IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: 2704/2022

In the matter between :-

GREEN PEACE AFRICA NPC Applicant

And

THE MINISTER IN THE PRESIDENCY RESPONSIBLE FOR STATE SECURITY First Respondent

THE INFORMATION OFFICER, STATE SECURITY AGENCY Second Respondent

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FILLING SHEET

KINDLY TAKE NOTICE that the Fisrt and Second Respondents evenly files herewith it's Answering Affidavit.

SIGNED and **DATED** at **PRETORIA** on this the **17th** day of **JANUARY 2022.**

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FIRST AND SECOND RESPONDENTS' ANSWERING AFFIDAVIT

Table of Contents

I, the undersigned,

AMBASSADOR :THEMBISILE CHERYL MAJOLA

do hereby make oath and state that:

1. I am an adult female. I am the Director-General of the State Security Agency ("the SSA") having been appointed to this position by the President of the Republic of South Africa in terms of section 3(3) of the Intelligence Services Act, 65 of 2002 ("the IS Act").

2. The facts contained herein are within my personal knowledge, and are to the best of my belief true and correct unless where otherwise stated or where the contrary appears from the context. Where the facts are not within my personal knowledge, I rely on the confirmatory affidavits from the relevant officials within the State Security Agency ("the SSA"). However, these affidavits will be submitted in camera for the perusal of the presiding judge and counsel for the applicant. This is necessary to protect the identity of the employees of the SSA.

3. Where I make legal submissions I do so on the advice of the SSA's legal representatives, which advice I believe to be correct.

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4. I am authorised to depose to this affidavit and to oppose this application on behalf of the SSA, whose Minister and Information Officer have been cited as the first and second respondents respectively.

5. My failure to address or deal with any averment or allegation in the applicant's founding affidavit does not constitute an admission of the correctness or truthfulness thereof.

6. It is appropriate to state at this juncture that whilst a Table of Contents is not ordinarily included in an affidavit, given the length of this affidavit I have done so to easily reference the sections in the hope that the document will be easier to navigate.

INTRODUCTION

7. The applicant, Greenpeace Africa NPC ("GPAF or the applicant") brings this application in terms of section 78(2) of the Promotion of Access to Information Act, 2 of 2000 ("the PAIA"). It seeks to set aside the State Security Agency's ("SSA's") decision of 12 November 2021, attached as "**GP5**" to the founding affidavit. In terms of that decision, I dismissed an appeal by GPAF against the decision of the SSA's Deputy Information Officer, Dr Luvhengo, refusing its request for access to information. Dr Luvhengo's decision is dated 30 August 2021 and attached as "**GP3**" to the founding affidavit.

8. The request for information is at "**GP2**" to the founding affidavit. As appears from the request the applicant seeks access to the following documents:

8.1. A copy of the report dated 27 February 2017 relating to the performance of the Special Operations Unit ("*SOU*") during 2016 and 2017, which is referred to at page 65 of the high level review panel report of the state Security Agency, dated December 2018. This is referred to as the "*Boast Report*";

8.2. Copies of any application(s) or representation(s) by the State Security Agency ("*SSA*"), SOU or any other organ of state, to a designated judge or judicial officer in terms of the Regulation of Interception of Communications and provisions of Communication Related Information Act, 70 of 2002 ("*RICA*") for a directive, directive extension or entry warrant to undertake surveillance of GPAF, its employees or any of its legal representatives (which includes any practising lawyer representing GPAF, including Cullinan & Associates Inc Or any of the firms attorneys; and any advocate briefed to represent GPAF);

8.3. Copies of any directive, directive extension or entry warrant granted by a designated judge or judicial officer in terms of RICA

in respect of GPAF, its employees or any of its legal representatives;

8.4. Copies of any court order granted by a judicial officer in terms of section 205 of the Criminal Procedure Act, 51 of 1977 to access the phone and metadata records of GPAF, GPAF employees or any of GPAF's legal representatives (together with any representations made by the judicial officer in that regard);

8.5. Copies of any records obtained by the SSA, the SOU, or any other organ of state as a result of surveillance on GPAF, GPAF employees or any of GPAF's legal representatives (whether or not undertaken in terms of a directive or entry granted in terms of RICA, including:

8.5.1. recordings of oral conversations;

8.5.2. copies of emails, letters, or any other written documents; and

8.5.3. copies and/or recordings of mobile phone communications (including phone records, meta data, data, text, voice notes or messages, and visual images; and

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8.5.4. copies of any progress report required by a designated judge (in terms of section 24 of RICA) during the execution of a director or any warrant obtained in respect of GPAF (including GPAF employees or any of GPAF's legal representatives) or upon the expiry thereof.

9. Dr Luvhengo refused the request on the grounds that its disclosure would be unauthorised and contravene section 10(4) of the IS Act as read with PAIA. He reasoned, as appears from **"GP3"**, that *"[t]he PAIA should not be read in isolation to section 10(4) of the Intelligence Services Act, 65 of 2002 ... which directs the Director-General of the SSA as far as is reasonably practicable, to take steps to ensure that national security intelligence, intelligence collection methods, sources of information and the identity of members of the Intelligence Services as the case may be are protected from unauthorised disclosure".*

10. He also based his decision on section 4(1) of the Protection of Information Act, 84 of 1982 which criminalises the distribution of classified information and documents to an unauthorised person. He concluded that the information requested fell squarely within the type of information that I, as the DG, am directed to protect from unauthorised disclosure under the IS Act.

11. On 29 October 2021, the applicant lodged an internal appeal against Dr Luvhengo's decision. I considered the appeal and on 12 November 2021, I refused the applicant's request for information because there were no valid grounds to come to a different decision from that reached by Dr Luvhengo. This is apparent from **"GP5"** to the founding affidavit. Thus, I did not interfere with Dr Luvhengo's decision.

12. In the light of this refusal, the applicant seeks an order setting aside and declaring the refusal invalid. It argues that it is entitled to the records sought on the following grounds:

12.1. It has complied with the procedural requirements set out in section 11 of PAIA.

12.2. The request could not be refused in terms of the exclusions set out in Chapter 4 of PAIA because:

12.2.1. The respondents did not rely on any of the grounds in Chapter 4 of PAIA in refusing the request. This is a contravention of section 77(5) of PAIA, which requires that the respondents cite adequate reasons for the decision, including the provision relied on in PAIA for the decision refusing access to the record.

12.2.2. The PAIA request could not be refused in the interests of national security because the respondents' decision to monitor the applicant was unlawful. GPAF cites two reasons for the illegality. First, it contends that it is engaged in "*lawful political activity, advocacy, protest or dissent*", which is excluded from the definition of national security in the National Strategic Intelligence Act, 67 of 2002 ("the NSI Act"). Second, GPAF was monitored for an improper purpose unrelated to national security, namely the protection of the personal and political partisan interests of a faction of the governing party, and former President Jacob Zuma. This unlawful decision contravened section 199(5) – (7) of the Constitution.

12.3. Even if Chapter 4 of PAIA applies, the information requested should be disclosed in terms of the public interest override in section 46 of PAIA. GPAF justifies its reliance on section 46 arguing that the disclosure of the records would reveal a substantial contravention of, or failure to comply with the law, because its surveillance and infiltration appears to have been unlawful. It argues further that the public interest in the disclosure of the record outweighs any potential harm that its disclosure could cause.

13. The basis of the application is thus that the applicant complied with section 11 of PAIA and the surveillance was unlawful because it targeted lawful activity, which GPAF contends is statutorily exempt from the definition of national security. Moreover, there were no reasonable grounds to believe that it presented a threat to national security or that disclosing the records to it present a threat to national security.

14. GPAF also seeks condonation, for the late filing of this application. The application was brought some five (5) court days late on 18 May 2022, because the applicant's counsel, who was on brief since the inception of the matter was not immediately available to settle the application. The applicant contends that there is no prejudice to be suffered by the period of the delay and that it is in the interests of justice for condonation to be granted.

OPPOSITION

15. The respondents oppose the application. The unredacted, classified "*Boast Report*", cannot be disclosed because such disclosure will cause prejudice to the security of the Republic. The *Boast Report* contains names of the SSA's "*co-workers*", commonly referred to as sources and the name of the senior member of the SSA, who authored the report. Therefore, the request for access to information was properly refused

because the disclosure of the information would contravene section 10(4) of the IS Act, read in conjunction with Chapter 4 of PAIA.

16. In addition, the remaining documents sought by the applicant can only be generated pursuant to a decision to intercept communications electronically in terms of RICA. The respondents deny that any such decision was taken or that the applicant was monitored and its communications intercepted under RICA. As I explain comprehensively in this affidavit, environmental scanning only was conducted on GPAF based on open-source information that was contained on its public, social media platforms.

17. The risk assessment was done to determine whether GPAF presented a threat or potential threat to national security. This is in line with the SSA's primary function, to identify opportunities and threats to national security. The outcome of the risk assessment showed that GPAF did not represent a threat to national security, and therefore no further surveillance was conducted on its operations. What this means is that the remaining information sought by GPAF simply does not exist.

18. The respondents also contend that the decision to refuse the applicant's request was indeed based on PAIA. On this score, the request was considered in terms of PAIA as interpreted together with the relevant intelligence legislation. It is the respondents' case that this was indeed the

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correct approach and that PAIA cannot be interpreted without reference to the legislative framework governing the intelligence environment.

19. Finally, the respondents' argue that even if the applicant may have been subjected to unlawful monitoring, the appropriate relief is not to grant it access to classified confidential information. In this case that information includes the identity of sources and the identity of a senior employee of the SSA. Rather, the appropriate course of action is a complaint to the Inspector-General of Intelligence ("the IGI") under the relevant provisions of the Intelligence Services Oversight Act, 40 of 1994 ("the ISO Act").

STRUCTURE OF AFFIDAVIT

20. In opposing this application, I address first the history of the intelligence services. This is followed by a discussion of the constitutional and regulatory environment in which the SSA operates, including the relevant provisions of PAIA that govern a request for access to information where such request has the potential to prejudice national security. Where relevant I also refer to the internal organisational policy directives.

21. This is followed by a discussion of the facts, where I focus on the report of the High-Level Review Panel as led by Dr Mufamadi ("the Panel Report") and the evidence he gave at the State Capture Commission into the state of the nation's security services. As an aside, the SSA accepts the

outcomes contained in that report, as well as its recommendations. . The SSA also takes no issue with the evidence given by Dr Mufamadi at the State Capture Commission and welcomes the Commission's recommendations on securing its credibility in - intelligence. But, as I show, these outcomes have no bearing on whether the applicant should be granted access to information, which if disclosed will harm the nation's security interests.

22. I then discuss the impact of the irregularities uncovered on the mandate of the SSA, after which I turn to the reasons for, and nature of the investigation against GPAF. I then unpack the content of the Boast Report, and make submissions on why the classified version cannot be disclosed.

23. Next, I address what the appropriate course of action is if indeed GPAF was unlawfully monitored, which is followed by why PAIA was in fact relied on in the decision to refuse the request. I focus also on PAIA's correct interpretation within the framework of the intelligence legislation. I then answer *ad seriatim* the allegations contained in the founding affidavit and conclude with a section seeking condonation for the late filing of this answering affidavit.

THE HISTORY OF THE INTELLIGENCE SERVICES

24. Our contemporary intelligence structures evolved from formations that predate our constitutional democracy. It had to transform to give effect to the democratic values of our new dispensation and encapsulate in its composition and function equity, fairness, and respect for human dignity. Integration in the intelligence services meant amalgamating the personnel and resources of the apartheid intelligence services with the personnel and resources of the non-regulated services.

25. Under the apartheid regime, the functions of the intelligence services were carried out through agencies such as the Bureau for State Security ("BOSS"); the Security Branch of the former South African Police; the. BOSS; and the increasingly militarised Civil Cooperation Bureau ("CCB"). They were empowered to:

25.1. Collect, evaluate, correlate, and interpret national security intelligence to both define and identify any threat or potential threat to the security of the Republic;

25.2. Prepare and interpret for the then State Security Council a national intelligence estimate concerning the security of the Republic;

25.3. Formulate a policy on national security intelligence and to coordinate the flow of such intelligence between the different government departments; and

25.4. Make recommendations to the State Security Council on intelligence matters.

26. The now repealed Security Services Special Account Act, 1969 also created an account for the use and control of funds for confidential services and expenses connected with the security services. But of course these agencies were notorious as the vehicles through which political dissidents and indeed civilians were victimised, intimidated- and harassed. Their heavy-handed tactics would become well known for the harassment of journalists and editors; surveillance of political meetings; and tapping of telephones among others.

27. The Security Branch in particular was known to monitor resistance through a coordinated network of informers in anti-apartheid groups. It was empowered to detain, harass, and conduct surveillance. It engaged in domestic and cross-territorial attacks on activists, including those who were in exile. The CCB on other hand was known for the extensive political assassination campaigns it engaged in.

28. All of these components – BOSS, the Security Branch of the SAP, the Division of Military Intelligence of the SADF, and the satellite intelligence services of the former TBVC states – served as the security apparatus whose sole purpose was to maintain the continued existence of the apartheid regime.

29. This was the intelligence environment that existed in the transition to democracy. It also operated in the mid-1980's to early 1990's: an exceptionally violent period in our nation's history where their response to political protest was a joint show of force; detentions without trial; prosecutions and imprisonment under the then anti-terrorism and internal security legislation; and political assassinations by apartheid hit squads, among others.

30. It was at Congress for a Democratic South Africa ("CODESA") of course that the transition to a new intelligence dispensation was conceived. A working group charged with creating a climate for free and fair political activity produced a final report on the security services, which concluded that they must be subjected to the supremacy of the new Constitution; be politically non-partisan and respect human rights, non-racialism, and democracy. It was agreed that the intelligence services of the apartheid government would remain intact during the transition, until the adoption of the new Constitution, which came into effect on 27 April 1994, the date of the first democratic elections.

31. Departing from the environment of fear, harassment and intimidation, the new security apparatus would have to operate within the framework of a Bill of Rights that entrenched the rights to life; equality before the law; privacy; freedom of expression, association, and movement; access to courts and administrative justice and most significantly, the public's right of access to information.

THE LEGISLATIVE AND POLICY FRAMEWORK

The 1994 White Paper on Intelligence

32. In 1994 the White Paper on Intelligence was adopted. It was the first post-democratic document setting out the manner in which the intelligence services were to operate. In paving the way for the creation of a new intelligence dispensation it warned against the intelligence services adopting a militaristic approach to security, as was the case under apartheid regime.

33. It concluded that the main threats to the well-being and interests of the nation are economic collapse, overpopulation, mass migration, ethnic rivalry, political oppression, terrorism, crime, and disease. It called for the intelligence services to be governed by principles in sharp contrast to those that governed intelligence under apartheid. Our democratic intelligence services are therefore grounded on the following principles:

33.1. The primary authority of the democratic institutions of our country;

33.2. Subordination to the rule of law;

33.3. Compliance with the democratic values of the Bill of Rights and respect for human rights;

33.4. Political neutrality;

33.5. Accountability and parliamentary oversight;

33.6. Maintaining a fair balance between secrecy and transparency; and

33.7. An ethical Code of Conduct to govern the performance and activities of the members of the intelligence services.

34. The White Paper defined intelligence as *"[t]he product resulting from the collection, evaluation, analysis, integration and interpretation of all available information, supportive of the policy and decision-making processes pertaining to the national goals of stability, security and development*".

35. The White Paper thus reprioritised the role of the intelligence community to assume a greater focus on the national agenda of stability, security, and development. This remains the underlying purpose of the SSA, to gather

intelligence which identifies threats and opportunities undermining stability and security, so that enforcement agencies and other relevant authorities can adopt appropriate policies and take the necessary action to neutralise such threats. It is within this framework that the post-apartheid intelligence legislation was developed.

The Constitution

36. Chapter 11 of the Final Constitution sets out the role and functions of the intelligence services. It is drafted against the backdrop of the principles set out in the White Paper. The governing principles are set out in section 198. Section 198(c) of the Constitution mandates that national security must be pursued in accordance with the law. Section 198(d) is an accountability and oversight mechanism, which subjects national security to the authority of Parliament and the national executive. Section 199(1) establishes the security services as "*a single defence force, a single police service and any intelligence services established in terms of the Constitution*".

37. The security services must, in terms of section 199(4), *"be structured and regulated by national legislation*". The Constitution mandates that the security services must act, and require their members to act "*in accordance with the Constitution and the law, including customary international law and international agreements binding on the Republic*".

38. Moreover, no member of the security services may obey a manifestly illegal order, and the security services must not in the performance of its functions prejudice a political party interest that is legitimate in terms of the Constitution or further, in a partisan manner, the interest of a political party.

39. To give further effect to transparency and accountability, the Constitution requires that multiparty parliamentary committees have oversight of all security services as determined by national legislation or the rules of Parliament. The Committee referred to is the Joint Standing Committee on Intelligence ("the JSCI") established by section 2 of the ISO Act.

40. In terms of section 209(1), the intelligence service "*may be established only by the President, as head of the national executive, and only in terms of national legislation*". In terms of section 210 "national legislation must regulate the objects, powers and functions of the intelligence services...". The national legislation must, among others coordinate all intelligence services.

The Intelligence Services Act

41. The IS Act came into effect in 1994. It provides for the amalgamation of the old statutory and non-statutory intelligence services, which together comprise the civilian intelligence department. It also creates a foreign intelligence department to collect intelligence about threats emanating

from abroad and a domestic intelligence department focussed on internal threats to security. The domestic department also holds a counter-intelligence mandate to ensure that foreign agents do not penetrate the South African intelligence machinery. The IS Act is thus the national legislation which structures and regulates the security services as envisaged by section 199(4) of the Constitution.

42. Section 1 of the IS Act defines the "Agency" as the SSA, which is established by section 3(1). As its long title explains, the IS Act was promulgated to *"regulate the establishment, administration, organisation and control of the State Security Agency…"*

43. The SSA is comprised of persons who became members under the now repealed IS Act, 38 of 1994; and persons appointed in terms of the extant IS Act. The SSA has absorbed the now defunct National Intelligence Agency and the South African Secret Service. In terms of section 3(2)(a) the President appoints a Director-General ("DG") for the SSA. The DG is the head of the SSA in terms of section 3(2)(b) of the IS Act, and its accounting officer. The Minister is then empowered by section 4 to appoint Deputy Director-Generals ("DDGs") and to establish branches, directorates, and divisions.

44. I was appointed by the President as the DG of the SSA with effect from 1 March 2022. The powers and functions of my office are set out in section

10 of the IS Act. In terms of section 10(1), the DG exercises command and control over the SSA. In terms of section 10(3)(d) the DG may issue functional directives that apply to among others the protection of classified information. Section 10(4)(a) enjoins the DG to, as far as reasonably practicable, take steps to ensure that *"national security intelligence, intelligence collection methods, sources of information and the identity of members of the Agency, are protected from unauthorised disclosure".*

45. The DG's office must also in terms of section 10(5) "*at the end of each financial year submit to the Minister a report on the activities of the Agency for the relevant financial year".* That report must be publicly accessible, except for the classified information.

46. Section 11(1) of the IS Act obliges members to obey all lawful directions received from a person with the authority to issue such directions. A member is empowered by section 11(2) to approach a designated judge, as contemplated in section 1 of the RICA, to obtain directives on application authorising the SSA to retrieve information on any premises that has a bearing on its functions. The various forms that such authorisation may take is set out in section 11(2)(b). Any order obtained in terms of section 11(2) is issued for a period of three months and, may in terms of section 11(3)(b) *"be executed by a member of the Agency, who is authorised to do so by a senior member of the Agency holding a post of at least a General Manager".*

The Intelligence Services Oversight Act

47. That is of course not the end of the legislative framework because section 198(d) of the Constitution demands oversight in respect of the security services. To this end Parliament enacted the ISO Act which creates the multi-party parliamentary oversight committee, the JSCI. To extend the oversight function, Parliament, through the ISO Act also provides for the appointment of the IGI. As its long title reads, the ISO Act was passed to "*provide for the establishment of a Committee of Members of Parliament on Intelligence…and for the appointment of Inspectors-General of Intelligence…*".

48. The primary mandate of the JSCI is to perform oversight over the intelligence and counter-intelligence functions of, among others the SSA. In terms of section 6 of the ISO Act, the JSCI is enjoined to "*within five months after its first appointment, and thereafter within two months after 31 March in each year, table in Parliament a report on the activities of the Committee during the preceding year, together with the findings made by it and the recommendations it deems appropriate, and provide a copy thereof to the President and the Minister responsible for each Service*".

49. Members of the JSCI are vetted in order to be accorded the required security clearance. The JSCI is authorised to receive reports, make recommendations, order investigations, and conduct hearings on

intelligence and national security matters. The JSCI is also obliged to obtain an audit report from the Auditor-General ("AG"), consider the SSA's financial statements and report thereon to Parliament. It must report to Parliament in March each year on the findings and recommendations made in respect of the service.

50. The IGI on the other hand, essentially investigates complaints about the intelligence services, including the SSA. The IGI has certain statutory monitoring and compliance duties, for which the office is directly accountable to the - JSCI Section 7(1) of the ISO Act provides that the President shall appoint the IGI. Section 7(7) of the ISO Act deals with the functions of the IGI and reads:

"The functions of the Inspector-General are, in relation to the Services-

(a) to monitor compliance by any Service with the Constitution, applicable laws and relevant policies on intelligence and counter-intelligence;

(b) to review the intelligence and counter-intelligence activities of any Service;

(c) to perform all functions designated to him or her by the President or any Minister responsible for a Service;

(cA) to receive and investigate complaints from members of the public and members of the Services on alleged maladministration, abuse of power, transgressions of the Constitution, laws and policies

referred to in paragraph (a), the commission of an offences [sic] referred to in Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004, and improper enrichment of any person through an act or omission of any member;

(d) to submit the certificates contemplated in subsection (11) (c) to the relevant Ministers;

(e) to submit reports to the Committee pursuant to section 3 (1) (f); and

(f) to submit reports to every Minister responsible for a Service pursuant to the performance of functions contemplated in paragraphs (a), (b), (c) and (cA): Provided that where the Inspector-General performs functions designated to him or her by the President, he or she shall report to the President."

51. In terms of the ISO Act '*Agency*' means the State Security Agency referred in section 3 of the IS Act, and 'services' means the Agency, the Intelligence Division of the National Defence Force and the Intelligence Division of the South African Police Service. The IGI is empowered to monitor compliance with applicable laws and relevant policies on the *"abuse of power, transgressions of the Constitution, laws and policies on intelligence and counter-intelligence"*. This is an express obligation in terms of section 7(7)(cA) read with section 7(7)(a) of the ISO Act.

52. The outcome of this monitoring and compliance is a report, which must be submitted to the relevant Minister. That report must, as prescribed by section 7(7A), contain the findings and recommendations of the IGI.

53. Subsection 7(8) deals with the powers of the IGI whilst fulfilling its statutory monitoring and compliance duties, and provides the following:

"(8) Notwithstanding anything to the contrary contained in this or any other law or the common law, the Inspector-General-

(a) shall have access to any intelligence, information or premises under the control of any Service if such access is required by the Inspector-General for the performance of his or her functions, and he or she shall be entitled to demand from the Head of the Service in question and its employees such intelligence, information, reports and explanations as the Inspector-General may deem necessary for the performance of his or her functions;

(aA) shall inform the Head of a Service prior to his or her access to the premises of such Service in writing of his or her intention to have access to such premises: Provided that the notice shall specify the date and the nature of access to the premises;

(b) may, if the intelligence or information received by him or her in terms of paragraph (a) is subject to any restriction in terms of any law, disclose it only-

(i) after consultation with the President and the Minister responsible for the Service in question; and

(ii) subject to appropriate restrictions placed on such intelligence or information by the Inspector-General, if necessary; and

(iii) to the extent that such disclosure is not detrimental to the national interest;

(c) shall have access to any other intelligence, information or premises which is not under the control of any Service if such access is necessary for the performance of his or her functions in terms of subsection (7) and he or she shall be entitled to demand from any such person such intelligence, information, reports and explanations as he or she may deem necessary for the performance of his or her functions: Provided that the Inspector-General shall not have access if such intelligence or information is not necessary for the performance of his or her functions: Provided further that the Inspector-General shall first obtain a warrant issued in terms of the Criminal Procedure Act, 1977 (Act 51 of 1977), if such information, intelligence or premises are not under the control of the Services in question;

(d) may, if the intelligence or information received by him or her in terms of paragraph (c) is subject to any privilege or restriction in terms of any law, disclose it only-

(i) after he or she has given written notice of his or her intention to do so to the lawful possessor of such intelligence or information; and

(ii) after consultation with the President and the Minister responsible for the Service in question; and

(iii) subject to appropriate restrictions placed on such intelligence or information by the Inspector-General, if necessary; and

(iv) to the extent that such disclosure is not detrimental to the national interest.

(9) No access to intelligence, information or premises contemplated in subsection (8) (a) may be withheld from the Inspector-General on any ground."

54. The ISO Act thus sets out in explicit terms who may lodge a complaint with the IGI, what the IGI may investigate, and in conducting his investigations what powers he has to access information for the purposes of his investigations.

The NSI Act

55. Finally, the NSI Act was enacted to give effect to the injunction in section 210 that national legislation must regulate the objects, powers, and functions of the intelligence services…". The NSI Act, as its long title reads, does so by defining the "*functions of members of the National Intelligence Structures…*".

56. The NSI Act speaks to the role of the DG in ensuring that unauthorised information is not disclosed and defines 'security', 'intelligence' and national security intelligence' .

57. Section 1 of the NSIA defines intelligence as:

> ***'intelligence'*** *means any information obtained and processed by a National Intelligence Structure for the purposes of informing any government decision or policy-making process carried out in order to protect or advance the national security, and includes-*
>
> *(a) counter-intelligence;*
>
> *(b) crime intelligence;*
>
> *(c) departmental intelligence;*
>
> *(d) domestic intelligence;*
>
> *(e) domestic military intelligence;*
>
> *(f) foreign intelligence; and*
>
> *(g) foreign military intelligence;*

58. In terms of the NSI Act, the SSA is a national intelligence structure. National security is in turn defined as:

59. **'national security'** includes the protection of the people of the Republic and the territorial integrity of the Republic against-

(a) the threat of use of force or the use of force;

(b) the following acts:

(i) Hostile acts of foreign intervention directed at undermining the constitutional order of the Republic;

(ii) terrorism or terrorist-related activities;

(iii) espionage;

(iv) exposure of a state security matter with the intention of undermining the constitutional order of the Republic;

(v) exposure of economic, scientific or technological secrets vital to the Republic;

(vi) sabotage; and

(vii) serious violence directed at overthrowing the constitutional order of the Republic;

(c) acts directed at undermining the capacity of the Republic to respond to the use of, or the threat of the use of, force and carrying out of the Republic's responsibilities to any foreign country and international organisation in relation to any of the matters referred to in this definition, whether directed from, or committed within, the Republic or not, but does not include lawful political activity, advocacy, protest or dissent."

60. National security intelligence is defined as:

'national security intelligence' *means intelligence which relates to or may be relevant to the assessment of any threat or potential threat to the security of the Republic in any field...*

61. The definition is broad and the powers conferred on the SSA to conduct an investigation extends to threats or potential threats in any field.

62. Section 2 governs the functions relating to intelligence, and sets out the functions of the SSA. It provides:

2 Functions relating to intelligence

(1) The functions of the Agency shall, subject to section 3, be-

(a) to gather, correlate, evaluate and analyse domestic and foreign intelligence (excluding foreign military intelligence), in order to-

(i) identify any threat or potential threat to national security;

(ii) supply intelligence regarding any such threat to Nicoc;

(b) to fulfil the national counter-intelligence responsibilities and for this purpose to conduct and co-ordinate counter-intelligence and to gather, correlate, evaluate, analyse and interpret information regarding counter-intelligence in order to-

(i) identify any threat or potential threat to the security of the Republic or its people;

(ii) inform the President of any such threat;

(iii) supply (where necessary) intelligence relating to any such threat to the South African Police Service for the purposes of investigating any offence or alleged offence; and

(iv) supply intelligence relating to any such threat to the Department of Home Affairs for the purposes of fulfilment of any immigration function; and

(ivA) supply intelligence relating to any such threat to any other department of State for the purposes of fulfilment of its departmental functions; and

(v) supply intelligence relating to national strategic intelligence to Nicoc

(c) to gather departmental intelligence at the request of any interested department of State, and, without delay to evaluate and transmit such intelligence and any other intelligence at the disposal of the Agency and which constitutes departmental intelligence, to the department concerned and to Nicoc.

(2) It shall, subject to section 3, also be the functions of the Agency-

(a) to gather, correlate, evaluate and analyse foreign intelligence, excluding foreign military intelligence, in order to

(i) identify any threat or potential threat to the security of the Republic or its people;

(ii) supply intelligence relating to any such threat to Nicoc;

(b) in the prescribed manner, and in regard to communications and cryptography-

(i) to identify, protect and secure critical electronic communications and infrastructure against unauthorised access or technical, electronic or any other related threats;

(ii) to provide crypto-graphic and verification services for electronic communications security systems, products and services used by organs of state;

(iii) to provide and coordinate research and development with regard to electronic communications security systems, products and services and any other related services;

(c) to liaise with intelligence or security services or other authorities, of other countries or inter-governmental forums of intelligence or security services;

(d) to train and support users of electronic communications systems, products and related services;

(e) to develop, design, procure, invent, install or maintain secure electronic communications systems or products and do research in this regard; and

(f) to cooperate with any organisation in the Republic or elsewhere to achieve its objectives.

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63. From the above it is clear that the role of the SSA is to gather intelligence, domestic or foreign, as well as counter-intelligence, for the purpose of identifying any threat or potential threat to the security of the Republic or its people. The SSA is required to inform the President of such threats; the SAPS for the purposes of investigation and to supply intelligence relating to such threat to any other department of state so that it can fulfil its departmental functions.

64. The above three pieces of legislation govern the manner in which the SSA carries out this responsibility and, and with their differing mandates serve as the binding code directing the implementation of its operational mandate. Their collective goal is to entrench accountability and to ensure that the intelligence services, established under the Constitution adhere to one of the fundamental principles set out in the White Paper, submission to the rule of law.

65. It is the submission to the rule of law and establishment of the intelligence services under the Constitution that sets it apart from the apartheid legacy and confers it with legitimacy. This legitimacy is the bedrock of its broad legislative power to collect intelligence so as to identify threats and potential threats to national security. National security of course contemplates the protection of the Republic and its people against any threat that will undermine the constitutional order. Such acts include, as in this case, incidents at any place or area which has been declared a

National Key Point under section 2 of the National Key Points Act, 102 of 1980. Parliament – whose interests the SSA sought to protect when it monitored GPAF – is a Key Point in terms of the Act because under section 2 it is an important place or area where *"loss, damage, disruption or immobilization may prejudice the Republic…"*.

66. As I show further in this affidavit, GPAF was subjected to non-invasive monitoring because of the potential threat that it presented at the time when the former Energy Minister was tabling that department's Budget Speech Vote for 2016/2017 financial year and when the President was delivering the 2017 State of the Nation Address ("SONA") endorsing certain aspects of the nuclear power deal.

The Promotion of Access to Information Act

67. PAIA does not operate in isolation. The laws governing the intelligence environment create obligations regarding the classification and dissemination of records and therefore, the intelligence legislation has an impact on the procedures in PAIA and the application of PAIA's provisions.

68. With this context in mind, I explain next how in the sphere of the security services PAIA operates to give effect to right of access to information. The right of access to information is entrenched in section 32 of the Constitution. It provides that everyone has the right to access to – (a) any

information held by the state; and (b) any information that is held by another person and that is required for exercise or protection of any rights.

69. PAIA, which was adopted on 3 February 2000 gives effect to this right. Section 11(1) makes access to the record of a public body mandatory where *(a)* a requester complies with all the procedural requirements in PAIA and *(b)* access to the record is not refused in terms of any ground for refusal contemplated in Chapter 4 of PAIA. The list of grounds of refusal in the PAIA are specific and exhaustive. Records that are not protected by one of the grounds must therefore be disclosed.

70. Chapter 4 of the Act provides that a request for access to information may be refused on any one of a number of listed grounds. The relevant ground relied on by the respondents is contained in section 41 of PAIA, which permits an Information Officer to refuse a request for access to information where granting the request will prejudice the security and international relations of Republic.

71. The provisions primarily relied on by the respondents are contained in sections 41(1)(a)(ii). It provides that:

> *"(1) The information officer of a public body may refuse a request for access to a record of the body if its disclosure-*
>
> *(a) could reasonably be expected to cause prejudice to-*

(i) .....

(ii) the security of the Republic; or

(iii) ....".

72. Section 39(b)(iii)(bb) of the PAIA is also relevant. It provides as follows:

"(1) The information officer of a public body-

(a) ....

(b) may refuse a request for access to a record of the body if-

(i) ...

(ii) .....

(iii) the disclosure of the record could reasonably be expected-

(bb) to reveal, or enable a person to ascertain, the identity of a confidential source of information in relation to the enforcement or administration of the law;"

73. Additionally, section 46 of the Act requires disclosure of a record even if it is covered by one or more of the grounds of refusal where the content of the record reveals a breach of law or a specific safety or environmental risk and where the public interest in disclosure outweighs the harm that disclosure will cause.

74. PAIA's purpose, as held by the Constitutional Court demonstrates the changed character of our society envisaged by the Constitution. PAIA turns its back on past practices of secrecy, prejudicial to a democratic dispensation and aims through accountability and transparency to give effect to a culture that protects human rights. As such, PAIA's starting point is a general right of access to information possessed by the state with the exemptions in Chapter 4, including those dealing with national security, being exceptions and not the norm. Thus, the Constitutional Court recognised that the provision dealing with national security does not constitute a blanket ban on the disclosure of information, but, as I am advised, rather delineates what are reviewable grounds for non-disclosure.

75. In keeping with PAIA's objects the intelligence services have a constitutional mandate to function within the parameters of an open and democratic society. I am advised that all these various constitutional provisions and statutes must be interpreted together harmoniously, and that, as a result, it is no longer possible to view the intelligence services as operating in a dubious smokes and mirrors context. Rather, its establishment under the Constitution makes it legitimate and the legislative framework within which it operates underscores its function of keeping government well-informed.

76. In this context, it must be remembered that the legislative framework identifies processes of information gathering that must remain confidential

and where disclosure to the public is prohibited. The SSA's intelligence collection methods include non-intrusive and intrusive means. Both are used to give effect to its primary legislative mandate, i.e. to identify threats or potential threats to national security and to timeously inform other law enforcement agencies so that the appropriate action can be taken.

The SSA Operational Process

77. GPAF was monitored through what is known in the intelligence community as "*Open-Source Intelligence*". In essence open source intelligence is simply collecting information through observation. It is a non-intrusive method of surveillance. It also describes the practice of collecting data from publicly available sources, with the aim of collating, processing and analysing it so that it may be used to extract intelligence. This initial process is then used to inform the SSA's decision whether the target, based on the publicly available accounts of its activities presents a threat or a potential threat. -(REMOVE REPEATED SENTENCE)

78. In the event that a threat or potential threat is identified it will then be necessary to use more intrusive intelligence gathering methods. The open-source investigation is generally the first stage in the investigative process and it entails initial gathering data from sources such as publications, broadcast media, social media and internet sources. As I show later, this was the only 'monitoring' that GPAF was subject to, namely observation

based on publicly available information in terms of which an assessment is made whether there is a basis to conclude the existence of a threat or potential threat warranting an approved and more intrusive monitoring and surveillance exercise.

79. What appears from the above is that in terms of the SSA's internal processes, intelligence gathering is either an intrusive or non-intrusive exercise. Intrusive operations/methods refers to intelligence collection methods that intrude and/or contravene impinge constitutional rights as entrenched in Chapter 2 of the Constitution, for example the right to privacy. The breach is of course sanctioned in terms of a law of general application such as RICA.

80. Given the constitutional rights implicated, intrusive intelligence collection methods are governed by strict procedures, to guard against the unlawful breach of constitutional rights when intelligence is being gathered. Intelligence is of course obtained through the act of surveillance or monitoring. None of the applicable legal prescripts provide a definition of what surveillance means. The respondents therefore have to rely on the ordinary dictionary meaning of the word, which is "close observation, especially of a suspected person". The next question is then whether the observation or surveillance will be non-intrusive or intrusive.

81. In the case of GPAF it was non-intrusive, as set out below. The intrusive surveillance methods on other hand include technical surveillance and/or physical surveillance. Technical surveillance refers to the employment or placement of electronic devices as contemplated in RICA for the purpose of intelligence collection. Physical surveillance is the physical monitoring and observing of persons, premises vehicles or objects, their movements and all activities that are carried out in a manner that is calculated to ensure the persons who are subject to the surveillance are unaware that it is or may be taking place.

82. Each of these methods are governed by certain standard operating procedures, that determine who may apply to use identified surveillance methods and how. Section 10(3) of the IS Act empowers me, in my capacity as DG to issue directives governing the procedures for the authorisation and administration of surveillance methods, which are approved by the Minister of State Security.

83. These directives are issued to ensure that these surveillance methods are carried out in strict conformity with the Constitution, applicable law, and directives and procedures authorising operational activities, with special emphasis being given to the protection of constitutional rights and privacy.

84. All surveillance operations are subject to prior authorisation. The authorisation is given in accordance with the directive issued for that

specific method of surveillance. In each case the requirements for the authorisation, as contained in the legislation and the appropriate policy directives must be complied with. In terms of the directives no intelligence component or member can request any person or entity to undertake unauthorised surveillance operations. Additionally, the need to conduct a surveillance operation is weighed against possible damage to constitutional rights, basic democratic principles as well as diplomatic and international relations.

85. The conduct of surveillance operations are subject to direct managerial involvement in the planning as well as the monitoring, control and supervision thereof. There is therefore a record of all approved surveillance operations in the SSA.

86. The operational directives referred to above are classified documents and therefore cannot be attached to this application. However, these directives will be made available *in camera* to the above Honorable Court, if the respondents are so directed.

87. Non-intrusive intelligence gathering methods, is the use of readily available information that is public in order to assess whether there is a threat to national security. This was the methodology applied to GPAF.

THE MATERIAL FACTS

The High-Level Review Panel Report

88. In June 2018 the President established the High-Level Review Panel on the SSA ("the Panel"), chaired by Dr Fholisani Sydney Mufamadi ("Dr Mufamadi"). The Panel was appointed to determine the extent to which the nation's security services fell victim to incidents of corruption and maladministration. The Panel's objective, as articulated by Dr Mufamadi was to *"enable the reconstruction of a professional national intelligence capability for South Africa that will respect and uphold the Constitution and the relevant legislative prescripts"*. Dr Mufamadi records that the affidavit filed at the State Capture Commission is drawn from the Panel's report. The Panel's declassified report was also filed at the Commission and formed the basis of both Dr Mufamadi's affidavit and the oral evidence he gave at the State Capture Commission.

89. The Panel commenced its work on 1 July 2018 and released its report during December 2018. The said report is marked and attached as annexure **"A"** to annexure "**GP2"** of the applicant's founding affidavit. As part of its Terms of Reference the Panel was requested to identify all material factors that contributed to current challenges in the SSA, so that appropriate measures could be instituted to prevent a recurrence.

90. The declassified report of the Panel also contained a declassified version of a confidential performance review. The document is titled *"Performance Review: Period 01 January 2016 – 24 February 2017: CDSO Co-Workers Deployment Team attached to Braze".* Dr Mufamadi refers to the performance review as the *'Boast Report'*. This is the first document that the applicant seeks access to.

91. Since the declassified version of the Boast Report is a public document,, GPAF's PAIA application must of course be assumed as seeking access to the classified, unredacted version of the report. The report was prepared to provide feedback to the then DG, Mr Arthur Fraser, on the performance of the "co-workers" affiliated with the SOU. The names of the co-workers are listed in table 1.1 of the report.

92. Chapter 9 of the Panel's Report focussed on the involvement of members of the executive in intelligence operations. It also addressed measures to prevent this. According to the information made available to the Panel, the factionalisation of intelligence had become particularly marked in the period since 2005. The Panel went on to identify the abuse of the powers of the SSA through its SOU and Principal Agent Network ("PAN"). The Panel found that the SOU was a law unto itself and that it directly served the political interests of the executive. It concluded that "*the SO also undertook intelligence operations which were clearly unconstitutional and illegal…*" The report then goes on to list its illegal activities, which include

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the monitoring of GPAF. It goes on that the SOU "*had largely become a parallel intelligence structure serving a faction of the ruling party and, in particular, the personal political interests of the sitting president of the party and country*".

93. The Panel finds further that in some instances manifestly illegal orders were issued, which included "*intrusive intelligence operations without compliance to the law*", and goes on to recommend that "*there should be firm consequences for those who issues manifestly illegal orders and those who wittingly carried them out*". The Panel finds that the civilian intelligence community had been turned into a private resource to serve the political and personal interests of particular individuals; and there was a doctrinal shift that was given effect through the proclamation issued by the then president, Mr JG Zuma. The Panel found that this conduct was in direct breach of the Constitution, the White Paper, the relevant legislation, and plain good governmental intelligence functioning.

94. The Panel presented its findings and recommendations to the President on 3 December 2018. It included a recommendation that urgent forensic and other investigations are conducted by the competent authorities into breaches of financial and other controls at the SSA. This included procedural breaches of process with regard to the PAN project and the abuse of the mandate of the SSA through the improper use of its SOU. It

recommended that where necessary, appropriate disciplinary action and criminal prosecution should follow.

95. The Panel also made recommendations to correct the deficiencies in the current legislative framework. It found that the current legislative framework gives the Minister of State Security too much scope to interfere in the administration and operations of the SSA. It concluded that the manipulation of the SSA for factional purposes emerged from the President through the Ministry and into the staff of the SSA, and that the executive did not heed the SSA's warning about these threats. This resulted in the Minister participating in operations that were in breach of the legislative framework.

96. The Panel went on to recommend a review of the current legislative provisions on the role of the Minister's powers as it relates to the SSA, and that its findings "*of the current investigation of the IG into the SO and related matters should form the basis for serious consequences for those involved in illegal activity, including where appropriate disciplinary and/or criminal prosecution*".

97. Insofar as the issuing and implementation of illegal instructions were concerned, the Panel found that there - *"should be firm consequences for those who issued manifestly illegal orders and those who wittingly carried them out"*. In its recommendations the Panel urged the development of a

clearer definition of what amounts to an illegal order and a broader review of the legislation that would lead to amendments to the law and the promulgation of regulations and directives on manifestly illegal orders and the processes to deal with them.

98. The President adopted the recommendations directing that they be implemented in totality. During April 2020, following the release of the Panel Report, and the adoption of the recommendations contained therein, the Minister of State Security,, -(THE STATE ATTORNEY WAS NOT INVOLVED IN THIS PROCESS. LIGWA WAS APPOINTED THROUGH INTERNAL SCM PROCESSES) appointed a forensic law firm, Ligwa, to investigate corruption and malfeasance at the SSA.

99. As matters stand, Ligwa is investigating some 26 matters relating to - malfeasance. Volumes of information pertaining to various allegations of corruption and malfeasance are in the process of being investigated and many individuals are being interviewed in this regard. The contract with Ligwa is for a period of one year and is set to expire on 31 March 2023, with an option to renew. No doubt the investigation will assess the lawfulness or otherwise of the decision to monitor GPAF.

The findings of the State Capture Commission

100. In 2016, former Public Protector, Advocate Thuli Madonsela, released the *State of Capture* report after an investigation into corruption, malfeasance and maladministration in the public sphere. As part the remedial action the report ordered that a Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State ("the State Capture Commission") be established.

101. The State Capture Commission was subsequently founded with Deputy Chief Justice Raymond Zondo, as he then was, as its chair. The hearings commenced on 20 August 2018. Relevant for the purposes of this matter is that on 30 November 2020, Dr Mufamadi filed an affidavit at the State Capture Commission. The affidavit dealt with events and activities at the SSA. Dr Mufamadi clarified in his affidavit that he was there to assist the Commission *"to understand whether some of the things which happened at the SSA do throw some light onto allegations of state capture, corruption and fraud in the public sector, including organs of state".* He also gave oral evidence at the State Capture Commission.

102. The final date of the State Capture Commission's hearings was 12 August 2021. At the end of its inquiry, and on 4 January 2022, the Commission released Part One of its report. Part Two was released on 1 February

2022, Part Three one month later on 1 March 2022 and Part Four, which was divided into four volumes, on the morning of 29 April 2022.

103. Before the release of the fifth and final report, on 18 May 2022 the respondent launched this application. One month later the State Capture Commission published the fifth and final part of its report on 22 June 2022. Volume 1, Part 5 of the report specifically dealt with the Commission's findings and recommendations in respect of the SSA and Crime intelligence. Specific findings and recommendations were made by the Commission under the heading "*Illegal operations by the State Security Agency (SSA)*" contained in paragraphs 864 to 868 of the report.

104. The Commission found that there was evidence that some of the activities of the SSA, in the performance of its functions, furthered interests of the ANC in a partisan manner. It cited as an example the abuse SSA funds.

105. Additionally, the Commission found that the SOU of the SSA, particularly under the direction of Ambassador Dlomo, was a law unto itself, and engaged in many projects that operated illegally. It found that these activities were unconstitutional and that there is a strong indication that some of them contravened the legislation governing the intelligence services. The Commission recommended that:

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"5. Investigations should be carried out internally for disciplinary action against members, and also by law enforcement agencies against possible criminal statutory contraventions. The use of the resources and services of national intelligence agencies to destabilize opposition parties, to benefit a ruling party and to fan intra-party fractions in order to facilitate political or electoral outcomes, amounts to a serious threat to the democracy. Steps therefore need to be taken to deal with this"

106. The Commission concluded its report with the following recommendation in paragraph 981:

"It is recommended that the law enforcement agencies should conduct such further investigations to establish whether any of the persons implicated in the wrong in this report did not commit one or other crime. In particular it is recommended that law enforcement agencies conduct further investigations with a view to the NPA possibly brining criminal charges against such people including Mr Arthur Frazer in relation to the PAN programme and any other matter revealed by the evidence before the Commission and Mr David Mahlabo and Mr Thulani Dlomo in regard to State Security Agency cash received and/or legitimately handled by them."

107. Pursuant to receiving recommendations from the Commission on how to fix the intelligence services, the SSA has embarked on a process to implement both the reports of the Panel and the State Capture

Commission. As part of that process it is investigating every project that was alleged to be unlawful, including the projects referred to in the Boast Report relied on by the Panel and entered into evidence at the Commission. To this end it has concluded a protocol with the Independent Directorate of the National Prosecuting Authority and the IGI to conduct criminal and civil investigations. The protocol is discussed hereunder. It is a confidential document, but if necessary can be disclosed *in camera* to this Honourable Court.

THE IMPACT OF THE IRREGULARITIES ON THE MANDATE OF THE SSA

108. Notwithstanding the highly regulated environment in which the SSA operates, what the Panel Report and evidence emanating from the State Capture Commission demonstrate is that partisan political agendas have weakened the ability of the SSA to constitutionally carry out its mandate. The intelligence services sit very close to the seat of political power, and the possibility of abuse for politically motivated objectives is always a danger. The heads of the services and indeed the persons in the senior command are appointed by the President who relies on them for briefing of security threats. Thus, they wield significant influence.

109. In truth, the oversight mechanisms require overhauling and introspection and this includes a reconsideration on the composition of the JSCI, among others. Regulatory changes are needed to ensure that the SSA achieves

its mandate in a manner that does not infringe the entrenched rights in the Bill of Rights.

110. As reported both at the State Capture Commission, and as appears from the Panel Report, the security services became embroiled in political conflict. The SSA does not dispute these findings and recommendations. It agrees that the identified incidents have damaged its credibility and legitimacy and that more must be done to insulate the intelligence services from political interference and abuse. The SSA is actively engaging with the reports with a view to developing a more rigorous system of checks and balances. It will engage with Parliament through the JSCI on overhauling oversight to improve accountability. It has already embarked on an extensive investigate process both internally and with the ID of the NPA and the IGI.

111. Whilst these processes are underway, the statutory mandate of the SSA must however still be implemented. It will be recalled that the mandate of the intelligence services is to gather intelligence on threats or potential threats to security. This broad legal formulation allows for flexibility and adaptability to changing security conditions, meaning that over the years the SSA's focus has been varied ranging from politically motivated violence in its earlier years, and, as transpired in this case, parliamentary budget speech votes and the President's annual SONA. One example that comes to mind is the intelligence provided about the instigators of a terror

campaign in the Western Cape between 2001 and 2004, which led to the arrest and prosecution of the persons involved.

112. In later years, from about 2004 after the third democratic election, a number of factors in the domestic security environment began to surface sharply. These were related to rising unemployment, a steep increase in undocumented migrants, and service delivery protests among others. These issues contributed to growing instability across the country. When tensions flared the SSA was required to monitor the developments. Corruption has been another matter receiving attention, as rising levels started to contribute to instability causing alarm to government. The SSA's ability to address and identify all these threats and potential threats is attributable in the main to its expansive intelligence mandate.

113. The SSA and its Minister is still democratically accountable to Parliament for decisions made in the interests of national security. Moreover, national security decisions, particularly those that relate to the national security assessments must, with respect be afforded an appropriate degree of deference. This is required because the SSA, the executive and Parliament through the JSCI has access to the particular information and expertise in these matters. Moreover, these decisions hold serious potential results for the public at large and therefore require a legitimacy which can be only conferred by entrusting matters that impact national

security to institutions accountable to the public through the democratic process.

114. In other words, if the public is to accept the legitimacy of its security apparatus, decisions, such as the refusal of a request for access to information must be made by the infrastructure put in place by the Constitution, and an appropriate degree of deference must be shown in respect of that decision.

115. I accept however that this deference does not arise on the mere classification of the Boast Report as secret. I accept also that the classification of the information as secret does not oust this Court's inherent power to determine whether it should be disclosed. I contend simply that where there is a reasonable basis to conclude that the disputed information was properly classified as secret, this court should be slow to release the information.

116. On this score, the SSA objects to the disclosure of the Boast Report because its content is secret as it contains the details of SSA sources and the name of one senior SSA member. Therefore this court is, with respect, obliged to consider all the relevant circumstances to determine whether it is in the interests of justice for the Boast Report to continue to be kept secret. In so doing this court must strike a balance between GPAF's right of access to information, underpinned by the principle of openness on the

one hand, and national security on the other. I am advised that, in terms of the jurisprudence emanating from the Constitutional Court this entails

116.1. First, examining the substantive content of the Boast Report. The full classified report will, in due course, be disclosed *in camera* to this Honourable Court;

116.2. Second, a determination must then be made whether the Boast Report, at least the classified and redacted portions thereof, constitute security information or not.

116.3. Third, consideration must be given to the *de facto* public nature of the report. In other words, whether notwithstanding the classified nature of the report, this court must assess whether the facts support such classification.

116.4. Fourth, the redacted material itself must be considered and then a determination must be made whether the public interest demands the disclosure of the Boast Report.

117. Based on the above, I discuss next why the report should not be disclosed. I commence with the reasons why GPAF was identified as a target for investigation.

THE INVESTIGATION INTO GPAF

Reasons for the Investigation

118. It is necessary that I take this court into the SSA's confidence, at least insofar as is permissible, in respect of the investigation against GPAF. The SSA identified GPAF as a role-player with the potential to interrupt the tabling of the Energy's Department's budget speech vote in May 2016 and the 2017 SONA. Both dealt with the state's decision to continue the use of nuclear power. The applicant's organisational mandate, as a global environmental campaigning organisation, is focussed on issues such as climate change, deforestation, overfishing, commercial whaling, genetic engineering, and antinuclear issues. Its organisational mandate is thus lawful advocacy protected from monitoring by the NSI Act.

119. But this is not the reason why the applicant was identified as an interested party that presented a threat or potential threat to state security. Rather, the SSA was concerned about the robust and sometimes unlawful manner that it conducted its campaigns. Thus, it was necessary that the SSA look into its activities. GPAF's chronicled history demonstrated instances of advocacy that, in some cases could constitute a risk to security. For example, during one of its anti-whaling campaigns against Japan's Antarctic Research Programme in 1999, which was lawful in terms of Article VIII of the International Convention for the Regulation of Whaling,

one of Greenpeace International's vessels rammed into the Japanese research vessel. Although this was done in protest to further its organisational mandate, the concern was that it displayed a disregard for the life and safety of the scientists on the vessel, and also caused damage to the vessel. Such incidents repeated itself in 2006 and in 2008. They are well documented and publicly available on various credible websites on the internet.

120. After conducting an open source investigation, the SSA observed that in South Africa, the applicant has amongst other things, been campaigning for an urgent transition away from coal and nuclear power, towards renewable energy, and energy efficiency for decades. The lawful nature of such advocacy is not disputed as long as the protest action in support thereof remains lawful.

121. This was not the case because- in 2002, twelve Greenpeace activists were arrested after six activists scaled a wall of the Koeberg nuclear power plant, and hung a banner against the wall. These activists were conducting an anti-nuclear protest, however in doing so they compromised the safety and security of the workers and the power plant. The power plant is also a national Key Point, and must thus fell to be protected from any loss, damage, disruption or immobilisation that may prejudice the safety of the Republic. Whilst no harm came to the activists or the plant, SSA could not afford for the same incident to repeat itself at another National Key Point,

and so it became necessary to monitor GPAF when it became apparent to the SSA that government decisions on nuclear power were going to be communicated to the public at large at parliament's precinct.

122. During 2013 and 2016 various steps were taken by the state in furtherance of its nuclear power and procurement programme. The Minister of Energy ("the Minister"), acting in terms of section 34 of the Electricity Regulation Act, 4 of 2006, determined that South Africa required 9600MW of nuclear power, and that this should be procured by the Department of Energy. During 2015 the Minister tabled before parliament three intergovernmental agreements in relation to nuclear procurement.

123. During this time GPAF protested these decisions on its website, in social media, and in news interviews. It also conducted physical demonstrations outside the offices of the Department of Energy against the government's decision to secure nuclear energy. Former Energy Minister, Minister Tina Joemat-Petterson, was also set to table the Energy Department's Budget Speech Vote for 2016/2017 in Parliament on 11 May 2016. Her speech is attached hereto as **"AA1"**. Parliament, as I have indicated is a national Key Point.

124. In addition the President was to deliver the 2017 SONA on 9 February 2017. The highlights from the address are attached hereto as "**AA2**". As appears from the highlights, the President's address included measures to

resolve the energy challenge and he communicated that government was expanding the energy programme to other sources of energy, which included coal.

125. The applicant expressed its dissatisfaction with these decisions, both of which were to be communicated at Parliament. Due to the record of the applicant's past behaviour of putting its own members' lives and the lives of the public at risk during its campaigns, it was the SSA's duty to gather intelligence to ensure the integrity of the facility and the safety of people at Parliament during the said events. This was a matter of state security because any disruptive activity at Parliament is, in terms of section 2 of the National Key Points Act, a threat to the safety of the Republic and not in the public's interest.

126. In addition to the above, many NGO's had been multiplying the impact of their reach under the banner of an umbrella organisation called SAVESA. It was necessary to determine whether GPAF formed part of this group, and what impact, if any this would have on the nuclear power deal which was to be addressed in the former Minister's tabling of her department's budget and the 2017 SONA.

127. It was for the above reasons that GPAF was monitored in the manner that I discuss below. However, once it was determined that GPAF did not

present a threat or potential threat to national security, no further surveillance measures were implemented against it.

The Monitoring of GPAF

128. It is necessary to commence here with a proper understanding of the term 'monitoring', as it applied to GPAF. GPAF's request for information is premised on the view that it was monitored electronically under RICA. This was not the case. Monitoring in the intelligence framework is broad. Whilst it can include electronic and physical surveillance, it is not limited thereto.

129. Electronic surveillance is carried out in terms of RICA, and can include the installation of devices. Physical surveillance is approved only in terms of our internal organisational directives and then only where it has been established, through initial non-intrusive means, that the target of the surveillance presents a threat or a potential threat to national security.

130. To make the latter determination, some form of monitoring is necessary because an environmental scanning exercise must be done to determine the appropriate course of action, if any. Environmental scanning simply means assessing six key factors, namely the political environment; the economic environment; the social environment; the technological environment; the legal environment and the geopolitical environment in which the first stage of the monitoring will take place. Without such an

exercise no electronic or physical monitoring can ensue, because the purpose of the first stage is to determine whether there is a suspicion that the activity of the target potentially or actually threatens national security.

131. What transpired in respect of GPAF is that it was subjected to a non-intrusive environmental scan where its social media platforms were infiltrated by SSA sources. The outcome of the initial non-invasive infiltration was a conclusion that it did not present a threat or potential threat to national security, and therefore no further monitoring was authorised against it. In other words it was never an approved target for electronic or physical monitoring. What this means therefore, is that other than the Boast Report, the remaining documents GPAF seeks access to does not exist.

132. GPAF suggests that because it is engaged in lawful advocacy, an activity excluded from surveillance by the NSI Act, it should not have been monitored. However, its robust advocacy, which has resulted in trespass; damage to property and endangering life at times, meant that the SSA could not assume in its favour that it would not present a threat to national security when decisions on the nuclear power deal were going to be communicated to the nation at both the 2016 Budget Speech and the 2017 SONA.

133. The SSA was concerned that in the implementation of its advocacy mandate GPAF would potentially place Parliament, and the members who attend at risk. It was obliged therefore to investigate this risk in the exercise of its duty to identify threats and potential threats to national security.

134. In sum, the robust, and at times unlawful nature of GPAF's protests meant that the SSA could not simply take for granted that because it was an environmental advocacy group it would cause no harm. As a result, GPAF was subjected to an environmental scanning exercise. The purpose was to identify whether its activists would pose a threat to national security on those particular days, i.e. in May 2016 when Minister Joemat-Peterson tabled her budget vote and in February 2017 when the SONA was delivered. It would have been remiss of the SSA not to conduct any form of investigation since this would amount to a breach of its legislative mandate to identify threats and potential threats and inform the relevant structures so that appropriate measures could be adopted at Parliament.

135. However, not every decision to monitor constitutes surveillance or monitoring as contemplated in RICA. The SSA's intelligence collection methods, as I have said comprises both non-intrusive and intrusive means. As I indicated above, GPAF was monitored through open-source intelligence, which is the collection of information by observation. There was no electronic surveillance under RICA or physical surveillance in terms of the SSA's approved processes. This is why, other than the Boast

Report, the remaining information that the applicant seeks simply does not exist. The reason why the request was refused based on the fact that the information was not authorised is because the classified Boast Report is secret and confidential.

136. Thus, the monitoring of GPAF was non-intrusive and entailed the collection of intelligence through publicly available sources. GPAF was monitored through its social media accounts, website and any and all publications involving it. This is a process that requires manpower, because the monitoring had to occur on a 24-hour basis in case something was available that would spark our specific interests.

137. Where reference is made to the fact that GPAF was penetrated, it simply means that those deployed to monitor the applicant – and in this case only through its social media platforms – were given authority to follow the applicant on its various social media platforms, and participate in the applicant's social media activities, just as any other member of the public could, if permitted by GPAF to join its social media following.

138. This is what is meant by active monitoring as it relates to GPAF and was the extent of the infiltration that it was subjected to because the risk analyses demonstrated that there was no link between GPAF and SAVESA and, no threat. Thus, there was no contravention of the law. SSA was simply carrying out its statutory mandate to detect threats and

opportunities, and when none was identified there was no infiltration or surveillance.

139. The environmental scanning done on GPAF through its social media presence only, showed that the applicant presented neither a threat nor a potential threat. No intrusive methods were used to monitor the applicant and no further action was taken when the environmental assessment demonstrated no potential risk to state security interests at a national Key Point, during the budget speech and SONA. However, I am not at liberty to disclose the methods used to infiltrate GPAF across its social media platforms. This latter exercise is integral to intelligence collection and constitutes protected and classified information that cannot be disclosed in the interests of national security.

140. All initial investigations show that there was no physical infiltration at GPAF's offices and also that it was not monitored in the manner as contemplated in RICA. Whilst the SSA takes no issue with the outcomes of the Panel's Report as well as its recommendations and that of the State Capture Commission, upon conducting its own internal assessment, all that GPAF was subjected to was an environmental scanning process to determine whether its robust advocacy would post a threat to the budget speech and the 2017 SONA.

141. Therefore, whilst I acknowledge on behalf of the SSA the wrongdoing identified in both the Panel's Report and the Part V of the State Capture Commission's report, it is necessary that I emphasise that GPAF was not subjected to interception and monitoring as defined in RICA. In other words there was no electronic interception or surveillance done on GPAF. Such an exercise would have been subjected to the SSA's internal protocols and relevant organisational directives. These too are classified and confidential, but if necessary will of course be made available *in camera* to this Honourable Court to facilitate the finalisation of these proceedings.

142. These protocols would apply because in order to intercept under RICA, the SSA would of course had to secure a warrant, which would have regulated stringently the nature of the interception and the devices or numbers that could be intercepted.

143. Moreover, physical surveillance too would also have been subjected to our internal protocols and organisational directives. Such a process can only be approved by the Director-General for Domestic Intelligence Collection. I am assured, and once again, the relevant confirmatory affidavit will be furnished *in camera* that there was no such internal process or approval. This is because GPAF was never identified as an approved project – for which a budget would be allocated – that required either electronic surveillance under RICA or physical infiltration for that matter.

144. I want to add that our processes are rigorous. Where a project is approved for surveillance and monitoring, the implementation of the project is subjected to meticulous planning dealing with, among others, the management and supervision of the surveillance operation. Many senior members are engaged at different levels of the process to inculcate accountability within the SSA. The prevailing principle is that the higher the risk occasioned by the operation, the more meticulous the required planning will be, resulting in extensive supervision and the involvement of - senior members.

145. Without jeopardising the SSA's intelligence collection procedures, as contained in its organisational directives, which I have indicated can be made available *in camera*, an entity must first be approved in terms of an authorised project as being the target of electronic and/or other surveillance. The approval process is thorough requiring among others an internal application for the approval of the surveillance. Such application must motivate the relevance of the proposed target and why surveillance is required; the nature of the surveillance being applied for; the techniques that will be used; the period of the surveillance; list any joint law enforcement implications and contain sufficient details of the entity to be subjected to surveillance.

146. All intelligence collected is then analysed by the SSA to ensure that the infiltration was carried out in accordance with the organisational directives.

The directives are also clear that no members shall engage in unauthorised surveillance. This is done within the broad legislative framework that the SSA holds to gather intelligence and counter-intelligence with the purpose of implementing the central tenet of its legislative mandate, i.e. the identification of threats or potential threats to national security.

147. Thus, the decision to survey a target is not an ill-informed random decision. The SSA must receive a request from a member of the Agency or any other government department requesting or receiving service from the Agency in terms of our operational directives. Before any target can be subjected to surveillance through an intrusive method. It will be appreciated that the approval of a project for surveillance is labour-intensive requiring the use of many resources. It is only ever embarked upon where an initial risk assessment, through non-intrusive means determines that the target presents a threat or potential threat to national security. In this case, no such decision was reached and GPAF was never subjected to surveillance beyond the monitoring of its social media presence through its own online platforms. Therefore, there is no information beyond the Boast Report to disclose, with the Boast Report itself not being capable of disclosure.

148. I am also assured by the head of the relevant division, whose confirmatory affidavit will also be made available in camera to protect his identity, that - since no intrusive surveillance was conducted on GPAF, the remaining

documents it requests does not exist. In short, there was no project for the electronic monitoring of GPAF, approved or unapproved. The only document in possession of the SSA is the classified Boast Report, and for reasons already recorded, the respondents cannot accede to it being made publicly available.

THE BOAST REPORT

The Content of the Report

149. The Panel's Report concluded that the SOU *"undertook intelligence operations which were clearly unconstitutional and illegal".* The report goes on to identify those projects, and in his affidavit Dr Mufamadi includes the projects listed in the Boast Report as evidence of unlawful operations. To this end the Panel's report states that it *"was given access to a document which was purportedly a report to the then SSA DG, Mr Arthur Fraser, in February 2017 in which the author boasts of the SO unit's performance in the 2016/2017 year".* This Boast Report records that the SOU engaged in active monitoring of several NGO's, including GPAF.

150. The Boast Report is in fact a performance review. Its purpose was to *"provide documented feedback relating to the co-workers..."* to the then DG, Mr Arthur Fraser. The feedback in the Boast Report relates to the performance of the co-workers or sources. It reviews, for the stipulated

period, the in-post training they received, their operational deployments, and return on investment to the SSA whilst they were under the operational control of the supervisor who prepared the report. The supervisor is referred to as '*Braze*'.

151. The co-workers are not members of the SSA. Rather, they are sources who worked under the operational control of their agent handler, who is a member of the SSA. The sources were used as part of what is referred to as a PAN, which the Panel Report records is an accepted practice in intelligence agencies. The Panel report also correctly observes that the PAN *"is a method of 'force multiplication' in which principal agents are recruited outside the Agency who in turn are trained and capacitated to recruit and handle sources and agents in or close to targets of and legitimate interest to the Agency. This is primarily a HUMINT (human intelligence) collection initiative".*

152. As a result, the identities of the co-workers is classified because it constitutes human intelligence. Consequently, these names were redacted from table 1.1 in the declassified version of the report. The name of the agent handler they reported to, who is a member of the SSA, is similarly classified and hence, also redacted from the declassified version of the report. In all other respects the publicly released declassified report contains the same information as the redacted, classified version. In other

words, the only difference is that the classified version keeps secret the names of the SSA's sources and the member who prepared the report.

153. It is now a matter of public knowledge that these co-workers were, as stated in the report, deployed as part of the SOU's mandate to "impede, neutralize and advise management on threats to national security". The co-workers were deployed under the PAN programme. They were trained by the agent handler and deployed to collect intelligence information. In the year under review, 2016-2017, they were deployed on six short-term deployments, which according to the author of the report "exceeded all expectations". Section 3 of the report deals with the operational performance review and sets out the specific operations that the co-workers were deployed to. It is in this section where the review records that GPAF was monitored.

154. The operational focus of the project is recorded as being *"SONA/Questions and Answers/Budget Speech 2017"*. It was necessary to monitor the applicant through non-intrusive measures to ascertain whether, in the light of its robust advocacy opposing the nuclear power deal, it presented a threat or potential threat to national security when the SONA and budget speeches were to be delivered at a national Key Point, Parliament.

155. As indicated, the report is addressed to the former DG, Mr Arthur Fraser. It documents that GPAF and a number of other NGO's were actively

monitored by the SSA. The following is specifically reported on page 5 of the said report:

"*Active monitoring of the South Africa First, Right to Know, SAVE SA and Green Peace was done due to the penetration ability of the group. A team was penetrated and became "activists" for these NGOs. Through these actions reporting took place on supporter strengths, main actors, ideology, support structures and agendas*"

The Boast Report is Classified

156. It is because the performance review contains the names of sources and their agent handler that it cannot be disclosed. The legislative framework, PAIA included empowers the IO of the SSA to not disclose information that contains such sensitive information. The protection of the identities of sources and SSA members is necessitated by the intelligence agenda to identify threats. This agenda must be implemented in a space where complex security threats confront states and the intelligence services must operate to avert or mitigate the consequences associated with the realisation of such threats.

157. This is particularly evident in relation to counter-terrorism, where information sharing and coordination with international partners has emerged as a critical tool. But, beyond these security threats, intelligence

liaison provides a critical platform for states to discuss sensitive matters in a confidential manner that further serves to strengthen bilateral partnerships, facilitating trade relations and economic as well as social development more broadly. Similarly, intelligence liaison is particularly important in addressing conflict between two states, as it is often used as a back channel of communication to address and ultimately resolve such conflict.

158. Due to the role that intelligence liaison plays, it is governed by strict protocols, which are sacrosanct and amongst others include a stipulation that the information being shared belongs to the intelligence service concerned. This is particularly so as it relates to the identity of human intelligence and members. As such, these records in particular cannot be provided to a third party. Accordingly, if the SSA were to disclose the identity of its sources and members this would constitute a serious breach of trust. This in turn would not only impact on the SSA's relationship with the specific intelligence service (and South Africa's relationship with the country), but could also equally affect its relations with other intelligence services beyond our borders, which will perceive the SSA as untrustworthy. In addition, it would prejudice the SSA's ability to collect intelligence.

159. Any intentional attempt or incidental uncovering of any classified operational project, operational method used, source or activity would thus

be a contravention of the IS Act and the SSA's internal operational policies. Significantly, it could also lead to a possible loss of life, legal action or can result in the further exposure of SSA's national security intelligence, intelligence collection methods, other sources of information and the identity of members.

160. All intelligence operations must be conducted under an appropriate/suitable level of cover. They must be adequate measures to disguise/shield the status of offices, resources, members, sources and intelligence operations, and the DG must, in accordance with section 10 (4)(a) of the ISA, as far as is reasonably practicable, take steps to ensure the protection of national security intelligence, intelligence collection methods, sources of information and the identity of members of the Intelligence Services from unauthorised disclosure

161. In sum, section 39(1)(b)(ii)(bb) of PAIA also empowers the second respondent to refuse a request for access to a record of the respondent if the disclosure of the record could reasonably be expected to reveal, or enable a person to ascertain, the identity of a confidential source of information in relation to enforcement or administration of law. The respondents are relying on confidential sources of information to conduct their investigations into the alleged monitoring of the applicant. Without these sources of information, the detection of contravention of any laws committed during the surveillance of the applicants by any of the

operatives of the SSA would become a challenging, if not impossible task to complete.

162. The premature release of the record before investigations are completed will reveal the identity of confidential sources, who could in turn refuse to cooperate with the respondents in their investigations for fear of reprisal, which refusal could reasonably impede on the respondents' investigations and ability to implement the commission's findings

163. Moreover, section 39(1)(b)(ii)(cc) of the PAIA empowers the second respondent to refuse a request for access to a record of the respondent if the disclosure of the record could reasonably be expected to result in the intimidation or coercion of a witness, or a person who might be or has to be called as a witness, in criminal proceedings or other proceedings to enforce the law.

164. The respondent has identified that the forensic investigations currently being conducted by the respondents may lead to disciplinary proceedings and/or criminal proceedings against those implicated in any wrongdoing in the surveying of the applicant. Confidential sources of information and/or those operatives who choose to cooperate with the SSA may very well be witnesses in the coming enforcement proceedings.

165. Due to the seriousness of the possible charges that could be levelled against the perpetrators, and the possibility of convictions followed by lengthy prison sentences, there is a reasonable possibility that identified persons in the record could be intimidated, and harassed and this will jeopardise investigations as well as future law enforcement proceedings.

166. The respondents therefore submit that the record is exempt from being released as made provision for in Section 39(1)(b)(ii)(cc) of the PAIA.

Further Reasons for Non-Disclosure

Fairness of trial

167. Section 39(1)(b)(ii)(ee) of the PAIA empowers the second respondent to refuse a request for access to a record of the respondent if the disclosure of the record could reasonably be expected to prejudice or impair the fairness of a trial or the impartiality of an adjudication.

168. If the record is released to the applicant SSA operatives will know that they are currently being investigated. Such disclosure could serve as a basis for members who have participated in unlawful activities to allege that either the investigations or the manner in which the investigations were dealt with are irregular. The SSA will face many challenges on how to manage these employees. Thus, the prejudice that will be suffered as a

result of the disclosure of the information will far outweigh the alleged public interest in its disclosure. Simply put, it will jeoparise the ability of the SSA to properly implement the recommendations of the Panel and the State Capture Commission.

Illegal operations by the State Security Agency (SSA)"

169. One month after GPAF launched this application, the Commission published Part V of its report on 22 June 2022. It specifically dealt with its findings and recommendations on the SSA and Crime intelligence. The above Honourable Court, I submit, ought to consider the impact that the release of the Boast Report will have on the ability of the SSA to implement the Commission's recommendations. The implementation of the Commission's recommendations is indeed a matter of national security. If the functionality of the SSA is not secured through the implementation of these recommendations, the very vehicle through which national security is achieved will be eroded to the point of inefficiency.

170. It must be remembered that in implementing the recommendations of the Commission the SSA is obliged to conduct investigations into all the irregularities that it exposed. Together with the Minister and Parliament, through the JSCI, it must also embark on a project that will see the overhaul of the legislative framework governing the intelligence services. The

release of the Boast Report, which contains the names of sources and one member may well undermine this process.

171. As a starting point, it could lead to an unwelcome precedent that the SSA is unable to protect a vital component of its intelligence gathering capabilities, i.e. human intelligence. In an already volatile security environment, it could lead the way for the disclosure of other sources and members, leading even to a possible loss of life.

Prejudice to investigations

172. Section 39(1)(b)(ii)(aa) of the PAIA empowers the second respondent to refuse a request for access to a record of the respondent if the disclosure of the record could reasonably be expected to prejudice the investigation of a contravention or possible contravention of the law.

173. The applicant acknowledges in paragraph 70 of its founding papers that the disclosure of the records would self-evidently reveal evidence of a substantial contravention of or failure to comply with the law, more specifically, the unlawful surveillance and infiltration of the applicant. There is therefore a connection between the information sought by the applicant and ongoing investigations being conducted by the respondents, as well as the implementation of the Panel's Report - and the recommendations of the State Capture Commission.

174. Therefore, the disclosure of the classified Boast Report is reasonably expected prejudice the SSA's investigations into alleged contraventions of the law that resulted from any surveillance, including the possible unlawful surveillance of the applicant. Such disclosure could prejudice the forensic investigations currently being conducted by the respondents, which are twofold:

174.1. First, certain operatives within the SSA will be subjected to employment processes where misconduct charges will be levelled against them, and disciplinary hearings will be convened.

174.2. At a secondary level, the SSA is also engaging with the National Prosecuting Authority, thus creating the possibility of certain operatives within the SSA being prosecuted for their unlawful conduct.

175. A further prejudicial impact of the report is that certain operatives within the SSA involved in the alleged unlawful conduct would know that they are the subject of the SSA's investigations and that their names have been provided to the applicant. The release of the Boast Report and these names could well lead to interference with witnesses; and the destruction of vital evidence that could have been obtained during the investigations. The destruction of evidence would thwart any attempt to hold those implicated liable in any enforcement proceedings.

176. The respondents therefore submit that the record is exempt from being released as made provision for in both section 41 of PAIA and section 39(1)(b)(ii)(aa).

Public interest override

177. Section 46 of the PAIA provides for disclosure of a record in the public interest, where such clearly outweighs the harm contemplated in the provision in question.

178. The applicant alleges in paragraph 70 to 71 of its founding affidavit that, even if the Chapter 4 grounds of refusal apply they could be subject to a public interest override in section 46 of PAIA because disclosure of the records would clearly reveal a substantial contravention of, or failure to comply with the law.

179. Lastly that the surveillance and infiltration of the applicant appears to have been unlawful and the disclosure of the records would reveal that unlawfulness. I deal with the impact of the alleged unlawfulness in a separate section.

180. Thus, GPAF says that even Chapter 4 of PAIA applies, the information requested should be disclosed in terms of the public interest override since it deals with questions of accountability and transparency; the unlawful

nature of the infiltration has impacted and erodes its mandate to protect the environment; it has created a climate of mistrust and fear within the organisation where its employees and officials treat each other with suspicion; effected its work and activities because it is unaware of the extent and nature of the surveillance and therefore it feels insecure about the integrity and security of its teams, channels, programmes and information; and it has spent considerable resources attempting to understand the nature and extent of the infiltration and surveillance, and these resources were diverted away from other projects that could have contributed to its work in environmental protection.

181. But all of these complaints can be remedied through GPAF taking the necessary steps to lodge a complaint with the IGI under the ISO Act. The SSA would be obliged to disclose all relevant documents to the IGI and where it is found that the investigation of GPAF was indeed unlawful, those oversight mechanisms will take effect. Moreover, any member identified by the IGI as having wittingly carried out an unlawful instruction, will be subjected to the necessary employment and criminal sanctions.

182. It cannot be in the public's interest however for the SSA to disclose sources and the identity of its members so that the applicant can restore trust within its ranks. It is not the job of the SSA to, through intelligence collection, render the GPAF functional or to assist the GPAF in the

achievement of its organisational mandate. These are goals only the GPAF can achieve through whichever means it determines most effective.

183. Moreover, there is no guarantee that the disclosure of the report will assist the security and integrity of GPAF. There is however greater certainty and an almost certain probability that the disclosure of the Boast Report will undermine state security by revealing the identity of human intelligence sources and members of the SSA. I am enjoined by section 10(4) of the IS Act to ensure that this does not transpire.

184. Thus, the non-disclosure of the record by far outweighs the alleged public interest in favour of its disclosure. In any event all of the grounds pleaded on this score relates not to the interests of the public at large, but rather to GPAF's concerns about its operations and staff interactions and relationships. Whilst important, these concerns can be addressed through a complaint to the office of the IGI. The same applies in respect of the averment that the monitoring was unlawful.

185. Moreover, the disclosure of the record could reasonably be expected to frustrate the implementation of the recommendations from the Panel and the Commission. The culminative effect could also undermine investigations into those operatives involved in unlawful surveillance, prejudicing any enforcement proceedings against them. The public has an interest in effective prosecution of these individuals. The only way to

prevent the harm is to protect the secret and classified nature of the Boast Report.

186. The respondent therefore submits that the public interest override contemplated in section 46 does not apply in these circumstances. The record requested by the applicant should not be released by the second respondent on the basis of the grounds of refusal contained in sections 39(1)(b)(ii)(aa), (bb), (cc) and (ee) of the PAIA as well as the ground of national security in section 41.

THE IMPACT OF THE ALLEGED ILLEGALITY ON THE APPROPRIATE REMEDY

187. GPAF also argues that it is entitled to the information sought because the respondents' decision to monitor it was unlawful. It argues that because it was unlawfully monitored the exceptions contained in Chapter 4 of PAIA do not avail itself to the respondents.

188. First, the role of the SSA is to identify threats or potential threats to national security. At the time that a risk assessment was done on GPAF, it presented a potential threat to national security. I have set out the reasons why in this affidavit. This required further assessment, which was done through open-source investigations. Thus, preliminary indications are that

the assessment was not unlawful. Once completed a decision was made that GPAF did not represent a threat and no further action was taken.

189. For the purposes of this section, I want to make the narrow point however, that the lawfulness of an interception is of no moment to the question whether information that pertains to national security can be disclosed. The issue of disclosure must be determined in terms of section 11 of PAIA, which does not absolve the Information Officer from assessing whether the information sought comprises intelligence that implicates national security. In this case it does, and I have set out the reasons why.

190. Intelligence is of course defined in the NSI Act as being intelligence; intelligence collection methods; sources of information; and the identity of members of the intelligence services. In this case, some of the information sought contains the names of sources of information and the identity of one member of the SSA.

191. Therefore, in terms of section 11 GPAF's request cannot be granted because it is covered by a lawful ground of exclusion under Chapter 4, namely national security as set out in section 41(1)(a)(ii). The applicant's argument that it is entitled to the disclosure of the information because it was unlawfully monitored, is therefore a non-starter.

192. Moreover, even if the monitoring may have been unlawful, which is being investigated, it does not follow that the intelligence collected cannot be classified as pertaining to national security, provided of course that it does not fall within the exclusionary categories of lawful political activity, advocacy, protest, or dissent in the NSI Act. This exclusion does not apply to GPAF simply because it is an advocacy group.

193. In fact, its role as a robust advocacy group in the environmental sphere underpinned the decision to monitor it through open-source investigations. The SSA was concerned that GPAF's robust and sometimes unlawful protest action, which has led to trespass and damage to property in the past presented a threat to the security of the Republic. The SSA was obliged to monitor GPAF particularly during the delivery of the 2016 budget speech and 2017 SONA address when the issue of energy security was topical. It is well known that the applicant is opposed to any form of nuclear and coal power, and the state president was expected to make announcements on the nation's approach to nuclear, coal and gas power.

194. As I have indicated, the credible concern arose that GPAF might interrupt the address through unlawful protest action at Parliament, a national Key Point. Thus, the SSA was statutorily obliged to assess whether such a possibility could arise and to advise the relevant security authorities such as the SAPS so that they could plan in advance how to manage such potential protest action.

195. Therefore, the decision to monitor the potential threat was neither unlawful nor was it an abuse of power. But even if this is not the case, which is denied, GPAF's, remedy is not access to information under PAIA. Rather, the SSA must account for any alleged abuse of its powers to the IGI who is appointed by the President in terms of section 7(1) of the ISO Act.

196. The IGI is accountable to the Joint Standing Committee on Intelligence ("the JSCI") established by section 2 of the ISO Act. The JSCI performs oversight functions in relation to, among others, the intelligence, and counter-intelligence functions of the SSA. It is comprised of 15 members of Parliament appointed on the basis of proportional representation.

197. By way of summary, the IGI is empowered by section 7(7)(cA) of the ISO Act to receive and investigate complaints from members of the public and members of the Services on alleged maladministration, abuse of power, transgressions of the Constitution, laws and policies and the commission of offences. The IGI submits reports to the JSCI in terms of section 7(1)(e) of the ISO Act. The JSCI is in turn empowered by section 3(1)(f) to receive the report submitted to it. It can also order, in terms of section 3(1)(f) that the IGI investigate complaints received by the JSCI from any member of the public regarding the conduct of the SSA.

198. The SSA cannot deny the IGI access to any documents it requests in the investigative process because in terms of section 7(8)(a) of the IO Act the

IGI "*shall have access to any intelligence, information on premises under the control of any Service, if such access is required by the Inspector-General for the performance of his or her functions, and he or she shall be entitled to demand from the Head of Service in question and its employees such intelligence, information, reports and explanations as the Inspector-General may deem necessary for the performance of his or her functions".*

199. The JSCI similarly, in terms of section 4(1) of the ISO Act has access to intelligence, information and documents under the control of the SSA, subject to certain prescriptions, which include that the SSA is not obliged to disclose to the JSCI the names of sources or operatives, as appears from section 4(2). The same restriction does not however apply to the IGI.

200. What this shows is that an alleged abuse of process triggers the remedies under the ISO Act. It is not a licence to disclose sensitive information to the detriment of the nation's security interests. The applicant must either lodge a complaint directly with the JSCI in terms of section 3(1)(f) or it must – as it elected to do – lodge a complaint with the IGI in terms of section 7(7)(cA) of the ISO Act.

201. The applicant is aware that these are the remedies at its disposal. That is why on 8 March 2021 it lodged a complaint with the IGI requesting that it investigate the alleged unlawful conduct of the SSA in subjecting it to surveillance. The request appears from paragraph 3 of its letter. This is

the appropriate course of action, which the applicant must pursue to finality. Its remedy is not disclosure, since the latter question will always be governed by section 11 of PAIA which sets out two peremptory requirements, namely compliance with PAIA's procedural requirements and that access is not refused in terms of any ground for refusal in Chapter 4. The applicant has not met the second requirement because its request fell under one of PAIA's lawful grounds of exclusion, national security. It was therefore lawfully refused access to the information sought.

202. As opposed to waiting for the outcome of the IGI's investigation, on 18 May 2022 the respondent launched an application in this above Honorable Court in terms of section 78(2) of PAIA to set aside the refusal and to grant access to the necessary records.

203. The applicant is silent on the outcome of the investigation it requested terms of section 7(7)(cA) of the ISO Act. The applicant further fails to inform this above Honourable Court of the steps that it took to determine from the IGI's whether he has commenced his investigations as per its request; and if so, what the progress is on these said investigations. What the applicant seeks to achieve by obtaining the requested information prior to the conclusion of the IGI's investigations is to conduct its own investigations parallel to the IGI's investigations, which is impermissible.

204. In addition to the above, a *Protocol Agreement* was signed between the Director-General of the State Security Agency, and the Investigating Director of the National Prosecuting Authority ("ID") and the IGI. The ID is going to investigate any unlawful activities at the SSA In terms of section 27 of the National Prosecuting Authority Act 32 of 1998 ("*NPA Act*"). The Protocol Agreement is attached hereto as "**AA3**".

205. The IGI is of course mandated to investigate allegations of maladministration, abuse of power and transgressions of the constitution, laws and intelligence and counterintelligence policy, in terms of the ISO Act.

206. The protocol concluded will bring about the cooperation between the SSA; the IGI and the ID to uncover any further irregularities. Incidentally the protocol recognises that the unauthorised disclosure of classified information and supporting documentation may be detrimental to national security. It provides that in an effort to balance the security interests of the country with the principle of cooperation underpinning the protocol, there must be cooperation within the SSA to ensure effective prosecutions of implicated members.

207. To this end, the first objective of the protocol is to enable the IGI to have access to any intelligence, information or premises of the SSA in order to fulfill oversight mandate with regard to certain identified projects conducted

by the SSA. The second objective of the protocol lies in empowering the ID to investigate in terms of section 27 of the NPA Act in a cooperative framework. The third objective is to protect the disclosure of unauthorised information that is of interest to the ID in its investigative processes. To this end, the protocol seeks to manage access to information relevant to an investigation and balance the unauthorised disclosure thereof.

208. The protocol was signed by representatives of all the parties involved on 26 March 2021. The actual agreement is classified, but will be disclosed *in camera* if necessary.

209. I have made this point to demonstrate that even the ID, with its independent investigative mandate is alive to the sensitivity of the information it may seek from the SSA. In recognition of that fact a structure has been out in place, in the form of the protocol to protect from disclosure information that has a direct bearing on national security; the function of the SSA; and the investigative and oversight powers of the IGI.

THE ARGUMENT THAT PAIA APPLIES EXCLUSIVELY AND WAS NOT RELIED ON

210. GPAF argues that Dr Luvengho did not rely on "*a single provision of PAIA*", in refusing the request. GPAF argues that since PAIA takes precedence over all other statutes that prohibit or restrict access to information, its

request ought to have been determined under PAIA, and not section 10(4) of the IS Act. Moreover, the refusal, where no provision in PAIA is cited, contravenes section 77(5) of PAIA, which enjoins an IO to state adequate reasons for the decision "*including the provision of this Act relied upon*". The failure to cite the section relied on, says GPAF means that no ground of refusal lawfully applies.

211. However, when he decided to refuse the request, Dr Luvengho did not rely on section 10(4) of the IS Act only. As his decision records, he relied on PAIA too. That is why his decision reminded GPAF that PAIA must be read in conjunction with section 10(4) of the IS Act. Thus, his assessment commenced with PAIA, which he interpreted together with section 10(4) of the IS Act. Section 10(4)(a) obliges me, in my capacity as Director-General to take steps to ensure that "*national security intelligence, intelligence collection methods, sources of information and the identity of members of the Agency, are protected from unauthorised disclosure*". The report the applicant seeks contains sources of information and the identity of one member of the SSA. Thus, access thereto was lawfully refused.

212. When PAIA is read in conjunction with the IS Act, as recorded by Dr Luvengho, it is apparent that the applicable lawful exclusion is to be found in section 41(1)(a)(ii). This section vests an IO such as Dr Luvengho, with the power to refuse a request for access to a record, if the disclosure will cause prejudice to, among others, the security of the Republic. Therefore,

Dr Luvhengo properly interpreted PAIA in conjunction with section 10(4) of the IS Act, when he refused GPAF's request for access to information.

213. It is only that he did not identify which section of PAIA he was relying on. At best for the applicant, and indeed at worst for the respondents, this omission contravenes section 77(5) of PAIA and if so, the oversight must be considered within PAIA's overall purpose and framework, as I explain below. But it is a leap in logic to contend, as the applicant does, that this omission vests in it a right to the information sought because there was no lawful ground on which its request was refused. This is flawed for two reasons. First, there was a lawful ground on which the request was refused: national security, and Dr Luvengho properly relied on that ground. Second, the decision whether the request could be granted must be determined in terms of section 11 of PAIA only. Thus, the failure to comply with section 77(5) can never substitute the duty of an Information Officer to determine whether the prescripts in section 11 have been met.

214. It also does not assist the applicant to contend that PAIA should have been exclusively relied on when the SSA decided the fate of its request, and not section 10(4) of the IS Act. GPAF is correct that PAIA applies to the exclusion of any other law that prohibits or restricts disclosure. Section 5 of PAIA records as much. However, GPAF's interpretation on PAIA's application to the exclusion of other statutes overlooks the critical fact that section 5 applies only where the requirements it prescribes have been met.

215. The first requirement is that the other statute must prohibit or restrict access to information, where ordinarily PAIA permits such access. This requirement has not been meT because the IS Act does not prohibit or restrict access to information that can ordinarily be obtained under PAIA. On the contrary the information which the IS Act enjoins me to protect from unauthorised disclosure, namely intelligence and the identity of sources and SSA members is equally the kind of information that PAIA permits an IO to lawfully refuse access to under Chapter 4. Thus, both PAIA and the IS Act operate on the premise that there are certain lawful, grounds on which a request for access to information can legitimately be refused. PAIA codifies those grounds in Chapter 4, with section 41(1) vesting an IO with a discretion to refuse a request for information where disclosure will prejudice national security.

216. Section 10(4) of the IS Act in turn, in a more prescriptive approach, enjoins me to protect from unauthorised disclosure sources of information and the identity of members of the SSA, also known as operatives. The identity of sources and members or operatives of the SSA must be protected because they are deployed to collect intelligence that will be used to safeguard national security, which is defined in the NSI Act.

217. The information GPAF seeks access to carries a protected 'secret' classification because, as I have said, it contains the names of the SSA's operatives and sources. This is the nub of the respondents' opposition.

The public version of the review report, which was attached to the Panel Report has all of the detail of the original, classified report, but it does not disclose these names. Therefore, the classified report cannot be disclosed because the decision to monitor GPAF through an open-source investigation and risk assessment, was made with the legitimate purpose of advancing national security. When the risk assessment showed that GPAF did not represent a threat or potential threat to the nation's security, no further action was taken.

218. In sum, the second requirement is that the other statute must be *"materially inconsistent with an object, or a specific provision"* in PAIA has not been met. Since it relies on the application of section 5 without more, GPAF fails to explain how section 10(4) is inconsistent with PAIA. But even if it attempted such an explanation, the exercise would be stillborn because section 41(1) of PAIA and section 10(4) of the IS Act both cater for the lawful refusal of access to information where disclosure would prejudice national security. Simply put, the import of their provisions are similar. But what is of overriding importance is that IS Act is not inconsistent with PAIA's objects, because PAIA itself contemplates that information cannot be disclosed where such disclosure would harm national security interests.

219. Finally, whilst Dr Luvhengo did not cite the specific exclusion under PAIA, namely section 41(1), I implore this Honourable Court consider the impact of this oversight within the framework of PAIA's limited purpose, i.e. to give

effect to the right of access to information. What this means is that PAIA should not be read in isolation from other legislation, where, as in this case, that legislation determines whether the information sought can lawfully be disclosed. In this instance that determination must be made within the framework of the full ambit of the intelligence legislation, which includes the IS Act, the ISO Act, and the National Strategic Intelligence Act, 39 of 1994 ("the NSI Act").

220. This approach is informed by the principle of harmonious construction, which requires that PAIA is not interpreted in a manner that will render redundant or nullify the IS Act, the ISO Act and the NSI Act. Harmonious construction is a key element of contextual interpretation, which of course necessitates that PAIA's provisions are interpreted in the light of its provisions as a whole. I am advised that this is referred to as the internal context. But where a multiplicity of statutes find application, such as in this case, I am also advised that PAIA must then be interpreted within the context of the mischief it seeks to address; the social and historical background of the applicable legislation, and most importantly, the other legislation itself.

221. Thus, whilst Dr Luvhengo did not cite the relevant provision of Chapter 4, namely section 41(1)(a)(ii) in refusing the request, it cannot be refuted that section 10(4) of the Intelligence Services Act, operationalises the duties of the DG in the disclosure of particular information.

222. PAIA's long title establishes that it was promulgated to give effect to the right of access to information. Its prescripts govern only the requirements that must be met in the vindication of that right and the exceptions to the right of access to information. PAIA contains no substantive provisions on the classification of information, speaking only to how information must be treated once so classified.

223. Whilst information classified as prejudicing the security of the Republic can be refused, the question whether such information in fact concerns the security of the Republic is not decided under PAIA. Rather, the classification of the information implicating security interests must be determined with reference to the relevant intelligence legislation and PAIA must be read in harmony with those statutes to assess whether the public body has discharged the onus of demonstrating that the refusal is sanctioned by the closed list of exclusions in Chapter 4.

224. The relevant legislation in this matter is the IS Act, which is listed as the reason for the refusal. I have explained how the information requested by the applicant implicates national security, thus constituting a legitimate exception to the PAIA request, as contemplated in Chapter 4.

225. On a proper application of these principles, the applicant's request was lawfully refused. Whilst PAIA gives effect to the right of access to information, and identifies lawful grounds of exclusion, it does not

determine whether the information sought can be classified as constituting intelligence that has a bearing on the nation's security. The latter question, in this case, is governed by the IS Act, because it is this statute that imposes on me a statutory duty to prevent unauthorised disclosure of sources and the names of SSA members, which form a part of the report sought by the applicant.

226. In the light of the above, it is imprudent to contend, as the applicant does, that PAIA and PAIA alone must govern the outcome of its request.

227. I turn now to address ad seriatim the allegations contained in the founding affidavit.

THE RESPONDENTS' AD SERIATIM RESPONSE

AD PARAGRAPHS 1 TO 3:

228. Save to deny the truth of the contents of the founding affidavit, I note the remaining content of these paragraphs.

AD PARAGRAPHS 4 TO 8:

229. I note the nature of the application but deny that a case has been made for the disclosure of the record in terms of section 11 of PAIA. I admit, as

recorded by the applicant, that the documents listed in these paragraphs underpin its PAIA request.

AD PARAGRAPHS 9 TO 11:

230. I admit the content of these paragraphs.

AD PARAGRAPHS 12 TO 27:

231. I admit the contents hereof. I deny however that GPAF was monitored or subjected to physical surveillance or to electronic surveillance as contemplated in RICA. It was only subjected to a non-intrusive open-source investigation of its social media presence. When the information collected demonstrated that the applicant did not present a threat or potential threat to national security, no further surveillance measures were adopted. However, the names of the sources deployed to monitor GPAF on social media and the manner in which the non-intrusive surveillance took place cannot be disclosed. This is classified information that relates to both the SSA's sources and intelligence collection methods. Disclosure thereof would cause prejudice to national security.

AD PARAGRAPHS 13 TO 20:

232. I admit the content of these paragraphs.

AD PARAGRAPH 21:

233. I note the contents of this paragraph. It is important to note however that no direct correlation was drawn between the decision to monitor GPAF to determine whether it was part of SAVESA, and the finding that the SSA was used to further the interests of the former President in a partisan manner. Subsequent internal investigations show that the non-intrusive infiltration of GPAF was within the mandate of the SSA to identify threats or potential threats to national security.

AD PARAGRAPHS 22 TO 27:

234. I note the content hereof. The findings of illegality are also noted. The SSA has no objection to the findings of both the Panel and the State Capture Commission and it is in the process of implementing these recommendations. In so doing it has become apparent that there was a legitimate reason to subject GPAF to a preliminary non-intrusive assessment. When the assessment concluded that it did not present a threat or potential threat to national security, no further action was taken. Thus, the activities of the SSA, at least in relation to the preliminary risk assessment, was not unlawful. The SSA was acting within the framework of its mandate to identify threats and opportunities.

AD PARAGRAPH 28:

235. I note the content hereof. As I have indicated, the recommendations of the State Capture Commission are being implemented. Investigations are underway as to which projects were unlawful. Preliminary inquiries into the infiltration against GPAF reflect that it was lawful and that no intrusive surveillance was approved against GPAF. Save to deny that the second respondent did not provide any reasons for the refusal for the information requested, the remainder of the contents of these paragraphs are admitted.

AD PARAGRAPHS 29 to 33:

236. I admit the content hereof. Moreover, I persist with the contention that the appropriate way forward is not for the applicant to be granted access to a record where such access will undermine the interests of national security. Rather, the appropriate remedy is for the applicant to persist with the investigative process it has asked the IGI to embark on. If there has been an abuse of power, the applicant's remedies are in terms of the ISO Act, not PAIA.

AD PARAGRAPH 34:

237. I note the response of the IGI. However, this is not the end of the road. The IGI is obliged to investigate the complaint. It is in any event the only statutory body to whom the Boast Report can lawfully be disclosed to.

Should the IGI request the Boast Report, my offices have no lawful entitlement to refuse such request.

AD PARAGRAPH 35:

238. I have no knowledge why the applicant did not pursue its request for an investigation further with the IGI. However, it is of no moment to the investigation whether the IGI is in possession of the record. The IGI has the power to request any documents it deems relevant to the investigation the applicant requested it undertakes. As I have indicated, the SSA cannot refuse such request.

AD PARAGRAPH 36:

239. I admit the contents of this paragraph.

AD PARAGRAPH 37:

240. I deny the contents hereof. The applicant was informed that its request was refused because, when PAIA was read with section 10(4) of the IS Act, the disclosure of the information would not be authorised.

AD PARAGRAPHS 38 AND 39:

241. I admit that a declassified version of the Boast Report was filed at the State Capture Commission.

242. I also admit the content of the Boast Report, insofar as it appears from the report itself.

AD PARAGRAPH 40:

243. I deny the contents of this paragraph.

244. The applicant may play an important societal role. However, this role does not exempt it from surveillance where, through its own action, a legitimate concern is raised about whether it poses a threat to national security. As a result of the possibility of this threat, the SSA was obliged to monitor and assess it. The SSA did so using publicly available sources affiliated with the applicant on its social medial platforms. The purpose was to determine whether the GPAF posed an actual or potential to national security in the lead up to the budget speech and SONA.

245. However, to the extent that the applicant alleges that it was monitored unlawfully its remedy is to pursue the investigative process to finality with the IGI or even to report the matter to the JSCI. Further, the allegations of unlawful investigations by the SOU of the SSA through the PAN project are

being investigated and the recommendations of the Panel and the State Capture Commission are being implemented.

AD PARAGRAPHS 41 TO 43:

246. I admit the content of these paragraphs.

AD PARAGRAPH 44:

247. I deny the contents of this paragraph. The applicant was given written reasons for the refusal. These appear from Dr Luvhengo's decision.

AD PARAGRAPH 45:

248. I admit the contents of this paragraph.

AD PARAGRAPH 46:

249. I deny that the applicant is entitled to the records requested. The information requested by the applicant is exempted from being released in accordance with the provisions of sections 41 of the PAIA as read with section 10(4) of the IS Act.

AD PARAGRAPHS 47 TO 51:

250. The contents of these paragraphs are admitted. I deny however the manner in which the applicant interprets section 32 of the Constitution or PAIA itself.

251. PAIA was enacted to give effect to section 32 of the Constitution. However, as explained above, the right to access to information can be limited by a law of general application. In this context that law is the IS Act and the other intelligence legislation discussed in this affidavit. PAIA encompasses such lawful exclusions by listing the lawful grounds on which information can be refused in terms of Chapter 4. They are specific and exhaustive.

252. I have shown that the applicants right to access to the requested information is justifiably limited by the fact that the requested information falls within one of the lawful grounds under PAIA that exempts it from disclosure.

AD PARAGRAPHS 52 TO 58:

253. I deny the content of these paragraphs.

254. Although the applicant has met the procedural requirements of section 11 of the PAIA, the information sought cannot be disclosed because it will disclosure will prejudice national security. This is a lawful refusal under PAIA, so the second requirement of section 11, i.e. that the information

sought is not subject to a lawful ground of exclusion, has not been met. Thus, the applicant has not met the substantive requirements to access the information sought.

255. I deny furthermore that the SSA's approach to PAIA is misconceived, as alleged. I have explained why PAIA must be read together with the intelligence legislation and I persist with those submissions. I have also explained why the SSA was entitled to rely on the IS Act and I persist with those submissions too.

AD PARAGRAPHS 59 AND 60:

256. I admit the content of these paragraphs. I deny however that compliance with the procedural elements of PAIA alone entitled the applicant to the information sought. The information request fell within a lawful ground of exclusion and thus the request was properly refused.

AD PARAGRAPHS 61 AND 62:

257. The applicant is correct that the request can be refused in terms of Chapter 4 of PAIA. I deny however, as alleged that Chapter 4 did not apply in this case. It did, and that that is why Dr Luvhengo relied on PAIA together with the intelligence legislation in refusing the request.

258. Moreover, the grounds of refusal are not limited to the circumstances listed by the applicant. They also cover a refusal of an information request where such disclosure will prejudice national security. This is exactly what transpired in this case.

259. I have set out how the information requested by the applicant implicates national security, thus constituting a legitimate basis on which the request could be refused under Chapter 4 of PAIA. I persist with those submissions.

AD PARAGRAPH 63:

260. The content of this paragraph is admitted. I acknowledge that the specific provision in PAIA was not recorded in Dr Luvhengo's letter, but when regard is had to the basis of the refusal it is clear that the request was refused because the information sought, if disclosed, would prejudice the interests of national security. I have discussed also why and the manner in which PAIA must be harmoniously interpreted with the intelligence legislation so as not to render the latter redundant and persist with those submissions. I persist also with my submissions on the circumstances under section 5 of PAIA in which it would trump the intelligence legislation.

AD PARAGRAPH 64 TO 64.5:

261. I deny the content of these paragraphs.

262. The purpose of intelligence is to gather information about potential threats to national security. Although the applicant may contend that its operations are lawful, its robust advocacy was sufficient cause for the SSA to investigate whether it presented a threat to national security when the state's policies and budgetary commitment to the nuclear power deal were going to be communicated at Parliament. Therefore, the surveillance was lawful and I persist with the submissions I made in this regard.

AD PARAGRAPH 64.6:

263. I deny the contents of this paragraph. The "Boast Report" was prepared so that the DG could account to Parliament on the expenditure incurred by the SOU for specific projects. The DG had to inform Parliament about the operations that were conducted, and give feedback on the co-workers used in these operations and their performance so that any payments to them were properly accounted for in terms of the relevant legislation governing expenditure in the security services.

AD PARAGRAPHS 65 AND 66:

264. I note the content of this paragraph. The reasons for the refusal were communicated to the applicant and the surveillance was not unlawful.

AD PARAGRAPH 67:

265. I admit the contents of this paragraph. However, the question whether the request will be granted must still be determined under PAIA and the appropriate intelligence legislation.

AD PARAGRAPHS 68 AND 69:

266. I note the content of these paragraphs. Co-workers is a terms used to describe human intelligence deployed as sources to collect intelligence for the SSA. As explained above the respondents used open-source intelligence to monitor the applicant and in so doing deployed the co-workers to gather the required information. The monitoring of the applicant was thus lawful. Moreover, there is nothing on record that would indicate that the applicant was subjected to intrusive methods of surveillance. If however, as the applicant it was subjected to unlawful surveillance, it has remedies under the ISO Act.

267. Moreover, as I indicated, any alleged unlawfulness in respect of the surveillance itself, governed as it is by a host of other statutory remedies, does not absolve the DG from assessing whether the information sought, implicates national security intelligence; intelligence collection methods; sources of information; and the identity of members of the intelligence services.

268. In this case it does because the "co-workers" listed in the document are protected as human intelligence constituting sources of information and that is why the Boast Report is classified and protected from disclosure under PAIA and the IS Act. As explained above, uncovering of sources can undermine the intelligence collection agenda and even lead to a possible loss of life. It could also lead to legal action and result in the exposure of the SSA's national security intelligence, intelligence collection methods, other sources of information and the identity of its members. The applicant's request was thus properly refused.

AD PARAGRAPHS 70 TO 73:

269. I deny the content of these paragraphs.

270. The harm that will be caused if the information is disclosed, outweighs public interest in these circumstances. I have set out why and persist with those submissions.

271. The disclosure of this information will reveal the identities of sources and a member of the SSA. Such disclosure is detrimental to the SSA's relations with its sources and will, in time to come, set a precedent that could impact the relationship it has with other intelligence services, both domestic and abroad. In short, the SSA will be perceived as untrustworthy. This places our national security at risk and at a disadvantage as our

partners will be unwilling to divulge any intelligence information that impacts on national security. The disclosure of the information requested by the applicants is thus not in the public interest.

AD PARAGRAPHS 74 TO 81:

272. The respondents do not oppose the applicants application for condonation.

CONDONATION FOR THE LATE FILING OF THE ANSWERING AFFIDAVIT

Requirements for Condonation

273. I am advised that seeking condonation is an indulgence to be granted in the discretion of this Honourable Court. It is a matter that must be determined having regard to the *"interests of justice"*, which includes considering the nature of the relief sought; the extent and cause of the delay; the effect of the delay on the administration of justice and other litigants; the reasonableness of the explanation for the delay; the importance of the issue raised in the matter; and the prospects of success.

274. I am advised further that ultimately what is determined to be in the interests of justice must reflect all relevant factors, and is not limited to a consideration of the above factors. Moreover, the particular circumstances of each case will determine which of these factors are relevant, and some

of these factors may justifiably be left out of consideration in certain circumstances.

275. I am told that condonation will likely be refused - where the delay is excessive, the explanation is non-existent and granting condonation would prejudice the other party. Finally, as a general proposition the various factors are not individually decisive but should all be taken into account to arrive at a conclusion as to what is in the interests of justice.'

The Degree of Lateness

276. This application was issued on 18 May 2022. It was served at the reception of the SSA on the 23rd of May 2022. The answering affidavit was meant to be filed on 23 June 2022. It was filed on 16 January 2022 and is **accordingly** 143 late. It is indeed so that the degree of lateness is excessive.

277. However, there are cogent reasons for the late filing of this affidavit. These reasons, together with the prospect the application could be dismissed based on the content of the answering affidavit, mitigate in favour of granting the condonation application.

278. The application should be granted too because GPAF suffers no prejudice through its admission. It will simply be called upon to file its reply to the answering affidavit.

279. Finally, the interests of justice require the admission of the answering affidavit because without it classified, information pertaining directly to the interests of national security could well be subjected to an order compelling its disclosure.

The Reasons for the Lateness

280. When the application was served on the respondents on 23 May 2022, it was dispatched to our central legal department. We have in our legal department, the procedure to allocate work, amongst our staff members, to expedite the administration process efficiently and effectively. The allocation of work is done by considering the relevant experience, the availability of the staff members and the complexity of the matter.

281. On 27 May 2022, the file was thus allocated to an employee in the Legal Services Division, who was available and had the necessary relevant legal experience to peruse and consider the papers and take all the necessary steps to ensure that the SSA's interest were protected. He perused the papers and sought permission to defend from me as the DG on 28 May 2022, and I granted approval on 30 May 2022.

282. On or about the 30th of May 2021, the employee from Legal Services instructed the Office of the State Attorney Pretoria ("State Attorney") to oppose the application and, I am advised that the matter was allocated to an attorney in the offices on 23 June 2022. In the light of the procurement process that now governs the appointment of counsel, the Office of the State Attorney, implemented its processes and counsel was appointed on 29 July 2022.

283. In amplification of the foregoing I attach hereto, a letter addressed by our instructing attorney, Mr Prinsloo to the applicant's legal representative on 1 August 2022 highlighting the foregoing and the challenges encountered, same is annexed hereto as annexure **"AA4".** I humbly request that the Court take notice of the contents of the correspondence as if specifically referred to by me herein.

284. Given the sensitivity of the matter it was necessary for all the relevant officials from the SSA, the attorney and counsel to consult. The first date that all parties were available was 9 August 2022. This is when the first consultation was held. At the consultation it became apparent that given the complexity of the matter and the confidential material it implicated it was necessary to consult with more senior personnel in the Legal Services division as well as with the author of the Boast Report. It was necessary also to appoint additional capacity to assist with the finalisation of the affidavit and an additional advocate would have to be appointed.

285. A second counsel was appointed and thereafter, a meeting was arranged with a number of key senior managerial employees in the SSA, including the Manager of Legal Services and senior employees from the operational services department. This was required because our legal team had to be instructed on our internal processes and given further information on the decisions made insofar as it related to GPAF.

286. This was because SSA Legal Services could not meet with me to address concerns and request for information that was raised during the first consultation of 9 August 2022, owing to my unavailability during this period. In addition I am the only official empowered to consent to the disclosure of confidential information. In this case the confidential information that our team had to be instructed with included the classified Boast Report and a number of our internal organisational directives.

287. Our internal protocols, which includes getting approval from the accounting officer of the Agency had to be followed before these protocols could be disclosed to the legal team., and after these processes unfolded a meeting was held in the week 14 October 2022. However, the author of the report was not available to attend the meeting and a further meeting was scheduled and held in November 2022.

288. The failure to timeously avail the requisite documents to counsel, as per the first consultation, was due to my unavailability, as I have indicated since

I was not there to approve the request. I was out of the country between 9-17 August 2022 as well as 28 – 30 September 2022. Although the approval could have been done by my Acting DG, given the sensitivity of the matter and the fact that the information sought implicated the former DG; the former President and remains the subject matter of internal and criminal investigation, it was prudent that I deal with the disclosure of these documents. On my return to the office on 17 August 2022 until 28 September, 2022 I had familiarise myself with the content of the documents in question and further convene a briefing from the legal department to deliberate on the issue. Therefore, I was not in a position to approve the request when I was away again until 30 September 2022.

289. In the meantime, counsel requested a further consultation with our Legal Services Division. Due to availability constraints everybody who needed to be at the meeting, including members of the Chief Directorate Operational Support, which is the responsible directorate for legal interceptions were only available on 4 November 2022.

290. The meeting was accordingly held and after 4 November 2022, counsel drafted a memorandum to advise our offices on certain legal aspects that required our consideration. The memorandum was received by our office on 23 November 2022.. Thereafter it became clear that counsel would have to consult with specific individuals within our offices, to address the challenges raised in the memo. Additionally, counsel requested that

certain information be made available to them which would have required authorisation from myself before they could be made available to counsel.

291. Authorisation was obtained from me, and on 2 December 2022, a consultation was held at our offices with counsel and the state attorney, with the necessary documents furnished. A follow up consultation had to be conducted as counsel requested to interview additional critical role players in this matter. This consultation was held on 6 December 2022, and after these revised insrtuctions were given and the confidential documents reviewed, this affidavit was drawn. Counsel finalised the affidavit on 23 December 2022 and sent it the State Attorney who sent it to our offices on 03 January 2022- and it was filed on 18 January 2022.

The Explanation is Reasonable

292. It should be noted that by its very nature SSA processes and information pertaining to its day-to-day operations, are classified and protected from unauthorised disclosure. In terms of internal arrangements, permission ought to be sought and granted from me prior to sharing such classified information with third parties.

293. Given the processes that had to be adopted, which I set out in the reasons for the delay, I submit with respect that the period of the delay, although lengthy is reasonable.

294. My discretion also had to be exercised within the framework of the current ongoing internal investigations as well as the investigations that the ID and IGI will conduct under the protocol agreement. Thus, I had to be sure that both the disclosure of sensitive internal directives and the classified Boast Report would not undermine the goals of the protocol or the SSA's imperative mandate to implement the recommendations of the Panel Report and the recommendations of the State Capture Commission. To this end I had to consult with relevant colleagues in the exercise of my discretion and management of the matter.

295. The explanation is reasonable also because the matter was not left unattended. Since the legal team was briefed they consulted with our offices on three occasions and produced an opinion, which required internal deliberation.

The Prospects of Success

296. I submit respectfully that condonation should be granted because there are strong prospects of success that the argument tendered in the answering affidavit may well be accepted by this Honourable Court. This court may find that the Boast Report, as this affidavit shows, is indeed classified and protected from unauthorised disclosure. It may find further that there is no overwhelming public interest that warrants its disclosure. In that case, this court may very well agree with the SSA that its IO properly rejected the

information request and that I was correct in not departing from his decision in the internal appeal process.

297. The basis for these arguments, including the material facts which underpin these submissions is contained in this answer and it is my respectful submission that whilst the delay is long, the prospects of success and the reasonableness of the explanation tendered mean that condonation should be granted.

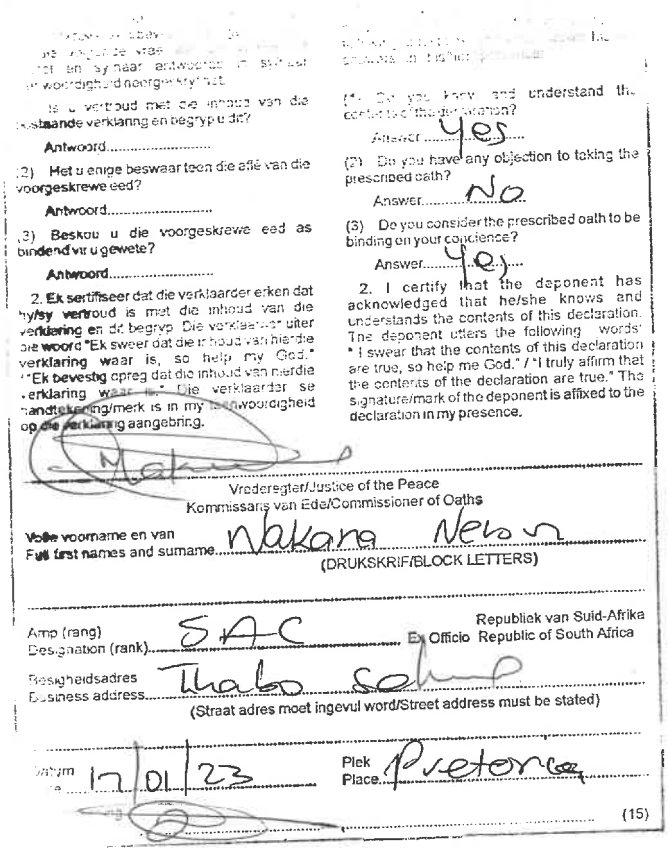
CONCLUSION

298. In the light of the above, the respondents contend that no case has been made in terms of section 11 of PAIA for the applicant's request for access to information to be granted.

299. Thus, its application in terms of section 78(2) should be dismissed.

DEPONENT

I HEREBY CERTIFY that the deponent has acknowledged that he knows and understands the contents of this affidavit, which was signed and sworn before me at Pretoria on this the 17/01 day of **JANUARY 2023**, the regulations contained in Government Notice No R1258 of 21 July 1972, as amended, and Government Notice No R1648 of 19 August 1977, as amended, having been complied with.



(1) Is u vertroud met die inhoud van die hierstaande verklaring en begryp u dit?
Antwoord Yes

(2) Het u enige beswaar teen die aflê van die voorgeskrewe eed?
Antwoord No

(3) Beskou u die voorgeskrewe eed as bindend vir u gewete?
Antwoord Yes

2. Ek sertifiseer dat die verklaarder erken dat hy/sy vertroud is met die inhoud van die verklaring en dit begryp. Die verklaarder uiter die woord "Ek sweer dat die inhoud van hierdie verklaring waar is, so help my God." / "Ek bevestig opreg dat die inhoud van hierdie verklaring waar is." Die verklaarder se handtekening/merk is in my teenwoordigheid op die verklaring aangebring.

(1) Do you know and understand the contents of the declaration?
Answer Yes

(2) Do you have any objection to taking the prescribed oath?
Answer No

(3) Do you consider the prescribed oath to be binding on your conscience?
Answer Yes

2. I certify that the deponent has acknowledged that he/she knows and understands the contents of this declaration. The deponent utters the following words: "I swear that the contents of this declaration are true, so help me God." / "I truly affirm that the contents of the declaration are true." The signature/mark of the deponent is affixed to the declaration in my presence.

Vrederegter/Justice of the Peace
Kommissaris van Ede/Commissioner of Oaths

Volle voorname en van / Full first names and surname: Nkakana Nelson
(DRUKSKRIF/BLOCK LETTERS)

Amp (rang) / Designation (rank): SAC
Ex Officio Republiek van Suid-Afrika / Republic of South Africa

Besigheidsadres / Business address: Thaba Sahu
(Straat adres moet ingevul word/Street address must be stated)

Datum / Date: 17/01/23
Plek / Place: Pretoria

(15)

COMMISSIONER OF OATHS

Republic of South Africa

Minister Tina Joemat-Pettersson: Energy Dept Budget Speech Vote 2016/17

11 May 2016

Honourable Chairperson
Honourable Ministers and Deputy Ministers
Chairperson and Members of the Portfolio Committee on Energy
Members of National Assembly
Sibingelela uMama Wesizwe uMaKhumalo
Invited Guests
Ladies and Gentlemen

Introduction

The energy sector has enormous potential to contribute to the growth stimulus that our country desperately needs. Economic growth through re-industrialisation, skills development and the creation of employment opportunities for our communities can all be enabled by the energy sector.

This year we will continue to focus on our chosen path towards a diversified energy mix, especially as it relates to renewable energy, regional energy integration, gas development and the Independent Power Producers Programme. We believe that these initiatives will support our

economic growth strategy outlined in the 9 Point Plan, the 2014 and 2016 ANC Elections Manifestos and the National Development Plan.

Over the recent period, the global community reached two milestone commitments towards a broad-based transformation of the world's energy systems and building a more prosperous, healthier, cleaner and safer world for this and future generations.

In September 2015 the new, post-2015 sustainable development agenda was adopted by 193 United Nations member countries. In addition, the Paris Agreement reached at the COP 21 Climate Change Conference in December 2015 signifies a second critical milestone, where the world agreed to chart a pathway to a low carbon energy system to mitigate against the impacts of climate change.

Integrated Energy Plan

The Integrated Energy Plan (or IEP) represents our overarching energy policy and strategy statement that has been under development since 2012, when Cabinet approved the commencement of the public consultation process.

I would like to thank the Ministerial Advisory Council, chaired by Dr Zav Rustomjee, for their detailed and comprehensive comments on the document. We will ensure that their comments are given serious consideration. A final version will then be tabled for further consultation. The IEP will provide answers to various questions our country has been grappling with regarding our energy future, including the development of our Energy Master Plan.

Integrated Resource Plan (IRP) and the Gas Infrastructure Plan

Arising out of the process for developing the IEP will be the infrastructure plans in respect of the electricity, gas and liquid fuels sectors in more detail as recommended by the IEP. The updated IRP process is well underway, and will be submitted to the economic sector and infrastructure development cluster in the second quarter of this financial year.

Similarly the Gas Infrastructure Plan will take its lead from the IEP, in regard to the gas pipelines, storage and other infrastructure that is necessary for meeting the energy demand through gas supply.

Going forward it is becoming more and more apparent that future energy demand will be a mix of electricity, gas and liquid fuels and, depending on the relative cost competitiveness of each of these an equilibrium between the three will be established.

Renewable Energy IPPP

As part of the Youth Month commemoration this year, we will celebrate the great strides made by the Renewable Energy Independent Power Producers Programme towards the development and empowerment of the youth. Not only have numerous employment opportunities been created, with 52% of total job opportunities specifically for youth, but they have also benefitted from various education and skills development initiatives preparing them for, hopefully, a bright and successful future.

In October 2015, South Africa became the sixth, and the first country in Africa to host the International Renewable Energy Conference. It is the foremost international conference dedicated to renewable energy, and provided a global platform for government, the private sector and civil society leaders to advance our renewable energy agenda. The conference was a huge success, drawing participation from more than 80 countries and, notably, most of the international organisations active in this space.

Our Renewable Energy Independent Power Producer Procurement Programme has become one of the world's most progressive and successful alternative energy programmes, a fact that is recognised globally.

Since their introduction, solar, wind, biomass, small hydro and landfill gas power plants have been going up across the country, feeding increasing numbers of clean energy into the national grid.

As at December 2015, the department had procured 6 377 MW of renewable energy and has already connected 44 projects with a capacity of 2 021 MW to the national grid, with many more under construction. The energy contribution of independent power producers is expected to grow to approximately 7 000 MW with the first 47 renewable energy independent power producers fully operational by mid-2016. Private investment in the programme currently exceeds R194 billion.

Bids in terms of the Bid Window 4 Expedited Round, totaling an additional 1800 megawatt are currently under evaluation, and we will announce preferred bidders in the second quarter of the financial year. Bid Window 4, including the investments made though the small projects programme, will increase the investment amount to more than R 255 Billion.

We remain on track to meet our national commitment to transition to a low carbon economy with the target of 17 800 MW of renewable energy power by 2030.

The current renewable energy operational portfolio is contributing an increasing percentage of the buffer between the available supply and projected demand for electricity. Already a 16% contribution is made to the total energy produced during the morning and evening system peak periods in a 24 hour period. As the energy mix diversifies with the inclusion of concentrated solar power, which includes a storage element, biomass and landfill gas, the share of energy available during peak periods will increase.

The department has procured private peaker stations to the capacity of nearly 1 000 MW that can be used when there is a larger demand than what the Eskom generators can produce. The Avon plant in Eastern Cape was completed in September 2015 and can produce 330 MW. The Dedisa plant in Kwa-Zulu Natal, when completed by the end of this year, will produce 630 MW. Total projects costs were R8 Billion, while 210 permanent jobs and 6190 temporary jobs were created at both plants.

Last year we initiated a process of redesigning the RFP for Bid Window 5 with attention to early, efficient and equitable benefits to communities and greater localised industrialisation. We are pleased to indicate that a new RFP for Bid Window 5 will be released during the second quarter of this financial year. This will further fast-track investment in the sector.

To further boost renewable energy development in South Africa, we have determined, with the concurrence of NERSA, that 1 500 MW will be generated from new solar technologies in a Northern Cape Solar Park.

The Solar Park will stimulate investment in new and expanding industrial and manufacturing facilities, the development of local supply chains and entrepreneurial and employment opportunities for South Africans in general and for the people of the Northern Cape in particular.

The Solar Park will be developed in a clustered fashion, sharing common infrastructure and services such as access to land, water supply, feeder lines to electricity transmission system, roads and support industries. Since 2010, significant development work has taken place including improvements to the grid infrastructure around the Upington transmission station which has been augmented to enable the integration of the Solar Park. The area has been included in one of the newly promulgated Renewable Energy Development Zones.

We have now made provision for the DoE IPP Office to lead the processes with regard to the structuring and procurement of the intended additional solar park capacity. We have directed further that the IPP Office should in its structuring of the proposed projects or programmes ensure the involvement of one or more state owned companies, taking into account the

constrained economic and fiscal environment of the country. The intention remains the transfer of skills and the strengthening of balance sheets of the participating SOC's, whilst leveraging private sector experience and financial strength through the participation of Strategic Equity Partners.

I am glad to announce that earlier today, the IPP Office published a Call for Expressions of Interest from potential Strategic Equity Partners for the Solar Park. We urge the participation of qualifying private sector and public sector stakeholders in this massive undertaking.

Coal

The Department is expected to announce the preferred bidders from the first bid submission for **domestic coal projects** in July 2016. Bids with a combined capacity of 900 MW were received and are currently in evaluation. The projected investment commitment from these coal projects is in the region of R45 billion, and will be rolled out over the next 4 years.

An additional 3750 MW of power will be generated utilising coal technology, through cross border projects that will augment the local Coal IPP procurement programme. The rationale behind the cross-border coal programme is that it facilitates the construction of the transmission interconnectors between South Africa and our neighbours. Transmission interconnectors are critical if we are to import power from the hydropower projects in the DRC, the Grand Inga, and in Zambia and Mozambique such as Cahora Bassa North Bank and Mpanda Nkuwa. This also gives the respective transit countries the necessary comfort that the interconnections are in their national interest and not just for the benefit of South Africa.

Biofuel strategy

Chairperson, as you are aware, the South African Cabinet approved the national Biofuels Industrial Strategy in December 2007. The regulations for mandatory blending of biofuels with petrol and diesel were promulgated in August 2012 and came into effect in October last year.

The Biofuels Regulatory Framework will be submitted to Cabinet during this year. It will outline how the nascent biofuels industry will be financially supported and how the projects would be selected and supported.

The blending of biofuels reduces the impact of fuel emissions on our people. In addition the benefits arising from biofuels include:

- the potential for a biofuels manufacturing industry to create a captive market for the agricultural sector, especially for new black or small farmers;

- the opportunity of a biofuels industry to create jobs in rural areas; and
- the reduction in imports of refined liquid transport fuel, which is good for the country's balance of payments savings.

The production of 460 million litres of biofuels, as approved by Cabinet in 2007, can create 15 000 new permanent direct jobs in the biofuels manufacturing plants and agriculture; plus over 3 000 temporary jobs during the 24 months of construction.

A 460 million litres per annum biofuels industry can immediately improve the country's annual balance of payments by over R2.5 billion at the current crude oil prices and exchange rate.

The Department of Agriculture, Forestry and Fisheries ("**DAFF**") played a key role in designing the biofuels feedstock protocol for mitigating the possible impact of biofuels production on food security. This will prevent the use of staple food crops and land currently used for these crops from being used for biofuels production other than as a result of crop rotation.

Nuclear Energy

The nuclear energy expansion programme is a central feature of our future energy mix, given the need to provide base load electricity and also meet the significant greenhouse gas emissions reduction target we have set for our country. We must re-iterate that our vision around this programme is centred on processes that will create a nuclear industry, with the objective of catapulting South Africa into the top echelons of the knowledge economy. We are confident that our nuclear programme would respond to job creation needs, by creating employment and fighting poverty. It will also provide assurance to the investors for security of supply for industrial purposes.

Our country once again stands at a cross-roads of a nuclear new build programme procurement process having done significant preparatory work for the deployment of at least 9 600 MW of nuclear power fleet by 2030, in line with Integrated Resource Plan for 2010 which will ensure that the South African socio-economic vision defined in the National Development Plan (NDP) up to 2030 is in part realised.

The NDP implored Government to undertake detailed investigations prior to making a final decision on whether to deploy the nuclear new build programme. These detailed technical investigations culminated in various studies and strategies. These were considered by Cabinet which has decided to allow the Department of Energy to, issue a Request for Proposal (RFP) to confirm the market appetite for the nuclear programme.

The RFP phase would ensure that our country secures binding commercial and financial information to fully appraise the Cabinet to be able to take a final decision on the best arrangement to implement the nuclear new build programme. This would inform the price, affordability, pace and scale of this programme. And, we will only implement what our country can afford.

We will ensure that the process is above board and free of any potential for corruption. We will not rush the process and will meet all the necessary national and international requirements for the new build process, led by the guidance, in the main, of the International Atomic Energy Agency.

Applications to license sites where these nuclear power reactor plants might be constructed are on the coast of the Eastern and Western Cape have been submitted to the National Nuclear Regulator in March 2016.

The Department of Energy is in the process of ratifying the amendments on the Convention on the Physical Protection of nuclear material. The Cabinet approval process has been initiated in this regard and ratification of this amendment by South Africa is an important step and will have major effect in strengthening measures for nuclear security in South Africa as well as contribute to the global effort of strengthening nuclear security.

Gas

During the second quarter of the 2015/16 financial year, the Department solicited market information to help in the design of the **gas-to-power programme** and in development of documentation required to procure gas fired power. There was an overwhelming interest in the programme. We hosted a successful international gas options conference at the end of September 2015 to solicit inputs from the market in developing the SA gas-to-power programme.

The exploitation of our indigenous gas (coal bed methane and shale gas) as well as the regional natural gas resources must be seen in the broader context of regional integration. The trade-off between South Africa and our neighbours in a synergistic manner will improve our ability to secure those clean energy resources we do not currently possess, due to the lack of adequate exploration, in the case of shale gas, or those that we do not possess at all like hydropower. We believe that the trade-off can be achieved by supporting and collaborating on the interconnection projects including transmission lines and gas pipelines. Mozambique and the DRC are strategic partner countries that possess complimentary clean energy resources that fit

our energy strategy. Therefor there is logic for supporting the development of gas pipeline infrastructure from Mozambique into South Africa.

I have directed my Department to undertake more upfront development work for the procurement of imported gas to ensure bankability of the gas-to-power programme for investors, affordability for gas users and the minimum fiscal exposure for government.

We will make a preliminary information memorandum on the 3125 MW gas-to-power programme available to the market in the second quarter of the 2016/17 financial year, prior to commencing with the formal procurement process later in the year. This will be an important development to stimulate our economy and promote investor confidence.

We will also, through the IPP Office, tomorrow release a further Call for Expressions of Interest from the private sector to partner with our State Owned Entities with the development of a 600MW Additional Gas Determination.

Inga Hydropower Project

Since the treaty for the development of the Grand Inga Hydropower project entered into force in March 2014, the DRC commenced the process of selecting the concessionaire. We will continue to work with our neighbours in Southern Africa to conclude power transmission transit arrangements. The Department of Energy with the Department of water Affairs are in partnership to identify other strategic sources for hydro power to address the regional challenges that affect neighboring countries.

We are accelerating implementation of our bilateral and regional agreements to realise the benefits of energy cooperation in the areas of hydro-electricity, coal, gas and renewable energy. The Grand Inga Treaty between SA and the DRC obliges SA to negotiate an off-take agreement for 2 500 MW of hydroelectricity from the Inga Hydro Project. We are also providing capacity support to the DRC for the project's management.

Solar Water Heater Programme

The solar water heater programme has finally taken off, with contracts placed for the supply of baseline systems under the social programme. Approximately 9 000 systems have been secured through this programme, in terms of which the local content of these products exceeds 75 percent. The next step is to commence with the training of local communities in the installation of the solar water systems, with clear objectives set for skills and enterprise development, job creation and the targeting of the youth, women and other designated groups.

Another priority for the Department of Energy is to address defective installations from the initial SWH rollout programme to ensure continued operation of the installed systems and service delivery to the recipients.

This corrective SWH programme has been identified to serve as incubator for suitably skilled and experienced SWH installers and installation businesses. It provides a platform for technical training at different skills levels and an opportunity for work-based experience with respect to all aspects of SWH installation; from identifying installation and system defects, to repairs and doing new, replacement installations. In this initiative we see an ideal opportunity for youth development and the establishment of an industry that can support the delivery of the larger national SWH target.

Integrated Electrification Programme (INEP)

INEP and its implementing agencies Eskom, municipalities and non-grid service providers have made remarkable progress in increasing access to electricity in South Africa and connected over 6.7 million households between 1994 and March 2016, as of February 2016 access to electricity is at 88% since 1994. It is important to note that, with every house electrified and more especially rural areas, this has a ripple effect, with security and increasing developmental opportunities to the residents.

R5.6 billion has been appropriated by 2015/16 financial year on the electrification programme, to delivering 260 000 connections utilising both grid and non-grid technologies. To the end of March 2016 INEP achieved 256 000 new connections as part of the 2015/16 financial year allocations which were implemented by Municipalities, Eskom and non-grid Service Providers. The final figure will only be determined as soon as all the verification of the new connections have been completed, which will be by the end of May 2016, however the department is confident that the target of 260 000 new connections will have been achieved.

The non-grid programme has progressed well in the last financial year and has over overachieved its target by over 5 000 in achieving 25 076 modern solar energy connections. Since the inception of Non-Grid Programme INEP achieved more than 123 379 installations of Non-Grid systems mainly in EC, KZN, Northern Cape and Limpopo. Non-grid systems consisting of solar cells converting sun energy into electrical energy, which are now also being considered to be implemented in urban areas of the country with a view of increasing the basic electricity services in the informal settlement. The EU is also assisting the Department to develop sustainable delivery model and sustainable non-grid entities around the country.

The Department has developed the first draft of the electrification master plan to ensure better co-operation between the different implementing entities, as well as different technologies, grid and non-grid roll-out in un-serviced areas, to ensure that universal access is reached by 2025/26.

The INEP programme will be appropriated with R5.5 billion in the 2016/17 financial year to deliver 235 000 connections for both grid and non-grid. Over the MTEF 2016/17 to 2018/19 an estimated amount of R17.6 billion will be appropriated.

Petroleum and Petroleum Products Regulation

We attach great importance to the quality of fuel sold to motorists and other users. In this regard, we have strengthened our capacity to monitor adherence to fuel specifications. We will conduct unannounced visits to service stations across the country to collect petrol and diesel samples for analysis. Non-Compliant operators will be issued with relevant enforcement notices and those repeat offenders risk losing their licenses.

The year 2016 marks the tenth year anniversary of the enactment of the licensing of persons involved in the manufacturing or sale of petroleum products petroleum products. For this, the department prides itself in having given Historically Disadvantaged South Africans an opportunity to participate meaningfully across the value chain, the number and quality of licensees to date bears to this.

We continue to monitor compliance to the Liquid Fuels Charter commitment which requires that Historically Disadvantaged South Africans own, in total, 25% of the aggregate value of the equity of the entity that holds the operating assets in the South African Oil Industry. To effectively monitor compliance with transformation initiatives, I instructed that the Department establish a Chief Directorate to drive radical economic transformation and this has now been done.

We can report to South Africans that Sasol Oil joined Total SA in fulfilment and compliance to the ownership element. Effective from 1 July 2006, Sasol Oil sold 25% of its shares to Tshwarisano LFB (Pty) Ltd, a broad based black economic empowerment consortium comprising of 150,000 direct shareholders and 2,8 million beneficiaries. The value of this transaction amounted to nearly R1.5 Billion, making it a significant BEE transaction in the liquid fuels industry. The demographics of this empowerment group include 54% women ownership, substantial rural representation, 3% youth and 2% disabled. In keeping with our strategic drive since 1994 and as implored by the Freedom charter, we would be facilitating other initiatives for economic freedom and empowerment.

We have always indicated that the refineries in the country can no-longer meet the national demand for petroleum products. In 2015, we saw a steep increase in the amounts of diesel and petrol imported into the country. In line with the National Development Plan, Government, in the next 12 months, will make recommendations and firm proposals regarding refining capacity in South Africa. We would need to consider a public private partnership model given the need to manage the demand on the public resources.

In respect of LPG, Mozambique became the number one source of imports, again helping to bolster regional integration in the energy trade. However to better develop LPG industry in our country, there are still bottleneck issues that need to be taken care of.

Skills

The challenges of technical skills required in the Energy Sector have continued to be of concern to the DoE. In response to these challenges; the DoE has developed a Workplace Skills Development Plan (WSP), based on the training needs of individual employees and their managers.

As part of the implementation of the WSP, a number of training and development interventions have been identified for implementation. The DoE has also offered thirty two (32) new bursaries to serving employees of the Department.

We will also contribute with the implementation of youth development intervention programmes such as the provision of bursaries to external applicants. Eleven external applicants within the youth programme were offered bursaries sponsored by the Chemical Industries Education and Training Authority (CHIETA) including four integrated learners, 32 interns and 15 people on learnership programmes.

In preparation for the rollout the nuclear build programme, the Nuclear Skills Development and Training programme is under way with various countries including China, the Russian Federation and South Korea.

2016/17 Budget

Turning to the nuts and bolts of this year's budget: The total appropriation to the Department for 2016/17 is R7.5 Billion. 90.2% is earmarked for transfer to municipalities and state owned entities while the remaining 9.8% is to be utilised for the Department's operational and capital expenditure.

- The spending focus over the medium term will remain on transfer payments to Eskom and Municipalities for expanding the electrification programme to increase the number of households with connections to the grid and providing substation infrastructure. We also focus on the implementation of the National Solar Water Heater programme with the objective of promoting energy efficiency. Spending of R1.2 Billion over the medium term on more than 130 000 solar water heaters is projected.
- Transfers to municipalities are expected to increase from R1.9 Billion in 2016/17 to R2.2 Billion in 2018/19, and transfers to Eskom from R3.5 Billion in 2016/17 to R4 Billion in 2018/19.
- Non-grid electrification projects, mainly solar energy, will be extended countrywide. The projects will be implemented in any areas where extending the grid would not be cost-effective. 70 000 non-grid connections to households are expected to be achieved over the medium term, with spending on non-grid electrification projects expected to increase from R166.4 million in 2016/17 to R201.6 million in 2018/19.
- Funding of R10.9 million was also allocated over the medium term within the Integrated National Electrification Programme for the oversight, monitoring and evaluation of non-grid electrification projects.
- Funding for state owned entities such as the South African Nuclear Energy Corporation, National Nuclear Regulator and the South African National Energy Development Institute were maintained at existing funding levels. NECSA will receive R599.34 million in 2016/17 while the NNR and SANEDI will receive R16.64 million and R20.63 million respectively. I have requested the Chairperson of NECSA to ensure that all the points of contention between NECSA and the Auditor-General must be addressed and resolved urgently, and, in an amicable manner.
- The New Nuclear Build Programme is part of the security of electricity supply. Additional funding of R200 million in the Nuclear Energy programme is made available in 2016/17 for a transactional advisors and consulting services for the New Nuclear Build Programme.

CEF/SFF

In line with the Presidential Review Commission on State Owned Entities, we have been working towards the review of the composition of the CEF Group of companies. Our work in this area includes the strengthening of the entities in the oil and gas sector and the stated policy objective of the creation of a stand-alone National oil Company, using PetroSA as a nucleus. Working with the Boards of the affected State owned Companies (SoCs), we will finalise this work by October 2016, and will revert back to Parliament on our views and strategies for a revised energy sector SoC framework.

Furthermore, the Department together with our state owned entities has been focusing on leveraging the current low oil price environment towards ensuring that our country benefits optimally.

Accordingly, in 2015, we issued a ministerial directive for the rotation of strategic stocks by the Strategic Fuel Fund and this has resulted in the increased revenue base for SFF, whilst at the same time maintaining stocks within our storage tanks for security of supply. This is in place through long term lease and contractual agreements with the buyers. The estimated revenue to accrue from this process is around R 170 million per annum, significantly boosting the balance sheet of the SFF.

Through the rotation of strategic stocks and trading initiatives the SFF has further consolidated its ability to be self- sustainable. This has also allowed us to replace the unsuitable stock that we have been storing in our tanks which has been both uneconomical and did not contribute to security of supply. The SFF will continue to ensure that it is able to respond to any shock in the market, whilst optimally making use of the opportunities presented in an evolving oil sector.

In addition the ROMPCO pipeline from Mozambique in which iGAS has a 25% stake is continuing to earn considerable income for iGAS.

Legislative Programme

The department has submitted a programme to the leader of government business regarding the following legislation for consideration by parliament and which will either be introduced or concluded in the financial year.

- *Amendment of the National Energy Regulation Act:* A new proposed structure will create a two-tier energy regulatory structure, to enable the appeal of regulatory decisions through a body that is not conflicted by having participated in making the regulatory decision in the first instance. The Review Board will create such a body.
- *Gas Amendment Bill*: The Bill will largely introduce a mechanism that allows the Minister of Energy to direct the development of new gas infrastructure including pipelines, storage and regasification technology for imported liquefied nation gas (LNG). The Bill will encompass the midstream elements of the gas value chain, whereas the upstream will be covered under amendments to the Mineral and Petroleum Development Act. The plan involves separating from the mineral regulatory framework those elements that relate to the petroleum value chain.

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- *Upstream Gas Bill:* The Gas Amendment Upstream elements of the gas values chain, including the exploration and concessioning of conventional and unconventional gas will fall under the purview of the Upstream Gas Bill, the legislation which will be derived from the MPRDA separation process.
- *Petroleum Agency of South Africa Establishment Bill:* seeks to establish the upstream gas regulator separately from its incumbent CEF SOC location. This will conclude the regulatory and institutional arrangements that are necessary to facilitate the concessioning, licensing and exploitation of the shale gas resource that offers so much potential for our country
- *Petroleum Products Amendment Bill* seeks to improve the enforcement elements in the licensing framework for wholesalers and retailers in the liquid fuels sector. Over the past few years shortcomings have been identified in relation to the extent to which the law does not adequately punish malevolent behavior by licensees, given the weak penalty regime that is applicable under the Act.
- *IPP Office Establishment Bill:* The IPP Office Establishment Bill will formally create the Independent Power Producer Office and define its role and mandate in regard to private-public sector programmes in the power sector. This has become necessary due to the lapse in the agreement that gave effect to the creation of the project office responsible for the procurement and contract management of the 15 to 20 year IPP projects that the Department of Energy has entered into. It has become incumbent that the department must manage its obligations under these contracts in a more structured manner.

The President implored us to work together to solve our current problems. If we are individually inward looking we will not succeed. It cannot just be a case of doing what is "good for me". We must put aside individual preferences and gripes and pull together to achieve the collective goals that will ensure that we get our country firing on all cylinders again.

In conclusion I would like to thank the Deputy Minister, the Chairperson and Members of the very engaged Portfolio Committee on Energy, the Director-General, Ministry Officials, Department Officials and all our state owned entities for ensuring that their eyes are focused on our mandate all the time.

I thank you

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« AM21

HIGHLIGHTS OF THE State of the Nation Address

Together we move South Africa forward

The Year of Oliver Reginald Tambo

"An illustrious son of our country, President Oliver Reginald Tambo, would have turned 100 years old this year, had he lived.

"This selfless patriot dedicated his adult life to a tireless pursuit of the liberation of our country and its people. He left a lasting legacy for all South Africans.

"In his honour, we have declared the year 2017, the Year of Oliver Reginald Tambo. It is the year of unity in action by all South Africans as we move South Africa forward, together."

– President Jacob Zuma, SoNA, 9 February 2017

President Jacob Zuma delivered the State of the Nation Address (SoNA) to Parliament in Cape Town on Thursday, 9 February 2017.

The President mentioned that in this 23rd year of freedom, government's mission remained the quest for a united, democratic, non-sexist, non-racial and prosperous South Africa.

"Guided by the National Development Plan (NDP), we are building a South Africa that must be free from poverty, inequality and unemployment," he said.

He said while the global economic environment remained uncertain, indications were that the country had entered a period of recovery, with an anticipated economic growth rate of 1.3% in 2017 following an estimated 0.5% growth rate in 2016.

The President acknowledged that the economy was still not growing fast enough to create much-needed jobs, especially for the youth.

Job creation

The focus areas of the Nine-Point Plan to reignite the economy to be able to create much-needed jobs include industrialisation, mining and beneficiation, agriculture and agro-processing, energy, small, medium and micro enterprises (SMMEs), managing workplace conflict, attracting investments, growing the oceans economy and tourism.

REPUBLIC OF SOUTH AFRICA

2030 NDP

Cross-cutting areas such as science and technology, water and sanitation infrastructure, transport infrastructure and broadband roll-out have also been added.

Boosting economic growth

The interaction between government, business and labour, known as the CEO Initiative, has been able to address some domestic challenges.

As a result, the country successfully avoided credit-ratings downgrades, which would have had a significant impact on the economy.

Stable labour market

South Africa's labour-market environment is showing signs of stability, owing to cooperation by social partners.

Unity in action was demonstrated following the conclusion of the agreement on the national minimum wage and on measures to stabilise labour relations.

Resolving the energy challenge

By February 2017, nearly seven million households had been connected to the grid and now have electricity.

The successful execution of Eskom's Build and Maintenance programmes helped to ensure stability and an end to load-shedding. Work is continuing to ensure energy security. Renewable energy forms an important part of the energy mix, which also includes electricity generation from gas, nuclear, solar, wind, hydro and coal.

Government is committed to the overall Independent Power Producer Programme and is expanding the programme to other sources of energy, including coal and gas, in addition to renewable energy.

Eskom will sign the outstanding power purchase agreements for renewable energy in line with the procured rounds.

Water and sanitation

Government is working hard to ensure reliable bulk-water supply in the various areas of the country to support economic growth while increasing access to vulnerable and rural municipalities.

In an effort to curb high water losses, which in some municipalities far exceed the national average which is at 37%, about 10 000 unemployed youth are being trained as plumbers, artisans and water agents. More will be recruited this year to reach the total of 15 000. Municipalities have been urged to support the War on Leaks Programme.

School infrastructure

Government continues to build modern schools, and is replacing mud structures and other inappropriate buildings through the Accelerated Schools Infrastructure Delivery Initiative.

A total of 173 inappropriate school structures have been eradicated since 2011. In total, 895 new schools now provide a conducive learning environment for schoolchildren.

Promoting investment

To promote investment, government has established InvestSA, an investment one-stop shop nationally and will open provincial centres in KwaZulu-Natal, Gauteng and the Western Cape. Affected government departments have been requested to avoid undue delays and unnecessary red tape, such as the issuing

of licences to visas that should make it easy to do business in South Africa.

Educational achievements

The results in the Trends in International Mathematics and Science Study and the Southern and East African Consortium for Monitoring Educational Quality show that the performance of South African learners is improving. Among the participating countries, South Africa has shown the largest improvement of 87 points in mathematics and 90 in science.

Science and technology

Since South Africa, supported by its eight African partners (Botswana, Ghana, Kenya, Madagascar, Mauritius, Mozambique, Namibia and Zambia), won the bid to host the Square Kilometre Array (SKA) telescope, significant progress has been made in building this mega science project and reaping its benefits.

Together with its precursor, the MeerKAT telescope, the SKA project continues to make important contributions to socio-economic development in South Africa.

The Department of Science and Technology is implementing a technology localisation strategy, which has ensured that the R2 billion MeerKAT telescope is constructed with 75% local content.

This has led to job creation in the Northern Cape and diversification of the economy through the creation of artisan and maintenance jobs, and the promotion of science as a career of choice.

Road infrastructure

The South African National Roads Agency Limited has started with the planning phase of the R4.5-billion project to upgrade the Moloto Road.

The Moloto Road and a railway line are currently under construction for the purpose of ensuring the safety of road users and also bring to an end the accidents that claim many lives.

During 2016, South Africa signed a cooperation agreement with the People's Republic of China (PRC) to build the Moloto Rail Development Corridor.

Operation Phakisa

The Operation Phakisa Big Fast Results Methodology in the ocean economy, health, education and mining sectors – which was launched in 2014 to unlock growth in implementing the NDP – is proceeding well.

The South African Navy (SAN) also participates in the Operation Phakisa project and is preparing to host the government garage concept for all state-owned vessels in Simon's Town near Cape Town, including the maintenance and repair of government-owned vessels through the newly established SAN/Armaments Corporation of South Africa/Denel partnership.

Tourism

Government has identified tourism as a key job driver. Tourist arrival numbers for January to November

2016 increased to nine million, an increase of just over a million arrivals from 2015. This represents a 13% growth in tourist arrivals.

Poverty-alleviation programmes

Government runs effective poverty alleviation programmes such as the Expanded Public Works

Programme (EPWP). The EPWP has since 2014 created more than two million work opportunities and the target is to create six million work opportunities by the end of March 2019. More than a million of the work opportunities have been taken up by the youth.

Many families benefit from social grants, which now reach close to 17 million people, mainly older persons and children.

During the 2015/16 financial year, more than 61 000 work opportunities were created through environmental programmes such as Working for Water, Working for Wetlands, Working on Fire and Working for Ecosystems. More than 60% of the beneficiaries were young people.

Dealing with drugs and substance abuse

Government is working with society to fight social ills such as drugs and substance abuse. In addition to law enforcement, the provision of treatment and prevention services is also critical.

The Department of Social Development is building new public treatment centres in provinces where there are no such facilities – in the Northern Cape, North West, Limpopo, Free State and the Eastern Cape.

Better healthcare for all

The National Health Insurance (NHI) is the flagship project that is aimed at moving South Africa towards Universal Health Coverage. The NHI will be implemented in a 14-year period in three phases.
The country is in the midst of the first phase, which is the preparatory phase, which started in 2012.

Mentally ill patients are some of the most vulnerable members of society, who need protection from the State itself and society as a whole.

Government has welcomed the recommendation of the Health Ombudsperson to urgently review the National Health Act, 2003 (Act 61 of 2003) and the Mental Health Care Act, 2002 (Act 17 of 2002) to ensure that certain powers and functions revert to the Minister of Health.

Socio-economic transformation

Government has acknowledged the slow pace of transformation in the workplace and the implementation of affirmative action policies, as required by the Employment Equity Act, 1998 (Act 55 of 1998).

Only 10% of the top 100 companies on the Johannesburg Stock Exchange are owned by black South Africans, according to the National Empowerment Fund.

In terms of the 2015/16 information submitted to the Employment Equity Commission, the representation of whites at top management level amounted to 72% while African representation was at 10%. The representation of coloureds stood at 4.5% and Indians at 8.7%.

At the level of gender at senior management level, males remain dominant at 67.6% and females at 32.4%.

Government is undertaking a new chapter of radical socio-economic transformation to correct the skewed nature of ownership and leadership patterns which exclude the majority.

This includes legislation, regulations, licensing, budget and procurement as well as Broad-based Black Economic Empowerment charters to influence the behaviour of the private sector and drive transformation.

Procurement

The State spends R500 billion a year buying goods and services, in addition to the R900 billion infrastructure budget, to achieve economic transformation.

New regulations making it compulsory for big contractors to subcontract 30% of business to black-owned enterprises have been finalised and were gazetted on 20 January 2017.

Through such regulations and programmes, government will be able to use the State buying power to empower small enterprises, rural and township enterprises, designated groups and to promote local industrial development.

However, two key challenges being faced are the high levels of concentration in the economy, and the collusion and cartels, which squeeze out small players

and hamper the entry of young entrepreneurs and black industrialists.
The competition authorities have uncovered the cartels and punished them for breaking the law.

Legislation to criminalize the cartels and collusion came into effect on 1 May 2016 and it carries jail sentences of up to 10 years.

During 2017, the Department of Economic Development will bring legislation to Cabinet that will seek to amend the Competition Act, 1998 (Act 89 of 1998). It will, among others, address the need to have a more inclusive economy and to de-concentrate the high levels of ownership and control in many sectors. The legislation will be tabled for consideration by Parliament.

Housing

Government is actively involved in the property sector and has provided more than four million houses since 1994.

The housing sector in South Africa is valued at approximately R7 trillion, with the subsidised sector being valued at R1.5 trillion.

However, less than 5% of the sector is owned or managed by black people and Africans in particular. The Department of Human Settlements will publish a draft Property Practitioners Bill for public comment with the purpose of establishing a more inclusive, representative sector, towards radical economic transformation.

Government will this year also address the increasing delays and backlogs in registration and issuing of title deeds to beneficiaries of housing projects funded by the capital subsidy.

The development of the Black Industrialists Programme will ensure the direct involvement of black people in business and owning factories. The programme has since inception supported more than 22 entrepreneurs.

Programmes to modernise harbours

The Department of Public Works will invest approximately R100 million this year on critical capital and maintenance programmes to modernise harbours. The programmes will also continue generating revenue from letting state-owned harbours and coastline properties, which will benefit black-owned SMMEs.

Information and communications technology (ICT)

Government will also continue to pursue policies that seek to broaden the participation of black people and SMMEs, including those owned by women and the youth, in the ICT sector.

The lowering of the cost of data is uppermost in policies and plans of government.

Mining

The Mining Charter, which seeks to recognise the internationally accepted right of the State to exercise sovereignty over all the mineral and petroleum resources within South Africa, is currently being reviewed.

It is also aimed at helping the country to deracialise the ownership of the mining industry to ensure its sustainability.

Government will continue pursuing direct state involvement in mining. The Mining Company of South Africa Bill will be presented to Cabinet and Parliament during the year.

The Minerals and Petroleum Resources Development Amendment Bill was sent back to Parliament so that issues relating to the public consultation process undertaken by provincial legislatures can be addressed.

Government continues to work with other stakeholders to combat illegal mining to save lives and to prevent the trafficking of precious metals and diamonds. It also continues to place great emphasis on the health and safety of mineworkers, which is crucial to the sustainability of the mining sector.

Agriculture and land reform

Only eight million hectares (ha) of arable land have been transferred to black people, which is only 9.8% of the 82 million ha of arable land in South Africa.

There has also been a 19% decline in households involved in agriculture from 2.9 million in 2011 to 2.3 million households in 2016.

Government will use the Expropriation Act, 1975 (Act 63 of 1975) to pursue land reform and land redistribution, in line with the Constitution.

The reopening of land claims is also still on hold because the Restitution of Land Rights Amendment Act, 2014 (Act 15 of 2014) was declared invalid by the Constitutional Court.

The Constitutional Court found that the public consultation process facilitated by the National Council of Provinces and some provincial legislatures, did not meet the standard set in the Constitution.
Government will continue to implement other programmes such as the Strengthening the Relative Rights of People Working the Land programme, also known as the 50-50 programme.

By February 2017, a total of 13 proposals had been approved, benefiting 921 farm dweller households at a value of R631 million.

Government has appealed to land claimants to accept land instead of financial compensation. Over 90% of claims are currently settled through financial compensation, which perpetuates dispossession and also undermines economic empowerment.

Government has committed itself to support black smallholder farmers and will implement a commercialisation support programme for 450 of them.

Women have been encouraged to consider farming. The 2016 Female Farmer of the Year was Ms Vanecia Janse from the Koukamma Municipality in the Eastern Cape.

Drought relief

To mitigate the drought, government has provided R2.5 billion for livestock feed, water infrastructure, drilling, equipping and refurbishment of boreholes, auction sales and other interventions.

Furthermore, the Industrial Development Corporation and the Land Bank have provided funding of about R500 million to distressed farmers to manage their credit facilities and support with soft loans.

Women emancipation

Government will continue to mainstream the empowerment of women in all government programmes and prioritise women's access to economic opportunities and, in particular, to business financing and credit.

Funding higher education

Accumulated debt and fast-rising fees have made it harder and harder for students from less-privileged households to enter and stay within the education system until they complete their studies.

In addition to taking over the responsibility to pay the fee increase for the 2016 academic year, government has settled all debt owed by the National Student Financial Aid Scheme (NSFAS) students and extended the coverage to larger numbers of students than ever before.

It has announced additional measures aimed at making higher education accessible to more students from working-class families.

Government has provided funds to ensure that no student whose combined family income is up to R600 000 per year will face fee increases at universities and Technical and Vocational Education and Training (TVET) colleges in 2017.

All students who qualify for NSFAS loans, and who have been accepted by universities and TVET colleges, will be funded. The university debt of NSFAS qualifying students for 2013, 2014 and 2015 academic years has been addressed. Government has reprioritised R32 billion within government baselines to support higher education.

Government has initiated processes to look into the issue of NSFAS students who study at some universities that charge fees that are higher than the subsidy that NSFAS provides, and thus end up accumulating debt.

Fighting crime

Police will increase visible policing, building on the successful pattern of deployments used during the Safer Festive Season Campaign.

Police will also use certain specialised capabilities, such as the tactical response teams and national intervention units, to assist in addressing problematic high-crime areas.

Other measures to fight crime nationally will include the establishment of specialised units, focusing on drug-related crime, taxi violence and firearms and the enhanced utilisation of investigative aids such as forensic leads.

The police will also enhance the utilisation of the DNA database in the identification of suspects. One of the strategies of fighting crime is to ensure that those who are released from prison do not commit crime again.

Justice and correctional services

The Department of Correctional Services continues to turn prisons into correctional centres and as a result, compliance levels with parole and probation conditions have improved to reach a historic mark of 98%. The country has also made good progress in reducing the numbers of children in correctional centres.

The High Court Division in Limpopo was opened in November 2016 and the Mpumalanga High Court will be completed in 2017, realising the goal of a high court in every province.

Fighting corruption

The Asset Forfeiture Unit completed 389 forfeiture cases to the value of R349 million and obtained 326 freezing orders to the value of R779 million.

A total of R13 million was recovered in cases where government officials were involved in corruption and other related offences in 2016.

Relations with Africa and the world

Starting from August 2017, South Africa will chair the Southern African Development Community (SADC) and use its tenure to fast-track the implementation of the SADC Industrial Strategy.

The country is accelerating the integration agenda through the implementation of the SADC-Common Market for Eastern and Southern Africa-East African Community Free Trade Area.

South Africa will continue with its involvement in mediation efforts, peacekeeping operations and peacemaking initiatives in Lesotho, Democratic Republic of Congo, Burundi, Mozambique, South Sudan, Somalia and Libya.

Trade with traditional partners in the West remains a significant contributor to the economy.

The country will continue to partner with the United States and work together on issues of mutual interest such as the full renewal of African Growth and Opportunity Act.

The country values its relationship with the PRC. China is one of South Africa's most important and key strategic partners. The PRC is recognised 'as the sole government and authority representing the whole of China'.

South Africa has reiterated its position and commitment to the 'One China Policy' and considers Taiwan as an integral part of the PRC.

At continental partnership level, the Joint Africa-European Union (EU) Strategy remains an important long-term framework for continued cooperation.

The Economic Partnership Agreement with the EU came into force in September 2016, thus providing new market access opportunities for South African products. Almost all South African products, about 99% will have preferential market access in the EU.

About 96% of the products will enter the EU market without being subjected to customs duties or quantitative restrictions.

The Southern African Customs Union's Mercosur Preferential Trade Agreement has also entered into force, providing preferential access to over 1 000 tariff lines. This is an agreement that promotes South-South trade.

South Africa's cooperative partnerships with other regions are bearing fruits. The BRICS New Development Bank has recorded encouraging progress.

Government welcomes the Goa Brazil, Russia, India, China and South Africa (BRICS) Heads of State and Government decision to establish the BRICS Rating Agency to assist one another in assessing economic paths.

South Africa is also pleased with agreements with its BRICS partners in the field of agriculture. It will implement off-take agreements on the export of pulses, mangos and pork to India.

The country will also export 20 000 tons of beef to China per year for a period of 10 years. It will continue to pursue the reform of the international system because the current configuration undermines the ability of developing countries to contribute and benefit meaningfully.

Occupation of Palestine

This year marks the 50th anniversary of the occupation of Palestine. The expansion of Israeli settlements undermines global efforts aimed at realising the two-state solution and the Oslo accord. Government has reiterated its support for the Palestinian cause.

Western Sahara issue

South Africa also hopes that the readmission of Morocco to the African Union (AU) should serve as a catalyst to resolve the Western Sahara issue.

SS Mendi

The Armed Forces Day on 21 February 2017 will be used to mark the centenary commemorations of the tragic sinking of the SS Mendi, which left 646 soldiers dead in 1917.

International Albinism Awareness Day

The Constitution of the Republic of South Africa of 1996 accords equal rights and dignity to all South Africans. The United Nations proclaimed 13 June as International Albinism Awareness Day, which will be used to raise awareness and eliminate the discrimination or harm that compatriots with albinism are subjected to in some areas.

People with albinism are also human beings and abusive behaviour against them should stop, and the myth about albinism should also come to an end.

The full speech is accessible on *www.gov.za* and *www.thepresidency.gov.za*

"AA3"

PROTOCOL REGULATING EXECUTION OF THE SECTION 28 SUBPOENA SERVED BY THE INVESTIGATING DIRECTORATE ON THE STATE SECURITY AGENCY

BETWEEN

THE STATE SECURITY AGENCY

AND

THE INVESTIGATING DIRECTORATE
OF THE
NATIONAL PROSECUTING AUTHORITY

AND

THE INSPECTOR-GENERAL OF INTELLIGENCE

PREAMBLE

THE DIRECTOR-GENERAL (DG) OF THE STATE SECURITY AGENCY (SSA), THE INVESTIGATING DIRECTOR OF THE INVESTIGATING DIRECTORATE OF THE NATIONAL PROSECUTING AUTHORITY, ESTABLISHED BY PROCLAMATION (ID) AND THE INSPECTOR-GENERAL OF INTELLIGENCE (IGI) (collectively referred to as the Parties):

WHEREAS the ID is mandated to investigate any unlawful activities and/or criminal offences, including offences under the Prevention and Combatting of Corrupt Activities Act, 2004 (PRECCA) relating to serious, high profile or complex corruption, including but not limited to unlawful activities and/or criminal offences identified at the State Capture Commission (SCC) authorised the conducting of a Preparatory Investigation into serious, high profile or complex corruption involving the State Security Agency (SSA), in terms of Section 28(13) of the National Prosecuting Authority Act, Act 32 of 1998 (the NPA Act).

AND WHEREAS the IGI is mandated to investigate allegations of maladministration, abuse of power and transgressions of the Constitution, laws and intelligence and counter-intelligence policy, as well as the commission of offences under Prevention and Combating of Corrupt Activities Act, 2004 (PRECCA) and improper enrichment of any person in the Agency, will in terms of this Protocol, assume responsibility for the control of access to, and safe guarding of the documents.

AND FURTHER WHEREAS the IGI has been conducting oversight investigations relating to SSA Investigations in terms of Pan Program Investigations and Project Veza Investigations (the Information), and continues to have oversight interests in the matter as contemplated in the Intelligence Services Oversight Act, 40 of 1994.

AND WHEREAS information pertaining to the High-Level Review Panel Report ("HLPR") on the SSA, and the evidence collected pertaining to the internal SSA Investigations in terms of Pan Program Investigations and Project Veza Investigations (the Information), was requested from the SSA, by means of a Subpoena, in terms of Section 28(6) read with 28(1) (a) and 28(14) of the NPA Act, which was served on the Acting Director-General of SSA, on 11 March 2021.

AND WHEREAS the Parties recognise, that the ID has a legal right to access the Information, which includes but are not limited to the information, described in **Annexure A** hereto, for purposes of conducting an investigation, however, some of the Information and supporting documentation, might be classified.

RECOGNISING that the unauthorised disclosure of classified information and supporting documentation may be detrimental to national security, and in an effort to balance the security interests of the country with the imperative that corruption within the SSA is investigated and prosecuted effectively;

THE PARTIES DO HEREBY agree to cooperate within the scope of their respective statutory mandates as follows:

ARTICLE 1

OBJECTIVE

The objective of this Protocol is to enable the IGI to have access to any intelligence, information or premises of the SSA in order to fulfil oversight mandate with regard to certain identified projects conducted by the SSA.

Realising that the **Investigating Directorate of the National Prosecuting Authority** is equally conducting investigation in terms of Section 27 of the National Prosecuting Authority Act 32 of 1998, to foster cooperation between the ID and IGI within the spirit of the constitution.

To the extent to which the ID interest pertains to also manage access to Information relevant to its investigation while at the same time considering the SSA's and IGI interests in preventing the unauthorised disclosure of classified information and supporting documentation which might be detrimental to national security.

ARTICLE 2

CONTROL AND MANAGEMENT OF ACCESS TO THE INFORMATION

Access to the information and supporting documentation, while balancing the interests of the Parties, will be managed in the following manner:

2.1 The Information and supporting documentation, obtained by the Agency, will be uplifted from the custody of the Domestic Branch of the Agency and transported and relocated to the Office of the Inspector-General of Intelligence (OIGI) as contemplated in the Intelligence Services Oversight Act, 40 of 1994 in the presence of representatives of all the Parties;

2.2 In view of the involvement of the ID at the time of entry to the SSA premises for the purpose of transportation/relocation/indexing and security of the Information, the IGI may consult with the President and the Minister of State Security as contemplated in the Oversight Act;

2.3 The Information will be properly indexed and sealed at the central storage facility within the OIGI premises;

2.4 The IGI, with delegates of all the Parties duly authorised by him, will then index the Information, to determine the exact extent and nature of the documentary evidence available;

2.5 The documents will be preserved and sealed in tamper-proof evidence bags in the presence of the delegates of all the Parties;

2.6 Access to the central storage facility and the Information, will at all times be under the control of the IGI, who will assume responsibility for the safe guarding of and access control to the documents;

2.7 Should any document forming part of the Information, be requested by any Party for investigation purposes, a copy of the document will be provided by the IGI to the requesting Party but the original document must be secured in the central storage facility under safeguard and control of the IGI at all times;

2.8 In the event that a document or part of thereof is required as evidential material in criminal proceedings, the original classified document will be declassified and/or redacted for that purpose by the Director-General of the Agency.

ARTICLE 3

DELAGATES OF THE PARTIES

3.1 The Parties nominate the following representatives as their delegates, who have the required security clearance, to be authorised by the IGI, to assist in the securing and indexing of the Information:

3.1.1 For the Agency:

Name of Official: L JAFTA
Telephone: 012 427 4000
Email: dg@ssa.gov.za

Name of Official: _____
Telephone: _____
Email: _____

3.1.2 For the ID:

Name of Official: Paul Jacobus Louw obo adv. H. Cronje
Telephone: 0824464223
Email: pjlouw@npa.gov.za

Name of Official: _____
Telephone: _____
Email: _____

3.1.3 For the IGI:

Name of Official: Dr SJ DINTWE
Telephone: 012 367 0841
Email: ~~tot~~ rbanda@oigi.gov.za

Name of Official: Mr SP JELE
Telephone: 012 367 0756
Email: pjele@oigi.gov.za

ARTICLE 4

FINANCIAL AND LOGISTICAL OBLIGATIONS

4.1 Each Party will bear its own expenses arising from the implementation of this Protocol, unless otherwise mutually agreed upon by the Parties.

4.2 Nothing precludes any Party from extending courtesies to the other Party on the basis of reciprocity.

ARTICLE 5

CONFIDENTIALITY

5.1 The Parties undertake that the Information, shall not be given to any third Party, except by agreement of all Parties and as required in terms of legislation.

ARTICLE 6

AMENDMENTS

The Parties may, by mutual agreement, amend this Protocol or enter into separate supplementary Protocols.

ARTICLE 7

ENTRY INTO EFFECT

This Protocol will come into effect after signature of all the duly authorised representatives of the Parties, in order to give effect to the Subpoena in terms of Section 28(6) read with 28(1)(a) and 28(14) of the NPA Act, which was served on the Acting Director-General of SSA, on 11 March 2021.

ARTICLE 8

DURATION

This Protocol will be in effect for as long as the ID has a mandate to conduct an Investigation into the alleged criminal conduct by/within the SSA.

SIGNED AT Musanda on this 26th day of March 2021.

Mr LTM JAFTA
ACTING DIRECTOR-GENERAL OF THE STATE SECURITY AGENCY

p/p

ADV H CRONJE
HEAD OF THE INVESTIGATING DIRECTORATE OF THE NATIONAL PROSECUTING AUTHORITY

DR SI DINTWE
INSPECTOR-GENERAL OF INTELLIGENCE

ANNEXURE A

DOCUMENTATION RELATED TO PROJECT VEZA AND PAN INVESTIGATION INTO IRREGULAR, UNAUTHORISED AND/OR ILLEGAL ACTIVITY BY THE SPECIAL OPERATIONS UNIT OF THE AGENCY

The nature and scope of the documentation referred to includes, but is not limited to:

1. In respect of the Project Veza and PAN investigation into irregular, unauthorised and/or illegal activity by the Special Operations Unit of the Agency:

   1.1. All documentation and records, including but not limited to witness statements, requests to witnesses or implicated parties and their responses, recordings and transcripts of recordings of witness and implicated parties interviews with SSA;

   1.2. Records of payments of money and receipts of money and other financial records accounting for cash payments relating to all projects or operations investigated as part of Project Veza, and PAN;

   1.3. All reports, documentation, correspondence, witness statements and affidavits arising out of the Project Veza and PAN investigation provided to the Directorate for Priority Crime Investigation and/or the Special Investigating Unit and/or the National Prosecuting Authority including the Investigating Directorate and/or the Asset Forfeiture Unit and/or any other law enforcement agency;

   1.4. All documentation and records relating to the High-Level Review Panel ("HLRP") chaired by Dr Sydney Mufamadi, including but not limited to submissions to the HLRP, recordings and transcripts of recordings of witness and implicated parties interviews by the HLRP;

2. In relation to the above:

2.1. All documentation and records, including establishment, budgetary and Temporary Advance ("TA") documents, relating to projects or operations conducted by the SSA and/or the Special Operations unit, including, but not limited to:

2.1.1. Project Mayibuye:

2.1.1.1. Operation Commitment;

2.1.1.2. Operation Justice;

2.1.1.3. Operation Lock / Truth;

2.1.1.4. Operation Simunye;

2.1.1.5. Operation Safe Return;

2.1.2. Project Construção:

2.1.3. Project Wave;

2.1.4. Project Lungisa;

2.1.5. Project Hollywood;

2.1.6. Project Tin Roof;

2.1.7. Project Academia;

2.1.8. Project Accurate / Khusela;

2.2. All documentation and records, including TA documents, relating to projects or operations conducted by the SSA and/or the Special Operations unit, including, but not limited to:

2.2.1. Project Speed;

2.2.2. Project Beatle;

2.2.3. Project Amex;

2.2.4. Project Amani;

2.2.5. Project Flute;

2.2.6. Project Tornado;

2.2.7. Project Isotoxal;

2.2.8. Project Whisper;

2.2.9. Project Skyline.

2.3. All documents evidencing the irregular and/or unlawful payments of SSA monies paid to, and payments of SSA monies made by, all persons including but not limited to, Mr David Mahlobo, Advocate Bongani Bongo and Mr Arthur Fraser;

2.4. All TA documents and electronic TA records relating to all individuals implicated in the Project Veza and PAN 1 investigations, including, but not limited to:

2.4.1. Arthur Fraser;
2.4.2. Patrick Mshothola;
2.4.3. Roxane Human;
2.4.4. Shireen Latiff;
2.4.5. Lungelwa Nokaneng;
2.4.6. Desmond Makhathini;
2.4.7. Ms N Maphumulo;
2.4.8. Ms Sigxashe;
2.4.9. Prince Makhwathana;
2.4.10. Joe Kudzingana;
2.4.11. Sonto Kudjoe;
2.4.12. Marthie Wallace;
2.4.13. Mr Shane Moodley;
2.4.14. Mr Oscar Jokane;
2.4.15. Mapule Maake;
2.4.16. Fumbatha Thomas;
2.4.17. Geraldine Khumalo; and
2.4.18. Mandisa Mokwena.

2.5. All reports and affidavits relating to the alleged breach of security by Ms Roxane Human and all documentation found in her possession;

2.6. All documentation, reports and records relating to the Agents known as Sipho Delani and Anele Mabelane, including but not limited to:

2.6.1. Activities under Project Accurate/ Khusela;
2.6.2. Activities concerning Operation Sesikhona;

2.6.3. Activities concerning Operation eThekwini and Ms Zandile Gumede;

2.6.4. Activities concerning the Economic Freedom Fighters (EFF);

2.6.5. The formation, support and/or funding of Black First Land First (BLF); whether related to Operation Sesikhona or not;

2.6.6. The formation, support and/or funding of "#feesmustfall"

2.6.7. The unlawful use of SSA firearms;

2.6.8. All reports in respect of the agents, including information relating to the disruption of the CR17 campaign, the #zumamustfall movement the ANC manifesto launch during 2016;

2.6.9. The foreign training of persons referred to as "co-workers" and the close protection services rendered by such co-workers;

2.7. Trade unions, including the Workers Association Union, formed or supported to counter the influence of the Association of Mineworkers and Construction Union ("AMCU") together with all court documentation relating to any civil action instituted against SSA and any response by SSA to such court action;

2.8. Records of and documents relating to all payments investigated as part of Project Veza and/or PAN 1, that were allegedly made to:

2.8.1. Members of any political party;

2.8.2. Past and present members of the National Executive;

2.8.3. Office bearers or employees of any state institution or organ of state or directors of the boards or employees of State-Owned Enterprises ;

2.8.4. Officials or employees of law enforcement agencies including, but not limited to, the Hawks, the SIU, the NPA and the AFU;

2.8.5. Officials or employees of the South African Revenue Services;

2.8.6. Members of the judiciary or magistracy, practitioners in the legal profession and/or other persons or sources within the administration of justice or the judicial system;

2.8.7. Office bearers or employees in state institutions supporting constitutional democracy (Chapter 9 institutions);

2.9. Records relating to, any payments made at any time known to be related to the direct or indirect funding, illicit or otherwise, of the ANC National Conference held in December 2017, within a period of three months prior to, during and three months after the said conference;

2.10. All documentation or reports relating to the alleged parallel vetting structure utilized by the SSA including;

2.10.1. All documentation relating to the security vetting of Mr Arthur Fraser and Mr Thulani Dlomo; and

2.10.2. The history of and involvement of Mr Makhwathana in the vetting process by SSA.

2.11. All documentation relating to Africa News Agency (2014/254680/07 including documents evidencing payments to, and receipts by, the said entity;

2.12. All invoices submitted by the entities listed below together with any contracts entered into between SSA and the said entities, namely:

2.12.1. Redlex 527 2007/000814/07

2.12.2. Naivasha Way Trading and Exports Pty Ltd (2013/114417/07)

2.12.3. Samdavy Development and Investment (Mozambique company)

2.12.4. Congo Export Company (Congolese company)

2.12.5. Korolo Investments 2013/162209/07

2.12.6. Khonzokwakhe Trading 2006/222678/23

2.12.7. PN Aviation and Protection 2013/073935/07

2.12.8. U CARE Warehousing and Distributions Solutions (Pty) Ltd

2.12.9. UMVUZO ENERGY (Pty) Ltd 2008/006920/07

2.12.10. PJG Integrated Security and Safety Consultants CC trading as G –TECH

2.12.11. Kalliston (Pty) Ltd

2.13. All documentation relating to the overseas travel of:

2.13.1. Mr Arthur Fraser,

2.13.2. Mr Thulani Dlomo,

2.13.3. Ms Shireen Latiff,

2.13.4. Mr Patrick Mshothola and

2.13.5. Ms Roxane Human.

"AH 4"

Prinsloo Etienne

From: Prinsloo Etienne
Sent: 01 August 2022 08:05
To: Tina Power; Mabasa Mamel
Cc: rtulk@law.co.za; Mabasa Mamel; Mthombeni Risuna Kevin
Subject: Green Peace Africa NPC v Minister in the Presidency Responsible for State Security & Another - Our ref: 2400/2022/Z65

Importance: High

Tracking:

Recipient	Delivery	Read
Tina Power		
Mabasa Mamel	Delivered: 01/08/2022 08:05	
rtulk@law.co.za		
Mabasa Mamel		
Mthombeni Risuna Kevin	Delivered: 01/08/2022 08:05	Read: 01/08/2022 08:09

Dear Tina

1. We refer to our telephonic discussion herein and with regard to the writers involvement in the present matter.

2. As indicated, the present matter was allocated to the writer in his absence whilst having taken ill. Where the present matter was received by the writers support staff, same entered a notice to oppose on behalf of our clients, in anticipation of the writers return. Unfortunately the said file not having been directed timeously to the writer upon having returned to office. This aspect has been resolved in house, which we apologise for.

3. Whilst this is the case, we confirm that steps were taken to obtain instructions to appoint counsel on behalf of our clients and in turn quotations were sought from various counsel in order to comply with the offices standing briefing procedures.

4. As mentioned, extensive difficulty was encountered with regard to the appointment, whereas it is obligatory that repetitive be avoided (within a period of two months), unfortunately such principle applies to each of the individual counsel and not to a particular attorney, counsel must be registered on the CSD database (with national treasury), tax compliant and have rendered certificates of good standing, all of which would be considered by our briefing committee, who is inundated with requests daily. The forgoing having had a material impact upon the appointment of counsel and the filing of our clients answering papers.

5. As matters stand, we have momentarily obtained authority from our briefing committee to appoint counsel and which we have now done. In this regard Adv R Tulk has been appointed on behalf of our client and who is evenly copied hereto. We kindly request that you invite Adv Tulk to caselines by utilising the following email account rtulk@law.co.za.

6. In view of counsels recent involvement, and as per our previous discussion we indicated that we would need approximately 7 days wherein to finalise our clients answering papers (the foregoing being dependent upon clients availability and counsel alike). We kindly request that you approach your client to ascertain whether the extension may be granted.

7. For the rest we undertake to ensure that our clients papers are filed, where such an indulgence is granted.

Kind regards

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