

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

HELD AT:

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

BEFORE:

COMMISSIONERS:

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

EVIDENCE LEADERS:

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

REPRESENTATIVES

Adv Varney (SC) – The Calata Group
Adv D Pillay – The Calata Group
Mr Sipho Tlhaole – The Calata Group
Ms A Thakor – The Calata Group
Adv KD Moroka (SC) – DoJ representative
Adv Motlalepule Rantho (for SAPS)
Adv Anisa Kessery-DOJ Representative
Adv Yanela Ntloko- NPA representative
Adv Nwabisa Ntshizana (for Adv RC Macadam)

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PROCEEDINGS ON 10 SEPTEMBER 2026

CHAIRPERSON: Good morning to you all.

ADV SONI: Good morning Chairperson.

CHAIRPERSON: Yes, Mr Soni?

ADV SONI: Morning, Chairperson, Commissioner Kgomo, Commissioner Gabriel. Today we are going to be having the evidence of Ms Theresia Bezuidenhout, both for evidence-in-chief and cross-examination.

CHAIRPERSON: Yes, thank you.

10 ADV SONI: She will be led by Ms Rangata.

CHAIRPERSON: Good morning, Ms Bezuidenhout.

MS BEZUIDENHOUT: Good morning, Your Honour.

CHAIRPERSON: How are you?

MS BEZUIDENHOUT: I am fine and yourself?

CHAIRPERSON: Fine. Are you going to give your evidence under oath or affirmation?

MS BEZUIDENHOUT: Oath.

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

THERESIA BEZUIDENHOUT: duly sworn states

CHAIRPERSON: Thank you. Ms Rangata?

EXAMINATION BY MS RANGATA: Thank you Chair. Good morning, Chair and Commissioners. Good morning, Ms Bezuidenhout.

MS BEZUIDENHOUT: Good morning, Counsel.

MS RANGATA: Are you comfortable?

MS BEZUIDENHOUT: I am, thank you.

CHAIRPERSON: All right, my name is Ms Rangata. So we will start with your evidence. As I have explained, when we speak, you will look at me; and as you answer, you speak to the Chairperson and the Commissioners.

MS BEZUIDENHOUT: Will do.

MS RANGATA: Thank you. Thank you so much for coming this
10 morning to assist the Commission on the matters that are relevant for the terms of reference of this Commission. In response to the request by the Commission, you have provided the Commission with your first affidavit, which appears, Chairperson, on page, on this particular witness bundle, on page 2349. Are you there?

MS BEZUIDENHOUT: Yes, I am.

MS RANGATA: All right, and if you go to page 2352, there is a signature there. Do you confirm that is your signature?

MS BEZUIDENHOUT: Yes, that is my signature.

MS RANGATA: Thank you. So you confirm this is your affidavit and
20 the contents thereof are correct and true.

MS BEZUIDENHOUT: That is correct.

MS RANGATA: Thank you. You then deposed to a second affidavit, which is titled "Supplementary Affidavit by Theresia Bezuidenhout". Chairperson, it appears on page 2367 of this bundle. Can you see that? 2367 and it ends on page 2382. I just want to confirm if you

can confirm that is your affidavit and that is your signature there.

MS BEZUIDENHOUT: I confirm.

MS RANGATA: Thank you, all right. Chairperson?

CHAIRPERSON: Yes, just give us a moment, Ms Rangata. Yes.

MS RANGATA: Thank you, Chairperson. Chairperson, this witness has, as already recorded, has two statements or affidavits that she has deposed to. And I am going to very quickly go through the first affidavit, because it looks more like a duplicate of the second affidavit, which is more detailed.

10 Ms Bezuidenhout, in your affidavit, which appears on 2349, you deal with the reasons why you deposed to this affidavit and the request that was made to you by this Commission. And you also deal with your background, your professional background, which you deal with more in detail in the second affidavit. Is that correct?

MS BEZUIDENHOUT: That is correct.

MS RANGATA: All right. You further attached some correspondence, which appears on paragraph 7.2, 7.3 and 7.4 in this affidavit, which you deal with in detail in the second affidavit.

MS BEZUIDENHOUT: That is correct.

20 MS RANGATA: For easy, Chair, for ease of reference, if the Chair allows, I will then accept to deal with this affidavit in between, in particular the attachments that are in the first affidavit.

CHAIRPERSON: Yes.

MS RANGATA: Thank you, Chair. Ms Bezuidenhout, can you please tell the commissioners about your background, your

employment background and your professional background?

MS BEZUIDENHOUT: Yes, I can. I will limit it to the Department of Justice, if that is correct. I started my career in the Justice Department previously in 1983 until 85, when I was still doing my articles. I was then a judge's clerk at that stage. After receiving my degree, I went ahead with articles.

However, during the latter part of 1990, I was in a severe car accident and I could for several months not work. And it was during this time, in the beginning of 1991, that the previous judge I clerked
10 for asked me if I would come back. And I agreed to that, and that is when my long-term career in the Department of Justice then started.

I started as a judge's clerk until up and about 1993, whereafter I was then transferred to the Magistrate's Court Johannesburg as a prosecutor and I prosecuted in the children's court. During in the beginning of 1995, my SSA, senior state advocate, received a telegram, we used to get telegrams in those days, that I was going to be transferred back to Pretoria. I was then... I think it was with inception 1 April 1995. I was transferred
back to Pretoria head office to a directorate called Law Enforcement,
20 where I was a legal administration officer.

In 1998, I became the senior legal administration officer, and in 2000 I was promoted to the Director of Law Enforcement in that unit. I stayed in that unit up until the end of 2011, beginning of 2012, where I received a promotion to chief director, and I was then moved to the branch masters in the Office of the Chief Master. And there I

stayed until I left employ in April of 2024.

COMMISSIONER KGOMO: And who was the judge that you was a clerk for, the lucky judge?

MS BEZUIDENHOUT: Judge JJ Strijdom.

COMMISSIONER KGOMO: Oh, okay, okay.

MS BEZUIDENHOUT: He was in Pretoria, on the Pretoria bench.

COMMISSIONER KGOMO: Yes.

MS RANGATA: Thank you. Thank you for that, madam. We will then proceed. You have dealt with your employment background, and that you have addressed paragraph 9, 10, 11 and 12 of your affidavit. I would like you to talk more about your role in the position that you held in 2000 as the Director in Law Enforcement; what it entailed, and what were your responsibilities? And when you do that, I want you to also address paragraph 14 of your affidavit where you deal with the structure in that department. Can you do that?

MS BEZUIDENHOUT: Yes, I can.

MS RANGATA: Thank you.

MS BEZUIDENHOUT: The Directorate Law Enforcement was one of the directorates which fall in a chief directorate, which was called Legal Process. The name Directorate Law Enforcement is a bit confusing. It sounds as though we actually had to be with the SA Police Force, which we were not.

Very shortly, what the directorate did, law enforcement had two aspects. The one aspect was it dealt with all litigation matters on behalf of the Department of Justice and all its employees. That would

include judges, magistrates, at that stage also the NPA and then as well as all employees. It had a second leg, which was actually called loss control, which dealt with state liability matters, as well as what the litigation was dealt with under the State Liability Act. However, the loss control would deal with fruitless, wasteful and irregular expenditure of its employees in the Department of Justice. So those were the two legs which the Directorate Law Enforcement dealt with. The biggest bulk of the work was the litigation part.

Early in those years, we had many matters coming. We just
10 had a new constitution and we had many, many, many matters coming regarding challenges in terms of the new constitution and then of course there was the liability part as well. Many of the matters we dealt with were also on behalf of the NPA in respect of malicious prosecutions. So that was what law enforcement did.

Later on, the unit was also tasked to deal with commissions. We dealt with, for instance, on behalf of the Department of Sport. We dealt with the Hansie Cronje Commission, which was the Cricket Commission. Before that, we dealt with the Ellis Park Commission, which dealt with the tragedy at Ellis Park where several members of
20 the public unfortunately passed away after a stampede. Those are the two major commissions I can recall at this stage.

And then during that time as well, we were also asked to assist the TRC regarding certain secretarial functions for the Amnesty Commissions and the TRC as well. Although they had their own support staff, we were mere in an advisory capacity at that stage.

The structure, how it worked at that stage, the department was headed by the minister. Below the minister was the deputy minister.

MS RANGATA: Just to interject, when you mention the position, would you also state who was the minister at the time?

MS BEZUIDENHOUT: I will...

MS RANGATA: Try.

MS BEZUIDENHOUT: Try my best to recall.

MS RANGATA: Thank you.

MS BEZUIDENHOUT: But during 2000, the minister, I think it was
10 Dullah Omar at that stage, but the structure stayed the same. Of course, the ministers changed and the deputy ministers and the director-generals and so forth changed. But in 2000, if memory serves me correctly, it was Dullah Omar and then thereafter Minister Mabandla.

COMMISSIONER KGOMO: No, it was Minister Penuell Maduna.

MS BEZUIDENHOUT: Penuell Maduna, quite correct. Sorry, I forgot.

MS RANGATA: Thank you, Commissioner, yes.

MS BEZUIDENHOUT: Yes, thank you, Commissioner. You are
20 quite correct. It was Penuell Maduna and then came Minister Mabandla. But the structure for the department during those years, which is actually still the structure today, is that it was the minister and then below the minister the deputy minister, the director-general, who dealt with the administration of the department and was also the accounting officer of the department would report directly to the

minister and the deputy minister.

Then below the director-general, depending on the branches, we called them branches. You would have your human resources branch. The state attorneys were a branch at that stage, if I can recall. There was legislation and constitutional development. There was the master's branch. So there were different branches and these branches were headed by deputy director-generals, and they reported directly to the director-general. Each branch had the same structure, but the naming of the incumbents of the posts would differ, depending in which branch you fell.

So, for instance, if you were legal, you would have in all probability be a legal administration officer or a state law advisor, or if you were in human resources, you would be a human resources practitioner, or whatever the case might be. But below reporting to the DDGs, you would get a chief director. There could be one or more chief directors in a specific branch. Below chief director, you would get directors; and then below the directors, you would get deputy directors, and then the rest of the staff incumbents would follow.

20 MS RANGATA: Thank you.

MS BEZUIDENHOUT: And as I say, they had different, there were different levels and they had different namings, depending in the branch you were.

MS RANGATA: All right, thank you for that. Can you just confirm; who was the DG, the director-general, at the time?

MS BEZUIDENHOUT: At that stage, it was Mr Vusi Pikoli.

MS RANGATA: Thank you very much. We will now move, and I will just read into the record, just for context, paragraph 7, Chair of the second affidavit. It says:

“It seems that the aspect which affects my role is what has become to be known of the PEBCO 3 matter, and my role in connection with that matter.”

Chair, that is the main reason why this witness is here, to speak to
10 this matter, her involvement, her role as to the litigation of this matter, which was under review in her department. Ms Bezuidenhout, you deal with this matter in detail in paragraph 17 of your affidavit. I want you to take your time and highlight the background to this matter.

MS BEZUIDENHOUT: All right. As stated previously, we were not actively involved in the amnesty hearings, although at a later stage, 1999, 2000, after the work of the TRC had concluded, litigation did happen. And what I know about the PEBCO 3 is not because I was involved with the Amnesty Hearing Commission, but what came about with the litigation that followed at that stage. Of course, we all
20 knew what the TRC was about and was followed very closely in the department, as well as news outlets and so forth.

But what I can recall of the PEBCO 3, there were certain members of the police force, I think eight or nine, offhand I cannot recall all their names, who abducted members of an organisation in Port Elizabeth, who then became known as the PEBCO 3. And if I

can recall out of, I know it was Mr Hashe ...[intervenes]

MS RANGATA: You can refer to your affidavit. You can go to paragraph 20.

MS BEZUIDENHOUT: Yes. Thank you. So it was of the Port Elizabeth Black Civic Organisation, Mr Siphon Hashe, Champion Galela and then Mr Godolosi. I unfortunately cannot pronounce his first name. They were abducted and murdered by these policemen. I am not sure if these policemen were attached to, to what unit they were attached to.

10 And when the TRC came about, these security policemen then applied for amnesty in respect of their role regarding the PEBCO 3. There were nine policemen, but I know eight in the matter I was involved with, there were eight members which had one hearing; and one of the members, I think it was a Venter, I am not sure, he had a separate hearing. Why that was so, I cannot comment on and I do not know.

 What I also know, during the scope of 1999, amnesty was refused to most of the security police in the PEBCO 3 matter, except Snyman and I think Mr Mogoai, if I pronounce it correctly.

20 MS RANGATA: Yes.

MS BEZUIDENHOUT: They received amnesty.

MS RANGATA: Feel free to read into your affidavit, maybe just for you to be comfortable. You can read paragraph 21.

MS BEZUIDENHOUT: Yes, so as I said; oh, so it was Nieuwoudt, du Plessis, van Zyl, Lotz, Beeslaar, Koole, Snyman and Mogoai were the

people that applied for amnesty, and then Snyman and Mogoai did receive amnesty, while the rest did not receive amnesty. And it was, this is how I came to know about the facts surrounding the PEBCO 3.

MS RANGATA: Thank you. And how does this matter end up in your office?

MS BEZUIDENHOUT: It was during August of 2008. The applicants lodged a review application against the finding of the Amnesty Committee at that stage, refusing them TRC and they launched a review application to take that decision on review.

10 MS RANGATA: Let us just check the date of the review application. Chair, the application appears in the evidence leaders' bundle on page 3 of that bundle; and on page 7 you will see when that application, the date of that application of the notice of motion.

MS BEZUIDENHOUT: Yes, that is correct. You will note that it was served, if I look at the stamp on the notice of motion, it was served on the department on 24 August 2004.

MS RANGATA: Yes.

MS BEZUIDENHOUT: If you, however, look in the top right corner, there is a handwritten note. It seems to be cut off a bit, but it says
20 DRB14/9/04. So it was referred to me on 14 September 2004 by my then chief director.

MS RANGATA: Yes. And in terms of that notice of motion, you are requested to file the record in terms of the normal rules of court within 15 days.

MS BEZUIDENHOUT: I think at that stage it was 15 days, yes.

MS RANGATA: Yes. Do you want to explain to this Commission how then did you handle this matter after your receipt of the application?

MS BEZUIDENHOUT: Just in short, we dealt with all the matters as in the ...[intervenes]

MS RANGATA: Sorry, just to assist you, you can look at paragraph 28 of your affidavit.

MS BEZUIDENHOUT: All right, thank you. We dealt with the review applications as we did with any other matter. An application would be
10 served on either... never our directorate that I can recall; either on the State Attorney or the director-general's office or the minister's office, whereafter it would then be sent down the line and that would explain the month delay from service until it reached my office. It would come down the line to my office and we would then deal with it as what we would with in any other matter.

What we usually would do is; I had a team of people working under me and I would refer it to one of the incumbents as well, but in this case, because it was a TRC matter which is fairly new in our directorate, I assisted, you know, being the responsible person at that
20 stage in that directorate, I would assist the incumbent. We went through the documentation to au fait ourselves with the ...[intervenes]

CHAIRPERSON: Ms Bezuidenhout, which...? Just read paragraph 28.

MS BEZUIDENHOUT: Of my...

CHAIRPERSON: Of your affidavit.

MS BEZUIDENHOUT: All right.

10 “As is the case with any review application, the record must be prepared. That was part of my function. The preparation of the record would involve a lot of work and expenses and it was necessary that the matter be approached carefully. As a department, we had been informed by the leadership in the department that we needed to use financial resources sparingly due to bilateral constraints. We would have to carefully consider the facts before making a recommendation in the matter. We were therefore cautioned not to incur costs and expenses if these can be avoided. Compiling a record is always challenging and it can be costly.”

MS RANGATA: Thank you.

COMMISSIONER GABRIEL: Ms Bezuidenhout, what are bilateral constraints?

20 MS BEZUIDENHOUT: Across the board in the department, there were many... because there were so many branches and each had to get a chunk of the... ja.

MS RANGATA: Do you want to maybe take advantage of that question, deal with those challenges in this specific matter that you encountered at the time of having to prepare the record? What were the issues that you had to deal with?

MS BEZUIDENHOUT: The first issue that came about was to find the record because... especially my unit never had control of the record. So that was the first obstacle we had challenges with, is to obtain the record. And if memory serves me correctly, I think we had discussions with the State Attorney and together we had discussions with... I am trying to recall the gentleman's name, but it might be Martin Coetzee. I cannot recall, but we had discussions with the TRC to find out where are these records? We are talking about ...[intervenes]

10 MS RANGATA: Sorry, madam, just to interrupt you. When you say record, what exactly? Was that the TRC records?

MS BEZUIDENHOUT: Yes, the TRC record, because it would have formed part of the record going to the high court in this review application.

MS RANGATA: Thank you.

MS BEZUIDENHOUT: So we needed to find the record of the TRC hearing.

COMMISSIONER GABRIEL: And I think you deal with that in paragraph 29.

20 COMMISSIONER KGOMO: Yes.

MS BEZUIDENHOUT: Yes.

COMMISSIONER GABRIEL: Can you read that into the record?

MS BEZUIDENHOUT:

“Compiling the record in this matter was particularly difficult as the TRC had already

closed its operations and the records were with National Archives. It was difficult to trace and find all records in order to compile a proper review record. At no stage was the record under my control.”

COMMISSIONER GABRIEL: Maybe you want to read paragraph 30?

MS BEZUIDENHOUT:

10 “During my interactions with the officials of the NPA and some within the department, I had come to learn that there were guidelines which were in the process of being gazetted by the Minister of Justice to deal with outstanding matters of persons that needed to be prosecuted as a result of the application for amnesty being refused. I had not seen the guidelines, but I understood that even those who had been refused amnesty could potentially benefit from the guidelines. Although I did not have all the information regarding the

20 guidelines, it was my understanding that if the accused could apply to be treated in terms of the guidelines, the review could potentially be withdrawn, in which event there would be no need to go ahead with the review and incur the costs.”

CHAIRPERSON: Ms Bezuidenhout, since you had not seen the

guidelines, what informed your understanding that even those who had been refused amnesty could potentially benefit from the guidelines?

MS BEZUIDENHOUT: I can recall we had many discussions with the NPA and the State Attorney dealing with that aspect at that stage; and as far as my recollection goes, there were certain guidelines that had to be made applicable to persons and they might not... they could either settle or come to some sort of plea agreement, and those were just of the talkings in the corridors regarding the guidelines. So the
10 knowledge I have about the guidelines came about with discussions with the NPA as well as the State Attorney's office.

CHAIRPERSON: So these were corridor talks?

MS BEZUIDENHOUT: Yes, many of them were.

CHAIRPERSON: As it were?

MS BEZUIDENHOUT: I beg your pardon?

CHAIRPERSON: These were corridor talks as it were?

MS BEZUIDENHOUT: Yes, yes. I had not seen the guidelines. I was not involved in any fashion with the guidelines.

CHAIRPERSON: Yes.

20 MS BEZUIDENHOUT: But of course, we took guidance from the State Attorney as our attorneys of record as well, and there were different people in the State Attorneys that were having high-level discussions regarding this.

COMMISSIONER GABRIEL: So is that what informed your view, if you look at the last two sentences of paragraph 30? You talk about...

you understood from this corridor talk that if treated in terms of the guidelines, the review could potentially be withdrawn, which in turn would save costs.

MS BEZUIDENHOUT: Yes, absolutely.

COMMISSIONER GABRIEL: And that was your view?

MS BEZUIDENHOUT: That was my view, and also taking into account reading the statements attached to the notice of motion that came in; and that specifically spoke about discussions going on, high-level discussions, trying to settle the matters and so forth. That came
10 out of the founding affidavit; and as my unit, we read through all those documents to enable to inform our principals about our recommendations to them.

COMMISSIONER GABRIEL: Thank you.

MS RANGATA: Just to interject, Commissioner; when you speak about the application and the discussions that were there, I just want to take Commissioners to the evidence leaders' bundle, and I want to take us to the beginning of that affidavit. It is the founding affidavit of Mr Wagener, which appears on page 8. And I would like you, Ms Bezuidenhout to... My Afrikaans is very bad, so I am not going to try
20 and embarrass myself. I want you to identify in this affidavit a paragraph that deals with those, that suggests those discussions that were held between the NPA and Mr Wagener, who was representing some of the accused.

MS BEZUIDENHOUT: I will, if you can just give me a moment.

COMMISSIONER KGOMO: And if you need to read, you could. If

you are at a particular page and you feel that you should read, you should not be shy to read.

MS BEZUIDENHOUT: Thank you.

COMMISSIONER KGOMO: As you are guided by counsel.

MS BEZUIDENHOUT: Thank you so much.

ADV MOROKA: We take it, Chair, the Honourable Commissioner, who is very conversant with Afrikaans, will then be able to help.

CHAIRPERSON: Yes.

COMMISSIONER GABRIEL: Which paragraphs are you referring
10 to?

MS RANGATA: Paragraph 23. Are you on paragraph 23?

MS BEZUIDENHOUT: Yes, I am. I am just making sure that I do not miss anything.

MS RANGATA: Okay.

MS BEZUIDENHOUT: Yes, on page 27, paragraph 23, in particular paragraph 23.2 Mr Wagener says the following. Shall I read it in Afrikaans or just translate what he says?

CHAIRPERSON: Translate it, please, Ms Bezuidenhout.

MS BEZUIDENHOUT: All right.

20 MS RANGATA: Thank you, Chair.

MS BEZUIDENHOUT: The 23.1, he merely says that during June 2003, he was made aware that the NPA were considering instituting certain criminal charges regarding matters that came from out the TRC. Paragraph 23.2, he refers to a discussion he had with Advs Ackermann, Pretorius and Macadam regarding what the status of the

charges were and, I presume, what was going to happen with them.

And then paragraph 23.3, which for me is very important, he says that his clients were hoping that this matter could be settled. That is the first two lines of paragraph 23.3 where he is trying to discuss with them settlement of this matter. And then he carries on in 23.4 where he refers to settlement discussions on high political level, where he and his clients were involved with; and then he refers to Mr Minnaar.

Now, that is Mr Ben Minnaar. He was attached also to the
10 State Attorney in Pretoria and he specifically was the state attorney who dealt with ex-policemen or policemen and security police, their involvement in the TRC hearings. The state attorney who dealt with our matters at that stage was Mr Sybrand Botes. So, what he says there; he had discussions with Mr Minnaar and they were talking about whether a review application should be brought or not be brought.

Then he carries on in 23.5, where he discusses, he has further discussions with Adv Ackermann during the course of 2003. He also talks to Ackermann in paragraph 23.6 about the PEBCO 3
20 matter where they are trying to settle the matter, but Ackermann purportedly says he cannot wait, he will have to at some stage institute criminal proceedings. And then 23.7, it is a continuation of discussions he has with Adv Ackermann regarding the criminal prosecutions of people which were his clients at that stage. So that ...[intervenes]

COMMISSIONER GABRIEL: Can I ask you to deal with what is said in 23.5?

MS BEZUIDENHOUT: Beg your pardon?

COMMISSIONER GABRIEL: In 23.5.

MS BEZUIDENHOUT: Yes.

COMMISSIONER GABRIEL: Can you translate that for us; “*tydens die gesprek*”.

MS BEZUIDENHOUT: Ja. He says:

“*In hierdie verband...*”

10 23.5

“*...gesprekke gevoer met Ackermann.*”

So he refers to his discussions he had on 22 September 2003 and 20 November 2003. “*Tydens die gesprek*”, then he refers to the discussion on 22 September 2003 with Adv Ackermann. Ackermann showed... I am trying to think the correct English for “*begrip*”. He understood that there might be a political agreement and settlement that might come about and that he was going to hold back instituting criminal charges until such time that such a political settlement might come about or not come about.

20 MS RANGATA: Thank you. You also, in your evidence, said that you had corridor discussions, but also there were discussions that you held with the NPA that also enlightened you to the existence of the guidelines. Do you recall who you might have spoken to in the NPA?

COMMISSIONER KGOMO: Before you carry on, Afrikaans is my

second language.

MS RANGATA: I know.

COMMISSIONER KGOMO: I spoke it from the time I was a kid. My mother is Afrikaans speaking. Mr Soni, I would suggest that... I think the witness has done very well, but it would be better to have a translation of this. I do not think it should be difficult.

ADV SONI: As you please, Commissioner.

COMMISSIONER KGOMO: Yes, thank you. Thank you, Ms Bezuidenhout.

10 MS BEZUIDENHOUT: Thank you.

CHAIRPERSON: Yes, Ms Rangata?

MS RANGATA: Thank you, Commissioner. I think I will take that responsibility, Commissioner, because I am responsible for this witness. We will make sure. I just also want to put it on record that the Commission is in the process of obtaining the full affidavit. The commissioners will realise that there are annexures that have been referred to in the affidavit, which we do not have. So we are in discussion with the department to obtain the full affidavit together with the annexures. At the end, we will then attend to what Commissioner

20 Kgomo has indicated.

CHAIRPERSON: Okay.

COMMISSIONER GABRIEL: Ms Rangata, my Afrikaans is rusty, but I wonder if we could ask the witness again to deal with what is in paragraph 23.7.

MS RANGATA: Thank you, Commissioner.

MS BEZUIDENHOUT: In paragraph 23.7 he says:

“Tydens laasgenoemde gesprek...”

So that means; he refers to the discussions he had with Adv Ackermann in the previous paragraph on 20 November 2003. Ackermann had told him that he would give him time until the end of that year, which then would be 2003, to see if there is going to be a political settlement regarding these matters. But however, that early in 2004, he would have no option than to proceed with criminal prosecutions if there was no political settlement in this matter.

10 COMMISSIONER GABRIEL: And so that is how the review came to be referred to you on 14 September 2004?

MS BEZUIDENHOUT: Yes, because if memory serves me correct, I think during February of 2004, I think Nieuwoudt might have been the first person which was charged, and then later on van Zyl, and I cannot recall who the rest was then.

COMMISSIONER GABRIEL: That is fine. Thank you. I just wanted to confirm that.

MS BEZUIDENHOUT: But during that, yes.

COMMISSIONER GABRIEL: Thank you.

20 MS BEZUIDENHOUT: And then in August, the review application came about.

COMMISSIONER GABRIEL: Thank you.

MS RANGATA: Thank you.

COMMISSIONER GABRIEL: Sorry for the interruption.

MS RANGATA: No, it is necessary. Thank you so much. Ms

Bezuidenhout, before you were asked further clarification on this affidavit, you were going to tell the commissioners, if you remember, who you spoke to within the NPA about the existence of the guidelines.

MS BEZUIDENHOUT: Yes, as I have said, once this review came to us, we knew there were several people we needed to talk to, and at that stage Mr Pikoli was still the DG with us, and we had discussions, if I can recall, with Mr Ackermann. I cannot recall at that stage if Mr Chris Macadam was there already, but I do know that we had
10 discussions with Mr Ackermann, because his name is mentioned in this founding affidavit on so many occasions, and I cannot really recall.

It is between 18 and 22 years ago, but I think that might then came about that the discussion went in the line of these high-level talks. There might be a settlement. I can recall out of news reports during that time, in the beginning there was no talk of criminal prosecutions. That came about at a later stage, and then the talks became how these criminal prosecutions are going to be dealt with. And Mr Ackermann, in all probability, was the one who also then
20 highlighted me to the fact that they are busy with these talks and that there would be guidelines in respect of how and which persons will be prosecuted or not.

MS RANGATA: All right. Chairperson and Commissioners, I think this is appropriate time to deal with the letter that appears on page 2353 of the witness first affidavit. It is a letter from the Department of

Justice. It is dated 19 October 2005 and it is addressed to the National Director of Public Prosecutions, and the subject line is "Criminal Matter in Respect of the PEBCO 3". I am going to request you, Ms Bezuidenhout, to read the entire letter into record. It is a letter authored. It says "from Tessie Bezuidenhout". Again it comes there under the signature of the Office of the Director-General of the Department of Justice.

MS BEZUIDENHOUT: Yes. This letter, as stated, is dated 19 October. You will see reference 9/13/3 PEBCO, DRB. That was my
10 designation at that stage, DRB. "Enquiries: Ms N Matima." She was one of the officials who assisted me. Her designation was RN1, if I can recall, and we wrote to the National Director of Public Prosecutions. And remember, it is now a year after, well, maybe 10 months after we received the review application.

MS RANGATA: Yes.

MS BEZUIDENHOUT:

"Attention: Adv Vusi Pikoli. Re: Criminal Matter in
Respect of the PEBCO 3.

1. As you may well be aware, the accused in the
20 above criminal trial (CG Nieuwoudt, HB du Plessis, J van Zyl and GJ Lotz) were refused amnesty by the then Amnesty Committee of the TRC.

Subsequent thereto, they were charged with murder and the matter has been postponed to

15 December 2005, pending a review application lodged by the accused.

The review application is a review of the Amnesty Committee refusing the application for amnesty.

I am in the process of preparing the record of the proceedings. This has become a major task, as the documents need to obtain from the archives.

10

In the meantime I have been informed that the minister has, or is in the process of gazetting guidelines to deal with outstanding matters of persons that need to be prosecuted as a result of their application for amnesty being refused.

20

Although the accused have been charged before these guidelines came into being, I am of the view that to save time and money, the criminal charges should be withdrawn, and the guidelines should first be applied to the accused, as will be the case with any other matter. If the guidelines are applied and it is found that the accused should be prosecuted, so be it. If it is, however, found that the guidelines indicate that they should in fact not

be prosecuted, it will be the end of the matter.

The preparing of the record for the review application will be at a cost of approximately R15 000.

I therefore request your consideration not to proceed with the criminal matter until such time as the guidelines have been finalised and applied to the matter of the accused.

Your comments and reply are awaited,
please.”

10

And then it is signed by myself on behalf of the director-general.

COMMISSIONER GABRIEL: So at this time, you have more knowledge about the guidelines?

MS BEZUIDENHOUT: Yes, Commissioner. At that stage, we had already done two memorandums to our principals regarding this matter, of course giving them our recommendation and then awaiting any feedback from them in this regard.

COMMISSIONER GABRIEL: On the guidelines?

20

MS BEZUIDENHOUT: Not specifically on the guidelines, just on the review application which we received.

COMMISSIONER GABRIEL: Okay, so my question was; at this stage, which is a year later, you appear to have more knowledge of the guidelines.

MS BEZUIDENHOUT: That is correct.

COMMISSIONER GABRIEL: Had you seen a draft of the

guidelines?

MS BEZUIDENHOUT: No, I have actually never seen a draft of the guidelines in those years. At a later stage, I have seen the guidelines, I think closer to when I received documents in this matter.

COMMISSIONER GABRIEL: Yet you nevertheless recommended or wrote to the NDPP, saying: wait until the guidelines are applied.

MS BEZUIDENHOUT: Yes, my assumption is, and as I say, I cannot recall all the discussions that we had and taking into account all the knowledge we had, that if one... in terms of the political discussions
10 going on, talking of settlement of the matters and taking into account what the guidelines might or might say, that the matter might be settled between the parties.

COMMISSIONER GABRIEL: But it is more than that. You made a recommendation.

MS BEZUIDENHOUT: Yes. You know, being in that unit for quite some time and being a prosecutor, in my mind, I knew we had difficulties with the record and it might take a long time. And I also knew that, as a prosecutor, you can only so many times postpone a matter and it might, you know, lead to difficulties. So it was a mere
20 suggestion on my side, a recommendation, but of course neither the NDPP nor the NPA are bound by anything I have to say, because that is not my function. It was mere out of looking at the difficulties with the litigation in respect of the review that that recommendation was made.

CHAIRPERSON: But Ms Bezuidenhout, you were making a

recommendation that criminal charges should be withdrawn on the basis of the guidelines that you had not had sight of?

MS BEZUIDENHOUT: Yes, I had not had sight, but I was in all probability given knowledge of what the guidelines had said and with the discussions of the State Attorney as well.

CHAIRPERSON: I mean, who had given you knowledge of what the guidelines contained?

MS BEZUIDENHOUT: At that stage, it would have been Anton Ackermann, Ben Minnaar, Sybrand Botes and I had discussions with
10 the deputy minister at the time as well, which was Adv Johnny de Lange.

CHAIRPERSON: And you were quite confident to make this recommendation on the basis of a document that you had not had sight of?

MS BEZUIDENHOUT: I would not say I was confident. I was ...[intervenes]

CHAIRPERSON: Then why make a recommendation if you are not confident?

MS BEZUIDENHOUT: I merely took into account the difficulties we
20 were having with the review application.

MS RANGATA: Thank you, Chair. Ms Bezuidenhout, I want you to assist the Commission and I want you to deal, because when you read paragraph 5 of your letter, you talk in the first person.

MS BEZUIDENHOUT: Yes.

MS RANGATA: But when you look at the end of your letter, the

letter is authored under the DG. I want us to understand the process. When you write a letter of this nature, you must recall that it is a serious request that you are making to the NDPP.

MS BEZUIDENHOUT: Yes.

MS RANGATA: You are requesting the withdrawal of charges, and you have got your own reasons, which are cost-based and other reasons. But when you take that decision, is it a personal decision, or is this a decision that would have been discussed in the department? Maybe just to clarify, who was the DG at that time in
10 2005?

MS BEZUIDENHOUT: Menzi Simelane.

MS RANGATA: Did you discuss this letter with Adv Simelane?

MS BEZUIDENHOUT: Yes, we discussed all our litigation matters with our principals. This is not a decision I would have taken on my own. I have no authority to take that decision. It would have been on the memorandums we had written to our principals and discussions which have been taking place; and upon, after discussions, probability was that I was given the instruction to go ahead and write this letter to the NDPP. This is not something that I can do out of my
20 own accord. I am not on that rank to be able to do that, and it would have definitely been after discussions with principals in the Department of Justice.

MS RANGATA: Are you then saying that when we read this paragraph where you say:

“I am of the view that to save time and money,

the criminal charges should be withdrawn and the guidelines should first be applied to the accused, as will be the case with any other matter.”

Are you saying we should then read this not to be your personal view; and whose view should we read it to be?

MS BEZUIDENHOUT: Well, absolutely. It was the view of the department at that stage, and that is why the letter is also signed under the name of the director-general.

10 MS RANGATA: Is it a norm when you write the letter from the department and you write it in the ‘I’, is that the norm, because I also read in paragraphs 8:

“I therefore request that your consideration not to proceed with the criminal matter until such time as the guidelines have been finalised and applied to the matter of the accused.”

MS BEZUIDENHOUT: Yes, it was the norm at that stage that we write the person dealing with a specific matter. We write in the first person. That was the norm and that it is signed off as written by the director-general of the discussions with him.

20 MS RANGATA: Thank you. I just want to, before I pass this point, just to remind you of the critical mandate of this Commission to investigate any attempts to stop or to delay the investigation or prosecution of the TRC cases. And if one reads this letter, one might, just looking at it, at a glance, might say that this might qualify as one of those attempts. And what would be your response? How would

you respond to that?

MS BEZUIDENHOUT: That was definitely not my attempt. I had no authority to be able to stop any prosecutions. I had no say in any decisions regarding prosecutions. There were many discussions in this matter, and I would have dealt with in respect of what was told to me by my superiors at that stage. I had no interest in these matters.

And I clearly say, in my letter I say if the guidelines are applied and they must be prosecuted, so be it. And I will not divulge my personal thinking about that, but that was the gist of my matter.

10 What must happen must happen, but if it could save cost, should we proceed or should we not proceed? And I can emphatically state that I would have not written this letter if it was not after discussions with our principals at that stage.

COMMISSIONER GABRIEL: And who were your principals at that stage?

MS BEZUIDENHOUT: Well, previously it was first Vusi Pikoli, and then thereafter Mr Menzi Simelane, Lindi Vilakazi and Neville... no, he came later on; and then of course the minister, Minister Mabandla and the Deputy Minister, Mr Johnny de Lange.

20 COMMISSIONER GABRIEL: Did you have discussions with each of them?

MS BEZUIDENHOUT: I cannot recall that I had discussions with Minister Mabandla, but definitely with Mr de Lange. We had many discussions with Minister de Lange. He commented on one... well, Minister Mabandla commented on one of our memorandums that he

must have discussions with me.

COMMISSIONER GABRIEL: Ms Rangata, do we have those memoranda?

MS RANGATA: Yes, Commissioner. We can... I can refer the commissioners to the evidence leaders' bundle. The memorandum that the witness is referring to is on page 75 of the evidence leaders' bundle. It is a memorandum prepared by the witness, Ms Bezuidenhout. It is dated 29 October 2004 and the memorandum... The purpose of the memorandum is to obtain approval to oppose the
10 above-mentioned application and to appoint counsel for this purpose, which is the review application. And in particular, I can ask the witness to read paragraph 3.4, 3.5, 3.6 and 3.7 and then I will direct her after that. Thank you, Commissioner. You are there, page 70...?

MS BEZUIDENHOUT: Yes, I am here.

MS RANGATA: 77.

MS BEZUIDENHOUT: Yes, as stated, this memorandum is dated 29 October 2004. So it is a month after I received the review application, and this is how we dealt with all litigation matters in the department. So paragraph 3.5 starts with:

20 "During 2000 ...[intervenes]

MS RANGATA: You can start on 3.4.

MS BEZUIDENHOUT: Oh, sorry, 3.4. We are just giving a background now.

"The Truth and Reconciliation Commission under
chairmanship of Honourable Archbishop

Desmond Tutu was a legal entity as stated in the TRC Act and therefore made decisions without consulting Cabinet or the then Minister of Justice.

10 3.5 During 2000 to 2001, Cabinet took a decision that although legal aid was granted to ex-policemen and ex-Defence Force members to lodge amnesty applications, this legal aid will not be extended to lodge review applications against decisions made by the various subcommittees on amnesty. After various discussions between the Chairperson of the TRC, the State Attorney's office and the then Minister of Justice, a decision was taken that to save money and pending the outcome, whether persons will be prosecuted for their actions, review applications would not be lodged. If and only when persons to whom amnesty were refused were charged and prosecuted, then
20 only will the review applications be lodged if the applicant still wished to do so.

3.6 As a result of the above decision and the fact that the applicant's criminal prosecution for the killing of the PEBCO 3 is to start on 12 October 2004, the review application is

now lodged.

3.7 We respectfully argue that the minister is bound by this decision taken by the TRC together with her predecessor and we should therefore not argue the time delay in this regard. It should be noted that prosecution has in any event only been instituted five years after the refusal to grant amnesty to the applicants.”

10 MS RANGATA: Thank you. You can read 4.8 into the record.

MS BEZUIDENHOUT:

“4.8 We support the above as it is costly for the department to set up a subcommittee and furthermore the South African Police Service will once again have to pay for the legal representation of the applicants.”

MS RANGATA: Thank you. Just to take one step back; on page 77 there is handwritten notes there on the right side of paragraph 3.5.

MS BEZUIDENHOUT: Yes.

20 MS RANGATA: Can you recognise, can you read what is written there?

MS BEZUIDENHOUT: Yes, this is a note by Mr Pikoli.

“This is inconsistent with the Cabinet decision.”

MS RANGATA: And what did you understand this to say with regard to paragraph 3.5?

MS BEZUIDENHOUT: That there were discussions regarding the legal aid afforded to the applicants and whether it would proceed or not. And those are the discussions which we had with the State Attorney at the stage, but Mr Pikoli was of a view that this was inconsistent.

MS RANGATA: Right. You make a recommendation there for the appointment of counsel in page 80, paragraph 5. I want you to read into the record the notes that appears under the Director-General for the Department of Justice. It says paragraph 5 approved and then
10 recommended there. Can you read that?

MS BEZUIDENHOUT: All right. I just want to go to the recommendation and I want to state that, as I have said on many times, we merely make recommendations. We cannot approve anything. We cannot make any decisions. We merely make recommendations. Then Vusi Pikoli, who was the Director-General ...[intervenes]

COMMISSIONER GABRIEL: But you recommended that the application be opposed.

MS BEZUIDENHOUT: Yes, we did.

20 MS RANGATA: Thank you, you can proceed.

MS BEZUIDENHOUT: Mr Pikoli, he received the memorandum or he signed the memorandum on 4 November 2004 and he says:

“Recommended accordingly, except I leave the matter of counsel to the minister and express no views on its...”

MS RANGATA: On it.

MS BEZUIDENHOUT: On it. Then:

“Subject to me strongly disagreeing with
paragraph 4.8.”

MS RANGATA: As it is.

MS BEZUIDENHOUT: Ja.

“...as it is inconsistent with the TRC Act. I also
have problems with Clause 3.7, because the
decision Tessie says we are bound to is
10 inconsistent with the Cabinet decision in this
regard. I am...”

COMMISSIONER GABRIEL: Available.

MS BEZUIDENHOUT: Sorry, yes.

“I am available to discuss this matter if you so
wish, Minister.”

And then on 8/11 the deputy minister signs and then it goes to the
minister, Minister Mabandla.

COMMISSIONER GABRIEL: So the Deputy Minister approved?

MS BEZUIDENHOUT: He seemed to have approved. I am not sure
20 whose handwriting this is, but in any event, under the name of
Minister Mabandla, it says:

“Let us have a discussion with the Deputy
Minister, myself and DG.”

So I presume that was Minister Mabandla asking for a discussion.
And then the minister writes “Deputy Minister”. I think it is the

minister's handwriting.

“Deputy Minister, discuss with Tessie
Bezuidenhout.”

MS RANGATA: And then what is your understanding of these handwritten notes, firstly by the DG on paragraph 4.8. You have already dealt with paragraph 3.7; and as the Commissioner had asked, if this matter was discussed with the deputy minister, if that indeed happened.

MS BEZUIDENHOUT: Yes, as I stated, I had many discussions with
10 Minister de Lange. He took charge of many of the litigation matters as well. So we had discussions and whatever the discussions were, would have been reflected in any letters that I would have written. As I state, I cannot make decisions on my own. I cannot even make a decision to oppose or not oppose. That is something that must be... I can just recommend. If the memorandum would have come back and said we are not opposing, then so be it. Then my unit would not proceed further. So we definitely did have discussions with Minister de Lange.

Just to then elaborate on 4.8. If I can recall, there was a
20 prayer in the notice of motion, which suggested that the court hearing the review application should sit as an Amnesty Committee as well and make a decision based on the evidence placed before it; and that was which Mr Pikoli also disagreed with. He said the court cannot sit as an Amnesty Committee. So he did not agree with that.

And then of course 3.7, which I had already dealt with

regarding information that came to us from the State Attorney on discussions which were held. We were not privy to those discussions. So I merely took on face value what the State Attorneys, we were being told by the State Attorney. But Mr Pikoli, who I presume would have been in the cabinet decisions, I am not sure, was of the view that it was not consistent.

MS RANGATA: Thank you. Just to invite your view; if you do not know, you do not know. Was this discussion not supposed to take place between the DG and the minister or the deputy minister? Why
10 was it supposed to be you as a director?

MS BEZUIDENHOUT: I do not actually know if I want to. I will talk about the run-of-the-mill matters. I do not actually want to give my view regarding Mr Pikoli and Minister Mabandla. But the usual course would be, as stated, that if there were discussions to be held, it would be held between the minister, the deputy minister and the DG. We would not be part of that. And then whatever the outcome was would be relayed to us and we would implement what the outcome of the discussions or the decisions that were made at any discussions be.

20 It was strange to me that on this memorandum, in hindsight, the minister said to the deputy minister to discuss with me directly. And I think that is where my report with Adv de Lange came, that after that we had many one-on-one discussions and he would call me to his office, although the DG was not present. And in the normal run-of-the-mill, that was not supposed to be how it should work.

MS RANGATA: Thank you. Just to conclude on the letter of 19 October; you write a letter to the Director-General, Adv Simelane. Did you receive a response to this letter?

MS BEZUIDENHOUT: No, I did not receive any response from the NDPP.

MS RANGATA: Sorry, from the NDPP, sorry?

MS BEZUIDENHOUT: Yes, yes.

MS RANGATA: And then you write another letter which appears, Chair on page 2355, it is Annexure 2.

- 10 COMMISSIONER KGOMO: Can I just, because I see you have moved away from the letter of 19 October 2005 at 2353. Before I forget, I see there is this handwriting, "*hang tot 23/11/2005*", which means pinned to 23 November 2005. Whose handwriting is that? And it seems that it is dated 24 October 2005.

MS BEZUIDENHOUT: Commissioner, that is my handwriting.

COMMISSIONER KGOMO: Is that your handwriting?

MS BEZUIDENHOUT: Yes.

COMMISSIONER KGOMO: Oh, okay.

MS BEZUIDENHOUT: Yes.

- 20 COMMISSIONER KGOMO: Thank you. Thank you, Ms Rangata.

MS RANGATA: Thank you, Commissioner. And then, if I am allowed, I will then step to the next letter which appears on 2355. It is a letter that you address in paragraph 32 of your affidavit. Do you want to read paragraph 32 into the record?

MS BEZUIDENHOUT: Oh, sorry.

MS RANGATA: Page 2374.

MS BEZUIDENHOUT: Paragraph 32?

MS RANGATA: Yes.

MS BEZUIDENHOUT:

10 “I again wrote another letter to the National
Prosecuting Authority. This is Annexure A2 to my
main affidavit. I had sent the letter for the
attention of Adv Anton Ackermann. I explained
that we needed clarity that if the guidelines were
applied to the applicants and it is found that they
should not be prosecuted, it would be a waste of
time and money to compile a lengthy record for
the review proceedings. I informed him that we
had in any event proceeded to compile the record
at great cost and will in all probability forward the
record to the State Attorney for filing at court.
Thereafter, they can amend the application,
whereafter the respondents will answer.”

20 MS RANGATA: Thank you. So, if we move back to Annexure 2,
which is on page 2355, do you agree that the letter is undated?

MS BEZUIDENHOUT: Yes.

MS RANGATA: Okay. And you have already identified this letter,
which is authored by yourself under the hand of the DG, and the letter
is addressed to NPA. I want to take the commissioners to the last
paragraph that appears on that letter. Can you read that, “our main

object”?

MS BEZUIDENHOUT: Of the letter; we have proceeded to compile the record.

MS RANGATA: Yes. I want you to read the last paragraph of that undated letter, which appears on page 2355.

MS BEZUIDENHOUT: All right. Thank you.

“Our main object for requesting clarity is simple.

10 If the guidelines are applied to the applicants and it is found that they should not be prosecuted, it will be a waste of time and money to compile a lengthy record for the review proceedings. We have, however, proceeded to compile the record at great cost and will in all probability forward the record to the State Attorney during this week for filing at court. Thereafter, the applicant may amend the application, whereafter the respondents will answer thereto.”

20 MS RANGATA: Do you then confirm that at that time, which is almost just over a year; what is the date of the letter again? 2 August 2006?

MS BEZUIDENHOUT: Yes. If one goes to the facsimile cover sheet, which was attached to this letter, it was sent on 2 August 2006.

MS RANGATA: At that time, you had already started compiling the record, but it was not yet filed.

MS BEZUIDENHOUT: Yes. We were in the final stages of

compiling the record. The State Attorney was of the view that as the record came about, he was going to send it to the attorney of the applicants, which is Wagener, and they would then discuss. And the moment that everyone, all the parties, were happy with the record as is, that it would then be filed at court.

COMMISSIONER GABRIEL: Ms Rangata, if my memory serves me correctly, were not the guidelines published or approved in December 2005?

MS RANGATA: Yes.

10 COMMISSIONER GABRIEL: So why is clarity still being sought, Ms Bezuidenhout, on 2 August 2006 on the guidelines?

MS BEZUIDENHOUT: Well, at that stage, the guidelines were then gazetted, I think 31 December 2005; and all that we were seeking, which we have asked from day one is: have you applied the guidelines to the persons; if yes, are they still going to be prosecuted or not, because if they were going to be prosecuted, of course the review proceedings would then proceed. If they were not going to be prosecuted and there might be a settlement or a plea agreement with them, then the review proceedings would have no need to proceed.

20 So that was all that we were seeking clarity on. Are you proceeding? Have you applied the guidelines? What is the outcome of your decision?

MS RANGATA: Thank you.

COMMISSIONER GABRIEL: So this is a year after you wrote that earlier letter of 19 October?

MS BEZUIDENHOUT: Yes, that is correct. And just for clarity's sake; once again, we received no response from the NPA on any of our letters; and even after our first letter, that is why we just proceeded to try and compile as best as we could the record for the review proceedings.

COMMISSIONER GABRIEL: Thank you.

MS RANGATA: Thank you; and then on paragraph 33, if you can just read it into the record.

MS BEZUIDENHOUT: Of my affidavit?

10 MS RANGATA: Of your affidavit on 2374.

MS BEZUIDENHOUT: Paragraph 33:

“I therefore complied with my duties and cause the record to be filed, and the rest was up to the prosecutors and the State Attorney to deal with the matter further.”

MS RANGATA: So at some stage you finally filed the record?

MS BEZUIDENHOUT: Yes.

MS RANGATA: And you did what you were supposed to do?

MS BEZUIDENHOUT: That is correct, yes.

20 MS RANGATA: It was almost how many years later?

MS BEZUIDENHOUT: I cannot recall. I think we filed the record during the latter part of 2000. The record was during 2006 already with the State Attorney, but there was a lot of to-and-fro between the State Attorney and Wagener, complaining that exhibits were not there. I recall a portion of evidence that was not there, but if I can

recall, during the latter part of 2007, beginning 2008, we sent the final product to the State Attorney to file. When exactly the State Attorney filed it with court, I am not sure.

MS RANGATA: Thank you. Chairperson, I again would like to take the commissioners to page 2364 of the first, which is an attachment to the first statement of this witness. The witness deals with this document in paragraph 7.4 of her affidavit, which is a document that she was provided with by the evidence leaders. Ms Bezuidenhout, if you are on that page, do you recognise that email?

10 MS BEZUIDENHOUT: Yes, I recognise the email.

MS RANGATA: Right. Can you just take us through that email? Who was it addressed to, and what does it have to do with you?

MS BEZUIDENHOUT: Right. The email is from Helena Zwart, sent on 9 July 2008 to Anton Ackermann, and the subject is "TRC work". So it seems to be an in-office email sent from one person to Anton Ackermann.

MS RANGATA: And if you go to page 2366, we can see who the author is.

MS BEZUIDENHOUT: Yes. "Kind regards, Chris." I presume that
20 would be Chris Macadam.

MS RANGATA: Yes. If you look at the first paragraph of that email, it says:

"Dear Anton, while I am out of the office next week, I recommend that you oversee the following work on TRC matters."

At paragraph 1 it makes reference to the PEBCO 3 matter, which is the matter that we have been dealing with since this morning.

MS BEZUIDENHOUT: Yes.

MS RANGATA: And I would want you to deal with paragraph 1.1 of that email.

MS BEZUIDENHOUT: Should I read it into the record?

MS RANGATA: Yes, please. Then you can comment after that.

MS BEZUIDENHOUT: It reads:

10 “Tessie Bezuidenhout promised to come to the
office so that an affidavit can be compiled,
confirming the fact that the record of the review
had been filed with the high court and giving
reasons for the fact that this was not done
already. She must be contacted and
arrangement made for the affidavit to be
compiled.”

MS RANGATA: Yes. Can you explain to the Commission what that means and if you had filed that affidavit?

20 MS BEZUIDENHOUT: Yes. The affidavit was for the criminal
proceedings matter in Port Elizabeth, explaining why the record had
taken so long. And yes, the affidavit was done and signed. I just
cannot recall on which date.

MS RANGATA: Thank you.

COMMISSIONER GABRIEL: Is this the criminal proceedings or the review?

MS BEZUIDENHOUT: No, this was specifically for the criminal proceedings, because I think they were going to ask for a postponement again, and they used the review proceedings as reasons why the matter could not continue.

COMMISSIONER GABRIEL: Okay, I understand. Thank you.

MS BEZUIDENHOUT: Yes.

MS RANGATA: All right. And I would like you to deal with 1.8. Read it into the record and then I would like you to address the Commissioners, what it meant with regard to the review matter and
10 the progress with regard to the prosecution and the proceedings, why they did not continue with the prosecution.

MS BEZUIDENHOUT: Yes, right. Paragraph 1.8 reads as follows:

“Van Zyl never applied for amnesty for assault. Therefore, even if the review was decided in his favour, he would still face prosecution on the assault charge. Koole has not applied for a review and therefore can still be prosecuted for kidnapping and assault. If all the urgent matters have been addressed, then the advocates should
20 be instructed to locate the missing evidence in the docket. Andrew Leask has indicated that a member of his staff can download the data on Eagle 1.”

I think.

“I have given Adv Bukau Leask’s email containing

her contact details. Wagener's disk should also be perused. It should appear that Piet Jonker at one stage made material available for the purpose of compiling the record of the review. Arrangements should be made with Tessie Bezuidenhout for one of the advocates to review the documentary evidence which forms part of the review, since certain of the missing portions of the docket could be filed there. A comprehensive
10 memo should be compiled, setting out in a systematic manner all further investigations necessary should the matter go to trial. The arrangement with the DSO, as far as Marion is concerned, is merely to confirm the availability of the witnesses upon whose evidence the decision to prosecute is taken. A new investigating officer would have to be appointed, so the instructions would have to be written in such a manner that the newcomer would be able to identify what is
20 required. An executive summary of all the evidence should be compiled."

MS RANGATA: Thank you. What would you then say about what you have just read into the record with regard to, in particular, the reasons why this review application was not the only stumbling block for the prosecution of this?

MS BEZUIDENHOUT: Yes. Some of the information that is contained herein, during our course of preparing the record of course came to our knowledge. And as you will see in our first memorandum, we wanted to raise the issue regarding the time delay in bringing the review application, because in any run-of-the-mill matter, there are certain timelines.

I think in the TRC cases, there was a period of 180 days and clearly this was not adhered to. So these were the aspects we were looking at. Why was this not done? And as we were preparing the
10 record, later on, in a later stage when all these discussions took place, I was very perturbed about what was going on, because it was clear that the prosecution was seeking to use the review proceedings as an excuse why the prosecutions have not proceeded. And this was just not correct. On their own version, they could have proceeded with criminal prosecutions in these matters, as stated in their own words. And we were perturbed about the fact that why was not Koole charged? Why was not van Zyl charged?

If I can just go to my notes, I could find no record that, for instance, I know Nieuwoudt was charged. I am not sure, Du Plessis,
20 I think, was charged. I am not sure. But Lotz, I could find no record that Lotz was ever charged. Beeslaar, I could find no record that he was ever charged. Venter, although I am not... I do not know what his outcome was, but if he did not receive amnesty, why was not he charged? And on their own version, the review applications doubt that they were refused amnesty for murder. There were many other

charges. Why were not they charged?

Now they were seeking to place us in a difficult position regarding using the record, stating that this was the reason why prosecutions were not proceeded. And in actual fact, they could have proceeded with prosecutions on many other charges if they so wanted to. If I further look, my understanding of 1.8 as well, and during discussions with the NPA, it was clear to me that they have not even started investigating these matters.

COMMISSIONER GABRIEL: So that probably accounts for the
10 sentence at page 1490 at the top, "a new investigating officer would have to be appointed".

MS BEZUIDENHOUT: Yes, and should go to trial. And also where they say one of the advocates must come and view the review record. To me, it was quite clear at this stage, they were never ready to prosecute and ...[intervenes]

COMMISSIONER GABRIEL: Could they have prosecuted?

MS BEZUIDENHOUT: And it is my view, I must state it in hindsight. This is my view that they used the review proceedings to cover for what was actually going on. And when reading these documents,
20 and I am getting agitated and upset now again, to think that I have to come and explain here today, but they could have prosecuted these persons and they failed to do so.

COMMISSIONER GABRIEL: Do you have any idea whether a new investigating officer was ever appointed?

MS BEZUIDENHOUT: I have no idea. As I have stated before, we

could have no decision-making or influence on the NPA whether to prosecute. Today in hindsight, as I sit here, I might have not written those records. But in my view, out of a litigation view at that stage, I thought it would be in the best interest to rather not proceed now, because there are going to be delays. And we saw that there were delays in the review proceedings, whether it is from our side, from National Archives' side, from the applicant's attorney's side. It was quite clear that there were delays. And if that was a mistake, I am fully, you know, will take that on the chin.

- 10 COMMISSIONER KGOMO: Yes. Ms Rangata, I see the numbers, following from what Commissioner Gabriel has said. She referred to page 1490, but we have been using the 2363. So the next page, which should be 2364, that number is cut out. So it should be 2364 where Commissioner Gabriel referred to page 1490. That should be 2365.

MS RANGATA: Thank you, Commissioner for your guidance. It is correct. The numbers you have referred to are the numbers that we have been using.

COMMISSIONER KGOMO: Yes.

- 20 MS RANGATA: Yes.

CHAIRPERSON: Ms Rangata, would this be an appropriate time to adjourn for tea?

MS RANGATA: Chair, I would like to conclude, and thank you very much for that; that this is the end of this witness evidence. The remainder of the affidavit seeks to deal with the issues that have

been raised in the cross-examination application, which I do not intend to deal with, because a number of them have been dealt with during her evidence-in-chief. So I would like to say that this is the evidence of this witness and we have ended the evidence.

CHAIRPERSON: Okay. This concludes your evidence-in-chief.

MS RANGATA: It does, Chair.

CHAIRPERSON: Okay.

MS RANGATA: Thank you.

CHAIRPERSON: We will take a tea adjournment and reconvene.

10 We will reconvene at 11:50.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Any questions for clarificatory purposes, Ms Moroka?

ADV MOROKA: No questions, Chair. Thank you.

CHAIRPERSON: Thank you. Ms Ntshizana?

ADV NTSHIZANA: Thank you, Chair. We have no clarificatory questions. We reserve our right to apply for cross-examination.

CHAIRPERSON: Thank you. Ms Ntloko?

20 ADV NTLOKO: Thank you, Chair. And good morning. We do not have clarification questions at this point, but, Chair, we note that, of course, there is already an application to cross-examine, and today she is also set to be cross-examined. There are certain things that came up in her evidence today that were not foreshadowed in her statements, and therefore we reserve our rights to cross-examine on

those aspects.

CHAIRPERSON: Yes. Thank you.

ADV NTLOKO: Thank you.

CHAIRPERSON: Anyone online?

ADV RANTHO: Good morning, Commissioners, there is nothing from the SAPS side. Thank you.

CHAIRPERSON: Thank you, Ms Rantho. Anyone else? Mr Varney? The ball is in your court for cross-examination.

10 ADV VARNEY: Thank you, Chairperson, and with your leave, we will proceed with our cross-examination.

CHAIRPERSON: Yes.

ADV VARNEY: Ms Bezuidenhout, thank you for taking time to assist this commission. Chairperson, before we proceed, we just want to place two matters on the record. Firstly, the evidence leaders' bundle was only circulated yesterday afternoon. That placed us under some pressure to get on top of it overnight, and we cannot claim that we have been able to analyse it in great detail, but we did nonetheless attempt to do so. It will mean, of course, that our cross-examination might be a little more disjointed than usual.

20 Secondly, we note that certain documents are missing from the bundle. My learned friend, Ms Rangata, has indicated that they will try to obtain the balance of the review papers.

CHAIRPERSON: Yes.

ADV VARNEY: Because it is incomplete. And in our quick review of that bundle, we also noticed that the minute referred to in facts cover

sheet dated to 2 August 2006, at page 49, that that is missing and needs to be obtained. Chairperson, a quick comment on the filing of a supplementary affidavit by this witness.

We are concerned about this practice of filing a supplementary affidavit following the application to cross-examine. Normally, as we understand it, when an application to cross-examination is made, then the witness has the opportunity to deal with it when he or she gives evidence, but as a result of the intention to file a supplementary, as we understand it, her initial appearance
10 was then postponed.

Chairperson, we would ask the commission not to encourage this practice because if all witnesses are given the opportunity to file a supplementary, which in part reads like an answering affidavit, causing their initial appearances to be postponed, as happened in this case and also in the case of Director-General Sindane, then I think we are going to run out of time and we only have a few weeks left.

CHAIRPERSON: Yes.

ADV VARNEY: And also, we do not want to turn this into civil litigation because, you know, we do not want there to be founding,
20 answering and replying affidavits. That is not what this commission should be about, in our respectful view. Thank you, Chairperson.

CHAIRPERSON: Okay.

MS RANGATA: If I may, Chair, I would just like to comment on one small aspect of what necessitated the supplementary affidavit. It is clear in the affidavit why the supplementary was necessary. It was

purely for this witness to be able to obtain documents from the Department of Justice and that was done immediately after we have received her first statement.

It might have coincided with the application for cross-examination, but it was not the intention of the evidence leaders to postpone this witness' evidence purely to deal with the cross-examination.

CHAIRPERSON: But the supplementary affidavit does address issues that have been raised in the application to cross-examine, Ms
10 Rangata.

MS RANGATA: Yes, Chair. Thank you.

ADV VARNEY: Thank you, Chair.

CROSS-EXAMINATION BY ADV VARNEY: And on the question of documents, perhaps we can start there. And just to give you a sense of how we are going to deal with this cross-examination, Ms Bezuidenhout, we are going to look at your supplementary affidavit and then the bundle of documents that were provided yesterday. And then we will return to our application to cross-examine to deal with any matters we might not have dealt with already.

20 Then it starts at page 2 of your supplementary affidavit. It is paginated page 2368. And in paragraph 4, you indicate that you approached the Department of Justice for further assistance in assessing the relevant documents to enable me to deal with the issues. You say you arranged a meeting with officials from the Department and informed them which documents you needed.

Can I ask which were the documents that you sought from the Department?

MS BEZUIDENHOUT: Yes, thank you. Let me just go back a step, if you would permit me. I got notification of my request to attend in August, and the final request came through on 17 August of this year. I was told that the matter is about the PEBCO 3. And I knew that during my time in the Department as Director of Law Enforcement, we had files on this review application.

And I did indicate to the evidence leaders that they should
10 seek the files, and I gave them the reference numbers of the files that I would need to look at, because I cannot recall everything that happened 22 years ago. So, the documents in short, that I was seeking were the files on the review application, which I knew were in possession of the Department of Justice.

ADV VARNEY: Thank you. So then, you write in paragraph 4.

“They showed me the files and I requested some
of the documents, but I was not given access to
all the documents based on some privilege that
they claimed.”

20 So can you indicate which documents were furnished to you and which were not?

MS BEZUIDENHOUT: Yes, it is a bit difficult. There are two files. There is a Part 1 and a Part 2 of the files. I, as best as I could in the time span that I had, went through the documents and I flagged various documentations that I thought would assist this commission

and whatever might come out of the review proceedings that would be brought to this commission.

I asked for them to make copies for me. That was refused. And I was told that the documentation would first be presented to their counsel, and thereafter they would decide what documents they would give to me and what documents they would not give to me. So it is difficult for me to, at this stage, I did not make a list of all the documents I flagged when I visited the offices.

10 However, we then received an email, or I think the evidence leaders received an email, and then I referred to the evidence leaders' bundle. Those are the documents, which they sent, and for the other documents, they claimed that they are not going to send them because there was privilege attached to it.

I then discussed the matter with counsel, and I was of the view that there are documents that we need to have to explain the time delays and exactly what was happening. I went to the offices for the second time, and I once again made a request that these are the documents, which I seek, but I was told that we would not be receiving them. There is privilege attached to them.

20 ADV MOROKA: Chair, I wonder if I can be helpful.

CHAIRPERSON: Yes, you may.

ADV MOROKA: Because we have communicated with the evidence leaders. We did give the documents that Ms Bezuidenhout sought. We even explained the basis of why we were refusing certain documents. They are all documented, if Mr Varney wants to have a

look at the correspondence and indeed, we confirmed that we asserted privilege.

CHAIRPERSON: Yes.

ADV VARNEY: Chairperson, just for clarification's sake, when she said Mr Varney wants to look at correspondence, what did she mean?

ADV MOROKA: We wrote to the evidence leaders, refusing to disclose the documents, some of the documents that Ms Bezuidenhout sought. She made a list. We responded to the list, and we informed the evidence leaders the basis. They asked us for the
10 basis, and we gave them the basis.

CHAIRPERSON: Or refusing to.

ADV MOROKA: Or refusing.

ADV VARNEY: Chairperson, given that the witness is of the view that the documents are needed for purposes of her evidence before this commission, may we ask the basis of the privilege claimed and why these documents cannot serve before this commission?

ADV MOROKA: Attorney client privilege, Chair.

CHAIRPERSON: Attorney and client privilege.

ADV MOROKA: Mm-hmm.

20 ADV VARNEY: Well, it is a bit surprising that attorney client privilege is being disclosed, because many of the documents that are before the commission deal with communications between the state attorney and the Department of Justice, so it is a bit odd that attorney client privilege is being claimed in respect of other documents, Chairperson.

CHAIRPERSON: Yes. Yes, Ms Moroka?

ADV MOROKA: Chair, the documents that we have refused, or the department has refused to divulge, have to do with advice given by counsel to the department on on-going litigation, and I would have thought that is common cause that that is privileged.

CHAIRPERSON: Yes.

ADV VARNEY: Indeed, Chairperson, the litigation is not on going. The litigation has been dormant and over for more than a decade.

CHAIRPERSON: Mm-hmm.

ADV VARNEY: And, Chairperson, may I refer you to rule 10.3? It
10 reads:

“Should a person claim that a document referred to in the summons is subject to legal professional privilege, he or she must identify the document in respect of which privilege is claimed and explain the basis for the claim of privilege in relation to each document.”

Chairperson, we would submit that given that the litigation is long over, that the explanation provided for the non-provision of these documents is not adequate in the circumstances.

20 CHAIRPERSON: Yes. Ms Moroka?

ADV MOROKA: Chair, we were requested to list and provide the reasons.

CHAIRPERSON: You were given a list?

ADV MOROKA: Yes.

CHAIRPERSON: Of documents?

ADV MOROKA: No. Ms Bezuidenhout flagged documents that she needed. Some of those were documents upon which we claimed privilege. The answer from the evidence leaders was, identify and give us reasons. We did exactly that. We identified and we gave reasons.

CHAIRPERSON: Yes. We as Commissioners are at a disadvantage because we do not have the reasons that you furnished to the evidence leaders. Ms Rangata?

COMMISSIONER KGOMO: The second microphone as well, please.

10 Yes, thank you.

MS RANGATA: Thank you, Chair. I am aware that there was a correspondence that was sent to investigations and there was a response. I am in the process of trying to locate the response that was sent with regard to the documents that we identified and I will advise the commission as soon as I receive that communication.

CHAIRPERSON: Yes. Can this matter be held in abeyance, Mr Varney, until it has been attended to by Ms Rangata?

ADV VARNEY: Yes, indeed, Chairperson.

CHAIRPERSON: Yes.

20 ADV VARNEY: We would suggest, if we may, that the list of documents flagged by the witness, together with the reasons why certain documents cannot be furnished to the commission, so that you are in a position to make a ruling in terms of rule 10.5.

CHAIRPERSON: Yes. You may proceed with your further cross-examination.

ADV VARNEY: Thank you, Chairperson. We just... No, I will proceed. Thank you. Let us then move on in your supplementary affidavit to page 4, at paginated page 2370. And you have mentioned a few times in evidence-in-chief that you were not calling the shots, you did not have decision-making powers. So, paragraph 15, you write.

10 “At the time when I wrote the letters in this matter,
 particularly the one in October 2005, I was a
 director, and therefore way down the decision
 chain in the department. I did not have any
 decision-making powers, and therefore my role in
 any of the matters in which I have been asked to
 assist must be seen in that light.”

In respect of this PEBCO 3 matter, who had decision-making powers?

20 MS BEZUIDENHOUT: The decision would have been by the
 Director-General then. Apologies. Director-General, who was the
 accounting officer. So, if we were to proceed with the matter, there
 would be costs involved, and as accounting officer, the Director-
 General would make that decision, and because this was a matter
 that came from out the TRC, the Minister of Justice would have also
 had to give approval on how to proceed and what would be contained
 in the affidavits, if and when filed.

ADV VARNEY: Thank you. But I want to put it to you that you were not an inconsequential role-player at the time. You were a director in charge of that particular department. You liaised on a frequent basis

with the deputy minister, and sometimes with the minister, and you were the person really managing the litigation on the PEBCO 3 case for the Department of Justice. Do you agree?

MS BEZUIDENHOUT: Yes, I agree. I was managing it. That was my role, that was my duties, to ensure that it is managed properly and dealt with in terms of the rules of court. Yes, I agree with that.

ADV VARNEY: And your recommendations counted for quite a lot when the people up the chain of command had to make decisions.

MS BEZUIDENHOUT: Yes, in run of the matters, it did have an
10 impact.

ADV VARNEY: All right, let us proceed then. I am now on page 6, and that is paginated page 2372. I just want to clear up what might be a typing error. Paragraph 24.

“Because amnesty was refused, they became
liable to prosecution. In 2004, criminal case was
brought against Nieuwoudt, van Zyl and Koole on
charges of kidnapping and murder, but the case
did not reach a conviction. Van Zyl and Koole
died, and Nieuwoudt died in August 2005, before
20 the trial was concluded.”

Am I right in saying that actually van Zyl and Koole died in subsequent years?

MS BEZUIDENHOUT: If that is so, then yes. I do not know exactly when they passed away.

ADV VARNEY: Okay.

MS BEZUIDENHOUT: But what I do know is that, just to clarify, Koole was never part of the review application. He was not a party to the review application. Hence, previously when I testified, I could not understand why charges were not brought to him immediately, because he was just not a party to the review proceedings.

COMMISSIONER KGOMO: Yes, and the pronunciation is Koole, Koole.

ADV VARNEY: Thank you, Commissioner.

COMMISSIONER KGOMO: Whom I know very well.

10 ADV VARNEY: Is that so?

COMMISSIONER KGOMO: Yes.

ADV VARNEY: We will not call you as a witness, Commissioner.

COMMISSIONER KGOMO: Thank you. Thank you very much. My elder brother was married to his sister, and I attended his funeral.

ADV VARNEY: Thank you for that disclosure, Commissioner. Just for the record, to the best of our knowledge, Sakkie van Zyl died in August of 2011, and Mr Koole, and Commissioners, that is reflected on page 6 of the cross-examination application, at paragraph 14.17, and according to our information, on the next page we reflect that, at
20 the top of the page, that Mr Koole also died in 2016, so many years later.

If we can then turn to the next page, page 7, paginated page 2373, and paragraph 28. And here you, and perhaps I will just read it in the record so we are on the same page.

“As is the case with any review application, a

record must be prepared. That was part of my function. The preparation of the record would involve a lot of work and expenses, and it was necessary that the matter be approached carefully. As a department, we have been informed by the leadership in the department that we needed to use financial resources sparingly, due to bilateral constraints. We would have to carefully consider the facts before making a recommendation on the matter. We were therefore cautioned not to incur costs and expenses, if these can be avoided. Compiling a review record is always challenging and can be costly.”

So, our question to you, Ms Bezuidenhout, is, in litigation where these rule 53 records are part of the relief sought, do you have any choice? Is there a basis to say, well, actually we will not provide this record because it is simply too costly?

MS BEZUIDENHOUT: No, not at all. That is why we look at the facts carefully to see, do we need to oppose, do we not need to oppose? Is there any way, which this matter can be settled out of court without the need of a record being filed? But in terms of rule 53, the record has to be filed, yes.

ADV VARNEY: But if, as in this case, the litigation was launched and part of the relief was for the rule 53 record, why even bother to raise

costs as an issue when you have to do it anyway?

MS BEZUIDENHOUT: Well, at that stage, as I said, we heard corridor talks that there were still guidelines that need to be finalised. We were not sure. The review application was simple. They were taking the decision of the Amnesty Committee on review. So, if they were not going to be prosecuted, in our minds and in my mind, it would not have been necessary to proceed with the review application.

10 That would have made the review application mute if they were not going to be prosecuted and that is why we sought clarity on whether they are indeed going to be prosecuted or not. And remember, being involved with the TRC, there was such a time delay that, you know, also came to mind. Is there intent to really prosecute, because five to six years had already lapsed.

So these were all things that we were mulling around with. But you are quite correct that the record had to be filed and we indeed started immediately trying to ascertain where can we find the record and how do we proceed to get the record together.

20 ADV VARNEY: Well, I have a problem with that evidence, because you ask, you know, well, time has elapsed. Are they going to be prosecuted given that guidelines might come along, but the fact of the matter is that on the 11 February 2004, they were charged with the kidnapping, assault and murder of the PEBCO 3?

So by the time these deliberations were happening in your department, the prosecution was already underway, was it not?

MS BEZUIDENHOUT: That is correct. But there was no prosecution from 1999 when the decision was made up until 2004 when the charges came and that was a long lapse. In my mind, that was a considerable time not to have brought charges.

ADV VARNEY: Well, considering the lapses that this commission has heard about, a lapse of four or five years is quite mild by way of comparison. But anyway, I am not going to ask you to respond to that. But you accept that by the time you were considering the questions around the record, the prosecution was underway?

10 MS BEZUIDENHOUT: Yes, absolutely.

ADV VARNEY: Now, you mentioned a corridor talk that guidelines might be in the pipeline which would negate the need for a prosecution and on the basis of that, you sent the letters which are attached, well, the first one which is attached as A1 to your affidavit. Now, on what basis do you request the withdrawal of the prosecution on the basis that there might be guidelines and in addition that the record would be an expensive undertaking on the back of corridor talk?

MS BEZUIDENHOUT: As I stated, we had many discussions with
20 the State Attorney's Office, with Anton Ackermann, and if that is then, you know, the corridor talks, we were concerned that we are going to spend a lot of money and at the end of the day, it might have just been not necessary.

Yes, and we wrote the two letters seeking clarity because we had difficulties at that stage with the record, but clearly my two letters

had no effect because the prosecutions at no stage were withdrawn in any event. It was merely seeking clarity as we were fully fledged starting to process the record and we noticed that we were going to have very much difficulties and it is going to delay, and that was the only reason, as I have stated before, being a prosecutor myself previously, that if there is continued postponements that it might lead to a problem later on in a criminal court.

So, we were merely suggesting taking, what we had and heard, in consideration that provisionally withdraw and we can file the
10 record and I cannot take it any further than that.

ADV VARNEY: All right, well, while we are here, let us go to A1, which is at paginated page 2353 of your first affidavit. And just to remind ourselves this, this is a letter that you directed to the NDPP. It is dated October 19, 2005, attention to Adv Pikoli. Titled "Criminal Matter in respect of the PEBCO 3".

Would I be right in saying that this letter was written some 14 months after the review was lodged on the 24 August 2004?

MS BEZUIDENHOUT: According to my calculations, I received the review application in September 2004, so it would have been about
20 10 months.

ADV VARNEY: All right, well, we of course can do the exact calculations. The letter gives the impression that you do not wish to go down the road of compiling this review because of the reasons you set out in paragraph 6. So, the impression was gained that you have not yet started on compiling that record. Is that correct?

MS BEZUIDENHOUT: No, that is not correct. We immediately started compiling the record. Well, not compiling the record. Our first step was to find out where do we find the record. The record was never under our control, so that was our starting point to try and ascertain where do we start looking for this record, what will the record entail, can someone give us an index of the record.

So, we did not hesitate. We immediately started and we were then directed, as far as my recollection goes, that all records were sent from Cape Town to the National Archives after the TRC had
10 ended in 2021, if I recall correctly. So that was our first port of call, is to liaise with our unit in the department, it was Library Services at that stage, who dealt with the National Archives, to assist us with obtaining the records of this application.

ADV VARNEY: So let us turn to the key paragraphs, which are really paragraphs 5 to 8. Paragraph 5, you indicate that you have been informed that the Minister is in the process of gazetting guidelines to deal with outstanding matters of persons that need to be prosecuted as a result of the application for amnesty being refused. And then paragraph 6.

20 “Although the accused have been charged before these guidelines came into being, I am of the view that to save time and money, the criminal charges should be withdrawn and the guidelines should first be applied to the accused, as will be the case with any other matter. If the guidelines

are applied and it is found that the accused should be prosecuted, so be it. If it is, however, found that the guidelines indicate that they should in fact not be prosecuted, it will be the end of the matter.”

Now, you would not have known the outcome of the application of the guidelines. It could have gone one way or the other. So given that you did not know, on what basis were you seeking the withdrawal of the charges?

- 10 MS BEZUIDENHOUT: We knew that there were guidelines and that guidelines had to be applied to all persons that were going to be prosecuted and that is all that we said. In both letters, we are simply seeking clarity. If the guidelines are going to be used, are you going to proceed with prosecutions or not? That was the only thing we were seeking.

- I, in hindsight, and with discussion with the principals, maybe should not have said withdraw the charges, but as I said, being a prosecutor, we knew that we had difficulties with the record at that stage. Remember, we were then already dealing with trying to obtain
- 20 the record for 10 months, that there were going to be difficulties and if there is a postponement of the criminal matter the whole time, as a result of the review application, that it might lead into difficulties.

I would have not written this letter if it was not upon instructions from my supervisors at that stage. And for us, it was merely seeking clarity. Are we proceeding fully fledged? Are we not

proceeding fully fledged?

CHAIRPERSON: But, Ms Bezuidenhout, the high watermark of your letter is that withdraw the charges.

MS BEZUIDENHOUT: Yes.

CHAIRPERSON: Was that an appropriate view to adopt at that stage when you had not had sight of the guidelines?

MS BEZUIDENHOUT: Well, maybe at that stage, no, it was not, but as I have stated, clearly my letters had no effect. No one adhered to my letters, no one answered my letters, so it had no effect on whether
10 the charges should have been withdrawn or not. On high level, maybe it was the wrong language to use, but in my view at that stage, I was just seeking clarity on whether we are proceeding or not proceeding with the review application as we had difficulties with compiling the record.

CHAIRPERSON: Yes.

COMMISSIONER KGOMO: And a further wrong word that was used is 'I', because you say it is a decision taken by your principals with you, but you are using the first person 'I'.

MS BEZUIDENHOUT: I can just recall in the norm that if we wrote
20 on behalf of the Director-General, we wrote that from our, you know, that we were in charge of the file and that is how we had written the letters. But once again, even if I said I, I had no interest in this matter, and even if I was saying to whoever withdraw the charges until we can finalise the record, it had no effect and no effect on anyone making a decision to prosecute or not prosecute.

No one listened to me. And that, I can take it no further. There was no intention on my part to stop prosecutions. For what reason would I do this? I do not know these persons. I have my own views on what should have happened. I was perturbed that they had not already been prosecuted since 1999, but my letters had no effect. I was just seeking clarity out of a litigation perspective.

COMMISSIONER GABRIEL: So, who then... I know I asked you this question. You keep saying you would not have written this letter without discussing it with your principals. Who are these principals?

10 This was written under DG Justice and Constitutional Development.

MS BEZUIDENHOUT: At that stage, it would have been Menzi and Melanie.

COMMISSIONER GABRIEL: Do you have any independent recollection of the discussions?

MS BEZUIDENHOUT: No, no.

COMMISSIONER GABRIEL: Thank you.

MS BEZUIDENHOUT: But what I can say is that we would have not proceeded with anything without their approval and that was how matters were dealt with in the department. I might just take you back.

20 There were many memorandums we had written to our principals regarding this matter. It was not just one memorandum. I think there are about three or four memorandums we had written and our view was always that this matter must be opposed.

We did not have independent knowledge of high-level talks and those are some of the documents in the files that talk to why were

matters kept in abeyance. There is a part from a Ben Minnaar who actually explains why the prosecutions were kept in abeyance. Why certain, even this matter, at some stage was kept in abeyance.

And in not one of the memorandums that came back to me, any of my principals at that stage said, but you are doing wrong now. You need to file the record immediately because if you do not file the record immediately there is going to be an issue with prosecutions. In not one of the several memorandums I had written, anyone raised the issue of we are going to have problems with the prosecution, if we do
10 not proceed now.

COMMISSIONER GABRIEL: Right. I just want to refer to what you just said. For instance, you saw these documents in the files when you went to DOJ.

MS BEZUIDENHOUT: Yes.

COMMISSIONER GABRIEL: That is how you know about letters to or from Ben Minnaar at the NPO.

MS BEZUIDENHOUT: Yes, I saw a draft affidavit, which was in the file. And if my recollection is correct, that draft affidavit speaks about the stay of the prosecution and why that decision was taken after
20 discussing with TRC and ministers. And it also talks about the legal fees regarding specifically these applicants in this matter.

And that the matter must be kept in abeyance until such time their request for further legal assistance from the Minister of Police is sorted out in this matter.

COMMISSIONER GABRIEL: So when you referred earlier to letters

that explained the delays, is that what you were referring to?

MS BEZUIDENHOUT: Yes, yes.

COMMISSIONER GABRIEL: Thank you.

MS BEZUIDENHOUT: As I say, I have neglected in making a full list of what I needed. I thought that both the files were going to be brought to the commission. That would have been my understanding.

COMMISSIONER GABRIEL: Thank you.

CHAIRPERSON: Mr Varney?

10 ADV VARNEY: Thank you, Chairperson. If we can just return to paragraph 6.

CHAIRPERSON: Paragraph 6 of the letter?

ADV VARNEY: Of the same, A1 letter at page 2353. We have read it in the record, but I want to focus where you say that:

20 “And the guidelines should first apply to the accused, as will be the case with any other matter, if the guidelines are applied and it is found that the accused should be prosecuted, so be it. If it is however found that the guidelines indicate that they should in fact not be prosecuted, it will be the end of the matter.”

Now, as a former prosecutor, what were you really suggesting here? You are saying look, let us withdraw these charges, and if the guidelines find that they should be prosecuted, then so be it. So are you really saying, well, withdraw, and if the guidelines do not go the way of the accused, then reinstate the charges? Is that what you

were suggesting?

MS BEZUIDENHOUT: Yes, because according to what came to our knowledge, that there were several things that could happen during the guidelines. Plea agreements could be entered into, there could be settlement agreements, whatever the case might be. For us at that stage, it was merely we have got difficulties with compiling the record.

Withdraw the charges now, apply whatever guidelines need to be applied, and if the guidelines are not applicable to whoever, then
10 of course just proceed with the criminal charges again.

ADV VARNEY: So we know that the guidelines came into effect towards the end of 2005, during December. So if they had been applied, following your recommendation, the charges would have been withdrawn, and then potentially a few months later they would have to be reinstated if it did not go the way of the accused.

MS BEZUIDENHOUT: I would not be able to answer to that. I do not know how the NPA would treat the guidelines, and whether they would apply them to these people or not. I made a mere suggestion, which was not followed, and yes, if they were applied and they were
20 to be prosecuted, then they should have been prosecuted.

ADV VARNEY: So, you know, acting from a position of a great deal of ignorance, because one, you were not sure what was in the guidelines. Two, you would not know which way it would go for the accused. You nonetheless, recommended, and let us look at your paragraph 8.

“I therefore request your consideration not to proceed with the criminal matter until such time as the guidelines have been finalised and applied to the accused.”

So, notwithstanding your ignorance of what was in the guidelines and how it would be applied against the accused, you formally requested the withdrawal of charges.

MS BEZUIDENHOUT: Once again, we merely suggested the withdrawal. Yes, and it might be ignorance on our part, but because
10 we had difficulties with the record. We had severe difficulties. It is 10 months later, and we could still not compile a full record to file with the review proceedings. That was the only underlying decision for us, is to be able to proceed with the review proceedings, and that was our decision-making at that stage. Not to delay any further prosecutions, but we have got difficulties with the record.

ADV VARNEY: And it is because of that approach that the NPA, in a few documents, and I am going to put to you a comment that was made on your letter. This was made in a memorandum prepared by NDPP, Shamila Batohi, on the 3 December 2020 addressed to the
20 Minister of Justice. We have attached that, Commissioners, as ANNEXURE ST2.

The relevant passages are page 25, but we quote it in the application to cross-examine at page 9, paragraph 15.6. And it reads:

“The fact that these guidelines were intended to put an end to TRC prosecutions is reflected in a

letter dated 19 October 2005 written by the
Director of Law Enforcement on behalf of the then
Director-General Justice. “

So, the NPA is saying that your letter is indication of the view of the Department of Justice that the guidelines were intended to put an end to the prosecutions. And I think that they do have a point because here you make a suggestion that the case be withdrawn even though you are not aware of how those guidelines are going to be implemented in respect of these accused.

- 10 MS BEZUIDENHOUT: Ms Shamila Batohi was the NDPP at that stage. She would have known full well the fact that whatever suggestions we made, could have no influence on her decision to prosecute or not prosecute. Where she gets to state this in her letter to say that was the decision of the Department is clearly wrong. I do not know, as I said before, and in hindsight, hindsight is always good, I in actual fact gave the NPA a piggyback ride to suggest that because then they could piggyback on this and say but the record, the record and that is why we cannot prosecute.

But where Ms Shamila Batohi comes with this, I do not know.

- 20 I have never seen this memorandum. I fully disagree with her and I think it is just once again the NPA trying to not take responsibility for the fact that they were actually never ready to prosecute for the TRC matters.

ADV VARNEY: Yes. Now, we are going to return to that evidence of yours a little later but just to be clear, the NPA in that memo is

referring to their perspective of the views that they believed was held by the Department of Justice at that time. I am going to move on.

MS BEZUIDENHOUT: Sorry, may I just comment on that?

ADV VARNEY: Yes, please do.

MS BEZUIDENHOUT: I just need to, sorry, if you can just give me a moment to find the correct page. I just want to refer to page 45 of your bundle and it is a memorandum to Minister Radebe where I just wish to comment that in the same view to say the NDPP took note of my two letters. The NDPP themselves in paragraph 3.2.2 further say.

10 “I further explain that independently of the review process, there was an evidential difficulty relating to the availability and reliability of witnesses who had implicated the two accused. In this regard, I informed the families that were the state to proceed, at this stage, the accused would be acquitted.”

So they knew they were not ready for the criminal matters and the lodging of the record had no effect on what I have just stated that they were never ready to prosecute and I think I gave them an opportunity
20 to escape their responsibility by stating that maybe the criminal charges should be at that stage, at no stage did I say it should be withdrawn forever.

Merely we are in litigation, apply the guidelines, if the guidelines are going to apply, good, if they are not good but just look at that because we have got difficulties compiling this record. That

was the bottom line. I did not want to influence any withdrawing of charges. It is not within my decision-making and there was no suggestion on my part that it should have – that is what I wanted.

It was merely looking at the litigation, the problems we were having, if it was not a good suggestion at that stage. Years later it now comes to light that, and it is my view that the record and myself is now being used as a scapegoat but if I look at all this, to me it is quite clear they were just never ready to prosecute.

ADV VARNEY: But with respect Ms Bezuidenhout that simply does
10 not wash. Look at the date of that memorandum on page 44 what does that date read?

MS BEZUIDENHOUT: That date reads 28 May 2009 and I understand the dates ...[intervenes]

ADV VARNEY: And May of 2009 is approximately five years after those charges were first brought. So quite obviously, the NPA has to look again at the availability of those witnesses and effectively start from scratch. Surely, that follows as a matter of course.

MS BEZUIDENHOUT: Well, what did they do between 2004 up until
20 2008? I testified previously where it was stated by Chris Macadam in a very earlier memorandum that a new investigator had to be appointed that they were looking for evidence. So yes, this is years later but looking at things previously, it was quite clear that they had difficulties in proceeding with these matters.

Rightly or wrongly, I do not know but to suggest that I influenced the stopping of prosecution that is ludicrous ...[intervenes].

It was never my intention. I had no interest in this matter, for me the prosecution should have started immediately.

ADV VARNEY: Ms Bezuidenhout, your evidence was that the NPA was never ready to proceed with this prosecution and in fact, they were ready to proceed in 2004. Some five years later they clearly have to reassess matters, do you not accept that?

MS BEZUIDENHOUT: As I stated, I think they took the issue of the review proceedings as a scapegoat not to fully fledge proceed with the proceedings. I have stated it before, there is no reason why they
10 had to stop proceedings in respect of assault charges because that was never part of the review proceedings and in respect of Mr Koole, he was not even a participant in the review proceedings. So why not continue with the prosecution? That is the question I am raising.

ADV VARNEY: Yes.

MS BEZUIDENHOUT: Why did they not proceed? And the only infringement I can make, if I look at all the documents presented that they were not ready. They could have in 2004 proceeded fully fledged with the prosecution of Koole. They could have fully fledged proceeded with kidnapping and assault charges for the others. Which
20 they did not. There is no mention of Beeslaar and of Venter. My question is just, in hindsight, why? Why?

ADV VARNEY: Yes, and I am going to deal with that in great detail shortly. But let us finish probing A1, if we can go back to 2353. There is a handwritten note at the bottom, which reads, "Hang tot 23 November 2005". It looks like it is /R, I cannot quite read what is

underneath that date, but is that, I think you mention that it is your handwriting?

MS BEZUIDENHOUT: Correct.

ADV VARNEY: And can you explain what you wrote there and why?

MS BEZUIDENHOUT: All right. The letter was written to Adv Pikoli on October 19, 2005, and I was seeking an answer to him. So all that this letter, my handwritten note says, pen to 23/11, which is roughly a month later, in waiting for a response for him. If on that date I did not receive a response, then I would decide what to do further with this letter, or if a response did come, then we would act on that response. So it does not refer to hang or to pen the review application. It was merely to append waiting an answer to this letter.

COMMISSIONER GABRIEL: Mr Varney, before you leave this letter, but I do not want to interrupt you.

ADV VARNEY: No, I was going to leave the letter, so please go ahead, Commissioner.

COMMISSIONER GABRIEL: Okay. Ms Bezuidenhout, I am looking at ANNEXURE A1 again. You say that you had problems compiling the record and it would have been time-consuming and expensive, yet you place great emphasis on the guidelines. So would you say that that was an important factor that contributed to you writing this letter?

MS BEZUIDENHOUT: Yes, out of a litigation perspective, it was. We had counsel that had to be appointed, we had records that needed to comply, and in my little legal mind, if the guidelines were

going to be applied and it was maybe found that this person should not be prosecuted, that would, in my mind, mean the end of the review application.

And that is all. I see a lot wants to be read into that, but with great honesty, that was all that we worked on. What I was concerned about was the review proceedings and the difficulties we had with that. And I say it in my letter, if they are going to be prosecuted, by all means. If they are not, then, in my mind, it would mean the end of the review application.

10 COMMISSIONER GABRIEL: Do you accept that this was an important factor ...[intervenes]

MS BEZUIDENHOUT: Yes, it was.

COMMISSIONER GABRIEL: at the forefront of your mind?

MS BEZUIDENHOUT: Yes, because at that stage, I knew the difficulties we had with the record.

COMMISSIONER GABRIEL: Thank you.

ADV VARNEY: Thank you, Commissioner. While we are on the correspondence, let us turn to the next letter, that is A2, it is at page 2355. This is the undated letter that you addressed to the NPA for
20 the attention of Adv Anton Ackerman. Although there is no date, I think we can glean from the fax details at the top that it was sent on 2 August 2006.

Now, in this letter, you draw attention to the review application, PEBCO 3, that is in the title. In the second paragraph, you say:

“Furthermore, as you will recall, we requested the NDPP to indicate that the applicants are still to be prosecuted in the light of the guidelines that have been approved by the Minister. We have not received a response.”

And in the next paragraph.

10 “Our main objective for requesting clarity is simple. If the guidelines are applied to the applicants and it is found that they should not be prosecuted, it will be a waste of time and money to compile a lengthy record for the review purposes.”

And then remarkably, in the next paragraph, you say:

“We have now however proceeded to compile the record at great cost and will in all probability forward the record to the State Attorney during this week for filing at court.”

20 Now given that, you have already compiled the record, at great cost, and you say in all probability you are going to forward the record to the State Attorney, why then in the previous paragraph are you asking for this clarity, if the guidelines are to be applied, then they should not be prosecuted. It will be a waste of time and money to compile a lengthy report for review purposes.

When writing this letter, you have already compiled the record and it is available. Why are you posing that question again?

MS BEZUIDENHOUT: We compiled a record which we thought to the best of our knowledge was the record to be filed. As I stated before, the State Attorney had many dealings with Mr Wagner as well and the arrangement was that whatever we had we would give to them and they would then say if anything is missing or not.

So, the record we had compiled at that stage was the record which we thought was the complete record. Later on, it then came about that the applicant's attorney was not happy with the record that we were in the process of wanting to file and that they say there were
10 documents and exhibits missing.

My language might not be that good. English is not my first language. However, what I can glean and which I can remember from the file is that this was the record at that stage we had available. Whether it was the complete record would be seen, once it was given to the applicant's attorney. It did then, as I have said, appear that they were not happy with the record and they were seeking other documents that we had to go and look for.

ADV VARNEY: Well, I must put it to you, Ms Bezuidenhout, and hope that given that you had compiled the record to the best of your
20 ability, the fact that you were still posing the question as to whether the prosecution was going to proceed because of the time and money you needed gives the distinct impression that you were still pressing for withdrawal of the case against the PEBCO 3.

MS BEZUIDENHOUT: No, that is not so. Nowhere in this letter I have stated that the charges must be withdrawn. It was merely once

again asking, have you applied the guidelines, yes or no? If yes, are you proceeding? If no, then we know what to do with the review application. There is nothing untoward in my mind about that.

I, nowhere for a second time asked, or in this letter asked, for the criminal charges to be withdrawn. I am merely asking, out of a litigation perspective, have you applied the guidelines? If yes, what is the answer? If no, what is the answer? Because that would then give us the answer we want, is whether we are now fully fledged proceeding once again. And I stated in my letter, it is simple.

10 The guidelines are applied to the applicants and it is found that they should not be prosecuted, it will be a waste of time and money to compile a lengthy record. And once again, we knew we had problems with the record and I am not asking for them not to proceed with the prosecution. It is not in my decision-making to do that.

My concern was whether we were going to be ready for the review application. And if we can avoid a review application, then of course we want to. At that stage, if I can recall, the state contingency was sitting at R2.7 billion. There are many factors that we had to take
20 into account. If we could stay out of court, then we wanted to stay out of court.

CHAIRPERSON: Ms Bezuidenhout, I think the question that is being posed to you is, why in one sentence you say that if the guidelines are to be applied and it is found that they should not be prosecuted, it will be a waste of time and money to compile a lengthy record for the

review process.

And on the other hand, you say that you have complied and you have compiled the record.

MS BEZUIDENHOUT: Yes, as I have stated, my language might not be that good.

CHAIRPERSON: Are you saying it is the language that is to blame for the reading of your letter?

MS BEZUIDENHOUT: After I have looked at the file, yes, it seems to be that because we compiled a record, but when the state attorney
10 gave it to the attorney of the applicants, they were not happy with the record and there were different things that we had to look for. So my language might have not been that good at the time, but to our knowledge, we thought we had the record now in order.

COMMISSIONER GABRIEL: And you say in your words in the last paragraph that this was at great cost.

MS BEZUIDENHOUT: Yes.

COMMISSIONER GABRIEL: So you had spent money?

MS BEZUIDENHOUT: We had already spent money on what we could gather from National Archives. We had already spent quite a
20 lot of money to get together what we thought was the full record at that stage.

ADV VARNEY: Thank you, Commissioners. Ms Bezuidenhout, we will be putting it to this commission that this was not a language issue. We will be putting it to this commission that this letter reflects a further attempt on your part and that of the Department of Justice

and your principals to suggest to the NPA that they amend this case in favour of letting the guidelines deal with it.

MS BEZUIDENHOUT: I cannot comment on that because I had no influence on prosecution. And I would like to ask if I am now an implicated person, then I would not want to proceed with my evidence, and I would like to consult my own attorney in this matter, because it seems to me that I am now being implicated in something that I had no control over.

ADV VARNEY: My suggestion, Ms Bezuidenhout, is that you
10 continue with your evidence. You had an opportunity to consult with lawyers, if you so pleased, and you chose not to.

MS BEZUIDENHOUT: Just to comment on that, yes, because I thought that I really did nothing wrong, if I look at all the matters, I thought I would get all the documents from the department, which I have not. I am merely asking if I am going to be an implicated person then that I will discontinue with my evidence at this stage.

In my mind, I had no role to play in the prosecution or not. Not at all. I could not flay anyone to make a suggestion to prosecute or not.

20 CHAIRPERSON: See, what Mr Varney has put to you is that this letter, they are going to argue, which might not be the argument of everybody else, they are going to argue that your letter reflects the view of your superiors and the Department of Justice at that time.

MS BEZUIDENHOUT: Well, that might be so. And all that I can say on that is, taking into account all the memorandum we had written,

how the prosecutions were dealt with, that decisions were made which we were not privy of. I cannot comment on that. I want to stress again that not in one of the memorandums, which I sent to my principals, they ever came back to say, no, we want to prosecute immediately now. There was just nothing.

I think ever since I have left that unit, I cannot even recall what happened to the review proceedings and what happened to the prosecutions. So that is the only thing I am stating, that taking into account all the documentations, if those letters are then seen as the
10 view, then I am actually fine with that, because I know for a fact it was discussed lengthy and I would have not done anything if it was not with the go-ahead from our principals and the memorandums state that.

The memorandums in no way suggest that I am doing something untoward or doing something wrong.

MS RANGATA: Chair, if I may? I have taken note that this witness might not be comfortable and has raised a very important aspect, that if I am now considered as an implicated person, then perhaps I need to consult my lawyer. The Chair will recall that this witness was
20 approached by the evidence leaders and we have afforded an opportunity for her to state her case.

And I would say at this stage, perhaps it might be an opportune moment to take a five-minute break and consult with her, just to make sure that we are not going to upset her rights, as she has already intimated.

CHAIRPERSON: Yes.

COMMISSIONER KGOMO: Yes, but Chair, can I just come in, because if Mr Varney has put this matter as broad as all that, it is not only herself, sometimes you may say you can respond if you wish to, or you may choose not to respond. In what the witness has said, would the, well we do not know what the lawyers might say, but they would not say to Mr Varney not to put that statement to the witness, because it does not only affect him, but you do not have to respond because the Chair is coming in.

10 ADV MOROKA: Can I come in before the Chair comes in?

CHAIRPERSON: Yes, yes. Let me allow Mr Soni to come in before Ms Moroka.

ADV SONI: Chair, just in the interest of fairness, because our rules demand it, and you will recall, Chair, that on a previous occasion, we mentioned the matter of *Du Preez v TRC* in regard to fairness to persons who come before, well, that was before the TRC, but the same principles apply in this case.

Now, our rules in 3.1 require us to ask persons who can provide evidence that will assist the commission, and then in 3.3, it
20 requires us to say to persons who are implicated or classified as implicated to apply a different set of rules. Now, the concern that Ms Rangata has raised is a serious concern, Chairperson, because this witness has effectively, through the question posed by Mr Varney, been transformed from a 3.1 witness to a 3.3 witness.

CHAIRPERSON: Yes.

ADV SONI: And I just submit, on behalf of all the evidence leaders, that we need to tread carefully as to the further progress of this witness.

CHAIRPERSON: Yes, yes. Thank you. Ms Moroka?

ADV MOROKA: Chair, I seldom agree with my learned friend, Mr Soni, in this regard, I do.

CHAIRPERSON: Thank you. Ms Rangata, your request is granted. You may consult with the witness. So, Mr Varney, you wanted to respond?

10 ADV VARNEY: Chairperson, I just note that it is lunchtime, so maybe this is an appropriate time for the lunch adjournment.

CHAIRPERSON: Yes. Before we adjourn, do you want to respond?

ADV VARNEY: I was going to make certain submissions, but I think it might be appropriate for me to confer with the evidence leaders before they consult with their witness, just to give them a sense of what we intend to submit in relation to this witness.

CHAIRPERSON: Yes, yes. I think to allow the parties to clear the air in this regard, we will take a lunch adjournment and reconvene at five past two.

20 ADV MOROKA: Chair, if I may be excused?

CHAIRPERSON: Yes, you are excused, Ms Moroka.

ADV MOROKA: Thank you, Chair.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Yes, Ms Rangata?

MS RANGATA: Thank you Chairperson, there has been a request by Adv Varney to make submissions and we will respond after that.

CHAIRPERSON: Thank you. Mr Varney?

ADV VARNEY: Yes, thank you Chairperson, so these are the submissions I was going to make before lunch, that confer with my colleagues, so we thought that I would put our submissions down and then they in turn will put their submissions up.

COMMISSIONER GABRIEL: Can you pull the mic closer to you Mr Varney, thank you.

10 ADV VARNEY: Thank you, Commissioner, yes I think that is more audible. If the Chairperson permits, I will proceed.

CHAIRPERSON: Yes you may proceed.

ADV VARNEY: So Chairperson, as it is our custom we put a very detailed application to cross-examine, we typically give all our questions, we set out the evidence we wish to challenge, we set out the points we wish to put to each witness and we did so in this case as well. So this witness was aware of the approach of the families in respect of her evidence and she knew what was coming.

20 What was put to her before lunch is nothing new, it is part and parcel of the application. Now we do have some sympathy for her, we know that she was a mere cog in the machine, she was not calling the shots, she was not a decision-maker, that we accept. Nonetheless, she was an author of some of the documents and so that follows, there is a requirement for her to explain those documents and any inconsistencies that arise.

And lastly, we do not regard her as a target, her superiors are, we certainly will be asking the commission to make findings against the department as a whole and in particular the principals of that department. So we do not believe that she is at any particular risk. We will not be asking this commission to recommend any action against her personally.

On that basis, Chair, we would submit that the proceedings should continue.

CHAIRPERSON: Yes, thank you. Ms Rangata?

10 MS RANGATA: Thank you, Chair. We note the submissions by Adv Varney and we hold a different view solely for the purposes of what has been put on record earlier on by Adv Soni that this witness came here under a different rule, which was 3.1. During the cross-examination, which it is not correct that she should have anticipated that kind of questioning.

It now came out in the submission that is going to be made to this commission that her letter in particular will be used and will be a demonstration on her part and others, of course, the superiors, as being part of the attempt to stop the prosecutions. And that
20 immediately the witness responded to and said, I feel uncomfortable because if I am now implicated, I need to consult my lawyer.

And during the break or the lunch period, I consulted with the witness. The witness indicated and confirmed that she would like to have a consultation with her lawyer. And although I must record that she has indicated the issue of costs, but she made it clear that she

would like to have her own attorney to consult with and consider her position.

And I think with that being made, Chair, I am compelled to say that the commission must consider that request and not proceed with this cross-examination because the rights of this witness will be implicated as a result of what has already been put as a potential submission to the commission.

CHAIRPERSON: Yes.

MS RANGATA: Thank you.

- 10 COMMISSIONER KGOMO: Yes. Before the Chair comes in, it seems the position might even be exacerbated by the fact that there are documents that she wanted before the commission, which might be in her favour. She wanted to play open hands, open cards, and then she was told that, look, there is some privilege attaching to some of the documents. So, I just want to put that before the Chair comes in.

MS RANGATA: Thank you, Commissioner. .

CHAIRPERSON: Thank you.

ADV SONI: Sorry, Chair, may I make this point?

- 20 CHAIRPERSON: Yes.

COMMISSIONER KGOMO: Speak into the microphone, please.

ADV SONI: Sorry, Chair, Commissioner. After you directed us to talk among ourselves, we talked not only to Mr Varney and his team, but we talked to all the legal representatives, and they all wished to say something either in favour of or against. And, again, to protect

the integrity of the commission's process because this witness is a witness of the commission, we submit that that would be helpful so that we do not create a situation where witnesses are afraid to come on the basis that action may be taken against them.

CHAIRPERSON: Yes. And Ms Kessery?

ADV KESSERY: Thank you, Chair. We support what Adv Soni has said. The bottom line for us is also about the process and the processes that must be followed in protecting the integrity of the process and the commission where a witness says, I want to be
10 legally represented. Thank you, Chair.

CHAIRPERSON: Thank you. Ms Ntshizana?

ADV NTSHIZANA: Thank you, Chair. I am also in support of the view raised by Ms Rangata. If the witness has raised her or has waived her constitutional right to be legally represented, I think that process should ensue according to her rights and, of course, according to whatever that the Commissioners may decide in or out of her favour.

CHAIRPERSON: Thank you. Ms Ntloko?

ADV NTLOKO: Thank you, Chair. We heard the submissions from
20 Mr Varney, but I think the fundamental question is as put firstly by Adv Soni earlier, which is, what has this witness indicated? What was this witness called to do? Mr Varney, says, well, she should have anticipated. Unfortunately, the fundamental question here that the commission needs to answer is whether or not when a witness, and this will not apply to just this witness, it will apply to all other

witnesses going forward, whether or not when a witness asserts their right to legal representation, which is a right that we know to be a fundamental right, there is ample case law to that effect, and there is also case law on how commissions ought to be run and when certain rights have been asserted.

So, in light of that, one, neither be prudent nor be fair, because fairness cannot only be looked at from the Calata Group's point of view. Fairness in this particular matter needs to be looked at, firstly, one, from the witness, but also from the parties that appear
10 before this Commission. The question that Mr Varney asked, Chair, goes fundamentally to ask, you drafted X that very assertion that you drafted then does implicate this witness.

But further than that, our respective, I can speak for my client, the NPA, that letter is drafted to the NPA. If she then indicates, and we have said we want to cross-examine, if she had asserted that right with us as well, we would have said, she has the right then to be legally represented, because the implication is then quite clear.

So, just then, as for the NPA, we fully align with what the evidence leaders have indicated here. Not only is the process
20 supposed to be fair, it has to be fair to all parties and not just one party.

CHAIRPERSON: Thank you. Anyone online?

ADV RANTHO: Good afternoon, Chairperson. From our side, we align with submissions from NPA, Justice and Ms Ntshizana. So, we will say that we go with what is proposed.

COMMISSIONER GABRIEL: Ms Rangata, Mr Soni, is it not a question of fundamental fairness to allow Ms Bezuidenhout, firstly, to obtain legal advice, and secondly, to be guided by that legal advice when she returns? Mr Varney, I put that to you as well. Am I correct that that is the essence of the Du Preez case?

MS RANGATA: Yes, yes, Commissioner, you are correct. Yes.

COMMISSIONER GABRIEL: Mr Varney?

ADV VARNEY: Yes, Commissioner, the Du Preez case does say that. Where we think these circumstances are distinguished is
10 because we do not believe that this witness is at risk. And this is where I differ with my colleagues. We do not believe that mere inconsistencies that are raised on documentation gives rise to the kind of risk that would necessitate a legal representation and the adjournment of these hearings and to return. Having said that, we leave it in the hands of this Commission.

COMMISSIONER GABRIEL: Do you accept that you are not the decision-maker?

ADV VARNEY: Oh, absolutely. This is why we are going through this process.

20 COMMISSIONER GABRIEL: Okay. Thank you.

CHAIRPERSON: Thank you. These proceedings will be adjourned for 10 minutes.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Thank you, this is my ruling.

RULING

Having heard the submissions made to this commission by Mr Varney, Ms Rangata, Ms Kessery, Ms Ntshizana, Ms Ntloko, in regard to whether Ms Bezuidenhout should be afforded an opportunity to consult with her lawyer, I rule that fairness demands that Ms Bezuidenhout be granted an opportunity to so consult with her legal representatives.

10 This is so because Ms Bezuidenhout has been called before this commission to give evidence as a rule 3.1 witness and not as an implicated witness under our rules 3.3. She penned the letters that are a subject of this cross-examination and may therefore be a direct target of the submission, let me say Mr Varney intends to make to this commission. That is my ruling.

ADV VARNEY: As the commission, please.

ADV SONI: In the circumstances, Chairperson ...[intervenes]

COMMISSIONER KGOMO: Speak into the microphone.

20 ADV SONI: Sorry, in the circumstances, Chairperson, may we propose that the hearing of Ms Bezuidenhout's further evidence be postponed until that process is taken?

CHAIRPERSON: Yes, yes. Ms Bezuidenhout, your evidence is postponed to a date to be arranged with the commission.

MS BEZUIDENHOUT: Thank you.

CHAIRPERSON: Thank you.

ADV SONI: Chairperson, that is the business of the day.

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

INQUIRY ADJOURNS UNTIL 11 SEPTEMBER 2026

CERTIFICATE OF VERACITY

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

JUDICIAL COMMISSION OF INQUIRY INTO TRC

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- Where no information provided, names transcribed phonetically.
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