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 Semenya (SC)
Adv Vas Soni (SC)
Adv Fana Nalane (SC)
Adv Nompumelelo Seme
Ms Baitseng Rangata
Adv Phelo Mahlati-Mbanga

REPRESENTATIVES
Adv Mfundo Salukazana (for Ex-NDPP's Officials)
Adv Nwabisa Mtshizana (for Ex-NDPP's Officials)
Adv Varney (SC) – The Calata Group
Adv D Pillay – The Calata Group
Ms A Thakor – The Calata Group
Mr Jos Venter – The Calata Group
Mr Sipho Tlhaole – The Calata Group
Adv KD Moroka (SC) – DOJ Representative
Adv Anisa Kessery-DOJ Representative
Adv Irene Dikgale (for SAPS)

29 OCTOBER 2026

DAY 105

PAGES 1 – 131

MzanziSA Business Solutions
Arbour Square
Cnr Melle & Juta Street
Ground Floor, Office 3
Braamfontein, 2001
TEL: 011 339 1289 Cell: 0794374335
E-mail: transcription@mzanzisa.com

PROCEEDINGS ON 29 OCTOBER 2026

CHAIRPERSON: Good morning to you all. Mr Semenya?

ADV SEMENYA: Good morning, Madam Chair and Commissioners. Today we have Mr Mpshe appearing virtually and assisted by my learned colleague, Salukazana, but he is here for cross-examination.

CHAIRPERSON: Thank you. Good morning, Mr Salukazana.

ADV SALUKAZANA: Good morning, Chairperson.

CHAIRPERSON: Yes.

ADV SALUKAZANA: Yes, [indistinct].

COMMISSIONER KGOMO: Switch on your second microphone, please.

ADV SALUKAZANA: I will be sitting here and my colleague, Ms Mtshizana and the attorney, Ms Mudzi are sitting with the client, Mr Mpshe.

CHAIRPERSON: Yes. Yes. Adv Mpshe, can you hear us?

COMMISSIONER KGOMO: He is muted. He is muted.

CHAIRPERSON: You are muted, Adv Mpshe. Can you hear us?

ADV MPSHE: Yes, I can hear you, Chair.

CHAIRPERSON: Yes. Good morning.

ADV MPSHE: But can you hear me?

CHAIRPERSON: Yes, we can hear you now.

ADV MPSHE: Good morning, Chair.

CHAIRPERSON: Yes. You are reminded that you are still under your former oath.

ADV MPSHE: Thank you, Chair.

MOKOTEDI JOSEPH MPSHE: still under oath

CHAIRPERSON: Mr Varney?

ADV VARNEY: Thank you, Chairperson. With the leave of the Chair, we would like to commence our cross-examination.

CHAIRPERSON: Yes.

COMMISSIONER KGOMO: If Mr Mtshizana can just switch off his second microphone, please. No, no, not, you are switching that one on. Switch both off now.

CHAIRPERSON: Yes. Thank you, Mr Salukazana.

CROSS-EXAMINATION BY ADV VARNEY: Thank you. Mr Mpshe, I just want to check; can you see and hear me?

ADV MPSHE: Yes, I can see and hear you.

ADV VARNEY: Good morning to you. I hope you are keeping well.

ADV MPSHE: Thank you. I am well, thank you very much. Good morning.

ADV VARNEY: I have heard that you do have some health challenges, so we will try not to keep you for too long today.

ADV MPSHE: Thank you very much. I will appreciate.

ADV VARNEY: And we are grateful for you making the time to assist the Commission this morning. Before we commence, can I just check; do you have a copy of the Calata Group's application to cross-examine you?

ADV MPSHE: Yes, I do.

ADV VARNEY: Wonderful, because we are going to, by and large, follow that application. I will be referring to it quite frequently, so it

will be helpful if you can have it in front of you. And just to give you a sense of where we are going, we are going to be dealing with five broad topics. We are going to look at your decision to relieve Ackermann SC of his duties in relation to the TRC cases.

Secondly, we are going to look at the management of the TRC cases. After that decision, thirdly, we are going to focus on the PEBCO 3 case. Then fourthly, we will look at work conducted on the TRC cases from 2008 onwards. And then lastly, we will look more generally at the challenges facing the TRC cases, in particular the challenge around having the cases investigated.

ADV MPSHE: Yes, I follow.

ADV VARNEY: So now that we have that roadmap, let us turn to the first heading. And perhaps you can turn to page 2 of the application. It is actually page 49 of the bundle for those who are following in the cross-examination bundle.

ADV MPSHE: Ja.

ADV VARNEY: And so there, Mr Mpshe, you can see that we make reference to your statement. And perhaps just before I get there, can I just confirm that you provided a statement to the Commission dated 18 March 2026?

ADV MPSHE: I do confirm that.

ADV VARNEY: Thank you. And you will recall that you testified before the Commission to give your evidence-in-chief on 7 April 2026.

ADV MPSHE: I confirm that as well.

ADV VARNEY: Can we also just confirm the dates when you were

acting NDPP? Was that between September 2007 and November 2009?

ADV MPSHE: That is correct.

ADV VARNEY: Wonderful. All right, then let us then turn back to page 2 of the application, and we will start at paragraph 7 and we make reference to paragraphs 28 to 30 of your statement, where you provide an explanation behind your decision to relieve Ackermann SC of his operational duties in relation to the TRC cases. And I am just going to provide a summary of those paragraphs, which we have set out between 7.1 and 7.3 of the application and then will follow up with some questions.

So in paragraph 29, you said that soon after your appointment as Acting NDPP on 26 September 2007, you held briefings with various stakeholders, including those that were responsible for the TRC matters. During these engagements, it became apparent to you that there was much acrimony directed towards Ackermann. You also referred to these as personality issues. And you also referred to Ackermann's management of the TRC matters. Perhaps we can pause there. Could you indicate to the Commission who were these various stakeholders with whom you engaged?

ADV MPSHE: Ja, the stakeholders I engaged with, one of them was one of the… was the then Acting National Commissioner Williams, and I engaged with him on the basis of the work that has been done by the PCLU unit. And another person that I engaged with was with the late Jackie Selebi, may his soul rest in peace, when it pertained to

an investigation of cases. And of course, last it was the PCLU itself that I had a chat with.

ADV VARNEY: Thank you. Can I just check whether at that time when you were engaging with the stakeholders about relieving Mr Ackermann of his duties in relation to those cases, did you also have occasion to engage with the then Minister of Justice, Brigitte Mabandla, and the Director General of Justice, Menzi Simelane?

ADV MPSHE: No, not at all. With Menzi Simelane, my contact with him when I saw him, it was when I attended one of the meetings of the DG, of the Director-General's forum that turned out to be the task team, but I did not have a meeting with the then Minister Mabandla.

ADV VARNEY: Thank you. Did you consult with any other individuals at that time, for example, the then Minister of Safety and Security, Charles Nqakula?

ADV MPSHE: No, no, no.

ADV VARNEY: So you indicated that you consulted with Acting National Commissioner, Timothy Williams.

ADV MPSHE: Yes.

ADV VARNEY: Our information is that he was not Acting Commissioner at that time, because he only started acting as National Commissioner in January of 2008. And here we are talking about the period, seems it is between September and November 2007.

ADV MPSHE: Well, it may be a question of days that I am referring to, but the meeting that I had with him, because when I was put in as

the Acting National Director and I did the work that I did, when Jackie Selebi was then suspended by the then President Mbeki, then Williams was put in place. And I, me and him were sort of appointed almost maybe at the same time or after Jackie Selebi was suspended. It is then that I had meeting with him and we met in Pretoria. It could be a question of days then.

ADV VARNEY: Right. Apparently, Jackie Selebi was suspended on 12 January 2008.

ADV MPSHE: Okay.

ADV VARNEY: Although you were appointed Acting NDPP in September of 2007.

ADV MPSHE: In September 2007. Well, I will stand corrected in as far as the dates are concerned, but those are the people that I had contact with.

ADV VARNEY: Thank you and noted. Let us turn to paragraph 7.2.

ADV MPSHE: Ja.

ADV VARNEY: So during November of 2007, you received information about a complaint that Reverend Frank Chikane lodged with the then Minister of Justice, Brigitte Mabandla, about Ackermann's handling of the prosecution in the Chikane matter. And that letter was attached as MJM1 to your statement.

So you became concerned that the operational management of TRC matters by Ackermann became untenable because of tensions between Ackermann and the stakeholders that you have mentioned. So that is also set out in paragraph 29. Can you just

remind us; what were these tensions between Ackermann and these various stakeholders?

ADV MPSHE: Ja. You see, it had become clear to me then that the stakeholders did not approve or appreciate Ackermann operating in that office of PCLU. And some of the information came to me via Mr Vusi Pikoli, who was attending those meetings. And when he came back from the meetings, he sometimes come and tell me what happened in those meetings and referred to the dissatisfaction of the other members and stakeholders regarding Ackermann.

ADV VARNEY: And can I just check those interactions with Adv Pikoli; was that before his suspension?

ADV MPSHE: Yes, yes, before his suspension, yes. Remember I was his deputy.

ADV VARNEY: Yes. And just one last thing on the stakeholders; you mentioned you consulted with the PCLU itself.

ADV MPSHE: Ja.

ADV VARNEY: Who in the PCLU did you consult with?

ADV MPSHE: It was Ackermann and some of his other managers therein. I remember one of the people who was there, it was Helena Zwart, who was some kind of an assistant in there.

ADV VARNEY: My understanding is that Helena Zwart was the secretary to the PCLU, an admin person.

ADV MPSHE: Yes.

ADV VARNEY: Why would she have been consulted?

ADV MPSHE: Well, she was present when I was in the office with

Ackermann.

ADV VARNEY: All right, now also in paragraph 29, you indicate that you fully supported Ackermann in his response to Chikane's complaints. That is set out at paragraph 30. But you decided as a result of the Chikane complaint to relieve Ackermann of his duties because of the perception of him by the stakeholders and the acrimony directed against him remained.

So do I understand correctly that although you agreed with the response of Ackermann to the complaints, you felt that his response had merit and effectively you were not agreeing with the accusations made against him, but it was nonetheless the perception that existed by the stakeholders that caused you to reach that decision.

ADV MPSHE: Yes.

ADV VARNEY: Thank you. Now, the stakeholders that you have mentioned, so I suppose that would… you mentioned three or two persons, namely Timothy Williams, Jackie Selebi and then the PCLU. Did any of them suggest that Ackermann should be relieved of his duties?

ADV MPSHE: No. No.

ADV VARNEY: So would you agree that certainly from the perspective of outsiders, like ourselves, there does seem to be something of a disconnect, because on the one hand, you fully supported Ackermann in what he had done, but nonetheless you felt that he had to be relieved of his duties in relation to those cases, or

his operational duties at least. Do you accept that there appears to be a disconnect between fully supporting him, but nonetheless taking action against him?

ADV MPSHE: Yes. On the face of it, one would say there is a disconnect, but I did that not because I did not want him to partake in the TRC matters, but I did that in a way of protecting him from the acrimony that was outside there, and say let me remove him out of the face of these people and make him office bound to operate from the office in order to protect him. And that does not mean that when I decided to relieve him of his duties, I did not like him or I did not support him. It was a question of protecting him from the attitude out there, but ...[intervenes]

CHAIRPERSON: So, Adv Mpshe, if I may interpose, you fully supported Ackermann in his response to the Chikane complaints, but you decided to relieve him because of the perception. Were you influenced by the view that was held by the stakeholders of Ackermann? Is that what influenced you?

ADV MPSHE: Yes, madam, that was part of it, because I felt that insisting and keeping him there, he would not be able to operate fully and effectively, even in the course or in dealing with these matters further because of the acrimony that was outside there for him. That was the reason. That is why I said it was a way… sorry, Chair?

CHAIRPERSON: Yes, you may proceed.

ADV MPSHE: That is why I said it was my way of protecting him, but making him stay to be able to pursue and deal with the matters.

ADV VARNEY: Mr Mpshe, the pressures on prosecutors, like the pressure that was being exerted on Ackermann and the NPA in relation to these matters, is that not the nature of the game, so to speak and that prosecutors are expected to be strong and firm and to act without fear and favour, would you not agree, and not to be influenced by pressure or criticism?

ADV MPSHE: No, no, I fully agree, but here we are talking about a person who was faced with other people out there who were senior or superior to him and the people who were to be in his life right through for as long as he was dealing with the matters in the PCLU. And I was thinking about the discomforts and everything that he was going to endure, but it is the nature of it that a prosecutor would be criticised and what have you. But here, this is a different scenario of a standing body of [indistinct] about directors-general who were there and who hold meetings, which were not once-off meetings, which were going to be determining even the operation of the PCLU. There is a difference there.

ADV VARNEY: Can I just ask you to elaborate on what you just said in relation to the role of the directors-general?

ADV MPSHE: Yes. Remember, there was that body that was being set up, I cannot remember the year, but it is somewhere in the files, who would sit and who would be invited to that meeting where he was a member in that meeting, wherein the task team was finally formed. And the task team, if you remember the guideline that was set aside by the Court, refers to the establishment of that task team. Now, the

task team was there to sit and to assist the NPA in doing his work, his work regarding the TRC matters. That is what I am talking about. Or you want me to elaborate more on that?

ADV VARNEY: Thank you. So, I just want to put to you the version of Adv Ackermann. This is what he alleged to have said to you when you advised him that he was relieved of his duties in relation to those cases; and this is in his statement, as well as in his transcript. Chairperson, that is on day 18. He testified on 5 March 2006 in the transcript. I do not have the page number, page 31. So, Adv Ackermann says to you:

> "My parting words to Mr Mpshe was that he must remember that the TRC cases are a given and that they are not going to disappear."

So, it seemed from the perspective of Adv Ackermann that he was not happy with being relieved of his operational duties in relation to those cases. So, my question to you is: why would he need protection if he was doing his job prosecuting boldly and fearlessly? It would seem that, if anything, your duty was to protect him from that kind of outside pressure.

ADV MPSHE: Yes, I was protecting him from that outside pressure. Like I said at the beginning, I did not want him to be working there and dealing with those cases and maybe even going to court as an unhappy person and getting whatever sort of remarks against him. It was my form of protection to him. I do not know how to explain it further.

ADV VARNEY: Yes, I hear what you say, but what I was really putting to you is that that protection was misplaced, because there you were relieving him of his duties; and what I was putting it to you is that the protection you should have afforded Ackermann was to let him continue with his duties boldly and fearlessly. But when that criticism and pressure came from the DGs and elsewhere, that is where you should have stepped in to protect him, not relieving him of his duties because that is not protection.

ADV MPSHE: No, I see, I see. I understand you. I understand you now.

ADV VARNEY: Thank you. If you wish, you can comment on that.

ADV MPSHE: Well, I can say that what you are saying is not out of line. Maybe that is what I should have done.

ADV VARNEY: Okay. And you did make reference in your evidence-in-chief to the fact that the then DG of Justice, Menzi Simelane had in fact asked you why you had not removed Ackermann from the TRC cases, and perhaps we can just go to that particular passage.

ADV MPSHE: Yes, [indistinct].

ADV VARNEY: If you can just wait, perhaps we can just go to the actual passage and then we can take it further. So this is, let me just see if I can find it; 84, 85. So this is in fact the statement of Adv Menzi Simelane before this Commission. It is at pages 84 to 85 of the bundle.

ADV MPSHE: Ja.

ADV VARNEY: And perhaps we can just focus on his paragraphs 30 to 31. And to be fair, you were not at this particular meeting. We will come back to the exchange you had with Mr Simelane shortly. But previously at a meeting that had been attended by Adv Pikoli, Menzi Simelane had indicated a desire to have Ackermann removed; and so I will just quote paragraphs 30 to 31.

ADV MPSHE: Ja.

ADV VARNEY:

> "The response of Adv Pikoli was exactly as he had stated to me in our meeting. He indicated that since Ackermann was the head of the PCLU, it was his job to oversee all the work of the unit, including the TRC cases; and for that reason, he would not remove him."

And then perhaps just the first line of the next paragraph, 31.

> "The mood in the meeting changed and there was tension. Members wanted to know why in the light of the concerns raised Adv Pikoli insisted on retaining Ackermann in that role."

So do you accept that even before you assumed your post as Acting NDPP, there was a desire by some in the executive branch at the DG level to have Ackermann removed from those cases?

ADV MPSHE: Yes, I do agree. That is why some minutes ago, I said to you I knew about this attitude towards Ackermann via Vusi Pikoli, because when he would come from the meeting sometimes,

he would brief me about what had been in the meetings. So I would know; so I agree with that.

ADV VARNEY: And perhaps while we are on this topic, we can now turn to the exchange that you had with then DG of Justice, Menzi Simelane, and this is from your evidence in chief, the transcript of day 28. Chairperson, this is at page 228 of the bundle. I will also wait for you to get there as well, Mr Mpshe.

ADV MPSHE: Yes, I am there.

ADV VARNEY: Okay. So you have been led by your Adv Salukazana, and at the top of the page, I will start quoting. He says:

> "I want to direct you to the statement, the one that starts with 'I can only speculate'. Is the speculation reasonable that the probabilities are higher that Mr Simelane asked you to remove Mr Ackermann?"

And you respond:

> "The speculation as he states for me recalling is not improbable and I would substantiate that. It is because that happened to me as well in passing. It was not in a meeting, it was not written anywhere, but I recall I was with Adv Simelane who just remarked to me and said: 'hey Chief, why are you keeping Ackermann there?' So that is why I say that speculation may be closer to what happened."

So it does seem that even in a direct exchange with you, Adv Menzi Simelane, then DG of Justice, was anxious to see Mr Ackermann relieved of his duties. Would that be correct?

ADV MPSHE: Correct.

ADV VARNEY: All right. Let us move to paragraph 10 on the application to cross. So we note that in your letter addressed to Minister Mabandla was attached to your statement at MJM2 on page 2. You made an interesting observation, which I will just read into the record, and it is at page 19 of the bundle.

> "Adv Ackermann admits that he had some concerns about the guidelines and in a number of official memoranda raised his concerns on the constitutionality thereof. Despite reservations, he diligently applied the criteria as stipulated in the guidelines. With the wisdom of hindsight, it appears that there was some merit in Adv Ackermann's reservations. Indicative thereof is the institution of a civil action in the High Court challenging the validity of the TRC guidelines."

So there you are pointing out that Ackermann's reservations turned out to be correct in relation to the guidelines, which was some simplicity overturned in the High Court. You accept that?

ADV MPSHE: Yes, I do.

ADV VARNEY: Now, can we ask; did you share Ackermann's views on those guidelines at that time?

ADV MPSHE: Well, I cannot say share his views on the guidelines, but I would say when I went through them myself, then I realised that he may have had some merit by his attitude towards the guidelines. And I said, and that is again stated in the case that was launched in the High Court. Then that is why I said on hindsight, because I was there when the guidelines were formulated and tabled and accepted by parliament. But at that stage, one did not go deeper into them to understand exactly what they meant until when they were challenged in court; and then I got his attitude towards them. That is what I mean.

ADV VARNEY: Yes, I suppose you use the words 'hindsight', because as acting NDPP, you actually ...[intervenes]

ADV MPSHE: Supported.

ADV VARNEY: Opposed the application of the Cradock Four wives and Thembi Simelane.

ADV MPSHE: Yes, I did.

ADV VARNEY: All right, let us turn to paragraph 12 on the application to cross-examine. And we are referring to the same letter that you addressed to Minister Mabandla. It is at page 18 of the bundle, dated 24 January 2008 and it deals with the representations made by Frank Chikane, you providing a response to the minister.

And on page 19, at the top of the page, you state the gravamen of Reverend Chikane's complaint is his perception of being used as a pawn in the battle between government and the NPA. No mention is made of any specific government department. So what did

you understand when you described Chikane's deception of himself being a pawn in the battle between government and the NPA?

ADV MPSHE: Well, I was quoting what he said in his letter. If you recall in his letter, he is using the very same words, though he does not use the word 'pawn', but he says his matter is being used in the battle between government and the NPA.

Then what came into my mind, or even comes into my mind even now, is that he was referring to what would happen in the meetings of the DGs or even in the task team, between what happened in those meetings there and what the stand of the NPA was; that there was a standoff between the NPA and the DGs who were representing government, because these were representative of certain departments.

That tension, he was saying maybe they are using this, his case to… they are using this case in that tension between NPA and the government, the government as represented by the DGs.

ADV VARNEY: Thank you for that clarification. And clearly you were simply quoting or paraphrasing from the complaints made by Reverend Chikane.

ADV MPSHE: In his letter.

ADV VARNEY: Did you ever get a sense of what he meant when he spoke about a battle between government and the NPA? And perhaps if I can put it to you perhaps a little more directly, what appeared to be going down was that the NPA wished to prosecute in that matter and others. And there was a reluctance on the part of

some in government to take that route. Would that adequately sum up the tensions?

ADV MPSHE: Yes. Look, the whole thing that, what was happening or let me refer to the tension there. It was regarding the power of the NDPP to decide whether to prosecute or not. Now that body wanted to, they wanted Vusi Pikoli to leave that to them or to include them in taking a decision to prosecute or not. That is where the tension started. And I remember again, listening to the former Minister of Safety and Security, Charles Nqakula mentioning this tension. That is what was happening.

ADV VARNEY: Thank you. And a bit later, we will return to that tension as you have eloquently set out. So just in wrapping up this section, we want to put it to you, Mr Mpshe, that your decision to relieve Ackermann of his operational duties in relation to the TRC cases; that you did take that decision, because pressure had been placed on you by the likes of the DG of Justice, Menzi Simelane as well as other stakeholders. And you deemed it prudent at that time to maintain relationships, smooth the waters. And you felt that the best way to do that was to essentially accede to their demands that Adv Ackermann be taken out of the fray.

ADV MPSHE: Ja. Let me not agree with you, or let me put it this way. The pressure that you are talking about, I do not want to interpret it, if you do, to interpret as meaning that the people in that forum were approaching me or made me or told me to do that, except the incident with Simelane when he was at the NPA offices. It should

not be interpreted in that fashion, but you should look at it if you use the word 'the pressure'. I would say it was coming from their attitude towards Ackermann. Their attitude towards Ackermann made me to decide to do that. And I was not doing that in order to maintain good relations with them, not at all, not at all.

ADV VARNEY: Thank you for the clarification, but it was nonetheless pressure, as you just stated.

ADV MPSHE: Ja, ja, ja. The insinuations and remarks and what have you, we can drop that and call it as pressure.

ADV VARNEY: Yes. Now, just dealing with the impact of the decision that took Ackermann away from operational duties, would you accept that this had a negative impact on the cases? Because if we just look at the question of delivery between 2007 and 2016, and I fully accept that you were only there for a small fraction of that time, but it is a matter of record that between that period, there were no prosecutions enrolled and no inquests reopened.

ADV MPSHE: I agree to that. I agree.

ADV VARNEY: Thank you. And then with hindsight, looking back now, would you agree that in fact that decision to take Ackermann off those cases at an operational level was improper and played a role in undermining those cases?

ADV MPSHE: No, I would not agree to that. One, I would not agree that the decision was improper. Two, I would not agree to the fact that it undermined the going forward of the processing of the matters, because there were other members who were in the office who then

continued with the work and who were then joined later by Adv Macadam who then saw to it that those matters are dealt with. There were people in the office.

ADV VARNEY: Right. Well, we will shortly come to the management of the cases following the removal of Ackermann from the day-to-day work on them. Well, perhaps we should simply just go there. Now, in your statement at paragraph 30, that is at page 8 of the bundle, you indicated that; and in fact, it is at page 9 at the top, you indicated that following the relieving of Ackermann, you appointed Chris Macadam to take over what you refer to as the TRC operational management and responsibilities as soon as he finished his FATF project.

ADV MPSHE: Ja.

ADV VARNEY: And then you attached your letter dated 24 January 2008 as MJM2. Now, according to Macadam, he says he only became involved in the cases after a year into your tenure as Acting NDPP in September of 2008. And perhaps we can just check Macadam's statement, which is at page 86. It is at paragraph 53. He says:

> "I next became involved in the TRC cases in September 2008 when Mr Ackermann, the head of the PCLU at the time, informed me that I would be assuming his responsibilities on a task team established by Mr Pikoli to address all TRC matters."

So I know it is unclear exactly when Ackermann was relieved of his duties. And as you can see from paragraph 18, he says it was in late 2007. That is actually in your statement where you mentioned November 2007, although in your evidence-in-chief, you said it was sometime in early 2008, regardless of the actual date. What is your response to Macadam saying that he only became involved in September of 2008?

ADV MPSHE: Well, that may not be incorrect. Remember, like I said, there were officers in the PCLU who were working there, and Ackermann was there, to mention some of them. Mhaga was, Mthunzi Mhaga was one of them there, and I think… let me think about, Shaun Abrahams was also there. So they continued doing the work.

And then when Macadam came in, he then assumed the leadership of the operation there, but with Ackermann still in there. What I am trying to say is, it is not that when Ackermann was relieved, the office was empty because Macadam was not there. No, no, even if when he was not there, there were people who continued doing the work. Torie Pretorius was also there.

ADV VARNEY: Yes, and to be fair to you, in paragraph 20 in the letter you wrote to Minister Mabandla on 24 January 2008. You say that:

> "All future post-TRC investigations and prosecutions be managed by Dr Ramaite, Adv Mhaga and the TRC Task Team."

And we will come shortly to their roles. Well, perhaps since you raised Adv Mhaga, and let us perhaps jump down the page to paragraph 22, because Adv Mhaga actually complained that because nothing was happening with these cases, he was not getting any prosecution experience, and he actually asked to be transferred to the…

ADV MPSHE: Transferred.

ADV VARNEY: Special Commercial Crimes Unit. So let us just quote from Adv Mhaga, and this is from his statement at paragraph 72. Chairperson, it is at page 92 of the cross bundle. He says:

> "From late 2007 until approximately June 2009, there was a marked decline in progress on TRC-related matters. As a result, the TRC Task Team became largely dysfunctional, and my role within that structure was effectively rendered redundant."

That is at his paragraph 77. He says:

> "This was a professionally difficult period characterised by a lack of prosecutorial work."

And then he says he even asked Adv Ackermann to facilitate his transfer to the Special Commercial Crimes Unit. So according to Adv Mhaga, during that time, late 2007 to mid 2009, there was not any real progress happening to the point where he wanted out. He wanted to go to a unit where they were doing cases.

ADV MPSHE: Yes, that will be correct, or I cannot gainsay that,

because as I have indicated, and you have reminded me about Macadam coming in there, it could have happened that there was no work that was given to him by the seniors who were there at that stage. I cannot gainsay that at all. It is possible.

ADV VARNEY: And you ...[intervenes]

ADV MPSHE: Because you need to remember that Macadam was not yet there at that stage.

ADV VARNEY: Yes, so you accept, you do not gainsay Adv Mhaga; and if you accept Adv Mhaga, at least Macadam's statement that he only started work on the matters in September of 2008, then there would have been something of a hiatus between the suspension of Ackermann and Macadam coming on board of at least nine months if Ackermann was relieved in January of 2008.

ADV MPSHE: No, seven.

ADV VARNEY: Well, I think on your second version, you said early 2008; alternatively, in November 2007, so you potentially add on a few more months. And you did mention Adv Shaun Abrahams.

ADV MPSHE: Ja.

ADV VARNEY: My recollection from his evidence is that during that time, he was seized with nuclear proliferation cases and was not working on the TRC cases. My team is going to find the references to that in his evidence, and we will put it up in due course.

ADV MPSHE: Yes, I can respond to that.

ADV VARNEY: Please do.

ADV MPSHE: He is correct. He was working on that case, which

was giving him real peace, but he was still based in the office of Anton Ackermann. He was reporting to him.

ADV VARNEY: Yes. But at least until Adv Macadam came on board, it does seem as if there was a hiatus in activity at the NPA on these matters.

ADV MPSHE: Yes, yes, I agree.

ADV VARNEY: Now, you make reference to the TRC Task Team in paragraph 4 of that letter to Minister Mabandla in January of 2008. Now, perhaps you had the hope that that TRC Task Team would play some kind of constructive role in these matters, but would you accept that at the time that you wrote that letter, towards the end of January 2008, that task team was already effectively defunct, because the last meeting took place a whole year before.

ADV MPSHE: Yes, correct.

ADV VARNEY: In January of 2007.

ADV MPSHE: Yes, correct. I agree.

ADV VARNEY: And if we could just focus on the terminology you used, you referred to the prosecutions being managed by Dr Ramaite, Adv Mhaga and the TRC Task Team. Did you have an anticipation that the TRC Task Team would play a role in the management of the cases?

ADV MPSHE: Well, there I was referring to managing cases and assisting the NPA in as far as investigations were concerned.

ADV VARNEY: Yes, certainly assisting in terms of the guidelines. That was what they were meant to do.

ADV MPSHE: Yes. But I did not imply that the task team would be involved in the decision-making part of the matters.

ADV VARNEY: Yes, noted and thanks for that clarification. If we can turn to page 6 at the top paragraph 23, and here we are referring to a letter that was addressed to you from Acting Police Commissioner Timothy Williams. It is dated 7 March 2008, and it is at paragraph… rather, pages 93 to 94 of the bundle. And this is in a response that you had directed to SAPS, inviting them to attend a meeting of the task team, essentially to, I suppose, resuscitate the task team which had stopped operating.

And let me just read into the record this letter, and I will start at paragraph 2. So it is from the National Commissioner's Office. It is addressed to yourself. It is titled "Interdepartmental Task Team Dealing with Post-TRC Matters", paragraph one:

> "The representative of SAPS received
> ...[intervenes]

CHAIRPERSON: That is at page 93, Mr Varney?

ADV VARNEY: Yes, page 93.

CHAIRPERSON: Yes.

ADV VARNEY: Ja. Are you there?

CHAIRPERSON: Yes, I am there.

ADV VARNEY: Thank you, Chairperson. So I will just start again.

> "The representative of the SAPS received an invitation for a meeting of the above-mentioned task team scheduled for 13 March 2008. As you

know, there had been correspondence between the National Commissioner and the NDPP about the interpretation of the role and functions of the task team *vis-à-vis* the Director General of the departments represented in it. Adv Pikoli agreed that there is a difference of opinion on the matter, and undertook to take the matter up with the Minister of Justice and Constitutional Development. A copy of the letter is attached for your convenience."

And we apologise that in the bundle that letter was not attached, but we have circulated it earlier today.

ADV MPSHE: I do have the letter.

ADV VARNEY: Yes.

"To date, no feedback has been received and the matter remains unresolved. Until such time that the matter has been cleared up, I am of the view that the committee cannot function meaningfully."

And on the next page:

"Please inform me as soon as possible of how you see the role of the Directors-General of the departments involved in the task team. Until such time that the matter is resolved, I have instructed the representatives of the SAPS not to attend meetings of the task team."

It is signed by Acting National Commissioner Williams. It is dated 7 August 2008. Now, do you recall what the difference of opinion was between National Director of Public Prosecutions, Pikoli and the Directors-General?

ADV MPSHE: Yes, the… Sorry?

ADV VARNEY: Please, go ahead.

ADV MPSHE: Ja. The difference of opinion was regarding the power or the mandate of the task team *vis-à-vis* the mandate of Vusi Pikoli or let me not say Vusi Pikoli; of the National Director. According to the Director-Generals, their opinion was to the effect that they are to assist the National Director, greet with him or deal with the matters that would be finalised and give him inputs, and in those inputs maybe even direct as to what is to happen to the case.

In other words, they wanted to take part in the decision-making of the National Director in as far as prosecuting or not is concerned. That is what they had in mind. Whereas in terms of the guidelines, their function was to assist the National Director to give him whatever information would be relevant to a matter to enable him to make an informed decision.

Now, they did not want that. They wanted to be part and parcel of the decision-making process, which was the prerogative of the National Director. That is where the problem started.

ADV VARNEY: Yes, and thank you for that clarification. – Just before I suggest, Chairperson that we break for tea, if I can just finish up this one section, Chairperson?

CHAIRPERSON: Yes.

ADV VARNEY: So in that letter from Acting Commissioner Williams, he referred to a letter that he attached and we unfortunately did not attach it, but we have circulated it. But you in fact have summarised what was contained in the letter addressed by National Commissioner Selebi to Adv Pikoli and copies were also sent to the other DGs.

Chairperson, that is in Calata Group, bundle 2 at page 172. And essentially in that letter, to summarise it, National Commissioner Selebi essentially was saying that before decisions are made in prosecutions of TRC cases, the NDPP should hear first from the DGs. Would that be a correct summing up?

ADV MPSHE: Yes, correct.

ADV VARNEY: Chairperson, would this be ...[intervenes]

ADV MPSHE: I have the letter.

ADV VARNEY: Sorry, do you want to add anything further?

ADV MPSHE: No, no, I just wanted to say I have the letter.

ADV VARNEY: Okay. Chairperson, would this be an appropriate time for tea break?

CHAIRPERSON: Yes. We will adjourn and reconvene at 20 past 11.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Mr Varney?

CROSS-EXAMINATION BY ADV VARNEY (CONTINUES): Thank you, Chairperson. Mr Mpshe, can I just check that you are back and

you can see and hear us?

ADV MPSHE: Yes sir, can you hear me?

ADV VARNEY: Wonderful, we can see and we can hear you too.

ADV MPSHE: Thank you.

ADV VARNEY: So just before the tea break, we had dealt with that letter from Acting Commissioner Williams ...[intervenes]

ADV MPSHE: Yes.

ADV VARNEY: Dated 7 March 2008 and he explained why that, why SAPS would not get involved in the TRC Task Team until the issues relating to the DGs had been resolved.

ADV MPSHE: Ja.

ADV VARNEY: Now in your view does this explain why the NPA did not get investigative support from SAPS during that period?

ADV MPSHE: It does explain that.

ADV VARNEY: And indeed as we will discover shortly, that lack of investigative support according to the evidence of Advocates Macadam and Ackermann and Mhaga, that effectively ran through the 2000s, from 2003 onwards until 2010. You of course were not NDPP during 2010, but during your tenure can you confirm that the TRC cases did not get investigative support from SAPS?

ADV MPSHE: I do confirm that.

COMMISSIONER KGOMO: Ja. Mr Varney, I am not so sure whether the date makes a difference. You had earlier said the letter by Acting Commissioner Williams is the 7 August 2008, now you say the 7 March 2008. Ja, I am not so sure whether this makes a

difference?

ADV VARNEY: The letter is 7 March 2008.

COMMISSIONER KGOMO: Oh yes, okay then we will stick with that because previously you had said 7 August 2008.

ADV VARNEY: Yes, I must apologise, it is handwritten and I think I have read it as 08 rather than 03.

COMMISSIONER KGOMO: Yes, okay.

ADV VARNEY: But it is in fact 03. My apologies, Commissioner.

COMMISSIONER KGOMO: Okay.

ADV VARNEY: Now in paragraph 36 of your statement which is at page 11 of the bundle, you point out that notwithstanding the relieving of Mr Ackermann's operational duties over the TRC matters, you nonetheless retained what you called a supervisory role relating to the TRC matters. Would I be correct in saying that that meant that at a managerial level because Ackermann was still the Head of the PCLU, he would nonetheless for example assign prosecutors and personnel to cases?

ADV MPSHE: Yes, correct.

ADV VARNEY: Now we want to turn to the PEBCO 3 matter and before we dive in, I just want to put to you the context behind this particular case and indeed not just the PEBCO 3 but the other TRC cases as well and for this purpose I want to refer you to page 245 of the bundle and I will just wait for you to get there. So this is a secret internal memorandum, it is addressed to the Minister of Justice and Constitutional Development. It is from the Acting NDPP.

It is titled, "Management of TRC cases by the NPA" and it is dated 14 December 2004. And of course this long predates you becoming Acting NDPP, but we are referring to it for context. It is a long memo and I am ...[intervenes]

ADV MPSHE: Yes, I have that with me.

ADV VARNEY: I am going to ask you now to turn to page 253 and at paragraph 8 there is a heading titled:

> "The role of former Commissioner Johann van der Merwe and his legal advisor, Mr J Wagener."

And I am going to read into the record a few paragraphs from paragraph 8.4:

> "8.4 In June 2003, when it came to Wagener's attention that the PCLU intended to prosecute certain of his clients (the PEBCO 3 case), he requested a meeting with the PCLU and indicated that should it prosecute his clients, he would then press for a prosecution of the President and indicated that he had a fully prepared docket.
>
> 8.5 In the PEBCO 3 case, he advised two state witnesses not to testify on behalf of the prosecution.
>
> 8.6 Wagener further attempted to prevent the arrest of Nieuwoudt in the PEBCO 3 case, on the basis that former State President FW de Klerk was busy with a special amnesty deal and had had

talks with the President.

8.7 When the second accused, Van Zyl, was arrested, Wagener made a public statement to the effect that the arrest was a political move orchestrated by the ANC in order to gain votes for the April 2004 general election. Similar comments were made when Nieuwoudt's amnesty hearing for the Motherwell Bombing incident was enrolled in the Port Elizabeth High Court.

8.8 Wagener also attempted to prevent the PEBCO 3 case being enrolled in the High Court. He also acts for the three high ranking police officers implicated in the poisoning of Reverend Frank Chikane.

And on the next page:

8.9 It is suspected that the generals are afraid that if the prosecutions proceed, the accused will be convicted and, like the former Vlakplaas Commander, Eugene de Kock, will implicate their superiors who gave them orders. This will in turn lead to the prosecution of the generals and explain their efforts to stifle such cases.

8.10 As indicated above, the threat of a prosecution of the President is a key ingredient of their

> strategies. One must be careful not to be "blackmailed" by general threats such as these. To date, however, no evidence has been produced that may remotely lead to such a prosecution."

So firstly when you assumed office of Acting NDPP in 2007, had that general context or background come to your attention?

ADV MPSHE: No, no.

ADV VARNEY: And you will note that notwithstanding these threats, the NPA at the time went ahead with the prosecution of the PEBCO 3, so would you agree that at that time notwithstanding the threats, the NPA decided to proceed with its mandate and prosecute boldly and fearlessly?

ADV MPSHE: Yes.

ADV VARNEY: Then if we can return to the application to cross, we note that at paragraph 26, although Ackermann was relieved of his duties in relation to the TRC cases, he retained in your words, a supervisory role and he was concerned about lack of progress particularly in the PEBCO 3 matter in which he had been previously involved and so he decided to take some action to get this matter going.

Now I just want to put to you a passage from his evidence which is at page 243 of the cross bundle and this is the cross-examination of Adv Ackermann by evidence leader Adv Soni. And it reads as follows, it is at the bottom of the page, line 20:

"Correct. I mean, up until 2007, so it is not the whole period, 2007, I did not do any operational matters. I had concerns when I, you saw those letters where I had a meeting with Ramaite, it must have been in 2008, I was then off for a year, but I had concerns about the PEBCO matter, I had concerns about matters not being followed up."

Now it is pointed out in 26.1 that at that time and as we discussed earlier this morning, Macadam was not involved in TRC cases, yet Mhaga was apparently on circuit in the Transkei. So as is pointed out in 26.2 which is a letter that is attached to your statement as MJM3A, on 5 June 2008 Ackermann initiated a process to inform Ramaite who you had appointed to be responsible for the TRC cases, and I want to read into the record a fairly long passage for your response. It is set out at the bottom of page 6 of the application:

"- An additional matter which I wish to bring to your attention is the PEBCO 3 matter, where the accused are due to appear on a final remand in the Port Elizabeth High Court on 5 August 2008. The accused had, since 2004, appeared in the High Court on indictment, but on each occasion, the matter has been postponed, due to the fact that the review of their refusal of amnesty by the TRC has not been finalised. The DoJ is responsible for compiling a record and enrolling the review before

the TPD. To date, this has not taken place and on each occasion when we take this matter up, we are informed that documents are missing. On more than one occasion, we had been asked to consider withdrawing the criminal case, because of the problems with finalising the review.

- The fact that the matter has not gone to trial is of considerable distress and dissatisfaction with the victims. They have complained to the Minister and have also displayed their dissatisfaction at court on the dates of the postponements. A decision must be taken as to how the next court appearance will be managed. We believe that this should first be discussed between ourselves and the Acting NDPP, whereafter the Task Team must be consulted and thereafter, a memorandum submitted to the Minister.
- Our *prima facie* views are that the Court would not grant another postponement, and, in any event, this would not be acceptable to the victims. The review is only for the benefit of the accused, and one option would be to proceed with the prosecution. We however believe that a judge is highly unlikely to order a trial when the accused has the opportunity of receiving amnesty and is in no way to blame for the failure to have the review process finalised. We

would also have to establish whether the matter is in fact at this stage ready for trial, since the witnesses were last consulted almost five years ago. The Court may require or we would be obliged to call someone senior from the DoJ to testify under oath as to the reasons for the delay with the review. We see both the NPA and the DoJ being criticised severely by the victims and the media."

So you can see in that internal memo from Ackermann to Ramaite, he suggests that this should be taken up with you as Acting NDPP. Do you recall this being raised with yourself at that time and if so, what steps were taken?

ADV MPSHE: I do not recall this. I do not recall Ramaite causing a meeting between me and him on this matter. I am trying to think. Mm-mm, I do not recall that.

ADV VARNEY: Okay, well then let us move on. I am going to ask you to stay ...[intervenes]

ADV MPSHE: Ja, ja.

ADV VARNEY: On the application to cross, let us turn to page 8.

ADV MPSHE: Ja.

ADV VARNEY: And there is actually a heading there, "The PEBCO 3 matter".

ADV MPSHE: Ja.

ADV VARNEY: So as we point out in paragraph 28 (*sic*), the charges against the PEBCO 3 accused were withdrawn by yourself

and that is set out at paragraph 2.1 in your annex MJM8. Commissioners, that is at 47.1 of the bundle, so you set out in 2.1 that you informed the Minister of your decision to temporary withdraw the charges against the two former Security Branch officers.

Are you aware that following the provisional withdrawal of the charges, that the charges were never reinstated subsequently?

ADV MPSHE: Yes.

ADV VARNEY: Now according to the evidence of Ackermann in his evidence-in-chief, he says he was informed by Macadam that you took over the responsibility for the PEBCO 3 matter after he was relieved of his duties and this is set out in the transcript of 4 March 2026. It is at page 76 of the transcript, it is at page 242 of the bundle. So can you recall whether you in fact did take over management of the PEBCO 3 docket between 2008 and 2009?

ADV MPSHE: No, I did not take over but I recall a calling for the PEBCO 3 report from PCLU. I think it was at a stage when I got an enquiry, a telephone enquiry from one of the PEBCO 3 family members, I think Mandisa. Mandisa, yes, Mandisa Hashe, because I worked with Mandisa and the TRC.

She called me to find out about the progress in the matter, then I called for a report from PCLU to, for them to come and brief me as to what is happening in the matter to enable me to respond to Mandisa's enquiry, but I did not take over the running of the management of that matter at all.

ADV VARNEY: Since you have raised the call you received from

Mandisa Hashe ...[intervenes]

ADV MPSHE: Mandisa.

ADV VARNEY: Ja.

ADV MPSHE: Ja.

ADV VARNEY: Her full name is Phumeza Mandisa Hashe, she actually testified in the PEBCO 3 inquest which was held. The very first inquest in this matter after all this time was only held or started this month, just two weeks ago. She testified and she did put up a statement which we have made part of this bundle and perhaps since you have has raised it now, we may as well just go to it. So it is at page 293 of the bundle Commissioners, towards the very back.

And perhaps I can just read into the record three of the paragraphs which are at red paginated number 304 of the bundle. It is on page 12 of the statement which is under a heading called, "Interactions with Adv Mpshe" and I am going to read paragraph 77 to 79. Mandisa says:

> "77. During 2008 or 2009 I heard on the radio that the suspects in the case were no longer going to be prosecuted. I contacted my former TRC boss, Adv Mpshe directly, who was the Acting Head of the NPA at the time, to ask what had happened.
>
> 78. I recall him telling me that the decision had been taken from above that prosecutions would not proceed.
>
> 79. I was shocked and deeply disappointed by this

response. In the aftermath, I was met with blow after blow about my father's disappearance and death. And each time, I was left with questions that went unanswered."

What is your reaction to what Mandisa Hashe says in her statement?

ADV MPSHE: Ja indeed, indeed what you have just said, that is what I told her, that I remember, I recall her calling me to ask about the progress in the matter and I said as she has indicated, I said that because of the review that was in the High Court which could not be finalised, we are not in a position to can continue with the matter. I think I remember saying that to her.

ADV SALUKAZANA: Chairperson, sorry Mr Varney, may we ask that the statement instead of being placed before the Commission in a bundle, be placed by affidavit or statement so as to allow us to cross-examine the person who made the statement if Mr Mpshe instructs us to do so, because it is a version that is not being tested, that is being introduced by a bundle of cross-examination and not an affidavit that is before or a statement that is before the Commission?

CHAIRPERSON: Yes.

ADV MPSHE: Yes, that is an affidavit.

ADV VARNEY: Chairperson, I would be very surprised if my learned friend got instructions to cross-examine Mandisa Hashe. It is a statement that was made under oath before an inquest, a recent Inquest Court and from what I have just heard from Mr Mpshe, he is

not disputing that the interaction happened and the gist of ...[intervenes]

CHAIRPERSON: Yes.

ADV VARNEY: Of what went down, so I am puzzled by the request that you know, Mandisa Hashe must make a further affidavit to say the same thing.

CHAIRPERSON: Mr Salukazana?

ADV SALUKAZANA: Yes Chairperson, I am not with the client at the moment. I did not want to object to the question being asked, I could have done that. To not be obstructive I allowed the question to be asked, but I think in fairness my client should be, should have an opportunity to cross-examine Ms Hashe if he wishes to do so despite the surprise and ...[intervenes]

CHAIRPERSON: On what basis since Mr Mpshe agrees that there was an interaction with Ms Hashe?

ADV SALUKAZANA: It would be ...[intervenes]

CHAIRPERSON: Why would there be a need for a cross-examination on the basis of the statement which deals with the interaction with Adv Mpshe, which Adv Mpshe agrees that took place?

ADV SALUKAZANA: Indeed, it would be the extent in what was said in the conversation.

CHAIRPERSON: Is that of relevance for purposes of cross-examination, Mr Salukazana?

ADV SALUKAZANA: I would say again, this is subject to

instructions. Unfortunately ...[intervenes]

CHAIRPERSON: Yes.

ADV SALUKAZANA: I am not with the client.

CHAIRPERSON: I think for not we will not allow the request.

ADV SALUKAZANA: Indeed.

CHAIRPERSON: Thank you.

ADV VARNEY: Thank you, Chairperson. Let us move on and let us return to the application to cross. And we want to put certain passages from a memo at page 33 of the bundle that was addressed by Adv Macadam to Adv Ramaite. It is titled "Internal memorandum" and the subject is "TRC cases". It is dated the 9 June 2008. I am just going to quote an extract:

> "- There is however one matter which requires urgent attention, namely the PEBCO 3 prosecution. The accused in this matter appeared on indictment in the Port Elizabeth High Court in 2004. On every occasion that the matter has been in court, it has been postponed so as to enable the review of the refusal of the amnesty to be heard by the full bench of the TPD. Last year, the matter was postponed as a final date to 5 August 2008. The responsibility for arranging the review lies with the DoJ.
>
> - To date, no date for the hearing has been fixed, although Adv Ackermann SC and I were given the assurance that this would be either early or mid-

2008. Obviously, the Judge President would not be able to convene a full bench to hear the review between now and 5 August 2008. It would be enormously damaging for the PEBCO 3 matter to be struck from the roll due to a failure on the part of a state department. In my view, the only way in which a postponement can be obtained is if a date for the review is set for the third or fourth quarter of this year's court sessions.

- Although I intend taking up the matter with Tessie Bezuidenhout as a matter of urgency, I would recommend that you contact the Director-General: DoJ and request him also to ensure that the matter is expedited.
- Another matter which requires attention is the status of the criminal investigation. As I recall, the matter was brought to court as a DSO investigation, but the investigators have now resigned. Consideration will have to be given to either appointing new investigators or to the matter being referred to SAPS. The reason why this is important is that the state may be required to demonstrate that it is ready to proceed with the prosecution on 5 August 2008."

Do you recall whether that was brought to your attention, in particular the issue around the need for SAPS to provide

investigators?

ADV MPSHE: Yes, I recall.

ADV VARNEY: And probably as a result of that, on the 20 May 2009 you then wrote quite an important memo to the Minister of Justice which was then Jeff Radebe that was attached at MJM8 to your statement and we have it at page 47.1 of the bundle.

COMMISSIONER KGOMO: Before you go there, Mr Mpshe says he is aware of this memo that was written by Macadam. Mr Mpshe, if you can just go to 34? That "noted" and the initials of 10 June, is it 2008, those are your initials, is it not correct?

ADV MPSHE: Indeed, indeed Commissioner.

COMMISSIONER KGOMO: Yes, okay.

ADV MPSHE: Yes.

COMMISSIONER KGOMO: Thank you, mister.

ADV VARNEY: Thank you for spotting that Commissioner, that "noted" escaped my attention. So returning to that memo which is addressed to Mr Radebe and the Minister of Justice from yourself, the subject is, "The State v Van Zyle & Koole (PEBCO 3)". It is dated 28 May 2009. You do point out on the next page that, and I will quote it at paragraph 3.2.2:

> "3.2.2 There was an evidential difficulty relating to the availability and reliability of the 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. I indicated that it would be necessary for SAPS to reinvestigate the matter in order to establish whether in fact any reliable evidence is available."

Now we wish to point out to you that it is unclear where your information about the reliability of the witnesses and if the accused were to be prosecuted at that stage, they would be acquitted. Well it is true that because the matter had been delayed some five years, they would still need to check on the availability of the witnesses, but for example we set out various extracts under paragraph 33 of the cross application. So for example, we put up an e-mail from Adv Macadam to Adv Ramaite, it is dated the 10 December 2008.

It is actually MJM6 attached to your affidavit. We have got it at page 40 of the bundle and it points out in relation to the PEBCO 3 case that the co-accused had not applied for a refusal of the amnesty and could still be prosecuted, provided the two state witnesses are available and I believe that was in reference to Mr Koole.

Then in relation to your memo to Minister Surty, the Minister of Justice and to Surty and that is dated 17 February 2009 which you attached at MJM7 to your statement, that is dated the 17 February 2009. It is titled, "TRC Task Team" and you state at paragraph 4 that:

> "All of the above matters, except for the PEBCO 3 case, require investigations by SAPS before I can make a decision whether are sufficient grounds to institute prosecutions or not."

So I just want to put it to you that even though there had been a delay of five years and even one would have to check on the availability of witnesses, that from a perspective of the family supported by these passages, at that time there was still a viable case against the PEBCO 3 accused.

ADV MPSHE: Yes, I would agree to that, that is why when you read one of the memos, I said to check on the liability of the evidence and whether there are witnesses who would still be available. The case had not died even at that stage, but remember it was kept in limbo or put in limbo because of the review application that was pending and the criminal case could not continue until such time that the High Court would have given its judgment on the application of Van Zyl.

ADV VARNEY: Now if we can just return to the concerns that were raised by Macadam to Ramaite in that memo of 9 June 2008? That is the one where Commissioner Kgomo pointed out that you had noted and you confirmed that you were aware of it. Can I ask why it took you approximately one, nearly one year to make the approach to the Minister of Justice Radebe on the 28 May 2009? What was the delay there, why did it take one year to approach the Minister?

ADV MPSHE: Which memo is it, can you give me the page?

ADV VARNEY: Yes, so the ...[intervenes]

ADV MPSHE: The page?

ADV VARNEY: 9 June 2008 memo, we already dealt with it.

ADV MPSHE: Okay.

ADV VARNEY: But that was the memo that you had initialled

...[intervenes]

ADV MPSHE: That was [indistinct] written?

ADV VARNEY: Ja and then ...[intervenes]

ADV MPSHE: The 2008 was to Minster Radebe.

ADV VARNEY: Ja, the ...[intervenes]

ADV MPSHE: The MJM8.

ADV VARNEY: Ja and then approximately 11 and so months later, you then take action because there is a concern around a lack of investigation and so on, the 28 May 2009, that is at 47.1 of the bundle. You then address a letter to the Minister of Justice in which you raised concerns around the lack of investigations. Perhaps I will just draw your attention to paragraph 4, it is at bundle number 47.3 and under the heading, "Other matters arising" you said the following at 4.1:

> "4.1 The problems surrounding the PEBCO 3 matter and the justifiable dissatisfaction of the families serve to highlight a general problem with all TRC-related matters, namely that since the closure of the TRC, these have never been properly investigated."

So the question is, why did it take you nearly a year to raise the lack of investigations with the Minister when this had been pointed out to you in that earlier memo from Adv Macadam?

ADV MPSHE: Ja, it could have taken me that long because the matters were still ongoing and again we were under the impression

that at some stage or another, NIA as well as the SAPS would come back to the party and continue with the investigations. You will remember I cannot just remember the date and the month and whatever, we did even write to SAPS to come back.

Okay, that was caused by, you remember you read the response from the Acting National Commissioner Williams where he was referring to my letter and saying that the police will not come? We are still making those attempts to get people back to come and function and assist the NPA. That may account for the delay in me bringing this to the attention of the Minister.

ADV VARNEY: So since we have raised the memo from yourself to the Minister of Justice and to Surty, that is the one dated 17 February 2009 at page 43, you point out under paragraph 2, I will just make sure that you have that in front of you.

ADV MPSHE: Ja, I do.

ADV VARNEY: In paragraph 2.1 you mention that the TRC Guidelines provide for the creation of a Task Team made up of representatives from SAPS, NIA and DoJ to assist the members of your office to evaluate the TRC matters. In terms of the Guidelines, it is your duty to decide whether to prosecute or not. Then in 2.2:

> "2.2 Since 2007, the Task Team has not sat, due to the fact that matters relating to it were tabled before the Ginwala Commission. The effect thereof was that investigations into TRC matters could not continue."

Now why would a parallel Commission of Inquiry, the Ginwala Commission which is looking into the suitability of Adv Pikoli ...[intervenes]

ADV MPSHE: [Indistinct].

ADV VARNEY: To hold office, why should that have the effect that investigations into the TRC matters could not continue?

ADV MPSHE: Ja, just to give you a bit of a background, the Ginwala Commission was in a way of speaking, initiated by some members of the Task Team, to be specific Menzi Simelane who was one of them and in that Ginwala Commission the issue of the processing of TRC matters was also tabled and it is at that stage then when the Ginwala Commission was still going on, that the other agencies that were assisting the NPA, that would be SAPS, NIA and others, they stopped continuing with the investigations because they said the Ginwala Commission into the mandate and the power of the National Director and his suitability to be in office.

That is the background I want to give you, so that, the Ginwala Commission had an effect or an impact if I may put it that way, on the running of the TRC matters and the PCLU, because it was one of the things that were discussed. I was even, I do not want to say subpoenaed, called to come and testify at the Ginwala Commission on these matters, including, including the tension, I testified about it, the tension that was there between Vusi Pikoli and the then National Commissioner Jackie Selebi. That is the background.

ADV VARNEY: So and thanks for that background, but would you agree that notwithstanding the tensions that would be enquired into by the Ginwala Commission, that that provided no legitimate or real basis for investigations not to be pursued into the TRC cases?

ADV MPSHE: I agree, I agree. There was no reason for that.

ADV VARNEY: And we will return to that memo in due course, but let us move on and we will turn to the next heading in the application to cross. That is on page 10. It is titled, "TRC matters while DPP: KwaZulu-Natal". Now in your evidence before the Commission you stated that while you were DPP in KZN, you did not deal with the TRC cases.

That is at paragraph 15 of your statement which is at page 3 of the bundle and perhaps we can deal with this one fairly quickly, but would I be correct in saying that that is not entirely correct because you were seized with the matter dealing with Phillip Powell and his alleged position of a large number of illegal weapons as we set out at paragraphs 36 and 37?

ADV MPSHE: What is the question?

ADV VARNEY: So the question is that your assertion that while you were DPP of KZN ...[intervenes]

ADV MPSHE: Yes?

ADV VARNEY: You did not deal with the TRC cases. That is not entirely correct because for example in the late 1990s you were dealing with the Phillip Powell matter where he was alleged to have been in possession and facilitated the disbursement of various illegal

weapons. So for example, you received representations from his lawyers in 1999.

ADV MPSHE: Yes, the Phillip Powell matter, at the beginning I would say it was not a TRC matter. It became a TRC matter simply because of it having been mentioned by Eugene de Kock as to the presence and the location of the arms that were given to Phillip Powell on behalf of the IFP, but one cannot say the Phillip Powell matter that was in the DPP office at that time was a TRC matter.

It came in and became a TRC matter via Eugene de Kock who was then applying for his amnesty. That is why I said I was, I did not deal with, there was no stage where I could say Phillip Powell was being prosecuted in the division of Natal.

ADV VARNEY: All right.

ADV MPSHE: The arms caches were mentioned by Eugene and we had to make a follow-up on that, because they were in KZN.

ADV VARNEY: All right, although the fact that it arose through the amnesty application of Eugene de Kock ...[intervenes]

ADV MPSHE: Ja, ja.

ADV VARNEY: Suggest that it was in fact part of the TRC process and in our view that would make it a TRC case.

ADV MPSHE: Well I do not dispute what you are saying. You would come to that conclusion because of the Eugene de Kock presence in this matter of Phillip Powell, but one cannot say the Phillip Powell matter was being prosecuted as a TRC matter in the division of Natal. No, it was not.

ADV VARNEY: All right, let us move on ...[intervenes]

COMMISSIONER KGOMO: Just there, I am missing something, Mr Mpshe. So Phillip Powell was not prosecuted?

ADV MPSHE: No, he was not.

COMMISSIONER KGOMO: He was not?

ADV MPSHE: No, no, he was not.

COMMISSIONER KGOMO: Why not, because even Eugene de Kock marvelled and wondered why he was not?

ADV MPSHE: Phillip Powell was not prosecuted. My recollection, I was a DPP at that stage in KZN and it came to light that these arms, it came to light via Chris Macadam that there were arms and whatever that were given to the IFP via Phillip Powell. That is how the matter landed in my office and this matter was handled by one of the deputies there.

Okay, I will remember the name, who then dealt with it in consultation with Chris Macadam and indeed the non-prosecution of him was followed, was because of the arms cache that he made or he disclosed to the NPA. And indeed where he told us that the arms were being hidden, they were actually there and we found… I was there, it was in Nquthu in KZN.

I was there together with members of the police as well as the then National Director Bulelani Ngcuka and we did find all those arms that were alleged to have been given to him by Eugene de Kock. And because of that disclosure by him and directing the NPA to where these things are and they were actually found in there, then

he was absolved from prosecution.

But it then came, it then emerged later, I am trying to get my memory back with me, that there were others that were hidden in Ulundi in the Parliament or the then Parliament Building of Ulundi. I cannot remember, I am, I do not want to mess up my facts here and then I remember a warrant, I think a warrant of arrest was issued for Phillip Powell if I recall and then he then fled to England or America, something like that.

COMMISSIONER KGOMO: Yes.

ADV MPSHE: And they were anticipation ...[intervenes]

COMMISSIONER KGOMO: Sorry, sorry, you can continue but what Mr De Kock was saying is that ...[intervenes]

ADV MPSHE: Ja.

COMMISSIONER KGOMO: Phillip Powell was protected and spirited away. Is this how he landed abroad?

ADV MPSHE: I should think that is how he landed abroad if you say he was spirited away. I do not know he was assisted and spirited away by whom. Remember he was an IFP member of Parliament and he received all those guns and everything on behalf of IFP.

COMMISSIONER KGOMO: Yes, thank you.

ADV MPSHE: Thank you, Commissioner.

ADV VARNEY: Thank you, Commissioner. Commissioner, there is actually quite a helpful memo dealing with the Powell case. It is at page 63 to 67 of the bundle and it is an internal memo from Adv Macadam to Adv Abrahams, Acting Special Director and Acting

Head of the PCLU. It is titled "Phillip Powell" and it gives the Mathubathuba and Pretoria case numbers.

It is dated 15 November 2013. It is a very detailed memo which explains the issues and challenges faced by the NPA in relation to the Powell matter. We do not intend to go through with it because it is not directly relevant to the evidence we wish to seek from this witness, so with your leave we will proceed.

COMMISSIONER KGOMO: Yes, yes, you may.

ADV VARNEY: Ja, so we now want to turn to the next heading which is at the bottom of page 10 at paragraph 39. It is titled, "The assertion that substantive work was done on TRC cases during 2008". And you will recall Mr Mpshe, that in your Rule 3.3 Notice there was an allegation that little work or progress was made during 2008.

And so in your paragraphs 41 and 44 of your statement, you say you do not accept the position that "no work" was done on those matters or were "left unattended" and you point out that in 41, the available contemporaneous document, the record reflects internal management and supervision arrangements concerning TRC matters within the PCLU during 2008. You refer to MJM3.

And then in 44 you dispute that it is factually correct or that it can be assumed that "little or no work" was done by the NPA, SAPS, or DSO on the TRC cases during 2008. And you refer to MJM3 to MJM7 as examples of work done on the TRC matters.

So we want to put to you that while we do not dispute your

assertions that there was various activities taking place in your words, management and supervision arrangements relating to the TRC matters and we have in fact discussed the attempts that were being made to get hold of SAPS and to persuade them to investigate, I suppose what we are talking about is actual delivery in the cases.

And so for that purpose we want to refer you to a memo that Macadam addressed to Ramaite and this is an e-mail dated 10 December 2008. We refer to it in paragraph 40 of the application and it is attached to MJM6 to your statement. It is dated 10 December 2008 and it refers to the status of eight TRC cases.

Now to save time I do not think I am going to go through all of them, but there is a common denominator which we set out in paragraphs 40.1 through to 40.7 and that is, these cases were not being investigated. So for example the Lubowski matter, again I am, he says:

> "Due to the fact that the complaint laid in December 2007 has not been investigated..."

40.2 dealing with the Cradock 4 matter, he said:

> "SAPS must investigate these allegations."

In the Nokuthula Simelane matter in 40.3 he points out that you have authorised a formal inquest but that SAPS must appoint an investigating officer. At 40.4 in the Helderberg Tavern and St James Church Massacre matter, he says:

> "SAPS will have to conduct a series of investigations."

So essentially what I want to put to you is that

notwithstanding what I might refer to as administrative steps that you were taking in relation to these matters, what we can see from Adv Macadam's communication in December 2008, is that these eight matters were not being taken forward. Would you agree?

ADV MPSHE: Yes, I agree.

ADV VARNEY: And just to conclude that, Macadam concludes his report with the following statement:

> "As can be seen from the above breakdown, the majority of matters can only be taken forward with the assistance of SAPS and NIA. There has been general public criticism of the fact that no progress has been made on the cases, aggravated by the fact that in certain cases they have appointed lawyers and consequently, the prospect of litigation is real."
>
> And in the next paragraph he makes a recommendation:
>
> "My recommendation is that, as a matter of urgency in 2009, when the parties are available, a meeting should be set up with the Acting NDPP, yourself and myself to obtain his approval on the way forward. As soon as the meeting with the Acting NDPP has taken place, efforts should be made to reconvene the Task Team so that work can commence."

So you know, Adv Macadam is raising the alarm bells here and is urging a meeting with you so that urgent steps can be taken. Do you recall that and do you recall having such a meeting?

ADV MPSHE: I do not recall such, having such a meeting but I recall Macadam's concerns and that is precisely what led me being, I cannot remember whether it was before or after but I am not sure of the dates, writing to SAPS to get the police back onboard. But I cannot recall having a meeting with him and Dr Ramaite, but action was taken by me along those lines to get the investigation back.

ADV VARNEY: All right and while we are on the question of investigators, Commissioner Kgomo had raised with you statements that Eugene de Kock has made in his evidence earlier this week and I want to put to you one or two other extracts from his evidence.

ADV MPSHE: Ja.

ADV VARNEY: He said that the NPA and the PCLU and I do not have the transcript in front of me but my recollection is that the NPA and the PCLU had all the investigators in the world, you simply had to walk downstairs to find investigators if you really wanted to take these cases forward ...[intervenes]

COMMISSIONER KGOMO: Yes, downstairs to the DCO's offices.

ADV VARNEY: Yes, indeed.

MALE SPEAKER: DSO?

ADV VARNEY: Do you have a response to that claim by Mr De Kock?

ADV MPSHE: No, no, no, no, he is not correct at all. If that was the case, these cases would not have stagnated as they did because the stagnation was caused by a lack of investigation. Remember the SAPS and NIA and others pulled out and remember the letter written

to me by the Acting National Commissioner Williams where he said he is not going to release his police to continue with the investigation.

We would not have approached SAPS and others to come and assist when we had investigation, we have, when we had the investigators as to say we could have just walked downstairs and get them to do the work. That is incorrect.

ADV VARNEY: Yes and on that score we have heard from other prosecutors in the NPA who were the PCLU at the time that the non-TRC cases such as nuclear proliferation and the like, those cases had investigators, it was just the TRC cases which were denied investigators. Is that also your recollection?

ADV MPSHE: Ja, that is correct and I want to say to you that that proliferation case, that was handled by Shaun Abrahams, it was a matter, a case that was investigated by SAPS and managed by SAPS. They had to get prosecutors from PCLU who were dealing with these matters. That is correct, that that case had its own investigators backed by SAPS because it was a SAPS matter.

ADV VARNEY: And would you agree that the denial of investigators for the TRC cases at that time could only have been the subject of deliberate decision on the part of SAPS management?

ADV MPSHE: Yes, correct, yes I agree.

ADV VARNEY: So now let us turn ...[intervenes]

ADV MPSHE: And then, okay sorry.

ADV VARNEY: If you want to add any further comment, you may.

ADV MPSHE: No, I was saying and that you will find again in that

letter you referred me to, the letter from the Acting National Commissioner who said I will not release them. Now that is deliberate and intentional not to assist.

ADV VARNEY: All right, now we want to return to the memorandum that had been addressed to Minister Surty and that is at page 43 of the bundle. So this is a memo from yourself as Acting NDPP to Minister ME Surty, Minister of Justice. Subject, "TRC Task Team" dated 17 February 2009. We have already dealt with one or two aspects from it.

ADV MPSHE: Ja.

ADV VARNEY: Such as the issue of investigations around the same time as the Ginwala Commission. So let us now move on. I want to draw your attention to this quote which is on page 44 and it is at paragraph 3.3. It is under the heading titled "Briefing" and the extract reads:

> "No requests to investigate TRC matters have been received since November 2007 and it is anticipated that once the matters on hand have been dealt with, that the chapter on these cases may be closed. In its report released in 1998, the TRC did in fact recommend that a time limit should be imposed on such prosecutions."

So I must just tell you Mr Mpshe, that our clients were somewhat alarmed to read that, given that on the books of the NPA at the time, there were a few hundred TRC cases and very few had been resolved at that time. Can you understand why our clients, the

families, would be concerned by such a statement that the chapter could be closed on these cases?

ADV MPSHE: Yes, it could be closed because they would be finalised, they shall have been dealt with. They shall have been investigated and taken to court if they were to go to court and the, and matters being finalised. That is what I meant.

ADV VARNEY: And if we can turn to paragraph 6 ...[intervenes]

ADV MPSHE: The ...[intervenes]

ADV VARNEY: You can add further if you wish.

ADV MPSHE: No, it is fine.

ADV VARNEY: Okay, then let us turn to ...[intervenes]

ADV MPSHE: [Indistinct].

ADV VARNEY: Let us turn to ...[intervenes]

ADV MPSHE: To paragraph 6, 6 yes.

ADV VARNEY: So in paragraph 6 you refer to, I will read it into the record:

> "Given the unique circumstances surrounding TRC cases, NIA has been requested to compile a threat analysis of the risks attached to such investigations."

You say you will forward the analysis upon receipt thereof so that you can brief the affected ministries. Why would NIA be asked to conduct a threat analysis attached to the risks of investigating the TRC cases?

ADV MPSHE: I mean I am trying to recall what I wanted to say in this paragraph and this is way back. I do not, this was in 2009, I

cannot recall why.

ADV VARNEY: If you cannot recall we will not press you on that matter.

ADV MPSHE: Ja.

ADV VARNEY: Let us turn to ...[intervenes]

ADV MPSHE: I am trying to recall what… Ja.

ADV VARNEY: So you are saying you cannot recall?

ADV MPSHE: Ja, I cannot recall, I am trying now to recall why NIA was involved in this threat analysis, how did it come about. Nee wat, I cannot recall now.

ADV VARNEY: All right.

ADV MPSHE: But maybe it will come back as we continue, that ...[intervenes]

ADV VARNEY: If it comes back then you can indicate.

ADV MPSHE: Ja, sure.

ADV VARNEY: Let us turn to the bottom of the page.

ADV MPSHE: Ja.

ADV VARNEY: And there is a handwritten notes from Adv Menzi Simelane.

ADV MPSHE: Ja.

ADV VARNEY: He was then DG of the Department of Justice and it reads as follows and I invite anybody to correct me if I get the handwriting wrong:

> "It may be that the Minister first discussed these matters" ...[intervenes]

COMMISSIONER KGOMO: It may be useful, useful.

ADV MPSHE: Be useful.

ADV VARNEY: May be useful, yes.

ADV MPSHE: Ja.

ADV VARNEY:

> "It may be useful that the Minister first discuss these matters with the IMC Ministers so that the Acting NDPP can be advised how to proceed, especially on what the mandate of the NPA is on these matters if at all."

Would you agree that that is what the handwriting says?

ADV MPSHE: Yes, yes, yes.

ADV VARNEY: Now can you give us your sense of what DG Simelane was saying here? Did you know why he wanted the Minister to first discuss these matters with the IMC Ministers? And perhaps can you just remind us who are the or what is the IMC? Who are these Ministers?

ADV MPSHE: I also do not know.

ADV VARNEY: Could it perhaps have been these Security ...[intervenes]

ADV MPSHE: I also do not know ...[intervenes]

ADV VARNEY: Cluster Ministers?

ADV MPSHE: But… Sorry?

ADV VARNEY: Could it had been the Ministers as part of the Security Cluster?

ADV MPSHE: I think so. Well I do not know what IMC means, it

stands for at this moment but the idea that I get is that it must have been a forum made up of Ministers and particularly in the Justice Cluster. That is what comes to my mind.

ADV VARNEY: And then he says:

"So that they can advise the Acting NDPP."

ADV MPSHE: Ja.

ADV VARNEY:

"On how to proceed, especially on what the mandate of the NPA is on these matters if at all."

ADV MPSHE: Ja.

ADV VARNEY: Now why do you think he was suggesting that the, this group of Ministers advise you on what your mandate is ...[intervenes]

ADV MPSHE: Ja.

ADV VARNEY: In relation to these matters if at all?

CHAIRPERSON: Mr Varney, is that a fair question?

ADV MPSHE: Ja, you know ...[intervenes]

CHAIRPERSON: Mr Varney, is that a fair question to put to this witness?

ADV VARNEY: Well Chairperson, it is a response to a memo that he wrote ...[intervenes]

CHAIRPERSON: Yes.

ADV VARNEY: To the Minister.

CHAIRPERSON: But for him to know what Adv Simelane meant on these written notes, how would he know that?

ADV VARNEY: Yes, I accept that ...[intervenes]

CHAIRPERSON: Yes.

ADV VARNEY: That aspect is unfair.

CHAIRPERSON: Yes, yes.

ADV VARNEY: So with the Chair's leave I would like to ask for his response to that handwritten suggestion of the DG.

CHAIRPERSON: Yes, yes.

ADV VARNEY: Can we have your response to the handwritten note of DG Simelane that that group of Ministers advise you on how to proceed with the mandate of the NPA on those matters if at all?

ADV MPSHE: Well my response would be this was out of, it was out of line. It was out of line and my response as I think of it now, is being confirmed by what Deputy Minister De Lange said responding to that as well as the Minister, because herein he is actually, this is my speculation, he is actually saying the mandate of the NPA should be looked into, you know, at the bottom where he says especially on what the mandate of the NPA is on these matters if at all.

ADV VARNEY: Yes and in fact would you agree that it is quite an alarming statement to find in such a document?

ADV MPSHE: Ja.

ADV VARNEY: Because Adv Simelane is even questioning whether the NPA enjoys a mandate on these matters with the [indistinct] ...[intervenes]

ADV MPSHE: Yes, yes.

ADV VARNEY: If at all.

ADV MPSHE: Yes, yes, indeed, that is the mini one, one gets, but Deputy Minister De Lange and the Minister responded correctly to what he said there, that is now on page 47.

ADV VARNEY: Are you able to read what Deputy Minister De Lange said there? I can read some of it but not all of it.

ADV MPSHE: Let me make an attempt.

ADV VARNEY: Okay, thank you.

ADV MPSHE:

"I am [okay], I cannot find fault with the approach..."

COMMISSIONER KGOMO: Proposed.

ADV MPSHE:

"With the approach followed [I think, or no, no] with the approach pursued. In fact, in law, NDPP must proceed with prosecutions or not to prosecute. To convey this does not take place in isolation, the Task Team was established as part of..."

I see policy there but I think he is being referring to the amended policies…

"…as this is a sensitive matter, I agree with..."

Oh, I do not know, is it I agree with what?

COMMISSIONER KGOMO:

"I agree without..."

Ja.

ADV MPSHE: Ja, I agree without and then he says:

"With NSC."

I do not know what that is, but he is ...[intervenes]

ADV VARNEY: I think it is [indistinct] ...[intervenes]

ADV MPSHE: But he is actually responding to that inscription or writing by the DG, questioning the mandate of the NPA on this matter. He says the NPA does have a mandate, they are to decide whether to prosecute or not. That is how I understand it.

ADV VARNEY: So if we can just look at the last few words there, I agree, it looks like it is without but I cannot be certain that that is the actual word, but then the last few words:

"Consultations with [it looks like] NEC plus President."

ADV MPSHE: Oh ja.

ADV VARNEY: Now ...[intervenes]

ADV MPSHE: Ja, ja, ja, without consultation with NSC and the President.

ADV VARNEY: NSC or NEC.

ADV MPSHE: Ja, ja, I do not know what that is, ja.

ADV VARNEY: All right and we do not have Mr De Lange here to clarify.

ADV MPSHE: Ja.

ADV VARNEY: Although I understand that Mr De Lange is not well and it is difficult to coming here, but perhaps the evidence leaders could clarify that handwriting with him.

ADV MPSHE: Ja.

ADV VARNEY: Now just to return to the note of Adv Simelane which you have correctly expressed your concern at, would you agree that

approaching the Ministers, whoever those Ministers might have been, in order to advise the Acting NDPP on its mandate in relation to those matters if at all, that that would have constituted interference in the work of the NPA?

ADV MPSHE: I agree.

ADV VARNEY: And we also note with some concern that it was Adv Simelane who had approached you and asked you why Adv Macadam, at least Ackermann was still in his position handling the TRC cases…

ADV MPSHE: I did not hear you clearly.

ADV VARNEY: I am just making the point to you that the same person who made that comment is the same Director-General who suggested to you that Adv Macadam should be removed from his duties in relation to the TRC cases, sorry, Ackermann.

ADV MPSHE: No, not Macadam, Ackermann yes.

ADV VARNEY: Yes.

ADV MPSHE: It is said ...[intervenes]

ADV VARNEY: My apologies.

ADV MPSHE: In [indistinct].

ADV VARNEY: I just want to check, are you still with us, Mr Mpshe?

ADV MPSHE: Yes, yes, thankfully.

ADV VARNEY: All right, I just want to deal with some of the documents that were included in the supplementary bundle and because these came to our attention post the application, they do not feature in the application itself. And I would like to start with the

memo that former NDPP Shamila Batohi addressed to the then Minister of Justice on the 2 December 2019.

COMMISSIONER GABRIEL: Page?

ADV VARNEY: And that is at page 268, sorry I am getting confused here. That is, I beg your pardon, it is the memorandum from NDPP Batohi to Minister Lamola and it is at pages 268 to 282. So if you managed to get to page 268, this is the memo titled, "Briefing on TRC cases". It is from Adv Batohi to Minister Lamola, then Minister of Justice. On the top right you can see in handwriting a date which looks like, and again my eyes are failing me ...[intervenes]

CHAIRPERSON: 3 December 2020.

ADV VARNEY: 3, thank you Chairperson, your eyes are better than mine, 3 December 2020. And I would like to refer you to ...[intervenes]

ADV MPSHE: Correct.

ADV VARNEY: Paragraph 2.25 to 2.28 and that is on paginated page 275. So I am just going to read into the record paragraph 2.25.

COMMISSIONER KGOMO: Sorry Mr Mpshe, are you all right?

ADV MPSHE: No, I am still looking for, I have got a memo here to Minister Lamola by Batohi but it is dated 2019 and then I, and it is on page 283.

COMMISSIONER GABRIEL: No.

ADV MPSHE: And then I have got ...[intervenes]

COMMISSIONER GABRIEL: Pause.

CHAIRPERSON: Mr Mpshe, check page 275, 275.

ADV MPSHE: The bundle starts at page 283, that is where the letter starts.

CHAIRPERSON: No, go to page 275.

ADV MPSHE: No Chair, I do not have page 275, my bundle starts at 283.

COMMISSIONER KGOMO: Can you assist ...[intervenes]

ADV MPSHE: At 283.

COMMISSIONER KGOMO: Sorry, can your assistants help you?

COMMISSIONER GABRIEL: It is in the supplementary bundle.

ADV MPSHE: This bundle was sent to me by, I think by [indistinct] during the week.

CHAIRPERSON: No, it is the latest bundle.

ADV MPSHE: Or sometime last week, but it does not, it starts at 283.

CHAIRPERSON: Ms Mtshizana? Ms Mtshizana?

ADV MTSHIZANA: Chairperson, I am trying to [indistinct] ...[intervenes]

CHAIRPERSON: Try the supplementary bundle that was sent much later.

ADV MTSHIZANA: Thank you, Chair. Okay, Chair.

ADV VARNEY: The supplementary bundle actually starts at page 244.

ADV MPSHE: I do not have that.

COMMISSIONER KGOMO: Yes, maybe Ms Mtshizana can find it on her laptop.

ADV MPSHE: Ja, we are looking for it, she said page 273.

COMMISSIONER KGOMO: As the Chair says, 275. Are you winning, Ms Mtshizana?

ADV MTSHIZANA: No Chair, because the one that is uploaded on the online portal is only a bundle with two pages.

CHAIRPERSON: And it is supposed to be a supplementary bundle.

ADV MPSHE: Yes, I see a supplementary bundle here, what is this? Here, index.

ADV MTSHIZANA: Yes, this the one, this the one of two pages, it is only two pages.

ADV MPSHE: Ja, it is only two pages, yes, made up of Mandisa's statement and memorandum. Wait, wait, wait, here is memorandum 2 from Batohi.

ADV MTSHIZANA: Yes, but it is not here because it is only two pages.

ADV MPSHE: Oh ja. It is not, we cannot find it here.

ADV THOKOA: [Indistinct].

COMMISSIONER KGOMO: Maybe if you can, miss, can you just move to the ...[intervenes]

CHAIRPERSON: There.

COMMISSIONER KGOMO: Yes.

CHAIRPERSON: You are talking to Ms Mtshizana, Ms Thokoa.

ADV VARNEY: Chairperson, it is actually on the website, it is under "Cross-examination bundle 95".

ADV THOKOA: Ms Mtshizana, you will find it at additional pages to

supplementary, under "Bundles for hearings 26 October to 30 October".

CHAIRPERSON: Dated?

ADV THOKOA: 22 October 2026.

ADV MTSHIZANA: Yes, I am there.

ADV THOKOA: It starts on 283.

ADV VARNEY: No Chairperson, that is not the correct bundle.

ADV MPSHE: Yes. No, 283 we have.

CHAIRPERSON: Yes, it is, the one that ...[intervenes]

ADV MPSHE: Page 283 ...[intervenes]

CHAIRPERSON: We want and yes, sorry, sorry to interrupt you Adv Mpshe. Ms Thokoa, the one that we want is the one that starts at 245.

ADV VARNEY: Chairperson, it is titled, "Bundle 95 cross-examination of Adv Mpshe" on the website. It was circulated on 23 October.

CHAIRPERSON: Mr Varney, I have got 275 in front of me that you wanted to refer to. Did you want to refer to many paragraphs of 275 to 276?

ADV VARNEY: Yes Chairperson, it is confined to 275 and 276 and then a little bit on ...[intervenes]

CHAIRPERSON: 277?

ADV VARNEY: A small section of 277.

CHAIRPERSON: Yes, I think in that case whilst we are trying to sort out the bundle, the witness' bundle, it would be an appropriate time to

adjourn for lunch while this is being sorted out.

ADV VARNEY: I think that makes sense, Chairperson.

CHAIRPERSON: Ja, we will adjourn and reconvene at 13:50.

ADV VARNEY: As the Chairperson pleases.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Mr Varney, have we sorted out the issue of the bundle, the supplementary bundle?

ADV VARNEY: Chairperson, I believe we have. Perhaps my learned friend ...[intervenes]

CHAIRPERSON: Mr Salukazana?

ADV SALUKAZANA: Yes, Chairperson. I believe that it has been resolved.

CHAIRPERSON: Yes, that has been sorted out, yes.

ADV SALUKAZANA: Everyone was directed to the correct folder.

CHAIRPERSON: Adv Mpshe?

ADV MPSHE: Yes, Chair, we did find the letter, but the page number is 268 on the letter that I was given.

ADV VARNEY: Yes, that is correct.

ADV MPSHE: The letter to Minister Lamola by Shamila Batohi.

ADV VARNEY: That is the first page about the memorandum.

ADV MPSHE: 268. Where is the date here?

ADV VARNEY: Chairperson ...[intervenes]

CHAIRPERSON: Is it a letter or a memo?

ADV MPSHE: It is a memo, Chair dated 2 December 2020.

CHAIRPERSON: Yes, it is a memo, not a letter. Yes.

ADV MPSHE: Dated 2 December 2020. The date is ...[intervenes]

CHAIRPERSON: That is right.

ADV MPSHE: Ja, by Shamila Batohi.

CHAIRPERSON: Yes, we are on the same page then with you, Adv Mpshe.

ADV MPSHE: Thank you, Chair.

ADV VARNEY: Thank you, Chairperson. I will proceed.

CHAIRPERSON: Yes, you may proceed.

ADV VARNEY: So perhaps while we are on page 268, Adv Mpshe, let us just confirm that this is a memo from then NDPP Adv S Batohi addressed to Minister of Justice, Mr RO Lamola. As you pointed out in the handwriting at the top, it has the date 3 December 2020. The subject is “Briefing on TRC cases”. Now, it is quite a long memo. The purpose is set out in paragraph 1.

The purpose of this memorandum is to brief the minister on all relevant issues relating to TRC cases arising from questions raised during a virtual meeting of 16 November 2020 dealing with responses to parliamentary questions. And I am sure you have been through it. It gives a very detailed background to the cases, in particular the challenges facing the NPA. I want to draw your attention to page 275. I assume that you are at 275.

ADV MPSHE: Yes.

ADV VARNEY: And you will notice that your name appears at paragraph 2.25. So I am going to read you certain extracts and seek

your response or ask you certain questions. So the first sentence of 2.25 reads as follows.

> "Adv Mpshe was appointed as the ANDPP. He appointed a senior member of the staff, Deputy Director RC Macadam, to negotiate with SAPS in order to have investigations into TRC cases commence again."

Let us pause there. Firstly, I would like you to confirm that that was the case. Is that also your recollection?

ADV MPSHE: Yes, indeed.

ADV VARNEY: So my question is; why should the NPA have to negotiate with the SAPS to have murder cases investigated?

ADV MPSHE: Well, I think the use of the word 'negotiate' is unfortunate. It was to request them to come back and assist in the investigations. Remember, SAPS was one of those agencies that was supposed or called upon to assist the NPA. And that you find also in terms of the guidelines.

ADV VARNEY: Yes.

ADV MPSHE: So the investigation was to be done by SAPS, by NIA, by DSO and assisted also by the Department of Justice. So SAPS was the body that was to assist us in the investigations.

ADV VARNEY: But would you agree that even in the absence of these particular guidelines, which of course in due course would be struck down, the SAPS had both the statutory and constitutional obligation to investigate crime, particularly serious crimes such as

kidnappings and murders?

ADV MPSHE: Yes, yes, I agree.

ADV VARNEY: So the word 'negotiate' here I do not think is out of place, because the evidence shows that yourself and Adv Macadam for a period of some two years had to interact and effectively negotiate for these cases to be investigated.

ADV MPSHE: Okay, okay.

ADV VARNEY: All right, let us, we do not have to go into the detail and the balance of 2.25. We have dealt with that, but let us go to 2.26.

> "Adv Macadam advised Mpshe that despite approaching the police and intelligence agencies, they were adamant they would not assist, unless they had the approval of their principals."

You confirm that?

ADV MPSHE: Ja, ja.

ADV VARNEY: Let us then, well actually I think we have to deal with the rest of 2.26, because we come on to the PEBCO matter again.

> "Adv Macadam also advised that he had, under very difficult circumstances, been able to obtain a final postponement for the PEBCO 3 matter. He, however, advised that if the outstanding issues were not resolved, the Court would not grant a further postponement and the charges would have to be withdrawn."

And let us turn to 2.27.

> "The matter did not receive any further attention, resulting in the charges being withdrawn. This led to Adv Mpshe on 28 May 2009 writing to Minister Radebe and making the following comment."

Now before I read that quote into the record, I just want to remind you, Mr Mpshe that the first part of the quote actually comes from a document that your team made available to the Commission, and that is the memorandum that you addressed to Minister Radebe as mentioned here on 28 May 2009. Chairperson, that is at 47.1 of the record. But that was an incomplete document, because after that first line that was paragraph 4.1 of that memo, the document simply stopped. We did not have the balance of the pages. You recall that?

ADV MPSHE: Yes, I do and I do mention that fact also in my statement to the Commission.

ADV VARNEY: So now we have this memorandum quoting what appears to be a section from your memorandum to Minister Radebe that likely was on the next page or subsequent pages. So I am going to read the full quote into the record.

> "The problems surrounding the PEBCO 3 matter and the justifiable dissatisfaction of the families serve to highlight a general problem with all TRC-related matters; namely that since the closure of the TRC, these have never been properly

> investigated… Although my office has held a number of meetings with the senior management of both SAPS and NIA, the process has not developed to the point where investigators have been appointed and investigations instituted… The minister is requested to take this matter up with his colleagues, the Ministers of Safety and Security and Intelligence in order to fast-track the process."

And if I can just finish off with the first line of 2.28.

> "Nothing, however, resulted from this memorandum, but Adv Macadam continued to lobby SAPS."

So is that an accurate reflection of what transpired and in particular the second part of the quote? Do you recall that as being part of the memo you addressed to Minister Radebe?

ADV MPSHE: I do recall.

ADV VARNEY: Now the memo seems to suggest that, notwithstanding your plea to Minister Radebe to take the matter up with his colleagues in cabinet or at least with the Ministers of Safety and Security and Intelligence to fast-track the process. The memo suggests that there was no positive results from your plea. Is that your recollection?

ADV MPSHE: That is true.

ADV VARNEY: Do you know if, can you recall perhaps if the

minister ever came back to you to advise on any steps he might have taken?

ADV MPSHE: No, not at all.

ADV VARNEY: So back to 2.28. Here we see the steps that have been taken by Macadam. He is talking to Head of Detective Service, General Ray Lalla. And then eventually, as we see at the bottom of the paragraph, eventually in January 2010 one of his deputies, General Lebeya agreed to investigate, but only after the conclusion of the 2010 Soccer World Cup. Now of course by 2010 you were no longer the Acting NDPP. But is that also your recollection that investigations only commenced in 2010 after the Soccer World Cup?

ADV MPSHE: Yes, I do.

ADV VARNEY: Let us turn to the next paragraph, 2.29. It reads:

> "The irreparable damage caused by the blocking of investigations for a period of seven years..."

And we believe the seven years to be between 2003 and 2010.

> "…cannot be underestimated. In addition to prescription now being applied to a number of new cases, a number of accused and state witnesses died."

Do you agree with what is stated there?

ADV MPSHE: Yes, yes I do.

ADV VARNEY: All right, I am not going to go into the individual cases. Let us turn to page 279, and there is a heading there "Matters to be noted", paragraph 3, and we will just look at the first part of 3.1.

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

Do you agree with that statement?

ADV MPSHE: I do.

ADV VARNEY: All right, we are then going to turn to another memorandum, also addressed by Adv Batohi to Minister Lamola, and this is at page 283 of the cross bundle. I will wait for you to get there.

ADV MPSHE: I have it.

ADV VARNEY: So this memorandum is dated, well, the date stamp from the Department of Justice is 7 June 2019, and the subject is "Response to complaint by Foundation for Human Rights", and if we just look at paragraph 1 which sets out the purpose.

> "The purpose of the memo is to brief the Minister on letters written by the Foundation for Human Rights to me and the Office of the President."

Now we are going to drop to the next heading, to "Issues". I want to read to you paragraph 2.2 to get your response. It reads as follows.

> "It is unfortunately a fact that the PCLU was prevented from fulfilling its mandate in dealing with the TRC cases because of the following series of events."

And they are not numbered, but they have bullet points. The first bullet point:

"• The DSO refused to investigate the cases."

Turning over the page;

"• The South African Police Services also refused to investigate.

• The then Minister of Justice persuaded an acting NDPP to impose a moratorium on the investigation of TRC cases pending the formalisation of special guidelines for TRC matters.

• A secret amnesty task team was set up by the Department of Justice which drafted an indemnity bill and looked at mechanisms of preventing private prosecutions and referrals to the International Criminal Court.

• These initiatives came to naught, but were replaced by guidelines which permitted the NDPP to have an amnesty process. The guidelines were declared unconstitutional for this reason.

• The NDPP, Adv Pikoli, was then required to set up a task team to guide him on TRC prosecutions. The then Minister of Justice complained that he was considering instituting

prosecutions. He wrote her a lengthy letter to the effect that his constitutional right to prosecute TRC cases was being improperly interfered with by the task team and their principals. He was then suspended and fired.

- Nothing further transpired with the TRC cases until late 2010 when the Directorate Priority Crimes Investigations, DPCI, agreed to commence investigating the matters. At that stage many of the role-players were dead, resulting in the fact that prosecutions could not be instituted in several high profile matters."

Mr Mpshe, do you agree with what is set out there that the contents of those bullet points explain the failure to deliver justice in these cases?

ADV MPSHE: I do agree. I do agree, but okay, no, no, I do agree. I do agree.

ADV VARNEY: If you want to qualify or add anything, you are free to do so.

ADV MPSHE: No, no, I was just going to talk about bullet number three that says: "The then Minister of Justice persuaded the Acting NDPP to impose a moratorium on the investigation of TRC cases." I have no knowledge of that, unless it was done after my departure.

ADV VARNEY: No, in fact it happened towards the end of 2004, long before you began Acting NDPP.

ADV MPSHE: Ja, sure. Okay. No, no, fine. I do agree then with the rest.

ADV VARNEY: All right. Now what I want to put to you is a narrative that has been advanced before this Commission, namely that there were no impediments or obstacles placed in the path of the NPA in relation to the TRC cases. It was simply and only the failure, reluctance or perhaps incompetence on the part of the NPA and its prosecutors, which explains this failure of justice. What is your response to that narrative?

ADV MPSHE: Ja, my response to that narrative will be that I do not agree. There was an impediment and the impediment was the lack of investigation into those matters. That is the only impediment that I know of.

ADV VARNEY: And finally from our side, Mr Mpshe, do you agree that the families of the PEBCO 3 and indeed virtually all the families of the TRC cases who have been denied justice and truth after so many years, do you agree that they have been terribly failed by the post-apartheid state?

ADV MPSHE: Yes, I agree.

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

CHAIRPERSON: Thank you, Mr Varney. Mr Salukazana, any re-examination?

ADV SALUKAZANA: Yes, Chairperson, just three questions.

CHAIRPERSON: Yes, you may proceed.

ADV SALUKAZANA: Mr Mpshe, may I ...[intervenes]

CHAIRPERSON: Oh, before, I think I omitted to come to the evidence leaders. Mr Soni? Yes, I am sorry I omitted to include you.

ADV SONI: I was going to say Ralph Ellison wrote a book, *Invisible Man*.

CHAIRPERSON: Yes, yes, you are quite visible.

ADV SONI: May I?

CHAIRPERSON: Yes, you may proceed.

CROSS-EXAMINATION BY ADV SONI: Good afternoon to you, Mr Mpshe.

ADV MPSHE: Good afternoon, sir.

ADV SONI: Mr Mpshe, I want to raise a number of matters arising out of your statement to the Commission. Now, let me just say that there are two aspects of that statement that I want to deal with and refer you to paragraph 26 of your statement, which is on page 6.

ADV MPSHE: Ja.

ADV SONI: And the first one is Adv Ackermann being relieved of his duties or some of his duties in respect of TRC matters. And the second is that there was little or no work on TRC cases during 2008. Now, Mr Mpshe in your, or to your statement, you annex a number of documents, and it is those annexures mainly that I want to deal with. And some of them have been dealt with by my learned friend, Mr Varney. I may want to put questions to you that or matter, raise matters with you that he raised, but I want to raise them in a different context. First issue I want to deal with is Annexure MJM2, which you would find at page 18. This is your letter to Minister Mabandla after

Reverend Chikane complained about his treatment by Adv Ackermann. You recall that?

ADV MPSHE: Yes, I do.

ADV SONI: Now, my learned friend, Mr Varney, raised a number of matters with you. I just want to ask you to please turn to page 20.

ADV MPSHE: Of my statement?

ADV SONI: Yes, no, page 20 of the bundle; page 3 of your… no, sorry, page 20 of the bundle, page 3 of Annexure MJM3.

ADV MPSHE: Ja. I am there.

ADV SONI: You will see on the left-hand side, there is a Roman (iii). Do you see that?

ADV MPSHE: Ja. Ja.

ADV SONI: The second sentence reads:

> "The perpetrators in *S v Van der Merwe* submitted representations through their legal representatives, which were dealt with by the NDPP and Dr Pretorius."

And then you say:

> "Adv Ackermann was not involved in this process."

That, I take it, is the process relating to the representations made by the accused.

ADV MPSHE: That is correct.

ADV SONI: Okay. Then at page 22, in response to what was said in paragraph 8 of Reverend Chikane's complaint, you say:

"Count 2 was including as a legal ...[intervenes]

CHAIRPERSON: "Was concluded".

ADV SONI: I beg your pardon.

CHAIRPERSON: "Was included".

ADV SONI: I am sorry, Chair.

"Count 2 was included as a legal tactical strategy to *inter alia* have key evidence admitted should the accused have pleaded not guilty."

ADV MPSHE: Yes.

ADV SONI: Where did you get that from?

ADV MPSHE: Let me just check what count 2 was first, then maybe I will be able to recall.

ADV SONI: The count that was, on which they were found not guilty.

ADV MPSHE: I will not have the charge sheet or the indictment with me here. If I can have chance to look at the count, then I will be able to recall why I say it was included as such.

ADV SONI: Mr Mpshe, sorry. I am asking you: where did you get that information from? In particular, did you get it from Mr Ackermann?

ADV MPSHE: It was from Mr Ackermann, because he was the one who respond to the query by Reverend Chikane.

ADV SONI: All right, then under the next small heading, you say "The list". It says:

"I am informed by Adv Ackermann that extensive attempts have been made to obtain knowledge of

the contents of the list."

This is the list of those who were to be poisoned, I may just point out in parenthesis.

"He even went as far as to use it as a bargaining tool not to accept any plea agreement."

I take it that too you got from Mr Ackermann?

ADV MPSHE: Yes, yes, yes.

ADV SONI: And then the next sentence, the next paragraph reads:

"The legal representative of the accused in the plea agreement categorically stated that none of the accused recalled the listed names."

That too you would have got from Mr Ackermann, am I correct?

ADV MPSHE: Yes, yes, correct.

ADV SONI: Now, I raise that with you, Mr Mpshe, because when Mr Ackermann gave evidence before the Commission on 5 March 2026 and during his examination-in-chief; Chairperson, I read from paragraph, page 29 of the transcript, from paragraph 10. This is what he says, Mr Ackermann. He says:

"I was not a party to the negotiations regarding the plea and sentence agreement. There was a separate committee formed, I think it was under Dr Pretorius, and there were three or four, and they completed this. The result that they had was that sentence agreement is a final say in the..."

Sorry.

"…and they completed this. The result that they had was that sentence agreement is a final say on the matter."

Do you want to comment on that?

ADV MPSHE: I cannot comment, I cannot comment on that, because the whole thing was handled by the PCLU.

ADV SONI: It is different from what he told you, though.

ADV MPSHE: Different from what Ackermann told me.

ADV SONI: Yes, in response to Reverend Chikane's complaint.

ADV MPSHE: I do not follow.

COMMISSIONER GABRIEL: Mr Soni, has that transcript been provided to Adv Mpshe?

ADV SONI: No, it has not.

COMMISSIONER GABRIEL: Because we do not have it either before us.

ADV SONI: I am just trying to point out. Well, I do not need to deal with it now, Commissioner. The only point I am trying to make is that when Mr Ackermann gave evidence on this issue, he gave a different version.

CHAIRPERSON: Yes.

ADV SONI: Now, can I then ask you, Mr Mpshe, just in relation to your appointment. You were appointed on 23 September 2007, am I correct?

ADV MPSHE: Yes, as the Acting National.

ADV SONI:

ADV MPSHE: That is correct.

ADV SONI: Now, you were never appointed the National Director of Public Prosecutions.

ADV MPSHE: No, no.

ADV SONI: And you served until 30 November. That is for a period of 26 months, am I correct?

ADV MPSHE: No, I served from 2007 to round about 2010.

ADV SONI: I think your statement says you served, paragraph 8 of your statement says you served until 30 November.

COMMISSIONER KGOMO: Of what year?

ADV MPSHE: No. I served from September 2007 up until when I retired in 2010, after Mr Simelane was appointed National Director in 2009.

ADV SONI: So, let me just read to you what you say in paragraph 6. It says:

> "While I held the position of DNDPP, I served as the Acting National Director of Public Prosecutions from 23 September 2007 to 30 November 2009."

Is that correct?

ADV MPSHE: That is correct.

ADV SONI: Okay.

ADV MPSHE: Yes. It is about two years, not months.

ADV SONI: No, I was saying 26 months, it is two years and two months. But I just want to make this point, Mr Mpshe; that section

12(1) of the NPA Act says that the National Director must be appointed for a period of 10 years.

ADV MPSHE: Yes.

ADV SONI: You were appointed for a period of 26 months serving only in an acting capacity.

ADV MPSHE: Yes.

ADV SONI: I just want to ask you; in terms of how you approached your job, the fact that you were only acting as the NDPP, what effect did it have on you?

ADV MPSHE: What effect did it have on me?

ADV SONI: Yes.

ADV MPSHE: Well, the only effect I can tell you is that it was extra work for me. It exposed me to more work than I was used to.

ADV SONI: No, I am saying, I am trying to make a different point, Mr Mpshe. The National Prosecuting Act contemplates that when somebody is occupying the position of NDPP, he or she would serve for a period of 10 years.

ADV MPSHE: Of 10 years, ja.

ADV SONI: You are not appointed as an NDPP. You are appointed in an acting capacity for 26 months.

ADV MPSHE: Yes.

ADV SONI: Did that have an impact on the manner you were able to perform your duties as a National Director of Public Prosecution?

ADV MPSHE: Yes.

COMMISSIONER KGOMO: Could you make a draft policy? Could

you restructure? Did you have to look over your shoulder; something in that direction?

ADV MPSHE: Yes, Commissioner. That is why I say it introduced me to more work that I was not used to, because in the office of the NDPP, there is that element of administration and there is the element of being supervisory of all members of the NPA in the country. Now, that was extra work for me. That is the impact that it had for me.

ADV SONI: Perhaps I should ask you a little more directly. Did it introduce a certain amount of certainty and diffidence in the manner you performed your duties?

ADV MPSHE: Certainty towards being appointed? Is that what you mean?

ADV SONI: Sorry, I did not hear that, Mr Mpshe.

ADV MPSHE: Are you saying did it introduce a measure of certainty? Is it certainty towards being appointed? I did not understand.

ADV SONI: So I am asking; did it have an impact on the certainty with which you performed your job and the confidence with which you performed your job?

ADV MPSHE: Yes, it did.

ADV SONI: Now, can I then ask you, Mr Mpshe, because all of that is a prelude to the various documents you have attached, annexed to your statement. I want to first take you to MJM3D, which appears at page 31. Are you there?

ADV MPSHE: Yes, I see it.

ADV SONI: Now, this is a letter, I am sorry, an internal memorandum from Dr Ramaite to Adv Ackermann.

ADV MPSHE: Yes.

ADV SONI: Sorry, from Adv Ackermann to Dr Ramaite.

ADV MPSHE: Yes.

ADV SONI: And it deals with the TRC Task Team and it is dated 5 June 2008. Am I correct?

ADV MPSHE: Yes.

ADV SONI: Now, when did you first become aware of this document?

ADV MPSHE: I became aware of the document it was tabled, when we were preparing for the Commission, when we were preparing my report.

ADV SONI: That is the first time you saw it?

ADV MPSHE: Yes.

ADV SONI: You see, what is significant about this document, and you will see with most of the documents that you annex to your statement, you are not the writer of the document or a recipient of the document.

ADV MPSHE: Yes.

ADV SONI: I am just making that point. And that is why you say you first saw it when you were preparing the statement.

ADV MPSHE: That is correct.

ADV SONI: Let us look at the next document then, which is MJM3E,

which appears at page 33. And you see this document, though, is addressed to you and it is from Adv Ackermann, and it is dated 9 June 2008. Sorry, it is from Adv Macadam, not Ackermann, sorry.

ADV MPSHE: It is from Macadam to me.

ADV SONI: Yes. You will see he says in the first paragraph:

> "The NPA Annual Plan required of the PCLU that it formulate an action plan whereby TRC cases would be promptly and effectively disposed of. More specifically, I was appointed to manage this plan."

Have you seen that plan?

ADV MPSHE: No.

ADV SONI: Was it ever… well, I mean, this document is addressed to you. Did you ask him for it?

ADV MPSHE: No, no.

ADV SONI: Can I ask why not?

ADV MPSHE: I did not ask for it, because he was informing me that this is what existed in that plan. He was introducing it to me. For me, it was a preamble to the contents that followed.

ADV SONI: Yes, but I am asking a different question. I am saying that he says he was required to manage this plan.

ADV MPSHE: Ja.

ADV SONI: Do you know whether he managed the plan properly?

ADV MPSHE: No, I do not know.

ADV SONI: Because you did not even see the plan.

ADV MPSHE: I do not know. I do not even see the plan.

ADV SONI: All right. Then he says that there was a meeting with Adv Mzinyathi and Dr Ramaite. Then in the third paragraph, he mentions that one of the cases is the PEBCO 3 prosecution. You see that that is the third paragraph?

ADV MPSHE: Yes, yes.

ADV SONI: Then in the last sentence on that page, he says:

> "Last year the matter was postponed as a final date to 5 August 2008."

You see that?

ADV MPSHE: Yes.

ADV SONI: Okay. Now, this memo is written to you on 9 June 2008.

ADV MPSHE: Yes.

ADV SONI: And the final date in respect of the postponed hearing was 5 August 2008. That is on page 34, sir.

ADV MPSHE: Page 34? What about page 34?

ADV SONI: Can I ask you to go to page 33, sir?

ADV MPSHE: 33.

ADV SONI: The last sentence there reads: "Last year".

ADV MPSHE: Ja.

ADV SONI: And then the following page says:

> "The matter was postponed as a final date to 5 August 2008."

ADV MPSHE: Ja.

ADV SONI: So that is two months after this memo was sent to you,

am I correct?

ADV MPSHE: Yes.

ADV SONI: Okay. Now, there he is talking about the record, and in the last paragraph he says:

> "Another matter which requires attention is the status of the criminal investigation. As I recall, the matter was brought to court as a DSO investigation, but the investigators have now resigned. Consideration will have to be given to either appointing new investigators or to the matter being referred to SAPS. The reason why this is important is that the State must be required to demonstrate that it is ready to proceed with the prosecution on 5 August 2008."

You see that, sir?

ADV MPSHE: Yes.

ADV SONI: All right. Now, under that is a note that seems to say "noted". Is that your handwriting?

ADV MPSHE: Yes, that is correct.

ADV SONI: What happened between 5 June, sorry, 9 June and 5 August in this matter?

ADV MPSHE: Between 9 June and 5 August?

ADV SONI: Ja, between 9 June and 5 August. Now, he is telling you that this was a final…

ADV MPSHE: Final date.

ADV SONI: Postponement and the DSO investigators have left. You would need to appoint investigators. I am asking: what steps were taken for the NPA to comply with these obligations?

ADV MPSHE: Well, is it not that because of this problem we are faced with of investigation; that is why letters were written to SAPS to come back to the party of investigations? Now, going back to your question where you say what happened between that date and 5 August 2008.

If I may recall, I may not be 100 percent, is that that is the period within which the review application that was pending in the High Court was being attended to, and attended to by the NPA communicating with the Department of Justice to file an affidavit that Justice was supposed to file. That is the question I can give on that question. The answer I can give on that question.

ADV SONI: Okay, that is your answer, right?

ADV MPSHE: Yes, yes.

ADV SONI: Can I then ask you to look at the next memo? Oh, before I go to the next memo, let me ask you this. In the documents you have submitted in this statement, is there any letter to SAPS dealing with the lack of investigators?

ADV MPSHE: Yes, there is a letter that was written by Chris Macadam to SAPS. And there is a letter where Macadam reported the response regarding investigation by the acting; I think he was the Acting Commissioner, Ray Lalla. And there is an indication again in the file of a response to my letter to the then Acting National

Commissioner Williams about investigation and their response thereto. It is all in the file.

ADV SONI: Okay, we will come to that. I just want to know in relation to this issue, you did nothing except in regard to the review?

ADV MPSHE: Ja, because we had to wait for the finalisation of the review. But unfortunately, the review did not give the results that we wanted in that the Department of DOJ failed in their duty to pursue the review, because it was now within their parameters to deal with that review. I think it took them about three years, if not more, to file an affidavit. And ultimately, the matter was decided by the Court on a review in the absence of intervention or filing by the Department of Justice, then they decided that the amnesty process must be done again on Van Zyl.

ADV SONI: Can I ask you to look at, please, the next memorandum?

CHAIRPERSON: Before we go to the next annexure, Adv Soni, may I just enquire from Adv Mpshe? Mr Mpshe, if you have regard to that letter, the internal memo at page 34, the third paragraph.

ADV MPSHE: Yes.

CHAIRPERSON: The third paragraph, it says:

> "Although I intend taking up the matter with Tessie Bezuidenhout as a matter of urgency, I would recommend that you contact the Director General: DOJ, CD and request him also to ensure that the matter is expedited."

ADV MPSHE: Yes.

CHAIRPERSON: You see that?

ADV MPSHE: I see that, Commissioner.

CHAIRPERSON: Yes. Did you do so?

ADV MPSHE: I did not do so, and I discussed that with Macadam.

CHAIRPERSON: Why not?

ADV MPSHE: I did not do so because of the relationship that was existing between the NPA and the DG of Justice, which was not a collegial relationship at all.

CHAIRPERSON: Yes, but what prevented you from directly liaising with the Director-General, as you were requested by Macadam?

ADV MPSHE: Madam Chair, I discussed it with Macadam. I said I do not have position to contact the DG of Justice because of what is happening between him and the NPA. And I said to him, maybe what is advisable is to contact the police directly or the minister directly. Yes, I remember I said the minister directly.

CHAIRPERSON: Yes. Thank you.

ADV SONI: Thank you, Chairperson. Can I ask you to go to MJM4? So the MJM3 was obviously dealing with the PEBCO matter, as you will see on page 33, Mr Mpshe. I ask you to now go to 9 July. That is a month later. That is a month after Mr Macadam wrote to you. This is a letter dated 9 July from Mr Macadam, and you will see that on page 37, because he signs “Kind regards, Chris”. I take it that is Chris Macadam. Would that be right, sir?

ADV MPSHE: Yes. Ja.

ADV SONI: And you will see that that letter; and I take it Helena Zwart is his secretary or professional assistant.

ADV MPSHE: Secretary. Yes.

ADV SONI: And this letter is addressed to Adv Ackermann.

ADV MPSHE: Yes.

ADV SONI: When did you see this letter for the first time?

ADV MPSHE: I saw it again for the first time when we were preparing my statement to the Commission.

ADV SONI: So you are not aware of the contents of this letter? Well, you ...[intervenes]

ADV MPSHE: Well, I was not aware before I saw it.

ADV SONI: Yes. Now, I just want to read one or two of the contents, part of the contents of that. I can ask you to, on page 35, turn to paragraph 1.6?

> "Consideration must be given to whether it is necessary for Marion to also submit an affidavit to use at the court hearing. This would be to confirm that the witnesses, upon whose strength the prosecution was instituted, are still available."

You see that?

ADV MPSHE: Yes, I see that.

ADV SONI: And then, if you look at the paragraph 1.8, Mr Macadams says to Adv Ackermann:

> "Van Zyl never applied for amnesty."

Van Zyl was one of the accused in the PEBCO 3 matter; would I be

correct, sir?

ADV MPSHE: Yes, that is correct.

ADV SONI:

> "Therefore, even if the review was decided in his favour, he would still fail prosecution on the assault charge. Koole…"

I take it he was also one of the accused.

> "…has not applied for review, and therefore can still be prosecuted for kidnapping and assault."

And then it goes on to say:

> "If all the urgent matters have been addressed, then the advocate should be instructed to locate the missing evidence in the docket."

Who would be the advocates who are instructed?

ADV MPSHE: I think it would be the advocates in the PCLU unit.

ADV SONI: And then, if you go a couple lines down, up to the fourth line from the bottom, you will see it says:

> "Arrangements should be made with Tessie Bezuidenhout for one of the advocates to review the documentary evidence which form part of the review, since certain of the missing portions of the dockets could be filed there. A comprehensive memo should be compiled, setting out in a systematic manner all further investigations necessary should the matter go to

trial."

It continues:

"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."

Then he makes the point that was made in the previous memorandum:

"A new investigating officer would have to be appointed."

And then at paragraph 9 he says, this is Mr Macadam:

"The evidence given by the State witnesses should be perused to establish whether there are any contradiction between such evidence and their statements in the docket. Any such contradiction should be described in detail and an opinion expressed as to whether they are fatal as far as the witnesses' credibility is concerned."

That is all in Mr Macadam's memo to Adv Ackermann, Mr Mpshe.

ADV MPSHE: That is correct.

ADV SONI: Now, I just ask you this; you were the Acting NDPP at the time. With all of these dark clouds hanging over this matter, was it likely to proceed on 9 August or 5 August?

ADV MPSHE: No. That is why Macadam is advising Ackermann to attend to the shortcomings or to the hazards that may befall the trial.

ADV SONI: Okay. Then the second matter dealt with in this memorandum is that of Anton Lubowski. That, of course, was one of the issues that came before, I think, also the D'Oliveira Commission, but that is not important. We do know that this matter lay on the table of the PCLU for some time. I just want to tell you what happened at that time according to this memo. If you look at 2.1, it says:

> "Late last year, Mrs Lubowski requested her husband's murder to be reinvestigated and alleged that an explanation should be provided why Torie Pretorius and Neels de Lange did not follow up evidence which her attorneys had provided earlier to them."

Now, if that allegation is correct, that would be a serious matter, would not it?

ADV MPSHE: Yes, yes.

ADV SONI: All right, can I ask you to then go to paragraph 3? This is the St James and Heidelberg Tavern matter, and 3.1 says:

> "The documentary evidence relating to these matters is in a box under the table next to the safe, and should be analysed and a comprehensive report compiled identifying all aspects thereof that would be relevant to Mphahlele."

Who was Mphahlele?

ADV MPSHE: Mphahlele was, I think he was an APLA leader, if I am

correct, yes. He was an APLA leader whom it was suspected he was responsible for the bombing at the Heidelberg Tavern. And he also went about making statements in that regard, and I recall his name was Letlapa Mphahlele.

I recall again, if you want me to say further about him, him coming to the offices of the Truth Commission in Cape Town to come and see me on this matter, where I discussed the Heidelberg matter with him. And he said to me he was not involved in this, but he was a member of APLA at that stage, that is Letlapa Mphahlele.

ADV SONI: Yes, now ...[intervenes]

COMMISSIONER KGOMO: Letlapa Mphahlele?

ADV MPSHE: Letlapa Mphahlele, yes.

ADV SONI: Now, what is clear from this, that the issue that arose in this matter is that all his involvement was based on a public statement he had made, am I correct?

ADV MPSHE: Yes, he was making quite a number of public statements. He was a stage person type of people, yes.

ADV SONI: As I understand it, he was the leader of the PAC.

ADV MPSHE: I am not aware of being the leader of PAC, but I know he was in APLA.

ADV SONI: Okay, can I then refer you to the fact that what was in issue was whether he could be prosecuted on the basis of that statement.

ADV MPSHE: Yes, that is correct, yes.

ADV SONI: And one of the issues raised there is, if you look at

paragraph 3.3, the third sentence says:

> "Particular attention must be paid to the fact that the media will claim privilege on how this claim can be dealt with."

ADV MPSHE: Yes [indistinct].

ADV SONI: That was an evidentiary issue that would come up there.

ADV MPSHE: Yes, yes.

ADV SONI: All right, can I then ask you to please look at the next matter, the Simelane matter, which is the fourth matter in this memo. It says:

> "4.1 A detailed analysis of the evidence in the docket must be conducted, identifying problem areas, including legal issues and all aspects requiring investigation.
>
> 4.2 The TRC evidence must be analysed in order to establish whether it materially contradicts the statements in the docket.
>
> 4.3 A detailed analysis must be made of Mr Varney's report, and the merits of his points in favour of a prosecution carefully analysed."

ADV MPSHE: Ja, I see that.

ADV SONI: Can I just say in regard to these four matters, it is quite clear that a fair amount of work still needed to be done before these matters were brought to court.

ADV MPSHE: That is correct.

ADV SONI: Can I then ask you, sir, to turn to page MSM5? And this I am not going to spend a lot of time over. It deals with the Anton Lubowski matter, and it is also a letter from Mr Macadam, but this is addressed to Dr Ramaite. You will see that it was sent to him by email on the 1 October 2008. Do you see that?

ADV MPSHE: Wait a minute, MJM3?

ADV SONI: MJM5.

ADV MPSHE: Oh, I see that, yes, yes, yes.

ADV SONI: Sorry, at page 38.

ADV MPSHE: Yes, yes, but it is under, for your information.

ADV SONI: I beg your pardon?

ADV MPSHE: Up there it will be from Helena Zwart, and then there is a FYI from Helena Zwart to Dr Ramaite as well. Do you see there?

ADV SONI: I just want to make... Can I ask you to please look at page 39? You see that Chris Macadam is the author of that letter?

ADV MPSHE: Yes.

ADV SONI: So I am just saying that that letter, although sent by email from Helena Zwart, is from Mr Macadam.

ADV MPSHE: Yes.

ADV SONI: And it is addressed to Dr Ramaite.

ADV MPSHE: And [indistinct].

ADV SONI: Oh, sorry. No. Oh, sorry, yes, sorry, yes. Now, can I ask you this, when did you first see this letter?

ADV MPSHE: The same when I was preparing for the statement.

ADV SONI: Now, in the last paragraph of that letter on page 39, it says:

> "All the above emphasises the need to have finality on these TRC matters, and I recommend that you advise the acting NDPP accordingly."

Do you see that?

ADV MPSHE: Yes, I see that.

ADV SONI: Were you advised?

ADV MPSHE: Well, I cannot say I was not or I was, but I cannot recall that.

ADV SONI: But what we do know is, from what you have just said, is that you only saw this letter while you were preparing for your statement.

ADV MPSHE: Yes, that is correct, ja. But I am saying as to whether he did advise me on this, I cannot recall, I cannot answer to that.

ADV SONI: Okay. Can I then ask you to look at MJ6, sir? And that is now a letter, although sent from Helena Zwarts, if you look at page 42, it is from, it is written by Mr Macadam, and it is addressed to Dr Ramaite and Adv Ackermann.

ADV MPSHE: Yes.

ADV SONI: And it said, its importance is said to be high.

ADV MPSHE: [Indistinct].

ADV SONI: You were not sent this letter?

ADV MPSHE: No.

ADV SONI: When did you first see it?

ADV MPSHE: When I was preparing for [indistinct].

ADV SONI: I will tell you why the fact that it was not sent to you is relevant, Mr Mpshe. Can I ask you to please turn to page 42, and you will see paragraph 7.

ADV MPSHE: Ja.

ADV SONI:

> "My recommendation is that, as a matter of urgency in 2009, when the parties are available, a meeting should be held or should be set up with the acting NDPP, yourself and myself, to obtain his approval on the way forward. As soon as the meeting with the acting NDPP has taken place, if it should be made to reconvene the task team so that work can commence."

Now, you obviously did not see this letter, because that is what you say. What I do want to ask you is, was a meeting held in 2009, early 2009?

ADV MPSHE: [Indistinct] between myself and Macadam, I do not recall that.

ADV SONI: Yes. Now, then can I ask you to please look at the next memorandum? And that is the memorandum that you have already been referred to by my learned friend, Mr Varney, which is MJM7 on page 43. Sorry, are you okay, Mr Mpshe?

ADV MPSHE: I am okay, I am okay.

ADV SONI: Sorry, sorry.

ADV MPSHE: Thank you.

ADV SONI: I say I just wanted to point out that you say:

> "The purpose of this memorandum is to inform the minister of my intention to reconvene the TRC Task Team, and to advise him of matters relating thereto."

This is the task team that had been dysfunctional, as it was put to you, from early 2007 ...[intervenes]

ADV MPSHE: 2007.

ADV SONI: Am I right?

ADV MPSHE: Ja, that is correct.

ADV SONI: Right. Now, this letter or this memorandum, if you look at page 46, is signed by you.

ADV MPSHE: That is correct.

ADV SONI: Now, it refers to, if you look at page 44, it refers to nine matters, and you will see that paragraph 3.4.1 to 3.4.9 ...[intervenes]

ADV MPSHE: Yes, yes.

ADV SONI: You see that, sir?

ADV MPSHE: Yes, yes.

ADV SONI: Now, this is a report now that you are making, or, well, a report or whatever one wants to call it, a memorandum from you to the minister about these nine matters.

ADV MPSHE: That is correct.

ADV SONI: Where did you get this information from?

ADV MPSHE: This information, I would say, the majority of it I got

from TCLU, because they would compile reports that would go to Dr Ramaite, and he would make me have access to those reports from the TCLU.

ADV SONI: So you would have taken those reports and compiled your reports based on them?

ADV MPSHE: Yes, to the minister.

ADV SONI: And those reports would have been compiled by somebody else?

ADV MPSHE: That is correct, somebody else in the TCLU.

ADV SONI: Yes. Can I ask you then to keep your tab, I mean, your finger on page 44?

ADV MPSHE: Ja.

ADV SONI: And to look at MJN6 on page 40.

ADV MPSHE: Ja.

ADV SONI: If you could just squizz your eye, move your eye down from 5.1 to 5.9, or 5.8, rather, on page 41, and the matters that are addressed in 3.4.1 to 3.4.8. And you can take it from me, it is correct, that all the matters referred to in MJ6 are repeated again in MJ7, MJM7. If you just squizz your eye through it.

ADV MPSHE: I can see, yes, I can see. Let me just check quickly. Yes, the majority of them come from that report, that is correct.

ADV SONI: Except, except, of course, 3.4.9.

ADV MPSHE: 5.3 ...[intervenes]

ADV SONI: No. So I am saying to you, Mr Mpshe, I do not want to unnecessarily rush you, I am saying 5.1 to 5.8, the matters referred

there are the same matters referred to in 3.4.1 to 3.4.8, in other words, the same cases are being referred to.

ADV MPSHE: Yes, yes, yes [indistinct].

ADV SONI: And I want to put another proposition to you, that MJM7 is but a summary, or the contents of MJM7 in regard to those eight matters are simply summaries of what is contained in respect of those matters in MJM6.

ADV MPSHE: Yes, I would agree with that. That is what I said, the information that I have conveyed to the minister comes from PCLU.

ADV SONI: Now, the one that is new is the one at page 46, paragraph 3.4.9, and it says, this is the matter regarding General Basie Smit.

ADV MPSHE: Ja.

ADV SONI: And this is what it says here:

> "When Vlok and others pleaded guilty to the poisoning of Reverend Chikane, they implicated General Smit as being involved in the plot. He never applied for amnesty, and was not prepared to plead guilty. The case against him based on these allegations has been investigated."

Now, is that correct, that the case against Mr Smit, against Colonel Basie Smit was investigated?

ADV MPSHE: Ja, that is what I was informed, that is what I was told.

ADV SONI: Now, can I just say this, if you look at page 46 at paragraph 4, it says:

"All the above matters, except for the Pebco 3, require investigations by SAPS before I can make a decision whether there are sufficient grounds to institute prosecutions or not."

ADV MPSHE: Ja.

ADV SONI: Okay, and then, of course, this is a matter that was referred to you by my learned friend, the one at paragraph 6, about NIA's involvement in this matter.

ADV MPSHE: Ja.

ADV SONI: In these matters, sorry. Now, can I just ask you this, in regard – you are aware now that all the matters, in other words, eight matters have to be investigated. How was SAPS to know that these matters are to be investigated?

ADV MPSHE: Look, SAPS was going to know if they were cooperating, because these matters would then be referred to them for investigation. So when you say they must come and assist in investigation, it simply means that if they say we have got so many police to assist you, then they would come and say to the prosecutors in PCLU, and they would give them the docket. Now, only at that stage would they be able to know that these are the matters that are to be investigated, if they had come to the party.

ADV SONI: Let us forget parties for the time being. I just want to ask you this, when President Mbeki gave evidence here last week, this is what he said. He said that these TRC matters were referred to the NDPP or the NPA, and he was aware that ordinarily crimes are

investigated by the police.

That is where the investigation starts, at police stations. And he made the point that a different arrangement was being made with TRC cases, because based on his April 2003 speech, he was leaving the matter in the hands of the NDPP. You recall that?

ADV MPSHE: Yes, yes [indistinct].

ADV SONI: Now, in other words, these matters are now in the hands of the NDPP or the NPA.

ADV MPSHE: That is correct.

ADV SONI: From 2007, around September to November 2009, you were in the acting capacity of NDPP.

ADV MPSHE: Ja, correct.

ADV SONI: What steps did you take to bring these matters to the attention of the police?

ADV MPSHE: The steps that I took, which I now repeat, is when I spoke to Chris Macadam and say we need to get these stakeholders or these agencies to assist. And one, Chris Macadam himself wrote a letter to SAPS to ask them to assist us in the investigations.

Two, I wrote a letter to the then, to the acting National Commissioner, Commissioner Williams, asking him to make available investigators. Those are the steps that we took, And there is a response to both letters from the office of the National Commissioner Williams, That is the steps we took.

ADV SONI: All right. Clearly, the response does not appear to be positive.

ADV MPSHE: Definitely, it was not.

ADV SONI: Did you follow on?

ADV MPSHE: Remember, we got a, remember, we got, I received a response to my request to the acting National Commissioner, where he categorically in his letter, in the last line he said, "I will not release my members until the matter is clarified". And that letter is referred to also by, I think it was, I do not know, I cannot remember his rank now, but his name was Jacobs, who was writing the letter on behalf of the National Commissioner, where they say nothing doing.

ADV SONI: So they refused?

ADV MPSHE: Yes.

ADV SONI: As I understood the position, they were refusing to participate in the interdepartmental task team, or am I wrong?

ADV MPSHE: You are right as well, yes.

ADV SONI: Sorry?

ADV MPSHE: I said you are correct as well on that.

ADV SONI: So what we do have is, they do not participate as members of the task team. But is there not a difference between participating as a member of the task team and doing your job or performing your constitutional obligation of investigating as the police in terms of section 2051 of the Constitution, or 2053?

ADV MPSHE: Ja, there is a difference, there is a difference. However, let us remember that their leader, that is the leader of SAPS, was a member in that task team. The task team that was refusing to continue [indistinct], and consequently he then told his

police not to continue assisting with investigations. Do not forget that part.

ADV SONI: Okay. Can I then ask you to please turn to…? So remember, I said to you that the purpose of your affidavit was to deal with two matters: one was to deal with the complaint in respect of, sorry, by Adv Ackermann, by Reverend Chikane ...[intervenes]

ADV MPSHE: Frank Chikane, ja.

ADV SONI: Yes, and then in paragraph 26.2, there was no work done on TRC cases during 2008. Now, you have submitted these memoranda. Can I just ask you now to turn to page, sorry, paragraph 38, page 12 of your affidavit. Paragraph 38, sir. Sorry, Mr Mpshe, can you hear me?

ADV MPSHE: Yes, yes, I can hear.

ADV SONI: Okay, I will just read it to you. It says:

> "I have already explained that I did not engage in any matters relating to the TRC which were being considered by the PCLU."

ADV MPSHE: Ja.

ADV SONI: And that is your position, am I correct?

ADV MPSHE: Yes.

ADV SONI: All the information you received was communicated to you by members of the PCLU, particularly, Adv Ackermann and Ad Macadam.

ADV MPSHE: Ja, but in addition to that, remember, Advocate, Dr Ramaite was in charge of that unit, and they were reporting to him.

So I would also get information through him from Dr Ramaite, who was in charge of that unit.

ADV SONI: Now, finally I just want to put to you what you say in paragraph 39.

ADV MPSHE: Ja.

ADV SONI: That while you were acting as NDPP, you had no reason to believe that there was any interference with prosecutorial discretion. Is that your position?

ADV MPSHE: Yes.

ADV SONI: And then you say:

> "This is supported by the reports that were tabled at meetings I attended with leaders of various units, including the PCLU. To the extent that there were delays in activity or limited progress in any matter during my tenure as the acting NDPP, those circumstances must be understood against the practical constraints that existed at the time.
>
> The prosecution of complex historical matters is ordinarily dependent on complete investigation dockets, the identification and location of witnesses, sufficient admissible evidence and the ability of the investigative authorities to prioritise and execute the required investigative steps.
>
> Challenges in interdepartmental cooperation and coordination may therefore have affected capacity

and timing. These constraints do not without more amount to interference with prosecutorial discretion. There were however constraints regarding the availability of investigators, because the SAPS management and the NPA deferred in the interpretation of their respective roles in the implementation of the NPA policy and guidelines."

ADV MPSHE: Ja.

ADV SONI: Is that your position in regard to the allegations that not much progress was made?

ADV MPSHE: Yes.

ADV SONI: We have no further questions, chairperson.

CHAIRPERSON: Thank you, thank you Mr Soni. Mr Salukazana, any re-examination?

RE-EXAMINATION BY ADV SALUKAZANA: Yes, chairperson, just two topics.

CHAIRPERSON: Yes.

ADV SALUKAZANA: Good afternoon, Mr Mpshe.

ADV MPSHE: Good afternoon, sir.

ADV SALUKAZANA: Is your evidence that there were issues of cooperation between various stakeholders, including SAPS and the NIA?

ADV MPSHE: There were issues with, if you may repeat?

ADV SALUKAZANA: Cooperation, so, for instance, investigation

problems, the other issues that you have mentioned between the NPA and SAPS.

ADV MPSHE: Yes.

ADV SALUKAZANA: And is your evidence that there was acrimony between Mr Ackermann and some, if not all of these stakeholders or officials in these stakeholders?

ADV MPSHE: Yes.

ADV SALUKAZANA: Was your attempt to remove him, or at least, was your removal of Mr Ackermann from engagements, or as a person who directly engaged with the stakeholders an attempt at enhancing or improving the cooperation between the NPA and these stakeholders?

ADV MPSHE: Yes, that was an attempt.

ADV SALUKAZANA: Did Mr Ackermann remain involved in any way, or was he removed completely from the TRC cases or the PCLU?

ADV MPSHE: No, no, he was not removed completely, because he was in the office of the PCLU, and he was participating with them. If you recall, I think I was referred here to quite a number of memos dating the year 2008, that is beyond the period. It is after my removal that he was still in there and still being active.

And that is why you will see the memo that I was referred to, I cannot remember the date thereof, or a letter from Chris Macadam to Ackermann to continue with certain matters, and even instructing him or directing him as to what to do in those matters specifically. So that shows that he was still active in that office even on these matters.

ADV SALUKAZANA: Thank you very much. I am going to take you to those memoranda, but let us start at page 243 of the bundle, the last paragraph starting at line 20. Are you there?

ADV MPSHE: Which page?

ADV SALUKAZANA: I am going to read the second sentence, so it is line 20 ...[intervenes]

CHAIRPERSON: Page 243 ...[intervenes]

ADV SALUKAZANA: 243, Line 20.

CHAIRPERSON: Mr Mpshe, 243.

ADV MPSHE: [Indistinct].

CHAIRPERSON: Mr Salukazana, page 243?

ADV SALUKAZANA: Yes, it is the bundle 95.

ADV MTSHIZANE: Yes, chair, I am going to take the witness [indistinct].

ADV SALUKAZANA: Line 20. You are not there because you are paging.

ADV MTSHIZANA: I said I would take the witness there, commissioner.

ADV MPSHE: 244?

CHAIRPERSON: 243.

ADV SALUKAZANA: 243.

ADV MPSHE: You will have to [indistinct] 244, and on top it is written Annexure X4.

CHAIRPERSON: No, 243 is a transcript. Ms Mtshizana, are you looking at the right bundle?

ADV MPSHE: Oh, sorry. Ooh, transcript?

CHAIRPERSON: Yes.

ADV MPSHE: 243, that will be, on the transcript it will be page 83, is that the right one?

CHAIRPERSON: Two, four, three.

ADV SALUKAZANA: On the transcript, yes, it is page 83, internal ...[intervenes]

CHAIRPERSON: Yes, page 83.

ADV SALUKAZANA: Internal page 83. Please go to the highlighted paragraph?

ADV MPSHE: At line 20?

ADV SALUKAZANA: This is in the topic of Mr Ackermann remaining involved. I am going to read the second sentence, it says:

> "I had concerns when I, you saw those letters where I had a meeting with Ramaite, it must have been in 2008."

2008 is after you had removed him as the leader of the PCLU or in the TRC matters, is that correct?

ADV MPSHE: Yes.

ADV SALUKAZANA: So that demonstrates even from him that he was still involved, albeit not as a leader of the unit, but involved in the TRC cases, is that correct?

ADV MPSHE: Yes, that is correct.

ADV SALUKAZANA: And then may we please go to page 35?

ADV MPSHE: Of the transcript?

ADV SALUKAZANA: No, no, no, of the bundle, of bundle 95, so it is paginated page 35.

ADV MPSHE: Ja. Is that MJM4?

ADV SALUKAZANA: MJM4, that is correct. There is an email from Helena Zwart. Could you just confirm for us, was she Mr Ackermann or Mr Macadams' personal assistant or secretary?

ADV MPSHE: Macadams'.

ADV SALUKAZANA: Macadams', thank you. We see that it is a letter or at least an email of 9 July 2008.

ADV MPSHE: Ja.

ADV SALUKAZANA: And it is addressed to Mr Ackermann.

ADV MPSHE: Ja.

ADV SALUKAZANA: And the first line of that letter, or let me start with the "Dear Anton", which is Mr Ackermann.

ADV MPSHE: Yes.

ADV SALUKAZANA:

> "While I am out of office next week, I recommend that you oversee the following work on the TRC cases…"

So this recommendation is made to him, and it is giving him a role in the TRC cases. Do you confirm that?

ADV MPSHE: I confirm that.

ADV SALUKAZANA: Okay. Do you know if Mr Ackermann followed the recommendation and oversaw the cases?

ADV MPSHE: I would not know, I would not know.

ADV SALUKAZANA: But at least insofar as this evidence is concerned, it supports your assertion that he was not taken out completely as if to stop him from continuing with the investigations. Am I correct?

ADV MPSHE: Indeed so, correct.

ADV SALUKAZANA: May we please go to page 40?

ADV MPSHE: Ja.

ADV SALUKAZANA: So we have moved now from July, we are going to December. It is an email again from Helena, it is dated 10 December 2008, it is to Mr Silas Ramaite. But most importantly on this topic, Mr Anton Ackermann is copied. Do you confirm that?

ADV MPSHE: I confirm.

ADV SALUKAZANA: And do you confirm going through the email, first starting with paragraph 1, that they say:

> "No fresh cases have been requiring investigation."

Sorry:

> "No fresh cases requiring investigation were reported after the Lubowski matter in December 2007."

Do you know what is meant by the "no cases requiring investigations were reported"?

ADV MPSHE: I do not know.

ADV SALUKAZANA: Do you know what the Lubowski case was?

ADV MPSHE: Yes, yes I know. Anton Lubowski was murdered in

Namibia, I remember that case.

ADV SALUKAZANA: So these cases listed here at 5.1 to 5.9, do they fall under the category of the TRC cases?

ADV MPSHE: Indeed, all of them.

ADV SALUKAZANA: And once again, just for confirmation, at least to close the loop, Mr Ackermann is involved in the TRC cases, or discussions of those cases at least?

ADV MPSHE: Yes, late in December.

ADV SALUKAZANA: Thank you. And then, so it would be incorrect for anyone to say or assume or conclude that you removed Mr Ackermann as the leader in the TRC cases because you were trying or attempting to stop the investigation and prosecution of TRC cases?

ADV MPSHE: It would be completely incorrect.

ADV SALUKAZANA: You were solving a problem to try and enhance cooperation and, in fact, ensure that there was speedily prosecution of the cases, speedily investigation of the cases. Is that correct?

ADV MPSHE: Indeed so.

ADV SALUKAZANA: Thank you. Then we will move then to the second topic, which is the alleged hiatus under your term as the acting director, and we will start at page 81, that is 8.1 of the bundle. Again to telescope where I am going, the proposition put to you or point put to you was that during your term there was a hiatus in the prosecution of the TRC cases.

ADV MPSHE: Ja.

ADV SALUKAZANA: Are you there?

ADV MPSHE: [Indistinct]. Yes, it starts with the internal memo.

ADV SALUKAZANA: Yes, that is correct.

ADV MPSHE: At page 81, ja.

ADV SALUKAZANA: Do you confirm that this memo is from Mr Ramaite SC addressed to you?

ADV MPSHE: Yes.

ADV SALUKAZANA: And do you confirm that this is during the time when Mr Ramaite was the person allocated the TRC matters before Mr Macadam?

ADV MPSHE: That is correct.

ADV SALUKAZANA: And it is dated 25 March 2008.

ADV MPSHE: That is correct.

ADV SALUKAZANA: Thank you. And we start then with paragraph one at page 81. Under the heading it says:

> "In pursuance of a previous memorandum by Ackermann SC of the PCLU, dated 23 August 2007, which was addressed to the National Director Pikoli, authority from acting National Director is hereby requested to proceed with the investigations into the following matters…"

And it lists the Letlapa Mphahlele and Sebastian Smit. Are these cases among the TRC cases?

ADV MPSHE: Yes.

ADV SALUKAZANA: And in March 2008, according to this

paragraph, Mr Ramaite was requesting your permission to proceed in investigating these cases.

ADV MPSHE: That is correct.

ADV SALUKAZANA: This demonstrates then that as at March, a few months after you were appointed, the people who were allocated to do the work were doing the work.

ADV MPSHE: That is correct, ja.

ADV SALUKAZANA: Thank you. May we then go to paragraph 3 at page 83?

ADV MPSHE: Ja.

ADV SALUKAZANA: Did you authorise the recommendations that he made, as set out in paragraph 3.1, 3.2 and 3.3?

ADV MPSHE: Yes, I did, I approved that.

ADV SALUKAZANA: Thank you. And just to confirm your approval, do you confirm that that is your signature above or on the line, just above Adv MJ Mpshe SC?

ADV MPSHE: Yes, that is my signature.

ADV SALUKAZANA: And do you confirm that the crossing out of "not approved" and leaving "approved" is an internal process that demonstrates approval of the recommendations?

ADV MPSHE: Indeed so, that is how it is.

ADV SALUKAZANA: Thank you very much. May we please then go to page 33 of the bundle?

ADV MPSHE: Another internal memo.

ADV SALUKAZANA: Indeed. This is a memorandum from

Mr Macadam to you as the Acting National Director of Public Prosecutions. Do you confirm that?

ADV MPSHE: Yes.

ADV SALUKAZANA: And it is dated 9 June 2008. Do you confirm that?

ADV MPSHE: Yes.

ADV SALUKAZANA: So by June 2008 Mr Macadam had assumed a role within or in respect of the TRC cases, is that correct?

ADV MPSHE: Yes, that is correct.

ADV SALUKAZANA: So any suggestion that he only started in 2008, September ...[intervenes]

ADV MPSHE: September.

ADV SALUKAZANA: And there was a year between the termination, as was put to you earlier, is incorrect?

ADV MPSHE: It is incorrect.

ADV SALUKAZANA: And do you confirm that this is a further demonstration, when considering the memo, that work was being done whilst you were the acting NDPP?

ADV MPSHE: That is correct, sir.

ADV SALUKAZANA: May we then go to page 40 again, specifically paragraph 4?

ADV MPSHE: Sorry?

ADV SALUKAZANA: Specifically paragraph 4.

ADV MPSHE: Okay.

ADV SALUKAZANA: So you have come in in August, there is work

being done in September, there is work being done, at least according to memoranda, in March. There is another memorandum of June 2008 and now we are in December 2008. Paragraph 4 says:

> "As at November 2008, both SAPS and NIA indicated their willingness to again commence the work on the TRC matters."

Do you see that?

ADV MPSHE: Yes.

ADV SALUKAZANA: Was this the first time SAPS indicated their willingness to cooperate?

ADV MPSHE: Yes, as far as I remember.

ADV SALUKAZANA: Was the cooperation or willingness encouraged, if I may, by your intervention, yours and Mr Macadam…? [intervenes]

ADV MPSHE: Yes, [indistinct] the letter. Yes, that is correct, by the letter that I wrote to the National Commission and the communication also by Macadam to SAPS; these were the results.

ADV SALUKAZANA: Thank you. May we then go to paragraph 6, still at page 41? The first sentence says:

> "As can be seen from the above breakdown, the majority of matters can only be taken forward with the assistance of SAPS and the NIA."

Do you agree with the statement?

ADV MPSHE: Yes.

ADV SALUKAZANA: And so their willingness to cooperate meant that you could get investigations going, and ultimately make decisions

about whether or not to prosecute once the investigations have been conducted. Is that correct?

ADV MPSHE: That would be correct.

ADV SALUKAZANA: Without the investigations, you cannot take the decisions to prosecute or not to prosecute, is that correct?

ADV MPSHE: Indeed, indeed.

ADV SALUKAZANA: So insofar as what you could have done as the NDPP acting, or the people you had assigned to TRC cases, you were doing the work, you were initiating cooperation, and ultimately you relied on SAPS and the NIA. Am I correct?

ADV MPSHE: That is correct.

ADV SALUKAZANA: What was the involvement or the need for the involvement of the NRA, NIA, I beg your pardon?

ADV MPSHE: Well they had the necessary intelligence in as far as investigations are concerned.

ADV SALUKAZANA: Okay, thank you.

ADV MPSHE: And we were [indistinct] on that as well.

ADV SALUKAZANA: Thank you. May we then go to page 43. So you have demonstrated that you have been working throughout December, I mean 2008. We are now in 2009 and it is February. Do you see that?

ADV MPSHE: Ja.

ADV SALUKAZANA: And paragraph 1 says:

> "The purpose of this memorandum is to inform the minister of my intention to reconvene the TRC

Task Team and to advise him of the matters relating thereto."

Why was there a need to reconvene the task team?

ADV MPSHE: Because if you remember, in terms of the guidelines, you know the guidelines that were set out to be unconstitutional, the guidelines made a provision for [indistinct], and the task team was, it started doing its work. Because of certain attentions and misunderstandings, then it stopped. So I wanted it to come back so as to be in line with the guidelines.

ADV SALUKAZANA: Was the reconvening of the TRC Task Team meant to advance the prosecution of the TRC cases?

ADV MPSHE: Indeed, indeed, that was the purpose.

ADV SALUKAZANA: Thank you. And then at paragraph 3.4, and it is at page 44, it says:

"The following matters are on hand at present…"

And it lists nine cases. Do you see that?

ADV MPSHE: Ja, under paragraph 3.4, yes.

ADV SALUKAZANA: Do these cases fall under the category of TRC cases?

ADV MPSHE: Yes, yes [indistinct].

ADV SALUKAZANA: And then if we go to paragraph 4 of 46:

"All the above matters, except the Pebco 3 case, require investigations by SAPS before I can make a decision whether there are sufficient grounds to institute prosecutions or not."

Again, you want to do your work, but you cannot do it until there is been investigations. Is that correct?

ADV MPSHE: Indeed.

ADV SALUKAZANA: It is not because you were just sitting on your hands and not doing anything?

ADV MPSHE: Not at all, not at all.

ADV SALUKAZANA: Thank you. And if we could go to paragraph 5:

> "Although the Pretoria High Court declared the guidelines unconstitutional and an appeal has been noted, there is no reason why the investigations cannot proceed in the interim."

Again, is this you seeking to advance the prosecutions, or at least the investigations, despite there being a declaration of unlawfulness or unconstitutionality of the guidelines?

ADV MPSHE: That is correct, that is correct.

ADV SALUKAZANA: This is a demonstration of you wanting to advance the investigations ...[intervenes]

ADV MPSHE: To proceed, yes.

ADV SALUKAZANA: And prosecutions, instead of halting them or interfering with them.

ADV MPSHE: Yes.

ADV SALUKAZANA: And then paragraph 46, I mean, I beg your pardon, paragraph 6:

> "Given the unique circumstances around the TRC cases, NIA has been requested to complete a

threat analysis of the risks attached to such investigations."

You were asked about why this had to happen. What threats were you thinking about here when you wrote the memo?

ADV MPSHE: You know, I still cannot recall, I still cannot recall, except to say that NIA was the only institution suited to can do the risk or the risk analysis on any matter, but I cannot recall why the threat analysis was called for.

ADV SALUKAZANA: Thank you very much. And then may we please go to page 47.1 of the bundle? This is our last document.

ADV MPSHE: [Indistinct].

ADV SALUKAZANA: Thank you.

ADV MPSHE: MJM8?

ADV SALUKAZANA: That is correct. This is a letter from you to the Minister of Justice and Constitutional Development. You confirm that?

ADV MPSHE: Yes.

ADV SALUKAZANA: And this is dated 28 May 2009.

ADV MPSHE: Yes.

ADV SALUKAZANA: So you have been working since you are appointed, and your term is about to come to an end now, it is May 2009. Do you confirm that?

ADV MPSHE: Yes.

ADV SALUKAZANA: It is incomplete, but I suppose we have not found the full letter ...[intervenes]

ADV MPSHE: The last page, yes.

ADV SALUKAZANA: Do you confirm that we have tried so that you are not criticised?

ADV MPSHE: Yes.

ADV SALUKAZANA: So in the light of all of this, starting from when you were appointed and until now, in May, at least as demonstrated by the documents, would it be reasonable for anyone to say you only, because it was put to you that why did you wait this long to write to the minister, that you only started taking action insofar as the TRC cases are concerned in May 2009, would that be reasonable?

ADV MPSHE: That would be unreasonable.

ADV SALUKAZANA: Would it be reasonable for anyone who has considered these documents that were being circulated amongst you and the people you allocated the TRC cases to, to say that during your acting stint there was a hiatus?

ADV MPSHE: No, it will be unreasonable.

ADV SALUKAZANA: After 2009, would it be reasonable for anyone to say that, or attribute, I know it has not been done, but it was mentioned that there was a slowdown between 2007 and 2016, would it be reasonable for anyone to attribute anything beyond 2009 to you?

ADV MPSHE: No, it would be unreasonable.

ADV SALUKAZANA: Thank you, chair, those are my questions.

COMMISSIONER GABRIEL: Adv Mpshe…

ADV MPSHE: Chair.

COMMISSIONER GABRIEL: Thank you. I just want to take you to

page 44, a document you were taken to.

ADV MPSHE: Yes, commissioner.

COMMISSIONER GABRIEL: And this is the 17 February 2009 letter from you to the Minister of Justice and Constitutional Development. Now, you were taken to various paragraphs in this letter, but I think it is important for the record to record what is in paragraph 3.1, which reads:

> "Members of my office have met with the Divisional Commissioner of the Detective Service of SAPS and the Deputy Director General Operational Support of NIA. Both agencies have indicated their willingness to again participate in the task team and to perform duties within their agency's mandates."

Can you recall that?

ADV MPSHE: Yes, commissioner.

COMMISSIONER GABRIEL: Okay, and then that provides the context for paragraph 4 on page 46, where you say:

> "All of the above matters, except for the Pebco 3 case, require investigations by SAPS before I can make a decision whether there are sufficient grounds to institute prosecutions or not."

Do you confirm that?

ADV MPSHE: Yes, commissioner, I confirm that.

COMMISSIONER GABRIEL: Thank you.

CHAIRPERSON: Adv Mpshe…

ADV MPSHE: Chair.

CHAIRPERSON: On behalf of the Commission, we wish to express our gratitude for having availed yourself to give evidence before this commission, and for having been available to conclude your cross-examination given your health condition, that we appreciate. We have now concluded your evidence, and you are excused as a witness. We wish you a speedy recovery in your illness.

ADV MPSHE: Thank you very much, Chair.

CHAIRPERSON: These proceedings are adjourned until tomorrow at 09:30.

INQUIRY ADJOURNS UNTIL 30 OCTOBER 2026

- - - - - - - - - - - - - -

CERTIFICATE OF VERACITY

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

JUDICIAL COMMISSION OF INQUIRY INTO TRC

FORUM OF ORIGIN	**:**	Inquiry
CASE NUMBER	**:**	N/A
TRANSCRIBERS	**:**	M Brits, M Botha, A van Staden
DATE COMPLETED	**:**	2026-10-30
NUMBER OF PAGES	**:**	133 (Including front page) M Brits: Page 1-28, 71-100 M Botha: Page 29-70 A van Staden: Page 101-131
TRANSCRIBERS	**:**	

TRANSCRIBER'S NOTE:

- ***Where no information provided, names transcribed phonetically.***
- ***Grammar errors types verbatim.***

MzanziSA Business Solutions
Arbour Square
Cnr Melle & Juta Street
Ground Floor, Office 3
Braamfontein, 2001
TEL: 011 339 1289
E-mail: transcription@mzanzisa.com
E-mail: mzanzisa1@gmail.com