

**IN THE JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS REGARDING
EFFORTS OR ATTEMPTS HAVING BEEN MADE TO STOP THE INVESTIGATION
OR PROSECUTION OF TRUTH AND RECONCILIATION COMMISSION CASES**

STATEMENT

I, the undersigned,

BRIGITTE SYLVIA MABANDLA

do hereby make oath and state that:

1. I am an adult female, and the former Minister of Justice and Constitutional Development.
2. Unless otherwise stated or so indicated by the context, the facts contained in this affidavit are:
 - 2.1 within my personal knowledge;
 - 2.2 alternatively, obtained through affidavits and documents in previous proceedings; and
 - 2.3 further alternatively, obtained through public records.
3. I will attach any documents that I rely on in substantiation of the averments I make.



PERSONAL BACKGROUND

4. I was a student activist in the early 1970s. During this time I was banned and detained as a member of South African Student Organisation and the Black People's Convention.
5. After my release from detention, I went into exile in 1975. From 1986 to 1990, while in exile, I worked in the ANC Legal & Constitutional Affairs Department in Lusaka.
6. On my return to South Africa, I was part of the negotiations to end apartheid. During this period, I was also part of the establishment of the Community Law Centre at the University of the Western Cape under the leadership of the late former Minister of Justice, Mr Dullah Omar. I headed the Women and Childrens Research Unit while there.
7. In May 1994 I became a Member of Parliament representing the ANC. I was a member of the Constituent Assembly and sat in a number of committees. One of the Committees I sat in was involved in drafting the TRC legislation under the chairmanship of Adv Johhny de Lange

HISTORY IN THE EXECUTIVE

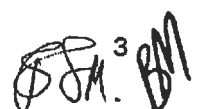
8. I have had a long history in the Excutive, and served in the following roles.
 - 8.1 From April 1995 to February 2003, I was the Deputy Minister of Arts, Culture, Science and Technology under Presidents Nelson Mandela and Thabo Mbeki, respectively.



- 8.2 From February 2003 to April 2004, I was Minister of Housing under President Mbeki.
- 8.3 From 29 April 2004 until 25 September 2008, I was Minister of Justice and Constitutional Development under President Mbeki (**"Minister of Justice"**).
- 8.4 From September 2008 to May 2009, I was Minister of Public Enterprise under President Kgalema Motlanthe.
- 8.5 From January 2020 to 2023, I was the South African Ambassador to Sweden and Finland, Latvia and Estonia.
9. The allegations against me relate to my role as the Minister of Justice. My tenure ended more than eighteen (18) years ago, in 2008. This is a long time ago, and as a result, I do not recall all the events. I no longer have access to documents and records which may have assisted me to recall specific events.

INVOLVEMENT IN TRC RECOMMENDATIONS

10. While the TRC process was ongoing, there were calls for the construction of symbols and monuments to honour the lives lost during Apartheid. As Deputy Minister of Arts & Culture, I was part of the conceptualisation and building of such monuments and symbols. The Freedom Park in Gauteng, and other provincial cenotaphs were built as a result.
11. The Department of Justice was one of the leading departments responsible for implementing some of the TRC recommendations. Reparations (monetary and

Handwritten signature and initials, possibly "JFM" and "BM", with a superscript "3" next to the first part.

non-monetary) was one of the recommendations. An urgent matter, when I joined the department as Minister, was the need to establish a TRC unit to facilitate, inter alia, reparations. The unit would also work with the NPA and the South African Police Service on missing persons and exhumations. The TRC unit was established during my tenure.

12. Given my political history and involvement in the TRC (as stated above) it is most unfortunate that I now stand accused of seeking to protect apartheid era officials who were involved in gross human rights violations.

THE SUMMONS

13. On 13 August 2026, the Commission issued a summons to me, to appear before it for purposes of:

"giving evidence before the Commission on all matters relating to the Commission's Terms of Reference of which you have knowledge and in addition being questioned about matters arising from the relevant parts of the affidavits/statements and the transcripts of the evidence listed in Annexure "A" to this Summons . . ."

14. I am aware that the Commission was established on the back of an application by families and victims of apartheid-era crimes in the Gauteng Division of the High Court ("**Calata matter**"). In that application, the applicants seek declaratory orders and constitutional damages for the failure to investigate or prosecute cases identified by the Truth and Reconciliation Commission ("**TRC**"), and referred to the National Prosecuting Authority ("**NPA**") for investigation and prosecution ("**TRC cases**").



15. I note that the summons does not require me to make this statement, but I nevertheless do so, in the hope that it will be of assistance to the Commission.
16. The summons does not set out a formal list of questions for me to respond to. I also note that the evidence in Annexure "A" comprises:
- 16.1 an affidavit deposed to by Dr Mashau Silas Ramaite SC ("**Dr Ramaite**") dated 26 November 2025; and
- 16.2 extracts from a transcript of the oral evidence given by Mr Ramaite on 23 February 2026.¹ Dr Ramaite testified that on 11 November 2004, while arrests and prosecutions in the attempted murder of Reverend Frank Chikane were imminent, I called him and instructed him that all TRC cases must be placed on hold until the development and adoption of prosecutorial guidelines. Dr Ramaite testified that he expressed concern to me that the instruction interfered with prosecutorial independence. However, (so his testimony went), I insisted that the TRC cases be put on hold, pending the adoption of the guidelines. He testified further that based on that instruction, he in turn instructed Adv Ackermann SC ("**Ackermann SC**") that the investigation and prosecution of all TRC cases must be put on hold pending the development and adoption of the guidelines. No further prosecution of TRC cases took place, he said.
- 16.3 extracts from a transcript of the oral evidence given by Ackermann SC on 5 March 2026.² Ackermann SC testified that on the morning of the arrests, he received a call from Mr Wagenaar, the perpetrators' attorney in the Rev

¹ Ramaite Evidence 2.

² Ramaite Evidence 2.

Chikane matter, who informed him that I would contact him (Ackermann SC) to instruct him that the case against the accused in the Chikane attempted murder case should be placed on hold. He testified further that shortly thereafter, he received a call from an official in my office who informed him that a decision had been taken to put the case on hold. He testified that he does not know who this official was, but that he informed him (the official) that I did not have the power and authority to give such an instruction – only the National Director of Public Prosecutions could give him such an instruction. A few minutes later, Dr Ramaite called him to his office and informed him that he had received a call from me, instructing him not to proceed with the Chikane attempted murder case and to put all investigations and prosecutions of TRC cases on hold.

ALLEGATIONS AGAINST ME

17. As discerned from Annexure “A” to the summons, I am alleged to have:

17.1 instructed Dr Ramaite that all TRC cases must be placed on hold until the development and adoption of prosecutorial guidelines.

17.2 disregarded Dr Ramaite's concern to me that the instruction interfered with prosecutorial independence.

18. It is alleged that, based on the instruction, no further prosecution of TRC cases took place.

A handwritten signature in black ink, appearing to read 'DR RAMAITE', followed by a superscript '6'.

19. I will address each of these allegations in turn below, after I locate the briefing on TRC matters on my appointment as Minister, and the amended prosecution policy.

ORIENTATION REGARDING TRC CASES

20. Shortly after my appointment, I met with the then National Director of Public Prosecutions, Mr Bulelani Ngcuka (**"Mr Ngcuka"**) for him to orientate me on the work of the NPA. Mr Ngcuka appraised me on the NPA's work generally and the challenges that it was facing at the time. One of the challenges that he raised was the need of more funding to enable the NPA to do its work.
21. On TRC cases, he advised me of the establishment of the Priority Crimes Litigation Unit (**"PCLU"**). The PCLU was a specialised unit within the NPA that was established in 2003 to manage investigations and prosecutions relating to priority crimes of national and international concern. The TRC cases had been classified as priority crimes by Mr Ngcuka to be dealt with by the PCLU.
22. During this meeting, he introduced me to Adv Ackemann SC, who had been appointed by presidential proclamation to head the PCLU. When Adv Ackemann was introduced to me, he stated that he would be impartial and would prosecute ANC and Apartheid officials alike. I told him that he should do his work as he saw fit.
23. In his witness statement before this Commission, Mr Ngcuka explains that after assessing, inter alia, the sufficiency of the evidence, and prospects of a

Handwritten signature and initials, possibly "BM", in the bottom right corner of the page.

constitutionally compliant prosecution, the PCLU identified about twenty-one (21) cases warranting further investigating.

24. Mr Ngcuka resigned as NDPP in July 2004. Dr Ramaite, who was then the Deputy National Director of Public Prosecutions responsible for the PCLU, was appointed as the acting NDPP until the end of January 2005. I do not recall whether Dr Ramaite briefed me regarding TRC cases.

THE AMENDED PROSECUTION POLICY

Section 179(5)(a) and (b) of the Constitution

25. Dr Ramaite spoke about prosecutorial guidelines in his evidence.
26. I assume that he meant the amended prosecution policy, which introduced prosecution policy and directives to deal with prosecution of cases arising from conflicts of the past which were committed before 11 May 1994 (**"amended prosecution policy"**).
27. The amended prosecution policy was introduced with the provisions of section 179(5)(a) and (b) of the Constitution in mind. These provisions state that the NPA, with the concurrence of the Minister of Justice, and after consulting with the Directors of Public Prosecutions, must determine prosecution policy which must be observed in the prosecution. This constitutional duty is further entrenched in section 21 of the National Prosecuting Authority Act 32 of 1998 (**"NPA Act"**).
28. It is generally accepted that the policy was introduced in light of President Mbeki's statement to Parliament and the Nation on the occasion of the Tabling

of the Report of the Truth and Reconciliation Commission on 15 April 2003. In his speech, President Mbeki, *inter alia*:

28.1 made it clear that there would be no general amnesty.

28.2 emphasised the fact that many people who participated in the past conflicts did not take part in the TRC process.

28.3 instructed that further processes should be left in the hands of the NPA for it to prosecute cases worthy of prosecution.

28.4 as part of this process and in the national interest, the NPA, working with the intelligence agencies, will leave its doors open for those who are prepared to divulge information at their disposal and to co-operate in unearthing the truth, for them to enter into arrangements that are standard in the normal execution of justice, and which are accommodated in legislation.

28.5 in each case where any legal arrangements are entered into between the NPA and particular perpetrators as proposed, the involvement of the victims will be crucial in determining the appropriate course of action.

29. The amended prosecution policy was intended to give effect to President Mbeki's proposals.

The development and promulgation of the amended policy

30. I do not recall much about the process that preceded the adoption of the amended policy.

 9 

31. However, I recall that when I started as Minister in 2004, the amended policy had not yet been passed but was in the process of being developed. Adv Vusi Pikoli (“Adv Pikoli”) was the Director General of the Department of Justice.
32. I have had regard to Ackermann SC and Adv Pikoli’s respective affidavits, deposed to in the high court in the matter of *Nkadimeng and Others v National Director of Public Prosecutions and Others* (32709/07) [2008] ZAGPHC 422 (12 December 2008). In his affidavit, Adv Pikoli explains that in his capacity as the Director General in the Department of Justice, he was previously involved in the formulation of a policy to deal with the TRC cases. He explains that on 23 February 2004, he chaired a Director- General’s Forum which appointed a Task Team to report on a mechanism “to give effect to the President’s objectives”. It is unclear whether the policy he refers to is the amended prosecution policy.
33. In a statement issued by Adv Pikoli on 24 January 2006,³ he explained that after the President’s 2003 statement in Parliament on the receipt of the final volume of the TRC report, and realising the importance for the NPA to deal with these matters on a uniform basis in terms of specifically defined criteria, the NPA;
- 33.1 started a consultation process to determine uniform Prosecuting Policy to deal with criminal matters arising from conflicts of the past.
- 33.2 consulted with other law enforcement agencies, relevant departments, the Minister of Justice and Constitutional Development, the Directors of Public Prosecutions and Unit Heads within the NPA.

³ <https://www.gov.za/ss/news/v-pikoli-amended-prosecution-policy-and-directives-24-jan-2006>.

34. He stated further that:

“During the middle of 2005 a draft Amended Prosecution Policy was submitted to the Minister for her approval as required by the provisions of the Constitution and the NPA Act. The Amended Prosecution Policy was submitted to Cabinet for its information and towards the end of last year the Policy was tabled in Parliament by the National Director and the Minister. This amended Prosecution Policy came into effect on 1 December 2005.”

35. As to the rationale for the amended policy, he stated that it served the important purpose to centralise the TRC cases in the office of the National Director for the following reasons:

35.1 to ensure that there is consistency in decision-making;

35.2 the complexities implicit in these cases;

35.3 the PCLU is based within the Office of the National Director, and shall be responsible for overseeing the investigations and instituting prosecutions; and

35.4 senior designated officials of various departments and other components of the NPA will assist the PCLU in the execution of its duties.

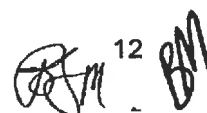
36. I accept Adv Pikoli's account that the amended prosecuting policy was developed as part of a collaborative work by various departments, including the Department of Justice.

 11

37. I also accept the reasons, as set out by him, for why it was necessary to develop the policy.
38. It is common cause that the amended prosecution policy was reviewed and set aside in the *Nkadimeng* judgment. The Commission's Chief Evidence Leader, Mr Semenya SC, represented the Government in that case.

RESPONSE TO THE ALLEGED PHONE CALL AND INSTRUCTION TO DR RAMAITE

39. Dr Ramaite testified that I called him on 11 November 2004 and instructed him that the prosecution of TRC cases are on hold, pending the development of guidelines.
40. I do not have an independent recollection of the phone call, but I do not dispute that it may have happened.
41. As explained earlier, interactions between myself and an NDPP is not foreign. I had also had prior interactions with Dr Ramaite.
42. Adv Vusi Pikoli had initiated the process of amending the prosecution policy whilst he was Director-General of the Department of Justice (as indicated above). Someone in Ramaite's position would have been aware of the amendments and the rationale behind the prosecution policy amendments.
43. Since I had been briefed about the policy amendments when I became Minister, I would have reminded Dr Ramaite of the pending policy amendments and would have advised him to wait pending the prosecution amendments.

 12 BM

44. This was in no way an act of political interference. As Minister, I shared responsibility in the development of the prosecution policy for the purposes of section 179 of the Constitution.

45. I did not instruct Dr Ramaite to stop prosecutions. I had no authority to give such an instruction.

CONCLUSION

46. I deny any knowledge or involvement in any interference with any investigation and/ or prosecution of the TRC cases. I further deny ever having directed and/ or instructed anybody not to pursue the TRC related investigations and/ or prosecutions in any manner.



BRIGITTE SYLVIA MABANDLA

I certify that the deponent has acknowledged that she knows and understands the contents of this Affidavit which was signed and sworn to before me at **JOHANNESBURG** on this the 09th day of **OCTOBER 2026**; the Regulations prescribed in terms of Government Notice R 1258 dated 21 July 1972, as amended, having been complied with.



COMMISSIONER OF OATHS

Brett Ashely Murison
Commissioner of Oaths
Practising Attorney
Murison & Associates Attorneys Inc.
0763775656
37 Laboria Road, Isandovalle, Edenvale



MURISON
& ASSOCIATES



**THE JUDICIAL COMMISSION OF INQUIRY TO INQUIRE INTO ALLEGATIONS
REGARDING EFFORTS OR ATTEMPTS HAVING BEEN MADE TO STOP THE
INVESTIGATION OR PROSECUTION OF TRUTH AND RECONCILIATION
COMMISSION CASES**

**SUMMONS [AS APPROVED BY THE CHAIRPERSON] TO:
APPEAR AS A WITNESS**

in terms of section 3(2) of the Commissions Act 8 of 1947, read with:

- Proclamation Notice 264 of 2025 published in Government Gazette No. 52749 on 29 May 2025;
- Proclamation Notice 278 of 2025 published in Government Gazette No. 53183 on 19 August 2025;
- Proclamation Notice 319 of 2026 published in Government Gazette No. 54818 on 8 June 2026; and the
- Rules of the Judicial Commission of Inquiry to Inquire into Allegations Regarding Efforts or Attempts having been made to stop the Investigation or Prosecution of the Truth and Reconciliation Commission Cases published in Government Gazette No. 53251 on 29 August 2025

Tracking reference:

0003/08/2026



TO BOQWANA BURNS INC.

INFORM:

BRIGITTE MABANDLA

of

228 GROSVENOR ROAD

BRYANSTON

JOHANNESBURG

2191

that she is hereby:

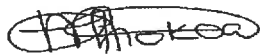
- **summoned to appear personally before the Judicial Commission of Inquiry to inquire into allegations regarding efforts or attempts having been made to stop the investigation or prosecution of Truth and Reconciliation Commission cases ("the Commission") at the Sci-Bono Discovery Center, corner of Mariam Makeba and Helen Joseph Streets, Johannesburg, on 16 September 2026 for the purpose of giving evidence before the Commission on all matters relating to the Commission's Terms of Reference of which you have knowledge and in addition being questioned**



about matters arising from the relevant parts of the affidavits/statements and the transcripts of the evidence listed in Annexure "A" to this Summons;

- **inform her further** that her failure to attend and give evidence as set out above or to remain in attendance until excused by the Chairperson from further attendance or her refusal to be sworn or make affirmation as a witness, after she has been required by the Commission's Chairperson to do so, or failure to answer fully and satisfactorily any question lawfully put to her constitutes an offence under section 6(1) of the Commissions Act; and
- **Inform her further** she is entitled to the same witness fees from the Commission as if she had been summoned to appear at a criminal trial held in a Superior Court in Johannesburg.

DATED at Johannesburg this 13th day of August 2026.



**ADV AM THOKOA
SECRETARY:**

Judicial Commission of Inquiry to inquire into allegations regarding efforts or attempts having been made to stop the investigation or prosecution of Truth and Reconciliation Commission cases.



ANNEXURE "A"

1. The following paragraphs of the affidavit of Dr Silas Ramaite dated 26 November 2026: paragraphs 28-38. (A copy of Dr Ramaite's affidavit containing these paragraphs is annexed hereto as **"Ramaite Affidavit 1"**).
2. Pages 22-36 of the transcript of the evidence tendered by Dr Ramaite to the Commission on 23 February 2026. (Copies of those pages are annexed hereto as **"Ramaite Evidence 2"**. The transcript of the evidence tendered by Dr Ramaite on 23 February 2026 is available at the Commission's Offices at Sci-Bono Discovery Centre, Third Floor, Cnr Miriam Makeba and Helen Joseph Streets and on the Commission's website at www.trc-inquiry.org.za)
3. Pages 7-11 of the transcript of the evidence tendered by Advocate Anton Ackermann to the Commission on 5 March 2026. (Copies of those pages are annexed hereto as **"Ackermann Evidence 1"**. The transcript of the evidence tendered by Advocate Ackermann on 5 March 2026 is available at the Commission's Offices at Sci-Bono Discovery Centre, Third Floor, Cnr Miriam Makeba and Helen Joseph Streets and on the Commission's website at www.trc-inquiry.org.za)

**IN THE COMMISSION OF INQUIRY INTO STOPPED TRC INVESTIGATIONS
AND/OR PROSECUTIONS**

**AFFIDAVIT OF
MASHAU SILAS RAMAITE SC**

I, the undersigned,

MASHAU SILAS RAMAITE SC;

Do hereby state under oath as follows:

INTRODUCTION

- 1 I am an adult male practising advocate and Senior Counsel. I was admitted as an Advocate in 1988 and granted the status of Senior Counsel in 2001.
- 2 I formerly served as Director of Public Prosecutions (DPP), North Gauteng, Special Director of Public Prosecutions in the Office of the National Director of Public Prosecutions, Deputy National Director of Public Prosecutions (DNDPP) and Acting National Director of Public Prosecutions ("ANDPP") in the National Prosecuting Authority ("NPA"). I



took early retirement from the National Prosecuting Authority in August 2019.

- 3 Save where expressly stated otherwise or appears from the context, the facts contained in this affidavit are within my own personal knowledge and are to the best of my knowledge and belief both true and correct.
- 4 I depose to this affidavit at the request of the Commission's Evidence Leaders and in order to ensure that all the relevant facts are placed before the Commission.

QUALIFICATIONS AND PROFESSIONAL EXPERIENCE

- 5 I obtained a *Baccalaureus Procuratoris* (B.Proc) in 1985 from the University of Fort Hare. I subsequently also obtained a Bachelor of Laws (LLB) in 1987, a Master of Laws (LL.M) in 1989 and a Doctor of Laws (LLD) in 1996, all from the University of South Africa (UNISA). I am also a Licensed International Financial Analyst.
- 6 I have worked as an Interpreter, Clerk of the Court, Prosecutor, Magistrate, Candidate Attorney, State Advocate, Senior State Advocate and Deputy Attorney-General. I have also worked as a University Part-time Lecturer, lecturing Constitutional Law, Administrative Law and Law of Delict.
- 7 I was appointed Acting Attorney-General responsible for the then Venda High Court in 1995, after the first democratic elections. In 1996 I was



appointed as a Deputy Attorney General and transferred to Pretoria, serving under Dr Jan D' Oliveira who was Attorney-General of the then Transvaal.

- 8 When the National Prosecuting Authority Act, 32 of 1998 came into operation in August 1998 and the National Prosecuting Authority ("NPA" was established, Bulelani Ngcuka was appointed as the inaugural National Director of Public Prosecutions ("NDPP") and I was appointed Director of Public Prosecutions ("DPP") responsible for all courts falling within the area of jurisdiction of the Pretoria High Court, which at that time covered the Vaal, North Gauteng, Limpopo and Mpumalanga. I was appointed as such by President N R Mandela on the recommendation of Mr Ngcuka as National Director of Public Prosecutions and Mr Dullah Omar as Minister of Justice. I served in that capacity from 1998 until 2001.
- 9 Before my appointment as DPP, Dr Jan D'Oliveira was the Attorney-General of the Transvaal, head-quartered in Pretoria. When I was appointed as DPP Dr Jan D'Oliveira was appointed as a Deputy National Director of Public Prosecutions ("DNPP") and moved to the Head Office of the NPA.
- 10 Upon my appointment as DPP, Pretoria I inherited all the cases and dockets which were being supervised by Dr Jan D' Oliveira as Attorney-General. Among these cases and dockets were cases and dockets that featured in the Goldstone Commission of Inquiry Regarding the



Prevention of Public Violence and Intimidation. I shall refer to these cases a little bit more later in this affidavit.

- 11 In 2001 Mr Ngcuka, the then NDPP moved me to Head Office as a Special Director of Public Prosecutions in his office. I served in this capacity from 2001 to 2003. In that capacity I served as his special advisor together with Adv. Lungisa Dyosi and was part of a team that identified the need for the establishment of specialized units to deal with cases which required a more specialized and dedicated focus. It was during this time that the Priority Crimes Litigation Unit ("PCLU") was established, together with the Specialized Commercial Crimes Unit ("SCCU") and the Sexual Offences Unit. ("SOCA"). The Witness Protection Unit ("WPU"), which was at that time operating from the Department of Justice, was moved to the Head Office of the NPA.
- 12 In 2003 I was appointed as DNDPP in charge of the National Special Services Division ("NSSD"), responsible for the PCLU, SCCU, SOCA and WPU. Adv. Leornard McCarthy was also appointed as a Deputy National Director of Public Prosecutions, responsible for the Directorate of Special Operations ("DSO").
- 13 I first became aware of dockets and cases relating to cases involving conflicts of the past during my tenure as DPP for Northern Gauteng. I subsequently became involved in dealing with these cases in my capacity as SDPP in the Office of the NDPP. A significant number of these cases featured in the Truth and Reconciliation Commission ("TRC") in that



some of the implicated persons had applied for amnesty during the active period of the TRC. Some of the implicated persons were mentioned in the dockets and cases which featured in the Goldstone Commission.

TRC CASES - BACKGROUND

- 14 As already mentioned, when I was appointed DPP, North Gauteng, I inherited cases and dockets which arose from the Goldstone Commission. These were cases which were being handled and supervised by Dr Jan D'Oliveira who, in addition to his position as Attorney-General for the Transvaal, was also the Chief Evidence Leader for the Goldstone Commission.
- 15 There were two categories of cases which arose from the Goldstone Commission of Enquiry which I inherited. Each category was assigned to a Deputy Attorney-General in the Office of the Attorney-General, Transvaal. The first category consisted of cases involving the Boeremag and right wing individuals; these were assigned to Adv. Paul Fick, SC. The second category consisted of cases involving the security forces, mainly State Security, the Police and the Defence; these were assigned Adv. Anton Ackermann, SC.
- 16 For the most part of my time as DPP, North Gauteng Adv. Ackermann was busy with the Wouter Basson trial, which resulted in not much attention to the bulk of the cases arising from the Goldstone Commission. There was also only one police investigator who part of the investigating team of the



Goldstone who assigned to deal with these case. The police investigator was subsequently withdrawn by the National Commissioner of Police and ordered to return all dockets in his possession or under his control to the Office of the DPP

- 17 Soon after the dockets were returned to the Office of the DPP, I approached the NDPP, Mr Ngquka, and raised my concern about lack of investigative capacity to deal with these cases. In 1999 the NDPP issued a directive that all TRC-related cases must be transferred to the Office of the NDPP.
- 18 Subsequent to the issuing of the directive, all TRC-related cases were transferred to the Office of the NDPP. The NDPP established the Human Rights Investigative Unit ("HRIU"), which headed by Vincent Saldhana and functioned as a working group tasked with reviewing, investigating and prosecuting cases in which implicated persons had been denied amnesty or had not applied for amnesty. No prosecutions were instituted during this period.
- 19 The HRIU operated until 2000. In 2000 cases and dockets which were with the HRIU were transferred to the Directorate of Special Operations ("DSO"). A sub-unit, known as the Special National Projects Unit ("SNPU") and headed by Adv. Chris Macadam was established and operated until 2003. No prosecutions were instituted during this period.

- 20 As already stated, I was appointed as SDPP in the Office of the NDPP and served as a Special Advisor to the NDPP, together with Mr Lungisa Dyosi. In one of our discussions with the NDPP about formulating and developing a strategy for addressing and combatting some of the criminal phenomena which the NPA had to deal with, it was decided to establish specialized units within the Office of the NDPP, with specific focus on priority crimes, commercial crime and sexual offences. It was a result of this that the PCLU, the SCCU and SOCA were established by proclamation. These units resorted under the National Special Services Division, which I was appointed to head as a Deputy National Director of Public Prosecutions.
- 21 I recommended to the NDPP that Adv. Anton Ackermann, SC be appointed as SDPP in charge of the PCLU. I did so because when I was DPP, North Gauteng Adv. Ackermann, SC was a Deputy DPP who reported to me and had dealt with cases involving conflicts of the past. He had successfully prosecuted Dr Wouter Basson and I regarded him as a fearless and formidable litigator.
- 22 Adv. Anton Ackermann, SC was appointed by Presidential Proclamation as an SDPP and head of the PCLU on 24 March 2003. The mandate of the PCLU, as stated in the Proclamation, was to manage and direct investigations and prosecutions in relation to various priority crimes, including serious national crimes such as terrorism, sabotage, high treason, sedition, international crimes under the Rome Statute, foreign military assistance and other priority crimes as determined by the NDPP.



- 23 In May 2003 the NDPP, Mr Bulelani Ngcuka, made a determination that all TRC-related cases in which amnesty has been denied or where no application for amnesty was made were 'priority crimes' in terms of the Proclamation. Some 400 or so investigation dockets were transferred to the PCLU. Adv. Ackermann, SC and Chris Macadam, who was assigned as a Deputy DPP in the PCLU, conducted an initial audit of TRC-related cases and identified some 21 cases which required further investigation.
- 24 Although I was not involved in the day to day operational activities of the PCLU, Adv. Ackermann, SC kept me abreast of the work of the unit by way of monthly reports. These reports were tabled and discussed at the monthly meetings of the Executive Committee ("EXCO") of the NPA, which was chaired by the NDPP and made up of all the DPP's and SDPP's.
- 25 In July 2004 Mr Ngcuka resigned from his position as NDPP. I was appointed as Acting NDPP and served in that capacity until 30 January 2005, after which Adv. Vusi Pikoli was appointed as NDPP.
- 26 During 2003, 2004 and 2005 the PCLU identified a number of TRC-related cases for further investigation and possible prosecution. It instituted prosecutions against Eugene Terre' Blanche, Buyile Roni Blani and Gideon Niewoudt, Johannes Martin van Zyl and Johannes Koole.
- 27 At the instance of the PCLU and in 2004, Gideon Niewoudt, Johannes Martin van Zyl and Johannes Koole were each charged with abduction,

assault and murder of three anti-apartheid activists, known as the PEBCO

3. The accused persons had been denied amnesty in 1999. They subsequently launched an application for a review of the decisions to refuse them amnesty. Niewoudt died in 2005 and, sadly, the review was delayed by some five years and was only finalised in 2009 when the High Court ruled that an Amnesty Committee be convened to hear the application of van Zyl.

28 The case against van Zyl and Koole was provisionally withdrawn in 2009 pending finalisation of the rehearing of the amnesty application. To my knowledge, the Amnesty Committee was never reconvened and the case against van Zyl and Koole was never reinstated.

29 In November 2004, the PCLU decided that three former security police officers, Major-General Christoffel Smith, Colonel Gert Otto and Johannes van Staden should be arrested and charged for the attempted murder by poisoning of Rev. Frank Chikane in 1989. I was briefed by Adv. Ackermann about the pending arrest and charges. I endorsed the decision to arrest and charge the individuals and personally took the decision and gave authorisation that criminal proceedings must be instituted and that the prosecution must proceed.

30 On or about 11 November 2004 Adv. Ackermann, SC reported to me that he had received a call from a Mr Wagenaar, an attorney representing Smith, Otto and van Staden, advising him not to proceed with the arrest and charging of his client. He informed me further that Wagenaar had told



him that he must expect a telephone call from the Ministry of Justice and that he would be advised that the case against Smith, Otto and van Staden must be placed on hold.

31 Adv. Ackermann also informed me that soon after he had spoken with Wagenaar he received a telephone call from an official in the Ministry of Justice and informed that a decision had been taken that the case involving Rev. Chikane should be put on hold pending the development of guidelines to deal with the TRC cases. I told Adv. Ackermann that I have no knowledge of the development of any such guidelines. As far as I was concerned, prosecution policy and guidelines already existed; the existing guidelines were developed in line with the United Nations Guidelines on the Role of Prosecutors and applied and continued to apply in all cases involving the decision whether or not to prosecute and whether or not to continue or discontinue a prosecution.

32 I advised Adv. Ackermann, SC that it would be better to wait and have a better understanding of what exactly was happening. Shortly after I have spoken with Adv. Ackermann, SC, I received a telephone call from the Minister of Justice, Mrs Brigitte Mabandla. She told me that there is a Task Team which was appointed by the Directors-General Forum to develop a mechanism to deal with TRC cases. I expressed to the Minister my concern that any process or mechanism which involves the Executive or the Justice and Security cluster would amount to encroaching in prosecutorial decision-making and would be a violation of prosecutorial independence as enshrined in Section 179. The Minister nevertheless

insisted that the prosecution of all TRC-related cases must be put on hold until the development and adoption of guidelines.

33 Subsequent to my telephone call with the Minister of Justice I called Adv. Ackermann and told him that I received an instruction from the Minister that the investigation and prosecution of all TRC-related cases must be put on hold pending the development and adoption of guidelines. I told Adv. Ackermann, SC that my understanding was that an effective moratorium has been placed by Government on all TRC cases and that until it was lifted we have no choice but to wait.

34 After the call from the Minister of Justice and my discussion with Adv. Ackermann, all TRC cases which were being handled by the PCLU were accordingly placed on hold pending the development and formulation of guidelines. My understanding was that the guidelines were in relation to cases arising from conflicts of the past. As I understood, they were to be incorporated as amendments to the existing Prosecution Policy.

35 As I have already stated, I raised my concern with the Minister regarding lawfulness and constitutionality of the guidelines. Even though I was not privy to the rationale, content and context of the proposed guidelines, I held the opinion that there was nothing wrong with the existing prosecution policy and that any guidelines or policy which sought to a specific class of cases would be irrational.



- 36 In my view, which I openly expressed at various EXCO meetings, the existing prosecution policy and policy directives were sufficient and no further guidelines were required.
- 37 The existing prosecution policy and policy directives were determined by the NDPP with the concurrence of the Minister of Justice and after consulting with the DPP's, as provided in section 179(5)(a) and (b) of the Constitution and section 22(1) of the National Prosecuting Act, 32 Of 1998. They were first issued in 1999 and became effective on 01 November 1999.
- 38 The existing prosecution policy and policy directives already provided a rational framework for prosecutors to perform their duties with independence and impartiality and to make consistent, fair and transparent decisions on whether to institute criminal proceedings. The primary criterion is whether there is sufficient admissible evidence to provide a reasonable prospect of a successful prosecution.
- 39 I served as Acting NDPP for six months, from July 2004 to January 2005. On 01 February 2005 Adv. Vusi Pikoli was appointed as NDPP. I continued serving in my capacity as DNDPP, still responsible for the PCLU and reporting to the NDPP.
- 40 In October 2006 the NDPP, Adv. Vusi Pikoli assigned me to chair a Task Team that was set up, as I understood at that time, to review TRC-related cases and to agree on providing investigative capacity. The task team met

for the first time on 12 October 2006 and consisted of senior officers from SAPS, NIA and the Department of Justice and Constitutional Development.

- 41 At the second meeting, which was held on 25 October 2006, Adv. Ackermann, SC presented an audit report on all TRC-related cases which were being handled by the PCLU. The need for investigative capacity to attend to these cases was discussed. The SAPS representative, Mr Lekalakala, made a commitment that he will discuss the need for investigative capacity with the National Commissioner of Police, Mr Jackie Selebi, and will report back at the next meeting.
- 42 The next meeting was held on 06 November 2006. The Chikane matter was discussed for the first time at this meeting. Mr Lekalakala informed the meeting that the National Commissioner of Police believed that Rev. Chikane was not interested in a prosecution. Adv. Ackermann informed the meeting that Rev. Chikane had left the matter in the hands of the prosecution. The meeting ended without any resolution and with no commitment regarding the provision of investigative capacity. I reported the development and outcome of the meeting to Adv. Pikoli.
- 43 A further meeting was held in early December 2006 to try and resolve the impasse. At this meeting Police Deputy Commissioner Jacobs informed the meeting that the National Commissioner was not prepared to provide any investigative capacity in the Chikane matter because Rev. Chikane



had not been consulted and did not wish to become involved in any prosecution. I once again reported this to the NDPP.

44 Most strikingly, at the meeting which took place in early December 2006, Commissioner Jacobs informed the meeting that the National Commissioner of Police had told him to make it clear the function of the Task Team was to make a final recommendation to a "Committee of Directors-General" which would in turn make a recommendation to the NDPP on whether or not to prosecute and who to prosecute and who not to prosecute. This was, in my view, inconsistent with prosecutorial independence.

45 In September 2007 Adv. Pikoli was suspended as NDPP. Adv. Mokotedi Mphse, SC was appointed as Acting NDPP. Soon after the appointment of Adv. Mpshe, SC as Acting NDPP, Adv. Ackermann informed me that he has been relieved of his duties in relation to the TRC cases.

46 I have read the affidavits of Lukhanyo Calata, Anton Ackermann and Vusumzi Pikoli which were supplied to the Commission by Webber Wentzel Attorneys.

CONFIRMATION OF AFFIDAVITS

47 I confirm the contents of the founding affidavit of Lukhanyo Calata dated 17 January 2025 in the matter of *Calata and Others v Government of South Africa and Others* (Gauteng Division, Case No 2025-005245) insofar as it relates to me.

- 48 I confirm the contents of the affidavit of Anton Rossouw Ackermann dated 07 May 2015 in the matter of *Nkadimeng v National Director of Public Prosecutions and Others* (Gauteng Division of the High Court, Pretoria, Case No. 36554/2015) insofar as it relates to me.
- 49 I also confirm the contents of the affidavit of Vusumzi Patrick Pikoli dated 06 May 2015 filed in the matter of *Nkadimeng v National Director of Public Prosecutions and Others* (Gauteng Division of the High Court, Pretoria, Case No. 36554/205) insofar as it relates to me.

CONCLUSION

- 50 I regard the imposition of a moratorium by the executive or a member of the executive on the prosecution of TRC cases purely on the basis of developing and adopting guidelines to deal specifically with these cases as a form of political interference.
- 51 The development and formulation of prosecution guidelines by a Committee consisting of Directors-General of the security cluster is inconsistent with section 179(5)(a) and (b) of the Constitution and section 22(1) of the National Prosecuting Authority Act, 1998 and unlawful.
- 52 I also regard the attempt to involve a body consisting of Directors-General to make recommendations on who to prosecute and who not to prosecute as an encroachment into prosecutorial independence.



53 There is no doubt in my mind that the effective investigation and prosecution of TRC cases were severely hampered by political interference.



DEPONENT

SIGNED AND SWORN TO BEFORE ME AT PRETORIA ON THIS 26th DAY OF NOVEMBER 2025, THE DEPONENT HAVING ACKNOWLEDGED IN MY PRESENCE THAT HE KNOWS AND UNDERSTANDS THE CONTENTS OF THIS AFFIDAVIT, THE PROVISIONS OF GOVERNMENT GAZETTE R1478 OF 11 JULY 1980 AS AMENDED BY GOVERNMENT GAZETTE R774 OF 20 APRIL 1982, CONCERNING THE TAKING OF THE OATH, HAVING BEEN COMPLIED WITH.

CST
257839-3
K RASEKLALA

COMMISSIONER OF OATHS

Full names: RASEKLALA KAMOUÉLO

Business address: 4971 Pretoria Rd Silverton

Designation: Constable

Capacity: POLICE OFFICER



the Amnesty Committee was never reconvened and the case against Van Zyl and Gule was never reinstated.

COMMISSIONER KGOMO: Can I just ask you, do you know where Gule is?

MR RAMAITE: I have no idea, Commissioner, I do not know.

COMMISSIONER KGOMO: Maybe there is something that I must disclose. He is late. He is not testifying because the investigators can get (indistinct). I know because I attended his funeral actually in 2018, 2019. His younger sister was married by my elder brother, that
10 is how I know him and that is for the investigators and I had to disclose that. You may proceed.

ADV SONI: As you please, Commissioner. Now the other case that was of importance while you were the Acting NDPP is the case of the three accused in the, or the three persons accused of attempting to murder Reverent Frank Chikane.

MR RAMAITE: Yes, that is the poisoning of Reverent Frank Chikane.

ADV SONI: Yes. Can I ask you, you have some personal knowledge of these matters. When I say personal knowledge, relating to what happened in that initial attempt to prosecute.

20 MR RAMAITE: Ja, I do not have personal knowledge of the content of the docket of course, but Advocate Ackermann briefed me about the matter.

ADV SONI: Before we get to that, when are we talking about? What period are we talking about?

MR RAMAITE: That would have been November 2004.

DAY 12/ks

- 23 -

23-02-26
RAMAITE

ADV SONI: All right.

MR RAMAITE: When I was Acting National Director of Public Prosecutions.

ADV SONI: It appears from both your affidavit and Advocate Ackermann's affidavit that Advocate Ackermann approached you on the 11th of November 2004. Can you recall that?

MR RAMAITE: Yes, that is correct.

ADV SONI: Now what happened in that interaction between you and Advocate Ackermann?

10 MR RAMAITE: He reported to me that he had received a call from a Mr Waggenaar who was an attorney representing the accused in the Chikane matter and then that Mr Waggenaar had advised him not to proceed with the arrest and charging of his clients. Ackermann was representing the three.

ADV SONI: Who were the three accused?

MR RAMAITE: It was Major General Smith, Christoffel Smith, Colonel Gert Otto and Johannes van Staden.

ADV SONI: Yes, and what did Mr Ackermann tell you?

20 MR RAMAITE: He also told me Mr Waggenaar also told him that he was going to receive a telephone call from the Ministry of Justice advising him that he should not proceed with the case against Smith, Otto and Van Staden and that the arrest must be, and the prosecution must be put on hold.

ADV SONI: Yes. Now what was, is this before the Ministry of Justice contacted, in this conversation between you and Mr Ackermann?

DAY 12/ks

- 24 -

23-02-26
RAMAITE

MR RAMAITE: That was, ja, as far as ja, that was before the Minister contacted me.

COMMISSIONER KGOMO: Were you speaking to Minister Brigitte Mabandla?

MR RAMAITE: That is later. Advocate Ackermann did not mention any names at that stage.

COMMISSIONER KGOMO: Okay.

MR RAMAITE: He just said someone from the Ministry, he will receive a call from the Ministry of Justice.

10 COMMISSIONER KGOMO: Okay.

MR RAMAITE: It is I who later received a call from the Minister of Justice, which was Brigitte Mabandla at that stage.

COMMISSIONER KGOMO: I see.

ADV SONI: The chronology is important. Let us deal with the chronology. Mr Ackermann approaches you and says look, I have received this call from Mr Waggenaer who told me that somebody from the Ministry is going to tell me that these matters must be put on hold.

MR RAMAITE: Yes.

20 ADV SONI: He approaches you, I take it for your views on what to do.

MR RAMAITE: He was informing me as a supervisor.

ADV SONI: Okay. What did you tell him?

MR RAMAITE: Before that, at the same time he also spoke, well rather told me that after he had spoken to Mr Waggenaer he did

DAY 12/ks

- 25 -

23-02-26
RAMAITE

indeed receive a call from an official from the Ministry of Justice.

ADV SONI: Did he name the official?

MR RAMAITE: No, he did not name the official.

ADV SONI: And then?

MR RAMAITE: Ja well, and that was in relation to the Chikane matter in fact. I told them that I had no personal knowledge about exactly what was happening and then in fact I expressed surprise that Mr Waggenaar, who is the attorney representing the accused, would in fact mention the Ministry instead of making representations to the
10 Office of the National Director of Public Prosecutions.

ADV SONI: And what was your attitude towards the Ministry being involved in this matter?

MR RAMAITE: I was not happy with that.

ADV SONI: You then say at paragraph 32 that you advised Mr Ackermann it would be best to wait to get a better understanding of the matter.

MR RAMAITE: That is correct.

ADV SONI: Now what happened after you had spoken to Mr Ackermann?

20 MR RAMAITE: After I had spoken to Mr Ackermann I then received a call from the Minister of Justice, a telephone call from the Minister of Justice, Ms Bridgette Mabandla.

ADV SONI: Before you go on, did you know Mr Mabandla?

MR RAMAITE: Yes, I know her. I interacted with her.

ADV SONI: Sorry.

DAY 12/ks

- 26 -

23-02-26
RAMAITE

MR RAMAITE: I interacted with her before.

ADV SONI: On many occasions or on a few occasions?

MR RAMAITE: Well, I would not say on many occasions, but like on a few occasions, more especially during my tenure as Acting National Director of Public Prosecutions.

ADV SONI: While you were the ... (intervenes)

MR RAMAITE: The Acting NDPP.

ADV SONI: Okay yes, and there were cordial relations?

MR RAMAITE: Ja, there were cordial relations between me and her.

10 ADV SONI: Okay. Now Ms Mabandla phones you, what does she say to you?

MR RAMAITE: She told me that there is a task team which was appointed by the, what is called Directors General Forum to develop a mechanism to deal with TRC cases.

ADV SONI: Yes, and what else did she tell you? Well, what was your reaction?

MR RAMAITE: Well, my ... (intervenes)

20 CHAIRPERSON: Mr Ramaite, before you give your reaction, prior to the telephone discussion with Minister Mabandla did you know of the existence of the Directors General Forum?

MR RAMAITE: I got to know it during my acting stint as Acting NDPP, but I was not familiar with it, but I did have some understanding of what it is from previously, because previously my younger brother was actually Director General of the Public Service and Administration and I do know that he chaired that forum, so I

DAY 12/ks

- 27 -

23-02-26
RAMAITE

knew of its existence.

CHAIRPERSON: Thank you.

ADV SONI: As it pleases you. And did you know what its role was?

MR RAMAITE: I did not have any, you know specific knowledge of it, no.

ADV SONI: Now Ms Mabandla tells you that there is a task team which was appointed by the Director Generals Forum to developing a mechanism to deal with TRC cases.

MR RAMAITE: That is correct.

10 ADV SONI: What was your reaction to Minister Mabandla?

COMMISSIONER GABRIEL: Before you get there, what was this mechanism? Did the Minister explain?

MR RAMAITE: No, she did not explain.

COMMISSIONER GABRIEL: Thank you, Mr Soni.

ADV SONI: Yes, what was your reaction to Ms Mabandla?

MR RAMAITE: My reaction was to express a concern. I did tell her that I am concerned about an outside process or mechanism, especially which involves the Executive, because in my view the Directors General actually report directly to the Executive and then
20 therefore were in my view part of the Executives and I was not happy with the involvement of the Executive in anything that deals with, you know prosecution of cases.

ADV SONI: What prompted your concern just as the Acting NDPP?

MR RAMAITE: What prompted my concern was hearing that there was an outside forum and then particularly in relation to a mechanism

DAY 12/ks

- 28 -

23-02-26
RAMAITE

of dealing with the TRC cases, because we as the prosecution were already seized with those cases and more particularly at that time the Chikane matter.

ADV SONI: Yes, but just at a level of delegation of powers, who is it that determines who should be prosecuted and who should not be prosecuted?

MR RAMAITE: It is the prosecution and I am saying prosecution broadly, but it is the National Director, the DPPs as well as the prosecutors.

10 ADV SONI: Did that play a role in your concern?

MR RAMAITE: It did, it did indeed.

ADV SONI: And what was the nature of the concern?

MR RAMAITE: The nature of the concern was it cut through the prosecutorial independence of the prosecution.

ADV SONI: Okay. Now what, you then say the Minister insisted that the prosecution of all TRC cases must be put on hold until the development and adoption of guidelines.

MR RAMAITE: That is correct.

ADV SONI: Is that what she told you?

20 MR RAMAITE: Yes.

ADV SONI: So she starts off with the particular arrests that were going to be made and now she then says but it does not apply only to that case, but to all cases.

MR RAMAITE: Yes.

ADV SONI: And what was your reaction to the Minister in regard to

that? Because this is now not prosecution only in regard to one matter, but all matters falling into this category of TRC cases.

MR RAMAITE: Again I raised a concern with her because, and then that is what I recall telling her that we already have prosecution policies that was actually developed and then agreed upon by the National Director of Public Prosecutions and after, together with the Directors of Public Prosecutions as in section 179 of the Constitution and in my view there was, the prosecution directives or policy directives that we had were sufficient to cater for all conceivable

10 cases.

ADV SONI: And what was the Minister's reaction to that?

MR RAMAITE: Well, she said you must not proceed until these guidelines are finalised.

ADV SONI: Now clearly from what you are saying that reflected an intrusion by the Minister into the independence of the prosecution, of the NDPP.

MR RAMAITE: That is correct, particularly also viewed in light of the decision that had already been made in respect of the Chikane matter that was going to proceed with the arrests and that we were going to

20 proceed with the prosecution.

CHAIRPERSON: And you say, Doctor Ramaite, that you conveyed that message clearly to the Minister.

MR RAMAITE: Yes.

CHAIRPERSON: That this was an intrusion of your powers?

MR RAMAITE: Well, I did not say so in so many words, but I did say

I am concerned at you as the Minister having to direct us what to do, because that infringes upon the prosecutorial independence of the prosecution.

COMMISSIONER KGOMO: You were diplomatic.

MR RAMAITE: Yes, I was diplomatic, to put it honestly.

COMMISSIONER GABRIEL: How did the Minister respond to that?

MR RAMAITE: Well, she said you must stop, you must not proceed with the charging and the prosecution.

COMMISSIONER GABRIEL: So she gave you an order to stop.

10 MR RAMAITE: An instruction.

COMMISSIONER GABRIEL: An instruction.

ADV SONI: Now having received the instruction from the Minister, what did you do?

MR RAMAITE: I then called Mr Ackermann, because remember that this flows from what Mr Ackermann said to me before. I then called him and I told him that I have received an instruction from the Minister that the investigation and prosecution of all TRC, and that is what she had said and specifically when she referred to the guidelines, that she had instructed that all investigation and prosecutions, that the
20 investigation and prosecution of all TRC related cases must be put on hold pending the development and the adoption of the guidelines.

We had a lengthy, well I cannot remember all the details of my discussion with Mr Ackermann, but because Mr Ackermann was actually insisting that we must proceed and I then said to him, I actually pleaded with him and said okay well look, let us just wait and

get an understanding of what exactly, of what exactly is happening and that at the end of it what the Minister had said was placing an effective moratorium on all TRC cases.

ADV SONI: Doctor Ramaite, I must ask you this, did you then instruct Advocate Ackermann not to proceed with the matter? Well, firstly there was going to be an arrest and then there was going to be the matter in court.

MR RAMAITE: Yes, I did give him an instruction based on what the Minister had said and then you know, with the expected, although I
10 had reservations around the guidelines, but she had said that there were guidelines that were being prepared and I said well, let us wait.

ADV SONI: But I mean, you gave the instruction to him after the Minister had given you the instruction.

MR RAMAITE: Yes, not to proceed.

ADV SONI: Yes. Now one of the things that I am obliged to put to you about your interactions with Mr Ackermann is he also deals with this interaction between you and him about this matter and I am going to read it to you. Commissioners, it is part of his affidavit which appears at annexure FA8 in the Kalaga papers and it deals with this
20 interaction at paragraph 17. You might remember, Commissioners, that this paragraph was read to the witness.

CHAIRPERSON: It is annexure what, Mr Soni, just again?

ADV SONI: Sorry?

CHAIRPERSON: It is annexure what?

ADV SONI: Annexure FA8.

CHAIRPERSON: 8.

ADV SONI: 8 To the Kalaga papers.

COMMISSIONER KGOMO: It is page 388.

ADV SONI: 217 Of the Kalaga papers.

CHAIRPERSON: Yes.

ADV SONI: You are correct, Commissioner Kgomo, 21.

CHAIRPERSON: 21.

ADV SONI: So this is what he says about that interaction and I am going to read it to you in full.

10 COMMISSIONER GABRIEL: This is paragraph 17.

ADV SONI: Paragraph 17, yes Commissioner.

COMMISSIONER GABRIEL: On page 388.

ADV SONI: On page 388, yes. It says:

20 "On the morning of 11 November 2004 the police was on the verge of affecting the arrests of three former officers of the Security Police on charges which related to the attempted murder of the Reverent Frank Chikane, the former Head of the South African Council of Churches, in 1989 by poisoning. The three former policemen were former Major General Christoffel Smith, Colonel Gert Otto and Johannes Manie van Staden (indistinct) had applied for amnesty for this crime."

And that is what you also say in your affidavit.

MR RAMAITE: That is correct.

ADV SONI: It goes on at paragraph 17.1.

"On the same morning I received a call from Jan Waggenaar, the attorney for the abovementioned suspects. He told me that I would receive a phone call from the Ministry of Justice and I would be advised that the case against his clients must be put on hold."

That is what she told you as well.

MR RAMAITE: That is correct.

ADV SONI: Then he says:

10 "Shortly thereafter I received a phone call from an official of the then Ministry of Justice. I was informed by the said official that a decision had been taken that the Chikane matter should be put on hold pending the development of guidelines to deal with the TRC cases. I told him that only the NDPP could give me such an instruction."

Now that is more or less what I understand he told you.

MR RAMAITE: That is correct.

ADV SONI: Now this is what he then says at paragraph 17.3.

20 "A few minutes later the NDPP contacted me and instructed me not to proceed with the arrests. I believe that it can be safely assumed that the NDPP was instructed at a political level to suspend these cases."

Now Doctor Ramaite, the difference might be small, but I must put to you that the one essential difference between what you say and what you said today and what you said in your affidavit you

had told Mr Ackermann and what Mr Ackermann says is he does not say that you told him that the person who had given you the instruction and upon which instruction you had acted was the Minister, do you see that?

MR RAMAITE: Yes, yes, but if my memory serves me well I did indeed tell him that I had received a call from her, because there is this chain of events which then culminated in me saying to him let us not proceed until we get an understanding of what is happening.

ADV SONI: Well no, you went further, Doctor Ramaite.

10 MR RAMAITE: Yes, yes.

ADV SONI: In fairness, you instructed him.

MR RAMAITE: Sorry?

ADV SONI: You instructed him. I am just putting in context what actually happened.

MR RAMAITE: Yes.

ADV SONI: Right, but we are dealing now with the difference between what you say happening in your last interaction with him on this issue and the fact that he said he assumes that it came from high up, whereas you say you did tell him it was the Minister who had
20 given you that instruction.

MR RAMAITE: Yes, that is correct.

ADV SONI: And as you recall the interaction, that is what happened.

MR RAMAITE: Yes.

ADV SONI: That you did tell him that that instruction came to you from the Minister and you were thereafter instructing him to stop this

prosecution.

MR RAMAITE: Correct.

ADV SONI: Now in paragraph 34 and ... (intervenes)

CHAIRPERSON: Mr Soni?

ADV SONI: Yes.

CHAIRPERSON: At an appropriate time you must allow for tea adjournment.

ADV SONI: As you please. Chairperson, it may be an appropriate time, because I am going to a slightly different issue.

10 CHAIRPERSON: We will adjourn and reconvene at 11:20.

ADV SONI: As you please, Chair.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Thank you, Mr Soni.

ADV SONI: Thank you, Chairperson. Dr Ramaite, just to finalise this part of your evidence, the Minister had told you it was not only the case of the Frank Chikane accused, but all TRC cases.

MR RAMAITE: That is correct.

ADV SONI: And the instruction was in relation to TRC cases.

20 MR RAMAITE: That is correct.

ADV SONI: All right. After that instruction was issued, what was the position in relation to TRC cases?

MR RAMAITE: No further prosecutions took place.

ADV SONI: Okay. Now, in fairness to you, Dr Ramaite, you have raised in paragraphs 35, 36, 37 and 38 your concerns about the Minister's intrusion into prosecution territory, if I can call it that.

MR RAMAITE: That is correct ja.

ADV SONI: And do you confirm that? You have already alluded to that during your evidence earlier this morning.

MR RAMAITE: I do confirm.

ADV SONI: Now, you were appointed, I think from about the 1 August, as the acting NDPP, is that correct?

10 MR RAMAITE: That is correct.

ADV SONI: How long did your acting stint, or your acting period, last?

MR RAMAITE: From August 2004 to January 2005.

ADV SONI: And what happened then?

MR RAMAITE: Advocate Pikoli was then appointed from the 1 February as the National Director of Public Prosecutions. And then I reverted back to serving in my capacity as Deputy National Director of Public Prosecutions, but still responsible for the PCLU and reporting to the National Director of Public Prosecutions.

20 ADV SONI: That is now Advocate Pikoli.

MR RAMAITE: Advocate Pikoli, that is correct.

ADV SONI: Now, as I understand it from your affidavit, Advocate Pikoli then gave you quite an important exercise.

MR RAMAITE: That is correct.

ADV SONI: And what was that?

Madison you will say you are referring to?

ADV ACKERMANN: Of course there were the clothes, there were reports, the poison, medical reports, the position [indistinct] because he [indistinct] three times and the FBI person who investigated the matter also had an affidavit, because I had no evidence from the office.

ADV VARNEY: Okay, thank you.

ADV ACKERMANN: Now, I obtained knowledge from a source that the three perpetrators – those are the foot soldiers, was General
10 Christoffel Smit, Colonels Gert de Kock and Johannes Manie van Staden; that they indicated that they were not going to take the fall for this poisoning. Somebody close to them told me that. So, I knew that perhaps my strategy works out this time.

At no stage did I, however, anticipate that Minister Vlok and Commissioner van der Merwe were going to admit to giving the orders and plead guilty. They said to me at least this time the strategy worked, except that it must be said that Vlok and Van der Merwe only offered a plea after the negotiations between the state and the three foot soldiers failed.

20 That must have been beginning of 2007 that Vlok and Van der Merwe came on the scene. That is the time when the washing of feet started. Commissioner van der Merwe appeared about five times before the TRC Commission, but never said anything about the Chikane matter. Now, the attempted, got any near the attempted arrest of the Chikane accused.

DAY 18/mb

- 8 -

05-03-26
A RACKERMANN

ADV VARNEY: Just before you start on that, you made reference to the washing of feet. Was that in relation to the late Adriaan Vlok's various attempts to, I suppose, reconcile with families and victims by washing their feet? Is that what you are referring to?

ADV ACKERMANN: Exactly.

ADV VARNEY: Thank you. Please proceed.

ADV ACKERMANN: Approximately a week before the intended arrest of the accused, foot soldiers, I contacted Attorney Wagenaar and informed him that the three accused must present themselves at
10 the magistrate's court or the police station – I am not sure where it was; where they will be arrested and arranged for trial in the Supreme Court of Pretoria and that I will not oppose bail.

During my discussions with Wagenaar, it was obvious that they caught him by surprise. In short, he told me again the whole story about it would be a futile exercise, because the politicians have already decided that there will be a special dispensation for the accused in TRC matters and a bill to that effect will be presented to parliament in the near future. I merely informed him to be at court with the three accused.

20 I then made an appointment with Dr Ramaite to discuss this matter. I cannot recall all the matters we discussed, but it was in the main about the independence of the NPA and the powers of the Minister of Justice. A day or two before their arrest, Wagenaar phoned me again to enquire if I have been informed by the Justice Department about what was to happen with this case, the TRC case

DAY 18/mb

- 9 -

05-03-26
A R ACKERMANN

of Reverend Chikane. I said no and once again informed him that he must ensure that the three accused present themselves at the police station, otherwise they will be arrested at their place of abode. He informed me then De Klerk was in contact with President Mbeki and it was decided that all TRC prosecutions investigations must be put on hold, pending the formulation of TRC guidelines policy, the policy guidelines.

Now, the morning of the intended arrest, I received a phone call again from Wagenaar who informed me that I would receive a call
10 from the Minister of Justice and that I would be advised that the case against the accused should be placed on hold. Shortly thereafter indeed I received a phone call from an official, Mabandla's office, who informed me that the decision had been taken by the minister and the Chikane case should be placed on hold. I told the official that the minister does not have the power or authority to give me such an instruction and that only the NDPP would give me such an instruction.
ADV VARNEY: Mr Ackermann, do you by chance recall the name of that official?

ADV ACKERMANN: I have mentioned that it was; the person said
20 hold on for Mr de Lange. Immediately I thought it is the Deputy Minister De Lange that was going to talk to me, but when I spoke to this person [indistinct] was not the deputy minister that spoke to me. So, I do not know if there is another De Lange there or that I was supposed to speak to the deputy minister, but the name De Lange came up and it was not... I know him and he knows me. Probably he

DAY 18/mb

- 10 -

05-03-26
A R ACKERMANN

would address me as 'Anton'.

ADV VARNEY: Okay, thank you.

ADV ACKERMANN: That is after I said I am not taking any instructions from him. Approximately 15 minutes later I received a call from Dr Ramaite requesting me to come to his office. Of course I knew what it was all about. He told me that he received a call from Minister Mabandla, informing him that he must not proceed with the rest of the Chikane perpetrators and that the NPA must put on hold all investigations and prosecutions of TRC cases. I reminded him that

10 we had discussed this scenario two or three days ago and that we both agreed that the minister did not have the power to give instructions to the NPA pertaining to prosecutions.

We had an argument, a legal argument, I would say, I do not know, for approximately 15 minutes or 20 minutes, I am not sure, because I was upset that Ramaite who previously agreed with me about the legal principles had succumbed to the pressure by the minister. I have read the transcript of Dr Ramaite's consultation with Mr Semanya and agreed with the reasons he furnished to Mr Semanya; and that is, he did not want to cause a conflict between the

20 NPA and the Minister of Justice.

He told me that the justice clusters, directors-general was going to formulate guidelines, but this cluster was not happy about my conduct in the prosecution of the TRC cases. At that stage I was not in the mood to have the same legal argument again with him and simply requested him to give me instructions on what to do. The

DAY 18/mb

- 11 -

05-03-26
A R ACKERMANN

instruction was to stop the arrest, not to proceed with any TRC prosecutions. I stood up and walked out.

Another heading I have here is "meeting with Reverend Chikane on 22 January 2007". Commissioners, it is relevant and important to explain what occurred before the meeting with Reverend Chikane. At some stage I was informed by General Jacobs that Chikane was against the prosecution and at ...[intervenes]

ADV VARNEY: Mr Ackermann, when you say General Jacobs, can you explain to the commission who he is and what was his role at that time?

ADV ACKERMANN: He was a legal, attached to the legal division of the police. He was also the representative. He was nominated by General, Commissioner Selebi to sit on the so-called task team, the task team where that started its first sitting, I think, was here in October 26; and I knew him from a number of matters I had to deal with the police, but he was a legal man.

ADV VARNEY: Thank you. Please proceed.

ADV ACKERMANN: Now, as I said, it is important to explain what occurred before the meeting with Reverend Chikane on the 22nd. We had a number of meetings. As I said, I have not got the dates here, but it must be middle of October and we had about three meetings of the task team during that time. Now, at this meeting virtually all the members, like a rehearsed choir informed me that Reverend Chikane does not want a prosecution. The minutes of the meetings of the task team is available and it...