

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

HELD AT:

Sci-Bono Discovery Centre, Corner of Miriam Makeba & Helen Joseph Street
Newtown, Johannesburg

BEFORE:

COMMISSIONERS:

The Honourable Ms Justice Sisi Khampepe (Judge Ret.) – Chairperson
The Honourable Mr Justice Frans Diale Kgomo (Judge President Ret.)
Adv Andrea Gabriel (SC)

EVIDENCE LEADERS:

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

REPRESENTATIVES

Adv Varney (SC) – The Calata Group
Adv D Pillay – The Calata Group
Ms A Thakor – The Calata Group
Mr Sipho Tlhaole – The Calata Group
Adv KD Moroka (SC) – DoJ representative
Adv Gwala (SC) – NPA representative
Adv Ebenezer Propphy (for SAPS)
Adv Vivian Rikhotso (for Adv Menzi Simelane)
Mr Lutando Gcilitshana (for Adv Bulelani)

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PROCEEDINGS ON 6 MARCH 2026

CHAIRPERSON: Mr Varney?

ADV VARNEY: Chairperson, good morning. Good morning, Commissioners. This morning we again have Adv Ackermann testifying from Cape Town. Before we proceed, we undertook to put up the extracts from an affidavit made by former President Thabo Mbeki in which he referred to the possibility of a shootout or a blood bath between the DSO, the Scorpions, and the SAPS. Mr Ackermann has pointed us to the affidavit in question; and as
10 mentioned yesterday, it is the affidavit that former President Mbeki put up in his application to intervene in the litigation launched by the Lukhanyo Calata and the other families; and with the leave of the commission, we would like to hand up those extracts.

CHAIRPERSON: Yes.

ADV SEMENYA: Chair, maybe I should join chorus with Moroka. Please give us these documents before you hand up.

ADV VARNEY: We have made copies and as mentioned, evidence leader, we only learnt about this recently ourselves. So we put them up as soon as we can. We have made copies for the evidence
20 leaders and others. We are only referring to two paragraphs. So, this is not a train smash by any stretch. And please hand out copies to our colleagues. It is a 180-page affidavit.

We have not printed all that paper, but I understand that electronic copies were sent to the commission, but if we can highlight paragraph 73 where President Mbeki says that he told Adv Pikoli that

SAPS would oppose any attempt to search its headquarters; and also said that so bad were the relations between SAPS and the NPA and DSO that members of the SAPS might even open fire against the NPA search team. Then if one goes to paragraph 78, President Mbeki says, however, he conceded that indeed there might be a shootout at the SAPS HQ.

COMMISSIONER KGOMO: Mr Varney, is it not better to identify them and then when Adv Ackermann comes in, he could deal with those or they could be read into the record?

10 ADV VARNEY: Yes, yes, we can do that. He did make reference to it yesterday, but we will refer him to those passages.

COMMISSIONER KGOMO: Yes, I mean to avoid duplication.

ADV VARNEY: Indeed.

COMMISSIONER KGOMO: So we have paragraph 73, 78.

ADV VARNEY: Just those two.

COMMISSIONER KGOMO: Oh, just these two, okay.

ADV VARNEY: With the leave of the commission, we can then start with Mr Ackermann.

20 ADV ACKERMANN: Madam Chair, may I with your permission refer to the evidence I gave yesterday relating to Mr Simelane's affidavit and more specific to where I stated that I did not attend a custom meeting where a list was produced with ANC names and it also referred to Lusaka and a meeting with the ANC members at Lusaka. The record will reflect what I said. I think that was the gist.

I think I said that I do not recall such a meeting and I still this

morning do not recall such a meeting, but I do know something about the people in Lusaka, the ANC members there and I said I recall that I perhaps read it in a book or maybe it is Wagenaar who told me about it during my interaction with him, with the Van der Merwe, about the case Van der Merwe had against the 37 ANC leaders. My concern was, however, was; how did Mr Simelane know that I knew about it?

10 Last night I scratched my brain and were looking for a list. I thought about what list it could be that was passed around at the meeting. I was certain that such a list of names did not exist and that I never investigated any person in Lusaka. This morning walking from the hotel I was still thinking about this and then it struck me that perhaps Mr Simelane was referring to one of the audit reports, one that Chris Macadam drafted in 15 May 2003 and there were subsequent ones.

20 This morning I went through all those audit reports and I found no case regarding the atrocities or what happened in Lusaka. I did not look at the obvious place. This morning sitting here, I went through my personal notes and I now know how I knew about it. I still do not know how Mr Simelane knows about it. I will refer to it when I come that point in my evidence.

ADV VARNEY: Thank you, Mr Ackermann. Before we proceed, can we just ask you to place on record the relevant paragraphs in the affidavit of Mr Mbeki? You will recall yesterday that in your evidence you were testifying in relation to the apparent reasons put up by

President Mbeki for the suspension of Adv Pikoli and you made reference to Mbeki's claimed reason of the ill feeling between the NPA/DSO and SAPS and you make reference to a blood bath or a shootout between those entities that Mr Mbeki had made reference to. And I asked you where did that come from, and you mentioned it was an affidavit that Mr Mbeki had made. I do not know whether you heard, but we have put up the affidavit that Mr Mbeki made in his application to intervene in the Calata litigation of last year. Can I just check whether you have a copy of that affidavit or the extracts before
10 you?

ADV ACKERMANN: At the moment, yes, I have it; page 49.

ADV VARNEY: And am I correct in saying that the relevant paragraphs that you relied on, paragraph 73 and 78 of Mr Mbeki's affidavit.

ADV ACKERMANN: That is correct. It is correct.

ADV VARNEY: In paragraph 73 he makes reference to a fear that members of those groups may open fire. At least in paragraph 73 he said:

20 "I also said that so bad were the relations
between SAPS and NPA and DSO that members
of the SAPS might even open fire against the
NPA search team."

And then in paragraph 78 a similar reference. Are those the two paragraphs you were relying on?

ADV ACKERMANN: That is correct. Chair, if I may add; I read all

the documents that were referred to me. I read this affidavit of President Mbeki six months ago; and I was always interested to know why was Mr Pikoli suspended, because in the press I read about the irretrievable breakdown between him and the minister. I read about the, because of the TRC cases and I kept it in the back of my mind when I run my note my wife typed out; and that is where I then wrote it that I do not believe. It is unbelievable. I do not accept it that that is the reason why Mr Mbeki suspended Mr Pikoli. There must be some other reason.

10 Why I say I find it unbelievable is; I cannot understand it if officers of the court apply for a search warrant. It is not a legal search warrant. He want to go and arrest or search and then Mr Pikoli or whoever had that search warrant are informed that they must do it in two weeks' time. That is just another interference in the work of the National Prosecuting Authority; that you have to get [indistinct] from the president before you can execute a search warrant.

 Because if you go further, I have not read it for some time, but somewhere in this document it must be stated that Mr Pikoli was still sitting there when he said 'well, I am going to execute it'. Now I am
20 just paraphrasing, because I read this document six months ago. He said he stood up and he went to his secretary – I think that is what the president said; and had a suspension letter typed and gave it to Mr Pikoli and Pikoli said: 'thank you that you are suspending me.' That is how I recall what was said in that affidavit of Mr Mbeki. I just find it unbelievable. Why I say I find it unbelievable; that today that

there will be a shooting in the streets of ...[intervenes]

COMMISSIONER KGOMO: Mr Varney, with the Chair's permission and Mr Ackermann. I think it would be poignant, please, just to read into the record paragraph 73 and 78 for the record.

ADV VARNEY: As the commission pleases.

COMMISSIONER KGOMO: If there need to be an explanation, it is fine. It could be done. Can we do that, please?

ADV VARNEY: Yes, of course, Commissioner. Mr Ackermann, as Commissioner Kgomo request, please will you read paragraph 73
10 and 78 into the record?

ADV ACKERMANN: Chair, may I start from page 70, because you know we just read these two and may I read the 10 paragraphs to get the complete picture?

ADV VARNEY: Yes, you may.

ADV ACKERMANN: Thank you. Paragraph 70 the president said:

20 "The next time I had to deal with this matter was when Adv Pikoli informed me that he had a warrant to arrest the SAPS headquarters and National Commissioner Selebi's house. I then asked Adv Pikoli to meet at the official president's residence in Tshwane. I also invited DD Chikane to attend the meeting. During the meeting Adv Pikoli confirmed that he had applied for and obtained the said search warrant. He said that he had to execute it immediately or within a week. I

told Adv Pikoli that in my view the SAPS would oppose any attempt to search its headquarters. I also said that so bad were the relations between the SAPS and the NPA and DSO that members of SAPS might even open fire against the NPA search team. I therefore asked Adv Pikoli to give me a fortnight, two weeks, within which I would engage the SAPS and take all the necessary measures to ensure that the NPA and DSO carry out their searches without any problems. I also told Adv Pikoli that I was surprised that he had sought a search warrant, knowing very well that I was ready to intervene with the SAPS, as I had already done such successfully to help the NPA. Adv Pikoli did not explain why he had opted to get a search warrant. However, he turned down my suggestion to delay the execution, the search warrant, undertaking to engage the SAPS, so that the NPA could search the SAPS headquarters with no opposition after a fortnight, insisted that they had to execute the search warrant within the short period he had indicated. However, he conceded that there might be a shootout at the SAPS headquarters, saying he based himself on what had happened when DSO unit had tried to

search the deputy president, Jacob Zuma's residence at Forest Town."

COMMISSIONER KGOMO: In Johannesburg.

ADV ACKERMANN: In Johannesburg. There is something; I recall something else. May I just have a minute or two to go through this?

COMMISSIONER KGOMO: Thank you, Mr Ackermann. Thank you.

ADV ACKERMANN: I think at that stage or after he decided that he was going to suspend Mr Pikoli there and then. That is my recollection.

10 ADV VARNEY: Thank you, Mr Ackermann. Unless there is anything else on this topic, perhaps we can move to the first subject you wish to address the commission on today, which I understand is that of the forged letter.

COMMISSIONER KGOMO: Maybe, whilst we are there, Mr Ackermann, you are being withdrawn from the TRC matters and orally so. Mr Pikoli is suspended. Did Mr Pikoli, as the commander, rally his troops, you and the others to a meeting and explained to you what has happened and why it has happened?

20 ADV ACKERMANN: No. There was no meeting about why things were happening. I cannot recall any meeting. I mean I am quite certain; he did not inform us at least. Probably he did inform Mr Hofmeyr and whoever was there, but it was all very sudden. I do not even know when he left.

COMMISSIONER KGOMO: Okay, thank you. Thank you, Mr Varney.

ADV MOROKA: Chair, if I may.

CHAIRPERSON: Yes, Ms Moroka.

ADV MOROKA: There are documents all over the place. It is going to be so difficult to get a handle on them and I wanted to find out from you whether you do not want to give this one an exhibit number.

CHAIRPERSON: Yes. Mr Varney, should we give an exhibit number to the affidavit from former President Mbeki?

ADV VARNEY: Yes, Chair. Can I suggest that we add it to bundle 3 as item... My attorneys have advised me that it will be bundle 3, item

10 6.

CHAIRPERSON: Thank you, Ms Moroka.

ADV VARNEY: Thank you, Chair. Mr Ackermann, are you ready to proceed in addressing the commission in relation to the forged letter?

ADV ACKERMANN: This is one matter Commissioner Kgomo asked whether Mr Pikoli had a meeting with us. I do not know what the position; if there is a person [indistinct] is suspended on that day. He is not part of the office anymore. So I did not see him after that meeting he had with the president. He was suspended.

20 I mean the forged letter; during May/June 2003 I established that there were 395 dockets registered by the two officers, Nel and Brits in Adv Fritz's office; and Nel and Brits were administratively in charge of those dockets and I think the dockets were kept at the D'Oliveira office on Church Square. I have given that evidence few times now.

I have perused these dockets, made a decision what should

happen to each docket. I testified yesterday that I started at the top of the pile and in respect of each docket, I compiled a short internal office memorandum setting out the facts and how the matter should be finalised. I discussed the problematic cases with Brits and Nel before I made a final decision.

In the majority of the cases the perpetrators had been granted amnesty and could therefore not be prosecuted or inquest had already been held. These memoranda were not addressed to any person and were to be placed in the docket, so that the status of this
10 docket could be ascertained, like 23 years ago. Fortunately I had this note in this docket. So I knew what I did. Now, the forged note, and I will give evidence extensively on this forged note, is; I have got here page 110.

ADV VARNEY: Commissioners, that is in the separate Ackermann bundle that the commission, of the documents that the commission obtained for Mr Ackermann; and it is at page 110.

ADV ACKERMANN: I will refer to this document through my evidence. I just noticed this morning I cannot believe that I never picked this up. Page 2 is missing and I said and I asked the attorney
20 to go through all the places where this was submitted, and I see even Commissioner Jacobs sent only page 1 and 3. I do not know where is page 2. I will tell you why it is relevant later on.

This note is a fabrication and I will explain later to the commission why, what were the reasons for this fabricated document. These notes, there must have been at least 90 of them. You will

see... I will just see [indistinct]. It is a reference number on top, reference A15. That is when I started there, and "*navraag*: Adv Ackermann" and the telephone number; and it is addressed. It says "to Ramaite SC, *van*: AR Ackermann SC" and the date is 26 June 2006. And at the bottom you will see there is my signature and the date is 26-06-2000 and you will see there is also a six and that six is not my handwriting. I will deal with it later.

As I said, these memoranda were typed by Ms Pienaar in Macadam's office; and the number that I gave in A15 is a number, a
10 reference number, it was in sequence. In other words, the one A14 will be; A14 will be dated before... I cannot see [indistinct] this document, but they were in sequence and it were all 2003. I will deal with the fraud itself, the forgery later on.

What is very important is; at the bottom of page 111 you will see under my name there is [indistinct] TP. I know in the older days the person who types a letter, the typist usually put her initials at the bottom of the letter; and that is Thea Pienaar. Now she left my office end of 2003 or maybe beginning of 2004. So it is not possible that she could have typed this letter. She was not there. But there are
20 multiple indications that and proving that this is a forged letter that I will come to later.

Just to give more background; later in 2004 Mr Ngcuka resigned and Dr Ramaite was appointed acting director. In late 2004 after Ramaite received a telephone call from Minister Mabandla regarding the Chikane arrest, I was informed by Dr Ramaite and Mr

Hofmeyr that they had attended a meeting in Cape Town with, *inter alia*, the Minister of Justice and the National Commissioner of Police, Mr Selebi.

They informed me that it had been alleged by national commissioner that the PCLU was in possession of 400 dockets and planned to paralyse government by arresting key government officials who had been part of the ANC Liberation Movement. This allegation was not true, but as a consequence, I was required to assist Dr Ramaite to compile a lengthy memorandum to the Minister of Justice, 10 Brigitte Mabandla, stating the correct position and again confirming that there was no investigation against the ANC leadership. I see there is a document to that effect. It is...

ADV VARNEY: Perhaps I can assist you, Mr Ackermann. That document is also in your separate bundle. It is at... it is from, it is in the document starting at page 7 of that bundle and I think you are making reference to Annexure I, which has not been delivered as yet, as far as we are aware, from the NPA. So that is paragraph 22 on page 13.

ADV VARNEY: Commissioner, I will at a later stage refer to the 20 important documents. I think the input there is just that Mr Mabandla was once again informed that there is no case against the ANC leadership. Subsequently, Adv Pikoli was appointed as a national director and in the beginning of 2006 guidelines for the prosecution of TRC cases were approved.

In mid-2006 I was called in by Adv Pikoli who informed me

that I was once again being accused of acting irresponsibly and not informing him of my activities. I can recall that he called me at least three times during those periods. But on 20 August 2007 Adv Pikoli drew my attention to an article which had been published in Rapport on 19 August 2007 and asked me to furnish him with a report dealing with the allegations in the newspaper.

ADV VARNEY: If you can just pause there, Mr Ackermann. That article in the Rapport Newspaper; Commissioners, that is in bundle 2 at page 42 and it is a Rapport article dated 20 August 2007 and it is
10 titled "*Dossiere oor leiers se vergrype lê al jare in kluis ANC-lêers verdwyn*" by Sonja Carstens.

ADV ACKERMANN: On a personal note, I said in this Rapport it was stated, *inter alia*, that:

"Ackermann het vroeër skriftelik opdrag gegee dat die polisie nog getuienis in die ondersoeke na die ANC leiers moet versamel met die oog op 'n moontlike vervolging."

Well, I wanted to see my memorandum that was filed ...[intervenes]

ADV VARNEY: Mr Ackermann, can you just offer a quick translation
20 of that Afrikaans, please?

ADV ACKERMANN: It is stated that I earlier gave an order that written, I gave him a written order that the police must be still look for evidence against the ANC leaders in regard to a possible prosecution. And that is why I then wanted to see my personal office note in the file. I contacted Commissioner Jacobs telephonically and

asked him to furnish me with my memorandum. Talking thereafter, he faxed me a document. It was the forged document. That is now again 110, the forged document, but there was no page 2. The document ...[intervenes]

ADV SEMENYA: Sorry, Ackermann. Chairperson, we have Ms Ntloko on virtual with her hand up. I do not know whether she wants that interruption to happen now or at the end of the evidence.

CHAIRPERSON: Yes. Ms Ntloko?

ADV NTLOKO: Chair, I am not certain that my hand is up. The hand
10 that is in fact up is Ms Rantho's hand. I see [indistinct] actually up. I am not sure why; [indistinct] wanted was the translation and then Mr Varney dealt with it.

CHAIRPERSON: Thank you.

ADV VARNEY: You may proceed, Mr Ackermann.

ADV ACKERMANN: Now I received this document and I recognise the portion of the contents of the document as corresponding to the memorandum that I compiled for the landmine docket in 2003. I recognise my signature at the bottom, page 2 of the document, but noted that a six, not in my handwriting, had been added to the date
20 which was in my handwriting and located next to the signature. I therefore immediately realised that this document was a forgery, as the document claim that in June 2006, I made the following decision. Fortunately we have a translation of that why [indistinct]. This is just for convenience sake that I can [indistinct].

ADV VARNEY: Mr Ackermann, before we put up the translation,

please would you read the Afrikaans portion into the record?

ADV ACKERMANN:

“Ten opsigte van die sogenaamde voetsoldate, is geen verdere ondersoek nodig nie. Ten aansien van die ANC leierskap wat die opdrag vir die landmynveldtog gegee het en nie amnestie ontvang het nie, moet ’n besluit ter geleger tyd nog geneem word nadat al die relevante bespreek is. Bovermelde is ’n moeilike besluit.”

- 10 ADV VARNEY: And Commissioners, just so that you are aware; that extract is on page 111 of the Ackermann bundle at paragraph 4. Now that is the document that Mr Ackermann says is the forged letter.

ADV ACKERMANN: If I can refer to page 72; that is page 72 to page 77. In this it is a report compiled by Commissioner Jacobs. I will later explain why he compiled this report. He, on the first page, he says the following:

“Adv Ackermann indicated that...”

Commissioner, and now I am going to read the translation of my Afrikaans note. The ANC ...[intervenes]

- 20 ADV VARNEY: Mr Ackermann, before you proceed reading, we just want to make sure that everybody is on the same page. So you are referring us to page 72 of your bundle. Is that the document that is titled “Report on audit document of South African Police Service TRC-related matters”?

ADV ACKERMANN: This was a report compiled at the request of

the task team.

ADV VARNEY: Yes, and am I correct in saying that that is the heading of the report?

ADV ACKERMANN: That is correct.

ADV VARNEY: And who compiled the report?

ADV ACKERMANN: Commissioner Jacobs.

ADV VARNEY: Thank you. You may proceed.

ADV ACKERMANN: I am just going to; the relevant part is the translation, so that everybody can understand what I said. He says; it

10 is his translation. He says:

“The ANC had approved the use of landmines and orders in this regard were given by the command structure of uMkhonto we Sizwe to members of the amnesty judgment of those involved. According to the evidence, those mentioned were under the command of one Mantshe who gave orders and who had to report to MK commanders. All the other ANC members, foot soldiers who were involved in these crimes

20 are deceased. Adv Ackermann made the following decision. In respect of the so-called foot soldiers, no further investigations necessary. In respect of the ANC leadership who gave the orders for the landmine campaign and who have not received amnesty, a decision need to be

taken at the opportune time after consulting with all the relevant parties. This is a difficult decision).

And then there is a date inserted 26 June 2006 ...[intervenes]

ADV VARNEY: Mr Ackermann, sorry to interrupt you, but which page are you reading from?

ADV ACKERMANN: That is page 72. I am now under page 73.

ADV VARNEY: Thank you.

ADV ACKERMANN: On top of page 73. I do not know.

10 ADV VARNEY: Proceed.

ADV ACKERMANN: Can I proceed? I will later give evidence to what is of relevance of that 26 June 2006, but I think what is important to understand; when this report was given to the task team, that was... I did not know of the forged letter. I will explain it later, but that 26 June 2006 will be relevant later. If I may indicate; perhaps it will play a role to understand it. If you go to [indistinct] at this page 73, you will see it says:

“Adv Ackermann indicated on 11 August 2003
that an inquest must be held.”

20 That is now a different matter, but the relevant part is:

“He indicated on 11 August 2003.”

At the bottom there is a note; not a note, a different case he deals with. “On 18 of”, I cannot see; “13 of” or is it now 18 August 2003 “Adv Ackermann decided that”. Look at page 74, he says that:

“19 August I decided.”

At the bottom you will see:

“Adv Ackermann on 3 October 2003 decided”.

Look at page 75 there in the middle it says:

“Adv Ackermann decided on 3 October 2003
that.”

And it is all translations. But it is only with this one matter where they have put in [indistinct] I decided on 26 June, ja, 26 June. It is just a date that they put in there. It does not start off, if you look at page 72 stating:

10 “Adv Ackermann indicated.”

That is the only one where he does not give the date. All the others he gives the date and it was in 2003. That is the only one that is not done with the same style. It is another indication that there was something fishy about this document, but I will proceed and we will come back to the document again. I say the document contained a reference number 815, which would be consistent with ...[intervenes]
COMMISSIONER KGOMO: Before you continue; I am not quite sure

where you are, but at page 75, Mr Ackermann, whose handwriting is this “*teenspreklikheid*” which means ‘contradiction’? Whose
20 handwriting is that, with reference to the statement “Adv Ackermann decided on 3 October 2003 that” and then the handwritten note “*teenspreklikheid*”, which is ‘contradiction’. Whose handwriting is that?

ADV ACKERMANN: I do not know, but I do not know. I asked for these documents and I do not know who submitted it. It can be

Jacobs. I think; if I have to... let me see. I must have his handwriting somewhere.

COMMISSIONER KGOMO: And with Jacobs, is that the reference to Dr ...[intervenes]

ADV ACKERMANN: Commissioner ...[intervenes]

COMMISSIONER KGOMO: Sorry. Is that Dr Phillip Jacobs?

ADV ACKERMANN: That is correct, Commissioner.

COMMISSIONER KGOMO: Okay.

ADV ACKERMANN: I looked at that handwriting. I do not think it is
10 his handwriting. It might be ...[intervenes]

COMMISSIONER KGOMO: No, if you do not know, if you do not know, do not worry then.

ADV ACKERMANN: Okay. Now, as I said, any document compiled by myself in June 2006 and addressed to Dr Ramaite would have been in English and would have been typed by Mr Swart on her computer in a different format and font. Mr Swart came after Thea Pienaar left me in end of 2003. She was my secretary. I say:

20 “In any event, an internal document compiled by myself and addressed to Dr Ramaite would not be in the lawful possession of SAPS. During a number of meetings with the TRC task team after June 2006, which were attended by Commissioner Jacobs representing SAPS, this memorandum was brought up, but a copy of the letter was never tabled.”

After I established that the document is a forgery, I immediately report the matter to the national director. He instructed me to request Commissioner Jacobs to forward the original of the note to my office. A letter was faxed to Commissioner Jacobs, requesting him to have the document delivered to my office by no later than 16:00 on 20 August 2007. The document was never delivered to my office, nor have I heard anything regarding the matter from Commissioner Jacobs.

I will just give briefly reasons I regard why this is forged.

- 10 General van der Merwe and his Foundation for Equality before the Law on numerous occasions threatened the 37 ANC leaders with a prosecution if they dare to prosecute any member of the security forces. These threats of the Foundation for Equality before the Law even played out in the public domain.

Ad nauseam I was informed by the attorney of [indistinct] Jan Wagenaar that General van der Merwe was in possession of a docket proving the guilt of the 37 ANC leaders. The gathering of the indictment was the so-called landmine campaign which they admitted in the amnesty application that was not successful.

- 20 I was informed by Wagenaar that the contents of the docket included, *inter alia*, agenda, minutes, presentation list and decisions taken by the ANC at meetings. I think Lusaka was mentioned. This is what I earlier this morning said. I knew something about Lusaka; and this was what Wagenaar informed me. I do not know whether it was over the telephone or it was in my office, but it appears to me I

did know about the Lusaka link.

I was also informed by Wagenaar that senior counsel perused this document and was of the view that a *prima facie* could be made out against the leaders of the ANC. I have no doubt that the ANC leadership must have been very concerned about the existence of this docket.

After all, they did apply for amnesty of the landmine campaign and it was refused. There was only one way out for the ANC to prevent a prosecution against them; and that was to make sure that
10 no prosecution was instituted in the Chikane matter. The TRC team was the vehicle they used. The task team was after all created for the purpose to make decisions on TRC matters.

That is the reason why the Chikane case played a very important role in the deliberations of the task team. And I will later deal with the minutes of the task team to see how many times Chikane came up and what the views were of the members of the task team. Virtually all the members were of the opinion that Chikane was not interested in the prosecution.

Now if the task team was unsuccessful with their attempts to
20 prevent the prosecution, the powers that be must then get another plan; and that plan was to obtain evidence that Ackermann was still investigating the 37 ANC leaders, but the problem was that there was no evidence to that effect. So what is the next step? Documents must be fabricated, approved that I was still investigating the 37 leaders. I have made here a note; the role played by Commissioner

Jacobs ...[intervenes]

ADV VARNEY: Mr Ackermann, before you proceed to the role played by former Commissioner Jacobs, would this be an appropriate time for you to take a short break?

ADV ACKERMANN: Ja, it will suit me perfect.

ADV VARNEY: Would 15 minutes be an appropriate time?

ADV ACKERMANN: It will be fine.

ADV VARNEY: Chairperson, with the commission's indulgence, could we take a 15-minute break?

10 CHAIRPERSON: We will adjourn for 15 minutes.

ADV VARNEY: As the commission pleases.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Mr Varney?

ADV VARNEY: Thank you, Chairperson. Mr Ackermann, before we proceed with your evidence in relation to the role of former assistant Commissioner Jacobs, I want to refer you to a document. Commissioners, this is in the Ackermann Bundle at page 35. It is a memorandum addressed from Dr Ramaite, then deputy NDPP to
20 Ms Mabandla, then Minister of Justice. It is dated 22 November 2007. The purpose of the memorandum was to inform the minister how the TRC prosecution related matters have been and are currently dealt with by the NPA. Mr Ackermann, I want you to read into the record the whole of paragraph 4.3 and subparagraphs, but before I do so, can I ask whether you had any inputs into this document?

ADV ACKERMANN: Looking at it now, I was of course taken off TRC matters since 22 November 2007, but I know that Chris Macadam wrote a letter and he discussed it with me how the, this is a repetition of many letters that we have written regarding the same topics.

ADV VARNEY: If you could turn... [intervenes]

ADV ACKERMANN: So ...[indistinct] I do not know if I had any insight, input into whether I read it before it went out, but it is under the name of, this went out under the name of Dr Ramaite. But I will read it out, 4.3, this is, I know of the things that are said there.

10 ADV VARNEY: Yes, please go ahead, 4.31 it is titled 'allegations against the ANC leadership', to 4.39.

ADV ACKERMANN:

"Prior to the establishment of the PCLU, SAPS had compiled a series of dockets relating to the arms struggle of the liberation movement. In consultation with the DPP Pretoria, SAPS had appointed two retired police officers to manage these dockets.

20 Although the suspects who have been implicated as being directly complicit with the offences contained in the docket, had been granted amnesty, the two police officers were of the view that the prosecution could be instituted against the ANC leadership which had adopted the arms struggle.

In this regard I realised on the refusal of amnesty to 37 ranking office bearers in the ANC by the TRC. For reasons unknown to the NPA, they were of the view that the prosecution should be linked to a landmine campaign.

10 These two officers brought the matter to the attention of the PCLU after it was established. They were however unable to furnish the PCLU with any docket containing any evidence against the ANC leadership.

 At the same time the PCLU gave notice to the lawyer acting for the former security forces that it intended to prosecute individual security force members for the role in the assassination of members of the liberation movement. The lawyer responded by stating that the security forces had compiled a docket against the ANC leadership which would be used to obtain a private prosecution in the event of any security force member being prosecuted by the NPA.

20

 Due to these concerns, the then DPP, Mr Ngcuka instructed the PCLU to examine the available case material in order to establish whether there was in fact any basis for such allegations.

After the PCLU furnished Mr Ngcuka with the report to the effect that there was no legal basis on which a criminal investigation could be instituted against the ANC led leadership, Mr Ngcuka released a statement confirming there were no grounds upon which the ANC could be prosecuted. This was done in May 2004.

10 Because there was no basis upon which to investigate the ANC leadership, Mr Ngcuka further directed that all the police dockets relating to the liberation movement be removed from the DPP Pretoria's office by SAPS. This was done under the supervision of the then Director General of Justice.

20 Since May 2004, the NPA, particularly the PCLU has regarded this matter as being finalised and has conducted no further investigations into such matter. The fact that this matter has been finalised was important to the minister and other key role players at the appropriate stages.

When the media speculated as to the prosecution of former Minister Vlok and former Minister Commissioner van der Merwe in relation to the poisoning of Rev Chikane, an organisation called AfriForum publicly called upon the NDPP to

either abandon the prosecution or to prosecutor the leadership in respect of the landmine campaign.

The NDPP informed AfriForum that the matter had already been closed by Ngcuka in 2004 and that there were no grounds upon which he could overturn the decision of his predecessor.

Signed, Dr Ramaite.

ADV VARNEY: Thank you, Mr Ackermann. Let us now turn to the
10 evidence you wish to put to the commission in relation to the role played by Commissioner Jacobs. Commissioners, for the purpose of this section of Mr Ackermann's evidence, he is going to rely on two main documents. That is going to be the affidavit of former assistant Commissioner Jacobs to the Ginwala Commission, that is dated 15 January 2008. And that can be found in the Ackermann Bundle between pages 61 and 97 and he will rely in particular on pages 61 to 69. And then the second document is an internal memo compiled by Mr Ackermann, which was a response to that affidavit of Commissioner Jacobs and that memo is in the same bundle between
20 pages 105 and 129. Mr Ackermann, you can proceed now.

ADV ACKERMANN: I will deal with the affidavit of assistant Commissioner Jacobs to the commission, to the inquiry of fitness of Adv Pikoli to hold office; I will read out his, well, each paragraph. And then I have a document, I know that Mr Pikoli submitted this Commissioner Jacobs affidavit to me and he asked me to respond to

it and what do I have to say about this. So can we then start off with first of all the affidavit and paragraph 1.

ADV VARNEY: So that is on page 61 of the Ackermann Bundle and it is the affidavit of Philippus Christoffel Jacobs before the Ginwala Commission and it is dated 15 January 2008. You can proceed, Mr Ackermann.

ADV ACKERMANN: He says, paragraph 1:

10 “I am making this affidavit with reference to paragraphs 114 to 120 of the Government submission to the Enquiry. I am an officer in the South African Police Service holding the rank of assistant commissioner. I am the head of the component: Legal Support: Crime Operations, at the head office of the South African Police Service, in Pretoria. Senior Superintendent Josias Lekalakala and I were instructed by the then National Commissioner JS Selebi to represent the South African Police Service on the interdepartmental committee set up in terms of

20 the guidelines of cabinet to deal with post-Truth and Reconciliation (TRC) matters.

My answer, I will now deal on page 105 is my reply to each paragraph, I will do it seriatim. At paragraph 1; I then write:

“Commissioner Jacobs’ affidavit was compiled with reference to paragraph 114 and 120 of

government submission and not with reference to the minister's affidavit. In addition thereto, it must be noted that the TRC guidelines do not make provision for the establishment of any committee."

That was my reply. Now I will read paragraph 2 of Jacobs' affidavit.

He says:

10 Notice was given by the National Director of Public Prosecutions on 9 October 2006 of the first meeting of the committee to be held and the national commissioner was invited to nominate an official to attend the meeting and also to attend the meeting personally.

20 This first meeting was convened for 12 October 2006, at the National Prosecuting Authority's offices in Silverton. The national commissioner of the South African Police Service did not attend the meeting. In effect two meetings were held on that day, one chaired by Adv Pikoli, with the directors-general and directly thereafter a meeting presided by Dr Ramaite with the designated officials from the respective departments.

I attended both meetings. It is reflected in the minutes of the second meeting, presided by Dr Ramaite that Mr Ngidi of the Directorate for

Special Operations said that:

‘Committee members will not be rubberstamps to the decisions already made by the PCLU and he was supported by Mr Kopedi of NIA who said they are prepared to go through volumes of records in all cases.’

I may add here that not one docket was read by then, I wanted at some stage ...[indistinct] of the docket but they were not interested, not one was ready. Now in paragraph 3 he says:

10 “The first subsequent meeting of the TRC committee was held on 25 October 2006, on which date both myself and Adv Ackermann provided audit reports of the matters at hand. I received a list of such matters from Superintendent Louis Bester of the unit Crimes against the State, who was placed in custody of all the files which were previously removed from the offices of the Director of Public Prosecutions: Pretoria.

20 Where they were dealt with by Adv Fick and later on the PCLU together with retired investigators who were appointed on contract by the SAPS, that is Hennie Brits and Nel. A more detailed report was requested from me, and I indicated that if need be I would request Brits to

assist me as I was never personally involved in any of the matters. Adv Ackermann, in a memorandum attached to revised report and faxed to me on 3 November 2006, objected against Brits being appointed to assist.”

I will later deal with this list that Superintendent Louis Bester sent to him.

My answer to that was, that will be page 105 at paragraph 3:

10 “The reason why I objected to the appointment of Brits as an investigator is cogently set out in the following extracts from PCLU report. Paragraph 2 to 8 of the report compiled for the task team on 30 October 2006...”

...[intervenes]

ADV VARNEY: Mr Ackermann, before you read that long stretch that is part of your memorandum. My recollection is that this is already in the record, you have already explained to the commission that Brits was a former member of the security branch and he had connections with Johan van der Merwe and the Foundation for Equality before the Law, so I do not think... Just to save time, I do not think there is a need to
20 read that out, unless there is anything else you wish to bring to the attention of the commission?

ADV ACKERMANN: I agree. Then I received, paragraph 4... I see there is no paragraph 4. I will then deal with paragraph 5, I just want to make sure my... [intervenes]

ADV VARNEY: There is a paragraph 4, it is on page 3 of that document, it is page 63 of your bundle.

ADV ACKERMANN: Let me deal with paragraph 4 where it says the following in his affidavit:

10 “I revised the South African Police Service Audit Report and requested Superintendent Louis Bester to provide me with a list of all matters which were according to the documentation at his disposal, outstanding. I was referred to a number of decisions took by Adv Ackermann, and where it was not clear whether the inquests in those matters were finalised. The revised report was submitted to the meeting on 6 November 2006. It was decided at the meeting that the discussion of the report would stand over until the next meeting.

20 Adv Ackermann informed the meeting that a decision to prosecute the suspects in the complaint of Rev Chikane had already been made, namely to proceed with the prosecution. It was minuted by Superintendent Lekalakala, also referred to as Josias, indicated to the meeting that recommendations of the task team are necessary, because the National Commissioner is of the view that Rev Chikane is not interested

in prosecution in the matter. It was minuted that it was decided that the Rev Chikane's attitude be ascertained and the matter was therefore closed pending a feedback on his attitude.

May I just state here, I see I did not deal with it in my report back to Pikoli, but you will see that in the beginning of that letter it is stated that when Bester provide you with a list of the documentation of at his disposal that is outstanding. And the matter that is referred to was, the very first matter was of course the landmine campaign inquest.

10 There is a document on page 19, information note.

ADV VARNEY: Mr Ackermann, can you just pause for a moment while we locate that document? I am led to believe that you are referring to the bundle put up by Adv Macadam and I understand that that bundle has been supplied to the Commissioners and hopefully the other parties as well. I am being told that everybody now has a copy of the relevant documents from the Macadam Bundle, that is on the website. It is under statements and submissions, then statements, then NPA, then if you go to Priority Crimes Litigation Unit and then Adv Macadam and then the documents under Macadam's
20 name. And Mr Ackermann is about to refer to page 19 which is titled information note. You may proceed, Mr Ackermann.

ADV ACKERMANN: [Indistinct] I just read these documents that were referred to me and appeared on my tablet and I did not know from whom it came, I just read. So I cannot refer you to from whom I received it, it was on the website that I read it. Now this is a

document to assistant Commissioner PJ Jacobs, TRC related matters inquest:

“As far as the finalisation of certain inquests are concerned, the following cases were perused and the findings are as follows...”

Now Chair, if we refer to the landmine case, I have disposed of that case and I have written a long report in it and in this report I mention what happened, you know, ja, that is a forged letter. I said that inquest and even people were prosecuted, ...[indistinct] I decline to
10 prosecute against the president and then inquest was held and I am, somebody, I think it must be Chris Macadam sent me some documents, the J56. That is the front page of an inquest.

And we have the front page of the inquest, that inquests were held, so when Bester and Jacobs state that they, these matters were outstanding, I do not know what they referred to. But what I do know, they made sure that it is in some sort of report. I can, on page 21, page 20 and 21 and 23 of the J56 of the landmine campaign, the inquests that were held.

These are documents that they have sent to the task team,
20 saying they are outstanding. I do not know why they state it is outstanding, I was under the impression I gave instructions what to do with these cases. But of course what is important, there is a note that I, the difficult decision about the President and the 37.

They give the impression that they was not aware of that. I have not got an answer on, in my ...[indistinct] on the document that I

refer to Mr Pikoli. Now I will deal with paragraph 5.

ADV VARNEY: Just before you proceed, Mr Ackermann, I am advised by my team that that particular bundle from the Macadam volume can be referred to as EXHIBIT 9 of the Macadam Bundle.

ADV ACKERMANN: I am not ...[indistinct]

ADV VARNEY: No, I beg your pardon, I am advised that we wish to add it as EXHIBIT 9 of the Ackermann Bundle, so the idea is to put these pages into the Macadam Bundle, that is Bundle 3 of the Calata group, it will be EXHIBIT 9.

10 COMMISSIONER KGOMO: EXHIBIT 9, not item 9? EXHIBIT 9?

ADV VARNEY: EXHIBIT 9 of Ackermann's Bundle 3 of the Calata group bundles.

COMMISSIONER KGOMO: Oh, okay.

ADV MOROKA: Can I understand, but that means that we have this new exhibit, but Mr Macadam is going to have another exhibit of the same documents? Is that what we are supposed to understand? I do not know whether you understand, my learned friend understands my question?

20 ADV VARNEY: It is correct, Commissioners, that those pages are in the Macadam Bundle, but since Mr Ackermann wishes to rely on them, we thought of also adding those particular documents to his bundle, but we are in your hands, we do not have... I accept that there might be some duplication there and if you want to avoid duplication, well then we will simply leave them in the Macadam Bundle.

CHAIRPERSON: Yes, I think a duplication will not be too frightening a measure to take.

ADV VARNEY: Well in that case we will add them as EXHIBIT 9 to Macadam's Bundle 3. Thank you, Chairperson. Mr Ackermann, you can proceed.

ADV ACKERMANN: I will now deal with paragraph 5 of the affidavit of Commissioner Jacobs, he says:

10 “The revised SAPS audit report was discussed at the next meeting, namely the meeting of 16 November 2006. Adv Ackermann was furious about the SAPS report and once again referred to Superintendent Brits’ prosecution of the President. Dr Ramaite enquired from Adv Ackermann about the relevance of his query. Upon enquiry from Adv Ackermann, I confirmed that I have compiled the report and that the SAPS needed guidance on how to deal with the outstanding inquests.”

20 I then wrote back in the report to Mr Pikoli in paragraph 3, page 107; I say:

 “I am embarrassed, I say it always. I will do my best to be brief. It is correct that I was furious when SAPS presented their report, the reasons are...”

ADV VARNEY: And Mr Ackermann, on the question of being brief, I

see it is a very long response, is there a chance that you could perhaps summarise for the commission your response?

ADV ACKERMANN: No, I will not be able to do, because they all relevant, I cannot even recall what I said... [intervenes]

ADV VARNEY: Okay, please proceed.

ADV ACKERMANN: So:

10 “Since 2003, Commissioner Selebi furnished the President and the ANC leadership with false information. In essence the false information was that PCLU was planning to arrest the President and other high ranking ANC officials. One of the documents used by Commissioner Selebi was a personal note which I drafted in 2003 and filed in the police docket. That is a false, the forged letter.

20 In early 2004 the former Minister of Justice, Mr Maduna informed Mr Ngcuka that Commissioner Selebi had alleged that I was on the verge of arresting the President. These allegations were investigated by Mr Ngcuka and found to be untrue. A plea statement was released in middle 2004 to the effect that there was no case against the President.

 These false allegations by Commissioner Selebi persisted during the period 2004 and 2006.

Adv Pikoli will be able to provide the details there.

During, I think July 2006 Adv Pikoli apparently had a meeting with ministers of government, Commissioner Selebi was also present and once again it was raised that I was pursuing an investigation against the President.

10 Adv Pikoli apparently request a meeting to provide him with proof of such an investigation. Commissioner Selebi apparently told the meeting that he had proof of the investigation in writing and pointed to a file he had with him. On 16 November 2006 Commissioner Jacobs presented a report at the task team. This is the meeting where I was furious.

20 The minutes of the meeting do not reflect everything what was said at this meeting. For instance I enquired about the meeting of the date 26 June 2006, which was in brackets on page 2 of the record. He did not provide me with an answer. At the time I was of the opinion that it was the date on which a report had been written by SAPS and that it as an excerpt from a SAPS report. I left it at that."

Commissioners, of course at that stage I did not know of the existence of the forged letter, that was the date of 26 June 2006, I

found very strange and I wanted to enquire what was it?

“The document provided by Commissioner de Beer indicated that it had been typed on 26 June 2006 and not 26 June 2003, everything then...
[intervenes]

ADV VARNEY: Mr Ackermann, you actually left out paragraph 14.

ADV ACKERMANN: Oh, ja. In paragraph 14:

10 “In August 2007 as a result of a report in the Rapport Newspaper, I requested Commissioner de Beer to send me my office note which had been filed in the police docket. And the docket provided by Commissioner de Beer indicated that it had been typed on 26 June 2006 and not 26 June 2003. Everything then fell into place.

20 Adv Pikoli instructed an investigation into the matter. The minister’s letter to Pikoli speaks for itself. It is obviously that the document Selebi referred to was this forged office note. On 17 September 2007, SAPS informed McCarthy that the office note had in fact been created in 2003. It is now common cause between SAPS and the NPA that my office note was written on 26 June 2003 and not 26 June 2006.”

Madam Chair, I do not know why I put in that paragraph, because at a later stage I was informed that I must advance reasons why I am not

prosecuted for perjury and I will refer to that document. So it is does not make sense to me that they admitted, because they were the ones, according to McCarthy who asked that I must furnish reasons why I should not be prosecuted.

10 “The question however remains whether Commissioner Jacobs was *bona fide* when he presented the SAPS report. It is significant that in that report which he compiled, he drafted it in the following manner: Adv Ackermann indicated on 11 August 2003, on second, that is page 2.

 On 13 August 2003 Ackermann decided that, next page Adv Ackermann indicated of 4 September 2003 that Adv Ackermann decided on 3 October that and yet when the President’s case is involved, a date of 26 June 2006 is inserted in brackets. It is significant that Commissioner Jacobs failed to insert his customary set, because it is an error.

20 I also attach a copy of my report to Adv Leonard McCarthy as well as a copy of my affidavit in connection with the investigation as reflected in the annexures. A copy of the forged document is attached hereto as Annexure A.”

What happened is then that some stage McCarthy called me in and said he had discussions with, I was under impression it is

Commissioners de Beer and Jacobs and they stated that they are of the view that I committed perjury and I must advance reasons why I made the false affidavit. In fact I did draft an affidavit, if I say draft, I immediately left it to Chris Macadam to deal with the matter and ask him, I gave him the facts to draft my affidavit. Now this affidavit you find on page 121. I do not intend to go through the whole affidavit, there is only one long paragraph in Mr Macadam's ...[indistinct] and that will be on page 126. That set out... [intervenes]

ADV VARNEY: Sorry, to just before you proceed, Mr Ackermann, so I
10 just want to check that the Commissioners and the parties are on the same page, it is in the same bundle at page 121, at the top it says E, it is your affidavit, this is an unsigned version. It is dated 21 August 2007. You can proceed.

ADV ACKERMANN: I will, I think the gist of this document is paragraph 14 on page 126 and this is how Mr Macadam drafted what transpired and I think this is the document referred to that is the perjury. Do you want me to read out that paragraph 14? It is a repeat of what I stated.

ADV VARNEY: Yes, it is a repeat and frankly, Mr Ackermann, unless
20 there is something different that you wish to draw our attention to, I do not think it is necessary to read it, given that from what I can see it is repeating the facts around the forged letter.

ADV VARNEY: And paragraph 15 and 16, it is also, I do not have to read that out, just the gist is the perjury I have committed. I of course then had to report to McCarthy, I just want to get the... I have it here,

it is on page 119.

CHAIRPERSON: 119?

ADV ACKERMANN: 119, Chair.

ADV VARNEY: So that internal memorandum from yourself to Adv McCarthy on the DSO, that is dated 27 September 2007, the subject matter is 'Project gnome' and it is obviously annexed D, what do you want to highlight in this document?

ADV ACKERMANN: I will read out this document, because that I was directed to advance reasons why I should not be prosecuted for
10 perjury. Now I feel that moment, because it was obvious to me that the document was forged, but now I have to advance reasons. I said:

"Dear Leonard, I shall be brief.

I am adamant and 100% sure that the figure "6"
as reflected in the handwriting expert's document,
FDC 0095/07 (Annexure "E") is not in my
handwriting.

And I am still of the view that any person, you do not need to a
handwriting expert to see that it is not my 6, if you look at the slants, it
is not even close and all the surrounding facts this document was not
20 written in 2006. And I say:

"I am of the view that you do not need an
handwriting expert to establish that fact.

"Furthermore, it is important to note that the
handwriting expert made no such finding and
merely remarked: '...with no alteration to the last

figure '6'."

There is no alteration; it was a completely different person that wrote that.

"Within minutes after I had received the said memorandum from Commissioner Jacobs, I phoned him and informed him that the memorandum was forged and requested him to furnish me with the original. To date I have not had sight of the original.

10 It is incomprehensible that somebody will post-date by three years the year on a document."

To pre-date the, I do not know what I mean, to pre-date the year during the months of January is quite common, but to post-date it was not that common.

20 "I have never, on any occasion, written to Dr Ramaite in Afrikaans. The crucial question is whether any person in SAPS had a motive or reason to produce a document emanating from the NPA, to the effect that the NPA was still investigating ANC office bearers during 2006.

If no such motive exists, I must accept that the *gravamen* of the disputed document falls away. Kindly find attached hereto a letter from the minister to Adv Pikoli.

I am very interested to know which documents

the National Commissioner produced to support his argument that indeed there is an investigation by..."

I cannot read what it says here:

"On certain political office bearers."

ADV VARNEY: I think it is likely, Mr Ackermann, that it is by the NPA on certain political office bearers.

ADV ACKERMANN:

10 "If the disputed document is relied on by the National Commissioner to prove that there is indeed an investigation by the NPA on ANC office bearers, then this will contradict the explanation given by Commissioners de Beer and Jacobs. To the effect that since 2003, SAPS were fully aware that the disputed document had been...

I cannot read, mine is cut off. But any event, it is, perhaps we should also refer to the handwriting experts report, I see that Commissioner Jacobs said, I read it on the website, the documents were submitted. I do not have it with me.

20 ADV VARNEY: Okay, we will find that handwriting report.

ADV ACKERMANN: In any event, they took photos of the 6, I do not, I cannot see that they in fact make report on it. Some of the findings are nonsensical and it will take a long time to go through their report. In any event, if it is accepted, Madam Commissioner that this was a forged document, we do not need to go through all these documents

that I am going to rely on.

ADV VARNEY: So Mr Ackermann, just for the record, the handwriting report is attached to the affidavit of former assistant Commissioner Jacobs, the one that he filed before this commission. But I agree that there is no need to go through that forensic report.

ADV ACKERMANN: Those are the handwriting experts of the police, what in fact also happened and that we go and look at an affidavit that Commissioner Jacobs submitted to this commission, it appears that he is still of the view that that document is forged. I refer you to

10 ...[indistinct] a sworn affidavit by Jacobs to the, in the Judicial Commission of Inquiry into allegations regarding attempts, this commission that he submitted an affidavit. And in paragraph 71 of this affidavit, it is page 18 I see.

ADV VARNEY: Just to be clear, Mr Ackermann, you are referring to the affidavit of Phillipus Christoffel Jacobs filed before this commission and are you referring to paragraph 71 on page 18 of his affidavit?

ADV ACKERMANN: That is correct, Commissioners. Can I read it out?

20 ADV VARNEY: Yes, you may.

ADV ACKERMANN: In paragraph 71, Commissioner Jacobs say the following:

“From senior superintendent Brits’ affidavit, it was made clear that the note drafted by Adv Ackermann was filed and received with his other

documents in 2003. However, the said note bore the date 23 June 2006 as opposed to 23 June 2003. It was further confirmed by means of forensic investigation that the note in question was signed by Adv Ackermann, the ink, paper and other characteristics on the document were found to be consistent with each other and that there were no alterations made to it. In essence, the conclusion made by the forensic report was

10 that the note in question was not forged.”

Paragraph 72 he says:

“On 30 August 2007, the disputed note together with a file consisting of documents, containing 72 specimen signatures and a copy of the fax received from Adv Ackermann was provided to the late Brigadier Hattingh, the director of Forensic Document Consultants. An independent consultant for a second opinion on the disputed document, his report was signed on 31 August

20 2007 and confirmed the initial report.”

I think that is now that this document is, was not forged.

ADV VARNEY: And what is your response to those two paragraphs?

ADV ACKERMANN: Commissioners, you do not know how it feels to be powerless. You have handwriting experts, you have the police and they prove in their case that I committed perjury on a document that is

so patently, blatantly forged, just the mere fact that Tia Pienaar was not even in my office, I do not know if she was even alive when that letter was typed. I noticed Macadam in his affidavit, the affidavit he drafted on my behalf stated that, I do not know, he use words like also pain and anguish, but we were both shocked that they could make such a decision. And I think what is also important is that, and I will just deal with it now, then go back to the... Chair, may I have a short adjournment just to get order in my thoughts?

ADV VARNEY: Mr Ackermann, how much time would you need?

10 ADV ACKERMANN: Just 15 minutes to write down and get some oxygen in my head.

ADV VARNEY: Okay. Chairperson, would a 15 minute break be in order.

CHAIRPERSON: Yes, we will adjourn for 15 minutes.

ADV VARNEY: As the Commission pleases.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Mr Varney?

20 ADV VARNEY: As the Commission pleases. Commissioners, we are about to move to a new topic, but Mr Ackermann just wanted to draw your attention to minutes of the Inter-Departmental Task Team which reflects some of the evidence that he has given this morning and that is at, the first minute is dated 6 November 2006, that is at pages 70 to 71 of his bundle and the next task team meeting is the one held on 16 November 2006 and that is at pages 79 to 80 of his bundle.

Mr Ackermann, I just want to put to you a passage from the affidavit of Advocate Vusi Pikoli, Commissioners, that is Advocate Pikoli's affidavit in Calata Group Bundle 2, his affidavit dated 6 May 2015 is at pages 1 to 47 and I am going to refer Mr Ackermann to a passage that starts on page 24 of that bundle 2 and It is at paragraph 64 of Advocate Pikoli's affidavit. Mr Ackermann, that paragraph reads:

Those at the meeting demanded answers from me about TRC prosecutions, and just to be clear this is a meeting that is
10 referred to in paragraph 62. It is a meeting of the Justice Crime Prevention and Security Cabinet Committee on post TRC matters held on the 23rd of August 2007. Attendees included Commissioner Selebi, Cabinet Ministers and other DGs, apparently Cabinet Ministers present included Minister for National Intelligence Services Mr Ronnie Kasrils, Justice Minister Mabandla and Minister Skweyiya among others. So paragraph 64:

“Those at the meeting demanded answers from me
about TRC prosecutions, they were also
particularly concerned that I was instituting an
20 investigation into certain members of the South African Police Service. This was in relation to my investigation into who was behind the fabrication of the letter purportedly written by Ackermann SC. Minister Mabandla told me to stop this investigation as we could not be seen to be taking

each other to court. I advised the Minister that I would not stop the investigation."

Were you aware that Minister Mabandla had asked NDPP Pikoli to stop that investigation?

ADV ACKERMANN: I was aware of that fact and ten years later it is prescribed. The matter was never investigated. I might add I suddenly realised that there is a document somewhere where Chris McAdam wrote to Ms Steenkamp of the Scorpions asking her for the investigations documents of the fabrication because he was also
10 involved in it and Ms Steenkamp wrote back to him stating she can't find those documents, it is not in the archives.

ADV VARNEY: Yes well, you have a good memory Mr Ackermann but I do not think it is possible for us right now to locate that document unless you can direct us to it. Can I suggest that we do not pursue that particular point unless you have it before you and you can advise us.

ADV ACKERMANN: I have the document here.

ADV VARNEY: Can you tell us which bundle?

ADV ACKERMANN: It is page 130 of the McAdams, of my bundle. I
20 did not even realise I had a bundle here.

ADV VARNEY: So it is page 130 of the Ackermann bundle.

ADV ACKERMANN: Yes.

ADV VARNEY: If you just give us a moment to get to it. Okay so that document is titled Internal Memorandum. It is dated 3 December 2009 and it is from Mr P Steenkamp who is the Principal Admin

Officer of the BG team to Advocate McAdam, Deputy Director of Public Prosecutions and the subject matter is Project Gnome. Please advise who Ms Steenkamp was and what was the BG team?

ADV ACKERMANN: I do not know, Commissioners. I just remember it was Ms P Steenkamp. He says he is Principal Admin Officer. I do not know.

ADV VARNEY: Okay. You may go ahead and highlight what you wish from this document.

ADV ACKERMANN: She says:

10 Dear Advocate McAdam, I confirm receiving a formal request from you to make available the original Project Gnome file. I also confirm that such a file was opened by a special investigating component of the DSO in 2007. This component was disbanded with the closure of the DSO in 2009 and substantial material was transferred out of the office.

 At the time I was in charge of the component's records. I have diligently researched the offices to
20 locate the file but have been unable to do so. I have also personally contacted the former Chief Investigating Officer, who is also unaware of the current whereabouts of the file.

 The file was dealt with by a senior investigator Mr Piet van der Merwe who resigned last year. All

that I have been able to locate are copies of various documents which I have attached here. I do not know why Chris requested these documents.

ADV VARNEY: And just so that we all know, what is this Project Nome, spelled G-N-O-M-E?

ADV ACKERMANN: That is the DSO, with all their investigations, named. This was Project Gnome and that was now the investigation with regard to this fabricated note.

10 ADV VARNEY: I see. Is there anything further you wish to add in relation to this document?

ADV ACKERMANN: No, that is all. None of this is available.

ADV VARNEY: All right, if there is nothing further, Mr Ackermann, can we then move to a topic that you wish to deal with, the hacking of your office computer?

ADV ACKERMANN: Of course, the notes that I have written will be on a typist's computer. So I requested my secretary at that stage, Ms Zwart, to search for the note A-15, that is a fabricated document, on our computer. She did find it and it was identical to the document
20 that Commissioner Jacobs produced, namely this forged document.

I was shocked and realised that my computer was hacked. Mr McAdam then took over and requested that the hacking be investigated by an outside expert. I did not get involved with the investigator in the investigation.

A few days later, Mr McAdam or Ms Zwart reported to me

that the expert found that the hacking of my computer did take place and that it occurred from a computer in Durban, or from the office of our IT expert at the BGM building. I know the person, he is Marnus, I probably asked him to do something on our computer, most probably this hacking occurred from a computer in Durban, it is our office in Durban.

ADV VARNEY: And did that, was there a report generated in relation to the hacking by that expert?

ADV ACKERMANN: I asked for the report for this commission, we
10 wrote in my affidavit, I stated that I would like to have a report of this expert, plus I wanted to know the cost, because as I look at the cost, we had to pay him and it is usually a fight, is it now out of my budget or was it out of Mr Pikoli's budget? But that is why I know that there was this expert to investigate the matter.

ADV VARNEY: But that report hasn't been recovered as yet?

ADV ACKERMANN: No.

ADV VARNEY: And while we are on documents, you mentioned that your secretary, Ms Zwart, I spot with a Z, she found the note A-15, the original or the identical on your computer, is there a copy of that
20 original document available?

ADV ACKERMANN: No, not that I know of. Look, in this reports, there are many annexures. These annexures, for instance, they were not, these annexures were not furnished to us.

But for instance, what we have done is probably 10 of these office notes were recovered. For instance, A-40 was written on a

certain date 2003. A-15, that is now the fabricated document, was written 2006. A-16 was written in 2003 and the rest. So the only document that was out of sync was the fabricated document, which obviously does, it is not in sync with the other documents and the dates. So, but I do not know if there is a copy. I am quite certain she made a copy for me at the time. And I am quite certain that it was handed to the investigators and to the computer expert who investigated the hacking. But I did not have those documents.

Chris was involved. I did not want to be part of that
10 document. That is why he also compiled my affidavit.

ADV VARNEY: So you would still want the commission to endeavour to recover the annexes you refer to and Commissioners, these are the annexes that were attached to the document that Mr Ackermann sent to Advocate Pikoli on 16 May 2006. And that is at page 7 of the Ackermann bundle.

And if you just peruse through that internal memorandum, classified secret, there are a number of annexes attached. When this memo was recovered, the annexes were not provided. Mr Ackermann would be grateful if attempts could be made to recover
20 those annexes.

ADV ACKERMANN: And of course, from Commissioner Jacobs or the police. It is only this morning when I went through this, the document, the fabricated document, that there is no page two. Maybe they could not fit in a page two. I am not sure, but it is the first time I have noticed that no page two was submitted to us. That is

now when Commissioner Jacobs sent the document to Mr Pikoli.

ADV VARNEY: So you would want the commission to endeavour to recover page two of the fabricated note A-15. Is there anything further that you want to add in relation to the hacking or can we move from that topic?

ADV ACKERMANN: We can move from that topic.

ADV VARNEY: Then I believe the final issue you wish to deal with in your evidence is in relation to the role of then Minister of Justice, Bridget Mabandla. If you're ready, you may proceed.

- 10 ADV ACKERMANN: Commissioners, over the years, there were many anecdotal rumours relating to Minister Mabandla's competence as Minister of Justice. I will not refer to them and I do not take it into consideration. I will tell you about my personal experiences with her.

On 17 July 2007, Ramaite and I were summoned to her office. We were summoned on the back of a memorandum that Pikoli had sent to the Minister on 10 July to inform her that the Chikane prosecution had been set down for a hearing on the 17 August 2007. Now, present at this meeting, I must say Mr Pikoli could not attend this meeting because he was on compassionate leave and Dr.

- 20 Ramaite was acting and the two of us then went. We arrived at the office of the Department of Justice. Present at the meeting was myself, Ramaite, and Mr Simelane, the Director General of Justice. The Minister arrived with two large black attaché cases in her hands, put it down, apologised that she was a bit late and told us that she was on leave but had to work during her leave and pointing at the two

black attaché cases.

She then proceeded to inform us that she was under the firm impression that there were not going to be prosecutions of TRC cases. Ramaite or myself then explained to her that the NDPP made a decision to prosecute the perpetrators of the Chikane poisoning. She then enquired why was she not informed of this prosecution.

I told her that she was informed and produced a copy of a letter addressed to her with the stamp of justice and the signature on it.

10 ADV VARNEY: Perhaps if you can just pause there for a moment. Commissioners, that meeting and the exchange is referred to in the affidavit of then DPP Pikoli. It is in his bundle, the Calata Group Volume Bundle 2, in his affidavit of 6 May 2015 and the relevant paragraphs are paragraphs 56 through to 58. That is on page 22 of Bundle 2. You may proceed Mr Ackermann.

ADV ACKERMANN: And if I remember correctly, this was the memorandum as I said that Pikoli had sent to her the week before. She asked me whose signature was on the document and who received it on behalf of the Department of Justice. Of course, I did
20 not know. She then asked Mr Simelane to look at it and stated that it was the signature of her secretary. Simelane was then instructed to call the secretary. The secretary came in and she was asked about this letter and enquired why was it not given to her.

The secretary walked to the black attaché case, opened it, took out the original letter and gave it to the minister. I noticed that

Mr Simelane was cringing with embarrassment. That settled, and then he proceeded and she enquired from me whether I intended prosecuting other TRC cases. I answered in the affirmative and started off with a Peco 3 case which was in the Gqeberha Supreme Court role. I explained to her that we could not proceed with the trial because the defence lodged review proceedings to overturn the decision not to grant amnesty to the accused.

She then enquired from me, now what is the defence doing in this matter? I was taken aback and did not know how to reply.

10 Mr Simelane again appearing extremely embarrassed said to her, Mr Ackermann was referring to the advocates appearing for the accused, not the Department of Defence. That day when I walked out, I thought to myself that, I'd rather not say. Now the instruction was given, there is quite a few number of incidents demonstrating Minister Mbandla's competence and this just arrived from TRC members. Then first is the instruction that was given to Dr Ramaite in November 2004 to stop the Chikane prosecution and all other investigations and prosecutions of TRC cases. It constituted blatant interference with the work of the NPA. Secondly, the failure to apply
20 the *audi alteram partem* principle to establish the facts of the forged document. She simply accepted Commissioner Celebi's version that the document was forged, was not forged.

The minister supported, the minister also supported the request by Mr Simelane, the mate to Pikoli to have me removed from TRC cases and it is, according to me, indefensible that she did not

acknowledge receipt of Mr Pikoli's memorandum to her.

ADV VARNEY: If we can just, can we just pause, which memorandum are you referring to?

ADV ACKERMANN: It is that the secret memorandum of, I am not sure what it is, the one that you wrote to her about the problems regarding decisions of TRC members.

ADV VARNEY: Commissioners, that secret internal memorandum addressed by Advocate Pikoli to Minister Mabandla is in Colata Group Volume Bundle 2 at page 56. It is dated 15 February 2007 and It is
10 titled Prosecution of Offences Emanating from Conflicts of the Past, Interpretation of Prosecution Policy and Guidelines.

When Mr Pikoli gives evidence, he will talk to it but just to give context to what Mr Ackermann is saying, I can draw your attention to perhaps the last page of that memorandum which is on page 66 of Bundle 2. Perhaps I'll just read into the record the last three paragraphs and then pose a question to Mr Ackermann. So at 5.2, Mr Pikoli writes:

20 "I have now reached a point where I honestly believe that there is improper interference with my work and that I am hindered and/or obstructed from carrying out my functions on this particular matter. Legally I have reached a dead end.

5.3. It would appear that there is a general expectation on the part of the Department of Justice and Constitutional Development, SAPS

and NIA that there will be no prosecutions and that I must play along. My conscience and oath of office that I took does not allow that. And lastly

5.4. Based on the above, I cannot proceed further with these TRC matters in accordance with normal legal processes and prosecuting mandate of the NPA as originally envisaged by government. Therefore, and in view of the fact that the NPA prosecutes on behalf of the state, I am awaiting government's directions on this matter.”

10

So you mentioned, Mr Ackermann, that Minister Mabandla did not respond to that memo. And what was the point you wished to make?

ADV ACKERMANN: Commissioners, it is such an important document that I would have expected to work in an hour to acknowledge the receipt of that document and inform him that he will be informed in due course what decisions he has taken on or how this matter could be settled. I spoke to his secretary. How I know about it was Kalehane Pillay, who was there, and I know they were all surprised that the minister did not answer or acknowledge even this letter. I do not think it was ever done. I do not know what happened afterwards.

20

Anything else?

ADV VARNEY: Is there anything else you wish to add in relation to Minister Mabandla?

ADV ACKERMANN: Of course, we have already dealt with the matter that she instructed that the criminal case investigation of the forged letter incident must be stopped. I have got the minister instructed Mr Pikoli, not to proceed with the investigation of a criminal matter. That is an obstruction of the course of justice. It is a crime to stop an investigation. Commissioner, I feel very strongly about this. She also played a major role in the suspension from office of an honourable person, a man with integrity, and he was fired just like that. That is how I feel the incompetence of her. It was, the president had to
10 decide between who is going to fire, Mr Pikoli or Ms Mabandla, and he got rid of Mr Pikoli.

There is just one other matter that I would like to discuss and give my views on. It is about the interaction I had with Wagenaar and the crimes he committed and the ministers form part of, and Celebi, were also the perpetrators of that crime. That is, during the period 2002 to 2006, my interaction with Mr Wagenaar pertaining to the Pepco 3 and Frank Chikane criminal cases, he on a number of times have I given evidence on that, threatened me with a private prosecution of the leaders of, the 37 ANC leaders. If I proceed with
20 the Pepco 3 and Chikane matters, I have given evidence on that, I think just now too.

It was in 2006 when he threatened me again, I informed him that if he threatened me one more time, I will go to the Silverton police station and lay a criminal charge against him. He asked me what the crime was, I did not inform him. The crime I had in mind was

the crime of compounding an offence, and I am of the opinion that both the parties, the ANC, when I say the ANC, I mean minister Celebi and the ministers committed that crime.

If I may just sit out a minute, what the elements of this crime is, the crime where a party agrees to drop criminal charges against accused persons on agreed set of facts. The elements are knowledge of the crime, agreement not to prosecute, receipt of some benefit. Both the police as well as the, yeah, police and the ANC members were part of that, were perpetrators of that crime.

10 And that was the whole purpose of these threats that were branded all the time.

ADV VARNEY: Thank you Mr Ackermann, anything further from your side?

ADV ACKERMANN: I have nothing.

ADV VARNEY: Mr Ackermann, we really wish to thank you, you have gone beyond the call of duty for a man in your condition, I think most people in your condition would have politely declined to put yourself through such an ordeal, so on behalf of the families we wish to thank you for appearing the last few days, thank you for doing an incredible
20 amount of homework. We also wish to thank you for your service to South Africa, you are an old school prosecutor in the best traditions of justice, so the families thank you for your pursuit of justice without fear or favour. Commissioners, we have no further questions.

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

ADV MOROKA: No Chair.

CHAIRPERSON: Thank you. Mr Gwala?

ADV GWALA: Thank you Chairperson, it will just be two questions.

CHAIRPERSON: If you could raise your voice Mr Kuala.

ADV GWALA: Thank you Chairperson. Mr Ackermann I just have two questions. One relates to the affidavit that you read into the record of the former President Mbeki. I hope you remember the context, but I will give it to you.

It was a setting where Advocate Pikoli came to inform former
10 President Mbeki about the pending arrest of former Commissioner Mr Selebi. Was that arrest, the intended arrest or the impending arrest, have anything to do with the TRC cases? And was he going to be arrested in relation to an offence relating to TRC cases?

ADV ACKERMANN: To my knowledge, no. It was in connection with a case that was investigated against Commissioner Selebi.

ADV GWALA: I was asking that because I understood you to be saying you understood that to be an interference. I thought you meant an interference so far as the inquiry is concerned.

ADV ACKERMANN: No, I am taking your point.

20 ADV GWALA: Sorry, I spoke whilst you were speaking.

ADV ACKERMANN: No, I am taking your point.

ADV GWALA: Oh, okay. The second point I want clarity on. You may know or you may not know that we had evidence of Dr. Ramaite. You have said something in relation to that. You say he called you and told you that he had received a call from Minister Mabandla that

we must put on hold the prosecution. And then later you made a statement, he instructed me to stop the arrest and not proceed with the prosecution.

What I want to know is, the clarity on this, did you understand this instruction to be that there will be no prosecution of the TRC cases, or that it was a temporal measure to stop the prosecution whilst the prosecution policy is developed?

ADV ACKERMANN: That was what he told me, that all investigations must be stopped till the formulation of the policy that will be done by
10 the cluster. He mentioned something about the cluster, the Director Generals will formulate the policy. And against his (indistinct).

ADV GWALA: Okay, so I must understand that to mean it was a temporal measure to allow the policy to be developed and after which the prosecution could continue.

ADV ACKERMANN: That is how I understood it.

ADV GWALA: Okay, thank you. Thank you Chairperson.

CHAIRPERSON: Thank you Mr Gwala. Is there anyone I am missing who may have joined virtually, who would want to put clarificatory questions to Advocate Ackermann?

20 MR PROPHY: Chair, I am not virtual but joining on behalf of the SAPS, the surname is Propy.

CHAIRPERSON: The surname is?

MR PROPHY: Propy.

CHAIRPERSON: Yes, Mr Propy?

MR PROPHY: Chair, I just have two questions for clarity. The

remaining of the questions will be taken up in cross-examination. Mr Ackermann, the first question is in yesterday's evidence you gave a list of meetings which you do not have personal knowledge to and began that list with the DG Forum, the HOD departmental team and ended that list with the interdepartmental task team but then referred to minutes of the ITT. Was it intentional to include the ITT in that list?

ADV ACKERMANN: I form part of it, at some stage I realised there was going to be a task team to decide on these matters. So I did not know about this interdepartmental task team until the amended policy
10 came out and then it was established this interdepartmental task team. I may add that I am of the view that the policy does not make provision for an interdepartmental task team. Simply state that there must be four or five different people of different departments that must assist in the investigation of TRC cases.

MR PROPHY: The clarity I just sought was that the ITT should not be a part of the list of meetings you have no personal knowledge in respect of.

ADV ACKERMANN: At what stage?

MR PROPHY: I am just referring to yesterday's evidence when you
20 were asked about the meetings you attended, you said I have got no personal knowledge and then listed the forums. You have no personal knowledge of their meetings or their minutes and the ITT was one of them.

ADV ACKERMANN: No, I wasn't part of the ITT. You have referred to the ITT, I just know about the task team. Are you referring to the

task team which I formed part of? Is that the team?

MR PROPHY: Correct.

ADV ACKERMANN: So of course I knew about it.

MR PROPHY: That is the point I just wanted clarity on. The second point is in respect of Commissioner Jacobs. You had started that evidence with even Commissioner Jacobs agreed with you that the document was forged and then read paragraph 70 of his affidavit. That paragraph ends with that it was not forged. So if you can just provide clarity in respect of the aspect you agree with Commissioner

10 Jacobs in respect of that paragraph.

ADV ACKERMANN: Just what is it? I read that paragraph and was under the impression that he still maintains that it is a forged document. I cannot accept.

MR PROPHY: No, I am just saying that you said that he agrees with you that it is a forged document but in the affidavit the paragraph you refer to ends with that It is not a forgery. So which aspect of the paragraph are you saying that even Commissioner Jacobs agrees with you?

ADV ACKERMANN: I cannot recall. If you ask me whether I am of
20 the view that he knew about the forgery beforehand, I can't answer that. But I do not know at what stage it was decided by, you know, he realised that it is a false statement. All I know is that Leonard McCarthy told me that I must advance reasons why I must not be prosecuted.

MR PROPHY: Chair, I am not going to take it any further. Yes. I

leave for cross-examination.

CHAIRPERSON: Thank you, Mr Propy. Mr Semenya?

ADV SEMENYA Thank you, Chair, Commissioners. With your permission, Chair, we had intimated to my learned colleague for the credit for that we would not be ready to do any questioning at this time. We still are to consider the papers. And with his agreement and to Advocate Ackermann's thanks, he has agreed to make himself available on Thursday and Friday of next week, which is 12 and 13. With your permission, Chair, would the questions by the evidence

10 leaders to Advocate Ackermann be postponed to those two days?

CHAIRPERSON: Yes. Do we have any application to cross-examine Mr Ackermann?

ADV SEMENYA Not, Chair.

CHAIRPERSON: For now?

ADV SEMENYA For now.

ADV MOROKA: I'm sorry Chair. If we may Chair, may Este go first?

CHAIRPERSON: Yes.?

COMMISSIONER KGOMO: We were going to say, Chair, that we do reserve the right to cross-examine. We have 14 days within which to
20 notify Mr Ackermann of our intention to cross-examine, and which documents we are going to rely on. We have not because we are waiting for the end of his examination-in-chief to then apply for leave to cross-examine.

CHAIRPERSON: Yes. You intend to bring that application?

COMMISSIONER KGOMO: For sure, Chair.

CHAIRPERSON: Yes. Mr Semenya?

MS RIKHOTSO: Chair, if I may just address this?

CHAIRPERSON: Oh, yes.

MS RIKHOTSO: My apologies, Chair. It is Vivian Rikhotso from the Johannesburg Bar on behalf of Mr Simelane. I am the junior on the matter.

CHAIRPERSON: Come again with your name?

MS RIKHOTSO: Vivian Rikhotso.

CHAIRPERSON: Rikhotso?

10 MS RIKHOTSO: Correct. I am the junior on the matter on behalf of Mr Simelane.

CHAIRPERSON: Yes.

MS RIKHOTSO: Chair, we have sent in an application to cross-examine Mr Ackermann. However, we have not received a response with regards to that as yet. I think we sent the application at the beginning of this week to cross-examine, and I think in light of the allegations that were put against our client yesterday especially, and until today, we still stand firm on that application that we would definitely want to cross-examine Mr Ackermann.

20 CHAIRPERSON: Yes. Ms Rikhotso, I am not aware of having received an application to cross-examine Advocate Ackermann from Mr Simelane..

MS RIKHOTSO: Chair, we sent it, I think, on Monday, but we will send it again to the Secretary, and we sent in an application to lead our witness this morning to the Commission. But for the cross-

examination, I think we sent it earlier this week.

CHAIRPERSON: Yes, I am not aware of it. We will resend it, Chair.

Please check with the Secretary.

MS RIKHOTSO: Will do, so.

CHAIRPERSON: Okay.

ADV SEMENYA Chair, might I ask for a short stand-down to engage with Madam Moroka on the 14 days?

CHAIRPERSON: Yes. We will take a short adjournment.

10 ADV VARNEY: Chairperson, before we stand down, I think it might be expeditious if we can just complete our re-examination. There are just two or three things we wish to clear up.

CHAIRPERSON: Yes, you may.

ADV VARNEY: Mr Ackermann, let me first start with what the junior counsel for the SAPS put to you, Mr Propy. And let us first start with the question he raised in relation to the Inter-Departmental Task Team, the so-called ITT. And he put it to you that you had said that you were not part of meetings of various bodies, such as the GGs Forum, the Amnesty Task Team, the ITT, and so on. I do not have the full list in front of me now. And he put it to you that you were, in
20 fact, part of meetings of a task team. And I do not think Mr Propy might be aware that there were, in fact, two task teams. And you, in fact, were referring to one and he was referring to another. And I think that is the source of the confusion.

So your evidence, as I recall it, was that you were not part of the Amnesty Task Team and you were not part of the Inter-

Departmental Task Team created under that Amnesty Task Team to make recommendations to the Amnesty Task Team, who in turn would make recommendations to the Directors General Forum. This is now back in 2004. Is that correct?

ADV ACKERMANN: That is correct.

ADV VARNEY: But once the guidelines, the so-called guidelines, which we now know as the amendments to the prosecution policy, a task team was then set up to deal with those TRC cases and that you did attend some of those task team meetings.

10 ADV ACKERMANN: That is correct.

ADV VARNEY: Okay. Then let us move to the other point raised by Mr Prophy. He put it to you that you had agreed with former Assistant Commissioner Jacobs that the forensic report determined that the note in question was not forged. I think we need to clear that up.

Commissioners, we did refer to those paragraphs. That is in the affidavit of Mr Jacobs before this commission. It is on the website. We are not aware of what bundle it is in at the moment. But It is at page 18 of his affidavit. That is his affidavit dated 26 February 2026, paragraphs 71 to 72. In fact, Mr Ackermann read those two
20 paragraphs into the record and he was asked for his response to Mr Jacobs' claims that there was a conclusion that the question was not forged. Mr Ackermann, my recollection is that your response when I asked you what was your response to those two paragraphs, that you said you vehemently disagreed with Mr Jacobs' claim that the note was not forged.

ADV ACKERMANN: That is correct.

ADV VARNEY: And lastly, if we can just turn to a matter raised by my learned friend, Mr Gwala. He put it to you that in relation to Minister Mabandla approaching Dr. Ramaite to put the TRC cases on hold and you were then duly instructed to do so. And as you mentioned, pending the formulation of guidelines, Mr Gwala put it to you that this was just a temporary situation and that it did not stop the prosecutions from going ahead at a later stage.

Now, I am aware that you were removed from the TRC cases
10 in and around October of 2007. But once the guidelines had been put in place, and let us recall that they were promulgated at the end of 2005 and really came into effect in early 2006, did the introduction of those guidelines end up resuscitating the TRC cases?

ADV ACKERMANN: Well, at least one was, the Chikane matter, that we proceeded with. But other matters, we were not the investigating agencies and there were not police investigators available to investigate all the matters. But there is at least one case that we proceeded with in terms of the amended policy.

ADV VARNEY: And if I recall correctly, that Chikane attempted
20 murder matter was able to go ahead because it had been investigated previously?

ADV ACKERMANN: Yes, yes. It was completely investigated. We proceeded as soon as the policy came into operation in the end of 2005.

ADV VARNEY: So, bar the Chikane matter which had already been

investigated, the introduction of the guidelines did not open the door to the balance of the TRC cases going forward?

ADV ACKERMANN: But because of the lack of investigating capacity.

ADV VARNEY: No further questions.

CHAIRPERSON: Thank you. We'll take a short adjournment.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Mr Semenya?

10 ADV SEMENYA Chairperson, thank you. We thank Advocate Ackermann to his agreement that the matter in respect of any questions to be put to him will be on 19th and 20th. Can you please confirm that?

ADV VARNEY: Yes, we confirm he is made himself available the 19th and 20th of March, that is Thursday and Friday.

CHAIRPERSON: Thank you. Ms Rikhotso, have you spoken to the Secretary?

MS RIKHOTSO: Yes, Chair. I have spoken to the Secretary. It seems there is some sort of confusion. We thought the letter had
20 been sent, or the application to cross-examine Mr Ackermann had been sent. She has not received the application.

CHAIRPERSON: No application was sent, Ms Rikhotso. I mean, that is a fact.

MS RIKHOTSO: Correct, correct. Well, yes, Chair. On that score, we tend our apology for having placed on record that an application to

cross-examine had been sent. However, we will definitely send in an application to cross-examine the witness over the weekend. I suppose by Monday it would have been received.

CHAIRPERSON: Thank you. Ms Moroka, you will accordingly do so, make your application to cross-examine Advocate Ackermann.

ADV MOROKA: Yes, Chair. The difference or the difficulty was about date and when we would be obliged to do so.

CHAIRPERSON: Yes.

ADV MOROKA: We've come to an understanding. Thank you, Chair.

10 CHAIRPERSON: Thank you.

ADV VARNEY: Chairperson?

CHAIRPERSON: Yes, Mr Varney?.

ADV VARNEY: Mr Ackermann has asked whether he may be released.

CHAIRPERSON: Yes. Is Advocate Ackermann here?

ADV VARNEY: Yes, he is online with us.

CHAIRPERSON: Yes, yes. Advocate Ackermann, we express our profound gratitude to you for having availed yourself to give evidence-in-chief before this Commission, given your medical condition. We
20 really appreciate it. You will be recalled for cross-examination on the 19th and 20th of March this year. You are excused as a witness.

ADV VARNEY: As the Commission pleases.

ADV SEMENYA Chair, the next available date for the formal hearings would be the 11th, the date on which Mr Ngcuka will receive questions from us at least.

CHAIRPERSON: Yes.

ADV MOROKA: Chair, if I may understand that, so is Mr Simenya saying Monday, Tuesday, there will not be a sitting?

CHAIRPERSON: Yes. Mr Varney, we confirm that Mr Ngcuka will be cross-examined on the 11th?

ADV VARNEY: Yes, our understanding is that that arrangement has been made and confirmed.

CHAIRPERSON: Yes.

ADV VARNEY: Commissioners, the evidence leaders had asked
10 whether we could again make contact with Mr Demisa Nsibese about the possibility of him appearing on the Monday, because as I understand, currently we do not have a witness on Monday. I am waiting to hear back from Mr Nsibese, and as soon as I do, I will advise the Commission.

Then secondly, because of the change in scheduling, I quickly approached Mr Pikoli to see whether he might be available to step in on the days originally scheduled for the cross-examination of Mr Ackermann. He is just advised me that he is available, so with the leave of the Commission and the evidence leaders, he could appear
20 on the 12th and 13th of next week, that is Thursday.

CHAIRPERSON: 12th and 13th?

ADV VARNEY: Yes, Commissioner.

CHAIRPERSON: You will arrange that with Mr Simenya?

ADV VARNEY: Yes, we did discuss it in the break, but we just had to approach Mr Pikoli first, and as we were speaking, I just received a

message indicating that he would be available.

CHAIRPERSON: Yes, yes.

ADV VARNEY: There is one further matter from our side, Chairperson, and that is in relation to certain documentation. We were advised that Mr Lawson Naidoo had sent a number of documents to the Commission dealing with statements and other documents that were before the Ginwala Commission. We have had no sight of those documents, but we understand that certain of the documents, an affidavit from former Minister Mabandla and an
10 affidavit from Advocate Menzi Simelane, are part of the documents, but we have been advised by the Commission that presently they can't be released, and we are of the view that that is a decision that the Commission ought to make.

And our view is that documents relevant to the terms of reference of this Commission ought to be released to the Commission and the parties, and if there are any reasons why those documents should be held back, then they need to be placed on the record. Indeed, we were even hoping to put those documents to Mr Ackermann, because we suspect that they might have been
20 relevant for his evidence, but that opportunity passed us.

CHAIRPERSON: Yes, Mr Varney. I mean, that matter will be taken up with the Commission.

ADV VARNEY: We'd be grateful, Chairperson.

ADV MOROKA: Chair, if I may, for the record, we had a discussion with Mr Semenya yesterday about those documents. Our instructions

are that there has been communication between the evidence leaders and the Department, and that the Department was looking at releasing and giving the Commission those documents. I am not sure what Mr Varney is trying to imply by insisting that there is a refusal of some sort.

CHAIRPERSON: Yes. Thank you, Ms Moroka, for that explanation. I think the matter will be taken up by the Commission, Mr Varney, and we'll leave it at that.

ADV VARNEY: As the Commission pleases. One last query from our
10 side. Mr Semenya mentioned that Mr Ngcuka would appear on the 11th. We just want to check, is Advocate Simelane not scheduled to appear on Tuesday the 10th?

ADV SEMENYA Chair, I have to confer with my scheduling colleagues, and I thought if we get rid of this one, you and I will see whether or not there is any impact. But for now, the cross-examination of Mr Ngcuka will happen on the 11th.

ADV VARNEY: Okay. Just in terms of scheduling, does that mean that currently Monday and Tuesday are not set down? And if so, what is the situation with Advocate Simelane?

20 CHAIRPERSON: We have not received a – you know we have got to comply with the rules of this Commission. You have got to apply timeously to lead the evidence-in-chief of your witness. You have got to be given a directive granting you permission to lead that evidence, and that request has not been made timeously.

ADV VARNEY: Okay, Chairperson. So under those circumstances,

Advocate Simelane won't be appearing next Tuesday then?

CHAIRPERSON: As far as we are concerned, there will be no hearing on the 10th of March for Advocate Simelane.

ADV VARNEY: Noted, Chairperson.

CHAIRPERSON: Yes. Ms Moroka, you seem to be having a querying face.

ADV MOROKA: Not for you, Chair, because I thought I did ask the question and you did give a response. So I am not very sure what Mr Varney is asking. I asked a specific question because I wanted to
10 understand the scheduling, and you gave an answer. So It is not a querying face towards you, Chairperson.

CHAIRPERSON: Yes, thank you.

ADV MOROKA: It is a pretty face towards you.

CHAIRPERSON: And you are pretty, I can confirm that. These proceedings are therefore adjourned until the 11th of March at 10:00 when the cross-examination of Advocate Ngcuka will proceed.

ADV VARNEY: As the Commission pleases.

CHAIRPERSON: We are adjourned.

INQUIRY ADJOURNED TO 11 MARCH 2026

CERTIFICATE OF VERACITY

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

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