discussions?

MR JAFTA: It most definitely would have involved members of the executive and officials at the level of accounting officer, officers of the

various departments. Definitively this was something that was raised and discussed.

COMMISSIONER GABRIEL: Ms Seme, can I interrupt you?

ADV SEME: Yes.

COMMISSIONER GABRIEL: So would it be fair to say that the overriding concern or a real concern was the potential prosecution of members of the liberation movements, including the ANC?

MR JAFTA: I would put it differently, Commissioner.

COMMISSIONER GABRIEL: How would you put it?

10 MR JAFTA: The overriding concern is that there was the colonial project that peaks with apartheid. The transition happens, occasioned by negotiations; and that transition and those negotiations enable South Africa to attain freedom to a very significant degree and democracy. And the overriding concern was; nothing should be done or everything should be done to entrench nation-building, democracy, get the institutions to mature so that the country never experiences the pain of the past. It was not definitively about protecting people from the ANC. It was principally about; let us make sure that democracy endures.

20 ADV SEME: And just to illustrate that point; you have an example around dockets and the ANC 37 and the ANC leaders in particular, around the investigation, whether they were ever investigated for them to have this fear, particularly whether Thabo Mbeki, former President Thabo Mbeki himself was ever investigated by the police, and broadly drawing on your knowledge, both from the intelligence

community and from your job as a policy advisor.

MR JAFTA: I truly have never heard of an investigation that led to the existence of dockets relating to any number of ANC leaders or leaders of any other liberation movement for that matter by the law enforcement or investigative entities of the state. I really have never heard of anybody saying there were dockets or there were investigations that would lead to the existence of dockets. I am unaware of that; and I am unaware of that, because I suppose had such occurred, I would have known. And if I would have known, that
10 would not mean I would interfere with the investigations, but I would have advised on the implications arising from such investigations leading to dockets being put together. So categorically, I am just unaware about such.

And I go back to the point I made earlier. Investigating 37 leaders of the ANC by the detectives or the Priority Crimes Litigation Unit would have required collaboration by people within the ANC to be witnesses; and on the basis of such statements, dockets would be generated. And I am unaware of anybody who sat in any of the structures of the ANC, at least I am familiar with those, who was ever
20 pulled in for investigative purposes. And so the anxiety may have been theoretical rather than practical, because there had been a formal investigation.

ADV SEME: Just on that point also; you say it would have been theoretical. In your knowledge, was there no basis at all for an investigation to be initiated against the ANC leaders, particularly in

the context where amnesty was denied to, the amnesty that the ANC leaders purported to pray for?

MR JAFTA: That matter predates my being in the presidency. However, it does not mean that I do not know about it. I could be wrong. There could have been, and one would have to go back and look at the actual record. I think the refusal for amnesty to leaders of the ANC, 37 or otherwise, would have been occasioned by certain considerations. And to the extent that amnesty was denied, that would mean those would fall within the definition of matters arising
10 from the TRC, and to that extent, those matters should have been investigated. But what I am saying is; I am just ...[intervenes]

ADV SEME: Just maybe there. So if you say those matters should have been investigated, who ought to have investigated those matters and prosecuted those matters?

MR JAFTA: They would have had to be, how does it work? There has got to be a complainant who goes to a police station to register a complaint. A case number is generated. A detective gets assigned to a case. And I do not know which police station would have been elected for approaching by any complainant. That is where the
20 matter would start.

It would have been decided that for whatever reason, the case remains with the detective who operates at the police station level, or it gets elevated to another level. Did anybody approach any police station to lodge a complaint? I am not aware of that. It might be that it exists, but that is a matter really to be canvassed with the South

African Police Services to determine if anybody had registered a case in the manner that I have explained, if my supposition is correct.

ADV SEME: Commissioners, I have been nudged by Mr Semenya that I have now exceeded the break for tea.

CHAIRPERSON: Yes. How long do you still need to be, Ms Seme with the evidence-in-chief?

ADV SEME: I think it should not be more than 10 minutes.

CHAIRPERSON: Okay, you may proceed, madam.

COMMISSIONER GABRIEL: Ms Seme, can I interrupt you?

10 ADV SEME: Yes, sure.

COMMISSIONER GABRIEL: Part of the negotiated settlement that brought about freedom in this country was the truth and reconciliation process through the National Unity and Reconciliation Act and we lived through that experience and the knowledge and the horror of what came out of that. At the end of that was a comprehensive report by the TRC, which made certain recommendations. And the recommendations and by law those who had been denied amnesty ought to have been prosecuted. Now, in the discussions about the TRC cases during your time, did the TRC report figure at all and the
20 need to prosecute those who had been denied amnesty?

MR JAFTA: Yes.

COMMISSIONER GABRIEL: It did?

MR JAFTA: It did. Yes, it did. And not only in respect to prosecutions, in respect to a whole range of other matters that were contained in the report of the TRC.

COMMISSIONER GABRIEL: Such as reparations and also
...[intervenes]

MR JAFTA: Such as reparations and a whole range of other interventions.

COMMISSIONER GABRIEL: So, what then was the concern about nation-building being at odds with the TRC recommendations? I am asking from your experience.

MR JAFTA: Ja. Picture a scenario where you... this is the report of the TRC now comes out, and it is called a seal in the early 2000s, I
10 think. There are people who, and I am coming to the cases for prosecution. Or maybe let me start there. Now, we know that the people who poisoned Frank Chikane, in fact, were processed in accordance with the law with all the attendant deficiencies. If that happened, that could, and I am not saying this is how the NPA would have proceeded with the issues. If that happened, that posed the risk of undermining the integrity of the Prosecuting Authority.

At the same time, and I am going into another realm, you have got communities that were completely ravaged by violence. Some of which, some of those communities had their houses. They
20 were ejected from their houses, and those houses were occupied to this day by the people who attacked them. And the cry was; can the state eject the people who unlawfully or illegally occupied their houses, so that the rightful owners could go back to their houses?

ADV SEME: Sorry to interfere. Maybe you could be specific, maybe use a specific example and name the parties so that we can

understand.

MR JAFTA: I dealt with some mothers from the East Rand. I think it is Thokoza. It could be Boipatong or some other such place. People are alleged to be IFP, Inkatha Freedom Party, armed with all sorts of weapons, marched into this particular settlement, meted out violence, and in the process chased out people from their homes, never to be allowed to go back to their houses, to their homes, to this day. And those mothers were saying – and I dealt with them; is it not possible for the state to facilitate that those people who had chased them out
10 of their houses can be ejected, because they occupy those houses illegally? So you can say failure by the government to respond to the legitimate cry of those communities would undermine the very notion of nation building and reconciliation.

COMMISSIONER GABRIEL: What about the failure to bring about justice to the families of victims, and in particular in instances where the perpetrators were denied amnesty?

MR JAFTA: Yes, I agree. In those instances, pursue prosecutions. Now, permit me to raise this. In January 1987, my own home was razed to the ground with limpet mines, January 1987. My parents did
20 approach the TRC. And so, even though you could quantify the prejudice suffered by my parents, which is not an isolated incident, the reality is that, respectively, 2014 and 2016 when they died, they had never received a penny in terms of some form of reparation.

There are instances where language is very important, where moving people from certain areas was called forced removals, but the

reality is that that was ethnic cleansing. You remove a certain group of people on the basis of ethnicity and race from specific geographic areas in order to avail that space to those who belong to apartheid or beneficiaries of apartheid. It is ethnic cleansing there is.

COMMISSIONER GABRIEL: I would like you to focus on... I am sorry to interrupt you, but Ms Seme is going to have my head if I eat up too much of her time. Focus on cases where perpetrators were denied amnesty and the duty was then to prosecute. Now, how would pursuing prosecutions have undermined nation-building?

10 MR JAFTA: The point I was trying to make earlier is that prosecuting those who were denied amnesty and prosecuting those who had not even gone to the TRC, but then get established to have committed these types of crimes. By all means, prosecute. But if prosecuting is not done in accordance with the letter and the spirit of the law, that becomes a problem, but you cannot prosecute when there has been no investigation.

20 So even before you talk about whether or not there was a prosecution, the question should be; where was the investigative work? Why was that not done? And I tried to explain what, in my view, are the systemic obstacles that would have frustrated even a very keen investigator, and I tried to illustrate what difficulties would attend a prosecution on either side.

ADV SEME: Perhaps to assist you in answering this question in your own words, can you go to 11.1.3 of your statement, read with 11.14; maybe if you read that into the record and try and

contextualise nation-building versus the prosecution, a robust and a bold prosecution exercise.

MR JAFTA: I make reference in 11.1.3. It reads:

“There was a need to pay attention to important or strategic fault-lines arising from the conflict of the past that retain the potential to undermine the sovereignty of the democratic state and its institutions.”

ADV SEME: So now that you have read that, the question posed is;
10 how would prosecuting TRC cases threaten nation-building?

COMMISSIONER KGOMO: Did not you say the witness must also read 11.1.4?

ADV SEME: Yes.

MR JAFTA: In 11.1.4:

“The transition to a democratic South Africa was attended by serious and painful compromises.”

And maybe let me read 4.5, 11.1.5.

20 “That functionaries of the former regime continued to wield considerable influence by virtue of the resources that had been available to them.”

Now, prosecutions of themselves cannot pose a threat to nation-building or entrenching democracy. That is the point I made a moment ago. I am back to my point. The investigations needed to have happened; that I have stated. So prosecutions, the short

answer is, will not pose a threat to nation-building, democracy and all of that.

I said a moment ago if you are going to prosecute, as an example, apartheid functionaries, you need to have access to people who were within this very compartmentalised machinery. That is not an easy task to penetrate and pry open those very closed networks. They held, they continued to wield or they wielded considerable influence, because they had sources. They had sources. And dare I say regard must be had to the fact that apartheid had strategic
10 alliances with various and very powerful western countries, almost all of them without exception; and they collaborated.

So theoretically, you could put the point that, you can make the point that; if you allowed investigations and prosecutions to happen, by virtue of the uneven playing field, the liberation movements would come second, because the former regime would have had an upper hand in terms of gathering information within those liberation movements.

And if you were to be successful, and I am mindful of the point I made earlier about the risks that would attend such an adventure,
20 because it would need those within the liberation movements who were working for the regime to surface themselves as witnesses. That is a considerable obstacle. So, you proceed along that line, uneven playing field. The liberation movements theoretically would come out second best.

ADV SEME: At this stage, the liberation movement is on one side,

and then you have government, which is supposed to now be a democratic government taking forward these cases. So explain this web of the liberation movement, government and the general public that is expecting justice, and how are these playing out in the investigation and prosecution of TRC cases?

MR JAFTA: Can I please ask that you repeat the question?

ADV SEME: The question was asked; what would, how would the prosecution of TRC cases undermine nation-building? And you explained that there ought to have been investigations, and
10 investigations were difficult.

Then I referred you to your paragraphs where you talk about fault lines and the fear that pursuing these cases could undermine sovereignty. And you were on the verge of explaining that to say that there is all this knowledge and resource and powers and perhaps this threat of; if government, and you say liberation movement, pursued TRC cases with rigour – and let me make a practical example, if they pursued former President FW de Klerk or perhaps former President Pik Botha, and tried to really get to the atrocities. That would in essence threaten the liberation movements, because they would
20 come up second. And I guess that links with this theory of nation, with this impulse or imperative of nation-building. So that was what government was trying to protect.

Now I would like you to just explain to this Commission, because at this stage you are dealing with a government under the constitution that has constitutional obligations, and yet in your

explanation it is harking back to the liberation movements who would have come second in the context of the prosecution of TRC cases.

MR JAFTA: The point I am trying to make is; pardon me for restating this, prosecutions of themselves would not undermine democracy and nation-building of themselves. The point I am trying to make now is maybe to illustrate this with some examples. There is the poisoning of Frank Chikane. I am making an example. He initiates the processes. He was poisoned. The chief representative, I am making an example, of the ANC in Paris, Dulcie September, gets killed. This happens in Paris.

Now it is very difficult to assume that, or the question should be; was similar energy invested in pursuing and investigating such cases? And there is a myriad of such other cases within South Africa and outside of South Africa. The point one is making is that were these things to be investigated, the ANC on its part would not have had the wherewithal to assist an investigation into the matter of Dulcie September. But the regime, because it had sources within and around various structures of the liberation movement, can easily put together evidence.

COMMISSIONER KGOMO: Yes, but I think if I understand correctly is that there is a third element. The liberation movement is now the government of the day. If that is not the question, was not a question, then it is my question. Add that element to the equation.

MR JAFTA: The liberation movement, in fact, is now the government, but the people who would have been, in this case who

could be prosecuted would still be the same people who are government, who are sitting in positions of authority in government, to the extent that they were members of the liberation movement before. And this is the point I am making that the field was uneven. But they are in government, to be sure. There is no question about it.

ADV SEME: So the former structures continued to operate.

MR JAFTA: Yes.

ADV SEME: And that fear, you would say, operated and maybe cast a veil on the prosecution of TRC cases.

10 MR JAFTA: It is something that would have been there at the back of the minds of people. Ja, but I must restate what I said early on. Am I aware of any evidence pointing to government giving an instruction that the police, direct or indirect, that the police must not investigate? I am unaware of that. I honestly am unaware. Was there a directive, direct or implied, that I am aware of to the Prosecuting Authority that they should not prosecute? I am unaware of that. So I just want to restate that, notwithstanding everything I have said; I am unaware of such.

ADV SEME: You place before this Commission at paragraph 12 the
20 pain you felt when you read the Calata affidavit about a reference to your role in the intelligence community. Can you elaborate that with reference to what the Calatas say about your role in the intelligence?

MR JAFTA: There is a statement that I was, well, it is not explicitly stated as such. I was in the constitutive meeting of the task team. And then reference is made to the fact that I have a background in

intelligence and security. And an inference is drawn that, in fact, that suggests that the presidency may have wanted to influence or something of the sort from the deliberations of the task team. Now, being in the presidency and being in the policy unit had absolutely nothing to do with the fact that I had a background in intelligence.

COMMISSIONER KGOMO: Mr Jafta, sorry to interfere. I thought, because it is a concluding paragraph, three short subparagraphs, if you could read that into the record and if you have something to add, you may. It is at page 1299, the final paragraph that you have been
10 referred to.

MR JAFTA: Thank you. I will go to the notice in terms of Rule 3.3. Paragraph here, it would be paragraph 9230. It reads as follows.

“It is interesting to note that Mr Loyiso Jafta, Chief
Director in the Presidency, who had an
intelligence and security background, was present
at the meetings of the ITT. Strictly speaking, he
should not have been there, as part B of the
amendments did not provide for a member of the
presidency to be part of the group assessing the
20 TRC cases. This indicated that the presidency
intended to have direct involvement in the
decisions relating to the TRC cases.”

Perhaps that is what I am responding to in paragraph 12.

COMMISSIONER GABRIEL: Yes.

MR JAFTA: And my response is:

“A reading of this paragraph is unfortunate. In the first instance, that I have an intelligence background is fact. Intelligence is a vital resource for any country. I attended meetings of the JCPS, not because of my background in intelligence, but because it was part of the tasks I had to fulfil. Secondly, my attending meetings of the JCPS had no malice on my part or on the part of the presidency. I should reiterate; many are meetings and engagements that I participated in, strictly for purposes of advising on the integrated implementation of government programmes.”

This is what I am responding to. Now, maybe I should say, as far as I can remember, and maybe the Commission can assert this for itself, I only attended the constitutive meeting of the ITT. I did not attend meetings wherein I would have had any possibility of advising or interfering in any form, shape or anything of the sort in respect to the work of the ITT, and particularly the mandate of the NPA to prosecute matters arising from the TRC. So the assertion that this indicated that the presidency intended to have direct involvement in the decisions, I think it is misplaced, because I did not attend those meetings.

COMMISSIONER KGOMO: Thank you.

ADV SEME: Thank you, Mr Jafta. Thank you, Commissioners.

CHAIRPERSON: Thank you. Mr Jafta, you have heard that your

cross-examination will happen on 13 July, so you are warned.

ADV SEME: I was getting quite upset, Chair.

CHAIRPERSON: I have omitted an important step, and that is to ask the interested parties if they have any clarificatory questions to put to you. Yes?

ADV MOROKA: I think I have only one or two questions, Chair. Thank you very much, and good morning. Good morning, Mr Jafta. With regards to your constituent meeting, the beginning of the first meeting of the NTT, you say it was part of your job to be in that
10 meeting. Mr Adams was asked a question, Mr Macadam, who was a member of the NPA, was asked a question, I think by myself. It is at page... It does not really matter.

I just wanted to get your response to what he told this Commission when he was asked whether the intelligence people or any other groupings should be at these meetings; and Mr Macadam says... Oh, it is gone. But essentially, my apologies, I am born before computers. Essentially, what Mr Macadam told the Commission that he felt that it was necessary ...[intervenes]

ADV SEME: Commissioners, if I may; may I request that all cross-
20 examination questions or questions relating to issues other than what Mr Jafta has said be held off or be part of cross-examination properly?

CHAIRPERSON: Yes. Let us listen to Ms Moroka. Let me hear, complete question.

ADV MOROKA: Thank you, Chair. It was not a cross-examination

question. It is a question that seeks to see whether there is... In fact, there is no difference between what Mr Jafta is saying and what Mr Macadam is saying. I just wanted to ...[intervenes]

CHAIRPERSON: Yes, what is your question?

ADV MOROKA: The question is; while I was reading what Mr Macadam had to say about the presence of members of the intelligence personnel in these meetings, and Mr Adams says: that is why we said we would like the intelligence agency, so that they can warn us of any risks or dangers that might take place in the
10 investigation. And all I am asking you is; do you differ with what he is saying here in regards to the task team and its work?

MR JAFTA: I do not differ with him at all. And just to restate, and I will be brief; it is what I object to is an inference drawn wrongly that my presence there had anything to do with me having an intelligence background. And maybe I may say this. I know Mr Macadam knows that very well, but it would be very, very strange for an intelligence operative to conduct intelligence by openly attending meetings, being known that he comes from intelligence, and using the Presidency Policy Unit as a cover for such activities. That is what I just find
20 objectionable, but I agree with what he has to say.

ADV MOROKA: And you have told the Commission that essentially it was to advise and to coordinate. Mr Macadam, therefore, also says that the general threat analysis from the intelligence in this assistance is that if there is a risk to life of a witness or any other improper activity that could derail, the NIA would, you know, give that

information to us; and he gives an example of political violence cases. Would you agree with that?

MR JAFTA: Yes, I agree with that.

ADV MOROKA: Thank you.

MR JAFTA: Thank you.

CHAIRPERSON: Thank you, Ms Moroka. Any clarificatory questions? None. Mr Jafta, thank you for giving your evidence-in-chief. As I have already indicated, you are going to be expected to come back to this Commission on 13 July for your cross-examination.

10 It will be at 10 o'clock. You are excused for now as a witness.

MR JAFTA: Thank you.

ADV SEMENYA: Chair, would it be appropriate to take the tea adjournment now, so that we can make logistics concerning the next witness?

CHAIRPERSON: Yes. We will adjourn until five to 12.

INQUIRY ADJOURNS

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