

**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 Mfesane Ka-Siboto
Adv Nompumelelo Seme
Ms Baitseng Rangata

REPRESENTATIVES

Adv Gerrie Nel SC (for AfriForum)
Adv Phyllis Vorster (for AfriForum)
Adv Varney (SC) – The Calata Group
Adv D Pillay – The Calata Group
Ms A Thakor – The Calata Group
Mr J Venter – The Calata Group
Ms L Doubell – The Calata Group
Adv Gwala (SC) – NPA representative
Adv Rantho (SC) – (for SAPS)

26 FEBRUARY 2026

DAY 14

PAGES 1 - 91



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PROCEEDINGS ON 26 FEBRUARY 2026

CHAIRPERSON: Mr Semenya?

ADV SEMENYA SC: We are set down to hear the evidence of Mr Kriel, and perhaps before that, I realise that there is a document that has been placed before us and I do not know its relevance. Maybe Mr Nel will appraise all of us why this document is here.

CHAIRPERSON: Ja.

ADV NEL SC: May it please you.

ADV SEMENYA SC: Oh sorry, I am told it is Mr van der Merwe who
10 comes first, sorry.

ADV NEL SC: May it please the Commissioners. That is indeed so, we applied to lead the evidence of Mr van der Merwe, Jacob Gabriel Cilliers van der Merwe. We also applied for leave to delete Mr van der Merwe's evidence, which was granted. In his evidence I will refer to two photographs that is not part of his affidavit.

CHAIRPERSON: Ja.

ADV NEL SC: I will hand them in and I have handed up copies to everyone, they are also with the Commissioners. I will properly hand them in through the evidence.

20 CHAIRPERSON: Thank you.

ADV NEL SC: Mr van der Merwe is present and he is willing to take the oath.

CHAIRPERSON: Thank you. Mr van der Merwe please place your names for the record.

MR VAN DER MERWE: Jacob Gabriel Cilliers van der Merwe.

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

MR VAN DER MERWE: Yes.

CHAIRPERSON: An oath or affirmation?

MR VAN DER MERWE: Oath.

CHAIRPERSON: Oath.

MR VAN DER MERWE: Ja.

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

10 MR VAN DER MERWE: So help me, God.

CHAIRPERSON: Thank you, Mr van der Merwe. Mr Nel?

EXAMINATION BY ADV NEL SC: Thank you, Madam Chair. Mr van der Merwe, would you kindly just introduce yourself to the Commissioners please?

MR VAN DER MERWE: I am Cillier van der Merwe, I am on my way to 64 years old. I am married to my wife, Charlotte sitting over there. We have four children. I used to work in government for years when I started my career. I moved on to Corporate Service, working for corporate technical engineering companies, heading up urban
20 planning and environmental services divisions. Over the past three years I have established my own company, focusing on feasibility studies and public private partnership transaction advisory services. That is in short.

ADV NEL SC: Thank you, thank you Mr van der Merwe. Would you kindly just confirm your affidavit? You have your affidavit in front of

you and the signature at the end of your affidavit at page 1206, can you just confirm that that is your signature?

MR VAN DER MERWE: Yes, that is correct.

ADV NEL SC: And you confirm the contents of this affidavit.

MR VAN DER MERWE: Yes, that is correct.

ADV NEL SC: We will deal with the annexures to your affidavit as the evidence goes, but it is your affidavit plus annexures thereto.

MR VAN DER MERWE: Yes, that is correct.

ADV NEL SC: Thank you. Mr van der Merwe, why are we here?

10 MR VAN DER MERWE: I think in short, in November 1978 my father was killed, he went missing. He was never found, his body was never recovered. We became aware of the activities of the Khampepe Commission and for that reason we approached the AfriForum, Mr Kallie Kriel, to assist us to make representation at this Commission concerning my father's case that was never resolved up to now after 47, 48 years, and essentially we are here to, as I have stated in paragraph 26 and 27 of my statement, to implore the Commission to also look at my father's case as part of your recommendations and findings of this Commission.

20 ADV NEL SC: Mr van der Merwe, there has been no prosecution on your father's murder, is that correct?

MR VAN DER MERWE: No, never.

ADV NEL SC: There was not even an inquest into the death of your father.

MR VAN DER MERWE: No, never.

ADV NEL SC: (Indistinct) taken steps to have an inquest held, is that correct?

MR VAN DER MERWE: That is correct.

ADV NEL SC: We will get to that. Mr van der Merwe, could you perhaps just give the Commission a short summary of the facts that you want to testify about, about what happened to your father on the 1st of November 1978?

COMMISSIONER KGOMO: Can I just enquire, when was your father born? If he was alive, how old would he be and if he has
10 disappeared, how old would he be? You know, I am also looking at inquest.

MR VAN DER MERWE: Yes.

COMMISSIONER KGOMO: There would have to be some certainty that he is no longer alive.

MR VAN DER MERWE: Thank you Commissioner, I will address that. In 1978 when my father left home he left a note to my mother on a pillow stating that he is going to a family farm, Doringlaagte, hunting, to shoot a buck for the pot. At that stage he was 55 years old and the farm that he went to was about 70 kilometres to the north
20 west of Thabazimbi. It was a family owned farm, a winter grazing farm. There was no real infrastructure at that farm.

Shortly after he arrived there my aunt called the neighbour to inform him that he is, my grandmother, his mother passed away and that he then left immediately to my aunt who was staying on another farm, Wagenbietjiesdraai which is close to Thabazimbi, and where my

grandmother was residing.

After that, in short she, my aunt called my mother to enquire about my father's whereabouts since she knew that he has left the farm and she was thinking that he first went home and my mother said no, he never arrived home, she thought that he was at Wagenbietjiesdraai and they then realised that there must be something serious going on due to the time that has passed and they immediately alerted the police, who launched a significant search at that point. They went to the farm, there was no sign of him, and the
10 police and even the military started a massive search since he just disappeared in thin air. There was no sign of him, his vehicle, nothing, and we all as a family converted to or went to my aunt's home.

I was at school in Rustenburg, my brother and sister were at university and it was absolute chaos obviously, because everybody was searching for my father, at the same time they were busy to prepare for my grandmother's funeral. So it was chaos, it was quite emotional and quite traumatic.

After a few days they located his vehicle close to the border
20 post at Derdepoort, hidden in a bush and they established that none of his possessions was in the vehicle and he was missing. My mother and the police even extended the search to Botswana due to the fact that in the earlier days my father farmed in Botswana on the farm Letwani, and they also went there to see if maybe he went to the old farm, but there was no sign of him at that time.

As the search went on we prayed that he may have been kidnapped and still be alive, which as time moved on we started to realise that the chances of that became very slim, up to the point where we had to reconcile with the fact that we think he is dead.

The local Kgosi came to my mother's home to express their sympathy, because they were well-known and loved and respected in those communities in that region. That is in short, that is what happened.

ADV NEL SC: I think what is important is to just realise that those
10 were the days without cell phones and really without phones on the farm. Is that correct, Mr van der Merwe?

MR VAN DER MERWE: Yes, that is correct. So there were no real contacts that could have been established. The neighbouring farm had a telephone because they occupied the farm fulltime, so it made sense.

ADV NEL SC: Let us deal with the impact on the family. Now at the time your mother was employed, is that correct?

MR VAN DER MERWE: Yes, she was a teacher at a primary school
20 at a mining town, Swartklip which is about 40 kilometres from Thabazimbi.

ADV NEL SC: And how many children were they?

MR VAN DER MERWE: We were four children; my elder brother, who was at the time about 21 years old, my sister 19, I had a brother just older than me who was 17, I was 16 and my younger brother was
11.

ADV NEL SC: Before we carry on, so up until today was your father's remains ever recovered?

MR VAN DER MERWE: No, that was never recovered.

ADV NEL SC: Now let us just deal with the impact on the family. You had two, you had a brother and a sister at university, is that correct?

MR VAN DER MERWE: Yes, that is correct.

ADV NEL SC: And this incident, what did that cause as far as the studies are concerned?

10 MR VAN DER MERWE: I think the incident happened at a time that was right at the yearend, they were busy with exams and they did not manage to pass those exams, so that was some impact on them. The university allowed them to take the extended exam in the next, in the following year, which they passed. I just want to take one step back, Commissioner, if you will allow me.

ADV NEL SC: Yes.

MR VAN DER MERWE: I was here last week when I think the Calata family made their statements and I would like to highlight that I think listening to them it was like looking in a mirror. So the experiences
20 that we had were very similar, so I just want to state that.

At the time my mother earned a salary as a teacher of about R600 per month. Obviously she could not care for a family with that income, you can only stretch it so far. She was not the real breadwinner at the time, so financially it was tough. It took about three to four years to have my father declared dead, so during that

time we had to depend on her salary. My brother and sister could not continue their studies and they had to postpone that also to get work and to earn additional income. Even myself and my younger brother Gerhard, we did some part-time jobs while we were at school. Sorry about that.

ADV NEL SC: One of your brothers did not cope well, let us just deal with that.

MR VAN DER MERWE: Yes. I think Bertus, he was very close to my father, he was just older than me, so he at the time decided, without
10 informing my mother, to leave school and to join the military, that destroyed his life, he was too young to go to the military and he returned from his military career, he could not keep a permanent job due to post-dramatic stress, so that destroyed his life.

ADV NEL SC: Mr van der Merwe, your mother, is she still with us?

MR VAN DER MERWE: My mother passed away in 2022, she was 91 years old. I would like to say that my mother remained true to my father during this period, even though we could not bury him, she had to bury my two brothers, they both passed away from cancer in 2005 and the other in 2014. It did not stop her to make a contribution to
20 society.

She started a, when she retired fine arts classes also for extra income and she gave lessons to all communities in Potchefstroom, young people, old people. Some paid for the classes, others could not afford it, but she still helped them. She passed away in 2022, as I have said.

ADV NEL SC: Mr van der Merwe, let us just deal with your mother having to approach the courts to declare your father deceased and as part of that application she attached an affidavit from a police investigator, is that correct?

MR VAN DER MERWE: Yes, that is correct.

ADV NEL SC: Commissioners, I have to start this with an apology. It is attached to the documents, but it is not translated.

CHAIRPERSON: Yes, I have noted.

10 ADV NEL SC: We will have that translated, but we will deal with the real issues we have dealt with in paragraphs 18, 19, 20 and 21 of the affidavit and we will deal with that now, but I commit myself to ensure that a translated copy is delivered.

CHAIRPERSON: Yes, that would be appreciated.

ADV NEL SC: So Commissioners, just so that we all know where we are, we are at page 1223 of the record, but that is now not translated, so we will rather deal with the affidavit and that is paragraphs 18, 19, 20 and 21. So the police investigator gave an account of what happened to your father after he had an interview with a person that he called Mr X, is that correct?

20 MR VAN DER MERWE: That is correct.

ADV NEL SC: So what did the investigator then testify or inform your mother?

MR VAN DER MERWE: At the time he informed my mother that he established through interviewing Mr X that four MK members who was deployed to establish and do reconnaissance in that parts of

South Africa and that they were tasked to identify places where weaponry could be cached as part of the struggle and they were instructed not to interfere with the civil society in that region.

He then established that on their return to the base in Botswana he noticed that they had hunting rifles as part of their cache and he asked him about that and they said that they took that from a white man that they engaged with in South Africa and that they have killed him.

10 They explained to him that they pretended to be hitchhiking on the road. Two were waiting in the bushes, the others were pretending to be hitchhiking and my father was a very good natured man from that area and he knows everybody, so he stopped to help him. They overpowered him. They forced him to turn around to the Botswana border.

20 They then picked up the other two that was hiding in the bush and at that point they forced him out of the vehicle, let him walk into the bush, they shot him in the back and then one of the cadres turned him around and shot him in the face. They left him there and they took the vehicle to the border, and from there they crossed the border back to their base in Botswana.

ADV NEL SC: What is important about this is that ... (intervenes)

CHAIRPERSON: Mr Nel, before you proceed... Were these four MK cadres ever identified?

MR VAN DER MERWE: Yes.

ADV NEL SC: We will, we are getting to that.

CHAIRPERSON: You are getting to that.

ADV NEL SC: Yes, we will do that, Madam Chair.

CHAIRPERSON: Yes.

ADV NEL SC: If you will allow us just a ... (intervenes)

CHAIRPERSON: Yes, you may proceed.

ADV NEL SC: But we will identify them.

CHAIRPERSON: Yes.

ADV NEL SC: Let us start with, I want to refer you to page 1224, that is the affidavit of the policeman. I have not identified the policeman,
10 but his name is Jan Carel Coetzee. Although the affidavit is in Afrikaans there, what is important here is the date. At paragraph 5 of Mr Coetzee's affidavit there is a date. What is that date?

MR VAN DER MERWE: His engagement was on March 1979, so it was only a few months after the incident.

ADV NEL SC: So the identity of the people that committed this murder was known to the police in March 1979.

MR VAN DER MERWE: Ja, that is correct.

ADV NEL SC: Good. We will get back to the full identification. Your mother also testified at the TRC, is that correct?

20 MR VAN DER MERWE: Yes, that is correct.

ADV NEL SC: She testified on the 23rd of September 1996.

MR VAN DER MERWE: That is correct.

ADV NEL SC: And we have attached her evidence to your statement.

MR VAN DER MERWE: That is correct.

ADV NEL SC: Now we are not going to read the whole of her evidence and I would just like to refer you to one or two paragraphs of your mother's evidence and if could turn to page 1212, the fifth paragraph. Do you have that? It starts with 'my story'.

MR VAN DER MERWE: Yes.

ADV NEL SC: So your mother testified that, that is her evidence that was transcribed and you are now reading what she said.

MR VAN DER MERWE: Yes.

ADV NEL SC: What did she say there?

10 "My story and that of my children is but a minor story in comparison with these others from whom we feel sympathy. Our pain is but a mere drop in the ocean of South Africa's suffering."

ADV NEL SC: I am going to ask you to read the next two paragraphs as well.

MR VAN DER MERWE:

20 "Even if we do not want to use this opportunity to highlight our problems and look for sympathy, that is not what we wanted to. In doing this we have done it in all the years, that is why I sat here today and thought about it for a long time before I came to you."

ADV NEL SC: Then the next paragraph please?

MR VAN DER MERWE:

"My story is the story about a woman with five children whose husband was a peace-loving citizen, who

wherever he lived and worked was also respected by the black communities, a man who was killed unnecessarily in a cowardly and cruel manner while he was helping murders. They abused the best of humanity.”

ADV NEL SC: Can you just turn the page to the next page please?

There it is paragraph, the fifth paragraph, also ‘my story’.

MR VAN DER MERWE: Ja.

ADV NEL SC: Please read that.

10 MR VAN DER MERWE:

"My story wants to put this question to you; would these people that were responsible for this deed, now that the liberation struggle hearsay been completed (in her view) be able to answer us what was achieved by this and who really benefited from this action?"

ADV NEL SC: Sorry, just carry on. It is a longer paragraph. This, what purpose did it all serve?

MR VAN DER MERWE:

20 "This, what purpose did it all serve from a military strategic point of view or from the viewpoint of the struggle? If these questions could contribute to answering the questions of the senselessness of what took place and this one deed in isolation to highlight the folly of what took place then, then the story has a humble contribution to bringing our country to where it is

today and will have made a contribution to the liberation.”

ADV NEL SC: Then you are not reading everything, but if you can turn the page to page 1214, paragraph... We are still looking for it, we will find it now. 1216, The ninth paragraph. Ms van der Merwe, where she was asked a question if your father was politically active or militarily inclined, what was her response?

MR VAN DER MERWE:

10 "No, not at all. One of the things that surfaced in the matter was that he did not take part in any political activity at all. We lived in Botswana for years and we have not come back to the Republic. He did not participate in any political activity. He was merely a farmer.”

ADV NEL SC: Thank you. Now the, although there was a matter being investigated, there was correspondence you received from what was then called the Attorney-General's Office and we have attached that. Again Commissioners, apologies, those are also in Afrikaans, we will have that translated.

20 CHAIRPERSON: Yes.

ADV NEL SC: But it is just a, it is just one paragraph from the Attorney-General, it is on page 1222. The Attorney-General informed you, if we translate that, that they did not have enough evidence at the time, they could not, there was no reason for them to prosecute, but the investigation is ongoing.

MR VAN DER MERWE: Sorry, I do not have 122 with me.

ADV NEL SC: 1222.

MR VAN DER MERWE: No.

ADV NEL SC: I will make it much easier. May I hand in 1222?

CHAIRPERSON: Yes, you may.

ADV NEL SC: Thank you.

MR VAN DER MERWE: I will skip to... Should I read this?

ADV NEL SC: No, just confirm that that is what you heard from the Attorney-General.

10 MR VAN DER MERWE: That is correct.

ADV NEL SC: Now let us just deal to another paragraph in your affidavit and that is paragraph 12, and perhaps paragraph 11. In paragraph 11 your mother's sentiments as far as the suspects or perpetrators, if they would have applied for amnesty, how she would have treated that.

MR VAN DER MERWE: My mother viewed that as the outcome that she was hoping for and that she would have accepted that as evidence and as part of the struggle and if they would have received amnesty she would have accepted that.

20 ADV NEL SC: But we now know, and we will lead evidence that, do you know if they ever applied for amnesty?

MR VAN DER MERWE: No, no, they never applied.

ADV NEL SC: Now seeing that they never applied, what was your mother and your family's sentiments that they have not applied, how do you feel about a possible prosecution or what should now

happen?

MR VAN DER MERWE: I think essentially the view was that my mother stated during the TRC that she was not looking at prosecution if they come to the amnesty or if they come to the TRC, which they did not, and failing which she felt that it would be fair, it would be equitable that the case must further be investigated and that the suspects must be prosecuted and an inquest must be held to establish the facts, because in our view then they remain coward criminals that should face the law.

10 ADV NEL SC: Now in paragraph 15 you deal with, we start dealing with members of the criminal justice system that you and your family had contact with and you had contact with Advocate van der Kooi.

MR VAN DER MERWE: Yes, that is correct.

ADV NEL SC: Please explain to the ... (intervenes)

MR VAN DER MERWE: I think at the time that my mother became quite aged and through a contact that we established through my wife, Charlotte, we made contact with somebody at the prosecuting offices, I do not know the exact organisation or institution, who then referred the case internally and said again that they will attend to that.

20 That was about 2017, and through that process an investigating officer contacted me and I cannot recall his name, and informed me that Advocate van der Kooi at the State Attorney's Office in Polokwane he is assisting them with the investigation.

I had a telephone conversation with Advocate van der Kooi who indicated to me that the file was incomplete and that he tried to

direct the investigation to complete the file so that further decisions can be made on how to proceed with the investigation and the case.

ADV NEL SC: You also had contact with the investigating officer Van der Schyff, is that correct?

MR VAN DER MERWE: Yes. She followed on the previous investigator that moved on to other cases and she was appointed. She contacted me, informing me that she took the case over, that is about three years ago, and at the time she also said the file is in shambles, she is trying to reorganise it and we had communication
10 once a year. The last time we communicated was sometime early last year where she informed me that the file has been prepared for submission to a person that had to decide to submit it to the Magistrate for a decision on whether an inquest will be held or what the forward steps will be.

ADV NEL SC: Now perhaps let me just refer you to your affidavit. Can you please look at paragraph 16 at page 1202? Can I ask you just to read that into the record?

MR VAN DER MERWE:

20 "We sympathise and we identify with the trauma, heartache and prejudice that families from the Freedom Fighters have had to endure and we have followed the reopening of the inquest and provisions of members of the Armed Forces."

As I have mentioned, I have witnessed Mr Calata's statements.

"We believe our father's case has not received the full timeous attention, especially given the statement by Captain Jan Carel Coetzee and the affidavit that he gave."

I will discuss this a bit later on, that follows.

ADV NEL SC: Thank you. Let us deal with something else. You also had contact with a Colonel Vreugdenburg, is that correct?

MR VAN DER MERWE: Yes, that is correct.

10 ADV NEL SC: I refer you to paragraph 23 of your affidavit and if you could just deal with paragraph 23 where, and I am going to read, I am going to tell you what it says and you can just comment on it.

MR VAN DER MERWE: Yes.

ADV NEL SC: Where the NPA views the excuse that your mother never wanted a prosecution and she made it clear during the TRC, was that correct?

MR VAN DER MERWE: No, that is not correct. I am aware that Vreugdenburg was also the investigating officer in the earlier years following also her presentation at the TRC, so but that communication I think is a complete misrepresentation of my mother's statement.

20 ADV NEL SC: Then Colonel van der Schyff also informed you that she had an interview with identified people. You discuss that at paragraph 17, page 1203, if you could perhaps just deal with that.

MR VAN DER MERWE: Ja, essentially she informed me early last year before that that they did interview one of the suspects at the time and that the outcome was not conclusive and that that information will

be used as part of the report that will be presented to take a further decision on if an inquest will be held.

ADV NEL SC: Did she give you any detail?

MR VAN DER MERWE: The only thing she mentioned was that, in vague terms that it was denied, the involvement was denied and that the suspect mentioned that he heard about something to that effect that may have taken place.

ADV NEL SC: Mr van der Merwe, now following up on the information given by Captain Coetzee about his interview in 1979 and
10 followed on available, publically available information you identified the person that was responsible for the death of your father, is that correct?

MR VAN DER MERWE: That is correct.

ADV NEL SC: You have identified him with the codename of?

MR VAN DER MERWE: Ja, there were several names. I think Felix Mochale, Mosibi, China.

CHAIRPERSON: Come again?

ADV NEL SC: Just ... (intervenes)

CHAIRPERSON: Come again with the names.

20 ADV NEL SC: Just give all those names.

MR VAN DER MERWE: Mr Felix Mochale, Mr Mosibi, and later on China as a nickname.

ADV NEL SC: Now you then, with assistance from investigators, discovered photographs on YouTube. Is that correct?

MR VAN DER MERWE: That is correct.

ADV NEL SC: The one photograph that we will hand up now is, you have it there, it is marked A, what does that depict?

MR VAN DER MERWE: Well, it actually ... (intervenes)

ADV NEL SC: I said YouTube, it is Facebook. That indicated my age, I really apologise.

MR VAN DER MERWE: It is an image of ... (intervenes)

ADV NEL SC: For me it is the same thing.

MR VAN DER MERWE: Sorry, Commissioner.

ADV NEL SC: Sorry. Yes?

10 MR VAN DER MERWE: It is an image of a person posing with an illegal firearm, it appears to be a type 56 AK47, China-made, Chinese-made weapon, in full camouflage wear.

ADV NEL SC: And the person there is the person that you were able to identify as China.

MR VAN DER MERWE: Yes, that is correct.

ADV NEL SC: Let us deal with the second image, also from Facebook is a, depicts a photograph of the same person, but what is important about this and that we will hand up as CVD and B, the second photograph, I have marked it CVDM, Cillier van der Merwe A
20 and Cillier van der Merwe B. What is important about this is the entry that one can see, if you have a look at the right, the second entry, from whom is that entry?

MR VAN DER MERWE: That entry is from Madelein Volhard.

ADV NEL SC: And she said?

MR VAN DER MERWE: She said:

"No my brother, do not waste your money there, keep it away. Your losses are certain."

ADV NEL SC: Who is this, do you know this Madelein Volhard?

MR VAN DER MERWE: She was the person that we, when we received the contact to further follow up on my father's case, the contact person name that was given to us and with which my, in particular my wife communicated with for several times during 2017.

ADV NEL SC: And she was attached to which organisation?

MR VAN DER MERWE: My understanding was that she was with the
10 TRC Investigation Unit or the Prosecuting Authority.

ADV NEL SC: The Prosecuting Authority. Now what is also important is, if we can just indicate the date of the CVDMB.

MR VAN DER MERWE: That was April 2017, it is basically the same year when we started to engage with her.

ADV NEL SC: And so this is the person that you identified as one of the perpetrators that was never prosecuted.

MR VAN DER MERWE: Ja, that is correct.

ADV NEL SC: Do you have any idea of this person's career after say 1994 where he was employed?

20 MR VAN DER MERWE: I stand to be corrected, I know that during exile he made a stint in Australia or New Zealand or somewhere, he returned from there afterwards and eventually being employed, it appears, with the Secret Service.

ADV NEL SC: In South Africa?

MR VAN DER MERWE: In South Africa, yes.

ADV NEL SC: Now this whole affidavit, and we will read the last couple of paragraphs, deals with the fact that this person, if it is him, never applied for amnesty.

MR VAN DER MERWE: No.

ADV NEL SC: And the family would want what?

MR VAN DER MERWE: Essentially we stand by what my mother's wishes was and we regret that it could never take place while she was still alive to give her some peace, that proper, that the law must take its course and that these identified suspects should have been
10 investigated properly. Most of them are dead now. And that a proper investigation and prosecution should have been executed.

ADV NEL SC: In conclusion, Mr van der Merwe, I know it is quite a few paragraphs, but I am going to ask you to read into the record paragraphs 24, 25, 26 and 27.

MR VAN DER MERWE: Sure.

"As a family we acknowledge the struggle against oppression and accept the necessity of our nation to move forward in the spirit of healing and reconciliation."

That was also our mother's wish. In that spirit my mother
20 expressed her willingness to let go on a mutual basis.

"Understanding that our collective and mutual progress depends on forgiveness and unity, however moving forward cannot mean excusing deliberate killings of innocent civilians outside of the ambit of the law and the process created through the TRC.

We must be mindful of the lessons we teach our children and the example that we leave for those who come after us. That such acts, whenever they fall outside the ambit of the law, must have consequences. If the killing of our father remains unsanctioned and justified by law it warrants a full and biased investigation and accountability. Only by confronting these truths we can ensure that our freedom rests on justice as well as forgiveness.

10

Given the apparent disregard of both the law and our family's loss with no meaningful representation made at the TRC, no proper investigation with the urgency and thoroughness it clearly deserved, that we are aware of these failures, creating a deeply troubling impression that the authorities, for whatever reason, may have delayed or deliberately stalled investigation and obviously then shielding these perpetrators, whether through neglect, political influence or abuse of power.

20

The patron of delay and inaction gives rise to the perception that the process was intentionally drawn out so that over time crucial evidence would erode and accountability would become impossible. In effect, justice for this murder has been denied and those responsible have been allowed to escape the

consequences of their actions.

Given this, although we as a family can understand the political realities and the need for transformation into a new democratic dispensation, we implore the Commission to include victims like us in their recommendations and to investigate why the investigations were not focused on apprehending, prosecuting these suspects who identified innocent civilians as legitimate targets of violence.”

10 ADV NEL SC: I think let us just read the last paragraph as well.

MR VAN DER MERWE:

"We unreservedly accept that the murder of our father and our consequential struggle to rebuild our lives is not unique and therefore implore the Commission to, with its recommendations, ensure equality before the law and the treatment of this death and those of the deceased who may have died at the hands of the government at the time.”

20 ADV NEL SC: Now I think we must just inform the Commission of something and that is usually counsel draft affidavits and hand it over and it is discussed, how did I get hold of this affidavit?

MR VAN DER MERWE: I prepared it and sent it to AfriForum and to your office.

ADV NEL SC: You prepared this and we settled it and we submitted it, that was your drafting.

MR VAN DER MERWE: Ja, that is correct.

ADV NEL SC: Commissioners, I have nothing further for this witness.

CHAIRPERSON: Thank you, Mr Nel. Mr Varney?

ADV VARNEY SC: Chairperson, we simply wish to express my sorrow for Mr van der Merwe's loss, we express our condolences on behalf of the family to you and your family. We regret that no inquest has been held in this matter and we hope that one will be set up expeditiously, but we have no questions for clarification for this witness.

10 CHAIRPERSON: Thank you.

ADV VARNEY SC: Thank you. Mr Gwala?

MR GWALA: Good morning, Commissioners and colleagues. We do not have clarification questions for this witness.

CHAIRPERSON: Thank you, Mr Gwala. Ms Rantho?

MS RANTHO: (Indistinct) on the issue of ... (intervenes)

CHAIRPERSON: Just raise your voice, Ms Rantho.

MS RANTHO: Can the Commissioners... Oh, yes.

CHAIRPERSON: Yes.

MS RANTHO: I think I ... (intervenes)

20 CHAIRPERSON: We can hear you now.

MS RANTHO: Thank you, Commissioners. I just want to clarify with Mr Kriel if I understood him correctly that failure to investigate happened during the Apartheid government, is that what happened? Failure to either investigate or prosecute it must have happened long before the TRC itself.

MR VAN DER MERWE: My apology, I cannot hear you very clearly.

MS RANTHO: What I am trying to clarify with you is whether failure on the part of government occurred even before the TRC Commission came into play, is that so? I just want to understand that it happened even long before.

MR VAN DER MERWE: I must apologise, can you maybe ... (intervenes)

CHAIRPERSON: Yes Mr Nel, come in.

ADV NEL SC: Can I pose the question?

10 CHAIRPERSON: Yes.

ADV NEL SC: Mr van der Merwe, what essentially is asked is if this failure to investigate this case properly, that happened before the TRC proceedings.

MR VAN DER MERWE: No.

ADV NEL SC: The murder happened before the TRC proceedings and there was no investigation up until the TRC proceedings, that is the question.

20 MR VAN DER MERWE: No, there was a significant investigation initially up to the point, as you have noted also from the communication or the statement from Captain Coetzee. At that time we had reasonably regular communication with the investigators and it was progressing well, but so I would say that at that point maybe after 1991 there was a decline in the investigation.

I have been informed through my brother Gerhard who had a close friend in Thabazimbi that the investigation file was overnight

collected from their offices without explanation and it was brought to head office in Pretoria.

So the local police could not take any further action on the matter subsequently, and I can mention that here that it was reported to me by my mother, she actually made a call to the house of Mr Mosibi at the time to try to solicit more information, her contribution to the investigation, and the wife of the suspect answered the call and when she mentioned her name as Ms van der Merwe, the wife immediately asked he why do you call her, do you want to kill my
10 husband? So we conveyed all that information to the police at the time. I would say that after the TRC there was little investigation going forward.

ADV NEL SC: I hope that is a response to the question.

CHAIRPERSON: Thank you. Ms Rantho?

MS RANTHO: Thank you, Commissioners. Just on what was handed up, we are trying to understand the person that is depicted on this document that was handed up this morning and we are trying to understand, your version is that this is China or Mosibi. I suppose China is Mosibi, is it not?

20 MR VAN DER MERWE: That was my understanding, yes.

MS RANTHO: And he worked for the NPA, like you say, even during 1991.

MR VAN DER MERWE: At that time, yes.

MS RANTHO: At that time which was specifically, you said it was a decision to decline prosecution in 1991, that is what I just heard from

you now when you said ... (intervenes)

MR VAN DER MERWE: I am not sure when he was employed.

MS RANTHO: No, I am trying to understand your version just to put forward now that in 1991 there was a decision to decline to prosecute.

MR VAN DER MERWE: I think the decision to decline to prosecute was only made in 1997.

MS RANTHO: In 1997.

MR VAN DER MERWE: Yes, that was after the TRC hearing.

10 MS RANTHO: Okay maybe sorry Mr Kriel, I missed.

COMMISSIONER KGOMO: It is at ... (intervenes)

MS RANTHO: You said 1991, what happened?

COMMISSIONER KGOMO: Sorry. It is at page 1222 and maybe if you did not quite follow the Afrikaans, the English, my note, I translated it for myself, that decision in English would read; from the Chief Clerk of the Attorney-General, I am directed by the Attorney-General to inform you that there is inadequate or insufficient evidence at this stage to prosecute any person in connection with the disappearance of your husband, yours sincerely. Then it is the Chief

20 Clerk, it is written to Ms S van der Merwe.

MR VAN DER MERWE: That is correct.

MS RANTHO: Thank you, Commissioners. I was trying to follow what the witness was saying about what happened in 1991 and my apologies, I referred to Mr van der Merwe as... It is Mr van der Merwe.

MR VAN DER MERWE: Yes.

MS RANTHO: My apologies. The witness was talking about the interaction between I think his mother and some Mosibi in 1991 and that is what I was trying to clarify as to I missed what happened in 1991.

MR VAN DER MERWE: No, not a, nothing in particular. All I am saying is that at that stage it appears that, I may be wrong about 1991, it may be about 1993 or just after the elections in 1994. So in general I referred to that period. It appears to us that after our new
10 democratic dispensation came about that there was significant lack of further investigation, if I can correct that.

MS RANTHO: Thank you, Commissioners. One last thing, Commissioners, related to the exhibit or the document that was handed up and we are trying to establish if the witness is saying the person that is depicted on this document is the same person referred to as China. We are just trying to understand. There is the ... (intervenes)

CHAIRPERSON: I thought he has already responded to that, Ms Rantho.

20 MR VAN DER MERWE: I have got a note here, and I do not know if that is in the, that was also handwritten by my mother from information that she gained that lists the people and on that note Felix Mochale, Mosibi and China appears to be the same person.

MS RANTHO: Thank you very much, Commissioners.

CHAIRPERSON: Thank you.

MS RANTHO: It is clear for us, thank you.

CHAIRPERSON: Ms Tsagae?

MS TSAGAE: No questions from our side.

CHAIRPERSON: Thank you. Mr Semenya?

ADV SEMENYA SC: Chair, Ms Rangata will just put some few questions to the witness.

CHAIRPERSON: Yes. Ms Rangata?

MS RANGATA: Thank you, Chair. I just want to make sure that I am audible. Thank you. Good morning, Mr van der Merwe.

10 MR VAN DER MERWE: Good morning.

MS RANGATA: How are you doing this morning?

MR VAN DER MERWE: Very well, thank you.

MS RANGATA: I can ... (intervenes)

MR VAN DER MERWE: Apart from a little bit of a lapse.

MS RANGATA: I can imagine under the circumstances and thank you so much for your evidence. I want to assure you that as evidence leaders we really, we are mindful and we acknowledge and recognise the pain that your family has gone through and 40 odd years up to today, your mother slept at 91 with a sore heart.

20 MR VAN DER MERWE: Yes.

MS RANGATA: Wanting to find out where the remains of her husband were and that has never happened.

MR VAN DER MERWE: Yes. Thank you for that. No, that has never happened.

MS RANGATA: I want to assure you that as evidence leaders we are

guided and this Commission is guided by the terms of reference that are very clear as to what our mandate is.

MR VAN DER MERWE: Yes.

MS RANGATA: And I have read in your statement that you would want this Commission to apply the law fairly as well and that the prosecution, sorry, the recommendations are not isolated. I want to make sure that the, the terms of reference are very clear and the issue of non-prosecution and non-investigation, as you would have noted from other victims and families, that it is non-isolated.

10 MR VAN DER MERWE: It is understood, thank you.

MS RANGATA: Across the board.

MR VAN DER MERWE: Ja.

MS RANGATA: And I must acknowledge your sincere acknowledgement to other families and there is many thousand families that are in the same position that you are.

MR VAN DER MERWE: No, thank you for that. We are quite clear on that matter, thank you.

20 MS RANGATA: Yes. I just want to ask you this question, you have indicated that there was meetings that you had with Colonel van der Schyff and it seemed from that discussion or from that meeting that there has been at all times identification of the perpetrators. Am I correct?

MR VAN DER MERWE: Sorry, just repeat that?

MS RANGATA: Identification of the perpetrators, even at the time when you spoke to Colonel van der Schyff.

MR VAN DER MERWE: The identification of the perpetrators?

MS RANGATA: Yes.

MR VAN DER MERWE: Yes, that is correct.

MS RANGATA: Yes. That is referred in paragraph 17 of your statement.

MR VAN DER MERWE: Ja, it was however communicated that they have mainly passed away, but ... (intervenes)

MS RANGATA: You say in that paragraph; Colonel van der Schyff has informed me that she and a prosecutor interviewed one of the
10 suspects in our father's killing and reduced his version to writing.

MR VAN DER MERWE: Ja, that is correct.

MS RANGATA: That is correct. Have you ever had sight of that statement?

MR VAN DER MERWE: No.

MS RANGATA: You have never had sight.

MR VAN DER MERWE: No.

MS RANGATA: You have also mentioned that there was a request for an inquest to be opened and you have mentioned under your evidence that you were not, are you, did I get you correctly that it was
20 declined, the inquest?

MR VAN DER MERWE: No, it is my understanding that a decision was not made finally at that point.

MS RANGATA: Okay.

MR VAN DER MERWE: Only that the documentation was submitted and prepared. I think it is to a Mr Singh.

MS RANGATA: Yes.

MR VAN DER MERWE: I stand to be corrected.

MS RANGATA: Yes.

MR VAN DER MERWE: To decide whether it is suitable to refer it to the Magistrate for a decision.

MS RANGATA: All right. One last question from me, from your personal knowledge do you know any particular reason why this case was never investigated or adequately? You have said in your statement that even from 1996 when there was a decline to
10 prosecute, that there was insufficient evidence and you were still being told that at this stage some few, many years later. Do you know, do you have any personal knowledge as to why failure to investigate?

MR VAN DER MERWE: We do not have any personal knowledge and that is why I said in my statement that it creates an impression that these suspects were shielded. I can say, and I was not personally witness to that, I have an aunt that lives in Panema at the moment, it is my mother's younger sister, she is also about 80 years old, when I told her that we will make representation at this
20 Commission she mentioned to me that my mother was approached after the TRC by a person, I think it was Ronnie Casroz, and through a lawyer they wanted to meet with her to discuss the case outside of the TRC, which she has declined and which she has indicated that people must go to the TRC so that it is public, that it can be heard truthfully.

Subsequent to that I can mention that she once, after we received this communication in 1997, received a threatening phone call and because of that she said to us we must please not engage further on the matter other than directly with the investigation officers, because this appears to be quite a dangerous situation. So at the time we, and that is why we actually lapsed until 2017 when she was quite aged to further follow up on this.

MS RANGATA: Thank you very much for that. We will make that follow-up from the investigation side.

10 MR VAN DER MERWE: Thank you.

MS RANGATA: Thank you.

MR VAN DER MERWE: Thank you.

MS RANGATA: Chair, there are no further questions from our side.

CHAIRPERSON: Thank you, Ms Rangata.

MS RANGATA: Thank you.

CHAIRPERSON: Commissioner?

COMMISSIONER KGOMO: Mr van der Merwe, you pointed out or your counsel pointed out that there are suggestions that your mother may have stated that she does not require any prosecution. Now it
20 also surfaced a few days ago that such suggestion that doctor or Reverent Chikane would not have required any prosecution. I just want to put it on record that a victim does not have any choice.

The prosecution is by the state on behalf of the people, whether well meaning as it may have been, even if your mother had said she does not require prosecution, the state must still prosecute,

whether or not Reverent Chikane may have said that he does not require prosecution, the state must still prosecute if the state believes that there is a prosecutable case. I just wanted you to go away with that knowledge.

MR VAN DER MERWE: Thank you for that, Commissioner.

COMMISSIONER KGOMO: As the law stands.

MR VAN DER MERWE: It makes it clear. Thank you.

COMMISSIONER KGOMO: Thank you.

CHAIRPERSON: Mr Nel?

10 ADV NEL SC: Madam Chair, I have a question of clarification on a question of clarification. There was a question asked if the person was identified as with the name China and I want to refer the witness and the Commissioners to the EXHIBIT A that we handed in. If one reads the entries on the right hand side of the photograph then... Well, let me do it through the witness. There is an indication of most relevant entries and there is one from a Christina Kennedy. What does it read, sir?

MR VAN DER MERWE: Sorry, are you talking about this?

ADV NEL SC: On A.

20 COMMISSIONER GABRIEL: Under most relevant, Christina Kennedy.

MR VAN DER MERWE: Ja, she is saying there; China, is that you?

ADV NEL SC: Then this person responded by saying?

MR VAN DER MERWE: That is me.

ADV NEL SC: Thank you. That was my only question of clarification.

CHAIRPERSON: Thank you, Mr Nel. Thank you.

Mr van der Merwe, we express our sadness on the loss of your father and appreciate that you have made yourself available to come and give evidence before this Commission. You are now excused as a witness.

MR VAN DER MERWE: Thank you, Commissioner, thank you for your time.

ADV NEL SC: Madam Chair, we will also lead the next witness. May I request half an hour adjournment just to set up the next witness?

10 CHAIRPERSON: We will adjourn for tea and reconvene at 11:40.

ADV NEL SC: As you ... (intervenes)

CHAIRPERSON: At 12:40, 11:40, yes.

ADV NEL SC: As the Commission pleases.

[End of recording]

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Mr Nel.

20 ADV NEL SC: May it please the Commission. Commissioners we apply to all the evidence of Mr Carl Martin Kriel. We apply to lead the evidence of Mr Kriel and we received an order that we are entitled to lead his evidence. Mr Kriel is available and Mr Kriel is ready to take the oath.

CHAIRPERSON: Thank you. Mr Kriel, please state your full names for the record.

MR KRIEL: Ma'am Chair, my name is Carl Martin Kriel and I am

willing to take the oath.

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

MR KRIEL: The oath.

CHAIRPERSON: The oath.

MR KRIEL: That is correct.

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 your right hand and say, "So help me God".

MR KRIEL: So help me God.

10 CHAIRPERSON: Thank you. Mr Nel?

ADV NEL SC: Thank you, Ma'am Chair. Mr Kriel, you are the CEO of AfriForum, is that correct?

MR KRIEL: Ma'am Chair, it is correct.

ADV NEL SC: And since when have you been the CEO of AfriForum?

MR KRIEL: AfriForum was founded in 2006 and I have been the CEO ever since.

ADV NEL SC: What is AfriForum?

20 MR KRIEL: AfriForum is a civil rights organisation. We have a two-pronged approach. On the one hand, we are a watchdog organisation and on the other hand, we are a community building organisation. With regard to the watchdog part, we litigate quite a lot and have public campaigns against the bad service delivery in municipalities with regard to corruption.

But a core business of ours is specifically to focus on the protection of constitutional rights and other civil rights and constitutional issues such as equality before the law and the rule of law. And the fact is, that is also why we are here today, is to protect the concept of equality before the law. That is also why we appointed Advocate Gerrie Nel and his team at the AfriForum Private Prosecution Unit. Because we have seen in certain cases there are selective prosecutions or a failure of the victims. Many cases, such as cases of domestic violence.

10 The second part, which is less relevant today, but probably the most of our activity, we spend 80 percent of our resources and that is making sure that we build strong communities where communities can live in dignity. Because of that, we have 160 branches as well as 177 neighbourhood watches that functions in the framework of the law. And we fix roads, potholes, we further cut grass and all those things.

 And then we also have, on the basis of mutual recognition and respect, have agreements with various traditional leaders so that we have joint agricultural projects. That is also part of building self-
20 sufficient communities.

ADV NEL SC: Mr Kriel, AfriForum is a members-based organisation.

Am I correct?

MR KRIEL: That is correct.

ADV NEL SC: How many members do you have?

MR KRIEL: We have approximately 300 000 members.

ADV NEL SC: Now, Mr Kriel, in preparation for your submission today, you have submitted an affidavit. Do you have the affidavit with you? I would like you to just turn the page from page 1229, but importantly at page 1241. Is that your signature?

MR KRIEL: That is correct.

ADV NEL SC: And you confirm the contents of this affidavit?

MR KRIEL: Yes, I confirm it.

ADV NEL SC: Earlier on, in October last year, you submitted a submission, a sworn submission, which is, in effect, exactly the same
10 as this substantive affidavit.

MR KRIEL: That is correct.

ADV NEL SC: Now, Mr Kriel, during your evidence today, you discussed three matters. What are those three matters?

MR KRIEL: Well, the one is the matter of a landmine explosion where Mr Dirk van Eck lost his wife and two of his children in 1985. The other one is the Ellis Park bombing incident. And then the third one is the case of the van der Merwe family. And the Commission saw the evidence just now of Mr Cilliers van der Merwe.

ADV NEL SC: Mr Kriel, before we deal with more of the facts of the
20 Van Eck matter, you deal with the essence of your evidence at paragraph six, page 1230.

MR KRIEL: That is correct.

ADV NEL SC: Let us just read paragraph six to indicate what the essence of your affidavit is.

MR KRIEL:

"The essence of my affidavit is to implore the Commission to ensure compliance with one of the basic principles of justice, namely equality before the law."

Do you want me to read it?

ADV NEL SC: No, that is fine. But this stance of yours is not a new stance as far as equality before the law with TRC matters concerned.

That is not something new, am I right?

MR KRIEL: That is correct.

ADV NEL SC: It goes back to September 2007.

10 MR KRIEL: That is correct.

ADV NEL SC: Please explain to the Commission how you became involved and what your stance was since 2007.

MR KRIEL: Ma'am Chair, Commissioners, in 2007, it was just one year after AfriForum's formation, we were approached by Mr Dirk Van Eck to help him to ensure equality before the law. As I have mentioned, Mr Van Eck, on the 15 December 1985, lost his family in a landmine attack. And Mr Van Eck said he wanted equality before the law. If I can just give a background on why he wanted that.

20 In 1985, on the 15 December, he, together with his friend, Koos De Nysschen, and their families, went on a game drive on a farm near Messina. Mr Van Eck also then testified before the TRC, and I had a lot of discussions with him. We spoke in 2007, and he gave us a mandate to act on his behalf.

The details of this incident is, on that day, when they went for a game drive, they went over a landmine. The right rear wheel

was the one that detonated the landmine. The car was flung into the air and caught fire. Mr De Nysschen, Koos de Nysschen was the driver. Mr Van Eck was sitting in the passenger side with his baby son on his lap when the incident happened. On the back of the bakkie was Mr De Nysschen's mother, his wife, and two young children. And also with regard to Mr Van Eck, his wife, Kobie, 34 years old, was on the back of the bakkie. Also, Nel-Marie, an 8-year-old daughter of Mr Van Eck, and then Nasie Van Eck, a 2-year-old boy, was on the back of the bakkie.

10 When this explosion happened, Mr Van Eck lost consciousness, and when he woke up, he said "That he looked into his baby's eyes, and thankfully his baby looked back at him and seemed not to have a serious injury". Next to him, Mr Koos De Nysschen had blood all over his face, and his vehicle caught fire. Mr Van Eck then wanted to go leave the car, but he could not open the door. He then went through the window, took his baby son, and put the baby son far away from the car. Because according to his testimony also before the TRC, they just filled the buggy with fuel, and he was scared of an explosion.

20 He then started looking for his family. He then found his wife, Kobie Van Eck, 34 years old, as well as Marie De Nysschen, the mother of Koos De Nysschen. Their bodies were mutilated, and they were dead. He then found his daughter, Nel-Marie, 8-year-old, as well as her friend. Both of them, their bodies were mutilated, and they were dead. He then found Kobus De Nysschen, the youngest

son of his friend. The boy was also mutilated, and he was burnt quite harshly.

He then went to Mr De Nysschen and told him, your child is mutilated, badly burnt, and Mr De Nysschen said, well, "Then it would be better for him to die", and indeed he then died. Lastly, Mr Van Eck looked for his 2-year-old son, Nasie, and he could never find the remains of Nasie. And it is quite moving if one goes to look at the TRC report on that.

Now, what is the interest of this Commission? Mr Van Eck,
10 when he approached us, said "He wanted to close the book of the past", similar to what we have heard from the Van Merwe family, but then something changed. In 2007, and that is why he approached us, the National Prosecuting Authority decided to prosecute the former Minister of the National Party, Adrian Vlok, as well as the former Commissioner of the police, General Van Merwe. And that prosecution, what Mr Van Eck argued, is that in that case, and the Commissioner also mentioned the case of Reverend Chikane. Reverend Chikane's socks were poisoned, you will know that better than I do. But it was not individually poisoned by Mr Vlok and
20 General Van Merwe. They were higher up in the political chain, taking decisions for these kind of things to happen. And Mr Van Eck said, "If there is going to be prosecutions, as in the case of Vlok and Van Merwe, then he believed that those people that were responsible for specifically the death of his family should be prosecuted".

At the TRC, the two people that planted the landmine received amnesty, and he actually accepted that. But he said "In the same way with regard to Vlok and Van Merwe, the decisions were taken higher up". And in our discussions when we started investigating it, it was actually common cause in various open sources that from 16 June 1985 to 23 June 1985, the ANC leadership held a conference in Kabwe in Zambia. And at that conference, it was decided to [indistinct] the distinction between so-called hard and soft targets. Meaning that civilians could also be targeted, as we
10 have seen in the landmine. They also decided then on a landmine campaign called Operation Setswayo.

In that landmine campaign, well, let me also state they decided on this landmine campaign even though the ANC in 1980 signed Protocol one of the Geneva Convention, which says, "Landmine attacks that can target civilians is prohibited". And we know now that after Kabwe, we have seen 250 people dying in ANC bomb attacks. We have seen 30 landmine attacks, of which Mr Van Eck was one. 24 civilians died, amongst them black people that were going to the church in a taxi detonated a landmine.

20 So we have seen all that, and Mr Van Eck's incident happened just less than seven months after the Kabwe conference. And in that sense, it is a long answer, but that is when Mr Van Eck said, well, "I would also then want those that were responsible to be prosecuted, those in the leadership positions" and he of course then

knew that there were 37 senior ANC leaders that did not get amnesty at the TRC.

COMMISSIONER KGOMO: Yes, so the trigger, as you say, is to be found at paragraph 19 of the statement.

ADV NEL SC: Indeed, that is paragraph 19.

COMMISSIONER KGOMO: Yes, I see.

ADV NEL SC: We will deal with all the paragraphs, Commissioner. But Commissioner Kgomo, you are 100% correct, it is discussed in paragraph 19. Mr Kriel, we know what the mandate of this particular
10 Commission is. And there is been lots of evidence led about possible political interference in prosecution of TRC matters.

Now, in paragraph nine, you deal with political interference and your view on political interference in these prosecutions.

MR KRIEL: Well, I believe there was a strong case. Of course, it is for this Commission to decide if there was political interference. But I think there are questions that need to be answered with regard to why certain prosecutions were not done. The other families that are represented here, they have stated their case.

What I can say is with regard to Mr van Eck and with regard
20 to the van der Merwe family, I have no doubt that there was political interference. But I will come to the specific examples of that further in my testimony.

ADV NEL SC: So, in paragraph nine, you deal with the Calata papers, and what is your view on the evidence that was led so far?

MR KRIEL: Well, I think in terms of, I think there is a lot of, from our side, a lot of empathy in terms of what we have seen in the Calata family that to this day have not found, or the Simelani family that have not found the remains. As well as the Calata family has not received answers.

And I think the question is just, there was political interference also in terms of our case with regard to Mr Dirk van Eck and van der Merwe. Also, in the Calata papers, there are also examples of referring to what we are stating.

10 ADV NEL SC: Let us deal in paragraph 12, Mr Kriel, with the TRC finding with regards to the ANC. And you quote the finding of the TRC. Would you just read that into the record, please?

MR KRIEL: Yes. In the official finding of the TRC, it was stated:

"The ANC to be responsible for a range of gross human rights violations arising out of unplanned operations. The bombing of public buildings, restaurants, hotels, and bars. The landmine campaign in the Northern and North Eastern parts of South Africa."

20 And the landmine campaign, we believe that Mr van Eck, as I have mentioned, and the death of his wife and two children fall directly under these gross human rights violations referred to.

ADV NEL SC: Mr Kriel, do you know of any prosecutions of any of senior ANC members for decisions they have taken?

MR KRIEL: No. Our experience is that they have been shielded from prosecution, and it even happens still today. We have now seen that

the National Prosecuting Authority has put in a lot of effort to appoint advocates to look at TRC cases. But none of the cases against the ANC members or even today we still see that inequality before the law.

ADV NEL SC: Let us just deal with paragraph 21, where the NPA spokesperson was interviewed. And he gave this version of why there was no prosecution in this regard.

MR KRIEL: Yes, I can quote him in that paragraph.

ADV NEL SC: Commissioners that is page 1233.

10 MR KRIEL: Mr Ngweba said to a journalist:

"The NPA does not know who did what or who gave orders. There is simply not enough evidence to draw up a charge sheet."

And the problem with this is the reason why you should have an investigation is to get enough evidence. You cannot stop the investigations because you say there is no evidence. And I think this is the problem. Later I will indicate how investigations were stopped. So, unfortunately, this statement, if we are saying this Commission looks at why there were not prosecutions, if there is not even
20 investigations, that is also a reason why there is not any prosecutions.

ADV NEL SC: Mr Kriel, I think it is an opportune, in preparation of your evidence and your statement, you had the opportunity to meet with Mr Paul Fick.

MR KRIEL: That is correct.

ADV NEL SC: Please tell the commission about that meeting and his views.

MR KRIEL: Yes, Advocate Fick worked for the National Prosecuting Authority before his retirement. He is now 76 years old. But Advocate Paul Fick was appointed by Dr De Oliveira to investigate specifically the TRC cases.

ADV NEL SC: Paragraph 27. Ja, sorry.

MR KRIEL: I thought I was making a mistake.

ADV NEL SC: I am still on the right page with paragraph 57.

10 MR KRIEL: What happened in the discussions with Advocate Paul Fick, he informed me that he was appointed after the TRC recommendations to investigate specifically the cases referred to by the TRC regarding gross human rights violations by ANC members. And he was in that process. He also had two policemen assisting him, Mr Britz and Mr Nel, in that investigation.

What is worrying, and I think of relevance to this Commission, Mr Bulelani Ngcuka was the head of the National Prosecuting Authority in those days. He was accompanied by Advocate Vusumuzi Pikoli, who was the Director General of Justice.

20 And they came to Advocate Paul Fick's office with a letter signed by Mr Ngcuka saying, "That there should be no further investigations by Advocate Fick and his team and that those dockets should be handed over". And for us, if we, in terms of the mandates of this Commission, is that those dockets were simply taken away.

After that, they were never investigated. Those dockets also include specifically the case of Mr van der Merwe that we have heard this morning. So it was stopped then, and only later on, the case has Mr van der Merwe testified there was a brief look at it. But the other dockets are still locked up in Visagie Street in Pretoria, in the [indistinct] Joubert Building. There is inventory of those dockets, but they are lying idle. And even now, the NPA is not going through those dockets to make sure that there is also prosecutions in that regard.

10 ADV NEL SC: Mr Kriel, so have you had access to any of the case dockets that you are referring to?

MR KRIEL: No, unfortunately not, but we would have been good if we could to make sure that justice prevails.

ADV NEL SC: Now, let us refer, you have testified, but let us just refer the Commission to paragraph 29 of your affidavit. It is page 1236 of the record. You had a consultation with Colonel Vreugdenburg is that correct?

MR KRIEL: Yes, after my discussions with Advocate Fick, we were contacted actually by Colonel Vreugdenburg when that came to the
20 fore, that we were going to take part in the work of this Commission. He then contacted us to give us further information.

ADV NEL SC: Colonel Vreugdenburg is he still an active policeman, or is he retired?

MR KRIEL: Well, if I correctly, he is retired.

ADV NEL SC: Now, in your discussions with Mr Fick, and in a question about the status of his investigations at the time, did he refer to a specific investigation, I refer you to paragraph 15 of your... (intervenes)

MR KRIEL: Yes, Advocate Fick referred to specifically the Ellis Park bombing, and he said, "They were making a lot of progress, and they were at the point where they could think of prosecution". And at that point it was stopped because these dockets were removed from them and they were given instruction not to do any further investigations in
10 that regard.

ADV NEL SC: Now, Mr Kriel, you have now indicated that you never had access to the dockets. Why would it be important to have access to those case dockets? What would we be able to establish if one has access to the case dockets?

MR KRIEL: Well, I think we would be able to establish what proof is available, what further investigations need to be done, so that there can be progress in those cases. If you are not going to let anybody have access to those dockets, those cases will lie idle, and never will those victims be able to get answers.

20 ADV NEL SC: Now, Mr Kriel, I am going to refer you to paragraph 24 of your affidavit. That is page 1234. Dealing with political interference, there is a reference to a statement made by Advocate Vusumuzi Pikoli. Just read the portion that we quoted there.

MR KRIEL: Yes. Specifically, his exact words in the statement that he did for the Calata group. He said:

"In early 2006, then Commissioner of Police, Mr Jackie Selebi, objected to Advocate Ackerman's participation, claiming that Ackerman intended to prosecute the leadership of the ANC."

ADV NEL SC: So why is that significant?

MR KRIEL: Well, if this Commission looks at political interference or any interference prohibiting investigations or prosecutions of ANC members, or any member, of course, also the members of the security forces, here you have a current Commissioner of Police
10 interfering and showing an attitude of saying, no, no, we do not want him because we do not want anybody to act with regarding to gross human rights violations by the ANC.

ADV NEL SC: Now, I am going to lead you now to page 1235, paragraph 26. And that also indicates the position of the NPA towards these dockets that you are referring to, where Mr Vusumuzi Pikoli is also quoted in paragraph 72 of his statement. Can you please read that quote into the report?

MR KRIEL: Yes. He stated:

20 "I reminded the Minister that my predecessor has satisfied himself that there was no basis for the leadership of the ANC to be investigated. And that he then briefed the then Minister as well as the President in that regard."

ADV NEL SC: And what is your view of this particular stance of Mr Pikoli with regard to any further investigations into these matters?

MR KRIEL: Well, the fact is, you do investigations to find if there is a basis for further action. You cannot say there is no basis and then not even investigate. If I may add, Ma'am Chair, with regard to that Van Eck issue I referred to in 2007 when he gave us a mandate. We then wrote a letter to Advocate Pikoli to say, well, there is now the prosecutions of van der Merwe and Vlok, that they should also now be looked at those people involved in giving instructions for the landmine attack that eventually led to that landmine. And we also got the similar answer from Advocate Pikoli saying, "No, there is no
10 evidence or basis to take the matter further". So I think the same issue was he did not even himself look at what the evidence was. He just relied on the decision of his predecessor, which one can say that might happen, but we now know that his predecessor removed the dockets that should have been used to see if there are facts available.

ADV NEL SC: May I refer you to paragraph 33 of your affidavit, 1237 of the record, where you quote Mr Ntsebeza, who we all hope would also be able to testify before this Commission. Can you just read that quote from Mr Ntsebeza?

20 MR KRIEL: Yes, in that report, Advocate Ntsebeza wrote:

"The consequences of this failure have manifested themselves in the vast number of cases that have now become irredeemable. Memories have faded, witnesses have died, evidence that should have been archived has over time got lost or destroyed."

I believe he is correct. We are concerned that also the evidence against the ANC-37 has been deliberately lost or destroyed.

ADV NEL SC: Just before we carry on, Mr Kriel, I think it is important to indicate to the Commission your stance on atrocities committed by the security forces as well as the ANC. What is your stance on the atrocities committed during this period?

MR KRIEL: Well, gross human rights violations are never acceptable and atrocities cannot simply be ignored. So, we condemn any atrocity that has taken place.

10 ADV NEL SC: And if you call for prosecution, does it also affect the matters against the ANC as well as the matters against the security forces?

MR KRIEL: Because we ask for equality, we feel before the law, there can be three routes that would go. In the case of Mr van Eck, his stance was that he was willing for the book of the past to be closed. The second route that might be followed is the one to say, well, we are going to prosecute now. And of course, there is also another route. But both of these have negative consequences. If we are going to say we are simply going to close the book of the past,
20 the van der Merwe family will not get answers. The Calata family will not get answers.

So, in a sense, for me, it is easy to say, because not closing the book of the past, it would not be good for reconciliation to see, that is my personal view, that many in this room might disagree. We do not believe it will be good for reconciliation to see elderly ANC

leaders in the dock. So, there is also a third option to say, but that is for the politicians to decide, to say we need to find answers. Make it possible for those that have not even looked at disclosures, that they do, again, through a process.

ADV NEL SC: Mr Kriel, I am referring you to paragraph 34 of your affidavit, where you also deal with a further part of the consultation with Colonel Vreugdenburg, where he referred to Advocate McAdam's position as far as the prosecution of these matters are concerned.

10 MR KRIEL: Yes, Colonel Vreugdenburg was also mentioned earlier in Mr van der Merwe's testimony, in terms that he also spoke to the family. But Colonel Vreugdenburg indicated that there was no appetite from Advocate McAdam to prosecute these matters. He was not looking at the ANC atrocities. He indicated that his focus would be specifically on those former security force members that made themselves guilty of gross human rights violations.

ADV NEL SC: Perhaps, I think you testified about it, but I think we should just make sure that it is entered into evidence. Paragraph 37 of your affidavit. Paragraph 37 of your affidavit indicates also:

20 "That it was confirmed that the van der Merwe docket was one of those dockets that were removed from Advocate Fick's' office."

MR KRIEL: Yes, if I can read that paragraph.

"Vreugdenburg confirmed that the van der Merwe docket was one of those transferred to 218 Visagie Street."

ADV NEL SC: Where they currently are.

MR KRIEL: Yes, that is correct.

ADV NEL SC: Mr Kriel, I have to go back now to paragraph 34, and you also received from Colonel Vreugdenburg indication of the position of the NPA related to General Nyanda.

MR KRIEL: Yes, General Nyanda received amnesty at the TRC, where he acknowledged or took responsibility for certain of these atrocities. But the unfortunate thing is the NPA then argued, or some in the NPA argued that he has already taken responsibility, so nobody
10 else should, and I think that cannot be true. If five people commit a crime and one takes responsibility, you cannot say the rest, the other four has indemnity. So, this for me is actually what we have seen, that they look for an excuse not to go down this road of also looking at gross human rights violations committed by ANC.

ADV NEL SC: Mr Kriel, why is the van der Merwe matter that was discussed earlier this morning, why is that important?

MR KRIEL: Well, for me personally, but my personal feelings are not relevant here. But personally the fact that the family could not find closure with regard to the remains not being found. But I think the
20 relevance is that we know who the perpetrator is, that he is still alive. A perpetrator that did not apply for amnesty. And a perpetrator that is being protected from prosecution. And I think that falls squarely within the mandate of this Commission.

ADV NEL SC: Mr Kriel, paragraph 42 of your affidavit, and let me just supply a basis for this paragraph. Early on in this Commission, there

was argument about AfriForum, not by AfriForum, but about AfriForum, indicating that AfriForum acted for members of the security forces and or people that made themselves guilty of human rights abuses. Is that true? Do you hold brief on behalf of anyone?

MR KRIEL: It is unfortunate that such a statement would be made, an indication that a specific person did not take the trouble of reading our submissions to this Commission. We only hold two briefs. The one in 2007, where Mr van Eck gave us a mandate, and the specific one from the van der Merwe family. And those are the two issues.

10 Why we are here, and to bring forth to the fore, we hold no brief from anybody else.

ADV NEL SC: We make it clear in paragraph 42:

"That AfriForum or yourself hold no brief on behalf of any security force members being probed."

MR KRIEL: No. But... I say so.

ADV NEL SC: But you follow it up with a but. Can you just read that but into the record?

MR KRIEL: Let me just find the but. You say it is in paragraph 42.

ADV NEL SC: 42 ja. It is a AfriForum or:

20 "I hold no direct brief on behalf of any security force members being probed"

And then you say "But".

MR KRIEL:

"But we strongly believe in the principle of fairness and equality before the law. This includes fair investigation

and prosecution of all parties that may have committed atrocities, including murder. I cannot remain silent about the transparent failure to treat the atrocities committed by everyone equally. The excuse that the docket against the ANC leadership lack sufficient evidence to prosecute is a transparent attempt to mask the State's unequal treatment of TRC cases."

ADV NEL SC: Okay good. Thank you, Mr Kriel. Then, perhaps in conclusion, Mr Kriel, that would summarise your submission to the Commission. Would you be so kind as to read into the record the contents of paragraphs 44, 45, and 46?

MR KRIEL: I will do so.

"It seems blatantly unjust that the apartheid state operatives responsible for the heinous crimes committed against the political activists be prosecuted while political activists who coordinated and ordered heinous acts to be committed against civilians, including children, escaped accountability. All parties had an equal opportunity to seek indemnity and avoid prosecution. Those who failed should all be investigated and prosecuted. If this has become impossible, the only alternative is to close the book of the past as far as criminal prosecutions are concerned. As an inalienable principle of equality before the law, I implore this Commission, the Commission, to ensure

that any recommendations made also benefit the victims of gross human rights violations committed by the ANC and other groups that participated in the armed struggle."

ADV NEL SC: Perhaps in conclusion, Mr Kriel, on behalf of yourself and AfriForum, you condone no atrocities committed in the past by anyone.

MR KRIEL: No.

ADV NEL SC: And they should all be treated equally.

10 MR KRIEL: Yes, and I think that is in line with our whole concept of equality before the law, and that is the principle that we act on behalf, that we receive the mandate from Mr van Eck. It is also the principle that we receive the mandate from Mr van der Merwe and his family.

ADV NEL SC: Mr van Eck is not with us anymore.

MR KRIEL: No, he unfortunately died a few years back before getting answers in this regard. But I spoke to his family and they respect the fact that he gave me and the AfriForum a mandate, so we continue with the course that he asked us to pursue.

20 ADV NEL SC: Thank you. Mr Kriel, Commissioners, I have no further questions for this witness.

CHAIRPERSON: Thank you, Mr Nel. Mr Varney.

ADV VARNEY SC: Thank you, Chairperson. Chairperson, we just have a few questions by way of follow-up. Mr Kriel, I do not know whether you heard the opening statement on behalf of the 25 families known as the Calata Group. But we did place on record that those

families did not wish to see any discrimination when it came to the pursuit of prosecutions and justice, and that there should be equal treatment in relation to the follow-up of past atrocities. Do you recall that?

MR KRIEL: Yes, and from our side, we are thankful for that stance taken by those families.

ADV VARNEY SC: Now, I am not putting this up as any excuse, but do you accept that under apartheid, the bulk of the prosecutions that took place, so-called political prosecutions, were directed against
10 those on the anti-apartheid side?

MR KRIEL: Yes, the then government prosecuted those that they believed acted against the State and the bulk of them were, of course, from the organisations that you referred to.

ADV VARNEY SC: I just want to refer you to your paragraph seven. It reads as follows:

20 "My interest in the debate over prosecutions flowing from the recommendations of the Truth and Reconciliation Commission dates back to September 2007, when, acting on behalf of Mr Dirk van Eck, I in my capacity and acting on behalf of AfriForum, implored the State to either, in the interest of national unity and reconciliation, cease all prosecutions as recommended by the TRC, or to ensure equality before the law to prosecute all those individuals, especially the so-called ANC 37 who failed to get amnesty."

Close brackets:

"Who committed gross human rights violations."

Can I ask, is it still the position of AfriForum that on the one hand there should either be no prosecutions, but if there are to be prosecutions, then it should be done equally?

MR KRIEL: That is correct, Ma'am Chair. That was also the position we took in those days was the firm position of Mr van Eck and the position he gave us a mandate to promote.

ADV VARNEY SC: Now, I get the impression from your statement
10 and your evidence-in-chief that you take the view that at least in the post-apartheid era, so from 1994 onwards, that the bulk of the prosecutions have been against those on the former government or apartheid side. For example those in the apartheid era security forces. Am I correct in getting that impression?

MR KRIEL: No, we know that there are many of these cases that there has been no prosecutions. What we have seen now lately is a move in terms of prosecutions with regard to a number of these enquiries, if I remember correctly, for instance the Rodriguez case, so we are only seeing it now. The bulk of the prosecutions did not
20 happen earlier because there were really no prosecutions.

ADV VARNEY SC: Yes, we are busy doing research but we have already alluded to figures in the Calata Affidavit that at least in the 1990s, post-94, it does seem that the majority of cases that were taken forward were against persons aligned to the former UDF and the ANC. Are you aware of that?

MR KRIEL: No, I am not privy to that information.

ADV VARNEY SC: No further questions?

CHAIRPERSON: Thank you Mr Varney. Mr Gwala.

ADV GWALA: Thank you Commissioners, we have no clarification questions whatsoever.

CHAIRPERSON: Yes, Ms Rantho.

ADV RANTHO: Thank you Commissioners, good afternoon Mr Kriel.

MR KRIEL: Good afternoon.

ADV RANTHO: Mine just relates to paragraph 13 of your affidavit
10 where I wanted to understand because your affidavit says:

"That you have no interest in who may have been
subjected to political interference."

That is on the part of the SAPS and NPA.

MR KRIEL: I missed the paragraph.

ADV RANTHO: 13.

MR KRIEL: One... (intervenes)

ADV RANTHO: Three, one, three.

MR KRIEL: Okay.

ADV RANTHO: Where you indicate that your approach is that you
20 are not interested in which members of the SAPS or NPA colluded
with anyone to prevent or, I mean the investigation or prosecution, do
you see that one?

MR KRIEL: Yes.

ADV RANTHO: So we want to understand then in terms of the terms
of reference of this Commission, ideally what is it that you are

expecting if you have no interest in terms of those that are fingered because you would have seen that terms of reference specifically pay a particular attention to SAPS and NPA. I just need to clarify as to what is meant by paragraph 13.

MR KRIEL: Yes, I think the issue here is our broader concern that prosecutions did not take place and I think that for this Commission those issues might be relevant to give the details in that regard. Our main focus is that there was no prosecutions with regard to the van der Merwe case and also not with regard to the van Eck case. I think
10 the broader issue is that there was a reluctance to prosecute and I think in terms of this Commission, further investigations can be done to whom was specifically responsible.

ADV RANTHO: Thank you Commissioners, that is all from us.

CHAIRPERSON: Thank you Ms Rantho. Mr Semenya.

ADV SEMENYA: Chairperson Mr Nalane will take some questions.

CHAIRPERSON: Thank you. Mr Nalane.

ADV NALANE: Thank you. Morning or good afternoon

COMMISSIONER KGOMO: Mr Semenya, maybe if you switch positions.

20 MR SEMENYA: Yes, thank you.

ADV NALANE: Good afternoon Mr Kriel.

MR KRIEL: Good afternoon.

ADV NALANE: You would of course remember what the terms of reference of this Commission are. You have read about the terms of reference.

MR KRIEL: That is correct.

ADV NALANE: And one of the terms, just for convenience sake, it says:

"Whether, why and to what extent and by whom efforts or attempts were made to influence or [indistinct] members of the [indistinct] Police Service or the National [indistinct] Authority to stop investigating or prosecuting terrorist cases."

MR KRIEL: That is correct.

10 ADV NALANE: So one of the issues that the Commission will have to do is to receive information about who, what, whether. Correct?

MR KRIEL: That is correct.

ADV NALANE: So it is important for the work of the Commission to be able to be assisted by people like yourselves if you are able to identify who, so that you bring that information forth for the Commission as well.

MR KRIEL: That is correct.

ADV NALANE: Now I see that you say your main focus are three entities. You said three persons or entities. Mr Van Eck, Mr Van der
20 Merwe. Correct?

MR KRIEL: That is correct.

ADV NALANE: When I read your affidavit, most of the focus is on the ANC. I get it, the ANC-37. You spend quite a amount of time referring to the ANC-37 cases, correct?

MR KRIEL: That is correct.

ADV NALANE: So the ANC-37 is one of the focus of your affidavit and submissions.

MR KRIEL: That is correct.

ADV NALANE: It is important because the ANC-37 features even in the Calata affidavit. So it is something that needs to be investigated really if it has any impact on the terms of reference. You agree?

MR KRIEL: I agree.

ADV NALANE: And if I read your affidavit and statements, you suggest that something untoward was done with the ANC-37 as you
10 call it.

MR KRIEL: That is correct.

ADV NALANE: You suggest that there was no prosecution and that there should have been prosecutions.

MR KRIEL: That is correct.

ADV NALANE: Now I think it is important for the Commission in order to look at your views, your submissions, that the matter be placed properly in context of the ANC-37 to see where it fits in the bigger scheme of terms of reference. You agree?

MR KRIEL: I agree.

20 ADV NALANE: Now there is a Advocate McAdam to whom you have referred to in parts of your affidavit and in your oral evidence.

MR KRIEL: Advocate, sorry?

ADV NALANE: McAdam.

MR KRIEL: McAdam, that is correct.

ADV NALANE: McAdam, yes. Unfortunately he has not yet given a statement, so we will not be able to put much of what he may now say in relation to the things that you say about him. You agree?

MR KRIEL: I do.

ADV NALANE: You also suggest that Advocate McAdam said to somebody that he had no interest in prosecuting the ANC cases.

MR KRIEL: That is correct. That is what Colonel Vreugdenburg told me.

ADV NALANE: Oh ja. Now in order to place the issue of the ANC-37
10 as they are called, it is important to get the correct facts so that when the Commission decides or deliberates on this matter, the correct facts are placed on the table, right?

MR KRIEL: That is correct.

ADV NALANE: You would agree that merely because somebody has been refused amnesty does not mean necessarily they must be prosecuted?

MR KRIEL: That is correct, but at least if there is allegations against what happened, then at least it should be investigated, and that is what Mr Ngcuka stopped. He stopped further investigations with
20 regard to the ANC-37 by taking those dockets away from Advocate Paul Fick and Nel and Britz that were supposed to investigate it.

ADV NALANE: I am sure Mr Ngcuka will deal with that when he comes to testify. But the point is one must look at the context of the ANC-37 and their refusal to be given amnesty. That is important.

ADV NEL SC: Ma'am Chair, may I interrupt? Are we asking questions of clarification?

CHAIRPERSON: The evidence leaders are entitled to ask any kind of questions, Mr Nel.

ADV NEL SC: That is fine.

CHAIRPERSON: Yes.

ADV NALANE: Mr McAdam gave us documents which were put on the website of the Commission and they have been put in the bundle as A1 to A41. Do you have that piece of paper?

10 MR KRIEL: No. No, I did not study that because my focus was on what I said in my statement and with regard to what Colonel Vreugdenburg told me in this regard.

ADV NALANE: What I am saying is do you have a bundle with A1 to A41 in front of you?

MR KRIEL: No, I do not.

ADV NALANE: Commissioner, I thought that the witness would have A, so all you have is your statement only. That is great. [Indistinct].

CHAIRPERSON: I think Mr Pieter is coming to your rescue.

ADV NALANE: [Indistinct] bundle [indistinct].

20 MR KRIEL: Yes I do.

ADV NALANE: Thank you. And I am saying that these documents are on the website of the Commission, so it is not something that we are just bringing out now.

MR KRIEL: Yes.

ADV NALANE: And the reason why I think it is important to look at the context in which the ANC 37 as they are called were dealt with, it is important and the document which informs us in some way about under what circumstances the ANC 37 as they are called came to be given amnesty, are set out in the report of the Amnesty Committee. It is from A1.

MR KRIEL: A1. Okay, I have it in front of me.

ADV NALANE: Ja, I will quote certain parts of the report, but the point of the matter is that amnesty you would have listened to the
10 evidence of Ms Yasmin Suka in these proceedings. You may not have been there, but you may not be here. But what she said is that the amnesty process, and I recall she said, "It is conditional justice". In other words, you tell the truth what you did and then you get amnesty. You agree with that?

MR KRIEL: That is correct.

ADV NALANE: If you do not tell the truth, then you do not get amnesty.

MR KRIEL: Yes, there is no such thing as blanket amnesty. You have to make a full disclosure. You had to make a full disclosure.

20 ADV NALANE: So what the Amnesty Committee did was to look specifically at the applications of the ANC 37 as they are called and this is what appears on page A2. And there is a declaration which the applicants from the ANC said at A2 towards the bottom of the page. The declaration on which the above applicants rely reads as follows:

"We..."

And I am going to read the record:

"We the applicants having at various times between 1 March 1960 and 10 May 1924, as indicated below, been members and leaders of the African National Congress, here in [indistinct] ANC, elected and or appointed to serve in various structures including the highest order in the National Advisory Committee. We are making the following declaration.

10 During the said period, the ANC played the foremost role in the leadership of the struggle of the masses of our people for the end of the hateful system of apartheid appropriately dubbed a crime against humanity by the [indistinct] Committee."

And on page A3, I am going to read paragraph six. I want to read from paragraph two to five. What they say there:

20 "In the event and to the extent that any of the activities of any of the above mentioned institutions and structures including the SDU's could in any manner or so ever be regarded as a kind of acts of omissions or offences and vis-a-vis the Promotion of National Unity and Conciliation Act we collectively take full responsibility therefore applying for amnesty and respect therefore."

Correct?

MR KRIEL: That is correct.

ADV NALANE: What I read from this is that they were saying many acts of various forms would have been taken by various members, structures, certain units, but we as the leaders we take collective responsibility even though we do not know what acts were there, what happened, but we simply take collective responsibility for applying for amnesty and in respect of that. This is what they told me, the Commission. And then the Commission decided, the Commission had one or two functions. One of them was to apply the act that govern the [indistinct] correct?

10 MR KRIEL: That is correct. Ma'am Chair, may I just respond to one thing that was said in the previous sentence. I think this is exactly our point. Here you have the ANC 37 taking responsibility, not getting amnesty and not being prosecuted. If the ANC took a decision in Cartway to take away the distinction between hard and soft targets and they take a decision for a landmine campaign called Operation Setswayo and then people go ahead and actually implement that decision even if they do not know specifically where a landmine was planted where. They should be held responsible because they are the people that gave the broader instruction. And I do not think there
20 can be any argument because they actually say here in paragraph six that they indeed take responsibility for what happened.

ADV NALANE: Mr Kriel, I will come very, very moment to the prosecution because first you must deal with the TRC and then the consequences thereafter. You agree?

MR KRIEL: I do.

ADV NALANE: The amnesty process and the prosecution are different processes because the one informs the other, correct? MR

KRIEL: Correct.

ADV NALANE: You have heard from the witness, the evidence of Mr Calata and also Ms Simelane that there were evidence material which was before the TRC, correct?

MR KRIEL: Yes.

ADV NALANE: And they said the material formed the basis of further investigations and prosecutions.

10 MR KRIEL: That is correct.

ADV NALANE: And the dissatisfaction in this Commission is that in spite of the information which was before the TRC, in spite of the evidence, there is been lack of diligent investigation and prosecution.

MR KRIEL: That is correct.

ADV NALANE: So stay with me, let us deal with the TRC process. We will finish in a moment for the ANC 37 in particular. And then we can deal with what happened thereafter. Do you understand?

MR KRIEL: I understand.

20 ADV NALANE: So if you turn to A4, there is an extract of the amnesty application because the application must be accompanied by documents which say what are you applying amnesty for, correct?

MR KRIEL: Correct.

ADV NALANE: Now as I read this document, A4, what appears to be paragraph nine, it starts with:

"Accordingly the list of the men covered in 1964 and

there are people who had been members of various groups of the ANC from the ANC downwards."

Do you see that?

MR KRIEL: Yes.

ADV NALANE: Then the application further says:

"Further the group was also selected on the basis that with the knowledge of the ANC, none of the people on the list had been involved in any individual actions for which they were required to apply for amnesty."

10 MR KRIEL: I see this.

ADV NALANE: Okay.

MR KRIEL: I disagree, but I see this.

ADV NALANE: Ja. So in other words, when they compiled what came to be known as ANC 37, from what I read, is that they asked those who are going to apply, you must make sure that you have not been involved in any individual action and if you have, you must apply for amnesty for that individual action. Correct?

MR KRIEL: Correct.

20 ADV NALANE: Because the TRC act is specific. You must tell the truth about what you did. I planted a landmine, I did this, I did that. You must be specific.

MR KRIEL: That is correct.

ADV NALANE: Ja. Now as I read this, the ANC then says, in selecting the 29, they asked those questions and if you read further, it say:

"It also seems clear that there are other leaders of ANC."

No, no from the foregoing, sorry:

"From the foregoing, it should be clear that the 29 would not be able to answer any questions which sought to establish the specific acts for which they were apparently applying for amnesty since there are none."

It is the same concept. We are not applying for amnesty for specific actions. Correct?

10 MR KRIEL: I disagree, but this is what they are... (intervenes)

ADV NALANE: Ja we will do the prosecutions. I think it is a valid point you have. You say, after the TRC process, what do the prosecutors do? Correct?

MR KRIEL: That is correct.

ADV NALANE: Because the prosecutors must work on the basis of evidence that they have. Correct?

MR KRIEL: That is correct.

ADV NALANE: You have said so in your evidence, oral evidence. There must be investigations, firstly, and then there must be
20 prosecution. The investigations show evidence.

MR KRIEL: That is correct.

ADV NALANE: Let us see what the Commission, what the Amnesty Committee then found in the context of the applications. If you turn to A5, the sixth paragraph, which says:

"Having regard to the declaration"

Are you there?

MR KRIEL: That is correct, I am here.

ADV NALANE:

10 "Having regard to the declaration, it is quite evident that the individual applicants applying for amnesty, not because they committed any acts that could constitute an offence or a [indistinct] but do so solely because they are persons who were either in the leadership of ANC at various times between 1960 to 1994, were members of the structures established by the ANC in order to wage a struggle against the NP government and therefore take collective responsibility for the acts committed by their members in the various structures which acts were committed under the ANC's political authority and direct leadership."

They accordingly assume political and moral accountability for such acts. Correct? That is what it says.

MR KRIEL: I see that is what it says.

20 ADV NALANE: And then what the Committee then does in the next paragraph, they look at the act which they must now apply because they work within a framework. They cannot simply say, we deny you amnesty and grant you amnesty. Do you agree?

MR KRIEL: Yes.

ADV NALANE: Then they say:

"It is appropriate at this stage to refer to the sections for

the grant of amnesty that is contained in the act.

Section 21 stipulates... (intervenes)

MR KRIEL: Sorry Chairperson I just, I do not know if it is a motor cycle or something.

COMMISSIONER GABRIEL: Mr Nalane, is there any way to pull that mic closer to you? You are quite [indistinct] thank you.

ADV NALANE: Is it this one or this one? Both. Is that better? Commissioner, am I audible?

COMMISSIONER GABRIEL: It is much better.

10 ADV NALANE: Thank you. So the Amnesty Committee then looks at section 220.1. It says:

"Section 21 stipulates as one of the requirements for amnesty that the act, omission or offence in respect of which amnesty is sought must be an act associated with a political objective. Section 21 stipulates that the applicant must make full disclosure of all the relevant facts in respect of the act, omission or offence for which amnesty is sought."

Do you see that?

20 MR KRIEL: I see.

ADV NALANE: And then the Committee then says:

"Section 22 then steps in to define an act associated with a political objective. It states, an act associated with a political objective."

I think we can leave that. But the point I am making is that

the Committee had to act within a framework of law. And if we fast-forward to AA, paragraph two:

10 "The committee knows that the reasons advanced by the ANC, unfortunately no matter how noble and commendable these reasons may be, they clearly demonstrate that these applications do not comply with the requirements of the act, as no act, omission or offence is a subject of the applications as required by section 18.1 of the act. The applications do not relate to any specific act, omission or offence, on their own admission. None of the applicants have been involved in any act for which they would require to apply for amnesty. In the premises, no amnesty can be granted to the applicants because in terms of what is before the Committee, they have committed no offence or [indistinct]."

Do you see that?

MR KRIEL: Yes.

ADV NALANE: Ja. And then the next paragraph says:

20 "The intention of applicants to support the thousands of [indistinct] did not warrant an application of this nature."

As I read that, it says, there was no need even for those applicants to apply that is how I read it. And then it says further:

"It would have been sufficient for the applicants to support their members' applications for amnesty where

necessary without themselves applying for amnesty for the acts of such members. That was never, that was never intended by the act to have persons such as applicants applying for amnesty on the basis of political responsibility or for the aforementioned reasons to be found in section 27, which has already been discussed."

You [indistinct] I think I am going to read the last part and then we can move to the prosecutions now. This is the amnesty process. The reasons the ANC 37, as they are politically called, will
10 refuse amnesty is because they did not qualify within the weighing of the act which governs amnesty, correct?

MR KRIEL: That is correct.

ADV NALANE: And the findings on A8, it says:

"It is our finding that insofar as applicants seek to apply for amnesty for acts committed by their members in the various institutions and structures on the basis of collective political and moral responsibility, their applications fall outside the ambit of the act and accordingly, they do not require to apply for amnesty."

20 And I want to emphasise, they do not require to apply for amnesty, so it was even unnecessary for them to have even gone to the TRC. That is what the Amnesty Committee says.

MR KRIEL: May I respond to that?

ADV NALANE: Ja.

MR KRIEL: It is in fact so that the Amnesty Commission, the TRC

could not give them amnesty, I agree with that. But the TRC responded with regard to the information they provided and the information they provided was insufficient. It does not mean that if the information was insufficient, that there was no grounds why they should have applied for amnesty. They should have applied for amnesty by giving some grounds. They should have said between the 16th and 23rd of June 1985, we took a decision to take on a landmine campaign called Operation Setswayo and therefore, then, they should have given more information. They should have then

10 said, because of this instruction, even though they did not plant the bombs or the landmines themselves, they should have said, our decision has led to the fact that there were 30 landmine explosions and they could have listed them. Van Eck the taxi I mentioned, in this, 24 innocent civilians died. They could have given the names because it was known to them. The ANC leadership, after some of these attacks, in their magazine, they acknowledged responsibility for that. So, you are right in the sense that the Amnesty Commission could not give them amnesty, but not because they should not qualify for amnesty, but because they did not give the information that would

20 have led them to qualify.

If one takes, for instance, Adriaan Vlok, he did not himself plant or put the poison into the socks of Reverend Chikane. So, if one's going to use this ANC argument to say, no, no, I did not commit that act, but it was found then that he should take responsibility and he did not get amnesty for that. So, that could not be an argument. If

that was an argument, then Adriaan Vlok would have also argued, I could not qualify for amnesty. He could have if he gave more information and the ANC 37 could have if they gave more information and that is the reason why they did not qualify.

ADV NALANE: Thank you, Mr Kriel.

COMMISSIONER KGOMO: In legal terms, it is called vicarious liability or vicarious responsibility.

MR KRIEL: Thank you, Commissioner. I studied to be a teacher, so I would not have learned that term. Thank you so much.

10 ADV NALANE: I want to move to the prosecution now because we know the mere fact that you have applied for amnesty and been refused means you may now be exposed to prosecution. That is the consequence.

MR KRIEL: That is correct.

ADV NALANE: So, I want to turn to page 810 and I want to investigate, to debate with you, not to debate, but to show you what the evidence in the McAdam says about the efforts and steps taken by the NPA. And I agree with you, the mere fact that the Commission found that the TRC, that they did not fall within the four corners of the
20 Act, it does not mean the end of the road. And part of the reason why we are here is to investigate that part. Post the TRC process, did the prosecutors, did the police do what they are supposed to do by law? And the law says there is a crime that must be investigated and there is evidence that must be prosecuted. Right?

MR KRIEL: That is correct.

ADV NALANE: Ja. Now, 810 is a document which was written on 26 June 2006 to Dr Ramaite, who testified in this Commission. It is from AR Ackerman, S.C. And it is [indistinct]. And as I understand this, this is where people of NC were involved in acts and activities in the Messina district. And if you turn A11, this is Mr Ackerman, as you know, he was a prosecutor in the NPA, correct?

MR KRIEL: That is correct.

ADV NALANE: Now, he says at A.11:

"[Indistinct] amnesty [indistinct] seen as [indistinct]."

10 As I understand that, he says these people were involved in landmine explosions, applied for amnesty.

MR KRIEL: Yes, and they received amnesty, as was also acknowledged by Mr Dirk van Eck. The two people involved in that specific incident received amnesty, but not those that took a decision for a landmine campaign.

ADV NALANE: Ja, I think this is where now Advocate Ackerman deals with that point, towards the bottom of A.11. He says:

"[Indistinct] opmerkings. Die ANC het gebuik van landmine in the Messina Grens gebied goedgekeur en opdragte in die verband is deur die bevels struktuur van Mkonto Isizwe aan lede gegee."

20

So, as I understand it, he is saying there was a campaign for explosions and landmines and instructions for those activities were given by the ANC leadership. And that is where you are saying this is how the prosecution, that is where the prosecutions would have

gone to.

MR KRIEL: That is correct, ja.

ADV NALANE: Now, he says the last part of paragraph three:

"Al die ander ANC lede voetsoldate wat by hierdie misdade betrokke was is oorlede."

So foot soldiers were involved in that incident and are now deceased.

MR KRIEL: That is correct.

ADV NALANE: And it says:

10 "Ten opsigte van die sogenaamde voetsoldate is geen (onhoorbaar) in aansien van die ANC lede wat die opdragte vir landmine veltog gegee het en nie amnesty ontvang het moet 'n besluit (onhoorbaar) tyd nog verneem word nadat al die relevante partye ge (onhoorbaar) is."

So, the prosecution can accept, even at this stage, he is talking about two kinds of people. He is talking, on the one hand, about the foot soldiers who applied for amnesty, but he says, Ackerman says, we must now look at the leadership, whether anything should be done about it. So, what I am saying is that, on the
20 face of this document, the prosecution did apply its mind, at least from what Ackerman is saying, on this matter.

MR KRIEL: Well, he said, a decision still has to be made.

ADV NALANE: Yes, I am saying at that point.

MR KRIEL: Ja. That they have to do it in the future.

ADV NALANE: Ja, and then if you turn to A12, it is a document written by RC McAdam, a deputy head at PCLU, and it is sent to Mr BT Ngcuka, who, at that stage, was the NDPP. And he talks about allegations against the President. He says:

I am closely with a copy of the CIO list of David, confirming that General Van der Merwe did not furnish him with any information on the basis that this was in the position of his attorney, Wagner."

We will deal with the affidavit. But he deals with the issues of the higher ups, if you want to call it that, within the leadership structure of the ANC. He is talking at this stage about the President. Correct? I see it is three minutes past one, Commissioners.

CHAIRPERSON: Yes, Mr Nalane. How long are you going to be, Mr Nalane?

ADV NALANE: I would think maybe 15, 20 minutes.

CHAIRPERSON: 15 to 20 minutes.

ADV NALANE: Ja, I think this is the last part of the... (intervenes)

CHAIRPERSON: I think proceed. Should we proceed? Yes, in that case, we will be happy to proceed, Mr Nalane.

ADV NALANE: Thank you. Mr Kriel, without taking too much time reading this document into the record, because... But A13 is the conclusion, his memo. It says:

"The various old terrorist laws have been abolished. His guilt or innocence must be determined by the general principles of common law relating to conspiracy of common purpose in this regard, he must prove that

either he was present at a meeting where he agreed or participated in the commission of the crimes. I am unable to find any evidence to prove either."

So this is McAdam, another prosecutor who looks at this matter, reports to the boss, Mr Ngcuka, and says:

"I have looked at this matter I do not find any evidence against the President"

Correct? And then... (intervenes)

COMMISSIONER KGOMO: Mr Nalane, at A13, there is one phrase
10 that is on my copy that... It is obliterated... (intervenes)

ADV NALANE: Ja.

COMMISSIONER KGOMO: Is it important, or are we going to get the appropriate wording there?

ADV NALANE: We will get the appropriate wording when Mr McAdam testifies. I think here, the point I am just making... (intervenes)

COMMISSIONER KGOMO: Yes, but we can get the gist.

ADV NALANE: We will get the gist, yes. The gist is that... (intervenes)

20 COMMISSIONER KGOMO: Yes, you may proceed on that basis.

ADV NALANE: The prosecution looked at the issues relating to ANC leaders who have refused amnesty from the correspondence that appears to be so. Correct? And then the next point, the next one is an affidavit by Mr Leask on page A14. This was dealt with a bit yesterday in the evidence. But as I understand what Mr Leask is

saying, he was an investigator. He was asked to approach former Police Commissioner Johan van der Merwe and get documents which Johan van der Merwe said he had in his possession. Correct?

MR KRIEL: That is correct.

ADV NALANE: Mr Leask said, "He was told that Johan van der Merwe had a docket with the guilt at least, or evidence, at least on the part of the President". And from here, it appears in Mr Leask's evidence that former General Johan van der Merwe did not give any docket of information which would link at least the President to any
10 criminality. Correct?

MR KRIEL: That is what stands, what is written.

ADV NALANE: Yes, and then if we turn to page A15, the NPA then releases a statement on 15 May 2004. You referred to it in your evidence.

MR KRIEL: Yes.

ADV NALANE: I just want to touch on a few paragraphs. The last paragraph... (intervenes)

COMMISSIONER KGOMO: A few paragraphs at A what?

ADV NALANE: A15.

20 COMMISSIONER KGOMO: A15, okay, yes.

ADV NALANE: It says:

"The foundation for equality for the law and organisation led by former National Police Commissioner General Johan van der Merwe, which mainly comprises four members of the all-security police, sought to use a TRC

judgement to call for the prosecution of ANC leaders."

You see that?

MR KRIEL: I see that. And A16:

"The foundation alleged that it was in possession of documents that could prove a criminal case against ANC leaders."

Correct?

MR KRIEL: I see that.

ADV NALANE: And then the next paragraph:

10 "The National Director for Prosecution, Bulelani Ngcuka, made several requests to be furnished with evidence. However, the foundation failed to provide the NPA with the relevant facts."

Correct?

MR KRIEL: That is correct.

ADV NALANE:

20 "Furthermore, the NPA perused all relevant material in possession of both the TRC and ICPS and was unable to find any evidence on which to launch an investigation. In the circumstances, the NPA is not on a basis to authorise an investigation in terms of the provisions of Section 28 of Act 2 of 1998."

Correct?

MR KRIEL: That is written here. I disagree, but that is what is written here.

ADV NALANE: And this is what the NPA is saying. I am not saying they are right or wrong, I am just saying it is all their stuff. Then McAdam on A17 says he makes the same conclusion:

10 "Refusal of amnesty, President and other permanent alliance leaders having considered all the relevant material in his possession, the National Prosecution Authority has decided that there is insufficient evidence upon which to launch a criminal investigation arising from the TRC's refusal to grant amnesty to the above persons."

So from my... (intervenes)

COMMISSIONER KGOMO: Now, this is what McAdam writes on the 2 July 2004.

ADV NALANE: Correct.

COMMISSIONER KGOMO: Yes.

ADV NALANE: Now, and then we know that... Well, and then there are two prominent prosecutors who will testify on this matter, McAdam and Ackerman, on page A18. And they deal with the same matter. And then paragraph three:

20 "During these discussions with Ackerman during the meeting, and drew their attention to the fact that since 2003, he had invited them to produce evidence implicating the President without any success. I am now awaiting to see if any documents will materialise, will inform accordingly."

So, at least from the path of the prosecutors, it appears that they were dealing with the matter. And then we know that Advocate Pikoli replaced Mr Ngcuka, and you, Mr Kriel, corresponded with the NPA about the same matter.

MR KRIEL: Yes.

ADV NALANE: If you turn to A38, this is a letter from Advocate Pikoli to you, A38.

COMMISSIONER KGOMO: The letter dated 17 August 2007.

ADV NALANE: Mr Kriel, this is a letter sent to you.

10 MR KRIEL: That is correct.

ADV NALANE: You received this letter in 2007.

MR KRIEL: I did.

ADV NALANE: And, Mr Pikoli, Advocate Pikoli told you in paragraph two in essence:

20 "The facts upon which you base your allegations against the ANC leadership form part of the evidential material which was considered by Advocate Ngcuka. I note in the letter that you have declined to make your private investigations available to me. I therefore have no legal basis upon which to overturn the properly informed and carefully considered decision of my predecessor."

MR KRIEL: This is what he wrote.

ADV NALANE: So, and he has said, so the NPA you are dissatisfied that they [indistinct].

MR KRIEL: Ja.

ADV NALANE: But on record they have told you in particular what they did.

MR KRIEL: Ja. Ma'am Chair, may I respond?

CHAIRPERSON: Yes you may.

MR KRIEL: This is exactly our point. It seems as if I read this there is an unwillingness and it is an effort to find excuses why this is not going to move forward. And the reason why I am saying so, we read here that they say there is no evidence. They use an excuse that General van der Merwe in I read it correctly did not come forward with
10 information. But that is the job of the State. If they do not get any information from someone else they then have an obligation to do that investigation. And the State was on the point of doing that investigation.

As I have mentioned earlier, I spoke to Advocate Fick and Advocate Fick indicated that he had these dockets in front of him and he had the two police investigators, Mr Nel and Britz. And they were investigating it. And they were on the brink of going ahead with a case regarding the Ellis Park bomb. And they were also investigating. On their table was also the van der Merwe case. And now I do not
20 see any credibility in Mr Ngcuka's letter here. If he says, "I can find no evidence" but there are also a letter that this Commission might have access to we do not. Where Advocate Ngcuka writes to Advocate Fick saying, "You are not, no longer going investigate this we are going to take these dockets away from you". And then those dockets are left without any further investigation.

So the reason why they saying they do not have evidence is because they stopped the investigation and that is the point we are trying to make.

ADV NALANE: But of course if you have any further information you are welcome to give it to the Commission.

MR KRIEL: Yes.

ADV NALANE: So we can take this up with Mr Ngcuka with McAdam, Ackerman who will also testify in this proceedings. But you do not simply prosecute because some [indistinct] refused amnesty. And in
10 the absence of evidence you cannot prosecute.

MR KRIEL: Yes, I agree.

ADV NALANE: Thank you.

MR KRIEL: But I believe if there is an investigation there would be a [indistinct] because it is common cause from various sources can confirm that between 16 June and 23 June 1985, in [indistinct] the ANC decided to go-ahead with campaigns that targets civilians. And that I believe is something that was never followed up and I am certain if there is an effort and not any political interference and people sincerely investigate this we will have closure. If we know.
20 The family of Mr van Eck that remains and I cannot speak on behalf of them. But if I was in their position I would have had closure if I knew that this was investigated. I do not, I think it is speculation now that there is no evidence. Because the NPA blocked those specific further investigation into those matters.

ADV NALANE: Thank you. All lives is precious. I appreciate that you have come forward. Mr van Eck's life is precious. Van der Merwe, [indistinct] Mr [indistinct] and all the victims of the past conflicts their lives are equally important.

MR KRIEL: Agreed.

ADV NALANE: No further questions.

CHAIRPERSON: Thank you Mr Nel.

ADV NEL SC: Indeed. I will be about 10 minutes ... (intervenes)

CHAIRPERSON: And why 10 minutes Mr Nel?

10 ADV NEL SC: If I have got questions arising from the questions that... (intervenes)

CHAIRPERSON: Yes.

ADV NEL SC: That was posed by the... (intervenes)

CHAIRPERSON: But it should not amount to 10 minutes.

ADV NEL SC: Is the intention that it should be shorter than 10 minutes... (intervenes)

CHAIRPERSON: It should be shorter than 10 minutes.

ADV NEL SC: Then... (intervenes)

20 COMMISSIONER KGOMO: You have taken away a minute of your time.

ADV NEL SC: If I am allowed... (intervenes)

CHAIRPERSON: Yes.

ADV NEL SC: A tongue in cheek moment. I will take nine minutes but that is a tongue in cheek moment. Mr Kriel, we have now heard that prominent prosecutors decided not to prosecute. You have

heard that they were prominent prosecutors. What we had yesterday is that a very prominent prosecutor with the name of Ramahepe decided not to prosecute Bamboo and they might have changed their minds after they received information from Mr Leask. So if they received other evidence prominent prosecutors may change their minds. And that is what you are saying with, it is speculation if a prosecutor says I do not have enough information.

MR KRIEL: Yes.

ADV NEL SC: Let us just, we have got nine minutes. Let us just
10 because we are [indistinct] I have been a prosecutor. So I have read
all this. If you want to prove what was said at a meeting, how do you
prove it?

MR KRIEL: You get the minutes.

ADV NEL SC: Indeed. Do you know if they have minutes of
meetings on those case dockets?

MR KRIEL: We will never know because Mr Ngcuka stopped the
investigations and [indistinct] the dockets.

ADV NEL SC: Then if you are instructed to plant a landmine you
need a landmine to plant. You must get it from somewhere. Do you
20 know if there is in these dockets indication where they got it from?

MR KRIEL: No, that is exactly why we brought that investigations.

ADV NEL SC: Do you know if it is in those dockets that it was
[indistinct] by very senior people in the ANC?

MR KRIEL: No, because the dockets are not accessible.

ADV NEL SC: So what we are saying is, the proof of the pudding would be in establishing if those dockets were indeed investigated.

MR KRIEL: Yes, and from what I have heard from Advocate Fick it was not, it was removed from them.

ADV NEL SC: But the one thing we agree with the evidence leaders is, a prosecutor tells you I do not have evidence in a case docket. But it is about what happened before that case docket was handed to him. Is that our point?

MR KRIEL: Yes.

10 ADV NEL SC: Thank you Commissioners, I have nothing further and it was eight minutes.

CHAIRPERSON: That was more than 10 minutes. Thank you Mr Nel. Mr Kriel.

ADV VARNEY SC: Chairperson, we do not have any questions but we do wish to place something on record.

CHAIRPERSON: Yes.

ADV VARNEY SC: It is an important correction. My learned friend for the evidence leaders put, it is a McAdam bundle at A10. It is a letter that allegedly is in the name of Ackerman to acting NDDP
20 Ramaite dated the 26 June 2006. It is in Afrikaans. The evidence of Mr Ackerman will be that that letter is a forgery.

CHAIRPERSON: Yes. Okay.

ADV VARNEY SC: Thank you Chairperson.

CHAIRPERSON: You will bring me that in due course. Thank you Mr Varney. Mr Kriel, we wish to extend our appreciation for your ability

to come and give evidence before this Commission. For now, you are excused as a witness.

MR KRIEL: Thank you Ma'am Chair. Thank you Commissioners. I appreciate the time.

CHAIRPERSON: Thank you.

ADV NALANE: Ma'am Commissioner, from our side we do not have anything. We do not know from the other side but from our side, that will be the business for the day.

CHAIRPERSON: Yes. We adjourn on Monday at 10:00. We will
10 reconvene at 10:00 on Monday.

INQUIRY ADJOURNS ON 26 FEBRUARY 2026

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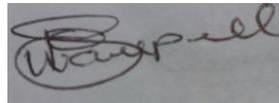
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