

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

**HELD AT:**

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

**BEFORE:**

**COMMISSIONERS:**

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

**EVIDENCE LEADERS:**

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

**REPRESENTATIVES**

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

**16 FEBRUARY 2026**

**DAY 8**

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PROCEEDINGS ON 16 FEBRUARY 2026

CHAIRPERSON: Mr Varney?

ADV VARNEY: Good morning Chairperson, we think that conditions in the auditorium are much better today and we... [intervenes]

CHAIRPERSON: Yes.

ADV VARNEY: Thank the Commissioner for attending to this, the session, we are grateful, and... [intervenes]

CHAIRPERSON: Yes, let me remind Mr Calata. Mr Calata, you are still under your former oath.

10 MR CALATA: Thank you very much. Yes, Commissioner.

LUKHANYO BRUCE MATTHEWS CALATA: still under oath

ADV VARNEY: Commissioner, there is just a few housekeeping matters in terms of upcoming witnesses. Adv Dumisa Ntsebeza SC, is still undergoing medical treatment, so there is a question mark as to whether he will be able to testify and... [intervenes]

COMMISSIONER KGOMO: Mr Varney, our... [intervenes]

ADV VARNEY: The moment Commissioner we must assume that... [intervenes]

COMMISSIONER KGOMO: Lower the... [intervenes]

20 ADV VARNEY: Oh.

COMMISSIONER KGOMO: Decent. Mr Calata is more audible than you.

ADV VARNEY: I see and that is... [intervenes]

COMMISSIONER KGOMO: That is much better.

ADV VARNEY: I must be as audible as my witness, Commissioner. I

was saying Commissioners, that Adv Dumisa Ntsebeza SC, he was meant to testify this week. He is undergoing treatment and it is unclear whether he will be able to testify at all, but we will keep the evidence leaders and the Commission advised. In relation to Yasmin Sooka, we have pencilled her in for tomorrow and she has an engagement letter today.

CHAIRPERSON: She is coming in tomorrow?

ADV VARNEY: Yes, Commissioners, ja. We promised on Friday that we would procure a copy of Mr Lukhanyo's book written by him and as his wife, Abigail, titled *My Father Died For This* and luckily we were able to secure a copy over the weekend with the assistance of Mr Calata and with the leave of the court we would like to hand up. Unfortunately we only have one copy, but our attorneys have copied the relevant chapter in which the meeting with Deputy Minister Jeffreys is dealt with.

CHAIRPERSON: Yes.

ADV VARNEY: With the leave of the Commission we would like to hand up one copy of the book.

CHAIRPERSON: Yes.

20 ADV VARNEY: And three copies of the chapter.

CHAIRPERSON: Do we give it an exhibit number?

ADV VARNEY: Yes Chairperson, we suggest that this also go into bundle 1, so it would be bundle 1, item 3 and it will commence at page 839, and we have marked this on the copies. And my attorneys will send digital copies to the evidence leaders and the parties, and

there are a few more copies if the evidence leaders would like a copy. And we have put a marker on the page where the discussion with the Deputy Minister commences where halfway down, Mr Lukhanyo reports and saying that he was astounded when he said that is part of the price that had to be paid. Thank you, Commissioners.

Mr Calata, thanks for coming back this morning. When we left on Friday, we were about to turn to the core, the subject matter before this Commission, notably the alleged interference which saw the bulk of the cases referred by the TRC to the NPA being blocked  
10 from going ahead.

Now in my opening address I pointed out that there had been a lack of delivery over many years and just to summarise, as at January 2025 the sum total of the delivery in the TRC cases amounted to six concluded reopened inquests for plea and sentence agreements between 16 and 21 years ago, two concluded criminal trials, one of those was some 18 years ago and then in the *New Yorker* matter there were some developments that we had spoken about, including a guilty plea and certain convictions in 2024 and then later in 2025.

20 Now the NPA I think have somewhat different numbers, but not substantially different. I want to put to you a comparison that was highlighted in your founding affidavit launched before the High Court last year and then I want to seek your reaction. You stated at page 50 of your founding affidavit at paragraph 118 that:

“Similarly placed countries where truth commissions

had recommended prosecutions, had achieved a whole lot more such as the case of Chile and that since 1998, Chile's courts had resolved hundreds of cases of dictatorship [indistinct] killings and disappearances and as of July 2023, the Chilean courts had handed down verdicts in more than 530 cases of crimes against humanity and that there were still 2 000 cases under investigation."

You also pointed to the case of Argentina where the Office of  
10 the Prosecutor for Crimes against Humanity by the end of 2021, had investigated 3 500 people for crimes against humanity and of more than 1 000 were convicted. So looking at that comparison where countries like Chile and Argentina which had also made recommendations, led with Commissions, had passed on lists of cases to their prosecutors who seemed to have gotten on with the job, what is your reaction to that stark comparison?

MR CALATA: Commissioners, good morning. So when we were preparing for this application, I was struck by just how little our government had actually done in pursuing matters of the TRC and  
20 how several and how the Amnesty Committee had made, and had made things a lot easier I believe, for the South African government to be able to pursue these matters.

For instance, in the Cradock Four matter, there was perhaps very little additional investigations that were needed to get to a point where there could be prosecutions. The TRC or well the judgment in

the second inquest by Judge Neville Zietsman had already made certain findings around the involvement of the state and some players within the state. Those people were then identified at the TRC and there were six police officers who were then denied amnesty for that.

So I would argue that that would have been an open and shut case and the Cradock Four matter was not the only one where a lot of work had already been done and it just needed the state to be able to close the loop on it. So when we were working on these documents, I was genuinely struck by just how very little our  
10 government had actually achieved compared to what the Chileans had done and of course what had happened in Argentina.

ADV VARNEY: And then if we proceed further in your affidavit to the next page, that is paginated number 51, you made reference to a film or a documentary made by the TV broadcaster Al Jazeera which also carried the title, the same title of your book, *My Father Died For This* and the makers of that documentary approached the ANC and spoke to a senior official, a legal advisor by the name of Krish Naidoo and in that documentary when he asked about the TRC cases and why they had not been pursued, his response was that the Cradock Four case  
20 and the other TRC cases simply fell through the cracks. What was your response to that statement purportedly made by the ANC?

MR CALATA: Again Commissioners, the only thing that I was left with and it was, it was incredible to hear Mr Krish Naidoo say that in that, in that documentary considering that on several occasions, at least two or three, we with the assistance of the Foundation for

Human Rights had actually been in meetings with the African National Congress. Those meetings were led by the now former Deputy Secretary-General, Ms Jessie Duarte, and Mr Krish Naidoo had been in those meetings with us and where we, he would have heard us pleading and asking for various assistance as the governing party at the time, because it was before the GNU.

So as the ANC as the governing party of the time and we were pleading with them for their assistance, you know to help us advance some of our cases, so then and you know, and Mr Naidoo in  
10 those meetings he always in the personal meetings that we had, some of them virtual, you know he never spoke much but when he did speak, it was always I felt measured and it was you know, supportive.

I leaved at the time but when I obviously then heard him you know, in this, in the film, he mentioned that wow, they simply fell through the cracks. How does, how does a crime against someone's humanity, how does, how does that just simply fall through the cracks? The manner in which my father's body was desecrated by the people that killed him, I am not so sure how, why it would just be  
20 seen as our, it fell through the cracks.

If I may Commissioners, while I am remembering, I am not sure if it is, if it is reflected in these documents but it could have been some time in May, May 2024 just before the national government elections, I was working at my previous job and the Reverend Frank Chikane came through for an interview, the interview was delayed

and as the politics editor there, I was then asked to say, "Look, please go downstairs, the reverend is down there and have a, you know, meet with him or just kind of keep him busy while we are trying to work out how, how we are going to salvage this situation".

So finally I went down, I greeted. You know, he knew who I was and we sat and you know, in those 15 minutes again I asked him to say, "But listen, as the former Director-General in President Thabo Mbeki's administration, what happened, how come you guys never moved on this?" The reverend said to me, he asked me if I wanted  
10 the truth and I said to him, "Yes, of course I want the truth".

He then said to me that as far as he was concerned, there was simply no appetite to prosecute because some of the guys in the security cluster, he mentioned Jackie Selebi's name, Joe Modise, ja and he just said that there were just simply no appetite to prosecute. I again, I reported that immediately to our family group on WhatsApp to say that this had happened, to my mom and to my sisters.

Subsequently to that, we then, I again and I will, because I was also receiving counselling, I mentioned that in one of my counselling sessions, to my therapist. Fortunately my therapist had a  
20 relationship with the Reverend Frank Chikane and then arranged for us to go and meet with the Reverend Frank Chikane at his home. And then we went.

Again for me because I just needed to understand, I really, I just needed to understand, for instance when he said that there was no appetite, what does that mean? And we went and the reverend

received us and we sat probably for two hours and we had a conversation and I was allowed to ask questions and the reverend explained obviously his matter and his case and how that unfolded.

But the reality for me was that I think from the conversation that I had had with the Deputy Minister John Jeffrey, the words, the conversations that we have had with the ANC, the words of Mr Krish Naidoo and the conversation that I, two conversations that I had with Reverend Chikane, I really did get a sense that the issue of justice perhaps meant more for us as the families than it did for the people that had the actual power to make that a reality.

And it did seem to me that the people who could influence or who could give us the justice, was simply not interested in helping us, even though justice for us would have meant so many different things, it would have meant a sense of peace, a sense of closure for us to be able to pursue different things in life.

I think I mentioned on Friday that every decision that I have ever taken, has centred around my father and the pursuit of justice for him and telling their story and all of that. Justice would perhaps have had allowed me to find out who Lukhanyo really is and what are the things that I like to do and what are the things that you know, that are important to me instead of chasing to close the hole that is in my soul.

ADV VARNEY: Thank you, Mr Calata. Commissioners, in the light of the evidence of this witness and in relation to the Reverend Frank Chikane, we would request through the Commission that the evidence leaders approach Reverend Chikane with a request that he

make a statement and potentially appear before this Commission.

CHAIRPERSON: Yes.

ADV VARNEY: Thank you, Commissioners. Commissioner, the video documentary made by Al Jazeera titled *My Father Dies For This*, a copy of it in fact is part of the contextual documents bundle which is under the Calata Group volume. It is item 9 on the index of the contextual documents on the Commissioned website and can be viewed there.

10 Mr Calata, you might be aware from the application for a stay of proceedings brought by President Ramaphosa, but also the other government parties to this Commission, including the Ministers of Justice Police and the NPA, that they take the view that you and the families have failed to put up facts to demonstrate any political inference at all. So I want to take you through some aspects of your statement.

MR CALATA: Yes.

ADV VARNEY: Which demonstrate at least some of these facts, beginning on page 52 of your statement where you made reference to an important speech made by former President Mbeki before both  
20 houses of parliament on the 12 March 2003. That is at paragraph 124.

MR CALATA: Ja.

ADV VARNEY: Of that affidavit. You quote the whole speech but I am not going to take the Commission through it, but just to highlight the fact that the President made the point that government would

have to deal with the reality that many of the participants in the conflicts of the past did not take part in the TRC process and that somehow they would have to be attended to through normal legal processes.

And if we continue in your affidavit to page 54, you made the point that within a few weeks of that speech, when attempts were made by the Priority Crimes Litigation Unit, the PCLU, to get investigators involved in these cases, they were not successful. So if you turn to page 59 from paragraph 134 onwards, you set out the  
10 attempts by Advocates Ackermann and Macadam who were running the PCLU at the time.

They made approaches to the DSO also known as the Scorpions, and you will notice at the top of page 60 that Adv Macadam quotes from that meeting with the Special Director of the Scorpions, Adv Jeff Ledwaba made it clear in no uncertain terms that the DSO would not investigate any TRC matters that then prompted the PCLU to approach the SAPS and at the bottom of the same page, you will see that they did so, they approached Commissioner Johannes de Beer, the Divisional Head of the  
20 Detective Service and a meeting was held in September 2003.

Commissioner De Beer wrote to Adv Ackermann, indicating that the SAPS would not investigate unless the President directed them to do so in writing. Then you make the point that that direction was never forthcoming. Now you have pointed out to me in your evidence that your own case, the Cradock Four matter, was not

investigated properly. In your view does this explain or help to serve to explain why cases like the Cradock Four in those days were not investigated?

MR CALATA: Commissioners, indeed it does explain why there was never any progress with my father's case. So as a family we obviously spoke a lot about why these matters were, why was this not moving. What we did not have was the actual evidence as to why there was no movement in the Cradock Four case. So again when we, I think the first time there was actual or the first time we heard of  
10 actual interference, was in the 2015 or 2016.

It was for me the first time that I actually took real note of it, was I think in the Ahmed Timol matter when there was an admission in that inquest of political interference and that was the, really like the first time when we were like yes. We have always suspected it as the families and we have always spoken about it, but I think the Timol matter was really the thing that sparked it for me at least, because here was an actual court being informed by the NPA that there had in fact been political interference.

And obviously when we started working on this and we were  
20 able to find some of this evidence, it started to make a lot of sense, it made the picture a lot clearer in terms of what was actually happening and how this interference, the nitty-gritties of it and how it operated and/or how it worked.

ADV VARNEY: At the bottom of page 66 of your affidavit at paragraph 147, you said:

“The refusal by both the SAPS and the DSO to investigate some of the most serious crimes committed in South Africa, deeply violated the legal and constitutional obligations.”

So here you have a situation Mr Calata, in which there are several hundred murder cases, massacres, assassinations, kidnappings and other serious crimes that are before new South African entities, the only entities in fact that are empowered to investigate crimes, at least at that time, the police and the DSO, and  
10 both are declining to investigate these cases.

So as families, how do you respond to the fact that two constitutional era entities had decided that they will not investigate murders, massacres and assassinations?

MR CALATA: Commissioners, let me try to answer the question as follows, I was, I once had the privilege to serve on a panel of discussion with a former Justice of the Constitutional Court, Albie Sachs, and we you know, had a conversation and all of that and the Justice said something to me which I latched on, again I latched on and it became almost like a motto or a mantra or like a way for me to  
20 conduct myself through life.

And he said that South Africa today is the country for which so many had sacrificed for while he, you know, he sacrificed his arm and half of his sight, my father, his life, and many others their lives. He said because today South Africa has got a constitution, we have got a Constitutional Court, we hold elections every two or so years,

those elections are free and fair, we have got institutions such as Chapter 9 Institutions that help to protect and defend our democracy and all of that.

The thing that struck me though was, he said that we do not yet have the society for which he and others sacrificed their lives for. And that, that hit me hard because if we do not have the society then it means that all of that sacrifice and my father's blood being spilled, was in vain. So as part of who I am and what I do on a daily basis, I have to in essence give meaning to my father's sacrifice and the way  
10 that I do that, is through all of my actions to be towards building the society for which I believe my father sacrificed his life for.

In a society, every society has got to be built on certain building blocks or pillars and for our society considering where we come from, justice has to be like a central pillar to building this new society. So when departments or when units within the state such as whether it is the DSO, whether it is the DPCI or anybody and as, and again the National Prosecuting Authority, when they do not prioritise the issue of justice and ensuring that people are held accountable for the crimes that they commit, it ultimately then means that my father's  
20 death was in fact in vain, because if they will not prosecute his killers, then what is the point?

If they will not act in a manner in which to try to balance and to help us as the families reach some level of closure, then what is the point, then why do we have the state? Then why do we have all of these departments within the state that are meant to help us as

ordinary citizens with things such as justice?

ADV VARNEY: Thank you. Let us move on to deal with more facts and if you turn to page 67 of your affidavit, you deal with an entity with the curious name of the Amnesty Task Team.

MR CALATA: Ja.

ADV VARNEY: And at page 148 you point out that this body was created by the Director-Generals Forums and first met in February 2004 to give effect to the President's objective set-out in his speech we referred to, and in that forum appointed the task team. On page  
10 68 you make reference to an undated 2004 secret report.

MR CALATA: Ja.

ADV VARNEY: Which was disclosed during the prosecution policy litigation in 2008. Commissioners, that report is at pages 612 to 623 of bundle 1 of the record. Mr Lukhanyo, that report discloses that the Amnesty Task Team, the ATT, created another body called Departmental Task Team and that it included representatives of the Department of Justice, the Intelligence Agencies, the South African Defence Force, the South African Police Service, Correctional Services, NPA and the Office of the President, and they had many  
20 different tasks, but one of them which is set out at 156, was to advise the NPA before the institution of any criminal proceedings for an offence committed during the conflicts of the past. It must consider the advisability of the institution of such proceedings and make recommendations to the NDPP.

So what is your response to the recommendation by the ATT

at the setting up of this body comprising members who are not part of the NPA, to advise the NPA on prosecutions and which they have to consider before they institute any prosecutions?

MR CALATA: Commissioners, as far as I understand the law around the National Director of Public Prosecutions, and I am hoping Mr Varney that you will assist if, but as far as I understand it, that the National Director of Public Prosecutions has got the sole discretion to be able to decide and determine which matter to prosecute or not. That is his prerogative enshrined by the laws of this republic for that  
10 position. So whoever holds that office or is appointed to the Office of the National Director of Public Prosecutions, that is that person's prerogative.

As to how the incumbent exercises that prerogative, that is up to them but it should never be that the decision on who or whom to prosecute is a rubberstamp for the NDPP. It cannot be a rubberstamping process and when we were reading this and going through this and hearing about the Director-Generals Forum and the ATT and all of those kinds of things, my understanding of this was that it was just really a fancy way for all of these people who had, who  
20 were supposed to have no input or influence in the NDPP's decision.

This was a fora that were created to try to influence the NDPP's decision on whom to prosecute. That was my understanding of all of this, which I find again to be contrary, because that is the NDPP's responsibility, only they have the right to be able to decide, I suppose, who to prosecute.

ADV VARNEY: Yes indeed, I can confirm that under the constitution and under the NPA Act, it is the NPA that enjoys exclusive authority to decide who to prosecute and who not to and indeed it was that legal requirement that caused the crisis of conscience for the then NDPP Vusi Pikoli, which we will return to later.

And if we can turn to a further secret report of the Amnesty Task Team and you deal with this at the bottom of page 72 of your affidavit at paragraph 161, now Commissioners, this particular report was not disclosed in the prosecution policy litigation but it was  
10 disclosed by Adv Chris Macadam in his affidavit before the [Indistinct] matter and that is in bundle 1 at pages 344.

Now I will just have to check that, actually I think it is at pages 281 to 364 of bundle 1. It is annex FA5 to Mr Lukhanyo's affidavit. Now in that secret further report, the Heads of Department Forum had considered the first report and then requested the Amnesty Task Team to consider further aspects and some of their questions were as follows, they asked the task team to consider whether there were ways and means of preventing private prosecutions and civil litigation where the NPA decides not to  
20 prosecute and to investigate the possibility and desirability of making laws to prevent private prosecutions and such civil litigation.

What is your response to the Heads of Department making such a request to the Amnesty Task Team to look into?

MR CALATA: Commissioners, how do you obviously prevent the, someone who has the sole discretion to decide on who gets

prosecuted or which cases must be prosecuted once everything is done, because obviously once a case goes up for referral in a decision, that sits on the desk of the NDPP.

Again for me when we are, when I see all of this about the Inter-Ministerial Committee and the task team and the Departmental Forum and/or DG, Director-Generals Forum and all of that, my understanding of that was really just adding layers of complications or of discussions of influence into the NDPP to try to influence or to try to pressure him in some way as to which cases to take forward or  
10 not, because none of these for the ATT, the DGs Forum, the Inter-Ministerial Committee, because none of things are necessary.

None of them were absolutely necessary and my understanding of it was really to create opportunities where they could get to influence and that is where the political interference then was coming in, was to try to turn the school on whichever incumbent was in the Office of the NDPP, to make sure that they do not get to prosecute some of these cases for political reasons. In this application that or this evidence that we have submitted, there is reference of how TRC cases were considered to be politically  
20 sensitive.

I do not understand why they were politically sensitive, because they were just meant to implement the recommendations of the TRC and the Amnesty Committee on how to deal with these TRC cases. I think the parts about them being politically sensitive had been properly ventilated during the actual TRC hearings themselves

and that is where the political sensitivity should have ended, not when it came to implementing the recommendations of the TRC.

ADV VARNEY: If you go a bit further, the same DGs Forum that directed that the Departmental Task Team should work under the direct supervision of an Inter-Ministerial Committee and that both the Departmental Task Team and the Inter-Ministerial Committee and the NDPP in performing their functions in reaching their decisions, should take the national interest into account.

Now what is your understanding when they talk about the national interest? Do you have a sense of what that is and why the NDPP had to take the national interest into account when making prosecutorial decisions?

MR CALATA: Ja, if I may answer it in the following way Commissioners, national interest and public interest are not the same as far as I would argue, are not the same thing. The public interest basically is really and for lack of a better definition, in the best interest of the public, the entire public irrespective of whether somebody lives in a mansion somewhere in Bryanston or in Camps Bay or they live in a three-bedroom home in the small town of Cradock in the Eastern Cape. So whenever decisions are made in the public interest, it means ultimately that those decisions affect everybody .

National interest is not necessarily the same, because national interest can be determined by a small group of people sitting around a table in an office somewhere in Pretoria and then they decide that this is of national interest and it is for someone, a

journalist like myself who deal with words and the meaning of words on a daily basis, and I can see why these politicians and the bureaucrats and all of that would want to use a word like national interest, because national interest invokes a particular emotion and can be manipulated.

There is a reason why they use national interest instead of public interest, because the public interest with regards to TRC cases would have been for prosecutions, would have been for us to build a society where people know that they will be held accountable for the  
10 crimes that they have committed against our humanity.

National interests can be determined to say well, that is not necessarily in our national interest to prosecute for whatever reason that can be manipulated and I think that is really why they used the word national interest as opposed to public interest, but again, also to try to influence the process as to who the NDPP and which cases may be allowed to be prosecuted and move forward. For why must there be a consideration of national interest?

COMMISSIONER GABRIEL: Mr Calata, help me understand your evidence a bit more clearly, what do you think they meant by national  
20 interest?

MR CALATA: My understanding around national interest would have been around politics, madam. How do we control or how do we manipulate or control this, these kind of prosecutions or whatever so that it is, it has the desired outcomes for them, the people that were in the room making that decision, that it was not necessarily in the

best interest of the Calata Family or the Mohapi Family or the Biko Family or the Haron Family or the Motasi Family or the Simelane Family or the Aggett Family where we could go on and on, madam. But it would have been for those people that were in the room, their superiors because they could couch it or they could crouch it as national interest when it was not of national interest at all. It was meant to serve only a few people and not all of us. I am not sure if I am explaining myself correctly.

COMMISSIONER GABRIEL: A bit more detail. Serve only a few,  
10 what do you mean by that? What have you got in your mind?

MR CALATA: So if there were prosecutions of Eric Taylor for instance who was denied amnesty for killing my father or of Gerhard Lotz who was denied amnesty for killing Matthew Goniwe, if they were prosecuted for their crimes that they had committed, it would ultimately mean that prosecutions also had to follow for what is colloquially known as the ANC 37 who were also denied amnesty for certain crimes that they had, excuse me, committed.

It would perhaps mean that people would be prosecuted for the St James massacre of that church in Claymont in Cape Town. So  
20 the people who were then sitting in the room claiming national interest, would have been doing so to try to protect themselves and perhaps their comrades from those kinds of repercussions or those kinds of prosecutions.

So to ensure that their friends and their comrades and their people were not prosecuted, decisions were then taken in the

national interest to say but we cannot proceed with prosecuting Eric Taylor, because if we prosecute Eric Taylor, we might then be forced in a position to prosecute one of the ANC 37 and in that, I mean they cultured it in really nice terms but that is as far as I understand, what happened there, madam.

COMMISSIONER GABRIEL: Okay, thank you.

ADV VARNEY: For the benefit of the Commissioners, Mr Calata unpacked somewhat, the concept of the national interest versus the public interest, paginated page 75, paragraph 166 and its  
10 subparagraphs. He equates the national interest with essentially the interest of the state and the government as opposed to the wider community. Since you raised Mr Taylor... [intervenues]

CHAIRPERSON: That is in paragraph 166, from 166.2 to 166.5?

ADV VARNEY: That is correct, Commissioner, yes. Since you raised two of a number of individuals namely Eric Taylor and Gerhard Lotz, my junior reminds me that they were available to potentially face justice because they only passed away in 2016. We will return to that, but let us carry on Mr Calata, with a few more facts and if I can  
20 ask you to turn to page 79 of your affidavit dealing with the so-called moratorium on investigating and prosecuting TRC cases?

Now we heard from our witness Thembi Simelane, that she was making quite strenuous attempts from the early 2000s, 2003, 2004 onwards, to have the case of her late sister, Nokuthula Simelane, investigated and she was advised of a so-called moratorium in place until certain guidelines could be issued. And she

made the point in her evidence and you make reference to it on page 80, paragraph 175 that before this moratorium was imposed, your views were not sought.

And just for the record, can I ask whether you or any member of your family or the other families or wives of the Cradock Four, were they ever approached and consulted about the imposition of a moratorium or an effective suspension on the investigation of their cases? Were they consulted before that moratorium was put in place?

10 MR CALATA: Commissioners, I can confidently say that none of us, of the Calata Family, we were never consulted, neither the Goniwe Family, the Mhlauali Family and the Mkonto Family which ultimately makes up the Cradock Four Families. We were not consulted about a moratorium of any sort that sought to prevent the prosecution of TRC cases. We were not involved at all.

I am not sure if this would be the correct place and, but I remember my mother and the other Cradock Four mothers and Thembi Simelane who had to come, I think it was 2007 or 2008, who had to go to court to try to get an interdict against a policy I think that  
20 was being discussed in government, which would ultimately have led to some kind of backdoor policy.

I remember that because I had to, my mom was visiting me in Cape Town at the time when a phone call came in from Jo'burg and I had to rush her to come, I had to rush her to get her to the airport because she needed to be in Johannesburg about and

obviously like I mean about this backdoor policy I think that was in discussion at the time. I had to try to prevent the government granting amnesty to people who had not even bothered to apply for amnesty or at the TRC. I remember having to rush my mother to the airport so that she could fly to Jo'burg.

ADV VARNEY: Thanks, Mr Calata. And yes, we are about to come to that... [intervenes]

MR CALATA: Okay.

ADV VARNEY: Prosecution policy momentarily. So what, we heard  
10 from Ms Simelane that not only was she not consulted but you know, she only learned of it at meetings at the NPA when she was pressing for answers and then she was told you know, there was this moratorium in place and we now know that this has been confirmed by senior NPA officials such as Adv Macadam, Ackermann, Ramaite. And so what is your response to the fact that a unilateral decision is taken to place your cases on hold and you are not even approached first to hear your views on the matter?

MR CALATA: I think I said it on Friday Commissioners, when I said  
20 that one of the lasting emotions or feelings that we have had from the state with regards to my father's matter, has been one of disrespect, complete and utter disrespect and disregard, not just for my father obviously, for his sacrifice, but also for us as the families that remain.

It is almost as if we as the families, we do not matter in the, in this, in all of this, that we have leaders who feel entitled to make decisions on our behalf, these leaders feel entitled to how we should

behave, what we should consider right and wrong, and that when we do not behave in a manner that they expect us to behave, then all of a sudden we are the ones that are behaving in bad taste.

And I say so Commissioners, because I gave testimony here on Friday. On Friday afternoon there were, I received a text message from somebody that I know that is or at least used to work for former President Thabo Mbeki's Foundation. And this person said to me in the text message that what I had said here, was in bad taste, what, there are some of the things that I had said about former President  
10 Thabo Mbeki and Jacob Zuma was that what I said to this Commission was in bad taste.

I responded via a text message and I did not inform my legal team about it because I did not think it was necessary at the time at least, but I responded by asking this person that, so what I say is in bad taste, what I say about Thabo is in bad taste, but not what he did by failing to prosecute my father's killer? They do not consider what he did as bad taste, but me saying and speaking the truth about how they violated our rights by failing to give us justice, that was in bad taste.

20 ADV VARNEY: Thank you, Mr Calata. So let us turn to the prosecution policy and amendments that you started alluding to.

MR CALATA: Ja.

ADV VARNEY: And you mentioned that your mother, the other wives, the widows of the Cradock Four as well as Thembi Simelane, approached the High Court for an urgent... [intervenes]

MR CALATA: Ja.

ADV VARNEY: Order back in 2007. And let us pause on the nature and content of those amendments and I want to seek your reaction and again just keep in mind that President Ramaphosa and all the government respondents, I do not know how many of them are here today, in the stay application claim that you have not put up the facts to show a political interference. Now let us take a look at this policy. Let us turn to page 87, dealing with the, with part C of the policy which sets out the criteria for a decision not to prosecute.

10 CHAIRPERSON: Page?

ADV VARNEY: So it is paginated page 87.

CHAIRPERSON: Yes.

ADV VARNEY: And then it will be at paragraph 198, and essentially part C of the policy dramatically expands the basis of the criteria upon which a decision not to prosecute can be justified or made and it includes the amnesty criteria namely for disclosure and political objective, but then it also includes a number of other circumstances. I will not go through all of them but for example at the bottom of page, you know, humanitarian considerations, the offender's sensitivity to  
20 the need for restitution.

At the top of the next page, the degree of remorse and attitude towards reconciliation, renunciation of violence and a willingness to abide by the constitution, a degree of indoctrination towards the offender was subjected. The extent to which the prosecution or non-prosecution would facilitate an undermined nation

building to transformation, reconciliation and the like. And even a [indistinct] phrase, any further criteria which might be deemed necessary.

So that policy was actually passed and it includes all these different considerations that are not normally in a prosecution policy.

MR CALATA: Ja.

ADV VARNEY: So what is your response to the inclusion of all these other excuses not to prosecute but that apply only to your case like the Cradock Four... [intervenes]

10 MR CALATA: Ja.

ADV VARNEY: But not the other serious matters, like other matters?

MR CALATA: Ja. Again Commissioners, it is preposterous. I am really sorry, but it is absolutely preposterous that we would have to consider I mean some of these points as to why cases should not be prosecuted.

Whether the ill-health of or other humanitarian considerations justified non-prosecution of the case, when we consider what the Germans have been doing in the Nuremberg Trials where they were charging former SS or Gestapo officers, when they  
20 were in their late 90s they were prosecuting them, they, like they were prosecuting them when these guys are obliterated knocking on death's door, yet they were still prosecuting them.

But in South Africa at the time when, I mean this, I think this policy was passed in 2006 or 2007, Eric Taylor was, who was the man denied amnesty for my father's murder, was alive, he was

kicking, he was, had not been diagnosed with cancer, he was living his life a free man, yet having committed a crime in which he and his comrades or his colleagues... The manner in which Eric Taylor killed my father was horrific, when my father was killed madam, I mentioned here last week my mother was pregnant and she had taken off her ring because of water retention because of the pregnancy, she had taken off her ring and my father was wearing my mother's wedding band, so when they killed my dad after they had stabbed him, after they had pulled his tongue like when my father's  
10 remains was found his tongue had been pulled from his mouth, it had been elongated.

They had set his body alight and they burnt my father's body, there was flesh missing from one of his thighs, I am not sure if it you know, if that had been chewed by a dog or whatever the case may be, he had stab wounds all over but here is the kicker madam, probably in a bet to try and disguise who my father was, they saw that gold ring on his finger, they probably could not take off as I am taking off my ring now, so they decided that they will saw through my father's hand so that they can get to the ring.

20 That is a desecration of someone who did not deserve it. He did not deserve it.

COMMISSIONER KGOMO: Desecration of the body?

MR CALATA: Of the body, yes sir, and my father did not deserve to be killed in the manner in which he did, neither did any of his colleagues and neither did any of the people that I am sitting here

representing today. So for there then to be a policy that is passed by our government that says that they needed to consider someone's ill-health, that they needed to consider the offender's sensitivity to the need for restitution, the degree of remorse shown and his attitude towards reconciliation, and then based on that the NDPP must then consider as to whether or not it is fit to charge my father's killer, on whether or not he renounces violence, what option does my father have in all of that?

10 Because he cannot speak for himself, he cannot make an argument that oh no, you cannot consider whether or not this person has renounced violent or violence. The state was supposed to act in the interest of the victim and in this instance my father was a victim. His life was taken from him when he was only 28 years old. He was only 28, he had two children, he had a wife and another baby on the way. Whoever sat and passed this policy here, betrayed my father and everything that my father stood for, for how could we consider whether or not Eric Taylor had shown degree of remorse?

20 Who cares whether or not he had shown a degree of remorse? He was supposed to have been prosecuted for the crime that he committed.

ADV VARNEY: Thank you, Mr Calata. Let us move to further facts. Perhaps I can draw your attention to page 102 of your affidavit and a letter that the then Minister of Justice addressed to the then NDPP, so that was Minister Bridget Mabandla addressing a letter to Adv Vusi Pikoli. It is dated 8 February 2007 and it is titled, "TRC matters".

Now I will just quote in part an extract from that letter which is attached as annex FA31 to Mr Calata's affidavit:

“I must advise you at the outset that the media articles alleging that the NPA will go ahead with prosecutions, have caught me by surprise. In our discussions you briefly mentioned to me that the NPA will not go ahead with prosecutions.”

So what is your response to the then Minister of Justice saying to the NDPP that steps to go ahead with these prosecutions  
10 are catching her by surprise because she thought they were not going ahead?

MR CALATA: My understanding of that was a political decision had already been taken, that there will be no prosecution of TRC related cases, and that these reports that the NDPP at the time, Vusi Pikoli, was proceeding, was basically going against a decision that they had already taken, a decision that had already been set in motion and therefore they were not expecting that Adv Pikoli would proceed with these matters when I do believe that he had already been informed that he should not proceed with these matters. That is my  
20 understanding of what is taking place in this letter from the former Justice Minister to the NDPP.

ADV VARNEY: So then on the next page of the affidavit, you referred to Minister Pikoli's affidavit that he filed in the Nkadimeng too case where he says he is at a loss to explain the Minister's letter, but it appears that there is an expectation on her part there would not be

prosecution in these cases and that then causes him to write an internal secret memorandum that you referred to in paragraph 246, titled, "Prosecution of offences emanating from conflicts of the past, reputational prosecution policy and..."

MR CALATA: The guideline.

ADV VARNEY: "...and guidelines" that stated 15 February 2007. It is attached to your affidavit marked FA33. And let me just quote a portion of that Pikoli memorandum to you to seek your response. Now he writes:

10            "I have now reached the point where I honestly believe that there is improper interference with my work and that I am handed and/or obstructed from carrying out my functions on this particular matter. 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."

20            What, what is your response to Mr Pikoli's communication to the Minister in those terms?

MR CALATA: My response is that Adv Pikoli refused to sellout. He would not have coerced and I thank him for that.

ADV VARNEY: And I might be wrong, Adv Pikoli, let me point you to page 105, the next page of your affidavit at page, at paragraph 250, is there you reflect what occurred when Advocates Pikoli and

Ackermann appeared before the Justice Portfolio Committee in parliament.

MR CALATA: Ja.

ADV VARNEY: On the 3 May 2007. Commissioners, the minutes of that Portfolio Committee meeting are annexed as FA34 to Mr Lukhanyo's affidavit. I will not quote the whole extract, just parts of it. At the bottom of that page and I quote:

10                    “In respect of the TRC cases, the annual report for 2006 also noted on page 4, that not much had been achieved despite all the attempts to take this matter forward.”

He maintained that the PCLU was not the cause of the delays and he suggested that perhaps the National Director of Public Prosecutions should comment further. That is Adv Ackermann speaking. And then Adv Vusi Pikoli add that this was a politically sensitive issue, the legal processes must solve the problem. And then he says this remarkable statement:

20                    “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.”

So Adv Pikoli says this before the Justice Portfolio Committee meeting, but what do you take away from this astounding statement?

MR CALATA: Commissioners, where would the former apartheid generals and I am sorry, I am trying to find a word, but where would

they get the chutzpah from to be able, to feel that they could interfere with the work of a constitutionally enshrined body such as the National Prosecuting Authority? Where would they get that from if perhaps they did, when they were not acting from a position where they knew that they were being protected, protected by the political masters who were assisting them at the time?

We have to question again parliament's own responsibility for if the National Director of Prosecutions comes to a Portfolio Committee, you know of the National Assembly, and then he makes  
10 an allegation that there is intervention by some people that are trying to prevent him from executing his duties as called on by the laws of the republic. They should have been serious enough for a proper parliamentary inquiry into the statements that Adv Vusi Pikoli was making at the time.

It should have been enough to prompt an investigation. The fact that he did not, again I am going to say, was perhaps an inditement on parliament and how seriously they took this issue, because if your NDPP says there is political interference in my department, in my office, I cannot do certain things because I am  
20 being prevented illegally so from fulfilling my responsibilities, they should have set alarm bells ringing.

ADV VARNEY: In your view Mr Calata, you say that parliament should have called for an independent inquiry back then?

MR CALATA: Yes.

ADV VARNEY: And I see that is also stated in your affidavit,

paragraph 251.2. In your view if, if there had been a full investigation at that time, now halfway through 2007, then perhaps we would not be sitting here today in this inquiry.

MR CALATA: No, 100%, 100% because had parliament taken the words of the NDPP seriously and investigated, there would have been information that would have come forth and that would have been dealt with. If I can just make this example Commissioners, when I was involved in the SABC 8 matters in 2016, there was a parliamentary inquiry into what was happening at the SABC at the  
10 time.

The outcomes of that inquiry led to certain policy changes at the SABC, I am not sure if it led to legislative amendments, I think there could have been, but what that meant following the inquiry into the SABC after the whole SABC 8 saga, was that the SABC was empowered for them to be able to reject any kind of interference within the newsroom.

Shortly thereafter the SABC then came out with a logo, oh sorry, a mantra that said, "Independent and impartial" to try to inculcate a new culture within the newsroom, that this is who we are,  
20 this is as a public broadcaster, this is what we stand for. Yes, I left the SABC in 2018, but I have subsequently heard how the newsroom and the, you know, the head of news at the SABC subsequent to my departure there, how they were emboldened to say but parliament told us that we do not have to accept all of these things. And that is all, as a direct result from that inquiry that was held because of what

we had started there as the SABC 8.

So I can imagine that if there was a similar inquiry into what had happened or what was happening at the NPA, subsequent NDPPs, whether it was Pikoli or whoever would have come after him, they too would have been embolden, they too would have been empowered to be able to speak up and to say but no, we are not going to do that because the outcomes of this inquiry has found X, Y and Z and we are going to stick to the law, we are going to be impartial, we are going to act without fear, favour or prejudice as is  
10 required by legislation.

I would like to believe that had there been some kind of, because it happened with the SABC, so why would that perhaps not have been an outcome of a, if there had been a similar process for the NPA?

ADV VARNEY: So Mr Calata, later this week we are going to, the Commission will hear from two authors, researchers who have looked at the question of the issue of post TRC prosecutions or the lack thereof and they will be detailing their research which includes information of meetings that took place between various generals,  
20 both policy and military from the apartheid era with senior officials in the government and the African National Congress.

Do you think there may be a connection between the statement of Mr Pikoli about the generals having the ability to intervene and the meetings that took place in previous years?

MR CALATA: Commissioners, yes, I a 100% think that there was a

connection and correlation. I am not sure if I made the point on Friday, but the influence or the connection of former apartheid leaders and generals was also confirmed to us in a statement that was issued by the FW de Klerk Foundation, 5 July 2021. Excuse me.

In that statement that was issued by the De Klerk Foundation, he alluded to an informal agreement between some ANC leaders and former apartheid operatives and generals. And in that agreement ultimately according to the De Klerk Foundation, was that there would be no prosecution of TRC related cases.

10           So what Pikoli had said, the confirmations that came subsequent to that in the Simelane matter, in the Timol matter and then ultimately in the Cradock Four matter when we lodged our application to compel, where again the NPA had confirmed in its response to our application, that yes, indeed there was political interference.

I do not believe for one minute that the political interference was limited to what the former generals and their role and their influence, I do believe that those generals were empowered to demand as they were, whatever it was that they were demanding  
20 from the NPA, because there had been an agreement. There had been an agreement with former ANC leaders that there will not be prosecutions of TRC related cases.

COMMISSIONER KGOMO: Mr Varney, maybe for the benefit of the public, former generals? Former generals, who are they?

ADV VARNEY: So Commissioner, according to the evidence that we

are going to lead from, which is Michael Schmidt and Ole Bubenzer, my team will tell me what the – we have put their bundles up before the Commission, they will give me their numbers shortly, both authors have carried out interviews with former police and army generals, so for example researcher Ole Bubenzer, he is in fact a German author who spoke to individuals such as former Police Commissioner, General Johan van der Merwe and former researcher, and account author Michael Schmidt, he focused on army generals such as former Major General Dirk Marais and others.

10 CHAIRPERSON: Constand Viljoen?

ADV VARNEY: Constand Viljoen was one of those involved in the initial talks, Commissioner, Madam Chair.

COMMISSIONER GABRIEL: So these were from the apartheid days?

ADV VARNEY: These were generals from the apartheid era and most of them had by that time retired. There might have been one or two who was still in the military or the police. So the bundle for Ole Bubenzer, that is bundle 7 and the bundle of Michael Schmidt is bundle 8 of the Calata Group.

20 COMMISSIONER KGOMO: Yes, I think if there are names that you may not have mentioned, those names could be mentioned at a later stage.

ADV VARNEY: Yes indeed, and they are... [intervenes]

COMMISSIONER KGOMO: I just wanted to establish whether there was any reason to just refer to them as former generals, but I think

you have dealt with that aspect.

ADV VARNEY: Yes indeed, and we did not supply the names of the individuals identified. They are on the papers, my team are busy looking for the relevant page numbers as we speak, but certainly when we lead the evidence of the two authors we will go into that in some detail. Sadly most of those generals, Commissioner, have passed away, so we cannot hear from them but we do think that one or two members of the contact group, particularly the mediator businessperson, that he is still alive and we have asked the evidence  
10 leaders to track him down.

COMMISSIONER KGOMO: [Indistinct] ja.

ADV VARNEY: And the reference that the witness made in relation to FW de Klerk, we did deal with that last week, but that press statement released from the FW de Klerk Foundation is at page 668 of bundle 1. So Mr Calata, let us now return to the unfolding facts. You might have heard from the evidence of Minister Thembi Simelane, that even after the... [intervenes]

MR CALATA: I missed her evidence.

ADV VARNEY: You missed her evidence?

20 MR CALATA: Ja.

ADV VARNEY: But even after the striking down of the prosecution policy amendments or so-called guidelines by the High Court in 2008, that the cases still remain stuck and she testified that in her meetings with the prosecutors at that time, they still said they still did not have investigators to deploy to her case, all the other cases and that

remained so through to 2010 or thereabouts, which then brings us to you know, the investigation of the Cradock Four matter and on Friday you advised the Commissioners about the disturbing fact that the original Cradock Four docket had gone missing and I wish to return to the missing docket.

Just to summarise, you indicated that in early 2013 a request had been made by the Acting NDPP, Adv Nhlangope Giba and that the docket had been taken over to her office and then nothing further was heard of that docket until a request was made some years later, approximately six years later by other prosecutors, namely Advocates 10 Tori Pretorius and Macadam, and it was at that point that they discovered that the docket was missing.

MR CALATA: Ja.

ADV VARNEY: And you testified that you learned about this through Colonel Makua... [intervenues]

MR CALATA: Yes.

ADV VARNEY: Who had spoken to your mother and that it had to be then reconstructed. So given that the docket was last seen in or around early 2013 and then steps were then taken to have it 20 reconstructed from 2019 onwards, what does that say about the investigation into the Cradock Four matter over those years?

MR CALATA: I am going to assume Commissioners, I have to try to answer, is that I am going to assume you are talking about 2013 and 2019?

ADV VARNEY: Ja, the steps taken between 2013 and 2019.

MR CALATA: Yes, that nothing happened with regards to the Cradock Four matter. A short answer, nothing would have happened because nobody, they did not even know that the docket was missing, so I for those six years, I do not know what would have gone on prior to that but for those six years nothing would have happened. In those intervening years between 2013 and 2019, Eric Taylor, Eric Taylor died in November 2016 while obviously nothing was happening with the investigation, the person who was denied amnesty for killing, physically killing my father, died.

10 ADV VARNEY: If we take that a little further, we know from the litigation that you launched in 2021 to compel a decision out of the NPA and you will recall that the NPA had to file what is known as a Rule 53... [intervenes]

MR CALATA: Yes.

ADV VARNEY: Affidavit and there was an affidavit filed by Adv Macadam, and his evidence was that the missing docket only comprised and I am now reading from your paragraph 332 on page 130 of your affidavit, he says:

20                    “That the missing docket only comprised on enquiry into unfounded rumours around one General Hankel and the inquest and TRC records which were easily reobtainable.”

So we do not have to go into the details, but we know that the rumours around General Hankel amounted to nothing, and were nothing more than rumours. So there was some paperwork around

rumours that really took the investigation nowhere and then there were the inquest and TRC records, but nothing more than that.

MR CALATA: Ja.

ADV VARNEY: So what does that tell you about the investigation prior to 2013?

MR CALATA: Again Commissioners, it is, the answer is the same, is that nothing really of any substance, of any worth happened with regards to investigations, with the, perhaps the intent or the purpose to then prosecute. I, that is what it tells me, that nothing happened  
10 with that investigation.

ADV VARNEY: And given that there had been quite a detailed inquiry through the auspices of Judge Zietsman in the second inquest in the early 1990s and you have already testified before this Commission that Judge Zietsman found the security forces to be responsible for these killings and there was much documentation that was put up in that inquest, and you have also referred to the amnesty process.

MR CALATA: Ja.

ADV VARNEY: And just to remind you that in January 1997 the  
20 Commission received amnesty applications from a number of security branch members for the killing of the Cradock Four and these included Eric Taylor and Manus Barend du Plessis, Nicolaas Jacobus Janse van Rensburg, Harold Snyman, Gerhardus Lotz and Johan Martin Sakkie van Zyl. So they have considerable evidence before the Truth and Reconciliation Commission and as you pointed out

today as we stand, all these individuals have died.

MR CALATA: Ja.

ADV VARNEY: And you pointed out a few times that Eric Taylor passed away in 2016 and we know that Gerhard Lotz also passed away in 2016, and the others passed away in earlier years. So notwithstanding what was unearthed in the Zietsman Commission and was unearthed in the TRC amnesty process, there appears to be no coherent investigation from the time of the Zietsman inquiry and certainly by the time the TRC round up its work and that the only real  
10 investigations started with a reconstruction of the docket... [intervenes]

MR CALATA: In 2019.

ADV VARNEY: In 2019. So what is your reaction to that treatment of the Cradock Four matter?

MR CALATA: I think I had mentioned that last Friday Commissioners, when I mentioned that we feel a deep, a very deep sense of betrayal by how the democratic government or governments have treated us as the families and not just as the families of the Cradock Four, but the TRC families if I may.

20 I mentioned on Friday that my father was betrayed ultimately by the state where the apartheid government played or became the terrorist and murdered him and his comrades, and that once they had done so, there was no realistic prospect that the apartheid government would give us justice for Fort's life after having basically killed him. But we expected very differently from ANC led

governments.

I remember the day of the elections in 1994, I remember it clearly because by then I had already, I think I had already made the decision and long, prior to that I had already made the decision that I would become a journalist. So I remember when my mother came back from voting, my youngest sister and I did a mock interview with my mother. The camera, I had cut off a 2-litre bottle of milk and I had cut off the bottom half of it and obviously at the bottom, I was using that as my view finder and I was the camera person and my sister  
10 was the journalist.

And my mom had just come back from voting and we sat and we did a mock interview with her, and we obviously asked how she felt, you know, voting for the first time and she was happy, and she spoke about you know, how my father would have felt with this moment and how she voted for you know, my father and her parents and my great grandfather and all of those kinds of things

And then she had mentioned in that mock interview that perhaps now, and we all knew, I mean we all knew that the ANC was going to win, and that she had mentioned in that mock interview that  
20 perhaps we will finally have justice for dad. So that was an expectation I think from the get go, the elections as you all would recall, was on the 27 April, Madiba was then sworn in to office on the 10 May and then on the 28 May, Judge Neville Zietsman then handed down his findings of the second inquest.

So we were expecting justice, that the ANC was, like one of

the things that would happen was that we would, we would get justice. I mentioned also on Friday that Madiba came to Cradock in June 1995 and it was shortly thereafter, after coming to Cradock, I think in August or so that year, where he then signed the promotion of the National Unity and Reconciliation Act into law, which effectively established the TRC.

But he did so like shortly after he came, he was in Cradock. One of the things that he said in his address to us, Madiba when he was in Cradock, he also referred to my father and his comrades as  
10 the real heroes of the struggle. That is what Madiba said about my dad and his comrades.

So then the fact that post the TRC and its recommendations and everything was there ready for I suppose to vindicate the lives of the real heroes of the struggle as per Madiba, so the fact that there was not any prosecutions or investigations or anything, is a second betrayal of my dad and his comrades and those who laid down their lives, but for us it is like it cuts, it cuts deep, it cuts to the very fibre of who we are. It cuts to the very fibre of who we are.

ADV VARNEY: Thank you, Mr Calata. Commissioner Kgomo, the  
20 information you wanted has been supplied by my team and we can refer you to bundle 1 from page 148 onward, starting at paragraph 381. And so just to give you a sense of the names of the generals mentioned by the authors, Bubenzer makes reference to former South African Defence Force, General Jan Geldenhuys, and as the Chairperson pointed out, the former Chief of the SANDF, General

Constand Viljoen who according to Bubenzer, was approached by the then Deputy President of the ANC, Jacob Zuma.

And President Zuma was then referred to the Contact Bureau which was an agency that the former generals had set up to conduct these discussions on negotiations. According to author Bubenzer, the talks were mediated and facilitated by a Johannesburg businessman by the name of Jürgen Kögl. That is at paragraph 381.3. He makes reference to high ranking government officials who were involved in those discussions.

10 And then on the next page 149 at paragraph 382, author Michel Schmidt says that he conducted an interview with Major General Dirk Marais. He was former Deputy Chief of the army and convenor of that Contact Bureau. And according to Major General Marais, there were various generals from the army involved in these talks, including at different points, General Magnus Malan, former  
Generals Constand Viljoen and Jannie Geldenhuys, former Chief of the army, General Kat Liebenberg.

20 And that on the side of the ANC with the government at different times it included then Deputy President Mbeki and other security cluster cabinet ministers. But we will hear more detail on this when the two authors testify later this week. Chairperson, I see it is now just gone 11:00, would this be an appropriate time for the tea adjournment?

CHAIRPERSON: Yes.

COMMISSIONER KGOMO: Yes. Mr Varney, Mr Calata does not

have to respond to what I am putting across now. On Friday, Mr Calata said politicians are scum. Now is a party, a political system constitutionally...

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Mr Varney?

ADV VARNEY: Thank you, Chairperson. Commissioners, in response to the request by Commissioner Kgomo, we had a short consultation with Mr Calata and he has a short statement to make in  
10 respect of what he said.

COMMISSIONER KGOMO: I cannot hear, sorry.

ADV VARNEY: And he has a short statement to make. Okay, if he is ready.

ADV VARNEY: He is ready, Commissioner.

COMMISSIONER KGOMO: Okay.

MR CALATA: Commissioners, thank you very much. Commissioners, I did not mean to make a generalisation or statement in which I sought to demean, denigrate, or dehumanise anybody. It is no justification. However, I do wish to explain, Commissioners that  
20 my, I suppose, view on politicians stems from the fact that it was politicians who ultimately decided that my father should be murdered. Those politicians, some of whom occupied the highest office in the land at the time, their decisions robbed me of my father. They robbed my sister, Dorothy, my younger sister, Tumani, who never got to meet our father. They never got to walk the earth at the same time. And

the reason why Tumani was denied that right or that privilege was because of the decisions of politicians. It was, again, the decisions of politicians that ultimately led to my father being, and us being denied justice for his life. We sit here today at this Commission of Inquiry, having led some evidence, or just evidence, about the role politicians had played in preventing the implementations of recommendations of the Truth and Reconciliation Commission. Commissioners, I wish to retract the generalisation of me calling politicians the scum of the earth. But I do find that the bulk of the politicians that I have had

10 personal interactions with, they are morally bankrupt. And like I said, I do not mean to offend. If I did offend politicians, at least those among them who are worth offending, I truly do apologise. It was not my intention to generalise and call them the scum of the earth. But for those ones that I have personally interacted with, and they would know, I do find them to be morally bankrupt. And I apologise, and I retract.

COMMISSIONER KGOMO: Yes, speaking for myself, I understand where you are coming from.

MR CALATA: Thank you, sir.

20 ADV VARNEY: Thank you, Mr Calata, for the retraction and apology. Commissioners, if there are no further ... [intervenes]

CHAIRPERSON: Yes, you may proceed, Mr Varney.

ADV VARNEY: As the Commission pleases.

EXAMINATION BY ADV VARNEY (CONTINUED): Mr Calata, let us carry on with the unfolding facts relating to the political interference.

If I can refer you and the Commissioners to page 139 of your affidavit, where you have a heading that is titled, "The NPA Admits to the Political Interference" and there you point to a supplementary affidavit that Senior Prosecutor Advocate Turi Pretorius SC made in a supplementary affidavit in early 2019 in the Rodriguez matter. And just to remind ourselves, the Rodriguez matter arose from the Ahmed Timol case, because Joao Rodriguez, following that inquest, had been charged with the murder of Ahmed Timol and he sought a stay, a permanent stay of prosecution and one of his grounds for the

10 permanent stay was the long delay. And in those papers, the Timol family pointed out that the long delay was largely due to the political interference, at least the delay that took place post the work of the TRC. Commissioners, the affidavit of Adv Pretorius can be found at page 624 of Bundle 1. And Mr Calata, I wish to put just a few extracts of the quotes from the affidavit of Mr Pretorius to seek your response. So Adv Pretorius says:

20 "The first respondent, (that being the NPA, and I am at the top of page 140), does not deny that the executive branch of the State took what one can describe as political steps to manage the conduct of criminal investigations and possible prosecution of the perpetrators of the political murders such as that of Mr Timol."

Further down, Adv Pretorius says, when regard is had to what the fourth respondent says, and the fourth respondent here being Mr

Niyaz Kaji, and he had put up affidavits from former NDPP Vusi Pikoli as well as former PCLU head Anton Ackerman, and they set out the interference we have discussed previously. So in response to that evidence, Adv Pretorius says:

“The only conclusion to arrive at is that the delay in prosecuting the applicant was not as a result of the first respondent, the NPA's own doing or its malice. It was as a result of the political interference and the severe political constraints.”

10 He says in the next extract:

“None of these incidents were created by the NPA because the NPA itself was the victim here, in a sense, was subjected to severe political constraints.”

And then lastly:

“Adv Pretorius calls on the Court to send a clear message that political office bearers should stop interfering with prosecutorial decisions unless authorised to do so by law.”

20 Now, what is your response to Adv Pretorius on the one hand saying yes, there were these political constraints, which interfered in their work on these cases, but that this was not the fault of the NPA because they were not doing this out of malice. They were the ones being constrained in their work. What is your response to those extracts?

MR CALATA: Well, Commissioners, I think it is fair, firstly, to commend Adv Pretorius for speaking up and for speaking out because that, I suppose, is the right thing to do in the pursuit, I suppose, you know, society democracy that we want. Secondly, is to say that whatever political constraints and interference that was brought down on the NPA was in fact criminal because the NPA is required by law to act without fear, favour or prejudice. If this political interference through the various structures, through instructions that may not necessarily have been written down but would have been

10 communicated in some way that is violating the law. It is violating the law because now you are preventing an organisation such as the NPA from fulfilling its mandate and its mandate is to ultimately prosecute and to give us justice. That is what it is. And it would be some form of consolation for us if this Commission could ultimately help us get to the bottom of who these individuals were that brought down this pressure and this political interference and political constraints which prevented the NPA from holding our fathers' killers accountable for the crimes that they committed against our humanity. Because these are not the kinds of people that should be occupying

20 the offices that they are because this is not the kind of society that we should be building. These people are holding us back for whatever political reasons or machinations that they may have. They are holding us back. My father's killers should have been prosecuted in 2004, 2005. They should have been convicted and they should have been sentenced to life sentence in prison. Today we should be

talking about them having reached 20 years in prison and we should be discussing issues of their parole and us as a family hopefully being included as part of that process where perhaps we would be allowed to say, well they have served 20 years, you know, they are close to their 70s now, it is okay, you know, they can perhaps be granted parole and they can spend the rest of their remaining lives with their families and all of that because we would have had a sense of closure around it. That is where we should be as a society. We should be talking about parole for Eric Taylor. Not sitting here in front of your  
10 esteemed selves having this Commission and trying to answer the questions that we are asking about why our father's killers were never prosecuted. So whoever these people were that brought this kind of pressure on Pretorius, on McAdam, on Pikoli and, you know, all of the others that were there we need to know who they are and if some of them need to be, again, prosecuted for their criminal acts of interfering with the work of the NPA then so it must be.

ADV VARNEY: Mr Calata, if we could just return to the evidence of Adv Pretorius and I suppose one can have some sympathy with the fact that the NPA was on the receiving end of this pressure and that  
20 according to Adv Pretorius they did not act out of malice. This was not their design or plan. But even though one might have some sympathy for what Pretorius has to say given that the NPA was an independent institution under the constitution and the NPA Act, was there not some kind of duty upon all members of the NPA, particularly the senior members of the NPA to resist and stand up and do

something about the interference to which they were being subjected to?

MR CALATA: Commissioners, yes 100%. While indeed there was this political interference that was brought down on them members of the NPA, particularly the senior ones, they should have been a lot more vocal about what was happening at the NPA. They should have spoken out and they should have put that in the public's eye. Yes, I understand, you know, we had spoken about the former NDPP, Vusi Pikoli, who went to Parliament and spoke in front of the Portfolio  
10 Committee on Justice and Constitutional Development. But I am going to make, again, if I may, a personal example. I risked whatever, I risked a job, my salary, my safety, my family's safety when I spoke out about what was happening at the SABC. I was ultimately fired for having done that, but it was the right thing for me to have done at that time.

COMMISSIONER KGOMO: Fired and reinstated?

MR CALATA: Sorry, sir?

COMMISSIONER KGOMO: Fired and reinstated?

MR CALATA: Yes, I was ultimately reinstated. But before I was  
20 reinstated, I was fired and there was something that had happened during those days and I spoke about it when at the inquiry, the parliamentary inquiry. I was fired on a Tuesday morning. My son was about four at the time and he got sick the Wednesday. I took him to the doctor the Thursday and I remember after the doctor had treated him and I handed in my medical aid card because you know,

and by the Thursday the SABC had already cancelled my medical aid card and the doctors or, you know, paediatricians, they, especially the one that we took Kwesi to, he charged about double the amount of money that I was paying for a consultation with the doctor. So he was quite expensive. But that is what happened to me. I had to deal with that because I thought that the right thing to do at the time was to speak out about what was happening at the SABC. So while... And that would have been my expectation from the people that were at the NPA at the time. The people that were bearing the brunt of this

10 political interference. It was incumbent upon them to speak out and to say this is what is happening. To name and shame or put whatever evidence that they had at that time out in the public. Again, so that this matter could be dealt with. All of these years later, this could have been dealt with nearly 20 years ago.

ADV VARNEY: Mr Calata, returning to the current at least position of President Ramaphosa and the Ministers of Justice and Police and the NPA at least in relation to what they put up in the stay application that you and the families have put up very little or indeed nothing by way of facts when it comes to the political interference and one assumes

20 that they will probably take the same line before this Commission. So you have set out how in the Cradock Four case and the other TRC cases the investigations into this peculiar class of murders was closed down from as early as 2003 and in most cases there were no investigators assigned until around 2010 and in your case even much later. You have demonstrated that and it is uncontested that a

moratorium was put in place suspending formally investigations into these cases. You have out machinations that had been put up through entities such as the Amnesty Task Team which produced policies such as the amendments to the prosecution policy and the backdoor amnesty that that supplied as well as the political pardons process and you have alluded, you have highlighted to this Commission that senior officials within the NPA have conceded that these cases were blocked and they have done so under oath. So what do you say to the claim that is apparently being made by

10 President Ramaphosa and his ministers that you and the families have put up no facts to demonstrate a political interference?

MR CALATA: I need to be careful now.

ADV VARNEY: Yes, please, please, choose your words.

COMMISSIONER KGOMO: No, I did not try to inhibit you.

MR CALATA: No, no, I understand sir but I would hate to have to have to retract again. So, I think it was expected that the President and his ministers would seek to deny or would point out that we have not provided actual evidence to this Commission. We expected them because it is not as if that they would openly admit that this is in fact

20 what they have done. It is sad that they are still not listening to us, they are still not hearing us they are still not taking us seriously, they still choose to disrespect us, still choose to minimise us that even when we come to this Commission and we bring the evidence that we have brought, it was not... This is decades of work that we have put in that we have been trying to be heard. So the State then says well,

we do not have any evidence and they will probably come and make that argument here, but how do we explain, how do we justify the fact that as I am sitting here in front of you Commissioners, there is still not any justice for my father or for any of them. How do we explain that? How do we – like how do we explain that my right to dignity, my right to justice is being violated, as I sit here with you right now, how do we explain that? And then the only thing the politicians say is, oh, you do not have evidence, yet my right is being violated as we speak. We have this Commission of Inquiry that only came about because

10 we had to take the very difficult decision to sue our government, because our government was not listening to us. We had written letters to President Ramaphosa, begging him for meetings, to try to have a civilised conversation. The President's party at one point used to talk about active citizenry. How more active citizens could we become? By writing letters, petitioning our leaders, asking for meetings, begging for their time to be heard, begging our government to do the right thing, what is it that they want from us. Because unfortunately we cannot... I have got a hole in my soul. The hole can only exist because my father was ripped away from me. He was

20 taken from me when I was a little boy. And I do not have peace. I do not have peace. I do not have closure. I struggle, I have mentioned to this Commission, to you Commissioners, some of the issues that I deal with on a personal basis because of my lack of having a father, of my father being in my life. This is not child's play for me. It is not something that I can forget because every time somebody says Mr

Calata, that reminds me of my father. Every time somebody calls me by my name, it reminds me of my father. Every day we live with this thing, every day. So the President did not want to hear us so then we had to take the very difficult decision to go to court and only once we then went to court, and I suppose him trying to minimise the fallout politically, where he is seen to be fighting against the interests of families such as ours, do they then want to have a discussion behind closed doors so that, you know, we can try to set this thing up. So he finally agreed to set up a Commission of Inquiry that we had been

10 asking him for since 2019. He finally agrees to do so only when we go to court. I suppose to spare himself the embarrassment of having to be ordered by a court to set up a Commission that will investigate why several administrations of the African National Congress had failed to do right by the families of people who died advancing the interests, not just of the African National Congress itself, but of the interests of this country of ours. This is the only country that we have. I do not qualify for an American passport or a British passport or an EU passport or any other. I only have this country. So if I do not work every day in the best interests of building this country and the

20 society for which my father sacrificed his life for, then what are we doing? I do not want to refer to them as the scum of the earth, but ...

[intervenes]

ADV VARNEY: Please, do not, Mr Calata.

MR CALATA: No, I will not.

ADV VARNEY: Let us turn to further aspects of the evidence that you

have placed before this Court in your affidavit. Now, I want to refer you to a statement by former President Thabo Mbeki that is reflected at page 155 of your statement. This is a statement released by the Thabo Mbeki Foundation, dated 1 March 2024. Commissioners, it can be found at page 736 of Bundle 1. The statement is titled, “Statement by former President Thabo Mbeki on allegations of NPA interference by the executive.” Now in this statement former President Mbeki vehemently denies that he or his administration ever interfered with the work of the NPA in relation to the TRC cases and

10 he ends off his statement with this quote, which I will put to you. It is at paragraph 404 on page 156. I will just read the last paragraph of the statement.

“The NPA must demonstrate enough integrity by apologising for not processing the TRC cases rather than engage in dishonourable behaviour of trying to hide behind a fig leaf which is nothing more than pure fabrication.”

So essentially, it appears that Thabo Mbeki seems to be saying that, well the explanation for the TRC cases going forward that cannot be

20 attributed to anything he or his administration did but it is rather the fault of the NPA for not doing its work and processing those cases. They are the ones that must take responsibility and should not be making any other such claims. What is your response to that statement by President Mbeki?

MR CALATA: Who received the seven-volume report of the Truth

and Reconciliation Commission in 2003 was former President Thabo Mbeki. He was the President of the Republic at the time. Those reports were handed to him. They were handed to him. So the buck around everything that related to the Truth and Reconciliation Commission, the implementation of the recommendations started and ended with him. If his Minister of Justice did not ensure that the recommendations of the Truth and Reconciliation Commission were implemented, who must be held accountable for that? His Minister of Justice or him? If the Directorate for Special Operations or

10 Investigations does not do what they were supposed to with documents with a report that was handed to the President who must be held accountable? The NDPP? What about the President who was the one that received the reports? Because when you are president you cannot decide, what you want to do and what you do not want to do. The fact that we are sitting here today, Commissioners, is because of Thabo Mbeki's failings. It is because he failed as the President of the Republic to ensure that two of his administrations, the one that he led when he received the TRC reports in 2003, then we went to the elections in 2004. I remember

20 intricately actually, when Mr Mbeki was inaugurated into office in 2004 there was a Malian artist that came and performed at his inauguration. His name was Ali Farka Touré. He performed at Mr Mbeki's inauguration. I was working there that day. I mean, I will not go on about how impressed I was with his music, but I remember Thabo Mbeki's inauguration in 2004. And then he led his second

administration from 2004 to 2008. So two administrations where Thabo Mbeki failed to do anything about the TRC matters. Now he issues a statement and he says the NPA must demonstrate enough integrity by apologising for not processing the TRC cases rather than engage in dishonourable behaviour of trying to hide behind a fig leaf which is nothing more than pure fabrication. Here, former President Thabo Mbeki insults our intelligence. He says the NPA must demonstrate enough integrity. What about integrity on his half? How about him apologising to us for the failures of his administrations to

10 process TRC cases? He says the NPA is engaging in dishonourable behaviour. I suppose his behaviour was quite honourable. Yet here I sit without justice for my father and all of the other families that I am here speaking on behalf of. He was in office and he says we are trying to hide behind a fig leaf which is nothing more than pure fabrication. Fabrication from whom? Fabrication from me? Am I fabricating the fact that I am sitting here without justice for my father? Am I fabricating the fact that I am struggling to raise my son? Am I fabricating that? Mbeki must not disrespect us anymore. It is enough now.

20 ADV VARNEY: Mr Calata, before we close up your evidence-in-chief. Is there anything further you wish to add? Any expectations that you may have in respect of this Commission?

MR CALATA: Commissioners, I wish to appeal to you, not just on behalf of my direct family and the families of the Cradock Four, but on behalf of all of the other families that I represent directly as I sit here

that this inquiry is perhaps the last hope for us. I wish to appeal to you to help us and help us like for real help us. Not the lip service that we have received from politicians over the years but help us. We will perhaps, well not perhaps, but we will not see justice in the truest essence of what justice is for my father's life. But help us at least to gain knowledge and understanding and to understand who the people were that denied us that justice for my father. Because maybe we can then use that information and we can say... [speaking in vernacular], we close it here, because the Khampepe Commission

10 has given us the answers that we needed. So today, we can now close this matter. But for this thing to just remain year after year after year, where we are fighting for recognition, where we are fighting for validation, where we are fighting for our dignity, because that is really why we are here. Because politicians or some politicians and the decisions that they have taken have perpetuated the stripping of our dignity. That is what has happened here. And I would like to appeal to this Commission to help us close what has been a very very difficult chapter in our lives. When my father was killed, my mother was 26. In two months, my mother will turn 67. For 41 years, we

20 have been with this thing. I was three when my father was killed. As I sit and talk to you, I am 44 years old. We have been doing this thing. So Commissioners, I really, I plead with you to help us close this matter once and for all. I would hate for Dorothy's children or for Kwesi or for my younger sister's kids for them to have to continue with this thing. Please help us close it with us at this generation. So that

it does not become an on-going thing that will affect generations after generations after generations. We need your help. And however difficult it must be, please, you guys are our only hope for the truth, for justice and for closure. Thank you very much.

ADV VARNEY: No further questions, Commissioners?

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

ADV RANTHO: Indeed so, Commissioner.

CHAIRPERSON: Not cross-examination.

10 ADV RANTHO: I am mindful of that, Commissioners.

CHAIRPERSON: Yes.

ADV RANTHO: However, I need to point it out that we will be bringing an application for cross-examination of Mr Calata.

CHAIRPERSON: Yes.

ADV RANTHO: In due course, but Commissioner there is perhaps question of clarity that we seek from ... [intervenes]

CHAIRPERSON: Just raise your voice, we cannot hear you.

COMMISSIONER KGOMO: Is it only one microphone? Yes, that is better. Yes.

20 ADV RANTHO: Yes, I do not know, Commissioner, if I am audible enough.

CHAIRPERSON: Yes.

ADV RANTHO: Commissioner, we have one or two questions that we seek clarity from Mr Calata. One relates to what appears in paragraphs 251.2 and 2.5.1.3 and that speaks to ... [intervenes]

CHAIRPERSON: Paragraph?

ADV RANTHO: 251.2 and 251.3.

CHAIRPERSON: Yes.

ADV RANTHO: Commissioners, reference is made to the Justice Portfolio Committee being derelict by not doing anything. And what we are seeking to clarify from Mr Calata is whether this notion of political interference does it also includes members of parliament. I thought I heard him saying that, but we simply need to understand if that also includes members of parliament. And we are asking that  
10 question given the different roles that are played by different arms of the state.

CHAIRPERSON: Yes.

ADV RANTHO: Yes, Chair.

CHAIRPERSON: Mr Calata, did you hear that question?

MR CALATA: Yes ma'am, I think if I understand correctly, the question is whether I am making the claim that political interference also stemmed from members of parliament and in particular the Portfolio Committee on Justice.

CHAIRPERSON: Yes.

20 MR CALATA: No ma'am. I am for clarity's sake, I do not believe that members of the Portfolio Committee or members of parliament were directly involved. I think the statement or why I say this in my statement, and I think I articulated it verbally, is because the Portfolio Committee on Justice or parliament is meant to exercise an oversight role over what is happening within the executive. So where do

someone like former NDPP, Vusi Pikoli, then comes to parliament, and then he says that they are in effect being hamstrung by political interference, including by the actions of former apartheid generals in the work that they are meant to do in that committee, oh, sorry, at the NPA. The point that I was trying to make is that this should have set alarm bells ringing in the oversight authority, which is parliament, and that they should have acted with great speed at that time and taken seriously what the NDPP was reporting to them at the time. I hope that clarifies the matter.

10 ADV RANTHO: So you are saying they failed in their oversight role?

MR CALATA: 100%, Commissioner. 100%. Because their role, and I worked in parliament 2011 to 2018, and I had seen how members of parliament, how they conduct themselves. I had seen some stuff there, Commissioners, where ESKOM comes to parliament with a report whether that is the annual report or whatever the case may be and members of parliament would ask members from ESKOM or whatever entity that was reporting. They would ask them and say to them, no, please, can you not give me an executive summary? Give me a one-pager. How do... I reported for the SABC and I covered the  
20 parliamentary inquiry into Nkandla. And, I mean, we all remember the allegations around the money spent on building this home for former President Zuma.

COMMISSIONER KGOMO: What is generally known as the EFF case.

MR CALATA: Yes. And I used to sit in the committee rooms as a

journalist, as an observer, reporting on what was taking place. And we would see politicians, particularly from the African National Congress, how they were simply not interested in the evidence that was being given. There were two politicians, who I will not name. They used to like to sit right in front of the inquiry. The amount of times during the Nkandla inquiry that I saw those two politicians either busy filing their nails or busy clipping their nails or sitting on their cell phones while the inquiry was happening. There was a period in our parliament where there was a complete and utter lack of oversight authority from members of parliament, particularly members of parliament of the African National Congress. They would come to committees and we would sit and we would listen and you would ask but did this MP, did they actually read this report? Because members of government officials, like directors, generals, sometimes ministers themselves, and they would come and these MPs would ask them questions and you think but sir, did you not read this thing? Why are you embarrassing yourself? I worked there, ma'am. This is personal experience that I am recalling to this Commission. So when I say to you that there was a complete lack and failing from particularly the African National Congress in providing oversight over the executive, it is based out of personal experience and having sat in those committees and reported on what they were not doing.

CHAIRPERSON: Ms Rantho?

ADV RANTHO: Chair, I suppose the rest we will deal with in terms of cross-examination. I do not think Mr Calata addressed us adequately

but another question, Commissioners, and again I am mindful that firstly, I do not represent the former President Thabo Mbeki and this is not cross-examination but I think, Commissioners, it becomes important because there is a lot of mentioning of the former President Thabo Mbeki. We are trying to understand as the SAPS the roles, because we seem to find the role of former President Thabo Mbeki being conflated as the President of the RSA at the time and the President of the ANC. We are not so sure what we are dealing with and specifically we want to understand in terms of the exact period

10 where the South African Police comes in and that is where we say where does one draw the line because what is mentioned in the papers we do not pick up a politician that was in the SAPS and for us it is very important as to when we talk to political interference where do we draw the line? In fact, maybe to assist Mr Calata that would be helpful if he could provide a specific period that he says the SAPS also participated in political interference.

CHAIRPERSON: Surely that is an issue that should be covered through your cross-examination, Ms Rantho.

ADV RANTHO: Commissioners, we really submit humbly so that we

20 need that for us to be prepared, I mean to prepare for the purpose of assisting this Commission and we say, we are struggling from what he said and his affidavits we simply need to know. We really do not want to get into specifics of mention of names of the SAPS but he is speaking of political interference and we are trying to understand because our understanding of persons that were mentioned from

SAPS were not politicians and we want to know now because the period is so broad, when perhaps can we say the SAPS started partaking in this because Mr Calata's evidence was really characterised by his dissatisfaction about how the NPA handled the matter of his late father, mainly the NPA and we are trying to understand from SAPS as to now, how do we then understand from what period should we be assisting the Commissioner in so far as his versions is concerned.

CHAIRPERSON: Yes, Ms Rantho I really feel that the papers are  
10 quite explicit when it comes to that and if there are any issues which are still obfuscatory for the SAPS they can be covered in cross-examination. I will not allow that as a clarificatory question.

ADV RANTHO: We accept it, thank you. Thank you very much Commissioners. Maybe just one last question. The interview that Mr Calata had with Reverend Chikane, perhaps if we could be assisted with this period as well.

MR CALATA: Commissioners, so the interaction, I would not  
20 characterise my interaction with Reverend Chikane as an interview, it was not at all. As I explained is, Reverend Chikane had come to our offices at the time for an interview to be conducted live on television. There was some delay around that interview so as perhaps one of the senior editors in the office at the time, I was then asked and I was the politics editor, so I was then informed that the Reverend is downstairs, there is some delay with his interview, so please could I run down and obviously explain to him, you know, and keep him

company, I suppose, while we were trying to figure out how we were going to rescue the situation. In that process I remember we still called a camera person to ask how far they were from the office and whether they could come back so that we could at least do this interview with Reverend Chikane, because he, you know, he had gone through the trouble of actually getting into his car and driving all of the way to our office at the time so it was not an interview at all. I just used the opportunity that I had with him for 15 minutes or so to be able to ask him about the Cradock Four matter and it was during  
10 those few minutes where he then, his response to me was that as far as he was concerned, there was simply no appetite from the government to prosecute the Cradock Four matter. So it was not. The timeframe, the timeframe was, it was in 2024. I believe I would just have to double check because I know that I had then sent a message, I think to my family group about, so there would be a date to it, it is just something that I remembered when I was giving evidence a little bit earlier on, but ... [intervenes]

CHAIRPERSON: I believe in your evidence earlier on you said May 2021.

20 MR CALATA: Yes ma'am it would have been 2024, it would have been just before the elections. It would have been just before the elections of 2024.

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

CHAIRPERSON: Thank you, Ms Rantho. Is there any other person who is representing an interested party that I have not recognised?

COMMISSIONER GABRIEL: Sorry, commissioners perhaps just for the record, this morning, I am assisted by, I mean, with Adv Ebenezer Prophy he is also here for the SAPS.

CHAIRPERSON: Thank you. Thank you Mr Prophy for attending.

ADV TSAGAE: Good afternoon, Commissioners. I am representing the Department of Justice. I am led in this matter but we do not have any questions for clarification at this point.

CHAIRPERSON: Your name again?

ADV TSAGAE: I beg your pardon?

10 CHAIRPERSON: Your name?

ADV TSAGAE: Tlotlego Tsagae.

CHAIRPERSON: Thank you, ma'am.

ADV TSAGAE: Yes, Commissioners so we will be addressing all the issues during cross-examination which we will apply for.

CHAIRPERSON: Thank you.

MS DE VOS: Chair, I do not know if it is appropriate to just put on record. I am Irene de Vos for the President here but beyond that I do not need to take up the Commission's time.

CHAIRPERSON: Thank you. Thank you, Ms de Vos. Mr Semenya?

20 ADV SEMENYA: Chair and Commissioners, listening to Mr Calata's last plea, it becomes immediately obvious that there are crucial witnesses whose statements we require to discharge our responsibility in respect of the work of the Commission and I might just indicate that witnesses who are crucial would by definition include all police commissioners. We know about Mr Selebi but we still do

not have one statement from any of the national commissioners, as an example, and we will clearly exercise our right to recall Mr Calata, if the need arises, if there is any evidence that seeks to be a counterfactual or a contradiction of his evidence. That is for the record. Mr Calata I can actually say that your pain that of your family, that of other families is both palpable and touching. So please do not understand me to minimise your pain and that of your family and others. The observation I want to make though is that for very good reason, most of your affidavits were drawn tailor made for the application that was to serve before a High Court. Correct?

MR CALATA: Yes, sir.

ADV SEMENYA: But I would like to enjoin you to share with me the gravity and the enormity of the mandate of this Commission and I do that by reference to the terms of reference themselves. Might I just read to you what paragraph 2.2 of the terms of reference says. It identifies as a heading interested parties in the Commission include the following parties. Under paragraph 1 it then refers to the matter that triggered this Commission to which you are a party. Correct?

MR CALATA: Yes.

20 ADV SEMENYA: What it also does though is... [intervenes]

MR CALATA: I unfortunately do not have the document in front of me.

ADV SEMENYA: Yes, I am sure my learned colleague will call me to order if I misquote what the terms of reference say. I am just saying that if you look at it, the first sub paragraph describes you as an

interested party, you and the family of 25. And then it has a conjunction and this is what the conjunction says. And 2.2:

“Families of or victims in the TRC cases other than those applicants referred to in sub paragraph 2.1 who have a substantial interest in the matter set out in the paragraph 1 and who are admitted as parties in the Commission under regulations that are made under the Commissions Act 1947, Act 8 of 1947.”

10 By that I want to convey that what you have told with such clarity and pain, the mandate of the Commission is called upon to go even that farther than the Calata Group but also including other families. You can accept that right?

MR CALATA: Yes I do.

ADV SEMENYA: And the reading of the terms of reference talks about the attempts, the interference to stop the prosecution and investigation of the so-called TRC cases now. Correct? You accept that?

MR CALATA: Yes I accept.

20 ADV SEMENYA: And the terms of reference specifically identify two state institutions that were to take the task of those investigations. Correct?

MR CALATA: Yes correct.

ADV SEMENYA: All in summary, we are talking about the South African Police Service. Correct?

MR CALATA: Correct, I accept.

ADV SEMENYA: And for that reason when the proclamation was made 29 May 2005, it would have been plain and obvious to the SAPS that they are the ones to help the Commission in respect to discharge this mandate. No?

MR CALATA: I accept that that is correct.

ADV SEMENYA: And they as NPA also mention to the terms of reference, would have known that they are implicated in the duty to assist this Commission. Correct?

10 MR CALATA: Correct.

ADV SEMENYA: And they would have known that too as well since 29 May 2005.

MR CALATA: 2025?

ADV SEMENYA: 2025.

MR CALATA: Yes correct.

ADV SEMENYA: Now I am also saying any keen reader of the terms of reference would know what is contemplated as possible interference or stopping of the work of the SAPS about the TRC cases cannot be private players. Correct?

20 MR CALATA: Correct.

ADV SEMENYA: By definition they would have had to be state actors who would have even the closest proximity to the work of the police. Correct?

MR CALATA: Correct.

ADV SEMENYA: They would have had the best and closest proximity

to the work of the NPA.

MR CALATA: Correct.

ADV SEMENYA: That common sense would tell us we are looking at the state actors over this period to see what possible interference could there have been that so many of these cases have not been covered.

MR CALATA: Correct.

ADV SEMENYA: And closure not attained by those impacted by it. But I want to suggest something else Mr Calata, the only objective  
10 evidence also is that 2003 to date is a very long time. Correct?

MR CALATA: Yes, sir it is.

ADV SEMENYA: And I also want to posit this with you. There cannot be any possible justification for the violence, atrocities that are committed during that time including that of your father, his comrades and other families. Correct?

MR CALATA: Yes, sir there is no justification none whatsoever.

ADV SEMENYA: And if there was any justification at all they would have told us by now. Correct?

MR CALATA: Correct.

20 ADV SEMENYA: So it is safe to make an inference that all of these murders could never conceivably have been justified.

MR CALATA: Correct, sir.

ADV SEMENYA: Now what I think you, your family and others are calling for is please give us an explanation why the mandate given to the government was not discharged in respect of the TRC cases.

Correct?

MR CALATA: Correct, sir.

ADV SEMENYA: And it must be helpful if you look at for instance the list of 37 ANC members. Any keen reader will tell you that, but President Mandela, all other presidents are alive.

MR CALATA: Correct, sir.

ADV SEMENYA: And their primary responsibility as you say would have been to do what you have described, i.e. use the powers they have under the law to ensure that such instructions as were given and  
10 such recommendations as were made by the TRC are fulfilled.

MR CALATA: Correct, sir.

ADV SEMENYA: And it is expected that they would give, would have given us as evidence leader's statements which if nothing would explain why nothing happened where it did not. Correct?

MR CALATA: Correct, sir.

ADV SEMENYA: So we are not talking about only acts of commission, as lawyers would say, we are also talking about all missions by discharging the responsibilities their respective offices entailed. Correct?

20 MR CALATA: Correct, sir.

ADV SEMENYA: Now I want to tell you, the application for amnesty for the so-called ANC 37 or 36 or 27... [intervenes]

MR CALATA: 37.

ADV SEMENYA: Yeah, they are very numbers but those include presidents, former presidents you accept that?

MR CALATA: Yes, I accept that.

ADV SEMENYA: They include former ministers.

MR CALATA: I accept that.

ADV SEMENYA: They include very influential members of the African National Congress. Correct?

MR CALATA: Correct, sir.

ADV SEMENYA: Who also came into public office.

MR CALATA: Correct, sir.

ADV SEMENYA: National Police Commissioners and other so-called  
10 heavyweights within the African National Congress.

MR CALATA: Correct, sir.

ADV SEMENYA: It is to those people that were to look for explanations if any were offered.

MR CALATA: Indeed.

ADV SEMENYA: Now, we do not have those. We talk about lack of accountability. There are those whose demise and who may have been guilty of all of this will never give us any accountability.

MR CALATA: Unfortunately, sir.

ADV SEMENYA: But there are also those instances of people who  
20 did not apply at all for amnesty. Correct?

MR CALATA: Correct.

ADV SEMENYA: But the duty placed upon them too was that their cases must be investigated.

MR CALATA: Correct.

ADV SEMENYA: And we do not have numbers but we can take a

guess. They may be running into hundreds. Is that correct?

MR CALATA: Yes, that is correct.

ADV SEMENYA: It is their closure as well in finding explanation for disappearance, murder, maiming that they are looking to find answers to.

MR CALATA: Correct.

ADV SEMENYA: And I do not know why it is lost on the state actors that their duties are quite profound. Can you think of anything?

MR CALATA: I could venture a response that I think I have already  
10 given to this Commission and that is a simple matter of just disrespect and disregard for us as families because we do not have, we do not hold high office. We do not carry the names of people who had gone into exile. We are not part of the political elite. You know, we are perhaps maybe, you know, just the irritant sons and daughters of men and women who chose to stay in the country as opposed to flee it. Who chose to confront the brutality of the apartheid system on a daily basis because that is what happened in Cradock. Our fathers were at the forefront of fighting and leading communities that on a daily basis, if I may, Commissioners, just recall a simple story of a time and I  
20 reflect that in my book of an incident that happened in Cradock. I think shortly after my father and Matthew Goniwe, Mbuleleo Goniwe and my daughter Jacobs were detained at the end of March 1984. Shortly thereafter there was a community meeting in Cradock and where young men and women gathered in this meeting and the police of the day wanted them to disperse and they gave them about five

minutes. Now how do you disperse a crowd of over 2 000 people in five minutes and these young men and women were inside a church and the police fired rubber bullets and tear gas directly into a church. The church was built by my great grandfather but that is another story. But the police fired bullets into a church, rubber bullets and tear gas. There was no respect for our humanity, for how do you fire rubber bullets and tear gas into a church because that is people will do almost whatever it is to try to get out of that environment and get to safety. So there was a stampede. Young men, women, my sister's  
10 age at the time, or maybe older than her, slightly older than her, but there was a stampede and people got hurt.

COMMISSIONER KGOMO: Your sister Dorothy now?

MR CALATA: Yes, my sister Dorothy. So my father he did not go into exile. So he maybe was not considered to be, you know, part of the crowd that went to Sussex or Essex or whatever and you know, my father chose to be that rice kernel that stayed in the pot and dealt with the heat of whatever it was. That is what my father did. He chose, he chose to stay in the pot. So the fact that we have not been heard or recognised and that our integrity is not being considered, is  
20 not because we are not worth it. We are. And the fact that some people, Thabo Mbeki among them, chooses to disrespect us that is on him. He chooses to disrespect this Commission by not abiding by regulations or statements or requests that have been made to him. That is on him and Zuma. It is on them. Because we know what our fathers did and we will fight to have the respect that our fathers

deserve. Because my father, he laid down his life for this country. My father there is not a single moment where my father was ever accused of having stolen people's money or abused his office or any of those things. That is what my father did. And if Zuma or Mbeki, if they choose not to respect my father, that is on them. That is on them. But if they can take the position as to not to respect us, not to respect this Commission, not to respect what we are trying to do here, then there is no obligation on us to respect them.

ADV SEMENYA: Yes, and the inquests and what they yielded, I do  
10 not think state actors can take much credit about that. My understanding is, these happened at the instance of the victims making the requests.

MR CALATA: That is correct. That is why we have had to file an application to compel the NPA to make a prosecutorial decision.

ADV SEMENYA: And two outcomes of some of those inquests illustrate the point that there was lack of investigation.

MR CALATA: Correct.

ADV SEMENYA: Even the judgments that you refer to also confirm something of interference. Correct?

20 MR CALATA: Yes, sir.

ADV SEMENYA: It becomes inescapable that if you join all the dots they would not disclose interference by state actors.

MR CALATA: Correct.

ADV SEMENYA: And that is what you seek to find amongst other things.

MR CALATA: Correct.

ADV SEMENYA: Those are the questions we have. I remind us, Chair, with your permission, that there may be a need to recall the witness should evidence seeking to contradict his testimony come home.

CHAIRPERSON: Thank you. Thank you, Mr Semenya. Mr Varney, I dare say you do not have any opportunity to say anything. These were questions of clarification.

ADV VARNEY: Chairperson, I do not have any questions for  
10 clarification. I just wish to advise the Commission that we are happy  
to assist our colleagues from the Ministry of Police in finding out  
where the references to the police are in the statement and we are  
happy to facilitate and assist in that regard. Secondly, we do have a  
concern around the process of cross-examination. We have heard  
now from the representatives for the police, and I believe also the  
Ministry of Justice, that they do intend to apply to cross-examine this  
witness. And I think there was indication that some parties also wish  
to cross-examine Minister Thembisile Simelane. So the clarity we  
seek is, is it permissible for parties who have been in possession of  
20 statements for months – for example, the statement we have relied on  
today, I think has been before the Commission and the parties for  
around six months – is it permissible to simply not apply ahead of  
time to cross-examine and then just come and listen to a witness and  
then indicate an intention to apply to cross-examine, one would have  
expected an application to have been put before the Commission,

before the witness testifies and that the parties be ready to cross-examine once the evidence-in-chief has concluded?

CHAIRPERSON: Yes. If I may just quickly respond, Mr Varney, without affording the legal representatives an opportunity to do so, such issues may be covered in an application for cross-examination. Remember, cross-examination is not there for the giving. You have got to apply and convince this Commission that you have something to do with cross-examination that you are going to proffer. So yes, they may apply for cross-examination after witnesses have given  
10 evidence-in-chief.

ADV VARNEY: Chair, the question is, are they not required to apply to cross-examine before the witness testifies on the basis of their statements?

CHAIRPERSON: No, because cross-examination will cover the whole of the evidence of a witness. So it should include *viva voce* evidence.

ADV VARNEY: Noted, Chair. Thanks for the clarification.

CHAIRPERSON: Thank you. Thank you, Mr Varney.

ADV VARNEY: Thank you, Chair.

20 CHAIRPERSON: I think what is most disturbing that I may wish to point out is that as with Ms Minister Simelane, were not given an indication of when cross-examination would be applied for. The same is the situation with Ms Rantho. It is most disconcerting. The Commission needs to know where it is. There has to be a decision by the parties of when cross-examination will be made. If that can be

taken up by the legal representatives of the parties, we need to be given an indication of when cross-examination will be applied for. Ms Rantho?

ADV RANTHO: Thank you, Commissioners. When Minister Simelane was testifying, my indication was that I was still taking instructions. What we can record this morning is that there is no intention to cross-examine Minister Simelane. Insofar as Mr Calata is concerned, we are here this morning, Commissioners. We listened to his evidence. We shall be advising the evidence leaders accordingly.

10 We have taken note of the concerns of the Commissioners.

CHAIRPERSON: Thank you. Thank you very much. Mr Calata, we comprehend the pain you must have gone through in coming to give evidence before this Commission. It is for this reason that we are profoundly grateful that you came to give evidence that will assist this Commission to discharge its mandate. As you have heard, you may have to be recalled for cross-examination and for questions to be put to you by the evidence leaders as it may be necessary to do so. For now, you are excused as a witness. Thank you for coming.

MR CALATA: Thank you very much.

20 CHAIRPERSON: We are adjourned until tomorrow morning at 9 o'clock.

ADV VARNEY: As the Commissioner pleases.

INQUIRY ADJOURNS TO 17 FEBRUARY 2026

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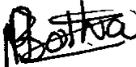
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