

**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  
Mr J Venter – The Calata Group  
Adv D Pillay – The Calata Group  
Ms A Thakor – The Calata Group  
Mr Siphon Tlhaole – The Calata Group  
Adv Motlalepule Rantho (for SAPS)  
Adv Vivian Rikhotso (for Adv Menzi Simelane)  
Adv Nwabisa Ntshizana (for Adv B Ngcuka)  
Mr Tabata (for Adv B Ngcuka)  
Adv Tlotlego Tsagae (DoJ representative)  
Adv Yanela Ntloko – (NPA)

**13 MARCH 2026**

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PROCEEDINGS ON 13 MARCH 2026

CHAIRPERSON: Adv Pikoli, you are reminded you are still under former oath?

ADV PIKOLI: Yes, Chairperson.

VUSUMUZI PATRICK PIKOLI: still under oath

CHAIRPERSON: Yes, Mr Varney?

ADV VARNEY: Thank you, Chairperson. Thank you, Commissioners.

EXAMINATION BY ADV VARNEY (CONTINUED): Mr Pikoli,  
10 yesterday we, the last point that we dealt with was a reflection on the NPA Annual Report of 2005 and 2006 and I want to refer you to a presentation made by the NPA to the Justice Portfolio Committee on the 8 March 2006 and it is in your bundle, it is bundle 2, at page 110. I just wish to check, Commissioners, can I be heard loudly and clearly?

CHAIRPERSON: Yes, you are loud and clear.

ADV VARNEY: I will try to lean over these mics.

ADV PIKOLI: Yes, I am there.

ADV VARNEY: Okay. So we are at bundle 10, page, bundle 2, page  
20 110 and it is titled "NSSD Report to Portfolio Committee by Dr Silas Ramaite SC, and those present, including from the SCCU Adv Jordaan, and the WPU, somebody by the name of D Adam, from SOCA Adv T Majokweni and the PCLU Adv Ackerman and it is dated, actually 8 March 2006, and if we turn the page, there is a slide presentation made by Adv Ackerman of the PCLU, and then on page

112, there is a slide dealing with performance against targets for the financial year 2004-2005 and there he puts up some bullet points, TRC Prosecutions, Audit of 300 Cases, Closure of 167 Cases, Prosecutions Instituted in Terre'Blanche, Blani and Nieuwoudt, which we have discussed yesterday and then I want to focus on that bullet point that says, "Further prosecutions put on hold in November 2004 Pending Formulation of Guidelines", and if you could just turn the page to 113, the title is "Performance Against Targets for the year 2005-2006" and heading "TRC Prosecutions, Failure to finalise  
10 guidelines results in no further prosecutions being instituted."

So you testified yesterday that you were not aware of the, one could term, a moratorium that had been placed on the TRC cases pending the issuing of the guidelines, but am I right in saying that at least by this time, so we are talking March of 2006, given the slides that "Further prosecutions put on hold in November 2004", that it had come to your attention?

ADV PIKOLI: Morning Commissioners. Yes, sir that is correct.

ADV VARNEY: Then let us move on. Yesterday you testified that you gave an instruction to the PCLU to go ahead with the prosecution  
20 of the matter of the attempted murder of Frank Chikane, and if I can refer you to your bundle, and indeed your 2015 affidavit that is at page 10, paragraph 27, so it is paginated page 10, and if I can draw your attention to paragraph 27.

ADV PIKOLI: Yes.

ADV VARNEY: Could you read into the record, please, in your loud,

booming voice, from paragraph 27 to paragraph 29?

ADV PIKOLI: Thank you, Commissioners. Paragraph 27 reads thus:

10                    “When the prosecution policy became effective in  
December 2005, I reviewed the available  
evidence implicating the three suspects in the  
Chikane matter, which in my opinion was clearly  
sufficient to justify a prosecution. None had  
applied for amnesty for this offence, I therefore  
gave the initial instruction to proceed with the  
prosecution in February 2006.”

ADV VARNEY: And can you read to the end of paragraph 29?

ADV PIKOLI: Paragraph 28.

ADV VARNEY: Yes.

ADV PIKOLI:

20                    “In response to the said notification, the three  
suspects made representations to me in terms of  
the guidelines in support of their contention that  
they should not be subject to prosecution. These  
representations were reviewed by a team within  
the National Prosecuting Authority, under the  
leadership of Adv T Pretorius, who reported to me  
that the representations did not comply with the  
requirements set out in the guidelines, insofar as  
the suspects declined to disclose the full truth.  
After reviewing the report and the underlying

documentation, I wrote to the legal representative of the suspects in July 2006, informing him of my intention not to accede to the representations and to pursue the prosecution.”

Paragraph 29.

10 “Meanwhile, in early 2006, I had approached the then Commission of Police, the DG of Justice and the heads of the NIA and the DSO, also known as the Scorpions, requesting them to nominate senior officials to assist the PCLU in accordance with the prosecution policy guidelines. Unfortunately, the SAPS and the NIA never provided the PCLU with the necessary support to conduct its investigations adequately.”

ADV VARNEY: And Mr Pikoli, I suppose the lack of investigative support is really the nub of the matter and without investigation officers, am I right in saying these cases, the ones that had not been investigated, could not proceed?

20 ADV PIKOLI: That is correct, Commissioners. And also, if I may add, what I said in paragraph 28, in terms of an accused person making the representations to the NPA, is a matter, which has already been there. Therefore, the guidelines or the amended prosecution policy did not make any difference, because that has always been there, but any accused person can make the representations to the National Director of Public Prosecutions. Thank you.

ADV VARNEY: Thank you. And on the question of investigative support, I just want to put to you paragraphs from the affidavit of Anton Ackerman and Commissioners and Mr Pikoli that is in bundle 3, E3, at page 12. Do you have bundle 3?

ADV PIKOLI: No, no. I have got two bundles.

ADV VARNEY: We will just get you that bundle quickly. And if you can get to page 12 of bundle 3, please.

ADV PIKOLI: Thank you.

ADV VARNEY: So that is the affidavit of Adv Ackerman, which he  
10 also made out in 2015. He says at paragraph 26, I am going to put paragraphs 26 and 27 to you and seek your response.

20 “In March 2006, I again met with the representatives of the Simelane family. I had to advise them that I was unable to take the investigation forward, as there were no investigators attached to the PCLU. Requests I had made to the SAPS and the DSO for competent and experienced investigators in this matter and the other TRC cases, had fallen on deaf ears. The said representatives also supplied me with a legal opinion not necessary dealing with the crime of torture under international laws. (I am going to skip that to paragraph 27). As a result of this meeting, the said representatives wrote to the then NDPP Adv Pikoli, requesting

him to reach out to the SAPS and the DSO in order to secure competent investigators for the PCLU as a matter of urgency. These efforts were not successful."

Then he advises the representatives to rather pursue an inquest. According to Anton Ackerman, they were so constrained around this time. Do you recall getting a request from the families asking you to reach out to SAPS to procure investigators?

ADV PIKOLI: Yes, Commissioner.

10 ADV VARNEY: And did you take any steps thereafter?

ADV PIKOLI: Yesterday, I did make a reference to this that there was this toing and froing on the question of availing investigators to assist the PCLU in conducting the necessary investigations before a decision could be taken whether to prosecute or not to prosecute on those matters. So I spent the last part of my time trying to convince the National Commissioner. I think somewhere in these bundles, you will be able to find that I even wrote letters to the National Commissioner, to the DG of Justice, DG of Mayor, you know, asking them to cooperate, you know, in terms of assisting the process go  
20 forward.

ADV VARNEY: And we will get to that documentation in due course.

ADV PIKOLI: Yes.

ADV VARNEY: If we can continue with your affidavit, so back to bundle 2. And we are now on page 11. If you could read it to the record, paragraphs 30 and 31.

ADV PIKOLI: Thank you, Commissioners. Paragraph 30 reads thus.

“In early 2006, the then Commissioner of Police, Mr J Selebi, objected to Adv Ackerman's participation, claiming that Ackerman intended to prosecute the leadership of the ANC. This is notwithstanding the formal denial by the NPA that no such plans were in place. I advised Mr Selebi that Ackerman was appointed as the head of the PCLU under presidential proclamation and it was not for the SAPS to determine who should discharge the mandate given to the PCLU.”

Paragraph 31.

“I then approached the Presidency in order to secure the necessary collaboration of the parties to apply the prosecution policy guidelines. A meeting was arranged in mid-2006 by Reverend Frank Chikane, the then Director General in the Presidency. The meeting was attended by himself, the DGs of Justice and the NIA, Mr Selebi, the Secretary of the Defence Secretariat, Mr Jafta from the Presidency, and I. Mr Selebi, again complained about Adv Ackerman's involvement in the process.”

Thank you, Commissioners.

ADV VARNEY: Thank you, Mr Pikoli. So, at that meeting, you said it

was called to facilitate the collaboration of the parties to apply the prosecution policy guidelines. At the conclusion of that meeting, did you think that that collaboration was going to be achieved?

ADV PIKOLI: Thank you, Commissioners. It was clear that for as long as Mr Selebi objected to Mr Ackerman participating in the process that it was going to be really difficult to be able to get what I was trying to seek from the DGs, because it is a matter which kept on coming up, Ackerman, Ackerman, Ackerman, all the time. Thank you.

ADV VARNEY: Now, Mr Pikoli, you made out a very comprehensive  
10 affidavit to the Ginwala Commission of Inquiry, which was set up by President Mbeki to inquire into your fitness to hold office and that affidavit was made out in 2008, so not long after all these developments. So, I think we would want to rely heavily on that affidavit and if I may refer you to the extracts dealing with the TRC cases that have been attached to bundle 2, at page 139 of your current bundle.

ADV PIKOLI: 139?

ADV VARNEY: 139, yeah. Do you see the extracts from the affidavit that you made? So it is bundle 2.

20 ADV PIKOLI: Yes, I am there.

ADV VARNEY: Okay. Now, can I ask you to read into the record from paragraphs 267 to 275. There will be a little bit of repetition here, but I do not think that is a problem. So that will be paragraph 267 on page 139.

ADV PIKOLI: On page 129?

ADV VARNEY: 139.

CHAIRPERSON: 139.

ADV PIKOLI: Okay. Thanks, Commissioner.

ADV VARNEY: So paragraphs 267 to 275.

ADV PIKOLI: I think I am having a problem here. This is bundle 2 and I started looking here, 139, which is bundle 1.

ADV VARNEY: No, no, you need to be in bundle 2.

ADV PIKOLI: Yes, yes. Then I must go back to bundle 2. 139.

ADV VARNEY: Yeah.

10 ADV PIKOLI: Bundle 139. And I do not have 263.

ADV VARNEY: Okay. We will just, it is 26, it is paragraph 267.

ADV PIKOLI: 267.

ADV VARNEY: Yeah.

ADV PIKOLI: Okay. That is it.

ADV VARNEY: You found it?

ADV PIKOLI: Yeah, that is correct. It is on 139. 267.

ADV VARNEY: So, yeah. Paragraphs 267 to 275, please.

ADV PIKOLI: Okay. Commissioners, this is how this reads. I will read it into the record.

20                    “In January 2006, I wrote letters to Mr Selebi and the DGs of Justice and the NIA and to the DSO requesting them to nominate a senior official to assist the PCLU in accordance with the prosecution policy guidelines.”

268.

“Almost from inception, the process was bedevilled by the failure of SAPS to provide the necessary support to enable the PCLU to conduct its investigations.

These difficulties are dealt with in paragraph 4 of TRC 1.”

Paragraph 269.

10 “I was advised by Mr Selebi that Adv Ackerman should not participate in the process. The distrust between SAPS and Adv Ackerman stemmed from allegations and counter-allegations in regards to the latter's supposed intention to launch criminal proceedings against the leadership of the ANC. These contentions had surfaced from time to time, notwithstanding the issue of a press release by the NPA in 2004 confirming that a decision had been taken that no such prosecution would take place.”

That reference to Annexure TRC 2. Should I proceed?

ADV VARNEY: Yes. All the way to 275.

20 ADV PIKOLI: Okay. Paragraph 270.

“I informed Mr Selebi that Adv Ackerman was the head of the PCLU by presidential proclamation and that it was, or that she was appointed, that it was, (I think there is a mistake here, writing), but it was not for SAPS to determine who should

discharge the mandate given to the PCLU under the guidelines.”

Paragraph 271.

“Faced with this lack of cooperation, I sought the assistance of the presidency in securing the collaboration necessary to apply the prosecution policy guidelines.”

Paragraph 272.

10 “In mid-2006, Reverend Chikane organised a meeting at the Presidency, which was attended by himself, the DG of Justice, the Mayor, Mr Selebi, the Secretary of the Defence Secretariat, Mr Jafta from the presidency, and I. This first meeting dealt in general terms with the question of developing a spirit of cooperation amongst the agencies as contemplated in the guideline process. Reverend Chikane supported the notion that there should be collaboration in assisting the NPA to fulfil its functions. At this meeting, there

20 was again a complaint by Mr Selebi in regard to Adv Ackerman's involvement in the process. My recollection is that there was no discussion of the information of a working committee at this meeting.”

Paragraph 273.

“Some time later, a meeting was convened at the home of Minister Skweyiya, the Minister of Social Development. The meeting was attended by the Ministers of Safety and Security and Defence, Minister Thoko Didiza, Acting Minister of Justice and Constitutional Development, representing Minister Mabandla, who was indisposed, and Mr Jafta. The meeting was called by Acting Minister Didiza and I was told that it related to the prosecution in the Chikane matter. It was originally suggested that Adv Ackerman accompany me to the meeting, but I elected to go on my own in order to establish what the concerns were.”

Paragraph 274.

“It transpired at the meeting that, (and then there are several subsections).

274.1, the Minister of Safety and Security was concerned about the decision to proceed with the prosecution and Adv Ackerman's involvement in the process and the issue of whether it was Adv Ackerman or me who was behind the decision to prosecute.

274.2, the Minister of Social Development was concerned about the impact of the decision to

prosecute on the ranks of the ANC cadres, who were worried that a decision to prosecute in the Chikane matter would then give rise to a call for prosecution of the ANC cadres themselves arising out of their activities pre-1994.

274.3, the Minister of Defence had concerns about where the decision to prosecute rested. Did it rest with me or did it rest with Adv Ackerman?

10 275, I explained to the Ministers that the decision to proceed with the prosecution rested with me, as did all other decisions in regard to post-TRC prosecutions being considered by the PCLU. I assured them that no prosecution would be undertaken without my specific direction and reiterated my concern about the delay in the process, particularly in view of the requirement that I report to Parliament on these matters. My recollection is that there was no discussion about

20 the formation of a working group or task team at this meeting. The Minister of Defence appeared satisfied with my explanation that I would exercise the decision as to whether there was a prosecution or not. The Minister of Safety and Security appeared to continue to be worried about

the involvement of Adv Ackerman. I have no recollection of a particular position taken by the Acting Minister of Justice.”

ADV VARNEY: Right. Thank you, Mr Pikoli. So let us deal with this meeting that took place at the home of Minister Skweyiya, the then Minister of Social Development. Do you agree that it is quite an extraordinary development that you are called to a meeting at the home of a cabinet minister and there you are confronted by several other cabinet ministers who proceed to question you about a prosecution in a particular case? Is that not an extraordinary development in your view?

ADV PIKOLI: Commissioners, no, it did not take me by surprise. But in fact, I saw it as a way of continuing stating our case insofar as the lack of cooperation from other departments, because by this time we already had the guidelines and the amended prosecution policy. Now we were to follow those guidelines and the amended policy. So I felt that it is now actually an escalation. I was hoping then out of that meeting they would be able to give instructions to their DGs that they must work closely with the NPA. But what I did not allow in that meeting, because they had also called Anton Ackerman, they wanted him to be in that meeting.

I felt no need to involve Anton Ackerman in that meeting, because I am heading the NPA and the responsibility is on my shoulders as the head of the NPA. So I felt that I had to protect my prosecutors from direct interaction with members of the executive.

My interaction with members of the executive, I did not see any problem with that.

CHAIRPERSON: But Adv Pikoli, was it normal practice for cabinet ministers to call meetings at their homes to discuss issues they had with the NPA?

ADV PIKOLI: This was the first time that it was happening, but also one, you know, taking into account the context, the broader context, and again yesterday I am hesitant to repeat that, that we are dealing with a situation that we have never attempted before and as I said, I  
10 was prepared to cooperate as far as, you know, I could go, but there was a line that I had drawn.

CHAIRPERSON: Thank you.

COMMISSIONER KGOMO: Just there, I conflate in my own mind, I do not know why, the duties of Minister of Correctional Services and the presence of Minister Skweyiya that would be Minister Zola Skweyiya, the late Minister Zola Skweyiya. Why was he there?

ADV PIKOLI: Did you... are you asking about the Minister of Correctional Services?

COMMISSIONER KGOMO: Yes.

20 ADV PIKOLI: No, I have no recollection of the Minister of Correctional Services being in that meeting.

COMMISSIONER KGOMO: No, no ...[intervenes]

ADV PIKOLI: But the meeting ...[intervenes]

COMMISSIONER KGOMO: Yeah, Minister Zola Skweyiya.

ADV PIKOLI: Yes.

COMMISSIONER KGOMO: The Minister of Social Development.

ADV PIKOLI: Yes.

COMMISSIONER KGOMO: And the relevance of his presence in that meeting.

ADV PIKOLI: Yes, yesterday when I was explaining the minister's cluster as well as the DGs cluster, the composition of the JCPS cluster included the Minister of Social Development, but then further on, to explain the entire criminal justice value chain, police, prosecutions, the court, correctional services and social development  
10 in terms now of those members, or the offenders who would have been rehabilitated by going through the process of corrections would need to be reintegrated back into society as good members of the society. Then that would explain the involvement of the Department of Social Development.

COMMISSIONER KGOMO: Yes. Thank you very much for dispelling my misconception. Thank you.

ADV PIKOLI: Thank you, Commissioner.

COMMISSIONER GABRIEL: At that meeting, I take it that everybody was fully aware that your decision to prosecute had already been  
20 taken?

ADV PIKOLI: That decision had already been taken.

COMMISSIONER GABRIEL: Were they aware of that?

ADV PIKOLI: I would think so, that they were aware.

CHAIRPERSON: And that is why they were raising concerns?

ADV PIKOLI: Yes, as to the possible impact or consequences of that

decision. Thank you, Commissioners.

ADV VARNEY: Thank you, Commissioners. Just on this meeting, it was held at the home of Minister Skweyiya. It was not held in a government office. Do you remember at approximately what time it was held?

ADV PIKOLI: I think it was perhaps late afternoon towards early evening.

ADV VARNEY: Right. So already this is unusual, it could have been held, you know, if it is early evening, we are talking after hours and it is not being held in a government office. It is being held at the home of one of the cabinet ministers and I want to follow up on the Chairperson's question to you. The previous meeting you spoke about, in paragraph 272, that was specifically called to look at how cooperation could be secured to implement the guidelines, but in relation to this meeting, that did not seem to be the case. And if I can refer you to your paragraph 273, third line.

“The meeting was called by Acting Minister Didiza, and I was told it related to the prosecution in the Chikane matter.”

20 So this particular meeting was called by those cabinet ministers to discuss a specific case. That seems to be the case?

ADV PIKOLI: That is correct, Commissioners.

ADV VARNEY: And so that is why I pose the question, is it not extraordinary and perhaps even improper for cabinet ministers to be calling in the NDPP? And, of course, it does seem as if you were

called in cold, but improper on their part to question you about a specific case that you wish to prosecute.

ADV PIKOLI: Thank you, Commissioners. My approach was always that of tactical flexibility, if I may say, without compromising the independence of the NPA. As part of exercising that tactical flexibility, I felt that, you know, as a demonstration of my willingness to collaborate, to cooperate, that I did not feel that at a personal level, I do not know one other perhaps NDPP, but I did not feel, at a personal level, sort of scared to have an open discussion with  
10 members of the executive around these issues.

ADV VARNEY: Yes. No, it is clear that you stood your ground. Correctly so. But we are talking about the conduct of the ministers in calling that meeting in the first place.

ADV PIKOLI: Yeah. Well, yes, somebody can make that call and say it was improper because we are dealing here with issues of state. Therefore, firstly, meetings should be in government buildings or state institutions at appropriate times. But we are dealing with a matter that was not your run-with-the-mill matter. That is why I felt, okay, let me demonstrate my willingness to cooperate. You see, my approach to  
20 the independence of the NPA is not a rapid obsession with independence to the extent that I would not allow issues of accountability, you know, reporting on the work of the NPA because you know that section 35 of the NPA Act makes reference to the fact that the NPA is accountable to Parliament. Therefore, there had to be interaction between the NDPP and the executive.

It is in the Constitution itself, the formulation of the prosecution policy, though in the main it is for the NDPP to determine, meaning that the NDPP, acting alone with its directors of public institutions, must determine the policy, but with the concurrence of the minister responsible for the administration of justice.

COMMISSIONER KGOMO: If I could come in there. Reverend Frank Chikane is known to be fiercely independent and principled, but was it not putting him on the spot, to use one of your words yesterday? For him to be present, should he not have been  
10 excused? It seems there is some measure of him having an interest in that matter. Was he not asked to excuse himself or asked whether he should be excused?

ADV PIKOLI: Thank you, Commissioner. Perhaps a fair point to make, but at the same time, even when, you know, you can be affected by certain things, but also it is a responsibility that is on his shoulders. By virtue of being the DG in the presidency, as DGs we regarded him as the DG of DGs, in terms of ensuring cooperation and coordination of the work of government. Therefore, he had this responsibility.

20 The question of availing investigators did not necessarily mean that he was going to be part of that, but also, Commissioner, you will recall that there was also this insistence coming from the National Commission of Police at the time, who kept on saying that we cannot go ahead because Reverend Chikane has not been consulted on this matter, which was far from the truth. I take your

point, but also I am saying, somehow the matter had to be escalated, and the beginning of such an escalation had to start with the DG in the presidency, just to facilitate the cooperation, because then I raised that matter with him because of lack of cooperation.

COMMISSIONER KGOMO: Yes, in any event, it was not your call to make for Reverend Chikane to perhaps excuse himself as being somewhat conflicted, but thank you very much.

CHAIRPERSON: Adv Pikoli, am I understanding your evidence correctly that at the meeting convened at the home of Minister Skweyiya, Reverend Chikane was not present?

ADV PIKOLI: No. You are right, Commissioner, Chairperson.

CHAIRPERSON: Yes.

ADV VARNEY: Thank you, Chairperson. At that meeting at the home of Minister Skweyiya, you also referred to the Ministers of Safety and Security and Defence. Can you just identify them?

ADV PIKOLI: The Minister of Safety and Security at the time was Mr Charles Nqakula, and the Minister of Defence at the time, may his sole rest in peace, was Mr Terror Lekota, and there was an Acting Minister of Justice, Ms Thoko Didiza. Yes, I think it was those Ministers.

ADV VARNEY: Great, thank you. And can we revisit your paragraph 274.2? It is on page 42, and there you see the Minister of Social Development, according to you, he was concerned about the impact of the decision to prosecute on the ranks of ANC cadres. He was worried the decision to prosecute security branch members on the

Chikane matter would then give rise to a call for the prosecution of ANC cadres themselves, arising out of the activities pre-1994.

So my question, Mr Pikoli, in your view, is that the reason that those ministers were so concerned about the Chikane matter going ahead, and needless to say, other TRC matters as well?

ADV PIKOLI: Yes, taking everything in context, the context being key in trying to have an understanding of issues, whether simple or complex, yes, given the fact that the then National Commissioner kept on saying that there is this sinister motive at the NPA, which started  
10 during the term or tenure of my predecessor, was that the insistence on the part of the NPA to go ahead with these prosecutions is because they also want to prosecute President Mbeki and other ANC leaders, whether in government or outside of government. So this is what has always been dangled as some kind of a threat or a risk, which might actualise or realise once there is just a prosecution, particularly against former police officers.

So this is what was always there, being dangled as a threat, because there was this organisation led by General van der Merwe, who was the last National Commissioner of Police prior to 1994, that  
20 he had a group of people and there were some people working with him, assisting, you know, building a case in terms of evidence that they had as the then SAP ready to prosecute ANC members. That was the reality.

So I always saw the Chikane case as a test case, basically. You know, that thing stand or fall by the decision taken by the NPA on

this matter. That was how I saw things unravelling.

ADV VARNEY: So, you know, if one has to look for an underlying motivation, would it in fact be this, that those in government occupying senior leadership roles in government had a fear that if the NPA went after the former generals on the security branch side, the apartheid hero security apparatus, that that would then give rise to call or pressure for prosecutions against the ANC as well, and does that explain why there were these attempts to put obstacles in your way in relation to the Chikane prosecution and the others as well?

10 ADV PIKOLI: Commissioners, I must say that it was not an unfounded fear, because what also had to be taken into account is that when the 37 ANC leaders or members applied for amnesty, that application was turned down. Therefore, in terms of the law, they were open to prosecution, depending on the nature of investigations and whether there was sufficient evidence that would justify a prosecution. Thank you, Commissioners.

COMMISSIONER GABRIEL: But by then, I believe it was your predecessor had made it clear that there was insufficient evidence, and I believe there was a press release to this effect.

20 ADV PIKOLI: Yes, Commissioner, thank you very much. And it is in the bundle as well, the question of a press release, which was issued around this matter.

COMMISSIONER GABRIEL: So what then was the context for this lingering fear?

ADV PIKOLI: I would rather not speculate. Thank you,

Commissioner.

ADV VARNEY: Well, we will be returning to that when we deal with the attempts to discredit Adv Ackerman with the forged letter, which I think will help to explain. We will come to that later in the day. Mr Pikoli, part of the terms of reference of this commission is to explore what was behind the stopping of the TRC cases, and largely based on what was said at this meeting, but also in relation to other developments, the families will be submitting to the commission that the fear of the NPA coming after ANC members and ANC leadership, since that pressure would be applied if the NPA went after the other side, namely the apartheid-era police officers and generals, that that really explains all the efforts made by members of the executive to control and curtail prosecutions of the TRC cases. Would you agree with that assertion?

ADV PIKOLI: Can you go again?

ADV VARNEY: Sorry?

ADV PIKOLI: Can you come again?

ADV VARNEY: Yes, sure. So part of the terms of reference requires this commission to explore what was behind the stopping of the TRC cases, and we will be submitting that the bulk of them were stopped. We intend to submit that on the back of this kind of evidence, in a meeting of cabinet ministers, one of them says, if you go after the one side, the apartheid-era police officers, then there will be pressure for you to come after the ANC side as well. And our submission will be that that explains their concerns and it explains the steps that they

took.

ADV PIKOLI: Thank you, Commissioners. Let me respond to that question by putting known facts on the table, and the known facts are that SAPS and other departments were not willing to assist the PCLU to do its work as mandated. That is one. Two, when, even after it was pronounced on the Chikane letter that the NPA has taken a decision to prosecute, a decision taken in February 2006, but actually a decision that was taken way back in 2004 to go ahead with the Chikane matter.

10           And I was sitting in 2006, where there is still no prosecution in the Chikane matter, which tells you that, rightly or wrongly, for whatever reasons, this matter was kept in abeyance. The prosecution was suspended in 2004 and to jump a little bit and say when we then went ahead with the Chikane matter, which finally went to court on the 17 August 2007, very soon thereafter, just over a month, I got suspended because the NPA had proceeded with this matter. Within a month, 17 August 2007, 23 September 2007, I get suspended.

20           What was the message that was being sent through? To anybody who was going to occupy the position of the head of the NPA, and again, to show that this is not far-fetched, again, a matter which I know that we have not really started talking about, one of the charges that I faced at the Ginwala Commission included the question of the prosecution in the Chikane matter, which was in the government case, in the submission by government. But then when I

started responding in 2008, on that accusation, government withdrew the charge. A lot can be read into that. I said it deliberately when I said that I believe that the Chikane matter was a test case in terms of the political will, whether to go ahead with the prosecutions. That would be my case.

ADV VARNEY: Thank you, Mr Pikoli. Chairperson, I see it is almost 11. Would this be an appropriate time for the adjournment?

CHAIRPERSON: Yes. We will take a tea adjournment until 11.15.

ADV VARNEY: As the commission pleases.

10 INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Mr Varney.

ADV VARNEY: Thank you, Chairperson. Mr Pikoli, I would like us to return to your affidavit that you made before the Ginwala Commission. And if I can draw your attention to page 143 of your bundle 2.

CHAIRPERSON: 143?

COMMISSIONER GABRIEL: Forty-three.

ADV VARNEY: It is page 143.

20 CHAIRPERSON: Okay. And can I ask you to read into the record from paragraphs 276 to 279?

ADV PIKOLI: Thank you, Commissioners:

"276. It was following this meeting that a meeting took place at the Office of the Presidency, which is dealt with in

paragraph 4.2 of my memo TRC1. My understanding and recollection of the meeting was that the role of the working group was that set out in paragraph 4.3 of TRC1.

10 That is, the working committee or task team would not make recommendations on a decision as to whether to prosecute or not, but would be responsible for ensuring that the NPA obtained the necessary information or such inputs as were appropriate from the various departments, so as to assist and enable me to reach a well-considered decision whether to institute proceedings or not. The task team would deal with all relevant matters identified by the PCLU and SAPS.

20 277. I have no recollection whatsoever of any suggestion at this meeting of the establishment of a separate committee of DGs which would receive reports from the task team. Had there been any suggestion that the task team members would report back to the DGs, who would in turn make recommendations to me in

regards to the question of whether to prosecute or not, I would have objected to this, as it would have amounted to falling back to the position originally suggested before the guidelines were established and which had been rejected by all parties as unconstitutional.

10 27. At this meeting I proposed that Dr Ramaite should chair the task team. I suggested this in order to deal with the complaints in regards to Adv Ackerman's position and as a concession to get the task team working. The proposal was accepted by those at the meeting. Dr Ramaite is the Deputy National Director of Prosecutions to whom the PCLU reports.

20 279. Subsequent to this meeting, there was a further meeting of Ministers in the Security Cluster at the office of the Minister of Safety and Security. This was attended by the Minister for Safety and Security, the Minister of Social Development, Acting Minister Didiza, Mr Selebi, various DGs and Mr Jafta.

The proposal for the establishment of the working group was put to the Ministers. It was agreed that the proposed working committee would proceed. Once again, I have no recollection of any suggestion of a separate committee of Directors General or that the task team would be reporting to such a committee.

280...." [intervenues]

10 ADV VARNEY: Actually you can pause there, we will come back to 280 in a minute or two. The reference to this separate committee of DGs, was that not a reference to the already existing DGs forum?

ADV PIKOLI: No. You will recall that with the guidelines now and the amended prosecution policy, it was the question of a task team that would be assisting the investigations by the PCLU. Nothing about the DGs forum anymore, in terms of the guidelines and the amended prosecution policy.

ADV VARNEY: So, in your view, the DGs forum effectively fell away?

20 ADV PIKOLI: There was no such after the adoption of the guidelines.

ADV VARNEY: All right. And in paragraphs 276 and 277 you make reference to the fact that the original proposal that the task team members would report back to the DG's would in turn make a recommendation to you as to whether to prosecute or not, that that had been rejected because it would have been unconstitutional.

ADV PIKOLI: Yes, Commissioners. Yes, Commissioners, that was rejected, hence it did not find its way into the guidelines and the amended prosecution policy, that is evidence of such rejection.

ADV VARNEY: As far as you were concerned, you did not have to wait for a recommendation from anybody before you made a prosecutorial decision.

ADV PIKOLI: That is correct, Commissioners, and this is borne by letters which I again sent out wherein the National Commission of Police was stating a different position on the question of the role of  
10 the DGs, and it is in the bundle.

ADV VARNEY: All right, and, of course, this was going to become the big bone of contention, which we will come to shortly. Perhaps you can continue from paragraph 280 to 283, please?

ADV PIKOLI: Thank you, Commissioners:

20 "280. After this meeting, letters were again written to the various Directors General, Mr Selebi and the DSO in early October 2006, inviting them to nominate a senior official to perform the functions set out in paragraph B6 of the guidelines (an example of such letter appears as annexure A to the affidavit of Assistant Commissioner Jacobs).

The letters were in the same format as those sent out in January 2006, at the

time of my first attempt to secure assistance. The letters were drafted for me and referred to the appointment of Dr Ramaite to head and supervise the prosecution processes of all TRC-related matters..." [intervenes]

ADV VARNEY: Actually, can we just pause there and refer to that letter? So in your bundle, if you can turn to page 114? Are you at page 114?

10 ADV PIKOLI: Yes, I am.

ADV VARNEY: So there is a letter there from the Office of the National Director of Public Prosecutions, and it is addressed to Commissioner Selebi, and it is dated, looks like it is the 9 October 2006.

ADV PIKOLI: That is correct.

ADV VARNEY: I think I am correct in saying that that is the letter you are referring to. Perhaps you can read that into the record?

ADV PIKOLI: it is addressed to Commissioner J Selebi, National Commissioner of Police, SA Police Services Headquarters, Pretoria,

20 0001:

"Dear Commissioner Selebi.

Prosecutions of crimes emanating from conflicts of the past.

As you are aware, the prosecuting policy with regard to criminal matters arising from conflicts of

the past came into effect on 1 December 2006..."

I think should have been 2005:

"In terms of the said guidelines, all such prosecutions would be conducted by the Priority Crimes Litigation Unit (PCLU), which is located in my office. I have appointed Dr Silas Ramaite to head and supervise the prosecution process of all TRC-related matters. In terms of paragraph B6 of the guidelines, the PCLU shall be assisted in the execution of its duties by a senior designated official of your department.

10

You are therefore kindly requested to nominate a senior official or officials to perform the above function. You are further requested to make such official available to attend a meeting to be held in the boardroom of the National Director of Public Prosecutions, VGM Building, 123 Westlake Avenue, Weavind Park on Thursday, 12 October 2006 at 14 hours. You are also kindly requested to attend this first meeting. Your assistance and cooperation in this regard will be highly appreciated.

20

Yours sincerely..."

And my signature.

ADV VARNEY: Thank you.

ADV PIKOLI: Dated 9 October 2006.

ADV VARNEY: Thank you, and we are going to return to that first meeting shortly. But can you continue reading to the record from paragraphs 281 to 283? So that is at page 145.

ADV PIKOLI: Thank you, Commissioners:

10 "281. The task team met for the first time on 12 October 2006. The minutes of the meetings of what became referred to as the "Task team on TRC cases" are annexed to the affidavit of Commissioner Jacobs, save for the minutes of its meeting on 8 October 2007, a copy of which is annexed to TRC3 hereto.

As is commented on by various parties, the minutes of these meetings are not a full record of all of the issues canvassed. As the meetings reflect, I attended the opening session of the first meeting, together with Ms Pillay, the Director

20 General of the NIA and Justice and Mr Jafta from the Presidency. The details of my address to the task team are set out in paragraph 4.3 of TRC1.

I recollect dealing expressly with a question by a representative of the NIA,

who raised the issue of whether it was the function of the team to make recommendations on the decision whether to prosecute or not. I indicated clearly that the decision as to whether to launch a prosecution rested with me and not with the committee.

10 2.8.2. I have noted the terms of the final sentence of paragraph 1 of the minutes of this meeting, stipulating that the role of the committee would be to make recommendations to the NDPP on each case. It was indeed the responsibility of the task team to assist in the process of obtaining the requisite information or assistance from the various departments so as to enable me to reach a decision as to whether to prosecute or not.

20 There was, however, definitely not any suggestion that a recommendation by the task team on whether to prosecute was a prerequisite for any decision that I might take. To the extent that the terminology referring to the making of recommendations by the task team in this

and other TRC-related documentation is interpreted to support that contention, this is both regrettable and wrong.

283. I did not participate further in the activities of the task team which was conducted under the chairmanship of Dr Ramaite. I received reports from time to time on their activities. It was certainly my understanding that the committee was functioning and securing the requisite cooperation from the other agencies which had previously been missing. I refer in this regard to the affidavit of Dr Ramaite.

10

284..." [intervenues]

ADV VARNEY: Actually we can pause there for the moment and we will come back to those paragraphs. Am I correct in saying that the assumption you made at that time that the committee was functioning and securing the requisite cooperation from the other agencies, that in due course you would discover that actually that cooperation was not forthcoming?

20

ADV PIKOLI: That is correct, Commissioners.

ADV VARNEY: So, let us then turn to the meeting in question, that first meeting. If I can ask you to turn to page 115 of your bundle, the same bundle that you are currently in? And that document is titled

TRC Committee Members, the members of that particular task team. And just to point out that at that first meeting there were three NPA members present, a member from Justice, two members of NIA, two members of SAPS, and two members from NPA DSO.

And then under "Principles", you are listed as NDPP, as well as Kalayvani Pillay from the NPA, Loyiso Jafta, Presidency, and I am assuming That is Menzi Simelane, DG of Justice, and then Mr Manzini from the National Intelligence Agency. Can you explain the difference between the principles and the members?

10 ADV PIKOLI: Well, the TRC Committee members, Commissioners, were the ones who were going to ensure that there is cooperation and collaboration in terms of ensuring that investigators would be availed to the PCLU. And then also to place any other information that might have been required for purposes of making a considered decision on the question of prosecutions, just to place that information which might be relevant. And then also to make sure that there is cooperation, that the various departments will make investigators available.

20 And then, well, here you then have, for instance, the NPA, I am referred to there, and Kalayvani was an advisor in my office. May her soul rest in peace. And then, of course, what I really cannot really explain is the presence then of Mr Loyiso Jafta from the Presidency, again, and then obviously Mr Menzi Simelane as the DG of Justice, and then Mr Manala Manzini, who was the DG of the National Intelligence Agency at the time. So just for purposes of ensuring that

there is the desired cooperation, as I have mentioned, what I mean by this. Thank you, Commissioners.

ADV VARNEY: So when you say that you cannot really explain the presence of Loyiso Jaftha from the Presidency, why can you not really explain his presence there?

ADV PIKOLI: It is because by this time we already had the guidelines in place, and the amended policy in place, and then also the task team, the members were outlined in the guidelines. Previously, yesterday I did indicate that, you know the presence of somebody  
10 from the Presidency, it did not really bother me. I was prepared to have a representative from the Presidency. I know we had a discussion on that yesterday.

What was operating in my mind really was to choose the battles that I wanted to fight. I did not want to engage in endless battles which, you know, would not enable the NPA to do its actual functions, as later evidenced by the fact that immediately we went ahead with just one case, the Chikane matter. The volume or the heat was sort of switched on in terms of the work of the NPA. So I was clear that I am going to choose my battles, but I had my bottom  
20 line.

ADV VARNEY: Yes. Am I correct in saying that if one looks at Part B of the amendments, the guidelines, and the list of organisations that were meant to support the NPA, the Presidency was not listed as one of those organisations?

ADV PIKOLI: Yes, that is correct, Commissioners.

ADV VARNEY: So in fact, properly speaking, the Presidency should not have been represented here?

ADV PIKOLI: *Stricto sensu*, yes.

ADV VARNEY: Yes, but it does reflect a desire by the Presidency to be involved at this level?

ADV PIKOLI: Yes, I would say so, undesirable as it might have been, but, yes.

ADV VARNEY: Yes. We can also presume that the Presidency, and possibly President Mbeki himself, would have been kept informed of  
10 developments?

ADV PIKOLI: Well, it would make sense if the Presidency is represented, that whoever is from the Office of the President would be reporting to the President.

ADV VARNEY: All right, let us turn to the first meeting of the TRC Committee or the task team, and that is actually on page 116. And it was attended by 15 individuals, and it looks like these are the same individuals mentioned in the list on page 115. I want to draw your attention, and I see the apologies was received from the National Commissioner that was written in. I want to draw your attention to  
20 paragraph 3, it says:

"Dr Ramaita indicated that there is a need for a task team of investigators to work on these cases."

So that reflects that, you know, towards the end of 2006, the NPA was still looking for investigators.

ADV PIKOLI: That is correct, Commissioners.

ADV VARNEY: And if we turn the page over, under the heading "Committee Meeting":

"Dr Ramaita requests the PCLU and SAPS to compile an audit report of all cases in their possession, and that the PCLU will take charge of investigations, being assisted by SAPS. The committee will then deal with all cases, including matters that have been closed by the PCLU..."

10 And the next sentence is the one I want to highlight:

"Mr Ngidi indicated that committee members will not be 'rubber stamper'..."

I think that should be, "will not be 'rubberstamps'":

"...to decisions already made by the PCLU. And he was supported by Mr Koopedi, who said they are prepared to go through volumes of records in all cases."

So what did you take to mean by Mr Ngidi, and Mr Ngidi was from the DSO, and Mr Koopedi ...[intervenes]

20 ADV PIKOLI: From the NIA.

ADV VARNEY: From NIA, exactly. So what did you make of them saying that: "They will not be "rubberstamps" to decisions that the PCLU and the NPA are making"?

ADV PIKOLI: Thank you, Commissioners. I will deal with the first part, what Mr Nhlanhla Ngidi, that is his first name, said. For me, it

was a further indication that things were not really settled within the NPA between the DSO and the PCLU, and we due to the history of this animosity.

So Mr Ngidi, coming from the DSO, was sort of perpetuating those intentions that they are not going to serve as a "rubber stamper". Which is fine, because their job was to properly consider everything that would have been placed in front of them.

Mr Koopedi from the NIA obviously was showing willingness to say that they are prepared to go through volumes of records in all  
10 cases. I suppose then this would have been in the possession of NIA, because also being a member of NIA, he might have known what was not known by other members of the task team.

Which then puts this thing in proper perspective, that all information that might not have been in the possession of the NPA would be availed so as to enable the NPA to take an appropriate decision, that would be my take. Thank you, Commissioner.

ADV VARNEY: Thank you. So let us then turn to page 118 of your  
bundle. This is an information note, it is undated and unsigned, and it is from the Assistant Commissioner PC Jacobs, who was then Head  
20 of Legal Support: Crime Operations at SAPS. And it is addressed to Divisional Commissioner: Detective Service JF De Beer. But in the first paragraph, he refers to the last meeting of the subcommittee.

We do not know which meeting he is referring to, but since Dr Ramaita had requested investigators, it might have been after that committee meeting. And you can see from paragraph 2 that there is a

recommendation regarding possible prosecution of various cases. In paragraph 3 he refers to:

"Discussion held with Adv Mthunzi Mhaga of the PCLU in order to obtain guidance on where investigators are needed."

And then they list various cases. I am not going to go through all of them, there are eight cases listed. And he finishes off in paragraph 5:

10 "It is recommended that detectives in their respective areas be identified and their contact particulars be given to Adv Mhaga in order to make the necessary arrangements for the investigations to proceed."

Were you aware of that initiative at that time?

ADV PIKOLI: No, Commissioners, I was not aware, but, of course, that is what would have been expected.

ADV VARNEY: Yes. And when one looks at the cases, one would have hoped that at least these eight cases would have gone ahead in one form or another. So 4.1, well, there we know that the PEBCO 3  
20 case was already underway, that had been previously investigated, according to Adv Ackerman. Now, the cases that our families are familiar with, apart from PEBCO 3, would be the Cradock 4 case and the COSAS 4 matter.

Now, dealing with the Cradock 4 matter, the families, in particular the families associated with the Cradock 4 case, they

contend that no serious investigations took place in the Cradock 4 matter until the docket was reconstructed in 2019. And I would like to refer you to bundle 1, page 129, paragraphs 3 to ...[intervenes]

ADV PIKOLI: Page?

ADV VARNEY: 129.

ADV PIKOLI: Yes, I am there.

ADV VARNEY: And under the heading, "The missing Cradock 4 Docket", so that runs from paragraph 328 to paragraph 332.2, and essentially what Lukhanyo Calata is saying here, and he is the son of  
10 the late Fort Calata, one of the Cradock 4, that in fact the docket had gone missing during 2013 and had to be reconstructed in 2019.

And I will also refer you to paragraph 332, where he refers to an affidavit made by Adv MacAdam in the application to compel a decision in that case that was brought by the Cradock 4 families in 2021. And in Adv MacAdam's affidavit, and I believe it is part of our record, and I will ask my team to find it, is that the missing docket only comprised of an inquiry into unfounded rumours against one General Hankel and the old inquest and TRC records.

So that then prompted Mr Calata to conclude that prior to  
20 2013, and I am at paragraph 332.1:

"Little or no substantive work was conducted in the decades between the Zietsman inquest and the TRC in the early to mid-90s and the reconstruction of the docket that commenced in 2019, and that meant that there was a

suspension of substantive work on the case for more than 20 years."

So, Mr Pikoli, even though it seems that there was a request in this undated, unsigned information note for the Cradock 4 case to be pursued, which would have been very welcome given that there were many suspects alive at that stage, do you agree with the families that, in fact, it was not pursued in any serious manner?

ADV PIKOLI: Yes, I do agree, Commissioners.

ADV VARNEY: And then let us turn to the other matter that we are familiar with, and that is the COSAS 4 matter, it is at 4.5. It says: "COSAS 4, Krugersdorp", and there I want to refer you to bundle 1 again, at page 167, and I am referring to paragraphs 430 to 436. And you will see from paragraph 430 that in September 2019 the families of the COSAS 4 requested the NPA and DPCI to investigate the murders of the four teenagers in 1982.

And ultimately, the families, out of frustration, decided to take matters into their own hand on 2 September 2020. They filed an application with the Krugersdorp Magistrates' Court seeking an order for the disinterment and forensic examination of the bodies. And at paragraph 431, in a founding affidavit in that application Maide Christina Selebi, the sister of Eustice Bimbo Madikela, one of the COSAS 4, noted that:

"Her legal representatives had meetings with the NPA and DPCI, as well as written multiple communications, several of which were ignored.

She noted that several high-ranking suspects had already died, and that it had fallen to the families to bring this application. She recalled that the COSAS 4 matter was handed over by the TRC to the NPA in 1999, and that the families bring this application to find peace and closure."

And that extract from her affidavit is quoted:

10 "We have been forced to take matters into our own hands. We can no longer be expected to wait for the NPA and SAPS, who have already delayed this matter for some 21 years, to act."

I am pleased to advise that after that intervention, the NPA did, in fact, act, and in August of 2021, two individuals were charged with the kidnapping and murder of the four teenagers. But you would agree, do you agree with me that the COSAS 4 matter, which could have been pursued, for example, from 2006, when there were more suspects alive, in fact, it was not pursued and the families had to take action in 2020?

20 ADV PIKOLI: Commissioners, yes, but again I still want to confine issues to the time I was in office. And what I have said already is that my first attempts as the NDPP after my appointment in 2005 stopped when we tried to, when we pursued the Chikane matter, which actually went to court. Somewhere do state that, though the matter was settled in terms of section 105A, I would have preferred a full trial.

But given all the resistance that we were going through, I still felt that, look, if we go ahead, we will be able to achieve a conviction, it is on record, that there are senior ranking officials, including the Minister of the previous apartheid regime who were actually convicted, you know, of apartheid atrocities.

This would have been Vlok, who was the Minister of Police, and Van der Merwe, who was the National Commissioner, and then Otto Smith, who later became also a General, and then the others were colonels, I think, who received a conviction. Personally, I would  
10 have preferred that situation, but it is something that we had to live with given all the resistance. I do not want to go back to that.

So, and then this happened in August 2007, I got suspended in September 2007. Clearly, there is a huge gap between what is referred to here between the time of my suspension and leaving, finally, after a settlement with government, when I left the NPA. So I left in 2007, now there was a huge gap. History will show that there was this gap up until there was a new administration in 2018.

And then, of course, that was to fill a gap that was left when President Zuma left the Presidency, which was in 2018. Now this  
20 would explain that there was sort of a change in attitude from that time, where there was, you know, some willingness on the part of the NPA, but I was not there at the time. So I cannot speak to that, but judging from what is contained in these bundles, it is something that has got to be taken into account. Thank you, Commissioners.

ADV VARNEY: Thank you, Mr Pikoli. Let us then turn to page 123 of your bundle, the same bundle that we are in. And you will note that this is an internal memorandum that was prepared by Adv Ackerman and his team. It was addressed to Dr Ramaite and copied to yourself and Adv Pillay. Two subject lines, "Details of TRC cases closed by the PCLU", and, secondly, "Reappointment of Senior Superintendent Brits", and it is dated 30 October 2006.

And he points out in his first paragraph that on 25 October 2006 the PCLU was requested to furnish these details, and at that first meeting, you will recall that that request was made. So it is a long memo, we are not going to go through it in any great detail. Paragraph 2 deals with TRC cases closed, and there are a number of cases, some high profile, like Ahmed Timol, Steve Biko and various others, so we can skip those.

But it looks like many cases were closed, certainly more than 25, actually, it looks like it is 27. Let us pause at paragraph 2.28, which is at paginated page 132, and this deals with the reappointment of Senior Superintendent Brits. And I want to pose a question to you on the first five paragraphs. It says:

"At the last meeting, the committee was informed by Assistant Commissioner Jacobs that Senior Superintendent Brits would be reappointed to investigate the dockets in possession of SAPS. And Ackerman says, 'I wish to express my concern at this. Brits was a former member of the

Security Branch, who, prior to the PCLU being involved with TRC cases, assisted the DPP Pretoria cases involving the liberation movement. Former Police Commissioner General Van der Merwe had formed an organisation entitled the Foundation for Equality Before the Law, which was intended to ensure that no further prosecutions of Security Branch members would take place.

10 When I and my staff were appointed to take over the TRC cases in the DPP office, Pretoria, we gained the firm impression that Brits was not only very sympathetic towards this organisation, but had regular contact with General Van der Merwe, in particular Brits."

And here we are talking about a detective by the name of Hennie Brits:

20 "He tried to persuade me and my deputy on numerous occasions that there was a provable case of terrorism against President Mbeki arising from the landmine campaign. This was raised in the context that there were security branch members to be prosecuted. The President would also have to be charged. It was clear that he was against prosecutions of Security Branch

members.

Despite his claims, he could never produce a docket implicating the President. At one stage he informed me that the docket was with General Van der Merwe and his legal advisor. This raises a very serious question as to how an official police docket could be retained by General Van der Merwe, who was not entitled to possess police material after his retirement from SAPS.

10 So what does this say about the approach of SAPS to these cases, that they wish to appoint a senior detective, who seemed to be working in cahoots with the former Security Branch and was even passing on information, according to Anton Ackerman, to former Police Commissioner General Van der Merwe?

ADV PIKOLI: Thank you, Commissioners. First let me align myself with the reaction of my predecessor on this particular matter, because what he did on hearing of this is, you know, expressed in no uncertain terms to the extent that, you know, he did not want anything to do with this Brits and whatever that they were doing there. I expressed a  
20 similar disgust, and then how one would have expected, you know, a proper investigation when people that already obviously had taken positions.

And also, as far as my position is concerned as well, and as a former combatant of uMkhonto Wesizwe, I did not have problems in terms of the ANC or members of uMkhonto Wesizwe being able to

explain themselves in terms of what happened during the arms struggle. I am saying this because there is a reference here to the question of the landmines.

I am saying this with the comfort of knowing that the ANC had signed the Geneva Conventions, particularly the additional protocols of 1977 and justified the ANC and to its military wing, uMkhonto Wesizwe being engaged in the arms struggle. It was a just fight, it was a just cause. Therefore, it would not be a problem for any member of the ANC who would have been accused of anything that  
10 fell within the ambit of conducting a just war.

Now, we have got the people against whom the ANC, the PAC, the BCM were fighting against, who were defending an unjust cause, who had gone to the extent even post-1994 to have formed an organisation. And you still have those people, of course, Sunset Clause, they were still there because they wanted to destabilise the work of government.

And you have a person like Brits who is mentioned here, associating himself and his thinking, perhaps understandably so, because the Security Branch, they were the ones who were at the  
20 forefront of persecuting political activists. Now, to have such a person you know, so this is what I am saying I fully align myself on this matter. And, therefore, also looking at this, I would have been equally disgusted to have such a person. Thank you, Commissioner.

ADV VARNEY: Yes. He was in fact removed, as you will see, from the rest of that memo, but let us move on. Can I ask you to return to

your Ginwala affidavit, the affidavit you made before that commission? And can I draw your attention to page 147 of the same bundle that you were in?

COMMISSIONER GABRIEL: What page is that again?

ADV VARNEY: 147.

COMMISSIONER GABRIEL: Thank you.

ADV VARNEY: And can I ask you to read into the record two paragraphs, that is paragraph 284 and 285?

ADV PIKOLI: Thank you, Commissioners:

10                   "284. In December 2006 Dr Ramaite reported to  
me in regards to the contention raised by  
Mr Selebi through Commissioner Jacobs  
that it was the function of the task team  
that it should make a final  
recommendation to a body identified as  
the Committee of Directors General,  
which would in turn make  
recommendations to me. The  
developments in this regard are dealt with  
20                   in paragraphs 4.4.1 to 4.6 of TRC1.  
In essence, the proposal made by  
Mr Selebi, and subsequently supported by  
the Directors General of Justice and NIA,  
amounted to a reversion to a two-stage  
process in which my decision on any

prosecution would be dependent upon a prior recommendation by an intervening committee of Directors General, which would be subject to the same constitutional challenge as had led to the rejection of this proposal in 2004.

10 285. It became clear to me that there was a material misunderstanding in regard to the role of the task team, and that unless this was resolved I would not be able to carry out my functions within the contemplation of the relevant legislation and as envisaged by the government..."  
[intervenes]

ADV VARNEY: Sorry, Mr Pikoli, can we just pause there? We will come back to the rest of those extracts shortly. But can I just refer you to some of the relevant documentation in relation to these developments, starting with a letter that Commissioner Selebi addressed to yourself and if you can turn to page 172 in the same  
20 bundle?

ADV PIKOLI: I am there.

ADV VARNEY: So perhaps, can you see the letter at 172?

ADV PIKOLI: Yes, I am there.

ADV VARNEY: Okay. So this is a letter addressed by National Commissioner Selebi to yourself, Adv Pikoli, and it is dated the, it looks like it is the 6 February 2007.

ADV PIKOLI: That is correct.

ADV VARNEY: Can I ask you to read into the record from the heading: "Outstanding TRC Cases" to the end, please?

ADV PIKOLI: This is how it reads, this is from the National Commission of Police to the National Director of Police Prosecutions. He says:

10                    "I have been briefed on the last meeting of the task team set up in terms of the Cabinet Guidelines on Outstanding Truth and Reconciliation Commission (TRC matters). It was brought to my attention that in *S v Otto*, the complainant being Reverend F. Chikane, a decision on prosecution was taken without consultation with the respective departments.

20                    I have insisted that the complainant be consulted in terms of the guidelines on the basis that the Directors General will have an opportunity to provide input before a decision on prosecution is taken. I am also under the impression that there is no common understanding on the process to be followed.

My understanding was that the officials

designated on the task team by the Directors General will provide recommendations to the Directors General, who will, as a collective, advise the National Prosecuting Authority as the decision maker on prosecutions. In my view, a comprehensive report, such as the one directed to the NPA, dated 24 November 2006, and revised on 29 November 2006, should be discussed by the Directors General.

10 Although I do not insist on a meeting of the Directors General after each meeting of our officials, I deem it necessary that the substantive reports and recommendations of the officials should be discussed by the Directors General before a decision is made. I am of the opinion that the Directors General should meet as soon as possible to provide guidance on the procedures to be followed by the officials in the task team.

20 I am also of the opinion that the Chikane matter should be discussed both in terms of the procedures followed and the way forward. I have requested the NPA to convene a meeting as soon as possible, and trust that you will be in agreement with that request. With kind regards."

Signed by the National Commissioner, dated 6, I think it is February.

ADV VARNEY: February, ja.

ADV PIKOLI: Ja, 06/02/07, which would be 2007.

ADV VARNEY: So in that fourth last paragraph, Mr Pikoli, Mr Selebi seems to be making it clear that before you can make a decision, the DGs will need to first discuss the substantive reports and recommendations of the officials of the task team. Is that a correct interpretation?

10 ADV PIKOLI: That is correct, Commissioner.

ADV VARNEY: I noticed that in the first paragraph Commissioner Selebi, the late Commissioner Selebi says:

"I have been briefed on the last meeting of the task team set up in terms of the Cabinet guidelines on outstanding TRC matters."

When he refers to "Cabinet guidelines", what was he referring to?

ADV PIKOLI: I suppose because there were no cabinet guidelines, other than the guidelines and the amended prosecution policy  
20 following the tabling of the amended prosecution policy. In so far as "Cabinet guidelines", I do not know what it is.

ADV VARNEY: Perhaps it was something of a misnomer, but since he probably was aware that the guidelines had been approved by Cabinet, he simply called them "Cabinet guidelines". Of course, that ... (intervenes)

ADV PIKOLI: That is what I know.

ADV VARNEY: I accept that that is speculation.

ADV PIKOLI: Yes.

ADV VARNEY: Now, this very same letter, am I right in saying that it was also sent to the other members, or rather the principals of the TRC committee or that task team? So, for example, if you turn to page 173.1, there is an exact copy of that letter addressed to Menzi Simelane, DG of the Department of Justice.

ADV PIKOLI: That is correct, Commissioners.

10 ADV VARNEY: And similar letters were also sent to the other principals in NIA, and so on, although we do not have those annexed here. Can we then turn to your response, which was actually sent on the same day, that is at page 174.1?

ADV PIKOLI: Yes, Commissioners.

ADV VARNEY: It is addressed, it looks like it is the date of the 7 February ...(intervenes)

ADV PIKOLI: No, 6.

ADV VARNEY: Sorry, it looks like I am on the wrong page here. Yes ...(intervenes)

20 CHAIRPERSON: It is 174.

ADV VARNEY: Yes, it is 174. Sorry, I was confused because in my bundle there is also 17.1, which is before 174. So if we can go to 174. This is a letter from your office to Mr JS Selebi, dated 6 February 2007. Please could you read this into the record from "Dear Commissioner Selebi"?

ADV PIKOLI: It says, "Outstanding TRC cases", which was a response to the letter which he would receive on the same day. It says:

10 "Your letter of 6 February 2007 refers. I advise that it is clear that our understanding of the mandate of the task team, as well as the guidelines that the Cabinet approved, are not the same. In the circumstances, this matter, as well as other issues that have emerged in the course of the NPA dealing with the TRC cases, are currently being taken up with the Minister of Justice and Constitutional Development."

ADV VARNEY: Thank you. And then if we can go back one page to 174.1. On the following day, the 7 February 2007 ...[intervenes]

ADV PIKOLI: Sorry, one, seven?

ADV VARNEY: I am not sure whether your bundle is the same as mine, but it is the preceding page, or maybe it is the subsequent page ...[intervenes]

ADV PIKOLI: The letter that I responded?

20 ADV VARNEY: No, it is page 174.1.

ADV PIKOLI: No.

ADV VARNEY: You do not have a copy of that?

ADV PIKOLI: 174 is only the letter where I was responding.

CHAIRPERSON: On the following page, Adv Pikoli.

ADV PIKOLI: Pardon?

CHAIRPERSON: On the following page after 174.

ADV PIKOLI: No, the next page is 175. We are just going to give you that ...(intervenes)

CHAIRPERSON: (Indistinct) 174.1.

ADV PIKOLI: Yes, now I have got 174.1.

ADV VARNEY: Yes, sorry about that. So this is a letter from Adv Menzi Simelane, Director-General, Department of Justice, dated 7 February 2007, and it is addressed to National Commissioner Selebi. Can you read into the record from "Dear Colleague"?

10 ADV PIKOLI: Thank you, Commissioners. The letter is from Adv Menzi Simelane to the National Commissioner:

"Subject: Outstanding Cases.

Your letter in the above matter, dated 6 February 2007, refers. I am in agreement with the sentiments contained in your letter. Indeed, I was also expecting that the Directors General would be consulted formally in a meeting on the decisions regarding TRC cases.

20 Whilst I agree that an urgent meeting of the DGs be convened, I am of the respectful view that it must also be to obtain a detailed report on all the cases on which the task team has deliberated, and to recommend how those cases should be finalised. I would like to propose that, as most of the Directors General will be in Cape Town, the

meeting should take place there tomorrow or  
Friday, 9 February 2007.

With kind regards."

Signed by Adv Menzi Simelane. Thank you, Commissioners.

ADV VARNEY: Thank you, Mr Pikoli. So would I be right in saying  
that this moment, was something of a tipping point for you?

ADV PIKOLI: Yes, Commissioners, clearly there is one view or  
interpretation by the DG's and the National Commissioner, and my, or  
our understanding in the NPA of what was meant in the guidelines,  
10 particularly as it refers to the question of the NPA and its  
independence.

ADV VARNEY: So, I want to put a paragraph to you from the affidavit  
of Lukhanyo Calata, and I must ask you to go back to bundle 1,  
please, page 100 of bundle 1?

ADV PIKOLI: Page 100?

ADV VARNEY: Ja.

ADV PIKOLI: Yes, I am there.

ADV VARNEY: I want to put this paragraph to you and seek your  
reaction, and it is paragraph 236.

20 CHAIRPERSON: Page?

ADV VARNEY: Page 100, Madam Chair. At the bottom of the page,  
paragraph 236:

"The 'penny finally dropped' with Pikoli towards  
the end of 2006. Up until this point, he had  
operated on a good faith basis that his

counterparts in the other departments in the ITT would support him to resolve the TRC cases. In fact, they never had any such intention. It is quite apparent that they saw their role as clamping down on the cases from proceeding. Since it appeared to them that Pikoli might act on an independent basis, the communication from Major General Philip Jacobs made it abundantly clear that Pikoli was not to act without their permission."

10

Would you agree with that contention?

ADV PIKOLI: Thank you, Commissioners. Perhaps the Commissioners might have seen the smile on my face because I was just marvelling at the opening sentence, "the 'penny finally dropped' with Pikoli towards the end of 2006". Again, I just want to make it clear that, you know, I never at any stage tried not to be part of this process at the time I was the Director-General of the department. And I was genuine in my belief that, you know, it is never going to end up interfering with the independence of the NPA, so I do agree with the sentiments as expressed in this paragraph. Thank you, Commissioners.

20

ADV VARNEY: Yes, and to make it clear, Mr Pikoli, there is no suggestion from the family that you were disingenuous. Indeed, Mr Calata makes it clear that you operated in good faith and that you

expected cooperation from your colleagues. I just wish to place that on record.

ADV PIKOLI: That is correct, Commissioners.

ADV VARNEY: In that case, let us move on, and I am going to draw your attention, and sorry to do this, but can we go back to your own bundle? That is bundle 2, and I want to draw your attention to a letter that the then Minister of Justice, Bridgett Mabandla, addressed to you, dated 8 February 2007, and it is in your bundle at page 39.

ADV PIKOLI: Yes, I am there, Commissioners.

10 ADV VARNEY: So this is a letter from Mrs BS Mabandla, then Minister of Justice, it is addressed to yourself, it is dated 8 February 2007. Can you read this into the record from "Dear Adv Pikoli"?

ADV PIKOLI: Yes, it is addressed to the National Director, Public Prosecutions, from Minister Mabandla. It says:

"Dear Adv Pikoli.

Subject TRC matters.

20 Our discussion in the above letter on Tuesday 6 February 2007 refers. I must advise you at the outset that the media articles alleging that the National Prosecuting Authority will go ahead with prosecutions have caught me by surprise.

In our discussions, you briefly mentioned to me that the NPA will not be going ahead with the prosecutions, as you had undertaken to advise

me in writing. I will appreciate it if you could advise me urgently on the matter so that there can be certainty. I trust that you find the above in order. With warm regards..."

Signed by Mrs Mabandla, Minister.

ADV VARNEY: And before we discuss that letter, if you turn to the next page, that is page 40, it appears that this is the article that the Minister was referring to. It is quite a long article, so we are not going to read the whole article into the record, but it is from *News24*, it is  
10 titled "Cops Up for Apartheid Crimes". It is dated 7 February 2007, it looks like it was released at 07:15 in the morning by two journalists, Jan Jan Joubert and Willem Jordaan, and it says:

"The NPA has informed three security policemen that they are to be prosecuted for apartheid crimes."

So the article essentially deals with the decision of the NPA to proceed with the Chikane matter. Am I right in saying that that is the article that the Minister was referring to?

ADV PIKOLI: That is correct, Commissioners.

20 ADV VARNEY: And the Minister also referred to a discussion between the two of you on Tuesday, 6 February 2007. Do you recall meeting with her on that day?

ADV PIKOLI: That is correct, Commissioners.

ADV VARNEY: And can you indicate, you know, why that meeting was held and what was discussed?

ADV PIKOLI: The coincidence here is that I received a letter on the 6 February from the National Commission of Police on this matter, and then again I had a discussion with the Minister of Justice on the same matter. That is why, for instance, in my response to the letter of the Minister, which had to give a detailed explanation, there is nowhere in which an expectation from her side could have arisen on the question of not going ahead with the prosecutions.

The Commission would be able to recall what I have been saying or testifying already, and also what is in the bundles, that the  
10 first decision was taken by the NPA not in 2007, not in 2006, though I made it clear in 2006 that the NPA would go ahead. The decision was taken in 2004, even before I assumed my responsibilities as the National Director.

There is nothing which could have come as a surprise to the Minister of Justice because the intention has always been there. Actually, if one were to go according to the submission or affidavit submitted by Dr Ramaite, she is the one who gave an instruction to the acting National Director of Public Prosecutions to put this matter in abeyance. And since then, nothing could have come as a surprise  
20 or a shock, because when I was in office, there has always been an intention to go ahead with these matters.

Yes, I participated in the process of the amendment of the prosecution policy, because I am enjoined by the Constitution, because it is there in the Constitution that the prosecution policy is determined by the National Director, but with the concurrence of the

Minister. So the Minister was always involved in this process, she knew. That is why in my response to her, I said I do not know what could have given rise to such an expectation. Thank you, Commissioners.

ADV VARNEY: And on that score, can I refer to your 2015 affidavit in the same bundle at page 19, and can I ask you to read paragraphs 49 and 50 into the record?

ADV PIKOLI: Perhaps even before I do that, you know, responding to your previous issue that you raised, and perhaps the expectation on  
10 the part of the former Minister, perhaps she could have mistaken as she had given me that instruction, which she gave to the acting National Director of Public Prosecutions. Now, coming back to you.

ADV VARNEY: Yes, could you read into the record paragraphs 49 and 50 from your 2015 affidavit?

ADV PIKOLI: Paragraph 49 on page 19:

20 49. I am at a loss to explain how the Minister reached such a conclusion. Her letter disclosed an assumption that the TRC matters will not be prosecuted. I found this to be a disturbing development, as it appeared that at a political level, there was an expectation that I would not prosecute the TRC cases. I regarded such an expectation as unwarranted interference in my constitutional duty to

prosecute without fear, favour or prejudice.

50. It is most likely that I would have clarified my position with the Minister either through a meeting or a telephone discussion. I would have confirmed to the Minister that it was not my intention to probe the TRC cases."

ADV VARNEY: Thank you. Now, Mr Pikoli, in our consultations you  
10 mentioned that sometime between 8 and 15 February you had a meeting with the Minister, and during that meeting the question of your oath of office came up. Could you just elaborate on what happened in that meeting?

COMMISSIONER KGOMO: For which year now?

ADV VARNEY: The same year, Commissioner, so that would be between the 8 and 15 February 2007.

COMMISSIONER KGOMO: Okay.

ADV PIKOLI: Thank you, Commissioners. Firstly, let me say that  
20 when I was admitted in 1995 as an advocate in Cape Town, obviously I had to take an oath, which I did. And then the second one was when I became the National Director of Public Prostitutions, that was the second oath.

The first one, if I am not mistaken, was administered by Judge Friedland, I think he was the Judge President of the Western Cape in 1995, if I am not mistaken. The second one, it was by Judge

Ngwepe in Pretoria. And you would have noted that every time I make an issue in terms of the independence of the prosecution, I will talk about the oath of office that I took.

So also in my discussions with the Ministers on these matters I will always refer to the oath of office, to such a point that I think she became annoyed with my reference to the oath of office. She went to the extent of saying: "Vusi, you are not the only one who has taken an oath of office. I have also taken an oath of office".

I must say that, I mean, I was shocked, I was surprised that  
10 she could have an issue with me referring to the oath of office, because my point was that I take an oath of office very seriously. Perhaps this has got something to do with my own upbringing, starting as a scout boy.

COMMISSIONER GABRIEL: Where you take the scout's pledge?

ADV PIKOLI: A scout's promise, you know, taking that pledge. So  
from my early childhood I have taken, you know, such an oath of promise seriously, and then subsequently when in government, and also my own religious upbringing as well. I might not be that Bible-thumping, practicing Christian, tut there are values that I have  
20 imbibed.

So for me, an oath is a serious pledge that you make, and should never be regarded lightly if one has no intention of abiding by it. So this is a point where I felt that I was annoying her by my constant reference to the oath of office. Thank you, Commissioners.

ADV VARNEY: So in that letter the Minister effectively asked you to advise her in writing. She said:

"I would appreciate if you can advise me urgently on the matter so that there can be certainty".

And as I understand it, that is why you then wrote the fateful memo of 15 February 2007, which is in your bundle at page 56. If I can ask that we turn to page 56 of your bundle, which appears to be your response to the Minister? it is quite a lengthy document, and there is much repetition that we have already canvassed. So I will  
10 only ask you to read certain extracts, but it is titled, "Secret Internal Memorandum", it is addressed to Ms BS Mabandla, MP, Minister of Justice, from Adv Pikoli, NDPP, subject:

"Prosecution of offences emanating from conflicts of the past. Interpretation of Prosecution Policy and Guidelines."

It is dated 15 February 2007. Just for starters, can I ask you to read paragraph 1, titled, "Purpose of Memorandum"?

ADV PIKOLI: Which paragraph?

ADV VARNEY: Paragraph 1. That is quite a short paragraph on  
20 page 56 ...(intervenes)

ADV PIKOLI: "Purpose of Memorandum"?

ADV VARNEY: Ja.

ADV PIKOLI: I beg the indulgence of the commissioners. Can I just go back to my discussions with the Minister on the question of oath of office?

CHAIRPERSON: Yes.

ADV PIKOLI: You know, that is why I was also reluctant to go to the Zondo Commission when I was asked to go, because I did not, you know, the pain was still there. You know, on this question what the minister actually said to me, apart from expressing her obvious annoyance or irritation, she actually said: "Vusi, I do not know this obsession with the oath of office". That is my real, and I believe it is the correct recollection of what she said, because it pained me. Thank you commissioners.

10 CHAIRPERSON: Thank you.

ADV PIKOLI: Paragraph 1 ...(intervenes)

ADV VARNEY: Sorry, just before you get there. So we have a situation where the Minister of Justice puts to you that you have an obsession with the oath of office that you have taken in suggesting that you had an obsession. What was your reaction to that?

ADV PIKOLI: That is why it is so vivid in my mind. I could not believe that I could be getting this from not just a Minister in the Cabinet. All Ministers do take the oath, whether it is an oath or an affirmation, but never would I have expected this to be said by a Minister of Justice  
20 and Constitutional Development.

ADV VARNEY: Thank you, all right... Yes, Commissioner.

COMMISSIONER GABRIEL: Mr Pikoli, that oath of office, I assume, would stem directly from the constitutional guarantees given to the NPA and the NDPP in the Constitution. Am I correct in that understanding?

ADV PIKOLI: That is correct, Commissioner, and it is also in the NPA Act, the question of the National Director the deputies the directors, special directors, you know, all prosecutors have got to take that oath, because prosecutors are powerful, they can destroy people's lives. You need people who take their work seriously and abide by the requirements of their oath of office. Thank you, Commissioners.

ADV VARNEY: Thank you, Commissioner. Mr Pikoli, let us then start with reading portions of your 15 February 2007 secret internal memo to the Minister of Justice into the record. Can you start by  
10 reading the full paragraph 1, titled "Purpose of Memorandum"?

ADV PIKOLI: Thank you, Commissioners:

"The purpose of this memorandum is to:

- (a) Inform the Minister about the National Prosecuting Authority's understanding and interpretation of the policy and guidelines relating to the prosecution of offences emanating from conflicts of the past which were committed on/or before 11 May 1994.
- 20 (b) Inform the Minister about the problems the NPA is experiencing in the implementation of this policy and guidelines..."

And I suppose it is a mistake here, it says (b). It should have been (c):

"(c) To propose a way forward."

ADV VARNEY: Thank you. And then your memo of the following pages deals with background information, which we have already traversed. Paragraph 3, important features of the amended prosecution policy which we have already canvassed in detail, so we can skip that. And then page 61 is a heading:

"Problems relating to implementation of amended prosecution policy."

And we have already traversed what you have set out there. But can I ask you to read from paragraph 4.4.1 on page 63 through to  
10 the end of your memo? And there will be a little bit of repetition, but I think it is necessary to read this part of your memo into the record. So from 4.4.1, please?

ADV PIKOLI: Thank you, Commissioners:

20 "4.4.1 Subsequently, on 6 December 2006, the Office of the PCLU received the email marked B from Dr PC Jacobs of the South African Police Service. Furthermore, the National Director received letters from the National Commissioner and the Director General NIA dated 6 February 2007 and 8 February 2007, respectively (attached here to annexures C and D respectively).

4.4.2 According to Dr Jacobs, his understanding is that the task team must submit a final recommendation to a Committee of

Directors General in respect of each case.

He also points out that the National Commissioner is of the view that this procedure should be followed in respect of each investigation that has been finalised. However, he does not elaborate on the role of the Committee of Directors General.

10 4.4.3 In his letter dated 6 February 2007, the National Commissioner points out that he has been briefed regarding the meeting of the task team set up in terms of the Cabinet Guidelines on the outstanding Truth and Reconciliation Commission, TRC matters.

20 According to the National Commissioner, his understanding is that the officials designated on the task team will provide recommendations to the Directors General, who will, as a collective, advise the National Prosecuting Authority as the decision-maker of prosecutions.

4.4.4 The Director General indicates that she had a discussion with his representative on the task team, and he received a copy

of the National Commissioner's letter. He concurs with the views of the National Commissioner.

4.4.5 In the first instance, it is important to note that, as far as the NPA is concerned, this task team was not set up in terms of the amended prosecution policy, which includes the guidelines on TRC matters, but in terms of an internal agreement between the relevant stakeholders. Furthermore, the NPA is not aware of any agreement or arrangement in terms of which the task team must submit a report to a Committee of Directors General, and which committee must advise the NPA regarding prosecution decisions.

10

Reading the email of Dr Jacobs and the letter of the National Commissioner in context, it seems as if the above process is a proposal by the National Commissioner and not an agreement reached by the task team, for example, Dr Jacobs points out that:

20

1. **The National Commissioner is of the opinion that it must be established what disclosures were made.**

2. **The National Commissioner is of the opinion that such processes need to be followed in each case.**

In the same vein, the National Commissioner writes as follows:

1. **That the complainant be consulted on the basis that the Directors General will have an opportunity to provide input before a decision on prosecution is taken.**
2. **In my view, a comprehensive report should be discussed by the Directors General.**
3. **Although I do not insist on a meeting of the Directors General after each meeting of our officials, I deem it necessary that the substantive reports and recommendations of the officials should be discussed by the Directors General before a decision is made."**

10

20

If I were to go further on 4.6:

"4.6 The NPA cannot agree to the above proposal. The effect thereof might be that the National Director will be obliged, as suggested by the National Commissioner,

to wait for the finalisation of the proposed process before he may make a decision whether to prosecute or not.

10 If the task team or the committee of Directors General, in spite of a reasonable prospect of a successful prosecution unnecessarily delays the process, the National Director would be prevented from complying with the Prosecuting Authority's constitutional obligation. Therefore, such a process would be unconstitutional."

Thank you, Commissioners.

ADV VARNEY: Thank you, Mr Pikoli. Actually, you can carry on reading. We may as well finish all the way to the end.

ADV PIKOLI: And then:

"Conclusion and way forward:

20 There is clearly a misunderstanding regarding the role of the task team and the role of the relevant State Departments referred to in the amended prosecution policy. In accordance with the approved amended prosecution policy, the NPA is of the view that the duty of the task team or the relevant State Departments is to assist the NPA in the execution of its duties.

However, nothing prevents such a task team or

department, whether individually or collectively, to make recommendations to the National Commissioner, provided that the National Director should never be in a position where his constitutional duty is dependent on the recommendation of such a task team or relevant department. Such a procedure would be unconstitutional.

10 5.2 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.

20 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.

5.4 Based on the above, I cannot proceed further with these TRC matters in accordance with the 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 direction on this matter."

Thank you, Commissioners. But I suppose I have to, I think I would need to explain myself on this.

ADV VARNEY: Please go ahead.

ADV PIKOLI: Thank you. One, this is a letter to the Minister of  
10 Justice and Constitutional Development, wherein I am expressing as the National Director my frustrations with the process and the misunderstanding of roles. Not of the role of the NPA, the NPA is always clear about its role with or without the amended prosecution mandate.

But this misunderstanding arises from the side of the DGs of other Departments, that they see themselves as entitled to make recommendations before there can be a decision on the part of the NPA. I do say here that, because a recommendation is a recommendation, it is not binding to the person to whom it is made, it  
20 is not binding on the person to whom it is made.

Yesterday I spoke of not wanting to even give a whiff that, you know, prosecutorial independence could be "sacrificed on the altar" of political expediency. This is exactly what I am trying to convey in this letter, writing to the Minister, that I believe that there is political interference in the work of the NPA, and the NPA Act

criminalises such an obstruction or interference in the work of the NPA.

The Minister, in terms of section 179(5), exercises final responsibility over the NPA, that is what the Constitution says. Now, just to also, you know, address this issue when it was placed before my predecessor by senior council here, Varney, when he asked him to sort of comment on this. And I appreciate his reluctance not to want to comment on the positions taken by his successors, which I appreciate.

10           But again, I want to believe that he did not have the full sight of what is condemned here. When he said that, and also I saw that it was running in the media, that Pikoli should have prosecuted, that I did not need, you know, the Minister to tell me, you know, how to proceed.

I have always been clear that there is no member of the Executive who will tell an NDPP on which matters to prosecute and which matters not to prosecute. I have always been clear, and what we have here has always been consistent with that understanding that no one, from the President to the Minister, to officials.

20           So what I was, I was like putting the Minister on terms, wanting her to state her actual position on this matter as a cabinet member responsible for the administration of justice, and the Constitution clearly saying that she (indistinct), she exercises final responsibility over the NPA.

Now here I am sitting with DGs of departments who have got this position, and as the NDPP, I have got this position. I wanted it to come out clearly, whether she is on the side of the DG's or she agrees with my position. But me, acting as the National Director, is not dependent on that, but I would know that for the Minister who is not supporting the National Director on such an important matter of national importance. Thank you, Commissioners.

ADV VARNEY: Thank you, Mr Pikoli. So did you actually get a response from the Minister on these deep and serious questions?

10 ADV PIKOLI: No, I did not get a response.

ADV VARNEY: So you posed these questions in which you say that you have reached a dead end, and you said that there has been improper interference with my work, and I am obstructed from carrying out my functions. That there is a general expectation on the part of the DOJ, SAPS, and NIA that there will be no prosecutions and I must play along, my conscience and oath of office does not allow that, and you get no response from the Minister. What is your takeaway from that?

20 ADV PIKOLI: Saying I was disappointed would be an understatement. I just simply could not believe when I gave a detailed report on the post-TRC matters as to what is happening and what is causing the delays. Bearing in mind that here, you know, it was just about one case. which did not require any further investigations.

Which she had asked the then acting National Commissioner, the acting National Director of Public Prosecution not to go ahead until the finalisation of the guidelines or the amendment of the policy, and then in 2006 a decision is taken by the NPA to go ahead. Now, this follows the adoption of the guidelines and the amended policy, in which she participated as enjoined by the Constitution to do so.

Now we have got a policy where she concurs with, and there is a problem of even implementing that amended prosecution policy.

10 And I expect, as a Minister, you would be able to have a position on the matter, and this was never conveyed to me; instead, the opposite is true. Now asking about why are we going ahead because she thought that you are not going to prosecute on the matter. Thank you, Commissioners.

ADV VARNEY: And just to clear up two matters before lunch. You have pointed out that recommendations are not binding. and indeed they are not. But in this instance you expected not to act until you had received a recommendation. Is that correct?

20 ADV PIKOLI: Yes, that is the effect of the letter from the National Commissioner, and, of course, the DG of NIA and the DG of Justice concurred with that position.

ADV VARNEY: And, lastly, in relation to the reaction of your predecessor, Adv Bulelani Ngcuka, he said, well, you should have gone ahead. My understanding is that you did go ahead and you did not stop the prosecutions of the subsequent prosecutions, for

example, in the Chikane case, or for that matter, of Commissioner Selebi himself.

ADV PIKOLI: That is correct, Commissioners, it speaks for itself, the record will show that. Even without the response from the Minister of Justice following the letter that I wrote on the 15 February 2007, the matter, you know, was set down for the 17 August, and we went ahead and prosecuted in the matter. So I do not know also, perhaps my predecessor was not aware of that, but it is on record that we did obtain a conviction, albeit in a manner that I have not wanted.

10 I would have preferred a full trial, so, ja, but, of course, it was at a price, which, as I said, within a month or so I got suspended. And when I got suspended, and there is a requirement in the law that there has got to be an enquiry following suspension of a national director. And one of the charges I faced was that we went ahead with the post-DRC prosecutions, which clearly says, had we not gone ahead, perhaps I might not have been suspended. But, of course, there are other reasons which were, that I answered to anyway at the Ginwala Commission.

ADV VARNEY: Thank you, Mr Pikolo. Chairperson, is this an  
20 appropriate time for the lunch adjournment?

CHAIRPERSON: Yes. We will adjourn and reconvene at 2 o'clock.

ADV VARNEY: As the Commission please.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Mr Varney?

ADV VARNEY: As the Chairperson pleases. Chairperson, Commissioners, I thought it incumbent on me to bring it to your attention that I do not think we will be able to finish by 16:00 with this witness.

CHAIRPERSON: Yes.

ADV VARNEY: I think we might struggle to do so, so I just wanted to...[intervenes]

CHAIRPERSON: Yes.

ADV VARNEY: Give you a warning of that.

10 CHAIRPERSON: Yes. Are we able to proceed beyond 16:00?

ADV VARNEY: We are happy to proceed beyond 16:00 from my side.

CHAIRPERSON: And how much time will you require after 16:00?

ADV VARNEY: My estimation Chairperson, it would be between 30 minutes and an hour.

CHAIRPERSON: After 16:00?

ADV VARNEY: After 16:00.

CHAIRPERSON: Yes, you may proceed then.

ADV VARNEY: As the Chairperson pleases.

20 CHAIRPERSON: Yes, we will accommodate you, Mr Varney.

ADV VARNEY: We will be grateful for the indulgence, Chairperson.

CHAIRPERSON: We are an accommodating Commission.

ADV VARNEY: Yes, I can see that and given the material we have to get through, I think it is necessary.

CHAIRPERSON: Yes.

EXAMINATION BY ADV VARNEY(CONTINUED): Mr Pikoli, I hope you had a relaxing lunch.

ADV PIKOLI: I enjoyed the lunch.

ADV VARNEY: Wonderful. I want to refer you to some more minutes from the Justice Portfolio Committee and this time it was a meeting of that Committee on the 3 May 2007. And the minutes of the meeting are in your bundle, bundle 2 between pages 175 and 179. I must apologise in advance that the print is tiny on that page, I struggle to read it myself. Luckily it has been reproduced in bundle 1.

10 If you prefer a bigger print, I can refer you to bundle 1 at page 105, paragraph 250.

ADV PIKOLI: I will certainly prefer.

ADV VARNEY: Okay yes, for those who is...[intervenes]

ADV PIKOLI: Which?

ADV VARNEY: Sorry, it is page 105 in bundle 1...[intervenes]

ADV PIKOLI: Page 105...[intervenes]

ADV VARNEY: Paragraph 250.

ADV PIKOLI: I have got it.

ADV VARNEY: Okay.

20 ADV PIKOLI: Thank you.

ADV VARNEY: For those using the actual minutes, it is at the top of page 178. Those are the passages we will be referring to. So in this Committee meeting before the Justice Portfolio Committee, there was a discussion on the TRC cases and it was quite a long discussion, we do not have time to go through all of it, but let me just put certain

extracts to you and under the heading, 'Discussion', one of the members of the Committee, a Mr Joubert, asked:

“What was causing the delay in prosecutions”...[intervenes]

CHAIRPERSON: Are you in 178, Mr Varney?

ADV VARNEY: Yes, if you are using the...[intervenes]

CHAIRPERSON: I am using the small print.

ADV VARNEY: Oh, the small print? I am very impressed Chairperson, that you can read that. So it actually starts and my  
10 apology, it starts at the bottom of page 177. You will see there is a little [indistinct] ...[intervenes]

CHAIRPERSON: Yes, I see discussion.

ADV VARNEY: Or discussion, exactly. So under discussion Mr Joubert asked what was causing the delay in prosecutions of the TRC and when these might be finalised. And then Adv Ackermann then gives a response. It is quite a long response, we have traversed those matters so I am not going to put all of that to you, but moving on in the quote towards the top of the next page, Adv Ackermann commented:

20 “That it was unfortunate that to date no meaningful results had been achieved from these meetings.”

The annual report of 2006 also noted on page 4 that much had been achieved despite all the attempts to take the matter forward, he maintain that the PCLU was not the cause of the delays and he suggested that perhaps the National Director of Public

Prosecutions should comment further. And perhaps I can then ask you to read the next paragraph where it says, 'Adv Vusi Pikoli and DPP added'. Do you see that?

ADV PIKOLI: Yes, I do.

ADV VARNEY: Ja.

ADV PIKOLI: Thank you, Commissioners. It reads:

“Adv Vusi Pikoli, National Director of Public Prosecutions, added that this was a politically sensitive issue. The legal processes must solve the problem.  
10 Whenever there was an attempt to charge members of the former Police Services, there was political intervention and effectively the NPA was being held to ransom by the former generals.”

ADV VARNEY: Can I ask you just to pause there for a moment? So that, that is quite a significant statement that you made to the Justice Portfolio Committee. Can you elaborate on what you meant by the NPA was being held to ransom by the former generals?

ADV PIKOLI: Thank you, Commissioners. It is being quite evident given what has been happening from 2004 up until the time we  
20 appeared before the Justice Portfolio Committee, particularly on this date which was May 2007. Nothing much had been achieved. Clearly this was a political sensitive matter as can be gleaned from the fact that the President even tabled it before parliament as far back as 2003, to try to find a meaningful way of attending to these matters.

And then all along there has always been this constant

refrain that if you go ahead with these prosecutions, then this will, that is now the prosecution insofar as it related to a specific case at the time which was the Chikane matter, but this could trigger a prosecution also of the ANC members who were denied amnesty when they applied for it, the 37 ANC members which included the President of the Republic of South Africa.

So clearly this was connected to that fear and the reference to us being held to ransom by the former generals, it has already been alluded to that there was this Brits who was in cahoots with the  
10 former Commissioner of Police, General Johann van der Merwe, who had their own dossier that contained evidence against ANC members. Therefore it was clear that there was this constant fear that going ahead with these prosecutions, I wish to remind the Commissioners that the prosecution at that time when it was sort of declared in 2004 and also in 2006, would have been confined to the three police officers, Smith, Otto and Van Staden.

But then the co-accused would have joined them in the dock, in the witness stand, would have been now as of 2007, would have been a former Minister of Police during the apartheid era in the name  
20 of Mr Vlok.

ADV VARNEY: Ja.

ADV PIKOLI: And also another general, the Commissioner Johann van der Merwe. Now the stakes are quite high which I believed then is what also led to the heat being switched on to higher levels insofar as the NPA not going ahead with the Chikane matter. Thank you,

Commissioners.

ADV VARNEY: So in effect Mr Pikoli, I suppose the big takeaway is that the former apartheid generals were able to exercise undue influence not over the NPA because you were standing your ground, but they appeared to have influence with senior members of the Executive who in turn were placing pressure on you. Is that correct?

ADV PIKOLI: It certainly appeared to be so, given the fact that the resistance was lastly coming from SAPS in the form of the then National Commissioner and also supported by the Department of  
10 Justice then and the National Intelligence Agency then. But I must hasten to add that also now it appears to be coming from the Executive because we should also be mindful that the instruction came from the Executive if the submission by Dr Ramaite is proven to be true and correct, that he received a call from the Minister to suspend the prosecutions. Thank you, Commissioners.

ADV VARNEY: Then you mentioned in the same page:

“On the other side the families, the victims were pressing for prosecution.”

And then it had skipped to the next paragraph:

20 “The Chairperson stated that she was aware of some efforts from the Department of Justice. She asked that Adv Pikoli provide the Committee with a full report on the events to date in writing so that the Committee could try to assist as this clearly beyond just the one case cited by Adv Ackermann. It was undesirable that

these problems should still be delaying matters.”

Did you return to the Committee or provide them with the report that was requested?

ADV PIKOLI: I am not aware given the time, because this was in May. I am not sure whether there was a report that was specifically prepared between May and the time that we left, but suffice to say that at least by that time the Portfolio Committee was aware of what was happening. And then of course in terms of section 35 the NPA is obliged to, is accountable to parliament and part of that accountability  
10 includes the question of submission of an annual report on the activities of the NPA.

So therefore there would have been an implication on the part of the NPA to give those reports, but as I say between May and September, I have no immediate recollection of there being such a submission but also there was some kind of instruction because in July I had to take you know, leave because of my mother and then already the heat was on in July, July/August. August was the date of the appearance of the five in court and then September I was suspended. Thank you, Commissioners.

20 ADV VARNEY: So you were rather overtaken with events which we are going to come to and we are just checking when the next Justice Portfolio Committee meeting was, but it might have, might have happened at a time when you were, I would say, indisposed. Do you think that the Portfolio Committee on hearing of your struggles in relation to the TRC cases and your statement that the NPA was being

held ransom by the former generals, that they should have called for a full inquiry at that time?

ADV PIKOLI: Commissioners, yes, I would have expected that the Portfolio Committee would have been concerned about the report that you had given them, because amongst other things it was talking about the difficulties that you were going through and the problems of interpretation of the guidelines in the policy and also alluding to some kind of obstruction which on its own would have made the Portfolio Committee you know, pay serious attention to that, because then it  
10 would not have been consistent with the law that was passed by parliament.

As lawmakers obviously they would have been concerned of a possible because then it would have been coming from our side, but an inquiry then would have problem whether what we were saying as NPA, was true or not. Thank you, Commissioners.

ADV VARNEY: Thank you. And indeed if there had been a full inquiry back then, perhaps today we would not have been in a need of an inquiry in 2026?

ADV PIKOLI: Commissioners, certainly. It is shameful to say that  
20 we are sitting here still trying to find reasons as to why there was no compliance with the law and the Constitution, perhaps being generous about it to say at least 2004, here was a clear case that required no further investigations, but the matter could not proceed and of course until August 2007.

The amount of time that has passed from a decision that was

taken in 2004 which actually then led to this prosecution, albeit it you know it is not what we desired but we were to accept it given the conditions existing at that time. And after I left, the record speaks for itself, until then these matters were subsequently looked at in terms of taking it forward.

That passage of time on its own has led to the issues that we have now finding difficulty in terms of prosecuting because of the witnesses not being there, because of the perpetrators who are no longer there, some of them. It is shameful. Thank you,  
10 Commissioners.

ADV VARNEY: Thank you, Mr Pikoli. Let us proceed with the unfolding story and for the next tranche we are going to rely on your 2015 affidavit and if I can ask you to turn to page 22 of bundle 2? So let me put aside bundle 1, I bring back bundle 2. If you go to paginated page 22 and I think we do need to deal with the Chikane case and set out what happened there.

ADV PIKOLI: I am there, Commissioners.

ADV VARNEY: And if I can ask you to read into the record paragraphs 55 to 60?

20 ADV PIKOLI: 55 to 60?

ADV VARNEY: 55 to 60.

ADV PIKOLI: Thank you, Commissioners.

“55. During the course of the next few months, the legal representative of Mr Otto, Smit and Van Staden, Vlok and Van Der Merwe, held detailed

negotiations with Adv Ackermann and members of the PCLU in regard to a plea and sentencing agreement.

- 10 56. The negotiation of the plea and sentencing agreements with the five accused was an extended process and was only concluded in early July 2007. On 10 July 2007, I sent a memorandum to the Minister, informing her of the fact that the prosecution has been set down for hearing on 17 August 2007 and that all accused had indicated their intention to plead guilty to a charge of attempting to murder Reverend Chikane by means of poisoning. The memorandum informed her of the facts that plea and sentencing agreements had been entered into. To the best of my recollection the Minister did not respond to this memorandum.
- 20 57. On or about 10 July 2007, I went off on a compassionate leave because of the illness and subsequent death of my mother. In my absence on 17 July 2007, Dr Ramaite and Adv Ackermann was summoned to a meeting with the Minister and reported to her on these developments.
58. In August 2007, those implicated in the Chikane case pleaded guilty to the charges in exchange

for suspended sentences as per section 105A of the Criminal Procedure Act 1977. Vlok and Van Der Merwe were sentenced to 10 years' in prison, suspended for five years, while the other three received five-year prison sentences, suspended for five years.

10 59. I would have preferred a full prosecution in this case because Adriaan Vlok and Johann van der Merwe only made limited disclosure, they lastly confined their disclosure to facts that were already in the public domain. They declined to disclose detailed information in relation to the compiling of the hitlist and who was behind such compilation. They did not reveal the other names on the list, the modus operandi of the other hits or the identities of the other masterminds and perpetrators.

20 60. A full prosecution in the Chikane case would have produced greater truth and accountability, however, there was strong political resistance to this prosecution and the pursuit of other political cases. It was clear to me that the government and in particular the then Minister of Justice, did not want the NPA to prosecute those implicated in the Chikane case. This was due to their fear of

opening the door to prosecutions of the ANC members, including government officials. Moreover, I could not rely on the police to investigate this case and the other political cases thoroughly, therefore a plea and sentence bargain was in my view the most appropriate compromise in the circumstances.”

Thank you, Commissioners.

ADV VARNEY: Thank you, Mr Pikoli. Now in our consultations you  
10 made reference to a meeting that you held with the then President Thabo Mbeki in August or September 2007. Can you indicate why were you called to that meeting, the main issues discussed and who was there?

ADV PIKOLI: This will not be with direct relevance to the matters, because also at the time the DSO was dealing with another matter which is not connected to the post-TRC cases. It was a matter that related to the investigation of the National Commissioner of Police.

ADV VARNEY: Can I suggest just because we are a little short on  
20 time, not to go into too much detail but perhaps you can focus on your request to the President that the NPA be given a political champion to and I do not want to put words in your mouth but if you could focus on that aspect of the meeting?

ADV PIKOLI: Yes, that would have been a different discussion that I had with the President, with the Minister of Justice in attendance of that meeting. It was a meeting with the President as I said. In the

course of our discussions I mentioned the fact that the NPA is so much under attack, it was always in the news, the Scorpions were being attacked left right and centre, the ANC Youth League attacking the ANC. I mean some of the issues that my predecessor referred to during you know, his term of office.

So my point was that the NPA needed somebody who would be like their political champion in terms of your mandate of the NPA, particularly to protect and insulate it from the politics of the day so that the NPA should be able to focus on its stated mandate which is  
10 that of instituting criminal proceedings on behalf of the State. That is the point that I made in that meeting with the President and the Minister of Justice. The meeting was in Mhlangandlovu.

ADV VARNEY: Thank you. And you made reference to your predecessor, Mr Ngcuka. Was he present at that meeting?

ADV PIKOLI: Well when I arrived for that meeting in Mhlangandlovu, I found Mr Ngcuka with the President. I do not know the nature of the discussions, but I joined them because I could join them and we had sort of general discussions which of course included you know, these attacks on the NPA whilst waiting for the arrival of Minister Mabandla  
20 to join us in the meeting. Ja, that is what happened and then of course Mr Ngcuka left.

By then truly speaking, I really did not have you know, like understanding the nature of the meeting because then I also had to raise the problems that we were having in terms of the NPA or the PCLU in particular not being provided with investigators. Thank you,

Commissioners.

ADV VARNEY: Mr Pikoli, can we return to your affidavit, paragraph 23? It is page 23 and can I ask you to read into the record paragraph 61?

ADV PIKOLI: Thank you, Commissioners.

10 “61. Shortly after the plea and sentence agreement had been confirmed in court, a newspaper article appeared in the *Rapport* newspapers of 19 August 2007, in which it was claimed that the NPA was preparing to prosecute ANC leaders. The claim was made on the basis of a fabricated document. A copy of this newspaper article is annexed hereto, marked VPP4. The NPA responded to this article by way of a press statement dated 21 August 2007 in which the allegations made in the *Rapport* article were denied. A copy of this press statement is annexed hereto, marked VPP5.”

20 ADV VARNEY: So let us take a look at that *Rapport* article, it is actually at page 42 of the same bundle. So it is in Afrikaans, it is in the Afrikaans newspaper, *Rapport*, and it is titled, ‘Dossiere oor leiers se vergrype lê al jare in kluis, ANC lêers verdwyn’. And the journalist is Sonja Carstens and that is loosely translated. We have provided a Google translation at page 43, ‘Dossiers on leaders’ abuses lay for years in safe, ANC files disappear’.

And in this piece is the allegation that the NPA is now going to be taking this matter forward through Anton Ackermann and the PCLU. I do not think there is a need to read that whole article into the record. So let us now turn to what transpired after this article was published and can I ask you to return to your affidavit on page 24?

ADV PIKOLI: I am there.

ADV VARNEY: And please could you read into the record, paragraph 62 to 65.3?

ADV PIKOLI: Thank you, Commissioners.

10           “62. After the newspaper article was published, I was summoned to a meeting of the subcommittee of the Justice Crime Prevention and Security Cabinet Committee on post-TRC matters which was held on 23 August 2007. This meeting was attended by several Cabinet Ministers, Directors-General and Mr Selebi. Cabinet Ministers included the Minister for National Intelligence Service, Mr Ronnie Kasrils, Minister Mabandla and Minister Skweyiya amongst others.

20           63. During the meeting, Mr Selebi said to me that the gloves are now off and that he was declaring war on me, which I took it that he was declaring war also. In response I told him, ‘For once in your life can you tell the truth and shame the devil?’

64. Those at the meeting demanded answers from

me about TRC prosecutions. They were also particularly concerned that I was instituting an 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.

65. I explained that:

65.1 The NPA was bound by law to continue with prosecutions of individuals who did not apply for or who were refused amnesty.

65.2 The NPA was actively preparing for those prosecutions and that we should not be stopped from doing our job.

65.3 It was my role as the NDPP to decide who will be judged.”

20 Thank you, Commissioners.

ADV VARNEY: Thank you, Mr Pikoli. So that meeting really sounded quite emotionally charged and that there were, and you were now being confronted. Let us first start with the statement in paragraph 64, ‘Those at the meeting demanded answers from me about the TRC prosecutions’. They were concerned that you were

instituting an investigation into certain members of SAPS, so what answers were they demanding from you about the TRC prosecutions?

ADV PIKOLI: You see, with the conviction of Vlok, Van Der Merwe, Otto, Smith and Van Staden which was on the 17 August, now this meeting is on the 23 August, precisely a month before my suspension of 23 September 2007. Now obviously this again brought back the so much repeated lie, that the NPA was going to prosecute the ANC-37.

Now to bolster that, there was this letter which was  
10 fabricated to strengthen that position that the NPA was hell-bent, excuse my language, on prosecuting ANC members. And over and above that, because I was convinced that this was not true because it is a matter which was already dealt with during the time of my predecessor and why he is coming back now more so after the Vlok, Van Der Merwe matter, here it is coming back, of course it is going to trigger those fears on the part of the ANC.

And now when I am trying to investigate that fabricated letter, I am being stopped because I felt that possibility there is a crime that is being committed because I believe Ackermann when he  
20 said that he did not do that. If however there was anything, the Minister should have been concerned also as to how did this letter come about, fabricated or not.

Now when I am instituting an investigation, I am being stopped and I felt that this cannot be the case, we have to investigate this matter to make you know, because it was fabricated and I

believed so. Now I am being stopped that we should not be investigating one another.

Nobody is concerned about how did this letter come about when you know, for some time then the NPA to the extent of even issuing a press statement that the NPA was not investigating ANC members. So it was a very unpleasant meeting and obviously the National Commissioner was very angry that I have instituted this investigation, that is why then he made reference to the gloves are now off and of course I did take up the challenge.

10 COMMISSIONER GABRIEL: Why did you say to the Commissioner, 'For once in your life can you tell the truth and shame the devil?'

ADV PIKOLI: It was because I firmly believed that he was telling a lie for such a long time and people were believing, let me not say people, the DGs of the cluster bought on that, hence all the attempts to try and stop these investigations. A lie is a lie and I believed that it was a lie. That is why I was saying, 'Can you for the first time speak the truth and shame the devil?' Thank you, Commissioner.

CHAIRPERSON: Adv Pikoli, at that meeting did they tell you why they were particularly concerned that you were instituting an  
20 investigation into certain members of the South African Police?

ADV PIKOLI: Thank you, Chairperson. Well it was a clear reference to the fact that I had ordered an investigation into the fabricated letter that was said to have been written by Ackermann, because I felt that, I mean this is forgery and it had to be investigated, hence the reference then to the investigation of members of the South African

Police Service.

ADV VARNEY: Thank you, Chairperson. You made reference to the NPA press release in which you disputed and denied the claims made in the *Rapport* article. Commissioners, that press statement is on page 44 of the same bundle, bundle 2. It is titled, "The National Prosecuting Authority in a *Rapport* article on A Ackermann'. It is dated 21 August 2007, our response to article in *Rapport* of the same date.

I do not think we need to read it into record, it is simply a  
10 robust denial of what was said in relation to Ackermann in that  
*Rapport* article. Mr Pikoli, can I ask you, at the time did you have  
suspicions as to who was behind the forgery of that letter, at that  
memo at least?

ADV PIKOLI: Thank you, Commissioners. Perhaps I should also  
refer to that time that a certain Brits was part of the Van Der Merwe  
Group and I would not want to believe that she was the only member  
of SAPS who was involved in these issues, therefore clearly there  
were some within SAPS who were stirring this thing up and did want  
to see it coming to an end, because despite all the denials, even to  
20 the fact that even the then Minister of Justice, Mr Panuel Maduna and  
Mr Ngcuka you know, who were satisfied with the fact that you know,  
there would be no such, still you know, this was you know,  
perpetuated.

ADV VARNEY: And what was their endgame? It is quite a drastic  
step to fabricate a NPA memorandum, suggesting that the NPA is

about to prosecute the ANC leadership. What were they trying to achieve with this Machiavellian step?

ADV PIKOLI: Thank you, Commissioners. It is quite evident that all these imaginations were aimed at ensuring that no generals of apartheid South Africa would be prosecuted and if they are not prosecuted, then obviously that dossier which was being compiled elsewhere with the collusion of a member of SAPS, Brits, and the former National Commissioner of Police, would then never see the light of day. Thank you, Commissioners.

10 ADV VARNEY: All right, let us then turn to a letter that you received from the Minister of Justice on the 28 August 2007, and that letter is in your bundle 2 at page 45. It is slightly smudged in the middle, but I think it is still legible.

ADV PIKOLI: I am there.

ADV VARNEY: So that is page 45 of your bundle and it is from Ms BS Mabandla, Minister for Justice. It is addressed to you, Adv Pikoli, as NDPP and it is titled, 'Meeting of the subcommittee of the JCPS Cabinet Committee on post-TRC matters'. Can you read into the record the body of the letter?

20 ADV PIKOLI: Ja, thank you, Commissioners. Just to provide the context, this is after that unpleasant meeting I had in Cape Town where there was a heated exchange of words about gloves being taken off. Now I received this letter from Minister Mabandla dated 28 August 2007:

"Dear Adv Pikoli

[This is about the meeting of the subcommittee of the JCPS Cabinet Committee on post-TRC matters]-

1. I refer to the discussions in the above meeting of 23 August 2007.
2. You will recall that both you and the National Commissioner, Mr J Selebi, provided the subcommittee with different facts on the *Rapport* article regarding an alleged forgery of certain NPA documents.
- 10 3. You further confirmed that you instituted a thorough investigation into the alleged forgery. I was however, not advised of this decision and the basis thereof.
4. In the course of the discussion it became clear that Mr J Selebi was of the view that there is no truth in the *Rapport* report and he produced documents [then it is smudged there], if you try to reconcile"...[intervenes]

ADV VARNEY: Ja, if I can help you, I believe it says...[intervenes]

20 ADV PIKOLI: Yes, to support.

ADV VARNEY: To support his argument.

ADV PIKOLI:

...that indeed."

Yes, you can continue.

ADV VARNEY:

“That indeed there is an investigation by the NPA on certain political office bearers.”

ADV PIKOLI: Yes, sir, it would make sense, that reconstruction.

And then further, 5:

“5. It was suggested at the meeting then that it would be useful if you could respond to the allegation that there is an investigation as mentioned above.

Your urgent response would be highly appreciated. Any information that could shed light to the issues will also be welcome. I trust that you find this above in order.

10

Yours sincerely, Ms BS Mabandla, MP, Minister for Justice and Constitutional Development.

Date, 28 August 2007.”

ADV VARNEY: So Mr Pikoli, it appears that there was an expectation on the part of the Minister that you should have first informed the Minister of your intention to investigate the alleged forgery. Well was there an obligation on you to do so?

ADV PIKOLI: There was no obligation for me to do that.

ADV VARNEY: So then you responded to her. If we can just turn the page over, this is an unsigned version of a letter that you sent through. It is addressed to Minister Mabandla and it is dated 20 29 August 2007, and the heading of the letter is, ‘Meeting of the subcommittee of the JCPS Cabinet Committee on post-TRC matters’. Please could you read the entire body of the letter from paragraphs 1 to 7 into the record?

ADV PIKOLI:

“Dear Minister

[And the subject as stated]-

1. I refer to your fax of 28 August 2007.
2. I refer to the meeting of the subcommittee of 23 August 2007 which I considered to be most unpleasant. Despite the information I put before the Committee, I am both surprised and disappointed to see that I now stand accused of misleading, alternatively having lied to the subcommittee members.
3. I confirm that I stand by what I said about the National Commissioner of Police and the South African Police Services.
4. I confirm and repeat the following:
  - 4.1 That I have instructed that an investigation be carried out in respect of the forgery of the memo by Adv Ackermann SC.
  - 4.2 As borne by the attached annexure and the numerous communications to the Minister, there is no investigation by the NPA or any office officials against the 37 ANC leaders, including the President of this country. Contrary to the assertions of the National Commissioner of Police, I give the Minister the

assurance that no investigations or decisions to prosecute in these matters are done without my express authorisation as per the prosecution guidelines as they pertain to the post-TRC matters.

- 10
5. While I am not certain as to what the meaning of paragraph 4 of your letter is, it is however clear that my account of the position as it relates to the NPA's handling of the post-TRC matters, has been completely ignored.
- 20
6. Arising from allegations made by two police officers as well as a threat by a lawyer representing former Security Branch members who were facing prosecution, my predecessor had the material relating to the ANC leadership, perused and satisfied himself that there was no basis for the leadership to be investigated. He also briefed your predecessor as well as members of the Office of the Presidency to this effect in my presence and in my capacity as the then Director-General of the Department of Justice and Constitutional Development. All the police dockets stored at the Office of the Director of Public Prosecutions: Pretoria were handed over to the police. These events all took place in

early mid-2004. I confirm as well that the Minister was made aware of all these facts as far back as December 2004 and I am surprised that this issue is now resurfacing.

7. In view of all that is transpiring now, I request an urgent meeting with the Minister, my Deputies and myself. Further, I request an opportunity to appear before the National Security Council to give a true account of this issue.”

10 Thank you, Commissioners.

ADV VARNEY: Thank you, Mr Pikoli. So what was the response of the Minister to this letter and your request for an urgent meeting?

ADV PIKOLI: There was no response that I can think of.

ADV VARNEY: So on the 29 August you set out a detailed response to her letter of the previous day. You point out that you considered the meeting of 23 August with the Cabinet Ministers, to be most unpleasant. You finished off your letter by saying that, ‘In view of all that is transpiring, I request an urgent meeting with the Minister, my deputies and myself’.

20 And further, you want an opportunity to appear before the National Security Council to give a true account of this issue. And the Minister does not respond to you, what do you make of that?

ADV PIKOLI: Well let us leave it at that in terms of how things were proceeding from that 28 August which culminated then to what expired or to what transpired on the 23 September. Yes, there was

interaction between myself and the Minister, we did have discussions, I did receive also another letter from the Minister not necessarily on the TRC matters, but on some other matters.

So there was a continual rescission and correspondence to that effect which again bothered me, because they were all about the independence of the prosecutors.

ADV VARNEY: But in relation to the subsequent interactions with the Minister, there was no attempt on her part to respond to this letter in relation to the TRC cases?

10 ADV PIKOLI: Yes, because there was also another urgent matter which related to the National Commissioner of Police. I supposed then that, that sort of overshadowed everything else because now the attention was turned to the Scorpions' investigation or rather the DSO investigation against the late National Commissioner of Police, Mr Selebi.

ADV VARNEY: Well let us then turn to the leadup to your suspension which ultimately happened on the 23 September 2007, and let us start with a letter addressed to you from the Minister of Justice, Brigitte Mabandla, dated the 19 September 2007 and that is  
20 in your bundle at pages 93 to 94. It is the same bundle 2 at page 93.

ADV PIKOLI: I am there, Commissioner.

ADV VARNEY: And this now touches on the developments around the investigations into the National Commissioner of the Police Service. Can you read into the record the body of that letter, please?

ADV PIKOLI: Thank you, Commissioners.

“Dear Adv Pikoli

RE: Investigations into the National Commissioner of  
the Police Service

The above matter refers.

I am advised that you have taken legal steps to effect  
the arrest of and the preference of charges against the  
National Commissioner of the Police Service. I  
presume that in making this decision, you have taken  
time to consider the seriousness and gravity of your  
intended course of action.

10

As you know, in terms of clause 179(6) of the  
Constitution, the Cabinet member responsible for the  
administration of justice, must exercise final  
responsibility over the prosecuting authority.

In addition, section 33(2) of the National Prosecuting  
Authority Act provides that the National Director of  
Public Prosecutions shall at the request of the Minister  
of Justice, furnish the Minister with information with  
regard to any case, matter or subject dealt with by the  
National Director or a Director.

20

In light of the above and in order for me to exercise my  
responsibilities as required by the Constitution, I require  
all of the information on which you relied to take the  
legal steps to effect the arrest of and the preference of  
charges against the National Commissioner of the

Police Service.

This includes but is not limited to specific information or evidence indicating the direct involvement of the National Commissioner in any activity that constitutes a crime in terms of the laws of South Africa. In pursuing your intended course of action and any prosecution, the NPA must do so in the public interest notwithstanding a *prima facie* case. Such exercise of discretion requires that all factors be taken into account, including the public interest, therefore I must be satisfied that indeed the public interest would be served. Should you go ahead with your intended course of action, until I have satisfied myself that sufficient information and evidence does exist for the arrest and preference of charges against the National Commissioner of the Police Service, you shall not pursue the route that you have taken steps to pursue. You should therefore and with extreme urgency cause for me to be briefed thoroughly in this regard.

Please advise me at your earliest convenience when you [I suppose an I] should expect to receive, when I should expect to receive the necessary documentation. I trust that you find the above in order.

Yours sincerely, signed off Ms BS Mabandla, MP

Minister of Justice and Constitutional Development.

Date, 18 September 2007.”

Thank you, Commissioners.

ADV VARNEY: Now you made a response to that letter on the 19 September and that is in your bundle at page 271. It is quite a long letter and let us see whether there is a need to read the whole letter into the record. And given that it is a rebuttal, I think we have no choice but to read it into the record. Before you do so, can I just check whether in your bundle it goes from page 271 to 276?

ADV PIKOLI: Yes, it does, 274, 275. I do not have 276.

10 ADV VARNEY: Let us get you up to 276.

ADV PIKOLI: 276 is missing.

ADV VARNEY: All right, just given the view of the Minister that she appears to be suggesting that she has a role to play in the exercise of your prosecutorial discretion, I think it is necessary to read the full response from 271 through to 276.

ADV PIKOLI: Thank you. Thank you, Commissioners. Perhaps before I do that, I beg your indulgence, again I believe in context.

ADV VARNEY: Please go ahead.

20 ADV PIKOLI: Thank you, Commissioners. I must say about this specific investigation, I had briefed the Minister, I had briefed the President about 10 times before a decision was taken. When you briefed the Minister about it, she wanted to know exactly what is it about the National Commissioner in this investigation. Before she wrote this letter, I asked the team responsible for this particular investigation and prosecution, to give the Minister an idea without

compromising on the nature of the investigations and the evidence that was at our disposal.

I did this deliberately because I am respecting what the law says in the Constitution, where the Minister if she wants to know what is happening at the NPA and the matters that you assist with, I followed precisely the law in terms of section 179(5) and section 33 of the NPA Act. I made that presentation to the Minister. Her response, I could see that she was scared of this matter, given the full implications of having the National Commissioner being investigated  
10 and prosecuted.

Before that, when I started informing her of the investigation even before this presentation, I asked her to then as the Cabinet member responsible for the NPA, 'Can you brief the President?' She said to me, 'No, no, no Vusi, you must go'. So when I briefed the President, it was because the Minister was afraid to go to the President and inform him of this investigation.

So when I went to the President, I was on my own without the Minister and of course she had said I must go and brief the President, which I did on not less than 10 occasions. So that is why I  
20 was surprised now then when the letter is coached in such a manner as if she had just suddenly become aware of this matter. Having said that, having laid out that context, I will proceed to read. This is my response to the Minister. It is dated 19 September 2007:

"Dear Minister

Investigations into the National Commissioner or SAPS

I refer to your letter dated 18 September 2007.

I confirm that the NPA had indeed initiated legal steps to effect the arrest of Mr Selebi, the National Commissioner of SAPS.

In fact, as I had reminded you during our meeting yesterday, I had informed you at a meeting on 11 September 2007 that the DSO had obtained a warrant, an arrest warrant for Mr Selebi the day before on 10 September 2007.

10 Request for information and briefings:

I assume that the request you make for information regarding the information on which the DSO relied to take this step is made in terms of subsection 2(a) of section 33 of the NPA Act.

I would like to state that I have taken my responsibility in terms of the above section very seriously given the sensitive nature of the matter.

20 As set out believe, I have therefore ensured that you were given extensive reports and information about important developments in the matter. These reports were usually verbal, but were often accompanied by a written report. You had agreed that it was not desirable to leave such reports with you for security reasons.

The first preliminary briefing to you occurred in March 2006 when the Kebble murder matter was first referred

to the DSO, and I have briefed you alone or with others on at least 10 occasions since then.

A possible investigation and arrest of the National Commissioner of SAPS would clearly affect the national interest, and it was vital that the President be placed in a position to take whatever necessary steps to protect the national interest or avoid embarrassment to the country. The outcome of the investigation may necessitate disciplinary or other action against the National Commissioner and it would be important for the President to know the nature of the allegations.

10

In March 2007 I informed the Minister and the President that Mr Selebi was formally added as a suspect to the DSO investigation.

These meetings culminated in a full and detailed briefing to you by the investigating team of the DSO and myself in the week starting 25 June 2007 which happened at my request and insistence.

20

At this meeting it was stated clearly that a decision had been made to prosecute Mr Selebi and that the DSO was essentially tying up loose ends in the investigation, and preparing for an arrest coupled with a search of Mr Selebi's residence and the SAPS Head Office.

At this meeting you raised no reservations about the intended course of action. As a matter of fact, I

requested that you seek an audience with the President to apprise him of the intended course of action in the matter. You, in turn, suggested that I should rather brief the President on my own. This gave me a clear indication that you were in agreement with the intended course of action.

10 You were always aware that both the Head of the DSO and I had provided a number of briefings to the President, particularly in the period from March 2007 onwards, and requested that I should update the President about the stage reached in the investigation.

As you know, shortly after that meeting I was away from office until early August due to the illness and subsequent passing away of my mother. During this time the team had essentially completed the investigation.

20 I resumed my efforts to update the President on the latest developments after my return on 6 August 2007, and was finally able to secure such a meeting on 22 September 2007.”

But over here is a 15, so I do not know what has happened.

“I have always been ready to provide you with a report on this matter, and am ready to do so again. However, I find it difficult to accept the implication in your letter

that I have not yet provided you with a full briefing on the matter.

Request for information and evidence:

With reference to your request in terms of subsection 32(2)(a) of the NPA Act that I supply you with all information and evidence on which the Investigating Director of the DSO relied to take action against Mr Selebi and the specific information and evidence that links Mr Selebi to criminal activity, I would like to place the following on record:

10

- I believe that the numerous reports and briefings we have given you have dealt fully with this matter. As indicated above, I am happy at any time to give you a further report on the matter.
- The most comprehensive summary of such information and evidence was contained in a report produced for the President in May 2007. The Minister of Defence, yourself and I discussed this report extensively at the time. I enclose an unsigned copy of this report for your ease of reference.

20

May I point out as well that it is unfortunately not possible to supply you with all the evidence in this matter. Releasing all such evidence would severely prejudice the intended criminal prosecution. In any

event, the sheer volume of such evidence would make it impractical.

I respectfully submit that such disclosure of evidence is not envisaged or required by either the NPA Act or the Constitution.

*A prima facie* case and the public interest:

10 The Investigating Director of the DSO has carefully considered the evidence in this matter as required by the NPA Act. He has satisfied himself that there is sufficient evidence to provide a reasonable prospect of a conviction as required by the NPA Prosecution Policy. In fact, he is satisfied that there is significantly more evidence than is required to meet this threshold.

Given the importance of the matter, both the Head of the DSO and I have familiarised ourselves in great detail with this matter, and we have both satisfied ourselves that this assessment is correct.

20 Regarding the concerns you raise about the public interest, I would like to refer you to the Prosecution Policy of the NPA which was determined by the NDPP with the concurrence of the Minister as required by section 21 of the NPA Act, and subsequently tabled in Parliament.

We have no doubt that the public interest demands a

prosecution in this matter.

10 I would like to point out that in all the extensive briefings I have provided to you on the information and evidence available in this matter, you have not once raised any concern that there may not be sufficient evidence to meet the threshold for institution a prosecution, or that it may not be in the public interest to do so. The only concern you raised initially was regarding the credibility of some potential witnesses, but you were subsequently assured by the extensive corroboration that was found for such evidence.

I would like to point out, respectfully, that neither the Constitution nor the NPA Act contemplates that the Minister needs to be satisfied that there is sufficient evidence or that it is in the public interest before a prosecution can be instituted. Such decisions are the sole prerogative of the NPA.

20 Section 33(2)(b) of the NPA Act does provide that ‘to enable the Minister to exercise his or her final responsibility’ over the NPA, the Minister can ask the NPA to account for its decisions by requesting it to provide reasons for decisions, that is once they have been taken.”

I think that anyway that is [indistinct].

ADV VARNEY: No, we will help you find it.

ADV PIKOLI: Is that the...[intervenes]

ADV VARNEY: It is a small A5 [indistinct] ...[intervenes]

ADV PIKOLI: Ja, so it [indistinct] here. Oh, here it is, thank you.

The first paragraph of that page, of that letter:

“Given the importance of the matter, both the Head of  
the DSO and I have familiarised ourselves...”

I have read that [indistinct].

CHAIRPERSON: Are we on the same page, Mr Varney?

10 ADV PIKOLI: Oh.

CHAIRPERSON: Because mine should start with, “Clearly the  
Minister can indicate?”

ADV PIKOLI: Yes, that is correct Chairperson, it is just that it is  
double.

CHAIRPERSON: Oh, okay.

ADV PIKOLI: Yes, it is the same page here.

CHAIRPERSON: Okay.

ADV PIKOLI: It starts:

20 “Clearly the Minister can indicate or even state publicly  
whether she agrees or disagrees with a particular  
decision, but I submit respectfully that it is not  
contemplated that the Minister can instruct the NPA to  
change a decision or not to take it. In this regard I  
would also like to refer you to the judgment of the  
Constitutional Court when it certified the new

Constitution where it dealt with this issue extensively.

Finally, your letter may be construed as an instruction to the NPA not to proceed with the arrest and preferring of charges against Mr Selebi until you have satisfied yourself that sufficient information and evidence exist to warrant such steps, and that such a prosecution would be in the public interest.

10 I wish to point out respectfully that if indeed it were an instruction, it would be unlawful, it would place me in a position where I would have to act in breach of the oath of office I took and of my duties under the Constitution and NPA Act.

From my interaction with you in the past, I am confident that this is not your intention and that you understand that you and I have a Constitutional obligation to protect and promote the independence of the prosecuting authority.

I would urge that we meet urgently to discuss this matter and to clarify it.

20 I hope that I have addressed your concerns and as sated earlier, would be happy to give you a further briefing.

Yours sincerely

Adv VP Pikoli

National Director, dated 19 September 2007.”

Thank you, Commissioners.

COMMISSIONER KGOMO: So you spoke about your oath of office again?

ADV PIKOLI: Yes, I did, Commissioner.

COMMISSIONER KGOMO: I see that.

ADV VARNEY: And on that score Mr Pikoli, did you see this as yet another attempt on the part of the Minister to impose her will or the will of the Executive on the prosecutorial decision making of the NPA?

10 ADV PIKOLI: Thank you, Commissioners. You know, in a meeting that we had with the Minister, I was with my deputies. It was in Cape Town and Ms Mabandla was visibly angry about these developments, visibly angry. And you know to go back, go back to Pretoria with my deputies and the Head of the DSO, this letter is not my own product, it is a collective product of the NPA that I had to sign off as the Head of the NPA.

This is the view and the position of the NPA, not my position at a personal level, my position as the Head of the NPA what is contained in this letter. As you can tell now, the winddown is the  
20 19 September and I was suspended on the 23 September. A simple calculation tells you it is four days away.

Perhaps I must indicate what perhaps I might have said anyway, I am not so sure, not even in my book, that after that meeting and after this letter, two things happened. I went back to my office alone and thought hard about these developments. I started

preparing a letter of resignation from my home. My deputy somehow came to see me because they could see that I was emotionally you know, going through a difficult time.

COMMISSIONER KGOMO: Deputy Dr Ramaite? Your Deputy, Dr Ramaite?

ADV PIKOLI: No, no, not him alone, with other deputies because at the time the deputies was Adv Hofmeyr, Willie Hofmeyr. It was Adv Mpshe, it was Dr Ramaite, it was the Head of the DSO, Adv Leonard McCarthy. So we talked about what is happening. We  
10 felt that we are under sieged as the NPA, but I did not go ahead with the letter. That is one occasion.

The second one is that I always had a very good relationship with the late Chief Justice, Pius Langa. I went to see him because on my appointment he said to me, should it take harm when I consider stepping down or resigning from the NPA? I must have a chat with him. I went to the Constitutional Court, I had a discussion with the late Chief Justice Nkondo Pius Langa and talked about these problems.

And perhaps one can accuse me of trying to bring in the  
20 judiciary in a matter that does not necessarily concern the judiciary, but at this time the matter was already with the judiciary, given the sense that we had already applied for a warrant of arrest and which we obtained from the Chief Magistrate in Johannesburg. We had applied for search warrants which matter served before the Deputy President of Gauteng in Johannesburg.

The matter was out there and it requires you know, it was also said to us, let us not resign, I should just carry on with my work.

That is why I did not resign, but I was asked to resign. Thank you.

ADV VARNEY: Oh, thank you, Mr Pikoli. Let us...[intervenes]

CHAIRPERSON: Mr Varney.

ADV VARNEY: Yes, Chairperson?

CHAIRPERSON: I think this might be an appropriate time to take a short adjournment in view of the fact that we are still going to be longer with Adv Pikoli, to give him a short comfort break. We will

10 reconvene at 15:45.

ADV VARNEY: As the Chairperson pleases.

CHAIRPERSON: Yes.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Mr Varney?

ADV VARNEY: As the Chairperson pleases. Mr Pikoli, let us now turn to the day that you were actually suspended and I understand that on that particular day because it must have been a very stressful day for you, you had meetings both with Ms Mabandla, the Minister

20 as well as President Mbeki.

Now it does go back many years, but in the Ginwala Commission of Inquiry, you did give an account of those two interactions with the Minister and the President, and I think it would probably be best to refer to the transcript which we have included in your bundle. It is from page 265 of bundle 2 and my suggestion is

that you read certain aspects of that transcript into this record and then you can add to it if you so wish. It is the transcript of the inquiry into the National Director of Public Prosecutions. It is the 2 July 2008 and then at page 265.1, you are being led by your then counsel, Adv Wim Trengove (SC) and at the top of the page in response to a question, you say:

“In my mind I felt that nothing would satisfy the Minister other than stopping the arrest and prosecution of Mr Selebi.

10 Adv Trengove asked: “Did you manage to make an arrangement for a meeting with the Minister?”

Could you start reading into record from your response and I will indicate to you where I think you can stop.

ADV PIKOLI: Thank you, Commissioners. You want me to start from where I respond to?

ADV VARNEY: Yes, it starts, “Well the Minister responded” ...[intervenes]

ADV PIKOLI: Yes.

ADV VARNEY: “To my letter”, ja.

20 ADV PIKOLI:

“Well the Minister responded to my letter dated 19 September delivered on the 20 September. She responded on the 21<sup>st</sup>, accepting my request for a meeting. She said that yes, she was going to see me on Sunday, the 23<sup>rd</sup> at 17:00.”

And then Adv Trengove: "Sunday, 17:00 in the afternoon?"

My response was: "In the afternoon, yes."

Adv Trengove: "So did you meet the Minister on Sunday afternoon at 17:00?"

Pikoli: "We met shortly after 17:00, not exactly."

"What happened at that meeting?"

10 "Well we exchanged the normal pleasantries, we chatted a bit and then got to the core issues which I thought were the core issues of the meeting because I was ready to engage the Minister in the discussions around her request. The Minister said to me, 'Vusi, I want you to resign.' I asked the Minister, 'Why, Minister?' The response was, 'That there is a breakdown of the relationship of trust between the two of us.' I said, 'But Minister, you know as much as I do that there is no breakdown in the relationship of trust between the two of us.' She did not respond to that. She said, 'Vusi, it is all about trust, no, it is all about  
20 integrity. I will talk one day'."

Adv Trengove: "It is all about"...[intervenes]

Pikoli: "She went on further to say that she feels bad that during her time in office, she had to ask two National Directors of Public Prosecutions to resign."

Adv Trengove...[intervenes]

ADV VARNEY: If you can just pause there for a moment, would I be right in saying that the other National Director of Public Prosecutions she asked to resign could only have been Adv Bulelani Ngcuka?

ADV PIKOLI: It stands to reason to believe so, because he was the first National Director of Public Prosecutions. I followed him.

COMMISSIONER KGOMO: Can you repeat that? I did not hear because of the noise.

ADV PIKOLI: My response is that yes, it stands to reason that it would have been Mr Ngcuka, because he was the first National  
10 Director of Public Prosecutions and I succeeded him, therefore becoming the second National Director of Public Prosecutions.

COMMISSIONER KGOMO: Thank you.

ADV VARNEY: Please continue.

ADV PIKOLI:

Adv Trengove: "She said it is all about integrity?"

Pikoli: "Yes."

Trengove: "And then one day?"

Pikoli: "I will talk, I do not know what she meant by that.

I did not take it further on that, I did not ask her as to  
20 what she meant."

Trengove: "Suggesting though that you do not know the full story?"

Pikoli: "Yes and that you know there might be a need to explain some other time as to why she had to take whatever course of action that she was taking."

Trengove: "And then what happened?"

Pikoli: "We also talked about our communication during the week, including the telephonic conversation where the Minister broke into a tirade and she again apologised for that because I was seriously hurt by that, because she made a serious allegation. She accused me of being disrespectful to her. Now given my upbringing, what my mother taught me and my father..."

Sorry.

10 ADV VARNEY: Mr Pikoli, if you wish you can skip that section.

ADV PIKOLI: Thanks for the offer but I have to read it. [Coughing].

Excuse me.

"Now given my upbringing, what my mother taught me and my father, I felt that she was insulting the memory of my mother. I was hurt and angry and I told her so. She apologised and I accepted her apology."

Trengove: "Are you okay? Would you like to have some water?"

"Yes, I am fine."

20 Trengove: "Did she go on at any time to explain what she meant when she said to you it is all about trust or that there has been a breakdown of trust?"

Pikoli: "No, she did not. She did not explain herself further."

Trengove: "Did you believe there had been a

breakdown of trust between the two of you?”

Pikoli: “No.”

Trengove: “Did you in fact in that meeting experience any lack of trust between the two of you?”

Pikoli: “No.”

Trengove: “Was there anything else during that meeting or was that it?”

Pikoli: “Well, after that meeting I had to prepare to have a meeting with the President, so we parted.”

10 Excuse me.

ADV VARNEY: If you can just pause there for a moment, Mr Pikoli. Before we move on to the subsequent meeting with the President that evening, in our consultation you mentioned a little more of what went on in your meeting with the Minister after she asked you to resign, and you said that there were three reasons why you could not resign. Perhaps you can just elaborate on those?

ADV PIKOLI: Yes, that is correct, Commissioners. I said to Ms Mabandla, ‘No, I am not going to resign and I will give you three reasons’ which I thought of them on my feet, on the spot. I said to  
20 her, ‘Three reasons, that I would be lying to the nation and to myself if I were to resign, because I will not be in a position to state the real reasons behind the resignation. I would have to say I have decided to pursue another interest in my life and I have decided to leave’. But given the short tenure, this was, I was appointed in 2005 and by 2007 already I am thinking of other things, so I said, ‘I will have to lie not

only to the nation but to myself. I am not prepared to do that.

Secondly, for the sake of independence of the prosecutors, it cannot be right for a member of the Executive to ask a National Director of Public Prosecutions to resign. Thirdly, for the sake of rule of law, if I have done anything that is wrong, let there be due process', and that due process obviously then translated itself into the Ginwala Commission. Thank you, Commissioners.

ADV VARNEY: Thank you, Mr Pikoli. So perhaps you can pick up where you were about to start with the meeting with the President.

10 You will see that Trengove says...[intervenes]

ADV PIKOLI:

Trengove: Your meeting with the President was arranged for 19:45 that night?"

Pikoli: "That is correct."

Trengove: "Who attended the meeting?"

"It was Reverend Chikane and the President."

Trengove: "Could you tell us what happened?"

20 Pikoli: "When I got into the meeting with the President and Reverend Chikane, perhaps let me if I am allowed to go back to the meeting of the 23<sup>rd</sup> with the Minister, the earlier meeting with the Minister, the meeting that afternoon, the Sunday afternoon."

And then Trengove: "The meeting that afternoon, the Sunday Afternoon with the Minister?"

And then I said, Pikoli: "The Sunday afternoon meeting

in response to the Minister, I had said that I am not prepared to resign for two reasons, one, because of the rule of law and the independence of the prosecutors. And furthermore, I indicated to her that I would be lying to the nation if I were to resign, because on being asked I would have to say that I have resigned voluntarily when in fact this would have been imposed on me by somebody else, to resign. I said for those reasons I am not going to resign. So when I met the President later that evening, the President informed me that the Minister has already briefed her on my discussions with her. That is my earlier discussions with the Minister and that I have refused to resign. I confirmed that to the President. I said, 'Yes Mr President, I refuse to resign' and I told the President why I refused to resign. I gave the President the same reasons that I gave to the Minister, one, on the rule of law and the independence of the prosecutors and also that I would be lying to the nation if I were to resign, because I would have to make it out as if it was a voluntary decision. The President then said to me, 'Vusi, this is all about interpretation, there is life after this. Do you think if I were to give you a letter of suspension, you would not change your mind?' I said, 'No Mr President, I will accept your decision to suspend me if that is your intention'. And

then the letter was prepared in my presence, the letter of suspension. I remained with the President in the room whilst Reverend Chikane was organising the letter to be ready for signature by the President. And then I asked the President, 'Mr President, can you please tell me why are you suspending me?' The President said, 'Vusi, it is all about interpretation and also, it is also about the [indistinct].'

10           Tregove: "Could you just repeat that? I lost the first sentence. The President said?"

          Pikoli: "Well the President said, 'Vusi, this is all about interpretation and also about the plea bargains and you entertaining the possibility of granting immunities to criminals'. My response to the President was that, 'Mr President, I think you are skating [should have said, I read that but the transcript does not say so], I think that you are rather on thin ice because these issues that you are raising, touch on the core competence of the NPA'. We left it at that. And then the Reverend  
20           Chikane brought a letter. The President signed the letter. It was put in the envelope and I was given the letter and then I left the residence."

          Tregove...[intervenes]

ADV VARNEY: Let us, before we deal with the next section, we will come back to it shortly, I think we should now turn to the letter and

then we will come back to the transcript. The letter is on page 90 of the same bundle and my attorney advises me that if anybody needs a clearer copy, we do have copies, a clearer copy of this letter. This is a photocopy from Mr Pikoli's book. So this is a letter from the President to Adv Pikoli dated the 23 September 2007. Mr Pikoli, will you read the letter into the record?

ADV PIKOLI: Thank you, Commissioners.

"Dear Adv Pikoli

10 As you are aware, the Prosecuting Authority forms an important part of our criminal justice machinery, and accordingly, our fight against crime.

This machinery to fight crime was further strengthened in 2000 when Parliament adopted legislation creating the Directorate of Special Operations (DSO), in the office of the National Director of Public Prosecutions.

In recognition of the particular threat posed by organised crime in the country, the DSO was specifically tasked to investigate and institute criminal proceedings relating to organised crime activities.

20 As a result of the importance of the Prosecuting Authority to the success of our fight against crime, I receive regular reports from government agencies and ministries about the activities of the Authority.

Organised crime poses a serious threat to our national security. While I accept that the Prosecuting Authority

has the discretion to enter into plea bargain and/or immunity arrangements with alleged offenders, the public interest must always be considered. Accordingly, in determining what is in the public interest, before exercising such discretion, the Prosecuting Authority must necessarily have regard to the totality of information available to the State.

Such plea bargaining and/or immunity arrangements cannot be done at the expense of our national security.

10 Clause 179(6) of the Constitution of the Republic of South Africa provides that the Cabinet member responsible for the administration of Justice must exercise final responsibility over the Prosecuting Authority. Accordingly, the government, on whose behalf the Minister of Justice and Constitutional Affairs exercises this responsibility, must and does have an interest in ensuring that the Prosecuting Authority serves the public interest. In this regard, acting in terms of the dictates of the Constitution, the Minister of Justice

20 and Constitutional Affairs informed me about some of the matters that the National Prosecution was seized with. Some government agencies also advised me of some of the activities relating to the same matters.

The information I have received shows that you have entertained the granting of immunity to members of

organised crime syndicates in instances where the prosecution of such people would, in the government's view, be in the public interest. In some of these matters there seems to be no reason why the Prosecuting Authority would not proceed against all persons implicated in the alleged offences.

10 I have evaluated the information at my disposal and have reached the conclusion that you, in your capacity as National Director of Public Prosecutions have failed to appreciate the nature and extent of the threat posed by members of organised crime syndicates to our national security. Such a lack of appreciation in itself amounts to a threat to our national security.

The Minister of Justice and Constitutional Affairs has also drawn my attention to the breakdown of relations between your office and hers due to several incidents, such as your testimony to the Khampepe Commission of Inquiry.

20 Accordingly, the letter serves to inform you that I, acting in terms of the provisions of section 12(6) of the National Prosecuting Authority Act (the Act), have decided to suspend you from office with immediate effect. You will continue to receive your full benefits during the period of suspension.

Acting in terms of the same provisions of the Act, I have

also decided to institute an enquiry into your fitness to hold the office of National Director of Public Prosecutions. The particulars relating to the enquiry will soon be communicated to you.

Yours sincerely.

Signed, Thabo Mbeki.”

ADV VARNEY: Thank you, Mr Pikoli. So I would like you to give the Commission your views on this letter and in particular the claim by President Mbeki that various decisions you were taking as NDPP  
10 amounted to a threat to South Africa’s national security.

ADV PIKOLI: Thank you, Commissioners. One, the work of the NPA, the prosecutorial mandate of the NPA, the NPA Act talks to the NPA instituting criminal proceedings on behalf of the State. And perhaps this might also lead us to go back, particularly when it came to the question of an approach to issues of national unity and reconciliation.

Well it was said that when the President, when President Mbeki said that the NPA must deal with these matters but assisted by the Intelligence Agencies, what I would find strange is that throughout  
20 that process, before I am coming to where, to the issues raised here, not once did those responsible for our national security, and when I refer to National Security Services, this is in Chapter 11 of our Constitution, and that Chapter 198 talks about our approach to issues of national security, freedom from fear and freedom from want.

But then the specific Security Services relate to the Defence

Force, to the South African Police Services and to the National Intelligence Services. If we are engaged in any work that could pose a threat to national security, there was enough opportunity for those responsible for national security to put this matter at the disposal of the NPA.

Particularly the National Intelligence Services, without being long, I said yesterday that Minister Dullah Omar when he was Minister of Justice, was also Minister of Intelligence Services in the first administration and I was his special advisor. Actually today is  
10 the day that he passed on, the 13 March. May his soul rest in peace. I owe that man a lot.

So to the extent that he together with the Deputy Minister of Intelligence at the time, Comrade Joe Nhlanhla, asked me to chair a ministerial inquiry into the work of the Intelligence Services, which means that I had a good understanding of Intelligence Services and that understanding also tells me that Intelligence Services amongst other things of the collection and processing and analysing information, they are the only Intelligence Service that has got a national legal mandate for counterintelligence in this country.

20 Now counterintelligence is there to counter the cracks to a country insofar as national security. Not once was this information placed at our disposal, which would obviously, would have given us a fuller picture on some of the issues and then our decision would clearly be, we would take that into consideration without necessarily fettering our discretion in terms of our mandate about who were to be

prosecuted or not prosecuted.

And secondly, the reference to issues of plea bargain and [indistinct] in terms of section 204 of the Criminal Procedure Act, I engaged with the Minister, with the President when I had asked him. I might not have said everything there, but it was amounting that the President saying to me that you know, you guys are the NPA, you are prosecuting people that we think you should not be prosecuting and actually you are prosecuting people that we think you should, you know.

10           That is why there is a reference to skating on thin ice, because this is the sole prerogative of the NPA and even if we are wrong and if I were to be more specific, what our matters, where we have taken a decision to prosecute, end up in court, we lose cases, we win other cases. But there is nothing that should prevent the NPA from taking a decision to prosecute, whether we are going to win or we are going to lose the matter. That has always been the position of the NPA and me.

20           And also, us having gone to the courts for the warrant of arrest because that is further assurance because whoever would be presiding over the application for a warrant of arrest, would have satisfied himself or herself, more so when it comes to the application for search and seizure warrants.

          And in this case I must indicate that I think it was Justice Phineas Mojapelo before whom the DSO appeared in his Chambers, who gave them a hard time in terms of he having to be satisfied that

indeed in this particular instance it warranted the issuing of such, that is another level of assurance in terms of our work, and then of course there are the courts. It is not the responsibility of the Executive, because our decisions are always subject of criminal trials.

So that is why I said to the President, 'That Mr President, you are skating on thin ice on these issues, because we should be allowed and the law says we take decisions'. So this was the nature of our discussions with the President on that evening.

ADV VARNEY: Thank you, Mr Pikoli. And just to round up on the  
10 transcript, can I ask you to go back to page 268?

CHAIRPERSON: 368?

ADV VARNEY: 268, ja.

ADV PIKOLI: Yes, Commissioners.

ADV VARNEY: And I stopped you in the middle of the page where  
Adv Trngove says:

"Will you have a look at the letter, please?"

ADV PIKOLI: Yes.

ADV VARNEY: Can you read into the record from there and I will  
stop you when you get to a point on page 269.

20 ADV PIKOLI: Thank you, Commissioners.

"Trenrove: "Will you have a look at the letter, please?"

It is VP1, he says on the 1<sup>st</sup> page in about the fifth  
paragraph:

'Organised crime poses a serious threat to our  
national security. While I accept that the

Prosecuting Authority has the discretion to enter into a plea bargain and/or immunity arrangements with alleged offenders. The public interest must always be considered. Accordingly, in determining what is in the public interest, before exercising such discretion, the Prosecuting Authority must necessarily have regard to the totality of information available to the State.'

Do you have any quibble with that paragraph?"

10           Pikoli: "Yes, I do have. I could never imagine anything more in the public interest than investigating the Chief of Police when there are allegations of him being in the books or in the payroll of organised crime. I do not think there is anything more in the public interest than ensuring that you fully investigate those serious allegations and if satisfied that there is a case to be met, to charge the National Commissioner."

Trengove: "The President said, he goes:

20           'Such plea bargaining and/or immunity arrangements cannot be done at the expense of our national security.'

Did you believe that you had entered into plea bargain or you made arrangements at the expense of national security?"

Pikoli: "No."

Trengove: "Over the page"...[intervenes]

ADV VARNEY: Ja, I think we can stop there, Mr Pikoli. Unless you have anything to add to the interactions with the President, we can move on.

ADV PIKOLI: Yes, and I know obviously what he did fell within the four corners of the law. Plea bargains in terms of section 105A and section 204 is part and parcel of our legislative arrangements and these are processes that the NPA in the normal course of things would have to invoke in appropriate cases, therefore I did not see any  
10 threats you know, to national security.

ADV VARNEY: And indeed, and as we heard from earlier evidence, well we will see that some of the complaints also related to the TRC cases and in particular the plea bargain relating to the Chikane case, and again the accusation was that you had not taken national security into account. Is that correct?

ADV PIKOLI: No, on the Chikane matter at the time it happened, nobody ever put anything around national security.

ADV VARNEY: Yes, well when we got to the Ginwala Commission proceedings, it will be raised there.

20 ADV PIKOLI: Yes.

ADV VARNEY: Ja. I would like you to read into the record your concluding paragraphs of your 2015 affidavit, so if you could then turn back to page 28? You read into the record, paragraph 75 and 76.

ADV PIKOLI:

"Conclusion:

75. I have little doubt that my approach to the TRC cases contributed significantly to the decision to suspend me. It is no coincidence that there has not been a single prosecution of any TRC matter since my suspension and the removal of the TRC cases from Adv Ackermann.

10 76. The political interference or meddling that I have set out in this affidavit is deeply offensive to the rule of law and any notion of independent prosecutions under the Constitution. It explains why the TRC cases have not been pursued. It also explains why the disappearance and murder of Nokuthula Simelane was never investigated with any vigour and why the pleas of her family and her representatives were ignored.”

ADV VARNEY: Thank you. And indeed that affidavit which is dated 6 May 2015, am I correct in saying that that was a supporting affidavit in support of Thembi Simelane then known as Thembi Nkadimeng in an application that she brought before the High Court to compel a  
20 decision in her sister’s case?

ADV PIKOLI: Yes, this is correct because I deposed to that which was part of the proceedings.

ADV VARNEY: Yes, indeed. And I want to turn to the Ginwala Inquiry into your fitness to hold office, and in particular I want to refer to the government submissions dealing with the TRC cases and that

is at page 180 of the same bundle.

ADV PIKOLI: I am there.

ADV VARNEY: So as you can see, this is titled, 'Submissions of government to the inquiry into the fitness of Adv Vusumuzi Pikoli to hold the office of National Director of Public Prosecutions' and if we can turn to, if we go to paragraph 212, that is at page 212 and there is a section titled, 'Post TRC litigation'. Quite a lot is said here, so we only have time to deal with some of the extracts but can I refer you to page 213 and let us start at paragraph 119. We can deal with them  
10 in tranches. I am going to read the first two paragraphs, 119 and 120 and seek your response:

20 "119 Shortly after its establishment it became clear that the Task Team was not operating as efficiently and effectively as envisaged by the directives. Members of the Task Team from outside the NPA were continually frustrated by the officials of the NPA, who denied them access to files in respect of cases under consideration, but elected to provide the members with summaries of cases. This compromised the Task Team's ability properly to consider issues and make informed and appropriate reports to their principals. As a consequence, critical information relating to crimes arising from conflicts of the past was not

presented to the Directors-General represented in the Task Team.

120. These concerns were raised with the National Director. Effectively, the NPA proceeded to evaluate these matters without the participation of other members of the Task Team, this despite confirmation by the National Director in the meeting of 12 October 2006, that the Committee will make recommendations to him on each case.”

10

So Mr Pikoli, it seemed that from the side of the government, they were expecting not just a summary, but perhaps your entire files, be the dockets in question. Were they entitled to get these dockets?

ADV PIKOLI: No, Commissioners.

ADV VARNEY: And do you have any other response to those two paragraphs?

ADV PIKOLI: Relatively short, no. I agreed with the approach taken by the NPA.

ADV VARNEY: And then in the next paragraphs, 121 and 122 which I will try to paraphrase if I can, this is where there is the claim that your handling of these cases were impacting on national security:

20

“121 The post-TRC cases are of great importance to the government and the country, yet this is an area of dispute between the NPA and the other departments in the JCPS Cluster. The effect of

this disagreement is that the issues were not properly discussed with the Cluster and notwithstanding their profound potential impact on the national security of the Republic, and the objective of national reconciliation as set out in the interim Constitution and the TRC Act.

10 122 An indication of the problem arose when the NPA concluded plea bargains with Mr Van Der Merwe and Others (the Vlok matter). This matter was not discussed in the Committee as was intended, prior to the final decision of the National Director. The Minister was also not informed of the plea bargain until after they were made.”

And if you just jump to the last line:

“This failure to discuss the matter resulted in national security issues not being reflected on in relation to the matter.”

Your response?

20 ADV PIKOLI: Thank you, Commissioners. My simple response to this, it is not incorrect. Firstly you must remember that these were put to me as a charge during the Ginwala Commission, a government submission to justify the holding of the inquiry. When I responded to this, the charge was withdrawn, because I would have gone on to point out certain issues that actually happened and issues or things

that did not happen because it is indeed true that there were all these different interpretations and knowing the mandate of the NPA, we were quite clear that there is nothing that prevents us from going ahead with the prosecutions.

I suppose perhaps now would be the opportunity for instance, for those who represented government at the time, and those who prepared the submissions of government which obviously would have been the DGs of the Cluster, particularly SAPS, NPA and NIA who would play the major role in these submissions and these  
10 are the people that we did not see eye to eye in terms of what was required going forward on these matters.

Perhaps it would be the right appropriate for those who made the submission, to also perhaps explain as to why did they have to do it wrong, this charge against me when I was prepared to respond to all the allegations that are contained in the submission.  
Thank you, Commissioners.

ADV VARNEY: Do you have a sense Mr Pikoli, why they decided to withdraw this particular charge?

ADV PIKOLI: The only thing Commissioners that perhaps I can say,  
20 is that they knew that they would not have been able to sustain this charge. Truth be told, they would not have been able to carry on with this charge and to save them from embarrassment that would have resided in my response to the allegations, well the best decision is to withdraw the charge so the matter is not fully ventilated before the Ginwala Commission.

ADV VARNEY: And then the last two paragraphs, 123 and 124 are along the same lines. Now the complaint is that:

“123 That notwithstanding a meeting of the relevant DGS with the National Director, that the matters be thoroughly discussed before the National Director made his final decision”...[intervenes]

CHAIRPERSON: Where are you, Mr Varney?

ADV VARNEY: Sorry, I am at paragraph 123.

CHAIRPERSON: Paragraph 123, yes.

10 ADV VARNEY: 123 on page 215.

CHAIRPERSON: Thank you.

ADV VARNEY: So the complaint is that the DGs could not discuss this matter before you made your final decision and so that issues that needed to be taken into account, could not be including national security. And then lastly, 124 and I will just focus on the middle sentence:

20 “The National Director failed to honour this directive by concluding plea bargaining agreements with Mr Van Der Merwe and the others before informing the Minister of these agreements.”

My recollection is that you went out of your way to inform the Minister.

ADV PIKOLI: I...[intervenes]

ADV VARNEY: Before the conclusion of the plea and sentence agreement in court?

ADV PIKOLI: You, the Commissioners will recall that there is a letter or memo that was sent to the Minister of Justice on the 10 July 2007, informing the Minister of the position that we had taken, that the matter was set down for the 17 August 2007.

ADV VARNEY: Now there is another affidavit that is before the Ginwala Commission and that is the affidavit of the Minister herself, Ms Mabandla. It is also in this bundle at page, it runs from pages 227 to 257. But it is quite late in the day Mr Pikoli, and I do not see anything really different between her submissions and that of the  
10 government, but if there is anything in particular you would like to respond to, you may do so.

ADV PIKOLI: No Commissioners, all the issues, I think I would be repeating myself if I were to respond to the you know, averments made in this affidavit, because I think that I sufficiently responded to these matters.

ADV VARNEY: Yes, thank you, Mr Pikoli. Then let us turn to the finding of the Ginwala Commission which is at page 258 of the same bundle, this is the finding of the report of the inquiry into the fitness of Adv VP Pikoli to hold the office of NDPP. The report was issued in  
20 November 2008. There is a section dealing with the post-TRC cases, page 259. Let me just see if there is anything in particular that we should deal with.

The Chairperson of the Commission ultimately noted that this complaint had not been pursued further. If I can draw your attention to paragraph 211, and can I ask you to read into the record

from the middle of that paragraph, 'There were concerns articulated by the DG about the nature of the consultation', to the end of that paragraph.

ADV PIKOLI: Okay.

10 "There were concerns articulated by the DG: Presidency about the nature of the consultation but for the purposes of this report it is unnecessary to deal with those save to say that he found the demeanour of the prosecutor insensitive to his plight as a victim in that case. This complaint also touches very closely on the constitutional guarantee of independence of the NPA to prosecute or not to prosecute, and to do so without fear, favour or prejudice."

ADV VARNEY: Do you find it significant that that Commission found it necessary to highlight the fact that this complaint touches on the constitutional guarantee of independence of the NPA?

ADV PIKOLI: Commissioners, it did.

ADV VARNEY: And perhaps you can just read the last line of paragraph 213 on page 261 into the record.

20 ADV PIKOLI: Paragraph 213?

ADV VARNEY: Yes.

ADV PIKOLI:

"Moreover, government has not pursued this complaint. In closing argument before the enquiry it was stated on behalf of government that: 'The TRC and Khampepe we

have not gone into. We have not pursued the TRC complaint and the Khampepe complaint'. As a result it is my considered opinion that the government has not made out a case that Adv Pikoli is not fit for office by reason of this complaint."

ADV VARNEY: Thank you. Now before we close up, just a few matters we have to deal with.

ADV PIKOLI: Perhaps before that with the indulgence of the Chairperson and the Commissioners, just perhaps before we  
10 proceed, something would, I would be short, something which came up on TV yesterday and also which formed part of the allegations, it has got nothing to do with the post-TRC cases but it has got a lot to do with the independence of the NPA.

Adv Mothibe yesterday spoke of the NPA going flat out for financial and administrative independence and it is one of the charges that I faced at the Ginwala Commission. And I want to commend Adv Mothibe to have carried on what I became a victim of. And indeed it is required and I fully support and I hope parliament will also support Adv Mothibe in his endeavours to have the NPA  
20 declared a public entity in terms of the PFMA Act.

I faced an allegation, a charge because I was, we were making moves towards the financial and the administrative independence of the NPA. I am sorry to have raised this issue which have, has no direct bearing, but is relevant.

ADV VARNEY: Yes, indeed I think it most certainly is relevant and

thanks for raising that, Mr Pikoli. So just a few other matters, we promised to bring to the attention of the Commission when the next Justice Portfolio Committees were held after the meeting which was I believe in, my team will tell me, that meeting where it was being indicated that the NPA was being held to ransom. I think it was in...[intervenes]

ADV PIKOLI: It happened in May 2007.

ADV VARNEY: It was in May 2007. So my team have discovered that there was another Justice Portfolio Committee meeting, I am not  
10 sure if this date is correct, it says the 8 May 2007, but that was in relation to the Commission for Gender Equality and the next meeting that dealt directly with the NPA was only held, a series of meetings between the 20<sup>th</sup> and 26 February 2008 and of course by then you were no longer in the NPA, you were on suspension and in those meetings the TRC cases were not discussed.

And I want to give you an opportunity to respond to various allegations that Adv Menzi Simelane has made against you in his affidavit filed before this Commission and we have put up Mr Simelane's statement in this bundle, it as page 277. I do not want  
20 to take up too much time given that it is already 16:40 but I want to put certain allegations made against you, so that you have an opportunity to respond.

Firstly Mr Simelane claims that while he was Director-General of the Department of Justice and Co-Chair of the DG Cluster, oh sorry, while you were DG of the Department of Justice and Co-

Chair of the DG Cluster, you penned a memorandum motivating for the dissolution of the DSO as per the...[intervenes]

CHAIRPERSON: On which page are you, Mr Varney?

ADV VARNEY: So this is paragraph 24 of Mr Simelane's affidavit and my team will find the page number, the paginated page number in bundle 2.

CHAIRPERSON: Paginated 285?

ADV VARNEY: Yes, that is correct. So Mr Pikoli, what is your response to the claim that while you were DG of Justice and Co-Chair  
10 of the DG Cluster, you penned, the claim that you penned a memo motivating for the dissolution of the DSO?

ADV PIKOLI: Commissioners, this would not have been within the personal knowledge of Adv Simelane, because at the time he was not the DG of Justice.

ADV VARNEY: No, it is when you were DG of Justice, ja.

ADV PIKOLI: No, I am saying when he made this.

ADV VARNEY: All right.

ADV PIKOLI: He was the DG of Justice. What I am saying is that  
20 this would not have been the DG's personal knowledge, because he is referring to my term of office when I was DG. Adv Simelane was appointed after I left then the Department of Justice, so it is something which he would have been told by the DGs of the Cluster, so it did not fall within his own personal knowledge. That is one.

And two, I did express my position when I was the DG of Justice on this matter, but for him to say that first I reject this and I

would want to put him to the proof thereof about me having penned a memo which obviously must be lying somewhere and which I think should be unearthed because my position also at the Khampepe Commission, the first Khampepe Commission contradicts this position and it is also one of the charges that I faced at the Ginwala Commission, that there was this disagreement between me and the Minister of Justice at the Khampepe Commission because at that first Khampepe Commission I defended the position of the DSO, hence also there is reference.

10 I think the letter of my suspension from the President that also one of the things would have been the disagreement between me and the Minister when there was the Judge Sisi Khampepe Commission, the first one. So therefore what he is saying is not borne by fact and now perhaps it would be good if we were to produce such.

COMMISSIONER GABRIEL: You are saying what is there is wrong?

ADV PIKOLI: Sorry?

COMMISSIONER GABRIEL: You are saying what is there is wrong?

20 ADV PIKOLI: I am disputing it and I am putting to him the facts thereof.

ADV VARNEY: And then in the same paragraph 24, Mr Simelane claims that other DGs and the DG Cluster knew you from the time that they grew up together in the same area in Gqeberha.

ADV PIKOLI: Again this is not correct. At the time none of the DGs of the JCPS Cluster grew up with me during this period.

ADV VARNEY: And then Mr Simelane claimed...[intervenes]

ADV PIKOLI: And just...[intervenes]

ADV VARNEY: Ja.

ADV PIKOLI: And just to be sure but also I do not know in terms of the relevant periods. The only person also who is older than me, who became a National Commissioner, would have been Commissioner [Indistinct] who was a DG, but during the relevant period this can be depicted and ascertained, I do not think he was part of the Cluster at that time.

10 ADV VARNEY: Yes. And then in paragraphs 26 to 28 which is at page 286 of the bundle, Mr Simelane claims that you attended a DG Cluster meeting with Adv Ackermann?

ADV PIKOLI: It is a reference to the DGs Cluster when I was the National Director. I did not attend meetings of the JCPS Cluster when I became the National Director and I would not have gone with Adv Ackermann as it is intimated here because of obviously if he says that you know, I attend the meeting with Adv Ackermann, it can only be when I was the NDPP, because it is only then that I would have had the authority to ask Adv Ackermann to accompany me to  
20 the meetings of the DGs.

ADV VARNEY: And am I correct in saying that was the traditional custom that NDPPs would not attend DG Cluster meetings?

ADV PIKOLI: Firstly at the time of my predecessor, Mr Ngcuka did not attend meetings of the JCPS Cluster. I did not attend meetings of the JCSP Cluster, but later when I sort of, when I got back to

government I realised that the NDPP or the NPA would be represented in the meetings of the Cluster, but this was after my period.

ADV VARNEY: Okay.

ADV PIKOLI: But then we would have gone back to government, particularly when I was the Special Advisor to Minister Mchunu and then to Minister Chachalia. It is when that I saw that actually things have changed.

ADV VARNEY: And at paragraph 35 which was page 288 of the  
10 Cluster, 8 of the bundle, Mr Simelane claims that the Cluster meeting referred to, descended into disorder. Your response?

ADV PIKOLI: I have no recollection of any meeting of the Cluster that descended into disorder. Yes, there were you know, disagreements and strongly so, but not to the extent of a meeting having degenerated to such levels.

ADV VARNEY: And if you turn to paragraph 37 which is also on page 288?

ADV PIKOLI: I am sorry.

ADV VARNEY: Ja.

20 ADV PIKOLI: Commissioners, what I think, it was mostly around the time when there was this demand to remove Anton Ackermann from dealing with matters of the post-TRC matters and I stood firm, all the DGs felt that he should be you know, removed from these matters. I think this was in reference to that particular issue.

ADV VARNEY: And then if we turn to paragraph 37 which is also on

page 288, Mr Simelane claims that the Political Military Council was discussed at the Cluster meeting. Your response?

ADV PIKOLI: The Political Military Council?

ADV VARNEY: I think he got the name mixed up, I understand it is actually the Political and Military Committee.

ADV PIKOLI: Well yes, the structures in the ANC at the time would have been the structure of the Political and Military Committee which was known as the PMC. I was not part of the structure even when I was in exile.

10 I would not have known the people there and also, I never had a peep even you know, in those dockets that were since taken to the, to SAPS basically when my predecessor you know, was angry and ordered that they be taken there, because you know when I became the NDPP, I felt that there was no need for me to open something which you know, the NDPP had decided on and I did not feel there was any urgent need to try to review his decisions. So for me the matter was closed. Yesterday I made reference to a *functus officio*.

ADV VARNEY: So to your recollection, was the PMC discussed at  
20 that Cluster meeting?

ADV PIKOLI: No, as I say did not attend no meetings of the Cluster, so I would not have known whether there was a question of the PMC which was operating during our days in exile.

ADV VARNEY: And then also on paragraph 37...[intervenes]

ADV PIKOLI: And also I believe that since I, I have never known him

to be a member of the ANC, perhaps when he came back he was and I never, I had no association with him in exile. Whether as a member of AK or an ordinary member of the ANC, but I do not rule out that he was a member, but I do not think he would have been privy to issues relating to the PMC other than hearing from some DGs of the Cluster.

ADV VARNEY: And then also in paragraph 37, Mr Simelane says that he was present when Ackermann was said to have stated that he will prosecute one member of the Liberation Movement and then borne from the apartheid Security Forces?

10 ADV PIKOLI: Commissioner, I have not dealt with this issue because it all revolves around Anton Ackermann and the fear being that once you start with the prosecution against former generals and then what was going to follow would be the prosecution of ANC members, and again this was further emboldened by that forged letter actually, which sort of now was saying [indistinct], we told you. Here is this thing that the NPA has been denying all along.

ADV VARNEY: And then if we can turn to paragraph 39 which is at page 289, so Simelane claims that you acceded to the demand of the DG Cluster and I quote:

20 "That if the members insisted on the removal of Ackermann from the TRC cases, then he will remove him but that he will seek his counsel any time if he needed it."

ADV PIKOLI: No, the issue here is that also I did earlier indicate that I had to choose my battles tactfully. I did not want to cause any

further delays, but I never removed Anton Ackermann from the cases. But what I did so that I am able to eliminate this obstacle, Ackermann, and also knowing him to be you know, abrasive and can you know, cause you know, friction you know, because you know, a hardcore prosecutor can cause that and I regard him as such.

Tactically for things to proceed, I said fine, Dr Ramaite to whom he reported, would attend those meetings and you would be the one who takes a lead in the discussions so that it is not Anton who is the face of the post-TRC prosecutions because that animosity  
10 would have continued and it would have caused further delays. So I never removed him because anyway, I did not have any authority because he was a Special Director appointed by the President.

ADV VARNEY: And...[intervenes]

COMMISSIONER KGOMO: Sorry.

ADV VARNEY: Yes, Commissioner.

COMMISSIONER KGOMO: You say this obstacle, Ackermann, you show in quotes, this 'obstacle' Ackermann, did you do that, is it not, in quotes?

ADV PIKOLI: Ja.

20 COMMISSIONER KGOMO: I mean as you were sitting there, I was looking at it.

ADV PIKOLI: Yes, yes, yes, Commissioner.

COMMISSIONER KGOMO: I am merely putting the record straight because the record would show, that it is not you who say he is an obstacle.

ADV PIKOLI: Because he was seen as the obstacle and I did not believe that he was an obstacle.

COMMISSIONER KGOMO: Yes.

ADV PIKOLI: So that is why I was saying this obstacle, meaning that it is not me saying that.

COMMISSIONER KGOMO: Yes.

ADV PIKOLI: That he was an obstacle, because I firmly believed that he was not an obstacle.

COMMISSIONER KGOMO: We are on the same page.

10 ADV PIKOLI: Thank you, Commissioner.

ADV VARNEY: And then the issue of Ackermann then arose later, for example paragraphs 47 at page 292, another reference in paragraph 58, page 296 and Mr Simelane says or claims there was no need to remove Ackermann as the issues were resolved with Pikoli.

ADV PIKOLI: Yes. Commissioners, it is correct that Adv Simelane came to my office to have Anton Ackermann removed and I told him in no uncertain terms that this is not going to happen, I am not going to remove Anton Ackermann.

20 So I suppose what he sees as having been solved would have been the fact that I had then said Dr Ramaite would attend those meetings so that the process can go on because already we have had these inordinate delays on these matters.

Again as I said, I had to choose my battles and find a way of being tactically flexible as to how I approach the matter, because

there is no point being engaged in a battle and then actually then lose sight of the war. And the war in this case being protecting the independence of the prosecutors and going ahead with the prosecutions, with or without the support of other departments.

ADV VARNEY: And then lastly there is a claim by Mr Simelane which is set out in paragraph 53 at page 294, where he says:

“Quite clearly the NPA had its own investigative capacity. Secondly, it is known that the NPA through the PCLU conducted investigations on its own.  
10 [Indistinct] took statements from those that are identified. I need a statement from this, this is also confirmed by Ackermann in a meeting with members of the Cluster in the presence of Adv Pikoli and other members of PCLU. Quite clearly the NPA did have investigation capacity.”

So this is said in the context of the assertion that the PCLU did not have investigators at that time. What is your response to the claim that PCLU clearly had its own investigative capacity?

ADV PIKOLI: Commissioners, this is clearly not correct. It has been  
20 stated time and time again that this matter, the Chikane matter, was ready for trial in 2004 because there was no need for investigations on this particular matter. So he did not fall into the category of those matters that the NPA required investigators, so this is completely incorrect.

ADV VARNEY: And then lastly and sorry to return you to the

[indistinct] of Mr Ackermann, but at paragraph 58 there is a claim that, there is a suggestion being made, a request to remove Ackermann from playing an active role in the investigation and prosecution of TRC cases, an attempt from stopping prosecutions. He says:

“It is not explained how this can be. Adv Pikoli agreed with the request when he did not have to. If he was of the view that it stopped prosecutions, one can only conclude that he agreed because it did not affect the prosecutions.”

10           What is your response to that?

ADV PIKOLI: Commissioners again, it is difficult to think, to really understand as to why are we having this, because Ackermann was appointed as a Special Director with a specific mandate to deal with the post-TRC matters, investigation and prosecution of those matters. Now if you take out the person who was appointed by the President via the proclamation, then you are effectively saying no, perhaps Mr President, you made a mistake, you need to appoint somebody else because the person you appointed is not suitable for this.

20           Because if you are insisting on removing him, what are we saying? Because he is the one with the direct legal responsibility and mandate to deal with the post-TRC prosecutions. So how could I have coerced in such imaginations? This is completely wrong. Thank you, Commissioners.

COMMISSIONER GABRIEL: And why would it have been of any business of the DG of Justice to come to you, specifically to come to

you to say get rid of him?

ADV PIKOLI: Well you are asking why, it is because he was singing the same tune about the removal of Anton Ackermann. He agreed with the views of the other DGs and actually something which because he is a lawyer, he understands the law better than the DGs of the other clusters, of the other departments. That is why I could not understand as to why should he be battling, you know, for this position which was clearly untenable and clearly unlawful.

ADV VARNEY: So you mentioned earlier in your evidence that you  
10 had been approached by Judge Zondo who at the time was Chairperson of the Zondo Commission into allegations of state capture and just to let you know, if you did not know that, the families of the Cradock Four, Nokuthula Simelane, Ahmed Timol, Matthews Mabelane, Neil Aggett, Imam Haron and Hoosen Haffejee did approach the Zondo Commission in the course of 2019, asking the Zondo Commission to investigate the issue of what they referred to as the capture of cases, of this category of cases by elements from with outside the NPA. Can you indicate why Judge Zondo made contact with you and your response?

20 ADV PIKOLI: Commissioners, for the sake of the accuracy of the record, it was not Judge Zondo directly, these were the evidence leaders who required me to depose to an affidavit on my suspension and subsequent departure from the NPA.

Of course I was willing to cooperate, but this thing, I mean I do not know how long did it take for it to go away, the pain, the

suffering that I went through, but I indicated to the evidence leaders because I had a consultation with the evidence leaders, I indicated that everything I have, I have said everything on this matter from the Ginwala Commission and the affidavits that I deposed to in the Nokuthula Simelane matter and also in the Ahmed Timol matter which involved the prosecution of Rodrigues.

My affidavits were submitted in those cases, so it is a matter that has going through our courts of law and I did not want to appear again and talking about all those things, because everything is on  
10 record and that I have no objection to the Zondo Commission making use of my affidavits from the Ginwala Commission, the 2015 one on the Nokuthula Simelane matter , on the Rodrigues matter, that I have no objection to that and I stand by those affidavits, that that was my position. I did not want to again be at the centre of public discussions and debates, where again this process is reopening that.

ADV VARNEY: Thank you, Mr Pikoli. Before we close your examination-in-chief, is there anything that you wish to say to the Commission?

ADV PIKOLI: I will try to be short. I came here to be a truthful  
20 witness, I did not come here to make accusations, to make allegations against anybody. I have gone beyond taking issues personally, a long time ago. I am here to put facts on the table for proper consideration and if in the course of doing so it might appear that I am making certain allegations, it is not me, it is the facts that speak for themselves.

It is said that so many years down the line after the final report of the TRC, we are still talking about post-TRC prosecutions. It is painful for the survivors and the families of the victims, that for them justice has not been done. You can say whatever you want to say, the lawyers representing government will say and put forward all the reasons as to why things never happened. They will point fingers at those who are actually responsible, who had the mandate to prosecute and did not prosecute.

10           These are the issues that this Commission will have to look at carefully and consider and make findings and recommendations flowing from everything that is going to be placed before this Commission. And also you know, I have great respect and admiration for the late Comrade [Indistinct].

One of the things I learned from him when I worked with him as a Special Advisor and then being an official in the Department of Justice, is the question of which is in section 10 of our Constitution, human dignity. No wonder it found expression into our Bill of Rights. This is what things would be about, not about personal issues, who did what, who did not do what, but I would be true to section 10.

20           All of us sitting here, we are lawyers. You can put 10 lawyers in a room and perhaps give them the same set of facts but it is not improbable that you might get 10 different answers. It is not about that, it is about the truth. This is about making a determination as into who was responsible for the absence of prosecutions when the law was quite clear.

I have got respect for the late Dr Zola Skweyiya, because he is the one who asked me to join the Department of Legal and Constitutional Affairs of the ANC in exile. And I got involved then in the discussions about post-apartheid South Africa. Yesterday I made reference to the meetings that we had with the lawyers from South Africa in marshalling a post-apartheid South Africa.

And I am happy that I participated in those things, I have got a better insight and I had a better insight than the DGs of the Cluster about the genesis of the Truth and Reconciliation Commission.

10 Comrade Lalla sent me to chair in 1994 and Prof [Indistinct], late, who happened to be my lecturer at the University of Lesotho, I mentioned Justice Lex Mpati, I mentioned Ms Tiny Maya or Yolisa Maya who was a member of the BLA, a practicing attorney, who went to Chile to study what happened in Chile, because she wanted to make sure that we will deal with these issues in a manner customised for our own situation based on our own history.

I am grateful for Comrade [Indistinct] on that trip in 1994 which formed the basis. And then also, I am not surprised that the Calata Family and the applicants in the Calata matter relied heavily

20 on my submissions on the question of the political interference in the work of the NPA. I understand why I have to spend this time here and I am prepared to come back for those who might want to cross-examine me on issues that I have said, on issues that I might not have said. I am prepared for that. Thank you, Commissioners.

ADV VARNEY: Mr Pikoli, in closing on behalf of the families we

would like to thank you for your service in South Africa, we would like to thank you for standing up to injustice. We would like to thank you for resisting political interference and paying the price for that. You set the best possible example for future NDPPs of which the families thank you again. A debt of gratitude is owed to you. Thank you. No further questions.

CHAIRPERSON: Thank you, Mr Varney. Mr Propy or Ms Rantho?

ADV RANTHO: Thank you, Commissioners...[intervenes]

CHAIRPERSON: Any [indistinct] questions?

10 CROSS-EXAMINATION BY ADV RANTHO: There will be, we will do our best just to select a few, Commissioners. It is almost evening. Good afternoon, Adv Pikoli.

ADV PIKOLI: Good afternoon, madam.

ADV RANTHO: On behalf of SAPS, just some few clarification questions.

ADV PIKOLI: On behalf of SAPS?

ADV RANTHO: SAPS, indeed. And then you spoke about Chapter 3 of the Constitution, you would recall you testified about the need for collaboration among the state entities, the cooperation so to speak?

20 ADV PIKOLI: That is correct.

ADV RANTHO: Now specifically relating to ITT, I just want to find out if there was any working document...[intervenes]

ADV PIKOLI: With specific relation to?

ADV RANTHO: The ITT thing, the formulation of the ITT.

CHAIRPERSON: The ITT?

ADV RANTHO: Interdepartmental...[intervenes]

CHAIRPERSON: ITT.

ADV PIKOLI: Yes, yes there is reference in these bundles.

ADV RANTHO: Yes, there is.

ADV PIKOLI: Yes.

ADV RANTHO: What I wanted to understand...[intervenes]

ADV PIKOLI: And it is documented.

ADV RANTHO: Okay thank you, Adv Pikoli. Perhaps to be specific, the working of the NPA and when I say NPA that includes PCLU with  
10 the police, remember you spoke about the lack of cooperation on the part of the SAPS in terms of assisting with the investigation?

ADV PIKOLI: Yes, I did.

ADV RANTHO: What we would like to find out is, what was the working arrangement? Was there any document that was formulated to assist in terms of knowing as to how you would work, that collaboration? And we ask that question specifically because you did testify yesterday that investigative powers in terms of the Constitution lied with the SAPS.

20 So what we are trying to understand is that at that time when it is alleged or when reportedly there was a lack of cooperation by the SAPS, allegedly their failure to provide the necessary assistance insofar as investigation is concerned, so we are trying to establish was there any document or Memorandum of Agreement for that matter, that would have aided that impasse, in other words to assist in terms of knowing when to come in and not when to come in as

SAPS?

ADV PIKOLI: Thank you. Commissioners, let me start with a small clarification, that when this matter of the establishment of this Commission came up, I was the Special Advisor to the Minister of Police, Minister Senzo Mchunu and continued in that position with the Minister Firoz Chachalia.

I immediately informed both of them because it is a matter which also fell on the lap of SAPS, that I am not going to be involved in any discussions around these issues, issues of consultations, you  
10 know, because I know that to a large extent some of these issues will affect me.

But coming directly to the question as posed, there is ample evidence that shows starting from what Anton Ackermann said about SAPS not cooperating as expected, to the DSO not providing investigators, and the question of SAPS being responsible for the investigations, is a matter also which was properly traversed in the first Khampepe Commission, the question of a national, a single National Police Service as outlined in the Constitution, the chapter, Chapter 11 of the Constitution.

20 And there was no problem with establishing the DSO and it being given special policing powers in terms of investigations, these are matters that were openly discussed in the first Khampepe Commission. And there is ample evidence that shows that there was lack of cooperation between the NPA and the police in terms of availing investigators, including problems within the NPA itself where

we would have expected the DSO to avail investigators.

There is evidence to that effect, it is here in all the bundles, I am sure you can be able to specifically talk to that issue.

ADV RANTHO: Okay, so what I can understand from Adv Pikoli is that there was not any Memorandum of Agreement between the DSO, let us say NPA at that time with the SAPS insofar as what to do and who decide and you know, the do's in terms of what and when and who, and that is why and perhaps if I may just assist Adv Pikoli, we are saying that against the testimony that you gave and the one  
10 that was also given by Adv Ngcuka in terms of the tension that was between the SAPS and the, particularly DSO at the time.

And that is why now we are trying to understand against that which the Constitution obligated the two entities to collaborate whether there was any working document and that is what we wanted to find out, that was it just a matter of NPA hoping that SAPS would cooperate, on the other side SAPS also hoping that NPA would cooperate?

And that is what we are trying to understand, was there something that was kind of formalised in terms of regulating the  
20 operations of the two state organs?

ADV PIKOLI: Thank you. A short answer is that there was no Memorandum of Understanding.

CHAIRPERSON: Yes.

ADV RANTHO: Okay.

CHAIRPERSON: Yes?

ADV RANTHO: Thank you, thank you Adv Pikoli.

ADV PIKOLI: Yes.

ADV RANTHO: And then there is also an issue of the removal of dockets, removal of dockets that were taken to Visagie, I think it is being put like Visagie Street somewhere or some building, but your testimony was that your predecessor decided that some dockets I would assume, they involved the ANC 37, were taken back or were actually taken from NPA to the SAPS.

10 Is that how we understood your testimony where you were present? I think your testimony was that you were also present when that transfer took place and that there was also no audit conducted.

ADV PIKOLI: Thank you.

ADV RANTHO: Yes.

ADV PIKOLI: Commissioners, firstly I want to eliminate the question of Visagie Street.

ADV RANTHO: Okay.

20 ADV PIKOLI: Because where I was when the dockets were removed from the DPP's office and the DPP's office is not in Visagie Street, I was present when the dockets were removed and they were removed from the offices of the DPP Pretoria.

ADV RANTHO: Okay.

ADV PIKOLI: Which I think are in Church Street.

ADV RANTHO: Do you remember who received them on the part of the SAPS?

ADV PIKOLI: I think Mr Ngcuka made it clear that, okay let me just

talk on my own recollection because I want to believe that Commissioner Tim Williams would have been there when these dockets were removed from the offices of the Director of Public Prosecutions, Pretoria. Obviously there were other police officials who were there.

I would not be able to remember all of them and I cannot even say though you know, it might, I might assume that he was there because he was in charge of the Legal Services, Commissioner Phillip Jacobs. But I am speaking under correction on this.

10 ADV RANTHO: Perhaps also to be clear, you were there in your capacity as the then DG of Justice?

ADV PIKOLI: That is correct.

ADV RANTHO: Okay and the issue of the tactical approach that you spoke to when you were asked about the meeting that took place at the then Minister Skweyiya's house, you would remember that and the testimony that you gave was that, I think there was a level of flexibility in terms of where to attend meetings and what time of the day, so for you it was not really difficult, is that that how we understood you.

20 ADV PIKOLI: Yes, to be accurate, I talked about a term which I just coined on my own, about the tactical flexibility. That is what I said when I was led in evidence.

ADV RANTHO: So what you were trying, just to clarify, is that that meant you really did not have a difficulty with the meeting being held at the Minister's house in a way when you say you adopted that? We

are mindful that you said that was subject to you maintaining your independence.

ADV PIKOLI: Yes.

ADV RANTHO: Yes.

ADV PIKOLI: You would be correct.

ADV RANTHO: Yes.

ADV PIKOLI: That is correct.

ADV RANTHO: And then there was also an issue of the policy statement that as you explained that for all intents and purposes,  
10 everybody that formed part of the DGs Forum or let us say that the Task Teams or Interdepartmental Task Teams that were formed under the JCPS...[intervenes]

ADV PIKOLI: Yes.

ADV RANTHO: There was a good intention to give effect to the policy statement of President Thabo Mbeki. You would recall that you did say that it was intended to serve good. What we also gathered was that the lack of cooperation was not only from the SAPS side, but then as you said, I think that is when you were speaking or you were talking about the presence of Reverend  
20 Chikane being the DG at the time in the Office of the President, you would recall that you said that there was no problem with that because there was a problem of lack of cooperation by a lot of departments. Do you remember?

ADV RANTHO: Well perhaps to clarify what you might have misunderstood, the primary role player was the SAPS in terms of

availing investigators to assist. The DSO also had an obligation to provide investigators to assist the PCLU and this was not forthcoming from both the SAPS and the DSO. And of course when it came to the police, the main issue seemed to have revolved around perhaps two main issues, to have revolved around the participation of Anton Ackermann in the process, which made them not want to cooperate.

And two, the so much often repeated lie, I am sorry to use such strong language, that it was the intention of the NPA all along that as soon as there is a prosecution against the generals, that the  
10 NPA is going to pursue investigations and prosecutions of ANC. And this was coming from SAPS and this position was accepted by other departments including the Department of Justice and the NIA. That is the crux of my submission.

ADV RANTHO: And it is just for clarity Adv Pikoli, another thing that we are also trying to understand is that your interaction with the late Commissioner Selebi, was more at the head of offices level, is it not, your counterpart so to speak? Meaning the National Commissioner was your equivalent but obviously responsible for the police at the time?

20 ADV PIKOLI: During which period...[intervenes]

ADV RANTHO: Well...[intervenes]

ADV PIKOLI: With me in office?

ADV RANTHO: Either at the time when you were the DG or when you became the NDPP.

ADV PIKOLI: No, that would be a wrong understanding.

ADV RANTHO: Okay.

ADV PIKOLI: When I was DG of Justice, I regarded myself as you know, in the same position because we were DGs answerable to Ministers. And yesterday I did try to explain the difference, not out of any superiority to think that the NDPP is above everybody else, but the fact that the Constitution gives the responsibility of determining the Prosecution Policy to the NDPP, now there is no DG in government who has got that responsibility, so obviously that policy would be in accordance with the constitutionally guaranteed  
10 independence of the NPA.

And then the fact that it says that but this must be with the concurrence of the Minister, then it puts the position of the DGs including the National Commissioner, slightly different from the position occupied by the National Director of Public Prosecutions. So in terms of role playing or in terms of executing the tasks required, would have been different.

ADV RANTHO: Okay, perhaps if I may just make myself even clearer, yesterday you gave testimony in relation to the role played by the Executive Authorities. Those are my Cabinet Ministers, let us say  
20 the Ministers, and what I wanted to understand when I wanted, when I actually tried to establish that your relations with the late Commissioner Selebi was more of your counterpart, meaning your colleague who is responsible for another department say SAPS, and I am mindful that as NDPP of course you were independent, but you were the Head of the NPA as the NDPP, is it not?

ADV PIKOLI: Yes, purely on the basis that I also wanted to give peace and stability a chance. That is why I from the outset, I said when I was the DG I fully, you know, I was fully committed to ensuring that the statement of the President you know, is given effect to when I was DG.

ADV RANTHO: Yes, meaning...[intervenes]

ADV PIKOLI: My position did not change.

ADV RANTHO: Okay, now...[intervenes]

ADV PIKOLI: When I was NDPP.

10 ADV RANTHO: Thank you. What I am trying to establish further is whether your interaction did not involve the Minister of Safety and Security at the time, because the lack of cooperation from your evidence was more coming from SAPS and that is running through even from the evidence of Adv Ackermann, Adv Ngcuka to say it was more SAPS...[intervenes]

CHAIRPERSON: Ms Rantho, is that not a question right for cross-examination?

ADV RANTHO: I will do so, Commissioners, if it is so.

CHAIRPERSON: Yes.

20 ADV RANTHO: Thank you for that, I will defer the question. Thank you, Commissioner.

CHAIRPERSON: Thank you.

ADV RANTHO: Perhaps just one last thing, the interaction with other stakeholders, we also seek clarity as to whether you also had interaction with the DG of National Intelligence Agency at the time,

NIA, in terms of this lack of cooperation. Did you also have that with NIA as well?

ADV PIKOLI: That is correct, Commissioners.

ADV RANTHO: Okay, thank you Commissioners, I think...[intervenes]

CHAIRPERSON: Thank you, Ms Rantho.

ADV RANTHO: I do not have anything further in cross-examination.

CHAIRPERSON: Thank you.

ADV RANTHO: Thank you very much.

10 CHAIRPERSON: Ms Tsagae?

ADV TSAGAE: Afternoon, Commissioners. Thank you Adv Pikoli, we do not have any clarification questions for today.

CHAIRPERSON: Thank you, Ms Tsagae.

ADV PIKOLI: Thank you.

CHAIRPERSON: Mr Tabata?

MR TABATA: Thank you Commissioner, we have no clarifying questions.

CHAIRPERSON: Thank you. Ms Rikhotso?

20 CROSS-EXAMINATION BY ADV RIKHOTSO: Thank you, thank you Commissioner. I think we just have one question and I am sort of piggybacking it off of the question by Ms Rantho. Mr Pikoli, this goes back to the time when the dockets were being collected at the DPP's office and you were there, but at the time you were the DG.

So now the interaction was clearly between the SAPS and the NPA, so now the question that we lacked clarity on was, what role

were you there to play as the DG while dockets are being collected by SAPS? You never said that when you were leading your evidence.

ADV PIKOLI: Thanks. Commissioners, I think I did talk about this thing, that you know, my presence there was as a Co-Chair of the JCPS Cluster of DGs and that this is a matter that was being considered by the JCPS Cluster, given the fact that it included issues of investigations and prosecutions, therefore it cannot be divorced from the criminal justice chain, that I think I did say that quite often  
10 yesterday. That is what made me to be there when the dockets were taken from the office of the DPP to SAPS.

ADV RIKHOTSO: Thank you.

CHAIRPERSON: Thank you, Ms Rikhotso. Mr Semenya, any clarificatory questions?

CROSS-EXAMINATION BY ADV SEMENYA: Just a small area Chairperson, if I may. Advocate, again good afternoon to you.

ADV PIKOLI: Good afternoon, sir.

ADV SEMENYA: Please do not read any of the questions I put to you as a challenge to any aspect of your evidence. I just want to take  
20 us back to 2003 and look at the address by the then President to parliament. It would seem to me that there was concern about two categories of people, the one would have been those who on poor advice did not participate in the TRC process, right?

ADV PIKOLI: That is correct, Commissioners.

ADV SEMENYA: And the other category would have been people

who thought for good or bad reasons, they will not be found out and caught and prosecuted. Am I right?

ADV PIKOLI: That is correct again, Commissioners.

ADV SEMENYA: The reading of that address also appears to raise a concern that the post-TRC outcomes have left other matters fragile. Am I right?

ADV PIKOLI: It have left other matter what?

ADV SEMENYA: Fragile such as per the...[intervenes]

ADV PIKOLI: Fragile?

10 ADV SEMENYA: Ja, the reconciliation that that process was intended to achieve.

ADV PIKOLI: Yes, that is correct, Commissioners.

ADV SEMENYA: And the plea in that area was that perhaps there could be creative methods by which to accommodate those concerns. Am I right?

ADV PIKOLI: That was my understanding. That is correct, Commissioners.

ADV SEMENYA: And the creation of the Amnesty Task Team which you correctly say it is a misnomer, was intended to see if there were  
20 not any creative ways in which that can be done, right?

ADV PIKOLI: That is correct, Commissioners, except that if you are talking of creative ways, it conjures something as in my [indistinct] trying to, but the crux of the matter is that we were to find perhaps new ways of trying to deal with this matter without any precedent, yes, in that sense.

ADV SEMENYA: Yes.

ADV PIKOLI: We had to be creative, to be imaginative.

ADV SEMENYA: Not to find solutions.

ADV PIKOLI: Yes.

ADV SEMENYA: I mean there were various areas in which efforts were directed, but would meet a cul-de-sac, be it certain legislative instruments that can trigger a resolution of that problem for instance, right?

ADV PIKOLI: That is correct, Commissioners.

10 ADV SEMENYA: And there would be difficulties as I understood your evidence, such as the fact what underlying statutory premise that would exist for those opportunities, correct?

ADV PIKOLI: Can you come again?

ADV SEMENYA: You would look at various possible solutions, including what statutory premise would help achieve those solutions. Am I right?

ADV PIKOLI: That is correct, Commissioners.

ADV SEMENYA: Still hitting a cul-de-sac because there was no such instrument to facilitate the legal basis for that type of solution.

20 Am I right?

ADV PIKOLI: Except that it was thought prudent to look at the Prosecution Policy with the view of accommodating this special category, I am saying special category of cases which might not have been within the contemplation of those who drafted the first Prosecution Policy, because reality then demanded that there be

consideration to this new or to this new category.

ADV SEMENYA: Yes.

ADV PIKOLI: That is the nearest in terms of legislation, but it was policy, yes.

ADV SEMENYA: And you correctly say or at least you say in your evidence-in-chief, you did have concerns about the Prosecution Policy, but in furtherance or in amelioration of the difficulties you had with that, at least the prosecutorial independence was safe. Am I right?

10 ADV PIKOLI: That is correct, Commissioners.

ADV SEMENYA: And that also ended up with the Prosecutorial Policy being set aside. Am I right?

ADV PIKOLI: The, no, the policy was not set aside...[intervenes]

ADV SEMENYA: Ja.

ADV PIKOLI: Via the amendments. This was an addition to accommodate a special category of cases, so the amended policy did not replace or displace the existing Prosecution Policy. Yesterday I spoke of supplementing and complementing it.

20 ADV SEMENYA: Ja, perhaps I did not express myself too well, but the point I am making is, all of these efforts are done in public, there is nothing clandestine about it. Am I right?

ADV PIKOLI: That is correct.

ADV SEMENYA: That are tabled before parliament for its consideration, right?

ADV PIKOLI: That is correct.

ADV SEMENYA: Cabinet as well?

ADV PIKOLI: That is correct.

ADV SEMENYA: All of that in an attempt to deal with what you call this special category?

ADV PIKOLI: That is correct.

ADV SEMENYA: And it may be open for argument to others, to say these were efforts intended to widen the ambit of opportunities to reconcile the reconciliation effort. Am I right?

ADV PIKOLI: That is correct, Commissioners.

10 ADV SEMENYA: As opposed to being efforts at stopping the work of the NPA. Am I right?

ADV PIKOLI: You are right, it could not have been you know, an attempt to stop the work of the NPA.

ADV SEMENYA: Neither being an effort to stop the investigation of TRC cases that required investigation. Am I right?

ADV PIKOLI: It could never have been the intention, that is correct.

ADV SEMENYA: Yes. Now if we talk about the section 105A of the Criminal Procedure Act, that was good law before the address by the then President. Am I right?

20 ADV PIKOLI: It was existing law.

ADV SEMENYA: Ja, so the facility to have a process by which plea and sentence agreements could be concluded, was still good law. Am I right?

ADV PIKOLI: It was law that was in the existence, that is correct.

ADV SEMENYA: And even post the address by the President, it

remains still good law to have that as a tool opened to the NPA?

ADV PIKOLI: That is correct, Commissioners.

ADV SEMENYA: In fact, as a matter of fact, General Van Der Merwe, Commissioner Van Der Merwe and the Minister together with the other three, were prosecuted strictly in terms of that facility and power the NPA had?

ADV PIKOLI: That is correct, although I was not really in favour of that, ja.

ADV SEMENYA: Ja.

10 ADV PIKOLI: That is correct.

ADV SEMENYA: What I mean is, even when you were there, the readiness of those matters to be concluded in that manner, was still open?

ADV PIKOLI: That is correct.

ADV SEMENYA: Ja, okay. Lastly, the fact is that no beneficiary came out of a process by which the Prosecutorial Policy as amended, was derived. Am I right? Nobody got the benefit of an amnesty through those efforts. Am I right?

ADV PIKOLI: Not when I was there.

20 ADV SEMENYA: Okay. That would be the end of the questions I have for you, Mr Pikoli.

CHAIRPERSON: Thank you, Mr Semanya.

ADV SEMENYA: Sorry Chair, I am told somebody's hand was up.

ADV NTLOKO: Good afternoon, it would be my hand, Chair.

CHAIRPERSON: I cannot see you?

ADV SEMENYA: I cannot see you too.

CHAIRPERSON: Oh, I cannot see you.

ADV NTLOKO: Can you now see me?

CHAIRPERSON: Yes.

ADV PIKOLI: I can see you on the screen, yes.

ADV NTLOKO: Thank you so much.

CHAIRPERSON: Yes, yes. Ms Ntloko, where are you sitting?

ADV NTLOKO: Yes, Chair I am unfortunately...[intervenes]

CHAIRPERSON: Oh, you are on virtual?

10 ADV NTLOKO: On virtue in Pretoria.

CHAIRPERSON: Yes.

ADV NTLOKO: Yes, I am virtual.

ADV PIKOLI: Oh.

CHAIRPERSON: Yes, Ms Ntloko.

ADV NTLOKO: And I must thank the Secretariat for organising for me to join. Chairperson, in light of the time constraints before the Commission right now and of course being my fault that I myself included some of the people there also kept silent, we as the NPA propose that we will ask our clarification questions together with our  
20 cross-examination, because there are certain aspects that we would want to canvass with this particular witness and in relation to dates and a particular process that he has mentioned in relation to the NPA, and therefore we think that might be the most prudent manner in which we can in fact deal with this.

CHAIRPERSON: Yes, yes. Thank you, Ms Ntloko.

ADV PIKOLI: Thank you.

CHAIRPERSON: I think it will be highly advisable.

ADV NTLOKO: Thank you, Chairperson.

CHAIRPERSON: Am I missing anyone who is appearing virtually?

ADV NTLOKO: There is no one else on the platform, it was my senior but he had to fall off because of course the summit is starting soon and so he had to drive home.

CHAIRPERSON: Thank you, Ms Ntloko. Mr Varney?

ADV NTLOKO: Thank you.

10 RE-EXAMINATION BY ADV VARNEY: Thank you, Chair. Just two small matters by way of re-exam. Mr Pikoli, in relation to the question put to you by my learned friend for the South African Police Service as to whether there had been a Memorandum of Understanding struck between SAPS and the NPA in relation to the TRC cases, as Special Advisor to the Police Minister, you would be aware that section 205(3) of the Constitution...[intervenes]

ADV PIKOLI: Section 205?

ADV VARNEY: Ja, sub 3.

ADV PIKOLI: Sub 3?

20 ADV VARNEY: Ja.

ADV PIKOLI: Yes.

ADV VARNEY: Which essentially says that amongst the objects of the Police Service, one of them is to investigate crime?

ADV PIKOLI: That is correct.

ADV VARNEY: Yes, so why would you need an MoU if the SAPS is

already constitutionally mandated to investigate crime and is indeed obliged to investigate crime?

ADV PIKOLI: Well that is why I will say that there was no Memorandum of Understanding that I can think of and I am saying this also conscious of the responsibility of SAPS and I did talk about the question of SAPS having a constitutional mandate to investigate crime.

ADV VARNEY: So there should be no need for a special document or MoU to investigate these crimes?

10 ADV PIKOLI: Especially given the fact that we are dealing with the one criminal justice value chain.

ADV VARNEY: Yes and of course we are dealing with crime such as murders and kidnappings and the like?

ADV PIKOLI: That is correct.

ADV VARNEY: And my learned friend for the evidence leaders, he when talking about the amendments to the Prosecution Policy, he noted that one of the objectives was to promote national reconciliation.

20 Now given that in your evidence you have conceded that in the preparation of that policy, victims and families and their communities were not consulted and given further that part C of the policy provided a number of additional criteria on which not to prosecute, in other words avenues for perpetrators to escape justice, in the light of those two factors could it really be said that the Prosecution Policy in reality served to promote national

reconciliation?

ADV PIKOLI: Yes, because, thank you Commissioners, yes, because there is reference also to perhaps coming up with matters which may not have been put before the TRC because of the absence of other people who for whatever reason did not appear before the TRC, which created then you know, the fragile peace which we were enjoying at the time.

Therefore, we needed a process that would have put everything on the table to be able to deal perhaps with those  
10 outstanding matters, because clearly in the view of the President he felt that the TRC though it might have, what it did, submit its final report but there were still some matters which did not really address the issues of peace and stability and all that, hence the need to accommodate those issues within the framework of the law.

And then of course like I said yesterday, as far as the NPA you know, was concerned, it did not take away the discretion on the part of the NPA to prosecute any matter which it would have deemed fit and proper under the circumstances.

ADV VARNEY: Yes, but you accept from the perspective of the  
20 families, the families of victims of these gross human rights violations, and indeed it is one of the grounds they put up before the High Court, was that the amendment to the Prosecution Policy undermined the objectives of the Truth and Reconciliation Commission including the objective of reconciliation amongst them for the reasons that I have given but you accept that that is their perspective?

ADV PIKOLI: Yes, I do say so. It was and they are right in terms of the view that it had formulated. I have no problems with that.

ADV VARNEY: No further questions, Chairperson.

NO FURTHER QUESTIONS

CHAIRPERSON: Thank you, Mr Varney. I thought you were pushing it hard there Mr Varney, but as you say, that is their perception.

ADV VARNEY: Indeed.

CHAIRPERSON: Yes. Adv Pikoli, we offer our profound gratitude  
10 for you having availed yourself to come and give evidence before this Commission, some of which has had the effect of re-traumatising you, but as you know, we must receive this evidence in the execution of our mandate as set out in our terms of reference. As you have heard yourself, there will be applications to cross-examine you, so you must remain available to submit yourself to cross-examination. The date and time will be made known to you in due course. You are excused for now as a witness.

ADV PIKOLI: Thank you Chairperson, and I will submit myself to any cross-examination which may be required.

20 CHAIRPERSON: Thank you.

ADV PIKOLI: Thank you, Chairperson.

CHAIRPERSON: These proceedings are adjourned. These proceedings are adjourned?

ADV SEMENYA: Chairperson, may I just point out that we have a High Court matter on Monday and Tuesday, and those would be *non-*

*dies* for the proceedings of this Commission.

CHAIRPERSON: Yes, what is the date on Wednesday,  
Adv Semenya?

ADV SEMENYA: It must 18, 16 and 17...[intervenues]

CHAIRPERSON: Yes.

ADV SEMENYA: Is Monday, Tuesday.

CHAIRPERSON: These proceedings are adjourned until the  
18 March at 10:00.

ADV VARNEY: As the Commission pleases.

10 INQUIRY ADJOURNS TO 18 MARCH 2026

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## CERTIFICATE OF VERACITY

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

### JUDICIAL COMMISSION OF INQUIRY INTO TRC

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