

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

HELD AT:

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

BEFORE:

COMMISSIONERS:

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

EVIDENCE LEADERS:

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

REPRESENTATIVES

Adv Matseleng Lekoane (DOJ representative)
Adv Anisa Kessery-DOJ Representative
Adv Varney (SC) – The Calata Group
Ms A Thakor – The Calata Group
Ms Lamiah Casoo-The Calata Group
Adv Nwabisa Ntshizana (for Ex-NDPP's Officials)
Adv Gwala- NPA representative

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PROCEEDINGS ON 24 JULY 2026

CHAIRPERSON: Good morning to you all. Mr Semenya?

ADV SEMENYA: Good morning, Chair, and good morning to the Commissioners as well. This morning we are having Mr Jeffery, who will react to the evidence previously given by Mr Calata, and he is going to be led by Adv Millard.

CHAIRPERSON: Yes.

ADV MILLARD: Thank you. Good morning, Commissioners and good morning, Mr Jeffery. Mr Jeffery, as Mr Semenya said

10 ...[intervenes]

COMMISSIONER KGOMO: No, wait.

CHAIRPERSON: No, wait, Ms Millard.

COMMISSIONER KGOMO: Wait.

CHAIRPERSON: We have got to...

ADV MILLARD: Swear him in.

CHAIRPERSON: Swear the witness first before you can lead him. Yes. Mr Jeffery, are you going to give your evidence under oath or affirmation?

MR JEFFERY: It will be under affirmation, Commissioner.

20 CHAIRPERSON: Affirmation. Do you affirm that the evidence you will give will be the truth, the whole truth and nothing but the truth?

MR JEFFERY: I affirm that it will be the truth, the whole truth and nothing but the truth.

JOHN JEFFERY: affirms

CHAIRPERSON: Thank you. Ms Millard?

EXAMINATION BY ADV MILLARD: Yes, thank you. Mr Jeffery, Mr Calata gave evidence at this Commission and he made various statements about you concerning an interview that you had with him in 2017; and you have been asked to come to explain the background and the context in which you made those statements. And you have made an affidavit, which is at page 2310 of the bundle of documents in front of you. Do you have the bundle?

MR JEFFERY: I have got the... Well, I have got my affidavit. There is a file with a bundle, which I just found here, but I am happy with
10 just... I think at this stage I have got the bundle... I mean, sorry, I have got my affidavit and I have got... So, ja, that is what I have got. You can refer me maybe to pages if you want to in the bundle.

ADV MILLARD: Yes, your affidavit that you made is at page 2301 of the bundle. I just want you to look ...[intervenues]

CHAIRPERSON: 2310?

ADV MILLARD: 2310. I just want you to look at it so that you can confirm.

MR JEFFERY: Okay, so I must use this, because you are going to go through those pages.

20 ADV MILLARD: Yes.

MR JEFFERY: I do not know if this is the correct bundle.

ADV MILLARD: Do you need some assistance?

MR JEFFERY: 2310, wait.

ADV MILLARD: Someone will assist you.

MR JEFFERY: There is a whole lot of other things in the file. Oh,

there, okay. Thanks. Okay, I have got it now.

ADV MILLARD: All right, thank you. Can you...? You will see that your affidavit starts at page 2310.

MR JEFFERY: That is correct.

ADV MILLARD: And it runs for 14 pages.

MR JEFFERY: Yes.

ADV MILLARD: On the 14th page at page 2323.

MR JEFFERY: Ja.

ADV MILLARD: That appears to be your signature.

10 MR JEFFERY: Ja.

ADV MILLARD: Can you confirm that that is your signature?

MR JEFFERY: That is my signature, and this appears to be my affidavit that I commissioned, or I signed.

ADV MILLARD: This is your statement. Thank you. Now, you...

The basis on which you have been called here, as we have already set out, is Mr Lukhanyo Calata's evidence that he gave to this Commission where he claimed that during an interview with you in 2017, you had discussed TRC prosecutions and you had made certain statements. Now, in your affidavit, you set out the evidence at

20 page 2315.

MR JEFFERY: Ja.

ADV MILLARD: And at paragraph 20 of your statement, you record what Mr Calata said when he was doing research for his book *My Father Died for This*. Could you read paragraph 21 into the record, please?

MR JEFFERY: All right.

“Mr Calata stated: I had a meeting with the former Deputy Minister of Justice, John Jeffery, where I spoke to him about why the state was not pursuing or prosecuting these cases. I remember that in one of those conversations that I had with him, the Deputy Minister or former Deputy Minister said to me that, you know, if it were not for the agreements that were made, they would have, you know, perhaps pursued the Cradock Four matter. I was very disturbed by that, because whatever agreements that had been made did not involve us as a family.”

ADV MILLARD: And you were asked by Commissioner Gabriel...

MR JEFFERY: Sorry, he was asked.

ADV MILLARD: Yes. When he was asked by Commissioner Gabriel whether he had asked you about the nature of the agreements to which you referred, his response was that his understanding was that political agreements reached during the transition had resulted in the failure to prosecute his father's case and that the government's hands were tied. And then at paragraph 23 of your affidavit, you write that:

“He stated further that I told him that this was the price we have to pay in order to move the country forward; and he said that he was deeply disturbed by this, particularly because the Calata family had

not been party to any such agreements.”

Now, in his book, he has made reference to the discussion with you. There is... we have referred to what he says in his book in your affidavit at paragraph 24, and I wonder if you could please read that into the record.

MR JEFFERY: In his book, paragraph 24:

10 “In his book, Mr Calata records that more than 32
 years after the Cradock Four murders, he
 interviewed me in my capacity as Deputy Minister
 of Justice in order to understand why
 prosecutions had not followed. He sought an
 explanation for why the ANC-led government had
 failed to prosecute those responsible for the
 deaths of his father and his colleagues. He
 records that I stated: part of the problem is the
 nature of our transformation from apartheid to
 democracy, the negotiated settlement. That was
 the price that had to be paid.”

20 ADV MILLARD: And at paragraph 25, you record that according to
 Mr Calata, he then asked whether you were suggesting that the
 murders of his father and his comrades, as well as those of many
 other South Africans, including Victoria Mxenge, the PEBCO Three
 and Steve Biko had been used as bargaining tools during the
 negotiations that led to a democratic South Africa. And you recorded
 your response as follows, and if you could please read paragraph 26

into the record.

MR JEFFERY:

10 “He records that my response was: That is the price that had to be paid, (and) we, the ANC-led government, do not have the resources to reopen all these investigations. We do not have the resources to have inquests into all these murders. Some can be done, as has happened with Ahmed Timol, as has been done with Nokuthula Simelane. The problem is there are so many. That raid into Mthatha and the Transkei that killed two young boys, and I mean literally boys, was openly admitted as an operation. It was the army, I think, that went in and they claimed they were raiding some or other PAC or MK person's house and they killed two young boys. I mean there is so many. The whole of KZN, nobody knows what happened to most of the cases. It is unfortunately the result, I think, of our transition.”

20 ADV MILLARD: Yes, and he records in his book that he was not satisfied with the responses, and he pressed you further, because what he wanted was you to explain whether he would now have to explain to his mother, according to you, that she and the rest of the family, particularly his younger sister, who had never seen her father, would never see justice for the life of Fort Calata, and he records your

response as... and you have listed it in paragraph 28; if you could read that into the record, please.

MR JEFFERY:

“He recorded my response as: The problem we have got is, yes, you want to know what happened, but what happens if we cannot do it all at one time, as it were? I appreciate that what I am saying must sound terrible, but for me the pressure is the issue of getting a functioning
10 justice system now that can deal with present-day crimes and ensure that perpetrators get brought to book.”

ADV MILLARD: Thank you. Mr Jeffery, in preparing for this affidavit and your statement and your evidence to the Commission, you had a look at the transcripts of the interview between yourself and Mr Calata, because it was recorded. Is that correct?

MR JEFFERY: Ja, I focused more on the audiovisual recordings, which I... well, I looked at both the transcript and the audiovisual recordings. I would suggest to the commissioners that if they do want
20 to see what was really said, that they listen to the audiovisual recordings, because they give more of a context.

The transcript is generally accurate, although, you know, there was a third person in the interview; and it is pointed out, I think, in Mr Calata's supplementary affidavit that he submitted on Monday and I referred to her in my affidavit, Ms Maria Della Togna, but

unfortunately in the transcript she is recorded as Ms Calata, which gives a different, a completely different perspective if it is a family member.

So what I am saying is, yes, I have gone through, I have refreshed my memory. This interview was nine years ago now, so but I would, if the commissioners are wanting to see really what was said, to please watch the transcripts. I mean, sorry, watch the recordings.

ADV MILLARD: Yes. You referred to Mr Calata's supplementary
10 affidavit, which he sent to us on Monday. Attached to that supplementary affidavit are extracts.

COMMISSIONER KGOMO: Sorry, you say watch the recordings. Are you saying listen to the recordings or was it videos?

MR JEFFERY: Sorry, they were audiovisual recordings. They are video recordings with sound, yes. So there is only one. There is not an audio and an audiovisual. It is just the audiovisual, but I am suggesting that you watch the audio and listen to the audiovisual recording.

COMMISSIONER KGOMO: I follow. Thank you.

20 MR JEFFERY: And it also, because, ja, well, we can get more into that, but it was less of an interview and more of a discussion.

ADV MILLARD: All right. So, Mr Jeffery, you have looked at the supplementary affidavit and you have looked at the transcripts that are attached to that supplementary affidavit.

MR JEFFERY: Yes.

ADV MILLARD: And your impressions of that transcript, is it an accurate reflection of the discussion?

MR JEFFERY: It is largely, but it obviously omits, I mean, as it says itself, it omits certain duplication, so it does not purport to be a 100 percent recording. That is number one. Secondly, there are mistakes, and I do not know how they could have happened, where Ms Maria, Marina Della Togna is Martina Della Togna, sorry, is listed as or recorded as being Ms Calata, also making comments and asking questions. So that is incorrect, obviously. He does point that
10 out in his supplementary affidavit. But generally, it is relatively accurate, although the full thing is the audiovisual recording.

ADV MILLARD: In relation to the specific comments attributed to you by Mr Calata in his evidence and in the book, are they an accurate reflection?

MR JEFFERY: Well, Mr Calata's comments in the book; no, they are not an accurate reflection. As I had, I think I had said earlier, I had found the... and I think I deal with it in, do I deal with it in my affidavit? I do to some extent under paragraph 31, and I had wanted to engage with Mr Calata, because I knew of the problems he was
20 experiencing and I wanted to discuss and engage with him.

And his concern was, you know, no prosecutions for the Cradock Four, specifically. And it was also the... what I wanted to convey was some of the broader contexts, but I will get onto, can get onto that more later. But as far as the... I mean, so when the book came out about a year later, I was quite surprised to see that he had

quite a negative reaction. He felt I was callous. He was angry with me. I did not get that sense in the interview, but ...[intervenes]

COMMISSIONER KGOMO: Yes, Mr Jeffery, sorry to intervene. Now that you have referred to paragraph 31, but you have already moved elsewhere, maybe you could read 31 into the record.

MR JEFFERY: 31 into the record, yes, Commissioner.

10 “I knew of Mr Calata before the interview, having followed his views on the failure of the criminal justice system with regard to the Cradock Four murders. I was aware that Mr Calata regarded the failure to secure prosecutions for the Cradock Four murders as a failure of the criminal justice system. I knew that he remained affected by the loss of his father and dissatisfied with the answers the TRC process had provided to his family. In agreeing to the interview, I was happy to engage with Mr Calata to discuss the broader issues relating to the TRC and post-TRC processes.”

20 COMMISSIONER KGOMO: Thank you.

ADV MILLARD: Thank you. Mr Jeffery, the interview took place at the time that you were Deputy Minister of Justice. Is that correct?

MR JEFFERY: Sorry.

ADV MILLARD: Do you need to take some water?

MR JEFFERY: No, no, I am fine. I am sorry. I have a bit of upper-

respiratory infection. I felt, though, that it was important to come at my stipulated date and time and not send a sick note, as there had been some issues in other commissions raised with those, and I did not want to be part of those. So I think I am able to give evidence to testify, but just excuse the coughing, if you do not mind.

CHAIRPERSON: Okay, understood.

ADV MILLARD: You were saying that at the time you were the Deputy Minister of Justice.

MR JEFFERY: Ja.

10 ADV MILLARD: Now, was the interview in your capacity as Minister of Justice?

MR JEFFERY: Deputy Minister, look, it was to some extent, but for me it was; and this is why I list my involvement, my history in the early part of my affidavit of somebody who had been in the struggle, obviously from a different perspective to Mr Calata, and particularly the conflict in KZN, which was really a low-intensity civil war, but it was in that context and wanting to give those, you know, have a discussion from the context of where I was coming from around these issues. So it was not just in my capacity, or for me it was more as
20 somebody who has got experience from a different perspective in these issues.

ADV MILLARD: Yes, at paragraph 17 of your affidavit on page 2314 of the record, you also mentioned that you yourself are listed in the TRC final report as a victim of a human rights violation. Could you explain what that is a reference to?

MR JEFFERY: Well, basically, there is reference to the assassination of Reggie Hadebe, where I was driving the car that Reggie and I and a third person, Shakes Cele, were travelling in, and we were ambushed and Reggie was killed and Shakes was injured. I luckily was not injured. And the TRC held a hearing at the Pietermaritzburg City Hall, and I was asked to testify at that hearing. The hearing was into the assassination of Reggie Hadebe.

So I was asked to testify there, which I gladly did. I think because of that, the TRC bureaucracy included me as a victim of a
10 human rights violation. However, I think the point I make in my affidavit, I was not applying to be one. I did not want to be listed as one, as I made my contribution, you know, out of commitment; and there were many people who suffered far greater human rights violations than I did, simply by being black.

So I only discovered it later. It was pointed out to me and I was a bit taken aback, but I am not alleging any improper action on the part of the TRC. As I said, I think it was just the people who testified into these hearings into human rights violations, they get listed as victims.

20 ADV MILLARD: And at paragraph 32 of your affidavit, you reference this to say that your own experiences during the conflict in KZN gave you some understanding of the impact of political violence on families.

MR JEFFERY: Yes, and it was both political violence. One of the first, one of the very early victims in the KZN violence was the

criminal justice system, its corruption of basically that Inkatha warlords could commit crimes with impunity. So there was that element. Then there was also the element of state, apartheid state, and KwaZulu state, if that was a different state, their involvement in covert operations. So it was a whole complicated landscape.

ADV MILLARD: And you say that in speaking to Mr Calata, and here I am quoting from your affidavit, again at paragraph 32, you say:

10 “I was not seeking to minimise the suffering of the
 Calata family. Rather, I sought to explain that
 their experience formed part of a broader national
 tragedy in which many families were left without
 full answers about the deaths of their loved ones.”

Why was that important to you in the context of your discussion and your meeting with Mr Calata?

MR JEFFERY: From what I had seen from Mr Calata, the focus was specifically on his father and his father's comrades' murder rather than broader political issues. So it was to sort of see if giving a case at end context helped him, gave him a different, a bit of a different perspective. So it was from that perspective.

20 ADV MILLARD: Right, I want to move on now to deal with what you actually said during the interview, unless there is something you ...[intervenes]

MR JEFFERY: No. Well, you had asked me about the book and the interview.

ADV MILLARD: Yes.

MR JEFFERY: And I said I gave the interview. I did not take any notes. I knew it was recorded, but I did not take any notes. The book came out. I was surprised about some of the things that Mr Calata said about his reaction to me, but I let it be. I did not have any... I did not ask for the recording or anything. I just felt, okay, that was the way he felt.

But what I did subsequently was do a comparison between what is in the transcript after I subsequently got the transcript after being called to testify here and comparing that to what is in Mr
10 Calata's book. And Mr Calata's references to me are not an accurate reflection. I can go through those issues if you want.

One of the most glaring is that Mr Calata refers to a comrade of mine being killed, whose name he refers to as Reggie Nkabinde. Now, that was obviously not what was in the interview. It was Reggie Hadebe; and it is a pity that Mr Calata could not have got that right. I think he may have combined the issue with or been thinking of Sifiso Nkabinde, which is another issue on its own.

So anyway, but there is a number of... I mean, what he had basically done... You know, I do not think I made references to the
20 ANC government prosecuting, because the ANC government was not prosecuting. It was the NPA. There is a separation between the prosecuting authority and the government, and the NPA should not be prosecuting at the behest of the government. So those would be some of the things. So a lot of what he put in the interview; and that is why, I mean, in the book, is out of context.

What then happened was... I would have expected he would have referred to the video recording he had at least taken, but because of those inaccuracies, I do not think he did when he wrote the book. And then he made later references in affidavits, in court applications and then ultimately in terms of his testimony here; and each time it was not, it became more inaccurate. It was a bit like a toy telephone where you repeat something to the person next to you, who repeats it to the next person, and you look at what the message is that comes out at the end; and it has got a bit distorted.

10 ADV MILLARD: Well, let us look at what he says. Let me take you back to what he says in the book, and then let us look at what you have said in your statement with reference to what he said. So at paragraph 34 of your statement, you deal with the context in which you made references to the negotiated settlement and the TRC process. And what he says in the book, at page 248, it is referenced in your affidavit.

20 He says that when he asked you about, when he wanted to hear an explanation for why the ANC-led government had failed to prosecute those responsible, you began by saying part of the problem is the nature of our transition from apartheid to democracy, the negotiated settlement. That was the price that had to be paid. I then asked the deputy minister if he was implying that the murders of my father and his comrades were used as pawns or tools. His response astounded me, and he said that is part of the price that had to be paid. Now in your affidavit, you contextualise that. And at

paragraph 34, could you read that into the record?

MR JEFFERY:

10 “I did not suggest that prosecutions were
abandoned because of any secret or improper
agreement. My references to agreements and to
the negotiated settlement were to the political
negotiations that took place between the National
Party government and other political parties and
organisations during South Africa's transition to
democracy, which ultimately led to the interim
constitution and the establishment of the Truth
and Reconciliation Commission.”

ADV MILLARD: And you yourself were not personally involved in the
negotiations?

MR JEFFERY: No.

20 ADV MILLARD: But you say at paragraph 35 that your
understanding, however, is that the question of amnesty was a
central issue for the National Party negotiations, and that the ANC
was not prepared to accept a blanket amnesty. So when you talk
about various inaccuracies or impressions that are created, and you
correct that or you say that you want to correct that. Is this one of the
issues that you are referring to that you want to correct in relation to
what the agreement was about?

MR JEFFERY: Ja. I mean, he is... I think when he testified here,
and I had have to look up again the references, but it was more that

there was... I might have been talking about a post-TRC agreement, which I definitely was not. The only agreements or the agreement that I was talking to was the agreement on an amnesty process, which required full disclosure, and which then was incorporated into the Truth and Reconciliation Act, and the process followed. I was not referring to anything post the TRC process.

ADV MILLARD: Could you read into the record what you say at paragraph 37 and 38 of your affidavit?

MR JEFFERY:

10 “The point I was seeking to make was that the negotiated settlement, including the Truth and Reconciliation process, formed part of the means by which South Africa brought a period of violent conflict to an end and sought to avoid further loss of life. That is the context in which I refer to the price that had to be paid.”

And the issue of... it is maybe a speculation on my part, is that, you know, the apartheid regime was not defeated. They got to a point where they saw that sustaining apartheid was not sustainable. So
20 there were negotiations. I think the impression I have got ...[intervenes]

COMMISSIONER KGOMO: Mr Jeffery, sorry, sorry to interrupt. Counsel had wanted you to stop at 38, and then you can comment.

MR JEFFERY: Okay.

COMMISSIONER GABRIEL: So could you read paragraph 38?

MR JEFFERY: Oh, 38. Sorry. Okay.

“My reference to the negotiated settlement...”

Apologies;

10 “...and the amnesty process should not be
understood as suggesting there was any
agreement not to pursue perpetrators who had
not received amnesty. To the contrary, I have no
knowledge of any agreement, arrangement or
understanding that such persons would be
exempt from investigation or prosecution and I
was never aware of any such policy during my
time in government.”

ADV MILLARD: Thank you. Now, in Mr Calata's supplementary
affidavit, which is in the bundle of documents, you should have it,
he... At paragraph 11 of his affidavit, he says the following:

20 “On page 45 of the transcript bundle, Mr Jeffery
states the following. I think there was a political...
my sense is there was a political decision in the
first 10 years of not going for having the TRC
process, not going for prosecutions, and I think
there has been some evidence in that regard.
There was this policy that was challenged relating
to prosecutions.”

And he says that in your statement you do not address the statement
about the political decision not to pursue prosecutions in the TRC

cases in this affidavit. What is your comment to that? Do you agree with that statement?

MR JEFFERY: Well, I think I addressed it in paragraph 39, and would you like me to read that into the record?

ADV MILLARD: Yes, thank you.

MR JEFFERY: So, it is during the interview.

10 “I expressed the view that in the early years of South Africa's democracy, the focus was on allowing the TRC to do its work before tension turned to possible prosecutions arising from apartheid-era crimes. I was expressing a personal impression of that period, rather than referring to any formal policy, decision or agreement of which I had knowledge. My sense was that the priority at the time was to hear the accounts of victims, consider amnesty applications and allow the TRC process to unfold. It was only later that attention turned to the question of prosecutions.”

20 I do want to sort of point out, you know, Mr Calata says at 11.2:

 “Mr Jeffery did not address the aforesaid statement about...”

And this would be my emphasis;

 “...the political decision not to pursue prosecutions.”

I was not speaking about a political decision, the political decision. I was speculating. But basically, look, it is an issue of debate. I do not know how much detail I should go on to. There were some cases in the first five years of our democracy. There was the De Kock trial, which was successful.

There was the Motherwell bombing case, which resulted in convictions, but then got tied up, caught up in issues of amnesty applications and taking those applications on review, so that ultimately those convictions or the accused were all given amnesty or
10 the amnesty, they were refused amnesty by the TRC. That was overturned on review, except for Mr Gideon Nieuwoudt who had passed away, so he could not serve his sentence. So there was that.

Then there was the Malan trial, which was not successful, and there was the Wouter Basson trial. So there were trials going on, but even Motherwell, which was successful, ran into problems over actually getting anyone to serve imprisonment. So the issue was; I think the emphasis was on, you have got this TRC process, let it unfold rather than rushing off to prosecute people. And where those attempts had been made, they were not particularly successful.

20 ADV MILLARD: Because one of the issues that Mr Calata appears to take with you is that you express the view during the interview that the criminal justice system just simply does not have the capacity to investigate every apartheid-era crime; and you deal with that at paragraph 41 of your affidavit. What were you talking about in relation to that?

MR JEFFERY: Look, I think as everybody knows, the National Prosecuting Authority did have its capacity reduced for a variety of reasons after 2009; and it lost a lot of skilled prosecutors. It lost a lot of capacity that it had, and there was a lot of corruption that was emerging from state capture cases or whatever, and state capture by 2017 was something more broadly in the public domain. And so for me, it was a priority that the NPA must focus on those cases. Not to the exclusion of other cases, like post-TRC cases, but a major priority at that period and would still be now is the corruption prosecutions.

10 ADV MILLARD: So he says in the extract of the book, he says your statement that the government has no resources to prosecute these crimes rings hollow. How dare he cite a lack of state resources as an explanation for what is clearly a lack of political will. I find this most insulting.

MR JEFFERY: Ja, well that is, I did not unfortunately pick that up from the interview. But I did not say that the state did not have the capacity to prosecute at all. And in fact, I referred not just to prosecutions, but to inquests and other such bodies. And my issue was that I think it was probably more from an absolutist point of view
20 of it would not be able to look at every TRC case.

Obviously, I mean, I do think it was a problem that there were not enough post-TRC prosecutions and that they sort of did grind to a halt. I mean, the people who applied for amnesty and who did not get it should have been prosecuted. Where there were four people who committed a crime, a human rights violation and three apply for

amnesty and the fourth one does not, the fourth one should have been prosecuted.

So those at the very least should have been prosecuted. I was just more meaning that you cannot go through all of them. There are so many cases there would need to be prioritisation. So I think possibly there was a bit of a misunderstanding between Mr Calata and myself in terms of what I was trying to convey. Maybe the fault is with me and I did not convey it properly. I think that would have to be judged from watching the interview.

10 COMMISSIONER KGOMO: Yes. Mr Jeffery, I have highlighted paragraph 41 which intrigues me; if you could read it, please.

MR JEFFERY: In my affidavit, Commissioner?

COMMISSIONER KGOMO: Yes, yes.

MR JEFFERY: Okay. During the... 41?

COMMISSIONER KGOMO: Yes, 41, please.

MR JEFFERY:

20 “During the discussion, I expressed the view that the criminal justice system did not have the capacity to investigate every apartheid-era crime while simultaneously responding to contemporary demands, such as serious violent crime, corruption and state capture. I was attempting to explain what I understood to be the practical constraints under which the criminal justice system was operating at the time, including the

need to make difficult decisions about the allocation of limited resources. In doing so, I was not suggesting that apartheid-era crimes were unimportant or undeserving of investigation.”

I think that does summarise what I was trying to say just now.

COMMISSIONER KGOMO: Yes, that is why I referred you to this, okay.

ADV MILLARD: Because you also say at paragraph 42 that at the time of the discussion with Mr Calata in 2017, there were
10 prosecutions that were ongoing. Would you like to explain that?

MR JEFFERY: Well, look, there was the Nokuthula Simelane murder matter which had, I think, started and there were a few others. There was the... I cannot remember when it started, the Madonsela case in KwaZulu-Natal, in Durban. But, ja, there were cases. Unfortunately, well, Madonsela completed. Simelane, unfortunately, has got stuck.

ADV MILLARD: And that is why you say at paragraph 42, you say:

20 “That was one of the reasons why I did not regard post-TRC prosecutions as having been abandoned altogether. I was, however, conscious that many families still do not have answers about what happened to their loved ones. The Simelane prosecution showed that prosecutions could still be pursued where there was sufficient evidence and a decision by the

NPA to proceed.”

And then at paragraph 43 of your affidavit, you make reference to discussions about where Mr Calata could obtain additional information if he wished to pursue the matter further, and whether the Department of Justice would be prepared to make the information accessible.

Now, you make it clear in the next paragraph that you did not offer to intervene in any prosecutorial decisions, or that you did not make any additional comments other than what you say in paragraph 10 43. But what was the purpose of that discussion, about where he could obtain additional information?

MR JEFFERY: Well, it was that if you... I mean, there had already been two inquests into the Cradock Four murders. Oh, is it two or three? The current one is the third or the fourth, the third one. Okay, so there had been two previous inquests. Mr Calata was very keen on having FW de Klerk held accountable for his role in the murders of the Cradock Four.

And so the issue was whether you try and get the NPA to prosecute and that would depend on them feeling they have got 20 enough evidence, a reasonable basis on which to secure a conviction. They would need that evidence. Or even if it were on the issue of a reopening of the inquest, that he may want to look at some of the TRC records. Maybe he already had them, so maybe it was a stupid point that I was making, but he did appear to be grateful for me making that point. Maybe he was just being polite. But anyway, that

was the issue.

I remember it is not in the affidavit, but I had even suggested to Mr Calata was that if he wanted to get Mr de Klerk, who was still alive at the time, into a witness box, then he was probably better off pursuing an inquest, because if the state did not prove sufficient evidence against Mr de Klerk in a criminal matter, he could, you know, would probably not even be put to his defence, or could decline to testify. And the problem with the Malan case, Magnus Malan case and the Wouter Basson case was the chain of evidence, the link
10 between what they were doing and what was happening on the ground.

ADV MILLARD: Right, I had like to turn now to the transcript to look at what you actually said. And if you could turn, it is the transcript that is attached to Mr Calata's affidavit; if you could please turn to page 37 of that transcript.

MR JEFFERY: Ja, I am there.

ADV MILLARD: If you could, if you could read into the record what you say in relation to the problem, where you say the problem is the nature of our transition. Could you read that into the record?

20 MR JEFFERY: Sorry, the whole part of my input on that page?

ADV MILLARD: You can read it and I will stop you when I want you to stop.

MR JEFFERY: Okay.

“Look, I think as part of the problem is the nature
of our transition, the negotiated settlement and ja,

that sort of, as I said, part of the price that had to be paid. Prosecuting someone would depend on evidence against that person, so I do not know enough detail of the case in terms of all. I remember was this sort of so-called confusion as to what permanent removal meant, with them all trying to claim that it did not mean what to most of us would seem obvious. And I suppose it depends on who was in a meeting, and I suppose
10 it is an interesting point where a decision is taken. Ja, I do not know, but the problem, the problem is that there is so many. I mean, you know, I was just thinking it is that raid in Mthatha in the Transkei that killed two young boys, I mean, literally boys, which was openly admitted as an operation. I mean, it was the army. I think they went in.”

ADV MILLARD: You can stop. You can stop there.

MR JEFFERY: Okay. So that is what you say in relation to the price
20 that had to be paid.

MR JEFFERY: Yes.

ADV MILLARD: And then if you turn over to page 38, Mr Calata says:

“And it hurts me, because I think that maybe, maybe somebody in that negotiating table, my

father's life was used to negotiate.”

And could you read your response into the record, please?

MR JEFFERY: I said:

“Look, I doubt if, look, I was not part of those negotiations, okay. I was in... so I was in KwaZulu-Natal. I doubt if it would have been specifically, you know, the Cradock Four matter. I imagine in the regime, people would have had a lot of things they were afraid of in terms of being brought to book. You know, it is ironic that one of the things I do not talk about in the 80s was, I think it was 80, 82 or 83, sort of a march in Pietermaritzburg, as in other places on the quota bills, because the then Minister of Education wanted to set quotas to restrict the number of black people going into universities. It was sort of the English liberal universities. So, you know, I do not know what the quotas were, but there was sufficient of a protest from those universities. Who was the Minister of Education who wanted to put a cap effectively on black students at university? FW de Klerk.”

ADV MILLARD: You can stop there. And then at page 45, if you could read into the record what you say at the bottom. Mr Calata says:

“I hear you, but how do we then explain what seems to us as a lack of willingness from, if I can put it crudely, our government to go after and prosecute?”

And then he says:

“Because if there was willingness, then maybe something could have been done in the 90s, then we would not be sitting here.”

And you respond, if you could read that into the record, please.

10 MR JEFFERY: So that is the second part on page 45.

ADV MILLARD: Yes.

MR JEFFERY: Okay.

ADV MILLARD: What your response is.

MR JEFFERY: Okay. This is the one that he referred to in his supplementary affidavit.

ADV MILLARD: Yes.

MR JEFFERY:

20 “I think there was a political, in my sense, there was a political decision in the first 10 years of not going for, having the TRC process, not going for prosecutions. So the KwaMakhutha Massacre case, that is the Malan one, would have been an aberration, something unusual; and I think there is some evidence in that regard. There was this policy that was challenging, challenged, related to

prosecutions. That was all then. The issue is then what happens now; and I think that those are decisions by the NPA. You have seen decisions on the Simelane matter, the disappearance, let us put it that way, to have a prosecution. You have seen a decision on the Timol, on Timol in terms of an inquest. With the Simelane matter there was litigation, as I am sure you know. I am not sure to what extent there was with the Timol matter.”

10 ADV MILLARD: Now, when you are talking about, when you say ‘my sense is that there was a political decision in the first 10 years of not going for, having the TRC process’, what do you mean?

MR JEFFERY: I think what I was meaning was, and I have explained it earlier and it is in my affidavit, was that because you were having, the country was having this TRC process in which perpetrators of human rights violations could apply for amnesty and get amnesty if they made full disclosures, that it was a bit difficult to run a prosecution process at the same time as that amnesty process.

It did happen in the case of the cases that I have mentioned.

20 And in the case of the successful, well, it did not seem to have affected the De Kock case that much, but I think the TRC process and the review applications resulted in a person who was found guilty of murder, not serving his sentence, because he died before that decision was taken to overturn the amnesty or the decision to grant him amnesty.

ADV MILLARD: Mr Jeffery, if it was suggested ...[intervenes]

MR JEFFERY: Or is it the other way around? Sorry.

ADV MILLARD: If it was suggested to you that what you were saying here was that there was a political decision not to prosecute in the first 10 years after democracy, what would your response be?

MR JEFFERY: Well, no, that is not what I meant. Well, political maybe it is more the broader issue of the broader qualification of political. That was; was it appropriate to be running criminal prosecutions at the same time as TRC amnesty applications were, for
10 those same crimes were being taken. And that is what I think I meant by a political decision. What I did not mean; that the ANC or the ANC government had taken any decision that there should not be prosecutions.

ADV MILLARD: Thank you. And the last part of the transcript that I want to refer you to is at page 48; if you could turn there. And I would like you to read into the record what your response was to Mr Calata's question when he says:

“As someone who sits in government, is this
something that you would like to see resolved as
20 Deputy Minister of Justice in the country?”

And he is referring there to decisions to prosecute. I would like you to read your response.

MR JEFFERY: I said:

“I wish we could investigate all these cases. I
wish you know, but that is an ideal world. And if

what I would say is there is enough evidence for a different conclusion, then sure that should be followed. That should be given priority.”

Can I explain?

ADV MILLARD: Yes.

MR JEFFERY: What I was trying to say was that if there is enough evidence, there should be prosecutions.

ADV MILLARD: Thank you. Mr Jeffery, I do not have any more questions for you.

10 CHAIRPERSON: Thank you, Ms Millard. Mr Gwala?

ADV GWALA: Thank you, Chairperson. Good morning, Deputy Minister. I just have two ...[intervenes]

MR JEFFERY: Mr Gwala, can you speak up or put the mic closer? My ears are also a bit blocked with my sinus things.

ADV GWALA: I will do my best.

MR JEFFERY: That is better, thanks, ja.

ADV GWALA: Thank you. I heard you in your testimony, you referred to 2009 when you said the budget of the NPA was reduced. Did I get that correctly?

20 MR JEFFERY: No, I was not meaning the budget. I was more meaning... Well, I guess it was initially problems at the top. The removal of Vusi Pikoli as National Director, which started in, I think, 2007. Then Menzi Simelane was brought in and that got overturned. So there were all the issues of more linked, I guess, to state capture.

So I was not specifically referring to budget cuts of the NPA

and I do not actually know if there were any budget cuts. I mean, there were overall budget cuts from government in the Zuma period, in the period when I was in the latter part of the Zuma administration when I was Deputy Minister of Justice, but that was sort of across the board. But I cannot really, I was not referring to budget cuts for the NPA specifically.

ADV GWALA: No, I get you.

MR JEFFERY: But, sorry, it also was issues of, you know, the Glynnis Breytenbach experience, or what she experienced, was very
10 wrong and that she effectively got hounded out of the National Prosecuting Authority for doing her job in trying to follow up corruption or non-prosecutions. So those are the kinds of things that undermined the prosecuting authority and people with skills leaving.

ADV GWALA: All right. The people leaving, that was going to be my next question. So when you referred to people leaving, you referred to people such as Vusi Pikoli, Menzi Simelane and Breytenbach, Ms Breytenbach.

MR JEFFERY: Those would be some of the more high-profile ones. Obviously, advocate or Mr Simelane was found, was removed by the
20 Court, found not to be...

ADV GWALA: No, no, no, no, Deputy Minister, I understand that. I do not want us to explain it. I just wanted to understand when you were talking of people leaving, because I got an impression that a number of prosecutors were leaving the NPA. So you are actually talking about those high-profile persons.

MR JEFFERY: I am talking about high-profile, but without being able to name names. I suspect that, as with general attrition, that there would have been skilled prosecutors leaving. And because there seemed to be a lot more problems in the NPA, I am sure that made some prosecutors, and I am speculating, feel that it was not such a good place to work, but that is just speculation on my part.

ADV GWALA: Okay. Thank you, Chairperson.

CHAIRPERSON: Thank you, Mr Gwala. Ms Ntshizana?

ADV NTSHIZANA: Thank you, Chair, no questions.

10 CHAIRPERSON: Ms Kessery?

COMMISSIONER KGOMO: Switch off your mics, Mr Gwala, please.

ADV KESSERY: Thank you, Chair, no questions.

CHAIRPERSON: Where is your mic?

ADV KESSERY: Apologies, Chair, it is on that side.

CHAIRPERSON: Yes.

ADV KESSERY: Apologies.

CHAIRPERSON: But you said no questions.

ADV KESSERY: No questions, Chair.

CHAIRPERSON: Yes. Do we have anyone online before I get to Mr
20 Varney? Mr Varney?

ADV VARNEY: Thank you, Chair. We do have some follow-up questions. Mr Jeffery, firstly, thanks for coming up from Cape Town to be with us today. And also, thanks for coming up, notwithstanding your condition, which looks quite serious, and I hope we do not go down with whatever you have.

MR JEFFERY: Well, that is why I have got a mask. If I am going to cough, then, ja.

ADV VARNEY: Thank you. I should disclose to the commissioners that we have known each other for several years. I think our paths first crossed at Natal University back in the 1980s. And when you became a young attorney working in the political violence, and I was at Legal Resources Centre, we actually did work on some matters, for example, the Bruntville Massacre and others with the Goldstone Commission. And I should also disclose that we have had a few
10 meetings over the years while you were Deputy Minister, and I always found your approach in those meetings to be constructive and cooperative.

I should also point out that we make no allegations that you have interfered in these cases in any way. Having said that, I do wish to pose some questions to you arising from your statement, your transcript. That is the transcript of the meeting with Calata, and then a few developments that arose while you were on the Portfolio Committee of Justice, and then subsequently as Deputy Minister. I will try not to keep you too long.

20 Let us turn to your statement; and from paragraph 34, you deal with references to the negotiated settlement and the TRC process, and you offer an explanation as to what you meant.

COMMISSIONER GABRIEL: Which paragraph are you referring to, Mr Varney?

ADV VARNEY: I am not going to refer to any particular paragraph,

but it is from paragraph 34 onwards.

COMMISSIONER GABRIEL: Thank you.

ADV VARNEY: Under the title: "References to the negotiated settlement and the TRC process". And then Ms Millard referred you to page 45 of the transcript at the bottom where you make mention of a political decision not to go for prosecutions for the first 10 years having the TRC process at the KwaMakhutha Massacre case would have been an aberration. I suppose from the perspective of Mr Calata, he probably had in mind that during the 1990s there were
10 discussions between the ANC and the former generals, both police and army, to look at ways and means of avoiding prosecutions of apartheid era crimes. Were you aware of those discussions?

MR JEFFERY: No, I was not aware of those discussions. I was aware of the political negotiations that resulted in the interim constitution, which were on a political party and ANC, I mean and National Party government basis, not involving the generals from the police or the army. I know that there was, I think I had heard about some negotiations with getting General Constand Viljoen into the, and the... what were they called then, the... well, it later became the
20 Freedom Front, but there was some other ...[intervenes]

ADV VARNEY: It was a confederation.

MR JEFFERY: Getting them in, but that was the only engagement with generals that I was aware of and that was partially in the public domain and not about amnesty.

ADV VARNEY: Yes. We will not go into that just so far to say some

of the proposals made in those discussions emerged in one form or another in subsequent years, such as the amendments to the prosecution policy and the political pardons dispensation. In that paragraph 45, you make reference to the KwaMakhutha Massacre case that would have been an aberration and something unusual and you mentioned, and I think there has been some evidence in that regard. I know I am asking you to think back over many years, but can you give us a sense of what that evidence might have been?

MR JEFFERY: So which, which paragraph?

10 ADV VARNEY: So it is on page 45 of the transcript.

MR JEFFERY: Oh, the transcript.

ADV VARNEY: Right at the bottom, it is in that same passage, where you say:

“I think there was a political, my sense is there was a political decision.”

And then in the next sentence:

“So the KwaMakhutha Massacre case would have been an aberration, something unusual, and I think there has been some evidence in that regard.”

20

MR JEFFERY: Ja, I had to, on re-listening or re-watching the interview, try and work out what I was meaning in this particular point. I noticed that Mr Calata did not pick up on it in his book or elsewhere, but so I am, you know, I am not entirely sure what I was meaning, but I know what I was not meaning was that there was a formal political

decision by the ANC not to prosecute.

I think the issue was, as I have said earlier, is; it did seem, particularly when going back to do a bit of research on those cases, those main cases that I mentioned, that I do not think it was the best thing to run criminal prosecutions at the same time as the TRC. I do think, though, having said that, that my own personal feeling, speculation is that the De Kock trial, which was successful, and even the Motherwell trial, which was successful in securing a conviction, did probably put pressure on apartheid operatives to come forward, because the threat of a prosecution hung over their heads. The Malan trial did exactly the opposite because it failed.

So, I am saying that, you know, Malan was very high profile. I mean, you talk about discussions with army generals, which I have said I do not know anything about. I am surprised that there was not, if that was happening, there was not an effort to stop the trial of the former Head of the South African Defence Force for murder at KwaMakhutha; that that trial proceeded.

But ja, so I think that is what I was talking about, that there was not a big push for prosecutions. You did speak about, and I do not have knowledge of this, as I have said. So I am going on your words that the amendments to prosecutions, to prosecution policy and the political pardon dispensation. I do not know if you mean the special dispensation, which I was involved in, which was not linked to post-TRC issues.

I was involved because it... in KwaZulu-Natal there was a

view that the conflict between the ANC and Inkatha did not end on 27 April 1994. It went on for a number of years, I think, into the first local government elections. You also had the whole issue of the Richmond conflict, and that Sifiso Nkabinde, who was the secretary of the Natal Midlands region in KZN, I was his deputy, was exposed as an apartheid agent and expelled, went and joined the UDM and then embarked on a violent campaign against ANC members. And there was a peace process in Richmond. Some people were convicted, and there was a push from there to say look, cannot there be a
10 special dispensation for pardons?

But the TRC cases were specifically included, so one of the criteria was if you had applied for amnesty in the TRC and you got refused it, you could not apply under this process, but it was more meant to be dealing with the post-94 cases, also that Inkatha had not really encouraged their members to apply for amnesty. So, a lot of their members got left out, but the whole purpose was to not duplicate what happened in the TRC.

So I am not sure how, what, I do not know what was said in these meetings, if they happened, but from my own knowledge of
20 involvement in the political pardon process dispensation, the special dispensation, that is what it was called, it was not linked to the TRC; and it also was for people who had been found guilty, not for people who had not been charged. So I think the idea was if they had been found guilty, the evidence which caused that guilty finding would have been aired before the court.

On the amendment to the prosecution policy, I mean, it is again, it is speculation. It was before my time, but there is a tension between, and it was right there from the start of the TRC, between truth and justice; and that to get justice, you needed evidence. You needed to know, to have the evidence to prove guilt, and to prove that beyond reasonable doubt. And that is why I am also a little bit cynical about this issue of justice is not as easy as it seems.

There is the adage of it is better for nine innocent people, sorry, nine guilty people to go free than for one innocent person to be
10 convicted. I do not know how accurate that is when it comes to the facts, but, you know, the presumption of innocence favours the accused; guilt beyond reasonable doubt, not guilty on a balance of probabilities. So that makes convictions in any case more difficult than in a civil case.

Now, one of the problems with the prosecution policy being overturned was that it did provide for some kind of... because, well, for me, a crucial area and probably more important than prosecutions, was for people to know what happened and the families of victims to know what happened and where the bodies, the remains
20 are.

ADV VARNEY: Mr Jeffery, sorry to interrupt you. You have gone much further than I anticipated.

MR JEFFERY: Well, you spoke about the prosecution policy, and I just thought ...[intervenes]

ADV VARNEY: Yes, perhaps we ...[intervenes]

MR JEFFERY: So you are inferring that that came from this meeting that I do not know anything about, but I am just saying, and it is also part of the tension possibly between myself and Mr Calata, where what happened also with the lack of prosecutions was that information about where remains were, what happened to people, dried up, because why should perpetrators come forward, to confess if they are just going to get prosecuted.

ADV VARNEY: Yes, thank you. I want to return to the passage on page 45, but before I do, I just want to offer a small correction. The
10 political pardons process did include the TRC period, but it was extended to 1999, although I do agree with you that it was primarily aimed at those who had not applied for amnesty previously for various reasons.

MR JEFFERY: Ja, maybe just to ensure we are on the same page, I do not disagree with that, and it was not what I was trying to say. It was the period from... I cannot remember when the starting period was, but there was a specific provision, and correct me if my memory is wrong, that persons who had applied for amnesty under the TRC, who had that amnesty refused, could not apply under this process.

20 ADV VARNEY: Yes, we are in agreement on that.

MR JEFFERY: Okay.

ADV VARNEY: So if we go back to that passage, and I should disclose that in the KwaMakhutha case, I think you will be aware, but perhaps the commissioners might not; I served on the Investigation Task Board, which was appointed by the then Minister of Police to

oversee the investigations of the Investigation Task Unit, which carried out the investigations in that matter and others.

I should also say to the best of my knowledge, there was no political opposition to that case, at least from the government. There was opposition from other quarters, of course. And on that score, you did mention a few cases, helpfully. You mentioned De Kock, you mentioned Motherwell that went ahead in those days, and I can offer a few more.

For example, Dirk Coetzee and a few others were convicted
10 for the murder of Griffiths Mxenge in 1997. Of course, they did receive amnesty shortly thereafter. In 98, Freddie Barnard of the Civil Cooperation Bureau, the CCB, he was convicted for the murder of David Webster, and he did serve time in prison. And there were, in fact, a number of convictions arising from the violence in the Midlands in the late 90s, probably more than 30 convictions. So you would agree that during the 90s, prosecutions did proceed to some degree?

MR JEFFERY: Ja.

ADV VARNEY: So if we could go back to your statement, if I can refer you to paragraph 41. And here you were talking about the fact
20 that the criminal justice system did not have the capacity to investigate every apartheid-era crime while simultaneously responding to contemporary demands, such as violent crime, corruption and state capture. And of course, you know, these were challenges; and I should say after reading the transcript, and I have not listened. Maybe I will do that in due course. I will watch the

video, but I did find it a very compelling discussion that you and Mr Calata had in looking at these challenges. Although you conclude by saying:

“I was not suggesting that apartheid-era crimes were unimportant or undeserving of investigation.”

Although from the transcript, it does seem as if you were pointing to this tension between competing demands, you know, overwhelming current problems that the criminal justice system had to address, as
10 well as these older historical cases. And I think Mr Calata got the impression that you were saying that oftentimes the historical cases would have to give way to current pressing demands.

MR JEFFERY: Can you refer me to that section of the transcript?

ADV VARNEY: We will do that. I will get my colleagues to do that. In the meantime, we will move on. Let us move to paragraph 42. Here you point to the fact that in your discussion with Mr Calata, you mentioned that there was the prosecution of four Security Branch members in connection with the abduction, torture and murder of Nokuthula Simelane. And that is why you said that was one of the
20 reasons why I did not regard post-TRC prosecutions as having been abandoned altogether. When you say “having been abandoned altogether”, were you suggesting that to some extent they were abandoned?

MR JEFFERY: I think there was, I mean these are my impressions, not on any, definitely not on the basis of any decision, but there was

a lull. I think part of it was confusion on the part of the NPA, which is my speculation, but with the overturning of that policy and what to do. But you yourself approached me when I was deputy minister, when I just got appointed about the Nokuthula Simelane matter and why was that not proceeding. I think it was, and you can correct me if I am wrong, I think it was Shaun Abrahams who took the decision to institute prosecution. But I think the issue is, and I would agree with you for my concern was why did it take so long, you know? That was a problem.

10 And I would sympathise with Mr Calata in wanting to reopen the inquest or have prosecutions for the Cradock Four murders. Why did that need to take so long? But obviously they needed to have the sufficient evidence. And when you raised the issue with me, and I think I have explained in my statement, affidavit, that, you know, I believe the separation between the prosecution and the executive, it is very important that there is a separation.

 So when you took up your complaint that no decision was being taken in the Nokuthula Simelane murder matter, I did not go to the then... I mean it was Mxolisi Nxasana who was NDPP when I
20 came in as Deputy Minister. So I do not know to what extent I went to him or whether it was after, in Shaun Abrahams' time, but I did not go and say what are the reasons?

 My issue was: look, this is taking a long time. Please can you look? It is taking a decision, applying your mind and taking a decision. But I did not want the detail of this is the evidence we have

got. This is where we may have a problem. This is why we are taking long. I felt that would be overstepping. So, you know, I think that I would fully agree those decisions were taking too long.

ADV VARNEY: Thank you. The bringing of that prosecution, do you recall that the family, Thembi Nkadimeng, as she was known then, today Thembi Simelane, brought a case in 2015 to compel the NPA either to make a decision on prosecution or to refer to an inquest. Would you accept that it was that litigation that prompted the ultimate decision to proceed with the case in 2016?

10 MR JEFFERY: Well, I do not know the basis on which they finally took the decision, but I am sure it is very likely that the threat of... well not the threat, it was there, the litigation put pressure on the NPA or the NDPP to take a decision.

ADV VARNEY: So the Simelane family, as you would understand, I think you might have met with them over the years, they were of course concerned about the long delay in initiating that case, especially since they knew that an investigator by the name of Andrew Leask, who has appeared before this Commission, at that time was with the DSO in the late 90s. He mentioned that the docket
20 was largely ready to proceed in the late 1990s, but it was one of the cases; once it was transferred back to, well not back to, but transferred to the PCLU that did not get attention because of a lack of investigators. Did you get to hear about the struggle of the PCLU through the 2000s in getting investigators?

MR JEFFERY: No, I was not aware of that at the time. I have only

become subsequently aware of it.

ADV VARNEY: Because as it turned out, an investigating officer was eventually only appointed after the World Cup in 2010 in that case. I am just trying to read my handwriting here. So let us move to paragraph 43, and this is where you and Mr Calata had a discussion around getting information for the Cradock Four case, and you suggested that he might approach the history archives. Was that the South African history archives?

MR JEFFERY: Ja, that is right.

- 10 ADV VARNEY: And then you made it clear that any decision by the NDPP to reopen investigations regarding Cradock Four would likely depend on the emergence of material information that had not been previously considered during the earlier inquests.

And as you pointed out, there had already been two inquests, one in the 80s and then the Zietsman Inquest in the early 90s, and that then was followed by the Truth and Reconciliation Commission at which several of the perpetrators applied for amnesty. I cannot remember the exact figure, but I think seven or eight applied for amnesty, and only two were granted amnesty. So the majority were
20 refused.

So from Mr Calata's perspective, there were significant developments following the last inquest. So would you understand from his perspective, given the refusals of most of the applicants for amnesty, that there really should have been an investigation based on the information that served before the TRC? You would have to

speaking into the mic.

MR JEFFERY: Ja, no, I agree with that. I think that where I was making the suggestion about the South African history archives was that that is where most of the TRC information went eventually. I think it started with the Department of Justice. There were some problems when I came into office around accessibility and people finding it difficult to get access, but I think those were resolved; and my understanding, I speak under correction, was that the information was referred to the South African history archives.

10 But the point I was making was, so I was, you know, I guess trying to look at ways of giving support. Maybe he had all the TRC information, but the point is that the decision as to whether to reopen another inquest or to prosecute anybody would depend on the prosecuting authority, and they would have to take that on the basis of evidence.

 I am not sure in terms of the... and I know there are, I think you have one particular view relating to the admissibility of evidence at the Amnesty Committee in terms of leading that in a criminal matter, but, you know, there would be issues like that and I do not
20 want to engage on that. I do not know. I do not have a view on it. So I do not, ja, I cannot engage you on that.

ADV VARNEY: Yes, and you do mention that in the discussion with Mr Calata, although you said maybe it would not be admissible, I think is the view expressed. Although while we are on that, I am not going to tackle you on the law on the matter, but Adv Matthew

Chaskalson and myself in May of 22 submitted an opinion to the NPA in which we expressed the view that TRC evidence would be admissible, just applying the normal rules of criminal procedure. We never got a response from the NPA, notwithstanding follow-up. I cannot recall if that opinion was forwarded to you and the minister.

MR JEFFERY: I do not recall you forwarding that or having seen that opinion.

ADV VARNEY: Thank you. All right, let us then turn to a few aspects arising from the transcript; and if I can refer you to page 29 of
10 the transcript. And again here, this is also referring to accessing documents and materials. And Mr Calata or perhaps it is Mr Calata's colleague, because it says Ms Calata.

MR JEFFERY: Well, Ms Calata is Ms Maria Della Togna.

ADV VARNEY: Della Togna, yes.

MR JEFFERY: Who was present in the interview and participated in it. And I do not know why it comes out in the transcript that she is Ms Calata.

ADV VARNEY: Yes, that is an unfortunate error. Anyway, she says:

20 "You know, would the Department of Justice be open to sharing whatever evidence, opening the files?"

And you reply:

"Sure, sure. Okay, I think we have got most of the material. The material does need to be made accessible."

And then she says:

“Including classified documents that were kept off
the record.”

And you say “sure” and then you talk about a statute of limitations in relation to crimes, like murder. Well, perhaps you might have been referring to a period of time after which documents are released.

MR JEFFERY: Well, she spoke about a statute of... it is cut. I thought, well, you can see from my answer that I thought about whether there was effectively prescription on certain criminal cases,
10 which there is, and that is why I said but not murder. She may have, looking back at this, been referring to documents being classified for particular periods.

And I know there were problems of documents being classified, and I think it is, I think; has not come up before this Commission in terms of you are still not being able to get some of the documents? But, you know, I would have thought those things should be pursued. Ja, I mean, as, ja, our classification legislation, I think it is the Protection of Information Act from the PW Botha era period. It is still on our statute books. Probably most is in conflict
20 with the Constitution. The Protection of State Information Bill did not make it through Parliament.

ADV VARNEY: Yes, I am aware of that. There has been an interesting development, though, on the question of... on the question of classified documents as they relate to the Cradock Four matter. Mr Calata’s attorneys did approach the Department of Defence about

five years ago, asking for the release of certain classified documents. Some were released, but many were not. And then matters came to a head earlier this year.

Just to bring you up to speed, it was an application to have those documents released before the Inquest Court. I am happy to advise; the Inquest Court ordered the release of all those documents, notwithstanding their classification. So we would certainly agree that it is high time that these old classified documents be made available. Interestingly, the Department of Defence claimed National Security
10 for not releasing those documents, National Security from the 1980s, which Judge Beshe disagreed with.

And then if we can turn to; I do have a number of flags, but since you have already dealt with them in-chief, I am going to skip as many as I can. Yes, just a small one on page 45; we have already dealt with that part in passage. And this is where Mr Calata is saying, you know, if there was a willingness, then maybe something could have been done as far back as the 1990s. And we have already discussed that exchange around a political decision. You have explained yourself there.

20 At the bottom of the page, you say you have seen decisions on the Simelane matter to have a prosecution. You have seen a decision on Timol in terms of an inquest. With the Simelane matter, there was litigation, as I am sure you know. I am not sure to what extent there was with the Timol matter. So there was not litigation to force a decision on the Timol matter, but the attorneys for the Timol

family had to place the NPA on terms. They sent three letters of demand to get that inquest happening. Were you aware of that?

MR JEFFERY: Yes, I think. Were you not involved in bringing this to my attention? I mean, remember this transcript is from 2017. So I think I had the inquest already made a judgement, a finding by 2017. But anyway, regardless, I mean, my knowledge as reflected in that paragraph reflects at that time.

I know there was a finding by the Inquest Court for the prosecution of, I think it was both Mr Rodrigues and I think another
10 policeman. I seem to recall, I may be wrong, that you actually complained to me about why they are taking so long to prosecute. And I did then take that up with the then NDPP to say but as I have said, you know, I am not expecting reasons and detail, but why are you taking so long and can you please finalise this matter?

A decision has been... a judgement has been given on the basis that there should be a prosecution on the basis of the evidence that was put before the inquest. Surely it is not taking, does not need too much time to evaluate whether you can prosecute or not. So I am aware. I thought you had brought it up to my attention. I took it up
20 with the NDPP. And then eventually, again, it may have been because of the letters of demand, whatever, Mr Rodrigues was prosecuted. I think they had claimed to, if I am correct, to prosecute the other person.

ADV VARNEY: Yes, that is correct. And thanks again for the efforts you made on behalf of the family following our request. So Rodrigues

was prosecuted for murder; and then two other Security Branch officers by the name of Neville Els and Seth Sons. Judge Mothle had made a recommendation that they be further investigated for possible prosecution on grounds of perjury. I am not going to go into that story, but the bottom line is that it took a few years to make a decision. And once the review happened and it was overturned, it was too late for various reasons to bring those cases.

But turning to Rodrigues, you will also recall that Mr Rodrigues brought an application for permanent stay of prosecution, 10 largely because of the long delay in bringing a prosecution against him. And it was pointed out in... we intervened in that matter. And I disclose again, I acted on behalf of the Timol family in the Rodrigues case and we attempted to explain the delay. Obviously what happened under apartheid, one could not expect police to investigate themselves. But in the post-apartheid era, we pointed to the obstructions that had taken place. And we put up the affidavits of Adv Vusi Pikoli as well as ...[intervenes]

CHAIRPERSON: Mr Varney, what is the clarificatory question?

ADV VARNEY: I just want to put Mr Jeffery into the position where 20 he can answer the question.

CHAIRPERSON: Yes. Yes. I think you are now giving evidence instead of asking a question.

ADV VARNEY: Yes. I will just assume that Mr Jeffery is familiar with that detail and I will just put the question.

CHAIRPERSON: Yes. You are clarifying his evidence. So put the

question.

ADV VARNEY: Yes. So in that litigation, the NPA did not dispute that there had been interference that blocked and delayed these cases, and the Minister of Justice was also a respondent and there was also no comeback from the minister. So certainly at that time, both the NPA and the Minister of Justice accepted that interference, and I should state that this interference did not take place during your tenure as Deputy Minister, but previously, in previous years had taken place. Do you recollect that?

10 MR JEFFERY: No, I do not.

ADV LEKOANE: Sorry, Chair. I do not think that that is the correct evidence. At least we do not have evidence regarding the minister accepting that there was political interference, just to put that on record.

ADV VARNEY: Ja, I did not say it was the minister. I said the NPA accepted that there is an affidavit to that effect, but the minister did not respond or reply; and typically in litigation, if there is no response, then there is effective consent.

CHAIRPERSON: Yes.

20 ADV VARNEY: Ja.

CHAIRPERSON: There has been a response to that question. The witness is not aware.

ADV VARNEY: Yes, I was just clarifying to my learned friend. So you are saying that had not been brought to your attention at that time?

MR JEFFERY: No, but it is possible that it could have. I mean, look, the way government, well, as I had explained in my affidavit, what my areas of responsibility were, but that I then did have some involvement with the NPA in terms of most, if not almost all, memoranda to the minister would come through the deputy minister. But you said, I think that... so I do not, there may have been a memorandum on this case, but I do not recall it. And it may have come through me, but I do not recall it.

ADV VARNEY: Yes, but given that the minister did not dispute the
10 allegations of Advs Pikoli and Ackermann and the NPA accepted it, certainly at that time. But I would be right in saying that the ministry did not have any particular reason to dispute what the NPA was saying.

MR JEFFERY: Well, you are talking about the ministry. I was in the ministry at that time, I think, and I did not have any, I do not recall having any knowledge of this case. You know, so I just want to put that on record. Maybe you are right, but I cannot, but you cannot speak for me on that and I do not recall having any knowledge of that.

ADV VARNEY: Let us turn to page 47 of the transcript. And here
20 you and Mr Calata were discussing various cases, the Neil Aggett matter, Ashley Kriel. And you point out that:

“The question really is how much from a societal perspective, how many resources do we need to put into those matters versus current matters?”

Mr Calata says:

“But should that even be a consideration?”

And then you point out:

“Yes, because we have got to ensure from a justice perspective with diminishing budgets, you have got to ensure that, well, the ideal is if crimes are committed now, people will be held to account for them.”

I think perhaps Mr Calata took the view that you were suggesting that that if crimes were committed now, that people have to be held to
10 account and that they should be given some priority.

MR JEFFERY: And I think even from the transcript, I am not arguing for one or the other. I am just saying that I think Mr Calata, maybe I perceived him as wanting a lot of considerable resources towards the post-TRC cases. And I was sort of saying I think that, yes, it is not saying they should not take place, but there is also pressure for prosecutions on the current cases. I think it is problematic that there have been so few prosecutions for state corruption. You know, the public were particularly at that stage and still now wanting to see people in orange overalls. So I am just saying there is that factor.
20 But it is definitely not a one or another. I was saying there are competing demands.

On the inquests, you know, so a state capture, successful state capture prosecution maybe would make people think twice about corruption, getting involved in corruption. So that is an important thing, whereas that is different to a conviction in a murder

that happened some time ago, 30 years ago.

ADV VARNEY: Yes. That is the reference. You asked for a reference, so that is ...[intervenes]

MR JEFFERY: Okay, but you are saying, what did you say that you thought you ...[intervenes]

ADV VARNEY: Well, I am putting ...[intervenes]

MR JEFFERY: That I was downplaying. I do not think I was downplaying. I think, well, just maybe repeat what you had asked me earlier ...[intervenes]

10 ADV VARNEY: I did not use the word 'downplaying', but there is a suggestion where you say if the crimes are committed now, people will be held to account for them. We have got to ensure that if crimes are committed now, people will be held to account.

MR JEFFERY: Ja, I think there I was meaning more the corruption cases and the fact that the public expected and still expect prosecutions for corruption. And it was important that there were convictions, because hopefully they would have a deterrent effect. That is a different reason for a conviction for the murder of Reggie Hadebe, which happened 30-plus years ago, 30, 35, 34 years ago, I
20 think, but... and for me, and I cannot speak for the Hadebe family, but I mean, what is important, what I really would like to know is who did it and why did they do it? And that is why I am talking about the issue of truth versus conviction.

ADV VARNEY: Yes, understandably so. You also speak on the same page of the need to exercise a balancing act. In some cases,

since you raised inquests, I think somewhere in the transcript you point out that if there is not going to be a prosecution, then under law there has to be an inquest. So in those circumstances, there is no real balancing act, because the law requires an inquest to follow in those circumstances.

MR JEFFERY: Yes, but you can have an informal, an informal inquest, which is just done on the papers, so you do not have to have a formal one.

ADV VARNEY: Yes, but an inquest nonetheless.

10 MR JEFFERY: Ja.

ADV VARNEY: Although, sadly in some cases, for example, the Highgate Hotel Massacre, there was no prosecution and no inquest, and there was one that was concluded last year, but it took more than 30 years to take place.

MR JEFFERY: I am speculating, but I would have thought an informal inquest, which would be a magistrate looking at the docket, at the papers, would be very easy to take place. So I am surprised that that did not happen, because with most of the unsolved cases that there were not prosecutions, there would have been informal
20 inquests, and I thought they just took place in a magistrate's office.

ADV VARNEY: Yes, that question was raised in that inquest. I did represent the families. There was no answer to that question.

MR JEFFERY: Okay, ja. Maybe there was no record.

ADV VARNEY: I am not going to get into the Highgate Hotel ...[intervenes]

MR JEFFERY: Okay, sorry, sorry, yes.

ADV VARNEY: We do not have time. If we can turn to the next page, 48, and here Mr Calata's colleague, sorry, whose name escapes me, but...

MR JEFFERY: Marina Della Togna.

ADV VARNEY: Yes, thank you. So she asked you ...[intervenes]

MR JEFFERY: Martina Della Togna, sorry.

ADV VARNEY: Right. I have never met her. I do not know who she is. So she says at the top:

10 “So I mean, can we approach the NDPP, ask
 them for full information on what investigations
 have happened?”

You indicate:

 “Ja, well.”

And she says:

 “Whether they are not pursuing this case for
 now.”

And you say:

20 “I guess you could. I mean, there would be a
 docket. Where that docket is, I do not know. You
 need to get the TRC material.”

Did it ever come to your attention that the Cradock Four docket had actually gone missing in the NPA in 2013, and then had to be reconstructed in 2019?

MR JEFFERY: No, I did not. I was not aware. I saw also that the

Simelane docket also went missing.

ADV VARNEY: Unfortunately, yes.

MR JEFFERY: So I also was only aware more recently. I mean, when I read, where I was preparing for here.

ADV VARNEY: If I can just turn to your role on the Parliament's Justice and Constitutional Development Portfolio Committee. There was a meeting that took place in April of 2010 and you actually asked a question from NDPP, Menzi Simelane; and I will just quote it.

10 “Would there still be a focus on crimes post the
TRC where individuals did not apply for amnesty
or did not receive it?”

And ...[intervenes]

ADV LEKOANE: I am sorry. I am sorry. Can e please get a reference?

ADV VARNEY: Yes, of course. That is in Calata Group, bundle one, page 610. And Mr Simelane points out that currently they were not prosecuting any matters, but that there were cases with the PCLU. Since you had put the question, it must have been on your mind at that stage. I am sorry, Mr Jeffery, that particular reference is not in
20 your bundle, but I can assure you that you did put the question. Do you recall putting the question?

MR JEFFERY: I do not recall putting the question, but if you say I put the question and it is recorded in some other record, then it is probably correct.

ADV VARNEY: Right. So when Adv Simelane, Menzi Simelane

says that currently they are not prosecuting any cases, did it raise any alarm with you and the committee?

MR JEFFERY: Well, that is why I would have liked to have seen the transcript of the committee to see what my response was to him, if any. The NPA would; I mean, I was a member of the Justice Committee from coming into the National Assembly in 1999 until my appointment as Deputy Minister in 2013. I was at the same time the parliamentary counsellor to the deputy president and then the president and then the deputy president again. So I did have other
10 responsibilities, but I was, became more active particularly after, I think it was 2008.

The issues in the committee, I mean, the NPA would come and do their annual account. The issues relating to the TRC would have been prosecutions, but it also would have been the fact that the recommendations that the National Assembly Parliament had approved arising out of the TRC had not been fully implemented; regulations on education for victims, their children, their grandchildren, higher education, basic education, housing, health, community, rehabilitations, all those.

20 So there were a number of issues relating to the TRC that we were concerned about. But, I think I am sure that I would have been concerned about the post-TRC prosecutions, as would other members have been, but without having seen the context of the discussion and whether I said anything afterwards, I would have liked to have, I would be, that would probably jog my memory more.

ADV VARNEY: Yes, certainly if it was reflected, we would have put it up. While on the Justice Portfolio Committee, there were no further references to the TRC cases. There might have been talk about reparations and the like, but there were no further references to the TRC cases between 2011 and 2017 in that particular committee.

MR JEFFERY: Well, I was not a member of that committee from July 2013, so it would only be the first stage, I mean the first years that you spoke about; and I would have to, I do not know, maybe there could have been that I have forgotten or was not there. One
10 would need to check all the references. I do not know if, I think the Commission did approach the Parliament and the committee chairs of the relevant committees. Ja, so I do not know.

ADV VARNEY: If we can turn to the judgement of Judge Mothle in the Timol matter.

CHAIRPERSON: Mr Varney?

ADV VARNEY: Yes.

CHAIRPERSON: I have been very patient with you. You are supposed to put clarificatory questions pursuant to the evidence that has been led before this Commission today. Any other issue that
20 needs to be canvassed has to be canvassed through cross-examination. So, help me understand where you are and where you intend to go now.

ADV VARNEY: Yes, no, we certainly do not want to take up the time and resources of calling Mr Jeffery back for cross-examination. We ...[intervenes]

CHAIRPERSON: No, but I cannot allow you to cross-examine him on the basis of putting clarificatory questions. The question of having to get him back for cross-examination is a different issue.

ADV VARNEY: No, indeed so.

CHAIRPERSON: And if it has to be done, it must be so.

ADV VARNEY: No, indeed, Chairperson. I did not believe that I was cross-examining. These are all questions arising from his statement, the transcript, his evidence-in-chief. So, for example, he has made several references to the Timol matter. So, I just wanted to put an
10 aspect of the judgement to him for his comment, because there the judge made a proposal in relation to taking these cases forward. And since he was Deputy Minister at the time, it is something he might have considered.

COMMISSIONER GABRIEL: Has Mr Jeffery, in fairness to him, been given a copy of that judgement?

ADV VARNEY: No, I would simply read the passage to him, just a few lines.

CHAIRPERSON: Yes, yes, you may proceed, Mr Jeffery, Mr Varney.

20 ADV VARNEY: Thank you, Chairperson. I am grateful. So, in his judgement, Judge Mothle made reference to proposals that the Timol family had made, which was the following. The energetic and vigorous investigation of outstanding apartheid error cases before it is too late, which may involve the creation of a dedicated team of carefully selected investigators and prosecutors.

And then subsequent to that, not just the Timol family, but the Foundation for Human Rights then made various proposals around such a dedicated approach or unit with investigators and prosecutors. Do you recall those discussions and your view on the matter?

MR JEFFERY: Look, I am happy to answer any question. I am aware of the gist of what was in the judgement, but unfortunately I do not even have a copy of the judgement, but it sounds as to what I knew. The NPA did set up a team, a specific team. There were issues around whether, and I am now going from memory.

10 There was an issue around whether these cases should be with centralised, like at the PCLU level, or whether they should be decentralised to provinces. My recollection was that there was resistance to that happening from families. I may be wrong, but that was one of the groupings that were not happy with it being decentralised.

 And then at some point, there was a more centralised unit within the NPA set-up, which I think, thought involved members of the Hawks. So was that aspect of the judgement not responded to by the NPA, but that was obviously for the NPA to determine how they were
20 going to run the matter and respond.

ADV VARNEY: Thank you. In your evidence-in-chief, you were dealing with the fact that there were so many cases and that there needed to be... I think the word you used, some prioritisation of these cases, because not all of them could be taken forward. So there is evidence before the Commission that that was attempted.

So, for example, there was an initial list of 21 cases that the PCLU identified. Subsequently, it whittled down to 10 cases and the like, but even those cases were not taken forward over the years. Do you have any comment on the fact that even a short list of matters were not taken forward until recently?

MR JEFFERY: I think it depends on what you mean as recently. What date would you say recently begins?

ADV VARNEY: Well most of the successful matters have taken place in the last few years since about 2021.

10 MR JEFFERY: Well, look, the inquest started with Timol and then there were, and I cannot now remember which, that was the start of the inquests and there were then others. My concern, I have to say, and it is maybe what I was meaning when it came to prioritisation, I think there was a list from the Foundation for Human Rights that you may be aware of from that period. So that would have been 2017/18.

And my concern was that the vast majority of people who died in detention were African activists, African people, but most of the vast majority of names on that list were non-Africans. Now it may be that the families, whether they were... well, it was Neil Aggett, but
20 coloured or Indian families had more resources, been able to record more information, do more monitoring, so there was more evidence. But I was concerned that it would not have been appropriate politically for a folk, well insufficient attention on inquests for African people who died in detention, which were the vast majority.

So I am not sure if you are getting me. That was also a factor

that would need to be taken into account. Obviously you cannot reopen an inquest, unless you have got evidence, you have got information. And maybe the families of the non-African detainees who died in detention would have had more resources, kept more records, so there might be more evidence, but it is a factor that needed to be looked at.

ADV VARNEY: Yes.

MR JEFFERY: But basically, going back to your original question; I thought there was a list of... I was not aware that there was not any
10 attention, that inquests were then launched into other people, and those have been continuing. I mean, it does unfortunately, and the NPA would be better able to explain, take its time to take a decision whether to ask for an inquest.

But even in Minister Masutha's time, I think he took the decision on opening, reopening the Aggett inquest. I think I speak under correction. So from 20, well, from about 20, I do not know, but when the decision was taken on the Simelane prosecution, Simelane matter prosecution, the Timol inquest, then things started opening up again.

20 ADV VARNEY: Yes. The initial list I was referring to actually go back to 2003, but I will not take that further.

MR JEFFERY: Ja, well, look, that list, I was not in the executive for another 10 years. So, I would not have known anything on that.

ADV VARNEY: Noted. And then finally, you mentioned in your evidence-in-chief; you did list those cases, De Kock, Motherwell and

so on, but you said, you know, there was a problem, there were not enough, and the cases ground to a halt. Can you elaborate what you meant by the cases grounding to a halt?

MR JEFFERY: Can you refer me to...?

ADV VARNEY: No, this is in your oral evidence.

MR JEFFERY: Here, today?

ADV VARNEY: Your evidence-in-chief that you gave here this morning.

MR JEFFERY: I do not recall, I do not know if anybody can help me.

10 ADV VARNEY: So, it was when you were dealing with the passage on page 45, the political decision, and you made reference to various cases, De Kock, Motherwell, Malan, Basson, but then you said, well, these were not enough, but then eventually, you know, the cases ground to a halt.

MR JEFFERY: Okay, I think what I was saying is that there were some cases in the 90s, the post-94 to 2000 or 2002 was when, I think, or 2001 was when Basson ended. And you have mentioned other ones, but those were not enough, but they ground to a halt. Yes, they did. There stopped being prosecutions. To some extent, I
20 think it was an issue, as I put out, that it would seem to me to make more sense to focus on allowing the amnesty process to run its course.

And then, I think, post-TRC, it would seem that the NPA had wanted to, or came up with this prosecution policy, which got struck down and there was confusion. It looks like I was finding this out in

retrospect, confusion about whether to appeal that decision or not. And ultimately, it was decided not to appeal, and that policy was not replaced. So I think that caused, my speculation is that that caused a fair amount of inertia on the part of the TRC not knowing what to do and how to approach things. I think that is what I was referring to.

ADV VARNEY: Thank you, Mr Jeffery. No further questions, Chairperson.

CHAIRPERSON: Thank you, Mr Varney. Mr Soni?

ADV SONI: Good morning, Mr Jeffery.

10 MR JEFFERY: It is afternoon, Mr Soni.

ADV SONI: Yes, thank you. Mr Jeffery, I have two sets of issues I want to raise with you.

COMMISSIONER KGOMO: Sorry, Mr Soni. I thought maybe you could shift a bit to the left, if you can. Thank you.

ADV SONI: Thank you, Commissioner. There are two sets of issues that I want to raise with you, Mr Jeffery. In your affidavit from pages 6 to 8 under the broad heading "Mr Calata's evidence and references to me", you are anxious to place in proper context the words that Mr Calata attributes to you, and you give a particular meaning and you
20 would have seen when my learned friend, Mr Varney, was questioning you, Mr Calata appears to give a different interpretation of what you said, or certainly how he interpreted it.

Of course, you know that if there are words that are spoken and one wants to know the meaning of them, the rules of interpretation are simple. You look at the text, you look at the context

and you look at the purpose for which the words are spoken. Now, this is just for the commissioners mainly. It is a matter we, as a Commission, are going to have to resolve as to which version appears on the basis of what is set out is the more probable version. I want to take you to paragraph 24 of your affidavit where you say Mr Calata quotes you and say:

10 “Part of the problem is the nature of our transition
 from apartheid to democracy, the negotiated
 settlement. That was the price that had to be
 paid.”

Now, I just want to say in context; that appears at page 37 of the transcript. Commissioners, if you want the lines, I will give it to you. I am just trying to make it easier when a decision is taken. It is right at the top. I think part of the problem is the nature of the transition. Then at paragraph 26 that phrase “that is part of the price that had to be paid” is repeated. And then what is repeated under that appears at paragraph, sorry, page 32 of the transcript and that is towards the end where you say:

20 “I do not think anyone can expect; we do not have
 the resources to open all these investigations.”

Right at the bottom of page 32. And then if you turn over the page, on page 8, the first part of what appears at the top of page 8 is at page 34 of the transcript where you refer to the... right at the top of page 34 where you refer to Mr Simelane's disappearance. And then the bottom part appears at page 37 of the transcript. Then, can I just

refer you to paragraph 28 where your response is recorded. And I want to say that that appears at page 29 of the transcript where you say:

“The problem we have is; what happens is, we cannot do this all at once. I appreciate that what I am saying may sound terrible.”

And that is what appears at the top of page 29. You see that?

MR JEFFERY: Yes, yes.

ADV SONI: Now, I am going to suggest that in order to... sorry,
10 before I do that, can I ask you? We know what the text is, what you said, the context, because the whole document is there and I have referred to where in the document the various passages are. What was the purpose of this interaction between you and Mr Calata? How did it come about?

MR JEFFERY: Look, I think I had covered it a bit in my affidavit and Mr Calata approached me for an interview. I actually cannot remember if I had met him before then, but I obviously knew who he was and knew what his concerns were. So, I was actually quite eager to engage with him. He was coming from a particular
20 perspective as the son of a person who was murdered, an activist, a political leader.

The Cradock Four are quite sort of an icon or iconic in South Africa, but his focus seemed to be mainly on that. Obviously, he was very young. I think he was three when his father was murdered, and so he had grown up without a father. And then, obviously, he is also,

you know, his grandfather was a secretary general of the ANC. So, he is, you know, an interesting person, both in terms of his own ideas and also his history.

So, I wanted to engage with that, but I did think that, given that I was coming from a slightly different perspective from my experiences of the KZN violence where there were very few prosecutions, there were very few answers to who got killed and why; that, you know, that those perspectives, him hearing my perspectives may enable, may broaden his perspective. So, not undermining what
10 he is going through or went through and what he is going through. It was to have that exchange. So, although it was an interview, it really also was a discussion.

ADV SONI: A dialogue.

MR JEFFERY: A dialogue. And so, Ms Martina Della Togna also featured in the thing, not asking questions, but expressing views. He expressed views. It was an exchange of views more than an interview, and that is what I had intended. And at the end of it, I have to say it obviously was completely wrong, but I thought it had gone quite well.

20 ADV SONI: Can I ask you; one of the issues is whether or not, when you made references to the price we had to pay for the agreement, the agreement you say relates to the agreements leading to the institution of our new democratic order. Mr Calata seems to say that it may well have been a reference to agreements between the ANC and former generals of the security forces. That appears to be part of

the debate between you and Mr Calata.

MR JEFFERY: Yes, but I think I was quite clear that I meant the political negotiations that took place between the ANC and the apartheid government in the negotiations that had results in the interim constitution and some kind of provision for amnesty, and ultimately in the Promotion of Justice and National Reconciliation Act. I think that was the title act. So, that is what I was meaning.

And I think I have to say that, or not I think I have to say; I have to say that I think part of Mr Calata's recording of what was said
10 and what is in the transcript is taking things out of context. He is not putting the context. And so, I do think that that needs to be looked at.

You know, he would talk about... you know, I am just reading from this summary. He says in his book part of the problem is the nature of our transition, the negotiated settlement; that was the price that had to be paid. From the transcript, it is, what I said actually in the transcript was; I think as part of the problem is the nature of our transition, the negotiated settlement and ja, that is sort of, as I said, part of the price that had to be paid.

So, you know, that was the price that had to be paid. I
20 actually said that was part of the price, and that was a speculation. So, I am just saying those issues need to be looked at. And he was very much talking about the ANC-led government prosecuting. And I did not see the ANC government, led government as being responsible for prosecutions. I saw that as being the responsibility of the NPA. I do not think that presidents or Ministers of Justice or any

politician should be saying who should be prosecuted or not.

ADV SONI: Coming back to the question of what you were referring to, we, with the Commission, have to look at the usual rules of interpretation, text, context and purpose. And that is a matter of law, which I am unable to debate with you as a witness. Would you agree?

MR JEFFERY: I would agree. The only thing I would want to raise is a request that you look at the video recording, not just the transcript, because I do think it does give some additional context.

10 And as the transcript itself says, there were some alterations made to try and probably clean things up. But also, you get more of a context from the video.

ADV SONI: Can I ask you; one of the other areas of disagreement between you, and I am just talking philosophically that emerges is this proposition where at page 47, starting from even earlier, but at page 47, [indistinct] is saying:

“But what about all the people who have died and
so on?”

And then you, at about page 9 says, he says:

20 “Should that not be a consideration?”

And you say, starting at page 9:

“Yes, because we have got to ensure from a
justice perspective, with diminishing budgets, we
have got to ensure that... or the ideal is if crimes
are committed now, people will be held to account

for that.”

That was the view you expressed. Can I ask you; you have been a member of the... you were a member of the Provincial Legislature, KZN from 1994, and then you went to Parliament thereafter. Let us start with KZN. The view you expressed here, was that a view that people in the ANC, in KZN, as MPLs shared with you?

MR JEFFERY: Which view, sorry?

ADV SONI: The view, yes, the difference between you and Mr Calata as to whether there has to be this broader view taken, that you
10 have got to deal with crimes now. Of course you cannot ignore TRC matters, but we have got to use our resources in a way that deals with the needs of the present situation as well.

MR JEFFERY: Would that have been the view of other ANC members in KZN? I am difficult to answer that one. But for me, the issue would be; I mean, let us take the violence. In the beginning, nobody was prosecuted, or if they were prosecuted, they were acquitted.

Then there was a case of a young hitman, Inkatha hitman, from Imbali. I think he was a teenager or early 20s, Phumlani Mveli.
20 He killed a number of people, ANC people and it was more towards the... I do not know if it was, possibly it was in the early 90s after the unbanning, but he was prosecuted and he was convicted for a large number of these murders. Whether it is because of that conviction or not, I do not know, and I am speculating, but after that conviction, the murder rate, the assassinations in Imbali dropped considerably. And

my view was it was because Mr Mveli got convicted, and suddenly people were seeing that there were going to be consequences, whereas before there was immunity.

So obviously the prosecutions then were important. I particularly think that during or immediately after the TRC process, there should have been emphasis given, particularly to those people who had not been granted amnesty or had not applied when others in their group, other co-perpetrators had. So I think it would have had a more impact then in terms of people coming forward.

10 And for me, as I said, a great priority; and it is one that I am sad that we have not, well, it did not materialise, was finding answers to the questions around why was somebody killed, who killed them, how were they killed; and if their bodies were not found, what happened to their remains?

 And, you know, so I think, you know even with Nokuthula Simelane, I mean the Security Police left a tainted picture of the fact that they claimed they had turned her and released her. And she is not able to counter that, because they probably killed her, most likely killed her. And it is just such a pity that one of them cannot come
20 forward and say this is what happened and this is how we disposed of her body.

 And so that, I might be diverting a bit, and apologies on that, but I think that, you know, there are those issues of do we want truth or do we want justice? It would be lovely to have both, but in many instances, it is the truth that matters more to people in the beginning.

Once they get the truth, then they start thinking about, oh, it would be nice for that person to be prosecuted.

ADV SONI: Mr Jeffery, my question is a slightly different one. I understand your views, and your views are stated quite clearly both in your affidavit and in your interaction with Mr Calata. The question I want to ask is: how widespread was that view in the ANC for one and in the KwaZulu-Natal legislature, while you are a member of it, and the National Parliament?

MR JEFFERY: I find that difficult to answer. I do not recall
10 discussions ...[intervenes]

COMMISSIONER KGOMO: Mr Jeffery, maybe what you could do is; was that view widespread? You could say well, you do not think so, or you think so, and then there could be a follow-up question. If you can be, say, short in your questions and do not anticipate the next question, so that they can ...[intervenes]

MR JEFFERY: Apologies for that. This was my view. I can say that I do believe that the public in South Africa wanted to see, at this time when the interview was given, convictions for corruption. It did not mean they did not want to see convictions for these old cases, but
20 that was a priority.

What I can say with the special pardons with Richmond, there was a lot of community consultation over that process and there were not problems. People did not have a problem with those who had been convicted of the murders of ANC or UDM or Sifiso Nkabinde-reliant people. They did not have a problem with those people getting

a pardon. What they did have a problem with was the cases that they did not know what had happened.

COMMISSIONER GABRIEL: Mr Jeffery, the question was; was this a view that was widespread amongst the ANC?

MR JEFFERY: I have said I cannot answer that.

COMMISSIONER GABRIEL: And you cannot answer, and I think that is your answer on that.

MR JEFFERY: Yes, okay.

ADV SONI: I have no further questions.

10 CHAIRPERSON: Thank you.

COMMISSIONER KGOMO: Mr Jeffery, I am trying to do the nearby impossible, put myself in the shoes of Mr Calata. Go to page 45 of the transcript from line 16. The only sentence that reads where you say:

“I think there was a political, my sense is there was a political decision in the first 10 years of not going for having the TRC process, not going for prosecutions.”

The 10 years, where do you put the 10 years? I put the 10 years, the
20 interview with Mr Calata was in 2017, rewind, [indistinct] 2007. So that is not, that has nothing to do with the CODESA negotiations. This is post the delivery of the Truth and Reconciliation Report. Now, would I be wrong to think that that is how Mr Calata understood you?

MR JEFFERY: Commissioner, I also cannot speculate what Mr Calata thought, but from what I can say from my side is that when I

meant the first 10 years, I meant the first 10 years of our democracy; so from 94 to 2024. And so, that would have covered the TRC process. I mean, the TRC only, I think the act was passed in... was it 96?

CHAIRPERSON: 95.

MR JEFFERY: 95, okay. So that would have covered that period. And what I meant was, I mean, I am sorry, the way I speak is, is I sometimes put things that are coming later in earlier, is that my sense is that there was a political decision of not going for prosecutions in
10 the 10 year, first 10 years and having allowing it, leaving it to the TRC process.

I then go on and I did battle to try and remember, recall what I meant by this, because then I did raise that the Malan trial, which was the KwaMakhutha Massacre; that that was a bit of an aberration, because that was a major prosecution of a very senior person in the middle of that process. I think it started in 96. Obviously they had been investigating before.

So I do not know if that answers this, but I cannot speak for, I had not thought that Mr Calata could have read it that way for me
20 when I speak. And Mr Soni, I think my ANC colleagues of my generation or older would do the same of when we speak about the first 10 years, we mean 90, well from the 20s, from democracy.

COMMISSIONER KGOMO: Yes, but can one then blame Mr Calata for thinking that those political decisions that you are speaking about are discussions which inhibited the prosecutions or delayed the

prosecutions? Can one blame him if, from what was said there is how he understood it?

MR JEFFERY: You are again asking me to get into his mind and it is difficult to do that.

COMMISSIONER KGOMO: Let me say this; this is what I think he was thinking.

MR JEFFERY: It is possible. I mean, I do not know what he thought. I would have thought it is obvious, with respect, that the first 10 years means 94 to 2004, that that is what we mean by it. I guess
10 it is possible, but I think the other issue is that this interview was not my only interaction with Mr Calata.

COMMISSIONER KGOMO: Ja, but I am only speaking, I am zooming in on this aspect only.

MR JEFFERY: No, I understand that, but I am saying we did interact at... attend common functions; and if he was not sure, it is a pity he could not have asked me to clarify.

COMMISSIONER KGOMO: Okay. Let me deal with another aspect. Go to your paragraph 17, 17 of your statement. The opening line, the opening sentence, there you say:

20 “In that regard, I should mention that I was myself
listed in the TRC final report as a victim of a
human rights violation.”

And then, let us jump and go to the last sentence. Well, not quite, from:

“I did not seek or receive any benefit, financial or

otherwise, arising from the designation. Quite frankly, I am embarrassed by this status, as there were numerous people who had suffered far greater human rights violations than I did.”

And I want you to draw a line to our terms of reference. The proclamation in Clause 1, the president says:

“The Commission must, in relation to the period 2003, enquire into, make findings.”

And then we go to 1.1, 1.4. It says:

10 “Whether in terms of the law and fairness, the payment of any amount in constitutional damages to any person is appropriate.”

Your view there that you were a victim, but you are embarrassed to have been so listed, because you did not seek those things that have been mentioned, and what the president says we must look at. Can you comment?

MR JEFFERY: Well, Commissioner, my understanding is the issue of constitutional damages is something that was raised by the families in their court application, which I think this Commission was
20 one of the results of that court application. I prefer not to get into the validity of that. I have not really studied the law on that aspect, and I would not feel it would be fair to ask me to comment.

The reason I put this, and I hope I am not going off on a tangent, but put this issue about being a victim of human rights violations was really pre-emptive in terms of it has been in the public

domain. My successor, Deputy Minister Andries Nel, had recently, after he got reappointed. He is my predecessor and my successor. He was deputy minister before me and deputy minister after, but when he got reappointed, he raised with the Portfolio Committee that I was a victim of human rights violations.

So I just did think I needed to put that as a context of I did not want to be, I did not apply. Yes, as a victim, I could have got, I think, 30 000. I think there are other mean tests in terms of housing, education, so those would not have applied, but I think it was more.

10 When I was saying I did not get any money, I did not get the 30 000. I could have got it, but I did not want it. I do not know if that makes any sense. I see it as slightly different from the constitutional damages.

CHAIRPERSON: Yes, no, we understand, Mr Jeffery. What you were trying to say is that the issue of you being classified as a victim has repercussions of making you becoming eligible for reparations as opposed to constitutional damages.

MR JEFFERY: Yes.

COMMISSIONER KGOMO: Yes, and did you, along what Mr Calata

20 was thinking and the line that Mr Soni was asking, did you think that that was a price that you had to pay? That is why you take up this attitude that you have taken up. Not in your answer now, but what you have stated in paragraph 17. Did you think that was a price that you had to pay?

MR JEFFERY: No, I do not regard it as a price I had to pay. I did

not... The issue I was trying to say with the price was that; and it is really, I think, borne out by the... was it AZAPO judgement on the amnesty for the... or not being able to, the Steve Biko murder. And, you know, the people and the Calatas, the Bikos were not able to prosecute. Well, they could have in the Calata matter, but in the Biko matter, let us put it this way; people who got amnesty, their families were not able to have those perpetrators sent to jail. That is the price that had to be paid.

COMMISSIONER KGOMO: Yes. Thank you.

10 CHAIRPERSON: Ms Millard?

ADV MILLARD: Yes, thank you, one question. Mr Jeffery, Mr Varney interrupted you when you were talking about the relationship between truth and justice. It is an issue that you have raised a number of occasions, also in relation to answering Mr Soni's question. I am wondering if you want an opportunity to elaborate on what you mean, or you feel it has been covered?

MR JEFFERY: No, thanks. Thanks for that, if I may, Commissioners. I mean, obviously the whole TRC process was an issue of truth versus justice. When Magnus Malan was acquitted at
20 the KwaMakhutha trial, the Chair of the TRC, I have got it on the phone, but made a comment about truth and justice, but it plays itself out in terms of...

In our situation, our historical context, there is a large number of people who are missing, whose family, like Nokuthula Simelane, whose families do not know what happened to them; and Sbo Phewa

would be another one. And that must be, I mean, for me is terrible.

Now, in the TRC process, people came forward and gave information around what happened and where the remains were disposed. My recollection is that with the PEBCO Three; that they had acid poured over them, and then those remains were poured into a water tanker on some farm. And that water tanker was drained, and I think by the Missing Persons Task Team, and they found DNA evidence that there were the remains here. Now, unless one of the perpetrators had said this is the water tank we put the remains in,
10 those would never have been recovered. So a lot of the issues are around people coming forward.

A big mistake, I think, was there was an impasse on the prosecution policy with it being struck down, because it did try and provide for allowing people to disclose. And then there was a problem of paralysis from government, not knowing what to do, and in the end nothing was done. But that basically closed the door, I think, my own perception, is on the possibility of people coming forward still before they die, wanting to come clean, to say okay, this is what we did to this or that activist.

20 And so the discovery of the remains of missing people, that is also in the last 20 years ground to a halt. And even, I mean, you know, the issue Reggie Hadebe, I would love to know, okay, I know what happened. I was there. I went to his funeral. So I know what happened to his body, but I would still love to know who did it. Was it Inkatha warlords, one of the local *inkosi*? Was it other issues?

Things were quite murky in KZN, as was shown by, you know, the exposure of Sifiso Nkabinde and what he then got up to.

So I do not know. I would love to know. Now, I am not, I have not suffered the pain of losing a family member, so definitely the people that are most important in that matter are the Hadebe family, and I have not discussed what their view is, but I am saying the question is one of, for me personally, one of the greatest problems is the tragedies, is people not knowing particularly where the remains are, and then what the reasons were and who did it.

10 You know, you can get, and I think I refer to it a bit in the transcript. The dice is weighed in the favour of an accused in terms of guilt beyond reasonable doubt. So you can commit a crime, you can get acquitted. You can have, as you would know, a judge or a magistrate saying: I think you are guilty, but I cannot say so with beyond reasonable doubt, and therefore I have got to acquit you, because an acquittal is not a finding of not guilty.

So, you know, ja, so it is a complicated area is what I am saying, and it is not just for me prosecutions. The issue of finding the truth is also something very important.

20 CHAIRPERSON: Thank you, Ms Millard.

ADV MILLARD: Thank you. I have nothing further.

CHAIRPERSON: Thank you. Mr Jeffery, we thank you for having come to give evidence before this Commission, given your health conditions. We truly appreciate it. You are now excused as a witness.

MR JEFFERY: Thank you, Chair, and thank you, Commissioners.

NO FURTHER QUESTIONS

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

INQUIRY ADJOURNS UNTIL 27 JULY 2026

CERTIFICATE OF VERACITY

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

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