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

HELD AT:

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

BEFORE:

COMMISSIONERS:

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

EVIDENCE LEADERS:
Adv Ishmael Semenya (SC)
Adv Fana Nalane (SC)
Adv Mfesane Ka-Siboto
Adv Nompumelelo Seme
Ms Baitseng Rangata

REPRESENTATIVES
Adv KD Moroka (SC) – DoJ representative
Adv Gwala (SC) – NPA representative
Adv Varney (SC) – The Calata Group
Adv Mpati Qofa-Lebakeng (for Adv Shaun Abrahams)
Mr Mongezi Ntanga (for Adv Shaun Abrahams)
Mr Moray Hathorn
Adv Tlotlego Tsagae (for Department of Justice)
Ms Chuma Bubu (for Helen Suzman Foundation)
Ms Judy Seidman (for Galela Reparations Movement)
Mr Shadrack Ganda (for Joe Xabi)
Adv Sokhela, Phumzile (for Former President Mbeki)
Mr Max Boqwana (for Former President Mbeki)
Mr Nkosinathi Thema
Adv Mpofu (SC) (for former President Zuma)
Adv Muvangua (SC) (for former President Mbeki)
Adv Soni (SC)
Ms Ntloko – NPA representative
Adv Gerrie Nel (SC) – AfriForum representative
Adv Masuku SC (for Adv Menzi Simelane)

12 FEBRUARY 2026

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MzanziSA Business Solutions
Arbour Square
Cnr Melle & Juta Street
Ground Floor, Office 3
Braamfontein, 2001
TEL: 011 339 1289 Cell: 0794374335
E-mail: transcription@mzanzisa.com

PROCEEDINGS ON 12 FEBRUARY 2026

CHAIRPERSON: Good morning. Before we commence, I just wish to make an announcement that we have a problem with our air-conditioners. As we do not have electricity, they are off. So you will have to bear with us as we go through this difficulty and inconvenience. Adv Semenya?

ADV SEMENYA: Good morning, Chair, Commissioners. Today we are scheduled to hear minister and with your permission, I would then administer the prescribed oath.

CHAIRPERSON: Yes. Before I administer the oath; Minister, we hear that yesterday you were celebrating your birthday. We wish you a happy belated birthday. Thank you.

MS SIMELANE: Thank you very much, Chairperson.

CHAIRPERSON: Yes. Are you going to take an oath or affirmation?

MS SIMELANE: I will take an oath, Chair.

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

MS SIMELANE: So help me God.

THEMBISILE PHUMELELE SIMELANE: duly sworn states

CHAIRPERSON: Thank you.

ADV SEMENYA: And maybe, Minister, if you may just give us your full names.

MS SIMELANE: My names are Thembisile Phumelele Simelane.

CHAIRPERSON: Thank you.

MS SIMELANE: Chair, I would like to clarify a bit; that Thembisile Phumelele Nkadimeng is still the same Thembisile Phumelele Simelane.

CHAIRPERSON: Yes.

MS SIMELANE: Because some of my old affidavits are on my marital surname.

CHAIRPERSON: Okay.

MS SIMELANE: Yes.

CHAIRPERSON: Mr Varney?

ADV VARNEY: As the commission pleases. Commissioners, as discussed yesterday, we decided to proceed with Minister Thembisile Simelane because our first witness... I am just checking. Am I ...[intervenes]

CHAIRPERSON: Lower your microphone and bring it closer to you. Thank you.

ADV VARNEY: Is this better?

CHAIRPERSON: Yes.

ADV VARNEY: So we are proceeding with our first witness, who is Minister Thembisile Simelane. Mr Lukhanyo Calata will testify tomorrow. As mentioned, he is not available today because of his responsibilities with the SONA in Cape Town. So with the commission's leave, we will commence with the evidence of Ms Simelane.

CHAIRPERSON: Yes, you may.

EXAMINATION BY ADV VARNEY: Ms Simelane, firstly, thank you

for taking time out your busy schedule to be with us today. Can we kick off by asking you to give us your current title and position?

MS SIMELANE: Thank you very much, Commissioners. My name, as I said, it is Thembi, shortened from Thembisile Simelane. I am currently the Minister of Human Settlement in the Republic of South Africa.

ADV VARNEY: Now before we proceed with your evidence, we wish to place on record some affidavits that you have made out recently and in past years. Do you have before you a copy of the affidavit that you made out last year on 4 November 2025? And Commissioners, this affidavit I am hoping is before you in bundle 4 of the Calata Group volume.

CHAIRPERSON: What volume?

ADV VARNEY: It is the Calata Group volume, bundle 4, page 620. I think before you have bundles 1 and bundles 4, so you need to go to bundle 4, which is the Thembi Simelane bundle and at page 620 is the affidavit that Ms Simelane made out on 4 November last year. Ms Simelane, do you confirm that this is your affidavit?

MS SIMELANE: I confirm, Commissioners.

ADV VARNEY: And if we turn to the second page of that affidavit, at paragraph 5 you say you confirm the contents of the founding affidavit on Lukhanyo Calata dated 17 January 2025. Commissioners, that is the affidavit on Mr Calata in bundle 1. Just for purposes of being absolutely proper; do you again confirm the contents of that affidavit in so far as it pertains to you?

MS SIMELANE: I confirm.

ADV VARNEY: Then if we turn to paragraph 6 on page 621, you also confirm contents of the founding affidavit that you made back in May of 2015, 18 May 2015 and you brought an application against the National Prosecuting Authority. You are under oath here. Can I ask you to again confirm that that is your affidavit?

MS SIMELANE: I confirm, Commissioners.

ADV VARNEY: And while we are confirming matters, and just for the record, Commissioners, that affidavit is also in bundle 4 from pages 1 to 474. And Ms Simelane, am I correct in saying that in that same application you made out *in camera* an affidavit also dated 18 May 2015. Commissioners, you can find that affidavit at page 475, bundle 4. We also confirm that the *in camera* affidavit is an affidavit that you made out.

MS SIMELANE: I confirm, Commissioners.

ADV VARNEY: And then lastly, you confirm that you were the lead applicant in an application also brought against the National Prosecuting Authority and Minister of Justice back in 2007. Commissioners, a copy of those pleadings are also in bundle 4 on page 631. Ms Simelane, do you confirm that you were the lead applicant in that application?

MS SIMELANE: I confirm, Commissioners.

ADV VARNEY: And just to remind the commissioners – that was the application that sought to set aside the amendments to the Prosecution Policy. All right, now that we have those documents on

the record under oath, could you just tell us a bit about yourself, your family and perhaps what it was like growing up in those days?

MS SIMELANE: Thank you, Commissioner, I am the last-born. The inquiry is hearing the matter of my sister, Nokuthula, who was first born at home; and my brother, Lungelo, who passed in 2015 was second; and my brother, Mzwandile, who I come after is deaf and I am the last-born.

Our home was a political hub, one may call it. I have very vivid recollections of police raids, assault on my parents and I think that led to me being taken to boarding school at a very young age. So, of the parent of the children that my brother grew up with, we recall my aunt, it is in English, but Mamkhulu, my mom's elder sister took my brother, Mzwandile. And both my sister, Nokuthula and my brother, Lungelo, grew up with my maternal grandmother in Swaziland.

So, the South African experience of the children mostly is with my brother that I am coming after, Mzwandile and myself. Because of the activism, I suppose the parents had to protect the children. The household was relatively with no children for most of the time. So over holidays I will either join my brother, Mamkhulu, my mom's elder sister or we will shuttle, all of us, to Swaziland for holidays.

I just remember brutality; and to a very large extent, my father actually had a lot of scars and piercings which were what will remain of him after a brutal visit by the police. I do not necessarily know very well my sister. I last saw her when I was 9 years old. She

disappeared when I was 10. When I was 9, that is 1982, 83, she stopped coming home because of the constant search by the police and we had a sister who was relatively of Nokuthula's age who mom had also taken from the relatives and they will also confuse her, Nokuthula.

So there were raids very frequently and I think it is because of the Swaziland school system. If I recall very well, my sister was last home in 82. It will be around there, June, July, because they were using the old level prestige system in the year starting July, August. She would have been last home around that time and never got to set her foot back until her disappearance. We understand that from her disappearance she left from Swaziland straight to Johannesburg.

So in a nutshell, I can say I am a child not raised by the parents. I can say but when I was home, I will enjoy the love. The period might have not been too long. I often put it lightly to my friends to say the disappearance of my sister also made my parents more than feeling guilty, but to pour their love on me. I was the only girl remaining anyhow.

So, ja, there were light moments, family full of humour, full of love, very restricted movements, because even outside Nokuthula's disappearance or life my parents themselves were active. So, home gates were always locked. Visitors sort of vetted. I did not understand what was happening at the time. I got to understand very later on.

Ja, I can summarily say that was my brief upbringing. So my

mom's elder sister is the one who created really a home for me and my brother and I would like to believe did a very good job to the best of her ability to raise the two of us.

ADV VARNEY: Thank you, Ms Simelane. You have some siblings. Could you just describe who they are?

MS SIMELANE: Well, as I indicated, Chair that the second sibling, my brother, Lungelo, who passed a week after one of my affidavits here in 2015. I think that 8 May 2015. He was already bedridden with colon cancer with [indistinct] to the liver, but was very supportive and he came through. But the following months or so, not weeks, I am sorry, Chair. It was May. He died in August of that year. He was already fully hospitalised at the time. So I lost him to cancer in August 2015.

My brother that is coming after, we have got a challenge of diabetes at home. So he stays with me here. He is blind due to the negative impact of diabetes. I stay with my mom as well. Those are the only siblings I had, two brothers and myself. So, Nokuthula we know what would have happened to her. Hopefully we will find out. And then my brother died of cancer and my brother is alive. We stay in a household of three led by mom, himself and myself, of course with my children.

ADV VARNEY: And how old is your mother?

MS SIMELANE: My mom turned 85 on 9 December. She is a December baby. So she just turned 85 in this December passed.

ADV VARNEY: And when did your father pass away?

MS SIMELANE: My father passed away of a cardiac arrest in 2001. If I am not wrong, it was 25 March. It was shortly after our Human Rights celebration. He was very unhappy with what am I celebrating freedom and human rights for. And I was working already in Limpopo at the time and I just received a call that he collapsed as he was running errands in the shops. It was a Saturday. And he could not make it in the early hours of that Sunday morning. He passed.

ADV VARNEY: Now I understand, Ms Simelane that you are not here just representing your own family. You are here in a greater representative capacity, representing the other 25-odd families who sought this commission as well as many other families who are in a similar position to you. Please elaborate to the commission more about the approach that you have decided to take in ensuring that the memories of those who fought for liberation and democracy in this country is not forgotten and the struggles that you and the other families have sustained over the years.

MS SIMELANE: Thank you, Commissioners. I think we have created a family, a family of victims; and this family was not created automatically. The journey has been very long. I must say. No support, no... Ja, let me just say no support. But as we walked in the course of whatever individually one person will be trying to do, then you get to know there is a Tlhapi family in the North West. Then I will drive and go and check on them.

I have heard some disappeared under the same circumstances, more or less the same unit, what happened; and we

will develop that friendship, because I have been on this journey very active and it could also be about the condition that I explained that most of the time you are from home. I will rightly be with my parents and there would not be anybody else, because all the old ones are gone or are staying in other areas.

I remember vividly accompanying my father to the police station in John Vorster Square. I was a student. I remember the telephone call, mom saying come back home. There is someone who is giving us leads on the disappearance of Nokuthula. And that culminated into the article, which I think it is in the bundles here on Nokuthula's disappearance at the time where we had not necessarily fully understood what would have happened beyond her leaving the safe house in Soweto to Carlton Centre. That is all that we knew as a family.

We relate to Barney Molokoane. The mother is my father's aunt. So they worked very close together. A week before there was an article. Our family was searching for what we believe would have been Barney's child and the only child with the woman she was dating at the time. So because we did know the woman, we took out pictures of Barney and the picture of the woman we thought it is and it was more a cry from my father to say I could be having a nephew and niece from somewhere; anyone who knows.

In the article there was also reference to my sister and a small picture at the corner, if I recall very well. And that is how one of the black officers came forth to indicate that she is missing. So, I

became very close, following up, media interviews; that I will receive calls, people looking for me. 'Please help. How did you get the light? How did you do this?' And ultimately, we started this family of victims. We will interact. We will support one another. We will have workshops from the TRC, which in the main I met most. When the TRC unit was formed, I remember a workshop or something which happened in Johannesburg Hotel, around Braamfontein, if I am not wrong. That is where I got to met. We met one another mostly. And after that nothing happened. We just hurt ourselves.

So, with the progress of time we started WhatsApp groups. Today is mom's birthday and mom has passed away or any other thing and then we will go and support one another. And if there is a case of Nokuthula, which I had already started, they will come support me. If there is a case of Caiphus Nyoka, I will drive to Daveyton to support the Nyoka family or the Mabalane family and other.

So that is how we survived until today. Those relations eight years back, if I am not wrong, we should have started somewhere around 2002, 2003, just shortly after the verdict; and you were given a verdict and then you were supposed to come and sign for it at the TRC offices.

ADV VARNEY: When you say 'verdict', you mean the amnesty ...[intervenes]

MS SIMELANE: The verdict of the amnesty, yes. So we will communicate. At the time I was the one following through on most of

the issues. I went to collect the affidavit, the verdict rather, and I found quite a number of members as well and we started there to move. We lost others along the way. Others have passed, but that is how the movement started and we sort of made a commitment really, not written anywhere; that we are the only ones who understand our pain and no one else does; and if people do, very few care. So let us rather support ourselves and start to work together.

And that is why, Chair not only today my legal team will tell you that very, maybe some eight years or so ago, I started seeing my chances of finding my sister diminishing; and I will say to them but that should not discourage us, because there are others who we are fellowshipping together and I have a responsibility as well as a person and a member of acting that have others to assist where I could.

And I am sitting here today on behalf of all those 25 families. I almost know all of them, their difficulties and the road that they have traversed. I do not want to claim that I know their experience. This thing is very painful. I wish it to no one else, not even my worst enemy to undergo what we are going through, but I do believe that we have created a movement, one could call it, that we just can, even if we cannot do anything else, but support and care for one another.

And that is how I interpret my presence here today, not only on behalf of Nokuthula, but on behalf of the 25 and more who might have not had the means to come. My mom was part of the Khulumani Group when she was still able to move and she has made

her own relationships as well. They still relate mostly with the Khulumani old women who are also in a search just like she does.

I also would want to express really on behalf of the group our disappointment. We might have not been treated any differently or any special. I do not think we call for that, Commissioners, but I think in acknowledgement that we deserve justice to me and the team. It would have been very important, but also somebody to even care to give an explanation when the state takes some decisions, maybe rightly or wrongly on our behalf.

I find it very wrong for us to go and challenge a policy on our matters in court when I am coming across the policy on the newspaper. I just think there could have been other things, even if they do not care. That could have been done slightly differently and better, but ultimately we feel betrayed. I feel betrayed myself as well. The state has betrayed us. I had hoped; the old system may not do anything, but I had hoped that the new system will at least give me the truth, which is what the TRC promised us; nothing else, just the truth.

So I guess that is what I can say on behalf of these families, but it is and it has been a very lonely journey. In some instances we are being made to feel like: 'why do not you just forget? Move on.' I try. I have tried so many times, but I sit with an 85-year old mother who has not buried her child and I simply cannot forget. That is how I feel. Thank you, Commissioners.

ADV VARNEY: Thank you, Ms Simelane. Can we now return to the

story of your sister, Nokuthula Simelane? You can go back to 1983. Can you explain to the commission; at that time, as far as you were aware, what political activities was she involved in?

MS SIMELANE: I would not say I was aware really at 9 years, 10 years old.

ADV VARNEY: With hindsight, with now what you know today.

MS SIMELANE: With hindsight, yes, as I am saying, recollecting and putting up the pieces. She will come and she will disappear and then there will be action. My father will not sleep. There will be movement of people who are in the house. They do not go out. The house is always locked.

I always got to understand later on that, for example, the father of the girls, Khayiyana Victor, who died with Barney in the last mission on Sasol as they were crossing back to Swaziland. We were staying front opposite. Now, my parents will also fear that I will recognise and go and tell the children in the house that 'I saw your dad'. And I actually think I spotted him one day and I did say there is a girl of my age then, Lindiwe, and I said: 'you know, I think I saw your father [indistinct]'; and this was an MK soldier.

So, I know that from my aunts, my grandmothers, because we come from a very small community [indistinct], my paternal family. Almost all of them, the nine of them stay there. So they will hide guns with them and all the missions. My uncle was working at Sasol, was the one who organised the cards for the reconnaissance for Barney and them, but these are issues that I then got to understand. The

movements I recall.

The activity I recall a little bit as a 9, 10-year old girl right up until I think I was around 14, 15, which I can say that is where I lastly saw a lot of movements than I normally would see. And that corresponds actually with the death of Barney in 1985; that the mission still continued my father was assisting, but they went down, because mostly both the front opposite neighbour, as I am saying, passed in that 1985 with a certain Vincent Sekete.

So we also met as families. We have ran a process of reburial and exhumation where they were buried in Piet Retief. So that conscientised me even more; and at the time dad was alive, mom still alive and I will be able to deduce quite a lot of what is happening. And in fact, we will make jokes of how I used to be a problem to their struggle, because I am told I was a very hyperactive child. So it was very difficult to confine me when there were issues that they wanted nothing to be helpful.

I have recollection of [indistinct] Bab Shabang, who I would still even recognise later on. I think he was cooperating very well with the team and the groups of the ANC, particularly my father; that he will come and not get into the house. If I am outside the yard, [speaking in vernacular]. 'Tell your dad I passed here.' That was a message to say they possibly are coming. And most of the time when Bab Shabang has done that, a day or two or that evening there will be a raid.

So, that is what I recollect. By the way, Commissioners, the

loss of Nokuthula and my family and Barney is not the only one. My father adopted by aunt's son and an adoption really is a way of trying to define it. I think as Africans we know that you can take your aunt's son and stay with him or her and without paperwork.

So my father was running some businesses. That was his profession. My mom was a teacher. So he was assisting and he got very political as well and they had to move him to stay in Soweto with another relative when the police were very strong now in raids and arrest. He was shot by the police in Bongo High School ...[intervenes]

ADV VARNEY: Thanks, Ms Simelane; if we can get back to Nokuthula herself. Am I right in saying that in 1983 she was based on Swaziland and she was at college? And one of her missions for the uMkhonto we Sizwe, the African National Congress underground was to act as a courier between Swaziland and South Africa. Is that a correct paraphrasing?

MS SIMELANE: Yes, that is the paraphrasing that I understand as well. I understand it as well also as what she was doing on her last mission, the mission that we know led to her disappearance. I am made to understand she was bringing a message from Swaziland for the establishment of the Vaal Triangle Unit at the time that MK was trying to open or unlock. So that is the understanding I have; that she was a member of uMkhonto we Sizwe and her main task was mainly to carry, as a courier, messages for whatever reason.

ADV VARNEY: Thank you. And can you briefly describe, again with

the benefit of hindsight and what you know today, what happened to Nokuthula, starting in that fateful mission?

MS SIMELANE: We are made to understand, Commissioners that my sister departed on an instruction of one of the commanders, Mpho Thwala. Mpho, I think, was his quote name, but we are referring to him as Mpho. His real name is Gilbert Thwala. He testified at the TRC as well. And he organised a safe house in Soweto in Senaoane, the home of the later and former Ekurhuleni Mayor, Duma Nkosi. And my sister left Swaziland and went and put up a night or two at Duma's place before proceeding to Carlton Centre for the appointment. And it is in Carlton Centre as she left the Senaoane safe house to Carlton Centre where she never returned.

So as we began after the graduation, picking up the pieces really, I went with my parents to Senaoane and we found her bag, travelling bag. I think it was jeans inside, stuff and stock that my mom could identify that this is my bag I bought for her, *et cetera*, *et cetera*, and we took that stuff. If I am not wrong, it should have been the December holidays of 1983.

Nokuthula disappeared just a month before her graduation. So as I am saying, the calendar, their graduation will also be around August, September. So she was sent in this mission at the beginning of September. If I am not wrong, her graduation was the end of October that year for the University of Swaziland, ja.

ADV VARNEY: Thank you. At that time, as I understand from your evidence in your various affidavits, your parents made strenuous

efforts to try and locate Nokuthula and all to no avail.

MS SIMELANE: Ja, my parents made effort, my mom in particular. My father had quite heavy restrictions in travelling. For example, my mom travelled alone with one of my aunts from Swaziland to go to Botswana when the leads were somehow suggesting that go to the head office or whatever of the ANC in Botswana. So it is my mom who went there to go and register with the ANC that such has happened.

They hired an investigator as well from a legal firm. Maybe 'investigator' may be not be the right word, but they hired a legal firm of De Klerk to go through the borders to check, to go through the monks and everything to check at that period a description that could fit that. They started their own investigation as well, went back to Swaziland, including my cousin, Barney, and they started from Mpho, that is Gilbert, and everybody else to try and connect the chain. And I think it is that chain that led them to Senaoane where we picked up the bags.

So, they went to very much untold extents. They used to laugh at the story that they even went, somebody told them there is a good sangoma who can tell them where my sister is; and they attempted even that and it brought no fruits and it just brought anguish at home continuously, ja.

ADV VARNEY: Thank you. So, through the 1980's you and your family were in the dark, but there was some kind of breakthrough, because am I right in saying that in 1990 there was feature article

published in the Sowetan. Can you explain to the commission why that was regarded as a breakthrough and what that article disclosed? And before you do; Commissioners, there is a copy of the Sowetan article in bundle 4 between pages 782 and 785.

CHAIRPERSON: Page?

ADV VARNEY: 782 to 785.

MS SIMELANE: Are those the Sharon Chetty articles?

ADV VARNEY: Sharon Chetty articles.

MS SIMELANE: Okay. Commissioners, it is briefly what I explained earlier; that in the write-up on the preparation towards the TRC and also the search that my family was on in relation to Barney and Barney's possible child, which we were not certain, there were articles which were written by Sharon Chetty. I think the first one or the other one had a picture of Nokuthula at the corner and she was missing obviously.

And then one of the officers who guarded her in the farm obviously did not know our family, then went to Sowetan and looked for the journalist, who is this Ms Sharon Chetty, to say: 'the girl you have put there, I know her. I guarded her.' And that is the breakthrough. We otherwise, possibly if there was not that article or if there was that article and there was not this, ultimately we know him to be Mr Nimrod Veyi. If he did not come forth, he read the story and kept quiet, I doubt if we would have been knowing or had an idea of what would have happened.

So that gave a breakthrough. And the journalist then brought

Mr Veyi home to meet my parents. In the article I think we are referring to him as “Mr X”, because he was very scared of his identity to be known at the time, but subsequently, honourable Chair, it then got to be disclosed at the TRC hearing that it is him who visited us and gave the information on the whereabouts of what happened ultimately from Carlton Centre to the farm in Northam and possibly what could have happened to her at the end of the movement from the farm to somewhere where we are not certain exactly where was she taken to.

ADV VARNEY: Thank you. So that then brings us to the early 1990’s; and for the first time you and your family now have a sense of what happened to Nokuthula, namely that she was abducted by the Security Branch at the Carlton Centre and then held in various locations. Can you just give an indication to the commission of what you know happened to Nokuthula following the abduction?

MS SIMELANE: What we know, honourable Commissioners is that following the abduction at Carlton Centre, Mr Norman Mkhonza, who was called “Scotch” led my sister to the basement of Carlton Centre. They were meeting at the restaurant. I am forgetting the name, but in the records it appears. And then there already were special branch in that restaurant and others were on the basement. So he lured her to the basement. They got into the lift. As the lift opened, we are told that they were both apprehended and put at the separate boots of cars. And my sister was driven to police flats, residential flats where they were staying. The name escapes me.

ADV VARNEY: Was it called the Norwood Barracks?

MS SIMELANE: Norwood. Thank you, Norwood block of flats. The estimation suggests she was kept there between seven and eight days under constant torture; and the reason in the explanation is that because it is a residential. There were children obviously playing and they would hear her screaming and whatever.

She was then moved to a farm in Northam. Northam by demarcation then used to be in the North West. Northam today by demarcation is in Limpopo, just about 4 kilometres outside Northam. I have been to the farm myself. That is where she was taken to and arguably kept there from that mid-September to around October, November.

The evidence sort of, it is difficult to tell for exactly how long. Was it five weeks or six weeks, but the information we have suggests that she was kept towards the end of the year, later in the year of that 1983 and was put in a boot of a car which was driving her back towards the Carletonville direction, back to Gauteng; and that is where we know her trace to have ended at that Fourways stop. We do not know where was she taken to after that.

ADV VARNEY: And Ms Simelane, we know from the evidence given before the TRC's Amnesty Committee, particularly by the individuals, such as Mr Veyi and the other guards who were securing her; that there is some evidence about the treatment that she received at the Northam farm. Can you give an indication of the kinds of treatment that was meted out to Nokuthula?

MS SIMELANE: Chair, the record gives very painful evidence. It suggests that my sister was severely tortured. She was tortured to an extent that sometimes she will soil herself and they will throw her into a kettle, a zinc dam for her to possibly rinse herself. And in some instances she will be drowned in that dam when she was not cooperating nor not giving the information as the officers. 'Tell us.'

She was kept 24-hour in a very small room. It is a storeroom actually, no window, nothing; and she was kept there. There was just a small single bedroom and she stayed there for the duration of her stay in that farm. We are told that as part of torture, sleep was kept to a very bare minimum and she was not fed properly.

So the description at the TRC says she was beyond recognition and that the description which was not disputed. She was kept in shackles 24 hours. And because of possibly the abrasion between the shackles and the skin on the hands and both the ankles, she was swollen and could not walk and could not move. And the officers, when she wants to relieve herself, like go to the bathroom to urinate, they will carry her. Sometimes they will leave her there and ja, she will obviously soil herself.

ADV VARNEY: And the evidence suggested that the security police were tempting to turn her. What do you know about that farm, the evidence led before the Amnesty Committee?

MS SIMELANE: Well, Commissioners, in the evidence that was led, the police were divided into two groups as they were leading evidence and the outcome itself, as you go through it, does indicate

this distinction. But what I understand was that the team of Mr Coetzee and others recorded that they were able to turn her and they minimised the torture and then they released her and she gave... released her back to Swaziland.

And as she was still even in caption, she gave some evidence, which led to some bombings. You call them “false flags” in some two stations. I think it is Sandton and Bryanston and Soweto and led to the arrest of a few others who were coming from Swaziland, but that gave us very good homework with our legal team, because we went and looked for the articles, because those were recorded and some happened long after Nokuthula. Some happened even before she was apprehended.

And the notion of her cooperating was dispelled, in my view, at the TRC. It corroborated the notion of the other group, Veyi, Selamolela who the commission found to be truthful; that they will even beg her to say: ‘these people are going to kill you; talk.’ But the evidence of the ANC itself, which is on the record, because I did explain that my maternal family comes from Swaziland.

So, most of the ANC houses in Swaziland were registered in my sister and my uncle’s names; and that evidence was led. And right all the way after Nokuthula had been captured, disappeared, the ANC was able still to operate with no harm; even in areas or things that if she had spoken really, there was going to be a major damage to the ANC.

And in my view, I think Senaoane, Duma Nkosi, should have

been the first one to be arrested, because I guess the question logically, when you apprehend a person will be: 'I am picking you up now. It is 10 o'clock. Where did you sleep?' The first person she should have taken out is Duma Nkosi. She was not even supposed to go beyond back to Swaziland. She should have said: 'I slept at this person and this person is also responsible for the PWV region and we exchange information and he will be arrested, but that did not happen either.

ADV VARNEY: Thank you. In your view, was Nokuthula betrayed?

MS SIMELANE: The record tells us so, Commissioners. How Nokuthula came to South Africa; Commander Mpho gave an instruction: 'you go and the person you are going to meet at the Carlton Centre is Mr Mkhonza Norman and his quote name was "Scotch". Unbeknown to the ANC that Scotch was not actually not even an *askari*. He was a pure policeman planted in the ANC in Swaziland. I am told they were two. It was Scotch and Frank. I think Frank's surname was Langa. I have forgotten the name, the real name. Frank was a quote name.

So, that is how my sister fell into capture in Carlton Centre, but for me, I think I understand that. I do not think there is a soldier that goes to war with an expectation that we will come back alive. I think my father understood that as well. My mom understands that. I think the worst betrayal for me is when you are left in the lurch, just to find the truth, because we cannot all raise her. We cannot wake her up. I want her back, but I know that it is not possible. But at least the

worst form of betrayal that could be avoided is after all this sacrifice, then she is betrayed again. I think that is the worst for me.

ADV VARNEY: Ms Simelane, if we can turn to the attempts to investigate your sister's abduction, brutal torture that left her unable to move, her face unrecognisable, then what you believe to be the subsequent murder. You mentioned in your 4 November 2025 statement. Commissioners, that is at page 620 of bundle 4, from paragraph 20. Sorry, paragraph 17 at page 623. For the first time it appears that this matter is being investigated and you say that the matter was transferred to the D'Oliveira Unit towards the end of 1996 and it was handled by Captain Andrew Leask. Can you give an account to the commission as to the progress and investigations from that point?

MS SIMELANE: At the time, Commissioners, I was a student at the university, but I had much time assisting in what my parents were now seized with, the search of my sister. Just slightly before that on paragraph 16, it talks about the case, which I said I remember my father going to John Vorster.

And if I recall very well, a step before that was my father visiting the Premier of Mpumalanga and the Premier of Mpumalanga [indistinct] and referring my father to the Minister of Safety and Security, Sydney Mufamadi. And Sydney said: 'I cannot help if there is no case reporting the person missing or anything. You now have direction. Remember, Sowetan is already written. We have been told who were these officers and they are still in the employ then of

the state.

And subsequently I think that is what led to the opening of the case and the beginning of the appointment of Mr Leask as the department or SAPS to investigate the case of Nokuthula. It started very well. There was huge progress, I must say, and very positive progress. Mr Leask was able to go firstly to Swaziland, round up almost everybody from my aunts, uncle and everybody else to check and who was she working with and all that, all the investigation; and the docket obviously was then opened, the first team actually to go to the farm and all that. And we were getting feedback in relation to what is the findings bit by bit as he was doing the investigation.

And subsequently we do not know how he then stopped the investigation and we were told the investigation has been transferred. I think there was D'Oliveira and Thoms in the investigation group or team that took over after Mr [indistinct]. That was the end of us.

ADV VARNEY: Before we proceed and just for the record, the D'Oliveira Unit, am I correct in saying that that was, Mr D'Oliveira was Director of Public Prosecutions, I believe, based in Pretoria; and following the publication of the Goldstone Commission report into political violence where there had been exposés around the role of the Security Branch. The D'Oliveira Unit was established under Mr D'Oliveira to investigate these crimes. Am I also right in saying that Mr Andrew Leask went as far as taking a warning statement against Mr Coetzee for the murder of Nokuthula?

MS SIMELANE: Commissioners, you are correct. I actually even

think after the warning statements they were suspended from the police and the investigation continued. I may not recall the dates per se, but as he started the investigation, the suspensions also kicked in and warning statements were taken.

ADV VARNEY: Commissioners, that was during 1996 and I believe the warning statement is at page 498 of bundle 4. You were saying, Ms Simelane that Mr Andrew Leask was removed from the investigation at a certain point. Do you have any idea why he was removed from this investigation?

MS SIMELANE: Well, I do not have, suffice to say that when one was asking, particularly at that time, we got to understand that the cases and the issues that relates to the TRC or the cases that have got an implication to relate to the TRC are not going to be investigated. I have had a look. I do not think I still have and the legal team may assist here on all. In fact, that police docket of Leask at the end was written by pen, 'refer to the TRC.' So that is how I would assume the investigation did not continue.

ADV VARNEY: So at paragraph 19 of your statement, that is the statement before this commission, you mentioned that Captain Leask was instructed by his superiors to stop this investigation and hand the docket over to one Captain Mike Holmes, because it was apparently going to form part of a larger case against former SAP General Krappies Engelbrecht.

MS SIMELANE: Yes.

ADV VARNEY: But then you said the following, Captain Holmes did

not investigate Nokhutula's case further. Did that bring an effective end to the investigation into Nokhutula's disappearance?

MS SIMELANE: I may say so Chair, that that is why in my previous statement I said then that was the end of us. Because there was this investigation and we were cooperating very well, we made sure that Mr Leask is, our families are ...[indistinct] in Swaziland, my aunts and my uncles, everybody that he deemed fit to speak and talk to as part of his investigation.

And we were getting feedback and after that when the docket was transferred, we never heard any progress and there was no investigation that concluded. I mean that continued, to even conclude on the case or possible what should be done about the case.

ADV VARNEY: In fact, Ms Simelane, he did not just suspend the investigation into what happened to Nokuthula, the evidence that you placed before this commission suggest that no investigation transpired for the next 13 years.

MS SIMELANE: Yes, nothing happened for many, many more years, even after this 13 years. The 13 years after that was about the push which one had to make sure that I write, I constantly visit the NPA, I do anything to make sure that the investigation happens, hence the subsequent court cases right up to 2015, which in the main was compelling the state to investigate.

ADV VARNEY: Can I ask for your reaction to the fact that, or let me first put this to you, in your view what could potentially have

happened if Detective Andrew Leask was allowed to continue unimpeded with his investigations?

MS SIMELANE: I think arrest would have happened. Here is a man who had already started investigating, even the what you call them the sworn statements, they were suspended from work; the next step should have been they must go and face the case in court, they should have been arrested.

And I do believe if you follow his investigation trail, you would see that he had made good progress to arrive at that step. I also believe the employer just did not take it lightly to suspend three or so of their members at a go without thoroughly assessing what would have been found in the investigation at the time.

ADV VARNEY: So we are around the year 1997, your sister's case was now before the Truth and Reconciliation Commission, perhaps you can just describe to the commission what the TRC did in relation to the case? I believe there was a human rights violation hearing and then of course the amnesty process.

MS SIMELANE: Chair, let me put this and I do not want to sound ungrateful as well, and I would like to understand to the best of my ability the circumstances that the TRC found itself under at that time. It was just one disorganised process. For example we never consulted, we actually did not even know who our legal rep, as a family was.

Because Mr Erik van der Berg was by the state, so we met him during tea time after he had already started for example,

something as basic as that, just to know what are the key issues you think needs to be raised. That was the starting point, but nonetheless they did their best. That is why I am saying I do not want to sound ungrateful that all was lost.

There were wins, there were losses. Secondly it was a process that I think was hurried because of time pressures. I do not think it is because they were negligent or anything and that they were not even able to look deeply in some of the issues that are on the table even in relation to any case.

They could not even, the process in most instances, including my case, did not even have room for additional people who know or who could shed light who could be interviewed. And in most instances even the outcome as you look into it does suggest that it left some of the matters hanging.

I mean the closing paragraph says well the final fate of Nokuthula was not what this inquiry was able to look into. So which means refer it to an investigation, maybe yes they would not have been able to find anything, but the evidence at the TRC itself was leading as to what ultimately could have happened. But those questions and those issues were not dealt with.

But I think they did their best, but our experience was a bit, it was not an easy good ride, we did most of our research ourselves. My brother was a historian, so he did quite a lot of work, Luwelo and was very close to Swaziland and their operations as well. So I can with certainty say, if he was not there, we could have finish more than

what the TRC could have been able to cover.

ADV VARNEY: And am I right in saying that your parents appeared at a human rights violation hearing of the Truth Commission in Leandra on 3 June 1997.

MS SIMELANE: That is correct, Commissioners.

ADV VARNEY: And of course it was a short hearing because there simply was not much information available.

MS SIMELANE: Exactly. I think this is the point that I am echoing that it was mainly about what my father was saying, oh so you lost your daughter, what do you think and very, very brief and short. But at least it laid the foundation for the hearings themselves to take place, I appreciate that.

ADV VARNEY: And then in your statement before this commission you make reference to the amnesty process and in particular the amnesty decision AC/2001/185. Can you just very briefly describe who applied for amnesty and who was granted and who was denied amnesty?

MS SIMELANE: It was quite a number who applied and some did not appear and nothing was done about them. I think Brigadier Schoon, I may be getting the titles wrong, but he was the senior who I am told authorised the very cogtin[?] or tindry[?] operation that they were doing. He applied but he never appeared. Those who appeared it was Coetzee.

I will prefer honourable Chair just to call them by surnames so that I do not mix the sergeant and colonel and because they were

various different ranks. But they were led by Mr Coetzee, there was Mr Pretorius, Mr Mong[?], Mr Gadebe did not appear or did not apply but you will see he appears on the papers because he was present, Mr Slamlela[?], Mr Veyi.

The statement prior the sitting of the TRC had other policemen who at the time that TRC sit had already passed on, that died. I remember Mr Pieter Lenenge, I remember Mr Sefuti, I remember Mr Mothibi. If I am correct, the three had passed. I am certain about Lenenge, I am certain about the old man Mr Sefuti... I mean Mr Mothibi.

I cannot remember if Sefuti had passed, but he did not appear, but there were statements and application to towards involvement in the Nokuthula, either from abduction, kidnapping, torture, as part of the charges that the TRC then was investigating. So it was a long line of people, but I think three out of that did not appear.

ADV VARNEY: Can you indicate which of the applicants were granted amnesty for the kidnapping?

MS SIMELANE: Okay, I beg your pardon Chair, I forgot Mr Mkhonza. Mr Mkhonza appeared as well, now I am reminded because he was granted amnesty. Mr Mkhonza was granted amnesty and his role... and I differ fundamentally with the commission and it is okay, I accept it that his role was to move to Carlton Centre into the basement. And he says 'that is where it ended, I never had contact from her, I do not know what happened to her, please leave me out'.

But evidence shows is that when Mr Leask was looking for him, he went to Mr Coetzee and they started rewriting statements and all that. I do not think it would have happened if ordinarily he had left it at Carlton Centre, but he was granted amnesty. Mr Vey was granted amnesty. Mr Slamlela was granted amnesty. The commission found them to be truthful.

In the possibility of what could have happened to Nokuthula, it found them that they did not reduce the element and the state of torture, they were explaining fully how she was tortured right up until the end. The commission was not happy with the evidence of Mr Coetzee, the evidence of Mr Pretorius, the evidence of Mr Mong. I think those were the three, because Mr Schoon did not appear. I hope I have not forgotten anyone.

ADV VARNEY: Yes, no I think that is a good summing up and just to complete the record there, am I right in saying that Mr Coetzee, Pretorius and Mong were denied amnesty for the abuse and torture?

MS SIMELANE: Yes.

ADV VARNEY: Of your sister.

MS SIMELANE: You are correct.

ADV VARNEY: But they were granted amnesty for the kidnapping. Am I also right in saying that they did not apply for amnesty for her murder?

MS SIMELANE: Yes, they were granted amnesty for kidnapping, I think everybody was granted amnesty for kidnapping and none applied for murder and the commission also did not look into

possibilities of murder, so you are correct there, they were granted amnesty for kidnapping.

ADV VARNEY: Alright. So that then brings us to the end of the section dealing with the Truth and Reconciliation Commission, in other words substantial information and evidence on the record, particularly from the guards that the security branch had deployed to secure your sister at various places. What were you expecting then, given that all this evidence was now on the table?

MS SIMELANE: Well I expected a prompt investigation, because remember we had a pre-investigation of Leask, they might have not concluded it, but was able to also place the very same persons who have placed themselves in the scene of crime, for lack of better way of putting it. And notwithstanding there is even an outcome which says they had not been fully truthful in relation to torture. And in our view and our medical opinion that as a family we got was that the extent of torture would have led possibly to excessive kidney or whatever failures, as they have explained it. So murder was a huge possibility. We thought that will be investigated quickly and there will be charges that follow and they will go for trial. Unfortunately that is not what we got.

ADV VARNEY: So what then transpired post the TRC and what steps did you and your family take to try and get this matter investigated?

MS SIMELANE: Chair, the TRC had an investigator, the main one was Fanie Mlambo and you will recall that before the TRC closed its;

or submitted its final report, the TRC was still operational in a very smaller scale now. I do not know how many times I went there to request for what is the way forward and everybody will tell us no, no, you are part of the report, the NPA will deal with the cases.

So between that period and the final report there was a lull, there was nothing that was happening and there was no assistance that were offered. We will try our own avenues to either try talk to ANC people and whatever whom we think may know a thing or two, but it came to almost nothing. And then we received the report, we started going back again now visiting and the offices were now closed altogether and we were left in the lurch.

There was not even a person you could call for a bit of time for you to be able to say okay, now I have this outcome, what now, who is going to take my matter forward? We stayed in that position of limbo for a very, very long time. I am not sure if you want me to continue from there, I can be a bad witness, I realise.

ADV VARNEY: No, I totally understand the need to relate the story, but perhaps if we can just pause for a moment, you mentioned in paragraph 20 of your statement before this commission, you make reference to the Priority Crimes Litigation Unit.

MS SIMELANE: Yes.

ADV VARNEY: Which was established in 2003 and the fact that the TRC cases were referred to that particular unit and I can also advise you that the then National Director Public Prosecutions, Adv Bulelani Nguka declared the TRC cases as priority crimes and you say that

your case was specifically brought to their attention in November 2004. So given those developments, did you have some hope, were you encouraged that something was going to happen?

MS SIMELANE: Of course, Chair and once I found that, I did not wait, I may not remember the year exactly when there was not communication coming from the PCLU, I actually tried to make means to look for them, who are they so that I can just get to understand. And as a result I am the one who went to them and find them to engage on my sister's case in comparison to my family being contacted by the priority crimes unit.

ADV VARNEY: It appears that post 2003 you were not getting any news, there were no developments as far as you could tell, at what point did you make contact with Yasmin Sooka and the foundation for human rights to assist you?

MS SIMELANE: Chairperson, at the time the missing persons task team, there is a lady called Madeleine Fullard and there were lot of articles that were coming out, they were finding bodies, they were searching, they were doing this as part of another unit of the TRC at the NPA.

I looked for Madeleine, I went, I presented myself, I said I have got this case, can you guys not help me? Of course I do not know the body, if I knew I would have gone there a long time ago. So it was not within their scope and she explained, no, no this is not part of our scope, our scope is exhumations and your sister is not yet. But she said 'I know people who could help you'.

I was introduced to Yasmin of Foundation for Human Rights, through that process. I did not even know that there was a foundation that existed at the time. Then I went to the foundation carrying all the pieces and articles that I had at the time and requested for assistance.

And at the time you will recall my father is late, my mom is stressing more, it was just not a nice time, it was not a nice environment at home. And I got to meet the foundation, then we started to piece, put the pieces together and I get to be assisted really on what I need to do, what does this mean exactly. Because as a layperson you just look all over, you are just unsure on what to do. So that is how I met Yasmin.

ADV VARNEY: And with the assistance of Yasmin Sooka and the foundation, did you then start to have meetings with the PCLU at their offices in Silverton and if so, what was the general outcome of those meetings?

MS SIMELANE: Ja, the journey began and the order may not necessarily may not be now in my head, but I know that the foundation then met with my mom just to get the fuller picture and close on some of the gaps that I would not have known, in terms of the flow of Nokuthula, her being and everything else. And then we started to make an appointment.

I think the first meeting we attended was Torrie Pretorius and there was Raymond Ackerman, myself, Yasmin, there could have been two or so people from the foundation as well who accompanied

us. And we introduced ourselves, we introduced the case of Nokuthula and the request was just for an investigation and take through the process of the amnesty report which we also had in our possession at the time.

ADV VARNEY: And I understand from your statement that the PCLU was indicating that they were not able to pursue with the case and what was the main reason they were putting up?

MS SIMELANE: Well Chair, from the beginning it was clear that the unit was formed, I am not sure if I must call it unit, but the unit was formed, it had no investigators for the longest time. There were instances where we met and I was told no, wait, we have deployed all our personnel to the 2010 Soccer World Cup, we do not have excess personnel to assist in such matters.

And the other story would be the protocols had not yet been developed, the unit is there but there is still a relationship between the unit SAPS and whatever, we still are not yet done in the harmonisation of the procedures and the protocol. But there was one barrier after the other. In the main they were not in a position to start with the investigations at that time.

ADV VARNEY: So you mentioned that they said that protocol or some guidelines had to be developed.

MS SIMELANE: Yes.

ADV VARNEY: And the timing, this would have been through 2004 and 2005.

MS SIMELANE: Yes.

ADV VARNEY: And we know that these guidelines eventually were promulgated at the end of 2005. Can you just indicate to the commission what these guidelines were about and what your concern was?

MS SIMELANE: Okay, I must indicate that from the beginning my understanding of the guidelines and protocols was not necessarily what then to come out. As I am trying to explain in my layman's language was I understood them to be meaning that there is a unit, but this unit must relate to the investigators at SAPS and any other in relation to investigation.

It was only when there were interviews, I think I heard it on radio or something, I called my legal team. I said I heard something that there is a release of guidelines and whatever. Then we started trying to make an inference possibly that the protocols and the guidelines they were talking to or about maybe meant this one.

But nonetheless even on our first manner in thought, there was nothing that came to be investigated. And then the policy or the guidelines or the protocols were then released. I think the first part I heard, Chair, now we are in a box in the NPA, we are around 300 or 400 cases, where I know.

I found it very, I do not know what will be the best word, very uncaring for the NPA not to even look for one or two people to say what do you think are your views now that you have gone through the TRC. You have an outcome and this is what the outcome suggest, what do you think about this process?

I view it as a backdoor amnesty, I view it as people who just gave us the first role, say come here, you testify, you listen, you will get an outcome and you must all abide. And we did. I mean my form of injustice starts when the case my father opened, nobody negotiated with him as to whether it remains a case or not.

But taken, you take it, it moves to the TRC, you are given terms, you abide by them. And then at the end of responsibility being taken by you or others, then the rules change again. So we kept on being dragged and pulled as if no one gives a damn how we feel. I am sorry. No one cares about how we feel as victims as well.

Now we are classified by the state, the report says deal with these people. Even that ...[indistinct] even if it is just a letter, if the consultations were not possible, to say here find attached, please go through it, we think it is important because of one, two, three, four and it will make you arrive to closure.

And I felt no, it has to end somewhere, that I think at the time we were just taken for people who cannot think for themselves or possibly who do not know what they want and no one even cares to hear a side that we have. And I was part of that 2007 and 8 Nkadimeng and others to challenge that guideline.

ADV VARNEY: Just to assist the Commissioners, the challenge that the witness refers to is part of the record before this commission and we have provided the full pleadings, the policy, the amendments itself as well as the judgment in that matter. That is Nkadimeng and others versus National Director Public Prosecutions TBD case number

32709/07.

And that paperwork is between 631 and 1391 of Bundle 4 that is Ms Simelane's bundle. For the record the other applicants in this matter were the widows of the Craddock Four. So the amendments to the policy which amounted to an effective rerun of the amnesty process, because it provided the very same criteria to decline the prosecution.

As well as other novel criteria, such as a suspect could say well, I was indoctrinated at school, that becomes a ground not to prosecute. Were you offended by this attempt to provide such latitude and accommodation to these perpetrators years after the Truth Commission had ended?

MS SIMELANE: Very offended. Very offended, I would not have gone to a court of law to challenge if it was not offending. But the only way I could prove my, how offended I am, I could only rely on justice. And I ask myself today if both the foundation and Webber and the team that has carried us pro bono legally, where would we be as victims?

I shudder when I think about that, because literally we are pro bono cases. For me LRC when they have got funds, they will take a portion of what they can do and help us, Webber Wentzel almost present always, foundation almost present. So what the system just literally did with us after the TRC was to dump us in that box that had over 400 cases, sitting in the corner at the NPA boardroom. That is how I feel to this day.

ADV VARNEY: So now you and your family and I daresay, you know, all the others were in a similar position to you, were in a state of limbo. You have been told that the PCLU had no access to investigators, they could not ...[indistinct] the process without investigations. And that apparently this was pending the publication of these guidelines and then when the guidelines were published in 2005, did anything change?

MS SIMELANE: Nothing changed, except that when I now was engaging with the NPA I could send some anger or, like no, we could not even be cordial in most instances. I got a sense that I am viewed as this person who is troubling, who does not want the mayors, the matters lie as they are. But in relation to investigations or provision of support for investigation, honourable Chair, nothing happened.

ADV VARNEY: So post the promulgation of the Prosecution Policy Amendments at the end of 2005, you were still being told that they had no investigators. At any point, were you told to perhaps abandon justice or a prosecution and just go for an inquest?

MS SIMELANE: Well yes, as I am saying that now after the whole policy outcome in terms of the case, even the discussions were no longer cordial. It was like, can you abandon this thing? Can you just leave this thing? Why do you not take an inquest?

It was not necessarily where you sit with a person who is seeking justice and have been mandated to assist, that you sit with the person and say in the light of this and that, we think this is the best possible option and informed by whatever the circumstances. In

some instances they will tell me to my face, the problem is this NGOs that are funding you, these things should be left as they are.

So I believed that I am doing is right, what I did then, what I am doing today and possibly what I will do tomorrow is right. And I am convicted to the process of if possible getting the remains of my sister, if they are there and I think it is the right thing to do. So if help does not come from where it is supposed to come, I do not think it is equally wrong to go and look for someone to help you and arrive at the outcome that you would want for yourself.

But I did not get any assistance at all. In fact as I am saying from that time leading up to 2010, there was no investigation at all, there was no resource. The last meeting we had, I think it was the beginning of 2010, not necessarily the last, but it was a meeting to say look, we do not even have police, they are all assigned to 2010 Soccer World Cup, we do not have resource for you. So I have never enjoyed any support, to be honest.

ADV VARNEY: And you heard various other excuses as to why the police could not investigate, let us say for example during the time that the ...[indistinct] Commission entered the suitability of Adv Vusi Pikoli to be NDPP, was that put up as an excuse?

MS SIMELANE: It was I think in one or two of the meetings where there was an explanation on the difficulty on why the issues are unable, even from the allocation of investigations and the leadership difficulties that are there on who is supposed to deal with what at the NPA.

But what always was a challenge for me was that those matters had nothing to do with me. I was mainly saying to them, 'deal with those matters, but assign justice'. But I think in my meeting with Yasmin, Torrie and Raymond, I remember Ray very well mentioning the difficulties that they are facing at the NPA beyond the issues of no allocation of investigators. They were sort of not amazed that that is happening, because there were difficulties in relation of dealing with the TRC cases.

ADV VARNEY: So you mentioned that in 2007 you and the Craddock Four widows went to court, in 2008 a judgment was issued in the Pretoria High Court by Judge Legodi. You will recall he set aside the guidelines or the so-called amendments as unconstitutional. He did not mince his words, he called them absurd, he called them a conflict of... a recipe for conflict and after the judgment, did you expect matters to change given how robust and decisive the judgment was?

MS SIMELANE: We were elated. We even did a media interview with the widows outside the Pretoria High Court. We thought this could have been one of the challenges, it has been set aside, now our expectation is investigation, arrest and the matters must be heard, you know.

What strike me even more about the Craddock Four was that they were even willing to accept any what the court says is the outcome. Because remember going to court does not mean that your plea is the only one that you may come out with it as you wanted it. It means the court must sit logically and apply its mind on everything

that is possible on the table and the outcome may not necessarily be favourable to what you have desired.

But we were prepared to put ourselves to that test. And that is one thing I have learned from these elders that are in this group with them, they yearn for justice but they are mindful that we also have a responsibility of assisting for justice to be done. So that is what it was, Chair, we got to the excitement about the outcome, we received the outcome positively, but unfortunately it did nothing to our favour in relation to taking the cases forward.

ADV VARNEY: Ms Simelane, your statement indicates that it was only around two years later during 2010 that eventually an investigator was assigned to your sister's case. Can you speak to that, please?

MS SIMELANE: Yes, it was only after, I think when we were right at the time of the earlier discussion that I spoke about, in the year where they said we did not have available resource. If I remember that meeting, we had a bit of very bad exchanges in the meeting, to say colleagues, I am not being assisted; I think I must then take this matter up legally.

And I do believe that that exchange were what have led relatively to an appointment of an investigator and I was hopeful that now we are taking the matters forward as in the reopening of the investigation. But then there were a lot of issues which were stumbling blocks, I mean not necessarily blame the investigator per say, but then we had the docket lost and it had to be looked for and

found, it had to be reconstituted, just to create a picture.

We had to restart the investigations, all the interviews again and I was requested to bring my aunt, my uncle, my cousin back from Swaziland, because remember we were trying to recreate now. Took them to the NPA, we started, but subsequently I think somewhere down the months Chair, or so, the original docket was found again and that could have been a tipping problem after the investigator was appointed.

But I was a bit feeling that this matter is being not handled in a proper manner, relatively very negligent on how do you put such cases aside as your priority cases and but then you still lose the information. But it is okay, we continued, we tried to re-craft and subsequently it was found, I was told.

ADV VARNEY: Yes, we will have to check on the tags, because the original docket I think might have only materialised a year or two later, but that is not a material issue. But so an investigating officer was eventually appointed in 2010. Do you remember his name?

MS SIMELANE: Ja, that was Mr Frank Dutton, may his soul rest in peace, he is late as well.

ADV VARNEY: No, I think you are confusing a private investigator Frank Dutton, he was appointed by the Foundation Freedom Rights.

MS SIMELANE: Oh, okay.

ADV VARNEY: Yes.

MS SIMELANE: You mean the investigator for the police?

ADV VARNEY: Indeed.

MS SIMELANE: It was Captain Masegela.

ADV VARNEY: Right.

MS SIMELANE: Ja.

ADV VARNEY: But he advised you that that the docket could not be found and had to be reconstructed.

MS SIMELANE: Yes.

ADV VARNEY: And how did you feel, because you know the docket have been lying dormant for more than a decade, to be told that it was missing?

MS SIMELANE: Chair, I was disappointed as I said. I was disappointed, but I also felt like there were some tricks and games that were being played behind the scenes. The docket was there, remember it was only through the docket that had most of the work of Captain Leask that we were able to even connect the dots.

Even when I say I went to the farm, I was only able to get the direction of the farm, because I was able to interact with the person who had already been to the farm, to see where she was held, where she was kept and all that. So but for it now to just disappear, I found that to be... ja, it was negligent, it was angering, but I also felt that I am in for a ride here and I am not very sure what is this ride about, but I am just not getting any joy about the system.

As I had said Chair, I could not even estimate for how long, because of the passage of time, but I think the record can be able to help us, how long did the docket disappear. But as I say, at the request of Captain Masegela, we had to transport the family back

from Swaziland, so that he can be able to interview them afresh.

That work at least were already done, actually they did not come this side, he went to the original settings where Nokuthula operated and what. But remember now when we are trying to reconstitute, we are relying more on my aunt who Nokuthula was staying with.

Of course she was staying in her own flats ...[indistinct] but her home was Swaziland where my uncle and my aunt were. And they had to come back and we start the interviews again and piecing, piecing, piecing up. And I must really say, it was a very emotional journey for my aunt as well. It is very, very painful to raise a child who disappears four weeks before you see the work of your hard labour, you know. The time of Nokuthula's disappearance is very hurtful for us.

ADV VARNEY: Just for the record commissioners, the docket, the missing docket was eventually discovered some two years later towards the end of 2012 and this emergences from Ms Simelane's 2015 affidavit, the application to compel a decision that paragraph 19 of that statement and that is at page 23 of Bundle 4. We are coming to that particular application shortly. So you mentioned earlier about a decision that you and the foundation took to appoint a private investigator, the late Frank Dutton. Can you explain to the commission why you decided to take that step?

MS SIMELANE: Commissioners, my earlier experience, besides the docket and assistance that obviously were to give to Captain

Masegela to be able to put up a duplicate docket, he was alone in the main, I think reporting to a certain Colonel Xaba or something and was running this investigation and it was a very wide scope.

Right, it had the elements of Swaziland, the elements of Soweto, the elements of a possible Westonaria, because of the direction of the car. But two reports that Colonel... that I think he was captain, Captain Masegela gave me, which made me unhappy.

And I think the record will remind me of the surname, it was a white officer who were trying to look in piecing up and his report was that that officer is late and he passed the system and we got to discover that the officer is not late. As far as I know, even some five years or so ago he was still alive.

And then I went to the foundation, I said guys I am not comfortable with the investigation for the state on this case; I do not think I will get justice. For example in the TRC record they will say there were safe houses that the special branch was using, in Soweto was using, in Westonaria, I am forgetting the other area, but in Carletonville as well.

These were safe houses which were mentioned in the affidavits of the TRC and they will go and say there was no safe house, that safe house cannot be found, that person can... and I was like no, I just had misgivings with how the matter was.

Looking at Captain Masegela I have nothing against him; I think he did his best. I never had a misgiving that at a personal level I think he is just delinquent or he is abdicating his responsibility. Chair,

I am not echoing that message. I saw a gentleman who was trying so hard, but was alone, had difficulties; the system possibly was not on his side.

For example, this report of this officer, he just pulled it out of Home Affairs database and it was possible that the initials can be the same and, and, and. And at the stroke of us checking with the people who used to work in that area, we were directed where the officer is and I requested the foundation that, 'can we look into a issue of a private investigator'. And that is how Frank was requested to come and assist in 2011.

ADV VARNEY: And am I correct in saying that I retired detective, Frank Dutton was one of the most experienced detectives in South Africa, had been the first head, the first chief investigator of the DSO, the Scorpions, that he compiled reports, very comprehensive reports which were handed over the NPA and obviously he had made conclusions. Did he believe that there was a case worth proceeding?

MS SIMELANE: Yes, he believed there was a case worth proceeding with, but he also as I was saying, he was able to go look for those safe houses, found them, even interview people who were staying there, what do they know about police work in the times and all that.

He looked for the witnesses which we were told are no longer there, he looked for some of the policemen who were working within the structures of the special branch, they were operating around Moroka Police Station, the records told me who were not necessarily involved in the Nokuthula.

But his experience was that there is relationships and they know one another and they engaged. In fact one captain is still in the employ at Germiston Police Station in the last two years or so that I know, he has been there since.

So there was a great deal, in the TRC case there was SWT66 which the special branch was refusing to tell us who was SWT66 and they were recording a lot of that information which they claimed they got from Nokuthula, it was through SWT66 and SWT66 was Mpumi Dhlamini and we were told she cannot be traced and Frank did.

Of course he arrived after she had passed and the family was suspecting she died of poisoning as a very hush, hush illness and she passed. But we got sense of work that had been done. Of course against the legal advice. I was feeling that the NPA should not be given that investigation; that they must do their own and be able to say 'we cannot charge' or 'we can charge', but we are lawyers sometimes.

But we gave the report to assist NPA and I can tell you now Chair, with my last Dollar the NPA never did an investigation that was thorough as Frank Dutton did to date.

ADV VARNEY: Madam Chair, it is 11:00 and I am wondering would this be an appropriate time for the tea adjournment?

CHAIRPERSON: Yes, I think it would be appropriate that we adjourn for tea until 11:15.

ADV VARNEY: As the Commission pleases.

CHAIRPERSON: Thank you.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Mr Varney.

ADV VARNEY: As the Commission pleases. Ma'am Commissioner, before we proceed, we would just like to hand up a graphical illustration of the timeline of the different events that took place in the investigation of this case. It is in fact part of the record at page 630 of Bundle 4. But just for easy access, perhaps I can just, with the leave of the Commission, hand up a copy each for the Commissioners.

CHAIRPERSON: Thank you. Mr Varney, if it is part of the bundle, there is no need to allocate the exhibit number?

ADV VARNEY: Yes, we agree there is no need to give it a specific number.

CHAIRPERSON: Yes.

ADV VARNEY: It is just for your convenience because it is already part of Bundle 4.

CHAIRPERSON: Yes.

EXAMINATION BY ADV VARNEY (CONTINUOUS): As the Commission pleases. Now, Ms Simelane, you make a reference in your statement before this Commission at paragraph 28 that:

> "No less than three senior prosecutors, Dr Silas Ramaite, a former acting NDPP, Advocate Ngopo Ojiba, also a former acting NDPP, as well as Advocate Sean Abrahams."

Who at that time was the head of the PCLU:

"They confirm in writing that no investigations were conducted on your sister's case between 2001 and March 2010."

And before I put my question to you, just to assist the Commission. The letter from former acting NDPP Ramaite is a January 2013 letter, and it can be found as annexed TN 21.3 at page 525 of Bundle 4. And the letter from Advocate Ojiba can be found at page 530 of the same bundle, paragraph three of her letter. And the letter from Advocate Abrahams can be found at page 518, paragraphs four and paragraph 5.16.

So, Ms Simelane, now that you had confirmation from senior individuals within the NPA that your case was not investigated for a period of, probably your sister's case was not investigated for a period of some 10 years, what was your reaction to that?

MS SIMELANE: Well, it was disappointment, Chair, coupled with frustration, because of the desire one has to conclude the matter. The level of frustration was compounding, because you will move from one hurdle to the other, and there will be no sense of urgency on the matter or even direction towards what you think can lead to a conclusion. I can only sum it that way. I am lost for words. I have been battered, really, for many years on this case.

ADV VARNEY: And in fact, Ms Simelane, was there an estimation of the time period in which no investigators were assigned to this case, in fact, not correct, because your earlier evidence before this

Commission is that by the end of 1996 or during 1997, when Detective Andrew Leask was told to stop investigating and to hand over to Captain Mike Holmes, your information is that Mr Holmes did not investigate this case, so in fact you can add at least three years on to that time period.

MS SIMELANE: Exactly. Exactly, Chairperson, as I have already explained earlier. The initial investigation was done by Leask, and it stopped up until the appointment in 2010, which I hope we may also go to it a little bit, because the appointment of the investigating officer also did not necessarily bear positive fruits. Some of the tasks, and I think we may be having that letter on record, that were assigned by Advocate Ackerman to the investigator, they remain undone to date.

ADV VARNEY: So if we can return to that period between 2010 and 2013, your evidence is that during this period, you and the Foundation had appointed Frank Dutton, and he had carried out investigations and presented a very comprehensive report to the prosecutors with the request that there was sufficient evidence to move on a prosecution. But by the end of 2012, what was the State of affairs? Had the NPA responded?

MS SIMELANE: No, there was no positive response, Chair, and there was no movement, and I think that is what then ultimately led to a request to my legal team that I am convinced by the action or non-action thereof that it is either the NPA does not have an interest in this case, or just do not want to do anything about it. I am not sure, or they are avoiding doing it because there was just nothing happening.

And I think that is what led, around 2013-14, we started exchanging letters again, but subsequently that led to my 2015 affidavit both as ordinary and one in camera, if I am not wrong.

ADV VARNEY: Yes.

MS SIMELANE: Yes.

ADV VARNEY: Before we get to your 2015 application to court, am I right in saying that around 2012 or thereabouts, you even considered bringing a private prosecution?

MS SIMELANE: Yes, I did. I considered bringing a private prosecution, and I was mindful, actually, of the argument of the State, even as early as 2007-08, which is what one of the issues that Judge Legodi, in my recollection, really, really hit on them negatively, that it is not the responsibility of the victim to investigate, but it is that of the State. Because some of the options of the Prosecutorial Committee guideline was you also may have a private prosecution line. But I was mindful that possibly at the back of my mind, they think, well, even if we do not do this, they have that opportunity, even though it has been stuck off as part of a decision that does not stand.

But I was convinced at that time, in 2014, after almost two, three discussions in 2013, with meetings and letters in exchange, that there is no commitment in dealing with the case, and there is nothing that I will be able to see coming out. So I considered the private investigation, and the advice was like, you cannot afford that one. It is going to be very expensive for the family, and I left it. Earlier on, we had had a discussion that even if the investigation does not

conclude, can I be granted an inquest? At the time, the NPA had said, we are still investigating, wait with the inquest. But I think in 2013, 14, I even made a formal request in a form of a letter for an inquest, which was also declined. And the basis for declining that request was saying, we are still investigating. An investigation which was just not taking off, and was not bearing any fruit. Then I felt that now my hands are tied, there is nothing that I can be able to do.

ADV VARNEY: Commissioners, the letter that the witness refers to was penned by herself, addressed to the then acting NDPP. It is dated 29 January 2013, and can be found at page 292 of Bundle 4. Just before we get to your request for an inquest, you mentioned that the reason why the private prosecution did not proceed was because it was too expensive?

MS SIMELANE: Yes.

ADV VARNEY: Am I right in saying that you asked your lawyers to draw up a budget to also address the question of security for costs? And that budget was a handsome budget.

MS SIMELANE: Ja. I confirm that, Chair, we went to that extent. The intention possibly was that if we get to that level, one can be able to plan for it ahead, but also can be able to hold the State responsible for the action that it will get to undertake on our case.

ADV VARNEY: Returning to the letter of the 29 January 2013 addressed to the NPA, where you now abandon your struggle for a prosecution, you appear to give up on it, and you just say, give me an inquest. Why did you take that dramatic step?

MS SIMELANE: It has always been my belief, and it still remains my belief, that above all, this is not about vengeance. It is about a right to justice. It is about justice being done. But ultimately for my mom, it is about her finding out what happened to her lovely child. And I was hoping that given the information that we had arrived at at the time, an inquest could then be able to assist, shed more light towards the direction of additional information that we could have sourced, or that we could have got from any other person whom we have spoken to or might have not spoken to, may come forward and be able to share some light into the matter.

And I found the rejection by the NPA really not giving an option, because if the investigations were firm and promising, or at least being done, one can say, give them a chance. But you will see that already we are 13 years or so down the line of no investigation, or no intention to investigate properly the matter so that it can get to its logical conclusion. I think that is what made me to move, and I was disappointed by the rejection. I think it was Advocate Silas Ramaite who wrote back to my letter and said, "No, we are still investigating, we do not think an inquest is..."

And as I say, Chair, from that 2013 letter to 2026, nothing has come much out of that investigation, or those investigations.

ADV VARNEY: So later that year, am I right in saying that you even took the step of approaching the UN Special Rapporteur on Enforced Disappearances?

COMMISSIONER KGOMO: Before you go there, if we can be reminded of the response by Mr Ramaite. Or the reasons, apart from a planned statement, we are still investigating? Is there anything more comprehensive for a document? Maybe in the meantime you could continue and your assistant could look for it. You may proceed.

ADV VARNEY: Yes. Commissioner, the response of Mr Advocate Ramaite can be read at page 525 of Bundle 4. But in essence, it does say that there are a range of reasons put up why they do not wish to hold an inquest, and that investigations are proceeding. But the record also shows that it was not just Mr Ramaite, but there was also substantial correspondence between the witness and her legal team, and other members of the NPA, for example, Advocate Chris McAdam at the PCLU, who gave a whole range of various reasons as to why the investigations were far from complete.

COMMISSIONER KGOMO: Yes.

ADV VARNEY: And then the legal team responded, disputing all those different claims. What we will do, Commissioner, is that we will... (intervenes)

COMMISSIONER KGOMO: No, you need not go there. It is sufficient.

ADV VARNEY: Okay.

COMMISSIONER KGOMO: Proceed on your own line.

ADV VARNEY: We can make reference to those communications. In fact, there is a schedule that is attached to the witnesses' in-camera affidavit we will be shortly coming to that was filed in 2015, setting out

all those different interactions and summarising each communication. And we will refer the Commission to that.

COMMISSIONER KGOMO: Yes, thank you.

ADV VARNEY: So, in July 2013, did you instruct your lawyers to, in a sense, go international by lodging a complaint against the South African government with the United Nations Special Rapporteur for Enforced Disappearances?

MS SIMELANE: Yes, Chair, I did.

ADV VARNEY: And, again, why did you take the step of now going international?

MS SIMELANE: Chair, I had believed that I had done everything within the boundaries in the jurisdiction of our law, and I have not been successful. I have not found any assistance. And I thought as part of the treaties that could assist in the search, it would be best for me to report also the matter. Possibly I could get some form of assistance with that interaction as well.

ADV VARNEY: So, let us now move to 2014. And in paragraph 31 of your statement before this Commission, at page 627, at that point you eventually instructed your attorneys in July of 2014 to write a letter of demand to the NPA to make a decision. As you said earlier in your evidence, because of the further inaction, you then decided to bring an application in 2015. That is quite a dramatic step to take. Why did you feel that you needed to go to court to force the NPA to make a decision, either to prosecute or to refer the matter to an inquest?

MS SIMELANE: Commissioners, I felt that was the only thing left for me to do. I had left no stone unturned in requests, in pleas, in meetings, in support, in anything if they need to move this investigation forward. But nothing was coming on the investigation, but nothing was coming also on the decision as to whether do they just decide not to prosecute or they have got an intention to prosecute. Now that the inquest request has also been declined. So, exactly what are you suggesting? Is the NPA, you think, is the right thing to do or you want to do?

So, if you go back a bit on those letters just between that early 2013 to 2014, earlier than the July, our exchanges were more about, no, the investigation is being done. No, we have come across remains, we are sending them to Bosnia for checking. And I am like, we now understand the movements and the possible areas if the body was dumped or where she could have been killed. There is no relationship with what they were doing.

I got a sense that they just give me anything just to make me comfortable to say, ah, be satisfied we are doing something. The investigation says she was moved from Northern towards Carletonville Western Area direction. They are, a mall is being built in Brits, they come across human remains which they believe are of a young girl. Then they stop the investigation. They say we are sending this for DNA assessment.

What is the relationship, lay as I am, I am not an investigator, but logically, what is the relationship of these remains found in Brits

with someone who was up there on the other side in Northern and down towards Western Area direction. And we will spend maybe a year or two just dealing with the remains. They will hear someone who says there are remains in Rustenburg. They will say we are searching the what, what records, mortuary records of remains in Rustenburg. How does she arrive in Rustenburg? It was not them in Rustenburg. Yes, you can say they are near if you are directing a person, but they not necessarily are. But what convinces you that those five bodies or so, she could be one of them.

So, they just went proper investigations being done. And it led to sheer frustration, Chair. And I felt that I now need to compel them that with all the work that they have done, and all the bodies and anything that they have done, can they come to a decision? Whether to prosecute, or not to prosecute, or to give an inquiry. Of course, an inquest had already passed it in a way. But I was feeling that they now cannot keep me on while still investigating forever. They must say to do. It was purely frustration out of all the exercise that I had undergone under the word or the name and the process called investigation which does still today to me, does not make any sense on how we went into all of the journeys that we undertook in what we call investigation in the NPA. But I ultimately went to the only body that I can rely on. Let us go to a court of law, let me put my case, put yours. And let a neutral person being a judge find reason on who is making sense between the two parties and come to a determination on what should happen on my sister's case.

ADV VARNEY: Commissioners, for the record, the papers in the 2015 case are part of Bundle 4. They can be found, the founding papers can be found between page one and 474. And the in-camera... (intervenes)

COMMISSIONER GABRIEL: What is that page number again?

ADV VARNEY: 12474.

COMMISSIONER GABRIEL: 12474.

ADV VARNEY: And then the in- camera affidavit can be seen at 475 to 619. And in that in-camera affidavit is a schedule of all the interactions and communications between the witness, her legal team, investigators and the NPA up to that time.

In other papers we have referred to that matter as Nkadimeng 2. And the reason why we refer to it as Nkadimeng 2 is because this witness was also the lead applicant in the earlier application to set aside the amendments to the prosecution policy. And we refer to that case as Nkadimeng 1.

Ms Simelane, in your papers, in order to explain, or to try and explain the long delay, you included supporting affidavits from very senior former members of the National Prosecuting Authority. Including the former NDPP, Advocate Vusi Bikoli, and the former head of the Priority Crimes Litigation Unit, Advocate Anton Ackerman SC. At a very high level, what did they say in their affidavits?

MS SIMELANE: Chair, the affidavit at a very high level mentioned that as they started work in relation to prosecution of TRC cases, there was interference. It was not necessarily an interference in

relation to the Nokuthula case per se, but they had had a schedule, if I recall, of about 16 cases of which Nokuthula was one of them. And they were ready to commence with the prosecution on them.

And they had started with the first two or so, and there were meetings which they also attached some of the records in their affidavits. That were held which led to the prosecutions in relation to TRC matters brought to a halt.

ADV VARNEY: So, in your view, did the evidence put up by Advocates Bikoli and Ackerman really serve to explain why up until 2010 there had been little or no investigations in your case and the other TRC matters?

MS SIMELANE: Chair it does, it did then, it still does today give me that as a reason, tangible. There has never been any view that gets to suggest things otherwise. If you look from the 2001 right up to date in relation to the investigations and the case of my sister Nokuthula. Nothing else makes sense on why there were no investigations, why the investigations were shabby, why there was disappearances of dockets and all what we had to go through in order just to arrive at proper and sound investigations.

There was not, there still is not anything in my view then to say the powers that be, including at the administrative level, at the NPA, they just need to be the ones who come and say here, what is it that we had as a challenge to pursue these matters? But there is a reason, and that reason I do believe in what Ackerman is saying, in what Tory is saying, in what Advocate Bikoli is saying. It just seems

to connect very well on why we had the difficulties to deal with such cases.

ADV VARNEY: Now, following the filing of that very substantial application which also received much publicity in the media. What was the response of the NPA and the government in general?

MS SIMELANE: The response was an invitation to a meeting. I may not remember exactly the order after the filing had happened, but what I recall, I think a week before the matter was to sit in court or something, I had a meeting with the advocate Sean Abrahams at the time. Ja, a very difficult to really place it. I think the first plea was, can you hold on a little bit and let us conclude? This is just going to be bad, it is an indictment on the country. And that is not what I could agree to.

If I recall very well, we then agreed to say he requested the time to place the charges then, formally for the State to judge. And my response was you have four or five days in my recollection of working days towards the date that would have been set for the hearing. It is up to you to act. Because I hold nothing against you, but I do not believe I must be the one who betray my sister again, join the others, and not when I am convinced that the State must arrive at a decision.

That was the response and I think they did place the charges before the sitting of that trial or something to that effect. I may not recall the exact days before, but the meeting was held in person at

the NPA with advocate Sean Abrahams amongst others, including my legal team of course.

ADV VARNEY: Yes, so just to assist you. The NPA did not file any answering papers and nor does the record show any public reaction to the application. But as you say, the then NDPP advocate Sean Abrahams, you know, took control of the matter and an indictment was issued on the 26 February 2016. So early the following year. And Mr Radebe, Mong, Coetzee and Pretorius were arrested and charged.

Can I ask you, what do you think would have transpired if you had not brought that application to court?

MS SIMELANE: We would still be in limbo even today. Not that we are out of the limbo, but we would still be worse off. We would not be in court. And I think, Chair, why I say so, there has been none of the cases besides the two, whether you talk the Chikane or the other, at the very beginning, before there was a halt, that anything was done in the main on TRC-related cases. The Nyoka, the inquest of the Calatas and everything came as a result of the new group we had met them twice or thrice as a group ourselves, as families. And I think they could foresee that there is now pressure coming from families and things started to roll a bit slow as well in relation to other families as well. But there will just be one or two isolated cases, really, which clearly deals with the number of the cases that were referred from the TRC to the NPA in relation to prosecution. Nothing

happened. The ball did not move until there was this 2015-2016 action.

ADV VARNEY: So, in your view, it really was your applications that blew the door open, so to speak?

MS SIMELANE: From my [indistinct].

ADV VARNEY: And now forced the NPA and the SAPS to take these cases seriously?

MS SIMELANE: I believe so, Chair. I believe so. I actually began receiving quite a number of family members from anywhere else in the country who say, my father died in Pongolo whoever, and the only thing I could do would be to give comfort and refer to the foundation if they can help. Some they could be able to help. Some, of course, it will be difficult for them to be able to take anything. But I do believe that Nokuthula's case opened the door for others as well.

ADV VARNEY: And you mentioned a short while back that matters have still not been resolved. Can you just very briefly give the Commission a sense of what has happened to the case?

MS SIMELANE: Well, Chair, as we all know, with the clock ticking, we do not grow young, we grow old. So, yes, we got the charges in February 2016, and the four were charged. But quickly we lost Radebe if I am not wrong, in 2019, and subsequently was followed by Mong who passed. And that is not only from them, my entire family has been wiped out. They died, almost all of them. My aunt in Swaziland, everyone, my uncle, my father, my brother. I think I can only say my aunts in Bethal, almost everyone has died. I am left with

two in Bethal with my mum, who can be able to come and stand before you, Chair, and say, we know her, we raised her. Other than that, you are talking to a secondary person just like me.

So I have also suffered a great deal in terms of carrying something that I am not even sure now what is its logical conclusion, and for whom. My grandmothers, all of them who raised there, including Swaziland, they have passed. Very little has happened in the case. Of course, it has its own court dynamics. It has been a struggle to get the case to commence. We have been in trial within trials, I think two or three of them. So they appeared, they got out on bail, and they were out, the two passed, and then we started a trial within a trial for various reasons. And then we had the one to confirm if practically or logically she would have died. We got that, the court declaring that. Then we moved up to fitness to stand trial. We went to Weskoppies, we have a report, we have just been concluding if Mr Coetzee is suitable to, is fit to stand trial.

The private report says no, the Weskoppies report says, "Yes" and Judge Phalane was the one who was supposed to give the report or the judgement in the beginning of the year, and she is on special leave and was still in between that process. So in a nutshell, from that 2016 to 2026 January, that is what we have done. I may not be putting them in the order of how they would have occurred, but that is what I can say roughly, Chair.

ADV VARNEY: And just to assist you, Ms Simelane, when you spoke about the interlocutories, there was some litigation, for example, on the question of legal costs.

MS SIMELANE: Oh yes.

ADV VARNEY: When the State did not want to subsidise the legal costs of the former police officers, and am I right in saying that you actually intervened in that matter in order to force the State to pay those legal fees?

MS SIMELANE: You are correct. In fact, Chair, that would have been the first matter we dealt with after the charges were formally placed. It was that process which I think could have taken us around 18 months to two years just to conclude properly that they were not on the frolic of their own, they were State employees, and I joined into that, and subsequently, yes, that was a result, and then we went back to the table, and then there was another issue, and subsequently the issue of fitness to stand trial.

ADV VARNEY: Commissioners reference is made to that case. There is in fact a judgement. It is at paragraph 8.5 of Ms Simelane's statement before this Commission, at page 622, *Coetzee and others versus Minister of Police and others, Gauteng Division, case number 72747 of 2016*.

Ms Simelane, you also approached the High Court to obtain a presumption of death order in relation to your sister. Is that correct?

MS SIMELANE: Yes, that is correct, Chair.

ADV VARNEY: And, Commissioner, there is also a judgement in that regard. It is at paragraph 8.6 of the same affidavit and that is ex party TP Nkadimeng also Gauteng Division, case number 86381 of 2018.

COMMISSIONER GABRIEL: What page number is that, Mr Varney?

ADV VARNEY: It is at page 622.

COMMISSIONER GABRIEL: 622, thank you.

ADV VARNEY: Of Bundle 4. So you mentioned a short while back that certain individuals had died, some of the accused as well as some family members. And just to assist you, accused Timothy Radebe, he died in 2019, and Frederick Mong died in 2021, leaving just two remaining accused, Mr Coetzee and Mr Pretorius. And as you mentioned, Mr Coetzee is now challenging the State in respect of his mental capacity to stand trial, which has still not been resolved. But I understand that others have died as well. Around eight of your own family members and witnesses have died over the intervening years.

MS SIMELANE: Ja, correct, including Mr [indistinct] Nkosi himself. I think he also passed in 2021 or 2022. He was also outside my family in the list of witnesses. We have lost quite a number, Chair in the list that the NPA has drawn itself as the witnesses possibly into the case of Nokuthula.

ADV VARNEY: So I want to put a quote to you to solicit your response. And this quote comes from a press statement, or rather an editorial released by the FW de Klerk Foundation on the 5 July 2021.

This is before FW de Klerk died. And the quote from that editorial reads as follows:

> "Because of an informal agreement between the ANC leadership and former operatives of the pre-1994 government, the NPA suspended its prosecutions of apartheid-era crimes."

What is your response to that statement from the FW de Klerk Foundation?

MS SIMELANE: Chair, I just think that statement is so unfortunate and unfair to us. But I also think if there were such discussions, we were then engaged not in good faith. We were taking through a process called Truth and Reconciliation. I am not sure whether to just be a passage of what the country will pass through without meaningfully meaning what we have written down in black and white. When there has been discussions and arrangements on the other side that we are not going to do any other thing of the 37 or whatever.

Because I do not recall in the entire time I have spent in all these cases where I have come across a single family which will say the State has engaged them in good faith. I even prefer it. I do wish sometimes that how I wish the guys who are involved in my sister's case just went to the TRC and said we buried her where. I promise you, Chair, I would not be sitting in front of you today. Because the only thing I want is just her remains. Nothing will bring me anything. I do not believe my mom as well. She has lived 1983 to date over 40 years or so without knowing what happened to a child. She has cried.

She has done anything possible. I have stopped taking her to court. SABC have got records of her crying in court. Nothing moves anyone. She just wants her remains.

So for any arrangement to be done, actually I think I did a media interview after that clip of the demise of a FW de Klerk. There was that video which he recorded in asking an apology and it played on our national screen. I was approached for an interview. I was livid, Chair. I was very livid. I wish he had not died and I go to him and say were we guinea pigs? Were we a joke that you put a system that you do not mean it and make us to undergo it with all our emotions and pain and then ultimately you know what happened, you record the video, you say play it when I passed so that we remain with what, a recording. I am very livid about that. I want to hear nothing. I think it is unfair. It is insensitive. It is cruel to say the least. It is done by people who just do not care about what happened to the real loved ones of those they do not care about today and I find it very hard to comprehend it.

I think that is how I feel then. That is how I felt then. That is how I feel now. I just will find no peace but I do not have a choice of course but to leave but I get it to be very unfair what we have been taken through. I do not like it.

ADV VARNEY: Ms Simelane, over the last 30 odd years has either the NPA or the SAPS or for that matter any senior person in government ever taken responsibility for these delays or ever offered an apology for these delays?

MS SIMELANE: Not once, Chair. Not once and in some instances I will be deliberating with them in boardrooms. That is not over a telephone or whatever and I will ask them directly, "Do you realise the harm we have caused?" You can imagine how my aunt received the message when I told her to come back again and redo the interview about your daughter, the docket is lost. She was in anguish. She was in pain.

And nothing has ever made the NPA or the police to just say once we think we have aired here. Maybe it was going to make the situation even much better because taking responsibility is one-step towards forgiveness, you know. But also being holding yourself accountable. It has never happened and I am way past expecting it to happen. I just want the right thing to be done. I can live without an apology, I am fine. But I think they owe it not only to me, to all those families in that box which they showed me in the boardroom of the NPA which had those cases which were referred by the TRC. They owe it to all those people, not only Nokuthula or Nokuthula's family. They owe us an apology.

ADV VARNEY: Ms Simelane, about, in fact more than 10 years ago on the 30th anniversary of Nokuthula's disappearance you wrote an opinion piece in the *City Press* and it was titled, "My Sister's Heart" on the 26 December 2013. Commissioners, a copy of that opinion piece is attached to the affidavit of Mr Lukhanyo Calata in Bundle 1, marked FA84. I want to put some short extracts to you and ask you whether

you wish to elaborate anything further now that we are, you know, some 13 years later.

> "The story of my sister Nokuthula Simelane is about freedom and betrayal. My sister believed in freedom with every fibre of her being."
>
> I am going to cut to the end of your opinion piece.
>
> "We have lost all faith in the prosecutors and police. They have betrayed our trust. They now claim that they are occupied with inquiries which could conceivably drag on indefinitely while witnesses and suspects grow old and die. We do not know why the authorities in the new South Africa would turn their backs on one of their own. Nokuthula's ultimate sacrifice helped to pave the way for the freedom and democracy we now enjoy. We cannot bury her and we can find no peace. The betrayal of my sister and what she stood for is almost complete."
>
> Do you have anything to add to that statement?

MS SIMELANE: Chair, I think I must try and picture and make you picture a household which is incomplete. Any moment at home, no matter how jubilant or happy we are, my mom can just start to cry. Whether I am getting married, whether I am graduating, whether we are eating, she will just say, "I am eating, I do not know what happened to my child, I do not know if she is eating, I do not know if she is alive".

If you watch the clip of my father testifying as he was concluding, he was tearing. It is there on record. His final plea, "Allow me to put my daughter to her final resting place". It just makes me a failure. I feel it every day. Also, Chair, I feel that we have given hope, all our hope, all our being to the system who promised us something that is tangible that we can hold on and work towards too. It is not that I do not accept that she was a victim of the system. I have gone way past that. I am sure you can ask so many families they are past that.

What we need is the truth. I do believe we deserve the truth. I do not believe this delay, Chair, was solely caused by negligence and incompetence on both the part of the NPA and the SAPS. Maybe I would believe it if I was not personally involved in that process. It is a hearsay. When I am talking about the letter I wrote, when I am talking about the meeting, I am talking about the meeting where I physically met them. I could tell you what was their attitude, what was their pace, what was their outlook towards these matters. I believe there is some force outside that made sure that these investigations do not continue. Whether there was a good reason for that or not, I do not know because we were never told.

But what I find unfair and the greatest betrayal to Nokuthula and all is when we deny them even a dignified grave. I just cannot see myself beyond that. You can betray them in who sent them out, who sent them in, who gave them this and that message, who did not. We can go past that. But for us, after the TRC, to be treated shabbily

like we have been treated and be denied the truth which leads to closure on what happened to our loved ones, it is gross, Chair. I think it is so unfair, it is so unfortunate and I hope it never happens ever again to anybody else.

If I do not find Nokuthula and her final resting place, the only thing we could give South Africa is that there must never be another Nokuthula. I can live with that. But I can tell you now, I am not sure if my mum watching at home, she is happy that I am saying I can accept that she cannot bury her child. I know she cannot, but what else can I do?

I think that is how I feel, Chair, and I am going to make a plea to you and all and the Commission and anybody who you are likely to see. Please help us look into this allegation, not only the allegation, but look beyond into what could be done. There are family members we interact with, even the President Funds never paid for their schooling. So there was a truth, reconciliation and reparations.

So I find it very difficult to understand that when you do not get the truth, you do not get a reparation as well. What type of a system was this that we were put into and we have got no options on it? No one talks to us, no one engages us, we are just somewhere there at the back. I am sorry to rant, Chair, but let me stop here. It hurts.

ADV VARNEY: Thank you for your evidence, Ms Simelane. No further questions, Chair.

CHAIRPERSON: Thank you, Mr Varney. Mr Semenya I see Ms Ntloko is not here. Is there anyone for the SAPS for clarificatory questions?

MS RANTHO: Sorry Chairperson I am [indistinct] Rantho from SAPS.

CHAIRPERSON: Yes.

MS RANTHO: I am still taking instructions in response to what was before... (intervenes)

CHAIRPERSON: Okay.

MS RANTHO: So we will not be doing an examination this afternoon, Chairperson.

CHAIRPERSON: Well, you would have been allowed questions of clarifications only.

MS RANTHO: At this stage, none.

CHAIRPERSON: Because you have to apply to bring an application to cross-examine the witness... (intervenes)

MS RANTHO: I have... (intervenes)

CHAIRPERSON: And now you have no such instructions.

MS RANTHO: Not as yet.

CHAIRPERSON: Yes.

MS RANTHO: I am mindful of that, Chairperson.

CHAIRPERSON: Thank you.

MS RANTHO: Thank you.

CHAIRPERSON: Is there anyone else who is representing the parties other than the evidence leaders? Mr Semenya?

ADV SEMENYA: Chairperson, we want to record that in the [indistinct] course of events, clearly after the testimony-in-chief of a witness, one would have expected that there would be cross-examinations or questions for clarification, and the witness would then be re-examined if such a re-examination is indicated.

But what happens like this is that we are constrained by non-assistance of various State parties again. We would have been better placed to put those allegations if we got the statements and the witness would have had an opportunity to react, to respond to any such things. We do not have that now, but that may necessitate unfairly and prejudicially maybe to witnesses to be recalled once we have statements that seem to want to refute, explain, clarify any of her testimony. So we lament that fact as a matter of record.

But Minister, you have to accept that 42 years, as you indicate in your statement, is an inordinate length of time for an investigation to happen properly. Is that right?

MS SIMELANE: Not necessarily, Chair. I believe you could also, would have done more in the 42 years to get it to be investigated properly.

ADV SEMENYA: Yes, that is the point I am making. It is a very, very long delay to investigate a matter of the kind you described.

MS SIMELANE: Okay.

ADV SEMENYA: 42 years is a very, very long time.

MS SIMELANE: It is a very long time agreed Chair.

ADV SEMENYA: And given that it is an obligation placed on a State that is sovereign, that has resources, it is hardly explicable. It is inexplicable. You would agree with that, would you not?

MS SIMELANE: I fully agree, Chair.

ADV SEMENYA: And I want to use the basis of your evidence which clearly shows the enormity of the agony, pain and suffering and hurt that you, your family and others would have underwent throughout this period. Is that right?

MS SIMELANE: That is correct.

ADV SEMENYA: And you would expect that at least the Government, given that they are given notice of the establishment of a Commission, State-run, would do more to assist, even if by way of explanation as opposed to justification, why we are here. Correct?

MS SIMELANE: It is correct, Chair, but I must also put it on record, Chair, the response is what I expected. In fact, from the State, because this is the response that I was getting. It actually coincides exactly with my testimony. My testimony says, "I will go to the State". The State has never called me, not once. So I was not expecting any different for you, Chair, that if you call them to this Commission, they will come with what is expected to have been brought. If you were to ask me, I would have said to my attorneys, "I told you so".

ADV SEMENYA: And for the record, again, we place it that we have issued requests for information to almost all the National Police Commissioners who are alive. And we are still awaiting explanations,

if nothing else, and if there could be justifications I would be surprised. You share that sentiment?

MS SIMELANE: I share that sentiment, Chair. I actually even saw the statement, a media statement, which was explaining that process and calling on everyone to bring any information that he has. So I agree, but the response is not amazing to me. The non-response or non-action thereof, at least from the State, is not amazing to me.

ADV SEMENYA: And whatever postulate we have, the type of possible interference can only be from the State. Is that a fair assertion to make?

MS SIMELANE: Very fair, Chair. It is an assertion I agree with. It is an assertion I hold personally as well, having undertaken the journey that I have, that it could have only been within the State itself.

ADV SEMENYA: And as you say, 42 years after the disappearance of your sister, justice is not home and has not arrived.

MS SIMELANE: Ja, and Chair, I am about to believe that it will never arrive, sadly.

ADV SEMENYA: Those are the questions, Chair, we have for the witness for now.

CHAIRPERSON: Thank you. Thank you, Mr Semenya.

COMMISSIONER GABRIEL: I have a question. Thank you, Minister. Has anybody in the present Government tended any apology or explanation to you for your 42 years of waiting?

MS SIMELANE: Honourable Chair, nobody. Maybe what we also overlooked, rather, in how we wrote, because quite a lot has

happened in 42 years, honestly, Chair. We also, the letters ourselves as victims wrote, I think to President Zuma we wrote, to President Ramaphosa we wrote. In some instances, there was not even an acknowledgement of receipt. And we were just asking to say, can we be assisted? We may have not mentioned it, but I think in some of my affidavits I did, but I think in the 4 November one, it might have not been mentioned. So, Chair, we have tried, when I say, to knock on all doors, really. We have, and we have not received any form of support whatsoever. So, there was no apology.

CHAIRPERSON: Mr Varney.

ADV VARNEY: Thank you, Chair. Just in response to that question, I can assist the Commission. And, in fact, the former Commissioners and family members did call on President Ramaphosa when asking for a Commission of Inquiry to also offer an apology to the families. And that letter is attached to the Calata founding affidavit in Bundle 1.

It was written in early 2019, and it is at annex FA68. It is also discussed at paragraphs 483 to 484 of that affidavit. And then family members, also later that year, on the 23 June, family members belonging to the Timo family, Biko, Luthuli Kriel and others, on 23 June 2019, they also asked for a Commission of Inquiry, as well as an apology.

And those letters are attached to the Calata founding affidavit as FA72 and 73, and discussed at paragraph 490 of that affidavit in Bundle 1. No apology was forthcoming from those letters. Chair, if I may add to what my learned friend Mr Semenya, for the

evidence leaders, has said about the lack of response from some of the parties, including the SAPS. Certainly from the perspective of the families, it is very disappointing that in this constitutional order we have Departments of State and Ministers who are effectively turning their backs on this Commission.

Most of them did not even bother to offer opening addresses yesterday, which the families find quite insulting. And we call on these Departments and Ministers and the Head of State to reconsider their approach to this Commission and to treat it seriously.

Now, in relation to outstanding statements, we are concerned that some of the parties believe they can dictate to this Commission when they will file and deliver. So, for example, we know that Rule 3.3 notices were issued last year, in and around September, and they should have filed their responses within weeks of those notices.

And so, for example, we would like to hear from the first NDPP Advocate Bulelani Ngaka, the acting NDPP that followed him, Advocate Silas Ramaite, as well as other figures who played a role at the very beginning. But we told there are no statements from them. And at one of the meetings, they simply announced that they will deliver their statements in March, without explanation. Because our witnesses, particularly Advocates Ackerman and advocate Pikoli, we believe they should only testify after we have heard from Advocates Ngaka, Ramaite, and also Advocate McAdam, who was also dealing with these cases before Pikoli and Ackerman came onto the scene.

So the logical order of the inquiry really should follow what happened, as opposed to being jumbled around.

And we would respectfully ask this Commission to order the production of those affidavits, not in March, but within a reasonable time, given that they should have been delivered last year. And we would submit that those affidavits should be submitted within five days of today, by the end of next Tuesday is when we think those affidavits should be put up, and those individuals should make themselves available to testify shortly thereafter.

And in relation to outstanding documents that the evidence leaders are still waiting for, from the SAPS and elsewhere, I guess cooperation is ideally the best way to secure documentation. One wants to engage collegially with these authorities. But if you have been knocking your head against a brick wall and nothing is emerging, then the responsible individuals must be placed on a subpoena. They must come to this Commission and explain why they have not delivered. Thank you, Chair.

CHAIRPERSON: Thank you. Thank you, Mr Varney. The state of affairs is disconcerting and perturbing. I think it is sufficient for me to say so, and nothing more at this stage. We may be compelled to use our powers of compulsion, as provided for by the rules and the regulations. The time has not yet come, but it is fast approaching.

Mr Varney, the SAPS has just indicated that they do not have instructions with regard to the cross-examination of the Minister. It seems inescapable that we may have to have the Minister come

back to this Commission for such cross-examination if these instructions are to surface. Would that be convenient for the Minister?

ADV VARNEY: Chair, we will consult with the Minister, although I am assuming that, from her perspective, she will do everything she can to assist this Commission.

CHAIRPERSON: Yes. Minister, we thank you for having made yourself available to this Commission and for your evidence. You are excused as a witness for now, but you may be recalled with a view of being cross-examined by, amongst others, the SAPS. Thank you, Ma'am.

MS SIMELANE: Thank you, Honourable Commissioners.

CHAIRPERSON: These proceedings are adjourned for the day until tomorrow morning at 09:00.

ADV SEMENYA: As the Commission pleases.

INQUIRY ADJOURNS TO 13 FEBRUARY 2026 @ 09:00

CERTIFICATE OF VERACITY

We, the undersigned, hereby certify that **as far as it is audible**, the aforegoing is a true and correct transcript of the digitally recorded proceedings in the matter of:

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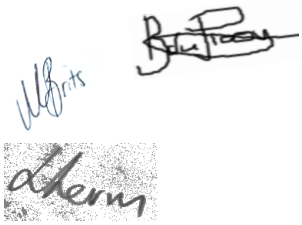
FORUM OF ORIGIN	**:**	Inquiry
CASE NUMBER	**:**	N/A
TRANSCRIBERS	**:**	M Brits
DATE COMPLETED	**:**	2026-02-12
NUMBER OF PAGES	**:**	97 (Including front pages) M Brits: Page 292-317 B du Plooy: Page 318-341 L Lerm: Page 342-373
TRANSCRIBERS	**:**	

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MzanziSA Business Solutions
Arbour Square
Cnr Melle & Juta Street
Ground Floor, Office 3
Braamfontein, 2001
TEL: 011 339 1289
E-mail: transcription@mzanzisa.com
E-mail: mzanzisa1@gmail.com