

**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 Rafik Bhana (SC) (for Adv RC Macadam)
Adv Nwabisa Ntshizana (for Adv RC Macadam)
Adv Motlalepule Rantho (for SAPS)
Adv Ebenezer Propy (for SAPS)
Adv Irene Dikgale (for SAPS)
Adv Varney (SC) – The Calata Group
Adv D Pillay – The Calata Group
Mr Sipho Tlhaole – The Calata Group
Ms A Thakor – The Calata Group
Adv KD Moroka (SC) – DoJ representative
Adv Anisa Kessery-DOJ Representative
Adv Vivian Rikhotso (for Adv Menzi Simelane)

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PROCEEDINGS ON 25 AUGUST 2026

CHAIRPERSON: Good morning to you all. Mr Semenya?

ADV SEMENYA: Good morning, Chair and to the Commissioners. Today we have Adv Macadam coming to help us further. He is assisted by my learned colleague, Mr Bhana and I take it to place on record that Mr Varney will do whatever questions he has to do virtually.

CHAIRPERSON: Yes, yes. Mr Bhana?

ADV BHANA: Chair, with Ms Ntshizana instructed by the State
10 Attorney for Mr Macadam.

CHAIRPERSON: Thank you.

ADV BHANA: Thank you, good morning to all of the Commissioners.

CHAIRPERSON: Who is going to start between Mr Varney and Ms
Rantho?

ADV VARNEY: Chairperson, Ms Rantho requested that she go first
this morning and we have consented to her request.

CHAIRPERSON: Thank you. Adv Macadam, you are reminded that
you are still under your former oath.

ADV MACADAM: Correct, Madam Chair.

20 RAYMOND CHRISTOPHER MACADAM: still under oath

CHAIRPERSON: Thank you. Ms Rantho, you may proceed.

CROSS-EXAMINATION BY ADV RANTHO: Thank you,
Chairperson. Good morning, Adv Macadam.

ADV MACADAM: Good morning, Advocate.

ADV RANTHO: My surname is Rantho. I represent the South

African Police Service.

ADV MACADAM: Certainly, pleased to meet you.

ADV RANTHO: Now, if I may start with you at paragraph 23 of your affidavit that you filed with the Commission. It must have been in March this year.

ADV MACADAM: Right, I have got it in front of me. I am just turning to paragraph 23.

ADV RANTHO: 23, yes. It is just to confirm that you informed the Commission that that is the time when you joined the PCLU, correct?

10 ADV MACADAM: Sorry, can you just repeat? It is paragraph 23.

ADV RANTHO: 23, yes.

ADV MACADAM: 23. I have got it, yes.

ADV RANTHO: Yes, paginated page 236 of the Calata cross bundle.

ADV MACADAM: I have it in the inquiry bundle at 1400.

ADV RANTHO: Thank you so much. What is indicated is that you joined PCLU after being so invited by Adv Ackermann in May 2003, correct?

ADV MACADAM: That is correct.

20 ADV RANTHO: Now, what I want to find out from you; what was your understanding of the PCLU's mandate at the time?

ADV MACADAM: Madam Chair, the PCLU was established as a special directorate which is provided for in the NPA Act. The act enables the president, on the advice of the NDPP and the minister, to appoint special directors for specific purposes. The act does not say

how many the president may appoint, nor does it specify what duties they will perform.

But it is clear, Madam Chair, that that provision in no way made these special directorates investigating agencies. That falls under a completely different section of the NPA Act, the section 7 where provision is made for investigating directorates. And when the DSO was established in January 2000, a special act of parliament was passed, Act 61 of 2000, which specifically empowered the investigating directorate to perform policing powers, full investigative
10 powers, without the investigating officers being policed.

So this was an elaborate piece of legislation, because they had to now confer all the police powers to a non-police agency. And with the PCLU, the president issued a proclamation where he defined our terms of reference. Now, that proclamation listed offences which fall within the ambit of state security, and I can explain why he did that.

Firstly, in, I think it was about 2001/2; the country was gripped in a serious wave of right-wing domestic terrorism. You had well-trained terrorists targeting the community in greater areas of the
20 country. They planted bombs in bus stations, taxi ranks, killing and injuring innocent people and killed children.

In Bronkhorstspuit there is a Buddhist temple which they blew up believing it was a mosque. They even went so far as to work out when President Mandela was visiting his home in Transkei. He would be going over a bridge, and they would blow up the bridge and

kill the president. And what had happened is the state realised that they were still addressing terrorism in terms of the old Security Branch legislation of the 70, 80s, and that was totally inadequate.

So this is why the president then said we will now deal with terrorism in terms of new democratic processes, because one of the first things that the PCLU did was to contribute to the passing of a new terrorist law, the protection of constitutional democracy against terrorist and associated acts. So that gave us extensive powers, while at the same time doing so in the course of human rights, which
10 was absent from the apartheid-era terrorism laws. South Africa had just ratified the International Statute of Rome, which created the International Criminal Court.

Now, as a result of those obligations, South Africa was not only obliged to assist the International Court with investigations, but it was required to have domestic law to deal with crimes against humanity, genocide and war crimes which fell outside the mandate of the International Court. So it was expected that we would be the world's policemen when the International Criminal Court. And, I mean, that required very experienced prosecutors, because those
20 crimes have very complex elements. They are not easy cases to prosecute and get convictions on.

As well, Madam Chair, South Africa had a grip of former combatants, not only the security forces, but also ex-MK members, either forming mercenary groups, like Executive Outcomes, or being hired by foreign governments to render mercenary activity; in some

cases, even being hired to overthrow sovereign governments.

So the president referred the mercenary legislation to the PCLU; and lastly, the act made provision that the president could also assign other priority crimes that were not in the proclamation. But the proclamation definitely did not turn the PCLU into a fully-fledged investigation unit. The PCLU was dependent on the two law enforcement agencies, SAPS and the DSO.

ADV RANTHO: Thank you, Adv Macadam. Now that you have addressed the Commission at length regarding the proclamation, may
10 I refer you to page 68 of the SAPS cross bundle? That is the proclamation, page 68.

ADV MACADAM: That is correct. I confirm this is the proclamation that was issued.

ADV RANTHO: And that is the one that you were just referring to earlier.

ADV MACADAM: That is correct, yes.

ADV RANTHO: Now, if I may, I am sorry, request you to just read into the record where it starts off by “to exercise powers”. Or maybe just for the sake of completeness, if you can just say, start reading
20 from “determination of powers” and then you proceed up to paragraph A and ja, paragraph A of the proclamation.

ADV MACADAM: Correct. Then starting with that;

“To exercise the powers, carry out the duties and perform the functions necessary within the Office of the National Director of Public Prosecutions as

directed by the National Director, and in particular, to head the Priority Crimes Litigation Unit and to manage and direct the investigation and prosecution of crimes contemplated in the implementation of the Rome Statute of the International Criminal Court, Act 2002 (Act 27 of 2002) and serious national and international crimes, which include acts of terrorism, sabotage committed under the Internal Security Act of 10 1982, Act 74 of 1982, high treason, sedition, foreign military crimes committed by mercenaries, or such other priority crimes as determined by the National Director. B is to generally, giving such advice and rendering such assistance to the National Director, as be required, to exercise the powers, carry out the duties, perform functions which are conferred on or imposed on him in terms of the Constitution or any other law.”

ADV RANTHO: Thank you very much. Now, in respect of paragraph 20 A that you just read out, I just want to get your understanding in terms of the responsibility given to manage and direct investigation and prosecution of crimes. What did that entail?

ADV MACADAM: Madam Chair, that meant that we would manage or direct investigations which were being conducted by the two law enforcement agencies at the time. It in no way conferred any power

that the police, that the PCLU could become a police force and start performing police powers.

In this regard, Madam Chair, I refer the Commission to the section in the NPA Act which deals with the powers and duties of the directors of prosecution who sit at the seats of the high courts in the country. They are empowered to coordinate, supervise and direct investigations. But again, it cannot be argued that the Director of Prosecutions in Johannesburg is now a Commissioner of Police. His office can go out arresting people, carrying out searches, setting up
10 roadblocks, shooting dead suspects and armed robberies, *et cetera*.

All it means is that the NPA will guide and direct investigations that is consistent with international best practises, namely that you have prosecutor-guided investigations. That was standard in all countries that have proper functioning law enforcement agencies. We have interacted on numerous occasions with our counterparts across the world and it is the same story. You will not get the district attorney of the United States going and arresting people and searching. That is the function of the FBI. The FBI arrests and investigates. It does not prosecute its cases. Similarly with Britain;
20 you have the Metropolitan Police, but you also have the Crown Prosecution Service.

So it in no way transferred the investigation of powers from the police to the NPA. That would have required amending the NPA Act, the Police Act as well as the Constitution, because the Constitution places the responsibility for investigation of crime on the

police and not the NPA.

ADV RANTHO: Thank you. I am going to make a request that when I ask the question that you try and keep your answer quite short, because I am going to end up losing each other. I wanted to understand by managing, what was your understanding, management of investigation, what exactly did it entail?

ADV MACADAM: Madam Chair, it would be that I could give guidance to the police and monitor the investigation. So the police would come in with a docket, I would read it. I would say these are
10 your further investigations written out. Please conduct them. I would then monitor the investigation to decide when is it complete, when would it be appropriate to arrest, would it be appropriate to conduct a search before; and that would be the sum total of it. At the end of the day, you would read the docket and make a decision to prosecute or not.

ADV RANTHO: So in this case, you informed the Commission that at that time you had members of the police that were reporting to you regarding those investigations.

ADV MACADAM: Madam Chair, as I said, we are not an
20 investigative agency. So where there are crimes falling with the ambit of that proclamation, they would be investigated by the police and those police officers would then report to me for the prosecutorial guidance and nothing more. At the time, the police had crimes against the state unit which mirrored our mandate. So when cases of those matters came in, they would be investigated by the police and

they would come to us for direction and guidance.

ADV RANTHO: Maybe if I may just ask a specific question. At that time, when you joined PCLU, which members of the SAPS were reporting to you in relation to these investigations?

ADV MACADAM: Madam Chair, at that stage, if I recall, this is now 2003. We had just started. So I do not think any police officers reported to me. Dr Pretorius was at that stage engaged in a number of mercenary-related cases. I stand under correction, but I think those cases were a shared responsibility between the police and the
10 DSO. So he was then... if they were investigated, some of those cases were investigated by the police, they would be reporting to him.

ADV RANTHO: So that investigation, as you say, or whoever police officials were involved would have reported directly to Adv Pretorius?

ADV MACADAM: No, Madam Chair, they would report to him for guidance on the investigation. They would be primarily responsible to their commander. He would be the person who would allocate the investigation. He would monitor; are the police complying with the prosecutor's directions? And he will render a lot of support to the police which fall outside of our capability.

20 ADV RANTHO: Evidence ...[intervenes]

ADV MACADAM: So, this in no way absolved the police commanders from their own responsibilities to make sure the investigators do their work.

ADV RANTHO: Evidence before the Commission is that during the formation of the DSO, there was secondment of members of the

SAPS who were housed with the NPA, performing investigative functions reporting to the NPA. Secondment, meaning they were housed with the NPA. To be specific, there was a senior superintendent, Henni Britz and Director Nel. And that is why when I wanted to understand as to who specifically you were dealing with, I wanted to understand; was it those ones or any other policemen?

ADV MACADAM: No, Madam Chair, Mr Britz, Henni Britz and there was a brigadier whose work were in no way seconded to the NPA. What happened is; in 1996, Commissioner George Fivaz gave an
10 instruction that all the cases that the police had investigated against the armed wing of the African National Congress be brought to Pretoria and to be available.

So all these cases would be available at one point; and they would, when the TRC needed to see police dockets to verify amnesty applications, they only had to go there. They did not have to go all over the country trying to get dockets from localised policemen. Britz and the brigadier were ex-Security Branch members. They were given contracts on retirement by the National Commissioner to discharge that function.

20 So the interaction would only be that where the NPA needed to access those documents to make decisions or whether Britz and the brigadier said there are matters that need investigation, can you give us the direction? But they were in no way working with the DSO; and while they were, what happened is; there is a shared of responsibility. They were given accommodation in the office of the

DPP Pretoria, because Adv Fick had done a number of cases against the ANC, the Delmas trial and other key cases. So he would be in close proximity to the police officers to deal with any requests.

And in the same way, Madam Chair, the former D'Oliveira Unit investigators who investigated the cases against Eugene de Kock, Wouter Basson, they were also housed in the DPP's office to have close proximity to the Attorney General of Dr D'Oliveira and his prosecution team. But that in no way changed the fact that they were police officers and the nature of their duties. It simply, it makes
10 sense on complex crime for NPA and police to sit together so we can move quickly and efficiently.

ADV RANTHO: Thank you, Adv Pretorius. Now perhaps if I may refer you to paragraph 29 of your affidavit.

COMMISSIONER KGOMO: Not Adv Pretorius.

ADV RANTHO: Adv Macadam; my apologies, Adv Macadam, paragraph 29. Now you inform the Commission in terms of that paragraph that Adv Ackermann submitted an internal memorandum to the NDPP, Mr McCarthy and Dr Ramaite and the Deputy National Director of Public Prosecutions.

20 Now of importance in that paragraph is that there was a proposal made to transfer Mr Fick's cases to the PCLU and those handled by Dr Pretorius from the DSO also to be transferred to the PCLU. It also proposed an office structure that included secondment from DSO headquarters of six investigators to conduct identified investigations. Now if those investigators were to be seconded within

the PCLU, but the PCLU did not have investigative powers, what purpose would that serve?

ADV MACADAM: Exactly the execution of joint prosecutorial and investigative powers. These investigators were not policemen. They were fully fledged DSO members who were conferred with the same powers as police officers. So if they second them to us, then they are working directly with us. We can directly task them. They do not have to be distracted with a whole range. They work full-time on these cases and not other matters and that is nothing different than
10 what happens with the police.

I for many years worked on the political violence and there were special police units that were set up to address that violence and the arrangement was that between the National Commissioner and the DPPs, the prosecutors and investigators would be housed in a separate building, because there were higher risks of witnesses being seen going to the police station or going to the DPP's office and we would work together in the same building as a team, but not usurping each other's functions. That was extremely efficient. If an informer phones the policeman and says: I have got information
20 about an arms cache. He can walk straight into the prosecutor's office and say I have received. What do you advise? Should we go ahead and do a search? Should we do some monitoring first or whatever? And that happens standard.

I was, after retirement, given a three-year contract with the Investigating Directorate Corruption. Now, before it became IDAC,

there were seconded commercial branch police officers that were doing our investigations. We were all working from the same building and in direct and daily contact with each other.

ADV RANTHO: On the same note, during your interaction with Mr Ngcuka, you informed the Commission in the same paragraph that a request for secondment of investigators was declined by Mr Ngcuka, correct?

ADV MACADAM: Yes.

ADV RANTHO: And you also informed the Commission that Mr
10 Ngcuka said that that responsibility lied with the DSO, correct?

ADV MACADAM: He declined the secondment, but he did not say that the DSO will not investigate the cases that we had identified and presented to Mr Ngcuka. Obviously if they are seconded to us, then Adv Ledwaba, who is the investigating director, would not be able to assign other investigations to them. So probably with the resource constraints, it would say they will help us, but not working directly under our command.

ADV RANTHO: Yes, but in paragraph 30.3, if I may just remind you, you stated that:

20 “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 correct.

ADV RANTHO: And there was no mention that it should be DSO

members with the SAPS, correct?

ADV MACADAM: Correct, Madam Chair. What had happened is; the police were at that time only focusing on the 400 ANC cases. There was already a brigadier and a colonel managing that process, but as far as the cases against the security forces were concerned, these had been the responsibility of the D'Oliveira Unit and that had dissolved and ...[intervenes]

ADV RANTHO: Sorry, Mr Macadam. I do not mean to be rude, but again, I think my question was just; it was pointed that in that
10 paragraph, what Mr Ngcuka made it clear was that investigations should be conducted by DSO members, right?

ADV MACADAM: Yes, that is correct.

ADV RANTHO: Yes. Can we just leave it on that note for now and then we will engage further in relation to the involvement of the police at a later stage? And then as you said in paragraph 24 of your affidavit, you said PCLU lacked investigative capacity; and can you go to paragraph 24?

ADV MACADAM: That is correct.

ADV RANTHO: Yes, and as you say, they will have to rely on the
20 DSO and the DSO.

ADV MACADAM: Or the police.

ADV RANTHO: Yes, or the police, ja. And then just perhaps to get your comment on what Adv Ledwaba said when he testified before the Commission to say that his understanding was that the PCLU was clothed with investigating powers. Now if I may just for the

convenience of the Commission and everyone; Adv Ledwaba's affidavit appears on the master bundle, page 1708, specifically those paragraphs 43 and 44, but essentially what Adv Ledwaba informed the Commission was that his understanding was that you were clothed with investigating powers; your comment on that one?

ADV MACADAM: He is incorrect. He has obviously not read the NPA Act as well as Act 61 of 2000 which created the DSO; and he clearly does not understand the difference between an investigating directorate and a special directorate.

10 ADV RANTHO: Okay, thank you. We go to paragraph 25 where you referred the Commission to a memorandum detailing audit of cases that you handled while at the DSO, correct?

ADV MACADAM: Sorry, my paragraph 35 ...[intervenes]

ADV RANTHO: 25, 25, sorry, 25.

ADV MACADAM: Yes, I have it now.

ADV RANTHO: Yes, paragraph 25. Now you informed the Commission about the audit of cases or that you conducted of cases that you handled while at the DSO, correct?

ADV MACADAM: That is correct.

20 ADV RANTHO: Now I need to get your understanding in the same paragraph where you stated that:

“The audit sets out ready to proceed ready to proceed to prosecution, provided investigations were finalised, as well as cases identified for investigation, including the Timol case.”

Now what I need to understand is; what did you mean by the audit that entailed ready to proceed for prosecution, provided investigations were finalised?

ADV MACADAM: Madam Chair, there were clear cases where, for example, persons had been granted amnesty, found to be excellent witnesses by the TRC were willing to testify against those who had not applied, but before you could have the prosecution, you would have to do further investigations and go much further than the TRC did in its amnesty committee; and there were other cases as well,
10 Madam Chair. There were cases where there had been successful prosecutions, people convicted; and there again you could use the witnesses, you could then use that as a basis for prosecuting the other people who had not been charged at the time.

ADV RANTHO: Perhaps if I may just understand; why would a case be ready for prosecution when there is a need to investigate further?

ADV MACADAM: Because you have read the amnesty, the judgments of the Court. In some cases I had, when I was at the TRC, dealt with these witnesses and you know they are good witnesses; and all you need to do is now conduct the necessary investigations to
20 have a bulletproof case where you can prove your case beyond reasonable doubt.

ADV RANTHO: But you can accept that until that has been done, the case cannot be ready to proceed for prosecution, right?

ADV MACADAM: No, but you already, as you are directing, starting to work on drafting your indictment, doing all your prosecution

arrangements, because the only reason that it will not be prosecuted is if your witnesses died before the time or the accused died, but there is nothing wrong at an early stage of saying do investigations, because there is clear cases to prosecute.

I have done terrorism cases where the police have come to me and said this is the information they have and this is the first time we met. I said well, look, on this alone we are going to get them, but now we need to get the search warrants, all the other investigations. So you do not say I do not even look at whether we can prosecute
10 until we have a full... it would be counterproductive. You get involved, prosecutor guided at the first instance you can.

ADV RANTHO: Your selection of words; you said 'ready to proceed'; and from what you explained, you would have investigated and in your example by obtaining search warrant; that means until you have obtained a search warrant, the investigation or the matter cannot proceed for prosecution, is not it?

ADV MACADAM: No, Madam Chair, let me give you an example. The one case that I listed was the prosecution of General van Rensburg on the Motherwell bombing and the Brian Ngqulunga case.
20 In those matters, when it was before me, there had been a full investigation. There had been prosecution where people had been convicted. There had been amnesty applications where people who would be very good state witnesses had been granted amnesty. The people we wanted to prosecute had been refused amnesty. So you had this huge wealth of material.

So as a prosecutor you go through it and then you identify the following further steps that are necessary, because you have gaps; re-looking 2003, the amnesty process, 97/98, the criminal investigations earlier. So you need to check; is the evidence still there? Has some of it not available? But also did people in the 1990s sit the matter out, but they would now come forward, seeing that you can be convicted if you do not cooperate.

ADV RANTHO: Thank you. Let us step off that point and deal with what you informed the Commission about, transfer of 400 dockets to
10 the SAPS. Remember when you testified during your evidence-in-chief where you informed the Commission of a number of 400 dockets that were transferred from the NPA to the SAPS. Do you remember that?

ADV MACADAM: Correct, Madam Chair.

ADV RANTHO: You also recall that you informed the Commission that those dockets would be kept with SAPS, pending direction on further investigation from you. Do you remember that?

ADV MACADAM: No, Madam Chair. What happened is; there was a very unpleasant incident where the National Commissioner of
20 Police accused Mr Ngcuka at a high level government meeting of preparing to investigate the president and six other prominent ANC officials.

ADV RANTHO: Sorry, Adv Macadam. I do not want us to get into the reasons of the transfer. I wanted to understand what the status was.

ADV MACADAM: The status was; as a result of that allegation, because Selebi alleged that the reason those 400 dockets were in the NPA building was to compile this case against the president and these other people. Mr Ngcuka then invited Mr Selebi to come to the DPP's office, remove the dockets. Mr Selebi did not appear. Deputy Commissioners Williams and Price arrived.

Mr Ngcuka said fine, this is the allegation. You take those dockets. So you can no longer make false allegations against the NPA, but Mr Ngcuka said the only reason that those dockets come
10 back to the NPA is if you, the police, say you need assistance from the NPA. If you do not need assistance, they stay where they are, but we are not closing the door on cases that could be prosecuted, but we put the ball back in your court. You come and tell us where you need our assistance.

ADV RANTHO: So the dockets were housed at the NPA, correct?

ADV MACADAM: That is correct, because the two police officers who were working with them were given accommodation in the DPP's office.

ADV RANTHO: And who did they report to, to the National
20 Commissioner of the Police?

ADV MACADAM: To whoever in the police appointed them. I do not know if they were reporting to Commissioner de Beer, the Divisional Head of the Detective Service, or to Commissioner Selebi, but I know the arrangement was done by Commissioner Fivaz, who was then the National Commissioner.

ADV RANTHO: Evidence before the Commission by General Williams and General de Beer is that those police officials were housed at NPA, they were reporting at NPA, hence they were seconded; meaning, they were not accountable to the police insofar as their work was concerned, but rather to the PCLU.

ADV MACADAM: Madam Chair, we had no dealings with these. No, this is a long time ago. I have to think about this. When those dockets and those two policemen arrived in the DPP's office, Adv Fick was in charge of them, but purely from a prosecution
10 perspective.

Now, when the PCLU was established, it was decided that all the PCLU cases should come to the PCLU, so you have only one unit dealing with these matters, not two different offices. And what happened is then Adv Ackermann said: I will start reading those dockets and writing up whether they can be closed, whether they need to be prosecuted, *et cetera*. And that process was interrupted by the decision to send those dockets back to the police.

So, and in my dealings with the Britz and the brigadier, they were no support reporting to me. All I would do is ask them; I need to
20 see if there is a case against the president. Would they show me their register? Would they draw certain of the dockets listed there, so I can check whether I am right if I say there is no case or not? And all they did was bring the Blarney case to our attention, say the suspect is now back in the country and would we look at... but they were not under our command. It was simply the normal relationship

of police officers and prosecutors working in close proximity, but within their own mandates.

ADV RANTHO: Now, if... who was in custody of those dockets?

Was it NPA or the SAPS?

ADV MACADAM: SAPS, Britz and the brigadier.

ADV RANTHO: If it was the SAPS that had custody over the dockets, why would Mr Ngcuka order that they be transferred to the SAPS?

ADV MACADAM: Because he wanted to prevent Commissioner
10 Selebi being able to further allege that the reason those dockets were at the NPA was to manufacture this case against the president and the other prominent government officials.

ADV RANTHO: Now, your evidence is in total contrast to what Adv Ackermann said, because his evidence is that in May 2003, the then NDPP, Mr Ngcuka, made a determination that all TRC-related cases in which amnesty had been denied or not applied for were priority crimes in terms of the proclamation, and I think we agree it is common cause. You also agree to that, is not it?

COMMISSIONER KGOMO: But if you can make the reference to
20 where Mr Ackermann said it in the report.

ADV RANTHO: The affidavit dated... Sorry, I will come back. It is the affidavit dated 2015, Commissioner Kgomo. We will get to that one, affidavit of Ackermann, but nonetheless...

COMMISSIONER KGOMO: Yes.

ADV RANTHO: Yes. I am mindful of that. Thank you,

Commissioner Kgomo. Chairperson, that would be paragraph 14 in the Nkadimeng matter; that is now Calata Bundle 3. That would be paragraph 14, page 5 of Calata Bundle 3. That would be page 5 of the Calata Bundle 3.

COMMISSIONER KGOMO: Thank you.

ADV RANTHO: But then, let us proceed in terms of the transfer, Adv Macadam. Your version is that these were in custody of the police, even though they were housed at the NPA.

ADV MACADAM: That is correct, Madam Chair. My access to those
10 dockets had to be through the two seconded police officers.

ADV RANTHO: Adv Ackermann in his affidavit, he stated that this resulted in more than 400 investigation dockets being transferred to the Ackermann's office. That is now when you were moved from the DSO to PCLU. That dockets were transferred to Mr Ackermann's office.

ADV MACADAM: Madam Chair, that is simply for prosecution purposes that Adv Fick was relieved of his duty of being the prosecutor in charge. The responsibility now moves to Mr Ackermann. So, Mr Ackermann had before he was made the special
20 director, been a deputy director in the Pretoria office. When the PCLU was established, we did not have office space. He remained at his old office and all he did was to ask the two investigators to place dockets before them, he would read them and then he would type up an office note saying what the facts of the case were and what his decision was. And those office notes were then put on the police

docket, so that the police could see what the position is. It was the responsibility of the police. All finalised matters would have to be closed off by them, not the NPA.

ADV RANTHO: Adv Ackermann further stated that Adv Chris Macadam attached to his office, conducted the initial audit and identified 21 cases as worthy of further investigation.

ADV MACADAM: Madam Chair, those were the dockets that were originally with the D'Oliveira Unit, which Mr Ngcuka had decided must be a DSO responsibility and not the police dockets.

10 ADV RANTHO: So there were dockets with the NPA?

ADV MACADAM: There will always be dockets with the NPA. We could not do our work without dockets where we can read the evidence, make decisions, give guidance. If anybody walks into the DPP's office down the road, in almost every advocate's office will be piles of dockets. There is nothing sinister or unusual or untoward about it.

ADV RANTHO: So the 400 dockets that were transferred to the SAPS were never in the custody of NPA, but they were in custody of the SAPS?

20 ADV MACADAM: They were. All that happened is; the NPA provided accommodation for those 400 dockets and for the police, two police officers who were in charge of them.

ADV RANTHO: But if it is so, why did it have to be Mr Ngcuka that said because you are accusing us, take the dockets?

ADV MACADAM: Because of the allegation by Commissioner Selebi

that those dockets were being used to manufacture this, to lend credibility to the false claim that Mr Ngcuka and the PCLU were planning to arrest the president and these other prominent officials.

ADV RANTHO: But why, yes, but why would he bother to cause a transfer of dockets that were not his or were not under his custody?

ADV MACADAM: To prevent any further allegations emanating from Commissioner Selebi.

COMMISSIONER KGOMO: Ms Rantho, you remember the witness was still explaining that part when you said to him he did not have to
10 go that far.

ADV RANTHO: Thank you. Yes, Commissioner, sorry; my apologies, Adv Macadam.

ADV MACADAM: Madam Chair, may I add, and it is important that we note this. Had it not been for Commissioner Selebi, then Adv Ackermann would have continued to read all 400 dockets, written them all up and we would have then taken a decision as to whether these cases go back to police closed or whether there are cases that need investigations and prosecutions.

ADV RANTHO: If I may ask, did you ever have a sight of those
20 dockets, the 400 dockets?

ADV MACADAM: I have had sight of certain of them, because I was tasked by Mr Ngcuka to establish if there is any credibility to this allegation. What I did is; I could in the time, because Mr Ngcuka said this is causing huge problems and ill feelings and tension in government are needed to be dealt with quickly. I could not read 400

dockets. So what I did is; I took the police register. It listed the police station reference, the charge and then the outcome of the case; and these were either amnesty granted, convicted or sentenced or undetected.

So what I did is; I asked the police to do spot checks for me that I would say okay, case number 5 says amnesty granted. Can I see it and you say it is... They draw it up, perused it. Yes, the register is accurate. So in that process I went through not 400, but say 20 or 30, confirming that that register was correct; and therefore,
10 I could rely on the register for the basis of my decision. Adv Ackermann did read, estimating between 65 and 95 where he wrote up on each of them.

ADV RANTHO: If I may just ask maybe from you; at whose behest were those dockets opened or registered?

ADV MACADAM: The police dockets?

ADV RANTHO: Yes.

ADV MACADAM: The South African police who were responsible for those investigations when the crimes were committed when a bomb goes off in the middle of Jo'burg, killing a whole lot of civilians. They
20 immediately open the case. When there is a landmine planted on a road and blows up a car with civilians and their farm workers, they open the case. They investigate it and they only really stopped with the amnesty process, because you could not commit extensive resources to investigating cases where everybody is going to get amnesty.

ADV RANTHO: Adv Macadam, I think we have common understanding; in a normal course the police or crime would be reported to the police, is that not so?

ADV MACADAM: And the police detect these things ...[intervenes]

ADV RANTHO: In a normal course?

ADV MACADAM: No, Madam Chair. There is no normal course. If somebody assaults me in the street, I have to trigger that, but the police monitor crime trends. If they pick up on their own there is terrorist activity, drugs are coming ...[intervenes]

10 ADV RANTHO: Sorry, sorry ...[intervenes]

ADV MACADAM: They will of their own initiative do the necessary police operations. They are not dependent on a member of the public saying please investigate this case.

ADV RANTHO: Adv Macadam, let us go back to basics. I am trying to ...[intervenes]

ADV MACADAM: I am giving you the basics, sorry.

ADV RANTHO: Yes, give me the basics, but let us find each other, let us be on the same page. The question is; in relation to the 400 dockets, the police, as you say, on your version, they opened those
20 dockets, is not it, because NPA, as you say, you do not register dockets as NPA or you did not register dockets as NPA. Correct?

ADV MACADAM: Madam Chair, no, we did not open dockets.

ADV RANTHO: So, these 400 ones, at whose behest were they registered or opened; these dockets that we are talking about?

ADV MACADAM: They were registered by the police who are

responsible for investigating crimes against the military wing of the ANC during the 70s, 80s and 90s.

ADV RANTHO: So the PCLU was not involved in ...[intervenes]

ADV MACADAM: They were not even in existence then, Madam Chair.

ADV RANTHO: I beg your pardon?

ADV MACADAM: I said we did not even exist then. We only came into existence in May 2003.

ADV RANTHO: Correct, yes. I am trying ...[intervenes]

10 ADV MACADAM: The 400 police dockets were all opened before 1996 relating to the political violence that took place in the 70s, 80s and 90s.

ADV RANTHO: All of them?

ADV MACADAM: That is correct.

ADV RANTHO: Now, evidence that was put before Court by Colonel Coetzee; the affidavit of Colonel Coetzee, Chairperson is in the Coetzee bundle. Apologies, Commissioners, I just want to page through. It is paragraph... it would have been paragraph 17 of Coetzee bundle. It would be page 6 of the bundle of Colonel
20 Coetzee. Do you have it in front of you there?

ADV MACADAM: I have this document. I am just paging through to see...

ADV RANTHO: Okay, so it is not there.

ADV MACADAM: If it is here.

ADV RANTHO: Okay, be it as it may, it is not... the only things that

are contained in that bundle are annexures, but what we know before this Commission is that Colonel Coetzee testified that, following the transfer of dockets from the NPA during 2004, there were about 395 matters that she said not all of them had or were dockets. In other words, the 395 figure combined files and some dockets; meaning, it could not have been 400 dockets. What is your comment on that?

ADV MACADAM: It could be correct, Madam Chair. I have not had an opportunity since 2004 to check that register and also I did not have an opportunity to read all these dockets. So I cannot say what
10 the correct position is; and if she says it, I will not dispute it.

ADV RANTHO: Okay. General Williams, who was the Deputy National Commissioner at the time responsible for crime detection and intelligence, also testified before the Commission that he witnessed at least one box that contained material that related to publications by the ANC. No dockets in one of those boxes that he saw. What is your comment?

ADV MACADAM: Madam Chair, what I also saw is that Colonel Britz was doing his own work. He was looking for amnesty applications to see if they are related to the cases. He also had Security Branch
20 intelligence reports where it would report that a sensitive informer has confirmed that there has been an ANC NEC meeting to carry out a wave of bombings to stop the 1988 election; or an informer says that this person was killed by the ANC, as he was suspected. So he had a wealth of material available to him.

ADV RANTHO: Thank you, Adv Macadam. So we can accept that

the 400 number that you referred to may have been a combination of dockets and some other issues that were not necessarily dockets.

ADV MACADAM: Correct.

ADV RANTHO: What Colonel Coetzee also informed the Commission was that the documents included dockets where there were decisions or were decisions by the NPA not to prosecute and some of them were investigations in progress. So you would not disagree with that.

ADV MACADAM: Madam Chair, as far as investigations in progress;
10 when the task team was set up in 2006, the police were required to table a report before that task team of all cases that required investigation or prosecution, and Adv Ackermann was the main representative in that committee, but I doubt whether any such cases were brought to the attention. I did see a report with Superintendent Bester compiled for Commissioner Jacobs which only listed eight cases, and in the main they were simply seeking direction as to what to be done with the inquests not to prosecute the suspects.

ADV RANTHO: Now in your understanding, those 400 dockets that were transferred, were they matters that were live?

20 ADV MACADAM: Madam Chair, as I said, I did not read them, save as to check whether the entry in the register corresponded with the docket in question. I was looking to see if there was in fact this case against the president and these other prominent ANC leaders who had been refused amnesty by the TRC.

ADV RANTHO: Colonel Coetzee informed the Commission that the

safekeeping of those dockets that were transferred from the NPA was for the purpose of mere storage and they were regarded as closed.

ADV MACADAM: Well, that is in direct conflict with what Mr Ngcuka told Commissioner Williams and Commissioner Price in the presence of the Director-General Justice, Adv Pikoli, that they were to go back to the police, they are police property, but they must be submitted if they need assistance and/or a decision from the NPA. So it was not that the NPA said go and store them and just ignore them.

ADV RANTHO: Now let us move to paragraph 28 of your affidavit.

- 10 In paragraph 28 you inform the Commission of Mr Ackermann having addressed an internal memorandum to the NDPP requesting a meeting to discuss the TRC matters, more specifically the progress made by your office. You see that? You confirm, paragraph 28?

ADV MACADAM: I see that. I am just trying to turn to AD6. I have it. I have AD6 in front of me.

ADV RANTHO: And you can confirm in terms of AD6 that it was an internal memorandum by Adv Ackermann?

ADV MACADAM: That is correct.

ADV RANTHO: You are aware of it?

- 20 ADV MACADAM: Yes.

ADV RANTHO: Now if I may take you to same AD6. Paragraph AD6, Commissioners would be page 299 of Calata cross bundle; now if I may refer Adv Macadam to paragraph 1.1 of AD6 where it is titled "TRC matters 14 minutes". You see that one?

ADV MACADAM: That is correct.

ADV RANTHO: Paragraph (a) says:

“Progress made by Adv Macadam's office.

(b) Progress made into ANC/AWB investigation
supervised by Adv Fick.”

Now, (b) says that there was progress that was made in ANC/AWB investigation supervised by Adv Fick. What did that mean?

ADV MACADAM: Before this we did not know anything about what Adv Fick was doing on those matters. So we needed to see what the position is. Have they cases identified for prosecution? Are there
10 cases that need to be guided for investigation or are there matters that can be closed or amnesty granted, *et cetera*. So that is all it meant.

ADV RANTHO: And paragraph (c), Adv Ackermann wrote that:

“Proposal for the further management of cases by
my office and the DSO.”

You see that?

ADV MACADAM: That is correct.

ADV RANTHO: And management of those cases, TRC cases would have entailed directing, meaning management and directing or
20 direction given towards investigations in terms of the proclamation, correct?

ADV MACADAM: Madam Chair, it refers to further management of the cases. So that is simply that the NPA would be discharging its normal mandate to give guidance and direction to investigations and make decisions whether or not to prosecute.

ADV RANTHO: But now, Adv Macadam, I think you referred us to the proclamation and the proclamation spoke of management of investigations. Remember?

ADV MACADAM: If I remember the proclamation, manage and direct. That is what we say, not conduct an investigation. Manage an investigation that a police officer or a DSO member is ...[intervenes]

ADV RANTHO: Well, that is your interpretation. It is not specified ...[intervenes]

ADV MACADAM: It is not my interpretation. It has been dealt with in
10 the legislation; and the legislation was all debated in Parliament. It had to go through the ministries; and if I remember correctly, there are even cases dealing with this.

ADV RANTHO: But can you accept for the purpose of the proclamation it is not specified what management of investigation meant?

ADV MACADAM: You do not define things that are common knowledge. I mean, if you have an act, an NPA Act that refers to a prosecutor, you do not have to go and say what is a prosecutor. It is a person who has studied in LLB, admitted as an advocate, has
20 joined the NPA as... otherwise, statutes, and that would be thousands of pages long.

ADV RANTHO: But management, from your understanding, may be different from somebody else's management in terms of what is meant in the proclamation. Do you agree?

ADV MACADAM: Madam Chair, we were *ad idem*, Mr Ngcuka, Mr

McCarthy, Dr Ramaite, Adv Ackermann and myself that it meant simply that we would manage investigations conducted by investigative agencies.

ADV RANTHO: Okay, let us step off and proceed to paragraph 29 of your affidavit.

ADV MACADAM: I have got it.

ADV RANTHO: You stated in that paragraph that Adv Ackermann or Mr Ackermann submitted an internal memorandum to the NDPP, Mr McCarthy and Dr Ramaite, the Deputy Director of Public Prosecutions
10 under whose portfolio the PCLU fell. Now, you referred the Commission to 87, which is that memorandum that you spoke to. 87, that is now the memorandum of...

ADV MACADAM: Let me just page to it. I would apologise, Madam Chair, I have severe arthritis. It takes me time to page to.

CHAIRPERSON: Yes, thanks, Mr Macadam.

ADV RANTHO: 87 would be page 303 of the Calata cross, Chairperson and Adv Macadam.

ADV MACADAM: Yes, as I said, I am trying to find it.

ADV RANTHO: It is from page 301 of the bundle, of the Calata
20 cross.

ADV MACADAM: I have never been provided with a hard copy version of the Calata bundle.

ADV PILLAY: Chair, I apologise for interrupting. We do have a copy that we can provide to the witness.

CHAIRPERSON: Yes.

ADV PILLAY: Thank you.

ADV MACADAM: Sorry, I apologise, Madam Chair. I did not realise that these had been put at the corner here. I was working from the ones that are prepared with the State Attorney.

CHAIRPERSON: Ms Rantho, how long are you going to be with the cross-examination of Adv Macadam?

ADV RANTHO: Chair, it might be maybe appropriate time to take a break.

CHAIRPERSON: Yes.

10 ADV RANTHO: We are anticipating that we will not be longer than an hour after adjournment.

CHAIRPERSON: An hour.

ADV RANTHO: It should not be. At maximum, we are looking at an hour.

CHAIRPERSON: Yes. I think this would be an appropriate time to take a tea adjournment until at 25 to 12.

INQUIRY ADJOURNS

INQUIRY RESUMES

20 ADV SEMENYA: Chair, Ms Rikhotso, with your permission, would like to be excused.

CHAIRPERSON: Mister?

ADV SEMENYA: Ms Rikhotso.

CHAIRPERSON: Ms Rikhotso. Yes, Ms Rikhotso.

ADV RIKHOTSO: Thank you, Chair. We had placed an application to cross-examine, and I think it has come to the Chair's attention that we

will no longer be proceeding with our cross-examination. However, I had come to place that specifically on record, however, something has come up. May I be excused and I will continue listening online?

CHAIRPERSON: Yes.

ADV RIKHOTSO: Thank you.

CHAIRPERSON: You will no longer be proceeding with the cross-examination of Adv Macadam?

ADV RIKHOTSO: Yes, that is true, that is true, chair ...[intervenes]

CHAIRPERSON: Yes, yes, you are ...[intervenes]

10 ADV RIKHOTSO: We will just listen in case something is said, I do not know, through other cross-examination regarding Mr Simelane, but from what he had said in his evidence-in-chief, we consulted and we decided that it was probably wiser not to cross-examine, it would not be fruitful.

CHAIRPERSON: Yes. No, it is not noted that you are withdrawing your cross-examination of Adv Macadam.

ADV RIKHOTSO: As it pleases, chair.

CHAIRPERSON: Yes, you may be excused.

ADV RIKHOTSO: Thank you, chair.

20 CHAIRPERSON: Ms Rantho.

RAYMOND CHRISTOPHER MACADAM (still under oath)

CROSS-EXAMINATION BY ADV RANTHO (Continued): Thank you, Chairperson. Before we adjourned, I had referred Adv Macadam to Annexure AD7, that appears on page 301 of the Calata Group cross bundle. Adv Macadam is in front of you.

ADV MACADAM: I have it here.

ADV RANTHO: Okay, and you can confirm that the memorandum that you referred to in your affidavit ...[intervenes]

ADV MACADAM: It is the same document.

ADV RANTHO: Now, if I may just request you to go to page 303 of AD7, paragraph Roman figure 9, which is (ix) to (x).

ADV MACADAM: Yes, I have got it.

ADV RANTHO: Yes, where it reads:

10 "As a result of three audits in February 2003,
cases were identified for investigation registered
and the focus area of each investigation defined."

So the identification was done by who? It would have been done by the PCLU?

ADV MACADAM: No, it was done by myself. At that stage, I was the head of a DSO unit that had been mandated to investigate TRC cases.

ADV RANTHO: And the registration?

ADV MACADAM: The registration was as DSO cases, not as police cases.

20 ADV RANTHO: Okay, they were registered as DSO cases?

ADV MACADAM: Investigations, investigations that the DSO investigative component would conduct, not the police.

ADV RANTHO: And then Roman (x):

"The 41 investigations have been incorporated
into a national project and budgeted. Cases have

been registered on Eagle Eye."

ADV MACADAM: That is the DSO processes.

ADV RANTHO: The DSO?

ADV MACADAM: DSO.

ADV RANTHO: If I may refer you to paragraph B, capital letter B of the same memo.

ADV MACADAM: Yes.

ADV RANTHO:

"Cases dealt with by Adv Fick.

- 10 1. SAPS appointed retired SAPS members
to investigate cases against the ANC, and
also the AWB for pre-election bombings."

ADV MACADAM: That is correct.

ADV RANTHO: So these are members that you said were reporting to their commanders at the SAPS.

ADV MACADAM: For policing duties, but for prosecution activities they would then be guided by Adv Fick, who is the advocate in charge of those matters.

ADV RANTHO: Adv Macadam, earlier when I asked you as to where
20 did they report to, your evidence was that they reported to their
commanders with the SAPS.

ADV MACADAM: But I also made it clear they were also working under the guidance of the prosecutors in that case, Adv Fick.

ADV RANTHO: So we can accept for the purpose of this memo that those retired members of the SAPS were reporting to the NPA?

ADV MACADAM: Only on matters where they needed assistance from the NPA. I can take it further and say when I did that spot check on the dockets, there were a number of cases that were written off as amnesty granted, and that was done by the police, not by the prosecutor. The police officer filed the amnesty judgement, and he himself made an entry in his register and signed off that entry.

ADV RANTHO: We will argue in closing that your evidence is in total contrast from what was presented before the Commission insofar as the reporting of these two retired members was concerned.

10 ADV MACADAM: Madam Chair, I stand by my evidence, and I leave it to the commission once it has heard all the evidence, seen all the documentation to make a finding which version is correct or not.

ADV RANTHO: Let us proceed to paragraph 2 of the same memo. It reads:

"A number of dockets were collected, but investigations suspended due to an instruction from your office in January 1999."

So this memo was addressed to the NDPP by Adv Ackerman, we can accept that?

20 ADV MACADAM: Yes.

ADV RANTHO: And the memo refers to dockets being collected, but investigations suspended. As per instructions of who?

ADV MACADAM: Madam Chair, the collection of the dockets took place in 1996 on the instructions of Commissioner Fivaz. And the decision to suspend the investigations by Mr Ngcuka would be

pending the outcome of the amnesty process, which had not been concluded at that stage.

ADV RANTHO: But Mr Ngcuka did have power to suspend investigations?

ADV MACADAM: Madam Chair, you can as a prosecutor say do not proceed, you are wasting time, it is not going anywhere, but the police can still say we disagree, we are going ahead because it is our investigation, it is our evidence.

ADV RANTHO: So you can say suspend, the police say no, we do
10 not suspend. Then who is leading who?

ADV MACADAM: Madam Chair, we make that decision based on prosecutorial processes and duties, responsibilities.

ADV RANTHO: That is okay. Let us just go to D1 of the same memo.

ADV MACADAM: Sorry, which...?

ADV RANTHO: Paragraph D1.

ADV MACADAM: Yes.

ADV RANTHO: The title or the heading is, "Proposal for Further Management of Cases", do you see that?

ADV MACADAM: Yes.

20 ADV RANTHO: Now, paragraph 1:

"Adv Fick's cases be transferred to my unit so that a full audit may be conducted in order to establish whether any of them have prosecution potential. All such cases will further be managed by myself."

That was Adv Ackerman?

ADV MACADAM: That is correct.

ADV RANTHO: So on your version, that refers to that management that you said it was simply to guide?

ADV MACADAM: That is correct.

ADV RANTHO: On the same ...[intervenes]

ADV MACADAM: Because if you look at ...[intervenes]

ADV RANTHO: Sorry, that is fine, I am happy.

ADV MACADAM: Yes.

10 ADV RANTHO: On the same paragraph, if you read the same paragraph, it says:

"On 22 May 2003 I instructed that investigations
be opened on matters identified by myself."

Now, you have Adv Ackerman that would instruct as and when investigations be opened or re-opened.

ADV MACADAM: Madam Chair, I have no personal knowledge of what Adv Ackerman wrote there. At that time, I was focussing exclusively on the DSO cases, so I do not know what informed that.

20 ADV RANTHO: You referred to it in your affidavit, this memorandum, you refer to it in that paragraph that we dealt with. So I am aware that it is Adv Ackerman, but you cannot differ that he gave instructions for investigations to be re-opened, you cannot dispute that?

ADV MACADAM: Madam Chair, I cannot dispute that. All I can say is I do not know what informed that.

ADV RANTHO: And then paragraph 3 of the same memo, it is the

one crafted by Adv Macadam, sorry, Ackerman:

10 "And that I assume personal responsibility for all cases currently being handled by Macadam, Fick and Pretorius. Since I am directly managing cases which are being investigated by the DSO, it is suggested that it be expedient and prudent that I be given appointment in terms of section 7(4)(a)(i)(aa), and authorised to perform the powers of the director in terms of section 27, 28 and 29 of the NPA Act."

So you would not disagree with me that Adv Ackerman felt that he wanted to assume powers to investigate upon being appointed, is it not?

ADV MACADAM: That is limited only to the DSO cases, because if he was given those powers under the DSO provisions, then he could be more directly involved in managing the investigations.

20 ADV RANTHO: Correct. And remember your evidence to say that during your interaction with Mr Ngcuka about the secondment, he indicated that the investigation responsibility belonged to the DSO. Remember that?

ADV MACADAM: That is correct.

ADV RANTHO: So in your interaction, even the memorandums, you would not disagree with me that it was anticipated that the DSO would assist with the investigation of the TRC cases, is it not?

ADV MACADAM: That is correct. The upshot of this meeting with

Mr Ngcuka is that the DSO continue with the cases I had identified, and that Adv Ackerman will now look at the cases that Adv Fick had previously dealt with.

ADV RANTHO: Yes, and in the proposed solutions by Adv Ackerman, because that memorandum in terms of your affidavit was intended to set out the challenges that PCLU experienced with cases, the TRC cases, is it not?

ADV MACADAM: I beg your pardon? Madam Chair, the PCLU had not started to function at the time of this memo. The proclamation
10 was issued in March 2003, but it was only in June that we started performing our PCLU duties.

ADV RANTHO: Yes. Maybe just from what you said, in May already, on your own version, you were invited to join PCLU. That is in your statement.

ADV MACADAM: That is correct.

ADV RANTHO: Yes. So at the time when these memorandums were compiled, PCLU was in existence.

ADV MACADAM: Madam Chair, I only assumed duties and transferred from the DSO in June 2003. Adv Ackerman had been
20 appointed in terms of the proclamation as a special director, but he had not started performing any of his powers under that proclamation.

ADV RANTHO: I would not go, but what we cannot deny from your factual account of what happened, you said or you stated that May 2003 you were invited to join the PCLU by Adv Ackerman.

ADV MACADAM: That is correct.

ADV RANTHO: Which means PCLU was in existence at that time, is it not?

ADV MACADAM: No, it does not. All that happened is, he told me he had been appointed as a special director, and would I then join his staff. But the purpose of this meeting was to actually get us up and running, that is why I was asking for these powers, office accommodation, extra staff, a decision on a division of labour on these matters. He certainly was not performing his powers under that proclamation at that stage.

10 ADV RANTHO: So you were invited to join a unit that was non-existent?

ADV MACADAM: Madam Chair, at the level of the President of South Africa, this was declared in a proclamation in March. That proclamation was on the basis of a request by the National Director, concurred with the Minister, and it was seriously intended to get this unit up and running as soon as possible.

ADV RANTHO: But you did join that unit?

ADV MACADAM: That is correct, in June.

ADV RANTHO: Fine. Let us go to paragraph 32 of your affidavit.

20 ADV MACADAM: Can you give me the page, because this is a different...? [intervenes]

ADV RANTHO: Sorry, it would be page 240 of that bundle that is in front of the Calata cross bundle, page 240.

ADV MACADAM: I have got it, thank you.

ADV RANTHO: Thank you, Adv Macadam. It is stated as follows:

"I could not make any progress on my cases, because Mr Ledwaba's approval of my project proposal, as well as the four applications for authorisation of investigation was still outstanding. This led to Mr Ackerman and I meeting Mr Ledwaba on the 15 July 2003 to discuss the matter. At the meeting, Mr Ledwaba informed Ackerman and I that he had decided that SAPS must assume responsibility for all TRC cases previously under the DSO's purview."

10

That is your statement, correct?

ADV MACADAM: That is correct.

ADV RANTHO: And then we proceed to page 34 of your affidavit, that is on page 241 of the same bundle.

ADV MACADAM: 241, Yes.

ADV RANTHO: Yes, 241, paragraph 34:

"As a result of Mr Ledwaba's decision, either in late July or early August 2003 Mr Ackerman and I approached Commissioner De Beer, the Divisional Head of the Police Detective Service, to ask the South African Police Service to take over the TRC investigation from the DSO, including the Timol matter."

20

That is your statement?

ADV MACADAM: That is correct.

ADV RANTHO: So what you are telling the Commission is that the basis upon which you approached Commissioner De Beer was because of the refusal of Advocate Ledwaba?

ADV MACADAM: That is correct.

ADV RANTHO: If I may ask, from the beginning, when you were dealing with those investigations and the compilation of the memos that I took you through, was the South African Police Service, in particular, the National Commissioner or Commissioner De Beer himself, involved in your discussions or your planning regarding the
10 investigations of the TRC cases?

ADV MACADAM: No.

ADV RANTHO: They were not. So you cannot deny that you only approached Commissioner De Beer, and probably remember that, by the way, the police also have responsibility to investigate, because Advocate Ledwaba refused to come to your aid, is it not?

ADV MACADAM: That is correct. The police was the only other investigative agency that could form investigative powers.

ADV RANTHO: Thank you, yes. Yes. And that was occasioned by Ledwaba's refusal?

20 ADV MACADAM: That is correct.

ADV RANTHO: Had Ledwaba agreed, you would not have approached the police, is it not?

ADV MACADAM: That is correct.

ADV RANTHO: Thank you. Paragraph 35:

"Commissioner De Beer required that our

request be put in writing, and we did this on
20 August 2003."

Meaning that request that you put your proposal in writing to
the police by Commissioner De Beer, you did not find it odd, is it not,
meaning you did not have a problem with it?

ADV MACADAM: That is correct.

ADV RANTHO: And then paragraph 36:

10 "On 26 December 2003, Commissioner De Beer
 wrote to Mr Ackerman, giving various reasons
 why the SAPS would not take over the
 investigations unless certain conditions were met.
 That either Mr Ackerman or Mr Ngcuka
 approached the President, at the time President
 Mbeki, and obtained instruction from the
 President for the SAPS to take over the
 investigations."

20 And then you referred to the letter of Commissioner De Beer,
 which is annexed to that document as AD11. So if I may just refer
 you to Annexure AD11. Sorry, commissioner, it is in the Calata
 bundle, AD11.

CHAIRPERSON: Page 311.

ADV RANTHO: 311, Thank you, Chairperson.

ADV MACADAM: Page 311?

ADV RANTHO: I am indebted to the chair. My apologies, chair, it is

page 311.

ADV MACADAM: I have got it.

ADV RANTHO: That is a letter that you referred to in your affidavit, correct?

ADV MACADAM: That is correct.

ADV RANTHO: And in terms of the letter, Commissioner De Beer, as you indicated, requested that advocate or Mr Ngcuka be approached, or be requested to approach the president so that there could be clarity insofar as to whose responsibility it was to investigate TRC matters, is that not so?

ADV MACADAM: Yes.

ADV RANTHO: Now, in your view, the approach by Commissioner De Beer in terms of that letter, would you say that it was unreasonable?

ADV MACADAM: No, I would not, Madam Chair, because he is now being asked to take over another unit's work when they have already been done by that unit.

ADV RANTHO: So it was reasonable for him to seek clarity?

ADV MACADAM: Yes. I understand his predicament entirely, because he said if the document is correct, there was this arrangement that the DSO would deal TRC cases, and the police actually transferred police officers with TRC experience to discharge that function. So if that is correct, now, I cannot say whether that is true or not, because I was not, then it would be unfair to say, no, sorry, we have got these extra members from you, but now we want

you to do their work.

ADV RANTHO: Correct.

ADV MACADAM: So I did not say this was wrong of Commissioner De Beer, which is why we went back to Mr Ledwaba and wrote to him asking to reconsider his decision and let us continue with the DSO working on the cases.

ADV RANTHO: Thank you. So you would not disagree that there was no lack of willingness to assist by Commissioner De Beer, right?

ADV MACADAM: What I will say with Commissioner De Beer,
10 because I had lots of dealings with him on these other cases, and he was always very polite, always willing to accommodate, and in other cases where we were working with these police officers, delivered good results, he was always very appreciative.

ADV RANTHO: Thank you. And you will also not disagree that, because of the fact that you did not actually have a problem with his approach, that that would not have been, or that would not have constituted political interference, meaning his letter?

ADV MACADAM: No, Madam Chair, it was an operational decision by the most senior detective as to whether he should take over DSO
20 cases or not. And was driven by, if we look at his letter, issues of why should we take over some work when we have given them that capacity?

ADV RANTHO: Thanks. So there was no political interference from your understanding of Commissioner De Beer's letter?

ADV MACADAM: No.

ADV RANTHO: And then paragraph 38 of your affidavit, that appears on page 242 of the bundle that is in front of you.

ADV MACADAM: Right.

ADV RANTHO: And what you stated is as follows"

10 "In the meantime, due to the refusal of the SAPS
to take over the cases from the DSO, no further
investigations could be conducted into those
matters (which were limited to TRC cases)
because the PCLU lacked its own investigative
capacity. The PCLU relied on the DSO or the
SAPS, and the PCLU's hands were tied,
particularly given the refusal by the SAPS to
assist."

Now, paragraph 38 seems to suggest that there was refusal
to assist by the SAPS, if I may ask?

ADV MACADAM: Well, Commissioner De Beer had said, no, unless
you go to the president, and this was a matter that Adv Ackerman felt
would not be the route to go. It does not mean that it means that he
had declined, forcing us to go back to the DSO.

20 ADV RANTHO: But was that refusal, or it was an issue of clarify
something, we are willing to help you once that has been sorted out?

ADV MACADAM: Madam Chair, this was, I believe he said it is not
the end, go and talk to the president. But what we said is, let us
rather deal with Mr Ledwaba, get the DSO, because they had already
done quite a lot of work, they were experienced investigators.

ADV RANTHO: Meaning Commissioner De Beer did not prevent you from continuing with your work?

ADV MACADAM: No, because that is why we went back to the DSO, to say please do it. And this is where there was quite a strongly worded email sent by Mr Ackerman to Mr Ledwaba setting out all the steps we had taken since July to persuade him to do the investigations. And Mr Ackerman cited the extreme prejudice that was being suffered because of this non-investigation.

ADV RANTHO: Now, going back to what you indicated earlier, that
10 the dockets were always in the custody of the police. Remember the transfer of dockets, 400 dockets?

ADV MACADAM: That is correct, those were the dockets that were under the control of Colonel Brits and the brigadier.

ADV RANTHO: And now, DSO being in charge of investigations, did they also carry dockets?

ADV MACADAM: Yes, Madam Chair, the members of the D'Oliveira unit had transferred to the DSO, and they had taken the dockets with them.

ADV RANTHO: So the NPA was in possession of some dockets?

20 ADV MACADAM: Yes, these were the DSO investigators who had been tasked to take over those investigations, had uplifted those dockets. I cannot recall whether they were still in police hands and they were signed over to them, or whether when they came from police to DSO, they took the dockets with them.

ADV RANTHO: So we can accept that it may well be that PCLU did

not have dockets, but the NPA, as an organisation, was in possession of some dockets?

ADV MACADAM: Correct, madam chair, the NPA will always have dockets in its possession because of its duty to make decisions and other functions on dockets.

ADV RANTHO: I am talking dockets not for the purpose of taking decisions, but investigation of dockets.

ADV MACADAM: No, madam chair, the DSO was an investigative agency. So the starting point is, what do we have to launch the
10 investigation? So if there was a police investigation, they will draw it, because the police are not going to now investigate it, and that will then be partly re-registered, and then from then on they will be gathering all their own evidence.

ADV RANTHO: And then, thank you for that, Adv Macadam, if I may ask, the request for General de Beer to assist was limited to those cases that were identified as having prosecution potential, is it not?

ADV MACADAM: No, he was asked to take over the DSO cases. So if I remember, you see, the thing is, there is a letter that Adv Ackerman wrote to Commissioner De Beer, which we cannot find,
20 I have looked for it, and that tells us what was intended to be taken over. But it was, whether they are prosecution or whether it is matters that still needed investigation or not. bit it was now the DSO has washed its hands completely in the light of Advocate Ledwaba. So anything that needed investigation powers would have to be dealt with by the police.

ADV RANTHO: So going back to what you stated or informed the Commission earlier, that investigations have always been the responsibility of the police. That means, at the time when you requested Commissioner De Beer to assist, other investigations that the police would assist with at the time would have continued, is it not?

ADV MACADAM: That is correct, I mean, there were investigations on non-TLC matters, where the police were investigating those matters as per their normal duties.

10 ADV RANTHO: So if the Commission was to find that General De Beer's refusal to assist you resulted in some form of conduct, whether political interference or otherwise, which we do not accept, you would not agree that such finding would have to be limited to those dockets that were handled by DSO, in other words, the ones that you solicited his assistance with?

ADV MACADAM: I do not know if I have grasped the question. All we want, to take over the DSO work, so anything we say about this matter is limited to that.

ADV RANTHO: Okay, thank you for that, yes. Well, I will not pursue,
20 I think, my next question, because, Adv Macadam, you did say that investigations in relation to other matters continued as usual. And then we can then go to your communication with the DPCI. You would recall in your statement you informed the Commission about your first interaction was with General Lalla, where you requested to have a meeting with General Dramat, who was the first DPCI head at

the time. That was during 2009, you remember that?

ADV MACADAM: That is correct, there are annexes in my affidavit dealing with my interaction between Commissioner Lalla, General Dramat's office, and then, finally, General Lebeya.

ADV RANTHO: Yes, and then your interaction with General Lebeya resulted in the appointment of investigators or some form of assistance from a Senior Superintendent Bester at the time, correct?

ADV MACADAM: Correct. What happened is, we were working with the Crimes Against the State unit, which was now part of the DPCI,
10 and then General Lebeya said they will now take over the TRC cases because they are already working with us on the other matters, and the CATS was a unit that fell under DPCI, and no longer under the general detectives headed by Commissioner Lalla.

ADV RANTHO: Yes. And then I just want to refer you to some letters that seem to have been borne from, well, your paragraph 65 seems to have been informed by that process ...[intervenes]

ADV MACADAM: Paragraph 65. Let me ...[intervenes]

ADV RANTHO: Perhaps if you can go to paragraph 65, page 249.

ADV MACADAM: I have got it.

20 ADV RANTHO:

"In March 2010, nevertheless, I..."

Sorry, my apologies, it reads:

"In March 2010, I nevertheless tasked out the investigations to the DPCI so that when they were ready to investigate, they would already know

what was required of them."

ADV MACADAM: That is correct.

ADV RANTHO: That is your statement. Now, if I may require, sorry, I may request you to go to the bundle, the police one, the initial one, the smaller one.

ADV MACADAM: It is updated SAPS bundle?

ADV RANTHO: Yes, yes, yes. Page 35 of that bundle, it is annexure VC3, commissioners, to Colonel Coetzee's affidavit. Do you have it, Adv Macadam?

10 ADV MACADAM: I do.

ADV RANTHO: Okay, this is a letter from the NPA addressed to Senior Superintendent Louis Bester, dated 9 March 2010. You have it in front of you?

ADV MACADAM: I do.

ADV RANTHO: And you can confirm that it is one of those correspondence that you addressed to ...[intervenes]

ADV MACADAM: To Superintendent Bester.

ADV RANTHO: Indeed, yes, and that would have been VC3 up to, I think it is VC11, if I am not mistaken.

20 ADV MACADAM: Yes.

ADV RANTHO: Yes. Now, if I may now refer you to initial VC4.

ADV MACADAM: VC4. I have it.

ADV RANTHO: That would be page 38 of the bundle in front of you.

ADV MACADAM: I have it, your page 38.

ADV RANTHO: Yes, 38, VC4. You have it in front of you?

ADV MACADAM: Yes, I do.

ADV RANTHO: So that is also one of the memorandums that you addressed, or the letters.

ADV MACADAM: Yes.

ADV RANTHO: One of the letters addressed to the DPCI. Now, in terms of that memo or letter, one of the matters that you referred to there was the Reverend Chikane matter. Would you agree with it?

ADV MACADAM: That is correct.

10 ADV RANTHO: If I may refer you specifically to page 29 of the same letter, right at the bottom. Perhaps before you go, second from the top ...[intervenes]

ADV MACADAM: Sorry, I am missing a page. I jumped from page 38 to page 40. Thanks a lot. Yes, I have it now.

ADV RANTHO: Yes, I want to read out to you where you started dealing with the matter of Reverend Chikane, okay.

ADV MACADAM: Yes.

ADV RANTHO: That appears on page 39, and the second paragraph from the bottom reads as follows:

20 "The investigation is further complicated due to the fact that Reverend Chikane subsequently was appointed as the Director General in the Office of the President, and in his capacity decided..."

Well, I cannot see, but documents relating to the case:

"It is to be expected that if Smit is prosecuted, that his lawyers will request access to all records

in the President's office relating to the matter,
which obviously affects national security."

So I think Smit, you would have referred to Basie Smit?

ADV MACADAM: That is correct.

ADV RANTHO: And that was one of the suspects in the Reverend Chikane matter, is it not?

ADV MACADAM: That is right.

ADV RANTHO: And then the next paragraph"

10 "Reverend Chikane also complained about the
manner in which the plea bargain was conducted
and testified at the Ginwala Commission. In
addition, he recorded on national television with
the original five accused, and also published an
article dealing with how this case contributed to
nation building. It is only to be expected that he
would be extensively cross-examined on all these
issues where Smit is to be prosecuted."

And then the last paragraph:

20 "In light of the above, before commencing on a
lengthy and costly investigation, it is
recommended that Reverend Chikane be
approached at a senior level, and requested to
indicate whether he, in fact, desires any further
investigation in connection with the matter."

ADV MACADAM: That is correct.

ADV RANTHO: And that was your recommendation, is it not?

ADV MACADAM: That is correct.

ADV RANTHO: Now, evidence that was led before the Commission by General Jacobs was that during the interdepartmental task team, that you indicated in your affidavit that you only attended twice, the matter of Reverend Chikane arose. You cannot deny that it was discussed, is it not?

ADV MACADAM: I know it had been tabled. I cannot recall whether it was at a meeting when I was present or not.

10 ADV RANTHO: Yes, I can accept that. What played out during the ITT meeting regarding Reverend Chikane appeared to have been a view that was reported to have been the view expressed by the National Commissioner about the Reverend Chikane matter. You may not be aware of that.

ADV MACADAM: Madam chair, it is not something I had first-hand knowledge, but what I do recall is that Adv Ackerman had put on record he is going to proceed with this prosecution, and that it was then put on record, I think by Commissioner Jacobs, that the National Commissioner said Reverend Chikane does not want a prosecution.

20 And that resulted in Adv Ackerman and Advocate Malga then going to Reverend Chikane to see whether he wants a prosecution or not. And if I remember correctly, Adv Ackerman advised that Reverend Chikane leaves this matter in the hands of the prosecution, that is my recollection. I could be mistaken because it is a long time ago, and I was not dealing with this directly, it was Adv Ackerman.

ADV RANTHO: Yes, it does accord with the evidence that is before the Commission. Thank you for that, Adv Macadam. But then one of the things that was tabled before the ITT was that:

"There was a recommendation by the SAPS that before a prosecution in the Reverend Chikane matter would be proceeded with, there was a need to consult Reverend Chikane to ascertain what his stance was in relation to the prosecution of his accused."

10 What is your comment regarding that?

ADV MACADAM: That is correct, it was requested, because this is not the normal case. Reverend Chikane was the Director General in the Office of the President. He had reconciled publicly on television with Minister Vlok by washing his feet as an apology, he had had a lot of engagements with both Van der Merwe, and he is still alive, he did not die. So if he says, look, I do not need a prosecution, I have reconciled with the people who were responsible, is it desirable that we go ahead against his will, perhaps undermine nation building?

20 That was the view, and that is why you will see in my last portion of my letter, I recommend to Superintendent Bester that he should first confirm with Reverend Chikane whether he, in fact, desires it. Because to proceed with this matter would be very costly, all the evidence relating to the poison was held by the FBI in America, and there were also a lot of other complicating factors.

ADV RANTHO: So by having requested that Reverend Chikane's

position be ascertained, that is now the SAPS, you would not interpret that as political interference?

ADV MACADAM: Not at all, it is raising a legitimate concern.

ADV RANTHO: And it accorded with your view, as expressed in the letter?

ADV MACADAM: That is correct. It would cause harm, in my view, if you forced a victim of a serious crime to go ahead with a prosecution that he did not desire. Because I dealt with cases where people have been tortured, I interviewed them personally, they said they do not
10 want a prosecution. They have gone ahead with their lives, they do not want to stand in court, face their torturers, be cross-examined and be re-traumatised.

ADV RANTHO: Thank you. And then maybe if I may take you back to paragraph 56 of your affidavit, which is on page 246 of the same bundle, the Calata bundle ...[intervenes]

ADV MACADAM: I have just, sorry, I have got so many bundles now, so it is ...[intervenes]

ADV RANTHO: Sorry about that.

ADV MACADAM: No, no, no, it is not your fault. I am just trying to
20 find out which bundle. Is this again relating to my affidavit?

ADV RANTHO: The Calata one, that other one, the one that has got your affidavit, yes, I am referring to your affidavit.

ADV MACADAM: So let me just... Oh, this is, no, that is my... Is it not this big thick one here? Because I am just thinking that probably my affidavit and that is all, ja, because it is like pages 437, and that

type of thing.

ADV RANTHO: Oh, that must be the master bundle.

ADV MACADAM: Everything is in here, thank you very much.

Madam Chair, would it cause any irregularity if perhaps my junior be permitted to sit with me for no purpose other than finding the right pages?

CHAIRPERSON: Yes.

ADV MACADAM: Particularly, I have got arthritis.

CHAIRPERSON: Yes.

10 ADV MACADAM: It is not to coach me how to answer questions or anything.

CHAIRPERSON: Yes.

ADV MACADAM: It might speed the process up, if that is permissible.

CHAIRPERSON: I think that is in order, mister, Adv Macadam.

ADV RANTHO: And we have no objection to that, chair. So [indistinct], if you may assist? Let us start with paragraph 55 on page 245, paragraph 55 of Adv Macadam's ...[intervenes]

ADV MACADAM: I have it.

ADV RANTHO: Yes. You stated that:

20 "After taking over Mr Ackermann's responsibility, I discovered that the TRC committee was not submitting, nor were any investigations being conducted."

That is your statement.

ADV MACADAM: That is correct.

ADV RANTHO: Now, these investigations would be in relation to which cases?

ADV MACADAM: Madam chair, these were all cases that the task team had identified requiring investigation. What had happened is, at the first meeting of the task team in October 2006, SAPS accepted responsibility, They would conduct all the investigations, appoint investigators to them.

ADV RANTHO: In one of the ATT meetings, General Jacobs attested to the fact that he was assigned to audit cases that were handled by the police, and Advocate Ackermann was assigned to conduct audit of those that were in possession of the NPA. Are you aware of that?

ADV MACADAM: Correct, the police were called upon to present their cases, and Adv Ackerman to present his matters.

ADV RANTHO: So which means there were matters that were handled by the NPA, correct?

ADV MACADAM: That is correct. These were the ones that we wanted the DSO to investigate, and they then declined, so it was those matters.

ADV RANTHO: So there were dockets that were handled by the NPA in that regard?

ADV MACADAM: Because they had been uplifted from the police when the DSO was appointed to start investigating these matters.

ADV RANTHO: But you would not disagree that there were dockets or matters that were handled by the NPA, and others by the SAPS, correct?

ADV MACADAM: Madam chair, these dockets were handled by the DSO, the investigative component of the NPA.

ADV RANTHO: Hence I said NPA, because they were under the umbrella of the NPA, correct?

ADV MACADAM: That is right.

ADV RANTHO: Yes, and then paragraph 56:

10 "On my return, I engaged with Police Commissioner Jacobs, who was a member of the TRC Committee, also known as the 'Task Team', and Mr P Richer, the Deputy Director General in the NIA."

You confirmed it?

ADV MACADAM: That is correct.

ADV RANTHO: Now, you stated in that paragraph to say that:

20 "Both Commissioner Jacobs and Mr Richer agreed with me that investigations should progress, subject to approval by their principals, and under the same auspices that the TRC Committee had operated."

Correct?

ADV MACADAM: That is correct.

ADV RANTHO: Which means there was common understanding that investigations would progress?

ADV MACADAM: Yes.

ADV RANTHO: And there was no instruction that came from the late

National Commissioner Selebi to say that investigations had to stop at whatever moment, nothing?

ADV MACADAM: Madam chair, as I recall it, is that when Advocate Pikoli was suspended, Commissioner Williams, who was acting as the National Commissioner, wrote to Advocate Mpshe and said that, as a result of the suspension, the police were withdrawing from the task team.

ADV RANTHO: No, no, I am not talking about the withdrawal of the task team. What I want just to have a common understanding was
10 that the NPA never received any instruction from the SAPS, either by Commissioner Selebi or Commissioner De Beer, to say that stop investigation of TRC cases, correct?

ADV MACADAM: We are then going back to then 2003. and that is in fact true.

ADV RANTHO: There was no instruction?

ADV MACADAM: No.

ADV RANTHO: There was no instruction, yes.

ADV MACADAM: No, Commissioner De Beer made it clear, if the president gave the order, they would do it, and there was no further,
20 as far as I am aware, involvement in any of the actions that flowed where Commissioner Selebi was involved.

ADV RANTHO: And you were also not aware of any instruction issued by the SAPS to any of its members at whatever stage to say that there should be stoppage of investigation of TRC cases, correct?

ADV MACADAM: That is correct.

ADV RANTHO: Then we can proceed to paragraph 63 of your affidavit, that would be on page 247.

ADV MACADAM: I have it.

ADV RANTHO: You stated that:

"Commissioner Lalla informed me that he would facilitate a meeting with General Anwar Dramat to arrange for the DPCR to conduct the investigation..."

And you attached that.

10 ADV MACADAM: Yes.

ADV RANTHO: Just to confirm, these were investigated related to the cases that you had identified to General Lebeya, correct?

ADV MACADAM: Yes. This would be, the list that I presented would have been a consolidation of the reports that Commissioner Jacobs and Adv Ackerman had done.

ADV RANTHO: Yes.

ADV MACADAM: It would not just be limited to my original DSO cases.

20 ADV RANTHO: Yes, but you would have identified that they had potential of successful prosecution, right?

ADV MACADAM: Yes.

ADV RANTHO: Yes. And then at some point, I think it is, let us just check, communication with General Lalla, it was June 2003, where you requested some assistance.

ADV MACADAM: Correct. Commissioner Lalla had become the

Divisional Head of the Detective Service, and he had the power to then not only agree to take over the investigations, but to assign investigators. And that was the purpose of me meeting with, on a regular basis with Commissioner Lalla.

ADV RANTHO: And also, he did not display any conduct of lacking willingness to assist?

ADV MACADAM: No, madam chair, our final meeting is, we had agreed there were former policemen who had joined the DSO, but who were now coming back to the police because of the DSO being
10 disbanded. And between Commissioner Lalla and I, it was agreed that he would put those policemen that had TLC experience into a special task team, working out of his office with his budget, and they would work with me on those cases exclusively, so that was a really good deal I got from him.

ADV RANTHO: Yes, so there was willingness to assist, nonetheless.

ADV MACADAM: No.

ADV RANTHO: And then during evidence-in-chief presented by Colonel Bester or Colonel Bester, who was then at the time, you interacted with as senior superintendent, and he stated or informed
20 the Commission that you and him enjoyed a good relationship, and you worked in other matters harmoniously. Would you confirm that?

ADV MACADAM: And also on these TLC cases. He attended the one meeting, the second meeting with General Lebeya, and when the three of us then discussed the dynamics of it, and I referred all these cases to him, which you have as annexures, and he straightaway

appointed investigators. And at that stage, I had to do all the TLC cases, not delegate them to other people, so I was then engaging directly with his investigators.

ADV RANTHO: Yes, and he stated that, like yourself, he was engaged with other investigations.

ADV MACADAM: Yes.

ADV RANTHO: One of them being the one related to the nuclear weapons. You recall that?

ADV MACADAM: I prosecuted the case myself.

10 ADV RANTHO: Yes, and he says you worked closely with him in that investigation.

ADV MACADAM: That is correct. In every single case you work closely with the commander, because the commander has to support the police investigations. We can say do A, B, and C, but he has to then say vehicles, extra investigators, get a cyber expert, all these things, so you would always work very closely with your unit commander.

ADV RANTHO: And then his evidence is that during your interaction, other than the March 2010 correspondence that we canvassed, you
20 never raised any challenges that you had with investigation of TLC cases.

ADV MACADAM: Madam chair, I stand correction, I think that shortly after the cases were referred to Superintendent Bester, he retired. So if I, it was simply kick-starting and the eyes would come, and you can see from the letters, there would be a lot of work that had to be done

before you build up cases of substance.

So in that initial phase I do not think there were problems, but what I will say is, and I am not criticising the police, when Brigadier Xaba was appointed, there were issues of delays, inexperience, et cetera, which we had to address. And I mean, we have to accept that South Africa has far too much crime for the prosecutors and police who must deal with that.

ADV RANTHO: Now, Adv Shaun Abrahams during his testimony before the Commission dealt with Ministerial Memorandum dated
10 15 July 2015. Now, if I may refer you to an extract from SK3 to Adv Abrahams' affidavit, and that appears on page 206 of the master bundle, commissioners, and I think it is page 111 of the Calata cross, triple 1, 111.

ADV MACADAM: I think this is... sorry, we have got so many bundles. I think if it is that annexure, Ministerial Memo of Abrahams, I have it in a bundle which the inquiry prepared for me in March, and I am sure I will find it. We just have to... Yes, I have got SKA2, and the next document will be SKA3, I have got it.

ADV RANTHO: Okay.

20 ADV MACADAM: In our bundle which the Commission compiled, it is page 206.

ADV RANTHO: Ja, the purpose of the memorandum is set out as:

"It was aimed at providing honourable minister with a comprehensive report on the investigations and prosecutions of matters emanating from the

TRC Commission."

So that is the one that you have in front of you, right?

ADV MACADAM: Yes.

ADV RANTHO: Now, if I may refer you to page 124 of that memorandum, 124, paragraph 4.6.

ADV MACADAM: 4.6.

ADV RANTHO: Yes, dealing with attempted murder of Reverend Chikane.

ADV MACADAM: Yes.

10 ADV RANTHO:

"During the course of the plea and sentence agreement set out above, the accused in that matter implicated former Security Branch General Basie Smit. The DPCI was requested to investigate his involvement..."

And now this is where we come in:

20 "The DPCI conducted a very weak and unsatisfactory investigation, claiming that Reverend Chikane could not be traced. Before the matter could be taken further, the crime prescribed, thereby preventing any further probe into the alleged involvement of General Smit."

You see that paragraph?

ADV MACADAM: Yes.

ADV RANTHO: Now, during his testimony, Adv Shaun Abrahams

stated that that conclusion or those words would have been yours, or the expression or the view expressed in that paragraph, he would have been advised or informed by yourself.

ADV MACADAM: Madam chair, Mr Abrahams' position was in March 2013, when Adv Ackerman retired, he was appointed as the Acting Special Director. I was dealing with TRC cases on a monthly basis, reporting to him on the progress of the matters. In 2014, when I was taken to do the foreign bribery by Mr Nkosana, Adv Abrahams was demoted, and was instructed to take over the TRC cases with
10 me.

He was in that position required to work on the cases, and on a monthly basis report to the Acting Head PCLU, Advocate Johnson, on progress. And then when he became National Director, and that duty only stopped when he became National Director. So I would say when Adv Abrahams writes to the Minister, being fully aware of all these matters, he would know what the right facts are.

Madam chair, I know at my stage is that I am unaware of the fact that Reverend Chikane could not be traced. But I am aware of the investigating officer telling me that Reverend Chikane said he was
20 very busy with government business, he would only be able to meet with him in two or three months' time.

But then I checked myself, that this crime had already prescribed in 2009, so we could not proceed with the investigation because we could not institute a prosecution. So I closed it on prescription, but I did highlight, and I am not sure, you see, this is a

long time ago, I cannot say what the investigator did or did not do without me seeing the docket.

ADV RANTHO: But can you remember expressing the view that DPCI conducted a very weak and unsatisfactory investigation?

ADV MACADAM: Madam chair, I had have to check that docket and see what was done and not done before I could say that.

ADV RANTHO: And then ...[intervenes]

CHAIRPERSON: So you cannot remember?

ADV MACADAM: That is correct, madam chair.

10 ADV RANTHO: And then Adv Shaun Abrahams also informed the Commission that when he took over from you, there was no handover report in relation to the TRC cases ...[intervenes]

ADV MACADAM: Madam Chair, that was totally... that is correct, it was totally unnecessary. When he took them over from me, I had been on a monthly basis reporting to him on what was being done on each and every case. His office was diagonally across from mine, the same distance from myself to Commissioner Johnson. If he needed anything on these matters, he simply had to walk into my office. In my view, a handover is called for when somebody new who has no
20 background knowledge, he has to take over from scratch.

ADV RANTHO: In your view, there was no need to have a formalised kind of handover?

ADV MACADAM: No, I mean, the man is on a monthly basis getting these reports. He is in my office, he can just simply come to me and say I have a problem here, can you help me out, explain this,

because he had to report to EXCO on my progress every month.

ADV RANTHO: Thank you. That brings us to an end to an interaction with you, Adv Macadam, and thank you very much for your assistance.

ADV MACADAM: Certainly, thank you.

ADV RANTHO: Commissioner, that is the end of cross-examination on our part.

CHAIRPERSON: Thank you, Ms Rantho? Mr Varney. Oh, before Mr Varney, before Mr Varney, the evidence leader.

10 ADV SEMENYA: Chair, with your direction, we thought you would follow Mr Varney.

CHAIRPERSON: You will follow Mr Varney?

ADV SEMENYA: Yes.

CHAIRPERSON: Yes. Mr Varney.

ADV VARNEY: Chairperson, thank you. I am just doing everything to get organised on my side. Chairperson, we have a great deal to cover. I just wanted to check whether with Mr Bhana should be offered the opportunity to re-examine on the evidence given so far ...[intervenes]

20 CHAIRPERSON: Yes, on what Ms Rantho has cross-examined...

ADV VARNEY: Or would he prefer to wait until we have done ...[intervenes]

CHAIRPERSON: Mr Bhana, what would you prefer ...[intervenes]

ADV BHANA: Chair, I would prefer to wait...

CHAIRPERSON: To wait until all the cross-examination has been

conducted?

ADV BHANA: Indeed, thank you.

CHAIRPERSON: Yes. Mr Varney.

CROSS-EXAMINATION BY ADV VARNEY: Thank you, chair.

Mr Macadam, firstly, thanks for making time to come back and assist the Commission in its important work. I think I should disclose that you and I had several interactions over many years. I was actually trying to wrap my brains as to when we first met, and I could not remember, whether it was when we were a prosecutor in
10 Pietermaritzburg or during your time at the Truth and Reconciliation Commission. I think probably one of the two, and certainly we had quite a few interactions while you were at the PCLU in respect to certain cases.

Now, we think you are in a very unique position to assist this inquiry, largely because you have been at the PCLU consistently since 2003. We recognise, of course, that there were periods of time when you were taken off the TRC cases to handle [indistinct] matters, corruption cases, and the like.

Now, the main reason why we did not apply to cross-examine
20 you is that we have multiple documents in our possession, several of which were not put to you directly in your evidence-in-chief. And then subsequent to your evidence-in-chief, further documents dealing with transcripts and the like have come to our attention, and we are also duty bound to put those to you.

So there is quite a lot to deal with, because we are looking at

several decades' worth of work, and that is really why we suggested to the Commission that we set aside two days for your cross-examination. Of course, it is not just us, SAPS have now had their turn, and then after us the evidence leaders will also wish to question you.

We will try to truncate as much as we can, but there is a great deal of material, as you say, you know, you were overwhelmed with files. I share that experience, I am also struggling to keep track of all the paperwork.

10 I want to give you a bit of a roadmap as to how we have structured the cross-examination just to give you a sense of where we are going. We are going to start by taking you through your 2018 affidavit that you put up in the Rodriques matter. We will then turn to the affidavit you put up in the Nkadimeng matter in 2015. Although we are aware that that actually was not filed, but it is nonetheless part of the record.

 We will then turn to your affidavit before the Commission of Inquiry, then we will turn to the supplementary memos, or rather the supplementary bundle that we put up yesterday, which has just three
20 documents in it. Then we will turn to the transcripts from the Cradock 4 inquest, dealing with various investigating officers, and then, lastly, we will deal with any outstanding matters that we have listed in our application to cross-examine you.

As mentioned, we will try to avoid repetition, and I am indebted to Ms Rantho for covering some of that ground. Where we

can avoid the same ground, we will, but I suspect that some repetition will be unavoidable. Now, I thought before we start that I should just get a few matters out of the way in relation to your various answers to Ms Rantho.

I think if I do not deal with these now, I will probably forget about them, and also I think your evidence is now fresh in your mind, so I think it is convenient that I pose certain questions arising from your responses to Ms Ratho, so with that behind us, let us start.

10 This morning you mentioned by way of background that the SAPS at the beginning were only focussing on 400 ANC cases. And you then turned to explain about the cases against the former Security Forces in the Apartheid regime. And you mentioned that the D'Oliveira unit was dissolved, and you were about to elaborate on that when you were asked to stop, and you were moved onto another question.

So I want to give you an opportunity to complete what you were going to say in regard to what was meant to transpire in relation to the cases against the Security Forces once the D'Oliveira unit had been dissolved?

20 ADV MACADAM: Madam chair, when Mr Bulelani Ngcuka was appointed as the National Director in September, well, I am starting to lose my, 1998, the following month the Human Rights Violation Committee of the TRC released their first report, you know, calling for prosecutions in cases where amnesty was refused or not applied for.

So Mr Ngcuka had then set up a special unit in his head

office headed by, at that stage Justice Vincent Saldanha, but at that stage an attorney, and Brink Ferreira, who at that stage was a deputy director in the Johannesburg office, and a deputy and other state advocates aside.

But what they did not have is an investigative capacity. Why I know that is when I was dealing with the political violence cases, I would report to Mr Ngcuka, I would chat to Messrs Brink and Saldanha, and they would draw this to my attention. There was also a dilemma, was the amnesty process not concluded, so they did not
10 know are the people going to receive amnesty, and obviously, if they are, do we waste resources in a matter we cannot prosecute?

But what I had established is, unfortunately, the appointment of Mr Ngcuka and the conclusion of phase one of the TRC process coincided with a massive spike in very serious organised crime that posed a real threat to society. I was working at the TRC from, I think, May 1996 until August 1998. I was pulled right out of that TRC to immediately go into Richmond, where, despite a thousand soldiers and police officers on duty seven days a week, an unacceptable number of massacres politically were taking place.

20 And I know in Gauteng there was a huge spike in car hijackings, Eastern Cape, with the merge of Ciskei, Transkei, Eastern Cape, there was major taxi wars because new routes had opened up. Cape Town had the urban terror campaign being waged by PAGAD, and I know that the police officers were then drawn into all these current initiatives, and ceased to function as a special unit focussing

specifically on TRC cases relating to the Security Forces.

ADV VARNEY: Thank you for that clarification. I want to refer you to the document that is in the bundle at page 301, marked 187, where my learned friend from the Police raised certain questions in relation to this document, and in particular she referred you to paragraph D3. And just to refresh our memory, this was the internal memo from Adv Ackerman to the NDPP, it was dated 26 May 2003.

And your testimony, as I understood it, is that these were proposals to get the PCLU up and running. And in that at paragraph
10 D3, which is on paginated page 304, Ackerman makes a proposal that he be given appointments in terms of various sections of the NPA Act, including sections 27, 28, and 29, dealing with the authorisation of investigations. Can I just check, as far as we are aware, he was never given such powers, is that correct?

ADV MACADAM: That is correct, those are the powers that are unique to the DSO. So what he was trying to say, if I am dealing with all the DSO investigations, can I also exercise certain of their powers. So it would fast-track things, because he could then himself authorise the investigation instead of having to go to Mr Ledwaba, he could give
20 instructions directly to investigators, et cetera, and that is why he was asking for those powers.

ADV VARNEY: But unfortunately for him and the PCLU, those powers were never granted to him.

ADV MACADAM: That is correct.

ADV VARNEY: And then my last question arising from this morning,

and this was after an exchange between yourself and Ms Rantho in relation to the difficulties and debates around who should be investigating cases with the DSO declining to take them on, and this is now following your request to De Beer, and then he suggests an approach to the President.

Now, shortly after that you mentioned in response to a question that the other matters continued as usual. So I had like to know from you, when you mentioned that other matters continued as usual, which matters were these? Were these the other cases, such
10 as nuclear related offences?

ADV MACADAM: That is correct, the primary mandate of the PCLU, specifically at that time we were doing a nuclear case, there were mercenary cases, and then also the illicit trafficking in military commodities, et cetera. So it was all the cases that fell under the CATS unit of the police ...[intervenes]

ADV RANTHO: Sorry, chair...

ADV VARNEY: And so you are saying ...[intervenes]

ADV RANTHO: Sorry, Chairperson, I do not mean to be rude to my colleague, but maybe before Mr Varney carries on, he started off
20 leading the witness to say was it not one of nuclear matters, and so on. So I just want to say, caution my colleague not to lead the witness, to stick to the version that has to be put forward by the witness, chair.

CHAIRPERSON: Yes, thank you.

ADV VARNEY: Well, chairperson, I am not leading this witness, I am

cross-examining him; under cross-examination, chair, one is entitled to put versions to a witness.

ADV RANTHO: Chair, the reason why that concerned us, because the issue of other matters continuing had nothing to do with nuclear investigations from the examination of the witness insofar as we are concerned. And that is why I was saying, for Mr Varney to come and say was not that involving nuclear, he is trying to twist the story of what was never presented before the witness, and that is why we think, with the greatest respect, we really want to caution Mr Varney

10 not to "put words into the witness' mouth".

CHAIRPERSON: Yes. Yes, Mr Varney.

ADV VARNEY: Well, chairperson... Oh, sorry, there is an echo that I am hearing from my side, I hope it is not apparent on their side. But, chairperson, this is what cross-examination is all about, one is entitled to put versions to witnesses, one is entitled to put up facts and ask whether they are correct or not, so I really do not understand the objection from my learned friend. Chairperson, may I proceed?

CHAIRPERSON: Yes, you may proceed.

ADV VARNEY: Thank you, chair. All right, so you have mentioned

20 that other matters, let us call them "non-TRC cases/matters", continued as usual, and that these were being investigated by CATS section of SAPS, is that correct?

ADV MACADAM: That is correct, yes.

ADV VARNEY: So at that time, were you and your colleagues perhaps scratching your heads as to why SAPS were having to

proceed with those cases, but not the TRC cases?

ADV MACADAM: The reason that Commissioner De Beer advanced is that when the DSO was set up, the arrangement was that SAPS would transform police officers with TRC experience to capacitate the DSO, and for the DSO to deal those matters.

ADV VARNEY: We will accept ...[intervenes]

ADV MACADAM: Now, I was not involved at all in those negotiations,. I cannot say whether it is true or not, but that was the reason that he put in writing when he replied to us.

10 ADV VARNEY: Thanks, we will return to your interactions with Assistant Commissioner De Beer in due course. So now I want you to turn to your affidavit that you put up in Joao Rodrigues case. And Mr Macadam and commissioners, that is at page 137 of the Calata Group cross-examination bundle.

ADV MACADAM: I have it.

ADV VARNEY: Thank you. Perhaps we can just kick off with you explaining why it is you came to make an affidavit in this particular matter, the Rodrigues application for permanent stay on prosecution?

ADV MACADAM: Do you want to know why I made this affidavit?

20 Sorry, I did not get [indistinct] ...[intervenes]

ADV VARNEY: Yes, yes, why did you make this affidavit? Who asked you to make it?

ADV MACADAM: Yes, Dr Pretorius was acting as the head of the unit at that time, I was a deputy, mainly dealing with terrorism-related cases in the Joburg area. He handed me an application for a stay of

prosecution filed on behalf of Mr Rodrigues.

He informed me that as the head of the unit, he would make the main affidavit, but he asked me to go through it, and if there were any aspects that I could assist relating to the averments made therein, that I should supply him with a confirmatory affidavit. So I read it, and yes, I believed there were important things which had to be placed before the court, resulting in the affidavit being drafted.

ADV VARNEY: And in preparation of making out this affidavit, did you take time to research further and perhaps consult archives and
10 documents at the NPA?

ADV MACADAM: I could not obviously do a full search, but I tried to access as much as possible within the limited time, because I was informed that the NPA was running out of time on filing of papers, So what I attached to my affidavit is what I could find at that time.

ADV VARNEY: So let us then turn to the next page, paragraph 8, and here you will see that you indicate that the NDPP, Mr Ngcuka, back in October 1998, when the NPA Act came into force, he decided to set up a TRC unit in his office to deal with the TRC cases not already being dealt with by the DPP, at the last line at page... Would
20 I be right in saying that that unit was the HRIU, the Human Rights Investigation Unit?

ADV MACADAM: It was the one headed by Messrs Saldanha and Brink. I think its name changed a couple of times, but we are talking about the same unit.

ADV VARNEY: Yes, that is certainly the one we also have in mind.

And then if you turn the page, you indicate that that unit was dissolved. My recollection is that that was approximately in the year 2000, and you indicate because the amnesty process had not been concluded and that it lacked investigative capacity.

And then further down, in paragraph 11 you point to the fact that the Presidential Proclamation establishing the PCLU was issued in March of 2003, and that Adv Ackerman was appointed as special director of that unit, that we now know as the PCLU. And that you were then transferred from a component of the Directorate of Special
10 Operations, the DSO, to serve as one of his deputies. If we can just pause there? Which component were you in at that time at the DSO?

ADV MACADAM: I was head of the Special National Projects Unit. Our mandate was TRC cases against the Security Forces, as well as certain current organised crime projects.

ADV VARNEY: Noted, thank you. And can you indicate to the Commission what resources you had at your disposal, and if you viewed those resources as adequate?

ADV MACADAM: I deal with this in one of my annexures to my March affidavit, where I point out we were extremely under-resourced.
20 The investigators that were due to, you see, what happened is, in January 2001 I was supposed to do TRC cases for the DSO, but I was taken into witness protection.

When I came back in 2002, nothing had transpired, the documents were all in a mess. It was very difficult to try and identify cases with prosecution potential. At a certain stage, Advocate Sohn,

who was the head of the DSO at that time, instructed us not to proceed with the TRC cases.

But then thereafter it was agreed that I would get investigators, a small team starting in November, because they had to finalise their cases from the regional DSO offices. I got approval to employ two TRC researchers on a part-time basis.

Advocate Pryor, who had been one of the TRC's evidence leaders, also agreed to a short-term contract. But you will see in the annexures that I attached to my March affidavit, that all the capacity
10 constraint difficulties were all set out there.

ADV VARNEY: So if you compare the resources that you had at your disposal in terms of personnel and investigators and prosecutors, it would compare poorly with, for example, what the late Attorney General Jan D'Oliveira had when he was investigating similar cases.

ADV MACADAM: Correct, I had one advocate to assist me. We had a very small team, very complex organised crime matters. With the TRC matters we in many cases had to start from scratch. You will see there is a memo that I wrote to Advocate McCarthy in February 2003, where I said these are the cases we identified, this is what we
20 need to do. And I concluded by saying, with our limited resources, we would have to prioritise.

As far as the D'Oliveira unit, Dr D'Oliveira I had worked personally with, he was a very brilliant hands-on Attorney General. There were three deputy directors dealing with these cases, Adv Ackerman, Pretorius, De Jager, senior state advocates. There

was a very good investigative unit headed by a brigadier with very senior policemen. When I was at the TRC, I worked closely with those investigators, and they were highly competent, skilled investigators.

ADV VARNEY: Thank you, Mr Ackerman. Chairperson, I see it has just gone 1 o'clock. Will this be an appropriate time for the lunch adjournment?

CHAIRPERSON: Yes, I think this would be an appropriate time to adjourn for lunch until 2 o'clock. We are adjourned.

10 ADV VARNEY: As the chair pleases.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Are you well settled, Adv Macadam?

ADV MACADAM: Yes, Madam Chair.

CHAIRPERSON: Thank you. Mr Varney.

CROSS-EXAMINATION BY ADV VARNEY(CONTINUED): Thank you Chairperson and Adv Macadam, I am pleased to hear that you are all settled. Before lunch we were busy on page 139 of the Calata Group cross-examination bundle. I would like ...[intervenes]

20 ADV MACADAM: I have it.

ADV VARNEY: You to turn to the very next page, 140, and I want to draw your attention to paragraph 19 ...[intervenes]

ADV MOROKA: A perennial complaint ...[intervenes]

ADV VARNEY: Of your affidavit ...[intervenes]

ADV MOROKA: [Indistinct].

ADV VARNEY: As a reminder we dealing with the ...[intervenes]

CHAIRPERSON: Thank you. Yes, Ms Moroka?

ADV MOROKA: I was saying Chair, our perennial complaint, if Mr Varney ...[intervenes]

CHAIRPERSON: You cannot hear Mr Varney?

ADV MOROKA: If Mr Varney would speak louder?

CHAIRPERSON: Mr Varney, there is a request that you must speak a little louder.

ADV VARNEY: Chairperson, I will attempt to ...[intervenes]

10 CHAIRPERSON: Mr Varney.

ADV VARNEY: To project my voice.

CHAIRPERSON: Mr Varney, yes.

ADV VARNEY: Louder.

CHAIRPERSON: Yes, yes.

ADV VARNEY: Is that better, Chairperson?

CHAIRPERSON: Yes.

ADV VARNEY: Okay and I was also asked to adjust the camera so that I did not, my head does not disappear behind various other items on the screen, so I am hoping that I am now audible and visible.

20 CHAIRPERSON: You are both audible and visible.

ADV VARNEY: Wonderful. Thank you, Chairperson. Mr Macadam, I want to draw your attention to a paragraph on the very next page, so that paragraph 140 [sic], and at paragraph 19.

ADV MACADAM: Correct.

ADV VARNEY: It deals with the meeting that you and Adv

Ackermann had with Adv Ledwaba at the DSO to arrange investigations of the TRC cases. I think we are all very familiar with the background and you also testified about it this morning. I want to read to you the second line of this paragraph:

“The meeting was unpleasant as Ledwaba made it clear in no uncertain terms that the DSO would not investigate any TRC matters and that these should all be referred to SAPS.”

If you can, can you elaborate why you found that meeting to
10 be particularly unpleasant?

ADV MACADAM: Certainly, Madam Chair. While I was still at the DSO, I had submitted some applications in terms of section 28(1)(a) of the NPA Act for him to authorise those investigations. I had also submitted a National Project Plan as well as a budget. When we had the meeting with Mr Ngcuka where he indicated that the DSO should continue with those investigations that I had identified, Adv Ackermann immediately then started following up with Adv Ledwaba, when is he going to sign those authorisations and we were getting no response at all.

20 I know Adv Ackermann was constantly following it up because now we wanted to move on these cases. We then called for a meeting with Adv Ledwaba for a specific time. He made Adv Ackermann and I stand outside his office for more than an hour before he would meet with us and he was standing behind his table and he said, “That is it, take these matters to the police and end of

story”.

Leask must now write up all the files to prepare them for handover and all he did was say okay, Adv Tongwane who had done a lot of work on the Black Cats case must finalise that. But it was not open to negotiation or anything.

Now my view is, an instruction had been given for the National Director. If he had any capacity constraints, all he had to do was call a meeting with everybody before Mr Ngcuka can say, “We cannot work as you have ordered, let us see how we can do it”, not
10 just to shut everything down on the spur of the moment. That is why we regarded it as unpleasant.

ADV VARNEY: Noted, thank you. Now you made reference to the internal memo which was attached to your affidavit as RCM3, it is at page 155. If I can just ask you to turn to it?

ADV MACADAM: I have got it in front of me.

ADV VARNEY: And as you can see, this is an internal memo, it is from...

ADV MACADAM: From Mr Leask.

ADV VARNEY: To CIO Leask and it is from Adv MG Ledwaba. It is
20 dated 15 July 2003. It is subject, “SNPU Investigations” and under the heading TRC cases (i), I will read the first two lines:

“I have decided that SAPS must take over the investigations of all such cases currently handled by you. Your files should be closed off and all the material given to the PCLU.”

So did this effectively mean that the Chief Investigating Officer Leask was from thereon effectively barred from dealing with the TRC cases?

ADV MACADAM: That is correct Madam Chair, everything was, all the files that he had were given to us and they also made a storeroom available to us. And then apart from doing me a favour on following up Mr Cajee's information regarding the journalist, that was all he could actually do. I would also emphasise for Mr Leask to do any investigation, he had to have that investigation authorised in
10 terms of section 28 by the Investigating Director, Adv Ledwaba.

ADV VARNEY: Yes and we will return to that as well. Listen to the very next paragraph because this then deals with your reaction to that meeting which was to then approach Commissioner De Beer, Divisional Head of the Detective Services of SAPS with the request that SAPS take over the investigations. Again we are very familiar with this meeting and you also testified on this this morning, but can I ask you to go to that letter which you have annexed as RCM4?

ADV MACADAM: Yes, I will ...[intervenes]

ADV VARNEY: It is at page 157.

20 ADV MACADAM: Yes, I have the letter before me.

ADV VARNEY: All right and I just want to read you certain lines and then to ask you a few questions that arise. So that paragraph, it says:

"As agreed at our meeting" ...[intervenes]

COMMISSIONER KGOMO: Sorry ...[intervenes]

ADV VARNEY: I have ...[intervenes]

COMMISSIONER KGOMO: For the record can you identify the document first and the date, Mr Varney?

ADV VARNEY: Yes of course, my apologies. That was an oversight, Commissioner. So this document is a South African Police Services document, it is dated the 26 September 2003. It is addressed to Adv Ackermann, Head of the PCLU. It is titled, "Investigation of TRC cases". It refers to Adv Ackermann's letter of the 20 August 2003.

10 And then I am going to start reading from that second paragraph:

"As agreed at our meeting, I have discussed your request for the assistance of the SAPS to investigate cases emanating from the TRC processes with the National Commissioner. It is evident from your letter that the investigation and prosecution of these cases were referred to the NDPP by the President."

And let us pause there. What referral is he talking about? We are not aware of a particular referral or proclamation.

20 ADV MACADAM: The President lawfully cannot refer the investigation of cases to the National Director and where the President came in, is when he addressed Parliament, accepting the TRC report indicating that although there were wide speculation as to further amnesties, that was not going to be considered, the law must take its course, the cases must go through the normal process with

the NPA working with its other partners.

So all he did is to say the NPA must deal with them, with their partners which would include the police. I have seen this speech of the President, I do not know if I have it now on the stand but it is something that can be easily found.

ADV VARNEY: Yes, no doubt it can and my recollection is that the President did say that the NPA would handle these matters in the normal course, although we would agree with you that that does not mean that on a particular agency, the investigative agency is
10 excluded and one has been selected. But let us move on to the next sentence:

“Our understanding was that this referral was politically inspired.”

What did you understand by the reference to the referral being politically inspired?

ADV MACADAM: Madam Chair, I do not agree with that. I mean the President, the truth, all Commissions have to submit their reports to the President. The President must respond to what the recommendations and findings of that Commission are and all he did
20 was to say that there are going to be no further amnesties, the law must take its course.

I do not believe that is at all politically motivated. Even if he made no speech, the authorities would still have to deal with these TRC cases because they are crimes that need to be investigated and prosecuted if there is sufficient evidence.

ADV VARNEY: And let us move to the next sentence:

“As you know, a large number of cases to be investigated are those of ex-policemen. It is therefore understandable that you first endeavoured to have these cases investigated by the Director for Special Operations.”

Now it is not clear to us whether that is an explanation as to why DSO rather than SAPS should investigate since many of the suspects would be ex-policemen ...[intervenes]

10 ADV MACADAM: No, the ...[intervenes]

ADV VARNEY: Would that be a legitimate reason for SAPS not to take these cases?

ADV MACADAM: No, Madam Chair. In the beginning the D'Oliveira Unit which investigated cases against the Security Branch of the police, members of the military were all police officers and that did not prevent them from investigating those cases because the suspects were also police officers or other government structures.

The sole reason why the DSO was involved, is that many of the D'Oliveira police investigators had joined the DSO and they had
20 already worked on these cases and had the historical knowledge, so it would make more sense that they continue with work with which they are familiar and have already started than go to people who have no background to these matters.

ADV VARNEY: And in fact as you pointed out, these investigators were all former SAPS officers in any event.

ADV MACADAM: That is correct.

ADV VARNEY: Or seconded by the police.

ADV MACADAM: No, what happened is, when the... How it started is, the D'Oliveira Unit worked directly with Dr D'Oliveira. Now what happened is, Investigating Directorates were set up by Mr Ngcuka in 1998 when he became the National Director, then the Unit, the D'Oliveira Unit stopped focusing on political cases and were drawn into the Investigating, certain, not all of them, but a number of them were drawn into the Investigating Directorates to deal with serious
10 organised crime.

When the DSO was established, those police officers could elect, they could return to the police if they so desired or they could then transfer formally from the police to the National Pros... And the NPA investigators. So that is how the whole process unfolded.

ADV VARNEY: Yes but the point being that the investigators who were the with the DSO, with themselves are former police officers?

ADV MACADAM: That is correct yes, Andrew Leask was an investigator in the Johannesburg branch of the D'Oliveira Unit. Neels de Lange was a key investigator in the Eastern Cape, the D'Oliveira
20 cases where they investigated the then Port Elizabeth Security Branch on a number of cases. [Indistinct] was also part of the D'Oliveira Unit and was involved in the investigation of the prosecution of Eugene Alexander de Kock.

ADV VARNEY: They all had long histories in the erstwhile South African Police, right to the D'Oliveira Unit.

ADV MACADAM: That is correct.

ADV VARNEY: So then let me move on to what De Beer writes presumably under the instruction of the then National Commissioner which is that if the NPA gets a written instruction from the President, then they will investigate but in the absence of such an instruction, they will not.

Now given that Commissioner De Beer was saying that the President's decision in their view was politically inspired, perhaps that explains why the SAPS required a further political decision if there is
10 going to be a change in their view.

ADV MACADAM: Well Madam Chair, I cannot understand why this could not have been resolved at an operational level between the National Director Prosecutions, the National Commissioner of Police. And why should the President be involved in such a matter?

I mean one hears on the TV there has been a serious case and a decision has been taken now, the docket will be taken away from this Police Unit, it is given to a Special Unit or for now with IDAC, the NPA is again, has an investigative capacity and you hear of cases going from the Commercial Branch to the police to IDAC and
20 back and forth. So I personally do not ...[intervenes]

ADV VARNEY: Yes and ...[intervenes]

ADV MACADAM: Understand why the President should be involved.

ADV VARNEY: Yes and we certainly share that view, but as a matter of law Mr Macadam, one would have thought where a specialist agency, you have mentioned some examples like the DSO,

will not investigate, was not in a position to investigate and SAPS under the law and under the Constitution has no choice. They must investigate, they have a mandate that nobody else has to investigate serious crimes like murders and kidnappings. There should be no need for presidential authority or decision on this matter.

ADV MACADAM: Legally in terms of section 28, there is a provision which says that if the Investigator Director does not conduct the investigation submitted to him, he must refer it to I think the Director of Prosecutions where the crime is committed and I think the National
10 Commissioner. Now that referral was never made by Adv Ledwaba. He simply told Leask, "You take them and dump them on the police, that is what you do".

ADV VARNEY: And do you know perhaps why Adv Ledwaba did not do this?

ADV MACADAM: Madam ...[intervenes]

ADV VARNEY: Was it ever suggested to him?

ADV MACADAM: Madam Chair, I have no idea what informed this. When the DSO was established in January 2000, I was required to transfer from KwaZulu-Natal where I had lived all my life to do TRC
20 cases. Fine, I was drawn into witness protection but when I came back to the DSO, it was a given, I would be doing cases for the DSO. And that was confirmed by Mr Ngcuka, the National Director, that the DSO should continue investigating the cases with which they had been seized from 2002.

ADV VARNEY: Now we return to your affidavit. You point out in

paragraph 21 that neither the NDPP nor Ackermann approached the President and I assume Mr Ackermann was not in possession given his particular ranking to approach the President?

ADV MACADAM: That is correct.

ADV VARNEY: Ja, but do you know why the NDPP, Mr Ngcuka at that time did not?

ADV MACADAM: I do not know why he did not, but you will see in my annexures that after the meeting with Commissioner De Beer, we made several attempts to try and get Adv Ledwaba to reconsider, culminating and Adv Ackermann placing everything on record in his e-mail of November 2003. He copied Mr Ngcuka on that. Mr Ngcuka then not only then instructed Adv Ledwaba to investigate the cases that I had originally referred to Adv Ledwaba in May 2003, but additional cases that had come to our attention thereafter.

So it was clear Mr Ngcuka was adamant to the DSO would continue and he was now forcing Mr Ledwaba's hand. If it is a referral from the National Director, Mr Ledwaba has no discretion as to whether to investigate or not. His sole discretion, will it be a full investigation or a preparatory examination?

20 My own view is, we would have preferred to keep the cases with the DSO because of the experience of those former police officers and they had already done work on the cases we wanted to pursue. Going to SAPS, we go to the crimes against the state unit, no historical knowledge, overwhelmed with all these mercenary nuclear cases and the Boeremag case was running.

So a lot of their members had been drawn into that matter and were not available to attend to any other cases. So both Adv Ackermann and I were of the view we wanted the DSO to continue.

ADV VARNEY: Yes, that certainly made sense in the circumstances. Well to just say you were aware Mr Macadam, Adv Ngcuka did testify before these proceedings and he was asked the question why he did not approach the President. His answer was, it would have been non-sensical for him to have done so, given that the Constitution and
10 the law already empowered him to refer cases to either the DSO or SAPS.

But let us move on. You have already quickly made reference to the fact that you made attempts to persuade Ledwaba to reconsider his decision not to investigate. It is also set out in paragraph 22. You make reference to the letter that Ackermann wrote in which he set out the consequences of these cases not being investigated. Time does not permit us to go into it. You state in paragraph 23 that:

20 “The DSO however, did not appoint investigators as requested and consequently none of the TRC matters requiring investigation could be taken further.”

Now I want to draw your attention to the fact that eventually later in that year the NDPP did act in terms of section 28(1)(b) of the NPA Act and here I am referring to an internal memo which can be found at page 316, the cross-examination bundle. Now I will just wait

for you to get there.

ADV MACADAM: Sorry, can you give me the page reference again?

ADV VARNEY: Sure, 316.

ADV MACADAM: Yes, I have it before me.

ADV VARNEY: So this is an internal memo from the Head of Operations, at least from the NDPP to the Head of Operations. "Dear sir", it is dated 8 December 2003. It is titled, "Investigation of TRC cases by the DSO" ...[intervenes]

ADV MACADAM: I apologise, we have [indistinct]...[intervenes]

10 ADV VARNEY: And there the ...[intervenes]

ADV MACADAM: Our page 361 is a list of priority crimes which was drawn up in 2019, sir.

CHAIRPERSON: It is 316, Adv Macadam.

ADV MACADAM: 31... I apologise, Madam Chair.

CHAIRPERSON: 316.

ADV MACADAM: Yes, here it is, I apologise sir.

ADV VARNEY: Thanks, Chairperson. No problem, we are all drowning in paper here, Mr Macadam. So just to repeat, this is an internal memo, it is from the NDPP, Mr Ngcuka at that time. To the
20 Head of Operations: DSO. It is dated 8 December 2003. It is titled, "Investigation of TRC cases by the DSO" and the NDPP writes:

"I have decided in terms of section 28(1)(b) of the NPA Act that the following three cases [it actually turns out to be four] arising from the TRC being investigated by the DSO."

And he lists them:

- “(i) PEBCO 3;
- (ii) Brian Ngulunga;
- (iii) Motherwell 4 and then
- (iv). the attempted murder of Reverend Frank Chikane.”

And then just to complete the story, if I can also ask you to turn to page 318?

ADV MACADAM: I have it.

ADV VARNEY: And sir, this is a similar memo. It is from the NDPP
10 to Adv Ledwaba, Head of Operations. It is dated 26 February 2004. It is titled, “Referral of TRC cases to the DSO in terms of section 28(1)(b) of the NPA Act”. And if you look at the referral itself, this deal with APLA attacks and if you look at the last line, it deals with the APLA attacks on the St James Church and Heidelberg Tavern.

So between December 2003 and February 2004, the NDPP refers these six matters to the DSO for investigation. My first question Mr Macadam and this is from the perspective of the families is, why were so few cases referred to the DSO?

ADV MACADAM: Madam Chair, if regard [indistinct] had to the
20 report that I wrote to Adv McCarty in February 2003, I think it is AD1, I listed the cases but you can see extensive investigations would be needed, we would be starting from scratch and I indicated to Adv McCarthy is the extent to which I could deal with them would be dependent on my resources and we would have to prioritise.

So firstly it is an issue of resources because when I

transferred to the PCLU, it was only Dr Pretorius who fulltime engaged with mercenary activities, not being able to engage in TRC matters and Adv Ackermann and myself. So Adv Ackermann had 400 ANC dockets, I had all the cases that I have identified.

Secondly, I had to comply with section 28 and that the, I had to persuade the Investigating Director there were reasonable grounds for those investigations because I anticipated that the authorisation would in it itself be attacked by the accused and the investigation could be declared unlawful if there was non-compliance. This was
10 stated in the Hyundai case I think of 2000, so and therefore I had to be very thorough in my applications.

I attached the evidence that I relied on, there is a comprehensive report where I married the evidence to the DSO mandate, crimes committed in an organised fashion. There was an affidavit from Mr Leask confirming he had established all the role players that would be needed were in fact available and we had even drafted an investigation plan, sitting out step by step.

So obviously we wanted, we could not take on more than we could do and these were key cases that we had identified, the
20 Ngulunga and Motherwell case go together. I had identified that as the strongest case, it would have prosecuted General Nick van Rensburg and each case in a senior capacity and place. He ordered the killing of five policemen to prevent them from revealing their knowledge of murders committed by the Security Branch.

So I put a lot of effort into that, also with the PEBCO 3 there

had been an investigation by the D'Oliveira Unit, amnesty hearings and you know, that was also a case that we considered worth pursuing. But they would take up a lot of work and the Motherwell and Ngulunga matter, in the prosecutions two key witnesses have been found to be unsatisfactory, resorting in Motherwell of two of the five accused being acquitted and in Ngulunga of the, De Kock being acquitted on the murder charge and only on a conspiracy.

In Motherwell there has been a conviction with three accused, the Attorney General who conducted the prosecution had
10 retired, so I had to take over the appeal before the SCA. There was also an amnesty application where General Van Rensburg had been refused amnesty but on review before the High Court, it had been directed that a new amnesty hearing be convened because the original committee failed to have all the evidence before it.

Having taken over the criminal appeal, I had all the evidence, so I had to assist the Department of Justice in placing all the relevant evidence before that. So those were the reasons that we had to confine ourselves to what we could actually manage and deliver on.

20 ADV VARNEY: No, thanks for the very detailed and I think very helpful explanation which does put us in a picture. So essentially saying the primary reason that you were forced to match your available resources with the limited capacity that you had at your disposal, so you would not be able to take on more?

ADV MACADAM: That is correct.

ADV VARNEY: And also thank you for giving us some information in relation to those cases, because we have also looked at these four matters, I see you say Ngulunga and Motherwell are connected, so there is three or four matters as well as the other two APLA matters, the St James Church and Heidelberg Tavern matters in which a large number of people were murdered.

And we struggle you know, to ascertain what actually happened in these cases, so you have given us some information on Motherwell 4 and Ngulunga and that the connection was a potential
10 case against General Nick van Rensburg. As you point out, these cases actually took place, they were prosecuted and the trials heard in the 1990s, but that there was the potential for a prosecution against Nick van Rensburg.

Can I ask what ultimately happened because as far as we are aware, Van Rensburg was never prosecuted?

ADV MACADAM: That is correct. The referrals made by Mr Ngcuka were at the end of February 2004. Now shortly thereafter I was drawn to deal with a nuclear case and no longer involved in TRC matters, so I have no knowledge of what trans... what was done by
20 Mr Ledwaba after the referral of these matters. My involvement with the TRC matters commenced again in June 2008 where Adv Ackermann indicated that I must take over all his responsibilities in respect of TRC matters.

If we look at the Brian Ngulunga, nothing was done because I would have known that personally because I was assisting the

Justice Department with the new amnesty hearing and I was reading the whole record of the trial because I had to defend the appeal against conviction in the SCA and certainly nothing was done, and General Van Rensburg died at the end of 2004 which has a major impact.

Van Rensburg was not only a general, he recruited Dirk Coetzee into Vlakplaas. When the Eastern Cape became the flashpoint of resistance, he personally murdered by putting his service revolver against the heads of Mtimkulu and Topsy Madaka, killing them, having their bodies burnt down to skeleton, the skeletons
10 broken up into bits of bone, thrown in a sewer. He got amnesty for that case.

He did not apply for amnesty for the PEBCO 3, but members of his unit did do so. He applied for amnesty for Cradock Four but was refused amnesty. He was refused amnesty for the Motherwell case, he never applied for amnesty for Brian Ngulunga.

When the PCLU started off, we had the background of acquittals in the Magnus Malan, the Wouter Basson and the Bisho massacre cases, and there was public concern as to whether the
20 NPA was capable of prosecuting. So this would have been a key case to demonstrate proficiency.

What had happened is, when we were doing that assessment in 2002, we reached out to a number of people who were involved in these cases, offering them the status of witnesses and very little or very few if any, took a veil. Now we believe the

significant case like this would make those people who had sat out, reconsider General Van Rensburg was old, perhaps if he was convicted to get a lesser sentence, he might start bringing in the other police generals.

So that is why we said this was a very significant case, we put all our efforts into it and it came to nought. If Adv Ledwaba has signed the authorisations when they were submitted to him, we could have got the matter into court. Even if he died before we got a verdict, it would nevertheless sent out a message that the state can
10 come up with credible charges and evidence.

The PEBCO 3 matter ...[intervenes]

ADV VARNEY: Just before you move to PEBCO 3, are you aware whether the DSO in relation to Motherwell and Ngulunga, whether an investigating officer was actually appointed?

ADV MACADAM: Not at all.

ADV VARNEY: And if so, who?

ADV MACADAM: Not at all and I can confirm that any investigating officer would have had to liaise with me in retrieving the evidence that was put before the High Court when three people were convicted and
20 he would also have had to be involved in the amnesty hearing, because witnesses for the prosecution would now be testifying wanting amnesty and there is no such investigator, no approach to me to give documents, share them, give guidance, because I had, I put a lot of work, so I knew a lot about those two cases.

ADV VARNEY: Thank you. Sorry, before I interrupted you were

going to talk about PEBCO 3. Please proceed.

ADV MACADAM: Correct. Madam Chair, this was a matter that Adv Ackermann decided to enrol in, towards the end of 2004 and in that matter his decision was based on an investigation that had been conducted by the D'Oliveira Unit in 1996 and himself travelling to Limpopo, consulting with Roelf Venter who had been refused amnesty and then deciding to use Roelf Venter as a state witness.

Venter and Adv Ackermann had to themselves compile the statement which was commissioned at a local police station and not
10 by an investigating officer. When I took over from Adv Ackermann in June 2008, all, the two main perpetrators, Gideon Nieuwoudt, John Martin van Zyl were dead and we could go on and also I identified key, key investigations had never been conducted.

And you will see AD19 is my e-mail to Adv Ackermann, asking him while I am overseas on official business, to supervise the work of the two state advocates and there I set out all the issues that need to be addressed or so. The Commission has on its website a letter which Adv Bukau, one of the prosecutors, had compiled listing all the investigations that needed to be done.

20 ADV VARNEY: Thank you and the same question, at this time December 2003 or shortly thereafter, did the DSO appoint an investigating officer in PEBCO 3 and if so, who?

ADV MACADAM: Not at all.

ADV VARNEY: And the last matter we are more familiar with, that is the attempted murder of Reverend Frank Chikane, we know from the

evidence of Adv Ackermann that this had been previously investigated as part of the Basson case and we are also very familiar that a plea and sentence agreement was eventually struck in 2007, but just to ask the same question, were you aware whether an investigator was appointed in that matter and if so, who?

ADV MACADAM: I do not but what I do know is that the decision to prosecute the Chikane matter was because Anton Ackermann told me he did not need an investigating officer, he could simply lead the evidence that had already been led in the prosecution of Wouter
10 Basson and he could arrange for the accused just to report at court, he would not have to arrest them, take them into custody and that was his decision to then proceed with the matter because of a lack of investigative capacity.

ADV VARNEY: Thank you, but to return briefly to the PEBCO 3 matter, you might be aware that that matter remains unresolved even today and the NPA and the Minister of Justice have reopened that inquest which is due to take place actually later this year in October. The individuals that you have mentioned, Roelof Venter and the other suspects have all passed on. In fact, there is only one suspect
20 remaining, a former Vlakplaas member, Joe Mamasela.

Would you agree Adv Ackermann [*sic*] that in relation to the PEBCO 3 case in particular given that all the suspects have died without facing justice, that the PEBCO 3 families have been failed by the post-apartheid state?

ADV MACADAM: Certainly Madam Chair, if these matters had been

taken forward at that time, the suspects were available, there were witnesses in both the Motherwell, Ngulunga and PEBCO 3, certainly the people that had physically taken part in the kidnapping or killings, had been, had agreed to testify and had also been granted amnesty. So that confirm that these are credible witnesses.

ADV VARNEY: Then let us turn to, sorry I am hearing an echo. Thanks, I think it is being resolved.

ADV MACADAM: May I just add one very short point to this? If it is permitted, Madam Chair?

10 ADV VARNEY: Sure.

CHAIRPERSON: Yes.

ADV MACADAM: It is important to ...[intervenes]

CHAIRPERSON: Yes, you may proceed, Adv Macadam.

ADV MACADAM: Why Madam Chair, when we started off, we assessed PEBCO 3, Motherwell 4 and Cradock Four because they were all committed by essentially the same group of perpetrators. Now on Motherwell and the PEBCO 3 we had cooperating witnesses who had testified against the persons who had given them the orders.

20 On Cradock Four, none of the people that carried out the killings were prepared to testify against his superior, so our belief was if we were effective on Motherwell and PEBCO 3, that would bring the Cradock Four alive, people would come forward and start talking.

ADV VARNEY: Thanks for that useful background. So if can just quickly ask you the very same questions on the other cases and this is at 318, this is the referral to the DSO and perhaps we can handle

them together to save time. Are you aware whether investigators were appointed in the St James Church and Heidelberg Tavern massacre cases and if so, who?

ADV MACADAM: I have, I would rather leave this to Adv Ackermann to deal with, because in this period when it was referred to the DSO, that was when I was not dealing with the matters but what I do know about these matters, is that I referred them to the police and I accompanied the police to Cape Town, we consulted with the former investigators and potential witness. So my knowledge of this matter
10 is when it was gone to the police and it was being investigated.

ADV VARNEY: But as far as you know, the DSO did not investigate those two cases?

ADV MACADAM: That is correct because I know this was one of their cases I referred to Superintendent Bester in March 2003 and I remember at that stage the challenge was that the dockets and the court proceedings had gone missing, and I know I went down with a Captain Nel from the police to Cape Town, trying to find the material.

ADV VARNEY: So there is a document which we will come to later, which I believe is from 2019 or 2020 in which both these matters are
20 mentioned with the concern expressed that same, that they had not been investigated. I will, we will find that document and later in my cross-examination I will bring it to your attention.

But to save time let us keep moving and I should add and perhaps secure your answer, would you also agree that the victims in the St James Church and Heidelberg Tavern massacres and indeed

other matters that were not investigated over these last years, have also been failed by the post-apartheid state?

ADV MACADAM: I would not say it is the failing of the apartheid state, so ...[intervenes]

ADV VARNEY: Sorry, post-apartheid state.

ADV MACADAM: Certainly Madam Chair ...[intervenes]

COMMISSIONER KGOMO: Post-apartheid.

ADV MACADAM: The ...[intervenes]

COMMISSIONER KGOMO: Post-apartheid state.

- 10 ADV MACADAM: Thank you Commissioner, for that clarification. Madam Chair, I have I think illustrated all the difficulties, investigations. The primary problem is when eventually you start it is too late, evidence is lost, you cannot find dockets, witnesses are all there, because we had a referral in 2010 by the police, that is the first time we started looking at these matters.

- 20 2019 I take over as the Head PCLU, so I do all these efforts to dramatically increase the cases from 30 in the beginning to a 112, ending up to 140, but capacity of the number of investigators, quality of investigations played a major part. If they had been investigated in 2003 by experienced policemen, a lot of these problems would not have surfaced and also effective prosecutions in those cases would encourage people to come forward.

So it would have opened up a lot of cases, you would have had people pleading guilty, offering to be... And that never happened, for whatever reason I do not know.

ADV VARNEY: Thank you for that important context. And indeed this is the very meat of this particular Commission of Inquiry, is to get to the bottom of that and we will be exploring that with you. Can I ask you to if you are on page 141, this is your 2018 affidavit and at paragraph 24 you indicate that you were then assigned during 2004 a case dealing with internal nuclear weapons syndicate and that required your full attention until late 2007.

ADV MACADAM: Yes, that is correct.

ADV VARNEY: And as you say in paragraph 25, notwithstanding
10 that Ackermann regularly discussed the TRC cases with you, and you point out a few of the things that he informed you of, including the fact that he intended prosecuting three former Security Branch members for the poisoning of Reverend Frank Chikane. That is at paragraph 26.

ADV MACADAM: Okay.

ADV VARNEY: Now we are very familiar with what happened in that case and if you turn the page, you know you indicate that Ackermann informed you that the Acting National NDPP had put the prosecutions on hold pending the formulation of special TRC guidelines and that
20 there was now a moratorium on the investigation and prosecution of TRC cases pending the adoption of those guidelines.

Did he also mention to you that Acting NDPP Ramaite had been called by then Minister of Justice Mabandla, directing him to place those cases on hold?

ADV MACADAM: Madam Chair, I cannot recall that but what I do

recall is that Adv Ackermann was furious that he prevented, that he had been stopped from enrolling the matter because that was done the night before the accused were there. He told me that it was an instruction from Dr Ramaite and shortly after that, he again told me that Dr Ramaite is now instructed that a moratorium be placed on all investigations per pending guidelines.

But I cannot recall if he told me who, whether somebody gave that instruction to Dr Ramaite and if so, who that was. There was no documentation documenting any of this, it was just conveyed
10 verbally by Dr Ramaite to Anton Ackermann, I never saw any official correspondence.

ADV VARNEY: But in subsequent years do I assume correctly that you did become aware of that, Dr Ramaite had been spoken to by Minister Mabandla in respect of this moratorium?

ADV MACADAM: Madam Chair, I remember my original attorney giving me a copy of Dr Ramaite's affidavit which was filed at this Commission and also I am worried about if I say things that are not correct, but I think in that memo he did in fact confirm both instructions were from the Minister of Justice.

20 ADV VARNEY: Yes, we can confirm that no, it does appear in his statement but is this not an example of brazen political intervention in the TRC cases?

ADV MACADAM: Madam Chair, I do not want to use the word political interference because what does that mean? Is it intervention by a political party, is it then by a member of the Executive and then

is it not Executive interference and not political? But clearly my view is that you cannot have a Minister of Justice if in fact she did that, saying you cannot enrol a case in court because that interferes with the independence of the NPA.

Similarly when it comes to guidelines, the Constitution and the NPA Act clearly state that the guidelines are formulated by the National Director, but they must have concurrence by the Minister. So the prime mover of the guidelines is the NPA and not the Minister. The Minister is there simply to say yea or nay. And also if you look at
10 the NPA Act, the Minister, it defines how the Minister exercises her final oversight over the NPA.

It is calling on the National Director to give reports to her on specific matters that are of concern and there is also the reporting to the Parliamentary Portfolio Committee.

ADV VARNEY: Yes, perhaps Executive intervention is a more accurate description than political intervention. And since you have raised guidelines, let us move to paragraph 28 which deals in fact with the guidelines dealing with the TRC cases, and you state that you and Ackermann were both of the view that they were
20 unconstitutional. Can you elaborate on why you thought the guidelines were unconstitutional?

ADV MACADAM: Madam Chair, they made provision that if a person comes forward, meets the same criteria as is set by the Amnesty Committee, then the National Director can decline to prosecute. Now whether the person meets the requirements of the

Amnesty Committee is absolutely irrelevant as to how the NPA deals with persons who have committed crimes. There is firstly the general policy that anybody implicated in a crime can make representations as to why they should not be prosecuted.

More importantly, you have got section 204 of the Criminal Procedure Act which makes provision that if a person who has committed a crime testifies against the other and gives satisfactory evidence, then that person is indemnified from prosecution by the court trying the matter. Now that is what was there and in my view,
10 that was all we needed to deal with this. In my view this meeting is absolutely irrelevant, it actually narrows the scope for you to use section 204 witnesses.

In the TRC many of the cases where amnesty was denied, is that the person, the persons lacked a political motive, so if a person comes to me and said, "I acted purely out of criminal motives but I can testify against the rest", there is no reason why we do not take him and if he is a good witness, he or she a good witness, they get indemnity.

So why do we need to bring in meeting the requirements of
20 the Amnesty Committee? They are irrelevant. That is my answer.

ADV VARNEY: Thank you.

ADV MACADAM: And what I am saying is that this, putting that provision in triggers a lot of controversy because rightly or wrongly, the public thinks this is a second TRC and we have the AZAPO ConCourt judgment before the TRC, justifying the amnesty process

solely on the basis it is a once-off transition from oppression to democracy, so *vis-à-vis* that judgement, no more amnesties.

ADV VARNEY: Well and apart from the TRC amnesty criteria which you correctly point out became part of the new part C criteria in the guidelines or the amendments, whatever you want to call them, it went even further, there were additional criteria upon which the NPA could decline to prosecute, for example [indistinct], somebody could show that they had been subjected to indoctrination. So it went even further than the amnesty criteria.

- 10 ADV MACADAM: That is correct because if you look at those cases as well, there is the CCB who used a Cape Town gangster to facilitate those crimes. Now if that gangster comes forward and say, "I can implicate these very powerful people who committed these crimes", why can he not be used as a witness?

ADV VARNEY: Yes, so just to conclude ...[intervenes]

- ADV MACADAM: But there is also one case I remember where the main perpetrators all got amnesty because it was politically motivated, but now amnesty was refused to a foot soldier who said, "I only joined in after they had already shot the person and he was lying
20 on the ground for fear that they would kill me. They turned around with their guns pointing directly at me, I was afraid" and the TRC said, "Well you only get amnesty for political crimes and not fearing for your life, so we refuse it to you".

Now that would be the best person to use as a witness if those main perpetrators had not been granted amnesty.

COMMISSIONER KGOMO: Sorry, can I just ask ...[intervenes]

ADV VARNEY: Yes, thank you for those examples.

COMMISSIONER KGOMO: Can I just ask you something about the Head of the CCB, Verster? Remind me, did he appear before the TRC or was he ever investigated?

ADV MACADAM: Commissioner, Verster was not the Head of the CCB, he was the Head of the Johannesburg cell which made up of former police officers to do dirty tricks in South Africa where you need police officers to know what clues you not need to leave on the side.

10 If I remember, there was a General Webb who was overall in charge of the CCB.

Now, the scary thing is that investigations only revealed that Jo'burg cell. There were these other 39 cells that operated externally of which nothing is known about what they did. And there was no accountability at all. I worked on the Anton Lubowski case where I had no doubt he was murdered as a result of a CCB conspiracy, but it was impossible to get any CCB member to give us a coherent account so you could then base a prosecution on that person's evidence.

20 COMMISSIONER KGOMO: Yes, and if I repeat the same question about General Webb; did he testify? Was he ever investigated?

ADV MACADAM: Madam Chair, I do not know if the TRC tried, but I can confirm he never came forward as an amnesty. Nothing was put on the table by the CCB. A key case for the CCB to come clean on and apply for amnesty would have been the murder of Anton

Lubowski, the SWAPO leader. All I know about the CCB is there were some members who came forward and in the prosecution had Ferdie Barnard convicted. He was at that stage a foot soldier.

I worked on the Early Learning Centre case where a bomb was planted outside the centre, but nobody was killed or injured. And my difficulty is the only witnesses there were people who were 204 witnesses for the D'Oliveira Unit and the others had all been granted indemnity under the Indemnity Act. So, I could not prosecute at all out of that and the people who got indemnity were not going to ever
10 cooperate with the state.

COMMISSIONER KGOMO: Yes, thank you. Thank you, Mr Varney.

ADV VARNEY: Thank you, Commissioner. Mr Macadam, just to wrap up the section on the guidelines; at paragraph 29, you point out that they were ultimately declared unconstitutional for the reasons you have applied. But in summing up the guidelines, would you agree that they were primarily aimed at providing further avenues to permit apartheid-era perpetrators to escape justice? Here I am referring to all those criteria; and that it ultimately was an unwarranted interference with the NPA's prosecutorial discretion.

20 ADV MACADAM: Certainly, Madam Chair, because as I said, 204 does not need to be linked to political motives. Why do you need guidelines for these matters? After the cut-off date for the TRC crimes was 11 May, let me just remember, 1994; and in certain parts of the country that political violence continued, specifically in KwaZulu-Natal where I was directly involved. We addressed the

KwaZulu-Natal political violence, which was extremely serious, post-TRC, with no special guidelines at all, simply applying section 204 of the Criminal Procedure Act. Almost without exception, those cases were only solved by accomplices turning against the people who ordered them.

ADV VARNEY: Thank you. Let us then move to what you have to say about the Interdepartmental Task Team. You do not give dates in paragraph 30, but my recollection, and I stand to be corrected, that this task team, known as the ITT, started meeting towards the end of 10 2006, I believe around October 2006. Is that your recollection as well?

ADV MACADAM: As I recall, there was a minute. I think I might have filed it as one of my annexures in my March affidavit, documenting the first meeting which was in October, and it was a high-level meeting with Adv Pikoli and certain of the DGs. I can assist the Commission by checking if I do, in fact, have it as my annexure.

ADV VARNEY: It is okay. I do not think there is any dispute that we are talking about, you know, late 2006. So if I look at your paragraph 20 30, you indicate that you were informed by Ackermann that Pikoli had set up this Interdepartmental Task Team to advise him on making decisions in the TRC matters. Ackermann and Ramaite were the NPA reps on the task team. On one or two occasions, you say: I stood in for Ackermann in meetings of the task team when he was not available. And then your last line, I am going to read into the record.

"I noticed that the task team was predominantly comprised of members of the intelligence community who were more intent on cross-examining me as to why matters should be investigated, rather than addressing the issue of all the outstanding cases."

So let us first deal with the allegation you make that the task team was predominantly comprised of members of the intelligence community. So we all know that NIA was represented on that task
10 team. They had two representatives. So could you not be criticised for saying it was dominated by the intelligence community, given that they had two members?

ADV MACADAM: Madam Chair, the guidelines made provision for only one member from police, NIA and justice. And when I said it was dominated, on the meetings I attended, there would be at least three intelligence officials. And when I brought certain cases to their attention, they were, I got the impression they were cross-examining me. So it was in that context and not saying that the whole
20 committee was intelligence-related, because there were the three NPA people. But what I picked up as well, there was no representation from Commissioner de Beer or a senior detective in the task team.

COMMISSIONER GABRIEL: Can I ask a question, Mr ...[intervenes]

ADV VARNEY: Yes, my recollection is that ...[intervenes]

CHAIRPERSON: Mr Varney?

COMMISSIONER GABRIEL: Can I have a minute?

ADV VARNEY: Of course, Commissioner.

COMMISSIONER GABRIEL: In paragraph 30 of your affidavit, where you are looking at now, Adv Macadam, do you think your use of the word 'predominantly comprised of members' is correct?

ADV MACADAM: No, Madam Chair, I should have been more careful and said it was limited to only the questioning of cases being presented.

COMMISSIONER GABRIEL: Okay, thank you. Thank you, Mr
10 Varney.

ADV VARNEY: Thank you, Commissioner. My recollection, Adv Macadam in relation to the police, I think you are correct that detective service was not there, but there was a legal services officer by the name of Philip Jacobs or Jacobs. Is that your recollection?

ADV MACADAM: That is correct, Madam Chair.

ADV VARNEY: And are you saying that the detective division should have been there?

ADV MACADAM: Correct, Madam Chair. The whole purpose of setting up this task team was to get these investigations going,
20 because the guidelines had been approved by Parliament already in December 2005. The PCLU had no investigative power. So that is why not only were the police made a representative, but also the DSO, because in the absence of Adv Pikoli withdrawing Adv Ngcuka's referrals in 2004, the DSO was still actually bound to investigate those cases themselves.

May I just also add with Commissioner Jacobs, because it illustrates my point about not having a detective in this matter? I tabled the Highgate Hotel case because of sensational media reports about the matter. The TRC found it was an APLA case. Nobody, however, was prosecuted or applied for amnesty. And because of the high public interest in the matter, I felt that this should be looked at. Now, I have the minutes of a task team meeting of 29 January 2007, which notes that Commissioner Jacobs informed the meeting that he has gone through ...[intervenes]

- 10 ADV VARNEY: Sorry to interrupt. Can you just give myself and the commissioners the page number so we can also find it?

ADV MACADAM: Madam Chair, I do not know if it was part of my March affidavit, but in preparation for my cross-examination, I found the document. I do not know if it is permissible to raise it if it was not part of my affidavit.

ADV VARNEY: I am happy, you know, with the indulgence of the Chairperson, I am happy for you to raise it, because I do believe that these minutes are part of one of the bundles before the Commission today; so please go ahead.

- 20 ADV MACADAM: Thank you, Madam Chair. I only need to read out one short paragraph.

COMMISSIONER GABRIEL: Just remind us again, what is the date of that meeting?

ADV MACADAM: The meeting is 29 January 2007. The paragraphs are not numbered, but the paragraph says the following:

“Commissioner Jacobs informed the meeting that he has gone through the docket on the Highgate Hotel attack and is of the view that no further investigations is necessary.”

I would like to refer the Commission to the police bundle where... I must just find it here. In March 2010, I have to direct extensive investigations into that matter.

As a starting point, the two whistleblowers who came forward and said this was not an APLA attack had not even been asked to submit statements. It documents a score of statements not being commissioned. It documents not following up of a photo parade, but most significantly, the investigating officer of that case only asked ballistics to compare the spent cartridge cases on the scene, AK-47 cartridge cases, with a very, very small number of cases, although at that time the use of AK-47s in political cases throughout the country was highly prevalent.

When I then asked the head of the ballistic unit in Pretoria to draw all the cases of AK-47 rounds going back to 1993 and compare it, he then said he had appoint a senior person to do the exercise, but then he phoned and said they had established that those spent cartridge cases found on the scene had now been stolen. So that was the end of probably your most objective and direct link to this case, because those ballistics would come up. It is linked to this case, that case. You can start focussing on who the suspects are, which is the political organisation. We could not do that. We lost that

vital evidence.

ADV BHANA: Chair, if it is useful, we have got copies if you want to take this in as an annexure.

CHAIRPERSON: Yes. I think it will be useful to distribute the copies.

ADV BHANA: I am not sure ...[intervenes]

ADV MOROKA: Were included in the distribution, Chair.

CHAIRPERSON: And are the parties included in the distribution? What exhibit number should we allocate to this number?

10 ADV BHANA: I have no idea. I have not been following the exhibits. Perhaps somebody else can ...[intervenes]

CHAIRPERSON: Ms Moroka, are you able to assist?

ADV MOROKA: Not at this time, Chair. I cannot recall what was the last one.

CHAIRPERSON: You will consider.

ADV BHANA: Yes, I think the evidence leaders [indistinct].

ADV SEMENYA: Well, Chair, we do not have a recollection of the last one, but it should do no harm to use the abbreviated.

20 COMMISSIONER KGOMO: Counsel, sorry. Switch on your second microphone. Yes, thank you.

ADV SEMENYA: I was saying, Chair that we do not necessarily have the last exhibit number, but it would do no harm to use the initials of the witness and a capital A to identify the document.

CHAIRPERSON: Yes.

ADV PROPHE: Chair, sorry to interrupt. I do not know if it will be of

any assistance, but the minutes of 29 January 2027 is PCJ11 at 1753 of the master bundle.

CHAIRPERSON: Yes, but we want to allocate an exhibit number for purposes of this cross-examination.

ADV PROPHY: As Chair pleases.

CHAIRPERSON: So it will be Exhibit MA, CMA, CMA.

ADV BHANA: CM-A; noted, Chair.

CHAIRPERSON: Yes. Yes, Mr Varney?

10 ADV VARNEY: I am indebted to the Chairperson for that intervention.

ADV MACADAM: Madam Chair, may I just close this issue by referring to VC3, page 35 of the police bundle. That is the letter that I wrote to Superintendent Bester on 9 March 2010, identifying a range of investigations that were required.

ADV VARNEY: Mr Macadam, thanks for drawing our attention to that letter. I am going to propose that we move on, but we will mark VC10 and we will, in all likelihood, return to it once we have studied it in more detail. Before we move off this topic, there was one other SAPS member on the ITT. His name is Josias Lekalakala. Do you
20 recall him and do you know which department he was from?

ADV MACADAM: I may be incorrect. He may have been Crime Intelligence. I doubt he was a detective, because if he was, he could have been taking the lead when all these issues relating to investigations have to be dealt with, whereas in the same minute that we received now, this one of January 2007, Commissioner Jacobs is

the person who says now he is having to contact provincial commanders to get investigators, not this person.

ADV VARNEY: Noted, yes. We will certainly endeavour to check on that and perhaps our colleagues and the police can advise us in due course. But given your view that the detective service was not represented on the ITT, and given that there is a view that the ITT was meant to assist facilitating investigations, what did this say to you?

ADV MACADAM: Madam Chair, as I said, I only attended a couple
10 of these meetings, but in June 2008 Adv Ackermann instructed me to take over. I then established that no active investigations were being conducted on any of the matters that had been identified as requiring investigation. That resulted in me having to undertake this long process of firstly engaging with Commissioner Jacobs and Pete Richter from the NIA at getting investigations up and running, subject to they wanted approval from their principals, that is the director generals, and the task team being convened.

We attached, I attached in my March affidavit the memo which Adv Mpshe wrote to the minister, documenting all his efforts to try
20 and get the task team established. But nothing happened, except that, because I had worked very closely with Commissioner Lalla in the political violence, and he was now the head, I would approach him directly, and let us get these things going.

And you will see, he was at the very point where we were going to, he was going to give us a good investigative capacity. That

is when the decision was taken that the specialised units of the police would now all be transferred to the DPCI. That would leave him with only detectives investigating the less serious crimes, which was a result of me then making all these attempts to get General Dramat to buy in and agree to do those cases.

You can see that advocate, sorry, Commissioner Lalla was actually helping me by setting up these meetings. It is all documented in my emails. That led to then me meeting with Commissioner Lebeya. At that stage he was the deputy to General
10 Dramat, and that is when we had a buy-in and then these investigations then only commenced in 2010.

ADV VARNEY: Thanks, Adv Macadam. We are jumping ahead a bit, but I understand your need to disclose important information, but if we can return to the unfolding story. At paragraph 31 you indicate that Adv Pikoli was suspended, and we know that took place during 2007. It was not long after the plea and sentence agreement. And then you point out that he was ultimately fired, despite the Commission finding he was competent to be the NDPP.

Then you point out in paragraph 32 that during the course of
20 2009, now the acting NDPP, Mpshe, summoned you to his office and showed you a letter written by SAPS indicating that it was withdrawing from the task team. And then you write, and I quote; this is at the bottom of page 142.

“This would mean that again TRC matters would
not be investigated because at that stage a

decision had already been taken to disband the
DSO."

So I need to ask; why would investigations of the TRC cases be dependent on the task team? Why could not those investigations, and these are very serious cases which would fall within the mandate of the SAPS, murders, kidnappings and the like; why could they not have proceeded with or without the task team?

ADV MACADAM: Madam Chair, if the task team had properly functioned, it would have been a significant fast-tracking of
10 investigations, because there you have one detective. You refer all your investigation needs to him. You have intelligence people who can do the intelligence gathering. Justice is there. Without them, you would have to be running around trying to set things up, *et cetera*.

I came into the PCLU from the political violence in Richmond and we were able to, in a period of two years, blitz that violence, because it worked on a task team approach. We had dedicated prosecutors, dedicated investigators, a special intelligence component and all the other backup we need. We even had a special high-risk arrest team. So if you needed to arrest people, they could
20 immediately effect those arrests. Otherwise, you would have to make a request and they would say: 'sorry, we are attending to a cash-in-transit robbery. We can only help you, say, the end of the week.'

So when you bring all these people together, we put our heads together, we work full-time on these matters. You see significant results, because if you look at the cases, they were

spanning all over the country. Now, to try and arrange with individual provincial commissioners, *et cetera*, would be difficult.

Justice played a key role, firstly. If people decided to now challenge the refuse of amnesty, justice had to reconvene, deal with the review process and justice was the custodian of all the TRC records. So you have one person straight away, get all the stuff you need. So that is why I believe that if it had functioned, as task teams do function and are effective, it would have been a different story.

ADV VARNEY: Yes, although my question is a slightly different one.

10 The question really is as follows. You know, the normal detective service, and even yourselves at IDAC, you did not have a task team comprising Department of Justice, Intelligence Agency and other officials from the executive; and nonetheless, you got the job done. So I am still querying why the TRC cases, murders and kidnappings could not have been investigated in the normal course in the absence of this task team.

ADV MACADAM: Madam Chair, that would have meant that the NPA would have to start itself, you know, building bridges across, you know, provinces and that type of thing. What I am saying is; having a
20 dedicated lot is, you know, a major, you know, plus factor. It is just how it operated. Because, I mean, when I retired, I was given a three-year contract to work with the investigating directorate. And there were arrangements in place with the SARS, the Financial Intelligence Agency, dedicated commercial crime branch people, financial; and that also helped us enormously that we would not have

to be running around from pillar to post to try and get help. So my view is; if it had functioned properly, it would have helped.

ADV VARNEY: Yes, I do not dispute that if things had worked optimally and everybody shared the same ambition and energy, it certainly would have helped. But we know that the last meeting of the ITT was in January of 2007, and either in this statement or your subsequent statement, you conceded it never met again.

ADV MACADAM: That is correct.

10 ADV VARNEY: So the question is, well, how come SAPS simply did not pick up these cases and investigate, because we are not talking about 2009. It says in early 2009 you were summoned, and the ITT met last in January of 2007. So we are talking about two years previously.

ADV MACADAM: Chair, I cannot give that answer. All I can say is that when I was told to take over and I realised nothing had been done, that is when I took these drastic steps, lobbying commissioners of police to get the process going, doing the memo for Adv Mpshe alerting the minister. But the people who were responsible for that lack of activity, they should come and explain that and not me.

20 ADV VARNEY: And who are they?

ADV MACADAM: Well, if you look at the first meeting, there are all the principals listed, and those are the people who were there to make sure the process functioned properly.

ADV VARNEY: Yes, I do recall that you make reference to the fact that principals have to sign off, and we will come to that. In the next

sentence you say:

“Mpshe instructed me to negotiate with SAPS to agree to investigate the matters, which he said I should take over from Ackermann.”

And I suppose the obvious question again is; why did you have to negotiate with SAPS when it is already clear that under the Constitution and under law they are required to investigate, they should not require negotiation?

ADV MACADAM: Madam Chair, I was an office bearer of the TRC,
10 spent my life doing violent crime. I have seen the enormous suffering that victims... So my conscience and my oath of office required me to do what I can to get things going, which eventually happened. But I believe if it had not been for my efforts, there would not have been that buy-in to investigate in 2010.

If you look, I attached my emails, all my desperate efforts with Commissioner Lalla, my failed attempts to meet General Dramat. I would like this inquiry to specifically look at my Annexure, AD22F. This was the Lubowski case where we only had jurisdiction on a conspiracy which would prescribe after 20 years, which would have
20 been September 2009. How I am begging and pleading at least that we have one investigator to attend to that matter.

What had happened is; Mr Lubowski had briefed an advocate whose instructions were if the NPA did not prosecute, he would then conduct a private prosecution. So I said if the crime prescribes in September, my decision must be made in August. So if it is not to

prosecute, he has sufficient time to meet all the requirements to have a private prosecution.

An investigating officer was only appointed on 27 July 2009. AD22F is where I say that there is a colonel who is a former D'Oliveira investigator who has now been transferred to Crime Intelligence, but cannot be used to quickly investigate the case. Even if necessary, I will pay for all his expenses out of my own budget. That is how desperate I was to get this done.

And what I feel very bad is why do I have to do this? If 10
10 people are gunned down in the street outside, are the police going to say that: no, we will do nothing at all. The NPA must come cap in hand, begging us and pleading us and then we will actually investigate, because at this time the Scorpions were out. So the ping pong matches at Scorpions is out. It is a sole police responsibility. If one looks at that first meeting in October, the police accepted they will do all the investigations, even though the DSO was still in existence and a member of the task team.

ADV VARNEY: Thanks, Mr Macadam. We certainly empathise with the frustrations that you have expressed.

20 ADV MACADAM: My frustrations ...[intervenes]

ADV VARNEY: And...

ADV MACADAM: Are nothing compared to the suffering that these poor victims go through. We were often in the embarrassing situation. You give undertakings, yes. These matters will be investigated, and you cannot deliver it, because nobody is... It is

terrible. The PEBCO 3, myself, Adv Mpshe, the National Director, the DPP had to spend the whole day with the family of the PEPCO Three, explaining why we cannot proceed with that case; and it is those people suffering. You know, as a lawyer, I have to have a thick skin, but that is the real heart, is those victims. And I would like to say look at all these letters where there is ping-ponging and nothing being done. Where is the plight of the victims reflected in any of those communications?

ADV VARNEY: Yes, I think we are in agreement with you, Adv
10 Macadam. So, given that context that you have just painted, would you agree that you should not have had to negotiate with the SAPS? It should have happened in the normal course.

ADV MACADAM: That is correct. I mean, if you look at that task team, it is convened at a very high level. So, the people there should have got all of this done, and I would just be informed – these are your contact people, let us get going or so.

ADV VARNEY: Well, except in the situation that we are at the moment. Recall that we are now at 2009 and here you have the acting NDPP asking you to begin negotiations. And it is either in this
20 statement or the next where I think he does ask you; and perhaps my team will help me find the correct reference to see if the task team cannot be resuscitated two years down the road. And I believe the answer was that SAPS would not investigate, unless their principals gave them the go-ahead. Is that correct?

ADV MACADAM: That is correct. I think it is actually documented in

our reports, and I think there is a memo that Adv Mpshe wrote to the minister explaining the issue.

ADV VARNEY: Yes, when we find that reference, we will put it up. Let us move on, please. So at paragraph 33 you mentioned that Ackermann has already disposed of a number of matters, and he gave you a list of a smaller number of cases. You estimate that to be around 10, but that the Timol case was not one of them.

ADV MACADAM: That is correct.

ADV VARNEY: You then attach... Sorry, there is a disturbing echo
10 on my side, but I will continue. You then attach a string of emails between yourself and various role-players, and you make reference of Raymond Lalla, then Divisional Head of Detective Services. You indicate that he eventually advises the National Commissioner, as directed, that the cases be investigated by the DPCI. I just want to go to one of those communications at page 162 of the same bundle.

ADV MACADAM: I have it before me.

ADV VARNEY: And I just want to quote you a couple of lines from the email from Helena Zwart. Correct me if I am wrong, that was your secretary?

20 ADV MACADAM: That is correct.

ADV VARNEY: But the email is from you.

ADV MACADAM: Yes.

ADV VARNEY: It was sent on Monday, 18 May 2009 to Willie Hofmeyr and Mpshe, Ramaite and Ackermann were copied, subject: "Investigators for TRC cases." You write: "Dear Willie". And I should

add, just by way of context. Am I right in saying that the reason why you were writing to Hofmeyr was that there was an expectation that he was going to be appointed the new head of the DPCI? Is that right?

ADV MACADAM: Madam Chair, I had heard that that was correct. I have no direct knowledge, but the main reason I wrote to him, he was responsible for the transfer of the DSO to SAPS, because this is May 2009. The DSO dissolved in July 2009. So that was my primary responsibility. Any movement of people out of the DSO to SAPS, I
10 would have to work through him. But I know Mr Hofmeyr very well, we are personal friends, and he would definitely have wanted these matters done.

ADV VARNEY: So I am just going to read, I think, the first three lines.

“I met this morning with Commissioner Lalla concerning the appointment of SAPS investigators to investigate the TRC cases. The victims have asked the NPA to look at prosecutions. We have been taking quite a
20 beating due to the fact that nothing has been done on these matters for a number of years; and in fact, in certain cases, the victims are threatening us with *mandamus* applications.”

Were you surprised by that time that such *mandamus* applications had not already been brought?

ADV MACADAM: No, Madam Chair, there was huge... Well, the first thing is; there is suffering of victims that are being denied justice, but prominent human rights organisations were also severely criticising the NPA for non-activity. And there again, I feel very strongly about this. All these attacks were on the NPA, but almost without exception, the reasons were delayed, rested with the investigations. We had no investigators.

Madam Chair, these are not shoplifting cases. You cannot say if four people are blown up in a car bomb, to prevent them from
10 revealing the involvement of the Security Branch and the Cradock Four and other serious crimes, that you can just leave it gathering dust. Fair enough, if it was a shoplifting of a Simba chips packet; that would be a different story.

ADV VARNEY: So, let us move on. So in paragraph 35 you indicate that you ultimately met with Assistant Commissioner Lebeya on 26 November 2009 where you discussed the issue of conducting these investigations; and then he positively responded by way of a letter on 18 January 2010. And then you make reference to the fact that Senior Superintendent Bester was appointed to oversee the
20 investigations of the 10 cases that you had identified. If I can just pause there; again, from the perspective of the families, you know, they would want to know why only 10 cases, why not more?

ADV MACADAM: Again, what had happened is capacity constraints and to try and at least get these things going, because they had be going to the CATS component that we had worked with since... a

very small team and most of the experienced investigators were full-time in the Boeremag. So, they were going to people who did not have the historical background and were also inexperienced. So, we were trying to, you know, get a small number of cases, start showing impact, because that will immediately make things easier. People who are setting these cases out will now decide I should actually be a state witness and it might also motivate to increase extra capacity within both NPA and SAPS.

ADV VARNEY: Thank you, noted. Now, you make reference to a
10 letter that you wrote to Assistant Commissioner Lebeya on 18 January 2010, which is at RCM7. If we can go to RCM7, it is on page 167.

ADV MACADAM: Yes, I have it before me.

ADV VARNEY: So, I just want to focus on the bottom paragraph dealing with Senior Superintendent Bester and let me read it on the record, so we are all on the same page.

20 "Senior Superintendent Bester of your office attended our meeting and informed you that he was in possession of a number of further dockets, which he felt also required investigation. On 6 December 2009, I had a meeting with Senior Superintendent Bester and established that those dockets were related to cases against the liberation movements in respect of which a decision was taken in 2004 by the then National

Director not to prosecute.”

Perhaps let us pause there. You finish off by saying there was no basis to reopen those cases. Now, given that Bester knew that a decision had already been taken not to pursue with these cases back in 2004, do you know why he was still pushing these cases in 2010, 2009 and 2010?

ADV MACADAM: But he knew about it, because when Mr Ngcuka had confirmed my decision, I wrote a letter which was given to Colonel Britz. And thereafter, Superintendent Bester and Colonel
10 Britz came and saw me and they said that there is a solid case against the president contained in one of the dockets and wanting me to prosecute the president. Now, what I said is do not... I did not say get out of my office, I have made my decision, do not waste. I said no, give me that docket. I will consider it and evaluate it and make a proper decision and take it up further with Adv Ackermann, and Adv Ackermann would take it up with National Director.

ADV VARNEY: And there is at least another reference which we will come to in relation to Bester wishing to pursue cases against the ANC. Did you get the impression that he had something of a
20 preoccupation in pushing cases against the former liberation movements?

ADV MACADAM: The impression I gained is that he had been influenced by Colonel Britz, because I mean, in all my engagements with Colonel Britz, both Adv Ackermann and I, he was always adamant about this case against the president and it was clear to us

he was also in communication with Johan van der Merwe, the former Commissioner of Police. Now, Superintendent Bester comes out of the cold to now suddenly take over. What I suspect is; he was influenced by Colonel Britz.

ADV VARNEY: Yes, we will come to Colonel Britz, because you do make reference to him later in your statement. In paragraph 37, you point out that Adv Menzi Simelane was appointed as the NDPP and then he moved you into serious corruption investigations in the Northern Cape. That of course meant you were taken off the TRC cases. Was that an unfortunate decision that hindered the pursuit of the TRC cases, in your view?

ADV MACADAM: Madam Chair, we were in a situation of limited resources. When Adv Simelane was appointed, we just had this buy-in that the police would start investigating and I then, Dr Ramaite and I gave him a briefing about the TRC cases and he then instructed me to draft a ministerial memo, which was to the effect that the police must without further delay proceed and finalise these investigations; and secondly, that because all the cases were investigation related, the police should take the responsibility for investigations.

Now, as you will see, I tasked these investigations out in 2010. So it was at the early stage. So, although doing the serious corruption in the Northern Cape slowed me down, if I was working full-time, obviously I could move, but it did not stop them. The investigators had investigations to continue. If there was something urgent, they would still phone me while I was in Kimberley and we

would make a plan.

So, it did not, it was not certainly aimed at blocking the TRC cases, but I would like to tell the Commission what the condition was. Adv Ackermann had withdrawn from the TRC cases already in 2008. He was not available therefore to deal with them. We had myself doing the TRC cases. Dr Pretorius and Adv Abrahams were involved in long security-related matters that were keeping them out of the office and out of the province.

10 The only remaining member was Adv Bukau; and what had happened is she had been diagnosed as having cancer of the bone that connects her hip to her knee. She had to have a bone transplant and she had to lie flat on her back for six months, because if the graft had not taken, they would have amputated her leg from the groin. So it was capacity constraints and not any attempt by Adv Simelane to stop the cases. He could have told me; do not proceed with them, but we did deal with them. We did report on the matters.

ADV VARNEY: Thank you. Okay, so that then does answer my next question as to who was running the cases in your absence while you were in the Northern Cape; and essentially you are saying the only
20 remaining member was Susan Bukau, but she herself was incapacitated.

Just a follow-up question; you mentioned that Ackermann had already withdrawn from the TRC cases as far back as 2008. According to Adv Ackermann, sometime after the plea and sentence agreement in the Chikane matter in 2007, Adv Mpshe relieved him of

his day-to-day duties in the TRC cases around that time. Is that what you are referring to when you mention withdrawn?

ADV MACADAM: No, Madam Chair, I refer to an annexure. I think it is AD18. It is an email that Adv Ackermann sent to Dr Ramaite recording a meeting that he had had with Dr Ramaite and I, and he said that it is now agreed that I will take over his position in the task team and will manage the portfolio, and it is all set out in detail there.

So as far as I am aware, he was not removed because of the Chikane case in 2007. He elected in June 2008 voluntarily to
10 withdraw from the cases. I do not know if afterwards there was a meeting with him and Adv Mpshe, but all I know is; after the email, Adv Mpshe called me to his office, showed me the letter from the police saying they are no longer going to take part in the task team and appealing to me to get things going and investigations on track.

ADV VARNEY: Right, well, we will not do it now in the interest of time, but we will put to you Ackermann's evidence and in fact Mpshe's evidence as well who confirms that he did withdraw or
remove Adv Ackermann from day-to-day duties in the TRC cases, largely because of complaints levelled against him in the Chikane
20 matter, but in the interest of time, we are going to move on.

You then point out at paragraph 38 that Mr Nxasana was appointed as the NDPP and he also removed you from the TRC cases or rather, he asked you to act as a dedicated prosecutor in foreign bribery cases and that Adv Sean Abrahams, who was then a senior state advocate, was appointed to take the TRC matters over

from you; and this was the case until June of 2015 when Abrahams was appointed NDPP, as you allude to in paragraph 39. So while you were doing these foreign bribery cases and prior to Abrahams being appointed NDPP in June 2015, are you aware of any progress that was made in the TRC cases?

ADV MACADAM: Madam Chair, I am unaware, but, for example, on the Cradock Four matter I sent him an email saying that that matter has been outstanding since September 2012, pending Adv Jiba's decision. And as I said, he was across the road from me. He could
10 always come to me, but what would happen is that when he became the NDPP, Adv Bukau was appointed to now, to take over the TRC cases. Then she read the dockets to see what she had on her plate and that was showing in a lot of these cases major investigations outstanding. And she continued, I think, until December 2015 in that portfolio.

There was an impasse with the foreign bribery after Adv Abrahams took over that he said I have not been relieved of my duties. I must continue to report to the OECD, but then he allowed Adv Mrwebe to remove the dockets from me. So what I did is; I
20 started helping Adv Bukau, because she had no background to these and she was particularly struggling with the Neil Aggett matter where the inquest record was four and a half thousand pages, only available in batches electronically on the WITS.

So I started helping her there. I picked up the PEBCO 3 case had been... no, the Timol matter had been closed and then I

requested the police to investigate that; and I was assisting in identifying getting the detention files, tracing of who the suspects were, *et cetera*, until Dr Pretorius took everything away from.

ADV VARNEY: So you see, Adv Macadam, we need to assist the Commission to understand how it was that these cases never or most of them never saw the light of day; and certainly in the period 2003 to 2010, I think we have a pretty good idea that a combination of executive interventions that we have discussed previously and the fact that investigations were simply not happening at that time; that
10 certainly explains the lack of delivery through to 2010.

But post 2010 we now have SAPS, through the DPCI, on board and in theory at least, cases are being investigated, but we also see what might be called as, you know, missteps on the part of the NPA, including, for example, the shuffling of you, you know, from the TRC cases to corruption cases, back to TRC cases, to foreign bribery cases. So would you agree that that kind of chopping and changing really undermined the TRC cases and these could be described as missteps or strategic blunders on the part of the NPA?

ADV MACADAM: Madam Chair, we were dealing with a situation of
20 extreme capacity constraints. When Adv Ackermann retired, we were left with only four advocates, one of whom would have to act as the head of the unit. That means you take on a lot of responsibilities on the management of the NPA, less time to actually read dockets, go to court, make decisions.

And I know for a long time there was an externally imposed

moratorium on filling vacant posts and creating new posts for... I do not know if this was DPSA or another department, but it was something that was imposed on the NPA; and I know as a fact that that moratorium was only lifted shortly before I retired, because it was only, despite the fact that in January 2021 I had done all the memos to employ these retired prosecutors to work full time on these matters, the DPSA only approved in September 2019 and Adv Anton du Plessis, the Deputy National who negotiated permission, told me it was an uphill battle. It took him... he went through hell trying to get
10 those appointments for us.

When I was removed, it was to deal with serious emergencies. The block case was a company that through corruption had a monopoly on all the rentals for the province of Northern Cape. I worked on that matter during the investigation with the crack detective and PricewaterhouseCooper. The reason I was doing it was because the Northern Cape office had very small capacity and nobody with commercial experience, but then a commercial prosecutor at the level of deputy director was transferred to Kimberley. He took the case over.

20 It is a conviction against the MEC, the company director, 15 years' imprisonment for both of them and R70 million worth of assets forfeited to the state to go back to the companies that had been defrauded. So that was significant. The foreign bribery was no petty matter. South Africa had signed a convention to prevent the bribery of foreign government officials to get lucrative contracts. There is an

assessment carried out by the OECD. The ...[intervenes]

ADV VARNEY: Sorry, sorry, Mr Macadam. I hate to be rude, but we are approaching the end of the day and we do not contest that these foreign bribery and corruption cases were pressing and needed to be prioritised; so if I may ask you to return to the TRC cases, but you can accept, we do not dispute what you say about the urgency of all these other cases. You mention at paragraph 41 ...[intervenes]

ADV BHANA: If I may, the witness is dealing with what was put to him ...[intervenes]

10 CHAIRPERSON: Mr Bhana, if you may speak up a bit.

ADV BHANA: Thank you, Chair. The witness was dealing with a proposition that was put to him in relation to missteps and some sort of suggestion that there was something improper; and he should be given a chance to complete that answer as fully as he wants dealing with whatever he needs to deal with, whether Mr Varney wants to hear that or not.

CHAIRPERSON: Yes, Mr Varney, I will allow the witness to complete his evidence in that regard.

COMMISSIONER KGOMO: Switch off your microphone.

20 ADV MACADAM: Madam Chair, my involvement with these TRC cases stopped in 2014 when Mr Ketsana took me out of the whole PCLU, not just TRC cases, the whole PCLU, to do the foreign bribery. I can confirm from 2010 when Superintendent Bester tasked out the investigations up until that point, the police were investigating. I was engaging with them. I was giving them instructions how to

investigate.

There were cases where I could make decisions. Unfortunately, they were all decisions to decline to prosecute, but not... So work was being done. I accept it is not ideal. There were also capacity strains on the police. Often you are frustrated about the quality investigations, but you try to address that by, you know, giving guidance, fixing things. And again, if you look at the police start 2010 on matters that go back the 1980's, it is no easy matter to suddenly wave a wand and you have got all your evidence. So, the work was
10 done. Not to the best standard, but what we could do in the circumstances, both police and NPA.

CHAIRPERSON: Mr Varney?

ADV VARNEY: Thank you, Chairperson and thank you, Mr Macadam. That is helpful background. Chairperson, I see it has just gone 4 PM. Would this be an appropriate time to adjourn for the day?

CHAIRPERSON: I think so, taking into account that Adv Macadam is of matured years. I think this would be an appropriate time to adjourn until tomorrow at 10 o'clock.

20 ADV BHANA: Madam Chair, his energy and resilience I think surpasses most of the younger ones here.

CHAIRPERSON: Yes, thank you.

ADV MOROKA: Chair, if I may ask; what does matured age ...[intervenes]

COMMISSIONER KGOMO: Your microphones are off.

ADV MOROKA: I wanted to find out, Chair what matured age would signify, Chair.

COMMISSIONER GABRIEL: It means you still perform like a Duracell battery.

CHAIRPERSON: It signifies people of your age, Ms Moroka.

ADV BHANA: Thank you, Chair.

CHAIRPERSON: We are adjourned until tomorrow at 10.

INQUIRY ADJOURNS UNTIL 26 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:

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