

**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 Motlalepule Rantho (for SAPS)
Adv Irene Dikgale (for SAPS)
Adv KD Moroka (SC) – DoJ representative
Adv Anisa Kessery-DOJ Representative
Adv Varney (SC) – The Calata Group
Adv D Pillay – The Calata Group
Mr Sipho Tlhaole – The Calata Group
Adv Gwala- NPA representative
Adv T Masuku (SC) (for Adv Menzi Simelane)
Adv Vivian Rikhotso (for Adv Menzi Simelane)
Adv Bridgette Nthambeleni (for Adv Jiba)

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INQUIRY RESUMES

CHAIRPERSON: Mr Semenya?

ADV SEMENYA: Chair and Commissioners, at the request of the Calata Group we have recalled Mr Jafta for further cross-examination.

CHAIRPERSON: Yes. Mr Jafta, you are reminded that you are still your former oath.

MR JAFTA: Yes, good morning, Commissioners.

LOYISO MHLOBO THANDO JAFTA: still under oath

10 CHAIRPERSON: Thank you.

MR JAFTA: Thank you.

CHAIRPERSON: Mr Varney?

CROSS-EXAMINATION BY ADV VARNEY: As the chairperson
pleases. Mr Jafta, firstly, thank you for agreeing to come back to the
commission to answer questions from the families, otherwise known
as the Calata Group. These questions deal largely with your
evidence-in-chief, which I found very useful. I enjoyed the deeper
dive in which you took the commission and the insights that you
provided; and today I would like to elaborate a little further on some
20 of those questions.

We have provided you with most of our questions already, so
you have got a good sense of where we are going. Perhaps we can
start with the question that we pose, and if you do have a copy of the
application, it starts at paragraph 6.1. You have mentioned that you
were previously an intelligence officer. Can you indicate what that

role entailed, without giving away any state secrets? You do not have to indicate the kinds of intelligence you were uncovering, but the role of an intelligence officer, what was your day-to-day work about?

MR JAFTA: Commissioners, once more, good morning to everybody. It is very, very difficult to imagine how one can answer to that question without pointing an educated eye into what I did, which is not desirable in terms of the legislation that governs intelligence. The broad functions of the civilian intelligence structures of the Republic are outlined in the relevant legislation, and I would suppose
10 that for the purpose of the commission, that should suffice. If I was to go beyond that, I would be at risk of violating other provisions that govern.

COMMISSIONER KGOMO: Mr Jafta, you may wish to face the Chair and not Mr Varney.

MR JAFTA: Oh, pardon me for that.

COMMISSIONER KGOMO: As you speak, yes.

MR JAFTA: Yes, yes. So I was just saying it would be impossible to give an answer without divulging what I should not divulge in law.

ADV VARNEY: But would I be correct in saying that it was
20 essentially an analytical role where you would have to look at information and data, analyse it and provide reports and recommendations, you would have to cultivate leads and sources and the like?

MR JAFTA: Can I pray that I do not answer questions about my responsibilities in intelligence? And I am going to repeat myself; any

answer to that question immediately points at what I was doing and that I do not have the liberty to disclose that.

ADV VARNEY: And can you set out your main responsibilities while you were employed at the Presidency?

MR JAFTA: In the Presidency, there was an entity called the Policy Coordination and Advisory Services Unit, formerly referred to as the PCAS. It was formed in order to ensure and to facilitate an integrated approach to the development of policy, the programme of action of the government, the sequencing of the elements of that programme
10 of action, monitoring and evaluation and providing advice to the political principals in the Presidency and obviously including the cabinet committees responsible for the various clusters of government.

So, in a nutshell, one was responsible in that policy unit for the cluster responsible for the administration of justice, law enforcement and national security; and that cluster is commonly referred to as the Justice, Crime Prevention and Security Cluster, the JCPS.

ADV VARNEY: Thank you. If we can now turn to the TRC cases,
20 which is the subject matter of this commission; at any point, did you become aware of meetings that have been held between the former generals of the apartheid area security forces and senior members of the ANC, which took place in the 1990s and carried on through to the early 2000s? And the apparent aim of these meetings was to look at alternatives to prosecutions.

MR JAFTA: Commissioners, I am going to answer this question in this fashion. I want to be careful between stating a fact that I can be held accountable for and expressing a view and opinion based on any number of variables. In this instance, I have no factual knowledge of meetings that took place between generals, either of the police, South African Police, as it was then known, or the South African Defence Force, as it was then known, and anybody who was in the leadership positions of the African National Congress.

10 Factually, I have no such information. So, I cannot express a view about what happened there. Generally, I would have... It would not surprise me, considering the transition that happened in our country, starting with the unveiling of the political organisations and the processes that happened before then, it would not surprise me if such a meeting or such meetings occurred. But factually, I have no knowledge of those.

ADV VARNEY: Why do you say that you would not be surprised if such meetings were taking place?

20 MR JAFTA: Because even when the political prisoners were still incarcerated, there were engagements between functionaries of the apartheid regime with some of those political prisoners, and later there were engagements with various categories of functionaries of the apartheid regime with various categories of officials of the liberation movements, and it is in that context that I would not be surprised if such happened.

ADV VARNEY: And if we can turn to paragraph 8 of your statement,

and under the heading “The Truth and Reconciliation Commission”, and there you indicate that the findings and recommendations of the TRC straddled many departments of the state, the different spheres of government.

Some of the findings and recommendations fell within the mandates of the departments that make up the JCPS. Some of these related to the following, trying to determine the remains of people who disappeared, investigating and prosecuting people involved in abuses of the pre-'94 era, and then investigating networks and resources that
10 remain unaccounted for.

I want to focus on 8.2, “investigating and prosecuting people involved in abuses during the apartheid era”. Why would that be a particular interest for the Presidency? Or put differently, why should it be part of the purview of the Presidency?

MR JAFTA: In the first instance, Commissioners, the president as the head of government, head of the national executive, it is scarcely possible to imagine an area of government that would be of no interest to the president as the head of the national executive, particularly where the issues that fall within the mandate of any of the
20 departments of the state would, for instance, have an item within what one refer to as the programme of action of the government.

In respect to the JCPS, as an example, the discharging of the responsibilities of the various departments in respect to the administration of justice, and that would refer to the capacity of the police to investigate proficiently, referring dockets for consideration

on whether or not to prosecute by the Prosecuting Authority, that the judiciary is adequately resourced to adjudicate over those matters, including civil matters; and that where custodial penalties are handed down, Correctional Services is ready to discharge its responsibilities in respect to those who are sentenced to custodial penalties, and all the other things that go with it. So that on its own is something that the president would be interested in.

The cases arising from the TRC naturally straddle the normal functioning of the administration of justice, as I have just outlined, but
10 they also particularly focus on those matters that were referred to government by the TRC for further processing. And in respect to matters outstanding arising, for instance, from people who had not appeared before the TRC, at least in so far as it had a process that dealt with applications for amnesty, or whether somebody was denied amnesty and would have appeared before the TRC, those are matters that would have been referred to government. And as head of government, the president and the office of the president would have an interest on those matters.

I may add this, Commissioners; this is not just unique to the
20 JCPS. It would also attend those recommendations of the TRC or matters arising from the TRC that fell within the remit of other clusters, such as the social cluster, education, housing, healthcare, and that sort of a thing. So, all of those matters would have received the same level of attention from the Presidency. So there was nothing particularly unique in respect to the interest of the Presidency

on those matters that fell within the remit of the JCPS, as distinct from those matters that fell within the remit of other clusters.

ADV VARNEY: One can certainly understand the interest of the Presidency in pursuing these matters where perhaps there were challenges, shortcomings, a need to mobilise resources. Would it extend necessarily, though, to case-by-case oversight or monitoring in relation to the exercise of decisions in each TRC case?

MR JAFTA: No, it would not. It would not. The Presidency and the
10 functionaries, for instance, within the policy unit would not be involved
operationally in any of the departments responsible for the
administration of justice. But the Presidency, represented by the
policy unit, would be interested in ensuring and tracking any barriers
to proper functioning of the government in pursuit of the objectives as
outlined in a State of the Nation Address or matters that the
government has to attend to. So, yes, the Presidency would have
had an interest in monitoring how matters arising from the TRC were
proceeded with, without it being operationally involved on a case-by-
case basis.

ADV VARNEY: If I can draw your attention to paragraph 11.1.5 of
20 your statement. That is page 3. You make an interesting point there.

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

So you appear to be saying that even in the post-apartheid era, the

functionaries of the former apartheid regime, and I assume you are referring more particularly to those in the erstwhile security sector of the apartheid state; that they continued to wield considerable influence in the post-apartheid era. Would I be correct in saying that?

MR JAFTA: To a significant degree, you would be correct. And what does one mean by that? It is pretty much established fact that the functionaries of the apartheid government were resourced by a government. They were not dependent for their responsibilities on raising funding from the donor community and that sort of a thing, 10 mobilised underground structures such as those who were in the liberation movement side of things. And they had enabling legislation, whatever one, however one can characterise the laws that were applicable at the time.

There were arms that were disbursed. There were cases that were... there are particular operations that were carried out within the country and without the country. There were systems in place that, for instance, to this day, Commissioners, the country does not have enough information on that. There are agents and sources of the former regime that remain unknown or their status is not truly known 20 or the extent of what they were involved in is not known. And all of those and other factors I have not mentioned remain available for use or need by the functionaries of the former regime.

I may add, for what it is worth, Commissioners, that the government that obtained prior to 1994 had important and strategic alliances in the world. Many of the governments of the western

countries were really supportive of the government or the governments that obtained prior to 1994 and possibly even before 1948. And so, that is a resource that somehow remains available to those people who would have...

I do not know if I mentioned this last time. It may have slipped my mind at the time if I did not. Talk about the murder of someone like Dulcie September. It happens in Paris. She is the chief representative of the ANC, of the African National Congress. That already talks to the resources that were available to the government
10 that obtained before 1994. And these are the resources that one is referring to without really exhausting the full list of the resources, but I hope I am indicating exactly what is suggested by that line adequately for the purpose of the commission.

ADV VARNEY: Thank you, Mr Jafta. While we are on this topic, do you recall a project, a secret project of the apartheid regime called Stratcom that was in the apartheid days attached to the State Security Council? Stratcom was short for Strategic Communications and they carried out dirty tricks and specialised operations around deception.

20 MR JAFTA: Yes. I am aware of certain aspects of it. I would not suggest that I know. I have wall-to-wall knowledge of what Stratcom entailed. And perhaps in that regard, I would have suggested last time I was here that language and its deployment was an important tool. And by way of making an example again, I tried to make a distinction between what was called forced removals and what I

consider to be possible to properly profile it as ethnic cleansing where such obtained as distinct from forced removals. And that would be part of what Stratcom would have come about, come up with, black-on-black violence. That would be another product of Stratcom.

ADV VARNEY: Do you think it is possible that elements from the erstwhile apartheid regime could have employed Stratcom-type tactics and projects in the post-apartheid era to pursue their ends?

MR JAFTA: I have no factual evidence of it, but it would not surprise me that purely what you can call lone wolf operations, somebody who
10 would have come from that background would have pursued an operation that would be quite characteristic of a Stratcom-type of an operation. But I would not suggest that post-1994 that would have been carried out within government or in a discernible, organised fashion, yes.

ADV VARNEY: Yes. So we are also not suggesting that this was an official government operation post-1994, but in due course we will be submitting to the commission that the former elements from the erstwhile South African Police, South African Defence Force, State Security Council; that they did employ a Stratcom-type of operation to
20 manipulate the approach of government when it came to the TRC cases.

And in essence, we will be submitting to the commission that the deception that they employed was to suggest to senior people in government that the National Prosecuting Authority was on the verge of taking action against the ANC 37, including President Mbeki, and

that the underlying rationale was to close down all prosecutions on the basis that if they proceeded against the former apartheid officials, they would then have to move against the ANC leadership. Do you have a comment?

MR JAFTA: I am not sure, Commissioners it is my space to comment on what submission is going to be made. It should be made on the basis of what is available to those who shall make such a submission. And maybe those who have to respond will respond at the time when such a submission is made. I may just suggest for
10 what it is worth that powerful as Stratcom was, I am not sure that it would have played a material role in influencing decisions about whether or not anybody was prosecuted.

Further, and I tried to make this point last time, the step around deciding whether or not to prosecute has got to be preceded by and informed by the outcome of an investigation by the South African Police Services or any investigative authority of the state. And a decision to prosecute would be taken to a large degree on that basis would be informed by a docket.

Now, if the submission is going to be informed by the effect of
20 the existence of dockets and then notwithstanding the existence of dockets, then because of Stratcom, government was then persuaded to try and stop the prosecutions; that is another matter, but that would be my comment.

ADV VARNEY: Just in relation to the notion that you put up about the existence of dockets; there were actually dockets in existence in

relation to investigating alleged crimes committed by individuals within the ANC. For example, the landmine campaign, those dockets existed and the South African Police were pursuing those cases. But by May of 2004, the NPA decided not to proceed with those cases and they closed those matters, but notwithstanding that decision, certain police officers within the SAPS continued pressing for investigations to go further and for decisions to be retaken. Were you aware of that?

MR JAFTA: No, I am not aware of that.

- 10 ADV VARNEY: You mentioned, I believe in your evidence-in-chief, that the approach around the TRC cases had its genesis in the speech made by President Mbeki in April of 2003. And as a result of that speech, government set up an Amnesty Task Team. It was set up by the Directors General Forum and that team then made recommendations to that forum. Those are set out under paragraph 6.5 of our application. So I just want to put the main recommendations to you for your response.

- 20 The first main recommendation was to introduce new prosecution criteria in the NPA's prosecution policy to provide additional criteria not to prosecute TRC cases; and that ultimately did happen. Secondly, they proposed a Departmental Task Team which included officials from the intelligence agencies, the Presidency and other executive departments.

And then lastly, they recommended that this Departmental Task Team, sometimes called the Interdepartmental Task Team, play

a role in advising the NDPP of the advisability of prosecutions in each TRC case before the institution of any criminal proceedings in those cases. What is your response to those recommendations?

MR JAFTA: Commissioners, perhaps I would need to be advised here. This does not come from me, that there was a decision to establish an Amnesty Task Team. I think from what I read; that statement derives from someone else apart from me. And matters related to the Amnesty Task Team would be best responded to by those who were in the constitutive meeting of this Amnesty Task
10 Team and the officials who represented whatever departments were in the Amnesty Task Team.

I have my doubts. I would have to go back and look at some material, but I have my doubts about the suggestion that the Presidency was represented in the Amnesty Task Team. I seem to think that the Presidency was not represented at the Amnesty Task Team, and for that matter was not even represented. Once the Interdepartmental Task Team was established, the Presidency was not represented in that either. So I just thought I must state that at the outset.

20 In respect to what is before me, the application, particularly 6.5.3, where basically it says, if I can read it, it says:

“His...”

Meaning my view;

“...on the establishment of the task team and its
recommendations to the Directors General

Forum, including

6.5.3 Its role on advising the National Director of
Public Prosecutions of the advisability of
prosecutions in the TRC cases before the
institution of any criminal proceeding in
each case.”

If that was provided for, and it is possible it was provided for, that
would not fit neatly with the legislation governing the activities and the
mandate of the National Prosecuting Authority. I think that would be
10 highly irregular to advise the NDPP on essentially whether or not to
prosecute a case.

What most definitely would have happened, and I am saying
this on the basis of my experience having been in the Presidency,
would be for the departments to collaborate and share information
giving regard to the various differentiated mandates of the
departments in the JCPS in pursuit of an integrated outcome, so to
speak. I could be wrong here, but 6.5.1 must be talking to the
prosecution policy that was established specifically to deal with these
matters that was ultimately set aside, I think, by the Constitutional
20 Court.

6.5.2, the composition of the departments. I have stated that I
have my doubts on whether or not the Presidency was represented.
As for the other departments, and giving regard to their legal
mandates, I would not have a problem with the participation of those
departments if one has regard to their legal mandates.

ADV VARNEY: Thank you. Just turning to 6.5.1, the insertion of the new prosecution criteria; would you agree that this was also somewhat irregular to put up a specific criteria only in relation to a certain class of cases for a decision not to prosecute?

MR JAFTA: I must restate, Commissioners that this is something that I have no factual knowledge of; that I never participated in meetings of this Amnesty Task Team. So I think that must be borne in mind. But if 6.5.1 is talking about the prosecution policy that was subsequently adjudged to have been unconstitutional, obviously then

10 the view that this was irregular would sustain.

COMMISSIONER KGOMO: Yes, you make reference to the policy that was set aside by the Constitutional Court. It is in fact the high court, Judge Legodi, if I understood you.

MR JAFTA: Thank you. Thank you for the correction, yes.

ADV VARNEY: Thank you, Commissioner. And Mr Jafta, just to be clear, we are not suggesting that any of this comes from you or that you were part of the Amnesty Task Team. We know that you were not.

MR JAFTA: Yes. Thank you. Thank you.

20 ADV VARNEY: Although you, in relation to the Departmental Task Team that was set up subsequently some years later, you were listed as a principal member of that team, sometimes called the TRC Committee or the Interdepartmental Task Team.

MR JAFTA: On the surface, it might appear that I was a principal member. In fact, I was not. I only attended the constitutive meeting

of that. I suspect this fact can be... How would I say this? To establish this fact, one would have to look at the minutes of the meetings of the Interdepartmental Task Team and look at the representation. I would imagine that the Presidency does not feature in any of the subsequent meetings. The only meeting that I sat in was the constitutive meeting, which I think was chaired by Adv Pikoli who then handed over the day-to-day operations or functions or business of that ITT to Adv Ramaite.

ADV VARNEY: Since you raised the minutes, let us just quickly take
10 a look. Do you have a copy of the cross-examination bundle? It might be that lever arch file. Commissioners, I am referring Mr Jafta to pages 183 and 184. Perhaps we can just start at 183. This is a list of the TRC Committee members and then the principal members. It was attached to a statement of Assistant Commissioner Jacobs.

So, there you will see the list. We are not going to go through them. Under "principals", you are listed in the third row representing the Presidency. That is TRC. And then if you turn to page 184, this is the minutes of the TRC Committee Meeting, apparently the very first meeting, 12 October 2006 and you are listed at number 4
20 representing the Presidency.

The minutes are there. I do not think we need to go through them. I think you are correct that it was initially chaired by Adv Pikoli before he handed the chairpersonship to others. I think you are correct though that this is the only reflection of you attending that TRC Committee Meeting.

MR JAFTA: Correct.

ADV VARNEY: Incidentally, we did pose a question to Deon Rudman, who was a senior official in the Department of Justice and he was the Chairperson of the Amnesty Task Team. We asked him why did they recommend that a member of the representative of the Presidency be on the subsequent Departmental Task Team, the TRC Committee. It was put to him that this was possibly because this exercise was a project of the Presidency; and having a member of the Presidency on the task team would help to keep the president
10 informed of developments. Mr Rudman agreed with that proposition. Would you agree as well?

MR JAFTA: Yes and no. The task teams occur in government for a variety of reasons and in respect to multifaceted projects. Typically, reporting or accounting to government in respect to the business of task teams does not in strict terms of governance require a representative of the president to sit in each of the task teams. So, to suggest unintendedly that that was intended to ensure that the Presidency receives regular updates, I do not think that is correct.

In terms of the constitutive meeting, the Presidency would
20 have had an interest in ensuring that the programme of action is defined appropriately and the programme of action is outlined appropriately. The operational issues that derive therefrom is not the business of the Presidency and accounting to the Presidency would happen whether or not the Presidency is represented in such a task team.

ADV VARNEY: Thank you. Can we turn to a meeting that took place at the Presidency in mid-2006 and information regarding this meeting comes from the affidavit of former NDPP, Vusi Pikoli. That affidavit is in the same bundle. I am going to refer you to page 146 of that bundle, paragraph 31. I will just read it into the record so we are all on the same page. So Pikoli writes:

10 “I then approached the Presidency in order to
 secure the necessary collaboration of the parties
 to apply the prosecution policy guidelines. A
 meeting was arranged in mid-2006 by Reverend
 Frank Chikane, the then Director General in the
 Presidency. The meeting was attended by
 himself, the DGs of Justice and NIA, Mr Selebi,
 the Secretary of the Defence Secretariat, Mr Jafta
 from the Presidency, and I. Mr Selebi again
 complained about Adv Ackermann's involvement
 in the process.”

Do you have any recollection of that meeting?

20 MR JAFTA: In strict terms, no. Would such a meeting have taken
 place? I would imagine, yes, it would have taken place, but
 recollection in precise terms of such a meeting, no. This is how,
 Commissioners we would often do our work. If for whatever reason I
 picked up that there was a problem, either with the policy or the
 coordination of a policy or a programme, I would raise that with the
 then head of the policy unit and Reverend Chikane as the Director

General in the Presidency.

And every now and again, when there was a need for that, then you would convene a meeting where the issues that could not be resolved would be, Reverend Chikane would try to resolve the issues. And paragraph 31 suggests to me that this is one of those issues. That is why I am saying I have no specific recollection, but what is outlined in paragraph 31 fits in with what would happen in the Presidency at the time.

ADV VARNEY: So according to Adv Pikoli, in his oral evidence, he
10 said that the meeting was called to attend to various problems and challenges; and these included securing investigators from SAPS and then looking at the role of the other state departments on the task team, in particular SAPS and NIA in relation to the role that they should be playing in the prosecution decision-making process. I assume, of course, this was a long time ago, so you do not recall those kind of specifics?

MR JAFTA: Yes, I would not remember the specifics. May I just establish some certainty? I suspect that my reading of paragraph 31 refers to the Amnesty Task Team. That is how I am reading it, so I
20 just want to be clear that this is what... Or is it in respect to the departments that would collaborate in order to give effect to the provisions of the prosecution policy guidelines?

ADV VARNEY: Yes, the latter, not the former, because by then the Amnesty Task Team have already concluded its work and closed down back in 2004. So this would have been the departments

serving on the new Departmental Task Team, or that so-called TRC Committee. Let us then turn to paragraph 11 of your statement, where you make reference to a meeting that occurred later in 2006 at the home of Minister Zola Skweyiya, then Minister of Social Development, the late minister. And this meeting is also referred to in Adv Pikoli's affidavit. That is at paragraph 32, and I want to read to you Adv Pikoli's account of that meeting.

10 “At this meeting it became clear that there was a
fear that cases like the Chikane matter could
open the door to prosecutions of ANC members.
I quote hereunder from my affidavit filed before
the Ginwala Commission as to what transpired at
this meeting. The Minister of Safety and Security
was concerned about the decision to proceed
with the prosecution and with Adv Ackermann's
involvement in the process and the issue of
whether it was Ackermann or me who was behind
the decision to prosecute. The Minister of Social
Development was concerned about the impact of
20 the decision to prosecute on the ranks of ANC
cadres who were worried that a decision to
prosecute in the Chikane matter would then give
rise to a call for prosecution of the ANC cadres
themselves arising out of their activities pre-
1994.”

Let us pause there. Can I ask for your comment in particular on the concern raised by Minister Skweyiya that the impact of a decision to prosecute ANC cadres would give rise to a call for prosecution of ANC members themselves?

MR JAFTA: Commissioners, this is a statement by Adv Pikoli based on his recollection. There are other people who are suggested to have been present at the meeting. It might be important to solicit their views about what transpired at the meeting. In other words, to test what Adv Pikoli suggests happened at the meeting.

10 Previously, when I appeared before the commission, I stated that until this morning I really was unaware about the existence of dockets that would enable the NPA to decide to prosecute members of the African National Congress in the event the people who attempted to kill, to murder Reverend Chikane were prosecuted. I really am unaware of the existence of those dockets.

 Now, it seems to me that it is being suggested that the fear was more abstract, if that is the word for it, than really informed by reality; and I find that construct somewhat to be inconsistent with the reality that I have lived. And for what it is worth, I am going to put it
20 like this. Being involved in the war for liberation against colonial rule and apartheid necessarily attracted adverse implications for those who elected to participate in that war; and such adverse consequences included precisely what was attempted on Reverend Frank Chikane.

 Now, if those who were involved in the war and the struggle

for freedom could then later be characterised as being potentially paralysed by an abstract fear of prosecutions when many of them ended up in exile, incarcerated in Robben Island and such other places, I just find that construct to be inconsistent with lived reality. And that is why I suggested that if there were dockets; and I hear the point being made about the landmine campaign, if there was a factual basis that would trigger or cause anxiety and fear, I could engage with that, and I am unaware of the existence of such.

At the risk of repeating myself, I really cannot reconcile with a
10 construct that suggests that fear on the basis of an abstract threat would be sufficient for government with a constitution to then wish not to prosecute those implicated in violations of human rights. I just find that construct difficult to reconcile with. And it would also not be consistent with the fact that the same government made sure, notwithstanding the limitations, or let me put it like this.

There is no evidence, leave aside the part of the deal that talks to prosecutions, there is no evidence I am aware of that anybody interfered with investigative work by the relevant authorities, notably in the South African Police Services. And if there was an
20 anxiety about prosecutions, I would imagine if the suggestion is that because you have an anxiety about being prosecuted and therefore you interfered with the prosecution, it stands to reason for me that you would have had the same anxiety if you get to know that there is an investigation and then you interfere with the investigation, but there is no evidence pointing to that that I am aware of.

CHAIRPERSON: So Mr Jafta, in short, to respond to Mr Varney's question, are you aware of the concerns that were raised by the Minister of Social Development with regard to the impact of the decision to prosecute Reverend Chikane on the ANC cadres?

MR JAFTA: I am unaware of that and that is why I was suggesting that, and I am sure it is not for me to suggest to the commission, that this must be tested with the other people who are alleged to have been in the meeting.

ADV VARNEY: Thank you, Chairperson. So, Mr Jafta, I want to put
10 it to you that this fear or concern was hardly abstract or out of the ordinary, because by this time there is evidence before the commission that these generals from the apartheid era, through their attorney, a man by the name of Mr Jan Wagenaar, they claimed to have dossiers on the leadership; and the threat that was being made was that these would be released or made available to the prosecutors should their people be pursued. They even claimed that they were in possession of minutes of meetings that had taken place in Lusaka and the like.

Furthermore, we are aware of other developments. Not long
20 after the prosecution of the perpetrators behind the poisoning of Reverend Frank Chikane, not long after that, of the plea and sentence agreement, a document comprising of a memo dealing with the landmine campaign was actually leaked to the press, to the Afrikaans press which published it. The evidence of Adv Ackermann is that that document was forged to give the impression that it was

signed off in 2006 when in fact it dated way back into 2003. So given all these developments, I put it to you that this was not an abstract concern. It was a real concern, a real fear of governments at that time.

MR JAFTA: Commissioners, I would really suggest that this be canvassed with those who are supposed to have had the anxiety. I have read what is in the bundle ascribed to Mr Wagenaar. I have heard about people being in possession of minutes of one or the other meeting of some of the structures of the African National
10 Congress in Lusaka.

I am aware that, at least if you are talking about the police, Eugene de Kock was arrested and prosecuted. I am aware that the people who poisoned Reverend Frank Chikane were prosecuted, in fact, and other functionaries of the apartheid regime. Few as they are, but still important. That did not trigger a chain of events that would justify the anxiety that is being talked about.

So in other words, the generals, whatever they would have been threatening or suggesting that was going to be their response, I really have no evidence suggesting that whatever they threatened
20 materialised after the prosecution of Eugene de Kock and other people, and including the people who poisoned Reverend Chikane.

As a matter of fact, and maybe Reverend Chikane can best explain this; the meetings that he had with the relevant generals, at least in respect to the attempt on his life, I am not aware that they ever suggested that there was this other option available to them, if

there was to be a prosecution of the people who had attempted to terminate his life.

ADV VARNEY: Just as a matter of clarification, Mr Jafta; Eugene de Kock was prosecuted some 10 years previously, in 1996, at a different time when these circumstances were not prevailing. The plea and sentence agreement in relation to Vlok and Van der Merwe and the others for the attempted murder of Frank Chikane; that took place in September of 2007. Are you aware that shortly after that plea and sentence agreement, Adv Pikoli was suspended and part of
10 the complaints made against him was his handling of the Chikane matter, and Adv Ackermann, who was the prosecutor in that matter, was relieved of his duties in relation to the TRC cases?

MR JAFTA: I am aware of Adv Pikoli being relieved of his responsibilities. I am unaware of the relationship between that decision and how the matter of the poisoning of Reverend Chikane was proceeded with. I am unaware of that fact. And again, this would have to be canvassed by those who took the decision.

ADV VARNEY: Just lastly, and to be clear; are you disputing Adv Pikoli's recollection of what the Minister of Social Development said in
20 that meeting?

MR JAFTA: I am not disputing it. I have no recollection of him, of Dr Skweyiya having said that, which is why I then pray that this matter be canvassed with the other people who were in the meeting.

ADV VARNEY: Yes, we will certainly do that when the opportunity arises. But just to make the point that Adv Pikoli's affidavit before the

Ginwala Commission, he prepared that not that long after these meetings. Let us turn to any recollection that you might have of any further meetings on the TRC cases in 2006 at the Presidency, and these are also referred to in the paragraphs 34 to 36 of Adv Pikoli's affidavit. That is pages 148 to 149 of the bundle.

So paragraph 34 on page 148, Adv Pikoli refers to a further meeting that took place at the office of the Presidency, that the task team would not make recommendations on a decision to prosecute or not, but it would receive all the necessary inputs and information from
10 the various departments.

Paragraph 36, there was a further meeting of ministers in the security cluster at the office of the Minister of Safety and Security. This was attended by the Minister for Safety and Security, Minister of Social Development, Acting Minister Didiza. It is not clear to me whether that is the same meeting he is referring to, although this one was not at the home of Minister Skweyiya. So I assume it is a different meeting. Do you have a recollection of these other meetings that took place in 2006?

MR JAFTA: Not in specific terms, save to say that my reading of
20 paragraph 34, 35 is what earlier we referred to as the minutes of that meeting of the Interdepartmental Task Team. Not unless there is another meeting where Mr Adv Ramaite was assigned the responsibility to do this work operationally.

So it seems to me that 34, 35, 36 refer to what was the constitutive meeting of the Interdepartmental Task Team. I am not

sure if that meeting took place in the Presidency; in other words, at the Union Buildings. I really cannot, I have no recollection in precise terms of where that meeting took place, but that is my reading of those paragraphs.

ADV VARNEY: Yes, you are partially correct. They were referring to what this task team would do, although that task team had not met as yet. Do you recall in any of these meetings whether there was any opposition expressed to the role of Adv Anton Ackermann in these cases?

10 MR JAFTA: In broad terms, there was... I do not know if the word disquiet would explain, but there was a sentiment or some form of unease around Adv Ackermann and how he was running the business of government in respect to matters arising from the TRC. Yes, I remember that, but I have no specific detail in terms of what happened in what meeting.

ADV VARNEY: Now, you have made reference to the role of the Justice, Crime Prevention and Security Cluster, and in the documentation there is reference to a subcommittee of the structure known as the Cabinet Committee on post-TRC matters. Were you
20 aware of this subcommittee; and if so, why was there a need for such a Cabinet Committee on post-TRC matters?

MR JAFTA: Commissioners, and I mean this with the greatest respect, I was not a member of Cabinet, much less the Head of the National Executive. The decision to establish subcommittees of Cabinet rests entirely with the Head of the National Executive, who

was the President, and that was Mr Thabo Mbeki at the time.

I was not the spokesperson of Cabinet at the time and I think I cannot express an opinion on matters that fell completely out of my province, outside my province. This is a matter that is best left or canvassed with the Head of the National Executive and Cabinet.

ADV VARNEY: Let us turn to the TRC Committee or the Interdepartmental Task Team that was set up as a result of the recommendation emerging from the earlier Amnesty Task Team. And we know that it had its first meeting, I believe it was October
10 2006. Can I ask; how it was that you came to sit on that committee, or at least that first meeting? Who appointed you?

MR JAFTA: As part of my responsibilities in the policy unit, I sat in meetings of ministers, meetings with DGs, or rather with ministers, or with ministers. I met; I attended meetings of committees of the JCPS and subcommittees. All of that did not require a prior specific appointment to attend a specific meeting.

And I would suggest that, in fact, I do not think there was a set of rules or protocols that governed which task team one would attend and what regulatory instruments one would satisfy before one
20 attended. So I attended this specific meeting in the normal course of one discharging his responsibilities, as I had outlined right at the beginning about the mandate and the functions of the policy unit.

ADV VARNEY: If I can draw your attention to your statement, 11.1.2, and actually we are going back to something that you say emerged from that meeting at the home of Dr Skweyiya. You

mentioned that:

10 “A proposal or idea 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. In this way I understood any party to the conflict of apartheid would not feel more prejudiced than the other side. This would have been raised as a point of principle and no names of people were mentioned.”

Can I ask you; who raised that proposal or idea?

MR JAFTA: Commissioners, 11.1. Maybe let me read it to the record. 11.1 reads:

20 “I attended several meetings that dealt with matters related to the work and report of the TRC. I also was in attendance when a meeting took place at the residence of the late Minister, Dr Z Skweyiya. Although I have no specific recollection of the specific details of what transpired in the meetings referenced, I broadly recollect the following:

11.1.2 A proposal had emerged, a proposal or idea that in order to finalise cases arising from the TRC, two prominent individuals, one from the apartheid regime and one

from the African National Congress, could be identified for prosecution. In this way I understood any party to the conflict...”

That would be the former regime and the ANC.

“...would not feel more prejudiced than the other.”

In other words, there would be parity on how the two parties to the conflict were dealt with.

“This would have been raised as a point of principle.”

10 In other words, a proposal or some idea, informal;

“And no names of people were mentioned.”

The last time I appeared before the commission, I indicated and I spoke to this point; that at some point there was a view that emerged, that in order to bring matters arising from the TRC and its processes, it perhaps would be prudent to identify two prominent individuals from the apartheid regime and two prominent individuals from the ANC.

I then explained that this was found to be seriously problematic for various reasons, one of which would be that an approach such as that, and I have no recollection of where this came
20 from, but it certainly did receive attention; an approach like that would put on the same pedestal those who were fighting for apartheid and those who were fighting against apartheid, and this was found to be objectionable.

And I did explain something that I referenced earlier, and maybe let me repeat that. I think it is 1973 when the United Nations

pronounces apartheid as a crime against humanity, which it was, and that kind of an approach would fly in the face of that resolution by the United Nations. I did indicate earlier, like I did the last time I was here, that there were particular problems with the deployment of language such as referring to ethnic cleansing, instances of ethnic cleansing, and then you refer to that as force removals.

So, for those reasons, it would be really, it was argued it would be very, very wrong to put on the same pedestal those who were fighting for apartheid and those who were fighting against
10 apartheid. And I am making the point at 11.1.2 that this had received attention. Whether or not it was specifically at the meeting at the house of Dr Skweyiya or some other time, I do not know in specific terms, but this is something that did receive attention.

ADV VARNEY: Thank you, Mr Jafta. As a matter of interest, I would agree with you when you say that this tit-for-tat approach would have been a simplistic way of developing an approach to deal with apartheid-era cases. And coincidentally, around that time, I made a written proposal to the NPA advising against a tit-for-tat approach,
20 because it would not take into account the context of apartheid and the fact that under apartheid, thousands of people had been prosecuted and persecuted for their political stands. So that context is important. On that score, we are on the same page.

Before we close up, I just want to make sure that I have covered. I think I have covered almost everything in your statement, but I am not turning to my notes from your evidence-in-chief and I just

want to see. I think we have covered almost everything.

In your evidence-in-chief, you mentioned that one of the reasons for the approach adopted by government was to help uncover the networks and, you know, find information about arms caches and the like. And for that reason, government came up with this new approach to TRC cases.

My response to you for your comment is that government was always able to do that. It had the necessary tools. It had its intelligence services. And, of course, in the criminal procedure it had
10 section 204 where it could indicate, it could use state witnesses; and if they testified honestly, then they would be granted immunity.

So I put it to you that the rationale that this approach had to be adopted for the TRC cases was something of a fig leaf. There was a justification put up in order to control the cases rather than to extract that kind of information.

MR JAFTA: The matters arising from the TRC are complex in the sense that at the one level you would have to deal with the absolute operational functionaries. And these would be the people who would know where the body was buried, who pulled the trigger, who burnt
20 the body, how was it disposed of, where are the caches. At another level, you have to engage with those who formulated the policies, who gave the authorisations.

So, yes, these are matters that have received attention even prior to 1994; and dare I say these are matters that should continue to receive attention. And it is almost like that universally in respect to

transitions from totalitarian regimes to a democratic state. So, yes, that was always the case.

But in respect to these matters that arise from the TRC, they provide yet another opportunity for, if the departments work in a mature way, the police, the intelligence agencies and such like, for them to exchange information, because in the case, in one case; make an example. In case X you may find information that sheds light on something that is yet to be resolved on a completely different set of matters. And so there is never a time where you can, with a
10 hard and fast rule, say now there is no fit or relationship between what had happened before and what is happening in respect to the TRC cases and what happens subsequent thereto.

This is an ongoing *modus operandi*, so to speak, because whether you are dealing with terrorist organisations, transnational criminal syndicates, you need this collaborative approach between the various entities that are responsible for the administration of justice and other responsibilities of the state.

ADV VARNEY: Thank you. Also, in your oral evidence, you said that you were unaware of any attempt or effort to stop the law
20 enforcement authorities from carrying out their legal mandate. Were you aware of the direction that then Minister of Justice, Brigitte Mabandla, gave to the then Acting NDPP, Silas Ramaite, in November of 2004; a direction that the TRC cases should not be pursued further until the development of guidelines to handle those cases?

MR JAFTA: I was unaware of that, Commissioners; and I remain unaware of it.

ADV VARNEY: Right. And were you aware of the struggles that the NPA had in securing investigators for these cases, a struggle that persisted from 2003 all the way to 2010, which effectively meant that apart from a few cases that had been previously investigated, and we are talking about a handful of cases in that regard; they were not able to pursue these cases, because they were simply denied investigators until halfway through 2010?

10 MR JAFTA: I did state, Commissioners that there are other challenges that would have attended investigations in respect to the security apparatus of the government that obtained prior to 1994. And I did say that although there was great and mature collaboration between the various entities, the operations were still nevertheless very, very compartmentalised.

In other words, they were underpinned by the doctrine of need to know. And for any investigation to succeed, you would need to secure collaboration with evidence from those who were within a particular unit that would have carried out an operation. This would
20 not be an easy matter.

I was aware that, and I am even, having read this document, I am more aware now that the police are supposed not to have availed the sufficient numbers of detectives, as an example, to do investigative work, but that is a matter that really ought to be canvassed with the police, having regard to a whole range of other

factors or variables that are obtained within the police, such as the number of detectives, the number of crime scene experts, capacity with the forensic science laboratories, *et cetera, et cetera*. So there is a whole number of other variables that would have to be looked into.

And regard would have to be had to such other matters, such as the case cycle times; in other words, between when a case is registered with the police in a police station and when the case is ready for a decision on whether or not to prosecute, whether the
10 variance between normal detective work was so different in respect to detective work attending matters arising from the TRC.

So that is what I suggested last time around that. It might very well be that if somebody looked into that, you might find that the cases arising from the TRC, which is bad, are typical of normal detective work, material outputs of detective work in the police, but I do not know for a fact if that is the case.

ADV VARNEY: Chairperson, I see it is almost 1 PM. And looking at my notes, I estimate that I will probably need another 15 to 20 minutes. So I just wanted to check with Chairperson whether you
20 wish to proceed or adjourn for lunch.

CHAIRPERSON: Mr Varney, we will continue until you complete your cross-examination.

ADV VARNEY: As the Chairperson pleases. Mr Jafta, also in your oral evidence, you mentioned that Frank Chikane had made various complaints about the role of the NPA. For example, that in a meeting

that Adv Ackermann had with him, Ackermann, to use your words, berated him. And he complained further that the NPA should have consulted with Reverend Chikane before a plea bargain with the perpetrators went ahead.

So I just want to put it to you that under oath, both Adv Anton Ackermann as well as Mthunzi Mhaga, who were present in that meeting, deny that version. And in relation to the consultations, Adv Pikoli and Ackermann assert that they consulted with Reverend Chikane on multiple occasions before the plea bargain. Do you have
10 any comment on that?

MR JAFTA: Commissioners, I reported on a conversation that I had with Reverend Chikane. To be very precise, he could not have complained to me. He merely shared with me his experience of the meeting. If it is necessary, I will repeat that.

As far as I can recollect, it is Adv Pikoli who called seeking an appointment with Reverend Chikane, which appointment was, which request for an appointment was granted. And instead of Adv Pikoli showing up for the meeting that he would have requested, it is Adv Ackermann and Mhaga who showed up at the meeting with no
20 suggestion from Adv Pikoli that he was no longer coming to the meeting, but instead was sending the two officials from his office.

I do have a recollection, not very vivid, that Reverend Chikane was quite distressed at what happened. It might be of benefit to the commission to contrast what Adv Mhaga and Ackermann say transpired at the meeting with what Reverend Chikane would say.

And I do not know if he has canvassed this matter with the commission.

What I also stated was, in line with what Reverend Chikane said to me, shared with me, I would have expected that perhaps maybe the NPA could have explored exchanging notes with Reverend Chikane on what it is that he would have claimed from his engagements with the people who tried to kill him and the supervisors of the people concerned.

My recollection is that no such an engagement took place, but
10 it was more like, what are you talking to these people about? Desist from further engagements; and if you continue, some penalties would attend such behaviour. That is what I recollect, and it would be interesting to test the assertions by Advs Mhaga and Ackermann against what Reverend Chikane would say about his own experiences.

ADV VARNEY: Yes, just for the record; Adv Pikoli testified that before that meeting took place, he had already met with Reverend Frank Chikane. Let us move on to what you testified in relation to a discussion you had with Adv Menzi Simelane who made some
20 complaints around how the NPA at the time was dealing with plea bargains. And if my notes are correct, you indicated that Adv Menzi Simelane was of the view that some of the perpetrators should have been given plea bargains in order to assist them to testify against other accused.

Now, if that recollection is correct, then I must put it to you

that that is not what plea bargains are designed to do. A plea and sentence agreement is in fact an agreement between the accused and the state as approved by the Court. They are not then required to testify against other accused. There is a separate section dealing with that – that is section 204, which does allow for state witnesses to give testimony in exchange for immunity if they testify honestly. Do you accept that?

MR JAFTA: I accept that, and I must repeat what I said, that I wish that I should not be requested to elaborate on what it is that we are
10 talking about. It was by way of making an example, and I can assure the commission that the matter we are talking about had absolutely nothing to do with the Truth and Reconciliation Commission, absolutely nothing.

ADV VARNEY: And later in your oral evidence, you mentioned that prosecutions against senior figures in government, which might require them to step down from office, could paralyse government. And when you were asked, I believe, by Commissioner Gabriel whether that was an academic notion or a real threat, you said it was in fact an actual threat. So what I wish to put to you is; given that it
20 was an actual threat, surely that then adds to the assertion that the families make, and that this threat did feed into the concerns held by government and helped to shape their approach to these cases.

MR JAFTA: Commissioners, the matter arose somewhat differently, whether or not prosecuting; and as an example, the 37 members of the ANC would constitute a threat to national security. And the point I

made was that theoretically if you were to prosecute, as an example, if you make an allegation against a sitting president with a view to prosecute, it would stand to reason that that president would have to step down and leave the office of president for very, very obvious reasons.

Now, why was this? This was not canvassed by me to suggest that this was an anxiety that would have caused government to interfere with prosecutions. I restate that I am unaware of an instance where government interfered. The point made earlier about
10 Minister Mabandla corresponding with Adv Ramaite was unknown to me.

The point about it is; theoretically you can have a scenario where, suppose theoretically you mount a prosecution against a president and several ministers on account of them, in this particular example, having been members of the National Executive Committee of the ANC. You can paralyse government, particularly where you can so mount such a prosecution within reasonable bounds that, in fact, there might be no successful prosecution. And that is very, very possible.

20 So, in that case, yes, that would undermine, that would cause a president, but it has no bearing. I restate the points I made earlier that I am unaware of investigations, I am unaware of dockets that were referred to the NPA for prosecutions and I remain convinced that no such an anxiety existed based on any facts.

ADV VARNEY: Right, well, on that score, I am sure you are aware

that we will be submitting to the commission that there was this anxiety. May I refer you to what you said in relation to your role on the Interdepartmental Task Team? You had an exchange with Adv Seme that you attended the constitutive meeting, and you said the following. 'It was not clear to me whether it was about the ITT or other meetings.' You stated 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.' Can you explain what you meant by saying 'I was close enough to know what works and what does not work'?

MR JAFTA: Commissioners, this related, this arose when I was making an example about a visit. I was a part of to the borderline between South Africa and Mozambique, where on a particular day of the week, and I do not know which week it is, the same community separated by a fence, now Mozambicans on the other side and South Africans this side, and there is a market day, and they trade on all manner of goods – tobacco, alcohol, small animals, goats, *et cetera*, *et cetera*, with the borderline at the time being patrolled jointly by members of the South African Police Services and the South African National Defence Force.

And adjacent to that specific area, there were reports that syndicates or members of criminal syndicates from Mozambique would steal sports utility vehicles from the South African side and simply speed into the fence and drive into Mozambique with such. And the legal system on the other side of the fence made it almost

impossible for such vehicles to be repatriated back to South Africa.

So considering all the facts around managing security along the borderline, I would know what works and what does not work. That arose in that context. Now you can extrapolate and say what I was suggesting, which is true, is that in respect to quite a wide range of other issues within the purview of the JCPS, I would know what works and what does not work. Simply because, and this is not just true of Loyiso Jafta, it is true of the other colleagues in the policy unit who were responsible for the other clusters, because you needed to

10 keep your finger on the pulse of what it is that works and what it is that does not work. And that arises from the monitoring and the evaluation function of the policy unit.

ADV VARNEY: So yes, I recall that exchange. It was actually in a response. It was a question that Adv Seme put to you after you had said that you were involved in lots of task teams, not just this one. And she said yes, but you did not get involved in every instance of crime; and then you gave the example of the issues that arose on the Mozambican border. So here is one thing and that is obviously a very legitimate exercise to try and work out what will address those

20 issues, what will work, what will not.

But I want to put it to you that, you know, that kind of work is very different to a task team that involves itself on a case-by-case basis as the Interdepartmental Task Team did. And in fact, there was a point where the representatives from SAPS and NIA insisted that before the NDPP could act in any case, you would need to wait for a

recommendation from the task team and indeed the DGs forum.

Would you agree that there is a big distinction between that example and the task teams that deal with issues that arise, for example, on the Mozambican border?

MR JAFTA: Absolutely. But Commissioners, I would also want to, and I am not nitpicking here, please do not misunderstand me. The reference to NIA and the police asserting that they would have to advise the NDPP; actually, in the minute that was referred to earlier, that in the minute that ascribes that matter to have been raised by a
10 member of the Directorate of Special Operations, DSO, and not NIA or SAPS, but the commission can go back to the minute.

But my recollection is that that matter, in principle, I agree it is wrong. But factually, at least as far as the minute is concerned, that matter was raised by a member of the DSO and not a member of either the police or the... It is just that I do not want to distract the commission, but that matter was raised by a member of the DSO.

ADV VARNEY: Mr Jafta, can I suggest we do not go into it, because we are not relying on that minute to make that assertion. There is other documentation, and indeed there is a letter to that effect
20 addressed from the then Commissioner of Police, Selebi, to the NDPP, setting that out, which then caused a crisis, because that was a bridge too far for then NDP Pikoli. It then caused him to write a memorandum to the Minister of Justice, setting out his concerns that his office, the independence of his office was being undermined. If you like, I can find those documents to put to you, but did you accept

my word that that is in fact what happened?

MR JAFTA: Commissioners, I have just stated that in principle that would be wrong, whether it is by the late Commissioner Selebi or by the member of the DSO. In principle, that would be wrong in law.

ADV VARNEY: I am just skipping over questions that I believe we have canvassed already. Yes, perhaps one last question from the oral evidence. Commissioner Gabriel put a question to you as to why nation building was at odds with the TRC process, and in particular in relation to the prosecution of the cases emerging from the TRC and
10 in relation to the pursuing of cases where amnesty had been denied.

And your response was these were very complex matters and you gave various examples of what had emerged from the TRC that needed to be addressed. But in relation to the prosecutions, you said this was not a problem if done in the spirit and letter of the law. Put differently, if it was not done in the spirit and letter of the law, it would be a problem. What did you mean by that?

MR JAFTA: Let me go back to my conversation with Reverend Chikane. I genuinely believe that he felt aggrieved by how he was engaged by the team from the National Prosecuting Authority. And I
20 am not suggesting for a minute that that would, you can then use that and generically say that is how the NPA would deal with all other matters.

But the point that I was making there is that you have to implement; and that goes for almost any other business of government and not just TRC cases, implement it in accordance with

the spirit and the letter of the law. And I did say prosecutions of themselves have absolutely no bearing on national security. I did state that.

ADV VARNEY: And then finally, there is evidence before this commission that post the winding up of the TRC, although there were initial efforts to follow up the TRC cases, the ones that had not been amnestied; as we stand here today, more than 20 years later, very few cases have gone ahead, which is really the reason why this commission is now sitting and investigating. Do you have any
10 comment on the fact that so few cases have proceeded since they were handed over to the NPA some 20 odd years ago?

MR JAFTA: Commissioners, I would not want to come across as being insensitive to matters arising from the TRC, far be it that that would be the impression. The matters arising from the TRC are multifaceted, and I know that this commission is dealing principally with the investigations and the prosecution of those matters. I could be wrong, but I suspect that, yes, for a start, I would not be satisfied that so few cases have been concluded through a prosecution.

But I suspect that in respect to other matters arising from the
20 TRC falling within the remit of other structures of government, you are likely to find the same kind of unacceptable pace; restitutions and a whole range of other issues looking for and extracting, exhuming the remains of people who remain unaccounted for. There is real pain. And I should, in all honesty, apologise for this.

I did talk about my personal circumstances, and I should not

have, because I do not want to raise the personal circumstances of my parents as though that was the most important thing, or I am abusing sitting here to elevate that matter.

COMMISSIONER KGOMO: Yes, but you do not have to apologise for that.

MR JAFTA: Yes. Thank you, Commissioner. But the truth is, the point one is trying to make is that it is very, very possible that what you find as an outcome, and possibly the impact of government interventions on matters arising from the TRC, you may find the same
10 kind of outcome or outputs in respect to a wide range of other issues. Maybe perhaps with the exception of the change of place names, Port Elizabeth to Gqeberha and that sort of thing, you may find that there is an appreciable spike on that level, but otherwise, I have my doubts about what government has done.

I have to raise this as well, Commissioners, that truly, if you were to ask for my opinion, there is no greater restitution for matters arising from the TRC than the attainment of freedom itself and the constitution that we have that should ensure that such abuses never recur in this country. The greatest thing that has happened to the
20 people of this country outlined in the constitution is the greatest thing that South Africans have achieved to put an end to colonial rule and apartheid. That is what I would want to end on.

ADV VARNEY: Thank you, Mr Jafta. I think we can certainly agree with you on your last point. But in relation to your assertion that the failure to proceed with the TRC cases over all this time is similar to

the failure to deliver in a range of other matters, I think there we would have to disagree with you.

So, for example, the work of the Missing Persons Task Team, they have done amazing work, actually. They have recovered a large number of bodies. They have returned remains of missing people to their families and they have assisted them to restore dignity in all those cases. So that is an example where there has been significant delivery. And I would like to put it to you that they were able to deliver, because no obstacles were placed in their way, but obstacles
10 were placed in the way of the attempts to achieve justice in the TRC cases.

MR JAFTA: I honestly have no... I would not want to comment on that.

ADV VARNEY: Chairperson, my 20 minutes is up. No further questions.

CHAIRPERSON: Thank you.

COMMISSIONER KGOMO: Mr Jafta, one aspect, if you can go to paragraph 8 of your statement, reading more or less from the last sentence.

20 "Some of the findings and recommendations fell within the mandate of the departments that make up the JCPS."

Which is the Justice Crime Prevention Cluster; and then 8.1 says that, oh yes.

"Some of these related to the following:

8.1 Trying to determine the remains of people
who remain unaccounted for.”

Which is incidentally an aspect that you have touched on. On 9 June 2020, there was an interview by a journalist, off-starter with Mr Wagenaar who represented, generally, the security forces or some of them. And Mr Wagenaar suggest that there was this impediment; and if you could go to page 49, red number, 31 of the interview.

MR JAFTA: Page 41?

COMMISSIONER KGOMO: Page 49, four-nine, red number, and it
10 is 31 of the... or maybe page 10 of the interview or black number 31.
There are three numbers. Each one could take you there. Have you found it?

MR JAFTA: Yes, yes, Commissioner.

COMMISSIONER KGOMO: Yes. Now, I just want to read this to you, what Mr Wagenaar says about the impediment, particularly of the recovery of some of the bodies of the missing people. He says, if one reads from more or less line 6, he says there:

“And then I said to her...”

In other words, to Dr Jobson;

20 “...because my memory serves me right, I said to
her but let us suppose those missing people were
murdered by the security forces. I think it was at
that discussion. I am not sure. I think then I said
to her, Dr Jobson, that suppose that was the
case, you cannot expect those people to come

forward and say we killed someone and we buried him there, and there, and there, if you merely want the remains, because there is no legal privilege attached. I think that is what I said to her that day. You need a process where there is legal privilege; and that directive, that prosecution directive created the situation of legal privilege.”

And down there he carries on.

10 “Yeah, I said to her but you people, you were the people who took that thing to court to have it declared unconstitutional. And I think that that was an opportunity missed.”

Now, if you take what you have said at 8.1 there and what Mr Wagenaar says here, let me ask first. Did you at any stage have maybe met Mr Wagenaar and have you at any point discussed something along these lines with him?

MR JAFTA: Commissioner, I never met with him, and therefore I never had a discussion with him on these matters.

20 COMMISSIONER KGOMO: And now he says, if I understand him correctly, the reason why some of the missing people that were murdered by security forces, their remains have not been recovered, is because of what... let us just say basically the Calata Group or whoever, or maybe Ms Simelane who took this matter to court. In other words, if they did not do so, the remains of these people may

have been recovered. What do you say about this attitude? I do not think he is speaking his mind. I think he speaks on behalf of his clients.

MR JAFTA: Commissioner, thank you. It speaks in part to a point I have made earlier. There are people who were captured by the security apparatus of the former regime, tortured and their remains disposed of. There are cases that are known and there are cases that may not be known, because there are people who would have been intercepted, tortured and killed because of mistaken identity.

10 So it is not always the case that people referred to here will all of them in all circumstances be activists.

Now, the operatives who would apprehend a person, torture him and get him killed and dispose of the body, would not be a very large number. In order for you to get to the nitty-gritty of the detail, one of them has to come forward, one way or the other. The circumstances will vary from one case to another. There are examples one can make mention of.

There are people who were apprehended, we know that to be fact, and they are not accounted for, but you know the police station
20 where they were last in some form of detention or custody of the state. Typically when somebody went into the custody of the state, say in Ladybrand or a place such as, such-like place, almost always bordering one of the neighbouring countries, you can make an entry into the investigation through there. You would know who was the officer commanding on duty on the day. But then the obstacle would

be to get to the actual functionaries who can take you there. That is one level. But you need the enablers of this kind of an operation, and that is where you have to go to the policy makers and those who approve the operations.

My experience is; the operatives, and particularly their supervisors, at a policy level and other levels, say at the level of an accounting officer; I do not think they were ever, ever keen, and this would vary from one department to the other. I do not think they were ever, ever keen on the very project of transitioning from apartheid to
10 democracy. And because of that, you are going to find varying degrees of a willingness to assist the country to resolve, in the case of what we are talking about, this specific matter of people who are missing.

You will make a bit of success with Eugene de Kock because of his specific circumstances, and he can help you. But anywhere else in the security apparatus, civilian or military, where you do not have a Eugene de Kock in that environment, you are not likely to make a lot of progress. Were they not cooperating as a collective? To be sure; they were cooperating, but there were such strict rules
20 that governed who knew about which operation.

And this attitude that is displayed here, you will find it almost across the spectrum. You will find it across the spectrum. It is remarkable that the identities, the names and the faces could be matched to the people who poisoned Reverend Chikane. It is not always the case that you can do that, where you can match a face

and a name to a particular incident. It is exceedingly difficult.

There was an incident, Commissioners where I chanced upon a fellow who did not look well, somewhat inebriated, heavily in fact, not somewhat, who with absolute glee talked about how someone I knew personally had been shot dead. It is an extrajudicial killing. And I went back; you listen and you listen and you listen, and then you go back and you talk to the people charged with this responsibility and say but there is a chap who was inebriated, boastfully talking about how somebody was killed.

10 So we went back. I do not think we offered him more brandy than already was in his system, but he was quite incoherent. But I have no doubt in my mind that if we spent a little bit more time with him, he would have taken us to the detail of what happened. I am extremely hesitant to say what I am tempted to say now, because it might come across as being opportunistic or insensitive. You can think about Mxenge and how he was killed. A lot happened.

I think some of you know Justice Tshabalala and his wife. I could be wrong. I do not think that matter has been resolved, yet it is not a crime that happened in a remote place at 2 AM in the morning.

20 I think his wife was killed very, very brutally in such a manner that that matter could have been resolved in the same way.

So there are many of these kinds of cases. I may as well abuse my being here. I think President Mbeki himself lost a child and maybe another sibling to the same kind of... and these are mere examples. There are numerous other families, spanning generations,

who have got this wound that will never heal.

COMMISSIONER KGOMO: Let me ask you perhaps an unfair question. It may be said *quo vadis*, where to from here, particularly for people who have lost loved ones to try and, you know, find more of these missing people killed by the forces and so on. Where to from here? That is an unfair question.

MR JAFTA: Yes, yes. Commissioners, this is not a theoretical conversation. It helps to highlight the importance of this work, just this one, as an important pillar for the transition into a young
10 democracy that is maturing. I am aware of some efforts that are being made, and maybe it should be that such efforts must be given more resources, broadly defined, to put a bit more effort into this work.

The typical answer which is implied here on page 49 is that those who were involved have got this anxiety that if they so disclose, such a disclosure is going to attract a legal process with adverse consequences for themselves. But there must definitely be more effort and resources invested on this work, because many of these people who did these things are still alive. Many of them are still
20 alive, but the number is decreasing and the memory as well and the markings on the graves move as well. And some of them were not really...

I am thinking about a particular case now where the person was a gardener, really. The person was a gardener, working in the garden, attending to the gardens, but was just beloved by this official

and the person would talk about how they would smash the skull of a person in custody and dispose of their remains. Such people can... you can have conversations with such people, but the difficulty is: how do you give an assurance that once such a disclosure is made, then you shall not be prosecuted?

COMMISSIONER KGOMO: Yes. Are you through? Thank you, Mr Jafta. Thank you, Chair.

CHAIRPERSON: Thank you; Ms Seme?

RE-EXAMINATION BY ADV SEME: Thank you, Commissioners. I
10 just have one issue that I want to canvass with you. It is on the ITT. You are aware that there were further meetings of the Interdepartmental Task Team apart from the constitutive meeting?

MR JAFTA: Yes.

ADV SEME: And you did not attend those meetings?

MR JAFTA: No, I did not.

ADV SEME: Commissioners, it is not part of the bundle that Mr Varney provided, but in Mr Jacobs' affidavit, I am trying to check on my notes and I did make the note and I want to place it on record; that a meeting took place on 25 October 2006. It is PCJ4 of Dr
20 Jacobs' bundle at page 1721. There are minutes of that meeting. You will note that Mr Jafta is not present in that meeting.

Again, on the meeting of 6 November 2006, PCJ6, page 1735 of Mr Jacobs' bundle, a meeting of the ITT takes place. Mr Jafta is not present. The further meeting of 16 November 2006 at page 1750, ITT meets. Mr Jafta is not present. The last one, again, on 4

December 2006, PCJ10, page 1752, Mr Jafta is not present. I have not noted the one that took place in January 2007. Again in that meeting Mr Jafta is not present. And can you comment on why you were not present in all those meetings?

MR JAFTA: Thank you. Commissioners, I would not have attended, because those would be what I consider operational meetings. It is actually the task team doing the work and I would not attend that meeting for that reason.

ADV SEME: Thank you, Commissioners. That is all I wanted to
10 place on record.

CHAIRPERSON: Thank you. Mr Jafta, we wish to express our gratitude for your attendance at this commission to give evidence before it. You are now excused as a witness.

MR JAFTA: Thank you.

CHAIRPERSON: Thank you for attending.

NO FURTHER QUESTIONS

CHAIRPERSON: These proceedings are adjourned until tomorrow at 10 o'clock.

INQUIRY ADJOURNS UNTIL 14 JULY 2026

CERTIFICATE OF VERACITY

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