

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

HELD AT:

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

BEFORE:

COMMISSIONERS:

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

EVIDENCE LEADERS:

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

REPRESENTATIVES

Adv KD Moroka (SC) – DOJ Representative
Adv Anisa Kessery-DOJ Representative
Adv Varney (SC) – The Calata Group
Adv D Pillay – The Calata Group
Adv Thakor- The Calata Group
Mr Sipho Tlhaole – The Calata Group
Adv Ebenezer Propy (for SAPS)
Adv Irene Dikgale (for SAPS)
Adv Gwala-NPA Representative
Adv Yanela Ntloko- NPA representative
Adv B Lukhele-NPA Representative
Adv Irene de Vos for President Cyril Ramaphosa
Adv Nwabisa Mtshizana (for Ex-NDPP's Officials)

5 OCTOBER 2026

DAY 96

PAGES 1 – 84



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PROCEEDINGS ON 5 OCTOBER 2026

CHAIRPERSON: Good morning to you all, we apologise for the late commencement of this proceedings. One of the parties had a problem with, had traffic problems. Mr Semenya?

ADV SEMENYA: Good morning to you, Madam Chair, and to the group as well. We do have Ms Sooka this morning to help us with answers to any cross-examination.

CHAIRPERSON: Thank you. Good morning, Ms Sooka.

MS SOOKA: Good morning, Chair.

10 CHAIRPERSON: How are you, ma'am?

MS SOOKA: Good, thank you.

CHAIRPERSON: Fine.

MS SOOKA: Good morning, Commissioners.

CHAIRPERSON: Thank you. Ms Moroka?

ADV MOROKA: Chair, it is not one of the parties, it is I or myself, and my sincerest apologies. I leave home at the same time, but this time around, the traffic just was not working with us.

CHAIRPERSON: Yes, no we understand.

ADV MOROKA: And I really am indebted for the indulgence.

20 COMMISSIONER KGOMO: You must buy a helicopter.

ADV MOROKA: I do think I should, Chair, but I do not want to be appearing at my friend's Commission of Inquiry, so I will not. Chair, if I may just make one point before I start. I take it the commission understands that the Minister is responsible overall in terms of the Act and the Constitution for the NPA, but our intention today is not to

cross-examine Ms Sooka on the issues that she raised regarding the NPA. We do know that there is an application that you have not pronounced on from the NPA about cross-examination.

It is unfortunate that this application came so belatedly in the day, but for the record, we understand and we accept that, and we will not delve into the terrain of the NPA because we think they should do it themselves.

CHAIRPERSON: Mm-hmm.

ADV MOROKA: So any question that relates to the NPA will be
10 addressed by the NPA. Thank you, Chair.

CHAIRPERSON: Yes.

ADV MOROKA: Having said that, may I begin?

CHAIRPERSON: Yes, you may proceed.

ADV MOROKA: And if I may, Chair, I had indicated at a previous occasion that I know Ms Sooka when we did not have grey hair, both of us. And I do want to say to her that I do thank her, I do acknowledge her dedication and commitment to the work of protecting human rights and fighting for the victims of apartheid. I did need to put that on record.

20 CROSS-EXAMINATION BY ADV MOROKA: Having said that, can we – I only have got four issues that I want to raise with you, and it is going to be a very short cross. I want to take you to the evidence that you tendered in regards to Reverend Chikane and the plea agreement, firstly, and to the plea and sentence agreement that you said you were shocked and surprised about it, that it was going to

take place. This is in your transcript at page 46 of your evidence of the 17 February 2026 at line three. Did somebody say page? It is page 46, paginated page 46. I do not think you really need to go there. You do recall the fact that you said you were surprised about it.

And we just wanted to put on record that he also had issues with the plea bargain. He says to the Commission that he was not against the plea bargain agreement because for him it was a source for information so that other information could be uncovered. He was
10 interested in seeking the truth about his poisoning, but that his problem with the plea agreement was not with the fact that there was an agreement, but rather with the process followed.

And he put his concerns to the minister, Minister Mabandla, on the 22 October 2007. The questions are going to come. I am just giving you the context of my questions. And she says this under the cross-examination bundle. We refer to it as a letter to Minister Mabandla from Reverend Chikane, and it is found at pages 450 to 452 of the record.

The cross-examination bundle of Reverend Chikane. It is
20 termed "Index to bundle of additional documents, cross-examination of Ms Sooka". Well, it is our bundle, but the letter is in that extract at pages 450 to 452. He tells this Commission that he was unhappy with the manner in which that matter had been handled and felt that the wrong officials were assigned to his case and he complained about Ackermann and his approach to the plea arrangements.

He complains that he was not consulted about the details of the plea bargain agreement and that his views were not solicited regarding the suspended sentences. He only saw the plea bargain agreement during the proceedings in court, and he complains about the failure to consult him.

He complained about withdrawing one of the charges, which meant no probing about the production and procurement of the lethal chemicals when more information could have been extracted, and that there was a list of anti-apartheid members who were to be
10 acted against, which was not probed, and that there was no indication of the discussions that the NPA had with General Basie Smit and Dr Basson to source more information about their operations and what the NPA was doing about them. That is what Reverend Chikane told the court.

He then goes on, and this now brings me to the questions that we seek to probe with you. He told the Commission that he attended court on the day of the plea bargain and he felt alone. He felt that he was walking this journey on his own, and we will find this under the cross-examination bundle 287, "Transcript of Reverend
20 Chikane's evidence of 13 August 2026", lines 10 to 20.

And I want to say, I want to tell you what he tells this Commission.

MS SOOKA: Sorry, could you just give me those?

ADV MOROKA: I am so sorry about that. It is paginated 287.

MS SOOKA: Is that the first bundle or the second one?

ADV MOROKA: First bundle.

MS SOOKA: First bundle, okay.

ADV MOROKA: And it is 287.

COMMISSIONER KGOMO: Just look at the red number, Ms Sooka.

MS SOOKA: The red number. Okay.

COMMISSIONER KGOMO: Yes.

ADV MOROKA: We do not have a red number.

MS SOOKA: I am going to need some help. Okay. Thank you.

COMMISSIONER KGOMO: Line?

10 ADV MOROKA: Line number 10. It goes on to say:

“Ja, I am saying I have explained it before.

Nobody accompanied me on this journey.

Nobody. And I went to that court alone, except
the communications officer in the Presidency.”

And then a few lines down he says:

“And so I was on my own. And throughout, and
then when I came in, there were two protest
groups, one supporting the accused, and the
other one supporting me or protesting against. I

20 left there and I did say, when I left there, I had
deep depression.”

Now, you conclude in your evidence about Reverend Chikane's
evidence, you say, or before I get there, when you were talking about
the plea agreement, you say, you tell the court at page 46 of the
transcript, your evidence, that you were in court on that day. And it is

page 46.

COMMISSIONER KGOMO: Wait for the witness.

ADV MOROKA: Page 46, line 11. You are there? You are there?

MS SOOKA: Yip.

ADV MOROKA: And you say you were in court that day. The question for you, Ms Sooka, is, did you at any point, you do not say it in your evidence, Reverend Chikane does not say it either, that you did go to him to talk to him, to offer him comfort, to commiserate with him, or whatever. You did not go to him?

10 MS SOOKA: Thank you for the question. Actually, I did go to him. I was accompanied by members of Khulumani, the victims group and we actually went there to show our support for him, and I think that is what we said to him on that day.

ADV MOROKA: It is strange, therefore, that he felt alone and felt unsupported and uncomforted.

MS SOOKA: I cannot express an opinion on that. But what I do recall is that we were there and we actually went up to him to show the fact that we were supportive of him during this process.

COMMISSIONER KGOMO: And in the Khulumani group, who was
20 the, can I ask, the leader, maybe, if you can mention?

MS SOOKA: Marjorie Jobson.

COMMISSIONER KGOMO: Who?

MS SOOKA: Marjorie Jobson. At that point, there was only one Khulumani victims group and Marjorie Jobson was at the helm of that group and they were there with a whole group of people who had

come in solidarity, really, to support the Reverend.

COMMISSIONER KGOMO: Yes, thank you.

ADV MOROKA: So there is no explaining why he felt depressed and alone when he left the court.

MS SOOKA: It is difficult for me to say. But I guess that, you know, when I think back to that moment, and remember it was a long time ago, I would guess that for him what would have been important was for the people that he worked with, the people in whose office he was, if there had been a, you know, support from them.

10 In a way, the leadership of the country at the time, I mean, he was working in the President's office and perhaps that is where the aloneness came from. But that is speculation on my part, and I need to put that there.

ADV MOROKA: You then, in your evidence, tell the Commission that you asked Reverend Chikane to take a public stand to oppose applications for pardons by those who were behind his poisoning and you spoke about how bitterly disappointed you were with the Reverend's refusal to take the stand with the families and victims.

20 And you can confirm that you do not need to go to the bundle, or do you want to go to the bundle?

MS SOOKA: No, I do not need the bundle.

ADV MOROKA: Thank you. You conclude that Reverend Chikane's refusal to take the stand in pursuit of important truth undermines his claim that his overarching concern was truth-seeking. You do not need to go to the bundle for that either. And you do know that he

then makes a statement to the Commission in response to that.

MS SOOKA: Do you want to point me to that?

ADV MOROKA: I will point you to it. It will be on page 146, the cross-examination bundle of Reverend Chikane's statement. And he says that the attempt to murder him by poisoning him was highly traumatic, painful and traumatic. It is at page 148. Are you at page 148?

MS SOOKA: Yes.

COMMISSIONER KGOMO: You could even refer to the paragraph,
10 if you may, Adv Moroka.

ADV MOROKA: Thank you, Commissioner Kgomo. I was wondering whether you are talking to me. It is nice to talk looking at somebody. Thank you.

COMMISSIONER KGOMO: Sorry, I am addressing you.

ADV MOROKA: Page 148. And if I may, I will read paragraphs 10, 11, 12 and 13 for the record.

20 "First, [as I explained when I gave evidence before this Commission], the attempt to murder me by poisoning me, having regard to the totality of the circumstances, has been highly painful and traumatic for me and being asked to go through the details thereof, even if only briefly, revives that trauma and pain.

Second, [as I detailed in my earlier affidavit and in my evidence], I had to re-live that trauma during

the several and sustained attempts I was required to make to gather information relating to my poisoning.

Third, I again re-lived the trauma and agony during the plea and sentence procedure during which the convictions of the five pardon seekers were obtained.

10 Fourth, (and this is where we are going to deal with it), at the time I was approached by Ms Sooka and Mr Varney, which was some five years after the then accused persons were sentenced, my state of mind was that I did not want to have to re-live the trauma – yet again and I conveyed these matters to Sooka and Varney.”

So, the questions, the Moruti tells us about his pain and trauma. And no one can deny the pain and the trauma. We do not know it. It is like trying to tell somebody who has lost a parent to say, I know how you feel. When you have not lost a parent, you do not know how that person feels. You would agree with me.

20 MS SOOKA: [No audible reply]

ADV MOROKA: Oh, I am told that I must ask you not to nod, but to say yes.

MS SOOKA: Not to nod, but to say yes. Okay.

ADV MOROKA: Thank you. And so, for instance, if I were to say to you, you would not agree that no one – you have never been a target

of an assassination attempt. Not that we know of. It is the same as a parent who has lost a child, and I say, I know the pain. If I have not lost a child, I cannot talk to that pain.

MS SOOKA: Thank you for that question. I think it is a really important one. And, you know, I should place on record that I have known the Moruti for many years.

ADV MOROKA: You have known, I beg your pardon, sorry.

MS SOOKA: I have known the Moruti for many, many years. I worked very closely with him during the 1990s, and I really respected
10 and admired his courage, his integrity, and his contribution to South Africa's struggle for democracy. I also knew about the poisoning event, but I was also, you know, dealing with many, many families who were coming to the foundation, and in fact, who were seeking support to find out about what had happened to their loved ones.

And so, for me, they were, you know, in dealing with this question of the right to the truth, and it is something that I have been dealing with for the last 30 years. The right to truth is really the normative framework for this field of dealing with the past. And there are two components to the right to the truth.

20 The one is what we call the imprescriptible right of victims to know the truth about what has happened in the past, what has happened to their loved ones, who is responsible, and what actually happened. But the second aspect of this right is the right of a society. The right of a society which is an inalienable right to the truth, and to know what happened.

You know, looking at the question of the structures, the policies, and the methods through which they were authorised and carried out. And that collective truth, as we call it, is central to preserving both public memory, to preventing revisionism and denial, and ensuring non-recurrence.

And so, in approaching the Reverend, I was deeply conscious of the fact that he was still in enormous pain about what had happened to him. But for me, it was not merely information about his particular case, but really what I wanted to know, and in fact, this
10 is what the victims had asked me to convey, they wanted disclosure of the wider architecture of apartheid criminality.

The role of the Security Council, which was not disclosed in that plea agreement. The way in which its subordinate structures work. The relationship between political authorities, and the roles played by Adrian Vlok and General Johann van der Merwe. In fact, in the plea bargain, they talk about the unit being established.

In fact, we are talking about death squads. And yet, it is so casually referred to. And so, my concern was really about how were these “covert units” authorised? How did they operate? Who was
20 financing them? Who protected them? And what was the highest level of the State that was involved?

The targeting list for me was particularly important because only two names had been disclosed. That of Reverend Chikane and of course, the late Joe Slovo. And from what we knew, the available list that people were speaking about out there, it was much wider.

We wanted to know who compiled it, who authorised it, and who appeared on it. And to which police, military, or intelligence structures it was circulated.

And you know, the details. I mean, there were so many families who had lost loved ones who did not know if they lost them to natural causes or if they were the result of poisons or, you know, some kind of lethal injections or medication being administered to them.

In fact, when Wouter Basson was arrested, I think, and, you
10 know, the NPA at that point picked up what they called his "toolbox". I remember being asked to go there to collect it in the name of the Commission, but then to hand it over to the NPA. And I was struck by little Coke bottles and they had poisons in them.

Brandy bottles, you know, the things we would drink. T-shirts with anthrax and so we wanted to know how many people had been affected in that way, because a lot of people thought people had died from natural causes, but we also equally know of a lot of victims where they had been the subject of this kind of issue.

I was also conscious, of course, that the Reverend was a
20 victim and that ultimately the choice to participate was his, but my appeal, I think, was made to him because of my great respect for him and the fact that he had such important moral authority, and I wanted him to use that on behalf of other victims.

ADV MOROKA: But he did explain that he did not want to re-live that trauma.

MS SOOKA: He did, Chairperson, he did.

ADV MOROKA: And he did explain to the Commission that he had done his own investigations because he also wanted the truth to be known.

MS SOOKA: [No audible reply]

ADV MOROKA: Nodding does not help us.

MS SOOKA: Oh, yes, he did.

ADV MOROKA: I think you used the word 'victim' about three times, that he was a victim.

10 MS SOOKA: Yes.

ADV MOROKA: And if I go to your own evidence, if I go to bundle, your transcript, again, at page 54, lines 7 to 14, you talk about victims. You talk about giving victims a voice and you complained about decisions that were made with ...(intervenes)

COMMISSIONER GABRIEL: Ms Moroka, can we all get to the spot?

ADV MOROKA: Oh, apologies.

COMMISSIONER GABRIEL: Page 54, line?

ADV MOROKA: Lines 7 to 14.

COMMISSIONER GABRIEL: 7 to 14. Thank you.

20 ADV MOROKA: And if I may, I want to refer you to line 10 specifically, the last sentence in that, on that line at page 54, you say, "and you do not even afford them a voice". And it was, you talk about affording ...(intervenes)

MS SOOKA: Sorry, I think I am lost.

ADV MOROKA: Oh. Sorry, we will get – we will just – go check. It

is line 10 that starts with “implications” across there. But I want to refer you to what you say then that, “and you do not even afford them a voice”. It was in another context. But what I want to say to you is that, you acknowledge the essence of giving victims a voice and a choice.

MS SOOKA: Yes, I do acknowledge that victims need to be given a voice. And if we consider the question of the plea bargain, on the face of it, there was consultation, according to Adv Pikoli, with Reverend Chikane around the question of the plea bargain. And in a
10 way, he had a choice ...(intervenes)

ADV MOROKA: Can I interrupt you? Do you want us to go and talk about that plea bargain and the consultation, because Reverend Chikane disputes that it was proper consultation, and I was not going to go there, but if you say that, we would have to go there? He complains about the plea bargain, specifically because he says there were disputes of fact there that were – there were facts that were put up that were not correct. He would have preferred a different process, and that is why he complained to Mabandla about it.

So I would urge you to be careful to say Pikoli says there
20 was consultation.

MS SOOKA: Accept your caution, counsel.

ADV MOROKA: And what I want to say to you is that, he was unhappy with the plea bargain, even though he said in a news conference that it was a, “win-win situation”. But he complained to Mabandla about that plea bargain. You accept that?

MS SOOKA: Chair, I accept that, but I think there is some anomaly between the press or the media briefing around the fact that he said it was a “win-win situation”. And in a way, what that conveyed is that he had a choice, which most of the victims we were dealing with, did not have that choice.

And so while I absolutely respect and honour the fact that it is his choice, at the same time, I think what I was urging him to do was to use his voice to ensure that other victims would have the opportunity to learn about what had happened to their loved ones.

10 And that was really my compulsion in trying to persuade him to participate in the process.

COMMISSIONER KGOMO: And you told him so in so many words?

MS SOOKA: Sorry, Commissioner?

COMMISSIONER KGOMO: And you told him so in so many words?

MS SOOKA: I did. I did. I was very frank because we had a very frank relationship going back in the past. And based on that, I said, you know why we wanted him to take part in the process, and in fact, you know, when I wrote to him asking to have the meeting, I also sent him the documents which we had prepared on behalf of Civil Society,

20 which set out really what all the issues were, including what we thought was wrong with the pardons process.

COMMISSIONER KGOMO: And contemporaneously, did he react to what you had conveyed to him? And if he did, what did he say?

MS SOOKA: His words were that he had been very badly let down by, I think, the State. I cannot remember the exact words, but he felt

very badly treated and he did not think he wanted to be part of this process. He was very frank about that too.

COMMISSIONER KGOMO: Yes, thank you.

ADV MOROKA: Final question, I want to put it to you, I want you to reflect on, from the questioning by the Commissioner, is on page 170, line 17, on the issue of seeking the truth. Reverend Moruti Chikane has this to say:

10 “I also point out that, at the time the plea and sentence agreement was entered, which I emphasise was an agreement between the accused and the State, I was of the view that I had gotten all the information that the convicted persons were willing to impart. Accordingly, at the time I was approached by Ms Sooka and Mr Varney, I did not think that they would impart more information to me, if I participated in Ms Sooka’s and Mr Varney’s process, or made my non-participation therein conditional on further disclosure by the convicted men.”

20 CHAIRPERSON: Are you on page 170, Ms Moroka?

ADV MOROKA: I am at page ...(intervenes)

COMMISSIONER KGOMO: You ...(intervenes)

ADV MOROKA: I beg your pardon, I am at page 169, line 18.

CHAIRPERSON: 169.

ADV MOROKA: Yes, thank you. It starts at page 169.

COMMISSIONER KGOMO: And it would help each time, Ms Moroka, if you can just tell us the line or the paragraph, because there are paragraphs here.

ADV MOROKA: We said page 169, line 18.

CHAIRPERSON: Yes.

ADV MOROKA: And then it goes over to the next part.

CHAIRPERSON: Yes. May you repeat what you have just stated.

ADV MOROKA: I beg your pardon?

CHAIRPERSON: May you repeat what you have just stated.

10 ADV MOROKA: From the top?

CHAIRPERSON: Yes.

ADV MOROKA:

20 "I also point out that, at the time the plea and sentence agreement was entered, which I emphasise was an agreement between the accused and the State, I was of the view that I had got all the information that the convicted persons were willing to impart. Accordingly, at the time I was approached by Ms Sooka and Mr Varney, I did not think that they would impart more information to me, if I participated (that is on the next page), if I participated in Ms Sooka and Mr Varney's process, or made my non-participation therein conditional on further disclosure by the convicted men. Those were my

views. The fact that Ms Sooka strongly held views that were different from mine is, with respect, not a legitimate basis to challenge the validity of those views or my commitment to seeking the truth. In this connection I also record that my accession that Mr Vlok and Mr Van der Merwe had confessed to their involvement was 'coming out of the woodwork'..."

But these are his views as a victim. Would I be correct?

10 MS SOOKA: Chair and Commissioners, let me first correct you. It is not my and Mr Varney's process. It is a process really on behalf of victims ...(intervenes)

COMMISSIONER KGOMO: Before you answer, you are aware that Mr Varney had pointed out to the Commission that the situation places him in an invidious position and he expresses no view. You are aware of that?

MS SOOKA: Yes, Commissioner, and thank you for reminding me about that. But my correction really lies on, you know, if you go to page 170 and it says, "if I participated in Ms Sooka and Mr Varney's
20 process", I would like to make it very clear that, in fact, it was not my process. I was an emissary on behalf of a whole group of victims and human rights groups who intended to oppose the pardons process and had, in fact, been involved with even challenging the Chairperson of the committee that had been dealing with the pardons issue, Mr Delport, even seeking to actually meet with him to put forward views.

And so I think that it must be very clear this is not personal. This is on behalf of a group of victims and human rights groups. I think the second point, and it is, you know, the fact that he, you know, that I challenged his legitimate views, I think that, you know, it was the part of his testimony that spoke to, I think, Mr Vlok and Mr Van der Merwe coming out of the “woodwork”.

And the truth of the matter was, all they did was provide cover for what I would call the “foot soldiers”, but in terms of the fact that they held what we would call “command positions” in law dealing
10 with all of these issues, they did not come out of the “woodwork” on that.

And that is what I was referencing, that we should not, in fact, allow them to get away with the fact that they disclosed very little and, in fact, did not disclose anything about the bigger picture, what I would call, the need to understand the architecture of how the system worked. That did not emerge and they were in a place to do it, and that is what I wanted to convey there.

ADV MOROKA: But the point that I want to assert, Ms Sooka, is that I do not, I doubt and I do not, for the record say, what you were doing
20 was personal, what you were doing was not the correct way to do it, to try and fight for the victims. What I am saying is that victims have choices.

And victims' voices must have, victims of agency and victims' voices must be respected. That is the point that I am making. Whatever choice, whether it be right or wrong, they have the choice.

They have the choice to forgive. They have a choice to be angry. They have a choice to feel that their rights have been undermined. But it is their choice, not our choice.

MS SOOKA: Commission, I can only agree with what Ms Moroka has said, that victims have a choice. They have agency. They have the right to decide not to participate, not to add their voices. But what we were doing was asking a man who, in fact, had incredible stature and moral authority in our country to use his voice on behalf of other victims, but I respect the fact that he chose not to.

10 And really, the reason for my choosing, in fact, to come forward was to make sure that we would not leave this Commission with the view that, in fact, these men had, in fact, taken off the yoke and had revealed the truth. They did not. They just disclosed enough to ensure that they got the plea bargain.

 But in fact, in terms of the greater truth, they did nothing of the sort. And that is common, not to this particular case only, but to many cases that we were dealing with and it is important that, in fact, from the perspective of credibility, that Mr Vlok and Mr Van der Merwe, should not be allowed to, in fact, go along with a view that
20 they had been truthful. They had not. They just disclosed enough to cover their “foot soldiers”. And that was the point that I was trying to drive.

ADV MOROKA: Let we move to the second topic?

MS SOOKA: Sure.

ADV MOROKA: And that would be ...(intervenes)

COMMISSIONER GABRIEL: Ms Moroka, before you leave this topic, can I ask a question?

ADV MOROKA: Are you asking me if you can?

COMMISSIONER GABRIEL: Yes. I do not want to interfere with your cross-examination.

ADV MOROKA: It is okay, Chair.

COMMISSIONER GABRIEL: Ms Sooka, can you turn to page 148 of the bundle, which is the supplementary affidavit of Mr Pikoli? And in paragraph 16, he says, "in the circumstances, I am deeply saddened
10 that Ms Sooka"

ADV MOROKA: Sorry, Chair. You said Mr Pikoli.

COMMISSIONER GABRIEL: Sorry, Mr Chikane, Reverend Chikane. My brain is full of stuff. In paragraph 16, he says:

"In the circumstances, I am deeply saddened that
Ms Sooka has chosen to seek publicly to
challenge my integrity."

And he says, he repeats that refrain on page 150, paragraph 22. He says:

20 "I dispute the correctness and sustainability of the
attack on my integrity that Ms Sooka has
regrettably made in her affidavit of 10 July 2026."

Just want your response to that.

MS SOOKA: Thank you, Commissioner. As I said, you know, I placed this evidence before the Commission because the pursuit of truth recovery after the work of the Truth Commission remained, in

my view, unfinished and, you know, it is important for me to say that I did not intend to impugn on his integrity, but what I wanted to do was, in fact, to set the record straight in respect of what he was saying about two, what I regard, two people who were criminals during under the, you know, during the apartheid period and who, in my view, besides the plea bargain they got, should have been prosecuted for their role in much of the carnage that took place during the years of apartheid, and they got away.

And I wanted to be absolutely clear that nobody should
10 believe that, in fact, suddenly they had taken this yoke off, you know, all of the falsehoods.

COMMISSIONER GABRIEL: So you did not intend to attack the integrity of Reverend Chikane?

MS SOOKA: No, absolutely not. And in fact, I want to place on record that Reverend Chikane's contribution to our struggle and, in fact, to the struggle for democracy, that deserves absolute respect and honour and nothing in my evidence seeks to diminish that fact. My particular disappointment relates to the fact that, in what I considered a really important pursuit, the question of collective truth
20 that our society is entitled to, he made a choice, he did not want to be part of that.

But I think the biggest point of my evidence was to point out what the shortcomings were in the evidence of Mr Vlok and Van der Merwe and that there was absolutely no way that they had really put the truth before our society. And so that was really, that one small

issue was what I was stacking.

COMMISSIONER GABRIEL: Okay, thank you, Ms Moroka.

ADV MOROKA: I wish to thank you for that. I do not represent Moruti Chikane, but I have known him since I was a very young woman. So I needed to have placed these issues before the Commission, and I thank you for it.

MS SOOKA: Chair, I understand that and respect that. And I am sorry that he felt absolutely hurt. That was not the intention. And he deserves all of the honour that our society should give him.

10 ADV MOROKA: The objectives of the TRC. Again, it is a contextual setup, in a sense, because this is not part of our terms of reference, but I thought we needed to go through some of it and some of your evidence. And I make reference, as I start off, with your relationship with our ancestor, Dullah Omar, and to Judge Saldana.

Where you, in your evidence, again, I do think you need to go to it, because you and I would agree on it, it is cross-examination bundle, page 15, lines 9 to 20. You talked about your interaction with the late Mr Omar, or Minister Omar. By saying that – you said that you – about calling him and saying that the liberation movements had
20 sold out the rights of the victims. Oh, you need help.

MS SOOKA: I have it. Thank you.

ADV MOROKA: By offering them amnesty through the TRC process, and that knowing him so well, he responded, unlike you and I would have responded, with calmness to say, come into the fold and join us and work with us. And so, according to Judge Saldana's recollection

of this rule, we refer you to the cross-examination bundle again, page 453, where he talks about his late comrade – and I do not know whether everybody is there.

CHAIRPERSON: 453.

ADV MOROKA: 453.

CHAIRPERSON: We do not have 453.

ADV MOROKA: It is in the additional bundle, Chair, and it is a transcript of Judge Saldana's recollection of the rule.

COMMISSIONER KGOMO: 453, at the back there.

10 CHAIRPERSON: Yes, yes, yes.

ADV MOROKA: You have it to?

CHAIRPERSON: I do have.

ADV MOROKA: According to him:

20 “The late Dullah Omar was very careful and very clear that the TRC, (so I am going to give you the context before I ask you the question), was a political process as part of a transition that South African’s victory in bringing about the democratic dispensation in South Africa has been through negotiations. It has not been a victory by the ANC as a vanquisher over the National Party or anybody else who was in support. It was a negotiated pact. It was a negotiated settlement. And crucially compromises had to be made. And much of those compromises were encompassed

in the whole notion of a Truth and Reconciliation Commission.”

And you spoke at length about that process.

10 “And that the late Dullah Omar's views of the TRC process was that it was not about prosecutions and similar to the point that Reverend Chikane made in his evidence, and that his leader, and that the evidence leader also made reference to this, Adv Soni, when he referred to the constitutional judgment in the AZAPO case, where the Constitutional Court pointed out that the TRC amnesty process would be more successful in securing the truth for victims than a prosecution process, especially in the absence of evidence.”

And you took issue with that, if you recall, the statement by Soni. And in your statement, I would have said, described it as a flippant, and I may be wrong, a flippant response where you said that,

“The AZAPO judgment was a political judgment.”

20 Now, if I may then turn to the essence of that judgment, where the Constitutional Court expressly stated that it was not concerned about the debate ...(intervenes)

COMMISSIONER KGOMO: Yes, Ms Moroka, if you are looking at the record, if you can take us there, please.

ADV MOROKA: I am not looking at the record, I am looking at the

judgment and talking her through the judgment ...(intervenes)

COMMISSIONER KGOMO: The judgment ...(intervenes)

ADV MOROKA: if you recall, Chair ...(intervenes)

COMMISSIONER KGOMO: the judgment in the record
...(intervenes)

ADV MOROKA: If I may, Chair, can I start by saying, Mr Soni asked
Ms Sooka questions on the AZAPO judgment. Let me then take you
to that. It is page 107, line 8. And if I may apologise, because where
Ms Sooka and I are not in disagreement, I do not take you to the
10 record, because we are on the same page. She says, "Yes, that is
what happened".

So you want the exact words and the exact record. My
apologies, I will take you there. She says, sometimes she says she
does not need to go to the record. Recollection is better than Your
Lordship, the Commissioner, but I apologise. Page 107, line, it starts
at 108 where Mr Soni is asking her about the AZAPO judgment. But
her response is at line 107. I mean, page 107, 105. You start, Adv
Soni, or Mr Soni starts at 105. Quite long-winded, if I may say, of my
learned friend, but we understand the point that he was making.

20 So it is from page 104, line 24, page 105, line 9. Have you
got it, Ntate Kgomo?

COMMISSIONER KGOMO: Yes, I do. Thank you, very much.

ADV MOROKA: It starts 104, line 24, to 105, line 9. But then at
page 107, Ms Sooka says that "it was a political judgment for the
time". That is her response. So if I may then just take you to the

judgment by Justice Mahomed. "May his soul rest in peace". At page 409. Do not go breaking my property.

MS SOOKA: It is the ancestors.

ADV MOROKA: So if I refer you to page 409, paragraph 21 of the judgment, right at the bottom, Justice Mahomed says:

"There can be legitimate debate about the methods and the mechanisms chosen by the lawmaker to give effect to the difficult duty entrusted upon it in terms of the epilogue."

10 But what I want to really refer you to is what he says in the second sentence.

"We are not concerned with that debate or the wisdom of its choice of mechanisms but only with its constitutionality."

You accept that he may have meandered all over the place, but the essence of the judgment was that this was what the Constitutional Court was engaged with. Would I be correct in that?

MS SOOKA: Yes, Chair. But to answer that fully, you know, it might be useful to go back to, I think, that transcript that Judge Saldana
20 provided, because I think the reason I use the word "political" is because what it was dealing with was probably the most highly contested issue, you know, in the negotiations. And remember, it came right at the end.

And in my evidence-in-chief, I spoke about the fact that many of us in the human rights community, including my colleagues

in Nadel, and I think in the BLA as well, we anticipated that what the new government would do was institute Nuremberg-style trials, and in fact, when I phoned the late Dullah Omar, in his calm voice, he was quite scathing, and he said, you know, "you guys in Civil Society, you can scream and shout and jump up and down, or else, you can decide that you can come into the process and you can help us to make this process more accountable."

And so in that period between 1993 and 1994, I would say that for those of us who, in fact, participated in the discussions that
10 were taking place, it was very educational because we had contact with people who came from many different parts of the world, who had had their own experiences of transition.

And in fact, if you look at one of the footnotes that Judge Mahomed refers to, it is a footnote relating to a debate between the legal advisor of the president of Argentina at the time and Diane Orentlicher, who was then the person who drafted the principles to combat impunity.

And it really talks about the situation where we found ourselves. No winner, so no victory, really. And the need to find a
20 route in which we would be able to do that balancing act which Judge Mahomed describes there. And I think that, you know, Dullah made the point to us, which was why we decided that we needed to participate, that if you just took the epilogue and you left it to, in a sense, politicians and particularly the other side, what you could have ended up with is a purely administrative process, and it could have

been behind closed doors.

And officials would be dealing with it, not having a proper Truth Commission. And really, you know, when you go back in that history, the fact that we have this Truth Commission is also the product of the work of the human rights lawyers. So the late Dullah Omar, people like the late Kader Asmal, and of course, Judge Albie Sachs, and they were determined that it should not go that way, that you should have a process which brought about the rights of victims tied to that.

10 And that is why, in fact, we agreed we would participate in the discussions. And what we tried to build into the process were safeguards for victims.

COMMISSIONER GABRIEL: So you accept that Justice Yacoob recognised that this was a choice that had to be made by the lawmakers, and it was made... Justice Mahomed, sorry.

MS SOOKA: Yes, and that is why he says, we are not concerned with the debate or the wisdom of the choice of mechanisms, but really, what we are entrusted with is this notion of looking at its constitutionality.

20 COMMISSIONER GABRIEL: And so then what I am trying to understand, Ms Sooka is, why do you say that that judgment was a political judgment?

MS SOOKA: It dealt with the political issues of our time. That was what I was intending to convey. It was very clear. Their role was very narrow. It was to look at the constitutionality of the epilogue and

once they declared that it was constitutional, that debate was over. And then I think what we had to look at was, how would we actually deal with the actual process of the unfolding TRC.

COMMISSIONER GABRIEL: So you are not saying that the judges of the Constitutional Court took a political decision?

MS SOOKA: No, they were dealing with a political issue. But it was not political in the sense that I was trying to say that they were following through on the executive. No, absolutely not.

ADV MOROKA: That is what we were trying to understand, Ms
10 Sooka, and that is why we definitely wanted you to come and explain that. Thank you. Because thereafter, you participated. It was just the notion that the highest court in the land, the evidence was going to be unchallenged about what you said about the highest court in the land made a political judgment. That concerned me.

MS SOOKA: Oh, no, I would not dare to go there.

ADV MOROKA: Thank you.

MS SOOKA: You know, I may have had many differences with some of the Constitutional Court judges on other issues, including their refusal to come before the Truth Commission. But I would not dare to
20 say that they had actually just acted on it because that was what the lawmakers did. No, they were very clear.

ADV MOROKA: Because one of the ancestors, Pius Langa, would be turning in his grave to be called to be said he had made a political judgment. Thank you. Shall we then move to another topic? Chair, I do not know whether ...(intervenes)

CHAIRPERSON: Would this be an appropriate time to adjourn for tea, Ms Moroka?

ADV MOROKA: It would be most appropriate.

CHAIRPERSON: Yes.

ADV MOROKA: Thank you, Chair.

CHAIRPERSON: We will adjourn for tea until half past 11.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Thank you, Ms Moroka.

- 10 ADV MOROKA: Thank you, Chair. Ms Sooka, we are moving on to another topic. It is what we have listed as the list of cases. And I am going to make reference to bundle 1, Calata Group, page 35, paragraph 95. According to Calata's, Mr Calata's affidavit, which you confirmed, you and Mr Ntsebeza prepared a letter accompanied by a list of cases, which the TRC asked the NPA to investigate further with a view to prosecution.

CHAIRPERSON: What page, Ms Moroka?

ADV MOROKA: Page 35.

CHAIRPERSON: 35.

- 20 ADV MOROKA: But Calata bundle, and it is at paragraph 95. You are there, *Ntate* Kgomo?

COMMISSIONER KGOMO: *Ke a leboga.*

CHAIRPERSON: Yes.

ADV MOROKA: Mr Calata stated that it is likely that the letter and the list were transmitted to the... Oh, you are not there, page 35,

paragraph 95.

MS SOOKA: Yes. Yes, thank you.

ADV MOROKA: Mr Calata stated that it is likely that the letter and the list were transmitted to the NDPP on 28 or 29 October 1988, which was the last full meeting of the Commission before its activities. That would be correct?

MS SOOKA: Yes.

ADV MOROKA: The letter and the list are not attached to the affidavit, because they are still not found, or the letter has not been
10 found. Is that correct?

MS SOOKA: Yes, I see it on the record.

ADV MOROKA: And we do know that there were two reports produced by the TRC, the 1999, 98 and the 2003 report.

MS SOOKA: Yes.

ADV MOROKA: And that the first one was presented to the late President Mandela on 29 October 1998, but it was not a final report.

MS SOOKA: No, it was not a final report, because the Commission had not completely, you know, completed its work. And, in fact, while the bulk of the commissioners and the Human Rights Violations
20 Committee and the Reparations Committee went into suspension, I think there were two or three of us who were seconded to work alongside the Amnesty Committee, because the Amnesty Committee was going to continue with its work.

And so, the Human Rights Violations Committee, which I was responsible for, we were still in the process of making findings around

victims. We were dealing with exhumations and we were also dealing with a popular version of the Truth Commission report and a whole range of issues related to the human rights inquiries.

And I think from the perspective of the Chair of the Reparations Committee, she was involved in dealing with whether victims who had been found by the committee to have qualified to go into the reparations stream. And so all of that had to be captured together with the full amnesty report in the final bundle, I think, which was volume 6.

10 ADV MOROKA: Yes, we agree with that. So the 1998 report and the 2003 report contain the list of which the TRC... neither. I am sorry, I made a mistake. Neither that report, neither the two reports, let me put it that way, did not have as an annexure a list of cases. Would that be correct?

MS SOOKA: That is true.

ADV MOROKA: And that the interim report only contained a list of amnesty granted, not a list of those that were not granted amnesty.

MS SOOKA: That is correct.

20 ADV MOROKA: And that also those that had not applied. So you have got a list that has been granted, a list that is not granted, and a list of those that have not applied, because a full list of the decisions was, as you say, was only going to be made to accompany the report of the Amnesty Committee when it had completed its work.

MS SOOKA: Yes.

ADV MOROKA: And I do not refer, Chair, because we are in

agreement, unless you want the references.

CHAIRPERSON: Yes, that is fine.

COMMISSIONER KGOMO: Do not look at me.

ADV MOROKA: The other commissioner is the one who complained, so I am looking at him to see whether he is satisfied, Chair.

CHAIRPERSON: Yes.

ADV MOROKA: So even that final report did not have as an annexure or accompanied a list, a complete list of these items that I
10 am referring to.

MS SOOKA: Thank you for that question. We did not think it was necessary, because that list had actually gone to the NPA in 1998, and a copy of it had also gone to the Ministry of Justice. And then of course in the period of 99 ...[intervenes]

ADV MOROKA: Can I interrupt, because we are going to go there? The question is; the report did not have as an annexure a list, whether it was necessary or not necessary.

MS SOOKA: Thank you. I concern that.

ADV MOROKA: Thank you. So if we go to what you want to talk
20 about. Mr Calata says in his affidavit that you and Mr Ntsebeza prepared a letter accompanied by a list of cases which the TRC asked the NPA to investigate with a view to prosecution. It was not the TRC's list attached to the report. It was a list prepared by you and him. Would I be correct in saying that?

MS SOOKA: I would say that we oversaw the preparation of the list,

but it was in the context of the administrative work of all of the Human Rights Violations Committee members and of course the investigation body as well.

ADV MOROKA: And Mr Ngcuka in his statement at page 310, page 26. Again, we are going to agree, so I do not need to refer you to it.

MS SOOKA: Okay.

ADV MOROKA: I am going to say to you that he says that he received the... he calls it a final report. I am going to show you that he may be mistaken, that it was not a final report in 1998. It could
10 have been a final report, but he terms it a final report. He received a final report and associated materials, a substantial body of information and a list of several hundred matters which the TRC considered capable of prosecution. So you would agree with Ngcuka that that is what happened in 1998?

MS SOOKA: Yes, I guess that I would not be able to dispute what he says, that it is a final report. It was a list and a letter and it had several ...[intervenes]

ADV MOROKA: But remember, the final report is 2003. I think it is semantics. There is nothing that turns on it, but there were two
20 reports. The one was not final and the other one was final.

MS SOOKA: Correct.

ADV MOROKA: But the point that I am trying to get to is that you agree with him and his evidence that he received this body of material?

MS SOOKA: Yes.

ADV MOROKA: In 1998.

MS SOOKA: Yes.

ADV MOROKA: And thereafter, he, even though your legal representative was saying that it was Minister Omar who did it, he then commissioned or appointed Judge Saldanha to chair his subcommittee in the NDPP.

MS SOOKA: Yes, that is correct.

ADV MOROKA: So when Mr Calata states in his affidavit that it is likely that the list was transmitted to the NDPP on 27 or 28 October,
10 that could not be correct, because you would not be able to transmit that report before you give it to the President. Would I be mistaken?

MS SOOKA: No. It was actually... Sorry, Chair. It is a mistake in terms of... The letter, in fact, is part of the closing work of the Human Rights Violations Committee. Part of their job was to make sure that, in fact, the NDPP would have something to work with in terms of cases that in fact the committee had not been able to investigate fully, and there were many.

And then, secondly, cases where amnesty had not been applied for and cases where amnesty had been refused. Now, if you
20 look at the amnesty list that is attached to the 98 report, it is a very short list, and that is because the bulk of the amnesty cases were still going to be heard in 99.

And so, in a way, this is a cumulative list of what I would call unresolved matters where human rights inquiry had taken place, but it did not deal with questions of criminal responsibility, because that

was not the job of the Human Rights Violations Committee. So that is really what the list was about and the reason it was transmitted in that last week was to ensure that this issue would not fall in the cracks once the Commission went into suspension.

ADV MOROKA: So, Mr Ngcuka and Mr... okay. Mr Saldanha and Mr Ngcuka would be correct that they received the interim report, which was prepared in 1999.

MS SOOKA: That is correct.

10 ADV MOROKA: And you find that, Commissioners at bundle, at the cross-examination bundle at page 380, paragraph 8, and the statement of Mr Saldanha. So, you then met with Mr Saldanha or Judge Saldanha, if I may, in February 1999 to discuss the process of identifying potential cases for prosecution. And you find that at page 98 of the Calata affidavit, page 36. Do you need to go there or do you need to agree? I do not think you wanted to say...

MS SOOKA: I can go to the page, but yes, that is absolutely correct.

ADV MOROKA: Yes. And at that stage, as you say, there were many cases. Not all amnesty hearings had been concluded and there were still potential cases to be identified.

20 MS SOOKA: It was part of the process, because the list, you know, in fact had, it was... what would one say? It was a conglomerate of cases with inquiries had not been completed, cases where amnesty had not been applied for, and remember by then all the amnesty applications had to be in, and of course the cases where amnesty had already been refused. And yet there was going to be almost

another year when the Amnesty Committee was going to work. And so it was really a question of how to tidy that list up in relation to what was happening in the Amnesty Committee as well.

ADV MOROKA: In fact, what you say, to be fair, at page 27, paginated 27...

CHAIRPERSON: The Calata bundle.

ADV MOROKA: Calata bundle. Oh, sorry, cross-examination bundle, page 27. You are confirming what you say now, that because one should remember that at the time there were many cases where
10 amnesty had not... amnesty hearings had not yet taken place.

MS SOOKA: Correct.

ADV MOROKA: So it was amalgam of all sorts of lists. Thank you. And then following that meeting, there was a report prepared by the TRC dated 7 March 1999 titled "Report for the Office of the National Director of Public Prosecutions" and you find that at Calata bundle 1, Annexure FA9, page 360.

MS SOOKA: Correct.

ADV MOROKA: Did you prepare this report?

MS SOOKA: It was given to the... You know, at that time, the
20 Amnesty Committee... what is it; the evidence leader. And I think it was one of the evidence leaders, Adv Paddy Prior, who in fact had to go and put that together. And I think I just had a look at whether it correctly framed what they were wanting to look at, and that then went off.

ADV MOROKA: Because that report states that since the meeting

with the above office in early February 1999, the Commission has begun a process of establishing mechanisms for identifying potential cases. That is what the report would have said. Does that sound correct?

MS SOOKA: I think when we refer to mechanisms, it is really about within the function of the remaining... you know, the remaining commission members there. What process would be used to make this list a better prospect for the NPA? That is really what the language there means.

10 ADV MOROKA: And then in that report, you talk about a whole... Maybe we should go to the report, because I am going to refer to it a bit; page 360.

MS SOOKA: Which bundle?

ADV MOROKA: Calata bundle 1. Are you there?

MS SOOKA: Yes.

ADV MOROKA: Page 360, Annexure FA9 where the report in the first paragraph states that:

20 “Since the meeting with the above office in early
February 1999, the Commission has begun a
process of establishing mechanisms for
identifying potential cases.”

MS SOOKA: That is correct.

ADV MOROKA: And then it says this is a progress report thereon.
And at the same paragraph, it says that:

“A range of categories or issues around which

prosecutions can be considered were identified,
and there was to be some discussion around
these categories to determine the viability as well
as prosecution.”

MS SOOKA: Thank you. I mean, it is a long time ago, so I am going
by the record.

ADV MOROKA: Totally understand, Ms Sooka. And so, the report
goes through the categories. We see there is a preliminary work-in-
progress list at paragraph 37. There is a... under the heading, for
10 instance, “Torture”, at page 360, the report states that:

“Nature of torture in the absence of witnesses
frequently makes corroboration difficult. The
initial list that the Commission has begun to draw
up of security force members implicated is
extensive.”

The wording of this tells us that the list still had to be drawn in that
regard. Would I be correct? This is page 360, para 1.

MS SOOKA: Sorry, can you direct me to the line?

ADV MOROKA: You see there is a... sorry. At page 360, you see
20 that, A, there is categories of violations.

MS SOOKA: Ja.

ADV MOROKA: And then under those categories, we have torture.

MS SOOKA: Yes.

ADV MOROKA: You are still paging, so I want you to be there.

MS SOOKA: Yes, I have it.

ADV MOROKA: And then it says:

“Bearing this in mind, the Commission...”

This is line 3 of number 1.

“The Commission has begun to draw up an initial
list of all security force members implicated in
torturing more than three victims.”

So the list is work in progress. That is really what I am saying to you.

MS SOOKA: I think what this letter is conveying is that an initial list
was given to the NPA; and then following a meeting with Adv
10 Saldanha and Adv Bulelani Ngcuka, there was an agreement that the
Truth Commission would actually try to refine that list; and this report
is based on that.

ADV MOROKA: Thank you. And then under the heading “Gun
running”, the report says that:

“The TRC's investigations into gun running was
inconclusive.”

You agree with that statement?

CHAIRPERSON: Where is that, Ms Moroka?

ADV MOROKA: It is page 36...

20 COMMISSIONER KGOMO: Or paragraph 5.

ADV MOROKA: 361, paragraph 5. And the report says this one was
inconclusive.

MS SOOKA: That is correct.

ADV MOROKA: And then if we go to 362 under section B, under
“regional cases”, the report then states that:

“KZN...”

At paragraph 1;

“...has begun to identify cases where people did not apply for amnesty, who did not apply for amnesty have been implicated.”

You see that?

MS SOOKA: Yes.

ADV MOROKA: Again, it is a progress report.

MS SOOKA: Yes, because remember, I think it is instructive to just
10 think about the fact that you have these two committees. You have the Human Rights Committee, where you have victims coming forward and in fact presenting their statements. You also have the committee itself conducting investigations. At the same time, you have the Amnesty Committee that is dealing with applications which are submitted. And, in fact, if you begin to do a cross-exercise and you try and triangulate, that is when you pick up how many cases people have not applied for amnesty for. And I think that is the exercise that was being conducted.

ADV MOROKA: And we agree with you, because we are trying to...
20 The purpose of going into this particular rabbit hole is to understand the lists, the lists that were given, the lists that were outstanding and who gave what to whom. That really is the purpose of this exercise. You then say, under KZN again, there is one line after the main paragraph. You say that:

“This mammoth task... it is a mammoth task and

needs to be weighed up in relation to the capacity of Macadam's office to deal with new cases, considering his involvement in Richmond."

You want to say something? There is a smile on your face.

MS SOOKA: It is very difficult for me because, you know, I look at it and I read what we said, but I am trying to think back how many... It is so long ago and I need to be very careful before I impute any weight to it.

ADV MOROKA: No, I understand. I understand. Thank you. We do
10 understand. In a sense, and that is why, Ms Sooka, I am saying no criticism on anybody. It is just to be helpful to the Commission to try and understand about the lists, what was given, what was not given, and the tasks that were involved, the mammoth tasks that was involved in compiling all of this. So, at page 363 under the Free State, it says there that:

20 "There are a number of potential cases here, but given the pressure on time, KZN personnel have requested, even though it is under Free State, have requested assurance that some capacity exists to deal with such cases before they proceed."

You do not recall that, but you do not dispute it.

MS SOOKA: I cannot dispute it, because it is a report that has gone out.

ADV MOROKA: That you supervised, not necessarily that you

compiled.

MS SOOKA: Yes.

ADV MOROKA: And then at page 363 again, under section D, you talk of an analysis of indemnity and amnesty applications, and the heading is this, and the report states that the TRC was still in the process of identifying whether perpetrators identified applied for amnesty, and that a spreadsheet was currently being analysed. We do know...

COMMISSIONER KGOMO: Oh, I thought maybe a response was
10 required. If you accept that, you can say so, because sometimes you are not and we are not aware.

MS SOOKA: Sorry, Commissioner. I accept that.

ADV MOROKA: Because, and we ask this, Ms Sooka, in the context of a question that was asked of Mr Prior about; but there is a list and it seems that it is a comprehensive list; and it would seem again that it is not a comprehensive list, because he had issues with that list and was not able to confirm that that is a comprehensive list. So we are just trying to understand whether at a point in time there was a comprehensive list. Not that we want to tie you to a claim that you
20 gave a comprehensive list that had every bit of information on it. You do understand?

MS SOOKA: Thank you for that question. I mean, I did explain, I think, in my evidence-in-chief it was a chaotic period and you are asking officers to come forward and to compile these lists, and I have no doubt that there were probably things that were left off, but the

notion of comprehensive in the sense of, you know, a proper schedule, I think a lot of that work took place in the aftermath.

ADV MOROKA: Thank you. And then at a point Judge Saldanha requests feedback on the report regarding potential prosecutions.

MS SOOKA: Yes.

ADV MOROKA: And I think in your evidence-in-chief, if I am not wrong, you do say that you are not sure whether anybody ever got back to you. There seems to be no evidence to indicate that.

MS SOOKA: I confirm that, you know, I do not have a record of what
10 collaboration there was then between the Commission and the Human Rights Unit. In fact, I sort of, after the first report, handed that over to the Amnesty Committee, because they were really the ones who were dealing with what the amnesty applications were about, and so I did not feel that I could add anything more. I had done my job, which was to make sure that a list was handed over and, in fact, to faithfully deal with the question of making sure that the NDPP was going to take this issue up.

ADV MOROKA: But the point that we would want you to make is
20 that even then it was not a comprehensive list, and you agree with that.

MS SOOKA: As I say, I have no knowledge.

ADV MOROKA: Okay, thank you. Can we then turn to one next topic before we turn to the final topic, and this one would be...? Oh, I see it is still again on the list handed over to the NPA. And if I ask you to turn to page 462, it is the opinion. You have heard about the

opinion that Adv Ntsebeza prepared for the NPA. That would be cross-examination bundle on the additional bundle, right at the back.

MS SOOKA: The additional bundle. I have it.

ADV MOROKA: So you know about this opinion. You have seen it.

MS SOOKA: I have seen it, yes.

ADV MOROKA: If we turn to paragraph 7 of that report, Ntsebeza states that the... Are you there?

MS SOOKA: Yes.

ADV MOROKA: *Ntate* Kgomo is not there yet, we will wait.

10 COMMISSIONER KGOMO: Ja, I was a bit lost.

ADV MOROKA: It is 463, *Ntate* Kgomo.

COMMISSIONER KGOMO: Ja, I am there now eventually.

ADV MOROKA: In his report, *Ntate* Ntsebeza states that the TRC referred to the NPA some 300 cases of those people who did not apply for or were not granted amnesty. He says that in paragraph 7.

MS SOOKA: Yes.

ADV MOROKA: And then at page 148, para 148 of the cross-examination bundle, same page, right at the bottom, same page. Mr Ntsebeza gives evidence and states that a Commission of Inquiry
20 would determine whether individuals acted improperly to disuse, interfere, hinder or obstruct the investigation and prosecution of the TRC cases referred to.

MS SOOKA: Sorry, could you... It is the same page?

ADV MOROKA: Oh, 467, my apologies. 467, I am very sorry.

MS SOOKA: Yes, I have it.

ADV MOROKA: 467, it will be probably line 15, and he says:

“And all the cases, I think the completion date was either 2001 or 2003 and it was then that Yasmin said look, we need to take our findings to the presidency and that is how we began the meeting with these officials, but the purpose was to say look, there have been people, there are 300-odd cases which need either prosecution or further investigation or both.”

10 MS SOOKA: Yes.

ADV MOROKA: And his evidence to this Commission is consistent with this report. He says 300 cases were referred to the NPA and refers to 2001 and 2003, because the Amnesty Committee completed its work in 2001 and the final report was handed in, in 2003. You see that?

MS SOOKA: Yes, but I think he has all his dates wrong. I also think he has the notion of us taking findings to the presidency wrong. The findings of the Commission would go via the Truth Commission's report which was handed over in 98. And in fact, I understand that in
20 his cross, you know I think Adv Varney did give him the correct dates.

ADV MOROKA: Of the 98 dates?

MS SOOKA: It is the 98.

ADV MOROKA: When you went to go and meet the NPA and...

MS SOOKA: Ja.

ADV MOROKA: We must all be excused. There is a generation

issue that I always tell the Chair, who thinks she is younger than all of us, but there is a challenge of generational issues, Ms Sooka. So, I accept that. So you say it was corrected, that this is in reference to 1998 and not 2001.

MS SOOKA: Yes, yes. I mean, we never, beyond the sort of formal handover to President Mandela, we never actually met with officials to discuss the list. And even in the 2003 handover, it was a handover of the report, but not taking, you know, the findings to the presidency for discussion. It was a formal handover process, if I could say that.

10 ADV MOROKA: Understood. Thank you. If we then turn to page 469 of the cross-examination bundle, bundle 1, Annexure FA29.

MS SOOKA: Sorry, do you want to give me the number again?

ADV MOROKA: 469, bundle 1. Oh, I am so sorry; we have got all kinds of bundles here.

CHAIRPERSON: Bundle 1 or cross-examination?

ADV MOROKA: Cross-examination, Chair, page 469, Calata bundle 1, Annexure FA29. It is headed "Report to Portfolio Committee by Dr Silas Ramaite". We have just extracted it and put it in the bundle. So we refer you actually to page 470 and not 469, because the others is
20 just the title, but the body of what we want to engage with is on page 470. Have you got it?

MS SOOKA: Ja.

ADV MOROKA: And you will see there that there is performance against targets again, I mean "performance against targets: 2004 and 2005".

MS SOOKA: Yes.

ADV MOROKA: And it says there:

“TRC prosecutions – audit of 300 cases on hand
in NPA structures.”

This aligns with what Ntsebeza says. Ntsebeza SC talked of 300 cases. They are talking about 300 cases on hand and the closure of 167 cases with no prosecutions.

MS SOOKA: Yes.

ADV MOROKA: You do see that. And then if you turn to page 471,
10 it is an internal memo from Ackermann to Ramaite talking about the
audit of all these cases.

MS SOOKA: Yes, confirms.

ADV MOROKA: And then if you go to 1.8... No, I want to refer you
to 1.9, I am sorry. 1.9 says:

“No prosecutions were instituted because the
TRC final report and the president's response
were outstanding.”

Do you see that comment there?

MS SOOKA: I see that comment, but I would say the president's
20 response was outstanding, because I just looked at the date of this.
It is marked 24 October 2006. By 2003, the affairs of the
Commission had been wound up, so that is a little confusing.

ADV MOROKA: But it is from Mr Ackermann to Mr Ramaite.

MS SOOKA: Have you put that ...[intervenes]

ADV MOROKA: But he is talking about... if you look at 1... I beg

your pardon?

MS SOOKA: Sorry, did you ask him that, because...?

ADV MOROKA: No, I was telling you it is a memo from Ackermann to Ramaite. And then if you look at 1.8, it is talking about the DSO in 2001, if you look at 1.8.

MS SOOKA: Yes.

COMMISSIONER GABRIEL: I think just for the record, all of these paragraphs you have referred to, Ms Moroka, appear under the title "Historical Background".

10 MS SOOKA: Yes, I have that. Thank you.

ADV MOROKA: But then talking about 2003 to 2004 at paragraph 1.16, again Ackermann says:

"We declined to prosecute approximately 80 of the above-mentioned cases."

You see that?

MS SOOKA: Yes.

ADV MOROKA: And then he says:

"Similarly, 50 cases from the DSO were finalised by Macadam and Ackermann."

20 MS SOOKA: Yes.

ADV MOROKA: And then at 473, still talking about audits.

"The audit process further identified a small number of cases warranting prosecution, which will be dealt with hereunder."

MS SOOKA: Yes.

ADV MOROKA: Thank you. Can we then move, I think, to our last, the last...?

MS SOOKA: Sorry, was there a question related?

ADV MOROKA: No, no, no, I was just... it was under the rubric of what we are trying to establish about cases that were handed over and not handed over.

MS SOOKA: Can I make a comment?

ADV MOROKA: Please do.

MS SOOKA: I was struck by the matters closed by the PCLU in that
10 report, because one of them dealt with the case of the late Ahmed Timol; and at that time, many of the perpetrators were still living. And when you look at that, it is 2006. We finally get caught in 2017, if my memory stands to be correct, and at that point we only have the one person who was in the room at the time, João Rodrigues, and I think that is why, you know, Mr Cajee was so incensed, because in 2009 he himself had approached Adv Macadam to kind of ask where is this investigation? And then I saw this in this report and I thought what a disservice. And, I mean, there are, you know, on that list of closed
20 cases, I think each one of those should be investigated in terms of what was the basis? Because today, we are reopening them and that is a bit... it is tragic, actually.

ADV MOROKA: I guess we would be asking the people in the NPA who were there to explain.

MS SOOKA: Ja. I mean, I have a list also of, you know, the periods when there were cases and that actually the most cases were from

2021 and 22, where you have 56 in 21, 84 in 22, and in that period, 1998 to 2002, the cases that they did prosecute, four of them had actually been investigated in the period before they came to the PCLU. So it was not... So, effectively, nothing happened. And I think that point must be retained on record. I have this... I am not sure if you have a copy of it, but I can certainly make it available.

ADV MOROKA: Well, Ms Sooka, I take your point, and this Commission is about understanding why and how. And that is why we now deal with the last topic on this subject, because you then say
10 it is political interference and we wanted to have an engagement with you about that. So, if you go to what Mr Varney put to you, and we start off with an amended prosecution policy. We start off ...[intervenes]

MS SOOKA: Sorry, which bundle is that in?

ADV MOROKA: I am giving it to you now. It is the cross-examination bundle, transcript of your evidence on 17 February 2016, beginning this year, 2026, page 35.

MS SOOKA: There are so many bundles. Forgive me. I am getting confused. That is the wrong page.

20 ADV MOROKA: Sometimes we get it wrong too; page 43, not 35; page 43. It is paginated 43, but old 35.

MS SOOKA: Yes.

ADV MOROKA: And reference was being made to the prosecution policy, the guidelines, as it were.

MS SOOKA: Yes.

ADV MOROKA: And Mr Varney puts it to you that the ended...

where it says under Part B of that amended policy:

10 “The NDPP must speak to the Minister of Justice
before making public statement on any matter
arising from the conflicts of the past. And you
have already alluded to Part C. So what is your
response to this committee of designated officials
from outside the NPA and the fact that the policy
says the NDPP is not free to discuss the cases
without first conferring with the Minister of
Justice?”

And your response was very clear that it was a clear attempt on the
part of government to fetter the discretion of the NDPP and
constituted interference with the NDPP. I am going to ask you
questions on this response. And I start off with referring you to
section 179 of the Constitution.

MS SOOKA: Yes.

ADV MOROKA: It is page 286 of the bundle.

MS SOOKA: 286.

20 ADV MOROKA: You are going to have to bear with us, as we bear
with you. We are looking for it, my apologies.

MS SOOKA: Oh, okay.

ADV MOROKA: 383. It starts at 383, but we want to refer you to
385.

MS SOOKA: Yes.

ADV MOROKA: Prosecuting authority.

MS SOOKA: Sorry, I just... Yes.

ADV MOROKA: Under prosecuting authority, you were told that there is a single national prosecuting authority in the Republic, and it is structured and it then explains that. But where we want to take you to is; is that... I am sorry; this is not what I wanted to take you to, but it does say that the National Director of Public Prosecution must determine with the concurrence of the responsible minister; and then it goes on, whatever it is that he wants to talk to.

10 I want to talk to you actually about the act itself; what powers the NDPP has. My apologies, Chair. I think my junior did not understand me. I wanted the powers of the national director; and I think it is common cause. You would agree that he has unfettered discretion to decide who and when and how to prosecute. You would not dispute that?

MS SOOKA: Yes, if you looked at the sort of prosecution powers and of course the policy before the amendments took place, I would argue that he had unfettered discretion.

ADV MOROKA: Before which amendments took place?

20 MS SOOKA: The amendments to the prosecution policy.

ADV MOROKA: I am talking about the act itself, I am not talking about the prosecution. He has unfettered discretion to prosecute and that is it.

MS SOOKA: Yes.

ADV MOROKA: The act, nowhere in that act is there anything about

making public statements. He has not been given power anywhere in the act, the Constitution and the act about making public statements. He has been given power to prosecute. Would you agree with me?

MS SOOKA: That is correct, yes.

ADV MOROKA: The policy or the amended policy had something; what you were referred to was about making public statements. It was not about prosecutions.

MS SOOKA: I accept that correction.

10 ADV MOROKA: And, therefore, the issue about talking to the minister; and I think that is why my learned junior thought I was talking about policy and concurrence, because there is concurrence between the NDPP and the minister. They have concurrence on policy. They have no concurrence on prosecution decisions. But with the same breath, you would agree that nowhere in the Constitution, nor in the National Prosecution Act is there anything about assigning power to make public comments and public statements to the prosecutor.

MS SOOKA: I would agree with you.

20 ADV MOROKA: Thank you. And, therefore, where the policy... No, thank you. You have given me an answer. Let me not pursue it. And then, and you would agree that section 179 of the Constitution... Beg your pardon, I am arguing with my learned junior.

CHAIRPERSON: Yes.

ADV MOROKA: I am trying to...

COMMISSIONER KGOMO: Not arguing, engaging.

ADV MOROKA: Thank you, Commissioner, engaging with my junior.

I am afraid, Chair, my brain is tired. I do not understand what my learned junior is trying to say to me.

COMMISSIONER KGOMO: It happens.

ADV MOROKA: I beg your pardon?

COMMISSIONER KGOMO: It happens.

ADV MOROKA: It does, it does. And then at the end of a case, I do not know whether it is just experience, Judge Kgomo, where a judge then makes reference to what the junior had said and the junior had
10 been correct and you were wrong, and it is too late. Then in 2009, 2019 and 2022, you address a letter to the President about seeking a Commission of Inquiry. You recall that? I do not have to take you there.

MS SOOKA: Yes.

ADV MOROKA: And in the letter, you state that there is a deliberate suppression of the bulk of apartheid-era cases; and that even though the TRC handed over a list of several hundred cases to the NPA that they be investigated, virtually all of them were abandoned.

MS SOOKA: Yes.

20 ADV MOROKA: In respect to that letter. Then Adv Dumisa Ntsebeza makes comments. You wanted a Commission of Inquiry, because you want that commission to uncover the who, why, where, when, how.

MS SOOKA: That is correct.

ADV MOROKA: And Ntsebeza SC in his report says the same thing.

Let us find out who, where, how, when, by who.

MS SOOKA: I saw that recommendation in his report.

ADV MOROKA: And the terms of reference of this Commission really talk to that... and you do know there was a high court application. We then got to an agreement, and this agreement, the subsequent journey of that agreement was that a Commission of Inquiry was set up, this Commission of Inquiry.

MS SOOKA: That is correct.

10 ADV MOROKA: This Commission of Inquiry and its terms of reference ask those questions. We do not, as we sit here, we are enquiring as to those questions.

MS SOOKA: That is correct.

ADV MOROKA: So anybody who comes and says there was political interference, there was obstruction, there was engagement. We had somebody being asked a question about interference in another Commission of Inquiry, and he says it was engagement. We call interference, interference. We do not call it engagement, Commissioner Kgomo. Well, there was interference. It is the task that this Commission is seized with.

20 MS SOOKA: That is correct.

ADV MOROKA: Because if we did not have those answers, there would not be a Commission of Inquiry. We would have the answers. We would know who did it and when and how.

MS SOOKA: That is correct.

ADV MOROKA: And the consequences would fall upon that person

to be prosecuted or whatever.

MS SOOKA: That is correct.

ADV MOROKA: So you would understand when I say that this Commission is seized with recommending that so-and-so on such-and-such a date did such-and-such.

MS SOOKA: Yes.

ADV MOROKA: Or this body of people did such-and-such on such-and-such a date. And we therefore recommend to you, Mr President, to do the following.

10 MS SOOKA: That is correct.

ADV MOROKA: And this Commission is also tasked with looking at the Minister of Justice, past and present, the departments and their officials, past and present, the NPA members and the members of the South African Police, the members of the intelligence community, or whoever, government officials, past presidents, to say: did they or did they not interfere?

MS SOOKA: That is correct.

ADV MOROKA: The evidence must come before this Court that says these people did the following.

20 MS SOOKA: That is correct.

ADV MOROKA: And consequent upon that evidence, the Commission must then make its recommendations.

MS SOOKA: That is correct.

ADV MOROKA: Absent that, the Commission must say we have not had any evidence that tells us that so-and-so did the following.

MS SOOKA: That is correct.

ADV MOROKA: And whatever else might happen, we might be disappointed or we might be happy, because the Commission would have uncovered who did what or not uncovered who did what.

MS SOOKA: That is the consequence, I guess, of the work of the Commission.

ADV MOROKA: So, therefore, it does not help for somebody to come to this Commission and say there was interference, unless they are able to help the Commission and say it was by this person on
10 such-and-such a date and in such-and-such a manner. Then that evidence, I would submit, is not relevant to their terms of reference.

MS SOOKA: Thank you.

ADV MOROKA: You talk about the fact that members of the NPA confirmed and asserted that there was interference. And I want to talk to, I want us to engage on the people, the players, the actors, the people who have given evidence before this Commission about that. And the actors are Mr Ackermann, Mr Pikoli, Mr Pretorius and Mr Macadam. Firstly, if we could possibly talk about Mr Pikoli; you are aware that at a point in time when the guidelines or the prosecution
20 policy was being amended, he was the DG.

MS SOOKA: That is correct.

ADV MOROKA: And we know from the evidence before this Commission that he was the driver of this initiative.

MS SOOKA: That is correct.

ADV MOROKA: And he was asked by Mr Semanya, and let me refer

you there; Mr Semenya and Ms Moroka. But I will ask you, I will tell you what I asked him. And Mr Semenya asked the same questions, but I also asked him the same questions in a sense, in a different kind of formulation. The question was; and it is at page 490; page, paginated 490, line 16.

MS SOOKA: Yes, I have it.

ADV MOROKA: But during the process, this is the process of drafting the amendments.

10 “During the process that you were undertaking,
you did not at that stage feel that these processes
were a violation and that they were
unconstitutional.”

And Mr Pikoli answers:

20 “Yes, I did not have a problem with that, because
I thought it was a question of trying to
accommodate the outstanding TRC matters,
which could, which were not attended to during
the life of the TRC. Therefore, a mechanism had
to be found to deal with these outstanding
matters. So I felt that for as long as they fall
within the constitution and the law, that there was
nothing wrong with them.”

So the driver of this initiative answers and says there was; I found that there was nothing wrong at the point when I was doing this, and that is what he says.

MS SOOKA: I read that in his evidence, and I think what he conveys is of somebody who is sincerely committed to trying to find a way ...[intervenes]

ADV MOROKA: Can I ask you to do that?

MS SOOKA: That is how I read it.

ADV MOROKA: This is what he says.

MS SOOKA: Yes.

ADV MOROKA: And you say you see that that is what he said. What you understand by what he is saying is a different question, and
10 I am not asking you that question. I am saying the driver of the initiative answers questions and says this. And then he goes on at page 491, if I may, the following page. Let me start at 490, because Mr Ackermann in his affidavit in 2005, 2005 or 2015, the 2015 affidavit, my apologies, states that the first act of political interference which effectively stopped the work of the PCLU into the TRC cases of the suspension of such cases during 2004. And then Mr Pikoli says:

“Well 2004 I was a DG.”

And then he goes on to say:

20 “2005 I became the NDPP. There was work and that was being done on amending the prosecution policies.”

You see, there is a difference between what Mr Ackermann and Mr Pikoli says about the amendments. Mr Ackermann then says it was political interference. Mr Pikoli is trying as the driver of the initiative to say ‘I was the NDPP’. Do you see that?

MS SOOKA: Yes.

ADV MOROKA: And then he goes to say, I then asked him:

“And according to you, that was not interfering
with the work.”

Who know what else I asked, but his answer is:

“No, certainly at that time I did not see anything
wrong with that. I actually supported the
process.”

MS SOOKA: I see that and the qualification of course is certainly at
10 that time; and in fact, if you look at page 490, you know, I think it is
line 11, he would say:

“What I would say in the end is he was proven
correct.”

So I was trying to reconcile in fact, you know, those different
statements.

ADV MOROKA: He was proven correct on the constitutionality of the
policy. I am talking about political interference or interference.
Actually, the terms of reference do not talk about political
interference, they talk about interference. We are discussing
20 interference and Mr Pikoli says it was not political interference.
Nowhere does he say it was political interference at that time or at
any other time about the process of amending the prosecution policy.
That is the point that I am making.

MS SOOKA: I think he does not say so, but if you actually... you
know, and we have not come to that, his letter to the minister. I think

the effect of all of this was political interference.

ADV MOROKA: I am talking, Ms Sooka about the amendment to the policy. I am not talking about the letter to the minister. You also then base your allegations of political interference on the affidavits of Macadam and Pretorius.

MS SOOKA: That is correct.

ADV MOROKA: And you say so in your evidence at page 78, lines 18 to 23.

MS SOOKA: Which bundle?

10 ADV MOROKA: You have said that is correct, so we do not need to go to your evidence. I want us to go to Macadam's evidence where under cross-examination, at page 495, he says; Mr Macadam is asked a question by his counsel at 495.

"Yes, perhaps let me, in relation to the period that you were involved, are you aware of any evidence of deliberate intervention to stop prosecutions...?"

MS SOOKA: Thank you.

ADV MOROKA:

20 "...in TRC matters."

And Mr Macadam then asks a clarification question and says:

"I take it you mean from the executive level, not..."

And it is unclear what the answer is, and then Mr Bhana says "yes, yes" and Mr Macadam says "no" to the question of: are you aware of

any political interference?

MS SOOKA: I see that.

ADV MOROKA: You see that. And then right at the end of 496,
again Mr Bhana says:

10 “One of the terms of reference of this Commission
is to investigate whether members of the NPA or
the police colluded with or succumbed to
interference. In your experience, whilst you were
there, did you come across such collusion or
succumbing to interference?”

And Macadam answers “no”. You see that?

MS SOOKA: Yes, I see that.

ADV MOROKA: And then if you go to Mr Pretorius, it is at page 499.

MS SOOKA: Sorry, I am just looking.

ADV MOROKA: No, it is okay.

COMMISSIONER KGOMO: It would be the last page before that
divider.

MS SOOKA: Sorry, yes, I have it. I have it.

ADV MOROKA: You have it, 499.

20 MS SOOKA: Ja.

ADV MOROKA: You see there is, round about line 9 it says “Dr
Pretorius”.

MS SOOKA: Ja.

ADV MOROKA: And he had been asked about the confirmatory
affidavits of Pikoli, Macadam and Mr Ackermann, because you recall,

he was really confirming what the others were saying in the application. And then he says why was...? The question is: why was it necessary? And his response is:

10 “It was necessary, because I did not have personal knowledge of political interference. Obviously, I worked with my colleagues. I lived through it, like Sean Abrahams. Adv Sean Abrahams said I lived through it, but I do not have personal knowledge of that. So I have to refer to Ackermann, Pikoli and Chris Macadam that found
20 some of those secret documents. So that is why I refer to them, because I do not have personal knowledge.”

And my question to you; I am going to cut through all the questions that I am supposed to ask you, because the simple question that I do want to ask you is; all of us here, whether we represent clients or we represent, we are evidence leaders or we represent victims, have to be able to say we helped the Commission by giving evidence before the Commission that indicated how they are to answer the terms of
20 reference from personal knowledge, from documentation; that the people who were drafters of those documents can come to this Commission and say: this is a document that I drafted under these circumstances and this is what was happening. And in that way, you would agree with me that is of assistance to the Commission?

MS SOOKA: Absolutely.

ADV MOROKA: It would be of no assistance to this Commission if I were to rise and represent a client that says there was this that happened, but my client has no personal knowledge. My client surmises, my client infers, my client finds it is the only possible inference to be drawn, but I was not there, I was not working there and I do not have personal knowledge. That would not be helpful to the Commission. Would you agree?

MS SOOKA: I agree with that.

ADV MOROKA: Thank you. Those are my questions, Chair.

- 10 MS SOOKA: May I add something, though, because I think that is important. If you go to the cross-examination of Adv Macadam, you know, by Adv Varney, I mean, I think there are lines in his cross-examination which kind of indicate that even though he personally would not have dealt with the executive, I think that the impact of all of these issues which were taking place certainly impacted on his role.

- And, you know, he makes the point that he stood in for Adv Ackermann in meetings of the task team. And I was so struck by what he said, that I noticed that the task team was predominantly
20 comprised of members of the intelligence community, who were more intent on cross-examining me as to why matters should be investigated, rather than addressing the issue of outstanding cases. He also talks about ...[intervenes]

ADV MOROKA: Can I interrupt and ask you a question?

MS SOOKA: Yes.

ADV MOROKA: Right on that evidence. I had...

CHAIRPERSON: Yes, you may proceed.

ADV MOROKA: Thank you, Chair, and I am not discounting the evidence that you say Macadam gave. What I am trying to find out, so that you are helpful to the Commission, is the point that I am making. You are talking about somebody who says something. He is the better person to tell the Commission what happened, what he said, what he saw and what was done, and not you, because you have no personal knowledge of any of this.

10 MS SOOKA: I am also reading his evidence from his cross-examination, and I, you know, would like to take you, I think, to...

ADV MOROKA: We all read the cross-examination.

MS SOOKA: Ja. There also is, and I think that is important, that, you know, I think Adv Varney puts to him the memorandum that they drafted from the NDPP at the time, Shamila Batochi, which she said went to Minister Lamola, and it is about a briefing on the TRC cases. I was quite struck by the acknowledgement in that letter, which talked about the irreparable damage caused by the blocking of investigations for a period of seven years cannot be underestimated.

20 And in addition to prescription now being applied to a number of new cases, a number of accused and state witnesses have died. If you read that ...[intervenes]

ADV MOROKA: Ms Sooka, I am going to ask the Chair for leave to interrupt your question, your evidence. This is not your evidence. It is somebody else's evidence. That is the point I am making to you.

We can, all of us can go through this. We are going to argue what the witnesses said, what the import is to be given to that evidence, what probative value is to be given to that evidence of people who gave evidence about things that they know. The point I am making to you; wherever you go in the body of this evidence, is not your personal knowledge. You are interpreting what other people have said and you are asking that your interpretation of what has been said be accepted. It is not your evidence. It is your interpretation of the evidence. You were not there.

10 MS SOOKA: With respect, it may not be my evidence, but it is certainly evidence that came before the Commission from the person concerned who said he did not experience executive interference. And yet, at the same time, in cross-examination he puts before the Commission that he, in fact, was one of the drafters with the late Adv Rodney de Kock relating to this ...[intervenes]

COMMISSIONER KGOMO: Ms Sooka, I think maybe the approach would be; whatever the various witnesses said, this will come out in argument, because this is really the gravamen of what Ms Moroka's statement to you is. So otherwise, you will have to go through all the
20 witnesses. I think you must accept that the argument will be placed before Court about what various witnesses said specifically, and that is the point. You accept that?

MS SOOKA: Thank you, Chair.

CHAIRPERSON: But I think to allow the witness an opportunity to respond in her own way, in her own words, let us allow her to give the

evidence that she wishes to tender before us, Ms Moroka.

ADV MOROKA: As the Commission pleases.

CHAIRPERSON: Yes, Ms Sooka?

MS SOOKA: Thank you, Chairperson. You know, remember that we are acting on behalf of a number of victims. We also have a number of cases that we have taken to court; and when you look at each of those cases, in fact, the only reason they either ended up in court, either under an inquest or in the case of those few ones which went to trial, that came about because we, in fact, litigated to make sure
10 that that happened.

But even when we did so, what we experienced was that we did not really get cooperation. And in fact, what was so striking was in the high court application around the Timol matter, when firstly we had the affidavits of Adv Macadam and then the affidavit of Adv Torie Pretorius; and in a way what they were saying is that there was effectively a moratorium since 2003 on the investigation and prosecution of TRC cases.

Now, bear in mind that we are speaking on behalf of victims as the legal representatives to the NPA, and at no point in that
20 process did anybody ever disclose that these issues were happening behind the scenes. We also had the affidavits of Adv Pikoli and Adv Ackermann in the Nkadameng papers to compel a decision, and that too spoke to the enormous pressure that they were under not to take these cases forward.

And so I do think that it is absolutely critical to look at the fact

that this came from the people who were there at the cold phase of doing the work. And I think that is the job of this Commission, to look at the affidavits properly, to look at the cross-examination. And I take the point, Commissioner Kgomo that these issues will come up in argument, but for the sake of the families who have had to wait more than 25 years for justice.

One of the cases on that list from the PCLU was that of the PEBCO 3. And in fact, if you look at the evidence, Adv Mpshe writes a letter to Minister Radebe, asking him to intervene with his
10 colleagues in the security cluster, so that that case can go ahead. In the end, that case was struck down on 12 October ...[intervenes]

ADV MOROKA: Chair, I do think it is not fair. I did not ask that question. Ms Sooka is giving evidence on issues that I have not raised.

CHAIRPERSON: Yes. Ms Sooka, just confine yourself to the issues that have been put under cross-examination.

MS SOOKA: Thank you, Chair. I think I have said enough.

CHAIRPERSON: Thank you. Does that conclude your cross-examination, Ms Moroka?

20 ADV MOROKA: That concludes my cross-examination, Chair.

CHAIRPERSON: Thank you. Mr Semanya, Mr Soni?

ADV SONI: Good afternoon, Chairperson. Good afternoon, Commissioners. I understand the NPA ...[intervenes]

COMMISSIONER KGOMO: Start from the beginning, because you did not have the microphone.

ADV SONI: Sorry. I understand the NPA wishes to cross-examine, Chairperson. There is an application, but that has not been... a ruling on that has not been made. It has been our practise to be the last person. It was for a particular purpose.

CHAIRPERSON: Yes, yes. In that regard, Mr Varney, we have Ms Sooka today for cross-examination by the DOJ. There is an application for cross-examination by the NPA, to which I have not ruled. In the event that I grant an application for cross-examination, how soon can Ms Sooka be here for cross-examination? We do not
10 want her to wait for long before she can conclude her cross-examination.

ADV VARNEY: Chairperson, we have not consulted with Ms Sooka on that question. We can do so after today's hearing.

CHAIRPERSON: Okay, okay. Mr Varney, any re-examination?

RE-EXAMINATION BY ADV VARNEY: Yes, Chairperson. We do have some questions for re-examination. Ms Sooka, during your cross-examination this morning, it was suggested to you that perhaps the TRC had not provided the NPA with any comprehensive list of TRC cases. I just want to refer you to bundle 1. That is the Calata
20 Group, bundle 1, the affidavit of Lukhanyo Calata, at page 38. I will wait for you to find it.

MS SOOKA: Yes.

ADV VARNEY: And just so we are on the same page, I will just read paragraph 102 into the record.

"The NPA, Adv CB Ferreira, addressed a letter

dated 31 August 2000, date stamped 11 September 2000, to the TRC in relation to the cases that have been referred for further investigation. We are not in possession of this letter. However, the TRC legal adviser and evidence leader, Adv PC Prior, responded by way of an undated letter (presumably in September 2000) titled 'Human rights files and other relevant records'. In this letter, Adv Prior acknowledged receipt of the NPA letter and indicated that the TRC would respond in due course. Attached to Adv Prior's letter was a list of 226 TRC cases in table format. This list appears to have been compiled from the TRC amnesty database, a copy of the letter and table by an annexure hereto marked FA14."

And perhaps we can just turn to FA14. It is at page, I believe it is page 382. The table itself starts at 383, although that page does not seem to be legible, but the table itself runs from page 384 all the way to 482. It provides a date and place of incidents, the offences, the named victims, listed perpetrators and organisations where that applies. Have you managed to take a look at it?

MS SOOKA: Yes, yes.

ADV VARNEY: Yes. Does that list constitute something other comprehensive list, given that it runs for about 100 pages, it deals

with close to 230 individual cases?

MS SOOKA: Yes, it does.

ADV VARNEY: Let us turn to page 470 of the supplementary cross-examination bundle. I will just wait for you to get there. It is titled "Performance against targets 2004/2005". If you need help, just let us know. We can send somebody to assist you.

MS SOOKA: Sorry, which page was it?

ADV VARNEY: It is 470.

MS SOOKA: 470.

10 ADV VARNEY: It is not the main cross-examination bundle, it is the supplementary one.

MS SOOKA: I think I may have messed this bundle up. Yes, I have it.

ADV VARNEY: Thank you. And my learned friend took you through this page. It is titled "Performance against targets 2004/2005", and as mentioned, this was a presentation of the PCLU on page 468. The title is "NSSD report to Portfolio Committee by Dr Silas Ramaite".

COMMISSIONER GABRIEL: And the date is 8 March 2006.

20 ADV VARNEY: Thank you, Commissioner. That is correct. And as you can see, it deals with the audit of 300 cases on hand in NPA structures. It refers to the closure of 167 cases and it refers to the prosecutions instituted in *S v Terre'Blanche*, *S v Blani*, *S v Nieuwoudt & 2 Others*. Perhaps we can pause there. Do you recall from the evidence of Adv Ackermann that those cases proceeded, because they were already investigated?

MS SOOKA: Yes, I do. And in fact, I think I might have said so.

ADV VARNEY: And you were referred in this document as well as other documents to the closure of around 167 cases. And given at this time the PCLU did not have investigators assigned to the cases, would you accept that the only basis for closing those would be on the examination of the contents of the existing dockets?

MS SOOKA: I accept that.

ADV MOROKA: Chair, is that the evidence that has been tended; that they were closed because of that reason?

10 CHAIRPERSON: Mr Varney?

ADV VARNEY: I am asking Ms Sooka if she accepts that that must have been the basis for the closure.

CHAIRPERSON: Yes?

ADV VARNEY: And she has responded in the affirmative.

ADV MOROKA: But Chair, but Chair, that is not fair. The witnesses were here that spoke to these cases. None of them gave that reason that you are now giving to the witness.

COMMISSIONER GABRIEL: I seem to recall that they did.

20 ADV MOROKA: That they closed cases because they did not have investigators?

COMMISSIONER GABRIEL: Oh, no, not that.

ADV MOROKA: But that is the point that I am making.

COMMISSIONER GABRIEL: Right, okay.

ADV VARNEY: That is not what I said, Chairperson. I said something else altogether, as Commissioner Gabriel has indicated;

that the cases were closed based on the back of the contents of the existing dockets.

CHAIRPERSON: Yes.

ADV VARNEY: If we move to the next bullet point, and this was not raised with you; "Further prosecutions put on hold November 2004, pending the formulation of guidelines." What is your recollection of the reason why they were placed on hold?

MS SOOKA: My recollection was; Adv Ackermann indicated that, in fact, he had been told that he should not proceed with these cases
10 and instructed not to deal with them.

ADV VARNEY: Let us turn to another topic, and this is dealing with your exchange with Ms Moroka on the question of the discretion of the NDPP and the NPA more generally. And she made reference to the Constitution and the NPA Act, which does not fetter the discretion of the NPA, to which you agreed. You then pointed out that this was the case until the amended prosecution policy, which came into force towards the end of 2005. Can you indicate why you believe that that amended prosecution policy did fetter the discretion of the NPA?

MS SOOKA: Thank you for that question. I mean, I think the best
20 way of dealing with this would be to, in fact, look at what Justice Legodi found in the Nkadimeng case, where he made a particular point that, indeed, you know, why was there a need for these prosecution policies to be amended, because clear guidelines already existed. And he said that the first prosecuting policy and directives, in my view, are adequate enough to deal with any decision to

prosecute or not to prosecute in respect of any offence, whether or not committed in the conflicts of the past.

Sorry, Chair, apologies. You know, I think if you look at Judge Legodi's judgement, he actually goes through all of the points which we had raised around why this amended policy was, in fact, really fettering the discretion of the NDPP, and of course he found then that the prosecution amendments were unconstitutional.

I mean, I remember counting up that when you looked at the criteria that were set out in part C, and I have a copy of it here, 10 beyond the requirements of the Amnesty Committee that they had to look at, there were now another 11 criteria, and they were dealing with things like whether or not the person showed remorse; in fact, whether, you know, what should be assessed is their contribution to nation building and reconciliation; and in addition to that, ill-health or humanitarian considerations, credibility, the sensitivity to the need of restitution.

I mean, all of that was suddenly taking away the absolute discretion of the NDPP in terms of the constitution to actually do his work. And Judge Legodi in his judgement, he actually points that out 20 and he said that; you know, he went on to say the whole procedure, as envisaged, is a recipe for conflict and absurdity, because on the one hand, it does not provide protection for such a disclosure. On the other hand, you know, it is a recipe for conflict, because the respondent may wish to use the representations once it has decided to prosecute, and the person who made such representations is on

trial.

I mean, I do not want to read through all of it, but if you look at, you know, he said the need for the procedure does not prevail, unless the intention is to grant indemnity or amnesty, broad interpretation or construction of parts A, B and C of the policy amendments display amnesty or indemnity or agreement, and that is contrary to what is allowed.

The result of this is that the policy amendments are not only unconstitutional, but they are also absurd and cannot continue to
10 exist. And he went on to make the point that it is the responsibility of the police and the prosecution authority, if evidence exists, to investigate and to prosecute.

And I think what we were saying is that, you know, clearly, we as representatives of victims depend on these institutions to do their jobs without fear or favour, or in fact, without any fetter on their discretion, and I think that that certainly happened with these guidelines amendments.

ADV VARNEY: Thank you, Ms Sooka. It was put to you that this Commission was all about investigating whether there had been
20 interference in the TRC cases. And I think in order to be accurate, we have to look at the terms of reference, which I am sure you do not have before you. So I will just read to you paragraph 1.1 of the terms of reference, which were promulgated on 29 May 2025.

“Whether, why and to what extent and by whom
efforts or attempts were made to influence or

pressure members of the SAPS or NPA to stop
investigating or prosecuting TRC cases.”

The word ‘interference’ actually does not appear anywhere in these terms of reference. It is whether efforts or attempts were made to influence or pressure individuals, persons within SAPS and NPA. So you are clear about the terms of reference?

MS SOOKA: Yes.

ADV VARNEY: Now, various extracts were put to you by other witnesses, such as the evidence of Advs Macadam and Pretorius.

10 And you quite properly attempted to point to other extracts from those same two witnesses, and I wish to give you an opportunity to do so, because it was suggested that both Advs Macadam and Pretorius had said that there was no interference in the work of the TRC cases.

ADV MOROKA: Chair, I did not say Pretorius said that. Please, let us be clear of the questions that I asked.

CHAIRPERSON: Yes, Mr Varney. Mr Pretorius was not included.

ADV MOROKA: Mr Pretorius was included, Chair, but I did not say Mr Pretorius said what Mr Varney is saying Mr Pretorius said. I did say that Mr Macadam said there was no interference. I then read
20 what Mr Pretorius said.

ADV VARNEY: All right, my team is just trying to find what my learned friend said about Mr Pretorius, but we will start with Mr Macadam. And perhaps let us start with Mr Macadam's statement in the Rodrigues case, which you referred to in your evidence under cross-examination. Do you have a copy of his statement that he filed

in 20...? It would have been 2019, I believe, in the Rodrigues matter.

MS SOOKA: I think I have it, but I probably have to find it in this morass of files.

ADV VARNEY: All right, in order to save you time; Chairperson, I will read into the record paragraph 46 of Mr Macadam's affidavit before the Rodrigues matter. It is a few places in the record. For example, it is in bundle 70 of the cross-examination of Adv Macadam, at page 146. Paragraph 46 reads as follows:

10 “In December 2017, I was contacted by the
NDPP’s office manager, who requested me to
collect certain of Pikoli’s documents which he had
found in the strong room. I collected the
documents from him and perused the contents.
The documents included the following:

46.1 A second draft of an indemnity bill making
provision for the President to grant
indemnity to persons committing politically
motivated crimes from 1 March 1960.”

And he attaches that.

20 “46.2 The terms of reference of the Amnesty
Task Team dealing with the criteria which
the NPA applies relating to TRC cases,
formulation of guidelines, and whether
legislative enactments are necessary. The
document concludes by referring to the

views of the intelligence agencies, and that
is annexed as RCM14.

10 46.3 The further report of the Amnesty Task
Team, *inter alia*, looking into whether
private prosecution of civil litigation can be
eliminated where a decision not to
prosecute is taken, and whether a person
agreed with the decision not to prosecute
can approach the International Criminal
Court.”

And he attaches that document.

“46.4 A letter dated 8 February 2007, addressed
to Pikoli by the then Minister of Justice,
expressing her concern that the NPA was
proceeding with TRC prosecutions, as she
was under the impression that the NPA
would not.

20 46.5 A memorandum addressed to the Minister
by Pikoli, setting out in considerable detail
what he construed to be interference with
the dealing of the TRC matters by other
government departments and concluding...”

And he quotes:

“I have now reached a point where I honestly
believe that there is improper interference with

my work and that I am hindered and obstructed from carrying out my functions on this particular matter. Legally, I have reached a dead end.”

And then lastly, paragraph 7:

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

10 So here you have Mr Macadam explaining to the Rodrigues Court why he was of the view that those cases did not go ahead, and he pointed to the correspondence between then Minister of Justice Mabandla and Pikoli, and he pointed to the Amnesty Task Team documents and then the memorandum from Pikoli to Minister Mabandla. What did that suggest to you Mr Macadam was attempting to explain to the Court?

MS SOOKA: It was actually why I was trying to raise that, in fact, his statement around executive interference, I think that was problematic for me, because if you look at what he said in the Rodrigues matter, which is also what I think really influenced victims to believe that
20 there was political interference, it was his affidavit and he made the point there that these documents speak for themselves and go a long way in explaining why from 2003, PCLU constantly struggled to have TRC cases investigated.

So, you know, the moratorium, pending the formulation of guidelines, I mean all of these issues really go to the heart of the

interference and the pressure. I mean if we talk about the pressure and influence on people who are trying to do their work. So that, I think when, you know, the transcript that was given me about his statement to the Commission, I think you have to go to the cross-examination to really get a sense of, you know, what they also said then later.

ADV VARNEY: And you also made reference to a memo that Adv Shamila Batohi prepared for the minister, the then Minister of Justice, Lamola, in December of 2020; and you made reference to certain
10 passages, such as the consequences of the wilful blocking of the TRC investigations at a critical time for a protracted period must be accepted and responsibility taken.

I want to refer you to the transcript of that evidence in relation to Mr Macadam. Chairperson, this is the transcript of day 82, cross-examination of Mr Macadam, page 106. It happened on 26 August of this year. I will just read to you from line 10, when this memo was put to him. Macadam was asked whether he had input into this memorandum. He said:

20 “Correct, this is the memorandum that was a joint product between myself and Adv de Kock, because from April 2020, Adv de Kock was my supervisor on all PCLU matters, including the TRC.”

So would it be fair to say that the passage that you quoted in all likelihood represented the view of Adv Macadam, given that this was

his product together with Adv de Kock?

MS SOOKA: Yes.

ADV VARNEY: Now, turning to Dr Pretorius, my attorney advises me that Moroka, Adv Moroka said that Pretorius relied on the affidavits of Ackermann, Pikoli and Macadam in relation to his evidence also before the Rodrigues Court. And I want to put to you certain passages in his transcript under cross-examination.

Chairperson, I am looking at the transcript from day 78 of the cross-examination of Dr Pretorius from page 66. And essentially we
10 put it to Dr Pretorius that the families will be submitting that the cases were undermined due to both political interventions as well as the individual conduct of persons within the NPA and SAPS. We asked for his response and he says at the top of page 67:

“Yes, Commissioners, I just want to add also political will, because I make a distinction between political will and political intervention. If there is no political will, you do not get your investigators that you need, they cut off the water and light.”

20 What is your response to that statement?

MS SOOKA: When I read it, excuse me, the cutting off of water and light, what is that? That is interference. It means that you are unable to do your job. So the distinction he drew between political interference and political will I think is semantics, because in the end the question is: what was the intervening factor which did not allow

them to do their jobs? And what he said in his evidence, in my view, amounts to political interference.

ADV VARNEY: Thank you Ms Sooka. No further questions.

CHAIRPERSON: Thank you. Thank you, Ms Sooka for having availed yourself again to... oh, sorry about that. Thank you, Ms Sooka for having availed yourself to come before this Commission for the further conduct of your cross-examination. There is an application by the NPA to cross-examine you to which I have to make a ruling. If I do grant an application for your cross-examination, you
10 will be expected to return here for the further cross-examination by the NPA. For now you are excused as a witness.

MS SOOKA: Thank you, Chair. I guess I cannot ask, like Mr Macadam, that you make a ruling that I do not have to come back, but congratulations too on your doctorate. I think well-achieved.

CHAIRPERSON: Thank you very much. These proceedings are adjourned until tomorrow at 10 o'clock.

ADV VARNEY: As the Commission pleases.

INQUIRY ADJOURNS UNTIL 6 OCTOBER 2026

CERTIFICATE OF VERACITY

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

JUDICIAL COMMISSION OF INQUIRY INTO TRC

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TRANSCRIBER'S NOTE:

- Where no information provided, names transcribed phonetically.
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