

**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 Rafik Bhana (SC) (for Adv RC Macadam)
Adv Nwabisa Ntshizana (for Adv RC Macadam)
Mr Tabata (for Adv RC Macadam)
Adv Varney (SC) – The Calata Group
Adv D Pillay – The Calata Group
Ms A Thakor – The Calata Group
Adv Gerrie Nel SC (for AfriForum)
Adv Phyllis Vorster (for AfriForum)
Adv KD Moroka (SC) – DoJ representative
Adv Vivian Rikhotso (for Adv Menzi Simelane)
Adv Motlalepule Rantho (for SAPS)
Adv Yanela Ntloko – (NPA)

18 MARCH 2026

DAY 23

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PROCEEDINGS ON 18 MARCH 2026

CHAIRPERSON: Mr Semenya.

ADV SEMENYA: Chairperson, Commissioners, good morning and we are to hear the evidence of Adv Macadam today.

CHAIRPERSON: Yes. Mr Bhana, I take it you are going to lead Mr Macadam?

ADV BHANA: Thank you, Chair.

CHAIRPERSON: Yes.

10 ADV BHANA: Good morning to you and the commissioners. May I proceed?

CHAIRPERSON: Yes, let me swear in Mr Macadam before you proceed.

ADV BHANA: Thank you.

CHAIRPERSON: You can sit, Mr Macadam.

ADV MACADAM: Thank you, Madam Chair.

CHAIRPERSON: Please state your full names for the record?

ADV MACADAM: Raymond Christopher Macadam.

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

ADV MACADAM: I will take an oath, Madam Chair.

20 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.

ADV MACADAM: So help me God.

RAYMOND CHRISTOPHER MACADAM (duly sworn states)

CHAIRPERSON: Thank you, Adv Macadam. Mr Bhana, your

witness.

QUESTIONS BY ADV BHANA: Thank you, Chair. Good morning, Adv Macadam.

ADV MACADAM: Good morning.

ADV BHANA: You received a Rule 33 notice from the commission dated 14 October 2025?

ADV MACADAM: That is correct.

ADV BHANA: We do not have to go there now. Essentially in due course we will deal with the pertinent points in the notice, but
10 essentially it deals with certain points or matters raised by a certain Mr Ahmed Cajee in relation to the late Mr Timol. Correct?

ADV MACADAM: That is correct, yes.

ADV BHANA: And a statement was prepared on your behalf to deal with those matters and the pertinent issues. Is that correct?

ADV MACADAM: That is correct.

ADV BHANA: And that statement is dated 3 March 2026.

ADV MACADAM: That is correct.

ADV BHANA: Chair, I will give you the pagination number in a moment. 3090, page 139 of the commission's bundle. Do you
20 confirm that statement under oath today?

ADV MACADAM: Correct.

ADV BHANA: And that is subject to certain typos that you have asked me to bring to the attention of the commission. The first is at paragraph 116.

ADV MACADAM: Correct.

ADV BHANA: Bottom of page 1425. And do you have your statement in front of you?

ADV MACADAM: I do. I have turned to, it is on my page 30 and it is the second paragraph from the top.

ADV BHANA: Thank you and the correction is the deletion of the word 'prosecute' in the first line and you want to substitute that with 'deal with'. Correct?

ADV MACADAM: Correct, Madam Chair.

10 ADV BHANA: The next small amendment is paragraph 120, commission bundle 1426.

ADV MACADAM: Correct, Madam Chair, I have turned to paragraph 120, it appears on page 31 and it is again the second paragraph from the top.

ADV BHANA: And in the second line you just wanted to delete the word prosecution. Correct?

ADV MACADAM: Correct.

ADV BHANA: And paragraph 6, sorry to take you back, there is a missing word there.

ADV MACADAM: That is correct. Page 1 that I have.

20 ADV BHANA: Yes, and commission bundle page, paragraph 6, there is a missing 'a' to respond to a rule 3.3.

ADV MACADAM: Yes and also I wrote in notice as well.

ADV BHANA: Yes.

ADV MACADAM: Because that was also omitted from the typed version.

ADV BHANA: Perfect. And subject to that you confirm the statement under oath, as you have said?

ADV MACADAM: That is correct.

ADV BHANA: Yes, thank you. And then just go very briefly through certain paragraphs of the statement to be highlighted. You set out background to your appointment and career in paragraphs 4, 5 and 6.

ADV MACADAM: That is correct.

ADV BHANA: Of the notice and very briefly can you just tell the Commissioners what is contained therein?

10 ADV MACADAM: Madam Chair, I joined the Department of Justice in 1980, having obtained a BA.LLB and as a prosecutor, at that stage there was no NPA, so the prosecutors fell directly under Department of Justice. February 1992 I was appointed as a deputy attorney general in the office of the then attorney general Natal.

In 1998 I was appointed by Mr Ngcuka to then head an investigation directorate focussing on the political violence in KZN. I served in that capacity, sorry Madam Chair, I just made one mistake. After being an attorney general, I then joined the TRC for a short period, firstly dealing with witness protection and secondly then doing
20 specified investigations as directed by Adv Dumisa Ntsebeza.

I was then taken out of the Truth Commission in order to head the investigating directorate into political violence which I started serving in 1998. And my last service there was in December 2000. What happened is that in-between the NPA had amended its act to give itself an investigative capacity. The Directorate of Special

Operations or the Scorpions.

Now the NPA Act provided that all the preceding investigating directorates were dissolved and they will be absorbed into the Scorpions, so they would not continue and run parallel with the DSO. Then I was invited by Mr Ngcuka to take up an appointment in the DSO head office, which I did in January 2001.

Almost immediately however I was instructed by Mr Ngcuka to take over the Department of Justice Witness Protection Programme. This is due to two key witnesses in the cases against PAGAD being
10 murdered in their safe house and there was a concern as to the safety of the other witnesses and whether witnesses will be deterred from coming forward if their lives were put at risk when they are under protection.

And then in March 2002 I was taken back into the DSO and at that stage I was appointed to head a head office component called the Special National Projects Unit, SNPU. Now that component had two portfolios. The first was to take over the TRC cases from a unit that Mr Ngcuka had set up in 1998, but had dissolved in 2000. So I was to continue their work.

20 At the same time I was to do organised crime projects where it was considered inappropriate to refer those projects to the regional DSO offices. I served in that directorate until June 2003. What had happened is in March 2003 Mr Ngcuka had set up the Priority Crimes Litigation Unit, the PCLU and that was set up to manage investigations and prosecutions into crimes that are specified in the

Presidential Proclamation that created the unit.

Now what happened is then Mr Ackerman SC was appointed as the special director and head of that unit and while I was still at the DSO in May 2003, I was approached by Mr Ackerman inviting me to join his newly established unit, which I did.

And then I joined the PCLU in June and at the end of May there was a meeting with Mr Ngcuka, Mr Ackerman, myself and then Dr Ramaite. He was the deputy national under whose portfolio the PCLU fell. The NPA has a national director and then four deputy
10 nationals.

Each deputy national manages a specific portfolio, for example asset forfeiture, the DPPs, you know where 90 percent of prosecutions take place. And then you had also the component that deals with civil claims against the NPA and then Dr Ramaite was in charge of all the special units that was set up by Mr Ngcuka.

We had the PCLU but we also had the SCCU which was doing serious commercial crimes cases and we had SOCA which was doing sexual offences against women and children. So all of those fell under Dr Ramaite. And at that meeting it was decided that all the
20 TRC cases would then come to the PCLU, would be managed by the PCLU reporting to Dr Ramaite who reported to the national director.

ADV BHANA: Thank you, can we then skip to paragraphs 21 and 22 and if you can take the commission through... [intervenes]

ADV MACADAM: Certainly, Madam Chair.

ADV BHANA: Very briefly.

ADV MACADAM: Is it 21 the first paragraph?

ADV BHANA: Yes, 21.

ADV MACADAM: I have it on my page 4 at the bottom paragraph.

ADV BHANA: 1396. I think you can proceed in the meantime.

ADV MACADAM: Certainly. Madam Chair, on 2 May 2003, this is while I was still in the DSO and before the TRC cases had moved to the PCLU, Mr Cajee came and saw me. He introduced himself as being the nephew of Mr Ahmed Timol, a detainee who had died in detention in 1971.

10 What he did is he informed me that he had done his own investigations into his uncle's death. Firstly he informed me that the inquest record had been destroyed in the magistrate's court, that is because of archive instructions which say if after a certain period there is no new evidence which justifies a prosecution, they may be destroyed.

 This was due to the magistrates complaining that they had inadequate space in the offices to keep this huge volume of documentation. So it was not destroyed to conceal anything, it was simply to comply with archive instructions.

20 He also informed me that there was a former police officer, Mr Gloy[?] who had been involved in the death of his uncle, that Mr Cajee had approached him and the police officer said that I have got nothing new to tell you, you must go and read the inquest record.

 And lastly he also had some documents that, with him, including I think Mr Timol's mother's statement as a victim at the TRC

and some reports by co-detainees. Now what he emphasised is that he had information that there was a journalist Ivor Powell and another policeman who was involved in the Timol matter was a Sergeant Rodrigues.

And the allegation was that the daughter of Rodrigues had gone to Mr Powell and told him that her father had given her a version of the incident which differed from the version that was put at the inquest. And he, you know, emphasised that it will be important to go and see Mr Powell, if he can confirm that disclosure made to him and
10 I agreed, that was a very important thing to do.

Now I must explain the difference between the police and the DSO. A police officer, on information can open inquiry and simply conduct an investigation and submit the docket back to a prosecutor who can then make a decision. Whereas with the DSO it is regulated firstly by Section 7 of the NPA Act which requires that an investigating director must be appointed.

Now Section 28 of the NPA Act requires that a investigating director must authorise all the prosecutions, sorry, all the investigations. So remember the DSO cannot on his own, his or her
20 own initiative start an investigation. The Section 28 further applies that if the director authorises the investigation, the director has to appoint the persons to conduct it.

Section 28(1)(C) requires that if after authorising the investigation additional crimes are committed, then the investigation director has to authorise an extension of the investigation. Only the

investigating director can decide to prosecute. And the law required that deciding to prosecute must also have the consent of the DPP where the crime has been committed.

So in this matter I could not on the basis of what Mr Cajee conveyed to me, immediately start an investigation. My responsibility was to request the chief investigating officer of the DSO to then do an informal inquiry to gather information which would enable me then to apply for an authorisation from the investigator. With the TRC cases as well... [intervenues]

10 ADV BHANA: Sorry, is that what you referred to as the Section 28 application?

ADV MACADAM: That is correct. So and what was also a prerequisite, the DSO required of me to submit a national project proposal dealing with the TRC cases which had to include a budget. And the project proposal and the budget had to be approved before any investigations would be authorised. What I did then is on, I must just...

ADV BHANA: 5 May, paragraph 22.

20 ADV MACADAM: 22. Sorry, I skipped. So what I did is I then wrote to Mr Leask two days after I had interviewed Mr Cajee. And I asked him not only to follow up the allegation of the disclosures to the journalist, but also to speak to Adv George Bizos who represented the family at the inquest, to see whether there were any TRC records relating to fellow detainees who may well have been able to document torture. And I also asked that he approach the chief

pathologist to give us an opinion on the original medical evidence. I just need to know, I do have annexures that are attached to my statement, dealing with this matter, if it is necessary to refer to those?

ADV BHANA: I will take you there if it is necessary. For the moment I think reference is to AD2 at 1428 of the commission's bundle and in particular if we can... [intervenes]

CHAIRPERSON: 14?

ADV BHANA: 1428. And in particular if you can look at the second page of that memorandum, paragraph 4, commission bundle 1429,
10 you then asked him to focus the investigation on certain areas.
Correct?

ADV MACADAM: That is correct, yes.

ADV BHANA: And can you just identify those?

ADV MACADAM: I must just find this again.

ADV BHANA: Sorry, I apologise Madam Chair, I must just page through to the second page of AD2.

ADV MACADAM: Of AD2. Madam Chair, I also apologise, I have arthritis so I battle turning pages.

CHAIRPERSON: No, take your time Adv Macadam.

20 ADV MACADAM: Certainly. I now have the correct page.

ADV BHANA: Yes, paragraph 4 you required further investigation into certain areas.

ADV MACADAM: That is correct.

ADV BHANA: Very briefly just go through them.

ADV MACADAM: The first was to interview Adv Bizos, he was the

lawyer who represented the family, so we believed he may well be able to supply useful information. Then he must interview Ivor Powell, the journalist. And then I asked, we had appointed two former TRC researchers on contract, to help retrieve archive material and to also draw our attention to evidence that had emerged at the TRC.

So I said talk to those researchers, see if there is additional material that they could source for us. Then an important thing is, I want to see if the policemen who were involved in the Timol matter were not implicated on other crimes, because obviously we want to
10 look at all these crimes and you could then establish a modus operandi rather than looking at one individual case.

And then I said if there were any ex-former detainees who were available and be prepared to be interviewed, they could be interviewed. And then lastly I said once he got all this information, is to request an opinion from the chief state pathologist.

ADV BHANA: Yes, thank you. Can you very briefly, just to assist the commission, outline the Section 28 process, just conceptually, what does it involve, how restrictive is it, have you had cases throughout or a Section 28 refused?

20 ADV MACADAM: Yes, Madam Chair, as I said everything is micro managed by the investigating director, so the prosecutor who is in the DPP, you know, has an unfettered discretion. If a police officer says I have received information from a member of the public, that prosecutor can straightaway request the police register an inquiry and start gathering information.

Now that cannot be done because as I said Section 28(1)(A) requires the investigating director to personally authorise the investigation and he does that on the basis of the material that you put before him and under cover of a report where you also set out all the legal implications.

And then also, because the DSO is part of the NPA, the NPA must pay for all the investigative costs, unlike the police where they have to bear their own investigative costs and the prosecutor just gives guidance as to what evidence needs to be gathered. So that
10 was also complicating, because now as a deputy director prosecution I also had to manage the budget of investigators.

But we go now to 28(1)(A) which is where it requires the investigating director to authorise investigations, but it gives him a discretion, he is not obliged to declare an investigation in respect of each matter that is referred to him. The only exception to that is Section 28(1)(B). If the national director himself or herself refers a matter to the DSO, they do not have a discretion, they must investigate.

Then we have 28(1)(C) which is where the investigating
20 director must authorise any extension of the original investigation. So he would authorise the death in detention of Mr Timol, but we say we see three other cases that are linked to it, arising out of my investigation, then we have to get him to authorise that before we can even start investigating those other matters.

Then there is another provision which says the investigating

director appoints the people to conduct the investigation. He must authorise specific persons to issue subpoenas, if you want to compel a witness to provide you with information.

And then finally, I think this falls under Section 24 of the NPA Act, that if he prosecutes, he must have the consent of the DPP. So this is a very cumbersome technical process which is unlike how it works with only prosecutors and case officers. And particularly when the DSO's mandate was serious organised crime, there you would want to move quickly and fast.

10 And that is not possible where everything has to go to the investigating director, because only one investigating director is appointed for the whole of the DSO and they had regional offices in the Eastern, Western Cape, Kwa-Zulu Natal, Gauteng. So that is the legislative process that had to be followed not only in the Timol case, but in every other case that we required the DSO to investigate.

ADV BHANA: In the Timol case, before applying under Section 28, you required a further investigation to be done with regards to...

ADV MACADAM: Yes.

ADV BHANA: AD2, is that correct?

20 ADV MACADAM: What I rather refer this to, not an investigation but inquiries. Because what we said is although the investigating authorised, he must have facts beforehand. So I said you can gather information from that open source or people who are willing to talk to you, which would not constitute an investigation, but that provides the evidential material which is then placed before the investigating

director. now... [intervenes]

ADV BHANA: As part of the Section 28.

ADV MACADAM: That is correct. What one would do is, I would as a deputy write an application, I would attach the evidence that we had obtained under cover of an affidavit from the investigating officer and if there were legal issues that were raised, I would deal with that. It all goes before the investigating director. If he is satisfied, he authorises.

If he refuses, then that is the end of the matter. It may be that
10 he say it is not enough now, see if you can come up with more and we can look at it at a later stage. But when it comes to legal challenges, at this time there had not been a legal challenge, but in 2004 there was a legal challenge to the authorisation of a 28 investigation on very serious corruption charges.

And the SCA then declared that investigation unlawful, because they found that there was noncompliance with Section 28. And then the SCA said they are mindful of the need to move quickly and effectively on serious crime, but that does not... it is not at the expense of legality. You must fully comply with Section 28 and when
20 you did, your investigation is invalid.

So this is why we did not have the judgment at the time, but I knew that we could anticipate challenges, that is why I wanted to have these applications watertight. So if we were challenged, we could demonstrate that we had acted lawfully.

ADV BHANA: Did you ever reach the stage of a prepared Section 28

application being submitted in the Timol case?

ADV MACADAM: Correct, Madam Chair, I had already started looking at TRC cases in March 2002 and we had opened 41 files, not only on matters requiring investigation, but other issues relating to the TRC. For example the TRC reported that 477 persons had disappeared, their bodies never being recovered.

Now that was brought to our attention, that we would see what we could do on that, because it was a very big concern, particularly for the poor victims. And I had then worked on certain cases and I
10 was very fortunate that I had the Motherwell bombing case, the Pebco Three case, the Mamelodi 10 case and two other cases and there you already had significant work that have been done.

In the Motherwell and Brian Ngqulunga matters, we had a full police investigation, a full criminal trial and a full amnesty process. So I said on that, those cases, there is more than enough to justify an investigation, so I drafted applications on all those matters as well as I included my project proposal and my budgets. So that was all submitted to the investigating director, I believe in May 2003.

ADV BHANA: I might have missed it, was the Timol case submitted
20 with those?

ADV MACADAM: No, you see that was one where we had information that we would have to start from scratch, you know if for example Mr Leask had interviewed the journalist Ivor Powell, we could declare it on that basis. But what we had is that the inquest was not available and the policeman that was involved had said he

stands by his version.

So that is why I did not apply for that, I wanted Mr Leask to first reply with these directives of mine, so I could then bring a proper application. But also this matter was brought to my attention only in May 2003.

Now in the Brian Ngqulunga and the Motherwell case, I believe that I had very strong grounds of prosecuting a security branch general who had been intimately involved in the murders committed by the security branch and there is a full set of evidence.

10 So that was our priority and also it emphasised limited resources, I only had one advocate who was available to me and we had a very small team of investigators.

So we had to prioritise our investigations, we could not address all these 41 matters at the same time. And I believed if you could effectively prosecute and get conviction against a police general, this would have a very positive effect that people who were deciding to sit the process out, would then come forward and talk on the fear that they will go the same route.

ADV BHANA: Just on the Timol matter, did you reach the stage
20 where you submitted a Section 28... [intervenues]

ADV MACADAM: No.

ADV BHANA: Application.

ADV MACADAM: No.

ADV BHANA: No? And why was that?

ADV MACADAM: As I said I was waiting for Mr Leask to comply with

these directives.

ADV BHANA: Okay. If we can go to paragraph 25 of your statement, can you take us through that?

ADV MACADAM: Correct, Madam Chair. This is a audit that I did while still at the DSO shortly before the PCLU came into existence and I was then appointed to the PCLU. It is Annexure AD4.

ADV BHANA: And that was on 15 May 2003 as you said?

ADV MACADAM: That is correct.

10 ADV BHANA: And Annexure AD4 if you can briefly take us through that?

ADV MACADAM: Yes.

ADV BHANA: It is the commission bundle 1457 as I have it.

CHAIRPERSON: 14?

ADV BHANA: 57.

CHAIRPERSON: 57?

ADV BHANA: 1457. Are you there, Mr Macadam?

ADV MACADAM: Yes, I am. If you look... ja.

ADV BHANA: You do not have to go through the detail, but just take us through the gist of what is that about.

20 ADV MACADAM: Okay. Heading A were cases that we believed could be prosecuted provided through the investigations were conducted. They are listed, we had seven of those matters. When we said if we successfully prosecuted those matters, we believe that would open up prosecution on the murder of the activists that were referred to as the Pebco Three and it would also open up the

prosecution of the policemen responsible for the killing of the activists in the Craddock Four matter.

Then what we said is that is category B. Category C was new cases that we believed that there would be prosecution, potential, on those matters. Category D is high interest matters which required attention irrespective of the nature of the evidence, so on those matters we believed even if you did not prosecute, you would have to justify why you are not prosecuting.

10 And then we move to E as representations to investigate specific cases and there the case number one is the death and detention of Mr Ahmed Timol.

ADV BHANA: Under category E?

ADV MACADAM: Under category E and that is the first case.

ADV BHANA: Yes. If we can deal then with paragraph 26 of your statement?

ADV MACADAM: Certainly. Correct, Madam Chair, that is dealt with in my Annexure AD5.

ADV BHANA: Perhaps just take us through the content of paragraph 26 and then we go to AD5 after.

20 ADV MACADAM: I have got AD5 in front of me. It is correct, I then submitted an application for authorisation of investigations six matters and I also submitted my national project proposal. And that was all done on 22 May 2003 and again this was done as a member of the DSO, because I had only joined the PCLU in June 2003.

ADV BHANA: I do not think anything turns on it, you said six matters,

your statement says five, nothing really turns on that.

ADV MACADAM: Correct, ja, I apologise, I did not do my mathematics when I did my statement, but it is six, you can see it there.

ADV BHANA: Yes.

ADV MACADAM: Listed one to six.

ADV BHANA: And that is at 1462 of the commission's bundle. If I can then ask you to please take us through paragraph 32?

ADV MACADAM: Okay, certainly. As I said, these had been
10 submitted to the investigating director already on 22 May. Now we could not proceed on any of these six matters there, specified there and these we had those authorisations. So what happened is we had no feedback as to whether my project proposal had been approved or whether my budget would be approved.

So this led to Mr Ackerman who was at that stage the head of the PCLU and I came to see investigating director, Mr Ledwaba, that took place on 15 July 2003. And then at that meeting Mr Ledwaba informed both of us that he had decided that all the TRC cases must be taken away from the DSO, that was must be referred to the police.
20 And he was very firm on that.

He was not prepared to consider any, you know, counterproposals from us and he requested that his instruction be reduced to writing as well. So that put an end to the DSO investigating all matters that we had, not just the six that were in the absent Section 28. Because in the other matters that were, we

wanted to continue gathering information so that we could get Section 28 on those as well.

But everything came to an end, nothing further could be done. The PCLU is not an investigative agency, so we depended either on the police or the DSO to investigate matters. Our sole role in the investigations is simply to give guidance to those matters, which is a normal thing where the prosecutor says these are the witnesses you need to obtain statements from; they must canvass these issues with them.

10 So essentially that brought all the TRC cases to a halt, instead for some 400 dockets that the police had investigated before April 1994 against the military wing of the African National Congress, those dockets were under the control of a Mr Fick SC, a very senior deputy in the Pretoria office. So because those were police investigations, they were not affected at all by Mr Ledwaba's decision.

ADV BHANA: So those stayed with the police?

ADV MACADAM: That is correct.

ADV BHANA: And the Timol matter was amongst those that were then transferred to the police?

20 ADV MACADAM: No, what happened is Mr Ledwaba made it clear, he is not going to investigate, we were then... we had no choice, we can only go to the police, it is the only other investigative agency available to us. So I do not know if you want to go ahead to my engagements with the police now or there are other things...
[intervenes]

ADV BHANA: I think for the moment I just want to know where was the Timol matter at that stage... [intervenes]

ADV MACADAM: It was one of these... [intervenes]

ADV BHANA: [Indistinct] being transferred... [intervenes]

ADV MACADAM: Matters that we had flagged as wanting further evidence to be gathered to lay the basis for a Section 28 application.

ADV BHANA: So not yet transferred to the police?

ADV MACADAM: No.

10 ADV BHANA: Okay. Can we go to paragraph 43 and 44 of your statement?

ADV MACADAM: Yes, I have it.

ADV BHANA: You can take the commission through that.

ADV MACADAM: Certainly. Perhaps may I just intervene, because this is now dealing with February 2004, but what happened is as a result of the meeting with Mr Ledwaba, Mr Ackerman and I then met with Commissioner de Beer. He was the divisional head of the detective service of the police.

20 So all the detectives fell under him and we asked him can the police now take over the cases which the DSO had declined to investigate. And added now to the ANC cases which the police already had. And there were meetings and requests to put our requests in writing.

But we got a response, I think it was September 2003 from Commissioner de Beer saying that having discussed the matter with the national commissioner of police, they would not take over those

former Scorpion cases unless either Mr Ackerman or Mr Ngcuka went to the President and explained to the President why the DSO was not doing its work.

The police letter alleged that when the DSO was set up, it was agreed between the police and the DSO that the TRC cases involving security forces would be the responsibility of the DSO and the claim was also that the police had transferred police officers who had previously worked on those matters to the DSO in order to give them that capacity.

10 And then clearly neither Mr Ngcuka nor Mr Ackerman did go to the President. I mean Mr Ackerman would not get an audience with the President and Mr Ngcuka would have good reasons for not doing so. So that explains now why these cases were not then taken over by the police and everything remained in limbo.

ADV BHANA: And that is dealt with in paragraph 36 of your statement and AD... [intervenes]

ADV MACADAM: That is correct.

ADV BHANA: We do not need to go there for present purposes. If you can then advance to paragraphs 43, 44?

20 ADV MACADAM: Certainly.

ADV BHANA: And perhaps also 45 and just take the commission through those.

ADV MACADAM: Yes, certainly. In February 2004 I received a fax from Mr Cajee, asking for feedback on the inquiries that I had initiated. And then on 25 February 2004, I informed Mr Cajee that the

allegations relating to Mr Powell had been followed up, but Mr Powell had denied all knowledge thereof. And I also confirmed that Mr Cajee had given me certain documents when I met him and I asked him to give me one document which I think I may have misplaced and any other documents. The reason I asked him is because he had informed me he had done this investigation, he was an employee of the state, so it was not an indigent person who had not any means to do this. And I never got a reply to that letter. Then if you want me to move now to 45?

10 ADV BHANA: Yes.

ADV MACADAM: So now what happened is as far as the DSO was concerned, I have already said that if the national director refers a case to the DSO in terms of Section 28(1)(B), the investigator has no discretion, he must investigate. His only discretion is on the conclusion of the investigation to decide whether to prosecute or not to. So his hands are tied, he must investigate.

Now the reason is that obviously the national director would not refer a matter to the DSO unless you have very valid grounds. Whereas on Section 28 it could be a request from a member of the
20 public or some experienced member of the DSO. But that is why it is mandatory, you cannot not investigate if the national director tells you investigate, direct you to investigate.

So what happened there is that in fact in December 2003 Mr Ngcuka did refer cases to Mr Ledwaba, including some of the cases that had been in my application, which I had submitted in May

2003. And additional matters which he then referred in February 2004.

The last referral by Mr Ngcuka was done a day after I had replied to Mr Cajee. So I was then very optimistic now Mr Ledwaba would agree to now take over the responsibility and we could put the cases back in the DSO.

ADV BHANA: Yes. And you say in 45 shortly thereafter you were assigned to duties that took you away from TRC matters, you had to deal with the international nuclear weapons syndicate case and
10 numerous other responsibilities. Correct?

ADV MACADAM: That is correct.

ADV BHANA: Yes. Can we pick up then at paragraph 53 of your statement and perhaps just deal with 53, 54 and 55?

ADV MACADAM: Yes, certainly. Madam Chair, the background to this is that in December 2005 the parliamentary portfolio committee on justice approved amended TRC... amended NPA policy guidelines dealing specifically with TRC cases. And then those guidelines made provision for the fact that the PCLU in the execution of its duties would be assisted by a single member from the police, the NIA, that is
20 the forerunner of the state security agency, it was then the National Intelligence Agency, the Department of Justice.

Why we listed justice, they were the custodian of the TRC records that were stored in the state archives. And then that is three departments, I think there may have been a couple more, but I cannot remember that the moment, unless I look at the proclamation. But it

is it is not important as to who these departments were.

But the fact is now the matters could be, oh yes and the DSO was also listed as a department which had to assist the PCLU. So I believe inserting that provision placed a statutory obligation on both the police and DSO to investigate TRC cases. They could not decline to do so, as they had done in 2003.

So I believe that properly implemented this would resolve our issues and then we have the police and the DSO working jointly. So you could divide the labour and sometimes it would be better for a
10 policeman to deal with the matters, sometimes better for a Scorpion. So on that aspect of the guidelines, I have regarded it as a very good step.

Now what happened is in terms of the guidelines Mr Pikoli had become the national director. He appointed Dr Ramaite as the chairperson of this... there is confusion, its technical name I think was the ...[indistinct] but it became, everybody referred to it as the task team, so I think for ease of reference I will just talk about the task team.

It did have another name officially in the Gazette. But
20 Dr Ramaite was the chair of the committee, then Adv Ackerman was the senior member of the PCLU who was represented in the matter. And then when I had been assigned the other duties and Mr Maga[?], a senior state advocate had taken over my responsibilities and he was working on the matter.

So there again I was not part of the process, except for

attending two or three meetings of the task team when Mr Ackerman was either not available or he wanted me to be present and to brief the task team on certain aspects. But what happened is on 5 June 2008 there was a meeting between Dr Ramaite, Mr Ackerman and myself and that, what was discussed there and what was decided is set out in AD18 of my affidavit. I do not know if you want to...

ADV BHANA: No, it is not necessary.

ADV MACADAM: Not necessary.

ADV BHANA: Yes, just to help the Commissioners, that is at 1487 of
10 the bundle, but we do not need to go there.

ADV MACADAM: Certainly, but the decision taken by Mr Ackerman is that he was now voluntarily withdrawing from his role in the task team, as well as in the further management of TRC cases. I would then take over his responsibilities and he then indicated that Mr Margo would then continue to deal with TRC cases, reporting to me and not to Mr Ackerman. We had another senior state advocate in our office, Ms Bukau and that she could also be made available to assist me. So now I was now back on TRC cases again.

ADV BHANA: Yes. And at paragraph 54 you say the cases you took
20 over from Mr Ackerman did not include the Timol matter.

ADV MACADAM: That is correct.

ADV BHANA: And did you know why that was so?

ADV MACADAM: I subsequently learned that it had been closed after I had originally dealt with the matter in 2003.

ADV BHANA: Do you know the reason that it had been closed?

ADV MACADAM: I think there was a mistake that a person thought the only inquiry was relating to Mr Powell and not looking at the other investigations that had been requested. But this was done after my time, so I cannot really comment.

ADV BHANA: Yes. Can you then take us to paragraph 55 and take us through that?

ADV MACADAM: Yes. Now immediately I said I now must participate in the task team meetings, but I discovered that they were not meeting, nor were any cases being subject to an active investigation.

10 I do not know if you want me to deal with Annexure AD... [intervenes]

ADV BHANA: No, that is not necessary.

ADV MACADAM: No. So...

ADV BHANA: Can we pick up then at paragraph 57?

ADV MACADAM: Yes. What happened is I then started meeting with Commissioner... [intervenes]

ADV BHANA: Perhaps I am just going to ask you this, dealing with AD80, was that a voluntary handover by Mr Ackerman to you?

ADV MACADAM: Correct.

ADV BHANA: Paragraph 57 then.

20 ADV MACADAM: Correct. Madam Chair, what happened is to get the task team up and running, I then had a series of meetings firstly with Commissioner Jacobs, he was the representative from the police in the task team and then Mr Piet Richer from the NIA.

Mr Richer was a deputy director general in the NIA, but he had from time to time attended task force meetings and I had a lot

other dealing with Mr Richer outside of the TRC matters where he was always very willing to help us. So I started talking to them with the aim that we can get the task team up and running and we can start doing investigations again.

And they indicated that the police and the NIA would become involved, but subject to approval from their principals and on the basis that it would again function as a task team functioned. So all those discussions were held and I was at that stage optimistic that we would get everything running again.

10 So then I assisted Mr Mpshe who is then the acting National Director Public Prosecutions to draft a memorandum to the Minister of Justice, informing him of what we had done and indicating that Adv Mpshe indicated he would then further report to the minister once the task team was meeting.

ADV BHANA: Yes and to orientate the commission, that is then on 17 February 2009 and the memorandum is AD20.

ADV MACADAM: That is correct.

ADV BHANA: And it is to be found in the commission's bundle at 1492. Correct?

20 ADV MACADAM: That is correct.

ADV BHANA: Can you very briefly go to AD20 and perhaps just take us through the paragraphs that I have identified and any others that you want to go through. Chair, 1492.

ADV MACADAM: I found it; I am just turning to page 1.

ADV BHANA: Yes, certainly.

ADV MACADAM: AD20 is in fact a copy of the memorandum.

ADV BHANA: Okay.

ADV MACADAM: It shows at the top the ...[indistinct] by the Director General Justice, the Deputy Minister and the Minister.

ADV BHANA: Yes. In paragraph 2 you give the background, generally in 2.3 you say:

10 “The victims were dissatisfied with the lack of progress we made in their matters and in certain cases appointed lawyers who declared the intention to institute legal proceedings against the NPA. Certain interventions from my office were necessary in urgent matters.”

ADV MACADAM: Yes, that is correct.

ADV BHANA: And then 3.3:

20 “No requests to investigate TRC matters have been received since November 2007 and it is anticipated that once the matters on hand had been dealt with that the chapter on these cases may be closed.”

In its report released, the 1998 TRC did in fact recommend that a time limit should be imposed on such prosecutions.”

Do you offhand remember the time limit?

ADV MACADAM: No, it was just a general statement in the TRCs 1998 report that they said that these, there should be a time limit to

prosecutions.

ADV BHANA: In 3.4 you then deal with the matters that are at hand at present and there is a list of matters, we can skip that and go to paragraph 5 where you say:

“Although the Pretoria High Court has declared the guidelines unconstitutional and an appeal has been noted, there is no reason why the investigations cannot proceed in the interim.”

ADV MACADAM: That is correct.

10 ADV BHANA: And in 6:

“Given the unique circumstances surrounding the TRC cases NIA has been requested to compile a threat analysis of the risks attached to such investigations. I will forward the analysis to you upon receipt.”

And then there is a sign off by several people, I think I can read some of the handwriting, but you might be able to do so... [intervenes]

ADV MACADAM: [Indistinct]

ADV BHANA: [Indistinct] with each of the comments by Adv Simelane
20 with the DG Department of Justice and Constitution... [intervenes]

ADV MACADAM: That is correct.

ADV BHANA: And thereafter with Adv de Lange, Deputy Minister of Justice and Constitutional Development and then Mr ME Surty, Minister of Justice, perhaps just take us through... [intervenes]

ADV MACADAM: Yes.

ADV BHANA: Their comments on the... [intervenes]

ADV MACADAM: The Director General indicated as follows:

“It may be useful that the minister first discuss these matters with the IMC.”

Now IMC, interministerial committee:

“So that the acting NDPP can be advised how to proceed, especially on what the mandate of the NPA is on these matters, if at all.”

ADV BHANA: Yes and then Adv de Lange.

10 ADV MACADAM: I find it more difficult, but I think I will be able to convey what he says:

“I cannot find fault with the approach adopted, in fact and law the NDPP must proceed with prosecutions or not, if requested, to ensure this does not take place in isolation. The task team was established as part of prosecuting policy, as this is a sensitive matter, I agree...”

And I do not know if this is ‘going to consultations’, I cannot make out that:

20 “Consultations with the NCI.”

I take that that will be the National Commissioner of Police and the President.

ADV BHANA: My attorney says NSC, the National Security... [intervenes]

ADV MACADAM: Oh, I see.

ADV BHANA: Okay and the President, is that ...[indistinct]

ADV MACADAM: And then lastly the minister said:

“Investigations must proceed! However, matter
can be raised in the IMC meeting.”

ADV BHANA: And what was that about?

ADV MACADAM: I was never informed of whether that meeting took
place and if it did what the deliberations were.

ADV BHANA: Alright. So I want to just pause at this stage, is there,
are you aware of any political interference or is the position rather that
10 matters are being given attention and there is a desire to progress
those matters?

ADV MACADAM: What I would say is that clearly the NPA wanted
these matters investigated. The NPA that did all the steps to try and
convene a task team and you can see in the memos written by the
National Director that he was emphasising how very important that
must be done.

ADV BHANA: Yes. And in paragraph 58 you say, the TRC
committee, I have...

COMMISSIONER GABRIEL: No, no, finish off what you were doing.

20 ADV BHANA: Just to round off, paragraph 58 you say:

“The TRC committee however never
reconvened.”

Do you know why that was so?

ADV MACADAM: I did not. We heard nothing further after that
memorandum was sent and sent back to us. So attending high level

meetings would be dealt with by the acting National Director, not me. And we certainly did not get any further feedback out of any follow-up ministerial meeting.

ADV BHANA: The Commissioner has something to put to you.

COMMISSIONER GABRIEL: Thank you. Can I take you to paragraph 2.2 of your memorandum?

ADV MACADAM: Indeed.

ADV BHANA: Page 1492.

COMMISSIONER GABRIEL: 1492.

10 ADV MACADAM: Yes, I have it now.

COMMISSIONER GABRIEL: And it is recorded there:

“Since 2007 the task team has not sat due to the fact that matters relating to it were tabled before the Ginwala Commission. The effect thereof was that investigations into TRC matters could not continue.”

Are you able to speak to it? This is before your time or...

ADV MACADAM: Commissioner, I was not directly involved.

COMMISSIONER GABRIEL: Right.

20 ADV MACADAM: The persons who can best explain that would be Mr Ackerman who was the senior member of the PCLU who is in the team, Dr Ramaite was the chairperson and Mr Pikoli was the National Director. So they would have had direct knowledge on what happened there. As I said I only attended two or three meetings on, at the request of Mr Ackerman.

COMMISSIONER GABRIEL: And just very generally, what was your understanding of the role and function of the task team?

ADV MACADAM: I understood it as it was written in black and white in the NPA TRC guidelines, the responsibility for the cases, you know managing the investigations and making decisions is the responsibility of the NPA. I saw the other people there as simply assisting the NPA in the execution of its duties.

That is why we said we would like the intelligence agency so they can warn us of any risks or dangers that might take place in the investigation; we needed the police to have a dedicated component that can focus properly on these matters. It would be a disaster if these cases had to go to the detectives who were at the local police stations and the cases would be scattered like confetti between low ranking policemen.

Justice was critical, because we would have to get substantial, substantial evidence from their archives. It was not only the TRC records which were national archives. There was a policy if a person was detained by the security police, that person had to be inspected twice a week... no, once every two weeks by a magistrate of the district where the person was detained.

So the Department of Justice had what we called detention files. This is the person, this is all the information that is on the file while he is under, while the magistrate was, if he is released then obviously the files closed. Now what we found is extremely, in these justice files vary, sometimes it is not more than short reports that tell

you nothing and lots of news clippings.

But on other cases there were very detailed information supplied by the security police, why the person is being detained, what information is signed, who else is being implicated. So that is another source and those are held directly in justice, they were never transferred to state archives, so that is why ...[indistinct].

Obviously the police were there to investigate and we would want it to be done at a high level. The one person I can say ...[indistinct] a case, it does not matter where in the country it is
10 committed, that person will then identify the right detectives to do the case, rather than me having to go all over the country asking local branch commanders to open the cases.

NIA, what had happened is certain former security branch members had been incorporated into the agency post 94, Dirk Coetzee and Willie Nortje. So these people would be able to from the inside know if you approach this person, he would be willing to cooperate; perhaps we can talk to him ourselves.

But just the general threat analysis, if there is a risk to the life of a witness or any other improper activity that could derail, the NIA
20 would, you know, give that information to us. And that is what they did in the political violence cases that I worked on and also the nuclear case I dealt with. I just...

And then yes, the ...[indistinct] so they would then have to sit with the police and work out a shared responsibility that who will investigate what cases. Because there were some DSO members

who previously been part of the special units that investigated TRC cases, so perhaps in those cases they get a place that a police officer who has no experience in the matter.

COMMISSIONER GABRIEL: Thank you.

ADV BHANA: Thank you, can we go... [intervenues]

COMMISSIONER KGOMO: Mr Bhana, this memo by the acting National Director of Public Prosecutions, Mr Mpshe to the Minister of Justice and Constitutional Development, now at page 1495 at paragraph 5, there Mr Mpshe says:

10 “Although the Pretoria High Court has declared the guidelines unconstitutional and an appeal has been noted, there is no reason why the investigations cannot proceed in the interim.”

Then there are views or decisions by Adv Simelane, by Adv de Lange and Mr Surty, yourself. Now those decisions or views are in handwriting and Adv Macadam tried his best to read the handwriting. I think we need this to be typed out and provided to us.

ADV BHANA: Thank you, Commissioner.

COMMISSIONER KGOMO: Thank you.

20 ADV BHANA: My attorney has taken note of that and we will assist. Can you then turn to paragraph 61, Adv Macadam?

ADV MACADAM: Certainly. Because the task team had still not reconvened, I was requested by Mr Mpshe, the acting national director to see what else I could do to get these matters investigated. So if you want me then to just...

ADV BHANA: Yes, very briefly.

ADV MACADAM: What had happened is when I was doing the political violence in KZN in the 1990s, I worked very closely with Mr Raymond Lalla, it was at stage the Prescribed Intelligence Division. Subsequently when I came to Pretoria to be part of the DSO, he then became the Divisional Head of Crime Intelligence.

So the whole crime intelligence throughout the country fell under his portfolio. And thereafter at this time he was then transferred to become the Divisional Head of the Detective Service of the South African Police Service. So now he was in charge of every single detective and every single police station throughout the country.

Because I had known him and we had very good working relationship, I believed I could approach him directly and he would give me the necessary assistance. I may mention as far as the DSO is concerned that in 2007 a political decision was taken to disband them and in 2009 the process was already in place to disband them.

There were amendments made to the NPA Act removing them and then amendments to the Police Act created the Directorate Priority Crimes Investigations, DPCI, a police unit which will take over the functions of the DSO. And the DSO ended in July 2009.

So my point, it would serve no purpose in trying to get the DSO again to agree, because they only had a very short lifespan. But I did... do you want me to proceed with my engagements with Commissioner Lalla?

ADV BHANA: Please do so.

ADV MACADAM: Certainly. I had a series of meetings with the Commissioner, all these meetings were very positive; he was very keen to help me. We did not discuss individual cases or given police dockets, but I was outlining the type of cases, the issues, the type of skills that would be required from investigators.

And the upshot of all those discussions was shortly before the DSO was disbanded, he indicated that there are a number of former policemen who had previously investigated TRC cases, who had
10 gone over to the DSO but were now coming back to the police.

So he said to me, his plan is that they would form a project reporting directly to him, he would budget them and they would work, doing no other work than focussing on these cases, no other responsibilities. He would personally finance their operations out of his head office budget.

So I said well that is fantastic, that solves my problems. The people that were coming over were people I previously worked with, I knew they were experienced police officers, would be able to very quickly get into these cases. Must I tell you what happened next after
20 that meeting?

ADV BHANA: Very briefly.

ADV MACADAM: What happened is I received a phone call from Commissioner Lalla, please could I urgently meet with him. He said to me that the national commissioner had directed that these cases must go to the DPCI and therefore all his arrangements, my

arrangements with him ...[indistinct]. Why those cases had to go to the DPCI was that the DPCI was not created as a brand new investigative agency. All that happened is the specialised units of the detectives, you know the organised crime, commercial crimes were just transferred over to DPCI. So it was just a change in name. What, having clearly Commissioner Lalla would now be left only with the general detectives who were placed at the police stations to do localised crimes. So those people would not be able to do the specialised investigations I needed. So it was clear that I would have

10 to talk to the DPCI and get them to investigate the matters.

CHAIRPERSON: Mr Bhana, I think we have got to take a tea adjournment at this juncture.

ADV BHANA: Thank you.

CHAIRPERSON: We will take a tea adjournment and reconvene at 11:20.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Mr Bhana.

ADV BHANA: Thank you Chair. Advocate Macadam, I would like to

20 now go to paragraphs 75 and 76 of your statement. You deal with what occurred on the 4th of February 2016.

ADV MACADAM: Correct. I may just add that the DPCI did agree to investigate, and they started investigating these matters again towards the end of 2010. But to deal with my council's issue, on the 4th of February 2016, Dr Pretorius had been appointed as an Acting

Special Director and Head PCLU. He informed me of a meeting that had taken place with Mr Varney, Webber Wentzel Attorneys and the Foundation for Human Rights, where a request was made to reopen the Ahmed Timol and Dr Aggett matters.

And then I was requested by Dr Pretorius to furnish an opinion on the matter. I did so. I set out the work that had been done on these cases, and I advised that a decision to hold an inquest would only be taken once it had been established one could not bring murder charges.

10 ADV BHANA: Yes, your opinion is annexed as AD24. We do not have to go there for now. And in paragraph 76, you say,

"You continued to work on both the Timol and Aggett matters until you were instructed by Dr Pretorius to lead a DPCI investigation into terrorist activities in the Johannesburg area. Dr Pretorius assumed control not only of the Aggett and Timol matters, but also of the entire TRC portfolio."

So for a time, you had nothing further to do with the...

(intervenes)

20 ADV MACADAM: That is correct.

ADV BHANA: Timol matters, which the Commission is interested in. I will then ask you to go to paragraph 83.

CHAIRPERSON: If I may ask Mr Bhana, Advocate Macadam, how long did it take you to continue working on both the Timol and the Aggett matters?

ADV MACADAM: What had happened, Ma'am Chair, is that in, I think this was October 2015, I was supposed to be managing the foreign bribery portfolio, but another colleague had taken those dockets away, despite the fact that the National Director had indicated I must continue with them. And then I decided, because I cannot work on the OECD in the absence of the dockets, let me see if I can help out on the TRC, because I knew there was a problem with these cases.

So on the Aggett matter, I was the prosecutor who had directed that the matter be investigated by the DPCI as a result of
10 representations from a group called the Friends of Neil Aggett. These were doctors who had studied with him, and they were calling for an investigation. What happened is, so I had tasked out the police investigation, and I had had a lot of help from our missing persons task team. They were identifying all the former detainees who could provide relevant information, and we did other work on it. The magistrate's court record had been destroyed, but Advocate Bizos had donated a substantial copy of his record to WITS. So we arranged to have WITS break down their website into little blocks, because we could not print the stuff on our small office printer. And
20 then we got approval to appoint a printing office to print two complete records of everything that also was giving us very useful information.

What I was doing is, I was going through the evidence of the police officers who testified, looking for probabilities or contradictions, and also seeing whether there was one who might likely be prepared to be a witness. So that is what I did up to that point. On the Timol

matter, I then found that this matter had been closed in my absence, and at the time, I came home, and as I put the TV on, Advocate Bizos was being interviewed, and he said that it was clear that the version given by the police was not true, and that Mr Timol had been murdered. So I then sent an e-mail to the DPCI and said, please, you know, open an enquiry. On the very same day, they registered an enquiry and appointed an investigating officer. Then, although the inquest had been destroyed, there was some of it on the WITS website, which I downloaded, and again, I tasked the missing
10 persons task team to start now tracing all the persons who were in detention, and obviously, I identified the police officer who testified for the police investigating officer to follow up.

So that is what I had done, and it is all set out in my opinion. But then, I had to attend to a very urgent and very serious terrorism matter, but the head of the unit, Dr Pretorius said he would not only take over the Aggett and Timol matters, but the whole TRC portfolio.

ADV BHANA: Fine, and then we were about to deal with paragraph 83.

ADV MACADAM: That is correct, Ma'am Chair. So, what happened
20 is on the 1st of February 2019, Advocate Pretorius was appointed as the National Director, and she called me to her office in March and said, "She wanted me to take over as the head of the PCLU", and in April, the Minister of Justice then appointed me as an Acting Special Director. So I now became responsible for the whole PCLU portfolio, which included TRC cases.

ADV BHANA: Perfect, and you say you did that until September 2021?

ADV MACADAM: That is correct.

ADV BHANA: When the decision was made to remove TRC cases from the PCLU?

ADV MACADAM: That is correct.

ADV BHANA: And then, can you take us through paragraphs 84 and 85, and 86?

ADV MACADAM: Certainly, Ma'am Chair, because I had been
10 effectively out for a long time on this terrorism case in Jo'burg and
previously on the foreign bribery portfolio, I needed to take stock of
how many cases the PCLU had and what the status of those matters
were. And that process showed that we had a back club across the
board because there were only three or four advocates in the PCLU,
all based in Pretoria, who were trying to deal these cases all over the
country.

And it is important to emphasise that this is not limited to
TRC. We had these very serious state security matters where you
had to move quickly to prevent harm from taking place. And we also
20 had to investigate all the international crimes under the ICC Act by
virtue of a constitutional court judgement in the South African
Litigation Centre matter. So it was a huge portfolio, and just three
people, because what happens is when you get appointed as the
acting head, nobody's appointed to take over your deputy post, so

you are doing two jobs at the same time. So that concluded that we are not going to come right.

At that stage, it was only Dr Pretorius, Ms Bokow, myself, and only one admin officer. And then if I deal specifically with TRC cases, they were being investigated by a component of the DPCI called the Crimes Against the State Unit. Brigadier Klabo was the head of the unit. So I asked him to give me a list of how many cases they had. And that was 30 cases. So it was reassuring for me to see that there were a lot more cases than when, in 2009, the member
10 went to the minister identifying certain cases we want to investigate.

And what I picked up there is that certain of the cases which are still under investigation in 2019 were ones that I had referred to the DPCI already in 2010. So that showed that the police were themselves struggling to investigate these matters. Not every case that was referred was still under investigation, but there were certain matters. And further enquiries I saw that only four of these 30 matters were receiving the attention of a dedicated prosecutor, which was also a concern. And must I go on to paragraph 86?

ADV BHANA: Yes. In your view, what was the reason that only four
20 of the 30 had?

ADV MACADAM: It was sheer capacity. As I said, you had Dr Pretorius, who is now acting as the head of the unit. Now, the minute you act as head of the unit, you are then part of the MPA's senior management. So you have to attend enormous lot of functions that

have nothing to do with directing investigations, making decisions. It is strategic planning sessions, policy sessions, budgetary reviews.

So now he is trying to do that. And then manage all these cases. I am sitting almost permanently in Jo'burg, which was one of the most protracted cases I had. Literally every day in court there would be a legal challenge. If there was not a legal challenge, you are working with the Jo'burg police officers to get the case properly investigated. And then there was only Dr Bokow, and she was trying to deal with all the work coming into the office. And it is just not

10 doable, you know. We just hopelessly, hopelessly under-resourced.

ADV BHANA: Yes.

ADV MACADAM: And, you know, this backlog is not due to dereliction of duty, people being lazy. It is simply that they gave got far too much work. And if we say there were only four TRC cases, they were significant. The first one that Dr Pretorius did, and he appeared personally in the matter, was the reopened Ahmed Timol matter. And that led then to a decision to prosecute on a charge of murder against Sergeant Rodriguez. Dr Pretorius also had to assist the prosecutors who were going to conduct that prosecution with all

20 the background information.

Another case that was receiving the attention was a prosecution instituted on the murder of Nokuthula Simelane. She had disappeared in 1983. Her body had never been recovered. But the prosecutors believed they could still prove a murder case in the absence of that evidence. That was proceeding. There were lots of

legal challenges by the lawyers. So, again, there was assistance given to the prosecutor. That matter was being prosecuted by two prosecutors from Jo'burg because of lack of capacity within the PCRU at the time.

And then the other two matters that Dr Pretorius was working was the Neil Aggett matter to continue the investigations that I had identified and also the death and detention of Dr Haffejee, who died in detention in Durban. So, I mean, a lot of work had to go into those matters. And obviously, so much efforts are there, you cannot then
10 focus fully on the other matters.

ADV BHANA: Yes, your statement then deals with what occurred in 2019. And if we can then skip to COVID, March 2020, paragraph 96.

ADV MACADAM: Certainly. Ma'am Chair, what I had proposed to address this capacity is that:

"The cases should be dealt with by the DPP's offices where the crimes were committed, with the PCLU providing an oversight and support function."

Now, this meant we could now, we not only increased the number of prosecutors available, but we can simultaneously deal
20 matters in different jurisdictions at the same time. So, that did immediately show progress doing that. What had happened as well, the police were still investigating everything from their little component in Pretoria. We had asked if they could involve the regional DPCI. At that stage, the decision, that request was refused. But then in January 2020, there was a meeting between the National

Director, myself, and General Lebeya, who is now the head of the DPCI, where he said, "He will now get approval to appoint retired police office to work on three-year contracts and they will work exclusively on TRC matters" which then addresses substantially all our concerns, because now we have extra prosecutors and we have full-time investigators.

Now, this was the impact of COVID, is that all the offices were shut down, so General Lebeya was only able to make those appointments in mid-2021. Because even at a contract, there are
10 enormously complex procurement policies that have to be followed. You cannot just say to a person, here you are, here, off you go. So, that only happened then. But with the COVID, you have offices shutting down, where you need to go to the state archives just as those offices were closed down completely. There were other repositories of information that closed. DPP's offices were closed, staff was required to work from home, and there were also major restrictions on travel.

What I must say is, when COVID arrived, the DPCI said, "Business as usual, we are going to carry on as normal" resulting in
20 massive infections, resulting in orders to say, stay at your office or at home, unless there is something that is absolutely urgent you have to do. Because I work very closely with DPCI people throughout the country, and I was appalled at just how many people contracted with COVID. One of my investigators working a case actually died. A prosecutor who was working with me also died. So, these were all

the impacts that we had. And clearly, this all slows down the pace at which you can investigate. And we wanted to reopen the Aggett and the Haffejee inquests. But with COVID, you could not have a hearing like this.

Do you want to deal with how we try to overcome these matters?

ADV BHANA: I think for present purposes, just to say that you remained at the office seven days a week.

ADV MACADAM: That is correct.

10 ADV BHANA: You even met in parking lots.

ADV MACADAM: Yes, that is correct. Ma'am Chair, I was there seven days a week because the COVID led to an enormous spike in terrorism cases, because everybody was now enforcing lockdown. Nobody was looking at people plotting and planning. And we had a very serious right-wing terrorist case where the plan was to carry out an attack at midnight on Black Friday. They had armed themselves with two semi-automatic weapons that had been converted to fire in full automatic, 6 000 rounds of ammunition, 12 pipe bombs manufactured, one of which had been tested to see they had work.

20 And they had already identified their targets in formal settlements south of Johannesburg. And they were arrested, leaving that pot in a vehicle with all that weaponry.

And what happened in that matter is we had to run the case out of the DPP's office in Mpumalanga, which had just been set up. We had a chief prosecutor acting as a DPP, prosecutors drawn from

the Jo'burg and Pretoria offices and spending a lot of time there. So I had to personally run that case myself, doing all the court appearances, and assisted by Ms Bokow on the legal research and preparing legal documents. But what we said is our office, I was at the seven days a week, but then the office would close because the infections were so high, they would not allow anybody in. Now, Mr Nziyati who at that stage was the deputy national to whom I reported, we used to meet in the parking lot. So we could still try and keep the work going.

10 ADV BHANA: Yes. And you also say in paragraph 97:

"That you took advantage of the initial lockdowns to identify all deaths in detention and matters reported."

Can you elaborate on that?

ADV MACADAM: Yes, Ma'am Chair. With the TRC, we inherited essentially the work of the Goldstone Commission. And then there was a special police unit that fell under Dr Janda Oliveira. He was first the Attorney General in Pretoria. And that was known as the Oliveira Unit. That is the unit that did the prosecutions of Wouter Basson, Eugene de Kock, Ferdie Barnard, et cetera.

20 But the focus on those were on the premeditated killings. Nobody was really looking at the death and detention matters. Because obviously people wanted to have impact. These premeditated would probably be investigated, show that they were planned at a very high level. And that is why the focus was there. But now I would look at the Aggett and the Timol matters. And

although I could not conclude investigating those matters, on what I saw was showing there is something wrong. These police versions that were presented in the 70s are not right. So I said, everything's shut down. I am at the office. Let me go through the lists of death and detention cases. Because it was not only a list by the TLC. There were NGOs that monitored.

So I looked at these lists, reconciled them. And we already did have some death and detention matters. It was not just Aggett, Timol, and Haffejee. We also had the Salege matter. There were two
10 people in Silverton who allegedly slipped in the shower. So I took the cases we had already... That left me with approximately 59 cases. Now what I said is, once things normalise, we can distribute those cases amongst all the regions. Because we did an audit. My audit also showed in which province the crimes were committed. And if we had extra capacity from the DPCI, I believed it was feasible to actually investigate those matters.

What I may also add is, although the focus was on premeditated detentions, by 2019, a lot of the people you wanted to prosecute were already dead, as were their witnesses. So I believe
20 that it was essential that we do these 59 death and detention cases. Must I proceed to, but my difficulty is, I have come up with this idea. But now what about the poor police? If they are struggling with their 30 cases, how are they going to cope with 59 new cases where you have to start from scratch?

ADV BHANA: Yes.

ADV MACADAM: There is no police docket. So was there an inquest? Was there a hearing at the TRC? What is the availability of witnesses?

ADV BHANA: You say there was a promise of extra investigators, and that gave you some confidence, but did that ever materialise?

ADV MACADAM: Due to COVID, the extra investigators were only appointed in mid-2021. And that is not any fault of General Lebeya, that to get those contract appointments, he is got to get a dispensation from the Department of Public Service Administration. It
10 is no easy process. Thereafter, you have to follow a appointment process, because there are interviews, committees, and all those requirements. So he could only sort everything out 2021.

So what we did is, in April 2020, Advocate Rodney De Kok from Cape Town replaced Advocate Nziyati as the head of MPS. There is a report which I gave to Advocate De Kok in May, a month after he had assumed duty, giving him a breakdown of all the work that I was doing on the TRC cases and flagging these additional 59 cases. And then I drafted a letter for Advocate De Kok to submit to General Lebeya, identifying these extra 59 cases and alerting him to
20 the need for additional investigative capacity.

We also had a Microsoft Teams meeting with the General and his staff to discuss this issue. The bottom line is, I then started having a record of the cases. This column one would be cases already inferred. They are being dealt with by a police and a prosecutor. Cases that will be referred once we have capacity. So

this is where these death and detention cases were in the awaiting additional capacity. A third category, on some matters we had so little information, we did not know where to refer them. So that was listed separately, and then we would try and get the extra information and get it to the right prosecutor. And then we also had a couple of crimes that took place outside South Africa that we had listed as foreign offences.

ADV BHANA: If you can then pick up at paragraph 104.

ADV MACADAM: Yes.

10 ADV BHANA: And you had 13 November 2020.

ADV MACADAM: Yes, certainly. If we look at AD 29, that is the spreadsheet which I compiled. It shows that we had actually now in total 112 cases and it is split into active and awaiting capacity. I do not know if it is necessary to take the commission through it.

But you can see, already we have an improvement from 30 cases to 112 in a year. And also with the COVID virus wreaking its havoc.

ADV BHANA: Yes, and you conclude on this aspect at paragraph 110 where you say:

20 "In my view, progress was made under difficult conditions by prosecutors and investigators working on the cases despite the other responsibilities."

And you personally did not take a single day's leave in 2021.

ADV MACADAM: That is correct, Ma'am Chair. Firstly, I was retiring in October. I wanted to leave with a clean slate, not things hanging in

the air. But it was a nightmare year for me. We not only had this right wing terrorism case that I had to deal with. We had the leader of a foreign terrorist organisation that was bringing applications in the Jo'burg and Pretoria High Courts. I had argued this matter in the Constitutional Court a couple of years ago. So I was best placed to deal with those matters. And we had the July unrest land on our laps, because our portfolio did cover the July unrest.

What happened there is, every day, I had to have a meeting with General Lebeja and his commanders to try, and everything was out of control. It was absolute chaos. And we were now trying to say, what cases can we identify that we can get the right people, stop this. Also, most of the crimes related to posts on social media, incitement to violence and murder, et cetera. So I had to advise individual prosecutors and investigators on what were cases that we could properly pursue. Because there was fake news. You had other stuff that they were using platforms that do not cooperate with law enforcement, like Telegram, Signal, et cetera. So I was trying to deal with that, and at the same time be able to retire. My Jo'burg terrorism case only finished one week before retirement.

20 ADV BHANA: Yes, that then deals with generally what was happening with TRC cases. There is a section then in your statement that deals specifically with the allegations by Mr Kajee.

ADV MACADAM: Yes certainly from 115.

ADV BHANA: Yes. Can you take us then carefully through those paragraphs, 115 to 123?

ADV MACADAM: These are in response to allegations made in an affidavit filed at this commission.

"Mr Kajee alleged that he had never mentioned Ivor Powell at all. It was a Mr Piers Pigot, and he had actually given me M Piers Pigot's TRC file."

Now, that is not correct. Piers Pigot and I had worked very closely together when we were both in the TRC. I would never have made a mistake between him and Ivor Powell. Secondly, I was never given a TRC file compiled by Mr Pigot. I referred to my letter in May
10 2003 addressed to Mr Leask, where I identified what had been provided to me. And I may mention that two days after Mr Kajee met with me, already instruction was given to the chief investigating officer. And I emphasise chief investigating officer, not a low-ranking police officer. Mr Leask, I knew as a very experienced police officer. He had worked on certain TRC cases arising from the Jo'burg area.

I may also mention that in October 2015, I did immediately instruct the police to open an investigation into the Timol matter. And this was before the request was brought by the Foundation for Human Rights to have the matter looked at. So when they approached Dr
20 Pretorius, the police were already investigating.

ADV BHANA: Yes and you had done that [indistinct] without any insistence or pressure from anyone?

ADV MACADAM: That is correct.

ADV BHANA: At paragraph 116, you deal with the allegation of reluctance on your part to deal with the Timol matters. And can you take the commission through that?

ADV MACADAM: Ma'am Chair, I stand by what I said. When Mr Kajee met with me, an instruction was given to gather information to lay the basis for section 28. And in October 2015, when I learned that the matter had been closed, I got the police to reopen the investigation.

ADV BHANA: Yes. And you say in that paragraph that:

10 "You believe your energy and efforts to advance TRC-related matters, despite the challenges which have been mentioned, speak for themselves. And you had no wish or motive not to advance the Timol matters."

ADV MACADAM: Correct.

ADV BHANA: There was a... (intervenes)

ADV MACADAM: I mean, when there was an application for stay of prosecution I was approached by the head of the unit and I immediately offered my assistance and provided a supporting affidavit which was used to oppose the stay of prosecution.

20 ADV BHANA: Stay of prosecution in relation to... (intervenes)

ADV MACADAM: The Timol matter.

ADV BHANA: The Timol matter.

ADV MACADAM: Where prosecution was instituted.

ADV BHANA: In paragraph 118 you say:

"You appreciate Mr Kajee's frustrations and pain of his

uncle's case not being investigated in a timely manner.

I deny any dereliction of duty on my part and further deny any need or attempt to conceal the alleged dereliction of duty. I also reject his further allegations that I as a prosecutor prior to April 1994 protected my former colleagues from prosecution. I have demonstrated all my efforts and the extent to which I went to have the matters prosecuted."

Do you wish to add anything to that?

10 ADV MACADAM: No, Ma'am Chair.

ADV BHANA: And then you deal with in 119 of the statement you draw the Commission's attention to an e-mail received from Mr Kajee on 16 April 2022. Can you take us through that?

ADV MACADAM: Yes, that is correct. This is also in response to allegations levelled against me in his affidavit.

20 "I confirm that after I had retired he wrote to me and said he had been through my affidavit which I would filed in the Rodriguez matter and he realised that I had discovered important information that he lacked and could I supply it."

And I immediately then referred him to the former investigating officer and to the head of the missing persons task team who had assisted me in gathering the information in 2015.

ADV BHANA: Is that AD 33?

ADV MACADAM: That is correct, yes.

ADV BHANA: We do not have to go there but AD 33. And paragraph 120, can you take the Commission through that carefully?

ADV MACADAM: Yes, this is also a matter of concern to me. As I said, I did file a confirmatory matter in the Rodriguez case. I did not mention the words "Political interference" at all in the matter. I merely set out facts and documents that I had first-hand knowledge and documentation which the NDPP's office manager had given to me which belonged to Mr Pikoli. And in respect of those documents, Mr Pikoli gave me a confirmatory affidavit confirming the authenticity of those documents.

10

Now, when the court delivered judgement, it said that, "That affidavit of mine provided further evidence of the extent to which the NPA had been subjected to political interference". Now, Mr Kajee then said, no, "That affidavit is false insofar as my claim of political interference is concerned. The true position is I was trying to hide the fact that I had done nothing at all". And that is not true. The finding of political interference was drawn by the court looking at all the affidavits, in the case not mine, and obviously my affidavit got pieces of the jigsaw puzzle and that leads to that conclusion. So I deny that I ever tried to use political interference as an excuse for not doing my work.

20

ADV BHANA: Yes. In 121, you also deny that you failed to earnestly follow up on the leads that Mr Kajee furnished?

ADV MACADAM: That is correct. I referred to my letter of May 2003 to CIO Leask.

ADV BHANA: You also deny that you unlawfully placed the burden of investigating his uncle's death on him?

ADV MACADAM: That is correct. All I asked him was to provide me with documents that he had in his own possession. So he could have faxed or e-mailed them to me or I could have gone and collected from him and that is all I did.

ADV BHANA: Yes. And you say in 122:

10 "The logistical and resource-based constraints that we operated under has been set out in detail in earlier parts of your statement. At no stage did you place any onus on Mr Kajee. Whilst I probably invited him to supply any additional information to assist with the case, this in no way shifted the ultimate investigative responsibility onto him."

ADV MACADAM: That is correct Ma'am Chair.

ADV BHANA: That deals with the allegations that Mr Kajee has made. Is there anything else you wish to say in that regard?

ADV MACADAM: Not at all, Ma'am Chair. My affidavit is purely in response to the Rule 3.3 notice served on this.

20 ADV BHANA: I then want to deal with an aspect that is not in your statement. It arises from a document I think that we got from the evidence leaders I speak subject to, or from you, after the statement was prepared. And can I beg leave to hand those up, Chair?

CHAIRPERSON: Yes, you may.

ADV BHANA: It is a memorandum dated 16 August 2007 and it proceeds with the next numbering in the bundle. So it starts at 1597. We will make copies available to our colleagues as well. No, those are unnumbered. Can you take them back as the commission numbers? Have you got a copy in front of you?

ADV MACADAM: I do.

ADV BHANA: Okay.

ADV VARNEY: Sorry, Chairman, we are also waiting for copies. Do we have any more copies by chance?

10 ADV BHANA: No, I think we are a bit short. That is the last. My attorney has one and I have got one. This is a memorandum from you to Advocate Pikoli. It is dated 16 August 2007. Before we go into certain paragraphs, can you tell the Commissioners the purpose of the memorandum?

ADV MACADAM: Correct. Ma'am Chair, it is to respond to a fax that was received from AfriForum addressed to Mr Pikoli, the National Director. I have not been able to locate this fax and I am now not sure if it was a fax or a letter. But it was a call to either now prosecute the leadership of the ANC or to stop all prosecutions into
20 TRC matters.

Now, this fax, let me just see if I have a date. The date of my memo is 16 August 2007, the day before Mr Ackerman entered into a plea and sentence agreement with the former Minister of Police, the former Commissioner of Police, three other members of the police, where they pleaded guilty to a charge of the attempted

murder of Reverend Frank Chikane. They had put poison on his clothing with the intention of killing him. Reverend Frank Chikane was, I am sure, the head of a church council and he was also a member of the United Democratic Front.

ADV BHANA: Yes, and you referred to the AfriForum fax as you then described it in paragraph two, but I would like you to go to paragraph five at page 1598.

ADV MACADAM: Paragraph five? Yes Ma'am Chair... (intervenes)

ADV BHANA: Perhaps just in paragraph four, you record:

10 "As in the case of all previous complaints, AfriForum
 refuses to produce the evidence upon which it makes
 allegations."

ADV MACADAM: That is correct. Their letter said specifically that although they had evidence proving the case against the ANC, it was not going to be made available at the time when it was, when they wrote to Mr Pikoli.

ADV BHANA: Yes, and then please take us through paragraphs five and six.

20 ADV MACADAM: Yes, certainly, just as a very brief background to
 paragraph five is that the South African Police had pre-94
 investigated some 400 dockets against the military wing of the African
 National Congress. Those were the dockets that were held by
 Advocate Fick in the DPP's office, Pretoria, but they then came to the
 PCLU, and Advocate Ackerman indicated he would then start reading
 those dockets and making decisions on them.

So he did that, and I believe that he read about 50 or 60 dockets, and this was all done in June to August 2003. The next step in the saga is that in early 2004, I cannot recall the date, but Mr Ackerman, myself, and Dr Pretorius were called to the National Director's office. He then inserted a videotape into his TV, and he played back a recording of a meeting that the three of us had had with Commissioner Lalla in August 2003. I was asking Commissioner Lalla to assist me with two of my cases where we believe the intelligence community would be best able to advise us. But as the
10 meeting adjourned, Mr Ackerman said he has to make a decision against the President of South Africa, who is at the stage, Mr Mbeki. And Mr Ngcuka said that this tape recording, we were unaware that a recording was made of that meeting, but Mr Ngcuka said that this tape recording was presented by Commissioner Selebi at a very high-level government, and the allegation is that PCLU is on the point of arresting the President and a number of very senior government officials who had previously been part of the struggle.

And the final allegation is these 400 dockets in the DPP's office, Pretoria, were being used for the prosecution against the
20 President and these other persons. So Mr Ngcuka then said to me, "Take over from Ackerman, read those dockets, and I want a decision on whether there is a case or not". What I also need to refer to is that the TRC, and I think in two separate judgments, I have one but not the other, had refused amnesty to the ANC leadership on the basis that they took collective responsibility for all actions committed by

their supporters when their supporters believed that this was advancing the cause, and the TRC said, "No, amnesty is for where you admit to a specific crime, you have to persuade us it is political", so it was refused on that basis. Not on the case that they admitted committing crimes and had not made full disclosures or that they were not political crimes.

And I was told I had to make a decision quickly on the matter. I could not obviously read all 400 dockets. But the police who were in charge of those dockets had compiled a register to show
10 the police docket reference, the charge, the suspects and the outcome of the case. And the outcome fell into three categories, firstly convicted and sentenced, category 2 amnesty granted, category 3 undetected. So what I decided to do is do spot checks on that register. If the register said there was a conviction on say case 35, I draw case 35, I read it, yes, it is accurate. If case 54 says amnesty is granted, I draw that case, yes, that is correct. Undetected cases were also undetected. And I said on those matters, there was nowhere to lead as to where to go to look for the perpetrators, and I said, "Well, if these have been investigated fully in the 1970s, 1980s,
20 with all the resources of the regime, and they could not solve those cases" because they had resources that we do not have. They could detain people indefinitely, denied access to lawyers, get them to make confessions, they were not required like me. I would have to have evidence under oath, arrest a person, must appear in court within 48 hours. I must have the trial start within a reasonable time.

So I said. "That I am not going to get anywhere on those undetected cases, unless somebody comes forward and says I want to come clean now, I was involved, then obviously it is a different thing". So I went through, I was satisfied the register was correct. The interesting thing about that register, there was no case registered against President Mbeki.

ADV BHANA: Yes. You say in five:

"You also held discussions with the two SAPS members who were in charge of such dockets."

10 ADV MACADAM: Yes. Why I asked them that is they had had them under their control, so they drew my attention to the register, they also gave me background information. An important document that I looked at was that they, it was not part of the 400 dockets, but it was a leverage file which contained reporting by the various security branches to their head office. Now, that would fall into two categories.

20 Either they were deeply placed undercover agents who would infiltrated the ANC. Or they had informers working for them. And what I picked up is as far as the command structure of MK, their reports were mainly on the basis of very sensitively placed sources. And they say there is a meeting that lists about 18 members. And the one that I remember was that there would now be attack on polling stations at the 1988. So it led me to conclude they were working mainly on informer information. And they also had former members of *uMkhonto we Sizwe* that, when arrested, elected to join the security

branch. There was this term, I do not know if it is derogatory, I do not want to use it if it is, they were referred to as Scari's?

So it looks like the cases were resting on informer information, and to get into a high level MK meeting with 18 people, because if I looked at the name, Chris Hani was there, Joe Modise, Sipiwe Nyanda et cetera. That would probably be somebody who was in that meeting. And I said, "It is highly unlikely in 2004 that this source will come forward and admit that he was a spy for the security branch, whereas he may well be sitting in a key position in
10 government or cabinet."

So that was my assessment of the 400 dockets and that file that they had.

ADV BHANA: Yes.

ADV MACADAM: But I said I am not stopping there. With the assistance of Ms Fullard who was a former... (intervenes)

ADV BHANA: Just before that, you say in paragraph 5:

"I could find no evidence implicating the President or any other senior ANC member. In all the dockets the implicated persons had received amnesty and no further
20 prosecution of them was there for legal [indistinct]."...
(intervenes)

ADV MACADAM: Yes, that is correct. But now what I did is these were the people that actually were responsible for physically carrying out those crimes. But now when you look at the blanket amnesty case of the TLC, there were some prominent senior commanders in

MK. They would never be on the ground, but they would give instructions from Lesaka or elsewhere. So then with the assistance of Ms Fullard, we then checked all the TLC amnesty applications regarding people who were very high up in *uMkhonto we Sizwe*. And that again confirmed amnesty granted to the people.

ADV BHANA: Yes.

ADV MACADAM: And particularly General Sipiwe Nyanda was getting amnesty in several matters and he was the person that most of these activities came out of his component.

10 ADV BHANA: All right. And then in paragraph 7, you deal with the position in the 70s and the 80s and the different position that prevailed thereafter.

ADV MACADAM: That is correct, Ma'am Chair. When these cases were prosecuted in the 70s, 80s, there were these terrorism laws, the Internal Security Act, which contained presumptions and a lot of evidence that would not be found constitutional once we moved to democracy and had a Constitution.

20 And then importantly, so I believed I could not come in 2004 and prosecute under legislation that in all likelihood would be declared unconstitutional. Because when we talk about presumptions, these ran across the board. If you had more than so much marijuana, you were presumed to be dealing, if a firearm was found in their house, you were presumed to be the owner of it. And one by one, the courts declared all of those presumptions unconstitutional.

And how I said I am bound by the common law of the land, which is I must fall back on the doctrine of common purpose. And that had been interpreted in an SCA judgement, the state versus Sifatsa that is the Upington 26 case, which was a TLC matter. And there the SCA had said, "Common purpose requires you either participate physically in the crime or you are at a meeting where you agree that the crime should be committed". So that was the test that I applied when I did my evaluation of all the evidence.

And I did provide a report to Mr Ngcuka saying that I cannot,
10 on what I have available to me, decline to prosecute, which was accepted by Mr Ngcuka.

ADV BHANA: Yes. And is that what you deal with in paragraph eight? You say:

"In the light of the above, I was of the view there was no admissible evidence upon which to investigate or prosecute the ANC leadership. And I submitted a memorandum to Mr Ngcuka to this effect.

Subsequently, the NPA released a media statement to the effect that no grounds existed to investigate."

20 ADV MACADAM: That is correct.

ADV BHANA: Did you arrive at that conclusion as a result of any interference or influence by anyone, or was that your ... (intervenes)

ADV MACADAM: Not at all Ma'am Chair... (intervenes)

ADV BHANA: Personal decision based on your ... (intervenes)

ADV MACADAM: It was based on the evidence that was available at the time and applying the doctrine of common purpose.

ADV BHANA: Thank you, Chair. We have nothing further to lead, Mr Macadam... (intervenes)

CHAIRPERSON: Is that your evidence-in-chief?

ADV BHANA: That is the evidence.

CHAIRPERSON: Thank you. Mr Nel, any clarificatory question?

ADV NEL: Indeed, I think I should have another mic as well. I have clarification questions, but I do not have the correct microphone.

10 CHAIRPERSON: you will be assisted in that regard.

ADV NEL: I think I will have to move. I hope it works now. I just wanted to ask clarification questions on the portion of the evidence that was not included in the affidavit.

CHAIRPERSON: Yes.

ADV NEL: That was just made available now. As far as clarification is concerned, Mr Macadam, if I understand correctly, your decision that there was no evidence against any senior ANC officials and the President was solely based on the evidence that was collated by the police and contained in the dockets that you had a look at?

20 ADV MACADAM: As well as the amnesty application, which was refused by the TLC.

ADV NEL: Ja, okay. So was there a correlation between the amnesty that was allowed for Mr Nyanda and the specific cases that you had?

ADV MACADAM: Yes, what had happened is in several of these police dockets, Mr Nyanda was reflected as having received amnesty for those.

ADV NEL: And is it your evidence that there was no docket amongst the 400 dockets where amnesty was not given to Mr Nyanda?

ADV MACADAM: Ma'am Chair, I cannot recall at that stage. I remember that his name came up frequently in the dockets and frequently in the amnesties that were submission granted by the TLC, where he, in his individual capacity, assumed responsibility for
10 activities that he had authorised.

ADV NEL: As an experienced prosecutor and investigator, you saw no reason to direct the police or investigators to investigate anything further, but you just relied on dockets. There was no instruction to look further into any of the dockets?

ADV MACADAM: Ma'am Chair, what happened is after I had made my report to Mr Ngcuka, he gave a direction that the dockets must be removed from the DPP's office Pretoria, and taken back into police custody. I was present when he gave that instruction to Deputy Commissioner Price and Deputy Commissioner Williams. And Mr
20 Ngcuka made it clear that although the dockets are going back, this does not mean that investigations should not proceed, and should the police then have cases where there are specific charges identified, then they must submit those dockets.

ADV NEL: But the question had more to do with yourself, Mr Macadam. Did you give any further instructions on possible investigations in the case dockets or not?

ADV MACADAM: Not at all.

ADV NEL: So, apologies, I do not know why that happened, but it happened. I do not know if you followed the evidence that was led by Mr van der Merwe earlier in the proceedings.

COMMISSIONER KGOMO: Mr. Nel, just sorry, the reference to you do not know what happened, but it happened with reference to the
10 microphone, not what Mr Macadam is saying.

ADV NEL: Indeed. Indeed ja, indeed.

COMMISSIONER KGOMO: Yes.

CHAIRPERSON: Mr Nel, I know you want to put a version of Mr van der Merwe, but is it fair in relation to this witness when he was not here when Mr van der Merwe was giving evidence?

ADV NEL: Ma'am Chair, that is why I asked the question. I just asked him if he is aware of it.

CHAIRPERSON: Yes.

ADV NEL: If he tells me no, then I know how to act.

20 CHAIRPERSON: Yes.

ADV NEL: So the question was merely, are you aware of the evidence that was led by Mr van der Merwe in this proceeding?

ADV MACADAM: No, I am not, but what I can confirm is when I took over the TLC cases... (intervenes)

CHAIRPERSON: No, just respond to the question.

ADV MACADAM: Yes, no, I am not aware of his evidence.

ADV NEL: And so my last question as clarification is that you said there were three types of cases. The cases amongst the 400 or the police case dockets that you received, there were those that people were convicted on?

ADV MACADAM: That is correct.

ADV NEL: There were those that was undetected?

ADV MACADAM: That is correct.

ADV NEL: And then there were those that received amnesty?

10 ADV MACADAM: That is correct, yes.

ADV NEL: So those three categories of dockets you perused and drafted a report?

ADV MACADAM: That is right.

ADV NEL: And there was no action or instructions given on those dockets where nobody received amnesty and nobody was convicted?

ADV MACADAM: Ma'am Chair, those were still under the control of the police and they were still required to investigate if evidence emerged on the matter. The two policemen in charge of these dockets were former security branch members. So they would be
20 ideally placed to know where to go to get any extra evidence.

ADV NEL: I am glad you mentioned that. Those two policemen, can you recall their names?

ADV MACADAM: The one is Colonel Hennie Brits and then there was a Brigadier who was in charge but I cannot recall the Brigadier's surname.

ADV NEL: Ja, that I think, well we all know that it is Brigadier Nel.

ADV MACADAM: I do not know. I just cannot recall it. I do not want to blame the wrong Nel.

COMMISSIONER KGOMO: First name?

ADV NEL: I do not know his first name. I might get it, but I do not know of it now. But it was Brits and Nel. They were the two investigators with Advocate Paul Fick. That is also interesting questions. Just for clarification, the dockets that was handed over to you or to your unit, what was the purpose of those 400 dockets? Why
10 was it handed over to you?

ADV MACADAM: Because Mr Ngcuka decided that all the TRC matters must be dealt with by one unit and there may well be links between the two categories. You see at the DSO, I would worked mainly on the cases against the security forces and political structures. You know various political parties were involved in violence during the TRC period. It did not really make sense that we were dealing with one and now Mr Fick is dealing with the other matters. He was only the DPP of Pretoria, that those 400 dockets covered the whole country. He could not make decisions on cases
20 outside of the jurisdiction of the DPP Pretoria. Whereas the PCLU, we had national jurisdiction limited to the cases that fell within our proclamation. If it fell in the proclamation, I could investigate anywhere in South Africa, but I could not obviously investigate cases that did not fall under mine. That is the difference.

ADV NEL: That is an interesting choice of words, that he could not make decisions on those dockets, but you could make decisions. Were those then decision dockets?

ADV MACADAM: They were clearly dockets that were opened and that the police were writing off the final outcome. There were matters that were opened and prepared to be read and signed off by a prosecutor. I may mention, I do not know how long Mr Fick had them in his possession, but I can confirm he had not identified any cases for prosecution before Mr Ackerman took over.

10 ADV NEL: So I hear what you are saying so can I then accept that those were decision dockets because they were handed over from the police to a prosecutor to go through them and make a decision on them. So those were decision dockets am I correct?

ADV MACADAM: Yes that is correct.

ADV NEL: Now did you decide them before you handed them back to the police?

ADV MACADAM: I made a decision on the President and the other prominent persons. Mr Ngcuka made it clear that the cases must go back to the police they must continue with investigating those matters
20 and if there were cases where they needed a decision to be made they were to submit those dockets back to us and we would deal with them as we would deal with any other TLC matter.

ADV NEL: So can the Commission then accept that on instruction of Mr Ngcuka dockets were handed over handed back to the police without decisions by a prosecutor made on them?

ADV MACADAM: The decisions were made on the case that I dealt with in the other matters they were simply returned to the police to continue with the investigation so if the police discovered evidence they needed a decision the docket would come back. I mean we would not keep a docket in our office which required investigation because we are not investigators.

ADV NEL: So this is the cross-examination but it is clarification...
(intervenes)

CHAIRPERSON: Point [indistinct]. Mr Nel, I think you are bordering
10 on cross-examination.

ADV NEL: I am, that is why... (intervenes)

CHAIRPERSON: And you have a right to cross-examine upon a proper application presented before this Commission.

ADV NEL: Indeed I understand.

CHAIRPERSON: So I must warn you, you are treading on dangerous grounds.

ADV NEL: As the Commission pleases.

CHAIRPERSON: Yes.

ADV NEL: I warn myself that is why I am taking one-step back.

20 CHAIRPERSON: Well I am warning you.

ADV NEL: I accept the warning. May I then say I just want to clarify those were decision dockets and you admitted those were decision dockets.

ADV MACADAM: Yes.

ADV NEL: You handed back or whoever handed back those dockets to the police without the decision on every docket that was handed back.

ADV MACADAM: My decision was limited only to the allegations specifically made by Commissioner Selebi in respect of which the National Director required. It did not cover all 400 that is why we said those dockets go back the police can investigate and resubmit.

ADV NEL: So that is a last, my last question. I know what you are saying about yourself but can we just look at it more broadly. Mr
10 Ngcuka gave an instruction for the return of dockets, decision dockets to the police without a prosecutor having taken a decision on those dockets. Is that correct?

ADV MACADAM: Well those dockets were with Mr Fick. He was entitled to deal with those matters as he saw fit. So what I got was as dealt with by Mr Fick and there were no cases that Mr Fick had identified for prosecution. As I said I did not look at all 400 but I did not see and I stand on the correction because this is memory going back a long time ago whether Mr Fick had given directions on those matters. Because those dockets had already been investigated pre-
20 1994 and Mr Fick I got to know in 1983 when he was already a senior member of the MPA office in Pretoria.

CHAIRPERSON: That was the last question you indicated Mr Nel.

ADV NEL: Chair, may I have the indulgence to, the document was handed over to me now. I did not receive one because there were not enough copies. I never thought that I would be interested in this

particular document. It was not disclosed to anyone. I asked for two minutes, there is one specific paragraph that I read that I just want to deal with.

CHAIRPERSON: On a point of clarification.

ADV NEL: On a point of clarification. May I just have a quick conversation with Advocate Voster? I have an unnumbered document. May I have, we will ask one question of clarification. So the document I have is marked 1597.

ADV MACADAM: Is it part of my bundle?

10 ADV NEL: No, no it is the document that you handed... (intervenes)

ADV MACADAM: Is this one here?

ADV NEL: Ja indeed. So if you page through the document to the internal memorandum to Mr Pikoli from yourself, you send it to Mr Pikoli, Kalyani Pillay and Mr Ramaite, dated 16 August.

ADV MACADAM: That is correct.

ADV NEL: At paragraph 10, if you just read that paragraph into the record.

ADV MACADAM:

20 "It is highly likely that your reply will be released to the media by Mr Kriel. I therefore deem it inappropriate to request him to make his investigation available as this might create the impression there is a fact against the ANC leadership and we will have to have a repeat of the problems where the senior governments believed and we were planning to arrest the president."

ADV NEL: So you never asked AfriForum or anybody for the, well let us say AfriForum, you never asked AfriForum if they do have information about it because there was instruction by Mr Pikoli?

ADV MACADAM: That is correct.

ADV NEL: That is as far as clarification questions.

CHAIRPERSON: Thank you Mr Nel. Ms Moroka.

ADV MOROKA: Thank you Chair. Mr Macadam, you talked about the fact that the TRC cases were taken away from you. I am not very sure when that was, but it is pre-2007, is that correct?

10 ADV MACADAM: Ma'am Chair, the only time the TRC, well what had happened is Ma'am Chair, I was dealing with the matters until February 2004 when I had to attend to this urgent nuclear weapons case and other responsibilities. Then Mr Ackermann continued with the cases as assisted by Mr Mhaga. Then in 2014 Mr Nkosana, who is in the National Director, took me out of my other duties to deal with the OECD foreign bribery matter and then thereafter Dr Pretorius dealt with these matters when he was appointed as the acting head from October 2015 and thereafter when I was appointed as the head I took the matters over from him in April 2019 and they were only
20 physically taken away from the PCLU in September 2021, a month before I retired. They were then transferred directly to Advocate de Kock's office, the Deputy National.

ADV MOROKA: Throughout all those occasions, Mr Macadam, there was no sense or an understanding from you that there was political

interference involved and that is why you have been taken away from these cases.

ADV MACADAM: Ma'am Chair, every time I was taken off those cases to do other work, it was turned to very, very serious matters and not just to get me out of the way so that I can no longer contribute to TRC. I was required to lead the investigation into the corruption in the Northern Cape province which led to a successful prosecution by a colleague of mine who took over the matter. I had to do with the foreign bribery where South Africa was found to be non-compliant with its obligations in terms of an international treaty and the OECD said, "If South Africa does not put its house in order, then there will be severe repercussions" and South Africa was given a mere six months to rectify. That is why I was taken out and I had to work really hard to turn things around. When Dr Pretorius took over, there were very, very serious terrorism matters that I had to attend to.

The first one was Islamic State had radicalised people in South Africa and they had been tasked to carry out attacks on junior schools, businessmen, et cetera. And then there was the right wing case where they were on the point of actually carrying out a lethal attack. So at no stage was I taken off these matters just as an excuse to prevent any work being done on TRC cases. Every time I was taken away, another member of the PCLU would work on those matters.

ADV MOROKA: And with the task team that was formed after the guidelines were approved, even then, you are not of the view that this

task team was formed because it was a continuum of political interference.

ADV MACADAM: As stipulated in the guidelines, the task team was created so as to enable the PCLU to be assisted by other departments whose contribution was absolutely vital. Without the assistance of the police to investigate, justice to give us access to the files, we would actually be no better off than we were already in 2003.

ADV MOROKA: Thank you, Mr Macadam.

CHAIRPERSON: Thank you, Ms Moroka. Mr Varney.

10 ADV VARNEY: Chairperson, we actually have an indulgence to ask the Commission. We have been tied up since Friday evening until last night with the review. In fact, the review only ended around six p.m. We have been able to get to grips with Mr Macadam's statement and his many annexures. We have spoken to the evidence leaders, and our proposal is that we ask our follow-up questions tomorrow afternoon, as Mr Macadam is also scheduled for tomorrow afternoon. We proposed to the evidence leaders, and I think they agreed that they would proceed with their questions, and if anything fresh emerged from our follow-up, then they could also canvass those.

20 CHAIRPERSON: Yes. Do you have any intention to apply for cross-examination of Mr Macadam?

ADV VARNEY: At this stage, we do not think so because we do not have any fundamental disagreements with what he is saying, but we do think that he can assist this Commission to get to the bottom of its terms of reference.

CHAIRPERSON: Okay.

ADV BHANA: May we just indicate, tomorrow afternoon was a spill over date. There is considerable inconvenience to Mr Macadam to come back. His statement, which is basically what we have dealt with, has been delivered since the 3rd, so between then and last Friday, there have been 10 days. Can we ask if Mr Varney can just consider his position at the lunch adjournment, and if possible, if we can finish with the witness today so he does not have to come back tomorrow, just for Mr Varney's clarificatory questions.

10 CHAIRPERSON: Yes, Mr Varney.

ADV VARNEY: Well, it simply is not possible because there is no ways that we can get to grips with his statement and annexes between now and this afternoon, and so we persist with our request, Chairperson.

CHAIRPERSON: Mr Varney, are you able to go through your Mr Advocate Macadam' affidavit this afternoon? From the look of things, depending on how long, Ms Rikhotso do you have any clarificatory questions to ask Mr Advocate Macadam?

20 ADV RIKHOTSO: Thank you, Chair. Thank you, Chair. I do not have any clarification questions. I think he is placed everything that I needed quite well.

CHAIRPERSON: Yes. Depending how long the evidence leaders are going to be with Advocate Macadam' clarificatory questions, it looks like we will have the better part of the day for you to go through

his statement, to be able to put clarificatory questions this afternoon.

Is it not possible to do that, Mr Varney?

ADV VARNEY: Chairperson, it would be exceedingly difficult to listen to the evidence in response to the questions put by the evidence leaders and go through the statement and annexes and prepare. There is a further matter which I have brought to the attention of the evidence leaders, and I suppose I should bring it to your attention as well. I have to spend at least lunchtime completing papers that have to be filed in the Supreme Court of Appeal in the COSAS 4 matter.

10 Those have to be signed this afternoon in order to be couriered to Bloemfontein and filed tomorrow morning, which is the deadline.

That is the matter in which crimes against humanity, apartheid as crimes against humanity, is before the Supreme Court of Appeal, and I have to spend lunchtime finalising those papers so that they can be signed this afternoon.

CHAIRPERSON: So you are fully committed for the afternoon?

ADV VARNEY: Evidence is going to be led this afternoon, and of course I will be back, but otherwise every other available moment I have to finalise those papers, which we do have a deadline we cannot
20 avoid, and of course as given our programme before this commission and the review, normally of course if we did not have a review there would be no issue, we would simply proceed, but the review cropped up and we had to deal with it.

CHAIRPERSON: Yes. Mr Semanya.

ADV SEMENYA: Chair, before we say anything in response, I must indicate that I am informed that on the virtual platform there is Ms Rantho who also indicated an intention to put questions to the witness.

CHAIRPERSON: Thank you. Ms Rantho? I will park this issue, Mr Varney, and return to it.

ADV VARNEY: As the commission pleases.

CHAIRPERSON: Ms Rantho.

ADV RANTHO: Thank you, Commissioners. Good afternoon. Mine
10 is just one question to Advocate Macadam, and it is regarding the handover of dockets to the SAPS. The question is, or clarity seeking question is to establish if I understood him correctly to say that at the time when the dockets were transferred to the SAPS, Brigadier Nel, or the Brigadier that he is not sure of, or Senior Superintendent Brits were the ones that would proceed to deal with the matters with the SAPS, or maybe perhaps I did not get that one clear. I just want to establish that, Chairperson.

ADV MACADAM: Yes, if I can answer that. The dockets were
20 transferred then to the crimes against the state component of the police, and that was headed by Senior Superintendent Bester. But I am not sure of the position of the Brigadier, but I know that Mr Brits did have a contract, and he remained seized with those matters even though they had gone to crimes against the state. I had one meeting with Superintendent Bester and Mr Brits after the dockets had gone back, and then there is record in a task team meeting of 2006 where

Commissioner Jacobs put on record that he would need to further extend Mr Brits' contract.

ADV RANTHO: Thank you. That is all from my side, Commissioners.

CHAIRPERSON: Thank you, Ms Rantho.

ADV SEMENYA: I also must indicate, Chair, that Ms Ntloko advises that they do not have clarificatory questions, but anticipate that they will apply for cross-examination of the witness.

CHAIRPERSON: Thank you, Mr Semenya.

MR SEMENYA: The further conduct of the questioning will be done
10 by my learned colleague, Mr Soni.

CHAIRPERSON: Mr Soni.

ADV SONI: Thank you, Chairperson. Good afternoon to you, Mr Macadam.

ADV MACADAM: Good afternoon.

ADV SONI: Mr Macadam, when Mr Ackerman gave evidence, he...
(intervenes)

COMMISSIONER KGOMO: Sorry, Mr Soni, can you move the microphone?

ADV SONI: I am so sorry. When Mr Ackerman gave evidence, he
20 indicated that many of the memos that he submitted to either the NDPP, the acting NDPP, and so on, were in a sense joint efforts by you and him, or solely your efforts. Would that be correct?

ADV MACADAM: The correct position is that Mr Ackerman would inform me he needs to submit a memo, and then I would do a draft. Because neither Mr Ackerman nor I were computer literate at that

stage, but we had an administrative officer who was an excellent litigation typist, so I would stand next to her and then dictate the memo. It would then go back to Mr Ackerman, and if he was satisfied with the contents, he would then sign it. So there were occasions when Mr Ackerman did make amendments or corrections to my draft.

Also, you will see on the documentation, I signed on behalf of Mr Ackerman. That was because as head of the unit, he was frequently outside the office, so if a memo had to go out urgently, he would then authorise me to sign on his behalf that we would not have
10 to wait for him to return to the office.

ADV SONI: Now, the memos, I take it, would be drafted with the information in front of you. For example, if you were dealing with the PEPCO 3 case or whatever it is that is contained in the memos...
(intervenes)

ADV MACADAM: That is correct.

ADV SONI: It would be based on the information that was in front of you.

ADV MACADAM: That is correct.

ADV SONI: And can the Commission accept that, to the best of your
20 knowledge, the information contained in all the memos is correct according to the documents that you referred to?

ADV MACADAM: I can only comment on the memos that I myself compiled. I was also often out of the office. Ms Bokow, a senior state advocate, is also very good at typing, and she would type memos in my absence, or Mr Ackerman would go directly to our admin officer

and dictate. No, Mr Ackerman's style was to write, and then he would give her the written things. So I can take responsibility for the ones that I drafted and were certified as correct.

ADV SONI: And certainly those that bear your name would qualify on the basis that we can accept as a Commission that what is contained in those memos is correct.

ADV MACADAM: Yes, everything I went out under my name and under my signature, obviously I accept responsibility for them.

ADV SONI: Now, in your evidence today, save for a brief reference to
10 one or two of the memos that are annexed to your statement, you did not refer to any of those memos?

ADV MACADAM: That was on the advice of my counsel that he would lead me on specific aspects that he felt needed to be placed orally before the Commission. And as far as the remainder, that stood because I did confirm the correctness of my statement which included the annexes subject to those small corrections that we made this morning.

ADV SONI: So we can accept that to the extent that you confirmed the correctness of your statement, you also confirmed the correctness
20 of the memos?

ADV MACADAM: That is correct.

ADV SONI: Now, in regard to your statement as a whole, you referred to specific memos, and in addition, the Commission has memos that are not included in your statement. Can we accept that

everything that is concerned with your knowledge of the TRC matters is contained in those memos?

ADV BHANA: This is an unfair question to the witness at this general level. It would be fairer if those memos were produced to him. He is given his general answer, and if there is anything that he needs to clarify, he can deal with it. I understand Mr Soni may not be able to do that now, but at some stage if he can produce the specific memos.

CHAIRPERSON: Mr Soni?

10 ADV SONI: Chair, the difficulty is there are memos in different, attached to different affidavits. For example, Mr Ackerman's affidavit or Mr Ngcuka's affidavit, and so on. I am just trying to cover a general proposition. I am not trying to hold the witness hostage to what he is saying. I am just trying to say that when we eventually look at all the information before us, we can accept that Mr Ackerman has said that he accepts the correctness of what is contained in memos for which he has been responsible.

CHAIRPERSON: Yes ... (intervenes)

ADV SONI: That is the sole purpose of this.

CHAIRPERSON: I will allow the question.

20 ADV MACADAM: Ma'am Chair, I cannot comment on or accept responsibility in the air on documents that are attached to other people's affidavits without me having had the opportunity to see those documents and satisfy themselves. Why I say that is I have direct knowledge at a certain stage of the forgery of a series of reports by Advocate Ackerman that was done in either 2007. So I do not know if

these reports that were attached to these other persons are real, they are signed, whether they are forgeries, whether they are a draft which was submitted before it had been checked by me. And unless I am given a specific statement and said, look, you read this, confirm it, I cannot assist the Commission further on this point.

ADV SONI: I understand exactly what the witness is saying, Chairperson, and this is the approach I intend adopting on this issue.

CHAIRPERSON: Yes.

ADV SONI: To the extent that it is recorded in a document or memo
10 that it emanates from you, we will confirm that with you by sending it to you and ask you to respond to that. Would that be fair to you?

ADV MACADAM: That would be very fair. I would ask that it be sent to my attorney.

ADV SONI: Yes, no, no, of course.

ADV MACADAM: Yes.

ADV SONI: Now, in regard to the general thrust of your memos, you set out, and we are dealing mainly with the TRC matters, you set out your knowledge of all the TRC matters.

ADV MACADAM: Ma'am Chair, I cannot claim knowledge of all TRC
20 matters, only ones that I dealt with specifically.

ADV SONI: Oh, sorry, that I referred to in your memos.

ADV MACADAM: Yes.

ADV SONI: And the question I want to ask, you know the purpose of this inquiry is to determine the extent to which investigations into TRC cases were stopped or interfered with.

ADV MACADAM: That is correct.

ADV SONI: And the documents you have submitted in your affidavit address that question in part, am I right?

ADV MACADAM: That is correct.

ADV SONI: All right. Now, I think my learned friend Ms Moroka Morocco asked you this. On the basis of your assessment of the documents, it seems from the documents as a whole that part of the reason for the delays in the TRC matters were a lack of resources and a lack of capacity.

10 ADV MACADAM: That is correct.

ADV SONI: And, for example, in particular periods when there were the stoppages brought by the COVID lockdown, that also contributed to the delay.

ADV MACADAM: That is correct, yes.

ADV SONI: Were there any other factors that contributed to the delays in the finalisation of TRC matters?

ADV MACADAM: Is that from when, from inception? I became, basically in 2002, engaged in these matters which ended in September 21. Must I try and cover that whole period or not?

20 ADV SONI: Well, from 2003, that is the period.

ADV MACADAM: Yes.

ADV SONI: The Commission is investigating.

ADV MACADAM: As I said, the refusal of the investigating officer, investigating director DSO, put an end to all the cases that we wanted the DSO to investigate. We then went to the police. They made a

conditional refusal. Now, I cannot comment as to whether the grounds put up by the police were valid or not, but I can say when the police said we are not going to take those matters further, then nothing was done on them because now both investigative agencies had washed their hands of the matter and the PCLU had no investigative capacity. It is simply the normal prosecutor who gives guidance but does not conduct investigations.

ADV SONI: Now, in regard to that issue, it seems when one reads the document and your evidence, and based on your evidence today,
10 it seems that from around 2007, there was an impasse as to which of the two institutions, the DSO or the SAPS, should provide the investigators.

ADV MACADAM: Okay. The issue of refusals by the DSO and the police was in 2003. Now, what happened is Mr Ackermann is in the best position to tell us what happened. Because in February 2004, I was taken away from TLC to work on other urgent matters. But then we come to December 2005, where Parliament approved the TLC guidelines. And those placed a statutory obligation on both the DPCI. Now, the DPCI was not in existence then. It placed a statutory
20 obligation on both the police and the DSO to assist the PCLU. And that would be obviously on investigations.

ADV SONI: Now, you referred in your evidence today to a gazette. Is that the gazette that contains the prosecution policy, or is there a separate gazette?

ADV MACADAM: No, it is the one that refers to the prosecution policy. I had the gazette, which said, "That Parliament has noted" and the policy is attached to that gazette. That is the one I had.

ADV SONI: And that is the one you were talking about when you gave evidence this morning.

ADV MACADAM: That is correct yes.

ADV SONI: So when you say that this was gazetted, you are saying the prosecution policy was gazetted.

ADV MACADAM: That is correct. The gazette said, "That the policy
10 comes into effect", I think, on 5 December 2004. So it was now a lawfully binding instrument which all government officials would have to comply with.

ADV SONI: And the task team that you referred to, and I think you said that too was gazetted, is part of the prosecution policy.

ADV MACADAM: That is correct. That is where it said the PCLU will be assisted by a single representative of an enlisted the agencies.

ADV SONI: Yes. Now, in regard to the evidence that you have given in respect of the memo of the 16th of August 2007, that is the one we just dealt with.

20 ADV MACADAM: Yes.

ADV SONI: Now, the subject matter of this memo took place between 2003 and 2004, would I be correct?

ADV MACADAM: May I just clarify? The decision accepted by Mr Ngcuka regarding the ANC leadership was made in early 2004.

ADV SONI: Now, the letter written by AfriForum surfaced in 2007.

ADV MACADAM: What happened is after I had made my decision, I then gave a letter to the police informing them of our decision. This was then in, I think, June or July 2004. There was a meeting with Mr Brits and Superintendent Bester. They told me they are very unhappy with my failure to prosecute the president of South Africa. I then said to them, well, fine. Give me the docket where all that evidence is contained. They never produced that docket. I then followed it up with Mr Brits and said, "Well, where is the docket?", oh, it is now in possession of retired police Commissioner, Mr van der Merwe. I then
10 asked Mr Leask to go to Mr van der Merwe and ask him for that docket. How can a retired policeman have a docket where there is still not a decision against the suspect? You cannot do it. Mr Leask approached Mr van der Merwe. He indicated he would make material available. But according to Mr Leask, every time he went back to Mr van der Merwe nothing was produced.

Then when the task team was set up, and this would be in about 2006, the police were called to give a breakdown of all outstanding matters that they needed a decision on. And I do have that report they submitted. It listed about eight cases against the
20 ANC's military wing where in each case, all the police wanted was a directive as to the need to have further inquests. So the police never reported any new cases where they wanted a decision to prosecute. And those 400 dockets were the whole time under the position of the Crimes Against the State Unit. When the DPCI was set up, it was then incorporated into DPCI.

ADV SONI: Those 400 dockets were sent back in 2004, as I understand.

ADV MACADAM: That is correct, yes.

ADV SONI: Okay. One of the leaders you mentioned was Mr Siphwe Nyanda, who was the ANC military wing commander, or one of the senior members of the ANC military wing.

ADV MACADAM: That is correct.

ADV SONI: Were there any ANC leaders, were there doctors, were the dockets opened on any ANC leaders?

10 ADV MACADAM: No, the dockets were all opened on acts of terrorism. And that was how the police investigation proceeded, that persons were, in certain cases, arrested, convicted, and sentenced. Other cases, there were shootouts between the police and the MK members, resulting in both police and MK members being killed. And then the third category, as I said, the undetected cases. But then people of, very high-ranking people within the military wing, did then apply for amnesty. And that was not, I planted a limpet mine, or I killed this person. It was, my members did it on my instructions. So there they were complying with the requirement of the TRC disclosure

20 in your own involvement in a crime. Because they would be guilty of conspiracy, incitement, et cetera even though they did not perform the physical act. And that is where it came up. All those prominent MK commanders did get amnesty.

ADV SONI: Those were mainly, as I understand it, the landmine, the cases involving landmine explosions.

ADV MACADAM: The landmine was a specific campaign embarked on by MK. It did trigger a lot of publicity because innocent civilians were killed. For example, there is a case where the farmer, his wife and his young children were blown up. Only, I think, the father survived. But there were also cases where bombs were planted. The Church Square bombing in 1983, the Magoos Bar bombing, et cetera. But also within those 400 docketts, there were a lot of acts of sabotage not resulting in any loss of life or injury. I mean, what would happen is, in the middle of the night, somebody would plant a limpet
10 mine against a transformer or railway line. So there would be an explosion, but no injuries or loss of life.

ADV SONI: Now, of those 400 cases, were there decisions that they should be prosecuted?

ADV MACADAM: As far as I am aware, I did not see any directive at all. The only case where we were approached by the police in 2003 arising from these 400 docketts was the case of Mr Blaney. He was implicated in an attack on an elderly couple outside Kabega. And there had been a warrant of arrest issued for him at the time he had been identified by fingerprints, but he could not be traced. And we
20 were then informed that he was now back in the country. So I travelled to Kabega. I went through all the evidence to establish it was all available. I drew up an indictment and then Mr Ackerman did that prosecution and the person pleaded convict and was sentenced. That was the only case out of all these 400 that the police said, "Yes, we have a live suspect that we need you to prosecute on".

ADV SONI: And the others were because either there was no evidence or amnesty had been granted?

ADV MACADAM: Granted or convicted, or the suspect's dead, ja.

ADV SONI: Yes.

CHAIRPERSON: Mr Soni?

ADV SONI: Yes.

CHAIRPERSON: How long are you going to be? We have got to adjourn for lunch.

ADV SONI: Yes. Chairperson, I do not intend being much longer.

10 So if you would give me another five minutes, I ought to finish.

CHAIRPERSON: Okay.

ADV SONI: Now, outside the ANC, were there any other leaders which the TRC unit or the PCLU was investigating?

ADV MACADAM: We had APLA cases investigated as well and what happened... (intervenes)

ADV SONI: Sorry, I did not hear that.

ADV MACADAM: APLA. I think it is the Azanian People's Liberation Army.

ADV SONI: Army.

20 ADV MACADAM: That was the military wing of the PAC. So there were cases that were registered. But again, the majority of those cases had already been dealt with, persons arrested, convicted, sentenced, and granted amnesty.

ADV SONI: So there were no other... (intervenes)

ADV MACADAM: No, there were. There was one APLA commander who never applied for amnesty. So we had asked the police to investigate firstly, his involvement in a series of incidents in the Eastern Cape and thereafter on the St. James and the Heidelberg Tavern cases in Cape Town.

ADV SONI: Sorry, before... I should have asked you this before I asked you the last two questions. In regard to the 400 dockets, was the last time that you saw them the time when they were transferred from the NDPP officers or the NPA officers to the police?

10 ADV MACADAM: That is correct, because I can confirm that at no stage were any of those dockets ever submitted back to the PCLU.

ADV SONI: And for some reason it seems that they are referred to as the Visagie...

ADV MACADAM: Oh, the Visagie Street.

ADV SONI: Oh is it the Visagie Street?

ADV MACADAM: That is where the Crimes Against the State unit of the police was located in the CBD of Pretoria.

ADV SONI: So when we are told that there are these Visagie dockets, it is likely that that is what is being referred to, that these are
20 the 400 dockets that were transferred to the Visagie officers of the police.

ADV MACADAM: That is correct yes.

ADV SONI: Okay. The last set of clarificatory issues I need to deal with, Mr Ackerman, is the complaint of Mr Kajee in relation to the detention of Mr Ahmed Timol. Now, as I understand it, and this

appears at AD2 of your affidavit or annexure AD2 to your affidavit.

Firstly?

COMMISSIONER KGOMO: AD2 page?

ADV SONI: Page 14544.

ADV MACADAM: I am just paging. It is AD2.

ADV SONI: Ja so it is page 1454. It is your internal memo to Mr Leask in relation to the Timol inquest.

ADV MACADAM: That is correct. Ja, I found it.

ADV SONI: Okay. Now, as I understand it, one of the reason it could
10 not be investigated beyond the, aside from Mr Leask is because you
could not obtain or there was no justification or evidence on which
you could ask for a section 28 investigation.

ADV MACADAM: No. What I it is clearly spelt out in my letter to Mr
Leask. That I had then asked him to gather this information and that
would then lay the basis for the application in terms of section 28 and
then when the decision was taken by the investigating director to
withdraw the DSO from investigations Mr Leask was not able to
comply with these directives of mine.

ADV SONI: Okay. At the time though you had contemplated
20 pursuing a section 28 application.

ADV MACADAM: That is correct because you know it was conveyed
to me that Sergeant Rodriguez's daughter had given a disclosure to a
journalist and if that was confirmed that would be a key factor to rely
on in your application.

ADV SONI: Now did you explain to Mr Timol and I am just asking...
(intervenes)

COMMISSIONER KGOMO: To Mr Timol.

ADV SONI: I am sorry Mr Kajee that in fact in order to have a more intense investigation you would have to make an application under section 28?

ADV MACADAM: I did not specifically mention section 28 but I informed him that all the information that he brought to my attention would be followed up and we would attend to his matter which shows
10 in my report of later that month Mr Timol's case was reflected as a matter where representations had been received to conduct an investigation.

ADV SONI: And I am just trying to smooth the feathers. I think Mr Kajee makes part of the reason Mr Kajee is dissatisfied is he wasn't aware that there was this particular process that had to be followed before more intense investigations could be done.

ADV MACADAM: I cannot comment on that because obviously that is how he would feel but I deemed it unnecessary to inform Mr Kajee of the fact that we would follow up all the information he had supplied to
20 us.

ADV SONI: Mr Macadam, here is a person who loses an uncle a well respected teacher from Roodepoort whose death in detention was mourned at the time. Was it not a bit insensitive just to simply say well this is how I am going to do things? I am not I am just saying would it not have been wiser to take him into your confidence?

ADV MACADAM: You know s I said when I engaged with him I believe it was sufficient for him to understand we will follow up everything. If Mr Leask had been able to proceed I am sure he could have quickly come up with information for me. Because we were not only reliant on the disclosure to you know either Powell. We were going to interview George Bizos the researchers were going to establish whether there is additional TRC material whether the other policeman was involved. Other detainees who available would be interviewed and an opinion would be obtained from the chief
10 pathologist.

ADV SONI: Now these are the matters you referred to in paragraph four... (intervenes)

ADV MACADAM: That is correct.

ADV SONI: Of you letter to Mr Leask... (intervenes)

ADV MACADAM: Yes.

ADV SONI: Or your memo to Mr Leask, one of the issues and I am just raising it with you again perhaps it may ease Mr Kajee's concerns it is correct you should have investigated I mean you should have pursued Mr Powell or asked Mr Powell for information. There is
20 a more obvious source of information would have been Mr Rodriguez's daughter.

ADV MACADAM: Correct the allegation was that Mr Rodriguez's daughter had approached Mr Powell and made a disclosure to him. Now this is the starting point go to Mr Powell, does he confirm that if he does that is a clear [indistinct] to then do a section 28. And then

once it has been declared in terms of section 28 you can subpoena the daughter because she may be reluctant to implicate her father and other information.

But what transpired in this matter is that Mr Leask said as a result of the refusal by the investigating director he could not comply with these directives that I had given but because Mr Powell had joined the DSO in Cape Town he would never speak to him because he had other work in Cape Town. And Mr Leask came back to me and said Mr Powell denies it here is his newspaper article. It was
10 simply a critique on the magistrate's findings. No reference to disclosures because the DSO had refused to investigate as had the police. We could not take the matter further and that is the position.

ADV SONI: Yes. As I say if only for you to comment Mr Kajee's point is perhaps Mr Rodriguez's daughter should have been consulted as well.

ADV MACADAM: He could not do that because Mr Leask had been instructed by his, not to deal at all with TRC. So he could not go to her confront her as he could do if it was a declared investigation. He could approach her if she refused to give a statement we could
20 subpoena her in terms of section 205 of the Criminal Procedure Act. But those are all duties that can only be done once you have a declared investigation.

ADV SONI: These were the procedural difficulties you encountered in pursuing this further.

ADV MACADAM: That is correct.

ADV SONI: Chairperson, I have no, if I can just have... I have no further questions.

CHAIRPERSON: Thank you Mr Soni.

COMMISSIONER KGOMO: Can I just inquire Mr Macadam, the decision perhaps not to keep Mr Kajee or whoever abreast with the latest development was not, that decision was not caused by the fact that informing them would jeopardise the investigation. That was not the rationale.

ADV MACADAM: No. The only reason that I only replied to him in
10 February as result of his reaching out to me was the turmoil we were subjected to when both the police and the DSO refused to investigate. We had all these cases on our plate. You will see there is a memo that Mr Ackerman with my assistance wrote to Mr Ledwaba in November 2000 documenting all the problems we were facing and appealing to him to reconsider. So it was a miss of me not to keep Mr Kajee informed because of just the turmoil we were going. It was a very difficult period for us. We just set up. We did not have proper office space or admin support. We were trying to do justice to all these cases and you are running around knocking heads. In the
20 process I should have replied to him earlier which I did not. I do accept fault on my part there.

COMMISSIONER KGOMO: Thank you. Thank you Chair.

CHAIRPERSON: Thank you. Mr Bhana, I have a request by Mr Varney to postpone his opportunity to put clarificatory questions to Advocate Macadam. I can take judicial notice of the fact that Mr

Varney has been intimately involved in the preparation of the papers in the review application since last week on Thursday. That is when we received our papers in this matter that we are currently engaged in. And that as from Monday and Tuesday he is been involved in the argument of that matter.

In the premises, I do not regard his request to have his clarificatory questions put tomorrow as unreasonable. In any event, advocate Macadam was scheduled for two days, that is today and tomorrow. So I would appeal to you to agree to have Advocate
10 Macadam available for tomorrow for clarificatory questions to be put by Mr Varney to him so that we can conclude this matter.

ADV BHANA: Chairperson, we do have one proposal that my team have put up. I just want to put it on the table.

CHAIRPERSON: Yes.

ADV BHANA: Which possibly could accommodate Mr Varney and Advocate Macadam. If tomorrow is inconvenient, we understand there has been an application to cross-examine Advocate Macadam from the Menzi Simelane team.

CHAIRPERSON: Yes.

20 ADV BHANA: If that application is to be granted, then we could potentially put out clarificatory questions before cross-examination commences on that day, if that proceeds.

CHAIRPERSON: Yes. Yes, you may.

ADV BHANA: Chair, I assume you will not be in a position to make a ruling on the application for cross-examination before tomorrow.

CHAIRPERSON: No, I will not be in a position to make a ruling with regard to the application for cross-examination until I have received the papers to apply for cross-examination and have applied my mind as to the contents of the application to cross-examine.

ADV BHANA: Yes. In those circumstances, then, Mr Varney's proposal is a reasonable one. I understand him to say that we may have to come back if you grant that application another day.

CHAIRPERSON: Yes.

ADV BHANA: And he will then ask his clarificatory questions then.

10 CHAIRPERSON: Yes.

ADV BHANA: We do not have an objection to that.

CHAIRPERSON: To that. Advocate Macadam.

ADV MACADAM: Yes, Ma'am Chair.

CHAIRPERSON: You are for now excused as a witness.

ADV MACADAM: Thank you.

CHAIRPERSON: There is an application which will be brought before this Commission for your cross-examination which will be brought in due course. You have to be present for that application to proceed to cross-examine you.

20 ADV MACADAM: So I must be physically when the application is argued Ma'am?

CHAIRPERSON: No, when... (intervenes)

ADV MACADAM: Oh when it is approved?

CHAIRPERSON: The application has been granted to cross-examine you.

ADV MACADAM: Yes exactly. Certainly.

CHAIRPERSON: You must be available to be cross-examined.

ADV MACADAM: Yes, I will make myself available.

CHAIRPERSON: Yes, you are excused for the moment.

ADV MACADAM: Thank you, Ma'am Chair.

CHAIRPERSON: These proceedings are adjourned until...

ADV SEMENYA: Sorry might I just say that we have Mr Ackerman tomorrow?

CHAIRPERSON: Yes.

10 ADV SEMENYA: And that is between 09:00 and lunch?

CHAIRPERSON: And lunch.

ADV SEMENYA: And there are indications that there will be questions put to him through the cross-examination granted to Simelane, DOJ, SAPS and the MPA.

CHAIRPERSON: Come again.

ADV SEMENYA: There would be cross-examination granted for the Simelane team, the DOJ team, the SAPS team, as well as the MPA.

CHAIRPERSON: Thank you, Mr Semenya.

ADV SEMENYA: After that...

20 ADV VARNEY: Sorry, Mr Semenya, I thought you were finished. Please go ahead.

ADV SEMENYA: No, I was going to say that that would be the business for the day.

ADV VARNEY: Chairperson, just on that question, given that there are four parties which do cross-examine Advocate Ackerman, can we

propose for the Commission's consideration that the Commission lay down time allocations per party, because for the moment we have these two mornings with four parties to cross-examine. It is unclear, given Mr Ackerman's health, whether he will be able to come back. So we would propose that time allocations be laid down, perhaps equally between the parties, for the two mornings. And we would recommend to the Commission that the Commission control those proceedings fairly strictly in order to save time.

10 So, for example, if there are questions that are repetitive in nature, that the Commission step in, in order that time be saved and allow all four parties equal opportunity.

CHAIRPERSON: Yes.

ADV VARNEY: Thank you Chairperson.

ADV MOROKA: Chair... (intervenes)

CHAIRPERSON: Yes, Ms Moroka.

ADV MOROKA: The purpose of an inquiry is to test [indistinct] the decision in the defence in the [indistinct] case. We have to probe. We have to test. It does not necessary and I agree with my learned friend when he talks to repetitive questions. But I think it will be very
20 unfair to say look I am going to give you time and you must divide the time between yourselves.

We do not know how many questions are going to be posed. We do not know how long it is going to take. And I think it is going to put our clients in a very [indistinct] position where we are limited as to time regarding cross examination. The nature of cross-examination is

we are probing. You cannot be forced to then be limited to time. We accept that there is health challenges with Mr Ackerman. We have to be sensitive to that. But I think it is going to be grossly unfair to say I am going to limit you as to time and how long it takes.

CHAIRPERSON: Yes. Mr Varney.

ADV VARNEY: We do not disagree with my learned friend. It is just that these are pretty peculiar circumstances. We would still suggest that there be an allocation of time just so that all four parties that nobody is excluded. If there is a possibility of bringing him back if
10 people do not finish then that can be looked into. But just bear in mind that we are dealing with an elderly man who is not well.

CHAIRPERSON: Yes. I think I may just say without making a ruling, that we have got to be sensitive to the fact that we are dealing with a person with health issues. Very serious health issues. And that the parties must come together tomorrow morning and see how long they each would like to cross-examine him and give an indication to this Commission as to how long they each will require to cross-examine. We would not want to put a limitation with regards to the time required for cross-examination on the parties.

20 ADV MOROKA: I accept that Chair we will try to do that but with the [indistinct] that it might just not be possible.

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

INQUIRY ADJOURNS TO 19 MARCH 2026

CERTIFICATE OF VERACITY

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

JUDICIAL COMMISSION OF INQUIRY INTO TRC

FORUM OF ORIGIN : Inquiry
CASE NUMBER : N/A
TRANSCRIBERS : B du Plooy, L Lerm
DATE COMPLETED : 2026-03-19
NUMBER OF PAGES : 106 (Including front page)

B du Plooy: Page 1-38
L Lerm: Page 38-104

TRANSCRIBERS :




TRANSCRIBER'S NOTE:

- *Where no information provided, names transcribed phonetically.*
- *Grammar errors types verbatim.*
- *Mr Bhana and Mr Macadam are not clearly audible. Their voices are a bit soft. Mr Bhana and Mr Macadam tend to over talk / speak simultaneously, resulting in indistinct words and or phrases.*



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