

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

INDEX

ITEM NO.	DOCUMENT DESCRIPTION	PAGE NO(S).
1.	Notice in terms of Rule 3.3 of the Rules of the Judicial Commission of Inquiry into Allegations Regarding Efforts or Attempts Made to Stop the Investigation or Prosecution of Truth and Reconciliation Commission Cases	1-6
2.	Notice in terms of Rule 3.1	7
3.	Statement of Advocate Nomgcobo Jiba to the Commission	8-19.1
4.	Rule 53 Affidavit of Advocate Chris MacAdam in the Calata Review	20-21
5.	Calata Bundle 1: Statement of Lukhayo	22-23
6.	Statement of Advocate Chris MacAdam to the Commission	24-56
7.	Transcript of Proceedings: Testimony of Advocate Chris MacAdam, dated 18 March 2026	57

NOTICE IN TERMS OF RULE 3.3 OF THE RULES OF THE JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS REGARDING EFFORTS OR ATTEMPTS HAVING BEEN MADE TO STOP THE INVESTIGATION OR PROSECUTION OF TRUTH AND RECONCILIATION COMMISSION CASES.

TO: NOMGCOBO JIBA.

EMAIL: nomgcobo@pabasa.co.za

INTRODUCTION AND ESTABLISHMENT OF THE COMMISSION

1. On 29 May 2025, the President of the Republic of South Africa issued Proclamation Notice No. 264 of 2025, establishing the Judicial Commission of Inquiry into Allegations Regarding Efforts or Attempts Having Been Made to Stop the Investigation or Prosecution of Truth and Reconciliation Commission Cases ("the Commission").
2. The Commission was appointed in terms of section 84(2)(f) of the Constitution, 1996. The Honourable Madam Justice S. Khampepe serves as Chairperson, with the Honourable Mr Justice F. D. Kgomo and Adv A. Gabriel SC as members.
3. In terms of its mandate, the Commission is required to inquire into, make findings, report on, and make recommendations concerning allegations that, since 2003, efforts or attempts were made to influence, pressure, or otherwise improperly prevent the South African Police Service and/or the National Prosecuting Authority from investigating or prosecuting TRC cases. The Terms of Reference further require the Commission to determine whether officials within these

institutions colluded in such efforts, and whether further action—including investigations, prosecutions, or the payment of constitutional damages—is warranted.

4. Among the parties identified as having a substantial interest in these proceedings are:
 - a. The applicants in the matter of L.B.M. Calata and 22 Others v Government of the Republic of South Africa and Others (Case No. 2025-005245, North Gauteng High Court, Pretoria); and
 - b. The families of victims in TRC cases who have a substantial interest in the matters under inquiry.

NOTICE IN TERMS OF RULE 3.3

5. This notice is issued in terms of Rule 3.3 of the Rules of the Commission, read with the Regulations made under Government Notice R.278 of 2025.
6. The Commission's Evidence Leaders intend to present the evidence of one or more applicants in the Calata case, and any person who in the opinion of the Evidence Leaders possesses information that relates to the paragraph **Error! Reference source not found.** allegations against you and is relevant to the Commission's work.
7. The specific date and venue for the hearing at which such evidence will be presented will be communicated to you in due course.
8. Below is an extract from the Calata matter's founding affidavit, with corresponding paragraph numbering, which implicate, or may implicate, you in

allegations regarding efforts or attempts to halt or suppress the investigation or prosecution of TRC matters. Further details of the Calata proceedings, including the said affidavit, are available on the Commission's website at www.trc-inquiry.org.za.

PARTICULARS OF IMPLICATION

325. Following the Supreme Court of Appeal ruling on 1 December 2011 setting aside Adv Menzi's Simelane appointment as NDPP, Adv Nomgcobo Jiba was appointed Acting National Director of Public Prosecutions and held the position until 4 August 2013. It appeared that for certain times during this period, Dr Silas Ramaite also acted in this post.

326. In October 2012, the Constitutional Court confirmed that President Jacob Zuma's appointment of Adv Simelane as NDPP was invalid. In a unanimous judgment the Court held that "dishonesty is inconsistent with the conscientiousness and integrity required for the proper execution of the responsibilities of the NDPP."

327. In August 2013, President Zuma appointed Mr. Mxolisi Sandile Oliver Nxasana as NDPP, and he assumed the post on 1 October 2013.

327.1 When Nxasana was appointed as the NDPP, he removed Macadam from his duties at the PCLU in order to act as a dedicated prosecutor in foreign bribery cases.

327.2 Adv Shaun Abrahams, then a Senior State Advocate, was appointed to take the TRC matters over from Macadam. It is evident that Abrahams made little or no progress in the TRC cases while he was leading the PCLU.

327.3 After a protracted enquiry into his fitness to hold office, Nxasana stepped down as NDPP on 1 June 2015 and thereafter Abrahams was appointed NDPP.

The missing Cradock Four docket

328. Macadam filed an affidavit dated 24 May 2021 as part of the NPA's Rule 53 record in the matter of Calata and Others v NDPP and Others, Case No. 35447/ 2021 Gauteng Division, a copy of which is annexed hereto marked FA47 (Macadam's Rule 53 affidavit). In this affidavit he indicated that during April 2013, while he was deputy director of the PCLU and Abrahams was the acting head, they received a request for information about the Cradock Four case from a Ms Lepinka who was the personal assistant to Acting NDPP, Adv Nomgcobo Jiba. Abrahams responded to the request. Shortly thereafter, Macadam was asked to hand over the investigation docket, Swartskop CR 13/07/1985, to the Office of the Acting NDPP, which he did.

329. Macadam then avers that at a "certain stage", without disclosing a date, that Adv TP Pretorius SC, then Acting Head of the PCLU, asked him for the Cradock Four docket, and he advised Pretorius that "it had been uplifted from our office" and was missing. Macadam did not disclose why Pretorius was seeking the docket. This exchange must have happened between 2016, when Macadam returned to his normal duties after working on foreign bribery cases, and April 2019 when he assumed the position of Acting Head of the PCLU.

330. What is evident from the Macadam affidavit is that, at the very least, no investigations on the Cradock Four docket occurred between 2013 and 2019, when he took steps to assist the investigating officer to reconstruct the docket. This was a period of some six years.

331. It is also evident that in this six-year period, the PCLU leadership took no steps to recover the docket, let alone carry out any work on the case. If no work was happening on one of the most well-known and emblematic cases from our history, it can be safely assumed little or no work was being done on most, if not all of the TRC cases. This suggests that the suppression of the TRC cases was still in place through much of the second decade of this century, alternatively its impact had denuded the will and capacity of the authorities to act.

332. Equally revealing from Macadam's Rule 53 affidavit is the claim that the missing docket only comprised of an enquiry into unfounded rumours around one General Hankel and the inquest and TRC records, which were "easily reobtainable".

332.1 This confirms that prior to 2013, little or no substantive work was conducted in the decades between the Zietsman inquest and the TRC in the early to mid-90s, and the reconstruction of the docket that commenced in 2019. This means there was a suspension of substantive work on the case for more than 20 years.

332.2 The reconstruction of the docket in 2019 only occurred because me and my family instructed the FHR and my attorneys to engage with the NPA and DPCI to get this case off the ground. Indeed, the FHR's private investigator assisted with the reconstruction of the docket.

YOUR RIGHTS AND OBLIGATIONS

9. You are entitled to attend the hearing at which the evidence relating to the above allegations, and any other that may be led against you, is presented. You may be represented by a legal practitioner of your choice.

10. Rule 3.4 requires that, within fourteen (14) calendar days of this notice, you submit a statement in the form of an affidavit responding to the allegations. Your affidavit must specify which parts of the evidence are disputed or denied, and set out the grounds for such dispute or denial.
11. If you wish to—
- a. give evidence yourself;
 - b. call any witness in your defence; or
 - c. cross-examine the witness whose evidence implicates you,
- you must apply in writing to the Commission for leave to do so within fourteen (14) calendar days of this notice, accompanied by your affidavit.
12. You may also apply for leave to make written and/or oral submissions regarding the findings or conclusions that the Chairperson should draw from the evidence relating to you.

COMMUNICATION WITH THE COMMISSION

13. All correspondence, applications, and affidavits must be directed to: The Secretary of the Commission at secretary@trc-inquiry.org.za.

DATED at **SCI BONO DISCOVERY CENTRE** Johannesburg on this 19 day of September 2025.

For and on behalf of the Evidence Leaders to the Judicial Commission of Inquiry into Allegations Regarding Efforts or Attempts Having Been Made to Stop the Investigation or Prosecution of TRC Cases.



7.

20 October 2025

ADV N JIBA

Pan African Bar Association of South Africa
82 Maude Street
Sandton

Email: Nomgcobo@pabasa.co.za

Dear Adv Jiba,

RE: NOTICE IN TERMS OF RULE 3.3 – ADV N JIBA

1. We acknowledge receipt of your email of 20 October 2025.
2. As outlined in the notice in terms of rule 3.3, which you received, paragraph 8 states your role as a former NDPP. You are requested to submit an affidavit to the Commission addressing the issues raised in Rule 3.3. Alternatively, you may contact the Secretary of the Commission, who will coordinate with the evidence leaders to assist you with your affidavit.

Yours faithfully

Adv AM Thokoa
Secretary

**IN 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)**

STATEMENT BY ADV NOMGCOBO JIBA

1. I am an adult female and a practising advocate of the High Court Court of South Africa and a member of the Pan African Bar Association of South Africa with chambers situated at number 82 Maude Street, Sandton.

2. The facts deposed to herein are within my personal knowledge and to the best of my knowledge and ability, unless otherwise stated, true and correct. Where I make submissions of a legal nature, I do so on advice from my legal representatives, which I verily believe to be true.

3. I was previously employed by the National Prosecuting Authority of South Africa (NPA) as a Deputy National Director of Public Prosecutions (DNDPP) having been appointed as such on 22 December 2010. During my tenure as DNDPP, I was appointed to act as a National Director of Public Prosecutions (“ANDPP”) from around 20 December 2011 until around 30 August 2013 when Mr Mxolisi Nxasana was appointed as National Director of Public Prosecutions (“NDPP”). I recall that I acted in this position for a period of approximately twenty months.

N. J
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4. The President has established a Commission of Inquiry to investigate allegations into attempts to influence or to stop the investigation or prosecution of Truth and Reconciliation Commission ("TRC") cases.
5. Paragraph 1 of the Terms of Reference ("ToR"), states that the Commission must, in respect of the period since 2003, inquire into, make findings and recommendations on, amongst others:
 - 5.1 whether, why, and to what extent and by whom efforts or attempts were made to influence or pressure members of the South African Police Service ("SAPS") or the NPA to stop investigating or prosecuting TRC cases;
 - 5.2 whether any members of the SAPS or the NPA improperly colluded with, or succumbed to, such attempts;
 - 5.3 whether any action should be taken by any organ of state, including further investigations or prosecutions against persons who may have acted unlawfully by attempting to influence, or colluding with attempts to influence, SAPS or NPA members not to investigate or prosecute TRC matters; and
 - 5.4 whether, in law and fairness, the payment of constitutional damages to affected persons is appropriate.
- 6 The commission has thus requested me to furnish it with any information to assist it in the furtherance of its investigations. The statement is submitted in response to the Commission's request for assistance, and to respond to the false innuendo made against me by Adv Chris McAdam in relation to the Cradock Four docket. I state from the onset that at no stage did I make a request for the Cradock Four docket as it is stated, or any docket for that matter.
- 7 In this statement :

N.J
LM

7.1 First, I explain my interaction with the Priority Crimes Litigation Unit (PCLU) which dealt with the TRC matters in my capacity as the Acting National Director of Public Prosecutions;

7.2 Second, I explain my interaction with PCLU in my capacity as the Deputy National Director of Public Prosecutions .

A. Interaction with PCLU as Acting National Director of Public Prosecutions

8 As I have mentioned in paragraph 3 above, I was appointed by former President Zuma to act as the National Director of Public Prosecutions from around 20 December 2011. My acting stint as mentioned above ended around 30 August 2013 when Mr Mxolisi Nxasana was appointed as NDPP.

9 The NPA leadership at head office consisted of four Deputy National Directors of Public Prosecutors, who were responsible for four business units. The Priority Crimes Litigation Unit is one of the units that fell under Dr Ramaite as the Deputy National Director of Public Prosecutions.

10 In so far as PCLU matters are concerned, as ANDPP I would receive reports emanating from PCLU through the DNDPP, Dr Ramaite, in charge of PCLU. The reports that I received from PCLU did not allude to any political interference and as such I have no knowledge of political interference in the prosecution of TRC cases in my time.

11 With regard to the alleged cradock four missing docket, I never tasked anyone to go and collect a docket from PCLU, neither did I receive the said docket from PCLU. I find it strange that Chris MacAdam remembers that *a person from ANDPP office came to take the*

docket, but does not know who that person is; something that is very important. He is able to remember clearly things that occurred way before the alleged missing docket, but chooses not to remember who took the docket from his office. He conveniently states that he does not remember who came and took the docket from him. I submit that the allegations that he makes are false and unsubstantiated. No one was sent by me to take any docket from his office. It is unfortunate that these misleading and false allegations made by Adv Chris McAdam have been used as a justification for the delays in finalizing the investigations and prosecution of the Cradock four case.

12 I attach herewith a letter that was sent by Ms Lepinka the manager executive support in the office of the NDPP, which must have been a response to a report that was submitted by PCLU in the normal course of events and the memorandum received from Adv Shaun Abrahams, the Acting Special Director (PCLU) at the time as **Annexure NJ1 & NJ2** respectively. The request has no reference to the docket. The request only sought more information and clarity which was furnished. From the memorandum there is, and there was, no reason to request any docket because the information that was requested was furnished.

13 Adv Chris McAdam must not seek to use me, or the Office of the ANDPP during my tenure, as a scapegoat for his own failure to finalize the investigations. Whatever political interference there was in the past which he relies upon for the delays in finalizing the investigations and prosecutions of the TRC matters, there was none during my era as Acting National Director of Public Prosecutions.

14 Far from delaying the investigations and prosecutions of the TRC matters, I show hereunder that I took steps to ensure that these TRC cases are dealt with.

B. Interaction with PCLU as Deputy National Director of Public Prosecutions

- 15 After the appointment of Mr Mxolisi Nxasana as National Director of Public Prosecutions by former President Zuma, I was assigned to the Legal Affairs Division Unit (LAD) as a Deputy National Director of Public Prosecutions in charge of that unit. LAD dealt with all civil litigation instituted against the organization. After Mr Nxasana left the NPA, Adv Shaun Abrahams was appointed as National Director of Public Prosecutions. I was then assigned to the National Prosecuting Service (NPS) as a Deputy National Director of Public Prosecutions responsible for the unit. NPS dealt with prosecutions in general, reviews and representations made to the National Director of Public prosecutions.
- 16 In order to manage and monitor prosecutions, I would have bi-monthly operational meetings with the Directors of Public Prosecutions from all the divisions to discuss performance, challenges and agree on strategies that should be put in place in order to address bottlenecks which hampered performance and successful prosecutions of cases where there is a need to. These meetings were called the National Operational Management Meetings (NOMM).
- 17 Because of the depth in which performance was discussed and successes attributable to NOMM, the NDPP (Adv Shaun Abrahams) decided that the PCLU and Special Commercial Crimes Unit (SCCU) must also fall under the NPS so that performance by these specialist units could also be interrogated in the same way as the divisional performance.
- 18 I recall that I only had one or two NEEC meetings after the inclusion of PCLU. In one of those meetings a presentation was made on the cases emanating from TRC. As a result

of that presentation which showed lack of progress in the investigation and prosecution of the TRC cases, a resolution was taken that PCLU must submit a report consisting of the list of all TRC cases in their possession indicating the area of jurisdiction in respect of each and every case, the summary of evidence contained in the dockets and the dockets. This information was to be submitted to Adv Trish Matzke who was then the Senior Deputy Director of Public Prosecutions in the NPS, the business unit that I headed. I attach herewith the email implementing this resolution as **Annexure NJ3**.

19 Unfortunately, I was not able to see the investigations and prosecutions of these cases to completion as I was placed on precautionary suspension with full pay by the Honourable President Cyril Matamela Ramaphosa on 25 October 2018 pending institution of an inquiry into my fitness to hold office as DNDPP, arising from prosecutorial decisions I took in relation to the prosecution of the Cato Manor police officials, a decision that I to date maintain was the correct prosecutorial decision on available evidence at the time, and I therefore have no regrets of having taken the decision.

20 The report on the TRC cases referred to above is amongst the documents that I requested from the NPA in order to assist the Commission in its work. I was informed that the report, together with all memorandums that I requested cannot be found. I know for a fact that the report was submitted to Adv Trish Matzke, who I understand is now on retirement.



NOMGCOBO JIBA

I certify that the deponent has acknowledged that she knows and understands the contents of this statement, which was signed and sworn to before me at PRETORIA on 09 March 2026.



Lm Hlateni
CST
72693037

NJI

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**Office of the
National Director of Public
Prosecutions**



received 29/4/2013

INTERNAL MEMORANDUM

TO: ADV S ABBRAHAMS
ACT SPECIAL DIRECTOR: PCLU

FROM: J LEPINKA
MANAGER EXECUTIVE SUPPORT TO THE NDPP

REFERENCE: ANDPP/JL/04/2013

DATE: 26 APRIL 2013

SUBJECT: CRADOCK 4 MATTER

contact 1/0
re polygraph
affidavit.
He is in
Nelspruit
will try
the
about
reset
week.

Dear Adv Abrahams,

The above matter refers.

The ANDPP would appreciate the below mentioned areas to be attended to, to enable her to apply her mind accordingly:-

1. In your memo that you wrote to Adv. Mahlathi in paragraph 9, you state that after, accused received amnesty for the death of Goniwe - who are those accused persons - please specify their names.
2. Para 11 - who are the 6 former members of the Port Elizabeth Security Branch who applied for amnesty;
3. Who of those implicated in the murder of the deceased is still alive?
4. a. With regard to the affidavit made by the polygraph expert in Crime Intelligence, did the investigation establish why he made the allegation that he made against Gen Hankel?
b. Who is the Polygraph expert? Can his affidavit be attached to your memorandum.

N-J
Lm

In light of the above you are requested to submit a memo addressing all aspects as contained herein above. (bullet a - 4(b))

Kind regards



J LERINKA

MANAGER EXECUTIVE SUPPORT TO THE NDPP

N.J. "2"

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/Z36 forms



The National Prosecuting Authority of South Africa
Igunya Jikelele Labelshutshisi Bo Mzantsi Afrika
Die Nasionale Vervolgingsgesag van Suid-Afrika

INTERNAL MEMORANDUM

P. O. Box 752,
PRETORIA
0001

VGM Building
Hartley St.
Weavind Park
0001
Pretoria
South Africa

Tel: (012) 845 6000

TO: ADV N JIBA
ACTING NATIONAL DIRECTOR OF PUBLIC
PROSECUTIONS

CC: DR MS RAMAITE SC
DEPUTY NATIONAL DIRECTOR OF PUBLIC
PROSECUTIONS

CC: ADV RC MACADAM
SENIOR DEPUTY DIRECTOR OF PUBLIC
PROSECUTIONS

FROM: ADV SK ABRAHAMS
ACTING HEAD: PCLU

REF: ANDPP/JL/04/2013

SUBJECT: CRADOCK 4 MATTER

DATE: 22 MAY 2013

Dear Adv Jiba

1. PURPOSE

The purpose of this memorandum is to respond to the queries raised by the ANDPP in her letter dated 26 April 2013 relating to the above matter.

2. RESPONSE TO QUERIES

2.1 Adv Macadam from my office is presently dealing with this matter and has advised me hereon.

N.J.
LM

2.2 Ad para 1 of the ANDPP's letter, dated 26 April 2013:

Identities of persons who received amnesty for the death of Mr Goniwe (paragraph 9 of the letter of Adv Macadam to Adv Mahlathi):

As indicated in para 8 of Adv Macadam's letter, the amnesty hearing did not relate to the death of Mr Goniwe and his associates. The amnesty hearing was in relation to the murder of three Security Branch members, namely Glen Mgoduka, Desmond Mapipa and Amos Faku, as well as a police informer, namely Charles Jack.

Gideon Nleuwoudt, a Port Elizabeth Security Branch member, was convicted for the aforementioned murders and subsequently refused amnesty. In delivering judgment, the Court found that the three Security Branch members and the police informer had been murdered as they had key information in relation to the deaths of Mr Goniwe and his associates.

The two persons who received amnesty in relation to the deaths of these four persons were Marthinus Ras, a member of Vlakplaas and Wahl du Toit, the Head of the Police Technical Unit.

2.3 Ad paras 2 and 3 of the ANDPP's letter, dated 26 April 2013:

Details of the six former Security Branch members who applied for amnesty in respect of the murder of Mr Goniwe and his associates:

The particulars of the six Security Branch members are as follows (The details hereof are also contained in paragraph 11 of Macadam's letter):

- 2.3.1 Herold Snyman: Head of Port Elizabeth Security Branch (deceased).
- 2.3.2 NJ Janse van Rensburg: Senior member of Port Elizabeth Security Branch (deceased).
- 2.3.3 Sakkie van Zyl: Port Elizabeth Security Branch (deceased).
- 2.3.4 Eric Taylor: Port Elizabeth Security Branch (alive).
- 2.3.5 Gerhard Lotz: Port Elizabeth Security Branch (alive).

2.3.6 Herman du Plessis: Port Elizabeth Security Branch (alive).

All the aforementioned persons were refused amnesty.

2.4 Ad paras 4(a) to (b) of the ANDPP's letter, dated 26 April 2013:

Issues relating to polygraph expert:

The polygraph expert is Superintendent Josiah Stoffel Kgoroswe Maponyane. To date the basis for him having made the allegation against General Hankel has not been investigated at the instance of the NPA. My understanding hereof was that his statement related to the application for a security clearance by Hankel. As such, this is a matter that should be investigated internally by the relevant unit in the South African Police Service.

Nevertheless the allegations levelled against Hankel by Maponyane were investigated and proved to be false.

It must be borne in mind that a decision not to prosecute in the Goniwe matter may be reviewed in terms of the Promotion of Administrative Justice Act, No 3 of 2000 (PAJA) and may also be subject to a request for information in terms of the Promotion of Access to Information Act, No 2 of 2000 (PAIA).

The allegations levelled by Maponyane were made at a time when the Crime Intelligence Component, of which Hankel was a member, had publicly been embroiled in a number of internal conflicts. An enquiry by the NPA into the reason why Maponyane had levelled the allegations against Hankel may delve into these aspects. As such, I would be cautious in directing the SAPS to investigate the reason for Maponyane to have levelled the allegations against Hankel under the umbrella of the Goniwe investigation.

Such an investigation would not only unduly delay the decision in the Goniwe matter, but may potentially place all the unsatisfactory issues relating to Crime Intelligence into the public domain.

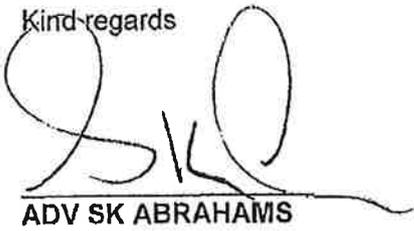
As requested, I attach hereto the affidavit of Maponyane, as well as the affidavit of his Commanding Officer and a letter from the Registrar of Fort Hare University.

N-J
Lm

3. CONCLUSION

Should the ANDPP require any further information and/or documentation in relation to the matter *in casu*, this office will be pleased to provide the necessary assistance.

Kind regards



22/5/2013

ADV SK ABRAHAMS

COMMENTS

DR MS RAMAITE SC
DNDPP
DATE:

COMMENTS

ADV N JIBA
ANDPP
DATE:

N-J
CM

Deputy Director of Public Prosecutions
012 845-6097 (t)
ematzke@npa.gov.za

19.1

From: Pfanani Malova (PG)
Sent: 22 October 2018 11:27 AM
To: Torie Pretorius (JP) <jppretorius@npa.gov.za>
Cc: Nomgcobo Jiba <NoJiba@npa.gov.za>; Trish Matzke <ematzke@npa.gov.za>; Jackie Lepinka <jlepinka@npa.gov.za>; Kim Benjamin <KBenjamin@npa.gov.za>
Subject: Request for list of Cases from TRC

Dear Dr Pretorius,

By directions of Adv Jiba, following the National Operations Management Meeting last week which you unfortunately could not attend, understandably so, a decision was taken that you should forward a list of cases / matters together with the cases themselves emanating from the TRC to my office in order to see and evaluate which matters should be referred to the DPP offices.

The delay in dealing with these matters was highlighted as something which is unacceptable, seeing that the cases are getting old, witnesses also getting old which might result in victims not getting justice at all.

The target date for the evaluation of these matters is 14 November 2018. Adv Jiba have already requested Adv Matzke and her team to run with the process.

It is therefore requested that this be submitted by Wednesday 24 October 2018 latest. You can delegate any prosecutors to collate the dockets.

Kind Regards



MS Pfanani Malova
PA To: Deputy NDPP(NPS)
National Prosecuting Authority

Head Office
VGM Building, 123 Westlake Ave,
Weavind Park, Pretoria

Tel: 012 845 6953
Call: 082 548 8663

Email: pgmalova@npa.gov.za
Web: www.npa.gov.za

AFFIDAVIT

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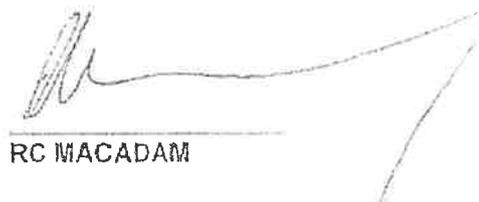
I, the undersigned,

RAYMOND CHRISTOPHER MACADAM

do hereby make oath and state that

- 1 I am an adult male of full legal capacity, serving as a Special Director of Public Prosecutions in the Priority Crimes Litigation Unit (PCLU) in the office of the National Director of Public Prosecutions (NDPP).
- 2 I have been requested to make a statement regarding the disappearance of the **CRADOCK 4** police docket, which is a Truth and Reconciliation Commission (TRC) case, from the Offices of the National Prosecuting Authority (NPA).
- 3 In 2013 I was a Deputy-Director in the PCLU. Advocate Abrahams was then Acting as the Head of the unit. Adv Jiba was Acting as the NDPP. Ms J Lepinka was acting as the ANDPP's Manager.
- 4 On 26 April 2013 Ms Lepinka wrote to Adv Abrahams, asking for information relating to the case. On 22 May 2013 Adv Abrahams replied to her.
- 5 There was no reply from the ANDPP in response to Adv Abrahams. At a certain stage, however, I was requested to handover the docket as it had been called for by the Office of the ANDPP. I complied with the request. At this moment in time, I cannot recall who made the request.
- 6 I reported that a response from the ANDPP was awaited. In October 2013 Mr Nxasana was appointed as the NDPP and Adv Jiba moved from being the ANDPP to, firstly, the Head: NPS (National Prosecution Service), and thereafter, Head: LAD (Legal Administration Department).
- 7 Mr Nxasana removed me from my normal duties so as to focus on foreign bribery cases with which I continued until December 2015.

- 8 On my return to my normal duties, I was allocated a number of terrorism matters and did not deal further with TRC cases. At a certain stage Adv Pretorius SC, who was then acting as the Head of the PCLU, enquired about the docket and I informed him that it had been uplifted from our Office.
- 9 In April 2019 I became the Acting Head of the PCLU and was advised that the docket had not been located. Adv Mzinyathi, who was then acting as the Head: NPS, informed me that a proper search had been conducted, but that the docket could not be located. At that stage Adv Jiba had had her employment with the NPA terminated by the President and Ms Lepinka had been suspended, due to being charged with removing an NPA computer from the Office. It served no purpose at that stage to try and locate the docket.
- 10 The docket comprised of an investigation against General Hankel as well as extracts from the CRADOCK 4 formal inquest and TRC amnesty hearing. Copies of the Hanke investigation were available as were key documents relating to the inquest and amnesty hearing. Further material relating to the inquest was available at Rhodes' University and at Archives in King Williams Town. The TRC material was available either on the Department of Justice website or at the State Archives.
- 11 I therefore gave the material in my possession to the investigating officer, Colonel Makua, and advised him to reconstruct the docket. A decision was, however, taken to refer the case to investigators in the Eastern Cape. I was able to locate considerable additional material relevant to the case, which was provided to those investigators.
- 12 I do not have evidence at my disposal to suggest that the docket was stolen. All the material contained in the docket was easily re-obtainable.



RC MACADAM

I hereby certify that the deponent has acknowledged that he knows and understands the contents of this affidavit, which was signed and sworn before me at **PRETORIA** on this the 21st day of May 2021, the regulations contained in Government Notice No R1258 of 21 July 1972, as amended, and Government Notice No R1648 of 19 August 1977, as amended, having been complied with.



Page 2 of 3

LC
NGI

327.3 After a protracted enquiry into his fitness to hold office, Nxasana stepped down as NDPP on 1 June 2015 and thereafter Abrahams was appointed NDPP.

The missing Cradock Four docket

328 Macadam filed an affidavit dated 24 May 2021 as part of the NPA's Rule 53 record in the matter of Galata and Others v NDPP and Others, Case No. 35447/ 2021 Gauteng Division, a copy of which is annexed hereto marked **FA47 (Macadam's Rule 53 affidavit)**. In this affidavit he indicated that during April 2013, while he was deputy director of the PCLU and Abrahams was the acting head, they received a request for information about the Cradock Four case from a Ms Lepinka who was the personal assistant to Acting NDPP, Adv Nomgcobo Jiba. Abrahams responded to the request. Shortly thereafter, Macadam was asked to hand over the investigation docket, Swartskop CR 13/07/1985, to the Office of the Acting NDPP, which he did.

329 Macadam then avers that at a "*certain stage*", without disclosing a date, that Adv TP Pretorius SC, then Acting Head of the PCLU, asked him for the Cradock Four docket, and he advised Pretorius that "*it had been uplifted from our office*" and was missing. Macadam did not disclose why Pretorius was seeking the docket. This exchange must have happened between 2016, when Macadam returned to his normal duties after working on foreign bribery cases, and April 2019 when he assumed the position of Acting Head of the PCLU.

330 What is evident from the Macadam affidavit is that, at the very least, no investigations on the Cradock Four docket occurred between 2013 and 2019, when

he took steps to assist the investigating officer to reconstruct the docket. This was a period of some six years.

331 It is also evident that in this six-year period, the PCLU leadership took no steps to recover the docket, let alone carry out any work on the case. If no work was happening on one of the most well-known and emblematic cases from our history, it can be safely assumed little or no work was being done on most, if not all of the TRC cases. This suggests that the suppression of the TRC cases was still in place through much of the second decade of this century, alternatively its impact had denuded the will and capacity of the authorities to act.

332 Equally revealing from Macadam's Rule 53 affidavit is the claim that the missing docket only comprised of an enquiry into unfounded rumours around one General Hankel and the inquest and TRC records, which were "*easily re-obtainable*".

332.1 This confirms that prior to 2013, little or no substantive work was conducted in the decades between the Zietsman inquest and the TRC in the early to mid-90s, and the reconstruction of the docket that commenced in 2019. This means there was a suspension of substantive work on the case for more than 20 years.

332.2 The reconstruction of the docket in 2019 only occurred because me and my family instructed the FHR and my attorneys to engage with the NPA and DPCI to get this case off the ground. Indeed, the FHR's private investigator assisted with the reconstruction of the docket.

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

**STATEMENT OF RAYMOND CHRISTOPHER MACADAM IN RESPONSE TO A
NOTICE IN TERMS OF RULE 3.3 OF THE RULES OF THE JUDICIAL
COMMISSION OF INQUIRY INTO ALLEGATIONS REGARDING EFFORTS OR
ATTEMPTS HAVING BEEN MADE TO STOP THE INVESTIGATION OR
PROSECUTION OF TRUTH AND RECONCILIATION COMMISSION CASES.**

INTRODUCTION

- 1 I am a 69-year-old pensioner.

- 2 I obtained a BA.LLB in 1979 and joined the Department of Justice ("**DOJ**") as a prosecutor in 1980. I was admitted as an advocate in 1981. I was promoted to the rank of Deputy Attorney General for the then Province of Natal in 1992.

- 3 I served as a Director in the South African Truth and Reconciliation Commission ("**TRC**") from May 1996 until August 1998, providing witness protection and conducting specific investigations.

- 4 In September 1998, I was appointed Deputy Director of Public Prosecutions in the National Prosecuting Authority ("**NPA**"), serving in the Investigating Directorate, Organised Crime and Public Safety ("**IDOC**"). Thereafter, in January 2001, I was appointed to the Directorate of Special Operations ("**DSO**") but required to oversee the Witness Protection Programme. In early 2002, I returned to my position in the DSO.

- 5 In June 2003, I was transferred to the Priority Crimes Litigation Unit (“**PCLU**”) and remained in the PCLU until my retirement as an Acting Special Director and Head of PCLU in October 2021.
- 6 The purpose of this statement is to respond to Rule 3.3 I received from the Justice Khampepe Commission and to address matters relating to an affidavit deposed to by Mr. Imtiaz Cajee.
- 7 I will below do the best I can to describe the issues as accurately as possible, but I am at times constrained by less than perfect memory due to the passage of time, compounded by the fact that, despite the NPA's best efforts, not all the documents I required could be found. In addition, certain documents are either incomplete or available only in draft form.

NDPP MR BULELANI NGCUKA’S TERM OF OFFICE (1998-2004)

- 8 When Mr. Bulelani Ngcuka became the National Director of Public Prosecutions (**NDPP**) in 1998, he established a unit within his head office, the Human Rights Investigative Unit (“**HRIU**”), specifically to review and assess TRC matters so as to establish which TRC matters were ready for prosecution or required investigation.
- 9 At the time, I was the head of the Investigating Directorate, Organised Crime and Public Safety, in KwaZulu-Natal, which focused on political violence in that province. Mr Ngcuka appointed me to this role on 1 September 1998. Prior

to this, from 1 May 1996 to 31 August 1998, I was a national portfolio director at the TRC.

- 10 After a year or two, the HRIU was dissolved for two reasons: first, the TRC amnesty process had not concluded; and second, it had no investigators and could not conduct investigations. I was still the head of the Investigating Directorate, Organised Crime and Public Safety in Kwa-Zulu-Natal when the Human Rights Investigative Unit was dissolved.
- 11 In January 2001, the DSO was established to investigate organised crime. When the DSO was established, various Directorates, including the Investigating Directorate, Organised Crime and Public Safety in Kwa-Zulu-Natal, of which I was the head, were dissolved to be incorporated into DSO.
- 12 Following the dissolution of my IDOC, Mr. Ngcuka requested that I join the DSO Unit's head office. I understand that he brought me in because of my experience as a national portfolio director at the TRC. When I joined the DSO unit, Mr. Tongwane was its only member.
- 13 At the DSO, my role included investigating TRC cases and prosecutions, as required. Mr. Tongwane and I were the only two members of staff. The DSO unit experienced operational difficulties due to a lack of investigators and administrative support.
- 14 Within a day or two of my joining the DSO, Mr Ngcuka instructed me to leave that portfolio and take over the witness protection programme from the

Department of Justice. The reason for my move was the murder in their safe house of two key witnesses who were due to testify in prosecutions instituted against the People Against Gangsterism and Drugs (“**PAGAD**”), in very serious cases in the Western Cape.

- 15 I then acted as the head of the witness protection programme from January 2001 until early 2002. Thereafter, I returned to the DSO, where a new component, the Special National Projects Unit (“**SNPU**”), had been established. Its mandate was to conduct investigations into matters deemed too complex for the four regional DSO offices. This included addressing TRC cases and to organise projects related to ongoing criminal activities.
- 16 The SNPU was also afflicted by a lack of resources. Its only staff members were Mr. Tongwane and I.
- 17 In May 2002, the head of the DSO, Mr. Sonn, appointed a chief investigating officer and four investigators to the unit. However, they could only assume their duties in November 2002, as they had to be drawn from the DSO's regional offices and therefore required time to finalise their outstanding investigations at the DSO.
- 18 In December 2002, the head of the DSO authorised me to employ two former TRC researchers and Mr Prior, who had served as an evidence leader at the TRC. Shortly after that, however, Mr. Prior returned to private practice.

- 19 With the assistance of the two researchers and the investigators, I compiled a report dealing with 41 TRC matters, which included cases that required investigation. These investigations were identified through various means, including requests for investigations from members of the public. The list of the 41 cases was then presented to Mr Leonard McCarthy, who had replaced Mr Sonn as the Head of the DSO, in February 2003. The report to Mr McCarthy is attached as annexure "**AD1**".
- 20 In all of these matters, I had identified the need for extensive investigations before any decisions could be taken about whether to initiate prosecutions.
- 21 On 2 May 2003, I was directly approached by Mr Imtiaz Cajee, the nephew of the late Mr Ahmed Timol, who had died in detention in 1971. Mr. Cajee introduced himself as a member of the intelligence agency and stated that he had been referred to me by Cabinet Minister Mr. Pahad. He provided me with the background of a private investigation he had conducted and the documentation he had obtained during the investigation. He drew my attention to the fact that he had information that the daughter of Sergeant Rodrigues (one of the policemen involved in the case of his uncle, Mr Timol) had made disclosures to a journalist, Ivor Powell. He emphasised the need to approach Mr Powell in this regard. Under the DSO's legal framework, I could not commence an investigation myself, as it required approval by the investigating director. My responsibility was to place information before the investigating Director by way of a formal application in terms of Section 28 of the National Prosecution Authority Act, 1998 ("**NPA Act**"). In this regard, reliable information had to be obtained to justify the investigation.

- 22 On 5 May 2003, I instructed Mr Andrew Leask, the Chief Investigating Officer at the SNPU, to not only follow up on the issue relating to Mr Powell but also to gather other relevant information so as to enable me, once the information had been obtained, to apply for the authorisation of an investigation in terms of section 28 of the NPA Act. I instructed Mr. Leask in writing, and the memorandum addressed to him is attached as annexure "**AD2**".
- 23 In May 2003, Mr. Anton Ackermann SC invited me to serve as his deputy in the newly established PCLU, which was established in March 2003 by Presidential Proclamation, a copy of which is attached as annexure "**AD3**".
- 24 Mr. Ackermann was appointed as a Special Director and Head of the PCLU. Unlike the DSO, the PCLU had no investigative capacity and would have to rely on either the DSO or the police for any matters requiring investigation. The mandate of the PCLU was to deal with serious crimes specified in the Presidential Proclamation and any other priority crimes referred to it by the NDPP.
- 25 On 15 May 2003, while still at the DSO, I addressed an internal memorandum to the NDPP, the Head DSO, the Head DSO Operations, and Mr Ackermann SC, which provided details of an audit of TRC cases I had dealt with while at the DSO. The audit sets out cases ready to proceed to prosecution, provided investigations were finalised, as well as cases identified for investigation, including the Timol case. A copy of the memorandum is attached as annexure "**AD4**".

- 26 On 22 May 2003, as a result of identifying certain TRC cases as having prosecution potential, I submitted applications in terms of section 28 of the NPA Act for investigations into five TRC matters. I also submitted my national project proposal, as required by the DSO, which stated that investigations could be approved only in terms of section 28 of the NPA Act on the basis of an approved project proposal and a budget. A copy of my internal memorandum is attached as annexure "**AD5**".
- 27 These applications and project proposals were referred to Mr. Malala Godfrey Ledwaba, the investigating director of the DSO. In terms of section 28 of the NPA Act, only he was authorised to approve investigations and to designate investigators to conduct such investigations.
- 28 On 23 May 2003, Mr Ackermann addressed an internal memorandum to the NDPP, requesting a meeting to discuss TRC matters, specifically the progress made by my office. A copy of the memorandum is attached as annexure "**AD6**".
- 29 On 26 May 2003, Mr Ackermann submitted an internal memorandum to the NDPP, Mr McCarthy, and Dr Ramaite, the Deputy National Director of Public Prosecutions, under whose portfolio the PCLU fell. It set out operational challenges experienced by both Mr. Fick and I. The proposal was to transfer Mr. Fick's cases to the PCLU and to transfer Dr. Pretorius and I from the DSO to the PCLU. It also proposed an office structure that included the secondment from the DSO Headquarters of six investigators to conduct the identified investigations. A copy of this memorandum is attached as annexure "**AD7**".

30 Shortly thereafter, a meeting was held between Mr Ngcuka, Mr Ackermann, and I (and possibly Mr McCarthy and Dr Ramaite).

30.1 Mr Ngcuka accepted the proposal insofar as it related to Mr Fick's cases and the transfer of Dr Pretorius and I, from the DSO to the PCLU.

30.2 Mr Ngcuka directed that the PCLU should apply for leave to appeal to the Constitutional Court for the acquittal in the *State v Wouter Basson* case to be set aside.

30.3 Mr Ngcuka directed that I continue working on the TRC cases I had handled at the DSO. The request to second six DSO investigators to the PCLU was not approved, but Mr. Ngcuka made it clear that the investigations should be conducted by DSO members.

30.4 At the meeting, Mr. Ngcuka did not refer the TRC cases to the PCLU as required by its Presidential Proclamation. This, however, was done on 21 October 2003. I attach a copy of the referral signed by Mr. Ngcuka as annexure "**AD8**".

31 In June 2003:

31.1 while I was at the PCLU, I assisted Mr Anton Ackermann with identifying material from the case record in *Wouter Basson* so as to enable the private counsel briefed by the NPA, Mr Wim Trengove SC and Mr Alfred Cockrell SC (who at the time was not yet senior counsel), to determine whether the evidence supported the grounds upon which the application for leave to appeal to the Constitutional Court, would

be based. It was a protracted process that included drafting and presenting an application to the court *a quo* for additional grounds of appeal, which had been identified by the private counsel team. Because Mr Ngcuka had indicated that TRC investigations should be conducted by DSO, I was still required to have the National project proposal approved and to submit applications under Section 28 in respect of all matters I required to be investigated.

- 31.2 I was approached by the legal advisors of the South African National Defence Force (“**SANDF**”), who informed me of an agreement between them and the Office of the State Attorney that refusals of amnesty to current and former members of the military would only be taken on review to the High Court if they were due to be prosecuted. They requested that I give them timeous notice of any intended prosecution so that they could take the necessary steps to have any refusal of amnesty reviewed in the High Court. I acceded to their request. Instituting criminal proceedings before finalisation of the review proceedings would have unduly delayed the criminal trials, as doing so would inevitably have resulted in the postponement of the criminal prosecutions. I duly informed Mr. Ackermann of the discussion with the SANDF and the undertaking I had given. Mr. Ackermann decided to adopt the same process in cases where the former police's Security Branch were identified as having prosecution potential and involving former Police Security Branch Members. The suspects in these cases were represented by an attorney, Mr. Wagenaar, who also represented

former Minister of Police, Mr Adriaan Vlok, and former Commissioner of Police, Mr Johan van der Merwe.

31.3 Mr. Ackermann did, in fact, meet Mr. Wagenaar and advised him accordingly. Upon his return from meeting Mr. Wagenaar, Mr. Ackermann informed me that Mr. Wagenaar had stated that any prosecution of his clients would lead to the prosecution of the leadership of the ANC, who had been refused amnesty.

31.4 Mr. Ackermann commenced reviewing the 400 ANC docket, which were prior to April 1994 investigated by the police.

31.5 On 24 June 2003, I wrote to Commissioner Rayman Lalla, the Divisional Head of the SAPS's Crime Intelligence Unit, requesting assistance with the two matters set out in my letter. A copy of my letter is attached as annexure "AD9".

32 I could not make any progress on my cases because Mr. Ledwaba's approval of my project proposal, as well as the four applications for authorisation of investigation, were still outstanding. This led to Mr. Ackermann and I meeting with Mr. Ledwaba on 15 July 2003 to discuss the matter. At the meeting, Mr. Ledwaba informed Ackermann and I that he had decided that SAPS must assume responsibility for all TRC investigations previously under the DSO's purview. At this stage, the Timol matter had been identified as a case requiring investigation. A copy of Mr. Ledwaba's written instruction to Mr Leask dated 15 July 2003 as annexure "AD10".

- 33 As at 15 July 2003, Mr Leask had not complied with my instructions to him, given on 5 May 2003, relating to the Timol matter. This was because he was still engaged with other matters at the time, including the TRC cases in respect of which I had applied for authorisations to Mr. Ledwaba, as well as organised crime matters that had been allocated to him.
- 34 As a result of Mr. Ledwaba's decision, either in late July or early August 2003, Mr. Ackermann and I approached Commissioner De Beer, the Divisional Head of the Police Detective Service, to ask the South African Police Service ("**SAPS**") to take over the TRC investigations from the DSO, including the Timol matter.
- 35 Commissioner De Beer required that our request be put in writing, and we did this on 20 August 2003.
- 36 On 26 September 2003, Commissioner De Beer wrote to Mr Ackermann giving various reasons why the SAPS would not take over the investigations unless certain conditions were met: that either Mr Ackermann or Mr Ngcuka approach the President (at the time President Mbeki) and obtain an instruction from the President for the SAPS to take over the investigations. I attach a letter dated 26 September 2003 from Commissioner De Beer to Mr Ackermann as annexure "**AD11**".
- 37 To my knowledge, this approach did not occur.

- 38 In the meantime, due to the refusal of the SAPS to take over the cases from the DSO, no further investigations could be conducted into those matters (which were limited to the TRC cases) because the PCLU lacked its own investigative capacity. The PCLU relied on the DSO or the SAPS. The PCLU's hands were tied particularly given the refusal by the SAPS to assist.
- 39 On 11 November 2003, Mr Ackermann wrote to Mr Ledwaba (copying Mr Ngcuka, Dr Ramaite, the DNPP to whom the PCLU reported, and Mr McCarthy, the head of the DSO). In the letter, Mr. Ackermann set out the steps he and I had taken to persuade Mr. Ledwaba to again take over the investigations of the TRC cases after the refusal of SAPS to do so. This also included a request for Mr. Ledwaba to make two DSO investigators available and to sign the declarations in terms of section 28, which had already been submitted in May 2003. The letter of 11 November 2003 is attached as annexure "**AD12**". No response was received to Mr. Ledwaba's letter.
- 40 On 8 December 2003, NDPP Mr Ngcuka, acting in terms of section 28(1)(b) of the NPA Act, instructed Mr. Ledwana to have the 4 (four) TRC cases specified in the referral investigated by the DSO. The referral included 3 (three) of the cases I had previously submitted for authorisation of the investigations to Mr. Ledwaba in May 2003. I attached a copy of the referral by Mr. Ngcuka as annexure "**AD13**".
- 41 Sometime before February 2004, Mr. Leask informed me that, due to Mr. Ledwaba's decision not to investigate, he had been unable to comply with my instructions regarding the investigation of the Timol matter. However, because

Mr. Powell was now a member of the DSO, Mr. Leask had asked Mr. Powell about the alleged disclosure by Sergeant Rodrigues's daughter. Mr Leask informed me that Mr Powell had denied all knowledge thereof and had supplied Mr Leask with an article he had published relating to the Timol matter, which contained no such disclosures.

42 In February 2004, I received a fax from Mr. Cajee inquiring about the request he made to me in May 2003.

43 On 25 February 2004, I informed Mr. Cajee that the allegations relating to Mr. Powell had, in fact, been followed up with negative results. I confirmed that he had supplied certain documents at the time he made his request, but requested that he provide the document in his possession relating to a detainee, which I did not have. I also asked him to provide any additional materials he may have. My letter of 25 February 2004 is attached as annexure **"AD14"**.

44 I did not receive a response to my letter from Mr. Cajee.

45 On 26 February 2004, Mr Ngcuka referred two further TRC cases to Mr. Ledwaba in terms of section 28(1)(b) of the NPA Act. I was now confident that the issue of investigations would be resolved. However, shortly thereafter, I was assigned duties that took me away from TRC matters; I had to deal with an international nuclear weapons syndicate case and numerous other responsibilities. I attached hereto Mr Ngcuka's referral as annexure **"AD15"**.

NDPP MR VUSI PIKOLI'S TERM (1 FEBRUARY 2005 - SEPTEMBER 2007)

46 Mr Vusi Pikoli became the NDPP on 1 February 2005. At that stage, I was still fully occupied with the nuclear weapons case, which remained the position until September 2007, when the prosecution was successfully concluded.

47 After the completion of the prosecution of the nuclear weapons case, I was not immediately assigned to TRC matters.

48 In October 2006, Mr Pikoli established the TRC Committee (also known as the Task Team) the purpose of which was to focus exclusively on TRC matters.

49 The Task Team was established pursuant to an amended NPA Prosecution Policy, which had come into effect on 1 December 2005. I was not involved in the process, except for attending 2 to 3 meetings on Mr Ackermann's instructions. I acquired documentation relating to the composition of the task team and the minutes of its first meeting on 12 October 2006. I attach a copy of the list of members as well as the minutes of the first meeting as annexure "AD16" and "AD17" respectively.

50 Mr Pikoli was suspended in September 2007.

**ACTING NDPP MR MOKOTEDI MPSHE'S AND NDPP MR MENZI SIMELANI'S
TERMS OF OFFICE**

51 Mr Mpshe was appointed as the Acting NDPP following Mr Pikoli's suspension.

- 52 When Mr. Mpshe was appointed, I was completing the nuclear weapons case and not involved in any TRC matters. Even after I completed the prosecution of the nuclear weapons case in September 2007, I did not immediately become involved in TRC matters.
- 53 I next became involved in TRC cases in September 2008, when Mr Ackermann, the head of the PCLU at the time, informed me that I would be assuming his responsibilities on a task team established by Mr Pikoli to address all TRC matters. My instructions for taking over from Mr. Ackermann are recorded in a memorandum addressed to Dr. Ramaite dated 5 June 2008. A copy of the memorandum is attached as annexure “**AD18**”.
- 54 My instruction from Mr. Ackermann was to continue with the cases that had not been finalised by the Task Team and with the Pebco Three Case (three black South African anti-apartheid activists – Siphon Hashe, Champion Galela, and Qaqawuli Godolozzi), where a prosecution had been instituted, but no trial had commenced. The cases I took over from Mr. Ackermann did not include the Timol matter.
- 55 After taking over Mr. Ackermann’s responsibilities, I discovered that the TRC Committee (the Task Team) was not meeting, nor were any investigations being conducted. The fact that investigators had not been appointed did not prevent me from tasking two advocates to review existing material, and in order to identify aspects requiring investigations. I attach as annexure “**AD19**” an email I sent to Mr. Ackermann dated 09 July 2008, requesting him oversee the work of the two advocates while I was away from the office for a week.

- 56 On my return, I engaged with Police Commissioner Jacobs, who was a member of the TRC Committee (also known as the Task Team), and Mr. P. Richer, a Deputy Director General in the NIA, who was also in attendance at the TRC Committee meetings I had attended. Both Commissioner Jacobs and Mr. Richer agreed with me that investigations should progress, subject to approval by their principals and under the same auspices that the TRC Committee had operated.
- 57 In early 2009, my discussions with Commissioner Jacobs and Mr. Richer had progressed to a stage where I was confident that the TRC Committee (also known as the Task Team) would reconvene. In this regard, the acting NDPP, Mr. Mpshe, reported accordingly to the Minister. A copy of the ministerial memo is attached as annexure "AD20".
- 58 The TRC Committee (also known as the Task Team), however, never reconvened.
- 59 During this period, I was also appointed to a project established by the Financial Action Task Force (**FATF**). South Africa was a member of FATF and was obliged to comply with all FATF's directives relating to money laundering and the financing of money laundering.
- 60 As a result of the nuclear prosecution, FATF established a project to determine whether to issue directives on nuclear proliferation financing. Due to my prosecution of the nuclear weapons case, I was appointed to represent South Africa in the FATF project.

61 In order to ensure that TRC cases would be investigated, and at the specific request of Mr. Mpshe, I commenced engaging directly with Commissioner Lalla, who was now the Divisional Head of the Detective Services of the SAPS. After a series of meetings, he agreed to set up a project team composed of former Police officers who had joined the DSO but were now returning to SAPS as a result of the DSO's dissolution. All these members had prior experience with investigating TRC Cases. I attach as annexure "**AD21A**" a trail of emails between myself and Mr. Mpshe, Dr. Ramaite, and Mr. Ackermann, and Mr. Mgwengwe of the NPA from 18 May 2009 to 20 May 2009 confirming an agreement with Commissioner Lalla that he would appoint a project team of former DSO investigators who had experience with TRC matters.

62 I was thereafter informed by Commissioner Lalla that the National Commissioner of Police has decided that, with the establishment of the Directorate of the Priority Crimes Investigations ("**DPCI**"), the investigation of TRC cases should be the responsibility of DPCI.

63 Commissioner Lalla informed me that he would facilitate a meeting with General Anwa Dramat to arrange for the DPCI to conduct the investigations. I attach as annexure "**AD22A**" an email dated 1 July 2009 addressed to the Superintendent, Colla Buzuidenhout, who was Commissioner Lalla's staff officer, in which I requested a meeting with Commissioner Lalla. I attach hereto as annexure "**AD22B**" her email of 07 July 2009, in which it was advised that Commissioner Lalla had agreed to the meeting but that Commissioner Dramat should be present. It was also advised that the meeting would be on 20 July 2009. Also on 07 July 2009, I sent an email to Dr. Ramaite, copying Mr.

Ackermann, confirming the meeting of 20 July 2009 with Commissioners Lalla and Dramat. I, however, advised that I requested Commissioner Dramat to appoint an investigating officer for the Lubowski case, because the matter was due to prescribe shortly, which is attached hereto as annexure "AD22C". I attach herein as annexure "AD22D" an email sent by Ms. Zwart of the PCLU to Superintendent Colla Buzuidenhout, emphasising the urgency. On 14 July 2009, Commissioner Lalla's office advised that Commissioner Dramat was no longer available for the meeting, which would now have to be moved to August 2009. Attached hereto as annexure "AD22E" is an email dated 15 July 2009 informing Dr. Ramaite that I had agreed to the meeting being postponed to August 2009, but insisting that an investigating officer be immediately appointed to investigate the Lubowski matter. In fact, an investigator was appointed on 27 July 2009. I attach as annexure "AD22F" an email addressed to Mr. Hofmeyr and Dr. Ramaite, again dealing with the urgency of the Lubowski matter. I attach as annexure "AD22G" a trail of emails dated 26 August 2009 to 28 August 2009 between myself, Commissioners Lalla, and Dramat is staff officers calling for a meeting with the two Commissioners to discuss TRC investigations. Commissioner Dramat's secretary, however, advised that he was unable to meet with me.

64 I, however, secured a meeting with Assistant Commissioner Lebeya ("Commissioner Dramat's deputy"). In 26 November 2009. At that meeting, Assistant Commissioner Lebeya agreed that the Crimes Against the State (CATS) component of the DPCI would conduct the investigations. Due to security operations related to terrorist threats aimed at disrupting the 2010

World Cup, he advised that the investigations would commence only after the World Cup concluded. On 18 January 2010, I wrote to Commissioner Lebeya confirming his undertaking regarding TRC cases. I attach hereto as annexure "AD23" a copy of the letter. I note that I have not been able to locate page two of the Letter.

65 In March 2010, I nevertheless tasked out the investigations to the DPCI so that, when they were ready to investigate, they would already know what was required of them. After the conclusion of the World Cup, the investigations commenced; however, only three investigators were allocated to conduct the investigations. In addition, the investigators had no previous experience in TRC matters and also had other responsibilities relating to the investigation of State Security matters.

66 I was also tasked with other responsibilities, including an instruction from the NDPP, Mr. Simelane, to guide investigations into corruption cases in the Northern Cape.

ACTING NDPP MS NOMGCOBO JIBA'S TERM

67 When Mr. Simelane was placed on special leave, Ms. Nomgcobo Jiba commenced acting as NDPP. She acted as NDPP until the appointment of Mr Nxasana was appointed as NDPP in October 2013. During this period, I continued guiding the TRC investigations in addition to carrying out substantial non-TRC related work.

NDPP MR MXOLISI NXASANA'S TERM (OCTOBER 2015 - MAY 2015)

68 In October 2013, Mr Mxolisi Nxasana was appointed as the NDPP. Following his appointment, Mr Nxasana removed me from the PCLU and assigned me to manage investigations into corruption offences within the scope of the Organisation for Economic Co-operation and Development ("OECD"). Given the complexity of the OECD matters, Mr Nxasana determined that I would be best suited to manage them.

69 I was in the OECD from 2014 until June 2015. Whilst at the OECD, I was not involved in TRC cases, except to furnish an opinion on one matter in which an application to compel a decision had been brought.

NDPP MR SHAUN ABRAHAM'S TERM (JUNE 2015 - AUGUST 2018)

70 Mr. Abrahams was appointed as NDPP in June 2015. He decided that I should continue with the OECD portfolio, but this was being frustrated because I no longer had access to the dockets, as another colleague, Mr. Mwrebi, had taken the dockets from my control.

71 In October 2015, Dr. Pretorius was appointed as the Head of the PCLU. Due to the impasse with the OECD, I offered to assist Dr. Pretorius with the TRC matters should he require it.

72 Prior to me being involved in the OECD matters, I had requested the police to investigate the death in detention case of Dr. Neil Aggett. During October

2015, I had become aware of a television interview with Mr George Bizos SC, the counsel who had represented the Timol family in the original inquest into Mr Timol's death.

- 73 During the interview, Mr Bizos stated that Mr Timol had been murdered and that the police had lied at the inquest. I was aware that the police were already investigating the Dr. Aggett matter. I, on 30 October 2015, emailed the DPCI requesting that they investigate the Timol matter. A copy of this email is an annexure to my supporting affidavit filed in *Rodrigues v NDPP 2019 (2) SACR 251 (GJ)* matter, which is already filed with the Commission.
- 74 I also started assisting the DPCI with the investigation of both the Timol and Aggett matters by locating documentation, identifying witnesses, and requesting Ms. Fullard, the head of the NPA Missing Persons Task Team ("MPTT"), to retrieve archival material. Ms. Fullard had previously worked as a researcher at the TRC and was in a better position to access the material than the police.
- 75 On 4 February 2016, Dr Pretorius informed me that he had a meeting with Advocate Varney and his team, Webber Wentzel Attorneys, and the Foundation for Human Rights, who were requesting that the NPA reopen the inquests into the deaths of Mr Timol and Dr Aggett. On the same date, I provided Dr. Pretorius with an opinion on the work done on both matters and recommended that a decision on reopening the inquests should only be taken when both cases had been fully investigated to determine whether murder

charges could be instituted. A copy of my opinion is attached as annexure "AD24".

- 76 I continued to work on both the Timol and Aggett matters until I was instructed by Dr Pretorius to lead a DPCI investigation into terrorist activities occurring in the Johannesburg area. Dr Pretorius assumed control not only of the Aggett and Timol matters but also of the entire TRC Portfolio.
- 77 In paragraph 7.2.3 of my above opinion and in relation to the Aggett matter, I complain of the difficulty in the online reading of the electronic inquest on the Wits website. I, however, point to the burden of printing 8,500 pages on the office printer. Mr. Cajee cites this as displaying a lack of interest. The true position is that the PCLU staff shared a single printer, not suitable for bulk printing. As a result, arrangements were made to have the digital record emailed in small batches. Thereafter, approval was obtained to get a printing office to print two copies of the record. I attach as "AD25" the email exchange between the PCLU admin officer and the Wits official.
- 78 In 2017, Dr. Pretorius decided to apply to reopen the Timol inquest. I was still working on the terrorism cases at this time. I, however, was aware that the inquest was reopened. As a result of the findings of the Court, a prosecution on the charge of murder was instituted against Sergeant Rodrigues.
- 79 In late 2018, I was informed by Dr. Pretorius that Sergeant Rodrigues had applied for a stay of prosecution. My assistance was sought in responding to the allegations made in the application.

80 On 1 November 2018, I deposed to a supporting affidavit on behalf of the NDPP, the first respondent to the application. As indicated above, a copy of this affidavit has already been filed with the Commission.

NDPP MS SHAMILA BATOHI'S TERM (1 FEBRUARY 2019 - 31 JANUARY 2026)

81 Ms. Batohi became NDPP on 1 February 2019.

82 In March 2019, she informed me that she was appointing me as the Head PCLU and nodal point for the State Capture Commission. I was also required to exercise oversight over the MPTT. The Minister appointed me as an acting Special Director in April 2019.

83 By virtue of my appointment as Acting Special Director, I became seized with the TRC matters. In this capacity, I handled and oversaw TRC matters until September 2021, when the decision was made to remove the TRC cases from the PCLU.

84 I commenced with an audit of all cases falling within the PCLU mandate. I discovered that there was a backlog, which I attributed to trying to manage cases across the country with a small staff based in Pretoria. At that stage, the PCLU was staffed by Dr. Pretorius, Ms. Bukau, one admin officer, and I.

85 In respect of TRC cases, Brigadier Xaba of the CATS unit provided me with details of approximately 30 cases under investigation, which included some of those I had referred to the DPCI in 2010. I established that only four of the

cases were receiving dedicated attention from a prosecutor. Shortly thereafter, Brigadier Xaba's commander, General Ledwaba, requested me to appoint prosecutors for all the cases.

- 86 Reviewing the dockets, I had concerns regarding the quality and pace of the investigations, which in part I attributed to the absence of any research capability and other resource challenges. As stated above, some of the cases referred to in 2010 were still not finalised. I expressed my concerns in this regard in an email dated 3 May 2019 to the NDPP, copying Mr Mzinyathi, who was the DNDPP and head of NPS. The NPS was the component under which the PCLU and all other prosecution units fell, including all the DPPs. A copy of the email is attached as annexure "AD26".
- 87 This led to a discussion with the NDPP, who agreed to set up a meeting with General Lebeya, the Head of the DPCI.
- 88 In May 2019, I submitted a proposal to the NDPP that the PCLU adopt a decentralised model, with cases being managed by the DPPs in the areas where the crimes were committed. The PCLU would exercise an oversight and support function. This proposal was adopted by the NDPP and her Executive Committee at the end of May 2019.
- 89 As a result of this policy, the DPPs were required to appoint senior staff members to serve as nodal points between the PCLU and their offices. I would be required to refer cases to the nodal points, who would allocate them to individual advocates. The nodal points would manage the work of the

- advocates and report progress to me monthly. I would consolidate the reports and add work done by the PCLU. The report would be submitted to the Head of NPS.
- 90 The nodal points were appointed in June 2019 and received a week's training in July of the same year.
- 91 Ms. Bukau of my office opened a file for each TRC case. I copied her on all my emails regarding the cases. Every morning, she would print emails from the day before and file them. All other documents relating to the cases were put in the files as soon as they were received. Brigadier Xaba was informed to submit the police dockets to the nodal points.
- 92 Shortly thereafter, in 2019, the nodal points in offices far from the investigators (who were all based in Pretoria) complained that the investigators were not readily accessible to them. As a result, in 2019, I met with General Ledwaba and requested that she appoint investigators in the DPCI regional offices for the DPP offices outside Gauteng. This request was refused.
- 93 As to research capability, I approached the NPA's research office, which made two researchers available. They conducted research but were constrained by a lack of relevant historical knowledge of TRC matters. This made it difficult to locate and evaluate material. I then initiated the process of appointing a former TRC researcher on a contract basis to conduct part-time research. With the onset of COVID-19 in early 2020, it was not possible to secure the

appointment. I then used the MPTT because its staff included two former TRC researchers with the necessary expertise.

94 As a result of the nodal point system, progress started to be made on the cases. Several cases in different provinces could be addressed simultaneously. There was, however, still a problem with having all the cases being investigated by investigators based in Pretoria.

95 In January 2020, Ms. Batohi, Mr. Mzinyathi, and I met with General Lebeya and explained our concerns regarding investigations. The General agreed to obtain approval to appoint experienced retired police officers on 3-year contracts to work full-time on TRC cases. As an interim measure, he also agreed to use regional investigators when appropriate. Due to the COVID-19 pandemic, the appointment of contract investigators only took place in mid-2021.

96 Beginning in March 2020, a series of lockdowns was imposed to contain the spread of COVID-19. This impacted negatively on the work. Offices, archives, and other record centres were closed, and travel restrictions were imposed. I, however, remained at the office seven days a week. When the office closed due to infections, Mr. Mzinyathi and I met in the parking lot to discuss urgent work matters.

97 I took advantage of the initial lockdowns to identify all deaths in detention matters reported by the TRC and other organisations. After removing the cases already under investigation, I was left with about 59 cases. With the

promise of extra investigators and the ability to distribute the cases across the provinces, I was confident they could all be investigated.

- 98 In April 2020, Mr. De Kock replaced Mr. Mzinyathi as Head of NPS.
- 99 On 25 May 2020, I furnished him with a breakdown of investigations and alerted him that I wanted a number of further cases investigated, which would require additional police capacity. A copy of my report is attached as annexure **"AD27"**.
- 100 Shortly thereafter, Mr. De Kock wrote to General Lebeya, informing him of the additional cases and that this would require additional investigators. A copy of the letter is attached as annexure **"AD28"**.
- 101 The requested meeting took place, and the General undertook to address the issue of additional investigators but noted constraints due to COVID.
- 102 By this time, the effects of COVID were taking their toll. At least one investigator and prosecutor died. Many more were seriously affected. There were, in addition, frequent changes in DPPs, nodal points, and prosecutors. In certain instances, certain nodal points failed to show progress in their monthly reporting, and some even failed to report at all. This was referred to in my reports to Mr. de Kock, and the two of us raised this in the DPP meetings.
- 103 COVID also affected the reopening of the Dr. Haffee and Dr. Aggett inquests, but ultimately, they began with virtual hearings. Microsoft Teams also enabled

me to communicate directly with prosecutors in the regions. This, however, was impacted by Eskom's load shedding.

104 Notwithstanding these challenges, as at 30 November 2020, 53 cases had been referred to the DPPs, while a further 46 were awaiting additional resources before referral. Another 10 cases were awaiting more information about where the crimes had been committed before they could be referred. There were also three foreign cases, bringing the total to 112. I attach herewith as annexure "AD29" the report by Ms. Bukau dated 30 November 2020.

105 In December 2020, a workshop was held between the DPCI and NPA to address issues impeding progress with the cases. It was accepted that using prosecutors who were seized with other duties was no longer practical. It was therefore decided to apply for permission to employ prosecutors on contract to work full-time on TRC cases, as the police were trying to do with investigators.

106 In January 2021, I requested the DPPs to indicate how many new prosecutors they each required. Once this information was received, the NPA's human resources section was requested to obtain the necessary financial approvals, which required permission from the Department of Public Service Administration. Due to the Department of Public Service Administration's reluctance, financial approvals were obtained only in September 2021.

- 107 Also in 2021, the Ernest Dipale inquest was reopened, and the DPP in Johannesburg instituted the prosecution of the Cosas 4 case. Work on other cases progressed.
- 108 In mid-September 2021, Mr. De Kock informed me that the decision had been taken to immediately take the TRC cases away from the PCLU. They were now to be managed by the NPS. I then signed off my files, and Ms. Bukau compiled a report detailing all cases as at 20 September 2021. A copy of the report is attached as annexure **AD30**. The total number of cases now stood at 114.
- 109 The report showed that the DPP Eastern Cape failed to report on a number of the referred cases. It must be said, however, that the office was fully occupied with the Cradock 4 case, which also included a civil action.
- 110 In my view, progress was made under difficult conditions by prosecutors and investigators working on the cases, despite their other responsibilities. I did not take a single day's leave in 2021.
- 111 I tried to assist the prosecutors and investigators as much as possible by providing advice and locating documentation they did not have access to. I noted that the case of Mr. Bayempini Mzizi was linked to that of Dr. Haffejee and advised the prosecutor accordingly. I attach as annexure "**AD31**" a copy of my email dated 24 June 2021, which provides all the necessary guidance. I also detected that the case of Mr. Ernest Dipale was linked to that of Dr. Aggett. I located all the relevant material. This case was not dealt with by the

TRC. I attach as annexure "AD32" the exchange of emails between the prosecutor and I of 26 February 2021, in which the prosecutor updates me on developments with the inquest, and I give further advice.

112 I also instructed that the Griffiths Mxenge, and Rick Turner cases be reopened after I learned that a witness in another case claimed to have new information. I assisted the MPTT in locating the records of an exhumation of the body of Ms. Ntombi Khubeka, which had been done by the TRC. The MPTT re-exhumed the body, and DNA testing established that the wrong body had been exhumed by the TRC.

113 The MPTT made a significant contribution to progress in investigating cases by retrieving archived material, drawing links between cases, and tracing witnesses whose whereabouts were unknown to the investigators. This was all done over and above their primary duties.

114 On 31 October 2021, I retired from the NPA.

THE ALLEGATIONS MADE BY MR CAJEE RELATION TO ME

115 In relation to the allegations made by Mr Cajee about me, I deny that I was reluctant or unwilling to prosecute TRC matters, or that I failed to seek to have the cases investigated by the investigative agencies. I also deny that, at the time he met me in May 2003, he informed me that the disclosures made by the daughter of Sergeant Rodrigues had been made to Piers Pigou, and that he gave me a TRC file compiled by Mr Pigou relating to the matter. Mr Pigou

was well known to me as we had both been in the TRC, and I would never have confused him with Ivor Powell.

116 The allegation of reluctance on my part to prosecute the Timor matter is revealed to be untrue when regard is had to the facts I have set out above. I believe my energy and efforts to advance TRC related matters despite the challenges which I have mentioned above speaks for itself. I had no wish nor motive not to advance the Timor.

117 From January 2001 to July 2009, the investigation of crime rested with the DSO and the police. My short stint in the DSO was as a prosecutor and not as an investigator. From July 2009 to September 2021, the responsibility for investigating crime rested exclusively with the police. My duty as a prosecutor was confined to giving guidance to such investigations and performing prosecutorial functions. In this affidavit, I have set out all my efforts to have TRC cases investigated.

118 I appreciate Mr. Cajee's frustrations and pain over 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 allegation 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.

119 I wish to draw the Commission's attention to an email I received from Mr. Cajee on 16 April 2022 informing me that I had discovered important information

relating to his uncle's death, of which he was unaware, and asking that I share it with him, which I did. The email correspondence is attached as annexure "AD33".

120 I further deny any political interference in any decisions I had to make in regard to the prosecution of the matter. To the extent that the Mr Cajee alleges that the notion of political interference was introduced by me, I deny this. I must say, however, that it is not entirely clear to me what Mr Cajee ultimately contends - that is whether he suggests that there was political interference or that there was no political interference, but this notion introduced to conceal what he believes to be a dereliction of duty.

121 As is apparent from what I have set out above, I further deny:-

121.1 that I failed to earnestly follow up on the leads that Mr Cajee furnished;

121.2 that I unlawfully placed the burden of investigating his uncle's death on him.

122 The logistical and resource-based constraints that we ioperatedunder has been set out in detail in earlier parts of my statement. At no stage did I place any onus on Mr Cajee. Whilst I probably invited him to supply any additional information to assist with the case this in no way shifted the ultimate investigative responsibility on to him.

123 The finalisation of this statement has been somewhat rushed due to the endeavour to meet the agreed filing date with the Commission. I may wish to supplement this statement in a further statement or when I testify before the Commission.

RAYMOND CHRISTOPHER MACADAM

3 March 2026

**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 Baitse 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

PAGES 1 – 104



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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 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 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.

ADV BHANA: The next small amendment is paragraph 120,
10 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 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 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 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 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. 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 where you submitted a Section 28... [intervenes]

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.

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

And then we move to E as representations to investigate
10 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.

ADV BHANA: Okay. Can we go to paragraph 43 and 44 of your
10 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 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 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 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 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... [intervenes]

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 Klabu 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
10 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
10 those documents.

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
20 ever tried to use political interference as an excuse for not doing my work.

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 docketts 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 docketts 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 Siphwe 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?

ADV SONI: Chair, the difficulty is there are memos in different,
10 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 docketts 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 docketts opened on any ANC leaders?

10 ADV MACADAM: No, the docketts 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 dockets, 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 dockets 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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