

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

REPRESENTATIVES

Adv Varney (SC) – The Calata Group
Adv D Pillay – The Calata Group
Ms A Thakor – The Calata Group
Mr J Venter – The Calata Group
Ms L Doubell – The Calata Group

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

PROCEEDINGS ON 16 JANUARY 2026

CHAIRPERSON: Mr Varney.

ADV VARNEY: As the Commission pleases. Commissioners, today we have the witness, Michael Schmidt. He is in the witness box and he is ready to testify with the leave of the Commission.

CHAIRPERSON: Yes, thank you. Mr Schmidt, please place your full names on the record.

MR SCHMIDT: Good morning, Madam Chair, Michael John Schmidt.

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

MR SCHMIDT: I am willing, yes.

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

MR SCHMIDT: I am willing to, yes, Madam Chair.

CHAIRPERSON: To take an oath?

MR SCHMIDT: Yes.

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".

20 MR SCHMIDT: I am not of a religious person, but I do affirm that what I say ...(intervenes)

CHAIRPERSON: Oh, you affirm?

MR SCHMIDT: I do affirm.

CHAIRPERSON: Let me conduct an affirmation.

MR SCHMIDT: Thanks, Madam Chair.

CHAIRPERSON: Do you affirm that the evidence you will give will be the truth, the whole truth, and nothing but the truth?

MR SCHMIDT: I do so swear, Madam Chair.

CHAIRPERSON: Okay. Mr Varney.

MICHAEL JOHN SCHMIDT (duly sworn states)

EXAMINATION BY ADV VARNEY: As the Commission pleases. Mr Schmidt, thanks for taking time out of your schedule to be with us this morning. I understand that you have made out certain affidavits, two in particular, which we would like to place on the record and get you
10 to confirm. We will start with the affidavit that you made for the purposes of this Commission, which is dated 7 November 2025. Commissioners, that affidavit is in bundle 8, which I hope is before the commissioners, and it is at pages 104 to 107. Mr Schmidt, do you confirm that this is your affidavit which you made out?

MR SCHMIDT: Sorry, I am just attempting to find it.

ADV VARNEY: It will be at the very back of your bundle, at page 104.

MR SCHMIDT: I seem to not have... Oh, there is a 104. Sorry, I am not finding this.

ADV VARNEY: With the leave of the Commission, can we assist
20 Mr Schmidt to find his affidavit?

CHAIRPERSON: Yes, you may.

MR SCHMIDT: Yes, sorry, Madam Chair.

ADV VARNEY: So it is a two-page affidavit with one annex.

MR SCHMIDT: I confirm this is my affidavit.

ADV VARNEY: And in that affidavit you also confirm that the contents of the founding affidavit of Lukhanyo Calata, dated 17 January 2025, in the matter of *Calata and others v Government of South Africa and others*, case number 5245/2025, that you confirm the contents insofar as they pertain to you?

MR SCHMIDT: I confirm those contents.

ADV VARNEY: And you also made reference to your confirmatory affidavit in that matter, dated 22 November 2024, which included extracts from your book, *Death Flight*. You confirm that affidavit?

10 MR SCHMIDT: I confirm that affidavit.

ADV VARNEY: So, Madam Chair, the certified copy of that confirmatory affidavit is in the bundle, pages 1, 2, 3, Mr Calata's founding affidavit that is in bundle 1, which we will also make reference to today. And then we also have certain extracts of Mr Schmidt's book, *Death Flight: Apartheid Secret Doctrine of Disappearance*. There are certain extracts from that book at pages 4 to 103.

Commissioners, Mr Schmidt has provided us with a copy of his Curriculum Vitae, which we would like to hand up copies to the
20 Commission, and we would like to include those in bundle 8 as item 4. With the leave of the Commission, we would like to provide copies of the CV of Mr Schmidt?

CHAIRPERSON: Yes, you may hand them up.

ADV VARNEY: Thank you. And we will email the digital versions of the CV to the Commission and the parties. Mr Schmidt, before we

commence with your evidence, can you take us through your career and perhaps offer some highlights of the work you have done over the years?

MR SCHMIDT: Yes, no problem. I have been a journalist for 37 years now. I started out at the *Natal Mercury*, as it was back then, which was independently owned, initially as a court reporter, and then moved on to establish what is now the *Saturday Newspaper* in Durban, and then moved across to *Sunday Times* Durban Bureau.

I eventually rose to become a bureau chief for *Sunday*
10 *Times*, and then left in about 2004 and, sorry, 2003, joined *This Day*, which was the brief Nigerian-owned daily in Johannesburg. I became, I was defence correspondent there.

I went on into thereafter, after the collapse of *This Day*, I joined *Independent Newspapers* again, and was Group Special Investigative Writer, one of three for the *Independent Newspapers* Group, and was offered the post of Africa correspondent for the group, but unfortunately that post was frozen.

So I left journalism per se, I went into journalism training with Paula Fray's Fray Intermedia, initially as chief trainer and then
20 became managing director. In 2010 I suffered meningitis and broke my spine in five places, so that took me out of action for a little, a little bit, but bounced back and was appointed executive director of the Institute for the Advancement of Journalism, where I served for four years, and then, ever since then have been an independent consultant.

I founded the Professional Journalist Association in 2010, and I still serve as its administrative secretary. That was a replacement for the South African Union of Journalists, which had died about three years previously. And I have also moved into a lot of human rights work, working right across the world, particularly in access to healthcare across Africa and in artistic freedoms around the globe.

And I would conduct journalism training, which I have done everywhere from the United States, through Egypt, through
10 Bangladesh, right into Solomon Islands in the South Pacific. And started writing books in 2009, and I have six published so far, *Death Flight* being my last published book.

ADV VARNEY: Thank you, Mr Schmidt. Commissioners, we will be focussing on a section of the Calata affidavit in bundle 1 under the heading, "Was there a political agreement not to prosecute", and that is at paginated page 144, from paragraph 370 onwards. Mr Schmidt, I understand that you also have a copy of that section of the Calata founding affidavit ...(intervenues)

MR SCHMIDT: I do, yes.

20 ADV VARNEY: So, Mr Schmidt, there have been information or allegations that there was some kind of agreement between members of the ANC government and former generals, and National Party, former National Party politicians that prosecutions of apartheid era crimes be avoided.

So, for example, at paragraph 371 in that Calata affidavit Mr G Hendricks of the All Jama-Ah party put a question to the Minister of Justice on 10 November 2020, and he asked for the reasons why no perpetrators of apartheid era killings of leaders, such as Imam Haron, Steve Biko, Suliman "Babla" Saloojee, and hundreds of others have not been prosecuted.

And in particular he asked whether there was any agreement, secret or otherwise, and if so, was the agreement legal or political, and the then Minister of Justice replied as follows: "The NPA
10 is unaware of such an agreement". At that time, before you had commenced your research for your book, *Death Flight*, were you aware of such allegations of an arrangement or an agreement not to prosecute the TRC cases?

MR SCHMIDT: I was not in fact aware of this. I had done some reporting on the TRC when it was sitting in Durban, but I was not following it around the country as some journalists, like Antjie Krog and others, were, so this was quite peripheral to my daily "grind", if you will.

ADV VARNEY: And then in paragraph 372, on the 5 July 2021 the
20 FW De Klerk Foundation released an editorial titled *The NPA's Decision to Prosecute Apartheid Era Crimes*, and by this time a great deal of pressure had been brought to bear on the NPA to proceed with investigations and prosecutions of these crimes, and so this was a reaction by the FW De Klerk Foundation. And in that editorial it

made reference to an informal agreement not to prosecute such crimes, and I quote:

"Because of an informal agreement between the ANC leadership and former operatives of the pre-1994 government, the NPA suspended its prosecutions of apartheid era crimes."

Did you recall seeing that editorial, and if so, or perhaps with hindsight, what is your reaction to it?

MR SCHMIDT: No, I did not see that editorial at the time, however,
10 what I do find interesting is this notion of an agreement. It has been bandied about, as you are probably aware, in the public for some time that there was a deal, a secret deal struck between the generals and the apartheid cabinet, but it seems that no actual deal was struck.

I see that, interestingly, the FW De Klerk Foundation mentions an "informal" agreement, and I am of the opinion that no actual agreement was ever struck, no actual deal was ever struck, but that there was an intensive project to try and achieve a deal that was to be legislated, in fact, but we will get to that later.

ADV VARNEY: All right, then, let us proceed down that road, and if
20 you can turn to the next page, there is a heading in the Calata affidavit titled, "Deliberations on a Further Immunity". And one of the earliest signs of attempts to engineer an immunity or amnesty emerged in a SARPA press release dated 14 July 1998, where former SADF generals called for a blanket amnesty. Commissioners, that press release is at FA54, and that is in bundle 1 at page 677.

Were you aware that by the middle of 1998 SADF generals had publicly began to call for a blanket amnesty on all sides?

MR SCHMIDT: This, in fact, I was aware of, and that is because in my book, in which I was essentially researching a small unit that had over a seven-year period, eight-year period conducted a series of "death flights", killing and disposing of the bodies of anti-apartheid detainees in the oceans from allied aircraft. I wanted to figure out what had happened subsequently to these perpetrators, so I was aware that the generals on 14 July 1998 had issued this statement
10 through SARPA on the desire for a general amnesty.

And what is interesting about that is that in South-West Africa, as it was then, the Administrator General, Louis Pienaar, had initially granted a blanket amnesty to all SWAPO returnees so as to allow them to participate in the first democratic elections. This led to a lot of disgruntlement among security forces, who felt they deserved a similar blanket amnesty, and this was in fact granted to them.

So it seemed like the generals relating to other crimes committed by the forces in South Africa and elsewhere were wanting a similar blanket amnesty, and it was on this basis that I tried to trace
20 the generals to see what their position was on this, particularly in the light of the fact that no subsequent prosecutions against their, other than the actual trial of the generals, which had Magnus Malan and others, which had concluded in 1996, had in fact proceeded.

ADV VARNEY: So Mr Schmidt, it appears that at least on the part of the former SADF generals, they had been awarded a general

immunity for actions taken in the war against SWAPO in South-West Africa.

MR SCHMIDT: Indeed.

ADV VARNEY: And so are you essentially saying that they anticipated or had some kind of expectation that they would be afforded a similar indemnity for any crimes committed, you know, against those resisting apartheid in South Africa?

MR SCHMIDT: Yes Madam Chair, I think this expectation on behalf of the generals was quite clear.

10 ADV VARNEY: And then if we turn to the next year in the Calata affidavit at paragraph 377. In March of 1999 the Truth Commission denied the amnesty applications of 37 ANC leaders, one of them included Deputy President Mbeki, and that was because that application did not disclose any individual offences.

But then at 377.2 there is a news article attached as FA56, which is at page 680 of the bundle, where Mbeki informed Parliament that Government was considering further amnesty proposals that had been put forward by the SADF generals. Was that proposal for the general or blanket amnesty that the generals had been seeking
20 previously?

MR SCHMIDT: Sorry, can you restate the question?

ADV VARNEY: So Mbeki, later in 1999 Mbeki informs Parliament that government was considering proposals for an amnesty that had been put forward by the SADF generals. Do you know whether that proposal was in fact a request for a general or blanket amnesty?

MR SCHMIDT: According to my research, the quest for a blanket amnesty remained the lodestone that the generals were pursuing.

ADV VARNEY: And then in the very next paragraph, and in the same article, it emerges that Mbeki was looking at the possibility of amending the Truth Commission law to allow for amnesty for collective responsibility without the need for individual disclosure. And according to the ANC spokesperson in the SARPA press release of 22 May 1999, that is annex FA57, which is at page 683 of bundle 1, the generals promised to come clean if they were guaranteed
10 amnesty.

So in your research, did you ever come across an indication from the generals that they would come clean about offences that they had been involved in if they were guaranteed this general amnesty?

MR SCHMIDT: Well, this became apparent only in later research. I was not aware of this particular news story at the time, but as I said, clearly the guiding principle of the journalists, sorry, of the generals engaging in these talks, it subsequently became apparent to there was a secure a blanket amnesty. Sorry, I do not know if I have
20 answered your question.

ADV VARNEY: Yes, that suffices. Now let us turn to the book you have written, which is titled *Death Flight: Apartheid's Secret Doctrine of Disappearance*. Commissioners in the (indistinct) bundled we have extracts from this book. Mr Schmidt has kindly given us one copy of the book, which we would like to hand up to the commissioners.

CHAIRPERSON: Yes, you may hand it up.

ADV VARNEY: The different extracts are in bundle 8 between pages 4 to 103. Before we start looking ...(intervenes)

MS MOROKA: Madam Chair, Madam Chair, can I interrupt, my apologies. I assume we are going to be favoured with the book too?

CHAIRPERSON: You may buy it, Ms Moroka.

MS MOROKA: That does not make any sense, if I may. I do not have the money to buy the book.

CHAIRPERSON: Yes, but it is for the Commission. (Indistinct) have
10 the extracts of the book in your possession.

MS MOROKA: I guess, Chair, my difficulty is that I am going to be told this is not a trial, but if you hand up something, you hand it up on the understanding that everybody will have it.

CHAIRPERSON: Yes, Mr Varney.

ADV VARNEY: Well, the short answer to that, commissioners is that we do not intend to rely on the whole book. We have put up the extracts between page 4 and 103 in bundle 8.

CHAIRPERSON: Yes.

ADV VARNEY: Those are the extracts upon which we rely.

20 CHAIRPERSON: Yes.

ADV VARNEY: And that really is the end of the matter.

MS MOROKA: So why hand up the book, Chair?

CHAIRPERSON: Yes, Mr Varney.

ADV VARNEY: Well, we are simply handing up the book to illustrate that these extracts come from a published book, and as a matter of

courtesy, we handed up the whole book for the benefit of the commissioners, and dare I remind my learned friend that this is an inquisitorial enquiry. The Commission is entitled to glean whatever information is at its disposal. Ms Moroka has access to bundle 8 and has had access to it for several months.

CHAIRPERSON: Yes, yes.

ADV VARNEY: If she wanted a copy of the book, she is free to order one.

CHAIRPERSON: Yes.

10 ADV VARNEY: There is nothing more that I can add.

CHAIRPERSON: Yes. Ms Moroka, you have got the extracts in your possession, do you not?

MS MOROKA: Yes, I do, Chair.

CHAIRPERSON: Yes, thank you.

ADV VARNEY: As the commission pleases.

MS MOROKA: If I may, Chair, we reserve the right to address this issue when it does come up.

CHAIRPERSON: Yes, you may.

20 ADV VARNEY: So, Mr Schmidt, can you give some background as to why you decided to write this book, *Death Flight*, and can you give us a high-level description of what this book is about?

MR SCHMIDT: The scenes of the book were shown during the trial of Brigadier, retired Brigadier Dr Wouter Basson over 1999 to 2002. He was the former director of Project Coast, which was the apartheid military's chemical and biological warfare programme. There was a

long charge sheet proffered against him in 1999. A collection of fraud charges amounting to about 30-million, a whole bunch of other charges and several charges relating to mass murder.

I have always been interested in comparative analysis, and I am intrigued by the junta regimes in Latin America and how they related to the apartheid state, and here we found for the first time, it was unknown at the time of the TLC, allegations that hundreds of detainees had in fact been murdered and their bodies dumped in the oceans from aircraft as part of a conspiracy conducted by agents of
10 Project Coast or associated with Project Coast, particularly special forces operatives.

At the time of the trial a lot of these gentlemen were still very active and very dangerous, working as mercenaries in Afghanistan, et cetera, but it played on my mind for a long time that this is certainly something that should be explored in greater detail. Wouter Basson was acquitted of all charges in 2002, as you are probably aware.

The judge, however, in his findings found that these death flights had in fact occurred, he just denied the evidence of a link between Wouter Basson, the accused, and these "death flights". And
20 Basson is essentially accused of supplying the surgical drugs used to put these guys into a coma and stop their hearts. That linkage was denied, but the actual "death flights" were accepted by the court as having occurred.

So I felt this really needed to be properly explored, and eventually I got some funding from the Royal Danish, sorry, the Royal

Norwegian Embassy via the Academic of Nonfiction Authors Association and proceeded to do an investigation several years later on. And this eventually resulted in the book after quite a long period of investigating, and I managed to track down the plane, I traced the plane that was used in the "death flights".

I used pilots' log books to reconstruct the "death flights", and I traced the actual perpetrators and interviewed them on the record and face to face, and they admitted to basically all of these, all of these actions. So the book is not speculative, except for where I
10 explicitly stated that I am speculating. It is, I think it amounts to a small unit study, I guess.

This was a secret operation that did not even fall under one of the recce commanders, the recces being special forces, it fell directly under special forces headquarters. It was an entirely ringfenced ultra secret operation that was conducted as if it was by civilians using civilian clothing, civilian aircraft, civilian vehicles, operating and paid for by out of a slush fund run by the military that went by the name of Vampire, and using front companies.

They were initially disguised as a real estate firm, but that did
20 not really hold water because they had armed guards and all sort of things, so they reconfigured themselves as a security company. So this was taxpayers' money that was spent, and in my, well, in my conservative estimate they killed and dumped something of the order of 420 people. But the primary killer, Colonel Johan Theron, retired,

and when I put this to him he said that, in all honesty, he could not remember, but it was definitely in the hundreds.

ADV VARNEY: Thank you Mr Schmidt. Now in your book you refer extensively to an earlier book written by a German researcher by the name of Ole Bubenzer, and that book is titled *Post TRC Prosecutions in South Africa*. Commissioners, we will be hearing from Mr Bubenzer on Friday. Extracts from his book are in bundle 7 from page 5 onwards.

Now, the reference you make in your book to Mr Bubenzer's
10 research discloses that Mr Bubenzer had spoken with some former police and army generals, including former Police Commissioner, Johan Van der Merwe. An overview of this is set out in the Calata affidavit at paginated page 147, from paragraph 378 onwards.

And according to the interview conducted with Johan Van der Merwe, Mr Bubenzer indicates that the consultations included President FW De Klerk, Deputy President Mbeki, and that the ultimate outcome was that a general amnesty was not politically or constitutionally feasible.

And therefore the organisation set up by
20 Johan Van der Merwe Foundation for Equality Before the Law proposed an indemnity based on the admission of a crime committed, but without the need to make full disclosure. There seems to be a parallel process where you have discussions between former police generals and the government at the time, and on the other hand there

were also discussions between former army generals and the government.

Would I be correct in saying that the army generals were the group seeking a general full blanket amnesty, whereas the police generals were happy to go for an indemnity process based on the admission of the crimes but without the need to disclose the details of those crimes?

MR SCHMIDT: That would seem to be correct. Commissioner, I find it interesting that these two processes were hermetically sealed from
10 each other. It is my analysis that the late apartheid state was a military state and not a police state, that the police were essentially handmaidens to the military. It is interesting to me that the findings of the Truth Commission essentially acknowledged that the police had been relatively forthcoming before the Commission as compared to the military.

And we see in this set of parallel negotiations, on the one hand, I believe, an attempt perhaps from the ANC's side to divvy up their enemies, but from the side of the generals to make sure, particularly the military generals, to make sure that their process was
20 sacrosanct and separated from that of their colleagues in the police. who they perceived to be rather loose-lipped.

MS GABRIEL: Mr Schmidt, on what do you base that? Did you conduct any interviews?

MR SCHMIDT: I have, Commissioner I have conducted many interviews over the years, and I continue to do so with apartheid era

operatives and perpetrators in pursuit of a current book that I am writing on how the former Minister of Defence, Magnus Malan, constructed a military state, transformed a police, what is essentially a police state into military state.

I am also working on several documentaries that relate to associated topics, and it is clear not only that there was inter-service rivalry between the police and the military, but that the military certainly held the whip hand. And that when it came to the TRC, there was definite dissatisfaction in military circles that the police had
10 been more forthcoming than they were, than they should have been to military minds.

ADV VARNEY: So it does not seem as if the police were successful in getting a new law or amendments to an existing law passed in relation to this individual disclosure, which seem to be loosely based on the TRC process. But as far as you are aware, did it emerge in later initiatives taken by the by the government?

MR SCHMIDT: Well as subsequently became evident, and we will obviously go through the actual talks process, but subsequent to the talks failing, it was apparent that a facsimile of these, of the intended
20 outcome, certainly on the police side, was effected in a change to the National Prosecuting Authority's rules of engagement, and that an additional amnesty process was brought into being, that was then later, subsequently, in 2008, if I recall correctly, shot down as illegitimate.

ADV VARNEY: Yes, that was in the High Court, and then around that time there was an additional initiative launched by President Mbeki, known as the "special dispensation on political pardons", which again required applicants for a political pardon to approach a reference group to disclose details of their crimes, but there is evidence to show that full disclosure was not an element of that process. Were you aware of that?

MR SCHMIDT: I am aware of that, yes.

ADV VARNEY: So let us then turn to the actual research and
10 interviews that that you carried out. An overview of your research as reflected in your book is set out in the Calata affidavit from paragraph 382 onwards. And you mentioned that you had an interview on the 21 December 2019 with Major General Dirk Marais in Hartbeespoort. You state that he was a former deputy chief of the army, and the convener of the SADF Contact Bureau. Can you just explain or describe Dirk Marais, the role that he had played in the SADF, and also can you explain what this Contact Bureau was about?

MR SCHMIDT: Yes, let me first explain how I came to Dirk Marais in
20 the first place. In pursuit of attending to understand what the generals' perspective was many years later, knowing now that none of their guys had essentially gone to jail for crimes committed during the apartheid era, I wanted some sort of comment from the top generals, and in particular General Constand Viljoen.

Through my contact network I got in touch with a Major General Hennie Roux. Now, Hennie Roux was the former chief of

Intelligence for the army, the former Chief: Intelligence Army. He said to me that at that point, this was mid-2019, he said to me that General Constand Viljoen was that point elderly and quite ill, in particular suffering from dementia, and would probably not be up to an interview.

So I said to General Roux, well, in that case, if I could send you three questions, and if he ever is at a point of clarity, just three very simple questions, if he would be so kind as to answer these, I would certainly appreciate it, because General Roux had indicated
10 that General Viljoen sort of faded in and out of clarity.

When General Roux received my three questions, which were essentially based around what the response was of the general call to the general staff to the lack of further prosecutions against their fellows, against their peers and subordinates, he got back to me and he said, this is by email, and he said: "Oh, you mean the talks with the ANC?"

And I was in fact unaware that there had been talks, as I have indicated earlier, so that took me by surprise, and I said absolutely, yes, sure, and he said, well, in that case you need to
20 speak to Major General Dirk Marais. I subsequently realised that Dirk Marais had been the convener of an entity called the SADF Contact Bureau.

Now, the Contact Bureau was essentially established in around 1996 to coordinate the SADF's response to the Truth Commission, in other words, to come up with a central point of

coordination by the military, the former military chiefs and their subordinates to the Truth Commission. This would include, I guess, subordinates approaching the Contact Bureau and saying, look, I have been subpoenaed to testify, I am worried, can you give me some legal guidance, et cetera, on this.

I believe the Foundation for Equality Before the Law was associated with this Contact Bureau, but the Contact Bureau itself was a purely military affair. And it seems this Contact Bureau was responsible for narrowing the framework of what military officers were prepared to say before the Truth Commission.

And we see this particularly when many of the top generals did appear before the Commission in Cape Town, if I recall correctly, the 8 October 1998, in which certain of their statements successfully telescoped very complex processes that involved a lot of killing into, seemingly, anodyne and innocent and rather brief processes that particularly relates to the "death flights".

There was one sole mention of this entity that I investigated in the *Death Flight* book, and it was by the generals at that hearing, and it was never fully explored at all, so this narrowing of the narrative was, I think, one of the tactical objectives of the Contact Bureau.

Nevertheless, I called up Major General Dirk Marais, and he asked me to send him a request by email, which I did. I sent him my CV, I sent him my request, and he said, well, in that case, come up and meet me at my home just outside Hartbeespoort. And I did so with two colleagues of mine, a photographer and a producer, because

I am looking at doing a documentary version of the book, and while he was not prepared to go on camera, he was prepared to go on to be recorded, and I recorded this interview with him.

ADV VARNEY: Thank you. So you are still in possession of the audio tape of that interview?

MR SCHMIDT: I am, yes, and I have shared it with the Foundation for Human Rights as well.

ADV VARNEY: And you would also be happy to share it with this Commission (indistinct)?

10 MR SCHMIDT: Absolutely, ja.

ADV VARNEY: Commissioners, if you would like an audio version of that interview, we would make it available.

CHAIRPERSON: Yes.

ADV VARNEY: We will do so.

MR SCHMIDT: It is perhaps important to state at this point that subsequent to the publication of my book, and also in subsequent interviews General Marais confirmed his statements in the interview, and he stood by the version as carried in my book.

20 ADV VARNEY: Thank you. We must bring to the attention of the Commission that, unfortunately, Major General Dirk Marais, we attempted to trace him, and we discovered that he died very recently, just last month at the age of 93, and the reports we have is that he died between the 10 and 13 January.

Indeed, Commissioners, we have attempted also to locate the other generals referred to in the evidence of Mr Schmidt, and we

have prepared a schedule just to indicate the dates of death of the different generals. With the leave of the Commission, we would like to have this up? It will go into bundle 8, and it will be item 5.

CHAIRPERSON: Yes, you may hand it down.

ADV VARNEY: The commissioners will see from this schedule, aside from Major General Marais, SADF General Jan Geldenhuys died on the 10 September 2018 at the age of 83. Former Chief of the SADF, General Constand Viljoen, died on 3 April 2020 at the age of 86. And Defence Minister General Magnus Malan died on 18 July 2011 at the
10 age of 81. Army General Kat Liebenberg died on 23 May 1998 at the age of 60. Surgeon General Daniel Peter Neil Knobel died on 22 July 2021 at the age of 84.

The only person involved in these different talks we believe is still alive is one Jürgen Kögl, and a rule 3.3 notice has been issued against him. That was on the 22 October 2025. As far as we know, he has not complied with that notice, and in due course we would like to see Mr Kögl before this Commission, if needs be, under subpoena. While we are on Mr Jürgen Kögl, can you describe who he was and what role he played?

20 MR SCHMIDT: I believe his origin is a Namibian businessman, who is associated with Thabo Mbeki. I believe that Thabo Mbeki stayed in his flat on his return from exile. I did attempt to contact Mr Kögl, but a lot of his businesses as listed had defunct phone numbers. He was not present at the residence where he was listed. He was essentially nowhere to be found. I did manage however to get a message

through to him via one of the ANC leaders, and he refused to speak to me.

ADV VARNEY: Thank you. While we are on Mr Kögl, can I ask you to read an extract from your book into the record, and I am actually going to ask you to go to the extracts of your book in your bundle, and it is on page, paginated page 42?

MR SCHMIDT: All right.

ADV VARNEY: And can you read the two paragraphs, and if you could start in the second paragraph on that page, which is page 265
10 of your book, in the chapter titled "Shallow Boxing: The of the Generals", if you could read the paragraphs, the two paragraphs starting with the line: "But there was another crucial impetus for the ANC"?

MR SCHMIDT:

"But there was another crucial impetus for the ANC initiating what became a seven-year secret negotiations process. From the outset, President Mandela's objective, as expressed by his team
20 leaders. Thabo Mbeki, in his capacities both as deputy president of the country and ANC president from 1997 onwards, and Jürgen Kögl, the ANC government's convener, was explicitly a *quid pro quo*.

In Marais' words (Major General Dirk Marais), 'They do not want us to be charged, and they do

not want them to be charged'. Or as Marais later claimed were Mbeki's words: 'I do not want my president to be charged in court'. He explained, however, that Mbeki had not meant this as specific as in President Nelson Mandela, but rather in the generic, and that he did not want to see any ANC state president facing charges.

10 It is a curious aspect of the negotiations that Marais' opposite member, businessman, Jürgen Kögl, hailed from South West Africa, the territory in which South Africa's armed forces had spilt the most blood, in which Operation Duel (that is the 'death flights' operation) had performed the bulk of its grizzly disposal work. When Mbeki returned from exile, he stayed in Kögl's apartment."

ADV VARNEY: So the allegation made by Major General Marais that Mbeki said: "They do not want us to be charged and I do not want them to be charged", what is your takeaway from that particular
20 statement?

MR SCHMIDT: The idea that both, the perpetrators on both sides of the line should get equal treatment in this search for a blanket amnesty, that, in other words, nobody on any side would in fact face charges, whether it was APLA, AWB, but in particular, of course, THE ANC and apartheid security forces ...(intervenes)

COMMISSIONER GABRIEL: Please remind me of the date again, the dates when this would have happened?

MR SCHMIDT: Sorry, the dates when?

COMMISSIONER GABRIEL: When these words were exchanged: "They do not want us to be charged".

MR SCHMIDT: This would have been during the talks between the generals and the "cherry-picked" group of ANC cabinet ministers, thus, somewhere between 1998 and February 2003.

ADV VARNEY: And then can I ask you to continue reading from the
10 next paragraph, starting: "A letter written by Marais"?

MR SCHMIDT:

"A letter written by Marais to the then Deputy
President Jacob Zuma in early 2004 for the
signature of the former chiefs of the SADF
recalled the initiation of the lengthy process of
secret high-level talks: 'A process of
communicating between the ANC, initially, and
the government, lately, with the former chiefs of
the ANC Defence Force was initiated by the
20 Deputy President of South Africa, Mr T Mbeni,
when he approached General CL Viljoen'."

And I am speculating that that is somewhere around late
1996. This is after the collapse of the Government of National Unity:

"General Viljoen, after consultation with former
chiefs of the Defence Force within the structure of

the SADF Contact Bureau, conveyed our preparedness to communicate with Mr Mbeki in his capacity as Deputy President and President of the NEC of the ANC. A convener, Mr J Kögl, apparently empowered by Mr Mbeki, arranged for a meeting at his house in Johannesburg..."

And again I am speculating, that is somewhere around early 1997 ...(intervenes)

ADV VARNEY: If you can just pause there? When you were reading
10 "The former chiefs of the ANC Defence Force", I think you meant to say the "SA Defence Force".

MR SCHMIDT: I am just reading it from his from his letter, so:

"Former chiefs of the Defence Force within the structure of the SADF Contacted Bureau..."
(intervenes)

ADV VARNEY: Ja, no, it was just a misread because ...(intervenes)

MR SCHMIDT: Oh, sorry, did I misread?

ADV VARNEY: At the bottom of page 42 it does say "SA Defence Force", not "ANC Defence Force".

20 MR SCHMIDT: Sorry, did I say that?

ADV VARNEY: Ja, but that is just a small correction. Can you also read the next paragraph, please?

MR SCHMIDT: Continuing with the quote:

"That meeting was in the form of discussions, followed by dinner hosted by Mr Kögl. It was

attended by Mr Mbeki and various of his ministers, as well as the Premier of Mpumalanga, Mr M Phosa, leader of an ANC lobby, arguing that its members be protected from prosecution, and by us, the former chiefs of the Defence Force. There was enthusiastic agreement that the commenced communications should be continued and that more meetings should follow.

10 We, the former chiefs of the Defence Force, being aware of the Deputy President's tight work schedule, suggested that he appointed one of his ministers to represent the ANC in future deliberations. Mr Mbeki expressed, however, the opinion that the process of communication that was mutually agreed to was so important to him that he preferred to remain the prime representative of the ANC in further deliberations.

Bubenzer claims that..." (intervenes)

20 ADV VARNEY: Actually, you can pause there. Perhaps we can just to save time paraphrase what you gleaned from Ole Bubenzer's book, namely, that there was further discussions between Jacob Zuma, who was the then KwaZulu-Natal Provincial Cabinet Minister. Well, I think he was at that time the head of the ANC in Kwa-Zulu Natal with Defence Force Generals Viljoen and Geldenhuys.

And then perhaps we can pick up your interview with

Major General Marais, and that is on the next page, which is page 44 of that bundle, and perhaps you can start reading from the fourth paragraph down, which starts: "Marais said that on his side at the talks..."

MR SCHMIDT:

10 "Marais said that on his side at the talks were former Defence Minister General Magnus Malan, former Chiefs of the Defence Force, Generals Constand Viljoen and Jan Geldenhuys, and former Chief of the Army, General Kat Liebenberg. Although sometimes they brought in other generals, such as former Surgeon General Neil Knobel or one of the former Chiefs of the Air Force, as required.

20 Although Marais said that no specific offences were ever discussed, Kat Liebenberg's continuous presence suggests that he was monitoring any potential references to Special Forces Black Ops, such as Operation (Indistinct)..."

This is my speculation:

"...although it was totally unknown by their ANC opposites at the time.

"While Knobel's intermittent presence suggests he was monitoring the ANC's limited knowledge

of the Project Coast Chemical and Biological Warfare Programme. On the ANC government's side, Marais said Mbeki's team at the talks usually consisted of the Security cluster. This would make it initially under Mandela's cabinet Minister of Defence, Joe Modise, Minister of Safety and Security (Police), Sidney Mufamadi, and Minister of Justice, Dullah Omar. 'Many deliberations followed and mutual agreements were reached...'"

The letter read:

"Marais said the discussions towards formulating an 'act of forgetting' (my term, not Marais') took place once every few months, 'a few times at Kögl's house, a few times at the Presidency, once in Mbeki's house and once in Durban with Zuma', and they were all 'very social'."

ADV VARNEY: Thank you Mr Schmidt. Now, in the Calata affidavit at paragraph 385, and that is on paginated page 150 of bundle 1, you make reference to an email from former Minister of Intelligence, Ronnie Kasrils, and you say that he emailed you on the 5 May 2020 in relation to these talks. Why did he email you and what did he say in that email?

MR SCHMIDT: I had approached him, because when Jacob Zuma replaced Thabo Mbeki as president, he apparently stepped into the

role as chief of the ANC team on the talks, and his ministerial team, that is the Security cluster, would have rotated, and Joe Nhlanhla would have been replaced by Ronnie Kasrils. Kasrils responded to me that he had no knowledge of these talks, however, this was, it was Marais who just called it the "Security cluster".

He could not always remember exactly who had participated, for instance, he recalled one elderly member who kept on dozing off during the talks. He could not remember his name, I speculated it is Alfred Nzo, but I did not put that in the book because there is no
10 confirmation of the name, and Marais could not remember the name. So he knew his side, I should say, better than he knew the opposition side. In any case, Kasrils denied any knowledge of having been in these meetings.

ADV VARNEY: So as far as you are aware, you do not have any evidence of Mr Ronnie Kasrils' attending any of these meetings?

MR SCHMIDT: No, I am prepared to accept that as true. It is quite clear that on the ANC's side it was a "cherry-picked" group of cabinet ministers. It is possible that the rest of the cabinet was not even made aware of these talks. This was very strictly ring-fenced, and
20 the talks were "kept very close to their chest and up their sleeve", and that only those participating were in fact party to the knowledge thereof.

ADV VARNEY: Now if we can return to your interview with Major General Marais, and if we can look at paragraph 386 of the Calata affidavit, also on paginated page 150. It is indicated that:

"During the interview Marais showed you an unsigned handwritten letter."

Please explain what this letter was about, who it was meant to go to, who it was meant to come from?

MR SCHMIDT: This was a letter that he had himself written by hand in early 2004 after the talks had essentially collapsed to Jacob Zuma to be typed up. And the typed version was then apparently signed by the chiefs of the Defence Force on the Contact Bureau side and sent off to Jacob Zuma. So these were essentially just the draft,
10 handwritten draft that Marais had prepared to be typed, and essentially it was a summation of the process of the negotiations.

It was a brief summary of the negotiations process, the secret negotiations process. Marais was attempting to achieve some sort of closure after the collapse of the negotiations on the 17 February 2003, which we will get to later, by essentially asking that Jacob Zuma officially sort of close off the process, acknowledge that it had run its course.

ADV VARNEY: And did Major General Marais allow you to take a copy of that letter?

20 MR SCHMIDT: He did not allow me to take a copy of it, but he did allow me to photograph it, and a copy of the photograph is available.

ADV VARNEY: And, indeed, Commissioners, we have attached copies of the photographs of that unsigned handwritten letter. It is annexed to the Calata affidavit as FA61, and it is in bundle 1 at page 709. The handwritten letter is somewhat difficult to read but, we do

have extracts of it in the Calata affidavit. And, Mr Schmidt, can I ask you to read into the record the first extract which is at the bottom of that same page, beginning with:

"A process of communicating between the ANC initially and the government."

MR SCHMIDT:

10 "A process of communicating between the ANC, initially, and the government, lately, with the former chiefs of the SA Defence Force was initiated by the Deputy President of South Africa, Mr T Mbeki. When I approached General CL Viljoen in 19?..."

And that was in the original, it seemed he was a little unclear about the initiation date:

"General Viljoen..."

I am going to, sorry, continue with my quote:

20 "General Viljoen, after consultation with the former chiefs of the Defence Force within the structure of the SADF Contact Bureau, conveyed our preparedness to communicate with Mr Mbeki in his capacity as Deputy President and President of the NEC of the ANC.

The convener, Mr J Kögl, apparently empowered by Mr Mbeki, arranged for a meeting at his house in Johannesburg. That meeting was in the form

of discussions, followed by dinner hosted by Mr Kögl. It was attended by Mr Mbeki and various of his ministers, as well as the Premier of Mpumalanga, Mr M Phosa.

And I have inserted a speculation:

10 "The leader of the ANC lobby arguing that its members be protected from prosecution, a position that Mr Phosa denied, and by us, the former chiefs of the SADF. There was enthusiastic agreement that the commenced communication should be continued and that more meetings should follow.

We, the former chiefs of the SADF, being aware of the Deputy President's tight work schedule, suggested that he appoint one of his ministers to represent the ANC in future deliberations. Mr Mbeki, however, expressed the opinion that the process of communication, which was mutually agreed to, was so important to him that he preferred to remain the prime representative of the ANC in future deliberations.

20

Many deliberations followed and mutual agreements were reached. Where Mr Mbeki could not attend, he authorised somebody, usually a minister, and later on, when he became

President, in 1999, you (and here he is referring to Deputy President Jacob Zuma) represented him. In execution of mutual decisions, much effort was put in by the Contact Bureau and some of your ministers to prepare papers and submissions for acceptance by the Deputy President, and later on the President."

And then there is a break because I have extracted a portion there:

10 "In similar fashion, we, the former chiefs of the SADF, as members of the forum, were flown to Cape Town for discussions with Ministers Maduna and Nqakula, and thereafter with you on 17 February 2003..."

Which, as I said, was the date in which the talks fell apart.

ADV VARNEY: So let us just pause there. There was a reference to Mathews Phosa in that unsigned handwritten letter, and at paragraph 387 you held a telephone call with Mr Phosa on 2 June 2020. Can you explain what that telephone call was about?

20 MR SCHMIDT: Yes, I approached Mr Phosa through his secretary, Debbie Matthews, in 2020, asking him about his alleged participation alleged by Major General Marais in these talks. I battled to get hold of him initially, but then eventually he in fact called me, and in a relatively brief conversation denied that he had been party to these talks.

ADV VARNEY: And, in fact, Commissioners, there is a statement from Mathews Phosa which had been placed before this Commission. It is on the TRC Commission website. It is filed up under Statements and then under Other Parties, and then under M Phosa. It is a statement, an affidavit that was signed on the 18 October 2025, and it is in response to a rule 3.3 notice that the Commission had served on him.

And briefly, Mr Phosa states that he never made any efforts or attempts to suppress or stop the investigation and prosecution of the TRC cases. He also states that he had never been involved directly or indirectly in this matter and/or attended meetings arranged and mediated by Jurgen Kögl, or any other person. That he never directly or indirectly supported the idea of introducing a new amnesty law. And, lastly, he states in paragraph 5:

"I do not know who Mr Schmidt is, nor have I ever received a call from him. I have no memory of myself talking to the alleged Schmidt on 2 June 2020, and I do not even know who he is.

Now, Mr Schmidt, can you respond to the statement of Mr Phosa? And I note that in your affidavit that you filed before this Commission in November of 2025, you did address the claim of Mr Phosa that he never had any contact with you.

MR SCHMIDT: Yes, I do not unfortunately have telephonic records, but I do have the email records of my discussions with Debbie Matthews, and in that it does indicate that Mr Phosa did in

fact call me ...(intervenes)

ADV VARNEY: Sorry, who is Debbie Matthews?

MR SCHMIDT: Mr Phosa's secretary or personal assistant.

ADV VARNEY: So can you just indicate why you maintain in your statement that you did have contact with him and a member of his office?

MR SCHMIDT: Because it did in fact occur. If he has forgotten this, it is perhaps no surprise, a person of his busyness at his level of career, but it did in fact occur.

10 ADV VARNEY: Okay, perhaps I can refer you to your affidavit dated 7 November 2025. It is in bundle 8 from page 104, and if you look at paragraph 8, I do not know if you have it. Do you have the affidavit with you? It again would be at the very back, the last two pages of the bundle.

MR SCHMIDT: Yes, I have it.

ADV VARNEY: And perhaps you can just read into the record paragraph 8 and 9?

MR SCHMIDT:

20 "I attach as MS1 a WhatsApp exchange I had with Phosa's personal secretary, Debbie Burnett..."

Sorry, I called her Debbie Matthews because that is what she is represented at on the WhatsApp:

"...on 31 May 2020 at 15:30 I informed Burnett that I was trying to get hold of Dr Phosa for

comment on my book, and a second message was sent her at 15:48. I confirmed that Phosa had just called me, and that I would email my questions to him through Burnett. At 17:41 on 31 May 2020 I sent a list of questions to Burnett for Phosa's response. The email delivery receipt is attached at MS2. The questions included an allegation of his involvement in an ANC lobby negotiating protection from prosecution of crimes committed during Apartheid.

10

On page 270 of *Death Flight* at footnote 5 I recorded that Phosa called me on 1 June 2020, flatly stating he was not part of the alleged negotiations. He added he had passed my email onto General Kögl, the mediator and facilitator of the negotiations, who in turn said that he refused to be interviewed. I stand by the information that is recorded in *Death Flight*."

ADV VARNEY: Then you attach the WhatsApp exchange with Debbie Matthews as MS1 ...(intervenes)

20

CHAIRPERSON: (Indistinct).

ADV VARNEY: Yes, I see that in paragraph 8 she is described as Debbie Burnett, but then if you look at the top of MS1, on WhatsApp her name appears as Debbie Matthews.

MR SCHMIDT: I believe that is merely stored in my phone because

she represents Mathews Phosa.

ADV VARNEY: Okay, so I think we can accept that, in fact, her name is Debbie Burnett. And then in MS2 there is a mail delivery system email record. So then let us turn to ...(intervenes)

COMMISSIONER GABRIEL: Mr Varney...

ADV VARNEY: Yes.

COMMISSIONER GABRIEL: Before you move on. Mr Schmidt, help me understand, just coming back to that manuscript letter. You say it was sent because Mr Marais wanted some kind of closure, and that
10 was even though the talks had broken down, the alleged talks had broken down on the 17 February 2003. What did he mean, what does that mean, that he wanted some closure?

MR SCHMIDT: Well, according to Ole Bubenzer's book, there had been some further contact into 2004, but these appeared to be rather desultory, and it seemed that on the side of the generals they were a little concerned that things had not been properly tied up, that the process had not been properly concluded, and that they were wanting it to be signed off on and acknowledged that it had been done and that business had been concluded.

20 COMMISSIONER GABRIEL: In other words, there would be no more of the process?

MR SCHMIDT: Well, presumably, I mean, it seemed like the generals had hoped that there would be a continuation, but certainly by 2004 it seems like they were left out in the cold.

COMMISSIONER GABRIEL: Thank you.

ADV VARNEY: So we will return to the Marais letter, but let me draw your attention to the ANC 51st National Conference that took place in December 2002 in Stellenbosch, and reference is made to this National Conference at paragraph 390 of the Calata Affidavit on paginated page 152. So it seems that there was discussion of guidelines for a broad national amnesty, possibly in the form of presidential pardons, or at least that discussion was scheduled, and according to a news article, it looks like it is a SAPA release, it was attached as annex FA62, it is in bundle 1 at page 712.

10 The head of the ANC Presidency, Smuts Ngonyama, said that the ANC supported the idea of introducing a new amnesty law, adding that his party was against running trials in the style of the Nuremberg trials because this would occur at the cost of nation building.

 Did you recall this emerging from that National Conference in 2002, and do you see a connection between what was said at that conference and the discussions that were taking place between the generals and various government leaders?

MR SCHMIDT: As an African correspondent, I report on politics
20 outside of South Africa, so I was actually unaware of this, but there does seem to be a clear alignment between what Mr Ngonyama is saying and the search for a broad national amnesty pursued on behalf of the generals, at least, even though I was not aware that the ANC itself was also considering something of the sort. It appears that they preferred a facsimile of the TRC amnesty process that is

amnesty on a case-by-case basis for full disclosure, so this was a surprise to me, to be honest.

ADV VARNEY: Now, it does seem from your book and the Marais letter that during the course of 2002 and into early 2003 the SADF generals believed that they were on track for some kind of new legislation that would accommodate their concerns around prosecutions. I would like you to read into the record an extract from your book, and can I ask you to go to the extracts in your bundle, that is bundle 8, to page 58 of that bundle, and there is a chapter 43 titled

10 "Re-Disappearing the Disappeared. And just let me know once you have found it.

MR SCHMIDT: Right, I have it.

ADV VARNEY: You have it. Can I ask you to read from the top through to the next page, and you can stop on that third paragraph at the top of page 59, "That was the last getting together"?

MR SCHMIDT:

20 "While the Wouter Basson case was wending its way through the courts, progress had been made by the old military chiefs and the ANC leaders in the seven-year negotiations on a legal framework for a post-TRC amnesty process. Major General Dirk Marais, the convener of the SADF Contact Bureau, recalled: 'Eventually there was an agreement that they would prepare legislation to grant a sort of amnesty in general, and they had a

writer, a law writer in Cape Town, and when it was time they invited us to Cape Town at State expense'.

The date was 17 February 2003, and a delegation of generals led by former chief of the SADF, General Jannie Geldenhuys, met with the Minister of Justice and Constitutional Development, Penuell Maduna, and Minister of Safety and Security, Charles Ngakula. 'They were very nice',
10 Marais said, 'We gathered at 7 in the morning because it was Zuma's speech at the parliament that day. They called their writer...'"

Who was apparently a State official in the Department of Justice, I am just inserting that:

"...and he read to us the proposed legislation. When he finished we said but that has got nothing to do with us because they said they would grant amnesty to everyone who will make a full statement, presumably of the crimes committed.
20 So General Geldenhuys said: "No, we do not need that. All our people who wanted to make statements and ask for forgiveness already went to the TRC. Our other people do not have to do that, so this means nothing to us". The whole thing collapsed there.'

The differences between the sides were now irreconcilable. The military chiefs wanted a new law granting a blanket amnesty with no disclosure required, but the ministers wanted a new law granting amnesty on a case-by-case basis only after full disclosure.

10 Marais claimed that it was the ANC and not the SADF that stood to gain the most from a general amnesty and had the most to fear from any legal requirement, that amnesty was dependent on full disclosure because they were in power and the stability of their rule would be threatened by prosecutions.

Geldenhuis' delegation then met with Zuma in his office, as Zuma had expressed a desire to meet with them. According to Marais, they merely shared 'a few niceties, and then he greeted us, and then we asked Kögl to book us directly back'."

20 That is the flight, I am taking it:

"That was the last getting together."

ADV VARNEY: Thank you, Mr Schmidt.

CHAIRPERSON: Mr Varney, I see that we have gone past our tea adjournment.

ADV VARNEY: My apologies.

CHAIRPERSON: Will this be a convenient time to adjourn and to convene at 20 past 11?

ADV VARNEY: Yes, indeed, Chairperson.

CHAIRPERSON: Yes.

ADV VARNEY: As the commission pleases

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Mr Varney?

ADV VARNEY: As the Commission pleases. So, Mr Schmidt, just
10 before tea, you had read an extract from your book into the record, and I suppose the nub of the matter is really that after all these negotiations and notwithstanding the promising signs that the talks had delivered, when the ultimate legal proposal was presented, it was not a general amnesty that the former SADF generals were seeking. Do you have a sense, because I am not sure whether it is reflected in your book, the reason why the government decided not to go down the road of a general amnesty?

MR SCHMIDT: Personally, I am not sure, but it seems that they
20 essentially wanted to, in some form, extend the TRC amnesty process. There was a level of dissatisfaction within ANC ranks that the security forces, the former security forces, had not been as forthcoming as they had hoped, and that not as many cases had been resolved at the TRC, and they were hoping that by a legislated further amnesty process on the same basis, amnesty for full disclosure on a case-by-case basis, that they would encourage recalcitrants to come

forward and confess and enlighten the populace as to what had occurred. That appears to have been the ANC's general perspective, although there were clear differences of opinion within the party on this.

ADV VARNEY: I want to put to you an extract from the speech of Thabo Mbeki to the Joint Houses of Parliament on 12 March 2003, on the occasion of the tabling of the report of the TRC. And, Commissioners, I am referring to the extract that is reflected in the Calata affidavit, at paginated page 52, paragraph 124. A full copy of
10 that speech is annexed to that affidavit as FA21, and I am just going to read a very short extract from the Mbeki speech, to Parliament.

“Government is of the firm conviction that we cannot resolve this matter by setting up yet another amnesty process, which in effect would mean suspending constitutional rights of those who are at the receiving end of gross human rights violations.”

So essentially, then-president in Mbeki is saying that if they were to introduce another amnesty that effectively would be unconstitutional.
20 Do you think that that was ultimately the reason why they could not go down the road of another amnesty?

MR SCHMIDT: I think in part it was because, in fact, that the generals had withdrawn from the talks, or at least had said that their draft legislation was unacceptable to them, that they felt that perhaps they could not go the legislative route, because what Mbeki is saying

in public, as I said, behind closed doors within ANC circles, it was felt that this is what should have been done, but it seems like the withdrawal of the generals put them in the position where they felt like they had not secured the buy-in of the other side, if you will, and so the legislative route was perhaps not the route to go.

ADV VARNEY: And in talking of the route to go, I see in the same chapter of your book that we have been referring to, you make reference to what transpired thereafter, including the creation and the work of the amnesty task team, which ultimately resulted in the
10 changes to the prosecution policy in relation to the TRC cases and the political pardons process. So, in terms of the outcome that the generals were seeking, that was effectively secured, even if they did not get their general amnesty in law. Would you agree with that contention?

MR SCHMIDT: That seems to have been the net result of the changes, in particular, to the National Prosecuting Authority processes and, of course, the amnesty task team that was convened from 2004, the net result being that further prosecutions did not, in fact, occur.

20 ADV VARNEY: I do not know whether you heard the evidence of earlier witnesses in these proceedings, particularly that of Minister Thembi Simelane, the sister of the late Nokuthula Simelane and Lukhanyo Calata, the son of the late Fort Calata, one of the Cradock Four, but in their cases and the TRC cases more generally, investigators were not assigned to their matters through the first

decade of this century and in some matters, for example, the Cradock Four investigations only really commenced in earnest in 2019. What is your takeaway from the fact that the state simply did not supply investigators for these cases and did not seem to be extending support for these cases to proceed in those years?

MR SCHMIDT: Well, it obviously flies in the face of the entire rationale behind the TRC in the first place. And it is a clear insult to the memories of all who died during the apartheid era. And that is, of course, across the board. It is definitely a tragedy and it is a
10 miscarriage of justice. Regardless of on whose behalf people were committing these various acts and these depredations, they should have gone through due process and that clearly did not happen.

ADV VARNEY: I want you to read one last extract from your book. If I can refer you to paginate page 67 of your bundle and that would be page 290 of your book.

MR SCHMIDT: I have it.

ADV VARNEY: And at the bottom of that page, there is a sentence that starts with "South Africa's pact of forgetting only started to unravel." If you could read that paragraph to its conclusion on the
20 next page.

MR SCHMIDT: If I may just say quickly, the concept of a pact of forgetting comes from the Spanish case in which the horrors of the Civil War of the 1930s were, by agreement in the post-Franco era in the 70s, laid to rest and that neither side, by agreement, was sort of allowed to raise the ghosts thereof. So I have speculated that a

similar pact of forgetting occurred in South Africa. I will now read.

“South Africa's pact of forgetting only started to unravel with the inquest ruling on 12 October 2017 that anti-apartheid activist Ahmed Timol had been murdered in security branch custody on 27 October 1971. The ruling has sparked public demand for apartheid-era political crimes to be prosecuted. On 5 February 2019, former TRC Chairman Archbishop Desmond Tutu, former TRC Amnesty Committee Chairman Dumisa Ntsebeza and nine other, “deeply outraged”, former TRC Commissioners demanded that President Cyril Ramaphosa institute a Commission of Inquiry into the suppression of TRC prosecutions. Finally, on 26 April... [intervenes]”

ADV VARNEY: Actually, you can pause there.

MR SCHMIDT: Yes, sir.

ADV VARNEY: So thanks for giving us some background on the pact of forgetting as it applied to the Spanish Civil War. But can you elaborate a little more on South Africa's pact of forgetting and why you described it in such terms?

MR SCHMIDT: It seems that, and we can read this in... [indistinct], that on the ANC side, one of the rationales for engaging in this secret series of negotiations to suborn the very statutory process that they

themselves had initiated with the TRC while it was underway was that they felt a desperate need to get on with running the country and with focusing on reconciliation, it was felt that raising the ghosts would in fact derail reconciliation in this country, which is a huge irony given the objectives of the Truth Commission.

ADV VARNEY: You did not perhaps see it as this pact of forgetting had other motivations, namely to ensure that individuals on both sides would not have to face justice for what occurred in the past.

MR SCHMIDT: Look, there is an interesting narrative on the side of
10 former apartheid operatives who, as I said in my numerous interviews working on books and on documentaries, has illuminated and that is that they feel that they essentially won because they see their enemy as essentially as having been godless communism and that as staunch Christian nationalists they were wanting to prevent a communist regime in South Africa. So they believe that they have won. The concept of what I call an impure of impunity is, I think, still very much present with us. As in many other countries going through transitional processes, the ANC regime has obviously attempted to make sure that its personnel does not get in their view persecuted,
20 just as the new regime feels that because its cause in its, by its own lights was morally justified should also not be persecuted. So there is a distinct sense, I think, on both sides that burying the past is a better way to proceed than illuminating the past.

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

CHAIRPERSON: Thank you, Mr Varney. Ms Rantho, any clarificatory questions?

ADV RANTHO: Good morning.

CHAIRPERSON: Good morning, Ms Rantho.

ADV RANTHO: My sincere apologies, Commissioners. Good morning once more, Commissioners. Clarification, none at this stage.

CHAIRPERSON: Thank you.

10 ADV RANTHO: Safe to just mention that like the other witnesses, we intend to take instructions on so far as the cross-examination is concerned.

CHAIRPERSON: Yes. Ms Moroka?

ADV MOROKA: Chair, [speaking in vernacular].

CHAIRPERSON: Meaning what, Ms Moroka? [speaking in vernacular]

COMMISSIONER KGOMO: Well, I am not a sworn interpreter, but she says, "and so say I"

ADV MOROKA: I am indebted to... [intervenes]

CHAIRPERSON: Thank you very much JP for that clarification. Mr Semenya?

20 ADV SEMENYA: Chairperson and Commissioners... [intervenes]

CHAIRPERSON: Oh, Ms Ntloko.

MS NTLOKO: Good morning, Commissioners. We also hold the same instructions. There is no clarification questions at this point, but we do reserve our right to cross-examine.

CHAIRPERSON: Yes ... [speaking in vernacular]

MS NTLOKO: Well, I am Xhosa that would sound very differently.

CHAIRPERSON: Thank you, Ms Ntloko. Mr Semenya?

ADV SEMENYA: Chair and Commissioners, I have discussed something with Mr Varney and I would say with your permission, and having heard for the first time about the existence of an audio, that we would want to have access to the audio, and for that reason, with your permission, can we defer our questioning of the witness?

CHAIRPERSON: Yes, until such time that we have the video, audio.

ADV VARNEY: Correct, Chair.

10 CHAIRPERSON: Thank you. Mr Varney?

ADV VARNEY: Chairperson, no follow-up from our side.

CHAIRPERSON: Thank you. Mr Schmidt, we want to thank you for having availed yourself to come and give evidence before this Commission, which will undoubtedly assist this Commission to discharge its mandate. You are excused for now. You may be recalled for cross-examination at a later stage. Do make yourself available.

MR SCHMIDT: I will do so and thank you Madam Chair.

CHAIRPERSON: Thank you.

20 ADV MOROKA: Chair, my apologies and I do not hold instructions for Mr Nel, but I think you have jumped him.

CHAIRPERSON: Yes. Oh, Mr Nel, Mr Nel, I did not see you. Sorry about that.

COMMISSIONER KGOMO: *Hoekom sit jy so stil?*

ADV NEL: May it please the Commission, I just wanted to say that

perhaps I should add a bit of Afrikaans and indicate that “ek het geen vrae of verheldering nie]. I have got no questions.

CHAIRPERSON: *Dankie meneer.* Sorry about overlooking you, Mr Nel. You are sitting on the extreme side and you escaped my radar.

ADV NEL: That is on purpose, Madam Chair.

NO FURTHER QUESTIONS

CHAIRPERSON: These proceedings are adjourned until Friday morning at 9 o'clock.

ADV VARNEY: As the Commission pleases.

10 INQUIRY ADJOURNS UNTIL 20 FEBRUARY 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:

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MzansiSA Business Solutions
Arbour Square
Cnr Melle & Juta Street
Ground Floor, Office 3
Braamfontein, 2001
TEL: 011 339 1289
E-mail: transcription@mzanzisa.com
E-mail: mzanzisa1@gmail.com