

**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 Varney (SC) – The Calata Group
Adv D Pillay – The Calata Group
Mr Sipho Tlhaole – The Calata Group
Adv Rafik Bhana (SC) (for Adv RC Macadam)
Adv Nwabisa Ntshizana (for Adv RC Macadam)
Adv Ebenezer Propy (for SAPS)
Adv KD Moroka (SC) – DoJ representative
Adv Anisa Kessery-DOJ Representative
Adv Gwala- (NPA representative)

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PROCEEDINGS ON 26 AUGUST 2026

CHAIRPERSON: Adv Macadam, good morning.

ADV MACADAM: Good morning, Madam Chair.

CHAIRPERSON: Yes, you are reminded that you are still under your former oath?

ADV MACADAM: Correct, Madam Chair.

RAYMOND CHRISTOPHER MACADAM: still under oath

CHAIRPERSON: Thank you. Good morning to you all. Mr Varney?

ADV VARNEY: Good morning, Chairperson.

10 CHAIRPERSON: Good morning, Mr Varney.

ADV VARNEY: Chairperson, can I just check that I am completely audible and visible?

CHAIRPERSON: Yes, you are both audible and visible, Mr Varney.

ADV VARNEY: Thank you, Chairperson. May I proceed?

CHAIRPERSON: Yes, you may proceed.

ADV MACADAM: Madam Chair, I would like, if it is permissible, just to briefly put on record that I have clarified the position last night as to whether Josiah Lekalakala was Crime Intelligence or detectives. I spoke to two recently retired brigadiers who were stationed in police
20 headquarters. The first brigadier confirmed that at January 2007, the date of that task team meeting, he was in Crime Intelligence. The second brigadier who worked closely with Crime Intelligence said he has all along been Crime Intelligence.

CHAIRPERSON: Thank you, thank you, Adv Macadam.

ADV MACADAM: If that will assist the Commission.

CROSS-EXAMINATION BY ADV VARNEY (CONTINUES): Thanks, Mr Macadam. That is very useful to know and confirms your view that detective services was not present on the ITT. Now talking of the ITT, before we return to your 2018 statement, I just want to wrap up a few matters from yesterday.

Firstly, we promised to put up evidence of the relieving of Adv Ackermann of his day-to-day duties on the TRC cases. And since this document from acting NDPP Mpshe is not currently in the cross-examination bundles, my team have made copies. I am going to ask
10 them to distribute to the Commissioners and to Mr Macadam.

While they do so, I will just describe the document. It is dated 24 January 2008. It is from the acting NDPP, Adv Mpshe SC. It is addressed to Ms Mabandla MP, then Minister of Justice. Can I just check that the Commissioners and Mr Macadam have their copies?

ADV MACADAM: I do, Madam Chair.

ADV VARNEY: Thank you. We will be brief. I am going to refer you to one passage. As you can see, it is titled "Representations, Reverend Frank Chikane". It deals with the complaints raised by Reverend Chikane in an earlier letter in October 2007. And if we turn
20 to the next page, it reads paragraph 2:

"As a result of this letter and the prominent role played by Adv Ackermann, I have deemed it prudent to relieve him from all TRC-related duties since November 2007."

You see that, Mr Ackermann?

ADV MACADAM: I do. I note this is a letter written by Adv Mpshe to the minister, so I assume it would be accurate, which then does not explain the Annexure A, I think it was 18, where Adv Ackermann notified Dr Ramaite that he was now withdrawing from TRC cases and I would be taking over, unless that was as a result of this decision taken by Adv Mpshe.

ADV VARNEY: Yes, we are not going to have time to look into that presently, but it does seem that Adv Mpshe decided that he would be removed from TRC cases, at least day-to-day duties. It does seem
10 that at an arm's length, because he was still head of the PCLU, he occasionally dealt with certain matters, such as deploying staff as yourself. I see in paragraph 3 and 4, Adv Mpshe notes the suspension of Adv Pikoli and he states that he has decided that all future post-TRC investigations and prosecutions be managed by Dr Ramaite, Adv Mhaga and the TRC Task Team.

ADV MACADAM: Madam Chair...

ADV VARNEY: Yes.

ADV MACADAM: It may be, as you will see, that Adv Mhaga was a senior state advocate, not a deputy. So perhaps the communication
20 of June 2008 to Dr Ramaite was to put me as a deputy with lots of TRC experience to manage the portfolio, because Dr Ramaite runs a whole portfolio. He would not do more than perhaps just attend strategic meetings, and what you needed is somebody with experience who can work full-time with the investigators. So that might explain the original apparent contradiction.

ADV VARNEY: Yes, thanks. I think you are correct on that and it does suggest that, as he was still the head of the PCLU, and I suppose in charge of staff deployment, but if we can return to the ITT, the Interdepartmental Task Team, sometimes known as the TRC Task Team; and I want to draw your attention to the meeting held on 4 December 2006, and it can be found in the bundle at page 433. Although before I proceed, we do want to put up some related documents connected to this meeting that appear to have been authored by Assistant Commissioner Jacobs, and I am going to ask
10 my team to do the distribution, because we do not believe that the two Jacob notes are in the current bundle. Mr Macadam, do you have your copy?

ADV MACADAM: I do. Is this the information note to Commissioner De Beer, and mine is not dated, but it is giving a list of cases.

ADV VARNEY: Yes, that is correct and then there should be another unsigned letter, which is dated 6 December 2006.

ADV MACADAM: I see it.

ADV VARNEY: Thanks. We are going to come to that shortly. I first want to focus on the minutes of the task team meeting on 4
20 December 2006. That is at page 433 of the bundle. Do you have that copy before you?

ADV MACADAM: I do, Madam Chair.

ADV VARNEY: Thank you. Firstly, there is an error on the date. It is recorded as 4 December 2007. I think we all agree that it was actually 2006, and I see that someone in handwriting has corrected it.

Now, if one looks at the attendees, your name actually does not appear in the minutes there, but it seems like that was another error in minute-keeping, because actually your name does appear in the minutes themselves; so, for example, if you look at the bottom two paragraphs.

ADV MACADAM: Yes, it is correct.

ADV VARNEY: Which looks like it has been numbered 4.6 and 4.7.

10 “Adv Chris Macadam indicated that we need to
 adopt a wait-and-see approach, as all
 perpetrators will probably make representations
 in anticipation of prosecution upon completion of
 investigations.”

Then you also briefed the meeting on the Claire Stewart case. And if you turn the page, you can see you also informed the meeting of media reports on Highgate. Before we move on, since the... Yes, you want to say something?

ADV MACADAM: No.

20 ADV VARNEY: Okay. Before we move on, given that you briefed
 the meeting on the Claire Stewart case, and that is one of the cases
 that remains outstanding or unresolved through until today, do you
 have a sense or can you recall what briefing you gave on the Claire
 Stewart case?

ADV MACADAM: Yes, I do, Madam Chair. This matter related to, I think, a social anthropologist who was murdered in northern KwaZulu-Natal and the initial investigation was indicative of her being

killed in a murder and robbery, but I received some information that perhaps that was not correct, that the real reason is that she had stumbled on an IFP training camp, and they had murdered her to prevent her revealing the existence of this camp. So, it was just on, and I cannot remember if there was a representation written to me on it or whether I picked it up in a media report.

ADV VARNEY: Thank you, and I assume that you were not able to secure any further evidence or leads to take that case further?

ADV MACADAM: I cannot comment on that. All I can say is that
10 when in 2008, Adv Ackermann told me to take over the portfolio from him. This was not one of the cases that was identified as requiring further investigation. So I do not know if at a subsequent meeting Adv Mhaga looked at the material, or whether this case slipped through the cracks, but it is not a case that I could say here is solid evidence.

If we investigate, we will get across. It was simply me being proactive, saying if there is any allegation relating to a TRC matter, I will look into it and see what it is about, even if we do no more than write back and say well, we checked it out, but we cannot take it
20 further. It could be also, with the delay between 2006 and the engagements with the police that started in 2008, this case slipped through the cracks.

ADV VARNEY: Right, thanks for that. Let us then turn to an earlier paragraph that is at handwritten 4.5. It reads:

“Commissioner Jacobs informed members that he

has sent a letter to Commissioner de Beer and
the list of all investigators will be ready soon.”

Now, this is why we have attached this information note, as well as the second letter; and they were put up in the Jacobs bundle. Commissioners, that is bundle 14, as PCJ17 and 18. Now, the questions that I want to put to you in relation to these documents are very similar to the questions I put to you yesterday in relation to the DSO cases that were meant to be investigated. Let us start with the information note. Firstly, you will note that it is undated and it is
10 unsigned.

ADV MACADAM: Yes.

ADV VARNEY: We can only speculate, but we assume that it must have been post or it must have been around that time. So, I suppose we are talking December 2006 and it reads as follows: “information notes”. It is addressed to Divisional Commissioner Detective Service, JF de Beer. And if you look at page 3, it is from Head Legal Support, PC Jacobs, titled: “Request to make investigators available, the NPA, outstanding TRC cases”. And then let us just jump to the cases that needed to be investigated. These included PEBCO 3, Cradock Four.
20 You can see I am reading from paragraph 4 onwards.

ADV MACADAM: That is correct, yes.

ADV VARNEY: Ja. And then if we turn over the page, 4.3, *S v Hantie Botha and Others*, 4.4, *S v Coetzee*. And we suspect that that is in fact the Nokuthula Simelane case. 4.5, COSAS 4; 4.6, you can see Heidelberg Tavern and St James Massacre pops up again; 4.7,

Kala and 4.8, Moss Morudu.

And let us then turn to the next letter, PCJ18. This one is dated 6 December 2006, but it is also unsigned. As you can see, the reference is from Assistant Commissioner PC Jacobs, though it is in the name of Divisional Commissioner Detective Service De Beer and it is titled: "Investigating officers to assist in finalising cases emanating from the TRC", and it is addressed to the various provincial commissioners. And under paragraph 2, they are requested to make five officers available from the various provinces
10 and one from head office.

Now, as mentioned, the questions are going to be similar. Firstly, do you know whether investigating officers were, in fact, appointed to those cases? And if so, do you know who and were they the individuals mentioned in paragraph 2; that last letter?

ADV MACADAM: No, Madam Chair. When I was instructed by Adv Ackermann in June 2008 to get the task team up and running and obviously investigate, at that stage no investigators had been appointed. I was not shown any investigated dockets at all. I had to start again with the list that was provided to first General Lalla and
20 then to General Lebeya; and then 2010 the investigators were appointed for those cases.

ADV VARNEY: Thank you. Then one returns to the information notes. Some of the cases we are quite familiar with, the more well-known ones, PEBCO 3, Cradock Four, Nokuthula Simelane, COSAS 4, Heidelberg Tavern, St James Massacre. And as we discussed

yesterday, some of these matters are only coming before inquest courts in recent years; for example, PEBCO 3 that has only been heard in October of this year. Cradock Four is currently before an inquest court. COSAS 4, we know that charges were preferred in 2021. That is ongoing. Nokuthula Simelane, those charges were only preferred in 2016. In respect of the other cases, do you have any knowledge as to whether they were taken forward at this time?

ADV MACADAM: Madam Chair, I can confirm all the cases that either prosecution was instituted or inquests were held started only
10 from 2010 when the Crimes Against the State Unit of the police started investigating those matters.

ADV VARNEY: Thank you. All right, then one last matter arising from the work of the ITT; I want to refer you to a document which is at page 60 of the SAPS updated bundle; so the bundle that my learned friend from SAPS was relying on yesterday. I will just wait for you to find it. This is a letter from National Commissioner Selebi to Adv Pikoli. It is dated 6 February 2007.

ADV MACADAM: We are still struggling to find it, but perhaps you can put it to me what is there and I can respond to it without having to
20 see the document.

ADV VARNEY: All right, let me quickly check with my team whether they have additional copies of this, which might be of assistance.

ADV MACADAM: We now have a bundle; if you can just give me the page reference again.

ADV VARNEY: I am told that it is from page 60.

CHAIRPERSON: Mr Varney?

ADV VARNEY: Yes, Chairperson?

CHAIRPERSON: On page 60 of the SAPS supplementary affidavit, we have got the investigation diary.

ADV VARNEY: I see. All right, then I am going to have to rely on my team to find the page number, because I was told that it was on the SAPS updated bundle from page 60 to 67. Ms Pillay, can I ask whether you have found the correct reference for the Selebi letter?

ADV PILLAY: Chair, my colleagues are assisting us and they advise
10 us it is page 66. Thank you. We are grateful.

CHAIRPERSON: Yes, it is page 66. Mr Varney, I think it is page 66.

ADV VARNEY: Thank you. I am indebted.

CHAIRPERSON: Outstanding TRC cases.

ADV VARNEY: Yes, that is exactly it.

CHAIRPERSON: From the national... it is dated 6 February 2007.

ADV VARNEY: Yes, that is the letter in question. Thank you, Chairperson. Mr Macadam, you have that letter before you?

ADV MACADAM: I do, yes.

ADV VARNEY: Great. So, it is a letter from National Commissioner
20 Selebi, as the Chair indicated. That second page, you can see in handwriting it is dated 6 February 2007, addressed to Adv VP Pikoli. And the exact same letter was also sent to other members of the task team, including the Department of Justice and National Intelligence Agency. It is titled: "Outstanding TRC cases". I am just going to read into the record a portion of this letter, so we are all on the same page.

It starts:

10 “I have been briefed on the last meeting of the task team set up in terms of the cabinet guidelines on outstanding TRC matters. It was brought to my attention that in *S v Otto*, Complainant Reverend Chikane, a decision on prosecution was taken without consultation with the respective departments. I have insisted that the complainant be consulted in terms of the guidelines on the basis that the director general will have an opportunity to provide input before a decision on prosecution is taken. I am also under the impression that there is no common understanding on the process to be followed. My understanding was that the officials designated on the task team of the director general will provide recommendations to the director general who will as a collective advise the NPA as the decision-maker on prosecutions.”

20 Next page;

 “In my view, a comprehensive report, such as the one directed to the NPA, dated 24 November 2006 and revised on 29 November, should be discussed by the director general. Although I do not insist on a meeting with the director general

after each meeting of our officials, I deem it necessary that the substantive reports and recommendations of the officials should be discussed by the director general before a decision is made.”

I am going to pause there.

ADV MACADAM: We do not have the second page, unfortunately, but with you reading it in the record, I fully understand it and can answer it without that page.

10 ADV VARNEY: My apologies for that. Perhaps my team can in the meantime furnish a second page to you, but thank you for allowing me to continue. Now, in response to this letter, Adv Pikoli said he was going to raise the issue with then Minister of Justice, Mabandla, and I want to refer you to what NDPP Pikoli wrote to the minister at the time; and his memo can be found at page 210 of the bundle. I will just wait for you to get there.

ADV MACADAM: There we are.

ADV VARNEY: Thank you. So, you can see it is a secret internal memo addressed to Minister Mabandla. It is from Adv Pikoli. It is
20 titled: “Prosecution defences emanating from conflicts of the past, interpretation of prosecution policy and guidelines”. It is dated 15 February 2007. It is quite a long memo, so we do not have time to go through the memo.

ADV MACADAM: I am familiar with it. I attached it as an annexure to my affidavit in the Rodrigues matter.

ADV VARNEY: Yes, indeed. And as you can see on that first page, it is titled up on the right, RCM17, which confirms that that was one of your annexures. If I can ask you to jump to page 219, there is just two paragraphs that I want to put to you. Those are paragraphs 4.6 and 5.1. So, it deals specifically with the procedure that Commissioner Selebi was insisting on. 4.6 reads:

10 “The NPA cannot agree to the above proposal.
The effect thereof might be that the National
Director would be obliged, as is suggested by the
National Commissioner, to wait for the finalisation
of the proposed process before he may make a
decision whether to prosecute or not. If the Task
Team or the Committee of Directors-General, in
spite of a reasonable prospect of a successful
prosecution, unnecessarily delays the process,
the National Director would be prevented from
complying with the prosecuting authority's
constitutional obligation. Therefore, such a
process would be unconstitutional.”

20 Then, under the heading “Conclusion and way forward”:

“5.1 There is clearly a misunderstanding
regarding the role of the Task Team and the
role of the relevant State Departments
referred to in that amended prosecution
policy. In accordance with the approved

amended prosecution policy, the NPA is of the view that the duty of the Task Team or the relevant State Departments is to assist the NPA in the execution of its duties. However, nothing prevents the Task Team or the Departments, whether individually or collectively, to make recommendations to the National Director, provided that the National Director should never be in a position where his constitutional duty is dependent on the recommendation of such a Task Team or relevant Department. Such a procedure would be unconstitutional.”

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Do you agree with the view of Adv Pikoli that what Commissioner Selebi, with the support of the DOJ and NIA, were wanting to do, which is require the NPA to wait for their recommendation; that was unconstitutional?

ADV MACADAM: Correct, Madam Chair. It is also in direct conflict with the NPA guidelines which were confirmed by Parliament and came into effect 5 December 2005. It specifically stated that the police, NIA, justice and the DSO should nominate one official from their departments to assist the PCLU. What the commissioner is relying on is reviving what was stipulated in the Amnesty Task Team of February 2004. That contemplated a committee which would advise the National Director on each and every case that he had to

20

take.

And clearly, Madam Chair, the Constitution and the NPA require that the NPA perform its prosecutorial without fear, favour or prejudice. But I also agree with Adv Pikoli that it is going to unnecessarily delay the process, because now the task team members must write to their DGs. The DGs must then write to Adv Pikoli.

I have seen correspondence addressed by Commissioner Jacobs to Adv Mhaga where he says no, the NPA must hand over all
10 their files to the task team and they will then go through all those dockets. How long is that process going to take? We are looking at half a dozen departments; and what can they really contribute to the matter? If this thing properly functioned, any issues which needed to be brought to the attention of the NPA could be dealt with at that level. For example, if the police said they have clear evidence that the only witness is going to retract his statement and that will result that; that can be brought to us and dealt with.

The same thing; if the Intelligence Agency say but there are these sinister moves afoot in a specific case, somebody will come
20 forward, but he will be planted there to infiltrate the investigation. That can be brought to our attention and taken into account. I cannot see what recommendation justice can do, because their sole function was to deal with any reviews of amnesty decisions after the TRC dissolved; and secondly, to facilitate fast access to the files. In 2007, the DSO was on the point of being dissolved. So what further

contribution could they make to the matter?

ADV VARNEY: Thank you; and I think you raise an important observation in relation to the DGs when you state, you know; what contribution can they make. Directors-general, they are in charge of executive departments in government. They are not involved in investigation of cases. What possible contribution or input could they make in relation to a decision to prosecute or not?

ADV MACADAM: May I take this further? Look at the National Commissioner of Police. When he wrote to Adv Pikoli in 2007, Adv
10 Nel and Mr Leask were at an advanced stage of planning to arrest and prosecute him for serious corruption offences. We look at the Director-General Intelligence Agencies, I believe in 2010 he had to resign after an investigation established that a principal agent network, which he had authorised, had resulted in massive financial fraud, mismanagement, corruption on the part of the persons in that network.

If we look at the DG Justice, I mean it is correct that he testified at the Ginwala Inquiry. The inquiry made serious findings against him; and when he became the National Director, the
20 Constitutional Court and the SCA found that he was unfit to hold office. So, what value are we going to attach to a person, high-ranking officials with those serious issues hanging over their heads?

ADV VARNEY: And if we turn to the next page of that memo, I will just read one further passage to you, because it now seems that this is the last straw for Adv Pikoli, and he writes at paragraph 5.2:

“I have now reached a point where I honestly believe that there is improper interference with my work and I am being hindered and/or obstructed from carrying out my functions on this particular matter. Legally, I have reached a dead end.”

Would you agree that the attempt by then Commissioner Selebi and indeed NIA and the DOJ, that this was another attempt at executive intervention in prosecutorial discretion?

10 ADV MACADAM: Correct. They were usurping the powers of the NPA.

ADV VARNEY: Thank you.

ADV MACADAM: Madam Chair, may I also add that with this letter of Adv Pikoli, when I filed it in the Rodrigues matter, he gave me a confirmatory affidavit confirming that he never received a reply from the minister to that letter.

ADV VARNEY: Yes, and I believe he also confirmed that before this Commission. Mr Macadam, can I ask you to return to your 2018 affidavit at page, red paginated number 144?

20 ADV MACADAM: Correct, I have the page in front of me.

ADV VARNEY: Thank you. So, yesterday, I believe we managed to get to paragraph 39. Just so that we can speed along, we will not deal with paragraph 40. You do indicate that the foreign bribery cases were taken away from you and then you were able to focus attention on the Timol and Aggett matters. Can we drop down to

paragraph 41? Here you mention that Adv Johnson, and I assume that that is Adv Andrea Johnson, is that correct?

ADV MACADAM: Correct.

ADV VARNEY: Who was at that stage acting as the Head of the PCLU, and I read:

“...informed me and a senior state advocate who was assisting me with the cases that we should not continue to work with the TRC cases, as they were going to be removed from the PCLU.”

10 Thirdly, do you recall who the other senior state advocate was?

ADV MACADAM: Yes, it was Adv Susan Bukau.

ADV VARNEY: Thank you.

COMMISSIONER KGOMO: But that Johnson, is it Adv Andrea Johnson?

ADV MACADAM: That is correct, Commissioner.

COMMISSIONER KGOMO: Yes, thank you.

ADV VARNEY: Mr Macadam, was that not an extraordinary instruction that you should not continue to work with the TRC cases, as they were going to be removed from the PCLU?

20 ADV MACADAM: Yes ...[intervenes]

ADV VARNEY: And indeed, you state. Sorry, go ahead.

ADV MACADAM: The background to this is; Adv Abrahams was appointed as the National Director in 2015. Immediately, Adv Mrwebi called for all the foreign bribery cases to be taken away from me and be given back to him.

This resulted in a meeting with Adv Abrahams, Adv Mrwebi and myself and there were two other advocates also in that meeting. And what I said in that meeting is that I said look, if me continuing with foreign bribery is causing all this unpleasantness within the NPA, I would be willing to hand those cases over and I would be willing to again work on TRC cases, because I was seeing that there was a need for those cases to receive the attention of an experienced prosecutor who had the necessary knowledge.

10 Mr Abrahams said no, I must not do that, because he is on the point of taking the TRC cases away from the PCLU, so that there can be a fresh look at them. Now, when this impasse, because what happened, so he said: no, you stay on foreign bribery. Step two was Adv Mrwebi, notwithstanding that decision by Adv Abrahams, instructed the police to give him all the dockets and not to me. I then wrote to Mr Abrahams saying I take it now. I am off. He wrote back, he has not cancelled my appointment; and in fact, he has authorised that I must now go and attend to two OECD meetings in Paris.

20 Then the next step is; of my own accord, I realised there was a problem with TRC cases and then I started working on Aggett and Timol. And then I think it is an annexure to my March statement, is that Dr Pretorius became the head of the unit, and he then asked for a report from me on what I had done on Aggett and Timol; and there I said: please clarify with the national director what the position is as far as where these cases are going. Are they going to stay with us, or are they going away? And if they stay with us, I will also flag staff

shortages, *et cetera*.

ADV VARNEY: Thanks for that clarification, and I suppose it is yet another example, and I am struggling to find the right words, you know, perhaps blunders are the right words, missteps, because this kind of indecision, would you agree, on the part of the NPA at this time, retarded, eroded the progress on the TRC cases?

ADV MACADAM: That is correct. This issue of saying my appointment to do foreign bribery has not been terminated, but I have no access to dockets, was raised at the Mokgoro Inquiry into the
10 fitness to hold office of Adv Mrwebi, and the commission spoke very strongly about how inappropriate this was.

ADV VARNEY: If we just return to the instruction given by Adv Andrea Johnson, and I just find it gobsmacking that the instruction was not; look, continue working on the cases while we decide where they are going to be located. Instead, it is you should not continue to work on the cases while they decide. So, the impact is that you have to down tools pending a decision.

ADV MACADAM: I agree with you. I mean there is no, as I said, we continued working on the Timol matter despite this; and as you were
20 the counsel in that matter, you can confirm there was no prejudice because of me continuing to work, despite the fact that we were told not to work on the matters.

ADV VARNEY: Yes, and we are grateful for your initiative in that regard. Let us move on. So, in paragraph 42, as you indicated, in February 2016, you were approached by Dr Pretorius SC, who by

then had taken over from Johnson as Head of the PCLU. He informs you that a request has been received to reopen the inquest in Aggett and Timol cases. You attached your opinion; and actually, in that document, which you attached as RCN8, there is an interesting passage which I think underscores your point. So, let us go to it. It is at page 169 and the passage in question is at 174.

ADV MACADAM: I have the document in front of me.

ADV VARNEY: So, Commissioners, you can see that this is an internal memo from Adv Macadam to Dr Pretorius as dated 4
10 February 2016. "Opinion: reopening Timol/Aggett Inquest", and if we can just jump to 174.

ADV MACADAM: Yes, I have that page already. I take it paragraph 12.

ADV VARNEY: Yes, paragraph 12, indeed. Can I ask you to read into the record, not the whole paragraph, down to the word "finalise the matters timeously".

ADV MACADAM:

20 "Having said that, it has to be in the strongest possible terms stated that it is imperative that the NDPP must make a decision as to whether the TRC cases must remain with the PCLU or not. It serves no purpose to decline the request."

That is that we were going to say we are not going to reopen the inquest before we have made a decision that we should not charge for murder.

“...be placed in the position that two or more years down the line the cases have not been finalised, because either the DPCI or NPA or both are unable to commit the necessary resources to finalise the matters timeously.”

Must I go on? It says it must be...

ADV VARNEY: No, we can pause there. But, you know, now that you have read that into the record, am I right in saying that that reflected some alarm that you had and a great deal of uncertainty and
10 instability in respect of the management of the TRC cases?

ADV MACADAM: Correct. As an advocate, you need to know exactly what your work is. So if this is hanging, this uncertainty makes it very difficult to focus work or so. But may I also say with Adv Abrahams, from March 2013 until 2014 when Mr Nxasana demoted him, he was acting as the Head of the PCLU. On a monthly basis I reported to him on all the cases, progress, difficulties, *et cetera*.

After he was demoted and until he became the National Director, he was now the state advocate dealing directly with these
20 matters. He was obliged to report every month to Adv Johnson on what was going on with these matters. So I would say he was ideally placed to know what the issues were and this is not something that you can leave hanging in the air while you think about perhaps taking it away, *et cetera*. He knew the urgency of these matters.

ADV VARNEY: Let us move to the next paragraph and here you are

dealing with the Timol matter, and you make reference to a report addressed by Ackermann to Ramaite and Pikoli dated 30 October 2006. Since you mentioned the role of Superintendent Britz yesterday, it features in that report. Although before we go to that report, I want to refer you to a memo, an earlier memo that you addressed to NDPP Ngcuka back in 2004. This is at page 409 of the bundle.

ADV MACADAM: We are just turning to the page. Ja, there it is, yes. I have it before me.

- 10 ADV VARNEY: Thank you. And Commissioners, I also assume you have it as well. So it is an internal memo, as mentioned, addressed from yourself to then NDPP Ngcuka. It is titled: "Investigation against the President and other prominent ANC leaders." It is dated 5 July 2004. It is signed both by yourself and Ackermann SC. It reads:

"1. I normally do not allow myself to be distracted by such matters, but given the manner in which Commissioner Selebi sought to attack you over the above case, the following is of interest.

- 20 2. On 5 July 2004, Senior Superintendent L Bester and Superintendent H Britz of SAPS headquarters saw me in connection with the attached memo confirming the NPA's decision not to conduct an investigation. They were displeased with the contents of the memo and

attempted to persuade me to reopen the case against the President, as there was an abundance of evidence to justify a prosecution. I have invited them to furnish me with dockets containing such evidence.

10 3. During these discussions, Mr Ackermann joined the meeting and drew their attention to the fact that since June 2003 he had invited them to produce evidence implicating the President without any success. I am now waiting to see if any dockets will materialise and will inform you accordingly.”

So yesterday, I drew your attention to the fact that Senior Superintendent Bester seemed to have a preoccupation with putting together cases against the ANC, in particular the ANC leadership. And here you have Bester and Britz, knowing that the NPA have now made a decision in the matter and coming to tell you that they are displeased with that decision, given the abundance of evidence. What did you read into that?

20 ADV MACADAM: This was, I do not... you see what had happened is; the allegation against Mr Ngcuka by Commissioner Selebi had already been investigated and we had demonstrated that his claims were false. And what happened there is that I had given my report to Mr Ngcuka, setting out all my reasons why there was no such case.

While I was working, Mr Ngcuka, accompanied by Minister

Maduna and Mr Billy Masetlha, a security advisor to the President, came into my office. I then explained the basis for my decision. They put questions to me. I answered them. I said look, if there is any doubt on this matter, I am willing to take you through, you know, all the material I worked.

Then the minister said no, that is not necessary. He then stepped out of my office, standing on the other side of the door, and Mr Maduna has got a very loud voice. I heard him say to somebody: put me straight through to the President. I did not hear what the next
10 exchange was, but he said: if Selebi is making that allegation, he is lying.

So I do not know if this was now orchestrated by Commissioner Selebi to gain credibility by saying; here you are, Macadam and [indistinct] made a mistake and here is his letter directing further investigations, if that was the motive. Or whether it was just Britz being an old Security Branch member, still wanted to settle scores with the ANC. But I can confirm, Madam Chair, what I did is; I did not have time to read the 400 dockets, but I went through the register that was given to me. President Mbeki was not listed as
20 a suspect in any of those dockets, in contrast to other cases where General Nyanda, General Shoke, other prominent members of uMkhonto we Sizwe were.

I can confirm, furthermore, that the only docket that they identified to Adv Ackermann and I for prosecution, and this was before Commissioner Selebi made his allegations, was the Blarney

matter, and that matter was in fact prosecuted by us. And the follow-up to this is; I said bring the dockets, because I always said fine, if there is evidence, I must reassess my decision. The story then changed. No, all the material is with retired National Commissioner Johan van der Merwe.

Now, the question is; what is a former national commissioner sitting with evidence that implicates the President of South Africa? If he had any such evidence, he should have handed over that material to the person who replaced him as the National Commissioner,
10 George Fivaz, so the matter could be properly investigated, as the law requires.

But to dispel this story once and for all, and I think the affidavit from Mr Leask is attached to one of my affidavits, or it is filed with the inquiry, is that Mr Leask said he went to Mr van der Merwe. He confirmed he has got a lot of evidence and he will submit it to Mr Leask via his attorney. No such material was handed over to Mr Leask. Mr Leask informed me that thereafter, every time he made an appointment to see Mr van der Merwe, he would cancel or not be available.

20 So, and then the final straw is; after the plea and sentence agreement in the Reverend Frank Chikane matter in 2007, their attorney, Mr Wagener, the same person mentioned in the affidavit of Mr Leask of March 2004, then writes to Adv Pikoli, saying that the NPA must focus on one single landmine incident and look into the role of the NEC. And that particular case referred to by Mr Wagener

is one where people were arrested, convicted and thereafter they were granted amnesty. And how can you then prosecute the President on one single landmine incident? And in that case ...[intervenes]

ADV VARNEY: Thank you.

ADV MACADAM: It was simply planted on a farm road and two families travelling in a car were the victims in this case. Not a high value target for the ANC; for example, a senior military or police commander or an intelligence agency infiltrated them.

10 ADV VARNEY: Thank you. We will turn to a document that I think will speak to some of the issues you have just raised. Chairperson, I see it is almost 11 PM. Would the Chairperson and Commissioners wish to take the tea adjournment?

CHAIRPERSON: 11 PM, Mr Varney? Mr Varney?

ADV VARNEY: Sorry, AM, AM.

CHAIRPERSON: Yes. Yes, I think this would be an appropriate time to take a tea adjournment until quarter past 11.

ADV VARNEY: As the Chair pleases.

INQUIRY ADJOURNS

20 INQUIRY RESUMES

CHAIRPERSON: Are you well settled, Adv Macadam?

ADV MACADAM: Correct, madam chair.

CHAIRPERSON: Thank you. Mr Varney.

RAYMOND CHRISTOPHER MACADAM (still under oath)

CROSS-EXAMINATION BY ADV VARNEY (Continued): Thank you,

chairperson. Mr Macadam, with regard to the evidence you were giving just before teatime, I want us to return to paragraph 43 on page 145, that is paginated red number. And you made reference to a report that Dr Pretorius showed you, a report addressed by Ackermann to Ramaite and Pikoli dated 30 October 2006, and you attach that report as annex RCM10. That report is ...[intervenes]

ADV MACADAM: I just need... I just need to turn to that annexure, because out of my head I do not know what the text of that document is. If I may do that?

10 ADV VARNEY: Yes, that is exactly what we are going to do. So the front page of that annex RCM10 is at page one, seven, six, 197.

ADV MACADAM: I have it here.

ADV VARNEY: Good. So it is an internal memorandum, it is from Adv Ackermann SC, it is addressed to Dr Ramaite, copied to Adv Pikoli and copied to Adv K Pillay. The two subject matters:

- "1. Details of TRC cases closed by the PCLU,
2. Re-appointment of Senior Superintendent
Brits."

20 And as mentioned, the date is 30 October 2006. Now, for current purposes, I want to deal with that second topic, "Re-appointment of Senior Superintendent Brits". So if I can ask you to turn to page 10 of the memo? It is at red paginated number 185.

ADV MACADAM: Yes, I have it.

ADV VARNEY: And at paragraph 2.28, that is titled, "Re-appointment of Senior Superintendent Brits". Now, there are several paragraphs

here, but I think it is important that we put all of them on the record. So I am going to read them into the record and then pose some questions to you. So starting at 2.28.1:

- 10 "1. At its last meeting, the committee was informed by Assistant Commissioner Jacobs that Senior Superintendent Brits would be re-appointed to investigate the dockets in possession of SAPS.
2. I wish to express my concern at this. Brits was a former member of the Security Branch prior to the PCLU, being involved with TRC cases, assisted the DPP Pretoria with cases involving the liberation movement.
- 20 3. Former Police Commissioner, General Van der Merwe, had formed an organisation entitled The Foundation for Equality Before the Law, which was intended to ensure that no further prosecutions of Security Branch members would take place.
4. I and my staff were appointed to take over the TRC cases in the DPP office. Pretoria. We gained the firm impression that Brits was not only very sympathetic toward this

organisation, but had regular contact with General Van der Merwe.

5. In particular, Brits tried to persuade me and my deputy on numerous occasions, that there was a provable case of terrorism against President Mbeki arising from the landmine campaign. This was raised in the context that there were Security Branch members to be prosecuted..."

10

I think that the word "if" is missing:

"The president would also have to be charged. It was clear that he was against prosecutions of Security Branch members. Despite his claims, he could never produce a docket implicating the president. At one stage he informed me that the docket was with General Van der Merwe and his legal advisor. This raises a very serious question as to how an official police docket could be retained by General Van der Merwe, who was not entitled to possess police material after his retirement from SAPS.

20

Sub 6 on the next page"

- "6. When the issue of prosecuting Security Branch members for the Pebco 3 incident

was raised with their lawyer, he immediately indicated that he was preparing to submit a docket calling for the prosecution of the president. I can only draw the inference that the sharing of information took place between Brits and Van der Merwe.

10 7. The issue of the prosecution of the president was raised at the highest level of government, and resulted in enquiries being conducted by a minister Maduna, as well as members of the president's office. All parties were satisfied that the NPA had no intention of prosecuting the president. In fact, Mr Ngcuka had been provided with a report. No such case had been established in the TRC records.

20 7. This highly embarrassing incident caused Mr Ngcuka to instruct that Brits vacate the offices of the DPP, and that all the relevant SAPS dockets be removed. Brits were subsequently relocated in the SAPS Crimes Against the State Unit. He requested the PCLU to provide written confirmation of the fact that the decision

had been taken not to prosecute the president. When he received the letter, he tried to persuade the PCLU to reconsider its decision.

9. I therefore believe that Brits lacks the necessary objectivity to be of assistance to the committee, and that his reappointment may lead to further controversy, as well as the potential leaking of information to General Van der Merwe."

10

So having read those remarkable passages, does this indicate that, given the date of this memorandum, being in late 2006, that there were elements within SAPS that still believed that there was a case to be made out against President Mbeki and other ANC leadership, and that these should be pursued, notwithstanding this earlier decision to close those cases?

ADV MACADAM: That is correct, because when Mr Ngcuka ordered the removal of those 400 documents, Deputy Commissioner Pruis and Deputy were present, and Mr Ngcuka made it clear that he is ordering the removal of those documents, not to stop any further work on them, but simply to deny Commissioner Selebi the opportunity to make further false allegations.

20

But Mr Ngcuka said to the police this does not mean that if you have a case where you need assistance from the NPA decision,

that you can submit it, and we will considered that individual docket. No such dockets were ever submitted at any stage to us after those two Deputy Commissioners were so instructed by Mr Ngcuka.

ADV VARNEY: And ...[intervenes]

COMMISSIONER KGOMO: Can you, sorry, Mr Varney, Mr Macadam, can you remind us why, is it Colonel Brits, was removed in the first place and subsequently reappointed? Who removed him and who reappointed him?

ADV MACADAM: Commissioner, he was a retired police officer
10 working on contract, with a contract given to him by the police who were then paying him his salary. So what would have happened is that when that contract lapsed, it was not renewed. And clearly here, what is stated was that Commissioner Jacobs was contemplating that he will be again given a contract to again take over these dockets. The NPA always said, as far as the NPA was concerned, remove the dockets from our office. We did not say the police must cancel Colonel Brits' contract.

COMMISSIONER KGOMO: Yes, thank you. Mr Varney.

ADV VARNEY: Thank you, commissioner. And Mr Macadam, there
20 is a rather prescient comment that Ackermann makes in that last paragraph, in sub 9. He says that if Brits is reappointed to deal with these cases, he says this may lead to further controversy, as well as the potential leaking of information, leaking of information in the hands of the police. Do you think that concern of Adv Ackermann was justified?

ADV MACADAM: Correct, madam chair, both Adv Ackermann and I were in 2003, early 2000 firmly under the impression that Colonel Brits was sympathetic to the former Security Branch, and we also got the impression that he was in regular communications with Mr Van der Merwe.

ADV VARNEY: And speaking of leaking of information, are you aware of a leak involving the very landmine case that you have referred to the press approximately one year later?

ADV MACADAM: That is correct, yes.

10 ADV VARNEY: So it does seem that Adv Ackermann's concern had a real justification. Now, if I can draw your attention back to sub 5, where Ackermann writes in relation to the pressing for a case against President Mbeki, the second sentence:

"This was raised in the context that there were
Security Branch members to be prosecuted..."

I think he meant to say this was raised in the context that if Security Branch members to be prosecuted, the president would also have to be charged. It was clear that he was against prosecutions of Security Branch members. And then in sub 6 a similar sentiment is
20 expressed by Ackermann in relation to the Pebco 3 incident, where he mentions that their lawyer, and I am assuming that is Wagenaar, said that he immediately indicated that he was preparing to submit a docket calling for the prosecution of the president.

Now, did this reflect a tactic on the part of perhaps Commissioner van der Merwe and his organisation, the Foundation

for Equality Before the Law, that the representative of these suspects, Mr Wagenaar, and perhaps individuals within the police, such as Brits, that this was a tactic they were using? If Security Branch members are to be prosecuted, well, then the effect is that they will ensure that anti-leadership must be prosecuted as well.

ADV MACADAM: I cannot talk about the police that were involved after this, but Colonel Brits clearly tried to sell that story to Adv Ackermann and I. I remember specifically him saying the TRC was such a beautiful process, we cannot contaminate it because the
10 prosecution of former Security Branch members will lead to the prosecution of the president, and that will have a major negative impact, he said that specifically.

ADV VARNEY: Now, Adv Ackermann before this Commission has been accused of being an apartheid prosecutor who could not be trusted. Given that Adv Ackermann is objecting strenuously the appointing of a former Security Branch officer, who appeared to be, in Ackermann's view, bent on pursuing cases against the ANC leadership, and appeared to be against prosecutions of Security Branch members. In your view, does that not undermine claims that
20 Adv Ackermann was not objective and that he was an apartheid prosecutor?

ADV MACADAM: No, madam chair, in all my dealings with Adv Ackermann, he never had an agenda that we have got to focus on the Security Forces, no, sorry, never that our priority is prosecuting the ANC leadership, and we should forget about the Security Branch

cases.

You will see, I think it is AD, in those AD1.4 documents, which are attached to my affidavit, I had identified all the cases that we needed to look into the Security Force, and then Adv Ackermann said he agreed with me, and that was the strategy endorsed by Mr Ngcuka. That was in our meetings in May 2003, and then he was involved in the Pebco 3 case, which was a case against the Security Forces. He also ...[intervenes]

ADV VARNEY: If you turn to...

10 COMMISSIONER KGOMO: Sorry...

ADV MACADAM: May I just finish? He also, you know, endeavoured to have the SCA judgment in Wouter Basson appeal to the Constitutional Court, he had to in the applications for leave to appeal provide an affidavit. And if you read that affidavit, you will see this is not a person who is gunning for the ANC and wanting to protect the Security Forces.

ADV VARNEY: Thank you. Commissioner Kgomo.

COMMISSIONER KGOMO: No, no, that is fine, thank you. Continue, Mr Varney.

20 ADV VARNEY: Thank you, commissioner. Adv Macadam, if we can return to your 2018 statement on page 145 of the bundle, paragraph 44?

ADV MACADAM: Certainly.

ADV VARNEY: So now this is dealing with the Ahmed Timol matter, and I want to read to you a section of this paragraph. I must start

from the second sentence, and this deals with the investigation of an aspect of the Timol matter:

10 "If memory serves me correct, Leask had informed me that as a result of the decision taken by Ledwaba, that the DSO would not investigate TRC cases, he was unable to comply with my original request for investigations. Since he was, however, travelling to Cape Town on other investigations, he contacted Ivor Powell (that was the journalist in question) and question him regarding the confession apparently made by the applicant in the matter. The allegation was however denied by Powell, and Mr Cajee was informed accordingly."

Now, as I understand it, it was on the back of that information that the Timol case was subsequently closed. Now, would you agree with me that that did not constitute an investigation of the case; it was simply Leask, who was not able to investigate officially, doing you a favour since he was already going to Cape Town on other matters?

20 So he made contact with Powell, who I understand had actually even joined the DSO by that time, and spoke to you and gave you that information, that that was just closing a particular lead, it was not conducting an investigation.

ADV MACADAM: That is correct, because if it had been an investigation, he would then have taken an affidavit from Mr Powell

and then set everything out in the affidavit. But more importantly, if you look at my tasking that I gave to Mr Leask in May 2003, I am confident that if he had followed up those areas that I had identified, that would have given me sufficient grounds to submit an application to Adv Ledwaba to authorise a full investigation in terms of section 28(1)(a) of the NPA. So then it could be officially investigated by the DSO, using all the powers of the DSO, and every bit of evidence would have been gathered if it was available.

ADV VARNEY: But as you have already indicated, that did not
10 materialise because Ledwaba instructed that Leask stopped his work on the TRC cases, and we have already dealt with that saga. So in those circumstances, given that Leask was not able to address all the instructions you had previously given him, and given that only one aspect was looked into, that is set out here in paragraph 44, is there not some merit in Imtiaz Cajee's criticism of the closing of that investigation, because it cannot be said that an investigation actually happened?

ADV MACADAM: That is correct. You see, this letter was drafted in 2006, when I was fulltime on the nuclear case. So what I suspect is,
20 somebody who had taken over from me may have seen that letter that I wrote to Mr Cajee in 2004, but not seen the previous letter a year previously, and seeing that, I wanted further investigations to be done.

But clearly when you have these breakdowns of continuity, it is this type of thing that does happen, because if the DSO had not

withdrawn, the matter would have been investigated already. Leask would have got that information, and we would have known already in 2003 whether we have sufficient grounds to launch a full investigation.

ADV VARNEY: Do you accept that the closing of the Timol investigation at that time, that that was a mistake?

ADV MACADAM: Correct, yes.

ADV VARNEY: And I know it is in paragraph 45 that you point to a report dated 24 October 2006 addressed by Ackermann to Ramaite.

10 And in that, we do not have to go to it, but in that report cases are listed that are closed, and names of prosecutors are mentioned next to those names. Then next to the Timol case there is no name mentioned. Commissioners, that is at page 192 of the record, if you do wish to look at it. Perhaps we can just go to page 192 quickly, and you will see under paragraph 3 at the bottom:

"Matters closed - Death and detention -
Ahmed Timol"

It makes reference to that alleged confession to the journalist, which was followed up. If you turn the page, there is also
20 reference to Biko and Niehaus and other cases, and you will see that names of prosecutors appear next to other case names like Niehaus, your name appears and several others. But there is no name of a prosecutor next to that of Ahmed Timol.

ADV MACADAM: That is correct, yes.

ADV VARNEY: All right, let us then move on to the next paragraph.

And here you indicate the research you did when you prepared this affidavit. Oh, sorry, it is not paragraph 45, it is paragraph 46 on the next page. Here you point out that in December 2017 you were contacted by the NDPP's office manager, who requested you to collect certain of Pikoli's documents that he found in a strong room. You collected these documents, perused them, and, in fact, you have attached these to your affidavit. Let us start with the first one:

10 "A second draft of an indemnity bill making
 provision for the president to grant indemnity into
 persons committing politically motivated crimes
 from March 1960."

If you turn to page 202, there is only the front page of that indemnity bill and then the preamble. Was the full bill not in the records at that time?

ADV MACADAM: Madam chair, I can check. I suspect when I was this year looking for documents and going back to the NPA, I might have come across the full Indemnity Act, so I think subsequent to my testimony in March, I found it. If that is the case, I will arrange for it to be supplied to Miss Graham, who collects the documents on behalf of
20 the inquiry, if that is appropriate.

ADV VARNEY: We would be grateful, I think it would help to complete the Commission's records, and currently, we only have those two pages. And then if we move onto the next sub-paragraph, 46.2:

"The terms of reference of the amnesty task

team, dealing with the criteria with which the NPA applies to TRC cases, formulation of guidelines and whether legislative enactments are necessary."

And then you attach that as RCM 14. The Commission is familiar with the contents. And then 46.3:

10 "The further report of the amnesty task team, *inter alia*, looking into whether private prosecution and civil litigation can be eliminated where a decision not to prosecute is taken, and whether a person agreed with the decision could approach the International Criminal Court."

And then the next, sub-paragraph 4:

"Letter dated 6 February 2007 addressed by Pikoli to the then Minister of Justice..."
[intervenes]

COMMISSIONER KGOMO: 8 February.

ADV VARNEY: I beg your pardon?

20 COMMISSIONER KGOMO: A letter dated... yes, a letter dated 8 February, not 6 February.

ADV VARNEY: Oh, thanks, commissioner, I am getting mixed up, and plus my eyesight is also failing me. That is"

"Letter dated 8 February addressed to Pikoli by the then Minister of Justice expressing her concern that the NPA was proceeding with the

TRC prosecutions and she was under the impression that the NPA would not."

And you attach that as RCM16. Perhaps we can turn to that one, it is at page 209 of bundle...

ADV MACADAM: Yes, I have it before me.

ADV VARNEY: So this is a letter from Minister Mabandla to Adv Pikoli dated 8 February 2007, titled "TRC matters". She refers to a discussion on the 6 February, and then she writes:

10 "I must advise you at the outset that the media articles alleging that the NPA will go ahead with prosecutions have caught me by surprise. In our discussions, you briefly mentioned to me that the NPA will not be going ahead with the prosecutions. As you had undertaken to advise me in writing, I will appreciate it if you could advise me urgently in the matter so that there can be certainty."

So when you read that, what impression did it leave with you?

20 ADV MACADAM: Madam Chair, after this was filed, I was this year approached by Ms Graham to look for documentation relating to the minutes of the task team and the communications between Adv Pikoli and the other DGs, which I obtained and provided to her. So now I attach considerable importance to the date, 8 February 2007. That is shortly after the task team, which was purportedly set up to fast track

TRC investigations, was set up.

A member of her department was represented therein, so I find it very strange to see how, if this is correct, obviously I do not know if this letter is accurate, but if it is, how the Minister could be under such an impression when there has been this task team. The minutes of the first meeting, I think, are attached to my March this year affidavit, and it was clearly the intention to make it clear that we need to move now on those investigations.

10 So I find it extraordinary that such a view should be expressed, and also, the Minister had to concur with the guidelines which Adv Pikoli had approved. So again, I find it very strange that there would be no prosecutions when you are setting up, you have got to go through a whole legislative process to have those guidelines approved, you are setting up a task team, people have to attend the meetings, etc., if there are going to be no prosecutions.

ADV VARNEY: Let us turn back to your affidavit at page 146, and we have a last sub-paragraph 46.5, and we have dealt with this memo already. This is the memo addressed to the Minister about Pikoli, setting out a considerable detail what he construed to be interference
20 with the dealing of TRC matters by other government departments, and he makes that conclusion.

That is at page 210, and that is about a week later, after he receives that letter from the Minister, that is 15 February. And then you quote the passage that we have already quoted previously, but perhaps if we can go to 220, we can just look at the concluding

paragraphs from 5.3, where he writes:

"It would appear that there is a general expectation on the part of the Department of Justice and Constitutional Development, SAPS and NIA that there will be no prosecutions and that I must play along. My conscience and oath of office that I took does not allow that."

So when you look at these annexures RCM13 to RCM17 that you attached to your 2018 affidavit, I suppose I should put it to you,
10 these documents, and given the almost total lack of investigations that occurred between 2003 and 2010, does this not point to what one might refer to as "unwarranted executive interventions" in the TRC cases that were being handled by the NPA?

ADV MACADAM: Madam chair, I would prefer to leave that to Adv Pikoli, who dealt directly with the minister, and Dr Ramaite, who alleged that the stopping of the Chikane prosecution, and therefore a monetary investigation, that they deal with it. So I do not know ...[intervenes]

ADV VARNEY: Yes, we...

20 ADV MACADAM: Ja, I do not know how the minister is saying I was under the impression they amounted to executive interference. It is simply a view that she expressed, which Adv Pikoli in detail responded to saying that is not the position. And then, as I said, I do not know what prompted both the police and the DSO in 2003 to elect not to investigate. And I do not know what happened in between,

because I was full-time involved in the nuclear case and not dealing with TRC matters, so I would rather leave this question to be answered by the people who have direct knowledge of that.

ADV VARNEY: Thank you, we will indeed, both Adv Pikoli and Ramaite have testified on these points before the Commission. Then let me ask you for elaboration on what you say in your paragraph 47:

10 "These documents speak for themselves and go
a long way in explaining why from 2003 the PCLU
constantly struggled to have the TRC cases
investigated."

ADV MACADAM: This is correct, as I said, I only found those documents many years later, but if you read what is stated in those documents which I attach, that could well be a reason for what happened.

ADV VARNEY: Yes, and certainly, it would be the view of the families that it was not merely a coincidence that you struggled to get investigators for a period of seven years. That, in fact, that struggle was intimately connected to these decisions and the views expressed in those documents, they were not unconnected. Would you agree?

20 ADV MACADAM: Madam chair, if you look at the Amnesty Task Team minutes, the first question I raise is, when those meetings took place, the issue was not that we need to have indemnity for people who did not apply for amnesty at the TRC. It was that the two investigative agencies were not investigating, despite the PCLU having identified cases that required investigation.

If you look further into those minutes, there is, first of all, exploring the possibility of preventing people having private prosecutions. Now, it is absolutely fundamental to our legal system that if the NPA declines to prosecute, the person who suffered the harm is entitled to have a prosecution, a private prosecution.

When it comes to preventing people going to the International Criminal Court, I had met personally the first and second chief prosecutors. They had each told me that the International Court not only relies on state referrals, but also has a mechanism whereby
10 civil society can bring matters to their attention.

So the question is, how can you prevent a South African citizen approaching the International Criminal Court when South Africa has ratified an international convention recognising the International Court, and committing itself in domestic legislation to assisting the court?

These are all things that point to me that if a decision is taken not to prosecute, there will be no other recourse available, and it is contrary to the law. I mean, if we look at these prominent corruption cases where Freedom Under Law, Helen Suzman
20 Foundation were able to successfully review several key decisions not to prosecute, and prosecutions had to then be instituted.

ADV VARNEY: Yes, indeed. Well, we know, Mr Macadam, that the Amnesty Task Team got legal advice, and they were advised that it would be illegal and unconstitutional to try and stop civil litigation and private prosecutions in respect of the TRC cases. But nonetheless,

you would agree that this points to the intention behind the posing of those questions?

ADV MACADAM: That is correct. I honestly cannot see why they would be so concerned about those matters. Because if it comes to the further indemnity, the President had, I think this was now April 2003, when the President had to address Parliament and put on public record his response to the TRC report, he specifically said he is aware of widespread calls for further amnesties, and he rules that out. So why would his officials then be contemplating a second amnesty process?

ADV VARNEY: Yes, although in the president's speech, he did speak, he did certainly rule out a further amnesty which would be unconstitutional, but he did speak of exploring ways to accommodate those who had not applied for amnesty.

ADV MACADAM: Madam chair, there are pre-existing mechanisms to address that issue. Firstly, any person implicated in a crime can make representations to the NPA not to prosecute, and those are then always assessed on their individual merits. Yes, sometimes you do not, even though the person admits he committed a crime, sometimes we say no.

Secondly, we have the vital tool in the Criminal Procedure Act that anybody who is prepared to testify against the other people who participate in a crime can then testify against those people. And if the court finds that the person was a satisfactory witness, indemnify the person from criminal prosecution.

ADV VARNEY: Thank you. Mr Macadam, I now want us to move to your 2015 affidavit. That is the affidavit that you made out in the Nkadimeng case. The beginning of the affidavit is at page 95, red paginated number 95 of the bundle. It is an affidavit that you attested to on 6 August 2015.

ADV MACADAM: Correct, we have it in front of us.

ADV VARNEY: And you did briefly explain why you were required to make out an affidavit in the Nkadimeng matter, and just to remind ourselves, Thembi Nkadimeng, as she was known in those days, and
10 these days, she is known as Thembi Simelane. She brought an application against the NPA, the National Commissioner, Minister of Justice and others for a decision either to make a prosecutorial decision or to refer the matter to an inquest. You can explain how it is that you made out an affidavit in this matter?

ADV MACADAM: She brought a mandamus application against the respondents cited on the covering page of my affidavit, and because I was the prosecutor dealing with TRC cases, I was required to make an affidavit setting out what I dealt with with the matter, and that is why I deposed to it.

20 ADV VARNEY: Thanks for that clarification. And am I right in saying that this supporting affidavit and the other answering papers were not actually filed because the matter was eventually settled?

ADV MACADAM: I am not aware of the final resolution of this matter. I am just trying to see, I see my affidavit was dated the 1 November 2018, but as a matter of ...[intervenes]

ADV VARNEY: [Indistinct].

ADV MACADAM: I see the date on the back page, page 147, I signed that ...[intervenes]

ADV VARNEY: No, sorry, you are on the wrong, you are on the wrong page ...[intervenes]

ADV MACADAM: Oh, am I on the wrong affidavit? Sorry, I apologise. I am trying to see the date on which I did the supporting affidavit. If you will just bear with me, we are trying to find the date that this affidavit was commissioned.

10 COMMISSIONER KGOMO: Page [indistinct].

ADV VARNEY: [Indistinct], thanks, commissioner.

ADV MACADAM: We cannot find it. The only reason I want to mention that is that already at the end of May 2015, I had submitted a full report to Adv Johnson, who was the head of the PCLU at the time. And I had analysed all the evidence, I had dealt with the various scenarios, prosecute people for murders, prosecute somebody else for kidnapping. And I concluded that the safest option was to have a formal inquest before a judge, which corresponded with the relief that was sought by the applicant to the case, so ...[intervenes]

20 ADV VARNEY: Thank you. It is important that you do find the affidavit. Can I just check whether you have it? It starts on page 95, the signature page is 105.

ADV MACADAM: May I also look at my own papers? Perhaps I have the copy that is signed and dated, then it will resolve everything. If you will just bear with me, if I could just page through it.

ADV VARNEY: With your colleague helping you, can we just ask that your colleague turn to page 95 of the bundle, that is red paginated number 95?

ADV MACADAM: Yes, I see that. I am just – what is important is – oh, my affidavit is then signed on the 6 August 2015, and I am just checking my report and recommendation was already done on the 28 May 2015, so I do not know. All I know is at some stage Adv Johnson approached me and said, on the instructions of either Adv Abrahams or Adv Jiba, the case has been taken away from me.

10 And subsequently it was given to two advocates in Joburg, but I had done all my work already on the 28 May 2015.

ADV VARNEY: Noted. All right, let us not deal with this affidavit, and I am going to try and move through it quickly because there is some repetition, which I will try to avoid. So can I ask you to turn to page 97?

ADV MACADAM: I have it in front of me.

ADV VARNEY: And you then, from paragraph 7 onwards you deal with your interactions with then Divisional Head of the Detective Services of SAPS, Commissioner Lalla. Before we get into what you
20 mentioned here, I am reminded that back in 2003, together with Adv Pretorius and Adv Ackermann SC, you attended a meeting with Raymond Lalla in order to perhaps ask for investigators or get advice on that question.

And that unbeknown to the three of you, that meeting was clandestinely recorded, and subsequently the three of you were called

into NDPP Ngcuka's office. Firstly, can I check with you, what was the reason for meeting with Lalla at that point in time?

ADV MACADAM: I had worked very closely with Commissioner Lalla when he was the Provincial Head of Crime Intelligence and I was doing political violence cases. What happened is, the Crime Intelligence Office in, I think Limpopo, submitted a report which came to my attention alleging that Mrs Mandela was involved in the murder. If we can just go to my March affidavit, I attached the letter that I wrote to Adv Lalla. So we wanted his assistance on the issue of this
10 intelligence report so it could be taken further.

Secondly, I was at that stage assisting the Department of Justice in opposing the review application on the Motherwell bombing case. Now, there was a conflict between the applicants as to what was the motive for killing those policemen. The one version was that they were going to reveal their knowledge of the Cradock 4 and other serious matters, but on the other hand, it was alleged, no, they had now decided to defect to the ANC, and they had to be killed to prevent them revealing the identities of agents and former safe houses.

Because that was, when the matter was set aside by
20 Cape Town High Court, those were the aspects that they found that when amnesty was refused, the TRC did not have proper evidence before it accepted one version and rejected the other. Now, with many of the crime intelligence persons having come from uMkhonto we Sizwe, I was hoping that Commissioner Lalla would be able to very quickly establish whether in fact there was ever any record of

that recruitment, so that is why we wanted to meet with him. It was set out in an annexure, the letter I wrote to him is an annexure to my March affidavit.

ADV VARNEY: Thank you, and indeed, we will consult it. But according to Adv Ackermann, in addition to those specific requests, was there also not a desire to see whether Commissioner Lalla could assist with the investigation of the TRC cases, given that the DSO at that time had declined?

ADV MACADAM: He was the head of Crime Intelligence, he could
10 not conduct investigations, that is the responsibility of the Detective Service. But what I remember very vividly is that this meeting took place a month after the refusal by Adv Ledwaba not to investigate the matters through the DSO, And Adv Ackermann let off steam, he was very vocal about how bad the DSO were in not doing that, because, you know, both of us were really seriously affected by that decision.

So, he just let off steam, believing that this would not go further than the four people in the room. And what I remember is that as we were leaving, Adv Ackermann said I have to make a decision against the President, which was perfectly correct. The president had
20 been refused amnesty, there were 400 dockets investigated, so obviously we had to see if there was any evidence of him or not. So that was correct, and Mr Ngcuka had said specifically that Adv Ackermann must make the decision in the case involving the president.

ADV VARNEY: Noted. And although he was at that point head of

Crime Intelligence, was there any discussion on whether SAPS could play a role in investigating the TRC cases?

ADV MACADAM: Yes, you will see that we were asking him to assist us on the intelligence level. Could they verify which of those two versions is correct regarding the purpose for which those policemen were killed? And secondly, the allegation against Mrs Mandela had been generated in an intelligence report, so obviously letting us see that report and the follow-up material would enable us to determine whether or not that allegation is correct.

10 ADV VARNEY: Noted. All right, so now we are essentially fast forwarding. If I can draw your attention to paragraph 10, and perhaps this is in the context of acting NDPP Mpshe asking you to negotiate with SAPS about pointing investigators to the TRC cases. So for example, at paragraph 10:

"As a result of Commissioner Lalla's advice, I commenced a further set of engagements aimed at persuading the DPCI to investigate the matters."

20 You point out that on 25 March 2010 you had written to the DPCI requesting the instant matter, that, of course, would be the Nokuthula Simelane matter, and you were informed that these investigations could only commence after the conclusion of the 2010 World Cup. Would I be right in saying that not just the Nokuthula Simelane matter had to wait for the World Cup to conclude, but all the other TRC matters as well?

ADV MACADAM: That is correct.

ADV VARNEY: Let us move on. If I can ask you to turn to page 99, and at paragraph 14. Now, this is in relation to the Nokuthula Simelane matter. You indicate that on an ongoing basis, you were consulted by the investigating officer regarding the conduct of the investigation. It was clear to me that he was encountering difficulties in complying with your instructions. Can I ask which investigating officer this was?

ADV MACADAM: It was Captain Masigela.

10 ADV VARNEY: Thank you. You then go on to say:

"At a certain stage, however, he resubmitted the docket together with a statement from the 96th investigating officer, Captain Leask."

Now, am I right in saying that once the investigations got going post the World Cup, it was noted that the original docket was missing or could not be found, and I believe that at that point, only a duplicate docket was located? Is that correct?

ADV MACADAM: That is correct.

20 ADV VARNEY: Commissioners, we can refer to the SAPS bundle at page 45. I will wait for you to find it, Mr Macadam. There is a letter from yourself to Superintendent Bester dated 25 March 2010.

ADV MACADAM: Yes.

ADV VARNEY: And it is titled, "Investigation: Nokuthula Simelane", and it gives the case number at John Vorster Plein/Square. If I can draw your attention to the second page, the second last paragraph:

"The NPA was only provided with a duplicate docket. It is only to be anticipated that it may be difficult to locate the original, as this was opened by the D'Oliveira unit, which closed down 10 years ago."

Now, would you agree that, you know, not finding the original docket or the original docket going missing, that this is the sort of thing that happens when a case is left dormant over a 10-year or more period?

- 10 ADV MACADAM: Linked thereto is also a lack of continuity, because this started as a D'Oliveira investigation, and then, as I recall, in 1998 the unit dissolved to address serious new crime threats. They were operating out of the DPP's office in Pretoria, in Church Square, when Mr Ngcuka set up his Human Rights TRC unit. Everything was then moved to the Maize Board building in Hatfield.

- 20 Then when the Scorpions were established, the documents moved to the Promat Building in Silverton, and then the documents then came to the VGM. So unfortunately, this is what happened, but I will say in this matter, by October 2010, we had found the original docket, and I was able to then write an 11-page instruction to Captain Masegela identifying all the aspects that needed to be investigated.

Madam chair, I have before me all my letters giving instructions to the investigation to the police. So certainly, once we had that docket, we were doing a lot of investigations. Unfortunately, because Captain Leask said do not stop further, because this case

must go to Captain Holmes and be part of an investigation against General Engelbrecht. A lot of things that he would have done in 1996, we could only do in 2010, and also, when Captain Leask had the docket, the TRC process had not unfolded.

Now, when the matter went to the TRC, the suspects came out with elaborate explanations as to why they would not have murdered the deceased, and they gave examples of where she had given information leading to the rest of other people. They, the Security Police, had to themselves plant landmines, limpet mines,
10 sorry, limpet mines at two Eskom substations and on a railway line to mislead the ANC into believing that she was still a loyal ANC member, giving instructions to people on the ground to plant those limpet mines.

So it took a lot of time for us to do all those investigations, but already by 28 March 2015, I was satisfied that there was enough evidence for me to say we can go for the inquest, I evaluated all the evidence, debated various scenarios. Yes, I did thereafter write to Brigadier Xaba and say that although we were, for the inquest, because I was fully under the impression we were going to have an
20 inquest.

There were even discussions with the DPP in Pretoria and Joburg, because they had a direct interest in the matter, the kidnapping started in Joburg, we believed she was killed in a rural area falling under GBP. That I identified a list of further investigations, which I told Brigadier Xaba needed to be done before we actually

start leading the evidence at the hearing.

ADV VARNEY: Thank you. And if we can proceed in the same affidavit, if I can ask you to jump to red paginated number 102, and I am going to draw your attention to paragraph 30. So here you point out that in May of 2015 Thembi Nkadimeng's application was served on the NPA. And you point out in the third line that:

10 "Had the LRC (Legal Resources Centre) instead
 of launching this application had written to the
 NPA, it would have been advised that a decision
 whether to prosecute or not or hold an inquest
 would be made within a short period of time."

I want to put it to you that that application did not come out of the blue, but it was preceded by multiple exchanges of correspondence in the preceding years. Would you accept that?

ADV MACADAM: Madam chair, I know of frequent engagements, I was involved in some of them, but the bottom line is on the 28 October proper investigations started, and continued right up until the point when the application was lodged, you know. And what happened, the applications filed on 28 May 2015, on 28 May 2025 I
20 assessed all the evidence and made a recommendation to hold a
 formal inquest before a judge.

So in my view, if the applicants had come to the NPA and said when are you going to make a decision, because already I believe that on the 9 April 2015, Adv Abrahams, then a senior state advocate, had started reading the docket handed to him by the police.

And even though I was dealing with foreign bribery, I was helping him because of my historical knowledge.

So the process of the NPA reading the docket to make a decision had already started a month before the application was lodged. So in my view, it would have been more appropriate to come to the NPA, we are concerned all the delays, this is an old case, these are all the prejudices, can you commit, because we would have probably said, yes, we will make a decision by the end of May.

If the applicant was dissatisfied, she had the perfect right.
10 But the problem is, the applications lodged, then you have to stop work on the decision to now read the application, you had to draft this affidavit. The police also uplifted the docket so that it could be considered by their legal advisors, as the police were a co-respondent in the matter.

ADV VARNEY: Yes, well, it is certainly the version of the Simelane family that they had exercised considerable restraint and patience, and that they had permitted the NPA to investigate further for several years, and that the action taken in 2015 was reasonable in the circumstances. Now, I do not wish to refer to the correspondence
20 now, but if it needs to be, we can return to it, but it is, commissioners, in bundle four before the Commission. I am advised by my attorneys that there is at least 12 exchanges between the family's attorneys and the NPA.

I accept that not all of them were with you, Adv Macadam, but I want to put it to you that the application did not come out of the

blue because of the preceding correspondence, and the fact that the NPA had been placed on terms. And I also want to put it to you that the family acted with some justification in bringing the application at that time, given the lengthy delays in the matter.

ADV MACADAM: Madam chair, I stand by the point that normally you do not launch a substantial application unless you have put the respondents on terms, because in this matter it would have been quickly resolved with a lot less problems and costs than it was done. Because, I mean, after I wrote the letter to Captain Masegela in
10 October 2011, I had a meeting with Adv Palmer, who represented the applicant, the applicant was present.

I spent a whole day taking Adv Palmer through that instruction to the police, and he then said to me he thanks me sincerely for going to all these efforts, despite the fact that this is a problematic case. And after that I continued constantly contacting the investigator, directing further investigations.

Now, I can understand the family is frustrated, they are victims, but what prevented the legal representatives to say, well, is it the best route to go this mandamus route, or should we not come to
20 the NPA and say what are you now doing? And I agree, if we said, no, no, you will have to wait another long period, then you would be a hundred percent right in bringing this application.

ADV VARNEY: Yes, all right. In order to save time, because time is fleeting, we will put up the correspondence, because the correspondence includes a letter of demand and goes over a period

of some years. Let us move on, and perhaps you can turn the page, that will now be page 103, and let us focus on paragraph 33. And here you deal with the delay in finalising the investigation, and there are lots of reasons, but I want to highlight 33.3:

"No investigations were conducted from 1996
until October 2010."

And from the perspective of the families, you know, they are not familiar why in that period there were no investigations. We have traversed that in great detail. We attribute that to the interventions
10 that the executive imposed on the NPA, as well as the conduct of elements within SAPS.

Their question, however, or at least the Simelane family question is the delay between October 2020 and the filing of the application in early, at least in May of 2015, so a period of four odd years, did not accept that a four-year delay in reaching a decision is not acceptable in the circumstances.

ADV MACADAM: Madam Chair, if you look at all the work the police did between October 2010 and May 2015, that four-year delay was or can be justified, because there were a whole range of unfolding
20 investigations and considerable evidence was covered. We have walked the extra mile on this case.

I have all my directives here available to show you all the efforts that the police and I and the Missing Persons Task Team did. And there is case law dealing with unreasonable delay, and it says that that will depend on case to case. You cannot just have a flat rule

four years is out.

On this matter Captain Masegela and I were putting considerable efforts into this matter, Missing Persons was involved. We even had a potential breakthrough, that in an excavation a skeleton was found in an area which linked Pretoria to the farm where the deceased was taken. An on-site examination by a Pretoria anthropologist was that the skeleton would be of a female in the age group of the deceased, and there was evidence of a fracture to the jaw.

10 At the time the area, when that skeleton would have been there, was when it was a very rural forested area, but at the time of the excavation, now there had been urban expansion and is now being graded to become housing. And one of the *modus operandi* of the Security Police is take the person to a remote spot, shoot them through the back of the head and then bury them in a grave.

 So I thought that the breaking of the jaw is that she had managed to escape and was fleeing for her life, tripped, fell, broke her jaw, lied there until she died. And what we did is, we first asked for the facial reconstruction to be done, which would be that you take
20 the skull and compare it to a photograph of the deceased and see whether you can say if the skull belongs to the deceased.

 We also asked the police DNA laboratory to take DNA samples. The report was that they could not obtain sufficient DNA to do a comparison and make either a positive or negative finding. Thereafter I went to Brigadier Ras, the head of the unit. She agreed

that the DNA sample would be submitted to a special laboratory in Bosnia, which did all the DNA testings relating to the Yugoslavian genocide.

Now, after all those efforts we went to, it did unfortunately show it was not the deceased's skeleton we had found, but I could not simply make all those efforts. It must be emphasised, the remains of the deceased were never found and subjected to a *post-mortem* report. There was no witnesses to what she had died. There were conflicting versions on the state witnesses as to where and in whose
10 company she was last seen alive.

So what we did is, and then we had the version of our suspects saying, no, she was dropped off at the Swaziland border post to go back into the ANC. So what we did is two things: we sat down, Captain Masegela, Missing Persons Task Team and I, we mapped out every single location that featured in this whole case.

She was kidnapped from the Carlton Centre, she was taken to the Norwood flats, she was taken to the farm in the Northern District. A single witness claimed she was seen after the farm in a boot of a car still alive at a crossroad near Potch. So we mapped out
20 all of those areas, and the Missing Persons team went to each and every, they checked all the mortuaries looking to see is there an unidentified corpse that could match the deceased.

But we did not stop there, we said let us find out at this time, 1983, where were the safe houses that were used by these people, so we checked them out. The one case, it was said there was a plot

on the southern outskirts of Joburg. When we went there, it was now a shopping mall.

One witness said that a deceased member had told him she had been shot dead and buried in a safe house in Rustenburg. A lot of efforts went into trying to find that safe house. The Missing Persons team went to the farm. When they arrived there, it was mid-summer, the grass was knee high. They said it is impossible to put probes, we will have to wait until winter and then we can do our work.

10 They went back in winter, they said the ground is too hard, we cannot get our probes in. They said we will have to wait until the first rain so the soil is soft but the grass has not grown, which they did. But what they said is they checked all the spots that were prominent in the case, a dam, a shed that the deceased was kept in, a house. They could not find anything there, but they said this farm is so vast that unless somebody who was involved in the killing comes forward and points out, they cannot take it any further.

 A key factor relied on by the suspects was that, as a result of her information, they were able to arrest a group of MK operatives.
20 We did a lot of work going into who those people were. We found extensive documentation, security, police reports of the interrogations, et cetera.

 And at the end of the day, I was firmly convinced I could prove that the information came not from Nokuthula Simelane, but from another source who was based in Bethel in Mpumalanga on the

planting of limpet mines at the railway line and the Randburg substations. We could not find any evidence relating to that railway line.

After an exhaustive effort looking for the police docket, looking at bomb squad, we eventually got Eskom reports on the examination of those two substations, and then we found that the author of that report was in an old age home in Kimberley. So Captain Masegela went there, he interviewed him.

10 A lot of efforts, were when this docket was taken from Captain Leask in 1996, that was not a cover-up. Mike Holmes, the investigating officer in the Eugene De Kock case, was now busy with an investigation into Krappies Engelbrecht, and they believed that the Nokuthula Simelane case should be part and parcel of that investigation.

I went to a lot - unfortunately, Mike Holmes died in 2002 or 2003 from cancer. I and Captain Masegela went to a lot of effort to try and find his docket on the subsequent investigation. We interviewed colleagues that had worked with Mike at the time, and we were unable to find that further investigation. What I did locate was the
20 report which Dr Ramaite submitted to Mr Ngcuka setting out the investigations that were conducted.

Now, the Nokuthula Simelane case was not listed as one of the cases submitted by Captain Holmes to the DPP. There is nothing suspicious about that. If you have a target, General Engelbrecht, you pull up all the cases that he could possibly be involved, but then you

focus on the ones where you believe you have good evidence, and you do not focus on the others.

Now, what I believe is that Captain Holmes had achieved considerable success against De Kock by getting the people who killed on his orders to turn state witness. So what I suspect happened here is that Holmes believed that Pretorius and Coetzee may well follow the route of the 204 witnesses, and obviously if that was the case, then it would be a good investigation.

ADV VARNEY: Thank you, Mr Macadam. We really do need to move
10 on. We do not doubt the lengths that you have gone into. I will simply put the perspective of the families to you. I want to move to another document, and that is at page 111 of the bundle. I will just wait for you to get there. Now, this is a Ministerial memorandum, it is from Adv Abrahams, who at that time was the NDPP. It is addressed to the then Minister of Justice Masutu, it is titled, Memo to the Minister" ...[intervenes]

COMMISSIONER KGOMO: [Indistinct].

ADV MACADAM: I have it before me.

ADV VARNEY: Thank you. Commissioner?

20 COMMISSIONER KGOMO: No, I say it is Masutha.

ADV VARNEY: Masutha, thank you for the correction. So it is titled, Report on Investigations and Prosecutions emanating from the TRC, it is dated 15 July 2015. It is quite a long memo. We are not going to have time to go through it in great detail, but can I refer you to page 120? The preceding pages gives a detailed account as to why the

TRC cases were not attended to and addressed in the past. And paragraph 3.17 caught my eye, because we have not, I am trying to focus on matters we have not dealt with previously. It reads:

"SAPS notified the NDPP, Adv Mpshe SC, that they would not continue to investigate TRC cases pending the outcome of the Ginwala Commission."

Now, can I ask, would there be any basis not to investigate the TRC cases, murders, kidnappings, and the like, pending the
10 outcome of a commission looking into the suitability of an NDPP to hold office?

ADV MACADAM: No, not at all. None of the matters that we wanted to investigate would depend on the credibility or actions of Adv Pikoli, because you now had a new NDPP who had not clashed with the other departments in the task team.

ADV VARNEY: Yes, and in the same vein, let us look at the next paragraph, 3.18, it says:

"A group of victims brought an action in the High
20 Court to have the TRC guidelines set aside on the basis that they had introduced a second amnesty process, and hence unconstitutional. This application was successful, and further delayed the investigation of TRC cases because the then Minister Mabandla and NDPP Mpshe SC first attempted to take the judgment on appeal."

And the same question, why would a decision to take a judgment on appeal setting aside the guidelines, why would that delay the investigation of TRC cases?

ADV MACADAM: I could be totally mistaken on this point, but I believe at some stage Adv Mpshe was given some legal advice that continuing out with the investigations would be problematic for the appeal. But that is not something I can categorically say, it is merely what may have happened. But again, the appeal, the only issue where it would be relevant is if there was a queue of people all
10 wanting to make disclosures in terms of the guidelines. Now, until the court rules that the guidelines are valid, that would not apply, but there were no such cases.

ADV VARNEY: Let us turn to page 131. There is a heading there at paragraph 6, "Matters of current concerns", and let us turn to paragraph 6.2 at the bottom of the page. NDPP Abrahams writes:

"Unfortunately, the quality of investigations are very poor, and is having a negative impact on being able to finalise the cases quickly."

Would you agree with that conclusion?

20 ADV MACADAM: No, chair, I do not know how he could make this as a general statement, because as I said, from 2014 up until June 2015 he was on a daily basis reading these dockets. But I can confirm in certain cases, we were experiencing difficulties, which we put down to inexperience, a lack of historical knowledge. And also, these people are doing these cases over and above all the other cases that they

must investigate.

But if you look at the Nokuthula Simelane case, the investigating officer, with the support from myself and the Missing Persons Task Team, did a lot of really difficult, complex investigations. So I do not know, it would be unfair to individual investigators to taint everyone with the same brush.

ADV VARNEY: And if we turn the page to 132, he gives some examples, I want to focus on 6.2.2:

10 "In the Heidelberg Tavern and St. James Church cases, the DPCI claimed that the police dockets and court records could not be located, although it has now been established that for many years the relevant material was in fact in the possession of the DPCI."

 And you will recall that those two massacres were listed in the information notes of Assistant Commissioner Jacobs as two of the cases to be taken up. And now we see in a memo of the then NDPP saying that the DPCI claimed they could not locate the police dockets, even though it was in fact in their possession. Is that not somewhat
20 shocking?

ADV MACADAM: Madam chair, it is a breakdown of continuity, because these two dockets, the St. James Church massacre, were first investigated by the ordinary police in Cape Town as part of the APLA investigations. And what had happened is, the APLA investigations, which all went the way of amnesty granted or persons

convicted, at some stage would have been filed with the Crimes Against the State Unit. I do not know when that process took place.

Then Captain Nel was appointed to investigate. He was unable to find them, resulting in he and I going to Cape Town searching the registrar's office and contacting Mike Barkhuizen to go around the police stations looking for them.

So again, when you have lack of continuity, gaps, et cetera, unfortunately, this type of thing does happen. But, you know, I do not know as well how good the CATS' record keeping was if there was an
10 easy computer programme that would have accurately all the cases that had been registered or not.

ADV VARNEY: Thank you. And then let me get your response to paragraphs 6.3 and 6.6. I will start with 6.3:

"The failure for the matters to be investigated from 2003 until 2011 has prevented prosecutions being instituted in cases that could possibly have resulted in convictions. This was because by the time the cases were eventually investigated, the suspects and/or witnesses were already
20 deceased."

And in brackets he puts up examples of Cradock 4 and Pebco 3. And then he says this astonishing statement in 6.6 on the next page:

"It is only to be expected that once the decisions are publicly announced and the failure to

investigate exposed, that allegations will be made that government deliberately waited for all the witnesses and accused to die before giving attention to the cases."

So it appears that within the NPA that was a real fear, that this is the kind of discussion or allegation that will be made in public against the government.

ADV MACADAM: Correct. I was actually raising this issue when I had engagements with my superiors to say why it is important.
10 Because if we do not do that, there will be a strong basis for inference that it was done deliberately to let everybody die so that there would be no prosecutions. That is why I said it is important, and I think if you look at all my engagements trying to get these matters investigated, et cetera, I was doing my utmost to try and get them done.

And I think what I said on this point is true, and this is what I was doing, to say, please guys, let us do it now, this is the consequence if we do not. And it is true, I mean, the Pebco 3 matter, the two leading culprits who carried out the kidnapping and the
20 murder all died before in 2010 we could consider prosecuting. The same thing in Craddock 4, key role players were already dead in 2010.

And if we go on the Nokuthula Simelane case as well, people that were mentioned by other witnesses as being able to confirm one version and the other were dead, so you could not follow it up. The

person who claimed to know about her being killed in a safe house was also dead. So we could not get him to take us to this area, point it out and see if we could exhume the body.

ADV VARNEY: Indeed. Mr Macadam, let us now turn to the affidavit that you have made out before this Commission. It starts at page 226 of the bundle. And before I forget, you have helpfully made reference to various notes and directives that are in your possession. Can I ask, are they currently part of your bundle, and if they are not, would you be willing to hand them up to the commission?

10 ADV MACADAM: The directions that I gave on the Nokuthula Simelane matter, is that what you are referring to?

ADV VARNEY: Yes.

ADV MACADAM: I have no objection, I will give them to the State Attorney, and she can then submit it to the Commission, just advising the NPA that we are handing these dockets over. When the former National Director, Adv Batohi, did write a letter giving me permission, instructing the NPA to make available to me all documentation that I needed to place before the Commission.

20 And in this Nokuthula Simelane, we cannot obviously read and go through these things now, it will take forever. But if somebody sits down and reads them, it gives you a very good picture of the challenges, the difficulties. But despite all these difficulties, we do not "throw in the towel", we kept pushing and plugging.

ADV VARNEY: Just on those documents, we should take note that the Nokuthula Simelane case is still a live case. It has been delayed

since 2016 for various reasons I will not go into, but trial itself actually has not started. So I do not think that those documents should be made public, I think they should be given to the Commission for the Commission and parties to look at, but they should not be posted on the website.

ADV MACADAM: I agree wholeheartedly. I was not aware that the case is still pending. These documents could be used to further delay the proceedings, opening the door to legal challenges. So I do not know if the Commission has the power to place documents under
10 seal. That would mean they may not be viewed except by the Commission and the legal representatives. But if there is a way in which the disclosure to the public and to the suspects could be protected, I would not, But obviously I would have real concerns if it goes public.

ADV VARNEY: Yes, indeed. So we will, with the chairperson's indulgence, confer with the evidence leaders to see whether that is possible, and that they can be protected and under seal and not disclosed further. And I think ...[intervenes]

ADV MACADAM: So if I may just add, I am a retired official, so any
20 matter involving these documents should be brought to the attention of the NPA, because they are the people that are going to be directly affected. So I would urge – what I will do from my side, the office manager of the NDPP is the nodal point for this inquiry. I can set up a meet with him and tell him so he can alert the people as to this matter.

ADV VARNEY: Yes, yes, indeed. And I am sure our colleagues from or representing the NPA can also make enquiries. We certainly do not want to jeopardise the case in any way. All right, thanks for that helpful suggestion. If we can turn to your current statement, that is from page 226. And again, I am going to try and avoid repetition where I can, so let us jump some pages ...[intervenes]

CHAIRPERSON: Page 231, Mr Varney.

ADV VARNEY: That is correct, yes, indeed, the first few pages of the index, so it does start at page 231. Thanks for that correction, chair.

10 And, Mr Macadam, can I ask you to jump several pages to page 9 of the affidavit, that is 240 of the bundle? I just want to point to 31.3. This is an exchange between Adv Ackermann and Attorney Wagenaar, and you write as follows:

20 "Mr Ackermann did in fact meet Mr Wagenaar and advised him accordingly. Upon his return from the meeting with Mr Wagenaar, Mr Ackermann informed me that Wagenaar had stated that any prosecution of his clients would lead to the prosecution of the leadership of the ANC who had been refused amnesty."

Did you regard that at that time as an implied threat?

ADV MACADAM: Correct, it was taken forward after Mr Wagenaar represented Messrs Vlok and Van der Merwe at the plea agreement involving Reverend Chikane. Thereafter, acting for AfriForum, he then wrote to Adv Pikoli saying that, as a result of the plea

agreement, the ANC must be prosecuted, and he has then identified this Musina landmine case as the case to be investigated.

And he also said that as a result of the conduct of Adv Ackermann in doing the plea agreement, he will be the ideal place to issue subpoenas in terms of section 205, and to make people cooperate, accomplice witnesses in terms of section 204. I do have the letter, it can be made available if required.

ADV VARNEY: Yes, I think we would like that letter, and I do not think there is any issue in putting that up, so, yes, if you could make
10 that available, we would, excuse me, we would be grateful. And on that score, Mr Macadam, the families will be putting it to the Commission, or making a submission eventually that this was in fact a strategy that Mr Wagenaar, his clients, former Commissioner Van der Merwe and his organisation, together with individuals within the SAPS, this was a strategy that they adopted in order to instil fear by those occupying leadership positions in government to clamp down on the TRC cases. What is your response to that?

ADV MACADAM: That is correct, it is documented. I can also make available a press statement that was released by Messrs Vlok and
20 Van der Merwe after they were convicted in the plea and sentence agreement. I also have available a letter that they wrote to Reverend Chikane in 2004, after Adv Ackermann was prevented from proceeding with the original prosecution in the Chikane matter.

ADV VARNEY: Yes, please do, we want to check. We might have those documents, but I am not sure. So if you could make them

available, we would be grateful. All right, I am just skimming through the balance of your latest affidavit, and in the interest of time, I think we have covered much of it.

Perhaps I can ask you to jump to page 23 of your affidavit, it is at paginated page 254? And we will actually need to go back a couple of paragraphs. If we can turn to the previous page, 253? This is under the heading, "NDPP and Ms Shamila Batohi's Term", although you do go back into history.

10 So, for example, you speak of the nodal points, your appointment as an acting special director, that you handled and oversaw TRC matters until September, 2021. That you commenced an audit of all cases, and that is in 84. And if we turn to paragraph 85:

20 "In respect to the TRC cases, Brigadier Xaba of the CATS unit provided me with details of approximately 30 cases under investigation, which included some of those had referred to the DPCI in 2010. I established that only four cases were receiving dedicated attention from a prosecutor. Shortly thereafter, Brigadier Xaba's commander, General Ledwaba, requested me to appoint prosecutors for all cases."

And then we turn to paragraph 86:

"Reviewing the dockets, I had concerns regarding the quality and pace of the investigations, which

in part I attribute to the absence of any research capability and other resource challenges. I stated above, some of the cases referred to in 2010 were still not finalised."

And you referred to other communications. So this is now you speaking in 2019, and you make mention of the fact that some of the cases which had been referred to the DPCI in 2010 were still not finalised. And that is nearly 10 years later, would you agree?

10 ADV MACADAM: That is correct. Sorry, I interrupted you, I apologise.

ADV VARNEY: No problem. Would you agree that that lapse between 2010 and 2019 is somewhat shocking and unacceptable, given that the suspects and witnesses would have been dying through those years?

ADV MACADAM: As I said, I deal with the issue of the absence of a research capability, resource constraints as being a key reason. That is why you will see in my email to Adv Mzinyathi I said we need to address this issue of investigations by the DPCI. Because fair enough, I pointed to some investigators under very difficult
20 circumstances doing very good work.

But we had lots of examples of, in my view, substandard work, for example, in the Pebco 3 matter, what had happened is I asked Brigadier Xaba for the list of cases. But then he also brought in some of the dockets to see how far they were to decide are they matters that simply require decisions, they can go to a prosecutor

who can deal with them in between his or her court commitments or at an early stage, and then you would need a prosecutor who is not in court who can work full time.

And if I can give you some examples, the Pebco 3 case was written up as fully investigated, it must just go to the DPP. But then the investigating officer says the victims are unknown and have never been contacted. Now, in that case, the victims were the key witnesses in the case. They had to testify to the fact that their husbands disappeared after going to the then Port Elizabeth Airport, believing they were meeting a member of the British Consulate. So how can you say it is fully investigated if you have never contacted the victims?

I had also in that matter, I think it is in the letter in 2010, raised the necessity to follow up certain allegations which you would have to work through the victims. That Mr Hashe had filed a second statement saying that she had been informed by the head of the Murder and Robbery Unit that her husband had been killed in a necklacing in Soweto. Now, how do you follow up that allegation if you have had no contact with the victims?

And it goes on, look, in the St. James and the Heidelberg, nobody who was convicted implicated the suspect. He was not implicated in the amnesty applications. His involvement is allegedly having taken part in radio interviews where he had claimed responsibility for the two attacks. And in 2010 I said you have the necessity to get those recordings and see if they confirm what is

alleged, and then in May 2019 that aspect has not been addressed.

And then also what I found, there are 30 cases, there was an unfair allocation of workload. Captain Nel was carrying no less than 10 cases in every single province, except the Northern Cape. Constable Ubisi was on her own, carrying four cases, including the very complicated case of Adrian Mbwambo. On the other hand, you have got people at the rank of colonel doing only one investigation, and so it goes on.

That is why I said we now from the NPA are going to put as
10 much resources as possible into the matter, but we are never going to get anywhere if the issue with investigations is not addressed. And these were the efforts that I took, in January 2020 Adv Batohi and I met with General Lebeya, expressed our concerns, and then he agreed with us that the way to go forward is he must now appoint 40 experienced retired police officers who can work full-time on the matters. And it goes ...[intervenes]

ADV VARNEY: [Indistinct]... I am so sorry, carry on.

ADV MACADAM: No, and, you know, on the research capability as well, with these TRC cases, before you take one step forward, you
20 have got to gather all the previous evidence to see who featured, are people being consistent in their statements that they make at various times, are other people appearing?

They had no research capability at all, and the proper – and where we did make progress in my cases was when in 2002 I got permission to hire two former TRC researchers, and they did a lot of

very good work for me. I could not have drawn up that list identifying the cases that we wanted to prioritise for prosecution if it had not been for their contribution.

ADV VARNEY: Thank you, Mr Macadam. Chairperson, I see it is just gone 01:00 PM. Will this be an appropriate time for the lunch adjournment?

ADV BHANA: Chair, may we enquire whether Mr Varney is close to the end? He has been examining for more than a day. We still have the evidence leaders who have got to ask questions and do
10 examination.

CHAIRPERSON: Ja. Mr Varney, for how long are you going to be cross-examining Adv Macadam, how long do you still have to go?

ADV VARNEY: Chairperson, we are approaching the "finishing line", but we estimate that we would still need around 30 to 40 minutes to wrap up.

CHAIRPERSON: Yes.

ADV VARNEY: We do apologise. We did suggest to the evidence leaders that we needed two days with Adv Macadam, although at that time we were unaware that there was going to be another application
20 to cross, which only came in recently.

ADV BHANA: Chair, it is quite important we finish Mr Macadam's cross-examination today, and our learned friend has had sufficient opportunity. We do not mind 30 more minutes, but if he can keep to that.

CHAIRPERSON: Yes. No, Adv Varney, I think we will finish

Adv Macadam's cross-examination today.

ADV BHANA: Thank you, Chair.

CHAIRPERSON: Ja, we have Mr Simelane who intended to cross-examine, who has since withdrawn from such cross-examination.

ADV BHANA: Yes.

CHAIRPERSON: We are adjourned until 2 o'clock.

ADV BHANA: Thank you, Chair.

ADV VARNEY: As the chair pleases.

10 INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Are you well settled, Adv Macadam?

ADV MACADAM: Correct, Madam Chair.

CHAIRPERSON: Thank you. Mr Varney.

20 ADV VARNEY: Chairperson, we will try to speed things up, but we wish to place on record that Mr Macadam is a key witness. As mentioned earlier, we had requested two days with him. Most of the documents that we have put up were not put up in the evidence-in-chief and given the fact finding mandate of this Commission, we are obliged to go through them meticulously because we are only aware of the application by SAPS last Friday. They were granted permission on Monday, so there were intervening factors as well.

Having said that, we will proceed as quickly as we can, but we do, we wish our rights to be respected and in regard to putting the necessary facts to Mr Macadam for his answers and we hope that the

Commission will give us the necessary latitude.

ADV BHANA: Chair, the Commission in our view has given Mr Varney a lot of latitude. I speak subject to correction, but initially he wanted a full day for his cross-examination which is [indistinct] more. The further observation is what is put as a question is often just to elicit opinion evidence after a long statement and that is really not the purpose of cross-examination. If he can stick to putting facts that concern this witness, I am sure we will go a lot faster.

CHAIRPERSON: Mr Bhana, you cannot tell your colleague how to
10 cross-examine.

ADV BHANA: Yes, but what we can do is to say that there is more than sufficient opportunity that has been given ...[intervenes]

CHAIRPERSON: Yes.

ADV BHANA: If he finishes in the 30 minutes that is fine.

CHAIRPERSON: Ja.

ADV BHANA: But in our view that one also has to respect the rights of the witness and the other parties here.

CHAIRPERSON: Yes, yes.

ADV BHANA: Thank you, Chair.

20 ADV VARNEY: Chairperson, I do not believe that intervention warrants a response. May I proceed?

CHAIRPERSON: Yes, you may proceed.

CROSS-EXAMINATION BY ADV VARNEY (CONTINUED): Thank you. Mr Macadam, I trust that you still have the stamina that you have demonstrated in the last one and a half days. We are now

going to move to a different topic and to assist you and the Commissioners, I am looking at page 3 of the application to cross-examine you, and at the bottom of that page you will see a heading, “Adv Macadam’s knowledge about the disappearance of the Cradock Four docket”.

Now there is a dispute that has arisen between you and former Acting NDPP Adv Jiba, and I want to give you a summary of the evidence that you provided in your 2021 affidavit in the Cradock Four application to compel a decision. Your affidavit incidentally is at
10 page 462 of the bundle, but at paragraph at least at page 460 in the Calata founding affidavit there is a summary of what you said. I am going to read that summary to you and you can advise me whether it is accurate or not. So I am at page 460, I will start at paragraph 328 under the heading, “The missing Cradock Four docket”.

“328. Macadam filed an affidavit dated 24 May 2021 as part of the NPA’s Rule 53 record in the matter of *Calata and Others v NDPP and Others* [a copy of which is annexed]. In this affidavit he indicated that during April 2013, while he was
20 Deputy Director of the PCLU and Abrahams was the Acting Head, they received a request for information about the Cradock Four case from a Ms Lepinka who was the personal assistant to Acting NDPP, Adv Jiba. Abrahams responded to the request. Shortly thereafter, Macadam

was asked to hand over the investigation docket
[with that number] to the office of the Acting
NDDP, which he did.”

Then the next paragraph:

10 “329. Macadam then avers that at a certain stage
without disclosing a date, that Adv Pretorius,
then Acting Head of the PCLU, asked him for
the Cradock Four docket and he advised
Pretorius that ‘it had been uplifted from my
office’ and was missing. Macadam did not
disclose why Pretorius was seeking the docket.
This exchange must have happened between
2016, when Macadam returned to his normal
duties after working on foreign bribery cases,
and April 2019 when he assumed the position of
Acting Head of the PCLU.”

Mr Macadam, does that roughly sum up the situation in
relation to that docket?

20 ADV MACADAM: Madam Chair, since I saw the affidavit file by
Adv Jiba, before this inquiry I have done considerable work on the
matter and I can if I am permitted, very succinctly explain the actual
process that unfolded. I think that will save time and we will be
talking on direct facts, because I am in a better position to give this
information than I was in May 2019 when I deposed that affidavit.
The Cradock Four case ...[intervenes]

ADV VARNEY: Sorry Mr Macadam, before you do so and for the benefit of the Commission, I think we should just put up the brief version of Adv Jiba so that the dispute is familiar to everybody. So with your indulgence I will just do so quickly and then you are at liberty to give a full account. I am going to draw your attention to Adv Jiba's affidavit before this Commission and that is at page 465 of this bundle.

That is her affidavit which is dated the 9 March 2026 and I will just jump straight to where she deals with this which is on page,
10 paginated page 467. And to cut to the chase I will just read into the record paragraph 11:

“With regard to the alleged Cradock Four missing docket, I never tasked anyone to go and collect the docket from PCLU, neither did I receive the said docket from the PCLU. I find it strange that Chris Macadam remembers that a person from ANDPP office came to take the docket but does not know who that person is; something that is very important.”

I am not going to make the rest, she does claim that what
20 you said in your 2021 affidavit is false. She also attaches correspondence and just to keep things short, the correspondence does not reflect that a docket was collected or taken to her office. Now that we have set out the dispute, you may proceed.

ADV MACADAM: Thank you, Madam Chair. The Cradock Four docket was one that I directed to be investigated in 2010. In

September 2012 the investigation was complete. I then compiled a report dealing with all my reasons as to why on the available evidence I was of the view that we could not institute a successful prosecution. That was submitted to the Director of Prosecutions Eastern Cape, at that stage Adv Mahlathi SC.

After he had studied my report together on, with the assistance of his advocate who had been a junior counsel in the reopened Goniwe inquest, he wrote back to me, advancing all the reasons why he agreed with my recommendation. In terms of the
10 NPA policy that prevailed at that time, the National Director was required to confirm any decision to prosecute or not to prosecute before it is implemented and specifically in this case, Adv Jiba then appointed as an Acting National Director, because the permanently appointed National Director, Adv Simelane, was on special leave.

Now I met with Adv Simelane shortly after he is appointed, he told me the investigations must proceed but he agrees with the policy that is being adopted by all the National Directors since Mr Ngcuka's time, that I should not make any final decisions before I have submitted the material to him and he has assessed them.

20 So what I did is, once I had the Directors report supporting me, both were submitted to Dr Ramaite, the Deputy National and also a senior counsel with a request that he place the material before Adv Simelane if he agreed with our assessments. After Dr Ramaite had assessed the material, he then submitted a report to Adv Simelane supporting our view, confirming that was also his view

and asking Adv Simelane to indicate whether he agreed or not.

What happened is, Adv Simelane was then placed on special leave because of the SCA finding about fitness to hold office, so the memo, signed memo from Adv Simelane never came back. When Adv Jiba was acting as a National Director in his place, I then wrote to Dr Ramaite, saying that is there now a delay, the police were constantly asking me what the position is, because one of the concerns is, there was an allegation against a General Hankel at Crime Intelligence and as a result of that allegation, he had been
10 removed from his post.

Now on the 17 September 2012, Dr Ramaite wrote to Adv Jiba, attaching the report setting out his views, and the final text on the last page of his memo was a decision confirmed or not confirmed, Adv Jiba, Acting National Director of Prosecutions. That internal memorandum was dated 17 September 2012 and on the same day it was stamped by Adv Jiba's office as having received on exactly the same date.

However, what happened is no response was received from Adv Jiba's office, resulting in whether she agreed or not. This
20 resulted me sending several e-mails to Dr Ramaite, querying the delay and he also copied me on e-mails where he had instructed his PA to take up with Adv Jiba's office where the delay was.

The piece kept coming to my office, complaining because I was now getting frustrated, we were sending all these reminders, nothing was happening, I then wrote to the police and said, "I

recommend that General Dramat takes this directly up because I have followed protocol queries through my Deputy National and that has failed to produce results”.

When Adv Abrahams was appointed as the Acting Head of the PCLU, I then went to him and I said, “Here are all the reports and the final report is that of Dr Ramaite, 17 September 2012, it remains unanswered, can you first read our reports and tell me whether you agree or not?” Because as the Acting Head he could himself say, “No, I disagree, do further investigations, whatever”. So he indicated
10 to me no, he did agree, he will now submit that letter back to Adv Jiba’s office.

Now the same internal memo, date stamped 17 September 2012, came back now stamped 26 April 2013. On the very same day Ms Lepinka, Adv Jiba’s PA, wrote to Adv Abrahams saying, “Please give the following information to Adv Jiba so she can apply her mind”. If you see the issues that were raised in that letter to Adv Abrahams, it was coming directly out of my report.

This resulted in thereafter, Adv Abrahams again submitting a second report which answered all those queries, but again nothing
20 transpired, nothing heard from Adv Jiba. Now I was in my monthly report to the Head of the PCLU, reporting this matter is outstanding pending Adv Jiba’s decision. That was done every month. Still no response, although now all the answers had been supplied.

Now I was extremely busy at that stage, in and out the office. I had, the reason why I was taken to foreign bribery in 2014, I already

had to start working on that in 2013. Now I cannot recall whether it was Adv Abrahams or a Ms Swart, our admin officer, that one of the two informed me that the docket was now required by the office or the NDPP.

I did not regard this as suspicious, because if Adv Jiba simply agreed with us, she could have signed that memo and sent it back to us, which did not happen. So the only reason is that she has a problem, that is the only plausible explanation. And I then would have most likely and again I cannot remember, given the docket to
10 Ms Swart, our admin officer, to deliver.

Again nothing suspicious, because the previous year when Adv Simelane was the National Director, I had to decline to prosecute in a very high profile matter, the complainant asked Adv Simelane to review my decision, the docket was called for. After a period of time I was, received a letter from Adv Simelane, he agreed with my decision and the docket was returned to me.

So there was nothing suspicious and I continued to on a monthly basis report that the matter is outstanding, pending Adv Jiba's decision right up until Abrahams took over from me as a
20 dedicated prosecutor on TRC matters. In December is, ja no, January 2015 I sent Adv Abrahams an e-mail in which I said the matter is still outstanding on Jiba's side, the DPP and I have done everything we had, our decision is being supported by Dr Ramaite, so I gave it to him then in 2015.

You will see he becomes the National Director in June 2015.

In his memo to the Minister which is before the court, on the Jiba matter he reflects that it is still outstanding on the side of Adv Jiba and the National Director must now decide whether to confirm that decision or not.

Now sorry, we must go backwards. Sorry, I apologise for this, as that, when Mr Nxasana was the National Director, this would have been now 2014 and up to May 2015. In April 2015 he called me into his office because he wanted an update on the foreign bribery matters. I, he then, I did so, he then asked me about the TRC
10 matters.

I told him you know, capacity constraints, delays on investigations and I specifically draw his attention to the fact that now Adv Jiba's decision had been outstanding since 2012 and we are now in 2015. He asked me to then give him all the reports on the matter which I did. They were e-mailed to him, he thanked me for his reports but this was shortly before he resigned, so he did not take it up.

This is where Adv Abrahams comes in, his memo one month after being in office reflects outstanding that the decision of myself
20 and the DPP still needs to be confirmed. Now he had two options, eh is the National Director, he had been dealing, he was the person who was giving Adv Jiba all the information already in 2013 as the Acting Director, he was thereafter responsible on a monthly basis to report on what is going on with these cases, so he knew full well what was going on.

Now he said the National Director must still confirm. He could do it two ways, he could do it himself because he is now seized with the matter and then call on Adv Jiba to give him a report saying what she had done, or he could go to Adv Jiba and say, "Look you were, this was referred to you in 2012, I authorised you to deal with this yourself" because the NPA Act enables the National Director to refer some of his responsibilities to a Deputy National Director, but I would expect then he would say to Adv Jiba that she must advise him of what her decision is. So there were those two options available to
10 him.

As I said when Adv Abrahams became the National Director, Dr Bukau was appointed to deal with the TRC cases. In her monthly report to Adv Johnson she wrote specifically Jiba's decision is outstanding, the NDPP must take this up with her. What happened is, in October 2015, Adv Johnson was replaced by Dr Pretorius. Adv Bukau wrote to Dr Pretorius and again said the issue of Jiba's decision remains outstanding.

Now what happened is, at a certain stage I cannot recall, but when it was in Adv, Dr Pretorius' domain as Acting Head, he did
20 come to me, asking about the Cradock Four matter and I informed him of what had happened. If I remember correctly, I even gave him the reports that had been referred to Adv Jiba in 2012 and the correspondence of 2013. I said, "Please take this matter up directly with the National Director and Adv Jiba".

I heard nothing further from Adv Pretorius at all on this

matter until in 2019 shortly before I was appointing the, appointed as the Acting Head, that I was informed by the police that the matter was still outstanding pending Adv Jiba's review, but now the docket could not be located, could I please help?

So what I did is, I then contacted Adv Mzinyathi who was, had replaced Adv Jiba and I said to him this is the situation, can he make a thorough and complete search of all the office premises that were used by Adv Jiba in all her capacities as Acting National Director, *et cetera*, and let us see if we can find the missing docket.

10 After a search he said they could not locate the docket. In my view there was virtually nothing in that docket which could not be easily reconstructed, so I said, "Instead of running around looking, let us reconstruct it which did take place". I am sure Mr Varney would want to cross-examine me on evidence lead by a Colonel Makua at the reopened Goniwe inquest which is running at present in the High Court in the Eastern Cape, so perhaps I will deal with that separately when he cross-examines.

 And then what I found out as well, at no stage was that memo of 2012 ever signed off. So I said through no fault of the
20 family, this matter must be looked at completely afresh because seven years had passed since I had made my recommendation.

 New facts could be available, evidence that I did not have [indistinct], so I said the whole matter needs to be investigated properly again and see if at this stage there is a basis for a solid prosecution and that is why the matter was referred to the DPP

Eastern Cape and the DDP said, "I am appointing Adv Henning, he worked on the case at the inquest, he has by far the best knowledge on that Cradock Four case than anybody on the NPA", and those arrangements were made.

But I would like to deal with that separately when we deal with the Colonel Makua if that is permissible.

ADV VARNEY: Thank you for that detailed ...[intervenes]

ADV MACADAM: And it is backed on my documents, everything I say.

10 ADV VARNEY: Thank you. Are those documents part of the bundle and if not, can we also request that you make those available?

ADV MACADAM: Certainly, Madam Chair, I am more than willing to do so. In anticipation of this being raised, we have made copies of the documents already for all the parties.

ADV VARNEY: Thank you, I will be grateful if a copy could be furnished to the families' attorneys. Obviously we are not in a position to study them now and time does not permit it. So Mr Macadam, the docket is uplifted from the PCLU in 2013. As I understand it, Ms Swart hands it over and then as far as you are
20 aware, it is never seen again and then that docket is reconstructed in 2019.

Now I understand the families' investigator, Brigadier Marion also assist with that reconstruction, but from the families' perspective and the docket being last seen in 2013 and then having to be reconstructed six years later, do you accept that that is a completely

unacceptable state of affairs?

ADV MACADAM: I do. Adv Jiba was provided with a very detailed motivation by myself, it was supported by the DPP Eastern Cape. He did not just say, "I agree", he wrote about two pages giving all the reasons why he agreed, how he had verified with many of the facts that are stated there and corresponded with Adv Henning's assessment, because he had been a junior counsel in the matter.

We had the support of Dr Ramaite and all that had to happen is Ad Jiba say, "I do not agree" and like was done with Nokuthula
10 Simelane, take the case away from me, give it to other advocates, let them read it. None of that happened and also from my side and from Dr Bukau who followed up after, on a monthly basis we were reporting. So it was the duty of the Acting Head of the PCLU at those times to take this up directly with Adv Jiba and Adv Abrahams. Abrahams admitted in his July memo to the Minister, that the NDPP had to still confirm those decisions.

So in my view it is totally unacceptable. You have reports, you either agree or you disagree and if you say I disagree, you take the necessary steps. The same thing, if there had been a prompt
20 response, perhaps the docket would not have been misplaced or if it had, it could have been quickly found because we would have looked for it in say 2014 and not in May 2019.

And again the docket never permanently disappeared. Shortly before my retirement I was in the Document Centre looking for old documents relating to another matter and there lo and behold,

there was the docket. And once that was brought to my, once I realised it is the Cradock Four docket, I then arranged for the Document Centre to remove those files and store them separately so they would not get mixed up with all the other material that was being stored there. The DPP Eastern Cape was immediately alerted to the fact that I had found the dockets.

After I had retired, Adv Trish Matzke had been appointed to oversee the TRC cases. She contacted me and I went to the Document Centre, I pointed out all the documents there. They were
10 exactly as they had been packed when I found them towards the end of 2019.

ADV VARNEY: Well it does suggest Mr Macadam, that if it was easy to find in the archives, that the initial searches were not very serious searches.

ADV MACADAM: No, there was a thorough investigation but none of us anticipated that it would be sent to archives. You only archive material once it is finally disposed of. If it is active you keep it in your offices and there was it though. I have noted because it took time before Adv Mzinyathi told me they could not find it, I know the people
20 who did the search, very experienced competent admin officers and we were taken aback, how did this docket suddenly end up in the Document Centre which is only for old finalised matters?

You would still if you make decisions, you would still keep your dockets in your own office space for say three, four years because people could always come with queries and parliamentary

questions, *et cetera*. So I do not blame the people and accuse them of doing a superficial search and neither I nor anybody else would ever thought that they would end up in the Document Centre.

ADV VARNEY: And if I may ask, between 2013 and 2016, why was there then no attempt to retrieve the docket from Adv Jiba's office?

ADV MACADAM: We were saying and it was done on a monthly basis, take up with Jiba what is her decision. We wanted that because that would determine the course of how you deal with the docket, so it would not help taking the docket before we had the
10 decision, unless the police came to me and said "Look, there is new evidence, we need that evidence to go into a file", then that would be a different position.

But my view is, it had been made available as per request and on a monthly basis, look I do not know what Adv Abrahams did when he was a senior state advocate, but in my time it was reported monthly, was able to locate the consolidated PCLU report for April 2014 which was submitted to the component in the Corporate Services which monitors performance on the part of Prosecution Units in order to report to EXCO and there it was again listed as
20 outstanding pending her decision.

ADV VARNEY: All right, let us then move to the topic that you have anticipated so that you have an opportunity to respond. And as you indicated, this deals with the evidence given at the Cradock Four inquest earlier this year in March 2026 when some of the investigating officers including Masegela and Makua testified before

the Inquest Court in Gqeberha and transcripts are in the bundle, they are at pages 741 and 73. It is going to take way too much time to go through them in detail, so I will do my best to summarise them on ...[intervenes]

ADV MACADAM: May I possibly, sorry to interrupt but I have a complete set of documents which we can move very quickly through, it is not going to take me time to read through them and explained what happened there, rather than reading all ...[intervenes]

ADV VARNEY: Well yes. No, we certainly are not going to read
10 through the transcripts, there is not time for that. Of course if you wish to refer to anything specific, you are free to do so. I just want to make this abundantly clear, these accusations do not come from us. These are plans made by the two investigating officers and we simply put them in the bundle to offer you an opportunity to respond. Is that clear, Mr Macadam?

ADV MACADAM: Yes, I must thank you for giving these transcripts to a mutual friend of ours who drew my attention to them, because I would have been completely unaware of those allegations until you filed your application to cross-examine and it would not have given
20 me sufficient opportunity to prepare and find undisputable evidence which refutes those allegations. So I am very grateful to you for doing that.

ADV VARNEY: Yes, of course you deserve a proper opportunity to respond. Let us deal with the allegations made by Captain Tlou Masegela and they go over many pages but essentially what he is

saying is that he claims to have seen the docket in your office in 2017 when according to you, the docket would not have been there because it would have been either with the NDPP or with Adv Jiba. What is your response to that?

ADV MACADAM: He is mistaken, Madam Chair. You will see on NJ1 which Adv Jiba filed and that is that the handwritten notes made by myself which I say the investigating officer has brought that docket in on 29 April 2013, ja 2013. In 2017 I was not dealing at all with TRC cases, I was dealing with very complex terrorism related matters
10 which kept me almost on a weekly basis in Johannesburg, either in the Magistrate's Court or the High Court. So if says that ...[intervenes]

ADV VARNEY: All right.

ADV MACADAM: I do not say he is lying, I think he is mistaken because that never happened. There is the entry, he brought it on 29 April.

ADV VARNEY: And before we turn to Makua, is there anything else you wish to respond in relation to Masegela?

ADV MACADAM: Madam Chair, my view is insofar as his version
20 might differ from mine, I would attribute it to firstly he was unaware of what happened in the NPA after he dropped that docket off in April 2013 and secondly, it would appear from the transcript he was only approached at this matter for the purpose of the inquest and did not make a contemporaneous statement, so that is my you know, explanation as to the difference between my version and his version.

ADV VARNEY: Okay. I should also point out that if you look at the transcript, my name appears as the cross-examiner although in fact that was not the case, it was my junior Mr Suliman, posing those questions. But let us turn to the allegations made by Mr Makua and I am going to summarise it. I am going to rely on the paragraph 18 on page 4 of our cross-examination application.

10 “Makua testified that he took over the investigation in 2018 after Masegela retired. He alleged that he approached Macadam after taking over but was not provided the docket. Macadam informed him after several months that the docket was missing. According to Makua, he was stopped by Macadam from making queries with Adv Jiba about the missing docket. Makua was ultimately responsible for reconstructing the missing docket with claimed little assistance from Macadam.”

 You were given the references. Your response?

20 ADV MACADAM: My response is, I am very, very sad to actually say that in respect of a colonel in a senior position in a head office. It is a complete fabrication. I have all the documentation which disproves it and if I am given permission, I will take the Commission through those documents and make them available to the parties.

ADV VARNEY: We would like you to make them available but we are not going to ask you to take the Commission through the documents unless the Commission requires it.

ADV MACADAM: Well I can quickly summarise and if there is any dispute, documents are available. But the fact of the matter is ...[intervenes]

ADV VARNEY: Sorry, sorry Mr Macadam, our time is quite limited, I just want to put one more allegation to you and you can quickly deal with it. I mean it is not going to take long and that is the next paragraph:

10 “Makua testified that he did not believe that the docket went missing by accident but that powerful forces were protecting high-ranking suspects in the matter. He claimed that from “the behaviour of Macadam”, he was the person who was protecting the suspects.”

The transcript references are there. Your quick response?

ADV MACADAM: I strongly deny that. If I am afforded an opportunity to take you through the documents, you will see a totally different story.

ADV VARNEY: Yes indeed and Mr Macadam, we are not contesting your version on these aspects. So please do hand over the, those documents but we would like to move on in the interest of time.

20 ADV MACADAM: So can we leave this matter and simply documents are available and will be perused, I do not need to talk, answer any of these questions? My denial of course [indistinct] ...[intervenes]

ADV VARNEY: Yes indeed and ...[intervenes]

ADV MACADAM: No, I am very grateful for that [indistinct]

...[intervenes]

ADV VARNEY: Unless the Commission directs otherwise.

CHAIRPERSON: Yes.

ADV VARNEY: Yes indeed, unless the Commission directs otherwise.

CHAIRPERSON: Yes, I think that is the appropriate course to take.

ADV MACADAM: Certainly Madam Chair, then I have nothing further to say on the matter, all the documents will be made available to the parties and to the inquiry itself.

- 10 ADV VARNEY: Thank you Chairperson and thank you Mr Macadam, for making those documents available. Now I want to draw your attention to certain documents that former NDPP Adv Batohi directed to Minister Lamola, and this took place while you were the Special Director of the PCLU. Correct me if I am wrong, but ...[intervenes]

COMMISSIONER KGOMO: Sorry Mr ...[intervenes]

ADV VARNEY: Yes.

COMMISSIONER KGOMO: Can you just wait a bit?

CHAIRPERSON: Thank you, Mr Varney.

ADV VARNEY: Thank you, Chairperson. May I proceed?

- 20 CHAIRPERSON: Yes, you may proceed.

ADV VARNEY: As the Chairperson pleases. Mr Macadam, as I understand your career at the PCLU, you were placed in charge of that body in 2019 and you remained in charge of the TRC cases till September 2021. Would that be correct?

ADV MACADAM: That is correct, yes.

ADV VARNEY: And would it also be correct that in correspondence or communications that the NDPP would make to the Minister or other parties in relation to the TRC cases, that she would quite likely depend on your inputs?

ADV MACADAM: Correct, my inputs and Adv De Kock who was my supervisor. We compiled the document together and Adv De Kock submitted it to Adv Batohi, saying he, for her to peruse and if she agrees, to transmit it to the Minister.

ADV VARNEY: All right. Can you just remind me of the date in June
10 if you can, at least in 2019 if you can remember when you became the Special Director?

ADV MACADAM: April 2019.

ADV VARNEY: Thank you. All right, so we did put up a short supplementary bundle and I am just going to refer you to two of those documents. The first document is a memorandum from Adv Batohi to Minister Lamola. There is a date stamp on the front, it says 7 June 2019, but Adv Batohi signed this memo on the 4 June 2019. It is titled, "Response to a complaint by Foundation for Human Rights".

ADV MACADAM: I see the document, yes.

20 ADV VARNEY: Yes, so that is at 511. Just to put everybody to the picture, that complaint by the Foundation related to the allegations of interference in the TRC cases as well as the call for an inquiry, and then you will see at the bottom of the page at 2.2 it reads:

"It is unfortunately a fact that PCLU was prevented from fulfilling its mandate in dealing with the TRC cases

because of the following series of events.”

And then there is several bullet points that run onto the next page 512 and this is essentially a summary of all the events we are familiar with, references to the Amnesty Task Team and so on. So would I assume correctly that you would have made inputs into this memorandum?

ADV MACADAM: That is correct. This memorandum was drafted by Adv Batohi after a meeting with myself and Adv Mzinyathi who was acting as her Deputy National, and after the High Court had delivered
10 the judgment in the Rodrigues matter.

ADV VARNEY: Yes, actually in this particular memorandum it is apparent that it was drafted before the judgment came to the attention of Adv Batohi because if you look at the very next memorandum ...[intervenes]

ADV MACADAM: Sorry, I am looking at the one. I am looking at the one where she indicated that she would approach the Chief Justice to appoint a retired judge to do an internal investigation into the allegations against the NPA, but now let me see, the other one is a response to a complaint by the Foundation of Human Rights.

20 CHAIRPERSON: That is the one you are directed to, Adv Macadam.

ADV MACADAM: Certainly, Madam Chair, I am looking through it to see if I recognise this document. Yes I do, so it was... I agree with what was said, that it was, that we were awaiting the judgment before she would take appropriate action.

ADV VARNEY: Yes and just because you were looking at the other

document, if I can draw your attention to paragraph 2.2 where she says that the PCLU was prevented, it is unfortunately a fact that the PCLU was prevented from fulfilling its mandate because of a series of events and those are then the bullet points.

ADV MACADAM: They also, sorry, they were also the issues that we dealt with in length yesterday and today.

ADV VARNEY: Yes, yes and I am not asking you to go through them again, we do not have time for that repetition. But you are confirming that she would have amongst other sources relied on you
10 for that information?

ADV MACADAM: Correct, yes.

ADV VARNEY: All right, then let us then move to the next document, the one that you were looking at previously. That is at, it starts on page 517.

ADV MACADAM: Yes, correct.

ADV VARNEY: Now you will note that Adv Batohi also signed this on the same day, the 4 June 2019 and it is in this document that reference is in fact made to the judgment. So would I be right in saying that the judgment which was in fact issued on the 3 June
20 came to the attention of yourself and colleagues and Adv Batohi actually in the course of the 4 June which prompted the next memo?

ADV MACADAM: That is correct, it was actually my... I was mistaken, I made an error in thinking that the Chief Justice had the power to appoint retired judges, because that was my proposal.

ADV VARNEY: I see. Okay, can I ask why at that stage

consideration was not given to an independent Commission of Inquiry with the normal powers of a Commission that could investigate across departments and would have the power of subpoena and compulsion?

ADV MACADAM: Madam Chair, the, as I read the judgment, you know I have not looked at it since it was delivered, so what I seem to recall is that the court directed that the National Director enquire into the cause of these delays and look at the obstruction. So I took this, that she would have to undertake her own investigation, that is why
10 we said normally when there is criticism levelled against the prosecutor or against the NPA, the National Director will then appoint somebody senior who is not connected to the entities that are responsible for blame.

They will then do an investigation and go back to the National Director. But I said given the serious nature of these matters and to demonstrate that we as the NPA have got nothing to hide, it would be appropriate for a retired judge to go into all the affairs of the NPA, submit a report to the NDPP because she would obviously not have the power to go and investigate other departments and
20 interrogate their records.

But then the full version of the facts within the NPA would be assessed by a retired judge whose you know, integrity and objectivity would be beyond repute and I believe ...[intervenes]

COMMISSIONER KGOMO: Reproach ...[intervenes]

ADV MACADAM: That that was the way that it would be dealt with.

COMMISSIONER KGOMO: Beyond reproach.

ADV MACADAM: I beg your pardon, Commissioner?

COMMISSIONER KGOMO: I said beyond reproach, whose integrity is ...[intervenes]

ADV MACADAM: Ja sorry, I apologise, my Duracell batteries are starting to run flat.

CHAIRPERSON: Yes. [Laughs].

ADV MACADAM: I apologise, Commissioner.

ADV VARNEY: If it is any consolation Adv Macadam, my Duracell
10 batteries are also running out. Thanks, thanks for that explanation.
Let us then turn to another document that is at page 435 of the
bundle. I will just wait for you to get there.

ADV MACADAM: Ah, there we go. So just very briefly, the Chief
Justice replied to that letter, saying he lacked the necessary power. I
immediately drafted a memo in Adv Batohi's name to the Minister of
Justice in which she asked the Minister to appoint a retired judge. I,
the copy of the document I had was signed by Adv Batohi, but I do
not know what traversed further, what response there was from the
Ministry. But again it was we were wanting to move quickly and have
20 a very objective investigation into the role of the NPA.

ADV VARNEY: Thanks for that further information. All right, this is
another memorandum from Adv Batohi to the then Minister of Justice
Lamola. It is titled, "Briefing on TRC cases". At the very top you will
see it says in written, it says, "Our copy" and at the top, "To Justice"
together with a date which looks like the ...[intervenes].

ADV MACADAM: As I am ...[intervenes]

ADV VARNEY: That is to say ...[intervenes]

ADV MACADAM: Reading it, it looks like 8 December 2020.

ADV VARNEY: Yes, I think that is right. And I also wanted to take you to the signature page on 448, so Adv Batohi has signed it and looks like the 2 December 2020 but you will note that there are no signatures from the Acting Director-General, the Deputy Minister or the Minister. Firstly would you had input as well into this memorandum?

- 10 ADV MACADAM: Correct, this is the memorandum that was a joint product between myself and Adv De Kock, because from April 2020 Adv De Kock was my supervisor on all the PCLU matters including the TRC.

ADV VARNEY: Yes, I think by that time he was overall in charge of the TRC cases.

ADV MACADAM: That is correct, yes.

ADV VARNEY: Now this memo was put to Minister Lamola. He could not recall receiving it. Do you know whether it was sent or do you assume it was sent?

- 20 ADV MACADAM: I assume if Adv Batohi signed it, it would have been sent because she had a very efficient office manager and executive secretary. Normally the problem is that the matters are not signed by the National Director because of other urgencies and then you have to remind and follow up to get it signed.

ADV VARNEY: Let me take you to page 443 and I want to read the

first line of paragraph 2.29 into the record:

“The irreparable damage caused by the blocking of investigations for a period of seven (7) years cannot be underestimated. In addition to prescription now being applied to a number of new cases, a number of accused and state witnesses have died.”

And the last paragraph I refer you to, is on page 446. It reads, “Matters to be noted” at paragraph 3 and I am just going to quote 3.1:

10 “The consequences of the wilful blocking of TRC investigations at a critical time and for a protracted period must be accepted and responsibility taken. This is one of the great impediments to being able to do justice to the cases.”

And then the rest of it the NDPP offers to put up the documentary evidence and to make a presentation so that there is no misunderstanding of the issue and its consequences. Are you of any response or action taken as a result of this memo?

ADV MACADAM: Not at all, nothing. I never heard but Adv Batohi
20 or/and Adv De Kock never called me in to say this is a response, how do we take it further. All we did is, the date December 2020 is significant.

There was a workshop which I had set up with all the DPCI members, the prosecutors, the DPPs where we did an honest assessment of all the problems we were facing, resulting in me then

submitting a memo to our HR Department to get approval to appoint retired prosecutors on three-year contracts so they could work fulltime on these matters and it would not have to be dealt with by court prosecutors to deal with this in between all their work. So that is what I did as supported by the NPA to try and improve this situation.

ADV VARNEY: Thank you, Mr Macadam. Mr Macadam, my, you have a wealth of information at hand and I can probably spend the rest of the afternoon picking your brain and putting more facts on the
10 table, but I am constrained by time because it is already 15:00. So I want to thank you for your stamina and your willingness to assist this Commission. Chairperson, no further questions.

CHAIRPERSON: Thank you, Mr Varney.

ADV MACADAM: I was about to throw these Duracell batteries away if you want to go on, Madam Chair.

CHAIRPERSON: Keep them, Adv Macadam.

ADV MACADAM: Certainly, Madam Chair.

CHAIRPERSON: Yes. Mr Soni?

ADV SONI: Chairperson, can we have a five-minute break? I just
20 want to put my papers together.

CHAIRPERSON: Yes.

ADV SONI: Ja.

CHAIRPERSON: We will adjourn for five minutes.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Mr Soni?

CROSS-EXAMINATION BY ADV SONI: Thank you so much, Chairperson and Commissioners. Good afternoon again, Mr Macadam.

ADV MACADAM: Afternoon, Adv Soni.

ADV SONI: Mr Macadam, can I ...[intervenes]

COMMISSIONER KGOMO: You have to speak up, Mr Soni.

COMMISSIONER GABRIEL: We cannot hear you.

10 ADV SONI: I am sorry. I am sorry. Can I start off with your appointment to the DSO? I understand you were appointed to the DSO in early 2001.

ADV MACADAM: That is correct, yes.

ADV SONI: And before that, you were a prosecutor in KZN.

ADV MACADAM: That is correct, except for a two-year span with the TRC Commission.

ADV SONI: Yes, I was going to come to that. So you have had experience with the TRC as well.

ADV MACADAM: That is correct. Yes, that is right.

20 ADV SONI: And then, after you were transferred, I mean, after you joined the DSO, you were transferred to the PCLU in 2003 after it was established, I think.

ADV MACADAM: That is correct, June.

ADV SONI: You said June 2003.

ADV MACADAM: 2003, yes.

ADV SONI: And you remained for the most part with the PCLU,

doing work with the PCLU until your retirement in October 2021.

ADV MACADAM: That is correct.

ADV SONI: And during that time, there were two periods when you were not with the PCLU. That is in February 2002 to September 2008 when you were involved in that nuclear syndicate case.

ADV MACADAM: What happened is I remained in the PCLU, but I was no longer able to work on the TRC cases. But in 2014, 201 Mr Nxasana relieved me of all my PCLU duties to give full-time attention to the foreign bribery cases.

10 ADV SONI: Okay. Now, you were thereafter, as was pointed out earlier this afternoon, you were appointed as the head of the PCLU in March 2019.

ADV MACADAM: My official appointment made by the minister was in April 2019, but in March, Adv Batohi informed me that she intended appointing me as the head.

ADV SONI: Now, can I ask you, Mr Macadam would you please, and I am going to deal with certain paragraphs of your affidavit; can I ask you to... you do not have to go to it, but you are more than welcome to. I just want to alert the Commissioners to where the
20 information is contained.

ADV MACADAM: Certainly.

ADV SONI: In paragraph 8 of your affidavit, you say when...

CHAIRPERSON: Page?

ADV SONI: Sorry, Chairperson, page 232.

COMMISSIONER GABRIEL: Is this the September 2026 affidavit?

ADV SONI: It is, yes, Commissioner. You say when Mr Ngcuka became the NDPP in 1998, he established the Human Rights Investigative Unit. That is the HRI Unit.

ADV MACADAM: That is correct.

ADV SONI: And its task was specifically to review and assess TRC matters so as to establish which TRC matters were ready for prosecution or required investigation.

ADV MACADAM: That is correct. This unit was replacing the D'Oliveira Unit which had been focussing on the security force cases.

10 ADV SONI: And then in paragraph 10 you say:

“The HRIU was dissolved for two reasons. The first reason was the TRC amnesty process had not been concluded at that stage, and second, it had no investigators and could not conduct investigations.”

ADV MACADAM: That is correct, yes.

ADV SONI: Then in paragraph 11 you say:

“The DSO was established to investigate organised crime.”

20 Now, I am trying to draw a distinction between the HRIU and the DSO and of course the other units that were established to deal with TRC matters.

ADV MACADAM: Certainly. The unit that Mr Ngcuka set up was comprised solely of prosecutors, so they were dependent on... at that stage there was no DSO, so they were dependent exclusively on the

police conducting investigations as they had identified. Now, the DSO was unique in that it now enabled the NPA to not only deal with prosecutions, but also to conduct its own investigations; and you had investigators who were not police officers, but they were conferred with the same powers as the police had. So that is the distinction.

ADV SONI: Yes, yes. So these were what were referred to as prosecution-driven investigations.

ADV MACADAM: Yes.

ADV SONI: Or prosecution-led investigations.

10 ADV MACADAM: Yes.

ADV SONI: That was the DSO investigation.

ADV MACADAM: And also the unit Mr Ngcuka said, because here you had prosecutors evaluating material and assessing evidence even before they had investigators. So that was another proactive step taken by Mr Ngcuka to get prompt attention to these matters.

ADV SONI: Now, this is prior to the PCLU, of course.

ADV MACADAM: That is correct.

ADV SONI: Now, in paragraph 12 you say that: when I joined the DSO, there were only two members, Mr Tongwane and yourself.

20 ADV MACADAM: That is correct, yes.

ADV SONI: And then in paragraph 13, you say at the DSO, your role included investigating TRC cases and prosecutions; and because you and Mr Tongwane were the only two members, it experienced operational difficulties due to lack of investigators and administrative support.

ADV MACADAM: That is correct, yes.

ADV SONI: And can I ask you to look at, well, I am going to go to paragraph 15 of your affidavit. You say that within the DSO, the SNPU was established. You say that in paragraph 15. That is the Special National Projects Unit.

ADV MACADAM: Yes.

ADV SONI: And you had appointed the head of that unit.

ADV MACADAM: That is correct, yes.

10 ADV SONI: And its mandate was to conduct investigations into matters deemed too complex for the regional offices of the DSO, and its mandate also included TRC cases and to organise projects related to ongoing criminal activities.

ADV MACADAM: Yes.

ADV SONI: And then you say at paragraph 16, just like the HRIU, you do not say this, but I am just saying; that just like the HRIU, the SNPU was afflicted by a lack of resources.

ADV MACADAM: That is correct, yes.

ADV SONI: And that would be both administrative and investigative view.

20 ADV MACADAM: That is correct. All those constraints were set out in either AD1 or AD2 to the affidavit where it was documented in detail what all the problems were.

ADV SONI: Now, can I ask you; when we talk about human resources, are we also talking about prosecutors?

ADV MACADAM: Yes, we are.

ADV SONI: And then in paragraphs 17 and 18, you say to assist in this process, four investigators and a chief investigator were appointed in May 2002; and in addition, you referred to a matter earlier, two former TRC researchers were also appointed to your unit.

ADV MACADAM: What happened is; the decision to appoint those investigators was taken in May 2002, but they could only assume their duties in November 2002, because they had to finalise the investigations that they had been conducted in their regional offices.

ADV SONI: And then you say in paragraph 19 with the... sorry,
10 before I go into paragraph 19, how long did those researchers remain with the DSO or the SNPU?

ADV MACADAM: They remained with the DSO right up to when Mr Ngcuka in May 2003 moved the prosecution of TRC cases to the PCLU. At that stage, I know the one researcher had got permanent employment in Cape Town, so she dropped out.

The second researcher, however, continued to assist us until we then had to appoint her as the Head of the Missing Persons Task Team. That was to address the finding made by the TRC that some 800 people had disappeared and their remains had never been
20 found. Nobody knew were they alive or dead. If they are dead, where are the skeletal remains?

So she then had to head that unit. I had to draft the budget and all the motivations to then have that unit established within the NPA as a sub-component. Now, so her primary response, she shifted to this portfolio.

ADV SONI: Mr Macadam, please, I am going to ask you to stick to the point. I will tell you why. I am asking these questions to raise certain specific issues.

ADV MACADAM: Certainly.

ADV SONI: And details are going to cloud those issues that I want to raise. And I do not mean to be disrespectful to you, Mr Macadam.

ADV MACADAM: No, certainly, then...

ADV SONI: And this person, incidentally, was Ms Fullard. Am I right?

10 ADV MACADAM: That is right, yes.

ADV SONI: Now, with the assistance of these two researchers, you then compiled a report in which you set out 41 TRC matters; and that report appears as annexure AD1 to your affidavit at pages 264 to 289. Would that be correct?

ADV MACADAM: Yes.

ADV SONI: Can I ask you, please, to turn to page 264?

ADV MACADAM: I have it before me.

ADV SONI: Now, there are certain parts of this report that I want to bring to your attention or place on record. The first is; it is addressed
20 to the Acting Head of the DSO.

ADV MACADAM: Yes, that is correct.

ADV SONI: That is Adv McCarthy.

ADV MACADAM: That is right, yes.

ADV SONI: And it is from you in your capacity as Head of the SNPU.

ADV MACADAM: Yes.

ADV SONI: It is dated 10 February 2003. You will see that on the third line.

ADV MACADAM: Yes.

ADV SONI: And then its title is "Breakdown of TRC investigations", yes.

ADV MACADAM: Yes.

ADV SONI: Now, can I then ask you to look at page... Sorry, can I just say that in this matter, you deal with, as you say, the 41 TRC cases and you deal with them consecutively.

ADV MACADAM: That is right.

ADV SONI: Numbered 1 to 41.

ADV MACADAM: Yes.

ADV SONI: Can I ask you to look at page 264, please? Oh, sorry, it is 269. I am just going to draw your attention. If you want to address any other matter, some of the matters have been, some of the cases have been referred to earlier. You will see at the top of page 269 is the case relating to the SAP General van Rensburg and it deals with the Motherwell or Brian Ngulunga killing. This is a matter that I think my learned friend, Mr Varney, raised with you on a number of occasions yesterday.

ADV MACADAM: Yes.

ADV SONI: And then at page 274, you will see that at number 17, it deals with the case of Ms Victoria Mxenge and that this case was being referred to on account of the huge public interest.

ADV MACADAM: Yes.

ADV SONI: Can I, while we are on that; I see that in respect of each of the cases, you set out in some detail the matters that you rely on and the possibilities in respect of the case. For example, in this case, you say locate the original inquest and police docket, locate TRC material, follow up information. It is a very detailed document in relation to these 41 cases.

ADV MACADAM: Yes.

ADV SONI: And I am saying it as a matter of compliment, Mr...

10 ADV MACADAM: Thank you. Then if you look at page 275, right at the bottom is the case of Mr Steve Biko and it is quite coincidental that the inquest into his case started just yesterday.

ADV MACADAM: That is correct.

ADV SONI: I am sorry, on Monday.

ADV MACADAM: Yes, I am aware this week it was in court, yes.

ADV SONI: Okay. And in his case, the issue was the possibility of investigating whether people should be held responsible on the basis that they have been murdered.

ADV MACADAM: Yes, that is right.

20 ADV SONI: And then here you say that there was a refusal of amnesty and the subject died in police detention, amnesty had been refused, but the Grahamstown DPP declined to prosecute.

ADV MACADAM: That is correct, yes.

ADV SONI: I take it one of the issues that would have arisen, and I say would have, you will see, because the matter is eventually closed

at that time, but would have arisen is whether the NDPP could revisit that decision.

ADV MACADAM: That is correct.

ADV SONI: As he is entitled to do.

ADV MACADAM: Ja, and as I was entitled to as well. I had the report of the DPP and why I registered the matter is to look at it again and see if there is not a possibility of proving a criminal case. So that is why I wanted to investigate and see if we can actually get to a criminal charge.

10 ADV SONI: Okay. And then on page 277 is the Cradock Four matter, as number 21.

ADV MACADAM: Yes.

ADV SONI: And at page 282 is a matter that also featured in your evidence yesterday, at number 29, the Anton Lubowski allegations relating to whether his death had been planned in South Africa.

ADV MACADAM: That is right.

ADV SONI: Now, can I ask you to look at page 289 of that report, or page 289 of the papers, which is the last page of that report? And these are your general comments. The first comment you make is:

20 "It is anticipated that the successful investigation
 of the above will lead to the detection of further
 unsolved crimes."

ADV MACADAM: That is correct.

ADV SONI: And how would that happen?

ADV MACADAM: I believe I have dealt extensively with accomplice

witnesses, and if you have a successful prosecution, people who had been sitting out of the process suddenly come forward, because they do not want to be the next person to be prosecuted, they want to be the next state witness.

ADV SONI: Then the second point you make is:

“Now that researchers have been appointed, the TRC material is being evaluated on a systematic basis, which will lead to further investigations being registered.”

10 ADV MACADAM: That is correct.

ADV SONI: So, you had two of the researchers from the TRC, and they assisted in compiling these 41 cases, and of course, based on amnesty applications and complaints made to the complaints unit at the TRC; that more cases would be added in respect of possible criminal prosecutions.

ADV MACADAM: Yes.

ADV SONI: Then you say:

20 “Due to the small number of staff members, the investigations are prioritised according to their degree of urgency. However, it remains the policy of my office to deal with the matters holistically once the final report of the TRC has been received and analysed.”

ADV MACADAM: That is correct. And that was the approach you were going to take.

ADV MACADAM: That is right.

ADV SONI: To await the report, which would in any case, in this case, was going to come in about four months.

ADV MACADAM: Yes, but although we were waiting for the report before we made decisions, the work that we had identified was continuing. So, we did not stop and say we will only start once we get the report.

ADV SONI: No, no, no, I understand perfectly. All right, now, this report was submitted to the Head of the DSO.

10 ADV MACADAM: That is correct.

ADV SONI: Can I ask you, Mr Macadam, and you would know this; you were appointed to the DSO, which was just formed in 2021. You are the first head of the SNPU. Was this the first... were you the... was this the first, if I can call it, list of cases that you were aware of where possible investigations ...[intervenes]

ADV MACADAM: That is correct, yes.

ADV SONI: And with the depth of analysis that is included?

ADV MACADAM: Yes, that is correct.

20 ADV SONI: As I understand it, though, there may have been lists of possible cases, but not where the facts had been considered holistically, as was done in this report.

ADV MACADAM: That is correct, yes.

ADV SONI: Can I then ask you; this report was sent to the DSO, the Acting Head of the DSO.

ADV MACADAM: Yes, that is right.

ADV SONI: What was his response?

ADV MACADAM: He said we continue. You know, he was satisfied with what I had reported and the DSO continued working on these matters until Mr Bulelani made that decision to move the prosecution component to the PCLU.

COMMISSIONER KGOMO: 2003, who was the Head of the DSO?

ADV MACADAM: That was Adv Leonard McCarthy.

COMMISSIONER KGOMO: Okay.

10 ADV SONI: Now, the reason I ask, Mr Macadam is; you complain in the third point you make at page 289 that due to the small number of staff, the investigations are prioritised and, of course, the list has to be included. Was there no indication that you carry on, we are going to give you more people to do this important work?

ADV MACADAM: Madam Chair, the DSO had just set up as a totally new unit established from scratch. So there were major concerns with resources and all the components of the DSO.

ADV SONI: Can I then ask you to look at, to go back to the affidavit and look at paragraph 23, please, page 236? You say there that in May 2003, Adv Ackermann invited you to serve as his deputy on the
20 newly established PCLU. Is that correct?

ADV MACADAM: Yes.

ADV SONI: And this had been established by presidential proclamation, which appears as AD3, page 292. Can I ask you quickly to look at that, please?

ADV MACADAM: Certainly.

ADV SONI: Now, this is the unit set up by the president by virtue of the powers he has under section 13(1)(c) of the ...[intervenes]

COMMISSIONER KGOMO: You have to refer to that page, Mr Soni.

ADV SONI: Sorry, Mr Chair.

CHAIRPERSON: 292?

ADV SONI: 292, yes.

COMMISSIONER KGOMO: Oh, sorry, I missed it, sorry.

ADV SONI: And I just want to refer you to what the mandate of the PCLU in terms of the proclamation was.

10 “To manage and direct investigation and
 prosecutions of crimes contemplated;
 1. In the implementation of the Rome Statute.”

Is that correct?

ADV MACADAM: Yes, that is right.

ADV SONI:

 “And crimes of the International Criminal Court.”

ADV MACADAM: That is correct.

ADV SONI:

20 “And serious national and international crimes,
 which includes acts of terrorism, sabotage
 committed under the Internal Security Act of
 1982, high treason, sedition, foreign military
 crimes committed by mercenaries, or such other
 priority crimes to be determined by the National
 Director.”

ADV MACADAM: Correct, yes.

ADV SONI: Okay. Now, in your evidence yesterday, you pointed out that one of the matters that the PCLU, or among the matters that the PCLU was dealing with or started dealing with, was that of foreign mercenaries and so on.

ADV MACADAM: Yes.

ADV SONI: And of course there were the PAGAD matters as well.

ADV MACADAM: We did not deal with the PAGAD matters at all.

ADV SONI: Was that when you ...[intervenes]

10 ADV MACADAM: That was dealt with by the Western Cape office under the DSO, and they continued with those investigations.

ADV SONI: Now, I take it before the crimes to be investigated by the PCLU were identified, as set out in the proclamation, it would have been clear to the prosecuting authorities or the wider set of authorities dealing with criminal matters that these are crimes that require intensive investigation and people with enough experience.

ADV MACADAM: That is correct, yes.

ADV SONI: And that there would be a fair amount of these investigations and prosecutions that would be taken.

20 ADV MACADAM: Yes.

ADV SONI: Now, can I then ask you to please turn to your paragraph 25 of your affidavit? It says:

“On 15 May, I addressed an internal memorandum to the NDPP, the Head of the DSO, the DSO Operations, and Mr Ackermann, which

provided details of an audit of TRC cases.”

And that is contained as Annexure AD4.

ADV MACADAM: Correct, yes.

ADV SONI: Can I just ask before we go to it; the audit that you did in February was, to some extent, replicated without the details. In other words, the number of cases and a couple of cases were added to it.

ADV MACADAM: Because we have done more work between February and May, which were then captured in this report.

ADV SONI: And I am going to come to that, because you then divide
10 the cases into different categories.

ADV MACADAM: Yes, that is right.

ADV SONI: So can we then go to AD4, which appears at page 293 to 297; and if I could just ask to look at page 293. This document is addressed to the NDPP, and it is cc'd to the Head of the DSO, the Head of Operations, and Adv Ackermann obviously in his capacity as the Head of the PCLU.

ADV MACADAM: Yes, that is right.

ADV SONI: And it is from yourself in your capacity as Head of the SNPU, it is dated 15 May, and this document is titled “Audit of TRC
20 cases”.

ADV MACADAM: Yes.

ADV SONI: Now, can I just ask you the headings to the cases? You will see on page 293, the first heading is “Cases being prepared for prosecutions” and you list the cases. I am going to come back to that. And the second heading on page 295 is “Potential further

prosecutions arising from the above”, and you list two cases there. Then the next heading is “New cases being evaluated for prosecution purposes”, and then D is “High interest cases which require attention irrespective of the nature of the available evidence”. And the next heading is or category of cases is “Representations to investigate specific cases” and then the last category is “Cases in the process of being closed”.

ADV MACADAM: Yes.

ADV SONI: So that is the work, at any, at least what had been done
10 between February and this document is that you had now categorised how these matters will be dealt with.

ADV MACADAM: Yes.

ADV SONI: Can I just on that score, dealing with the different headings; you will see that the first heading is the “Motherwell Bombing” case which we had already referred to in the previous document, and then the Brian Ngulunga case. Is that correct?

ADV MACADAM: Yes.

ADV SONI: And then there is a PEBCO case and of course the Philip Powell case which is at number 5. And these are the cases, as
20 I understand it, that appear to be somewhat ready for prosecutions.

ADV MACADAM: Yes.

ADV SONI: Then the next category of cases is “Potential further prosecutions” and you will see there at number 1 is the “Murder of the PEBCO 3” and you will see on page 294 the PEBCO 3 is mentioned there as well. I take it you were going to do this matter in stages?

ADV MACADAM: Yes, that is right.

ADV SONI: And then the second case in that category of further prosecutions was the Cradock Four case.

ADV MACADAM: That is right, yes.

ADV SONI: Then the new cases that were being evaluated, one of them is the COSAS, the murder of the COSAS 4 and that is the first one under C.

ADV MACADAM: Yes, that is right.

10 ADV SONI: And then as was done in the previous matter, you talk about, sorry, not as was done, but one of the cases you mentioned in the earlier memo was cases of high public interest, and the first case mentioned here is the murder of Ms Mxenge.

ADV MACADAM: Yes.

ADV SONI: Then you refer to the representations to investigate specific matters; and the first one on that list is the death in detention of Mr Ahmed Timol.

ADV MACADAM: Correct.

20 ADV SONI: I want to come back to that in a minute. Perhaps I should just deal with it while we are at it. If you look at page 290, Mr Ackermann, of the annexures; and that is annexure AD2. You indicate here the reason why it appears to be on this list and you set out how it came about, namely that you were approached by Mr Timol's nephew, Mr Cajee, on 2 May and then you asked Mr Leask to do certain investigations.

ADV MACADAM: That is right.

ADV SONI: And again, that would feed into the notion that this list was going to be amplified as circumstances required.

ADV MACADAM: That is correct.

ADV SONI: And as you say here, it was on the basis of representations made by interested parties; in this case the family members.

ADV MACADAM: Yes, that is right.

ADV SONI: And then you deal with the cases that were in the process of being closed and in number 5 you record that the case of
10 the murder of Steve Biko, sorry, which had been classified as murder in the previous memo, but it was now going to be closed, because the crime had prescribed in 1997.

ADV MACADAM: That is correct, yes.

ADV SONI: And that is, I take it, you had downgraded the investigation from murder into culpable homicide or am I wrong?

ADV MACADAM: No, what had happened is; I had consulted with the chief state pathologist. We had gone through all the medical evidence and the issue in that case of that a head injury had been sustained in an altercation and the view is that that head injury was
20 fatal in its own right. The person would have died, no matter what happened; and that was a bar to now holding the people who afterwards denied him medical treatment, transported him to Pretoria in the back of a Land Rover and possible actions in the Pretoria's Prison. You see, if prescription did not apply I would have still gone ahead on culpable homicide charges, but I could not prove murder.

And a lot of the key role-players who were involved in the subsequent treatment had already died.

ADV SONI: Then on the next page “investigations put on hold” is; the first one on that list is the murder of Adv Lubowski in Namibia.

ADV MACADAM: That is right, yes.

ADV SONI: Then can I ask you to look at J where you set out policy considerations that informed this memorandum?

ADV MACADAM: Sorry, I am just going back to; I take it this is my AD4?

10 ADV SONI: AD4, yes.

ADV MACADAM: And if I go to the last page?

ADV SONI: Ja, so that is where ...[intervenes]

ADV MACADAM: There you are, there you have it.

ADV SONI: Okay. The first consideration you set out is prosecutions not to be conducted on a piecemeal basis, except where special circumstances are present, namely, for example, as a witness on the point of death and so on. Is that right?

ADV MACADAM: Yes, that is correct.

ADV SONI: The second is:

20 “Once all the cases earmarked for prosecution have been investigated, a presentation will be given to the NDPP in order for him to confirm the prosecution strategy. Thereafter, prosecutions will be instituted.”

And the third point you make is:

“After convictions have been obtained, attention will be given to cases which currently had evidence since convictions may act as an incentive for perpetrators to come forward.”

That is the point you made when we talked earlier.

ADV MACADAM: Yes, that is correct, yes.

ADV SONI: I just want to go back to paragraph 2 of your policy considerations. As I understand it, and I may be wrong, what you were intending to do was to do all the investigations first and then
10 start the prosecutions.

ADV MACADAM: I very quickly had to revisit that; firstly, lack of resources. It would take too long. So by the time you had witnesses, an accused would have died and also to make an impact on the strongest cases. So on reflection, we did not follow that approach.

ADV SONI: And it made sense, given the fact that you had been complaining throughout, and that is specifically why I read those paragraphs of your affidavit. You had been claiming, I mean you had been complaining about lack of resources.

ADV MACADAM: Yes.

20 ADV SONI: Because on this basis there would have been no investigations until about four or five years ago.

ADV MACADAM: Yes, that is correct.

ADV SONI: Well, no prosecutions, not investigations.

ADV MACADAM: That is right.

ADV SONI: But this is the other part that I want to ask you about, Mr

Macadam. You say that a matter will, a presentation will be made, will be given to the NDPP for him to confirm the prosecution strategy.

Now, what was the prosecution strategy?

ADV MACADAM: That is what we had set out in here where we had set cases for prosecution, high interest cases, representation cases. So this is what we presented to him at our meeting with him.

ADV SONI: In other words, dividing the cases into categories ...[intervenes]

ADV MACADAM: Into these categories and prioritising according to
10 which category a case fell.

ADV SONI: Now, what was his response to the prosecution strategy?

ADV MACADAM: He endorsed it and that is why we started working according to that strategy.

ADV SONI: Now, aside from that particular strategy of dividing the cases into different categories, was there any other prosecution strategy that had been developed from the time the PCLU was established?

ADV MACADAM: No.

20 ADV SONI: Can I then ask you, Mr Macadam to turn to paragraph 26 on page 230...?

CHAIRPERSON: 7.

ADV SONI: 237, sorry, Chairperson, sorry. You then deal with the fact that now that you were in a position to prosecute, you needed DSO investigators.

ADV MACADAM: That is correct.

ADV SONI: And that is where the disputes and so on with Mr Ledwaba ...[intervenes]

ADV MACADAM: Surfaced, yes.

ADV SONI: I want to deal with that at a later stage, if you do not mind.

ADV MACADAM: Certainly.

ADV SONI: Can I then ask you to please look at paragraph 28 where you say that:

10 “On 23 May 2003, Mr Ackermann addressed an
 internal memo to the NDPP, requesting a meeting
 to discuss specifically the progress made by the
 PCLU.”

And his memorandum is at AD6. We do not need to go to that, but we know there is a request for a meeting.

ADV MACADAM: Yes.

ADV SONI: Then can I ask you to please look at page, paragraph
29? This is now Mr Ackermann's memorandum to the NDPP, which
appears as AD7 to your affidavit at page 301. Now this is a
20 document authored by Adv Ackermann. It is addressed to the NDPP
and Dr Ramaite and Adv McCarthy are cc'd on it. It is dated 26 May
and it deals with TRC cases.

ADV MACADAM: Yes.

ADV SONI: The first few paragraphs ...[intervenes]

COMMISSIONER KGOMO: 26 May 2003.

ADV SONI: 2003, sorry, Commissioner. Now the first three or four paragraphs, sub-paragraphs, gives a history of the matter as set out in, as has been summarised in your affidavit to a large extent.

ADV MACADAM: Yes, that is correct.

ADV SONI: Can I ask you though to look at on page 302?

ADV MACADAM: I have the page in front of me.

ADV SONI: (c), paragraph (c), towards the bottom end of page 302 where it is said that “the following steps were undertaken” and in (c) it is said:

10 “A business plan was completed and delegations
 as required by the NPA were made.”

Where is that business plan?

ADV MACADAM: The business plan, I will look for it. I did have it at a certain stage. If I find it, I will definitely make it available to the inquiry.

ADV SONI: Now, you seem to recall what it... you seem to recall the document. Can you recall just the issues that were addressed?

ADV MACADAM: You see, with the DSO, they work on a project basis; and unlike the police, they can select what cases they will or
20 will not investigate. So this was to comply with the DSO requirements, namely we would say more or less what we have set out in our report, but without referring to specific cases. We were just saying processes, investigations, where we need researchers, *et cetera*; and then also it included a budget and the budget would be allocated to the whole project. So when you start doing individual

cases, you do not have to have a separate budget for each case. You work out of the existing budget. If I find those two documents, I will most certainly make them available.

ADV SONI: Now, would that indicate cost matters or financial, I mean, resource matters?

ADV MACADAM: Yes, it would and we had to specifically say how much this process is going to be cost and breaking it down into vehicles, cell phones, travel.

10 ADV SONI: And to the best of your knowledge, was the business plan approved?

ADV MACADAM: No, it was not. This was the dispute with Adv Ledwaba. We had submitted the business plan, the budget and then the application for these authorisations; and nothing was approved.

ADV SONI: Was it because of the authorisations or the financial implications?

ADV MACADAM: I do not know. He just said he decided summarily that all these cases must go to the police. He did not give us any reasons for that decision.

20 ADV SONI: And the business plan was sent to whom – to the Head of the DSO?

ADV MACADAM: I will have to check. It would have definitely gone to Adv Ledwaba, because when he authorises the investigation, he has to be satisfied that we have sufficient budget to cover the investigations and also for audit purposes. When the Auditor General comes in, they will say but are what we are doing actually covered in

this business plan?

ADV SONI: Then can I ask you to look at page 303 of that document, Mr Ackermann?

ADV MACADAM: Yes.

ADV SONI: I mean Mr Macadam, and you will see at the bottom is paragraph B, the cases dealt with by Adv Fick and you say:

“A number of dockets were collected, but investigation suspended due to an instruction from your office in January 1991.”

10 Now this ...[intervenes]

COMMISSIONER KGOMO: 1999.

ADV SONI: I am sorry, it is 1999. This is addressed to the NDPP.

ADV MACADAM: That is correct. And “your office”, it was an instruction by Mr Ngcuka personally.

ADV SONI: And what was the reason for that?

ADV MACADAM: Madam Chair, in 1999 the TRC was still only at an infancy stage with amnesty applications. So you do not want to investigate cases where the perpetrators will get amnesty and there will be no prosecutions. And in respect to the ANC cases, all the
20 cases having prosecution potential were prosecuted and subsequently the perpetrators got amnesty.

ADV SONI: Oh, so it was just purely on the basis that we must await the ...[intervenes]

ADV MACADAM: The amnesty judgments, yes.

ADV SONI: Then can I ask you to please look at paragraph 30 of

your affidavit? Oh, sorry. Can I ask you please to turn to page 304?

ADV MACADAM: Yes, I have it in front of me.

ADV SONI: Yes. So these were the proposals that Mr Ackermann had made. Were those proposals accepted?

ADV MACADAM: No. Well, let me see. Paragraph 1:

“That Adv Ackermann would take over the role.”

That was done. Two was done; Macadam and Pretorius were transferred. But, okay, the request to give Adv Ackermann DSO powers was not approved. And then, what you call... I think we are
10 missing a page, because there were requests for secondment of investigators and the transfer of Adv Tongwane, which also was not approved.

ADV SONI: So on the basis of what was approved, the position would be that it would be Adv Ackermann, yourself and Adv Pretorius who would be the members of this unit.

ADV MACADAM: That is right, yes.

ADV SONI: Can I ask you then to please look at paragraph 30 of your affidavit? You recall earlier you had mentioned that Adv Ackermann had asked for a meeting with the NDPP.

20 ADV MACADAM: Yes.

ADV SONI: And I take it this is the meeting that eventuated out of that request.

ADV MACADAM: Yes, that is right.

ADV SONI: Okay. So you say a meeting was held, and present at that meeting were Mr Ngcuka, Adv Ackermann and yourself and then

probably, possibly Mr McCarthy and Dr Ramaite. Is that correct?

ADV MACADAM: Yes, it is, yes.

ADV SONI: And then that is where the proposals that are... That is the response to the various proposals.

ADV MACADAM: That is correct, yes.

ADV SONI: And then in paragraph 3.3 you say:

10 “The NDPP directed that I continue working on
the TRC cases I had handled at the DSO. The
request to second six DSO investigators to the
PCLU was not approved, but Mr Ngcuka made it
clear that the investigation should be conducted
by DSO members.”

ADV MACADAM: That is right.

ADV SONI: Now, can I ask; the difference between having these persons seconded to your unit would be that effectively you would be able to bypass the section 28 process?

20 ADV MACADAM: No, we would still have to comply with section 28, but the investigators would be working directly with us, not doing any other DSO matters and being directly tasked, whereas if they are not seconded, then all our requests will have to go through Adv Ledwaba once he has approved the authorisation of investigations.

ADV SONI: And the availability would determine when the ...[intervenes]

ADV MACADAM: Yes, that is right, so if you had them seconded, you could move quicker.

ADV SONI: And then you point out that at that meeting Mr Ngcuka did not transfer TRC cases to the PCLU, but he did so later in a proclamation that he issued.

ADV MACADAM: That is right.

ADV SONI: And that appears at AD8 at page 308.

ADV MACADAM: Yes, that is right.

ADV SONI: And in doing so, he was exercising the powers granted to him by the President's proclamation ...[intervenes]

ADV MACADAM: That is right, to refer other priority crimes.

10 ADV SONI: Now, can I ask you to please look at page 239 of your affidavit, paragraph 31.1 please?

ADV MACADAM: Yes, I have it.

ADV SONI: You will see it starts at paragraph, at page 238. The part I want to alert you to is this. It says:

20 “Because Mr Ngcuka indicated that TRC investigations should be conducted by the DSO, I was still required to have the national project proposal approved and submit applications under section 28 in respect of all matters that are required to be investigated.”

ADV MACADAM: Yes, that is right.

ADV SONI: Now, the position, Mr Macadam, that I want to suggest to you, based on what happens, because thereafter in your affidavit you deal with matters that happened somewhat later. The position I want to submit to you, as at the time of the meeting and at the time of

the memos, is; it was quite clear that the work of the PCLU would not be efficiently implemented, unless there were more resources available.

ADV MACADAM: That is correct, yes.

ADV SONI: And that was made clear by all the complaints that... well, all the observations you made about the lack of resources.

ADV MACADAM: Yes, that is correct.

ADV SONI: And why things had not been moving forward.

ADV MACADAM: Yes.

10 ADV SONI: Now, the evidence that we have is that these matters were not attended to. In other words, the resources that you had asked for, the extra investigators you had asked for, had not been ...[intervenes]

ADV MACADAM: No, but we still continued working.

ADV SONI: Yes. No, no, no, I accept that. I am not criticising you, because the decision did not rest with you.

ADV MACADAM: Yes, ja.

ADV SONI: Now, at that time though, or soon thereafter, it would have been clear to you, Mr Ackermann, Adv Ackermann, Adv
20 Pretorius, that look, this is taking, sorry, is not working as efficiently as it should. We are not moving fast enough on these matters.

ADV MACADAM: Yes.

ADV SONI: Were any requests, demands, whatever one wants to call it, made in respect of the provision?

ADV MACADAM: Yes, that is correct. There is a memo, which I can

make available, where Dr Ramaite, in the beginning of 2005, wrote to Adv Pikoli, indicating all the resource constraints, setting them out in real detail and then asking for Adv Pikoli to make interventions. There was also a report that I wrote to the Chairperson of the NPA Budget Committee where I also raised a number of budgetary concerns. Those two documents are available, if required.

ADV SONI: Okay. Let us start off, though, with Mr Ngcuka. You have made, both you and Adv Ackermann had made requests to him, both at the meeting and in the memos you submitted to him.

10 ADV MACADAM: Yes.

ADV SONI: He did not respond positively.

ADV MACADAM: That is correct, yes.

ADV SONI: And then you say Dr Ramaite, in 2005, made a request to Adv Pikoli.

ADV MACADAM: That is correct.

ADV SONI: What happened to that request?

ADV MACADAM: We were given additional resources. Adv Pikoli approved the appointment of two senior state advocate posts. He approved giving us a proper office, and we were also permitted to
20 also fill an admin post.

ADV SONI: We know, though, that whilst you needed more advocates, the real problem was investigators.

ADV MACADAM: That is correct, because everything required investigation, so at that stage they were more important than prosecutors.

ADV SONI: Now, when Adv Pikoli became the NDPP, your dispute with Mr Ledwaba would have taken on a different turn, I take it, because Mr Pikoli would have understood the necessity for more investigators.

ADV MACADAM: Yes, that is right.

ADV SONI: And did it improve?

ADV MACADAM: The problem in 2005 was; there was this moratorium on investigations and prosecutions imposed in, I think, either November or December 2004, and Adv Pikoli maintained the moratorium until the prosecution guidelines were adopted, which was
10 done in December 2005.

ADV SONI: So until then there was, from November 2004, when Mr Ramaite says the minister told him to hold on with the TRC cases until from November 2004 to 2005, this moratorium remained in place.

ADV MACADAM: That is correct.

ADV SONI: And it was a moratorium that Adv Pikoli accepted.

ADV MACADAM: That is right.

ADV SONI: Now, the point I want to make, Mr Macadam is; you
20 were appointed as the Head of the PCLU in 2019.

ADV MACADAM: Yes.

ADV SONI: And you have outlined in your affidavit the steps that were taken. Can I just summarise them very briefly? Among the steps that were taken is that more people were employed as prosecutors, even if purely on contract.

ADV MACADAM: That is right, yes.

ADV SONI: And negotiations were held with the DPCI where they appointed experienced investigators, if only on three-year contracts or whatever it is.

ADV MACADAM: That is correct, yes.

ADV SONI: The third improvement made was that the persons involved in TRC cases would devote all their attention to TRC matters and not be...

ADV MACADAM: Diverted.

10 ADV SONI: Diverted, that is perhaps the best word, with other matters, which would mean that the continuity you talk about would not be there.

ADV MACADAM: That is right, yes.

ADV SONI: And it is those matters that effectively led to the improvement you talk about, the number of cases increasing from 52 to about 114 by the time you...

ADV MACADAM: That is right.

ADV SONI: Now, I am making this point and I am not saying that is the sole reason, but the one thing we can say is this. Had proper
20 resources been made available, then the unacceptable delays, whether from 2003 or from 2005 or from 2010, simply would not have taken place.

ADV MACADAM: That is correct, yes.

ADV SONI: We can accept that one of the reasons for the delays was the fact that resources were being withheld... resources were not

being provided as should have been provided.

ADV MACADAM: That is correct, yes.

ADV SONI: Now, Minister Lamola came and gave evidence here and made the point that when he became aware that these were the problems, he put the machinery in place for these resources to be made available; and that is when they were made available.

ADV MACADAM: I think what, you see, what I had done was on my own initiative. It was not dependent on Minister Lamola. It was the NPA getting approval and the police getting approval. But I think
10 when it is taken further after I had retired, when there is now this full-time unit and, you know, large numbers of prosecutors, investigators; that would be the initiatives that had been taken by Minister Lamola.

ADV SONI: Can I just ask then, because that might just give a different perspective? I perhaps have put things in a different context. You say that even before Minister Lamola came on the scene, the situation began to improve.

ADV MACADAM: That is correct.

ADV SONI: Yes, no, carry on.

ADV MACADAM: In January 2000, General Lebeya undertook to
20 take the necessary steps to get those 40 contract policemen. In December 20, when we realised there was a problem with prosecutors trying to do cases in between, we started immediately taking steps to now also match the police, get full-time prosecutors on contract. In July 21, the first contract police officers started working. Because there were delays in getting approval from the Department

of Public Service Administration, we only got approval to appoint contract prosecutors in September 2021, but the DPPs had already identified how many prosecutors they need for their divisions. So that had all been done.

ADV SONI: But the one thing we know is that in 2003 and 2004, 2002, 2003, you had already tried to get that, but ...[intervenes]

ADV MACADAM: Without success, yes.

ADV SONI: And do you know what has changed the climate?

ADV MACADAM: Madam Chair, at that stage, 2019, there was a
10 buy-in by the police, the NPA; that these matters had to be properly dealt with. The necessary steps were taken to make those improvements.

ADV SONI: Can I ask you, and you were there at the time and it is not... I am not asking you to speculate, but one of the issues that has emerged in the evidence is; there was a serious dispute between Commissioner Selebi and, on the one hand, and Adv Ngcuka on the other, and then Selebi and Adv Pikoli on the other.

ADV MACADAM: That is right, yes.

ADV SONI: And to some extent, when this matter was raised with
20 you yesterday, you made the point that this was an organisational issue which should have been resolved at that level. You did not need a political intervention.

ADV MACADAM: Yes, that is right.

ADV SONI: Is that what prevailed throughout the period, from that time when these high-ranking officials could not get on, or were there

some other factors?

ADV MACADAM: Well, first there was a conflict between Commissioner Selebi and Mr Ngcuka, then there was stopping Adv Ackermann instituting the first Chikane prosecution, the moratorium on investigations and prosecutions, the task team that took a year to set up and failed to actually get any investigations going. Then my lobbying from mid-2008 right up until the end of 2009 to get a buy-in from the police that they will now do all the investigations. And then that was when, 2010, the police did start investigating the matters.

10 ADV SONI: But as I understand it, although the police started investigating in 2010, the real progress only took place from around 2019.

ADV MACADAM: Yes, that is correct. Because as we said, there were lots of capacity and skills constraints with the police investigations that started in 2010, resulting in General Lebeya agreeing now to have full-time experienced retired police officers to do the investigations.

ADV SONI: But that was not done between 2010 and 2009?

ADV MACADAM: That is correct, yes.

20 ADV SONI: And so that would be part of the problem, because it would be a similar problem that you faced in 2002 and ...[intervenes]

ADV MACADAM: Yes, that is right.

ADV SONI: Now, I want to move to a different topic; and I do not want to spend too much time on this. It is the section 28 dispute between you and Adv Ackermann, on the one hand, and Adv Lebeya,

I mean, Ledwaba on the other.

ADV MACADAM: Yes.

ADV SONI: Now, Adv Ledwaba gave evidence, and I am just putting the version to you so it does not go unanswered, because his evidence was led here and it was not put to you. This is what he says. He says that the reason he did not approve the approvals in terms of section 28(1)(a) is; the applications that came before him did not pass the threshold. I am giving you his evidence and you can accept it for what it is worth, but it did not pass the threshold. And
10 when Mr Ngcuka, as the NDPP, issued the section 28(1)(b) directives, he could do so, because that threshold did not apply to him.

ADV MACADAM: That threshold had to be complied with by Mr Ngcuka before he could refer the matter to the DSO. He then had to have satisfied himself. There was a basis either for a full investigation or a preparatory investigation, so it did not permit the National Director to refer flimsy cases. All it means is he makes the decision and not Adv Ledwaba.

As far as his first point about these not reaching the threshold,
20 I would have expected him to write directly to me saying why he is not approving, to give me an opportunity to submit proper, more detailed applications, so that we can address these concerns. He did not do that. I have my applications with me. I will make them available to the Commission to see how thoroughly those applications were drafted.

ADV SONI: But it is also quite clear, because you say that the meeting that you and Adv Ackermann had with him was an unpleasant meeting.

ADV MACADAM: That is correct, yes.

ADV SONI: It is quite clear from your evidence and Mr Ledwaba's evidence that there was some tension between you.

COMMISSIONER KGOMO: Are your batteries running low?

ADV SONI: You need me to speak up? I am sorry, Commissioner.

ADV BHANA: We are hoping they run so low that they will stop
10 soon.

COMMISSIONER KGOMO: Yes, continue, please.

ADV SONI: I think my learned friend must direct his attention to the person who conducted the cross-examination before I did. I have not been on my feet for more than 45 minutes. But, Mr, sorry, Adv Macadam, I am putting that on the table, so that you have an opportunity to respond.

ADV MACADAM: The only tension arose from the manner in which he conducted himself at that meeting. Adv Ackermann and he were both directors, deputy directors in the DPP's office. And when Adv
20 Ackermann was appointed as a special director and he is an investigator, those are similar ranks, because I think I saw Adv Ledwaba's affidavit in which he claimed now Adv Ackermann was a lower rank than he was.

Now, my position is; I was, since 1992, a Deputy Director of Public Prosecutions. I did not have any dealings at all with Mr

Ledwaba until 2002 when he was the investigating director. And I was then in a DSO subcomponent which reported directly to the Head of DSO, firstly, Adv Sonn and thereafter advocate... and I am unaware of any tension between us, specifically when he claims I resent the fact that he is of a higher rank than me. I did not have any resentment at all.

ADV SONI: Anyway, I have cleared that because ...[intervenes]

ADV MACADAM: Thank you, yes.

10 ADV SONI: I have a duty as one of the evidence leaders to put his version to you. Can I ask you; in relation to the point he made, I take it you are familiar with what is happening at the Madlanga Commission; and that is an issue that has been raised in that commission about the threshold for a section 28(1)(a).

ADV MACADAM: That is correct, yes.

ADV SONI: So I am again saying that as a matter of law, his caution may not have been totally unreasonable. I am not saying it was justified. I am only placing that on record.

20 ADV MACADAM: Madam Chair, as I said, if that was the reason, he should have told us. He has two options, because in terms of the Powell and the Hyundai decisions in 2000 and 2004, an investigating director, if he believes there are not reasonable grounds for the investigation, but there is evidence of a specified offence, then he can declare a preparatory investigation to then find that lacking reasonable evidence. So he could have declared preparatory investigations on these matters or he could have sent the matters

back to me and said these are the loopholes. You are not addressing this point. You have not given me enough there. And we would have addressed those issues and resubmitted. None of that happened.

ADV SONI: Can I ask you now to turn your attention to the complaint made by Mr Cajee? This is in regard to the Ahmed Timol matter.

ADV MACADAM: Yes.

ADV SONI: I have mentioned it already. We know it did not appear in AD1; that is your 1 February report. It appeared in your May
10 report, AD4, on the basis that representations have been made to you and you have indicated what those representations are.

ADV MACADAM: Yes.

ADV SONI: The issue that I want to raise with you is this. We know as a matter of fact that the Cajee file, sorry, the Timol file was closed; and I do not want to go through all the documents and offend my learned friend, your counsel, so I am going to move faster. But can I ask you to please look at two documents created by the PCLU? The first one appears at page 190.

ADV MACADAM: Yes.

20 ADV SONI: Mr Macadam, it is a memorandum. It has been referred to you in a different context, but this is a memorandum that is prepared or is dated 24 October. It is prepared by Adv Ackermann and addressed to Dr Ramaite and it deals with the audit of cases emanating from TRC process.

COMMISSIONER KGOMO: 24 October 2006.

ADV SONI: So did I not say that?

COMMISSIONER KGOMO: Very well.

ADV SONI: So if I can ask you to look at page 192.

ADV MACADAM: Yes.

ADV SONI: This deals with the detention of Ahmed Timol and this is what this report says. Now I want to place on record, Mr Macadam; that I am aware that between 2004 and 2008 you were not actively involved in TRC matters.

ADV MACADAM: That is correct.

- 10 ADV SONI: So this is what the... it is one of the matters that is closed and it is said almost there is reasons for it.

“This matter relates to the death of Mr Timol who died in police detention on 27 October 1971 during interrogation.

2. There was an allegation that one of the interrogators has confessed to a journalist that Timol had been murdered and this was followed up, but was later denied by the said journalist. The matter was therefore closed.”

- 20 Now the issue I want to ask you is; did you take this decision?

ADV MACADAM: I did not. You will see in this memo the names of the prosecutors making various decisions are listed. My name is not there. 2006, I was full-time occupied with the nuclear case. My assumption is that one of the persons who took over from me saw the letter which I wrote to Mr Cajee on a PCLU letterhead in February

2000, but failed to see the letter that I had written to Mr Leask in May 2003 as a member of the DSO, because I had to move officers from the DSO to PCLU and we had severe ...[intervenes]

ADV SONI: The only question, the question really is; did you take the decision?

ADV MACADAM: No, I did not.

ADV SONI: I tell you why I ask, and I want to get to the point. Adv Ackermann was questioned about this and he said it was not he who took the decision. He says he takes responsibility, because he
10 signed the document, but he did not take the decision. Adv Pretorius came here a week or two ago and was asked about this and he said he did not. Of course, you were not there, and I accept that you did not take the decision. Who else could have taken the decision?

ADV MACADAM: Adv Mhaga who was assisting Adv Ackermann with TRC cases after I was assigned other duties.

ADV SONI: You see, the difficulty I have with that explanation is; if you look at page 194 and 3.17, 3.18 and 3.19 and 3.21, his name appears at all of those.

ADV MACADAM: Okay, yes.

20 ADV SONI: If his name appears there, the question would be; if he took the decision, why does his name not appear here?

ADV MACADAM: Madam Chair, I cannot account for that. I did not draft the letter and I was not dealing with TRC cases at the time.

ADV SONI: I want to also refer you to the next matter on that list, namely the death and detention of Mr Biko; and you will see that at

page 193 says:

“The matter prescribed in 1997 as evidence only proves culpable homicide which, according to criminal law, prescribes after 20 years.”

You did not make, I mean you did not form this opinion for this reason that the matter should be closed.

ADV MACADAM: Madam Chair, what had happened is; already in 2003 I had consulted with the current chief state pathologist and I had already ...[intervenes]

10 ADV SONI: We have been through that. I am just asking; did you take this decision?

ADV MACADAM: Oh, yes, I did, yes.

ADV SONI: You did?

ADV MACADAM: Yes.

ADV SONI: Okay. The only question then is, as I understand it, you say that the only crime was culpable homicide and that is the point that is made here.

ADV MACADAM: That is correct, yes.

20 ADV SONI: But earlier, as I understood it, you say there was no crime.

ADV MACADAM: No, it was the DPP Eastern Cape who had originally read the investigation, decided that he could not prosecute at all, but when I was seized with the matter, I went further into the matter, leading me to conclude that I could prove culpable homicide, but the matter had already prescribed. So although evidence was

available, prescription had kicked in.

ADV SONI: Coming back to Mr Timol's matter; and we do not need to go into details, because the facts are there. You did an opinion for Adv Pretorius in regard to what to do in regard to the Timol, to the complaint of Mr Cajee that the matter was not being investigated.

ADV MACADAM: Yes.

ADV SONI: And your opinion was that an application to reopen the inquest should not be made.

ADV MACADAM: My opinion was we must first exclude the
10 possibility we can prove murder and that we would then definitely
reopen the inquest, if we were not of the view we could institute a
successful prosecution.

ADV SONI: Okay, I just want to ask you to look at, and it is your
AD4 at page 342; and if I can refer you to page 347 where you say:

"It is recommended that you:"

Addressing Dr Pretorius;

"Advise the NDPP not to accede to the request to
reopen the inquest until the investigations have
been concluded and a decision taken not to
20 prosecute and to request the NDPP, as a matter
of urgency, to make a decision as to whether
TRC matters must remain within the PCLU."

ADV MACADAM: That is correct.

ADV SONI: That is your recommendation.

ADV MACADAM: Yes.

ADV SONI: Now, I just want to deal with this quite quickly, Mr Macadam. Dr Pretorius did not follow your advice. He applied for the inquest to be reopened.

ADV MACADAM: Yes, that is correct. He took the matter over with me and did all the further investigations and concluded that he could not institute the prosecution on murder, and then he followed the inquest route.

ADV SONI: He applied to reopen the inquest.

ADV MACADAM: That is correct, yes.

10 ADV SONI: And that led to the decision, because the inquest court had found that Mr Timol had probably been thrown from the 10th floor of John Vorster Square; that the person, last person with whom he was, Mr Rodrigues, that led to a prosecution being instituted against him.

ADV MACADAM: Yes, that is correct.

ADV SONI: And of course, he had passed away before the prosecution could in fact be instituted.

ADV MACADAM: Yes, that is right.

20 ADV SONI: Now, we also know that in regard to Mr Biko, that matter is being reopened again; has been reopened again and a court will make a decision.

ADV MACADAM: Yes, that is right.

ADV SONI: I raise these matters with you, Mr Macadam, in this context. We are lawyers and we know that we sometimes can make the wrong decision, whatever it is, like all human beings. The point I

want to make is that had there been sufficient human resources at the time these decisions were taken, the probability is that because more warm bodies were available, these so-called cold cases would not have been closed.

ADV MACADAM: That is correct.

ADV SONI: Finally, Mr Macadam, I want to raise a matter with you. You were appointed to the DCO in 2001.

ADV MACADAM: Yes.

ADV SONI: Now, the DCO was dissolved in 2009.

10 ADV MACADAM: That is right.

ADV SONI: The DCO was based ...[intervenes]

CHAIRPERSON: The DSO.

COMMISSIONER GABRIEL: DSO.

CHAIRPERSON: DSO. Your batteries are running low, Mr Soni.

ADV SONI: I am sorry, Chairperson.

CHAIRPERSON: Yes.

COMMISSIONER KGOMO: You must buy Duracell.

ADV SONI: The DSO was dissolved in 2000 by virtue of the 2008 amendment and the dissolution took place in 2009.

20 ADV MACADAM: Yes, that is right.

ADV SONI: DSO is based on the following. That these would be prosecution, the investigations it conducted for the prosecutions it would institute would be prosecution-led.

ADV MACADAM: That is right.

ADV SONI: When the DSO was dissolved, the DPCI came into

being.

ADV MACADAM: That is right.

ADV SONI: And the purpose of that was to ensure that criminal investigations would be taken over by the police.

ADV MACADAM: That is right.

ADV SONI: Can I ask you; in regard to investigation of TRC matters, as I understand it, because they started while the DSO, because the investigations started while the DSO was in existence, the investigations were prosecution-led.

10 ADV MACADAM: That is right.

ADV SONI: Is that still the position?

ADV MACADAM: Yes, that is correct. I mean, the NPA, in all serious cases, applies the prosecutor-guided investigation principles. So even if it is a police matter, prosecutor will work full-time giving guidance to those investigations.

ADV SONI: No, I am asking a different question.

ADV MACADAM: Also, batteries are getting flat this time. Can you repeat it?

20 ADV SONI: So I am saying to you that when the DSO was dissolved and the DPCI was brought into being by virtue of Chapter 6A of the Police Act, as it now reads; that that type of prosecution-led investigation would be inconsistent with the new provisions, with provisions of the Police Act as they now are.

ADV MACADAM: No, the SAPS Act specifically made provision for the Head of DPCI to request the National Director to have dedicated

prosecutors available to guide the DPCI in their investigations.

ADV SONI: Well, firstly, let me ask you this. Was this matter investigated by the PCLU?

ADV MACADAM: Which matter is that?

ADV SONI: Whether the mechanism it had been using in terms of investigations would still be valid.

ADV MACADAM: Correct, Madam Chair. You will see that the police filed a number of letters which I wrote to Superintendent Bester, directing him on what needs to be done on the investigations,
10 and thereafter the PCLU and the investigators engaged on an ongoing basis dealing with these matters.

ADV SONI: So I just want to, and I am just raising this, because I do not know what the right answer is, but section 17F of the Police Act reads as follows. Multidisciplinary approach; and subsection 1 says:

“Government departments or institutions shall,
when required to do so, take reasonable steps to
assist the directorate in the achievement of its
objects, one of which is the investigation of
priority crimes.”

20 Is that the provision you rely on?

ADV MACADAM: Correct. No, I am sure. I mean, look, I have not looked at that act, but I am sure there was another provision which specifically gave the Head DPCI the power to request the National Director to make dedicated prosecutors available; and that is what happened. You had the PCLU, dedicated prosecutors to do cases

that fell within the mandate of the Crimes Against the State Unit of the DPCI.

ADV SONI: I just raise it, because I thought if it had been investigated, we would be favoured with an opinion which says that that would be consistent after the formation of the DPCI.

ADV MACADAM: I cannot comment on that. I was not involved at all about the legislation and transfer of powers at all, so I cannot answer that question.

ADV SONI: Chairperson, those are the questions from us.

10 COMMISSIONER GABRIEL: Adv Macadam, can you hear me?

ADV MACADAM: Yes, I can.

COMMISSIONER GABRIEL: Thank you. Thank you for your evidence. It has been biblical. Could I just get some factual clarifications from you?

ADV MACADAM: Certainly, Commissioner.

COMMISSIONER GABRIEL: I am unclear in my own head, during your time at the PCLU, when you were assigned to other cases. In the one affidavit I see, 2004 to 2007; can you help?

ADV MACADAM: Yes, I can.

20 COMMISSIONER GABRIEL: Thank you.

ADV MACADAM: What happened is; either at the end of February 2004, but definitely 1 March, I had to be taken, not removed out of the PCLU, but taken off the TRC cases to address this international nuclear case, which continued until 2007, 2 September, when the both, when the two accused were both convicted. We had to have

two separate trials.

COMMISSIONER GABRIEL: Until 2007?

ADV MACADAM: Yes, that is correct. Now, what happened then; when Adv Simelane was appointed, he then assigned me to go and manage the Block corruption case in the Northern Cape, but I continued to work on TRC cases, guiding investigations. I did make a decision in Adv Simelane's time frame with the Cradock Four case. Then the next step was with Mr Nxasana, 2014, 2015. He then removed me completely from the PCLU to work exclusively on the
10 foreign bribery cases. But then, as we have seen in the evidence, I still help my colleagues out on TRC cases when they are experiencing difficulties.

COMMISSIONER GABRIEL: Okay. Just remind me again of the dates.

ADV MACADAM: The nuclear case is either end of February 2004, definitely March 2004, and the final case was concluded September 2007.

COMMISSIONER GABRIEL: Okay, thank you. Then just another factual issue from me; I may or may not have read it in your affidavits.
20 You approached the DPCI who said that they would be willing to help with investigators after the World Cup.

ADV MACADAM: That is correct, yes.

COMMISSIONER GABRIEL: Now, I do not know where I read it, but I think it was in one of your affidavits that you said you soon found out they had only appointed three investigators.

ADV MACADAM: That was my recollection at the time.

COMMISSIONER GABRIEL: When did they appoint more investigators?

ADV MACADAM: As the cases progressed, but let me think now. This is 2010, so I was still dealing with 2010 up to 2013, but that is when I was taken away.

COMMISSIONER GABRIEL: That is where you... And then we know it was only in 2020 or January 2021 that 40 dedicated investigators were made available.

10 ADV MACADAM: They started being appointed in July 2021. Not all 40 in one batch, but one by one people were being appointed. So that process started in July 2021.

COMMISSIONER GABRIEL: Okay, let me just check my notes. Yes, in 2019 you raised the concern about the lack or the poor quality of investigations. You raised this, amongst others, with the NDPP.

ADV MACADAM: Yes.

COMMISSIONER GABRIEL: And then I just want to confirm; it was you who proposed the decentralised model.

20 ADV MACADAM: That is correct. That was the only way I could have more prosecutors available, because there was a moratorium on filling vacant posts and creating new posts. And in any event, my view is it would be more cost effective and efficient if you had prosecutors in the region, because otherwise we would still be flying all over the country to do these cases. So it is a necessary expenditure and you are coming in from outside, so you do not have

that local environment. So I believe the local prosecutor would actually be more effective.

COMMISSIONER GABRIEL: Thank you very much.

CHAIRPERSON: Mr Bhana, in your re-examination of Adv Macadam, you will recall that when he was being cross-examined by Mr Varney, he told us that he had certain documentation with him which he could make available to the Commission. Could you please in your re-examination make sure that you put those documentations on record?

10 ADV BHANA: Chair, I have not kept a list of that, but I think the transcript will reflect that. And with your permission, we will just go through the transcript and make available whatever he says he has.

CHAIRPERSON: Yes.

ADV BHANA: We will certainly do so. We will go through the transcript whenever it is available and within a few days of that, we will give you the documents.

CHAIRPERSON: Yes.

COMMISSIONER GABRIEL: But do you confirm, Adv Macadam, that you are formally placing them on record before the Commission?

20 ADV MACADAM: Yes, that is correct. It is very important that the Commission see those documents, because it is a dispute between myself, Adv Jiba and Colonel Makua in his evidence. So I think it is vital that the Commission see those documents.

COMMISSIONER GABRIEL: Thank you.

ADV BHANA: Thank you, Chair. Chair, I have the graveyard shift

and I promise to just deal with three or four areas.

CHAIRPERSON: Yes, you may proceed.

RE-EXAMINATION BY ADV BHANA: Thank you. Adv Macadam, in the examination by the evidence leader, Adv Soni, he put propositions to you and at least two of those were premised on this. Had proper resources been made available? It was put to you on a theoretical basis. In-chief you mentioned that there was a competition for resources on the ground.

ADV MACADAM: Yes.

- 10 ADV BHANA: And in reality, was it sinister that those resources were not made available or were there simply competing cases and competing areas for those resources?

- ADV MACADAM: Correct, Madam Chair. All occurred when we actually were ready to investigate and, you know, you did have, particularly with the DSO, this was before Adv Ledwaba refused to investigate, but before we said we have identified this with our team. If we have more staff, we can do more. The same thing when the DPCI started in 2010. Again, if they had more investigators, more experienced investigators, a lot of additional work can be done,
- 20 because from 2010, when those investigations started, even though we might say some of them were not of high quality, there was no stopping of those investigations for any reason at all. It was simply restraint.

ADV BHANA: My question is directed at something else. He put a theoretical proposition to you; on the practical level on the ground,

were there other cases and areas that were competing for the same resources that the TRC investigations would require?

ADV MACADAM: Yes, that is correct.

ADV BHANA: And are you aware of resources being withheld, deliberately withheld or withheld with any ulterior purpose in relation to the TRC cases?

ADV MACADAM: Not at all.

ADV BHANA: In relation to the cross-examination by our colleague, Adv Varney, he elicited a fair deal of opinion evidence from you and
10 one of the areas that he covered with you was in relation to the question. Let me put this to you. You are one of those persons that have been longest involved in these investigations, would that be fair?

ADV MACADAM: Yes, that is correct.

ADV BHANA: And on this topic in relation to TRC investigations and cases, it appears that you have the most institutional knowledge of this, is that correct?

ADV MACADAM: Yes, correct.

ADV BHANA: Yesterday, you, under cross-examination, said whilst
20 it was not ideal and not easy, work was done by the NPA and the police.

ADV MACADAM: Yes, that is correct.

ADV BHANA: During your evidence under cross-examination, the following came through. I am just setting the context for what I want to put to you. Those areas where things were not ideal were lack of

continuity, resource constraints, what I call turf wars, but personality differences that you have testified to, perhaps some degree of laxness and cases slipping between the cracks, to use some of the phrases you used. In your considered view and in your overall view, was there any sinister interference or any evidence of that that you saw where persons were trying to stop, deliberately stop prosecutions of TRC cases with an ulterior purpose or motive?

ADV MACADAM: Madam Chair, I was not involved in these matters in 2004 where Adv Ackermann was prevented from proceeding with
10 the prosecution and thereafter a moratorium was placed. I was not involved in... only starting investigations once the guidelines had been approved. I was not involved in the task team, except for one or two meetings that I attended.

And as I said in my evidence, I struggled for almost a year and a half before the police undertook to assist me with investigators, but obviously I do not know what informed, why there was such a delay, because at that stage the police were the only investigative agency available to investigate all crime. So I would leave that period that I would not express any opinions at all, I would leave it to the
20 Commission, having heard all the evidence, to make a decision what caused those events.

COMMISSIONER KGOMO: Yes, I think that is fair enough. I think the question was overbroad really.

ADV BHANA: Yes, perhaps let me, in relation to the period that you were involved, are you aware of any evidence of deliberate

intervention to stop prosecutions in TRC matters?

ADV MACADAM: I take it you mean from an executive level, not ...[intervenes]

ADV BHANA: Yes, yes.

ADV MACADAM: No.

ADV BHANA: And on that issue in cross-examination you were asked about executive intervention in prosecutorial discretion. That came up a few times in the examination by Mr Varney. And Adv Ngcuka testified before the Commission that people always lobby to
10 influence prosecutions, but in his experience, or certainly while he was there, that never succeeded. In relation to what may be termed executive intervention to influence ...[intervenes]

CHAIRPERSON: Executive interference.

ADV BHANA: Intervention, Mr Varney used the word intervention.

CHAIRPERSON: Intervention.

ADV BHANA: In relation to executive intervention that he put to you, in the periods that you were involved, did that amount, in your experience, to stopping of investigations or prosecutions?

ADV MACADAM: It comes back to the same point I have said, what
20 happened 2004 up to ...[intervenes]

ADV BHANA: Yes, and I prefaced it with when you were involved.

ADV MACADAM: If we go back to 2003, no, and then definitely 2010, no.

ADV BHANA: And one of the terms of reference of this Commission is to investigate whether members of the NPA or the police colluded

with or succumbed to interference. In your experience and whilst you were there, did you come across any such collusion or succumbing to interference?

ADV MACADAM: No.

ADV BHANA: Thank you, Chair. Those are our questions.

CHAIRPERSON: Thank you. Adv Macadam, we thank you for having taken time to give this evidence before this Commission.

ADV MACADAM: Thank you, Madam Chair.

10 CHAIRPERSON: Which will help us to be able to discharge our mandate.

ADV MACADAM: Certainly, Madam Chair.

CHAIRPERSON: We appreciate your presence. You are now excused as a witness.

NO FURTHER QUESTIONS

20 ADV MACADAM: Thank you so much, Madam Chair. Could you make that a formal interdict, preventing me from ever coming back here? Madam Chair, I just want to hear from Adv Soni. He asked me about these project plans and budgets and that if they are required, I will have to look for them and make them available. My shopping list is also these documents relating to Adv Jiba and Colonel Makua. And then I must also go back to the NPA and raise the issue of prejudice were the Commission to receive the instructions I gave to the police on the Nokuthula Simelane matter.

CHAIRPERSON: Yes.

ADV MACADAM: That is the sum total of all my homework.

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

INQUIRY ADJOURNS UNTIL 27 AUGUST 2026

CERTIFICATE OF VERACITY

We, 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:

JUDICIAL COMMISSION OF INQUIRY INTO TRC

FORUM OF ORIGIN : Inquiry

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