

**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
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PROCEEDINGS ON 20 FEBRUARY 2026

CHAIRPERSON: Mr Varney?

ADV VARNEY: Good morning, Commissioners. Madam Chair, Commissioners, this morning we have a witness by the name of Mr Ole Bubenzer testifying from Frankfurt, Germany. He is online and I believe the connection has been tested and it is all working, and we are ready to proceed.

CHAIRPERSON: Thank you. Good morning, Mr Bubenzer. Mr Bubenzer, can you hear me?

10 MR BUBENZER: Good morning, Madam Chair.

CHAIRPERSON: Can you hear me?

MR BUBENZER: Good morning Madam Chair, I can hear you well.

CHAIRPERSON: Thank you. Please state your full names on record.

MR BUBENZER: My full name is Ole Friederieke Bubenzer.

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

MR BUBENZER: I am prepared to take an oath.

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

MR BUBENZER: So help me God.

CHAIRPERSON: Thank you, Mr Bubenzer.

OLE FRIEDERIEKE BUBENZER: duly sworn states

CHAIRPERSON: Mr Varney?

ADV VARNEY: As the Commission pleases. Commissioners, before

we proceed, we just wish to hand up a document that was recovered by my attorneys which we wish to add to the bundle, that is bundle 7 which is Mr Bubenzer's bundle. This is the NPA Report to parliament of 2002/2003 and we have flagged a page in the report which indicates that the Priority Crime Litigation Unit is evaluating 459 of the TRC cases and with the leave of the Commission we would like to hand up copies.

CHAIRPERSON: Yes, you may hand up. Thank you.

ADV VARNEY: And Commissioners, that will be marked as part of
10 bundle 7, it will be item 5.

CHAIRPERSON: Yes.

EXAMINATION BY ADV VARNEY: Mr Bubenzer, before we proceed, I would just like to get you to confirm various affidavits. Am I correct in saying that you made out an affidavit before this Commission while you were in the Western Cape on the 7 January 2026?

MR BUBENZER: That is correct.

ADV VARNEY: Now Commissioners, that affidavit is in bundle 7, it is in item 4 and Mr Bubenzer, in this affidavit at paragraph 4, you
20 confirmed 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*, Gauteng Division, case number 5245/2025 insofar as it pertain to you. Is that correct?

MR BUBENZER: That is correct.

ADV VARNEY: So Commissioners, in that bundle we have a

certified copy of the confirmatory affidavit that Mr Bubenzer made out in that matter, the *Calata v Government of South Africa* matter, and that is at pages 1 to 4 and included in the bundle from pages 5 to 516 are extracts of Mr Bubenzer's book, *Post-TRC Prosecutions in South Africa: Accountability for Political Crimes After the Truth and Reconciliation Commission's Amnesty Process* and that was published in 2009, and we have this affidavit and then his Curriculum Vitae.

Mr Bubenzer, can we now turn to your background and
10 thank you for providing a copy of your CV. Commissioners, that is at page 519 of the bundle. Can you give the Commissioners a sense of your background and your career, please?

MR BUBENZER: Yes, of course. So I am a lawyer by education and in 1998 after I had finished my high school degree, I moved to South Africa for one and a half years, actually for about 14 months and spent some more time to work in a social function in the Western Cape, north of Cape Town, whereafter I returned to Germany and started my law studies, which I graduated in 2005.

Thereafter I commenced a PhD research which is the very
20 research we are having before us today. The research concluded in 2008, early 2008 and I published a book on it in 2009. During that research I spent I think around four months, four to five months in South Africa for research purposes.

After that, the PhD, I commenced a practical legal training for two years which is mandatory in Germany, during which I ran

through different practical stages of the legal function. I worked on the judiciary, I worked in a law firm, a prosecutor's office, a civil law court, the German Ministry of Foreign Affairs and the United Nations High Commissioner, Officer of the High Commissioner for Human Rights in Geneva.

Thereafter I took my second state exam which qualified me for the Bar and all legal professions in Germany, including judges and prosecution offices. Then I started after that second degree, I started working in a law firm in Berlin, Germany, where I worked on real estate law, procurement law, commercial law for a couple of months
10 until shortly after having started there, I received an offer from the United Nations Programme based in Bonn which is under the administrative authority of the United Nations Development Programme in New York where I started the legal function being the in-house lawyer for three years.

Time limited, thereafter I moved (coughing) excuse me, thereafter I moved to work for a German government agency for half a year and then started working for my current employer in 2014, which is the European Central Bank. It is an institution of the
20 European Union, an international organisation and institution of an international organisation, and I worked there since November 2014 as a legal counsel.

Then for some time as a compliance and now again since two years as a senior legal counsel where I work on institutional legal matters, on administrative legal matters, employment law, status

matters, privileges and immunities, contracts and procurements, contract negotiations. And that is a function I am currently inhabiting.

ADV VARNEY: Thank you, Mr Bubenzer. Now I would like you to give the Commission a sense of why you decided to focus on the topic of Post-TRC Prosecutions in South Africa for purposes of your PhD thesis which you ultimately transformed into a book that you published?

MR BUBENZER: Yes, I am happy to do so. As I mentioned, I after school, I went to, on a social service work to South Africa for more
10 than a year and during that time I would say I developed a very strong affection for the country, I enjoyed the time very much. I was every interested in politics already back then. I followed with great interest the transition to democracy. At the time I was there in '98, the second democratic election took place. Actually there was an election booth in the place where I worked, so I followed things very closely.

ADV VARNEY: Can we just check on the technical issue because we just lost connection. Mr Bubenzer, apologies for that, can you, can you see and hear us? Sorry, can we ask for the technical
20 assistant to return, please? Mr Bubenzer, apologies, I hope we are reconnected now. Can you see us and hear us?

MR BUBENZER: Ja, I can see you well and hear you.

ADV VARNEY: Great, apologies for that interruption, perhaps you can pick from you, just before you were, we lost connection.

MR BUBENZER: Yes, maybe just for me to orientate, am I facing

the Commissioners right now or? I do not see the picture, so.

ADV VARNEY: Just hold on, we are going to try and sort that.

Okay, just so that you get a sense of the orientation... (intervenes)

MR BUBENZER: All right, okay, okay perfect, now I have my orientation of the room back, thank you. Ja, to pick up on where I left off, so I had this background to South Africa. I was following events, I like for instance in '99 I kind of really coincidentally ran into a TRC hearing in one of, I mean they were ongoing after '98 obviously.

After I studied law, I came back to South Africa for internship
10 in a law firm in Cape Town where I made close connections and after my first exam I wanted to do a PhD, I wanted to pick up on my experience in South Africa and at the university where I studied in Berlin, Humboldt University, there is a Prof [Indistinct] who had very strong ties with South Africa, had conducted a lot of research already and had a cooperation with UWC and there were I think at the time, two or three PhD theses already written too or had been written already when I picked up on my topic in 2005.

The – mainly one thesis looked at the TRC proceedings and the amnesty proceedings during the 90s until early 2000s. So what
20 was really and I wanted, I wanted to pick up on the topic in relation to the TRC and what was at that time in 2005 obviously open, was to review and research the topic of what happens after the amnesty proceedings, so that was from a legal, from an academic legal perspective as well, from different perspectives obviously, but from an academic perspective a very important topic in reviewing holistically

the amnesty proceedings. That topic no one had so far researched, at least not in a PhD connection and this is how I got to that topic.

I had my access to the country, to the history, my kind of background knowledge so to speak, so it was rather easy for me to get into that. That is how I got to the PhD.

ADV VARNEY: Thank you. And can you give us a sense, the methodology of your research?

MR BUBENZER: Yes, so.

ADV VARNEY: No, you have given an outline at paragraph 5 of your
10 affidavit, but perhaps you can go into a bit more detail.

MR BUBENZER: Ja, so the topic of my research is obviously Post-TRC Prosecution, so the idea and the plan was to document the prosecutions and trials which had taken place after the amnesty process had come to an end in 2002 and then more officially in 2003 and some prosecutions went on, but basically at that time the amnesty proceedings were over.

The last year a few report volumes had been published, there was a recommendation on proceedings to take place. As I mentioned, there was that kind of from the academic perspective, the
20 clear expectation that trials would take place and the purpose was really to document trials and legal circumstances and to put it into perspective of international law and the amnesty proceedings at the TRC process. That was the idea, so it was really a more academic idea and a documentary approach as regards to trials.

When I started my research in 2005/2006 and especially

when I came to South Africa, it quickly became clear that I would be to shift the focus because it became clear that there are simply not so many trials to document. And when I, especially when I was in South Africa, the focus shifted to documenting the politics behind the topic because I realised this is more, the influential developments are more on that side rather than in the courtrooms.

So I documented trials as I had planned from the start, but a large part then had to concern documenting political backgrounds and trying to get to the key figures. So that in the end was the focus
10 of my thesis. I would mention three parts, the one is documenting the trials and the legal background, the second large part is documenting the politics behind past TRC prosecutions at the time and the third part would be to put it in a more legalistic context from the South African perspective and normative context and also international law.

ADV VARNEY: Thank you. Now am I correct in saying that you sourced the bulk of your information from court documents, other written materials and you conducted more than 20 interviews with people connected to the subject of Post-TRC Prosecutions?

MR BUBENZER: Yes, that is correct, I think it is more than 20, ja.
20 Yes, definitely.

ADV VARNEY: Now we are particularly interested in the interviews that you conducted with certain former generals of the erstwhile South African Defence Force as well as the South African Police in relation to the question of Post-TRC Prosecutions. But before we get there, I would like to canvass with you certain aspects that you have

raised in the book in relation to the efforts to get prosecutions off the ground. And Commissioners, for this purpose we will be looking at extracts from Mr Bubenzer's book, starting from around page 25 of bundle 7 and we would also make occasional reference to Mr Calata's affidavit in... (intervenes)

MR BUBENZER: Mr Varney, excuse me, the last, the last 30, 40 seconds I did not hear anything, I just, you are just picking on the volume again.

ADV VARNEY: Oh, apologies, Mr Bubenzer. I was just advising the
10 Commissioners of the paperwork that we were going to be relying on today, which is primarily extracts from your book which have been included in your bundle and most of the chapters have been included in bundle 7 at item 2, that is between pages 5 to 516, and then occasionally we will also make reference to Mr Calata's founding affidavit which is in bundle 1.

So if I can refer you to page 25 of your book, it is a chapter that, it is Chapter 2 titled, "Prosecution of Political Crimes after the TRC", that is from page 23 onwards and there you provide a useful assessment of the work of the units that had been set up to deal with
20 TRC Prosecutions, starting with the Human Rights Investigation Unit on page 24. And then from 25 onwards, and here you are relying on interviews with Vincent Saldanha as well as Jan D'Oliveira and others that were conducted in April and May 2006.

And you made an observation which piqued my interest towards the bottom of page 25. You said, "There was strangely no

consultation or cooperation between D'Oliveira and the Saldanha team". Can you elaborate a little on that?

MR BUBENZER: Ja, I have got this information from Mr Saldanha who I met in Cape Town, who was at the time heading the Legal Resources Centre, the legal aid function I would say and he explained to me about his function in the Human Rights Investigation in the Investigative Unit and what I picked up very clearly from him was that he had been mandated with this function but there was not any handover basically between the previous unit by Jan D'Oliveira, 10 headed by Jan D'Oliveira which was active in the 90s and which was very successful, and him.

There was a handover of dockets, but that was basically it, so there was no, that is what he told me, there was apparently no proper substantial handover in terms of qualifying the files and the dockets. And that is, that I found surprising because it would obviously have been helpful to do that.

ADV VARNEY: Yes.

MR BUBENZER: But the background of why that did not happen, I am not sure, ja.

20 ADV VARNEY: And then based on interviews also with Vincent Saldanha and Jan D'Oliveira and also Tori Pretorius also in May 2006, on page 26 you sort of give an overview as to why The Human Rights Investigation Unit was not really able to make any headway in dealing with the TRC cases. For the benefit of the Commission, can you just summarise why you believed that that unit was not able to

make any real progress?

MR BUBENZER: What I picked up also from Mr Saldanha, was that I think the unit was ambitious and Mr Saldanha obviously comes from a, well if you know him, he comes from a background where you would expect an engagement in that task, but the problem was that they did not have, his unit was (a), not staffed very well and did not have the real prosecutorial experience in these matters, so Mr Saldanha is maybe a lawyer, an attorney I think and was, but did not have, did not have the [indistinct] experience which he would
10 need as a prosecutor probably and in particular with these rather complicated cases which posed particular challenges.

Then it was also a time issue, he worked only parttime on these matters and that was, that were the main problems. So if you are handed over these kind of dockets and you do not get kind of a handover briefing, you do not have the time resources required and the experience, I think these were the problems and that is what he also communicating to me. After all, it was also just a short tenure of that unit, I think about a year.

ADV VARNEY: Yes, you did mention at the top of the page that it
20 was, he was only there for one year and I see you point out that under scrutiny there were some high profile cases, including that of the torture and killing of Steve Biko. Would you be surprised to hear that the Steve Biko case remained dormant all these years and until only last year when the inquest into that matter was reopened in 2025?

MR BUBENZER: Ja, it is surprising indeed. I mean this was what he told me, that they have high profile cases and he mentioned that one among others, so I am quoting him there and that case never reappeared in my research in my discussions with different prosecutors who succeeded him. That was never mentioned as one of the priority cases and it also never reappeared obviously in court, ja. That is surprising indeed, ja.

ADV VARNEY: And can we turn to the next initiative and that was the establishment of the unit within The Directorate of Special
10 Operations, also known as the Scorpions, called the Special National Projects Unit headed by Adv Chris Macadam, which was also meant to focus on the Post-TRC Prosecutions, but it again made very little progress. Can you indicate why you believed it also made not much headway?

MR BUBENZER: So my conclusion was, I have to say this is based on research which was conducted by Prof [Indistinct] I worked in and had interviews conducted there, so I have not met Adv Chris Macadam, but later on I met with the prosecutors and the PCLU, we will come to that I suppose, but so what I picked up very clearly also
20 from statements Mr Macadam made to Prof [Indistinct], was that I would say this function of looking at being responsible for the TRC cases was a responsibility but was not practically reflected with resources and time and investigators.

So the problem was there that the DSO was formally responsible but did not really have resources to deal with it. And

there was apparently also no priority in terms of assigning responsibilities to follow up on these cases. I think there was more of a continuity there in terms... I think some of the prosecutors had been involved in the 90s as well with prosecutions there, TRC Prosecutions.

They were also obviously very experienced, that is what I picked up, but they simply had other tasks, ja and they did not have this as a main responsibility allocated to them. This was the main problem, it was a former task placed on that unit but it was not reflected in time resources so to speak and personnel resources.

ADV VARNEY: And while we are on the question of personnel and resources, at the bottom of that page you make an interesting contrast between the D'Oliveira Unit and this unit, and I believe that you subsequently also made that contrast with the PCLU which we will come to, but can you elaborate on the contrast between the D'Oliveira Unit and the subsequent initiatives?

MR BUBENZER: Ja, the D'Oliveira Unit, so these conclusions I draw from my interview I had with Jan D'Oliveira and [Indistinct] and also from the research of my colleagues from Prof [Indistinct] in the 90s, and but we concluded it is that the D'Oliveira Unit in the 1990s, the so-called D'Oliveira Unit in the 1990s was highly efficient and was very well equipped.

So they not only had fulltime prosecutors dealing with these cases, some of whom then later on in the PCLU reappeared to be responsible for these cases, but they also had highly skilled, that is

what he told us, highly skilled investigators. I think they had a team of around 20 that, with the status, they had around 20 investigators assigned only to that unit on a fulltime basis.

And that strongly contrasted with what happened after the Human Rights Investigation Unit, the Investigative Unit in 1999 was put into place, because (a), you did not have that anymore, the prosecutorial experience, that changed with placing it on the DSO and (b), you did not have investigative resources allocated on a fulltime basis to these cases. That is a major, major difference.

10 So the major difference is resources in terms of prosecutors, time and investigators. That is a totally different picture after 1999 compared to the D'Oliveira and then in the 90s. And that is what they, what the prosecutors told us as well, I mean it is clear from the numbers when you look at what is this, I mean 20 skilled investigators, experienced investigators assigned in the 90s and no investigators anymore assigned on a fulltime basis at least to these cases after 1999.

ADV VARNEY: Yes indeed and this Commission has heard quite extensive evidence on the denial of investigative capacity to the units
20 that were meant to carry out these prosecutions and we will return to that. So the D'Oliveira Unit had the advantage of having prosecutors and investigators under one roof and were able to really pursue prosecution led investigations without, with considerable impact.

I notice on page 27 that you and I assume it has emerged from your interviews that one of the reasons they perhaps held back,

was because the amnesty process was still ongoing and then there might be amnesty decisions in relation to some of the cases before the DSO. What is your comment on that?

MR BUBENZER: Ja, what I concluded was that things changed in 2003 after the last report of the TRC had been tabled and there was also a speech by the President in parliament on the way forward, and then things picked up. So until 2003, well the Human Rights Investigative Unit and the DSO was responsible, there was very little progress.

10 Now while that was the case, I would not conclude that there was a lack of ambition, clearly not with the Human Rights Investigative Unit and I also do not have any evidence so to speak that the prosecutors at the DSO were not willing to move forward.

 There was a resource issue, but what I would clearly conclude, is that there was a bit of a state of limbo so to speak as to how politics want to go ahead with the cases and I was informed that and I picked up from the interviews, that there was a general willingness, there was also formerly units tasked with pursuing cases, but in the end prosecutors waited for the outcome of, for basically the
20 tabling of the last TRC report in 2002 I think and the signal from the government on the way forward.

 This is not a legal obstacle but this was clearly a kind of political factor in the very slow progress during that time '99 until 2003. Now so there were formerly units responsible but in the end, the prosecutors were waiting at best on a clear direction on how to

proceed with these cases. That was the main background factor I would conclude on the very slow progress and basically the lack of developments in that area between '99 and 2003.

ADV VARNEY: So your assessment is that they were waiting for direction on the way forward. To the best of your knowledge, in that period up until 2003, are you aware of any complaint allegation of active interference in the TRC cases?

MR BUBENZER: During that time no, I did not pick up any evidence of political interference during that time.

10 ADV VARNEY: Now you mentioned on page 27 that actually there were cases that could have proceeded with and so for example, you make reference to an investigation against General Krappies Engelbrecht, the former commander of Eugene de Kock and you also mentioned that the D'Oliveira Unit apparently had prepared around 20 charge sheets or indictments. Did anything transpire from the cases against General Engelbrecht and the 20 other charge sheets?

MR BUBENZER: No, no, I did not pick up anything. Obviously there were cases which could have been prosecuted. I mean the work of the TRC was over, there were still some ongoing amnesty hearings,
20 so the Amnesty Committee's work was still ongoing, but I mean as I am writing and there were 20 basically ready charge sheets apparently. Now there were cases handed over by the TRC, there were cases handed by the D'Oliveira Unit.

There was in '98 a speech by President Mandela giving already a direction on how things should continue after the TRC, so

there was no obvious reason not to proceed in my view and I do not know and I did not receive information really on why specific files did not proceed, which is also obviously for confidentiality reasons, prosecutors would not give information on *sub judice* cases or cases under investigation or charge sheets under preparation.

But theoretically from what I have picked up, there were cases which were ready and that was clearly communicated by the prosecutors, there were already charge sheets, there were dockets. Again my conclusion would be that there was the intention to wait
10 until a clear signal is given after the, after the official end of the amnesty proceedings in 2002.

ADV VARNEY: Thank you. The volume levels have just dropped a little bit. I do not know whether it is possible to get the volume of, from Mr Bubenzer's side up somewhat. While we attempt that, we will proceed.

COMMISSIONER KGOMO: Can I just come in there? Dr Bubenzer, the South African public speak a lot about prosecuting cases that they referred to as the low hanging fruit and that is their disappointment that such cases were not prosecuted or proceeded
20 with. Now they do not always have the information that you or some people have, but do you understand or appreciate their disappointment or share their disappointment?

MR BUBENZER: Commissioner, thank you. Well I should first of all say it is difficult for me to assess these... (intervenes)

ADV VARNEY: Mr Bubenzer, could you just pause for a moment...

(intervenes)

CHAIRPERSON: I think... (intervenes)

MR BUBENZER: Ja.

ADV VARNEY: We can barely hear you. I am assuming...

(intervenes)

MR BUBENZER: Okay.

ADV VARNEY: That you have adjusted volume levels on your side.

MR BUBENZER: No, I have not adjusted anything on my side.

ADV VARNEY: Okay, can we ask for the technical assistant to help
10 us with getting the volume levels for Mr, for Dr Bubenzer up? Is the
technical expert still present with us, because if so we need your help
urgently. We can barely hear Dr Bubenzer. Dr Bubenzer, can you
say something?

MR BUBENZER: Yes, yes, hello.

ADV VARNEY: Okay that is, I do not know really what happened,
but no, you are back up to normal levels.

MR BUBENZER: All right.

ADV VARNEY: You can now respond to Commissioner Kgomo.

MR BUBENZER: Yes. Commissioner, so I should first of all say that
20 I am not fully in a position to say what is a low hanging fruit, so
meaning what is a case which is ready for prosecution. Obviously I
did not have access to that, to files which would allow me that
assessment. And even if I had seen a docket which obviously was
not possible, I am not a South African lawyer so and not a prosecutor
licenced in South Africa, so I should say that.

But what I clearly picked up from my talks with Jan D'Oliveira and the other prosecutors, excuse me, is that there were quite a number of files which were not only potential for investigation and prosecution but which were really readily available, which were investigated where there was evidence which were handed over from the D'Oliveira Unit.

So one can probably describe these files as generally low hanging fruit ready to be prosecuted in terms of their completeness, ja, and again I was not given particular details on that for obvious
10 confidentiality reasons, but these files did exist and quite a number of them. That is what the prosecutors told me. Now it is indeed I would say, one of the conclusions of my research was that it is difficult to understand and surprising that such files were not taken forward, ja, such files which were alleged to be advanced and more that is ready for prosecution.

This is also something which Anton Ackermann told me when he took over. Prosecutor Anton Ackermann when he took over leading the Priority Crimes Litigation Unit, he spoke about files being handed over to them and quite a range being ready for prosecution,
20 ja. So it is surprising indeed.

COMMISSIONER KGOMO: Thank you, thank you, doctor.

ADV VARNEY: And while we are on the topic of lower hanging fruit, Commissioners can I draw your attention to Mr Calata's affidavit in bundle 1, the paginated page 39? There Mr Calata refers to the extract in Dr Bubenzer's book that there was an indictment prepared

against former SAP General Izak Johannes Krappies Engelbrecht and indeed one of the investigators with the D'Oliveira Unit, the late Frank Dutton who in 2016 was now working as a private investigator for the Foundation for Human Rights, since, as far as he was concerned, that matter should have proceeded.

He did a PIE application for the Engelbrecht docket and the SAPS responded to that request with a statement that it could not be found, and a copy of the request and the response is annexed to the Calata affidavit, FA17. That is in bundle 1 at page 488.

10 So Dr Bubenzer, let us now proceed to the work of the PCLU and you have already made some reference to the Priority Crimes Litigation Unit which was established by proclamation in 2003 and as you mentioned, Anton Ackermann was the first head of that unit. But you also make certain observations as to why that particular unit also was unable to make any headway and now I am looking at page 31 of your book. Could you just give us an overview as to why you concluded that the PCLU was unable to take these matters forward?

MR BUBENZER: Yes, I can do that. So first of all the responsibility was in 2003, actually the final report volumes were published in
20 March 2003. Shortly before that, the responsibility for TRC cases was placed again on a different unit which was the PCLU, the Priority Crimes Litigation Unit, was Anton Ackermann being the head.

And what the prosecutors told me and us and the previous research of also me, was that after the tabling of the final report volumes, there was a speech of the President in parliament and that

was the signal they had been waiting for and ja, and the unit was founded. So basically there was now the apparent barrier which was there was the original root, so that was already, they felt now, okay now we can go ahead.

There was also a development in resources because PCLU which is responsible for a range of other crimes, types of crimes, was then assigned the responsibility for PCLU cases and that in practice I was told was basically of their main responsibilities. So not only formally but also in terms of resources, things changed.

10 And the understanding again was now it is time to go ahead, now we can start and Anton Ackermann told me he was very eager, he had files and they made a review of the files which was there, the dockets, sorted them, what is immediately ready for prosecution, what is advanced, what is sort of, what needs more investigation and so on.

So there was a very systematic approach that that is what I picked up and there were apparently no more barriers in that sense, no more hesitation in terms of can we go ahead, should we and so on. Nevertheless, there were still significant resource constraints and
20 I got this firsthand from prosecutors I spoke to, Tori Pretorius, Anton Ackermann, Suan Bukau who all worked in the Priority Crimes Litigation Unit on these cases.

They said, you know we considered our main task in terms of percentage, this is our main task, that they had major resource constraints and that was a big problem. In the beginning that was the

main problem practically, so they said ja well, I mean now there was kind of a continuity in terms of prosecutorial experience. Tori Pretorius for instance, was also part, worked also for D'Oliveira in the 90s, Anton Ackermann I think also, so they were specialists in the area, they were experienced prosecutors, but they did not have and this is what they put forward, (a), they still had a range of other tasks, priority crimes falling into the responsibility of the PCLU, so not only TRC cases.

That was one thing, so there was, it could have been more,
10 definitely that is what they told me, there could have been more prosecutorial resources but the main issue was really a lack of investigators. So obviously the South African system does not foresee that the prosecutorial functions can direct the police to investigate. That is by the way different to Germany, in investigation matters the prosecutors are heading the police investigation services, so they can give direct orders and directions to the police. The police is reporting investigations to the prosecutors.

I think in South Africa that is not the case, so the PCLU prosecutors mentioned to me they are relying on resources from the
20 police, from SAPS, and there was an arrangement that the DSO, the Scorpions, would provide them with investigators. So basically they were meant primarily to rely on the Scorpions to do investigations. Now they told me in practice that did not happen, from the start the Scorpions, the DSO did not cooperate. I do not know why, but they did not provide the investigators.

The PCLU also referred them to the SAPS, they did get some investigative resources but (a), not the sort of the volume they needed and (b), not the experience they needed. So there was again a very strong contrast to the 1990s and the approach taken there. So I picked up there was a constant struggle to get investigators from their side, now apart from the workload they had and that was definitely the main takeaway they had in terms of obstacles.

ADV VARNEY: Yes indeed and I see in page 32 of your book, you make the point that the DSO which was mean to provide
10 investigators, declined to cooperate and that a request to the police to assign investigators on an ongoing basis was not followed, and that is also consistent with the evidence we have heard already before this Commission.

If I can draw your attention to the next page of your book, page 33, you make an interesting observation around the advantages of what you refer to as centralised prosecution and at least the idea was that the TRC prosecutions were to be centralised at the PCLU. Okay, can you indicate what, why you believe that centralised prosecutions are advantageous?

20 MR BUBENZER: Look ja, with regard to the South African context at that stage of my research, this is a conclusion I picked up. You can see that, it is simply, was very successful, the approach in the 1990s where a unit which had no other responsibility than pursuing TRC related cases and having the equipment for that, developing an experience in that and being focused, being not distracted by other

tasks so to speak, so one could see that this led to very, very strong prosecutorial pressure in the 1990s, a very effective approach, very effective prosecutions and by the way a major factor also for pushing a major incentive to apply for amnesty for many alleged perpetrators.

So and then the contrast, the disadvantages of having inexperienced units at least as regard the type of cases, units which have other responsibilities and units which do not have the investigatory power, was very stark because simply they were not able to perform that work anymore.

10 So it seems kinds of obvious that you, if you have specialised units that can develop a kind of experience and basically have more time, that that shown definitely by a South African example, and these cases are not ordinary cases, they are, that is what the prosecutors told me, they pose particular investigatory challenges.

 They, these crimes often happened in very secret circumstances, obviously if you look at for instance the South African Security Forces, they operated under secret circumstances obviously, they were very professional in disguising their operations, so that
20 poses particular challenges where you need to develop some kind of experience. Then you also have the ja, the political connection which is special circumstances you need to deal with and ja, it, these requirements show that you need to develop some kind of special skills I suppose or experience.

 Now the professorship I did my research at in Berlin, was

very active in researching transition justice approaches and we had done there a lot of research on the German situation, I mean the transition from the GDR socialist regime to integrating the country into the democracy. We have, now there also existed specialised units for prosecutions and the conclusion there was that this made a major difference in approaching cases in a very effective manner, ja.

ADV VARNEY: No, thanks Dr Bubenzler. In actual fact, Mr Calata in his affidavit essentially agrees with that approach and he details attempts to persuade the National Prosecuting Authority in recent
10 years from around 2019 onwards, to set up a specialised or a centralised approach to the TRC cases, but sadly as he points out and we will hand up the references shortly, the NPA took the opposite view.

They decided that no, the cases should not be centralised or specialised, but rather decentralised and then that the dockets were handed out to various offices around the country and the view of Mr Calata and the families, that produced poor results. Commissioners, that is at page 174 of Mr Calata's affidavit in bundle 1 from paragraph 452 onwards.

20 Now in your book also in Chapter 2, you do detail certain cases that did go ahead at that time, even in the absence of investigation officers and you point out that these were supposed also called readymade cases that had been previously investigated and you point to for example, the case of Eugene Terre'Blanche. He faced certain terrorism charges, the case of two former Transkei

police officers and the case of an individual by the name of Blani and then the PEBCO 3 case.

We do not have time to go through all the cases, but perhaps you can talk a little bit about the Blani case which some saw as a little controversial?

MR BUBENZER: Ja, the Blani case, well first of all as I have mentioned when Anton Ackermann took over the responsibility with the PCLU, they quickly made an audit of the files available, so like I have mentioned, they sorted the files ready for prosecution, ready for
10 trial, further investigation necessary by Terre'Blanche and I think the third [indistinct] so to speak a bunch of files which needed further assessment.

And I think there were about seven cases if I am not mistaken which were more or less ready for prosecution, no, three, three were immediately ready for indictment so to speak, and the approach taken by the unit from what I concluded, based on what I concluded from the talk with Mr Ackermann was, to take a very formal rationale approach. A crime is a crime, evidence is what it is, we go ahead with what we have.

20 And the Ronnie Blani case was one which was simply among this pack of around three cases which were ready for indictment. So it was simply tackled on that basis and approached directly without any, any sort of prioritisation or political consideration of like.

ADV VARNEY: So if can return to Commissioner Kgomo's question

to you, would it be your assessment that the PCLU saw Mr Blani as a potential low hanging fruit? He was an ANC member who had been involved in mob violence, I believe the necklacing had been involved, he was simply part of the mob and that case had been previously investigated, so they simply decided to proceed with it as a low hanging fruit case?

MR BUBENZER: That is how I understood it, ja. You can probably describe it as one of the low hanging fruits in terms of an easy, easy catch, an already investigated case, indictment ready, easy to tackle, ja absolutely, that was a factor for taking that case from what I have heard, indeed.

ADV VARNEY: And Commissioners, an overview of that case is set out on pages 73 to 74 of Dr Bubenzer's book in bundle 7. If we can also pause on the – if we can also pause on the PEBCO 3 case which you detail from pages 64 all the way through to 73, the impression that you regard the PEBCO 3 case as a missed opportunity, can you describe why you reached such a conclusion?

MR BUBENZER: Well a missed opportunity, it was one of the cases, one of the first cases which were pursued by the PCLU, so I think they did not miss an opportunity in that sense, it was put forward in 2004. Maybe it was one of the low hanging fruits so to speak, so quite, quite an advanced case. The case had simply died out so to speak. It was pursued with vigour from a prosecutorial side and then obviously it got entangled in review proceedings, in new amnesty proceedings, a review of the amnesty decisions.

It is also connected with the Motherwell-Four case and this is where obviously at least I concluded that sort of more a political influence came in, in the sense of how these later proceedings, the review proceedings and the new amnesty proceedings were tackled. There was a delay in terms of filing papers, and well it is all due process in a way but it has all got to do with how the case was tackled, how the case was approached by the government. So is it a missed opportunity?

Ja, probably, it would have been a high level case which
10 would have been useful in terms of dealing with these cases to be concluded in court and it would have been probably an opportunity from government to participate in a very active role. Ja, but I mean judging from the prosecutor side I did not see that they hesitated in that sense.

ADV VARNEY: Yes, it does seem that from the side of the prosecutors, they were keen to pursue with this matter and you state on page 73 that it was the Department of Justice that failed to act. And perhaps just some background, the, one of the accused in that matter, there was a Mr Nieuwoudt and a Mr Koole, we will get the
20 details but I think both applied to review refusal of the Amnesty Committee to grant them amnesty and that process, review process was never finalised because the Department of Justice for a period of some five years, simply did not file its papers in that matter, bringing the review to a slow death.

And as I understand it in the intervening period, both

Mr Koole and, or at least Mr Nieuwoudt died in subsequent years, Mr Koole died and actually as we speak today even though there were other potential suspects, that case has not been taken forward and there are now attempts to have a reopened inquest which has not happened as yet as we speak in 2026. So what is your takeaway from the treatment of the PEBCO 3 case?

MR BUBENZER: My key takeaway is, I mean obviously you have to lodge your process, re...

ADV VARNEY: Oh, unfortunately we have lost connection again.

10 On the screen it says, "extend your meeting". Is it possible to have unlimited time on this meeting, if we can? Hello? Dr Bubenzer? I see there is quite an echo.

MR BUBENZER: I do not seem to have an echo on my side.

ADV VARNEY: Ja, there was an echo on this side and it does seem as if the Zoom or Team's packages was limited perhaps to a certain time, but until that... (intervenes)

MR BUBENZER: Yes.

ADV VARNEY: During the tea time... (intervenes)

MR BUBENZER: That is my impression.

20 ADV VARNEY: It will be extended to an unlimited period.

MR BUBENZER: Ja, I got the notification that there is so much time left in this meeting and probably it switches off automatically once after one hour, I think it was scheduled for one hour which means that we might be online since two hours now.

Ja, so to pick up on that, well first of all and then it also

concerned the Motherwell-Four case, there was a kind of the issue that the deadline to apply for a review of amnesty, of an amnesty decision which is I mean, there is a whole legal story to that and amnesty decisions were considered to be an administrative act subject to review by court, and which is obviously subject to a deadline, but that deadline could be extended by agreement between the Ministry of Justice and the concerned persons.

And this had happened, so there was basically an unlimited possibility to apply for a review of amnesty. Without such agreement
10 which had been reached in the, I think late 90s between the Ministry of Justice and the key counsel for many perpetrators, Jan Wagenaar if I remember correctly, without such agreement there would never have been a review application of the amnesty decision.

Many years after the amnesty decision, in that case, the PEBCO 3 had been handed down. That is one factor. But okay, that is how it is, it probably has a legal basis that is, I would not doubt that. Secondly, the main factor then was, it is against this background of course, no one would complain as a lawyer about subjects, making use of their procedural rights, but there was
20 significant delay and that was a factor which I picked up on.

There was some delay in convening the amnesty, the new Amnesty Committee to hear that case, I do not know if that was on purpose, but there was significant delay from the Department of Justice to file its papers and there I am not even sure after I finished my research, this case was still not proceeding and these delays

were inexplicable to me at that time. So the key factor was indeed the lack of response in filing papers.

ADV VARNEY: Commissioners, if I can draw your attention to the Calata founding affidavit where he deals with the PEBCO 3 matter, that is at paginated page 42 of bundle 1 and it is from paragraph 115.3 onwards and there he points out that two of the accused, Gideon Nieuwoudt and Johannes Martin van Zyl applied to court to review the decisions to refuse them amnesty and this was in 2004. The review was delayed by some five years because of the failure or
10 refusal of the Department of Justice to file answering papers.

Nieuwoudt died in August 2005. He goes on to say that in 2009 the High Court ruled that an Amnesty Committee be convened to hear the application of Van Zyl. Charges were then provisionally withdrawn against Van Zyl and Johannes Koole. Inexplicably the Department of Justice never convened an Amnesty Committee and the NPA never reinstated the cases against Van Zyl and Koole. They both since died.

COMMISSIONER KGOMO: It is actually pronounced "Koole".

ADV VARNEY: It is, oh it is "Koole"?

20 COMMISSIONER KGOMO: Johannes Koole, yes.

ADV VARNEY: My apologies, Commissioner. Mr Calata concludes at paragraph 115, 3.3, "To date no steps have been taken against the surviving suspects, notwithstanding the hurting of family members over many years. Only two remain alive, former Vlakplaas members Gerhardus Beeslaar who is nearly 87 years old and Joseph

Mamasela who is in his seventies.

Now Dr Bubenzer, let us move to another matter that the PCLU handled during the years where they did not have an investigation team, no investigators for that matter and that is the significant matter of the attempted murder of Frank Chikane. This was a matter that you point out had already been investigated by the D'Oliveira Unit, so it was another one of these readymade cases that they could proceed with.

10 Can you explain why you concluded that this was one of the most significant matters at that time and if you could just give some background on that case? It is set out in your book from page 76.

MR BUBENZER: Yes, it was a very significant case I concluded for different reasons, (a) because of the case itself and its details, and (b), because it illustrated to me the political considerations and events in the background very strongly. So one could say it is a kind of tipping point maybe. And narrowing of the events, a bottleneck case so to speak where the political you know, events and considerations also had to be narrowed down to concrete decisions let us say in a case.

20 So that is what I would highlight on that case. I mean the case itself is significant obviously because Frank Chikane was a very prominent figure in the 80, a high level person and it is also a case which illustrates sort of the approach of the security forces. It involves collaboration between the security police and the military, that SADF Security Branch and indeed involved very high level

figures who had at that level in the end never been convicted.

The former Minister of Law and Order I think, Adriaan Vlok, Johann van der Merwe, later on John [Indistinct], so that is what it makes, well that is what makes the case very significant. It is a very high level case in terms of the victim but also in terms of the structures which were put to trial and it is illustrating very clearly, it illustrated to me very clearly political events in the background.

ADV VARNEY: Thank you. And I see from your coverage of this case between pages 76 and onwards, that you relied heavily on an
10 interview with a person by the name of Jan Wagenaar. Now you interviewed him on 8 May 2006. Can you explain who Jan Wagenaar was?

MR BUBENZER: Ja, Jan Wagenaar was an attorney at the time, having his own law firm with partners, I think it was Wagenaar and Associates. It was later merged with other lawyers, then called Masibo Inclusive Incorporated. Yes, before it was Wagenaar Muller but you know, this was just... So when I met him, he was just an attorney, excuse me, but of course he was a very influential figure, a very experienced figure in the transition and I mean he used to be the
20 general attorney of the, in the apartheid government, so basically the chief lawyer for the government up into the 90s.

He was then strongly involved in the TRC amnesty proceedings at some stage on the side of defending and providing counsel to perpetrators and he continued to be the chief lawyer for the security police side during that time and also after 2000. So when

I met him, he was still the key figure for the security police side in terms of providing legal counsel and defending cases, but also in terms of acting as a key figure in negotiations between the government and the secret police side.

So I would call him, that was my impression, the key lawyer in the amnesty proceedings in the 90s and later on any criminal proceedings after the end of your TRC on the side of the security police.

ADV VARNEY: Thank you, we will eventually get to the role he
10 played in the discussions and negotiations, but I see you...
(intervenes)

MR BUBENZER: Excuse me and of course he was the attorney of the accused in the Chikane matters.

ADV VARNEY: Yes.

MR BUBENZER: Obviously, ja.

ADV VARNEY: Yes, indeed and I see you point out that the accused
at that time was former Major-General Christoffel Smith, Gert Otto
and Johannes Manie van Staden and you point out that they had
been accused with the attempted murder of Frank Chikane by
20 applying a nerve toxin, a lethal nerve poison by the name of paraoxon
into his clothing and his bag at Johannesburg airport.

Now you have a heading at the bottom of page 77 called the "Arrest suspension" and you point that the arrest of those three were about to take place in November 2004. And there is a rather remarkable sentence in the middle of page 78 where you say, "The

suspension of the arrest was mainly the result of a political settlement behind the scenes". Can you give some detail around these arrests and why you conclude that the suspension of those arrests were mainly the result of a political settlement behind the scenes?

MR BUBENZER: Yes, so as I had mentioned already, the approach of Anton Ackermann and the colleagues supporting him on these cases and the PCLU working with him, in the PCLU Tori Pretorius and so on, was in my impression very straightforward. They had sorted filed, they had looked at cases, they were pursuing cases.

10 Strictly on the basis is it a case which you can go to court with or not? Very straightforward, that was my impression, pretty ambitious thus far.

The Chikane case was apparently one of the cases they were convinced they could carry, they could pursue, because this is basically what happened in November 2004 sometime after the responsibility was placed on them, they went ahead with that case. The arrest was eminent, there would probably have been bail hearings. The lawyer Jan Wagenaar was informed. Basically they had a ready case against these individuals.

20 Now a strong ready case, strong enough to press charges. Now what happened then was that and I got this information directly from Jan Wagenaar, attorney Jan Wagenaar in an interview. Allow me also to reflect that in my research what happened was very quick events on the same day, Mr Wagenaar intervened after he heard that his clients would be due for arrest, intervened at the government of

South Africa at the highest level.

He confirmed that he contacted the President's Office and in a very swift move I think on the same day, the President what Mr Wagenaar told me, gave instructions which were passed on through his office to the NDPP, the National Director of Public Prosecutions, Bulelani Ngcuka, to suspend the arrests and the case, and this is what happened.

ADV VARNEY: And just to be clear, which President was involved?

MR BUBENZER: According to Mr Wagenaar, the instruction was
10 given by President Mbeki.

ADV VARNEY: So from your perspective, what conclusions do you draw from the version of Jan Wagenaar that he was able to make contact with the President's Office and secure almost immediately on the very same day an intervention to prevent these arrests from going ahead?

MR BUBENZER: The conclusion I would draw from that is, well there is a big background to that, to these events. It is a culmination, again it is a culmination of a process and political considerations and factors which were lingering and which were sort of boiling, cooking
20 up in a way over many years.

So but the immediate conclusion I draw, there are two I drew or I would draw now is, (a), there is a very, there was a very, very close connection, a very direct wire of communication between that side and the government and (b), there were very strong political and strategic factors which Mr Wagenaar on the side of security police

side so to speak, could leverage, influence centred which were not new but which were factors all along and which culminated at that point in time.

ADV VARNEY: Yes, it is extraordinary that a defence attorney has that kind of access to the highest office in the land and is able to effectively change the course of history.

MR BUBENZER: Ja.

ADV VARNEY: So in, you conclude Chapter 2 by stating at the bottom of page 92, "That the promising advances made by the PCLU, 10 were halted by political interventions in late 2004, thereby restricting them to the few cases that had already been investigated". In your view but for the political interventions, would the PCLU have managed to proceed with these TRC cases?

MR BUBENZER: Again maybe, I cannot stress this, after all the PCLU consisted of very experience prosecutors in this area and I mean, suffered from a severe lack of investigatory resources but had the experience and really was ambitious. That was my impression, ambitious to proceed with its cases. Now with the limited resources they had, they were still eager and capable, that was my impression, 20 to push ahead with cases. They had the ability.

That was probably not the case for much of the Human Rights Investigative Unit, that was also not so much the case for the DSO possibly because they simply had other tasks, but this unit had had the experience and the capability, that was my impression, to pursue cases. They had dockets which were ready and I mean it is

not for me to judge the quality of a file, but I mean the Chikane case was obviously one which was considered to be ready for prosecution, the same as the PEBCO 3 case, the same as the Simelane case.

And ja, my impression was they had the ability to take the cases, they had the ambition to take the cases and they did take the cases, ja. The, in a case like Chikane I would jump to the conclusion maybe here a bit, but was that the problem was not resources in that sense, but in that case the problem or the obstacle was clearly political interference.

10 ADV VARNEY: Commissioners, just for the record I would wish to bring to your attention the fact that the attorney, Jan Wagenaar, has since died.

CHAIRPERSON: Yes.

ADV VARNEY: We will get to that date of his death.

CHAIRPERSON: Yes.

ADV VARNEY: And Dr Bubenzer, let us move to Chapter 3 of your book. It is titled, "The Politics of Prosecutions" and in setting the scene from page 98 onwards, you deal with what you call a number of interest groups including the Human Rights Organisation, various
20 NGOs, we will not delve into that. But from page 99 you look at the interest groups aligned with the side of the security forces and two in particular.

Let us start with the one that was aligned to the military, the former South African Defence Force, labelled in Afrikaans as the "Kontakburo" meaning which is also a Contact Bureau. Can you just

set out what this Contact Bureau was about and what you were able to learn about it?

MR BUBENZER: Yes. Maybe just quickly, again as I mentioned in the beginning, it was not my intention to do such political research. I wanted to document trials but again it was clear very quickly that I need to look at political backgrounds to understand, to sort of tackle the topic more realistically and to approach the political interest groups, to which I got access quite easily I would say, as an outsider and still maybe it was not easy in that sense but I did get access.

10 So I got access among others, to the Contact Bureau which I learned is the forum, the key forum, the key interest group advocating and acting on behalf of the former SADF Military so to speak in matters relating to criminal accountability and influence in the post-apartheid era. So the Contact Bureau I learned, was basically an office indeed as it says, which was set up in the 90s parallel to the TRC proceedings, allowing former SADF members to seek advice and counsel and to coordinate their actions and efforts with respect to the transitional justice scheme and criminal matters in particular.

20 So there was a physical location, there was phone numbers, there were contact details of people coordinating this assistance, organising lawyers if necessary and so on. I had spoken with Jan Gelenhuys on two occasions, Jan Gelenhuys, General Jan Gelenhuys was the Chief of the South African Defence Force Army in the 80s, he was later on the Chief of the SADF of three branches, so the highest ranking military I suppose in South Africa below the

Minister of Defence, and he was a key figure in this Contact Bureau structure on different levels, ja.

ADV VARNEY: And you mentioned at page 101 that there was some antagonism between the former SADF members and the TRC. Can you just explain the nature of that antagonism?

MR BUBENZER: Well that was a common theme I picked up when it comes to the perception of the former apartheid structures and the security structures on the military side and the police side as regards the TRC process and that theme is the TRC is, there are many
10 factors maybe but the key one is, the TRC was considered as a form of Invictus justice and was considered to be perceived biased towards the former security forces.

There are nuances, what I picked up is that the SADF also considered this a bit to be an attack on the military on as so to speak, I mean there is a different perspective on the function I suppose of a military person in that sense. So but mainly, mainly the TRC was considered to be untrustworthy, biased, a hostile opponent which required a strong coordination of efforts in tackling this sort of hostile attack on their integrity, on the legacy, on individuals. This is how I
20 would qualify it from the perspective of the SADF.

ADV VARNEY: Thank you. Let us now move to the next organisation lined with the security forces, this time to the former South African Police, an entity known as the Foundation for Equality Before the Law. What did you get to learn about that organisation?

MR BUBENZER: Well I know that during the 90s already, a similar

structure was founded for the security police side, a Foundation for Equality Before the Law which was an association with an association statute so to speak and the mandate, and the mandate of that organisation, association was basically the same as that of the Contact Bureau, just for the side of the security police, creating a forum and a focusing group, a support group for members, former members of the police who are faced with TRC related legal challenges and in particular who are faced with criminal prosecution.

Now there was that function of supporting the members, né,
10 the former security police members, officers, and that was also the same as the Contact Bureau, the mandate to conduct advocacy negotiation on political level.

The Foundation before Equality Before the Law, for Equality Before the Law had a board, had a chair and so on, and I met with Johann van der Merwe who was basically heading the Foundation for Equality Before the Law at that time, I met him for an interview in Pretoria together with Mr Steyn who I was I think his secretary, he was also present at that meeting, who explained to me what they were basically doing and who also told me a lot about the
20 negotiations with government on post-TRC matters.

Now Mr Wagenaar was also, is also strongly linked to that structure of or was strongly linked to that structure, for I mean he was a key attorney in that area.

ADV VARNEY: Thank you. Am I right in saying that that meeting with Johann van der Merwe and Major-General JA Steyn took place

in Pretoria... (intervenes)

MR BUBENZER: Ja.

ADV VARNEY: On the 5 May 2006? And I see you also give the names of the Management Committee at footnote 16. When it came to TRC related prosecutions, at the bottom of page 102 you make the following point, "The political advocacy efforts of the Foundation for Equality Before the Law are directed at pressing for the permanent sensation of any TRC related prosecutions and for finding a solution as to how to avoid further trials". And you say that this will later be
10 shown after 1998, it engaged in discussions with the government. Was that really their central mission at that time?

MR BUBENZER: Whether it was a central mission to advocate past sensation of trials, yes, I would say that was my impression at that time when I spoke with him in 2006. It was I would say the high time of or just the aftermath after the negotiations and certainly a key period in the advocacy for stopping trials, absolutely. So the main aim is, was of course of these structures, was to avoid trials for their side, for the members of their side.

ADV VARNEY: And if I can draw your attention to page 103 of your
20 book, you make a surprising observation, you point out that even though the viewpoint and activities of the two organisations being the contact group and the Foundation for Equality Before the Law were largely similar, so one would have expected close cooperation. You say there was never any attempt to coordinate their efforts. Can you explain to the Commission and then notwithstanding similar interests

and similar objects that these two groups did not really work together?

MR BUBENZER: Well ja, that was a clear conclusion I drew, that there was no coordination of efforts, so on the side of the, from the security police you had even from President FW de Klerk intervening, the side of the military, former SADF generals and personnel, was operating very separately and for me it is, in the end it is not maybe so surprising. Well there was an interest I learned from the police side and an openness to try efforts but there was not really an
10 interest from the military side to do so and that was due to, I picked up very different circumstances of these two groups when it comes to criminal accountability for acts which happened in the apartheid era.

And these are mainly true, on the one hand side, the military I would conclude, was far less exposed to criminal liability in practical terms, because there was far less evidence and the intelligence of the prosecutors on their activities.

They had participated to a far lesser extent to the TRC, there was a TRC which was lamented by the TRC in their reports, they were hardly concerned by trials in the 90s, I mean there was a trial of
20 Magnus Malan, there was also a trial against Jannie Geldenhuys, but these were very limited and the Malan trial was not successful in terms of conviction, otherwise there was hardly any criminal prosecution of SADF members that was due to the lack of evidence in that area.

As opposed to that, the security police side was much more

exposed to trials, they were, the D'Oliveira Unit focused on them, there was a lot of evidence on the, relatively much evidence on these activities and there was the main focus of the TRC proceedings and they were much, much more active in terms of amnesty applications than the army side, the Defence Force side which was due to the carrot and stick approach which we evidenced, I mean which has a research evidence.

By looking at the 90s, the pressure of prosecutions was much higher on the security police side than was the military, thus prompting the security police side more to apply for amnesty. So that is a very different background, so I got the impression the generals, the SADF generals acted more from a position of power so to speak, with a bit of knowledge or the perception, "you anyway cannot get us", really I mean or they were not that concerned, and the security police side was more acting from a dire pressure they felt and a threat of prosecution. So in that sense the military probably wanted to be a bit, you know, keep their distance.

The second and last factor in my view is the legal framework in which both sides operated, is very different. The SADF operated in a different legal framework, the law of more, the operated abroad and it is specific, a specific issue in South African criminal law, the limitation to prosecute acts of South Africans abroad. So that is a major difference and the South African Security Police operated in South Africa under South African laws. They contributed to many cases, South African laws of the apartheid era.

So there are strategic differences. Maybe I should add a third point, the considerations of the government were also very different in approaching the former military side that compared with approaching the former security police side.

They were both, at both areas there were significant considerations, but they were different strategically, so that is another factor why these two sides operated differently, separately.

ADV VARNEY: Thanks for that comprehensive explanation and yes, I think it is true that the security police were more exposed if one
10 looks at the amnesty applications from the security services, the bulk did come from the police rather than the military, probably precipitated by applications by people like Dirk Coetzee and Eugene de Kock.

You state in that paragraph at the bottom of page 103, that the SADF operated mainly abroad and you make the point that they were then governed by different rules, as you say the rules of international conflicts, the laws of war. But I should point out to you that the SADF did have quite substantial operations, security operations with South Africa, so for example Operation Marion dealt
20 with secret operations ran by military units in KwaZulu-Natal and around Johannesburg and in Operation Katzen which was also spearheaded by the military, was run in the Eastern Cape and you know, in certain, also in certain of the so-called independent homelands or Bantustans at that stage, so certainly a sector of the military would have been subject to South African domestic law.

MR BUBENZER: Yes, thank you. I am aware of these cases of these activities, it is maybe very journalistic, a bit of a journalistic assessment, but I would say this was a main consideration sort of. There were activities in South Africa, but the main understanding from what I picked up was okay, we operated in a different legal framework with the bite of our activities, ja.

ADV VARNEY: Chairperson, it is 11:00, would this be an appropriate time for the tea adjournment?

CHAIRPERSON: Yes. How long will you require for the technical
10 glitches to be attended to during tea adjournment, Mr Varney?

ADV VARNEY: We will have to seek the advice of the technical people, but I am hoping that will only take a few minutes.

CHAIRPERSON: Yes, so a 15-minute adjournment should be appropriate?

ADV VARNEY: I think it should work, ja, Chairperson.

CHAIRPERSON: Mr Bubenzer.

MR BUBENZER: Yes?

CHAIRPERSON: We will adjourn now until 11:15.

MR BUBENZER: Yes.

20 CHAIRPERSON: We are adjourned.

MR BUBENZER: Thank you, Madam Chair.

CHAIRPERSON: As the Commission pleases, madam.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Can the technician please attend to the current

problem?

ADV VARNEY: Testing, testing. I think it is now sorted, apologies, commissioners.

CHAIRPERSON: Yes, Mr Varney.

ADV VARNEY: Dr Bubenzer, can I just confirm that you can see us and hear us?

MR BUBENZER: Yes, sir, thank you. I can see you and hear you well.

ADV VARNEY: Thank you, and apologies for the delay. We want to
10 turn now, Dr Bubenzer, to the discussions or negotiations that took place between the former police and military generals and the ANC government at the time. And I want to draw your attention to chapter 3, and provide some context at page 111 of your book, and you point to certain statements that were made by the government and the ANC, starting with that of President Mandela, a statement he made to the National Houses of Parliament in February 1999. Could you just give an indication as to what those statements are and why they are potentially relevant to us?

MR BUBENZER: Yes, these, I listed a range, I highlighted a range of
20 government statements and ANC statements over the years, from the end of the TRC in 1999, spanning into around 2003/2004. I did so because they illustrate quite well or they point quite well, as I found, to some of the key considerations of the government, and they kind of accompany the developments which happened in the background quite well.

So they link with certain prosecutorial actions, they link with political measures and, as we will probably see, with negotiations in the background, so that is how I find them relevant. Maybe I can just highlight, after the formal end of the TRC, the amnesty proceedings were going on until 2002, but in 1999 Mr Mandela, at the tabling of the reports, pointed to a very clear direction.

I mean, he says, yes, we need, for the reliability of the process we need trials after the TRC, we need criminal accountability. But it should not take too long, it must be targeted, it
10 must be within a limited time frame because, as a nation, we need to move on.

That was a time when the Human Rights Investigative Unit was put into place, right, so to just mention that, which actually did not do much, again, not out of a lack of motivation, but out of a lack of experience and resources.

In the meantime I highlighted statements by President Mbeki, who alluded to the issues in Natal and already indicated that it is a problem, you know, that so little SADF members came forward in the process. And he made that link to the very, very problematic
20 situation in Kwa-Zulu Natal. In the meantime, there were also the pardons by Mbeki, where (indistinct) ...(intervenes)

ADV VARNEY: Can I just ask you to pause, Dr Bubenzer?

MR BUBENZER: Ja.

ADV VARNEY: Commissioners, the statement referred to by Dr Bubenzer, that the then Deputy President, Thabo Mbeki, said in

early 1999, that is reflected at the top of page 112 of that bundle, and that took place at a joint sitting of Parliament. It was a debate on the initial volumes of the TRC report that had been handed to President Mandela on the 29 October 1998.

So the sitting on the 25 February 1999 was to consider the initial volumes of the TRC report. Dr Bubenzer, can I ask you to read into the record that quote from Deputy President Mbeki towards the top of page 112 of your book?

MR BUBENZER: Yes. So I am quoting that from other literature. It

10 is an address to Parliament, so I am quoting:

"Quite a lot of people in Kwa-Zulu Natal did not apply [for amnesty], and with the level of violence that took place in that province, if you dig and dig and dig, you are going to have to arrest a lot of people. That cannot be right. A number of generals in the SA Defence Force are very keen that this matter be dealt with, because their own sense too is that there may very well be significant numbers of people in the former SADF

20 who did not apply. And again, with regards to them, it would not be right week after week to charge people with something that happened in 1987."

ADV VARNEY: Thank you. Before I interrupted you, you were going to refer to the issuing of certain pardons. Please proceed?

MR BUBENZER: Yes, I have to say, I did not review the pardoning in detail. These were obviously convicted individuals, and I think largely convicted already during the former apartheid government time. But as a matter of fact, 33 prisoners aligned with the ANC and PAC were pardoned during that period.

ADV VARNEY: Thank you. And then on the following page, that is 113, you then make reference to also what President Mbeki said to a joint sitting of Parliament in April 2003. And this was on occasion of a debate in Parliament on the receipt of the final report of the TRC.

10 MR BUBENZER: Yes.

ADV VARNEY: Commissioners, that speech is next to the Calata affidavit at page 508 of bundle 1.

MR BUBENZER: Yes, yes.

ADV VARNEY: Please go ahead, Dr Bubenzer?

MR BUBENZER: Yes, if I may, just to highlight the discussions at ANC level which took place in the meantime, where quite openly also other forms of amnesty were discussed at the national conference. Then to turn to your question, yes, April 2003, this is the occasion which I had already highlighted before, which formed kind of the go
20 ahead to the prosecutors which they had waited for.

I had mentioned that there was a bit of a state of limbo, the prosecutors not having legal obstacles, but rather political hesitation because the direction was not clear. This was provided by Mr Mbeki actually in April 2003, where he made a clear statement, saying that there shall be no general amnesty, that any such approach would fly

in the face of the TRC process, subtract from the principle of accountability, and also contravene the creation of new ethos within society. So, I am not sure if you wanted me to quote that directly. I can do so, but this process ...(intervenes)

ADV VARNEY: No, it is okay, we do not have to have that full quote. You note further down that an amnesty, he mentioned that an amnesty would amount to suspending constitutional rights. But if I can draw your attention to what you quote on page 114, and perhaps you can read that into the record, where you say: "The President
10 concluded that the NPA will leave its doors open". Perhaps you can read that into the record.

MR BUBENZER: Yes, in that same speech he made statements, the following statement, stating that: "The government", and now I start my quote:

20 "...should continue to establish the truth about networks that operated against the people. This is an obligation that attaches to the nation's security today, for some of these networks still pose a real or latent danger to our democracy. In some instances, caches of arms have been retained, which lent themselves to employment and criminal activity..."

And I go on to quote:

"The President concluded that the NPA..."

My quote is starting:

"...will leave its doors open for those who are prepared to divulge information at their disposal, and to co-operate in unearthing the truth, for them to enter into arrangements that are standard in the normal execution of justice, and which are accommodated in our legislation."

End of quote.

ADV VARNEY: So if you had to discern what the President was talking about, "leaving the doors open", what in your view was he
10 trying to say?

MR BUBENZER: Excuse me, I did not catch the last words properly, sorry.

ADV VARNEY: Where the President indicated in his speech that he, "Intended to leave the doors open to individuals who are willing to divulge information", what did you think he had in mind?

MR BUBENZER: Well, later on I concluded that, I mean, this has to be seen in the broader picture, and again, I highlighted these statements to match them with what was happening in the background. What I concluded he was alluding to were utilising the
20 possibilities of the Criminal Procedures Act in entering into plea agreements and acting as a State witness. These are obviously high level political statements in a speech, so not formalistic legal explanations, but this is what I would conclude.

Now, immediately this statement was ambiguous and was not easy to understand, neither for the NPA, apparently, nor for those

persons concerned, mainly the side of the former Security Police. So, Mr van der Merwe, who I spoke to, explicitly referred to the statement, and I asked him about it, what it meant to them, and he said they listened very carefully to what was said, and they did not understand what that meant.

What they did was, through their lawyer, Mr Wagner, and I think Mr Van der Merwe directly, approached the NPA to ask, okay, this is interesting, what does that mean for us, what opportunities, what possibilities do we have?

10 And the NPA responded, according to Mr Van der Merwe, that they were not aware of any particular process or any arrangement the President would have, President Mbeki would have referred to there. Later on it becomes more obvious. Again, one has to see these statements, in my view, that is my conclusion, in conjunction with what was happening in the background.

At the same time, and prior to the statement, and I do not want to sort of go forward too much, maybe, but there were discussions between the government and the SADF generals and the government and the former Security Police, which had as their
20 subject, in part, certain solutions which would allow further disclosure of information and pardoning and amnesty.

Later on we saw that the prosecution policy, the guidelines for exercise of prosecutorial discretion was enacted, and then the statement sort of starts to make sense in a way that it becomes clear what might have been referred to.

Essentially, using the possibilities of procedural laws to allow for disclosure of information and for plea bargaining and reduced sentences in that context. But at that time I concluded it was not clear what was referred to concretely. It was neither clear to the NPA, nor to concerned suspects.

ADV VARNEY: Yes, certainly at the time of your research, you would not have had privy to information and evidence that has subsequently been disclosed. So, for example, we know that in early 2004 an entity within government, a multi-departmental entity known as the
10 Amnesty Task Team was set up to give effect to President Mbeki's speech. Commissioners, that is set out in the Calata affidavit from page 67, paragraph 148 onwards.

And the work of this team ultimately resulted in initiatives that you have referred to, the amendments to the prosecution policy, and also the special dispensation on political pardons. But if we can take the story further, and if I can draw your attention to a striking title, a subsection in this chapter on page 115, you title it "Bargaining of the TRC's Legacy".

And from here on in your book you detail what you refer to
20 as "secret consultations or discussions between the former generals of the SADF and the government". Can you give an indication, firstly, where does this information come from that you rely on in this section, and what were these consultations or discussions about?

MR BUBENZER: Yes, I can do so. Again, even if I am repeating myself, but again, I would like to highlight the focus of my research

changed in a direction which had to look at these backgrounds. So I had the privilege to have access to key protagonists in secret, non-public, I would say, consultations between the former Security Police side and the government and the former SADF leadership generals and the government.

And in terms of persons I spoke to on the SADF side, I met Mr Jannie, General Jannie Geldenhuys, I spoke with him, who was basically the leading figure in the Contact Bureau. As mentioned, one very, very senior former SADF general, chief of the army, chief of
10 the SADF later on, on the SADF side, and I met with Mr van der Merwe, Bertus Steyn and Jan Wagner on the side of the former Security Police, representing the foundation for equality before the law.

I also met with a person called Jürgen Kögl, who facilitated the talks between the SADF generals and the government. Both these groups of persons had prolonged, ja, consultation and negotiation and discussion and exchanges with the government starting in the 1990s, at the end of the 1990s, and up until 2003, 2004.

20 ADV VARNEY: It appears from that extract that these talks began in and around 1998 until about early 2004. And what was the central purpose or objective of these talks?

MR BUBENZER: Yes, so it is probably not that one, what I picked up is there is not that one kick-off moment where these talks started, but there were exchanges between both sides already in the 90s during

the TRC for different reasons, I mean, coordination of things, I mean, exchanging views. And that over the time, from, and basically from the end of the TRC in the 2000s, from 2000 onwards was in both sets of discussions, in both groups.

The purpose was clearly, all participants confirmed that to me, the purpose was eventually in both sets of talks to try and find mechanisms and solutions to avoid full-scale independent prosecutions and trials. This was the purpose, the clear purpose for all participants, namely, the government side and the SADF and
10 former Security Police side.

Now, this kick-off point might have been a bit different in terms of how the talks with the generals started. The main incentive, according to the participants and to the facilitator, Jürgen Kögl, was a Natal situation in the late 90s and early 2000s, where I think that then he was a minister, Jacob Zuma had a leading role in trying to curb and settle these unrest situations there.

And in that connection he approached the generals, well, basically he approached, I was told, first, Constand Viljoen, who was then a politician of the Vryheidsfront, I think, and Viljoen referred him
20 to the Contact Bureau because he thought this is a structure which is much better placed to deal with these things. So that was the incentive to speak with the generals.

Now, from then on it quickly broadened from the Natal regional situation to a more holistic discussion, negotiation, consultation over the legacy of the TRC in terms of prosecutions,

because that is what Geldenhuys and also Kögl confirmed the position of the generals, the SADF generals: was we are not here to speak about a regional solution, amnesty solution for Natal, but we need a holistic approach, so that was the theme.

Now, with the former Security Police, these connections were there from the TRC time, that is what I picked up. I mean, I already explained that, for instance, there was an arrangement between Wagner and the government on prolonging the appeal deadline for amnesty decisions.

10 So they had contacts, obviously, there were discussions, and these were then channelled and focused more from 2000 onwards, focused more on discussing concrete solutions to find a new amnesty scheme or any kind of scheme, legal scheme which would avoid trials. Now, the discussions on the Security Police side also involved former president FW De Klerk, for instance ...(intervenes)

ADV VARNEY: Just, sorry, sorry, Dr Bubenzer, before we turn to the discussions on the Security Police side, let us just tie up a few loose ends in relation to the consultations with the former military generals. So you have mentioned that they were being mediated and facilitated
20 by Johannesburg businessman, Jürgen Kögl. You mentioned at the bottom of page 118 who was involved from the side of the government or the ANC. Can you just take us through some of the personalities involved?

MR BUBENZER: Yes, on the side of the government, on the side of the SADF generals I met with Jan Geldenhuys and with Jürgen Kögl,

not on, he was not on the SADF side, but he was in the talks, and there were a range of other former military involved, and there were a number of people involved from the government side.

But speaking about the two persons I met, Jürgen Kögl, on the one hand side. He, Geldenhuys and he explained that he was a very well connected, he was a person very well connected with the ANC, he was, he is a German, ethnic German or original German from Namibia. He was apparently active with SWAPO at that time, I was told, he had studied at UCT, he had further connections.

10 However, in the end he was one bridge for exiled ANC members to return to South Africa, that is what I was told. So he probably hosted a range of high-ranking ANC people coming back to South Africa and he facilitated things. So he was very, very well connected at that time. He was also, that is what I heard, close to Jacob Zuma, who was the leading figure on the government side in talking with the generals.

20 Now, Jan Geldenhuys, obviously the head of the Contact Bureau, he was a key figure on the military side and was conducting in a leading role also these consultations and talks with the government. There were other military officials, former military officials involved, such as, I need to look that up, but a number of other individuals took part, for instance, General Marais. Excuse me, if I should look that up, I am just trying to find it ...(intervenes)

ADV VARNEY: You do not have to look it up ...(intervenes)

MR BUBENZER: Okay.

ADV VARNEY: We will, my team will draw my attention to the other generals involved. It also emerged in the evidence of Mr Schmidt earlier this week. Can you just advise us from the information that you have been able to gather which high ranking members of the ANC government were involved in those talks? And you do make reference to some of them at the bottom of page 118.

MR BUBENZER: Yes. Both Kögl and Geldenhuys confirmed unequivocally to me that Jacob Zuma was tasked to conduct these talks and represent the government. Mr Geldenhuys described this
10 as sort of a sometimes loose, sometimes more intense process over the years of meetings with government officials, always under the leadership of Zuma.

He said that sometimes they would meet every three months or so, sometimes two or three times a year, I mean, it went over a couple of years, so Zuma was a central figure. Both confirmed that sometimes Thabo Mbeki, first as vice president, later on as president, participated directly in meetings. The meeting participants, they told me, were invited also to the residence of Zuma, to the residence of Thabo Mbeki, to government offices.

20 In the beginning they met at the premises, at the home of Jürgen Kögl, apparently. Then I was informed that other high-ranking members of the ANC and government participated occasionally, such as Minister of Justice, Penuell Maduna, Mathews Phosa, Sydney Mufamadi and Charles Ngakula. These were occasional participants, but sort of the key figure was Jacob Zuma, and under

the overall authority of Thabo Mbeki.

ADV VARNEY: And if we can just discuss for a moment the apparent motivation of government. You have already placed on record that they were concerned about the volatile political situation in Kwa-Zulu Natal, and there was also concern around the fact that many IFP members had not applied for amnesty. What was the government hoping to get out of this cooperation that apparently would ensue if the army generals were accommodated?

MR BUBENZER: So I should stress first that I never had input
10 information from government participants in these meetings, and
neither from ANC or other government officials. I had approached
the government on this, but maybe, not surprisingly, had not received
any response.

So I am drawing my information from my discussions as regards the SADF talks, from my discussions with Jan Geldenhuys and Jürgen Kögl, which are key protagonists and first-hand participant informants, so to speak. They were there, which is also good, but I am speaking about, I am drawing conclusions from their input on the government while I have not spoken to the government.

20 Maybe I should also mention that Jürgen Kögl is, of course, closer to the government as a facilitator. Maybe one could call him at that time a "representative", so to speak, of the government, that is how he appeared to me, unofficial, of course, so just as a background.

Now, secondly, the motivation, and I am only speaking about

the SADF talks now, the motivation of the government to speak with the former army generals, SADF generals is different from the motivation of speaking with the former Security Police.

Now, speaking with the SADF, again, the main incentive, so the common theme in both talks, I should also stress that very clearly, because it was verbatim, they told me the clear intention in both talks was, and that was made very clear from the government side, according to the input I received, the intention was in both cases to avoid trials.

10 So Zuma also made that apparently very clear in the talks with the generals so it is now the time, it partly was quoted, it is the time for politics, not the time for prosecutions, we need to move on, we need to solve this problem. Now, that is the overarching theme.

Then, in detail, as I said, there are these differences in the talks. Now, there is a host of reasons for the government to speak with the generals. It started off with the situation in Natal. Again, everything I am saying is based on the input from Kögl and Geldenhuys, it started off with the situation in Natal of conflict.

20 Mr Varney, you already alluded to the operations of the SADF in Natal, in possible setting up weapons caches and supplying Inkatha IFP fighters or other activists with weapons, and so on, and so forth. So there was that understanding that the generals still play an influential role in that connection.

That the SADF still has intelligence, knowledge, maybe access to potential secret groups, armed groups, that they have

knowledge about weapons caches, and so on. So their role in that particular regional conflict played a role in approaching them in the first place and was the theme all along. There was then a host of other issues.

So the government, and I am listing this, according to Kögl, the government had little interest in prosecuting military operations which happened abroad, setting precedents. There was a concern of interfering with the increased role of South Africa in peace missions in Africa, trying crimes which the SADF had committed in a military
10 connection in other countries.

There was a concern that other countries may pursue reparations from South Africa, the successor obviously from the apartheid state, it is still the same state, still the same legal entity, liability in that connection.

There was also a concern of losing intelligence and knowledge and capabilities from the SADF, because apparently some, quite a number of SADF military were recruited in other African countries as advisors, so all of this played a role, and so that was particular to the military, I would say, ja.

20 So this fear the generals could still have influence on the internal situation in South Africa played a big role. Now, Mr Geldenhuys told me, no, I mean, obviously they never had any intention to arouse any kind of trouble or not even the means and so on.

And he also indicated that there was a bit of, they were a bit

surprised of, this is what he told me, a bit surprised about how, you know, much the government still expected them to be in a position and to be willing to incite any kind of conflict and to engage in any violent action, so that then played a role. Now, the other two themes which are also relevant for the police talks are, and that is a very important one ...(intervenes)

ADV VARNEY: Sorry, Dr Bubenzer, I think you are going to come shortly to the police.

MR BUBENZER: Ja.

10 ADV VARNEY: Can we just stick with the military for the moment, and we'll come to the Security Police shortly. So thank you for setting out the interests, or the alleged interests of the ANC government at the time. And commissioners, that is set out in more detail in Mr Bubenzer's book between pages 119 and 124. And, in fact, at the bottom of page 124 you do briefly set out the interests of the generals in these negotiations. Perhaps you can just summarise what those interests were as you understood them.

MR BUBENZER: Ja, the interest of the generals was, I already mentioned before that they had a bit of a different approach to these
20 talks and to the whole topic than the Security Police because they felt less vulnerable, I would say. But their interest was generally maybe a bit more, I mean, they had the interest of avoiding trial, liability of their members, clearly.

That was one factor, but it was not that pressing, I would say, that was my impression. Their interest was otherwise to correct

a bit a process which was considered to be very unjust and biased in the 90s. What I picked up from speaking with Geldenhuys was also that this theme of honour, honour of the military played a role. They did not feel that they were treated fairly, these considerations also played a role.

Ja, so that is what I would say are the key factors, you know, of course avoiding the threat of prosecution for them, but also restoring a bit, correcting a bit a process and putting things right in a way maybe, balancing out a transition process which they considered
10 to be unbalanced.

ADV VARNEY: Thank you. I promised to return to you with the record we have of the various generals involved in those talks and the list on the record. So far is General Jan Geldenhuys, General Constand Viljoen, Major General Dirk Marais, former Defence Minister General Magnus Malan, General Kat Liebenberg, and Surgeon General Neil Knobel. Commissioners, we refer to bundle 1,
10 pages 148 to 149 where that is reflected.

Dr Bubenzer, let us now turn to the discussions and consultations that the government held with the former members of
20 the Security Police. And you do set out an overview of these discussions from page 116 of your book.

MR BUBENZER: Yes, so in parallel, and I would not rule out that there were overlaps, but I did not find any evidence on that. So I assume these discussions were not coordinated, but in parallel to the talks with the SADF, there were exchanges between the government

and the former Security Police side. They had the same aim, I mean, they had different kick-off, obviously, so it was not evolving from, you know, the Natal situation, the Kwa-Zulu Natal situation, but it were picked up after the end of the TRC.

And the focus and aim of these talks was all along finding a solution for trials, basically to avoid trials and to, or more positively put, to find a new scheme which allows indemnification of crimes committed during the apartheid time, that was the topic of the talks, yes.

10 ADV VARNEY: And can you give an indication of on both sides, who was involved in those talks?

MR BUBENZER: Yes, I again did not get input from the government, but I spoke with Johan Van der Merwe, who was the key figure on the side of the Security Police, as far as I understood it, in these talks and participated all along with other members of the Foundation for Equality Before the Law, also with the involvement of Jan Wagner, and they were assisted even by former President FW De Klerk.

20 So there were basically two levels, as I understood it. There was more the operational working level that involved, and that was not specified to me so much in detail, but that involved high-ranking government officials, among others also the then Vice President Zuma, occasionally, but generally high-ranking government officials, spoke with the operational, the working level, so to speak, of the Foundation for Equality Before the Law.

Then overlapping and parallel, or sometimes jointly, there

were exchanges between FW De Klerk and President Mbeki which were connected to these talks. So exchanges, and I do not have much detail on that because I have not spoken with FW De Klerk, but they did engage, and the aim was again the same as these talks between the Foundation for Equality Before the Law and government officials, the aim was to find solutions for trials, to avoid trials.

The former Security Police side, maybe I should first, had highlighted to me that they had a sense of, ja, also a bit of disappointment of not receiving full backing of the former government, apartheid government or the whole set-up. And they explicitly made too – so they felt a bit left alone, I mean, that is a topic on its own, that a lot of rank-and-file officers were charged.

But they made two exceptions, and the one is Adrian Flock, who I was told was sort of fully engaging with them for their cause, and the other was FW De Klerk, which is actually the highest-ranking official of the government of that time, of the last apartheid government, who also engaged on their cause directly with Mbeki, so these are the protagonists on that side.

ADV VARNEY: And before we proceed, I note that at the bottom of page 116 in footnote 88 you say you rely largely on the interview with Johan Van der Merwe in Pretoria on 5 May 2006. The consultations were conducted in strict confidentiality. Apart from the broad framework, details concerning negotiations with the Security Police members could thus not be provided. So am I right in saying that what you have reflected in your book are the broad strokes only

rather than the actual detail?

MR BUBENZER: That is correct. So that happened at a time when these talks had been over already since more than two years, so the perspective was different. Van der Merwe told me about these talks, he basically also told me who generally was present there, but he did not provide me with documents, written exchanges, details, but he confirmed the general themes.

ADV VARNEY: And can we talk a little bit about the solution? You point out they wanted to find a solution to avoid the prosecution of
10 members of the Security Police who had not received amnesty, and that a general amnesty was not an option given the various constitutional issues, but they were exploring another legislative option. Can you describe what that was?

MR BUBENZER: Yes, in both talks, maybe I join a bit the two themes of talks, if I may, because there we have strong resemblances. So both the SADF generals and the Police generals stressed to me that it was clear to all that a general amnesty is not an option. It was never advocated for because it was clearly considered to be illegal and not possible. A general amnesty meaning a blanket exemption of
20 all crimes of certain categories which happened without you even needing to come forward as a perpetrator.

Now, what they discussed, so what happened in both talks were more or less detailed discussions on concrete solutions, exchanges, written exchanges, which culminated in the case of the SADF generals and the drafting of a legislative text by officials of the

Ministry of Justice, legal drafters. More or less the same happened on the side of the Security Police, and different solutions were discussed.

What the Security Police told me, they started off with an idea to basically replicate the amnesty process in criminal procedure law. That was quickly abandoned, and then the idea was to, that is what I was told, to introduce a special plea on amnesty in the criminal procedure. And that was a solution which more or less identically, I mean I have not seen it, but from what I was told, was also
10 considered on the side of the SADF generals.

So that solution would foresee that if you are faced by a trial, by a criminal prosecution, by a charge, indictment, you have the option under criminal procedure law to plea amnesty under the condition that your crime, the act falls within the timeframe qualifying for amnesty under the TRC Act, and under the condition that it was politically motivated, but not under the condition of making a full disclosure.

So the participants described this to me as a process within the criminal trial, where once a plea is put forward, the court, or there
20 were different ideas apparently, also maybe an independent judge would then come in and review this, maybe the court would review it itself, there were different proposals.

But in the end it was the idea that this plea is reviewed, and what would be verified there is only that the details put forward by the accused on the deed and the motivation would qualify as political

motivation, you know, a political crime under the preconditions of the TRC Act basically replicated.

Or whether this was mainly a privately motivated crime, in which case this plea should not succeed, but this was in the end most concretely the detail I received on the proposal which was discussed, a plea on amnesty without full disclosure.

ADV VARNEY: So can we now turn to the results or outcome of all these negotiations and discussions, what ultimately transpired?

MR BUBENZER: Ja, I was told by the participants that there was
10 basically no outcome. I mean, when it comes to the SADF generals, I mentioned the proposal they were looking at, and Mr Geldenhuys and Kögl told me that they were actually invited to Cape Town, a group of generals, in the last meeting, that must have been late 2003, early 2004, 2003, I think, where they were supposed to meet with Zuma, they were supposed to meet with Mbeki.

And where a paper, they exchanged a lot of papers, they had drafted this proposal, where apparently then a proposal was put forward, concrete legislative proposal, which was then after all not accepted, not decided by the president to be adopted, that is
20 apparently the outcome. So in other words, on the side of the SADF, there was no concrete tangible result, no outcome which was enacted in any form.

I was told that these talks then continued more out of courtesy for some time, but died out in 2004, and so there was not any tangible outcome in that sense. The same I was told on the side

of the Security Police. They discussed concrete proposals, but these concrete proposals did not lead to any form of enactment, so these talks also kind of died out. That coincides with the time when Mbeki was holding the speech in 2003 in parliament and gave the go-ahead.

ADV VARNEY: Thank you.

MR BUBENZER: So that was the moment, sort of the decisive crossroads where it was decided what to do now, I mean, this ran in parallel, but ja, that is what I would conclude.

ADV VARNEY: So the research done by the author and journalist
10 Michael Schmidt, you might have heard his evidence early in the week when he interviewed Major General Dirk Marais. There does seem to be a slight discrepancy, at least in relation to what transpired at that meeting in Cape Town in early 2003.

According to the interview conducted with Marais by Schmidt, Marais allegedly indicated that the generals were looking for a broader protection without the need for a specific disclosure. I do not know if you picked that up.

MR BUBENZER: *Um*. Yes, this is what Mr Geldenhuys told me as well, I mean, he spoke about, again, a kind of plea, I mean, he was
20 not a lawyer, so he explained it a bit in lay terms, but his understanding was, you know, when you are faced by a trial, you would be able to plea amnesty, the alleged act would be to fall under these conditions. The only thing that is probed is whether it is politically motivated or not, but no full disclosure.

Apparently then, but he did not highlight that to me in that

form, apparently the proposal tabled and drafted by the legal authors in the justice industry, according to what Michael Schmidt was told by Marais, was then quite different. Geldenhuys just told me that there was no solution which was found and acceptable for both sides.

So he also did not show me what was tabled in the end, but it is well possible that in the end the government drafted something else than what they had discussed, namely, a proposal which foresee full disclosure, that is possible. In the end, it was not acceptable, apparently, for either side to proceed on that basis.

10 ADV VARNEY: Thank you. Yes, we are hoping the Commission will eventually lay its hands on that draft law ...(intervenes)

MR BUBENZER: Maybe, excuse me, if I may just stress that these are all, you know, sort of more details, nuances which might differ. I was also not given any documents by either side which I could review, so I am relying on the oral statements. But what was very clear to me, without a doubt, is that whatever the details of the solution, the aim was to try from the government side.

20 And that was confirmed to me explicitly by the former Security Police side and the SADF generals and Kögl, the aim of the government was to find a solution to avoid full-scale trials, prosecutions. That is the common theme, and that was the objective. It was not acceptable in the end due to certain details and strategic considerations, and I am not, you know, saying anything at that point about the motivation of the government, but that was the theme.

ADV VARNEY: Thank you. And then you conclude that section with

the statement:

"However, elements of the consultations did, as will be shown below, reappear in later policy decisions."

And since you have already made allusion to the amendments to the prosecution policy, we do not have to revisit those. I think the commissioners are very familiar with the contents of those amendments. But I would like to draw your attention to an interesting snippet that you provide between pages 131 and 132 of
10 your book. You say that:

"During the process of drafting the guidelines, it was not possible for the public and civil sector to participate in any way."

Can you elaborate on that, please?

MR BUBENZER: Yes, I met a representative of, ja, maybe the human rights sector, so to speak, the victim sector in South Africa, and so the Foundation of Human Rights, then the Khulumani Support Group, so the FHR, Khulumani Support Group, mainly, and was told by them that they were in no way involved in these developments by
20 the government.

They were neither, I mean, there were these rumours about the consultation between the government and the former Security Police and military, but apparently they were not privy to that, and they were also not involved in the development of these guidelines.

ADV VARNEY: But you do say on page 132:

"However, according to Attorney Jan Wagner, on a very occasional and infrequent basis, representatives of this side were consulted informally about those guidelines."

MR BUBENZER: Yes, that is correct.

ADV VARNEY: So it seems that those who could potentially benefit from the guidelines were consulted, albeit occasionally, but those who were going to be impacted negatively were not consulted and kept in the dark. What is your takeaway from that approach?

10 MR BUBENZER: I would need to judge, make a qualitative judgment on that. It is, well, it is obviously maybe not a fair approach, so to speak, but it is nevertheless a consistent approach in terms of strategy, I suppose, because there is a certain connection between the talks which happened and these guidelines.

I mean, they are, in the end I concluded they are an outcome of these endeavours, and it is consequent in a way to involve those who had all along participated in the consultations, which led later on to the guidelines. But I should add that I was, both sides did not confirm or actually told me that they had not been involved in the
20 development of the guidelines. So neither the SADF generals, nor the Security Police were in detail involved, as I am putting it, so that is clear. So apparently they were just occasionally, on an *ad hoc* basis, consulted there, ja.

ADV VARNEY: And then later in your book you make reference to the fact that the Foundation for Equality before the Law, represented

by its attorney, Jan Wagner, went so far as to compile complete dockets supporting the prosecution of top ANC members, including five of the top leadership, among them President Mbeki. Did you learn from Jan Wagner why they allegedly compiled these dockets?

COMMISSIONER GABRIEL: Sorry, can I interrupt you, Mr Varney? What page are you on now?

ADV VARNEY: Apologies, Commissioner, it is page 160.

COMMISSIONER GABRIEL: 160, Thank you.

MR BUBENZER: Yes, why they, you mean why they compiled that
10 kind of evidence?

ADV VARNEY: Yes, when you interviewed Jan Wagner, did he indicate why they saw the need to take that step?

MR BUBENZER: Yes, very clearly, that is a central part, I mean, that is a common theme in both talks with the SANDF and with the Security Police. I should stress that the government, according to what I have heard from those participants, had also a strong interest in the interest of nation building to avoid prosecutions, they had a sort of governance interest in that.

That was a key motivation as well, the consideration that
20 prosecutions might not be a good solution going forward might not be in the interest of the country for various reasons. So that is one common theme in both streams of talks.

The other common theme in both streams of talks, nevertheless, is the threat of prosecution of high-ranking ANC officials. So I was told by the participants that that was a key factor,

so... Excuse me, I am digressing a bit from your question by just saying that also Mr Geldenhuys told me they really had no intention to do that. But should the government ever get to them in terms of prosecution, they would be prepared to publicly refer them to potential crimes they committed. Now, that was a scene there.

Now, speaking about the former Security Police side, and again, Geldenhuys made it clear they had no intention to do so, but this was the kind of threat they retained in a way. That was much more concretely on the side of the Security Police.

10 They confirmed to me that as a means to put pressure and a means to negotiate and a means to protecting their interest, they kept it in the backhand, so to speak, the potential, the evidence which was available against high-ranking ANC officials, and generally against former anti-apartheid liberation movement fighters, so to speak.

And there are different levels, I mean, that was to some extent public knowledge, maybe to others not. What the former Security Police side confirmed to me was that they basically compiled complete dockets potentially available for private prosecution, which is a possibility in South African law.

20 And the NPA, they said, even asked them to hand that over to them. They had no interest whatsoever in pursuing such trials, but they wanted to retain that information as a means to pressure, as a means to negotiate and to protect their interests, which means that they knew fully well that this is a major consideration for the government to avoid trials as well.

I should add that Mr Wagner made it very clear to me, he also highlighted on various occasions, he indicated his motivation. He was strongly convinced that an approach of trials and prosecutions is not in the interest of South Africa going forward. He was strongly advocating of different solutions in the interest of the country, in the interest of nation building.

And he also stressed to me that they never had any intention to actually see Mbeki, Zuma, other officials put on trial, and that this is really not the preferred solution, but that they retained that
10 information solely for negotiation power and for finding a solution and protecting their interests and their people.

ADV VARNEY: And as far as you are aware, were those dockets ever handed over to the PCLU or the NPA or SAPS?

MR BUBENZER: No. I was told by Wagner, Jan Wagner that again the NPA asked them to hand these dockets over, but they refused to do so, and from what I understood, they were never handed over. But he also said this was not a big secret, I mean, they did – potentially no one knows what was in these dockets, and that was obviously one concern of the government.

20 I suppose, I speculate, it could have been a concern of the government that it is unknown what kind of intelligence was still available to the former security side which was not public. But Wagner told me that the information in these dockets would mostly have been public knowledge or easily available to the NPA. So he said when he was approached by the NPA, they had no interest

whatsoever to hand over these dockets, but he said the NPA could easily do the job themselves, that was his qualification.

ADV VARNEY: Thank you. So in conclusion, Dr Bubenzer, it appears that through your research and your writing, you have come to the conclusion that the NPA, through its Priority Crime Litigation Unit, did in fact wish to pursue the TRC cases. There was no lack of motivation on their part, but that ultimately they were prevented, their hands were tied.

And there is evidence before this Commission that the NPA
10 under oath before a subsequent case that took place in 2019
admitted that they had succumbed to pressure, but that this was not
out of their own malice. This was not something that they had
designed or they had wanted, it was subjected upon them
...(intervenes)

COMMISSIONER KGOMO: Mr Varney, a subsequent case, for the
record, what case is that, the 2019 case?

ADV VARNEY: Thank you, Commissioner Kgomo. I am referring to
the affidavit, the supplementary answering affidavit of Advocate
Torie Pretorius SC that was placed before the Rodrigues Court. We
20 have put it up already in evidence. My team will provide the bundle
number.

MS NTLOKO: If I may, can I find out whether this is a question,
Chair? We have kept quiet throughout the days that Mr Varney has
been leading his witnesses. We seem to think that he tenders
evidence instead of asking questions.

ADV VARNEY: Commissioners, I completely reject that contention.

The evidence is already before this commission and I was about to put the question.

CHAIRPERSON: Yes, you may proceed, Mr Varney.

ADV VARNEY: Yes, so in that affidavit, a sworn affidavit, which presumably was also authorised by the then National Director of Public Prosecutions. The interference was not disputed by the NPA, but they said this was not something that they had concocted. They did not act out of any malice of their own. They were merely on the receiving end of that pressure, which ultimately caused the demise of the bulk of the TRC cases. My question to you is, is that a contention you agree with? And what, in your view, should the NPA have done in the face of such pressure?

MR BUBENZER: Well, I might need to qualify first my impression because I did not, it is difficult for me to speak about the NPA. I did not speak with the NDPP at the time, I spoke with the prosecutors in the dedicated unit. And yes, my impression, I would confirm what you said in terms of, my impression is that the prosecutors' efforts were there, the ambitions were there, they were thwarted by rather political interference, indeed.

What should the NPA have done differently? Difficult for me to say. It is, in the end probably the NDPP is subject to directions of the Ministry of Justice in some way, I mean, I think legally it is an independent function, not subject to direct intervention, but politically that might be different. So what should they have done differently?

I mean, they did what they could, that unit, I would say. you know. They did not have, they did not have any directions on you should pursue these cases first and then these ones, these are the priorities. They did what they could in terms of they had files, they had evidence, and they went ahead, and they did, my impression was they did not really look left or right.

This is now a problem if we are pursuing the Chikane case. Is it a problem if we are going first for Ronnie Blani. They had a very straightforward, evidence-based, pragmatic approach. And in the
10 end they were held back, that is also my conclusion, by political interventions. And the evidence I found was on, the most complete evidence I found was on the Chikane case, where the arrests were called off by a direct political intervention, very much to the surprise of the prosecutors.

ADV VARNEY: Thank you, Dr Bubenzer. Commissioners, just for the record, the affidavit in question, the supplementary affidavit of Adv Pretorius SC can be found in bundle 1 at page 624. Dr Bubenzer, thank you very much for your time. No further questions.

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

MS NTLOKO: Thank you, Chair. I do not have any clarification questions at this point, but we do reserve our right to cross-examine the witness. And I think, Chair, this might also be an opportune moment to say the NPA aligns itself with the objection that was raised

earlier.

CHAIRPERSON: Yes, but these are inquiries, you may put leading questions on the witness.

MS NTLOKO: We fully accept that a leading question can be made.

CHAIRPERSON: Yes.

MS NTLOKO: What we do not accept is that you can give evidence.

CHAIRPERSON: No, he is not giving evidence.

MS NTLOKO: Well, we still reserve our right in that regard because we do believe he has been leading evidence quite extensively

10 ...(intervenes)

CHAIRPERSON: Yes, you may take, you may take the issue at an appropriate time.

MS NTLOKO: Yes.

CHAIRPERSON: Ms Moroka.

ADV MOROKA: No questions, Chair.

CHAIRPERSON: Ms Rantho?

20 ADV RANTHO: Good afternoon, Commissioners. I wish to align myself with what was raised by my colleague, Ms Ntloko. We also do not want to sound very legalistic, but we do reserve to make submissions in due course insofar as what we believe were concerns insofar as how the evidence was led, specifically speaking to the issue of Mr Varney leading his own evidence, but we say it is a matter for argument. But perhaps also coupled with that it is an issue that we wish to also deal with it is an issue of relevance, but other than that, we do not have clarity-seeking questions.

CHAIRPERSON: Yes, thank you.

ADV RANTHO: Thank you, Commissioners.

CHAIRPERSON: Mr Semenya.

ADV SEMENYA: Chair, with your permission, we might be slightly longer than the time we have. I see on my clock we passed 1 o'clock. Would this be convenient and we will start with ours immediately after lunch?

CHAIRPERSON: Yes. Dr Bubenzer, we are going to take a lunch adjournment and reconvene at 2 o'clock.

10 MR BUBENZER: Okay.

CHAIRPERSON: We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Mr Semenya?

ADV SEMENYA: Thank you, Chair. Good afternoon, Doctor.

CHAIRPERSON: Dr Bubenzer, can you hear us?

MR BUBENZER: Yes, I can hear you. I hope you can hear me as well.

CHAIRPERSON: Thank you.

20 MR BUBENZER: Good afternoon, Madam Chair. Good afternoon, Mr Semenya.

ADV SEMENYA: Hi, Doctor. Afternoon again.

MR BUBENZER: Good afternoon.

ADV SEMENYA: Your book first published in 2009, October, that would be right, Doctor?

MR BUBENZER: My book was published in 2009, indeed, yes.

ADV SEMENYA: Can I just see if you agree with me? It was never written as an evidentiary material when you did that, right.

MR BUBENZER: Excuse me, but I am not sure I fully understand the question. What do you mean with 'evidential material?'

ADV SEMENYA: To be presented in legal proceedings.

MR BUBENZER: No, that was obviously not, well, maybe not obviously, but that was not the purpose. The purpose was to conduct a legal research, which can qualify as a doctoral thesis and pass the
10 respective tests.

ADV SEMENYA: And for understandable reasons, you did not pursue it as if you were a legal opinion. Am I right?

MR BUBENZER: A legal opinion? You mean it was not designed as a legal opinion in any adversarial proceeding or as a legal assessment?

ADV SEMENYA: This is not an adversarial system, I mean proceedings. All I am trying to establish with you is you did not have this in mind in 2009 when you published the book.

MR BUBENZER: The present proceedings were not in my mind, no,
20 when I conducted the research and published the book.

ADV SEMENYA: Thank you. Because when I read it, there is something very striking, and that is you do not purport to be addressing anything that the terms of reference of this Commission is seeking, the Commission to inquire into. Can I illustrate something to you?

MR BUBENZER: Yes.

ADV SEMENYA: The Commission, amongst others, is invited to inquire into any efforts to stop investigations of TRC cases. That was not your focus of the book. Am I right?

MR BUBENZER: I would not agree with that statement. It was part of, the focus of my book was to document the political situation behind prosecutions and as such, part of my research was to document documented political interventions as well. So that is what I tried to make clear from the outset that I did not start off with that
10 focus. When I started the research, it was meant to be initially a purely more or less factual legal documentation of trials and research of legal circumstances. But I had to shift that focus to documenting political interventions and discussions in order to capture the matter.

ADV SEMENYA: Well, in fact, just listen to the question. You never attempted to inquire into efforts to stop the prosecutions by the NPA. You never sought to answer that question. Am I right? Efforts to stop the NPA to... [intervenes]

MR BUBENZER: Efforts of... [intervenes]

ADV SEMENYA: Sorry, let me just bring some clarity to my
20 question. You never sought to answer a question. Were there ever efforts to stop the prosecution of TRC cases? Am I right?

MR BUBENZER: That is not correct, I would say, as such. I am looking at the question in my research, whether there were efforts to interfere with prosecutions. It is not the main focus, but it is a side focus, I would say.

ADV SEMENYA: Are you able to give me a page number in your book that speaks to that topic?

MR BUBENZER: There is not a focused chapter as such, but the topic comes up in various parts of my book and I would run through... So, I am now looking at the parts of my book, which are dealing with rather political interferences in prosecutions... [intervenes]

ADV SEMENYA: Doctor, please, listen to my question. And if the answer to that is correct, you can embellish. I am saying, give us a page in your book that speaks about efforts to stop the prosecution of
10 TRC cases. You can find it, right?

MR BUBENZER: Efforts to stop the prosecution... Well, this is what I was planning to do, by going through the table of contents. So, the whole chapter 3, in various places, alludes to efforts to stop prosecutions... [intervenes]

ADV SEMENYA: Sorry... [intervenes]

MR BUBENZER: These are referred to, for instance, in part 2 of chapter 3, pages 115 and following. The consultations with the generals, subchapter 222, motivation of the government. Page 119 refers to the interest, to a political interest, which I picked up, to
20 interfere with, to basically stop prosecutions from running freely. So, you will find reference, for instance, there. It is also referred to in pages 128, following. There is a reference also earlier, on page 77, following, where I described that the Frank Chikane prosecution was interrupted and I explain the backgrounds for that further in pages 115, following. I also deal with that question on page 151, following,

and 149, following. And mainly in pages 157, following. The question of political motivations leading to a, what one might want to call, interference with prosecutions.

ADV SEMENYA: Doctor, please. You see the terms of reference are seeking to establish whether, why, and to what extent, and by whom. You never went in that direction in writing the book. Am I right?

MR BUBENZER: Excuse me, I need to apologise, but I did not, for acoustical reasons, did not fully catch the question.

10 ADV SEMENYA: I am saying, if you look at the terms of reference, they are asking answers to whether, why, and to what extent, and by whom, such efforts would have happened. And I am saying to you, that is not where your book was directed. Am I right?

MR BUBENZER: That was not the main focus of my book. That is correct. But it is a topic I am dealing with in my book.

ADV SEMENYA: Doctor, you were trying to qualify my answers, but I am saying that was not the purpose your book intended to answer. Am I right?

20 MR BUBENZER: Again, not the main purpose. The purpose of my book is to describe, from a legal perspective mainly, the development of post-TRC prosecutions and it is part of that description, so it is part of the purpose, to review the political motivations.

ADV SEMENYA: I have asked you nothing about political motivations, Doctor. I am very precise in the questions I put to you, and I would implore you to please help me.

ADV VARNEY: Commissioners, I do not wish to interrupt. My learned friend, the question has been put multiple times to the witness. He has given an answer multiple times, labouring the point. I just do not see the purpose of taking this particular point further, when the witness has in fact answered.

CHAIRPERSON: Mr Varney, will allow the witness to answer in the manner that he wishes to.

ADV SEMENYA: Doctor, even from a research perspective, if you are to do a balanced paper, you would speak to both sides of the equation. Am I right?

MR BUBENZER: Yeah, it helps, definitely. It helps to get input from all sides, indeed. If you are describing a conflict, for instance, yeah.

ADV SEMENYA: And you do not say you spoke to any of the ANC people. Am I right?

MR BUBENZER: That is correct.

ADV SEMENYA: And that cannot be a balanced research paper. Am I right?

MR BUBENZER: Well, I would not agree to that conclusion. What I would conclude is that it is lacking direct input by the major actors, and that is of course a gap. In my answers to the questions earlier, I had described that I attempted to receive input from the ANC and the government by contacting various individuals.

ADV SEMENYA: By what? Sorry, I did not hear. You attempted by what?

MR BUBENZER: I attempted to, I contacted, I asked for interviews

from the government. I contacted the office of the Minister of Justice, for instance. I do not recall, different persons. Johnny de Lange's office. I contacted that one and to try to get statements and an opportunity for an interview, but I did not get a reaction. So, yeah, indeed, that side is missing.

ADV SEMENYA: Yeah, and what is also missing is a research paper would have a disclaimer. That I have tried to make contact with the other side, but could not get it. So my conclusions have that as a disclaimer... [intervenes]

10 MR BUBENZER: Well, I put that in my book, excuse me, but I have put that in my book that I contacted the government side. I need to look up where exactly. But this is missing and there was no opportunity to reflect statements from the government side, yeah, but it is in my book. Maybe not in a prominent place, but it is in there.

ADV SEMENYA: You see, we have just been given certain excerpts of your book. That makes it difficult now that you may be pointing to pages that I do not have. But let us go on. I was saying, I can tell you that Penuell Maduna, to whom reference has been made, was in government in 1999 to 2004. When you were doing your research,
20 he was an available source out there. You would not dispute it, would you?

MR BUBENZER: In theory, all protagonists who were alive were available resources. Yeah, that is true.

ADV SEMENYA: Ngcuka, also relevant and referenced somewhere, was there. You did not attempt to talk to him, did you?

MR BUBENZER: I attempted to talk to a number of people. I still have my email records. I can look that up. I do not recall. It is 20 years ago. Who exactly, but I remember I contacted a number of individuals and the main focus was to get contact to the government, to the Ministry of Justice.

ADV SEMENYA: Before publication of your book, Sydney Mufamadi was there and referenced in what we call negotiations. You did not attempt to talk to him, did you?

MR BUBENZER: I would need to check my records who I wrote to. I
10 do not recall at this stage.

ADV SEMENYA: Matthews... [intervenes]

MR BUBENZER: I can just say that I contacted a number of individuals from government and ANC and did not receive any response on these leads. I do not think I contacted everyone who was mentioned to me as participant of these talks.

ADV SEMENYA: You did not even consult or try to interview Thabo Mbeki, the president of the ANC and head of government. Am I right?

MR BUBENZER: I would need to check. I contacted the
government.

20 ADV SEMENYA: No, but surely if you had contacted the head of state, you should be able to remember that.

MR BUBENZER: I contacted the government. That is what I remember. And the president is part of the government. So I do not recall if I contacted the president's office directly. Probably not.

ADV SEMENYA: You did not hear my question.

MR BUBENZER: But I contacted the government.

ADV SEMENYA: I say it would be very puzzling in a research of the nature you were conducting not to remember that you spoke or interviewed a head of state, Thabo Mbeki, who was principal in the ANC in negotiations around these matters.

MR BUBENZER: Yeah, I definitely did not interview him. I definitely remember I never interviewed him. I never had any contact with him. I would need to check whether my approach to the press office of the government, how that was phrased, whether I was asking for
10 interviews with a range of individuals. I would need to check that. I definitely contacted the government... [intervenues]

ADV SEMENYA: I can tell you what you say in your book. Sorry? I can tell you what you say in your book, is that Thabo Mbeki decided that the prosecutions be put on hold. I mean, that would have set alarms to go and speak to him. No?

MR BUBENZER: What I say in my book is that I was told by protagonists of the security police side that this was the case.

ADV SEMENYA: A good point to go there because I have looked at paragraph 5 of your affidavit. I do not see anything there that tells
20 me. Let me put it this way.

“The research that I conducted for the book was largely conducted during a four-month trip to South Africa in 2006.”

So this is the sum total of the time you spent, according to you, correct?

MR BUBENZER: That is the time I spent in South Africa.

ADV SEMENYA: Sorry?

MR BUBENZER: For the research.

ADV SEMENYA: Sorry?

MR BUBENZER: That is the time I spent in South Africa for the research.

ADV SEMENYA: So I must be correct that you do not purport to give evidence as an expert witness. Am I right?

MR BUBENZER: Excuse me, I did not catch the question.

10 ADV SEMENYA: You do not purport to be an expert on the evidence you are giving. Am I right?

MR BUBENZER: I am certainly an expert on the book I wrote...
[intervenes]

ADV SEMENYA: No, this is the first time... [intervenes]

MR BUBENZER: On what I wrote?

ADV SEMENYA: No, you are just an author. You are not an expert to give legal opinion. I mean to give opinion evidence. You can accept that.

20 MR BUBENZER: I am not an expert in South African law, but I am sort of an expert in what I put down on paper with regard to that very content which is in my book.

ADV SEMENYA: You are not an expert to give opinion evidence regarding the matters that are before this Commission. Am I right?

MR BUBENZER: I do not agree with that statement in a general sense. I am only here to report on what I picked up, what I

concluded, what I researched during my PhD research and on the conclusions I drew and put down in my book based on the evidence or the references, the citations I included in my book.

ADV SEMENYA: Yes, you are not called here as an author. So it is not that that I am inquiring into. You are called here to give opinion evidence, which naturally would not be admissible. And I am suggesting to you that you are not that type of expert whose opinion the Commission can give weight to. But I can argue that later. For now, you are not an expert.

10 MR BUBENZER: With all due respect, yeah, I think I am not the right addressee for that, to answer that question. I am called here to testify about the contents of my book, the factual input I had gathered for that book and the conclusions I drew from them as part of my doctoral thesis... [intervenes]

ADV SEMENYA: Well... [intervenes]

MR BUBENZER: I have highlighted in all places the sources of the information. So it is clear that this is input I received from certain individuals, if it is not legal research based on judgments and court documents, and I draw my conclusions from that solely for the
20 purpose of my doctoral research. How this will be qualified as evidence is outside of my assessment in this proceeding, as evidence in this proceeding. So I am sorry, I cannot answer that question, I suppose.

ADV SEMENYA: You realise you go way outside my question, but maybe you are welcome. I have tried to put it as plain as I can. You

see, the rules of this Commission will tell us, if you had an occasion to look at them, they will tell us that where a person seeks to provide expert evidence to the Commission, his or her evidence must include a summary of the relevant qualifications and experience. Are you aware of that provision?

MR BUBENZER: I am not aware of that provision, no.

ADV SEMENYA: And you did not seek to qualify yourself in that sense of the expression as I read it. Am I right?

MR BUBENZER: I was not asked to qualify myself as being
10 admissible witness to this Commission.

ADV SEMENYA: I agree. And then you must give a summary of the expert opinion you propose to give. That is not what you did. Am I right?

MR BUBENZER: Sorry, could you repeat that question? I did not hear it.

ADV SEMENYA: You did not provide a summary of the expert opinion that you intended to give this Commission as required by the rules of this Commission. I am correct, am I not?

MR BUBENZER: I was never asked to summarise anything in my
20 own motion. As we all can see, I provided an affidavit certifying that the reflections in the founding affidavit of the court proceeding and the Commission proceeding are correct in as far as they pertain to reflecting the contents of my doctoral research. Furthermore, I was today asked to answer questions in relation to these contents.

ADV SEMENYA: I do not want to argue later that you are being

evasive. I am saying you did not give us a summary of the opinion your evidence would entail. Am I right?

MR BUBENZER: I just answered that question, I think, by saying I did not provide any separate independent summary, but I also have to say I am not sure what you exactly mean with providing a summary of the expert opinion.

ADV SEMENYA: Okay, let me read the rule to you again. And I am trying very hard, doctor. The rule is 64. And what it says is:

10 “Where a person seeks to provide expert
evidence to the Commission, his or her evidence
must include a summary of relevant qualifications
and experience, a summary of the expert's
opinion as well as experience, (no sorry), as well
as an explanation of the relevance of the expert's
testimony to the work of the Commission.”

CHAIRPERSON: Mr Semenya, I think the witness has answered you. What more do you want of him? He tells you he did not provide that summary because he was not asked to provide such a summary.

20 ADV SEMENYA: Yes. Thank you, Chair. Because for you to give
an opinion evidence, the rules of this Commission require that to have
happened. Your response.

MR BUBENZER: My response? Excuse me, my response to what?

COMMISSIONER GABRIEL: I do not think the witness heard you.

MR BUBENZER: No, I did not hear a question. I am sorry.

ADV SEMENYA: That all of these things would be the basis on

which your opinion and evidence can be received. You agree?

MR BUBENZER: Excuse me, I do not understand. With what do I agree?

ADV SEMENYA: All these requirements would have to be met so that the Commission can accept your opinion and evidence. You accept that to be correct?

MR BUBENZER: You are asking me if I accept that the rules applicable to the Commission actually apply and have to be followed. Excuse me, I do not understand the question.

10 ADV SEMENYA: Okay, let us move on.

MR BUBENZER: Well, maybe one statement. If you are asking me whether I submitted a summary, I am not sure what qualifies legally as a summary and I am not the right addressee maybe for that question. So maybe the question would be whether what I presented here today would qualify as a summary, but I am not the right person to answer that question.

ADV SEMENYA: Well, the Chairperson said we could move on. You gave me an answer there. The question I am now asking is whether you accept the basis on which an opinion evidence by any person can
20 be received, maybe admissible or inadmissible, is that at least these basic requirements must be met. Correct?

MR BUBENZER: I am not in a position to answer procedural questions applicable to the Commission. I am simply not knowledgeable in that respect. I need to apologise.

ADV SEMENYA: In your NPA evidence or interviews or research,

you do not speak to Mr Ngcuka. Do you?

MR BUBENZER: No, I have not had the opportunity of an interview with the NDPP.

ADV SEMENYA: I do not know what you mean you did not have an opportunity.

MR BUBENZER: I did not have an interview. I did not speak with him, no.

ADV SEMENYA: You did not speak to Dr Ramathe. Did you?

MR BUBENZER: No.

10 ADV SEMENYA: And you did not speak to Mr Pikoli. Did you?

MR BUBENZER: No, I did not speak with Mr Pikoli, no.

ADV SEMENYA: And all these people would have given an opportunity to understand, as you say, protagonists of the other side, no?

MR BUBENZER: They would have potentially been in a position to give me information on their view, indeed. I would need to look up. I think I remember... Again, it is about 20 years ago. I think I remember I contacted the NDPP's office as well for a statement. I have a collection of old emails, which, if you wish, I can review and
20 give you a summary of who I had contacted exactly.

ADV SEMENYA: Now, the Commission is invited to inquire into very discrete aspects of its work. It is required to inquire into efforts that stopped the investigation by the South African Police Service. Are you aware of that?

MR BUBENZER: Yes, I am well aware of that, yeah.

ADV SEMENYA: Who, which police general, national police general or provincial police general that you spoke to to write your book?

MR BUBENZER: Excuse me?

ADV SEMENYA: Which national commissioner of police or anybody in that profile did you speak to in writing your book?

MR BUBENZER: Current national commissioners of police, none. Only former.

ADV SEMENYA: Sorry?

MR BUBENZER: I did not speak with acting commissioners of police
10 at the time.

ADV SEMENYA: Yes, except you inquired about the generals in the army. Correct?

MR BUBENZER: I spoke with former generals of the SADF, indeed.

ADV SEMENYA: Not anyone of that equivalence in the police. True?

MR BUBENZER: Exactly, correct. Not anyone of an acting function. I spoke with a former chief of the police, National Commissioner of police, Johan van der Merwe, but not with any acting person.

ADV SEMENYA: And you knew that there are many others who
20 followed. Am I right?

MR BUBENZER: Yes, I am aware that there were several other acting commissioners of police, yeah.

ADV SEMENYA: You did not get access to the dockets, so your evidence goes. Am I right?

MR BUBENZER: I did not have access to any individual dockets, no.

And I did not attempt to make any assessment on the quality of prosecutorial material.

ADV SEMENYA: So it is perplexing for me that you can opine on the readiness of any docket for prosecution.

MR BUBENZER: I did not opine myself on that. I reflected information assessments I received from the prosecutors in charge at the time who were actually working on these dockets.

ADV SEMENYA: No, I hear you. That is why I am trying to be as precise as I can get. Without looking into a particular docket, you
10 cannot express an opinion about its readiness for prosecution.

MR BUBENZER: That is true. That is true. Without having access and on top being a qualified lawyer in South Africa.

ADV SEMENYA: And yet you express opinion about the police or the NPA not making enough progress. That conclusion is baseless if you have not seen what is in the documents. I must be right.

MR BUBENZER: That conclusion is not baseless. It is based on various assessments. It is based on interviews I had with Jan d'Oliveira, with Anton Ackermann, with T P Pretorius. All of whom in a line and with Vincent Saldanha and it is based on interviews with
20 my supervisor, Professor Vell, I had with Chris McAdam. All of whom were charged to work on prosecutions and who were in a position to make an assessment. So I am reflecting their assessment. In addition, I am referencing the TRC report, which is, of course, maybe of less value in assessing whether a file is ready for prosecution or not. But I am relying on the assessments by the responsible

prosecutors having worked on these files.

ADV SEMENYA: You say that a centralised prosecution strategy is better. You are not an expert to express such an opinion. Am I right?

MR BUBENZER: I am not sure if you can be an expert on that particular matter, but I base that assessment on the experience made in South Africa in the 1990s, where there was a successful centralised approach. And the experience made on that matter in Eastern Germany was also a centralised approach. And in that regard, I am probably close to these matters as someone having
10 researched both areas. Coincidentally, it is interesting, if I may say so, that the centralised approach in South Africa, in my conclusion, had a certain disadvantage because it exposed maybe more political influence and there were a number of prosecutions which were conducted at the regional level in the end.

ADV SEMENYA: And you are not an expert in South African politics, are you?

MR BUBENZER: It is difficult for me to answer that question because I am not sure what qualifies an expert. I think it is a very subjective assessment to make. I would say I am pretty
20 knowledgeable in South African politics, comparably knowledgeable.

ADV SEMENYA: Even if I have to speak for myself, I am knowledgeable, but highly an expert in South African politics. That is the meaning I am attaching to it.

MR BUBENZER: To answer that question, can you describe the criteria of what qualifies an expert in South African politics that would

help me answer that question precisely?

ADV SEMENYA: You would recall part of your evidence, for instance that is worrying. This is regarding the conversation with who you call the president and Mr Ngcuka. Do you recall that?

MR BUBENZER: Which part of my book do you mean?

ADV SEMENYA: About whether some people must be arrested or the arrest must be stopped. And you said there was communication between Thabo Mbeki, you call him by name, and Ngcuka, you call him by name. Do you recall that evidence?

10 MR BUBENZER: Yes.

ADV SEMENYA: I can tell you you are horribly wrong. The person who gave instruction is said to have been Minister Mabandla, not Thabo Mbeki. You can accept that to be an error. Am I right?

MR BUBENZER: No, I am not wrong in the sense that I reflect in my book what Mr Jan Wagner told me that he approached, and maybe he is wrong, but I reflect in my book that he told me that he intervened at the highest place in the government. So I asked the president's office, yes, the president. Then he said the president intervened himself. This is what he told me. I cannot, of course, rule out that
20 this is wrong. I also cannot rule out that different ways were taken. Probably the instructions, if they happened, were communicated via Brigitte Mabandla, Minister of Justice at the time.

ADV SEMENYA: No, but you give me a long answer. I am saying reference to Thabo Mbeki in that context is wrong.

MR BUBENZER: Well, a long answer is necessary to qualify

because I cannot confirm that this is wrong... [intervenes]

ADV SEMENYA: I can also confirm... [intervenes]

MR BUBENZER: and I am convinced, I am fully right in what I put in my book. Namely, just to repeat that again, I put in my book that Mr Jan Wagner told me that this intervention happened and this was the communication channel he used.

ADV SEMENYA: But I can also tell you the evidence coming to the Commission will be that it is not Mr Ngcuka who was the NDPP when that happened. It was Dr Ramathe. Even that information you have
10 is wrong.

MR BUBENZER: Sorry, let us look at exactly the information you are referring to. In order for me to answer that question, could you guide me exactly to the position?

ADV SEMENYA: Okay, leave the transcript alone. I am saying that Mr Ngcuka was not the NDPP when that conversation about stopping the arrest happened. It was Dr Ramathe.

MR BUBENZER: Okay, let me first verify where I say. So we are speaking about an intervention that happened in November 2004.

ADV SEMENYA: Doctor, I can tell you, you will not find it where you
20 are looking because this is the evidence you gave today.

MR BUBENZER: Yes, yes, yes, but I think now we need to, you are saying that I got it wrong, so I just want to follow exactly the arrest suspension on page 77 of my book. So that was early November 2004. The arrests were due. And on that day, on that day in November 2004, the intervention took place and I am saying the most

likely scenario is that NDPP and Bulelani Ngcuka directed the PCLU to stop proceedings. And you are saying at the beginning of November 2004, Bulelani Ngcuka was not NDPP.

ADV SEMENYA: I think even Mr Ackerman... Just a moment, Chair.

Paragraph 17 of Mr Ackerman's affidavit reads as follows.

10 “On the morning of 11 November 2004, the police was on the verge of effecting arrests of three former officers of the security police on charges which related to the attempted murder of the Reverend Frank Chikane, the former head of the South African Council of Churches, in 1989 by poisoning. The three former policemen were former Major General Christopher Smith, Colonel Gert Otto and Johannes Mannie van Staden. None had applied for this crime. On the same morning, I received a phone call from Jan Wagener, the attorney for the above named suspect. He told me that I would receive a phone call from the Ministry of Justice.”

20 And if I stop there, it is the Ministry of Justice, not the president. You notice that fact, right?

MR BUBENZER: Yes... [intervenes]

ADV SEMENYA: And... Sorry.

 “And I would be advised that the case against his clients must be placed on hold. Shortly

thereafter, I received a call from an official in the Ministry of Justice. I was informed by the said official that a decision had been taken that the Chikane matter should be put on hold pending development of guidelines to deal with the TRC cases. I told him that only the NDPP could give me such an instruction. A few minutes later, the NDPP contacted me and instructed me not to proceed with the arrest. I believe that it can safely be assumed that the NDPP was instructed at the political level to suspend these cases.”

MR BUBENZER: Yeah.

ADV SEMENYA: Any comment?

MR BUBENZER: Yes. This is in line with what I picked up. And I cannot rule out that the president instructed the Ministry of Justice...
[intervenes]

ADV SEMENYA: Sjoe!

MR BUBENZER: to pass on the respective instructions.

ADV SEMENYA: Now you are even going through that type of assumption. That the Ministry of Justice got instructions from the president.

MR BUBENZER: Well, I would not go there. It is not part of my research and it is not part of any information I received. Again, I have on record and I received information from Jan Wagner that he intervened at the highest level of government, namely the president,

to effect a suspension of the arrests. And he confirmed to me that this was successful, so that from that office, from that function, respective instructions were given. This is what he told me.

ADV SEMENYA: I suspect you would say the danger of opinion evidence by people who do not qualify to give opinion evidence. Anyway... [intervenes]

MR BUBENZER: Yes. I mean, this needs to be qualified, obviously. But if I may comment from my perspective as a legal researcher, these are important details. But in the end, what I took away and
10 what I evaluated was that the government as such intervened, and I might obviously be wrong in implicating the president here. Again, I rely on the information I received from that very attorney. And there I am not a political journalist. For me, it was a crucial issue in the end to take away, to conclude that there was a government intervention in the case, prompted apparently by intervention of attorney Jan Wagner.

ADV SEMENYA: Those are the questions I have for the witness, Chair.

CHAIRPERSON: Thank you.

20 COMMISSIONER GABRIEL: Mr Bubenzer, are you still with us?

MR BUBENZER: Yes.

MR CHAUKE: Yes, I have a question. Do you have your book in front of you, page 78?

MR BUBENZER: Yes.

COMMISSIONER GABRIEL: Yes. You were taken to, this relates to

the suspension of the arrest. Recall that?

MR BUBENZER: Yes.

COMMISSIONER GABRIEL: In 2004. And towards the middle of the page, you say, you write that:

“The suspension of the arrest was mainly the result of a political settlement behind the scenes.”

And you footnote there to an interview with Jan Wagner. What was that political settlement? Did you find out? Because a settlement implies something concluded. What was that political settlement?

10 MR BUBENZER: Yes. The settlement was, well, it was not a formal agreement as far as I picked that up, but it was an accord, so to speak, to approach things differently now and to stop individual prosecutions without government oversight, so to speak.

COMMISSIONER GABRIEL: So you are saying it was informal?

MR BUBENZER: It was portrayed to me definitely as an informal arrangement, the details of which I am not privy to.

COMMISSIONER GABRIEL: Okay. So you cannot assist the Commission with that information?

20 MR BUBENZER: No, no, it is not a, maybe, maybe, you know, I am also not a native English speaker. I would say it was more an agreement, probably, rather than a formal settlement. Definitely not any formal thing.

COMMISSIONER GABRIEL: All right. Thank you.

MR BUBENZER: It was an accord, I would say, yeah.

COMMISSIONER GABRIEL: Thank you.

CHAIRPERSON: Mr Varney?

ADV VARNEY: Chair, just a few follow-up questions.

CHAIRPERSON: Switch on your microphones.

ADV VARNEY: Thank you, Commissioner, for the reminder. Chairperson, just a few follow-up questions. My learned friend from the evidence leaders has pointed out to you that you were not called as an expert. Can I just ask, were you ever advised that you would be testifying as an expert? Was it ever put to you by anybody?

10 MR BUBENZER: No, I was never asked to make such an assessment.

ADV VARNEY: Thank you. Can I draw your attention to Rule 6.1 of the Commission's rules? I am sure you do not have it in front of you, so I will just read it to you.

20 “The Commission may receive any evidence that is relevant to its mandate, including evidence that might otherwise be inadmissible in a court of law. The rules of evidence applicable in a court of law need not be strictly applied to the determination or the admissibility of evidence before the Commission.”

So essentially, just so that you are aware, you were called by the families who are party to this Commission because it was believed that you had evidence relevant to this Commission. Do you agree that your research is of relevance to this inquiry?

MR BUBENZER: Well, that is a factual... Again, I am not an expert

in the procedural law behind this Commission and the operation of this Commission, but this is more a factual question, and there I would consider that my research is of relevance to that topic and to the cause solved by the families of the victims, yeah.

ADV VARNEY: You indicated in paragraph 5 of your statement, and you have also made reference to a large number of interviews that you conducted. As far as you are concerned, does your book accurately reflect the contents of those interviews?

MR BUBENZER: That is correct. These parts of my research, the
10 focus on the political backgrounds, is largely based on the interviews I conducted.

ADV VARNEY: Now, it was also put to you by Mr Semenya that you had not made, at least the book does not reflect you making contact with members of the ANC in order to secure an interview. And I refer you to bundle 7, footnote 280, on page 157 of your book.

MR BUBENZER: Yes.

ADV VARNEY: And can you read footnote 280 into the record, please?

MR BUBENZER: Yes, that footnote reads, it is, I am starting the
20 citation.

“It is important to mention that no comment or statement was made by government officials. The deputy minister of justice, Johnny de Lange and the director general of the president's office, Frank Chikane, were both unsuccessfully

approached for comment by the author. The government's approach, therefore, had to be determined on the basis of the information laid out in the subchapters above.”

This is, end of quote. This is, by the way, exactly the, one might call it disclaimer, I was referring to earlier, and I did not have present right away.

ADV VARNEY: Thank you, sir. It was, in fact, part of the record that you had made those attempts unsuccessful as they were. Now, my
10 learned friend for the evidence leaders criticises you because he says, well, on what basis do you, can you express opinions on these investigations when you did not have access to the dockets? But am I right in saying that you did interview individuals such as the head of the PCLU, Adv Ackermann, and a senior prosecutor in that unit, Adv T P Pretorius, and that your colleague also had an interview with Adv McAdam? Am I right in saying that they had access to the dockets and they were in a position to express a view on the state of the investigations in relation to those matters?

MR BUBENZER: Yes, I would agree to that. For the purposes of my
20 research and the conclusions I drew, I had the firm understanding that these were sources who were in a position to assess the quality of dockets they were working on, the quality of evidence. So I took that as very reliable sources for that matter.

ADV VARNEY: And there was no reason for you to doubt their experience and expertise and their views on those investigations?

MR BUBENZER: No, there was no reason to doubt that, no.

ADV VARNEY: Now, let us deal with the incident that you have been referred to, which is on page 78 of your book, dealing with the suspended arrests. Now, you were accused, or it was suggested to you by Mr Semenya that you had said in your book, or you had said under evidence-in-chief that President Mbeki had called the NDPP. Is that anywhere in your book, or do you recall saying that in evidence?

MR BUBENZER: No, this is what I tried to allude to earlier in replying to the question. That was not what I stated in my book. I did
10 not draw the conclusion or claim that Mr Mbeki personally contacted the NDPP.

ADV VARNEY: Yes. Now, there is one aspect, which does seem to be an error, in that when you refer to the NDPP as being Ngcuka. It does seem that at the time the NDPP was in fact acting NDPP Silas Ramathe. We have confirmed that with Adv Ackerman, and the records do seem to show that. Are you willing to accept that particular error?

MR BUBENZER: Yes, I am willing to accept that. As we spoke, I tried to verify that, and it seems that Bulelani Ngcuka resigned just in
20 November 2004, just in that month, or shortly before. So it was probably an overlap of a very short period, and I acknowledge that I probably got that wrong in terms of who was the acting NDPP.

ADV VARNEY: It is your evidence, and it is reflected in your book, that you had an interview with Jan Wagner, who was representing the suspects in that particular matter. Can I ask you to read into the

record a few sentences on page 78? Commissioner Gabriel has referred you to this particular paragraph, and just after footnote 329, there is a sentence that starts, "after the PCLU informed the accused persons." If you could read into the record and go down, and you can stop where it says, "take the necessary steps."

MR BUBENZER: Yes, I start my quote.

10 "After the PCLU informed the accused persons of their arrest, their attorney, Jan Wagner, took immediate steps to prevent this from happening. Wagner intervened at the office of the president and pressed for a suspension of the arrests. According to Wagner, it was President Mbeki who then decided that the proceedings be put on hold. Ngcuka was apparently directed to take the necessary steps."

ADV VARNEY: Thank you. So apart from the error in relation to Ngcuka, that should have read Silas Ramathe, you stand by what you were told by Jan Wagner as to what transpired.

20 MR BUBENZER: Yes. I verified that information before this hearing today by looking into my records and my transcripts of interviews. This is what he told me. The value of that is a different question, but I stand by what he told me.

ADV VARNEY: And there was never any suggestion that it was President Mbeki himself who picked up the phone to the then NDPP. Am I correct in saying that?

MR BUBENZER: That is correct, and that is not what... Excuse me, yeah?

ADV VARNEY: No, go ahead.

MR BUBENZER: Yes, that is correct, and this is also not what he told me. Jan Wagner never told me that the president himself made the communications. That is correct.

ADV VARNEY: Yes. So the evidence we have on hand, which is also confirmed by other witnesses, including Silas Ramathe himself, is that the actual communication that he received was from the then
10 Minister of Justice, Brigitte Mabandla, and you have got no reason to dispute that and in your view, is that consistent with the version you have heard from Mr Wagner?

MR BUBENZER: Yes, that is, Mr Wagner did not speak about Brigitte Mabandla, but he also did not say anything to the contrary. He did not give him any information, which would contradict what Mr Ackermann said, apparently.

MR BUBENZER: Now, correct me if I am wrong, but you mentioned that you were willing to look into your records and emails as to who you made contact with. If that offer still stands, would you be able to
20 do so and revert to us?

ADV VARNEY: By when?

MR BUBENZER: Yes.

ADV VARNEY: Madam Chair, I will make the inquiry.

CHAIRPERSON: Yes.

ADV VARNEY: The Chairperson has asked when you might be able

to come back to us.

MR BUBENZER: Yes, Madam Chair, I can do so today, this afternoon. So, let us say by the beginning of next week, Monday morning, I can revert. I should add a disclaimer, though. I do not have access to that very email account anymore, but I saved a wide range of emails from that research into folders, storage, which I still have. So, I can review that quickly and immediately.

MR BUBENZER: We appreciate that. Chairperson, is Monday morning?

10 CHAIRPERSON: Yes, that is fine.

ADV VARNEY: No further questions, Chairperson.

CHAIRPERSON: Thank you. Dr Bubenzer, we thank you for having availed yourself to give evidence before this Commission. As for now, you are excused as a witness, but you may be recalled to be cross-examined in due course. I hope you will make yourself available for that.

MR BUBENZER: Madam Chair, I thank you as well. It was my pleasure to be here today. And I will make efforts, should I be asked to attend again, to make myself available.

20 CHAIRPERSON: Thank you. These proceedings are adjourned until Monday at 10 o'clock.

ADV VARNEY: As the Commission pleases.

INQUIRY ADJOURNS UNTIL 23 FEBRUARY 2026

CERTIFICATE OF VERACITY

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