

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

**HELD AT:**

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

**BEFORE:**

**COMMISSIONERS:**

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

**EVIDENCE LEADERS:**

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

**REPRESENTATIVES**

Adv Varney (SC) – The Calata Group  
Adv D Pillay – The Calata Group  
Ms A Thakor – The Calata Group  
Adv KD Moroka (SC) – DoJ representative  
Adv Motlalepula Rantho (for SAPS)  
Mr Tabata (for Adv B Ngcuka)

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PROCEEDINGS ON 4 MARCH 2026

CHAIRPERSON: Mr Varney?

ADV VARNEY: As the commission pleases. Madam Chair, Commissioners, this morning we have a witness by the name of Anton Ackermann SC. He will be testifying from Cape Town. He is with us remotely on the screen. I understand that a sound check was conducted this morning. By arrangement with the commission, we will adjourn at lunch time and our attorneys in Cape Town will be monitoring Mr Ackermann's condition and it may be that we might  
10 have to stand down if he is not feeling too well, but hopefully we will be able to run through all the way to lunch of course with the tea adjournment.

CHAIRPERSON: Yes.

ADV VARNEY: With the leave of the commission, can we ask that Mr Ackermann be sworn in?

CHAIRPERSON: Thank you. Mr Ackermann, can you hear me?

ADV ACKERMANN: I can hear you.

CHAIRPERSON: Yes, please state your full names for the record.

ADV ACKERMANN: Anton Rossouw Ackermann.

20 CHAIRPERSON: Are you going to take an oath or affirmation?

ADV ACKERMANN: I will take the oath.

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

ANTON ROSSOUW ACKERMANN: duly sworn states

CHAIRPERSON: Thank you, Adv Ackermann. Mr Varney?

ADV VARNEY: Thank you, Chairperson. Chairperson, before we commence, I just would like to confirm that the commissioners have certain bundles before them. That includes a bundle that we are referring to as NPA documents from the Commission of Inquiry and then the bundles 1, 2 and 3. We did arrange with the commission staff to have those available. So I am hoping they are with the commissioners, because from time to time we will refer to documents in those lever arch files. Mr Ackermann, good morning. Thank you  
10 for joining us from Cape Town. Before we ...[intervenes]

CHAIRPERSON: If I may interpose; Adv Ackermann, I omitted to greet you. Good morning.

ADV ACKERMANN: Good morning.

CHAIRPERSON: Thank you.

ADV VARNEY: Mr Ackermann, I trust you are well this morning.

ADV ACKERMANN: Carry on.

EXAMINATION BY ADV VARNEY: Good. I will take that as a yes. Before we start, I just would like to have you confirm certain affidavits that you have made, beginning with the affidavit that you made out  
20 before this commission, which is dated 25 October 2025. Commissioners, that is in bundle 3, pages 19 to 30. Mr Ackermann, do you confirm that this is your affidavit, your signature appended to that affidavit?

ADV ACKERMANN: I confirm.

ADV VARNEY: And then the second affidavit I would like you to

confirm is dated 7 May 2015. That was filed in the matter *Nkadimeng v National Director of Public Prosecutions and Others*, Gauteng Division, case number 36554/2015. Do you confirm that that is your affidavit that you made out and signed?

ADV ACKERMANN: I confirm.

ADV VARNEY: Thank you. Now I know that you wish to make a short opening statement, but before we get there; just so that we are all on the same page. Can you give the commissioners a short account of your professional history?

10 ADV ACKERMANN: Commissioner, it will be short. I graduated from the University of Potchefstroom, the degrees BLuris and LLB in 1975. I was admitted as an advocate in 1976, served in the Office of the Attorney-General in Pietermaritzburg between 77 and 89, appointed Deputy Attorney-General Transvaal in 89 and I served in this post until 2003 [indistinct] status was conferred in 94, appointed by President Mbeki to head the Priority Crimes Litigation Unit on March 2003. I was relieved of duties in relation to TRC cases by Acting National Director: Public Prosecutions, Mpshe, in September 2007 and I retired from the National Prosecuting Authority on 31  
20 March 2013.

ADV VARNEY: Thank you. Mr Ackermann, you can now make your short introductory remarks.

ADV ACKERMANN: Commissioners, firstly, I would like to express my gratitude to the commission for allowing me to give evidence via Video Link. Regarding my health, I had a major heart attack and it

reduced heart function. Health-wise it means that my brain and my body is a bit slow in the afternoon; and that is not to say that I am agile and alert in the mornings. We will see how it goes.

The last six months I have been bombarded with documents from different entities connected to the commission. It was sent to me via email. I am not computer-literate and it caused me the pain and anguish to read and find these documents that were sent to me via email. I am making use of a tablet. I believe that is the name of the small computer.

10           And further, it would be remissive me not to express my sincere thanks to Jos Venter of Webber Wentzel who retrieved the relevant documents on my behalf and made hard copies of those that I needed. During the beginning of my evidence I will rely heavily on reports, memos, emails, letters I have written during my tenure at the PCLU. I regard these notes as, and these documents as contemporaneous notes as expounded by our law. It is more accurate than a memory of 23 years ago.

20           And what I did; I first acquainted myself with the terms of reference and more specifically to the heart of the terms of reference; namely, that whether any efforts or attempts were made to influence or pressure members of the NPA. I then read all the available evidence which consisted about at least 5 000 pages and made notes as I went along reading the documents. I identified a number of efforts and attempts to influence of pressure, influence and pressure of the NPA. I listed them as topics and I will deal with these topics

*seriatim*. Commissioner, were these topics supplied to you?

CHAIRPERSON: Yes.

ADV ACKERMANN: All right, thank you. And lastly, there is just, I wish to be ...[intervenes]

ADV MOROKA: Apologies, Chair; apologies, Mr Ackermann. I am really very sorry. We are talking about documents that we are trying to locate. What topics are those? We do not know.

CHAIRPERSON: Come again, Ms Moroka. We cannot hear you.

ADV MOROKA: The witness, Chair refers to topics and you have  
10 said that you have the list. I am saying we do not have that list.

ADV VARNEY: Perhaps I can clarify. What has been provided to the commissioners, and it is on the commission website, are a number of documents that Mr Ackermann had requested upon which he intends to rely as well as in respect of the other bundles. When he refers to topics, these are simply topics that he wishes to address the commission on. And actually we have not given a list of those topics. He is going to talk to them.

CHAIRPERSON: Yes, Ms Moroka?

ADV MOROKA: Because when the question was posed, honourable  
20 Chair, you said yes, we have them.

CHAIRPERSON: Yes.

ADV MOROKA: I did not understand what that meant. I was trying to understand what you have that we do not have.

CHAIRPERSON: Yes. That has been explicated.

ADV VARNEY: As the commission pleases. Mr Ackermann, are you

still busy with your introductory remarks or have you concluded?

ADV ACKERMANN: No, just one last matter. Commissioners, I wish to be addressed as Mr Ackermann, Ackermann, or Anton; and likewise, if I refer to somebody during the commission by the surname, it is not out of disrespect. It was just Mbeki or Ramaiti. It is just a habit.

ADV VARNEY: Thank you, Mr Ackermann. Let us now turn to the first issue that you wish to address, namely your views on the prosecution of the TRC cases. You wish to give an overview of how  
10 you viewed the pursuit of those cases. Please proceed.

ADV ACKERMANN: Yes, Commissioners. I can anticipate that during these proceedings I will be cross-examined on my personal views of TRC prosecutions. These are my views in that I am of the view that the TRC Commission was created and form part of a political settlement amongst all the political parties; and the task team and the task of the TRC Commission was to bring about reconciliation and a peaceful democracy.

By all accounts I accept that they have been successful to bring about the reconciliation, but the TRC Act has run its course and  
20 had been concluded and is now part of the history of South Africa. I am a prosecutor representing the people of South Africa; and as a prosecutor, I believe in truth and justice. The aim of the TRC was to establish truth and pursue reconciliation.

Commissioner, there is a fundamental difference between reconciliation and justice. In a just society, victims of human rights

abuses are entitled to justice, not reconciliation. They are entitled to a trial of the perpetrators and be found guilty to adequate punishment. Victims do not forget and indeed cannot forget. Forgiveness is not something that can be demanded. It is fundamental principle that perpetrators of heinous crimes be held to account. These are my principles that I applied during deciding on TRC prosecutions.

ADV VARNEY: Thank you, Mr Ackermann. I understand that you now wish to deal with the prosecutions of the TRC cases and that you  
10 intend to deal with this background in certain phases, commencing with the period between 1992 and 2003. Please proceed.

ADV ACKERMANN: Yes, Commissioners. After the closure of the Goldstone Commission of Inquiry into political violence in 1993, the government, they decided that its work regarding investigations of human rights abuses relating to conflicts of the past should continue under the supervision of the then Attorney-General of the City in Pretoria, Dr Jan D'Oliveira investigating then led to successful prosecution of three cases.

Perhaps I should start off by saying I am not, I was never a  
20 member of the D'Oliveira Unit. The cases that we did was the case against Colonel Eugene de Kock, the head of the Security Police and the covert union at Vlakplaas and he was convicted of multiple murder counts and sentenced to several life terms.

Then I also; Ferdi Barnard; he was a hitman for the CCB, a covert project at the South African Defence Force, convicted, *inter*

*alia*, of the 89 killing of the anti-apartheid's activist, David Webster and sentenced to several life terms. The Motherwell case where members of the Security Police killed four of their colleagues in the 1989 car bomb was prosecuted by Les Roberts of the Eastern Cape. I did the prosecutions against Ferdi Barnard and Eugene de Kock. And during the mid ...[intervenes]

ADV VARNEY: Just to clarify, Mr Ackermann; so you mentioned that you were not part of the D'Oliveira Unit.

ADV ACKERMANN: That is correct.

10 ADV VARNEY: So did the D'Oliveira Unit hand over cases to you in your capacity as a senior member of the NPA at the DPP's office in Pretoria?

ADV ACKERMANN: That is correct.

ADV VARNEY: Thank you. Please proceed.

ADV ACKERMANN: During the 90s I also drafted indictments against the following accused, both high-ranking members of the Security Police is General Krappies Engelbrecht. He was the head from covert unit. I think it was C1; and then also a case against Wouter Mentz and others. I cannot recall who the names of the  
20 others were. These dockets and the indictments I handed over to colleagues at the NPA for prosecution and I played no further part in these cases after drafting the indictments.

I was later informed – that was whilst I was at the head office, the VGM office of the NPA; that the NPA declined to prosecute these cases. It was declined by the Director of Prosecutions sitting on

Church Square. I do not know who the director was at that stage. With the creation of the National Prosecuting Authority in 98, all the cases held by the D'Oliveira investigating team were transferred to the NPA's national office.

ADV VARNEY: Thank you. Thank you, Mr Ackermann. Just before we turn to the creation of the Priority Crimes Litigation Unit in 2003, I would like you to deal with President Mbeki's speech made at the joint Houses of Parliament on 15 April 2003. That was on the occasion of the handing over of the final reports of the TRC. Please  
10 can you give the commission your views on President Mbeki's speech?

ADV ACKERMANN: Yes. My feelings about President Mbeki are ambivalent. He always appeared very stageman-like to me. He was diplomatic and the intellectual leader who understood the political landscape. I was never embarrassed to say in public and privately that he is a president of my country; and I will be ever grateful for him and Mr Ngcuka in appointing me as a special director to manage the most serious crimes in this country – high treason, terrorism, international criminal for nuclear offences, military systems. There  
20 are quite a few mentioned in the proclamation.

And I was appointed at the time when affirmative action was a government priority. I know that security vetting was done before I was appointed and I am further certain that if there was a shred of evidence that I am a well-known apartheid's prosecutor, as alleged by Mr Simelane, I would not have been appointed. I have read most of

President Mbeki's speeches and associate myself with "I am an African" speech he made in 1994. However, my high regard and respect for him has been dented due to his actions relating to this TRC Commission.

In the aftermath of the TRC reports of 1998, President Mbeki was faced with the so-called unfinished business. At the time a number of meetings occurred between the leaders of the ANC and generals of the police and the security forces. They were all in search for a political solution to prevent prosecutions of the security forces.

ADV VARNEY: If you can just pause for a moment, Mr Ackermann. How did you know that there were meetings taking place between leaders of the ANC and senior members of the erstwhile security forces?

ADV ACKERMANN: Commissioner, I will deal with that when; there is a heading that I have interaction with Jan Wagenaar. That is how I know about it and I will give evidence extensively on what Wagenaar told me.

ADV VARNEY: And just for the record, Commissioners; Mr Jan Wagenaar was the attorney for several of the former members of the security forces, including some of these generals allegedly involved in meetings, but please proceed.

CHAIRPERSON: In response to your question then, Mr Varney; it is Adv Ackermann's evidence that he knows about these meetings because of the interactions he had with Mr Jan Wagenaar.

ADV VARNEY: Yes, exactly and later in his evidence he will go into that in more detail.

CHAIRPERSON: Yes.

ADV ACKERMANN: Commissioners, then regarding President Mbeki, I am of the view that he is a very, very competent politician [indistinct] politician. President Mbeki knew that general amnesty was out of the question. He could not set up another amnesty process. It would have been unconstitutional. The solution to the unfinished business is skilfully retracted in the speech in parliament  
10 on 15 April 2003.

The speech, Commissioner is a classical Machiavellian and it is obvious that he has read the prints, a textbook he recommended at political leaders; and the principle I am going to refer to is the principle 'the end justify the means'. That is a very important principle of Machiavelli. The end that President Mbeki was so desperately seeking was some accommodation of many of those who did not take part in the TRC process. The means that he used to achieve this end was unconstitutional. It was also morally questionable. This was the process embarked by the amnesty task  
20 team, the draft amnesty bill and ultimately the amendments to the prosecuting, the TRC Prosecuting Policy which became effective on 1 December 2005. That amounted to a re-run of the amnesty process.

When we analyse the first half of his speech, you realise how masterfully he has sheered the South African public; that, first, he said there should be no general amnesty. He says prosecutions will

be left in the hands of the NPA. The NPA must prosecute TRC cases as is normal practise. The NPA has a duty to prosecute the cases that deserve prosecution. The work of the TRC cases will continue, full stop. Commissioner, that is the first half of his speech.

Then his statements on these matters, the first half, they were clear and a coherent statement of the law and the prosecuting policy that was before the amendments were effected; nothing new. The second half of the speech deals with the creation of a cast of perpetrators who were misled by the leadership is not binding on me  
10 as a prosecutor. There are some other matters too, like it is crucial that victims be consulted.

To make all these matters relevant and binding on me as a prosecutor, it must be incorporated in the legislation of this country, but of course we have a law in this country. It is on our books, which deals with perpetrators of human rights abuses. It is a TRC Act, an act of parliament and it says perpetrators of crimes of human rights abuses who did not apply for amnesty or who were not granted amnesty must be prosecuted. That is the TRC Act, the act of parliament.

20 There is this famous quote that always take the following; “the law is the law, is the law”. Nowhere in any act is it stated that perpetrators who did not apply for amnesty, because they were misled by the superiors, should be treated differently. The courts, when it comes to sentencing stage at the trial who treat these perpetrators differently, it will be considered during the sentencing

stage that they were misled and that it was a political crime, *et cetera*.

But in his speech there is no mention of the creation of a departmental task team; nowhere in his speech of the establishment of interministerial committees, directors-general forums or heads of department who will play a role in the decision process of the prosecution. You will not see that in the speech. And that is probably why it is called the amnesty task team, but it operated in secret. I refer to it as our secret amnesty task team.

Now to come back to the Machiavelli quote, “the end justify  
10 the means”; the means, the amended policy, prosecuting policy to deal with TRC cases that the president used to achieve his goals infringed upon the rights of the victims of human rights abuses and it was found to be unconstitutional by a court of law.

ADV VARNEY: Thank you, Mr Macadam. Commissioners, for the record, President Mbeki’s speech to the National Houses of Parliament on 15 April 2003 is in bundle 1 at page 508. So Mr Ackermann, can we then now proceed with your overview of the prosecution of the TRC cases and in particular with the establishment of the Priority Crimes Litigation Unit, the PCLU?

20 ADV ACKERMANN: The PCLU was established in March 23, but I only assumed office in May, June 2003, which I had some matters still at the NPA’s, the director’s office in Church Square 28. So I only arrived there in June. The motivation and reasons for the establishment of the PCLU was set out, I already said, in a presidential proclamation.

Now the PCLU was not established to manage the investigation and prosecution of TRC cases. If I may pause there; presently there is a TRC unit. I believe I read somewhere in 2019 they consisted of 40 investigators and 25 prosecutors, if I am not quoting the correct numbers, but that was what happened in, I think was 2020 somewhere. But five years prior to the establishment of the PCLU, a number of unions or entities were established to deal with TRC cases.

10 In 1998 the NDPP established a TRC unit in its office to execute the recommendations of the TRC Committee. Also in 1998 the NDPP directed and authorised the office of the DPP situated in Church Square 28 to investigate and prosecute TRC cases against members of the liberation movements. The DPPs of the different regions – there are nine; also dealt with a number of TRC cases. In 2001 the NDPP once again established a new unit to conduct TRC prosecutions. The unit was called SNPU, Special... perhaps Mr Varney can help me; Special National Projects Unit. Am I correct?

ADV VARNEY: That is correct.

ADV ACKERMANN: And Mr Macadam he was the head of that unit.  
20 But for the period of five years there were no TRC prosecutions. Macadam will be able to inform you what happened to TRC cases during the period 98 to 2003. Commissioners, two months after the establishment of the PCLU; the NDPP decided to declare all TRC prosecutions as priority crimes to be managed by the PCLU. And there in my tenure at the PCLU, ballpark figure, I estimated the time

spent on TRC cases constituted about 25 percent of the time. Of course there was a long period between 2004, 2004 to 2005, approximately two years.

ADV VARNEY: If you can just pause for a moment; Commissioners, the evidence on the establishment of the PCLU and the information provided by Mr Ackermann is also reflected in certain documentation. We refer to a document released by the NPA titled "about PCLU". It can be found in bundle 1 at page 491 and more information on the PCLU which confirms what Mr Ackermann said is to be found in the  
10 NPA's annual report of 2004/2005. That is also in bundle 1 at page 545. Mr Ackermann, you can proceed with the PCLU. Perhaps you can talk about the staff complement.

ADV ACKERMANN: It is important that the commission should know that the PCLU consisted of two – myself and two experienced senior advocates. We were three. There was Chris Macadam who was already working at the NPA head office on TRC matters. He was, as I said, the head of the SNPU. Then there was Torie Pretorius, also had an office at the head office and was managing high-profile cases. I was still at Church Square 28 doing mostly litigation work pertaining  
20 to human rights violations; permitting to [indistinct] about these people that I worked with there – first Chris Macadam.

Commissioners, I relied heavily on Chris Macadam during the first six months after the PCLU was established. He is a very competent advocate, hardworking, diligent, thorough and give great detail, attention to great detail, sometimes too much detail; and

combine this with an extraordinary good memory. Many of the reports that went under my signature were dictated by Mr Macadam. He will be able to recognise very quickly which reports were written by me and which reports were written by Chris Macadam. Mine will be in a telegram style. His will be in a paragraph style.

Macadam had the ability to sit in the office of the typist, staring at the top of a corner of the office and dictate reports for more than an hour without a note in his hand. The last time I saw him was when I left the NPA on 31 March 2013. I have never been back to  
10 the office.

90 percent of the documentation reflected in my submission were retrieved by Macadam; and I wish to express my sincere appreciation for the effort. I did not... they gave me the opportunity to come to Pretoria and look for documents. I did not do it. But Dr Pretorius, Commissioners, academic. He is the PRO of the PCLU and a people's pleaser. He could never say no to colleagues in the NPA when they asked him to do work which did not fall within the mandate of the PCLU, but he had a lot of experience in the investigations of abuses of human rights.

20 He also knew a lot of cabinet ministers; even dined with Mr Mandela one night. He was a member of the Goldstone Commission, a member of the D'Oliveira Investigating Unit. And at the PCLU he managed high-profile, I would say cold cases. We are talking about the Samora Machel air crash investigation, Anton Lubowski from Namibia. I do not know if somebody can still recall the Smit murders,

the Helderberg air crash. My colleague, Gerrie Nel, who is probably sitting there, once also said to us: listen, are you not investigating Piet Retief also, because it was a local joke in the NPA about all these old cases that we investigated and reopened.

Now, during 2000 the work was just too much. Now during 2006 two additional advocates joined the PCLU, which I personally headhunted – Shaun Abrahams and Mthunzi Mhaga. Shaun Abrahams became later the head of the NDPP. It will be remiss of me not to inform this commission that he was most hardworking  
10 official in that VGM building, full stop.

Mthunzi Mhaga was a likeable chap. He was witty, had a sense of humour and fitted nicely in the office of the PCLU. I assume quite often on the... I think he is a special director now and spokesperson for the Prosecuting Authority. And I was the head of that unit and mainly the punch bag of the PCLU.

ADV VARNEY: Can we now turn to the TRC cases and can you talk about the audit of those cases that happened?

ADV ACKERMANN: Well, I have no personal knowledge of the handing over of TRC dockets to the PCLU. Neither, nor the PCLU  
20 ever received any lists of TRC, of the TRC dockets from the TR Commission or the NPA. The Calata affidavit refers to a handover of lists of the TRC dockets. I was not aware of that.

I was informed by the two police officers, Adv Fritz's office and later at my office, that they had in their possession 395 dockets and that those were registered. I did not see the list that it was

registered. It was the policeman who informed me. And if I recall correctly, Macadam can give the correct figures. I think he had about 50-plus dockets in his possession. It was also established that the directors of the regions were in possession of TRC dockets, especially in KwaZulu-Natal. I disposed of the dockets in possession of the two policemen starting from the top of the pile. I told them to bring me 10 cases a day and I read them and I made decisions on those dockets.

ADV VARNEY: If we can just pause there, because I wish to bring to  
10 the attention of the commission certain documents that you are  
relying on. Commissioners, if I can refer to the memorandum from  
Chris Macadam to Anton Ackermann dated 15 May 2003 titled “audit  
of TRC cases”. That is in bundle 1 between pages 289 and 293. Mr  
Ackermann also relies on a memorandum from himself to Adv Silas  
Ramaite dated 24 October 2006. It is also titled “audit of cases”  
emanating from the TRC process. It is also bundle 1, pages 329 to  
340; and then lastly, a memorandum from Ackermann to Silus  
Ramaite dated 30 October 2006 titled “details of TRC cases closed  
by the PCLU”. It is also in bundle 1 at pages 315 to 325. Mr  
20 Ackermann, you can proceed with your account of the prosecution,  
attempted prosecution of the TRC cases.

ADV ACKERMANN: Perhaps I should just indicate. The first; I  
asked Chris to compile... I am now referring to 289, page 289, the  
document of Chris Macadam that he compiled on 15 May 2003, “audit  
of TRC cases”. May I express a few words on that?

ADV VARNEY: Please go ahead.

ADV ACKERMANN: I said to Chris that: what do we have? I wanted to get a feeling of all the cases. He then compiled this report and it was also his strategy how we should approach these cases and it is very good, I would say, strategy to deal with these cases. You will see; I will just read the headings, the cases that are referred to and then he mention new cases being evaluated for prosecuting purposes, a few cases there, actually quite a few; high interest cases which require attention, irrespective of the nature of the available  
10 evidence.

He had representations to investigate specific cases and he gives there a list; and then cases in the process of being closed, give a list; and then also assistance to other authorities. He had a list of reparations-related activities and then a list of investigating put on hold, pending the appeal in the assault case relating to jurisdiction for the conspiracy to commit crimes. He says policy considerations; he says there at the end, he says that:

20 “Once all the cases earmarked for prosecution have been investigated, a presentation will be given to the NDPP in order for him to confirm the prosecuting strategy. Thereafter, prosecutions will be instituted.”

And then there is an important point he makes there that the president also mentioned in his speech. Chris said:

“After convictions have been obtained, attention

will be given to cases which currently had evidence, since convictions may act as an incentive for perpetrators to come forward.”

There was also then a second audit report dated 24 October 2008. I mention these two reports. And between these two dates there were many other reports in the sense that every, I think, three months we have to report to the executive. They are giving him an update of all the cases, but ...[intervenes]

ADV VARNEY: Just a small correction, Mr Ackermann. That date is  
10 24 October 2006. You said 2008.

ADV ACKERMANN: Oh, I need some glasses. 2006; that was ...[intervenes]

ADV VARNEY: And Commissioners, that is in bundle 1 at page 329.

ADV ACKERMANN: I was asked at this task team – that was [indistinct] the first meeting, I suppose, was a week before that, say October 2006; and they wanted to know from me the audit of the cases that we are investigating. And then I compiled this audit. I mentioned, *inter alia*, that the PCLU conducted an audit of all the cases in both offices and what we established and I mentioned  
20 specific cases. I said there are cases finalised in court, matters closed by the PCLU and I had to discuss all of these cases.

In any event, there is a long list that; how many page, 11-page document was the audit that I conducted on these cases. A week later they then asked no, they want now an audit of all the cases I am trying to prosecute. This is a document report dated 30

October 2006. And again, it is [indistinct] pages report and I had to go again and tell them which cases I have declined to prosecute. There was a report I was requested to do; and I did it for this task team.

ADV VARNEY: And Commissioners, that internal memorandum of 30 October 2006 dealing with cases closed is also in bundle 1 at page 315.

ADV ACKERMANN: The next point I would like to make – hopefully it will assist the commission; and that is the TRC prosecution...  
10 perhaps I should say the non-prosecution of TRC cases spanned a year of approximately 28 years. To assist the commission in the assessment of what happened during this period, I think it is helpful if we can break it up into four time frames.

The first time frame is the period 96 to May 2003. That is the period before the establishment of the PCLU. I already stated about the two units that were established during that period, but the bottom line is; during that period there were no TRC prosecutions.

The second time frame is between May 2003 and October 2007. May 2003 is when the PCLU was established when I came on  
20 the scene and October 2007 is when I was relieved of my duties on TRC cases. Mr Pikoli was suspended, I do not know, two weeks before my being taken off the TRC cases.

Now during the period, that period; I am not sure about the number of cases, but there were at least six cases that I went to court with. I know the PEBCO 3 one was one of them. There were some

other matters too. So there were some prosecutions. The third time frame is the period October 2007 to 2017, a period of 10 years. That is when I left and Mr Pikoli left. Now during this period there were no TRC prosecutions which I know about; 10 years.

Now the fourth period is of course 2017 to date. As I stated there, I read in the newspapers or somewhere that there was a TRC unit consisting of 40 investigators, how many prosecutors. I do not know if it still is, but I do not see that many prosecutions, but I know they did conduct some cases.

10 ADV VARNEY: Thanks, Mr Ackermann. Can we now turn to what you referred to earlier, your interaction with the attorney Jan Wagenaar who was representing some of the former members of the South African Police Force; in particular, the Security Branch.

ADV ACKERMANN: Yes. I have known Wagenaar for approximately 40 years. My interaction with him was mostly as an adversary in criminal court cases involving members of the South African Police Force. And as such, he was also the legal representative of General van der Merwe and Vlok and FEL, Foundation for Equality before the Law or something to that effect. I

20 call them FEL ...[intervenes]

ADV VARNEY: And when you refer to Vlok, are you referring to the former Minister of Law and Order, Adriaan Vlok?

ADV ACKERMANN: That is correct, that is correct. My relationship with him, as I said, it was always cordial. He was a reserved person who played his cards close to his chest. We of course had

differences inside the court and outside of the court, but in all my dealings with him I always found him to be an honest person. Before my appointment as the special director in 2023, I investigated and prosecute members of the police force for murders of atrocities committed and ...[intervenes]

ADV VARNEY: Just a small point; when you say 2023, you mean 2003?

ADV ACKERMANN: 2003, sorry. Wagenaar got wind of the fact that I was drafting an indictment against General Krappies Engelbrecht  
10 and all the perpetrators of the PEBCO 3 matter. He made an appointment to come and see me and discuss the prosecution of these police members. It was a very long meeting, but the bottom line of this meeting was that he told me that I am wasting my time and that any attempt to prosecute TRC cases will be futile and a waste of time and money.

He told me about meetings between the South African Defence Force, the Police Force, with ANC leaders. He told me about President de Klerk and President Mbeki took part in these meetings and that they all agreed that there should be a political  
20 solution to avoid any prosecutions. He told me about the new amnesty law that will be promulgated and that the law will make provision for a special plea.

And if I am not mistaken, he even showed me some document that it was in the offering, this... it was; I did not even take cognisance of it, but basically he told me what I then read last year in

the Calata docket, affidavit where it makes reference to extracts of the Bubenzer's book ...[intervenes]

ADV VARNEY: Did he show you a copy of the draft Indemnity Bill?

ADV ACKERMANN: I do not recall at this stage, but I know at some stage he told me there was already a bill; and that was now before. That must have been the end of 2002, because I was still... but I am not sure about what the date is. He told me all these things; and Commissioner, by nature I am a very cynical person and what he told me, he showed me whatever, I took with a pinch of salt, because  
10 there was no doubt in my mind that the re-run of the TRC prosecutions will be unconstitutional. At some stage during ...[intervenes]

ADV VARNEY: Mr Ackermann, when you say TRC prosecutions, do you mean a re-run of the TRC amnesty process?

ADV ACKERMANN: Process to grant amnesty. At some stage during my interaction with Wagenaar between, I would say 2003 and 2005, he informed me that I must tell my bosses that if any member of the former Security Police Force are prosecuted, this Foundation for Equality before the Law will institute a private prosecution against  
20 them. And I paraphrase when I say 'my bosses'.

I asked Wagenaar to; these bosses that you are referring to, who are they? And then he mentioned the ANC 37. Of course I took umbrage and he saw it and he immediately apologised. I further informed him that FEL cannot institute a private prosecution without the authorisation from the NDPP. Of course we must issue a *nolle*

*prosequi* certificate.

Commissioners, I was surprised 20 years later that a second draft indemnity bill and reports of secret amnesty task teams were attached to the Calata affidavit. The bill and reports made provision for the granting of indemnity by the president of persons who made full disclosure of the political crimes committed under apartheid.

ADV VARNEY: Commissioners, for your records, the bill that Mr Ackermann is referring to or draft bill is attached to the Calata affidavit in bundle 1 at page 342, but I must stress it is not the whole  
10 bill. It is only the cover page and the preamble. We do not have a full copy of the bill. We have asked the evidence leaders to try and establish or try to get a copy of that full bill. You may proceed, Mr Ackermann.

ADV ACKERMANN: As I stated, it was last year the first time I read about these matters. Chris Macadam retrieved it from some safe, I believe; and I am quite certain, having discussed this with him. He must have been shocked when he read that, because I am quite certain he did not know about that. I will deal with that at some later  
stage.

20 The terms of reference of this amnesty task team recommended the draft of the amnesty bills. The bill stated in its, I think in its preamble. I have not got it now in front of me, but it says the terms of reference of the amnesty task team recommended the draft amnesty bill. The task team must work on the amnesty and it is a secret task team.

The Department of Justice, the National Intelligence Agency, the NPA, the SAPS and the Department of Defence were represented on this secret task team, but the PCLU was not represented. I had no knowledge of this amnesty task team or the existence thereof. I also had no knowledge of the committees that I am going to mention now. It is the Director-General Forum, the Departmental Task Team, the Heads of Department Forum, Interministerial Committee. I had no knowledge. I only heard about that last year. Now the further report of the amnesty task team states that, and I see there is a

10 paragraph C that I mentioned here.

“The proposed task team should work under the direct supervision of an interministerial committee.”

In paragraph D:

“From the paragraphs it appear to me that the following entities were going to play a very important role. It is the task team, the Director-General Forum and the National Director of Prosecutions.”

20 As I stated, I was not aware of these steps that were taken to create these teams.

ADV VARNEY: Thank you, Mr Ackermann. Commissioners, Mr Ackermann referred to the terms of reference of the amnesty task team. A copy of those terms of reference on bundle 1 at page 343 and then he also relies on the report of the amnesty task team. It is a

secret report. It is in bundle 1 at page 514. And then he made reference to the secret further report of the amnesty task team. That is also in bundle 1 at page 344. Commissioners, my attorneys in Cape Town indicate that Mr Ackermann needs a short break.

CHAIRPERSON: Yes.

ADV VARNEY: A short break of 15 minutes, if...

CHAIRPERSON: Of 15 minutes.

ADV VARNEY: If the commission so grants.

CHAIRPERSON: We will take a short adjournment for 15 minutes.

10 ADV VARNEY: As the commission pleases.

ADV ACKERMANN: Thank you, Commissioner.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Mr Varney?

ADV VARNEY: Thank you, Chairperson, Commissioners; we are grateful for the indulgence. Mr Ackermann, you still with us? Can you hear us loud and clear?

ADV ACKERMANN: Yes, I hear you.

20 ADV VARNEY: Great. Mr Ackermann, I understand that you now want to deal with the struggle of the PCLU to secure investigating officers for your TRC cases, but before we do that, I want you to outline the few cases that you actually were able to proceed with.

And before you do so, I just want to refer the commission to the relevant parts of the record where these cases are discussed. Commissioners, in Mr Ackermann's 2015 affidavit in Bundle 3 at page

6 ad paragraph 16 and the subparagraphs he deals with certain cases.

And also in the Calata founding affidavit in Bundle 1 at page 42, paragraphs 115.1 to 6 there is also an overview of certain cases that went ahead. Now Mr Ackermann, before I ask you just to give a brief overview of these matters, can I ask why these six particular cases you were able to go ahead with, but not the other TRC cases?

ADV ACKERMANN: Commissioners, I have not read the statement, my statement lately in connection with the cases, but the reason why I  
10 could proceed with certain cases is that they were investigated before I became the head of the TRC, I am thinking about the Chikane matter, I am thinking about the Pebco Three matter. The Blani matter I know was also investigated, there was a warrant of arrest out for the accused and he did not apply for amnesty when they arrested him in South Africa. Of course that was a matter that was ready for trial. It was the Eugene Terre'Blanche matter, I cannot recall, but I think it was also already investigated and ready for trial, so I could immediately proceed with those cases. May I just have a look at my affidavit where you refer me to.

20 ADV VARNEY: Yes, so it is in your affidavit, it is page 6 of Bundle 3, you deal with the Eugene Terre'Blanche case at paragraph 61, the Buyile Roni Blani case, 16.2 and the Pebco Three case at 16.3.

ADV ACKERMANN: In my affidavit at paragraph 16.1 I read that in 2003 the late Terre'Blanche, former leader of Afrikaner Weerstand Beweging, we had entered a plea agreement with him, the case was

ready for trial and Terre'Blanche pleaded guilty to five counts of terrorism. And I say in this affidavit that he was the very first TRC related case taken up by the PCLU.

I see in 6.2 I refer to the Roni Blani matter, it was an ANC matter, ANC member who was implicated in a mob killing of two people in 85. Blani was charged with the killings in 1985. He have managed to flee to Angola where he remained in exile until his return in 1992. He did not apply for amnesty since the evidence was clear and compelling and the case was already fully investigated. He  
10 pleaded guilty and I personally did that case where he was sentenced to 5 years' imprisonment.

And then there was Gideon Nieuwoudt matter, that is the Pebco Three, also known as the Pebco Three matter. This was the very first case that the PCLU brought in respect of perpetrators who had been denied amnesty. Their application for amnesty had been denied in 1999. Shortly after their bail hearing in 2004, Nieuwoudt and van Zyl, I am going to discuss it when I discuss the Pebco Three matter, I will set out what happened there. But this case was fully investigated and I could proceed with it, but there was some other  
20 obstacles.

ADV VARNEY: Yes, you are going to return to the Pebco Three case, so no need to go into the details now. Although I do want to highlight what you say in 16.3.2 of that 2015 affidavit. When you are talking...  
[intervenes]

ADV ACKERMANN: Certainly.

ADV VARNEY: About the review of the decisions to refuse them amnesty brought by Nieuwoudt and van Zyl and you say the review was delayed by some five years because of the failure of the Department of Justice to file its answering papers. What did you make of the failure of the Department of Justice to file their papers for a period of five years?

ADV ACKERMANN: Inexcusable. Chair, I appeared personally three times in the Jouberta Supreme Court where the judge asked us that we must either, is the Department of Justice must establish a new  
10 amnesty hearing, there is a certain procedure. After the, this matter was then later taken over by Mr Mpshe. May I deal with it when I go to the, when I discuss the Pebco Three matter.

ADV VARNEY: Yes, of course.

ADV ACKERMANN: But as I say, inexcusable the five years.

ADV VARNEY: Yes, of course you will, right, so you will return to the Pebco Three case and you can deal with in detail then. And then also in your statement you make reference to another matter you were able to proceed with, namely the attempted murder of Frank Chikane. I am also aware that you are going to be dealing with this case in  
20 much more detail, so we can pause and return to that case at a later stage.

ADV ACKERMANN: That was also another case that was ready for trial.

ADV VARNEY: Yes, you had investigated that, or rather had been investigated previously. But just to wrap up the cases and now can I

refer you to Bundle 1, the Calata affidavit at page 42 and paragraphs 115.1 to 115.6. It also deals with the cases you have mentioned, the Terre'Blanche matter, the Pebco Three matter and the Blani matter, as well as the Chikane matter. But then there were two other matters that I do not believe you dealt with personally, but they proceeded. Can I draw your attention to 115.1, the case dealing with four APLA cadres? Do you have a recollection of that matter, State versus Kwezi Ngoma and others?

ADV ACKERMANN: I have no recollection, at some stage I compiled  
10 a report and in brackets I gave the name of the advocate dealing with the matter, but I personally did not deal with that matter.

ADV VARNEY: And then there is another matter that I presume you also did not deal with and that is State versus Aaron Tayane and another. Commissioners, that is at paragraph 115.5 of the Calata affidavit, it relates to the murder of an MK cadre by the Transkei Security Police in 1988. The two accused were convicted and sentenced to terms of imprisonment in 2005. Do you have a recollection of that case?

ADV ACKERMANN: I have no recollection of that case. I also do not  
20 know who dealt with it in my office.

ADV VARNEY: Yes, I believe it was mister... anyway; we will come back to that if necessary. So on record those are the six cases we are aware of that you were able to proceed with, because as you say, you, those matters were already investigated. Now can I ask you to turn to the question of your attempts to get investigators assigned to

the TRC cases and here Mr Ackermann, given that you have made the point about the importance of contemporaneous documents, I would like you to read into the record certain documents? Starting with an internal memorandum that you addressed to Adv Ledwaba of the DSO and that is dated 11 November 2003. Commissioners, it may be an idea to extract that letter so you can follow it. It is in Bundle 1 at page 298. This is an internal memo that was addressed by Adv Ackermann to Adv Jeff Ledwaba, he was, I believe the chief operations officer of the...

10 CHAIRPERSON: Give us the relevant page.

ADV VARNEY: Of the DSO. It is page 298 of Bundle 1. It was attached to the affidavit of Adv Macadam as RCM5. If the Commissioners have found the memo, we can proceed.

CHAIRPERSON: Yes.

ADV VARNEY: Great. Mr Ackermann, please could you read that internal memo into the record?

ADV ACKERMANN: Commissioner, before I start, this letter I addressed to Ledwaba and I wanted to put everything on record, because at that early stage I realised that we are going to encounter  
20 problems in future about these non-investigative capacities. Okay, I will start then, I said:

Dear Jeff.

In the light of current developments, I am constrained to document the history of the above saga.

In 2001 the NDPP decided that the DSO was responsible for the investigation and prosecution of the above cases. Both Advocates Sonn and McCarthy made a number of public statements creating an impression that the DSO was making a sincere effort to do justice to the cases. In addition Advocate Sonn gave the President a full briefing on the matter.

10 In 2002 the SNPU was established in order to investigate the cases.

In 2003 and in response to the TRC's final report, the President placed the responsibility for the investigation and prosecution of TRC matters on the NDPP.

In May 2003 I gave the NDPP and his Deputies a full briefing on all TRC cases identified for prosecution.

20 My prosecution strategy was endorsed and Adv McCarthy indicated that there would be no problem in having the cases declared in terms of Section 28 of the NPA Act. The NDPP briefed the Minister and Justice Portfolio Committee accordingly. Shortly thereafter and in the same month you were presented with applications in terms of Section 28 relating to the cases.

In July 2003 you verbally informed me that you were not prepared to sign the declarations and were withdrawing the DSO from the further investigation of the cases. A letter to this effect was given to the CIO Leask by you (copy attached).

10 In response thereto I requested Commissioner de Beer to appoint the police to take over the investigations. After a series of meetings with him, he approached the National Commissioner who indicated that the police would only investigate upon written instruction of the President (Copy of de Beer's letter is attached). His primary reason was that the SAPS had transferred all their members with appropriate experience to the DSO in order to capacitate it to conduct these investigations.

20 After receipt of de Beer's letter, I made several unsuccessful attempts to contact you to discuss the matter. Eventually I had to report the matter to Dr Ramaite.

On 3 November 2003 you informed me that you would sign the declarations in terms of Section 28(1)(b) and would appoint SSI de Lange to conduct the necessary investigations.

On 6 November 2003, Dr Ramaite informed Adv Macadam that he had discussed the matter with Adv McCarthy who indicated that the DSO would investigate.

On 10 November 2003, Adv Macadam presented you with Section 28(i)(b) declarations. You informed him:

- a) That you are not prepared to sign any declarations.
- 10 b) De Lange would not be appointed despite the fact that it was explained to you that he was part of the initial investigation and familiar with all the witnesses and the facts of the cases.
- c) That during the course of 10 November 2003 another investigator will be appointed.
- d) The President should not be approached to involve SAPS.

As at the date of this letter I have heard nothing further from you. I am constrained to  
20 express my concern at the above state of affairs. Since July 2003 no investigations have been conducted. There are certain cases which could have been prosecuted which have prescribed. There is both National and International pressure to institute prosecutions (e.g. Simelane's case).

An amnesty hearing for the Motherwell matter has been set down for early March 2004 and the TRC was given an undertaking that certain investigations would be conducted and made available to the committee the availability of witnesses and high public interest dictate that the other cases be brought to trial as soon as possible. The failure to do so will bring the *bona fides* of the National Prosecuting Authority into serious dispute and do irreplaceable damage.

10

Since I do not have any investigative capacity, I am powerless to deliver on my mandate. For the sake of justice and expediency, I appeal to you to assign de Lange and another investigator to investigate these cases and to sign the declarations in terms of Section 28(1)(b). This chapter in our country's history must be closed without further delay.

This was report written on 11 November 2003.

20 ADV VARNEY: Thank you. Just to clarify, that was sent to Adv Jeff Ledwaba at the DSO and copied to the NDPP, Dr Silas Ramaite and Adv Leonard McCarthy SC. Just remind us, who was the NDPP at that time?

ADV ACKERMANN: 2003, must be Mr Ngcuka.

ADV VARNEY: Now did you get any response to this letter?

ADV ACKERMANN: Not that I can recall. I have not seen any letters in the documents, any reply to this complaint of mine.

ADV VARNEY: And can we just clarify just a few things in the letter. You make reference to declarations in terms of Section 28 of the NPA Act, can you just clarify why it was necessary to get such declarations in terms of that section?

ADV ACKERMANN: The DSO needs these authorisations to investigate any matter. It is a 28 section document that they have and they then have the authority, I think, to investigate matters.

10 Without it they cannot investigate any matter.

ADV VARNEY: Right. That is a... [intervenes]

ADV ACKERMANN: And that the President must sign it.

ADV VARNEY: That is a section dealing with initiating investigations in the so-called investigating directorates. You made reference in your letter to CIO Leask. Does CIO stand for chief investigation officer?

ADV ACKERMANN: I assume.

ADV VARNEY: Right. And we have actually heard from Mr Andrew Leask who was the chief investigation officer of the DSO at that time.

20 You made reference to the Simelane case, is that the Nokuthula Simelane case?

ADV ACKERMANN: Nokuthula Simelane.

ADV VARNEY: And on the second page we of your letter under paragraph xi, 11, subparagraph D. You write: on 10 November 2003 Adv Macadam presented you with the Section 28 declarations. You

informed him and I want to jump to D; the President should not be approached to involve SAPS. Can you just elaborate on that?

ADV ACKERMANN: I think he was referring to a letter that de Beer has sent to me, I do not know whether it was discussed with Ledwaba, but you know it does not make sense. He said I should not, we should not approach him. I have no reason and I do not know why he stated that. There will probably be a reason, but I do not know at this stage, I cannot recall.

ADV VARNEY: Right, we will have to deal with that letter from  
10 Assistant Commissioner de Beer and perhaps let us leave it for when we deal with it. Can I then ask you to turn to the next internal memo that I would like you to read into the record? Now this is a longer memo of some 21 pages where there is, background you have already given, perhaps we can skip certain paragraph. I will suggest to you which ones you can skip.

Commissioners, this internal memorandum is in the separate bundle that has been supplied, it is referenced as NPA bundle of documents from the commission. The background here, Commissioners, is that Mr Ackermann made a request for certain  
20 documents to be obtained from the NPA and the evidence leaders approached the NPA and certain documents were provided.

They have been posted on the commission's website and they should be a separate lever arch file with those documents in the bundle. And this internal memorandum should be at page 7 of that bundle. It is an internal memo from Adv Ackermann to Adv VP Pikoli,

the then NDPP. It is dated 16 May 2006 and the subject is; National Intelligence Agency incidents. I will just wait to see if you have been able to locate the document.

CHAIRPERSON: Yes, we are on the same page.

ADV VARNEY: Oh good. So Mr Ackermann, let us kick off, I am going to ask you to read paragraphs 1 and 2 and then you give background which you have already provided, so then you can skip to paragraph 7 and read from there.

ADV ACKERMANN: I must skip? Which paragraph must I skip?

10 ADV VARNEY: Just to save time, I think you can skip paragraphs 3 to 6. So if you can do 1 and 2 and then jump to 7.

ADV ACKERMANN: Chair, this... [intervenes]

ADV VARNEY: Those paragraphs deal with the creation of the PCLU, you gave evidence on that this morning.

ADV ACKERMANN: Chair, this is, I see it is classified secret, but there is nothing secret in it. It is most probably in public domain. I will start then, I ask, I say:

“Dear Adv Pikoli,

20 I confirm that you advised me that a recent meeting the National Commissioner made certain allegations against myself, my involvement in cases arising from the TRC process and expressed a reluctance on the part to have SAPS cooperate with the PCLU. I further confirm that you asked me for the basis of the acrimony which

existed between myself and the National  
Commissioner.

Then I start at paragraph 7:

Shortly thereafter Mr Ngcuka... [intervenes]

CHAIRPERSON: Paragraph 2.

COMMISSIONER KGOMO: Paragraph 2.

ADV VARNEY: Just quickly read paragraph 2 as well?

ADV ACKERMANN: Okay.

10                   “The purpose of this memo is to respond to the  
                      above allegations.”

Ja, that is...

ADV VARNEY: And just before you proceed, Chairperson, I note that  
it is nearly 11:00, I just wanted to establish whether the commission  
wish to take a tea adjournment?

CHAIRPERSON: Is it convenient for Adv Ackermann to proceed?

ADV VARNEY: I am sure it is.

CHAIRPERSON: Yes. If it is convenient, we will proceed.

20                   ADV VARNEY: As the commission pleases. You can now commence  
at paragraph 7 and Commissioners, I should have mentioned that  
unfortunately the annexures referenced in this document have not  
been disclosed as yet. We have been pressing the evidence leaders  
who in turn have been pressing the NPA to deliver those annexures,  
just to let you know in advance.

CHAIRPERSON: Yes.

ADV VARNEY: Thank you, Mr Ackermann, you can go from

paragraph 7.

ADV ACKERMANN: Paragraph 7:

“Shortly thereafter Mr Ngcuka informed me that my unit should take over the management of TRC investigations and prosecutions from the DSO. I am informed that this decision was based on the following background.

10                   Shortly after his appointment, Mr Ngcuka created a Human Rights Unit in his office, headed by a DDPP (Mr Brink Ferreira) to deal with such cases.

                    For various reasons, this unit had been unable to discharge its mandate and in 2001, Mr Ngcuka had transferred the cases to the DSO. Mr Ngcuka was adamant that all the TRC matters had to be investigated by the DSO and not SAPS.

20                   As a consequence of this decision, the DSO requested Commissioner de Beer to conduct an audit of all TRC cases carried by SAPS and to refer the cases in question to the DSO. SAPS was perfectly amenable to this request as is confirmed from the attached documentation relating thereto.

                    The DSO had only a small number of investigators in its head office available to

conduct all the investigations which were necessary and this limited any progress which could be made. Only a handful of cases were finalized where decisions were made not to prosecute.

10 7.5. At this point in time, the final report of the TRC had not been released and there was wide-spread speculation that the President was intending to declare an amnesty for further prosecutions. As a result, it was felt that it would be inappropriate to institute prosecutions before the report was released and the President had responded thereto.

Shortly after the creation of the PCLU in April 2003, the report became available and the President, in a public statement, ruled out any form of further amnesties. He specifically mandated the NDPP to proceed with prosecutions according to normal practices.

20 8. During May/June 2003, I immediately conducted an audit of TRC cases on hand and a presentation was given to Mr Ngcuka and his deputies. I had identified certain cases warranting prosecution, as well as a number of matters which required further investigation.

Mr Ngcuka and his deputies were satisfied with my presentation and I was given the go-ahead to proceed.

Then Annexure A, I do not have it.

9. I however ran into considerable difficulties in obtaining the necessary legal authorizations for investigations from Adv Ledwaba (who was Head of the DSO's operations). In addition, the DSO investigators complained that they required access to SAPS dockets and personnel to conduct the necessary investigations and that SAPS was reluctant to assist them. This related to investigations against members of the security forces. As far as investigations against APLA and MK were concerned, these were being dealt with by a Director and Senior Superintendent from SAPS, who reported to Adv Fick SC, a DOPP in Adv Mpshe's office.

10

As a result of the above difficulties, I met with Commissioner de Beer and requested him to take over the TRC cases dealt with by the DSO. He requested me to put my request in writing, as he indicated that this matter would have to be discussed with Commissioner Selebi. After I put in my request, he, in writing, advised me that

20

SAPS would not investigate, unless the President authorized it to do so. There was however no objection to SAPS continuing with the APLA and MK investigations. Relevant correspondence is attached hereto.

I appointed... [intervenes]

ADV VARNEY: If we can just pause for a second, just a question for clarification, so in that paragraph 10 you seem to be saying that there was however no objection to SAPS continuing with the APLA and MK  
10 investigations. Are you saying that they were willing to continue with those ones, but they were not willing to pursue investigation against the former apartheid security forces?

ADV ACKERMANN: I cannot recall why I wrote it there. Annexure C, D and E that is not attached and I assume that those attachments will set out why I wrote that.

ADV VARNEY: Thank you, you may proceed.

ADV ACKERMANN:

20 I appointed DOPP Macadam to focus on the DSO cases, while I dealt with the SAPS cases. Both Macadam and I disposed of a large number of cases on the basis that there were no grounds to prosecute. Macadam however had identified a small number of cases involving security branch members, but informed me that he could not prosecute these matters, as he had dealt with the

accused while he was a member of the TRC.

In addition, I believed that a prosecution relating to the attempted poisoning of Rev Chikane was also justified and that it would be inappropriate for any person other than myself to conduct the prosecution because of the links to the Wouter Basson matter which I personally had dealt with. I therefore decided to deal with all these matters myself. I appointed Macadam to deal with the Blani matter which SAPS had informed me justified prosecution.

10

12. Due to the fact that the security branch cases were ones where amnesty had been refused, I informed the suspects' attorney of my intention to institute proceedings so that any review of the amnesty process could be dealt with expeditiously.

During the course of the discussions, I was informed by the attorney that he acted for a group of former police generals, who were protecting the interests of any security branch member faced with prosecution. In this context, he informed me that a solid case had been prepared, implicating the President on a charge of terrorism, linked to the MK landmine campaign.

20

The two SAPS members dealing with the APLA and MK cases also informed me that there was a case against the President. It was clear to me that the case against the President was being relied on to intimidate the NPA and not prosecuting security branch members.

10 Due to the fact that neither the lawyer in question nor the SAPS members could on any occasion produce a docket containing evidence implicating the President, I instructed Macadam to go through all the relevant TRC evidence in order to establish whether there was any merit in the allegations against the President. Mr Ngcuka was at all times informed of these developments.

ADV VARNEY: If we can just pause for a moment, Mr Ackermann. The attorney you refer to in this paragraph, was that attorney Mr Jan Waggenaar?

ADV ACKERMANN: That is correct.

20 ADV VARNEY: And just to be clear, that sentence in the middle of that paragraph at the top of page 5 of your memo, and page 11 of the bundle, where you say it was clear to me that the case against the President was being relied on to intimidate the NPA and not prosecuting security branch members. Are you really saying that the case against the President was being relied on to intimidate the NPA not to prosecute security branch members?

ADV ACKERMANN: That is correct, Chair. At some later stage of my evidence I will deal with the matter.

ADV VARNEY: Thanks, you can proceed with paragraph 13.

ADV ACKERMANN:

13. Due to the difficulties encountered with the DSO, my two deputies and I met with Commissioner Lalla to inform him of my unit's mandate and to request him to channel any intelligence relating to the cases to my unit.

10 During the course of these discussions, I did express my dissatisfaction with the DSO and informed him of the allegations being made against the President.

Macadam also asked his assistance concerning the Motherwell case where the accused were alleging that the deceased had been killed because they were MK operatives. As I subsequently discovered, this conversation was clandestinely recorded both on audio and video.

20 That will be a separate matter that I will, a topic that I have identified to be given evidence on. So 14:

14. At a later stage, my two deputies and I were at short notice summoned to a meeting with Mr Ngcuka. Mr Ngcuka informed me that Commissioner Selebi had addressed a meeting of

the Directors General and alleged that Mr Ngcuka was preparing to have the President and six generals arrested and charged with terrorism.

Mr Ngcuka further informed me that Commissioner Selebi was in possession of a video recording in which he had admitted that the President was due to be arrested. I was then shown the video recording of my meeting with Commissioner Lalla and this was how I learned  
10 that the meeting had been recorded.

ADV VARNEY: Mr Ackermann, just a small correction. In that sentence starting Mr Ngcuka further informed me that Commissioner Selebi was in possession of a video recording in which 'I', as in you, had allegedly admitted the President was due to be arrested.

ADV ACKERMANN: That is correct.

ADV VARNEY: Please proceed at paragraph 15.

ADV ACKERMANN:

15. Mr Ngcuka further informed me that  
20 Commissioner Selebi had complained about the NPA being in possession of SAPS dockets. Apparently, the allegation was that these dockets contained the evidence that would be used to prosecute the President and other high profile ANC leaders. I denied the existence of both an attempt to arrest the President and others, as well

as the existence of the so-called relevant police dockets against them. Mr Ngcuka then made arrangements for you and three police commissioners to be present at Adv Mpshe's office the next day for an inspection of the dockets to be carried out.

10           At Adv Mpshe's office, Mr Ngcuka invited SAPS to identify the dockets relating to the President and others, which they were unable to do. Mr Ngcuka then instructed the SAPS Commissioners to have all the SAPS dockets removed forthwith and for the two SAPS members working with Adv Fick to vacate their office at the DPP's premises.

20           17. Shortly thereafter, Minister Maduna personally visited Mr Ngcuka, myself and Macadam and was fully briefed on all these developments. Macadam had compiled a report to Mr Ngcuka in which he had expressed the opinion that having perused all the relevant TRC material, there was no case against the President or the other prominent ANC members who had been refused amnesty. A copy of the report is attached hereto. Minister Maduna also satisfied himself and said that the allegations made by

Commissioner Selebi were untrue and undertook to inform the President accordingly.

It is Annexure E and F, I have not read them.

While I was absent from the office, I was informed by Macadam that Mr Ngcuka had summoned him to a meeting with Mr Billy Masetla. I was further informed that the purpose of the meeting was to satisfy the Office of the President that there was no intention to prosecute the President. Macadam finally advised me that he had given Masetla a copy of his report and that he was satisfied with the manner in which the manner had been dealt with.

10

Matter, it should be matter.

ADV VARNEY: Mr Ackermann, if we can just pause on paragraph 18, you refer to Mr Billy Masetla. Was Mr Billy Masetla at that time the Director General of the National Intelligence Agency, NIA?

ADV ACKERMANN: That is correct.

ADV VARNEY: Please proceed.

20

ADV ACKERMANN:

I was angry that Commissioner Lalla had clandestinely recorded a confidential meeting and in my personal capacity, sent him a letter in which I expressed my feelings. I heard nothing further from him.

I will deal with this matter later.

ADV VARNEY: Just for the... [intervenes]

ADV ACKERMANN: Paragraph...

ADV VARNEY: Commission's records, that letter can be found in Bundle 3 at page 27.

ADV ACKERMANN:

Thereafter, Mr Ngcuka resigned and Dr Ramaite was appointed as the Acting NDPP.

10 As a result of pressure to deliver on the TRC matters, I decided that it was important to institute a prosecution relating to the attempted poisoning of Rev Chikane. On the eve of the arrest of the suspects, I was informed by Dr Ramaite that their arrests should be placed on hold until further notice. Shortly thereafter, I was informed that guidelines had to be formulated and incorporated into the NPA's general policy and procedure before any further prosecutions arising from TRC matters could be instituted.

20 ADV VARNEY: Mr Ackermann.

ADV ACKERMANN: Shortly thereafter... [intervenes]

ADV VARNEY: Sorry, Mr Ackermann, just for clarification, you say as a result of pressure to deliver on the TRC matters, where was that pressure coming from?

ADV ACKERMANN: The pressure was in the press, it was from the

complainants, the victims, I think you were one of the persons that complained about being, the cases not being investigated. There were quite a few persons that addressed us and if I remember correctly there were also reports about them, this non-prosecution of TRC cases.

ADV VARNEY: Thanks, you may proceed.

ADV ACKERMANN:

10                   Shortly thereafter, Dr Ramaite informed me that he had attended a meeting in Cape Town with the Minister of Justice and Constitutional Development, other cabinet ministers and Commissioner Selebi. He further informed me that Commissioner Selebi had alleged that the NPA was planning to paralyse government by arresting a large number of prominent government officials who had previously been involved in MK activities.

20                   As a result, Dr Ramaite submitted a comprehensive, secret internal memorandum to the Minister, explaining in detail how the NPA was managing TRC cases and denying the allegation made by Commissioner Selebi. It is believed that Commissioner Selebi had sight of this report.

23. Due to delays with the finalization of

the processes necessary before the guidelines could be implemented, no significant work was done on TRC prosecutions in 2005.

In the latter part of 2005... [intervenes]

COMMISSIONER KGOMO: Paragraph 24. It is better to refer to the paragraphs, counsel. Paragraph 24, each time just refer to the paragraph, please. That will be... [intervenes]

ADV ACKERMANN: Paragraph 24.

COMMISSIONER KGOMO: Yes, thank you.

10 ADV ACKERMANN:

24. In the latter part of 2005 however, it was publicly announced that the President had appointed a commission to establish whether the DSO should be incorporated into SAPS. I was approached by the NPA's legal advisor, Gerhard Nel, and informed that Commissioner Selebi had submitted an affidavit to the Commission in which he had made several allegations against the PCLU and had in essence recommended its closure.

20

I was required by Mr Nel to respond to these allegations insofar as they related to the PCLU, which I did. I also attended the sittings of the commission and also discussed certain of the allegations with Deputy National Commissioner

Pruis and Commissioner de Beer. It appeared to me that Commissioner Selebi was under the impression that the PCLU was in some way part of the DSO.

25. In early 2006, the guidelines were finally implemented and you instructed me to proceed with prosecutions. The guidelines make provision for the PCLU to be assisted by representatives of SAPS, NIA and the DSO.

10 26. Prior to the implementation of the guidelines, you had advised me to convene a meeting of these role players, so as to inform them of the nature of the guidelines which were due to come into effect. Under your name, an invitation was extended to all the role players. However, only the DSO representative attended the meeting.

20 27. After the guidelines had been implemented, you again requested the relevant state departments to nominate officials as contemplated by the guidelines.

28. I also met with Adv Mngwengwe, who agreed that SAPS could take over the TRC cases currently with the DSO. I also had a series of discussions with Commissioner de Beer in order

to arrange for SAPS to take over all these TRC cases. In the course of these discussions, I gained the impression that Commissioner de Beer was not opposed to doing so, but that he required higher authority because he could agree to do so. In follow-up discussions, it appeared that there was now reluctance on the part of SAPS to take over these cases, which was not the case when I originally had spoken to Commissioner de Beer.

10

29. Eventually, at the request of Commissioner de Beer, I compiled a letter for you to submit to Commissioner Selebi, outlining all the cases which required investigation and requesting him to have the necessary investigators appointed. I have not had sight of a reply from him and only learned from you that he had at this meeting expressed his reluctance to cooperate with the PCLU and made other specific allegations against me.

20

ADV VARNEY: Mr Ackermann, just for... [intervenes]

CHAIRPERSON: [Indistinct]

ADV VARNEY: Clarification, in paragraph 28 you mention a certain individual, Adv Mngwengwe, do you recall who he was?

ADV ACKERMANN: The name is familiar but I cannot recall.

ADV VARNEY: Okay thank you, you may proceed.

ADV ACKERMANN:

30. I must confess to being taken aback by these allegations and deal hereunder with the specific ones which you brought to my attention:

30.1: "The chasing away of NIA from my office"

10 I am not aware of such an incident and deny that such an incident has ever taken place. The only time I have met with a NIA official was on 27 February 2006 at 11:45 in my office at the VGM Building in Weavind Park. This meeting occurred as a result of an invitation the PCLU had extended to NIA to discuss the implementation of the TRC guidelines.

20 NIA failed to send a representative to the first meeting. After approval of the TRC guidelines by the Portfolio Committee of the Department of Justice and Constitutional Development, the PCLU once again addressed a letter to NIA to discuss the possible assistance that NIA could render to it in the prosecution of perpetrators. As already stated, this meeting took place on 27 February 2006.

I stand to correction, but my recollection

of this meeting is as follows:

The meeting was scheduled for 11 am.

The representative of NIA was Ms Yvonne Mabule.

She arrived at plus-minus 11:45.

I provided her with a brief background which had led to the drafting of the guidelines. I also provided her with a copy of the guidelines and referred her specifically to paragraph B6, in which

10 it is stated:

"The PCLU shall be assisted in the execution of its duties by a senior designated official from the following State departments or other components of the NPA:

The National Intelligence Agency.

The Detective Division of the South African Police Service.

20 The Department of Justice and Constitutional Development.

The Directorate of Special Operations."

I am quite certain that I would have stressed the point that the final decision on whether to prosecute or not, is vested in the NPA. She informed me that NIA would only be interested in

matters which threatened national security.

At that point in time, I showed her a draft letter addressed to Commissioner Selebi, setting out the relevant cases under investigation. I am not sure whether I have provided her with a copy of the letter.

10 I think that I also informed her that the only case that came to mind, which could negatively have influenced the security of the Republic, was the Powell case which involved alleged arms caches in KwaZulu-Natal.

I can also recall that I cautioned her to keep the intelligence operations separate from police investigations to avoid any legal challenges.

This meeting was very cordial and tea or coffee was served during the discussions. The meeting lasted at least 45 minutes.

20 The only indication that could have created the perception of "chasing her out of my office" was the fact that according to my diary, I had another appointment at 13h00 with one Sophie Matemane. Although I might have been in a hurry at this point in time, I never "chased her out of my office". I am quite certain that a

verbatim recording of the meeting could be obtained from NIA.

13.2, the heading is:

The reluctance of SAPS to cooperate with Ackermann/PCLU relating to TRC matters.

10 My staff and I have had numerous meetings and dealings with SAPS members in connection with TRC matters and on not one occasion have we been informed of any such reluctance, nor am I in receipt of any written communication from SAPS in which such sentiments are expressed.

20 In fact, on more than 10 occasions, Commissioner de Beer informed me that he was more than willing to provide investigators, but that he required the permission of Commissioner Selebi. In at least three cases, investigators have already been earmarked to commence investigations once the required permission has been obtained.

Since 2003, all the non-TRC matters have been dealt with by a specialised SAPS unit, headed by Senior Superintendent Bester. Commissioner de Beer also informed me that Senior Superintendent Bester and his unit should

also be involved in the investigation of the TRC matters.

I have discussed these matters with Senior Superintendent Bester and some of his investigators and none of them have expressed any reluctance to investigate these matters, nor to work with me or the members of the PCLU. It would therefore appear that the only source of reluctance to investigate TRC cases, emanates from Commissioner Selebi.

10

30.3. As a result, I can see no reason for SAPS not to cooperate with the PCLU in the investigation and prosecution of TRC matters. My staff and I have a more extensive knowledge of such matters than the DPP's offices. In the numerous discussions concerning these matters between myself and the DPP's, they have expressed their difficulties in dealing with these cases and have welcomed the PCLU playing the role set out in the guidelines. It also makes sound sense to centralize all these matters in your office so as to ensure consistency in decision making and to fast track investigations and prosecutions.

20

The next matter is perhaps...

ADV VARNEY: Ja, can we... [intervenes]

ADV ACKERMANN: Important.

ADV VARNEY: Just pause there. The next matter is titled criminal charge against yourself. And as I understand it, Mr Ackermann, these were false allegations and unless you think there is a need for the commission to be aware of this, I think we can skip it and move to the next page dealing with the alleged acrimony... [intervenes]

ADV ACKERMANN: Commissioner, this is just another example of all the criminal cases I had to face during my tenure at the offices. There  
10 was no basis for it; it was just to intimidate me. And what was even worse is I was prepared to make an affidavit to give my version what happened. But I know that they said no, no, we want a warning statement and I have to supply them with a warning statement. This warning statement must be Annexure N. I cannot even recall it, but this was one of the many cases that was brought against me.

31. Alleged acrimony between the National Commissioner and myself.

I have had no direct confrontations with Commissioner Selebi and in fact, I have never  
20 had any personal dealings with him. I can only speculate as to the reason for the alleged animosity.

It would appear that Commissioner Selebi has an obsession concerning a non-existent attempt on my part to prosecute the President

and other prominent ANC leaders. It may be that he was placed in an embarrassing position as a result of his original allegations which were disproved and this coming to the attention of both Minister Maduna and Mr Masella, whom I take it, would have reported it to the President. See also the Secret Internal memorandum addressed to our Minister, especially pages 4 and 6.

ADV VARNEY: I think it reads 4 to 9.

10 ADV ACKERMANN: 4 to 9.

31.2. I was informed... [intervenes]

COMMISSIONER KGOMO: Just a moment. Mr Varney, I am not sure where we skim over 30.4, what happened to the charges against you? The, I am on 30.4.

ADV ACKERMANN: You said 30.4? Ja. I have not read it... [intervenes]

COMMISSIONER KGOMO: I am just... [intervenes]

ADV ACKERMANN: But it was... [intervenes]

COMMISSIONER KGOMO: I am just taking you back, ja. Yes?

20 ADV ACKERMANN: I can only state what I read here, but I do not want to make allegations who I thought was behind it.

COMMISSIONER KGOMO: No.

ADV ACKERMANN: But just the fact... [intervenes]

COMMISSIONER KGOMO: No, I just want to know whether they proceeded with it, whether it was withdrawn or was it just...

[intervenes]

ADV ACKERMANN: I must... [intervenes]

COMMISSIONER KGOMO: Was it just left in limbo or what happened?

ADV ACKERMANN: What happened is I then set out in my warning affidavit, I set out everything and told they are making a serious mistake of identity, because they... if I can recall, it was stated that I intimidated or I did something, I said something to a witness at the offices of the D'Oliveira Investigating...

10 COMMISSIONER KGOMO: Ja, can I just... [intervenes]

ADV ACKERMANN: And they were... [intervenes]

COMMISSIONER KGOMO: Sorry, can I just interrupt you. I just want to know whether you were prosecuted and discharged or whether someone declined to prosecute, that is all that I want to know at this point. Not... [intervenes]

ADV ACKERMANN: I do not know what happened to it, but I was never charged. My warning statement was filed in the docket and I carried on with my work.

20 COMMISSIONER KGOMO: Okay, thank you. You may proceed, Mr Varney.

ADV VARNEY: Thanks Commissioner, for that clarification. Mr Ackermann, I think you were busy with paragraph 31 and the subparagraphs. Maybe you can just start afresh at paragraph 31.

ADV ACKERMANN: Okay, at paragraph 31.

Alleged acrimony between the National

Commissioner and myself.

I have had no direct confrontations with Commissioner Selebi and in fact, I have never had any personal dealings with him. I can only speculate as to the reason for the alleged animosity.

10 31.1. It would appear that Commissioner Selebi has an obsession concerning a non-existent attempt on my part to prosecute the President and other prominent ANC leaders. It may be that he was placed in an embarrassing position as a result of his original allegations which were disproved and this coming to the attention of both Minister Maduna and Mr Masella, whom I take it, would have reported it to the President. See also the Secret Internal memorandum addressed to our minister.

20 31.2. I was informed that there was ill feeling between Mr Ngcuka and himself and I can again speculate that I was perceived as being an ally of Mr Ngcuka.

31.3. It would also appear that he erroneously believes that the PCLU is part of the DSO and his feelings concerning the DSO are a matter of public record. My involvement in the

Khampepe Commission may also be held against me.

31.4. In certain matters accorded a high profile by SAPS, my unit declined to prosecute. In one such matter, the suspect has instituted a multi-million Rand suit against SAPS and Justice. In another matter, he requested that the docket not be read by my staff member, but by persons in the DPP Office, Pretoria. The DPP who read the docket also agreed that there were no grounds to charge the suspects and eventually the complainant also accepted that there was no such case.

31.5. In certain cases, members of my staff have complained about poor police investigations. These complaints however were always done in a constructive manner and not intended to in any way damage SAPS.

I was invited to address the Controlling Body concerning problems with prosecuting South Africans performing security services in Iraq. He attended this meeting and alleged that the NPA was dragging its heels on these matters. Dr Ramaite submitted a detailed letter to him, pointing out that this claim was unfounded. A

copy of this letter was also submitted to the political heads who attended the meeting.

Paragraph 31.7 I said:

A combination of the above.

In the short period of its existence, I believe that the PCLU has proved its worth and achieved considerable success in the fields of:

Nuclear proliferation;

Chemical and biological warfare proliferation;

10 Conventional arms control;

Mercenary activity.

In several of these matters the cases have been investigated by SAPS and the PCLU has always given it credit for its work. On an *ad hoc* basis, my staff members have worked long hours of overtime to assist individual police officers in obtaining search warrants and with other complicated investigations.

20 33. I have, on more than one occasion, spoken to Commissioners De Beer and Pruis and suggested that we meet informally to resolve any differences which may exist between SAPS and the PCLU. After you had informed me of Commissioner Selebi's latest allegation, I also wrote to him, requesting a meeting to discuss the

matter. As of the date of this letter, I have not received a reply from him.

34. Despite this "animosity", my staff and I are perfectly willing to work with Commissioner Selebi and with SAPS. I believe that this will be to the benefit of our country, as the PCLU's short record to date establishes that when it teams up with SAPS, a significant inroad into combating crime is achieved. I believe that both SAPS and the NPA should have the same object of combating crime and not acting in opposition to each other.

10

ADV VARNEY: Thank you, Mr Ackermann. So if I can just return to your paragraph 32 where you point out that the PCLU had worked closely with SAPS in relation to other categories of cases, nuclear proliferation, chemical and biological warfare, conventional arms control and mercenary activity. But of course the TRC cases are not listed in that group. So am I right in saying that it was only actually in relation to the TRC cases where there were issues with SAPS in relation to investigations?

20

ADV ACKERMANN: That is correct.

ADV VARNEY: Now if we can return to the account that you want to give to this commission in relation to, you know, why it was that you had such a struggle to get investigators on the TRC cases. You have already mentioned that the DSO and the SAPS at that time were not

coming to your assistance. What can you add? What explanations do you have?

ADV ACKERMANN: Chair, I could never understand why the two investigating agencies could so blatantly refuse to investigate the TRC cases. It made no sense to me. It was puzzling to me that the DSO was withholding, notwithstanding the President's instructions and Mr Ngcuka's directions that the TRC cases were a priority, they still refused to investigate the cases and they would even put it in writing. I personally asked Adv Ledwaba what his reasons were for  
10 this refusal. And if memory serves me, he stated that he is the head of the operations of DSO and that he does not need to give me any reasons. Macadam and I also had a meeting with Commissioner de Beer. De Beer informed us that the police will not investigate TRC cases unless the President so directs.

ADV VARNEY: And perhaps if we can just pause there. Commissioners, Mr Ackermann is relying on a letter from Assistant Commissioner de Beer to Adv Ackermann himself. It is dated 26 September 2003 and it is in Bundle 1 between pages 296 and 297. Mr Ackermann, perhaps it might be useful if you could read that letter  
20 into the record.

ADV ACKERMANN:

Dear Adv Ackermann, the investigation...

[intervenes]

ADV VARNEY: Can you just hold on a moment, in case the Commissioners want to find that letter. It is at Bundle 1 at page 296.

CHAIRPERSON: Yes.

ADV VARNEY: Thanks mister... [intervenes]

CHAIRPERSON: We are on the same page, Mr Varney.

ADV VARNEY: Thank you Chairperson, thanks Mr Ackermann, you can proceed.

ADV ACKERMANN: Yes.

“Dear Adv Ackermann.

Investigations of TRC cases.

10 Your letter dated 20 August 23 as well as the preceding discussions between ourselves have reference. As agreed at our meeting, I have discussed your request for the assistance of the South African Police to investigate cases emanating from the TRC processes with the National Commissioner.

20 It is evident from your letter that the investigation and prosecution of these cases were referred to the National Director of Public Prosecution by the President. Our understanding was that this referral was politically inspired. As you know, a large number of cases to be investigated are those of ex-policemen.

It is therefore understandable that your first endeavour to have these cases investigated by the Directorate for Special Operations. From

your letter it is firstly not clear what the DSO do not have the legal mandate to investigate the cases emanating from the TRC. And secondly, why it was not possible to obtain a presidential proclamation to provide such mandate if it was lacking.

10 Your letter only states that in March 2002 consideration was given to the issue of a presidential proclamation, but problems were encountered in this regard. You are aware of the fact that the capacity created by the D'Oliveira committee is presently with the DSO. In view of the nature of the investigations, the fact that the President has referred it to the National Director and that it seems to be common cause that the initial understanding was that the DSO would have investigated it.

20 The opinion is held that you or the National Director should approach the President and confirm the instruction of the President on who he wants to investigate these cases. If the President indicates that the South African Police Service should be involved in the investigation, the instruction should be obtained in writing.

Upon receipt of that instruction, the South

African Police Service shall of course assist. And the terms of reference as well as issues such as logistics, number of investigators, command can be discussed as well as the other issues. You are therefore requested to approach the President on the matter where after we can take the matter further if necessary.

ADV VARNEY: Thank you. To the best of your knowledge, did NDPP Bulelani Ngcuka or anyone else in the NPA ever approached the  
10 President?

ADV ACKERMANN: I certainly did not. What happened is, there must be reports that I have written to Mr Ngcuka and to my divisional head, Dr Ramaite, informing them about this letter.

ADV VARNEY: Yes, so you took that action, but are you aware of NDPP Ngcuka ever approaching the President?

ADV ACKERMANN: I was not aware of it. What I know is were no signed 28 authorisations.

ADV VARNEY: I want to put to you a paragraph in Mr Ngcuka's statement dealing directly with this matter. Commissioners, this  
20 statement was put up by Mr Ngcuka and it is on the commission's website. The paragraph in question is paragraph 43. And in fact we heard from Mr Ngcuka earlier this week. The title of that paragraph is:

Response to the allegation that I did not approach the President.

'In the Calata affidavit, it is alleged that I did not

approach the President pursuant to Commissioner De Beer's letter to Mr. Ackermann which *inter alia* demanded that I should approach the President for his written confirmation as to which entity, between SAPS and the NPA, the President required to investigate TRC matters.

10 This demand by Commissioner de Beer was, with respect, nonsensical. The President had in his address to Parliament already stated that the NPA would be responsible for prosecuting TRC related matters. The President's directive by implication gave the NPA the responsibility for sourcing investigators and other resources necessary for the prosecution of TRC matters.

20 The SAPS as an organ of state was required to co-operate with and assist the NPA by providing or seconding investigative resources where these were required. This mutual collaboration and co-operation between organs of state (that is NPA and SAPS) is constitutionally mandated. There was therefore no need for me to approach the President in the circumstances.

What was required was for the two organs of state to co-operate on the matter and for the

leadership of the two institutions to maturely resolve the matter between themselves. Accordingly, when this issue came to my attention, I directed Advocate Silas Ramaite and Advocate McCarthy to resolve the issue.”

Were you aware of the instruction by the NDPP to Ramaite and McCarthy to resolve the issue?

ADV ACKERMANN: I was not aware of the instruction, but I can say that it was not resolved.

10 ADV VARNEY: What do you make of former NDPP Ngcuka’s statement that the demand by Commissioner de Beer was with respect nonsensical and that SAPS was in any event required under law and the Constitution to cooperate and assist the NPA with such investigations, therefore there was no need for him to approach the President? What, do you agree with that contention?

ADV ACKERMANN: I do not want to comment on that at this stage.

ADV VARNEY: Okay. Before we wrap up this section, is there anything further you wish to add?

20 ADV ACKERMANN: Is that regarding the refusal of the two investigating agencies?

ADV VARNEY: Yes.

ADV ACKERMANN: Reluctance. Well you know the facts and the documentation speaks for itself that the SAPS and the Scorpions did not want to investigate. I had no investigative people to do the investigations, we do not have investigation capacity and that was the

fact that there were no investigations, full stop.

ADV VARNEY: Thank you. Commissioners, there has been a request for a 15 minute break.

CHAIRPERSON: Yes.

ADV VARNEY: If the Commissioners so...

CHAIRPERSON: Yes. We will take an adjournment and reconvene at 12:05.

ADV VARNEY: As the Commissioner pleases.

CHAIRPERSON: At 12:10.

10 ADV VARNEY: As the Commissioner pleases.

#### INQUIRY ADJOURNS

#### INQUIRY RESUMES

CHAIRPERSON: Mr Varney?

ADV VARNEY: Thank you, Chairperson, and thanks for the indulgence. Chairperson, the request from Cape Town is that we deal with two fairly small, discrete matters before we adjourn for the day.

CHAIRPERSON: Yes.

20 ADV VARNEY: The first matter is a case that Mr Ackermann has already referred to in his evidence, and that is the PEBCO 3 matter. He is not going to go into great detail, but the commissioners are referred to the supporting affidavit of Nomali Ghalela, which is in bundle 9, between pages 168 and 179 for detailed background on that case.

CHAIRPERSON: Pages?

ADV VARNEY: 168 to 179.

CHAIRPERSON: Thank you.

ADV VARNEY: Mr Ackermann, you wanted to speak a little more about the PEBCO 3 prosecution. Please will you proceed?

ADV ACKERMANN: Just to have the following notes on it. I say that the facts of this case are fully set out in the affidavit of Nomali Ghalela. It is on page 1104, I am not sure what the page number is.

ADV VARNEY: Yes, It is already in the record for you.

ADV ACKERMANN: Nine members of the security branch of  
10 Port Elizabeth and the Klapplaats unit in Pretoria applied for amnesty.  
After the TRC hearing, eight members were refused amnesty  
because it was found that they did not make full disclosure about their  
role in the murders of PEBCO 3. I decided to prosecute Nieuwoudt  
van Zyl and Koenie with three counts of kidnapping and murder in the  
Supreme Court of Gqeberha.

During discussions with the legal advisor Jan Wagenaar, the  
following came to light. During the discussions with him, he said that  
the TRC ruling for not granting amnesty will be taken on review, and  
that there are TRC guidelines in the pipeline that will formulate the  
20 criteria for TRC prosecutions. I informed Wagenaar that I am taking  
note of the intended review proceedings and of the intended  
guidelines, but they will still be arrested on 11 February 2004 for the  
murder of the PEBCO 3, and a trial date will be set.

I personally appeared about three times in court in that case,  
and each time the case was remanded for review proceedings. I was

later informed that the Department of Justice failed to file any court documents. The court apparently provisionally withdrew the case against the accused.

The Department of Justice failed to reconvene an amnesty hearing, and the charges were not reinstated against the accused. I was, of course, taken off. Mr Mshea removed me from the TRC cases, and I was informed by McAdam that Mr Mshea had taken over the PEBCO 3 cases. McAdam will be able to shed further light on this case. All I can state is that the case never proceeded, and  
10 somewhere I read in a document that a spokesperson of the Department of Justice said that those are one of the cases that fell through the cracks. I think that was the PEBCO matter, because he just disappeared, but Chris will be able to tell us more about the case.

ADV VARNEY: Thank you, Mr Ackermann. I understand that you rely in part on a document. It is a memorandum, an internal memorandum, that you prepared, and you sent it to Dr. Ramaite, as well as advocates Piccoli and Pilay. The subject matter is details of TRC cases closed by the PCLU and the reappointment of Senior Superintendent Britz. It is dated 30 October 2006. Commissioners,  
20 that letter we referred to previously.

It is in bundle 1 at page 315. Now, Mr Ackermann, you do refer to the PEBCO 3 case in this internal memo at page 325. I want you to read certain paragraphs into the record. That paragraph falls under a heading on the previous page, at paragraph 2.28, and the heading is The Reappointment of Senior Superintendent Britz. Just

to give context, can I ask you to read into the record paragraphs 2.28.1 to the end of that letter, please?

ADV ACKERMANN:

10                    “At its last meeting, the committee was informed by Assistant Commissioner Jacobs that Senior Superintendent Britz would be reappointed to investigate the docket in possession of SAPS. I wish to express my concern at this. Britz was a former member of the security branch who, prior to the PCLU being involved with TRC cases, assisted the DPP Pretoria with cases involving the liberation movements.

20                    Former Police Commissioner General Van Der Merwe had formed an organisation entitled the Foundation for Equality Before the Law, which was intended to ensure that no further prosecutions of security members would take place. When I and my staff were appointed to take over the TRC cases in the DPP's office Pretoria, we gained the firm impression that Britz was not only very sympathetic towards the organisation, but had regular contact with General Van Der Merwe. In particular, Britz tried to persuade me and my deputy on numerous occasions that there was a provable case of

terrorism against President Mbeki arising from the landmine campaign.

This was raised in the context for security blast members to be prosecuted. The President would also have to be charged. It was clear that he was against prosecutions of security branch members, despite his claims he could never produce a docket implicating the President.

10 At one stage he informed me that the docket was with General Van Der Merwe and his legal advisor. This raises a very serious question as to how an official police docket could be retained by General Van Der Merwe, who was not entitled to possess police material after his retirement from SAPS.”

ADV VARNEY: If we can just pause there, you make reference to a senior superintendent, Britz. Can you recall his first name?

ADV ACKERMANN: Hennie.

20 ADV VARNEY: Hennie Britz. And I am also right in saying that the...  
(intervenes)

CHAIRPERSON: Is it Annie or Hennie?

ADV VARNEY: Hennie. H-E-N-N-I-E. Mr Ackermann, am I correct in saying that the reference in the Calata founding affidavit to senior superintendent Saker Britz is an error? It should have read Hennie Britz.

ADV ACKERMANN: That is correct.

ADV VARNEY: And then lastly, the reference to General Van Der Merwe, you state in that last paragraph that he had retired from the SAPS. Was that General Johan Van Der Merwe, the former head of the security branch and commissioner of South African police?

ADV ACKERMANN: That is correct.

ADV VARNEY: Thank you. Please continue.

ADV ACKERMANN: Paragraph 2.28.6:

10           “When the issue of prosecuting security branch members for the PEBCO 3 incident was raised with their lawyer, he immediately indicated that he was preparing to submit a docket calling for the prosecution of the president. I can only draw the inference that sharing of information took place between Britz and Van Der Merwe.

20           2.28.7 The issue of the prosecution of the president was raised at the highest level of government, and it resulted in inquiries being conducted by Minister Maduna, as well as members of the president's office. All parties were satisfied that the NPA had no intention of prosecuting the president. In fact, Mr Ngcuka had been provided with a report that no such case had been established in the TRC record.

2.28.8. This highly embarrassing incident caused

Mr Ngcuka to instruct that Britz vacate the offices of the DPP and that all the relevant SAPS dockets be removed. Britz was subsequently relocated to SAPS Crimes Against the State Unit. He requested the PCLU to provide written confirmation of the fact that the decision had been taken not to prosecute the president. When he received the letter, he tried to persuade the PCLU to reconsider its decision. I therefore believe that Britz lacks the necessary objectivity to be of assistance to the committee and that his reappointment may lead to further controversy as well as a potential leaking of information to General Van Der Merwe.”

10

ADV VARNEY: Thank you, Mr Ackermann. Can we turn to the last issue we'll deal with today? And that is the matter of the clandestine recording of your meeting with Mr Ray Lalla, who at that time was the Commissioner and Head of the Police Crime Intelligence Unit. You have made reference to this earlier in your evidence, but let us deal with it in detail now.

20 ADV ACKERMANN: Ray Lalla was a Commissioner and the Head of the Police Crime Intelligence Unit. We were desperately determined, that is now the PCLU, to find an investigating agency to investigate the TRC cases. McAdam then suggested that we ask for a meeting with Commissioner Lalla, who he described as a sincere and trustful person. He previously appeared at interaction with him.

On 25 August 2003, McAdam, Pretorius and myself had a meeting with Commissioner Lalla in his office at the Police Headquarters. At this meeting, I informed him about my dilemma not having investigators for the TRC cases and the refusal of the DSO to investigate the cases.

I also made uncomplimentary remarks about the Scorpions, the DSO, and Advocate Ledwaba. In short, I bad-mouthed the Scorpions. I cannot recall everything in detail what I said at this meeting. Fortunately, before we went into this meeting, I directed  
10 McAdam and Pretorius not to say anything at the meeting because I anticipated that there is the possibility that Lala might report back to his boss, Selebi, and did not want to compromise McAdam and Pretorius.

A few months later, I received a call from Mr Ngcuka instructing me to come to his office and also to bring McAdam and Pretorius with me. From the tone of his voice, it was quite clear to me that he was very angry. Arriving at the office, we found Ramaite, Leonard McCarthy, and Mr Ngcuka sitting in front of a TV. We were ordered to sit down and watch the video recording. In short, it was an  
20 audio and visual recording of the meeting in Lalla's office.

It was extremely embarrassing watching the video. We looked like the three stooges and I am doing all the talking. McCarthy and Ramaite were grinning all the time, and I do not blame them. Mr Ngcuka repeatedly asked me how could I have badmouthed his office and the Scorpions. I apologised. He carried on. I apologised

about three times. The fourth time, I gave him a piece of my mind regarding the attitude of the Scorpions.

I always had a very good relationship with Mr Ngcuka, but it was never the same again. I was very fortunate to not be suspended, and I expected to be removed from my office. I was very upset, and I think on the same day, I wrote a letter in my personal capacity to Lala.

ADV VARNEY: Let us just pause there for a moment, Commissioners. That letter that the witness refers to is in bundle 3 at  
10 page 27. It is dated 16 March, 2004.

Mr Ackermann, if you do not mind, I'd like you to read that letter into the record.

ADV ACKERMANN: If you look at the right-hand corner, It is my private address. It is PO Box 136, Moreletta Plaza. I was very angry when I wrote this letter. It is addressed to Commissioner Lala, and it just follows.:

20 "Dear Commissioner Lalla, with reference to your clandestine audio and visual monitoring of our confidential discussion on 25 August 2003, I wish to convey my utmost disgust and such underhand conduct. It is accepted practise amongst professionals when it is desirable that the meeting be recorded, that it be done openly.

The purpose of my meeting with you was to further the interest of justice. You came highly

recommended to me by McAdam and Pretorius as a sincere and trusted colleague. Obviously, they made the grave error of judgement.

Unfortunately, because of this experience, I am left with the firm impression that the only difference between your division and the old regime, security regime, is a change of surnames.

10 I said: See attached documents indicating previous attempts to get rid of me. In a number of court cases, counsel wanted to get rid of me. I did give to Mr Barnier a press clipping. I do not know if they used it, but anyway, the heading of that paper clipping is actually, they tried to get rid of Ackermann or something to that effect. The only time will tell if you have succeeded and whether the end justified the means.

In closing, I wish to echo the answer by Oscar Wilde during the class examination, his class examination, do not you have any decency?"

20 And I signed it and sent it to him.

ADV VARNEY: Thank you, Mr Ackermann. Now, what do you make of that incident? What did it demonstrate to you?

ADV ACKERMANN: If I have to speculate, I think he told Commissioner Selebi about this meeting that he taped it and Commissioner Selebi then sent it to Mr Ngcuka to have put me in a

bad light or probably suspended or something to that effect. But I have not seen that. I saw it once, the tape.

But if I recall, Ngcuka told me that in a meeting, Selebi said I have a video recording where I stated I was going to arrest the president. I can't recall whether it appears on that video. That is why I asked for the police to furnish me with the video recording. I have not received anything from them, but it must be in their possession. In fact, Mr Ngcuka must also have a copy. Bottom line is I was not removed.

10 ADV VARNEY: So, as I understand it, you're really saying that the NPA leadership was very concerned about the image of the Scorpions, but that the actual subject matter, or the purpose of your discussion with Raymond Lalla, that did not seem to register with them. Could you elaborate, please?

ADV ACKERMANN: In my notes I state the following. This meeting with Lala and the subsequent showing of the tape to Ngcuka and company demonstrates two things. That they were so concerned about the image of the Scorpions that the subject matter discussed on the tape did not warrant any discussion. Namely, my desperate plea  
20 to the police to assist the PCLU with the investigation of TRC cases.

I say here, one would have expected that Mr Ngcuka will say something like, I did not realise that you did not have investigations for the TRC, or Leonard, why can't you, the Scorpions, please assist with the investigations? Maybe, earlier this morning we heard Mr Ngcuka saying he said to Ramaite and Leonard they must sort out

these problems. Well, in any event, it was not sorted out.

I also read here that I say that I am of the opinion that the purpose of giving the tape to Ngcuka was just another endeavour of Celebi to get rid of me. I was certain that I was going to be suspended or at least have a disciplinary hearing.

It is of great concern to me that the police are not playing open cards with the Commission. Commissioner Lalla says the following in his affidavit to the Commission. At no stage during the whole of my SAPS career spanning the period of 1995 to 2011 did  
10 either DOJ or the NDP bring any TRC docket or specific enquiry to my personal attention. It is an affidavit I got on a website.

ADV VARNEY: Thank you, and indeed you contest that claim. Is that correct?

ADV ACKERMANN: Can you repeat that?

ADV VARNEY: You contest the claim made by Raymond Lalla that at no point in his police career did the NPA bring any docket or enquiry to his attention?

ADV ACKERMANN: We did bring an enquiry. Did I find the excuse?

ADV VARNEY: Yes, this is where we are going to ask the  
20 Commission to bring the proceedings to an end today. Commissioners, with your indulgence, we'd like to adjourn so that Mr Ackermann can rest in preparation for tomorrow.

CHAIRPERSON: Are you going to proceed with his evidence?

ADV VARNEY: Yes, we'd like to commence again tomorrow morning at 09:00 with his evidence.

CHAIRPERSON: At 09:00?

ADV VARNEY: Yes.

CHAIRPERSON: Okay. These proceedings are then adjourned until tomorrow morning at 09:00.

ADV VARNEY: As the commission pleases.

INQUIRY ADJOURNS UNTIL 5 MARCH 2026

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## CERTIFICATE OF VERACITY

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

### JUDICIAL COMMISSION OF INQUIRY INTO TRC

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- *Where no information provided, names transcribed phonetically.*
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