

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

HELD AT:

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

BEFORE:

COMMISSIONERS:

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

EVIDENCE LEADERS:

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

REPRESENTATIVES

Adv T Masuku (SC) –(for Adv Menzi Simelane)
Adv Vivian Rikhotso (for Adv Menzi Simelane)
Adv KD Moroka (SC) – DoJ representative
Adv Tlotlego Tsagae (DoJ representative)
Adv Motlalepule Rantho (for SAPS)
Adv Varney (SC) – The Calata Group
Adv D Pillay – The Calata Group
Ms A Thakor – The Calata Group
Mr Siphon Tlhaole – The Calata Group
Adv Nwabisa Ntshizana (for Adv Macadam & Ngcuka)
Adv Gwala (SC) – NPA representative
Adv Yanela Ntloko-NPA representatives

31 MARCH 2026

DAY 26

PAGES 1 – 107



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PROCEEDINGS ON 31 MARCH 2026

CHAIRPERSON: Mr Semenya?

ADV SEMENYA: Chairperson, good morning. Good morning to the other commissioners as well. Today we are to hear the evidence of Adv Simelane and unless Mr Masuku says something different, I would request that he approaches the witness stand.

ADV MASUKU: Yes, Chair, if it is permissible, I would like to just summarise as an opening statement before I lead Mr Simelane in his evidence. That will take a few minutes, just to give the context.

10 CHAIRPERSON: That is fine. Yes, you may proceed.

ADV MASUKU: Thank you, Chair. Good morning, Chair; good morning, Commissioners. Mr Simelane, as you know, is a former senior government official who is here in this commission to clarify some issues relating to the TRC cases or the prosecution or the investigation of the TRC cases.

You would have seen from the two statements that he has submitted his main focus is really to illuminate on how the different departments of government collaborated with each other in an effort to strengthen or support the NPA to deal with this very complex
20 mandate that it had to prosecute post-TRC criminal cases.

So his main address really will focus on his role as he assumed the position of Director-General of the Department of Justice and Constitutional Development in 2005. And you would have seen that by 2005, when he took the position of DG, the infrastructure for engagement by different departments and the

system of collaboration between different officials of government and the different departments on these matters was already established.

So he walked into a system that was already functioning. And his evidence will then focus mainly on the functioning of the... or the role of the Justice Crime Prevention and Security Cluster. He will talk about its operational structure and its processes. So, and he will place it within the context of, I do not think the commissioners yet heard about, just the cluster system and how it functioned and where it drew its mandate and how its main focus really was to enhance the
10 operational capacity of the NPA rather than denote it.

And so, the context in which the debate about his involvement in these TRC cases will arise from that position as a DG, he has prepared for... as I lead his evidence, you will hear how he explains what he viewed as commitment by these DGs that he worked with to ensuring that there is a balancing, a very skilful balance that they had to strike between competing interest; on one hand, ensuring that the NPA did its job; on the other, ensuring that when they did the job, they had resources to do that.

So, when he talks about the concept of interference, it will be
20 in that context and you will see from your own debate that you are going to have with him, that there may be differences in how people view the engagement that these DGs had with the NPA and the NDPP; and as you have sought, Adv Pikoli clearly believes that at some point they overstepped the boundaries of normal supportive role.

He will testify as to his own views on what that engagement; whether that engagement, firstly, was necessary and whether that engagement exceeded the normal bounds of support to the NPA to deal with this complex TRC matters. He entirely accepts that... yes. So, one of the things that you will hear from him is that he accepts that there is a need for accountability. You are investigating a period of time when you occupied an important office as a DG; and as a DG, so he sees himself as a [indistinct] in illuminating or giving light to some of the issues that are a mystery, particularly to the families.

10 But Mr Simelane is also not a person without any experience with the apartheid repressive missionary's family who were affected by the apartheid [indistinct]. I think if he opens up a bit more, he will talk about that, but so, the idea that he could have been an enemy of prosecuting TRC cases will be dealt with through his evidence and one will see that he had to balance the national interest in reconciliation which was a constitutional, which was a necessary approach, given the delicacy of the constitutional state at the time.

20 And as Pikoli also put it in evidence that everybody was looking for joy at the inception of the constitutional state. There were some who would have wanted to stabilise the constitutional state and that the prosecution of these TRC cases were being conducted via the same institutions that had played a role in the apartheid system, created a bit more [indistinct].

So, Commissioners, Mr Simelane is ready to take his oath and present the evidence that he is going to present. I am going to

lead him in line with that broad structure and his main focus, as I say, is really try and get the commission to understand how different departments and the officials of that department tried to become a support base for the NPA rather than a restraining force in the NPA. Restrain perhaps was to the extent that they viewed certain prosecutions as posing a national security problem, but he will explain that; why there was a national security concern in some of the prosecutions involving the TRC.

10 And finally, Chair, obviously most of the allegations he had to deal with arise from an application that is in court where he was not cited as a party. To the extent that parties really believe that he was an obstacle to the TRC and they want you to make out a case that there was negligence of a nature that warranted the kind of leave they are seeking.

Mr Simelane, if he had been given a chance in that case to submit an affidavit, we would have his story here directly responding to those allegations that now he has to respond to from this platform, but he is happy to do that and you will also commend his readiness to immediately avail himself to assist the commission with no ranka, no
20 [indistinct], no sense of restraint. He is here and he will give whatever evidence he has to give. So he is here, Chair, if it pleases the Chair and the commissioners. He will take the stand and the oath of office and I will lead him in his evidence.

CHAIRPERSON: Thank you, Mr Masuku for that opening statement. Adv Simelane, you may go to the witness box. Adv Simelane, are

you going to take an oath or affirmation?

ADV SIMELANE: I will take an oath, Chair.

CHAIRPERSON: An oath?

ADV SIMELANE: Yes.

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

MENZI SIMELANE: duly sworn states

CHAIRPERSON: Thank you. Mr Masuku, your witness.

10 EXAMINATION BY ADV MASUKU: Thank you, Chair. Thank you, Commissioners. Mr Simelane, perhaps before I ask questions by way of leading, my understanding is that you prepared a short statement that you wanted to begin by, which you would want to tell the commissioners and about and perhaps we should start there before I can take you through the questions I have by way of leading.

ADV SIMELANE: Ja, thank you. Thank you, Chair [indistinct] things I wanted to say. So it kind of changes it a little bit, but Chair, maybe for what it is worth, all I would wish you to know ...[intervenes]

CHAIRPERSON: If you could just raise your voice, Adv Simelane.

20 ADV SIMELANE: All I would wish you to know and be aware of is that this is not going to be an easy process for I suppose anybody that comes here. For me it is not going to be an easy process. I am a victim as well and my family of apartheid. I think you know.

COMMISSIONER KGOMO: No, I cannot hear, sorry.

ADV SIMELANE: I think you are aware that my family does have a

matter currently before this commission. Obviously how it deals with it is a different issue.

COMMISSIONER KGOMO: Yes, that is better. Thank you.

ADV SIMELANE: So, and I will not deal with that particular aspect. There are people who are dealing with that aspect to the commission. In that sense I do have a view about the commission itself and what would take place in here. So I do not want to speak as somebody who received a notice. I speak as somebody who is directly affected personally in ways I would not describe here, but I would imagine, 10 because I think you have seen the papers I am relating to and what they talk to. So it is not going to be an easy process. So I hope, obviously I will try and restrain myself as much as I can, but to the extent that I am not, I will deal with it and explain to you why I am not able to do so. So that is the first thing.

The second thing is that I mean I came and I listened to some of the witnesses and I accept naturally how the families and the applicants would have approached their papers and their cases in the high court matter. And when I naturally read everything – Mr Masuku briefly touched on it; my initial instinct was that they should have just 20 asked. They should have just asked, because what that affidavit in the Calata matter specifically, Mr Calata's affidavit.

Before he testified, it was hearsay, because he does not know what he was talking about. He does not know what he was talking about. He does not know the person he was talking about, but he extracted from other people's affidavits those references to me. And

if I had just been asked to say is there anything you can assist us with to understand; that would have happened.

So the consequence of it is that it comes to this particular commission in such a manner that this commission then deals with me via a notice that is reserved for people that are implicated because of the manner in which they are mentioned. Naturally I know it does not mean it is true, but it suggests that the approach of the commission towards you is of a person who already is a person of interest. So I sit and I looked at this and I asked myself: why would I
10 be a person of interest in this particular concept? So I am hoping to deal with that.

And thirdly, when the witnesses came here, at least those to whom that affidavit relied on, to conclude the way it concluded, resulting in me getting this notice. I think a different picture emerged and a different picture slightly emerges, you know. And I look at it and I am saying I am sitting here not as a person who received an invitation via a different notice. I am still here with that evidence sitting here as a person who has received a Rule 3 notice. I would
20 have expected it to be different to say now that is the case, please still do come and clarify any way you can clarify and assist the commission to the extent that at least you would have some information and knowledge.

The net result; so that offends me that I am here in that particular context. It offends me deeply and it should likely result in that which is the chilling effect of it. One would not be able or may

not be able to deal with some of the things in the manner we have originally wanted to deal with it, because it just demonstrates to me that there is a lot of lack of information just generally about how government works, about how government worked.

Even those who worked within government, they have just different opinions and different views about different things and not having a forum where all those things, where all those views and issues are discussed in a way that they are clarified results in dribs and drabs of views that now this commission must try and put
10 together to make sense of it. So, I will try and assist to the extent I can, but as somebody who is directly affected by this in a significant way, it is quite offensive. It is quite offensive.

So what I propose to do in the way I will deal with the points that Mr Masuku would ask me to deal with is that I try and assist you as best as I can from what I know, so that you have a better picture about what I will be saying, whether you agree with it or not or somebody else agrees with it or not is something different, because that was a major factor in how some of these things were dealt with. There were disagreements. You may currently be under the
20 impression that there was some collusion, there was some agreement. There were a lot of disagreements pretty much almost every day.

So I will try and elucidate that to the extent possible and obviously the positions that I held as such that I would to a certain extent have had access or at least an opportunity to mingle with

people who would have also add their views. So to the extent I care without mentioning names, I will say some of the things that I recall were part of the discussion, just to assist you understand what the atmosphere was, because I think it is less understood that these TRC matters are not just unique.

They are the kind of things that; I am not aware of any country in the world that has successfully dealt with them. I try to go back to how Chile has dealt with them since, the time that Mr Pikoli referred to and I think that society is still under construction as it were. So I
10 hope you will be patient with me when I get involved in that particular way, but that is my opening statement. Thank you.

CHAIRPERSON: Thank you, Adv Simelane. Mr Masuku?

ADV MASUKU: Thank you, Chair. Thank you, Commissioners. Mr Simelane, thanks for those comments. You received this notice in terms of Rule 3.3 from the commission; and I would say commission evidence leaders actually.

CHAIRPERSON: Yes.

ADV MASUKU: And it was on 19 September and you prepared a written response to that notice, but before we go to your written
20 response. You have dealt a little bit on how you understood the notice itself. Would you want to perhaps give your evidence on how you understood the notice, particularly by reference to paragraph 3 of that notice?

ADV SIMELANE: Yes. I think the starting point goes also to the frame of the terms of reference in that it is a commission that looks

into whether – I will paraphrase it; into whether there are certain individuals or a group of people individually or jointly in a dedicated, intentional way went out of their way to basically undermine the process of investigation and prosecution of those TRC matters. That is how I understood it.

And in different ways, it therefore seeks to understand how each one by virtue of the positions they held, like myself and with reference to episodes that took place; whether or not all of that are such that the conclusion that can be reached or that comes out of that assessment is that those individuals or an individual intentionally went out of his or their ways to undermine the investigation and prosecute. So that is how I understood it. Therefore, in that vein if therefore there were those individuals or individual with any particular information that carried out that exercise; that needs to be unpacked and explained so that it can be better understood.

So for me starting as; I joined the Department of Justice. Well, I was in government before. I was at the Competition Commission since about 98, 99. That is well-known. And then I joined the department on 1 June 2005. That is when I started. And just before I started, there was a senior official, a DDG who was an acting DG, Mr Deon Rademeyer, if I remember him correctly, because I think my predecessor had left, I think, around January, if not thereabout. So there was an acting DG.

In the normal course, you know, a DG, in terms of the Public Service Act, is nothing but another official of the department, but the

highest ranking. In terms of the Public Service Act, you are what is referred to as a head of department. In the PFMA you are what is referred to as an accounting officer. The difference is; the Public Service Act as head of department, you deal with what is generally referred to as HR matters, which is the basic administration of the department. In terms of the PFMA, you are called an accounting officer, because you account for the finances and the budgets and the expenditure of a department.

10 Generally I think in the public domain people refer to as accounting officer as if accounting for work in terms of the Public Service Act is the same as an accounting officer for finance. It is actually two things, but in terms of general speak, I think they are used interchangeably. So, I would have been an accounting person either on the finances or on the administration of the department anyway by virtue of the fact that you are the head of the department and therefore you run the department.

20 Every director-general in a department, sorry, of a department has to be, as part of the structure of government, part of a cluster, because as Mr Pikoli did explain, Adv Pikoli explained here and with which I am in agreement when he described the structure of government; that it is a cluster system. And to such extent, Commissioners you will forgive my repetition, because I just want to make sure at least you understand it the way I understood it. He explained it the way he understood it, but most of it will be a repetition. So for emphasis, it will be helpful for recollection as well.

So it is a cluster system and the constitution obviously gives executive powers to the president together with cabinet. So it does not act alone. It acts with cabinet. Then cabinet structured its way into a cluster system of departments. So the clusters that are there, those that at least I can recall. I have not been in government for a while now. I do not know if there had been changes, because in each administration some changes do occur.

So, at the time that I was there at least the ones that I could recall, there was then a cluster that relates to this matter which is the
10 Justice Crime Prevention and Security Cluster. The acronym is JCPS Cluster of cabinet naturally. Then there was the Social Cluster and there was the Economic Cluster and there was the International Relations Cluster. There may have been one or two more, I just do not remember, but the ones I can remember succinctly are these four. And each cluster at ministerial level is co-chaired by two departments. Why co-chaired by those two departments is because of the subjects of the cluster what it deals with. Those would be the lead departments on issues relating to that cluster.

So with JCPS, security is naturally the police on a day-to-day
20 basis. They do most of the work. So they would be one of the co-chaired justice because of the courts, the judiciary, the administration basically of justice. They become the co-chair. So ministers have that at that level. Social cluster – it will be social development and human settlements. Those are the co-chair ministers in that particular cluster. Economic cluster – it will be National Treasury. I

cannot remember which other one would be, but at least National Treasury would be there. International relations – it would be DIRCO plus another, but in each cluster there are what are called the core departments relating to the core work of that cluster.

So in other words, each cluster has got as many departments as it should be decided there should be in that cluster, but in each cluster there would be core departments that talk to the subject of that matter. So in the JCPS Cluster, for example, the co-chairs naturally are the main departments, the core departments in that
10 cluster, those two, but in the JCPS you then have defence, Department of Defence which is another core because of the nature of its business.

Then you have Department of Home Affairs because of the nature of the work that Home Affairs does. So Home Affairs is a security department in the country. Then you have Correctional Services. It is also a security department because of the nature of its work, the security there; then naturally the state security. At the time it was NIA and Secret Service, because there were two different departments. Then they were amalgamated into one and I think a
20 couple of years ago there was... they were changed again. So we currently have in State Security domestic branch and we have a foreign branch.

So those are the core departments in the security cluster, but the other departments in the security cluster would be social development. It is also a member of the JCPS cluster. At least it was

at the time. Department of Transport is a member of the security cluster and DIRCO is a member of the security cluster. The reason really as I understood it then, it did make sense, is that; firstly, in terms of making sure that government work is done by everybody, you must have almost every department in each cluster, but transport does deal with a bit of security as far as maritime security is concerned, because they deal with that in terms of the ports and other things. So security does come in, in there. So for dealing with those types of issues, they need to be in this cluster as opposed to be
10 in the social cluster.

DIRCO naturally on issues that may have relevance for international relations, DIRCO needs to be there for its input. Social development is for issues that relates to children in conflict with the law and all those issues are dealt with throughout the JCPS system from how the police handle [indistinct] conflict with the law to the whole administration of justice as it were and also in respect of issues of gender-based violence. So those are the departments at the ministerial level. That is duplicated 100 percent at DG level. So if you become a DG of a department, you become a co-chair of a DG's
20 cluster that mirrors exactly what I have described.

So one of my duties therefore as the DG that came with that employment as a job description is that you co-chair the DG's cluster and your co-chair is the National Commission of Police. So the two of you become responsible as co-chairs for making sure that the DG's cluster, JCPS Cluster, does naturally the work that it is

supposed to do from a monitoring perspective and so forth. You do not have decision-making powers, but you are basically coordinators who chair almost like a board. So you do not have your own individual powers as co-chairs.

The way we ended up working is that I pretty much co-chair, because that is just how we ended up working. He did not want to necessarily chair. Whenever I was there, it became *de facto* that I chair the cluster, although we are co-chairs. So I do not know if [indistinct] I need to elaborate.

10 ADV MASUKU: Yes, ja, thank you. You have now located yourself in that position as a DG and a co-chair of the justice of the JCPS Cluster, but I want to then go into how that cluster approached, specifically matters of relating to the TRC, because the commission's focus is on those particular matters. Can you just broadly tell the commission how the JCPS Cluster, when you took over in 2005, how the JCPS Cluster addressed the TRC matters?

ADV SIMELANE: Maybe before I do that; as the DG of justice, the issues of TRC were within the department. There were programme, ordinary work of the department, even absent the issue of
20 investigations and prosecutions, because the government agenda on the post-TRC matters also include an element of reparations. So in the department there was a unit that was established called, we called it the TRC Unit, but it was chaired by the late Ambassador Sekwe, but its main purpose was to assist, put together a programme in terms of which families that were identified in terms of a formula

that was to be developed, it was later developed could be given compensation.

So part of the job of the department was to argue for a budget in terms of which compensation where it is determined was deserved, which was expected it would pretty much be in all cases, but for purposes of processing, you would have needed to have some formula, have certain facts, look at the families affected and ultimately result in an identification that a certain amount of money of reparatory form must be paid to the particular family. That was part
10 of the day-to-day work of the department, not the NPA and not necessarily the cluster.

The NPA had an additional element of work that it had to do. I think it was referred to the Missing Persons Task Team. That was in the NPA. But because the NPA is in the department, as DG I also therefore had to be responsible to monitor that it actually does what it does in the normal course, receive its reports and process its reports upwards obviously to the minister as part of overall departmental reports and to the extent necessary to cabinet. So there was that element as well that we were running with on the side and also the
20 department also was the ones who had the TRC records were archived and kept.

So anybody in government that needed to have access to that, as a DG I would have needed to know that there has been a request to access certain type of information. Internally the department attend to authorisation that access be given and so forth

and so forth. So we also attended to that in the department. There was a chief operations officer under whom that programme, amongst others, resided, but [indistinct] had been responsible for monitoring it.

So the nature therefore of the cluster system is there because it is a government programme that is approved in cabinet. Every department goes to the cluster and it accounts for progress it is making on the items on which it is a lead department within its programmes and on those items in terms of which it is in collaboration with other departments.

10 So if there were interlinking efforts or programmes, what generally happens in government is what are referred to as interdepartmental task teams, which basically says if you are dealing with [indistinct] conflict with the law, justice will come in respect of how those matters are dealt with in courts. That may include involving the prosecution. Social development will come to deal with issues in respect of which social workers deal with those particular situations as far as the reports are concerned and the police would come in respect to their work.

20 So what happens in an interdepartmental task team is basically to say whatever the issue is, the lead department chairs the interdepartmental task team and then receives different inputs from everybody and then formulate the reports that goes upwards in that particular department, but then ultimately ends up in the cluster of DGs anyway for discussion.

So, everybody knows that who is the lead department on this

topic. You get told. You either, if you are not in the interdepartmental task team through your official, you know anyway that whatever they do, you are going to get access to it and you reach it for decision-making purposes when you submit it in the cluster, so nobody panics about it. But those obviously who are in the interdepartmental task team have to deal with the day-to-day work and process that work and ultimately we all see it in the cluster itself when it gets presented by the lead department.

10 But in any event, because it is part of the cluster agenda, we all would know that this needs to be here. So therefore, it does happen that sometimes the cluster can remember that there is an agenda item here and the lead department is not bringing it for discussion. Any DG in that cluster can raise a hand and say: hold on a second. Where are we on this thing? Can the lead department account obviously through the coaches, so that we understand what is going on, because it is a programme for which all the DGs in that cluster are responsible, not just the lead departments or the core departments on that particular subject. The whole cluster is accountable for the programme of that particular cluster.

20 Similarly, all the ministers are accountable for the programme of their cluster, even if another department is a lead department on it. So if anything either falls between the cracks or is being handled in a way that others are interested in it, they are entitled to raise it as equal members of the cluster [indistinct] as it were, because no department, even if it is a core department on a subject matter, can

take decisions on behalf of the cluster. You cannot do that. You only take decisions alone in respect of your department in your department and you account to your minister accordingly.

But on issues that must be reported to the cluster, no department, no group of departments can ever take a decision that binds the cluster. A cluster decision comes after the cluster has deliberated in a formal way. In other words, there will be agenda. There will be a scheduled meeting of the cluster. There will be an agenda. There will be documentation which are circulated in
10 advance for consideration based on the fact that the lead departments who are submitting documents for that agenda item has processed that particular information with a clear recommendation; and then the cluster, after they have presented and after the cluster has deliberated, then the cluster takes a decision as a whole.

So if you go there, whether you are justice, police, defence, social development – you are going there before your colleagues to make an argument that what you are proposing must be supported and you advance your argument; and they can reject it, as it has happened many times where they reject, say: no, thank you, we hear
20 you. It is not the way we want to go as the cluster. We want to go differently.’ It gets changed or it gets sent back for reprocessing. You come back and met up with them.

The decisions in a DG’s cluster become a recommendation to the cluster of ministers. So the lead department, once the DGs in the cluster have decided, what becomes a recommendation; that lead

department then obviously prepares the particular report, update it to the extent necessary and that lead department submits that report to the minister's cluster. And that minister in that cluster will say: we are submitting these reports. It has been circulated. Can it be considered, discussed, input and so forth? And then the minister would say the DGs have discussed this and this incorporates the work their departments have done, their consideration and the recommendations carry the support of those DGs.

10 So it follows that when that type of report is presented in that way by that particular minister, the rest of the ministers immediately understand that what they have in front of them is supported by so many people over there and those departments, whatever the case may be, or is not supported. If somebody has a strong view, obviously which many times that does happen, the minister concerned, if it is not supported obviously, withdraws it or it is requested that it goes back for reconsideration and resubmission, which sometimes does happen. When all of that has happened, it then gets sent to cabinet.

20 So in the minister's cluster that is a subcommittee of cabinet. You have the minister. Every cabinet's subcommittee is chaired by the president. There is a deputy president there. There are ministers and there are deputy ministers. They process that work. And based on their decision, they recommend that that particular report goes to cabinet; and in cabinet it is only the president, the deputy president and the ministers. Deputy ministers, as you know, do not sit in

cabinet.

So what cabinet discusses, ministers are seeing it for the second time, because will include the president, deputy president, because they have seen it in the GAP committee together with the ministers. So that is part of how cabinet processes documents and information. So if it has gone to cabinet, the assumption is that in half a day, sometimes it can be lower than half a day, but generally cabinets take a day. Usually by lunch time they are done if everything goes smoothly, because they are not seeing anything for
10 the first time. These things have been discussed before, starting from the DG's side and then there are decisions made.

So it also happens that they discuss again and between the time that the cabinet, subcommittee discuss the issue and the time cabinet discusses the issue, there has been a change of views and so forth and so forth. So when it gets discussed at cabinet, sometimes it is recommended that the matter goes back again in light of new information or new thinking. It goes back and then it comes back again. So that is how it is generally done.

20 So, in that framework, at least as I understood it, there is not a single department that can ever take a decision on its own on anything without anybody else knowing, because that framework reflects the checks and balances that are in government. A department that is not working can never succeed in not working because that lack of progress gets picked up easily, because everybody else in the cluster is supposed to talk to the programme of

a cluster. In other words, if somebody wants to talk about the judiciary, they know what the programme is.

Let us say transformation of the judiciary for example. So if you are not, as the Department of Justice, if you are not submitting progress reports on how that is achieved, somebody from social development in the cluster can say: 'no, hang on a second. You guys have not produced a report for so long on this particular issue. What is actually going on in that department?'

10 So the check and balance is such that if you are slacking, it gets picked up and that flows upwards, because when people report back and give feedback to their ministers, that type of conversation does take place to say that DG is struggling over that, because we do not know what is going on at that department. It is affecting the performance of the cluster or the cluster is doing very well. It is very tight.

As a result, this cluster is performing. That is how you get in a way assessed and get recognised and that similarly affects the ministers and the deputy ministers, because other ministers get to hear and get to know anyway; and that usually gets measured also by
20 how much of the work of the department finds its way in the form of reports to cabinet ...[intervenes]

COMMISSIONER KGOMO: Sorry, can I just come in here, Mr Simelane, Mr Masuku? I know you have given a comprehensive statement or statements and I know you are summarising and explaining, which is good, but wherever possible, you could always

take us along if you have a sense of where you are in the statement.

ADV SIMELANE: Yes. I am at page 25 and I am describing what is on page 25, so paragraph 5 in terms of the work of the cluster, it actually starts on paragraph 3, just the organogram and how the cluster functions and it goes to, ja, up to paragraph 5. The reason why I am putting it this way is that when I go further to explain certain specific episodes, you must then understand them in the context of who these people are; and maybe it is the right point that I move on to what was described and mentioned in evidence as a forum of DGs.

10 COMMISSIONER KGOMO: Yes, all right, thank you.

ADV SIMELANE: So, what I have given you is the formal architecture of government. So as soon as you hear that somebody is a DG, in your mind you know that okay, this person is also part of a cluster, maybe co-chair or no co-chair, depending on the subject of the issue.

COMMISSIONER KGOMO: Yes, thank you.

ADV SIMELANE: One additional structure that I did not mention which I should mention is that all the DGs become part also of what is referred to as FOSAD – Forum of South African or South Africa
20 Directors-General. So every person who is a DG, in other words, you must be a head of department of a national department and you must also be a DG in a province – those are people referred to as DGs. So you cannot be a member of FOSAD if you are an HOD of a provincial department.

DGs are heads of national departments and heads of the

administration in the premier's offices. They become part automatically of FOSAD; and FOSAD is chaired by the DG and the presidency and [indistinct] does not meet very often, but maybe twice a year. If there is an additional issue that is of importance, maybe three times; maximum maybe four times, as it were. Every year there is a Cabinet Lekgotla and some time before the end of the year or midway there is a mid-year Lekgotla. So FOSAD attends to those issues in preparation for a cabinet Lekgotla. So that is really, it is relevant. So that is a forum of SA DGs.

10 Now what was described here as a forum of DGs is no formal structure. There is no such formal structure. What was described rather is what the DGs or the co-DGs of the JCPS cluster referred to themselves. So they decided that. Those co-DGs, they were not, I do not remember them being mentioned who they were, but I can almost get a sense who they were, because in that cluster with many of those departments they will be the core that talk to security issues.

 So I am imagining that that forum would have been the DG of Justice. It would have been the National Commissioner. It would have been the Security of Defence. Defence, because it has got two
20 heads. It has got the civilian side, which is the SCDF who is equivalent of a DG, but as part of the cluster, the head of the Defence Force also comes. So in a cluster meeting both of them do pitch up.

 In the police; at the time that I was there, we did not have the Secretary of Police, because at some point, I think it was in the President Mandela administration, the Secretary of Police, which is

the civilian side of the police secretariat was at DG level. It later did not become at DG level. So what you have therefore there, the DGs in that forum, as they called themselves, is the DG of Justice, the National Commissioner, the Secretary of Defence, the DG of Home Affairs or at least his or her representative, the Commissioner for Correctional Services and the DGs for Foreign Intelligence and Domestic Intelligence.

So those who deal with the core who would have been the ones on a day-to-day basis who are looking into TRC matters would
10 have congregated themselves as a working group of some sort, if you can call it that, to discuss on an ongoing basis issues that talk to the TRC matters. They must have referred to themselves as a forum.

In the time that I was there, I do not remember us referring to ourselves as a forum, but we were also a core of DGs that looked into issues. The idea was that when the matter goes to the cluster for discussion, at least all the views of those DGs are know. If the police is going to talk to something in the cluster meeting, they would be interested in knowing what the Department of Justice has to say about it or what I thought about it, because I would need to tell them
20 how it impacts the functioning of the courts, [indistinct] functioning of the courts of the NPA.

Intelligence, likewise, would be asked to make input and *vice versa*, depending on which department is leading on an issue. If it is core security, you want the support of the core, so that when you go to the cluster meeting as a whole, they are interested in knowing what

your other colleagues think, how does it impact on that and that, and that, and that. If you do not have a clue, then generally the cluster would say: well, we want to discuss this issue, because you have not done your consultations. Go and consult and do the work.

So the purpose of the forum, as it is referred to and to the extent that I will also refer to it, that is what I mean. I do not refer to FOSAD, but the important thing about that forum is that it has no formality. Whether it is there or nobody cares about it, nobody will ask about it. It is just a working arrangement that those individuals
10 decided to have to facilitate their work. There is no big deal about it. It is ...[intervenes]

ADV MASUKU: It is sort of a caucus of DGs.

ADV SIMELANE: It is kind of a caucus. So an interdepartmental task team is more important than that forum in a way, but because those individuals work together and they need to work together anyway, it works much better if they spend time deliberating on issues. So if there is a security issue that is discussed there becomes contentious, everybody [indistinct] if you have had a discussion about it first and formulated your view.

20 So the idea is that, to the extent possible, it helps if there is agreement, but it is not always expected that you will have agreement. But what is expected as a matter of principle and of course is that at least you spoke about it and assessed whatever implications there may be there, so that when you present it to all of the DGs, those things are covered. And it did happen sometimes that

whenever there was a discussion, another DG will say: but you should have spoken to my department on this issue and I would not know you will be interested in this to this extent.

Then where we do have experience on X, Y, Z type of matters, then we should come back and have a discussion, depending on the decision that is required. Sometimes it is going to affect the decision, but subsequent to that, those DGs would need to engage with that department [indistinct] officials who engage with that department to go get an update by way of what that department was referring to. So that becomes important.

So in a way, therefore, the discussion of the co-DGs on any aspect relating to TRC investigations would have required then to input based on how their departments were affected. So in my department I will not discuss it in that kind of group, because anyway, the NPA was doing its work. On the reparation side internally the department were doing our work.

The Missing Persons Task Team is doing our work. So we become less involved. We are in the group. You are part of the discussion group, but the people with the biggest views on the issue will be those who on a daily basis assist with the specifics of issues of security, as the case may be. Justice [indistinct], because [indistinct] judiciary. There is nothing yet there, whatever matter that is before the court is progressing in the normal course anyway.

So I am not a major player as the Department of Justice, because nothing seriously affects us. The reports carry on in the

normal course. So that is what I am describing as far as the architecture and what that forum refers to. So what Mr Pikoli testified to is that kind of formation. So when they formulated or contextualised the prosecution guidelines or an amendment to prosecution guidelines, I do not know how they contextualised it, but that group would have initially met and contextualised and discussed and caucused and did whatever it needed to do to the point where it would then submit a completed proposal to the cluster as a whole; and the cluster as a whole would then either say yea or nay.

10 In this case the cluster must have said yea, because their programme went through to the next stage, which is presentation to the ministers who would have supported it. The document was drafted to the point where it ended up obviously in parliament and later on obviously it went to court. So what I am indicating is; how it should have ended that far, it would have started with the core who contextualise issues, however they contextualise them.

So I cannot talk to that, because I was not there, but I am imagining in my mind that is what they would have done. That is dealt with every day, then up to the point where there is execution by
20 way of cabinet approval, because without that it means nothing. You can contextualise and produce documents as much as you want. If you do not reach the end stage, which is approval by cabinet, you are still in discussion mode, as it were.

ADV MASUKU: Mr Simelane, what I would like us to do now is to focus on the issue involving the investigations and the prosecution of

TRC cases. The structures you have explained. Can you perhaps tell the commissioners how this structure engaged on those issues, you know, where the JCPS structure and to an extent the FOSAD, all those, how did they intersect with the issues that were within the NPA's domain, prosecution and investigation of TRC cases? Sorry, bearing in mind, Chair, I have deliberately avoided going to the statements.

CHAIRPERSON: The statement.

ADV MASUKU: Yes, because I would like, ja, I would like him to just
10 speak freely without the constraints of the statement. I will come back to the statement just to say you have dealt with this and that and that and that in the statement, ja. So that is why I have done it.

CHAIRPERSON: Yes, we are with you.

ADV MASUKU: Thank you, Chair.

ADV SIMELANE: When I joined the department in 2005, and as it appeared in the evidence, most of the issues were already in play. They were already in motion, for example. The TRC issues would have come by way of the TRC reports, gets handed over to the president as head of state. It goes to cabinet. It gets discussed.
20 Decision is made. And once a decision is made, there is then a lead department which runs with that project. Justice ran with that project. So everybody knew TRC matter is a justice issue. So that becomes part of the programme of the department from a strategy standpoint in the normal course.

When you have your five-year strategy plan, we have all the

things you need to have, but in there would be TRC matters. Therefore, it is required that you report regularly on those and you are required as a DG to report regularly on those, just as part of your performance, performance contract to your minister. But also that work then, as I said, goes to the cluster. The cluster must report on it and it goes to the ministers naturally and it goes to cabinet, as it were. That is how cabinet keeps track.

So cabinet would say, for example, I cannot talk to this issue because it has never come to cabinet. I do not know what you are
10 talking about. I hear people talk about it out there in the corridors or in the public domain, as the case may be, but it has never come to cabinet. So I have no clue what you are talking about as a minister. That is what most of the time ministers would say to their officials on any issue.

If you want me to take this thing further or you want me to know the procedure is, prepare a memorandum that comes to me. And that becomes a DG's responsibility. The officials prepare memorandum. It goes to the minister either for noting or for decision-making, as the case may be. Then the minister can look at it and
20 say: okay, this issue I think it needs to go to cabinet. Then the department prepare a cabinet memorandum which the minister takes through. That is initially how it should work.

So at the time that I joined, there were already issues of difficulties between the NPA and the police in the department. You get told when you look at, if you get inducted, for example, and you

are given an update by your DDGs with their teams of chief directors and directors, they will tell you that: DG, on this issue this is the updates. This is the last engagement. There is an interdepartmental task team. This is how it is composed. This is our representative in that particular task team. Are you happy with it or should we change a person, whatever the case may be? You get that kind of update.

Then you get an update that says there are difficulties, because there is lack of cooperation that is alleged. The police and the NPA are at loggerheads over this issue; and the police still have
10 to submit to the NPA investigators to assist the NPA investigate. So expect, DG that in the cluster meeting you are going to expect this kind of issue coming up.

Naturally you start attending meetings and you hear; and because you arrive and naturally you are new, your colleagues will tell you that: oh, ja, by the way, your department has a problem. We have a problem of this nature and this nature with your department or my department and your department are working on this. People will tell you things that they consider urgent or important; and it is basically a kind of [indistinct] sometimes to say: look, let us work
20 close together on this particular issue, because for me to make progress on this issue for my department, I need your department. I cannot get done unless your department comes along. So let us cooperate. Let us work together. Oh no, actually we need a third one, a fourth one, a fifth one.

So this forum of DGs must have recognised, in my view, that

in the TRC matters all of them are critical. So they needed to work as a group together to process things as best as they could. The downside of that kind of arrangement is that what is there are conflicts? If there is a conflict between people who have to meet anyway, because we are all going to meet in the cluster. You can almost see that oh okay, just like you can see with ministers. Okay, something is wrong. They are not generally chatty to each other, you know, just like you see your parents. You say okay, something happened yesterday. There is a problem.

10 So, it is the kind of situation where it cannot be hidden. Everybody can see. Officials can see okay, my DG is not talking to a DG. What is the issue? Oh, he is upset about this. They are upset about that, but it always talks to I cannot move as fast as I can, because your people are not moving. They are not efficient. They do not come to meetings in interdepartmental. It creates major frustration.

20 Friendships are lost in those types of [indistinct], because people say: but I must perform, I must account. You could be putting me in a position where if I do not perform, my minister gets upset with me. I could be disciplined. I could be fired. Those things do matter in engagements at that level, just as much as it happens at much lower levels in the department. It is just difficult for everybody when it is at a high level. It gets very, very, very difficult, because those are the people who must decide on things. Those are people who must work on things.

So if there is serious conflict, everybody pretty much knows that oops, it is going to be a tough time dealing with these ones. And then obviously there are ways. I mean we are all adults. There are ways in which you try to resolve issues by, mostly informally. Everybody tries to find out: hey listen, who knows this person better that can go outward and outside and talk to this person? Those types of conversations come.

And somewhere in my statement I do indicate that was the time when the discussions in the forum got to the point where says
10 but who knows...? I already know Mr Pikoli, for example, had a name by which he was called, which is Ndjiva. I did not know, but the discussion got to the point where somebody said: but who can talk to Ndjiva, because we need to make sure that he is with us?

And in that particular situation the difficulty for me, which I learnt as I got there, is that they were saying: we cannot be having difficulties with the NPA, because before he went to the NPA, he was DG like you and we had agreed on these things already; that this is how we will progress. This is how we will discuss. This is how we will deal with matters. So we should not be having this difficulty, you
20 know. We need to find a way which we can engage with him and so forth.

And you will probably ask a question: what do not they just meet and talk? I mean I asked myself that question, but you could see that these guys do not want to be in the same room. They do not want to talk to each other. They do not want to be. And you could

hear, you know, other things were said that are not necessarily complimentary, and I will not repeat them here, but you will just see okay, this is a lost course.

So the problem for me is that as co-chair of the cluster, if your co-chair has that kind of view about one or two or three or other departments, you literally then become not just really a co-chair. You really become the chair, because you must now manage your co-chair and while at the same time you are managing the cluster. So that is what I ended up being seized with in terms of trying to engage
10 all the time informally to say: you know what, what are really the issues? Why is this a problem? And you discuss.

It eventually became clear at some point, because they were not hiding it. Those DGs accepts. The DG of DIRCO never used to come often, but had a representative. Except for DIRCO and Transport and Social Development, the other DGs were clear that: 'we do not want Ackermann. We have a problem with Adv Ackermann, you know.' So I did not know. You know the debate was there. So like oh, okay, you do not want Ackermann. What is the issue?

20 And the discussion with everyone, at least in that forum, on TRC matters was always a political discussion. It was not a typical programme discussion. The TRC matters are just political. And at the time, if you remember who the DGs were, and I think you can get their names. I do not have to say them here. Those DGs were first and foremost politicians in their own rights. They were politicians,

firstly.

Secondly, some of them were actually MK members in their own rights. That they became DGs is a function of their deployment, but first and foremost, the late [indistinct], for example, was referred to as commissar. So, obviously I was young. I was not an MK member. So if you ask somebody: but why do you keep calling this guy [indistinct] commissar? They say in exile he was basically a commissar. In other words, a commissar is somebody that leads political discussions in exile. Then others, they would refer to others
10 as commander. They still call each other – hey, commander. Why are you calling this person a commander? He is not in the defence force, because in exile, in MK that one was a commander.

So those labels found their way into the way people operated at government, because they had past relations and [indistinct] discussions there would be the issue that no, but Undjiva is one of us. He is an MK, you know. He understands us and how we think and who we are and why we would think this way. So why are we having difficulties engaging with him? There must be a [indistinct]. Maybe he is too isolated there in the NPA. There were all those types of...
20 that is isolated. He should have been set there with support. He did not get the support. As a result, he is isolated. So he has to now assist that institution, do the best it can, such that it is difficult for him maybe to be as responsive as we would have expected. That is what they would say.

So I am listening. I am thinking; okay, so these are the type

of issues, but they would not be discussed in the way that I am discussing it. People would be animated. It should be extremely, extremely serious. So when they say 'we do not want this person and that person'; and by the way, I did not deal much with Mr Macadam, but Mr Macadam was mentioned in the same way as Ackermann. The difference is; for some reason there was just something about Mr Ackermann that everybody said: 'we do not want Ackermann.'

10 So as you debate, they say: no, he must be removed from TRC matters. We do not want him in TRC matters. We do not want him in TRC matters. What is the issue – go back and forth. Well, I am obviously paraphrasing here; are series of meetings, different meetings, informal. Sometimes they were short – maybe an hour. Sometimes if people have time, they meet for little bit longer, but what I am discussing, because I do not recall the exact date for each particular informal meeting. These are not cluster meetings by the way. This is not the cluster. They are not formal. They are informal. It is this forum of people that meet to try and resolve whatever they want to resolve.

20 So the essence of it all was that SCDF would say: my members, when we talk in my department about making people available to assist, they are clear that they do not want to. So I do not know what to do, because they do not want to. So I cannot put together names. National Commissioner would say the same thing and that he supports of the late DG Manzini as far as NIA was

concerned with the inputs of the DG for the Secret Service.

So that was the atmosphere. It is security issues, domestic, even international, but it was a politically-laced engagement every time, because they would talk about exile, debating exile. They would talk about askaris. People were suspected of being askaris. So the debate just had a huge [indistinct] of those kind of issues. So it was not really easy and they were animated about it and they were clear that they do not want Ackermann. So it got to the point where...

10 ADV MASUKU: Sorry, Mr Simelane. Can you perhaps deal with the ...[intervenes]

CHAIRPERSON: Mr Masuku, I do not want to interfere with your leading of evidence, but it is almost that hour where we have to take a tea adjournment.

ADV MASUKU: That is fine, Chair.

CHAIRPERSON: We will take a tea adjournment and reconvene at 11:20.

ADV MASUKU: Thank you, Chair.

INQUIRY ADJOURNS

INQUIRY RESUMES

20 CHAIRPERSON: Thank you, Mr Masuku.

ADV MASUKU: Thank you, Chair, thank you Commissioners. Mr Simelane, you were taking us into the meetings of the, or what you call the caucus or the forum of the DG's where a lot of discussions took place and you had indicated the discussion about Ackermann and I would like us to go to that, or if you can continue with that

evidence that you gave.

ADV SIMELANE: Well, I think as, in the discussions as it just coming out that when... or maybe before I deal with Ackermann, when I mentioned the issue of who is a commissar and who is a commander, in relation to that discussion people would sit and describe how they came to acquire those titles.

So it was a matter of revolutionary pride that somebody was referred to as a commissar or as a commander for anyone who was involved with the formation that describes it, some of its members in
10 that way. It is an important thing if you are dealing with a commissar or a commander and if you know the differences, even more so.

But they would have discussions informally, not related to TRC but about how they functioned outside South Africa. Who they worked with and those types of things. So it was quite informative in that way, in the different areas where they all were.

But they would also talk about, some of them at least, at least in one... at least in two instances ...[indistinct] have indicated instances where he knew people that had been asked to, or not asked, they were commanded to go to South Africa to go and do
20 certain work of the job that at that time was being done and never came back.

As result of which there were obviously various accounting levels to which it had to be explained, you know, what occasioned people not coming back. Invariably it is people that would have been either intercepted or something that happened to them. Others would

have ended up in prisons after being charged and sentenced for terrorism acts amongst others, others you know, basically killed, you know.

So the nature in which their engagements with the machinery of the government at the time, the machinery of the government they were describing which is basically the apartheid government as they would say, was always with a sense of, in some cases hurt, in some cases anger, in some cases, I cannot describe.

10 But you could tell that this, some of these guys in what they are describing sometimes on certain episodes, they had a specific view about that particular system, about the people that emerge into working with that system at different levels.

Right, so for me when we discussed issues of the courts for example, and prosecutions, there will be an issue about no, the prosecutors they will describe him in a way that would not necessarily always agree with in respect of all of them. But the discussion would be such that our prosecutors, this is what they do, they are prosecuting our people, they did this and this.

20 Sometimes they mentioned names, I do not think I need to mention names, it is not necessary. But they had an attitude, so the attitudes towards Ackermann was deeply resentful, if I can describe that kindly. I could use worse words, but I think it was deeply resentful. They literally wanted nothing to do with him, you know.

In fact there were times when I feared for him, because one did not know what people would end up eventually doing because of

the way they felt so strongly about an individual and more so because while they described and mentioned prosecutors by name, the names that were mentioned here, Oliveira, Ackermann and Macadam.

They would mention Chris Macadam but really for some reason it would not rise to the level that they mentioned Ackermann. So it was always a mystery to me, I never asked about it, I just felt this is not my place and I leave it. But at least what we now know is that there is a problem.

10 Mr Zwele always argued that I cannot engage, me and him, I cannot engage properly with my members, because they are giving me problems, they do not want to be seconded. You know, so I do not want to have to deal with what they do to other people, because of how they feel about that. As the police we need to assess what kind of people to send over there and right now I am even having a difficulty just talking to my members about these things.

20 So that is the kind of difficulties that were mentioned. It went on further, lastly to say there were other people, or by the way, other than people who worked with the system in the past, the people who were sometimes mentioned as being possibly askaris. For example to say no, there in the system we are going to find different sorts of people.

So for me it was very clear and in the way in which that grouping of people engaged, the trust was a central issue. If you were not trusted in any way, not even just with a task, if you are not trusted to be in the room, it is a problem.

Obviously people are required to work with the colleague, because the colleague is there, the colleague has been appointed. But even when you are there, you have to have people trust you, that outside of a formal meeting that is said where they have to meet you, they can at least talk to you outside of a meeting, informally. They can give you a call. Most of the time nobody called anybody.

In fact the only person that I could call or who could call me was Commissioner Selebi. The others never called me even once on my phone, but we had each other's numbers. So we still, informal as
10 that forum was, we still contacted each other through PAs, to say I need this document from Adv Simelane or I need his views on this thing.

And I will communicate to my peers, say no you can tell them that this is my view on this particular issue. For some reason we never called each other.

CHAIRPERSON: Why was that?

ADV SIMELANE: Well for me I think they were much older than me, I think some of them were having 10 years, 15 years older than me. So generationally I was not their generation, right, it was just
20 so-called just a smart mouth over there that they had to contend with, but I was not their generation. So culturally this created distance, right.

But also because of the information they dealt with, and I said some of them were politicians, so in a way they did not filter information in conversations. And in these conversations there would

be others, so in other words it almost became standard that when these guys are meeting informally, there would be another official, you know they just paved the street to say but who is coming in, who are you, we did not call you.

So it would be people that within that group trusted each other. So they trusted me in a way and I had to learn to trust them, but you earned their trust, you know, so sometimes you would get given only little information, nothing much. Need to know basis.

10 And over the years I ended up getting to know a little bit more about what individually they thought, because privately they will tell you that no, you know my views, I hate this guy. I do not like Ackermann because, you know, he worked with other operatives of the security stage who would do the following things to our comrades.

You know, there is a guy who was sent there and then they, so they will describe the things that have been described in the public domain, except that for me they were talking about people that I did not know, but they were talking about people that they knew personally. And that they knew personally because they had deployed them or as the case may be.

20 So the conversation was that serious. And from a national security standpoint, obviously the debate as well was that the people of the system they were describing were now within the, they were working with them, we were all in the same system. So those were in special branch was still there in the police. Those who were the former ...[indistinct] NIS, they were there now in NIA and Foreign

Service. Same with defence, military intelligence.

So these guys were saying I am dealing with people who basically, barely a few years ago they were on this side of the fence and others were on this side of the fence and they are all now in one room and I must manage that. It is not easy. So the, I got a very clear sense that they have their own individual frustrations within their own departments. That are known at a cluster level.

I had the same thing at justice. And you would know and at least you should know that justice was the central point where all
10 these things were executed. It was the Department of Justice that executed everything on behalf of the apartheid ...[indistinct] from anything that came from law and order, everything that came from defence found its way in the Department of Justice.

And in that department there were those types of people and they would say no, you also watch out for this and this and that person. And I know, because one official we had to have a meeting with Deon Rademan[?], I had a meeting with him to discuss that listen, I know you have certain views about the country based on the political formation from which you come, I have views based on the
20 political formation from which I come.

We now have, it was at the time when there was after hits, government, I think... what is it called? National unit, so we discussed that we even had a government of national unity at some point. So basically we were joking to say we are all on the same side now, so we are all comrades all of a sudden.

But as a way of softening each other in a way that would say we could trust each other, and we made a deal about how I would run the department and how it would impact people that knew their work and I needed him to engage with them. Whether they liked me or trusted me or did not trust me, whatever the case may be, he would be the one that would engage with them so that I am able to work.

So if in a department, without pretty much security issues as the other departments, that is the engagement I found myself having to do to get stuff done. So I could imagine that I wonder what it is like
10 in the department where people are armed, you know, God knows, you know.

So fortunately my comfort was that I never got to know the type of detail of information that I really did not need to know. You know, those things were handled ...[indistinct] that you only need to know what you need to know, it is on a need to know basis. So I did not know anything about intelligence at all levels.

I did not know anything about and I was not given access to anything of the sort. At the most what I could get is what we were talking about. So that was the atmosphere. So if there was this kind
20 of problem with Ackermann, the question as well, you know, at the end of the day we have a programme that we must account for in the cluster about where this is happening.

So in one cluster meeting, the formal cluster meeting I had with all the DGs, this issue came up as a progress matter and it was reported by the forum of DGs individually that well, in my department I

had this problem, in my department I have this problem. And I summed it up as that look, you know, there have been discussions, this is an issue.

Then the cluster said, you know, can you and the DGs, the forum of DGs, can you go outside, discuss this matter. But can you go and have a meeting, facilitate a meeting between them and the NDPP and yourself on behalf of the cluster and discuss what the cause of this thing is so that we can see how it can be resolved and come back and report. So that was the issues.

10 So that is how I then proceeded in that capacity to ask my PA to say look, can you contact Adv Pikoli's office and inform him that I would like to have a meeting with him, there is an issue that has come up in the cluster that I need to discuss. I do not remember if in that meeting in the cluster a representative of the NPA was there, because every DG comes to a cluster meeting with support staff, some officials.

 And I always had staff from the department, my department in that sense, HQ, but there was also always somebody from the NPA. I think a lot of times it was Willie Hofmeyer that would come. I cannot
20 remember if he was there in that meeting, but we made sure in the cluster that the people that provide support must be of a seniority to reflect the issues the cluster discusses, so nobody below chief director could attend a cluster meeting formally.

 So if a DG cannot come, send the DDG or a chief director at the most. If not, you are regarded as absent. So fortunately most of

the time the DGs did come themselves, but they would still come with whoever is the support, for ease of follow-up afterwards anyway. So that meeting was set.

So I then asked that no, can I see who, before the date of the meeting, so that I can give him a heads-up of the nature of the issues. So he agreed. So I went to the NPA offices, I met him, I told him, I said that you know, Vusi, there is this issue that has come up, you obviously know about it from the past and that of type of thing. So he knew about it, that no, I know that there is these types of views.

10 I do not know if he knew the extent to which they were expressed, but everybody knew that there was an issue with Ackermann and I said well, they raised this issue and they will say that remove him. So it was clear that no, I am not going to do that, I am not going to remove him, why must I remove him.

You know, so I said well, these are the arguments that guys raise when we discuss, then he said no, but I also have to deal with the same problems they have. I have got people here that used to work in the other government and now they are here, everybody must deal with these things, so I am not going to remove him.

20 So when I left his office I was clear that okay, there is going to be a meeting where, when this issue comes up, at least I know what he is going to say. And I did tell the others, that well guys, you know, he is strong, he does not feel that it is right, he does not want to do it. So then no, it is fine, let us have a meeting.

So we had a meeting in the west wing, we had a meeting at

the west wing. I cannot remember who he came with. I seem to recall that he came basically with the essence of the PCA notice, the guys that we knew worked there. But I do not want to mention it, because I cannot really recall.

But at least in my recollection Ackermann was in that meeting. He definitely was in that meeting. So again it was a forum, it was not a cluster meeting, the formal cluster meeting. This was the forum, the informal, the working group we had a meeting with them and Ackermann ...[indistinct] the third or fourth person, but I do not
10 remember.

But there was a time in one meeting where the other members of the PCLU we met with, I just cannot remember. I think it was the west wing. The reason why I keep saying it was the west wing, because I remember correctly no other department would host that kind of meeting.

So for orderliness and administrative orderliness more than anything, the west wing was always the best place to meet, because that is where all meetings of clusters take place anyway. So if we were to meet at correctional service, the question about why would
20 we meet at correctional services? Right, unless the ministers are meeting there and we are then called, which sometimes did happen.

So I seem to recall that these meetings took place in the west wing. There was one room that was common, I think it was room 157 or something like that, but that were not the room where we met. But in this meeting definitely, I think for my purposes today, Ackermann

was there. So naturally there is tension.

Nobody walks in, like okay, you know, how is it, what is up, so you know, that type of stuff. Nothing major, you know, polite but you can sense the tension that it is there, right. Everybody sits down, naturally I am chairing that meeting ...[indistinct].

Then I say guys, we are here for this, it is informal. There were other people, I think there was a chief director from the presidency who was responsible for the cluster who was there. I seem to recall that there was a chief director from DIRCO who was a
10 representative of the DG of DIRCO in the cluster, I think he was there as well.

I cannot remember if the general of the army was there at the time. I just do not remember. But the other DGs were there. Naturally not the DG of Transport, not the DG of Social Development, but correctional services and a representative of the DG of Home Affairs, if I recall, was there, not necessarily the DG. So put the matter on the table to say this is the issue.

I cannot remember the order in which the discussion went, but it was an open discussion and you know, obviously there is back and
20 forth. The essence of that meeting is that Adv Pikoli was clear that no, I am not going to do this. That is how the meeting started.

I am not going to do it, I do not agree with you guys. Mr Ackermann is here, you know. So they also started explaining what the PCLU really does, you know this is what the PCLU does, I think as Mr Ackermann indicated, there was an indication that no, he was

appointed, he was special director by virtue of a proclamation and this is what they do across the board.

TRC matters is just one of the matters that they did and so forth. So there was a type of explanation. So when it came to the issue that well, this is how the cluster feels at the end of the day, Adv Pikoli was like no, I do not, I still do not agree, I am not persuaded, I am afraid I cannot. You know.

So that is how the meeting basically went. You know, it went on and on and then the issue was that okay, so but I mean what is the
10 issue. So Mr Ackermann explained how they worked, said no we are meeting people, they are telling us things about which they are complaining, crimes that they believe were committed in quarto, in the sense that this is what they were subjected to.

Either falsely accused of being an apartheid spy as it were and they were subjected to some treatment, got exonerated, so when they came back, they want justice for how they were treated at the time. There are those types of people. So the issue was, while you guys are actually meeting, people taking statements about these things.

20 Yes, we cannot ignore them, that is what Ackermann response, no we cannot ignore that if people come to us and with information, we must take that into account, right. Then the debate was, no, but hang on, why would you deal with those matters that happened, so those who were commanders or commissars in exile then started raising their voices to say no, but why would you deal

with that kind of issue?

Because according to them they said that is not a TRC matter in the agenda that we have to deal with. That thing happened outside in exile, why do you have to deal with that kind of matter? And if I recall correctly, the response was no, there are crimes, people are complaining, they must ...[indistinct] at least we must look at what they say. We have got statements.

I think in some cases they indicated that, you know, there were one or two dockets that in his view they were ready even to be
10 prosecuted. So at that time they, the temperature in the room had basically risen to the extent that no, but this is wrong, this is not how it is supposed to be.

So we did have a debate to say no, but as far as we understand where the mandates is, is the matters that are based in that reports, the people who did not get amnesty, that is what we are dealing with. They are not dealing with any other crime that was committed outside of South Africa by whoever complains about that particular crime.

How does that fit in? Because that seems to appear to be a
20 subject that falls outside of what the mandate is. You guys are doing your own thing, some of ...[indistinct] you guys are doing your own thing, why are you doing these kind of things. Debates went back and forth.

Then obviously we knew that there were other prosecutions that were being dealt with, because we had received reports that

there is a matter in progress. We also knew about the matter of Reverend Chikane that was being attended to, you know. So Mr Ackermann put it in that context that no, there are all these other matters that we are running with and nobody had a problem with that.

But there was a sticking point about this one. Then, you know, as obviously the pressure went and the ...[indistinct] went up, then Mr Ackermann said no, but we are going to prosecute, we are ready. Do not worry, we are going to prosecute, we have got a matter that we are going to prosecute this side and when we are done in this
10 matter, we are also going to prosecute this side.

And some say, what are you talking, what do you mean this side? What do you mean you are going to prosecute this side? Then he said no, these complaints that the commission had received information, one or two of them were ready for prosecution. So when they finished prosecuting this matter, he actually did mention the matter, it was not the Reverend Chikane matter, there was a name, I just do not remember the name.

But he did mention this matter, we are going to prosecute these individuals and when we are finished, we are ready on this one,
20 we are going to prosecute on this one. And in fact there is a list of people we are going to be looking into, who would be subjected to prosecution if there is evidence. Then he produced that list. He took out that list.

I said no, we have got a list here, you know. So when obviously produced the list, big five, everybody you know, behaves in

a way we are shocked, but okay you even have a list, what is that? No, the list of, and I think because of the previous debate that they had in 2002/2003 or whatever, 2004, I suspect others must have had some idea about what he was talking about.

But the list was shared. Others said no; let us have a look at that list. I also saw the list. The list was... I had a look at it, I saw the names there, I cannot remember the actual number of people there on that list, but it was a number above 20, there were over 20 people on that list and I did recognise some names.

10 In fact, some had even mentioned that no, my minister on this list, this minister is on this list, you know, I think ...[indistinct] was on that list and the Minister of Police at the time was on that list, Mr ...[indistinct]. And there were others, I mean the former president Mbeki was on that list, it was top of that particular list.

So and I think the term that was used was the decision making structure in Lusaka, the command structure, it is those individuals that were on that list. In my statement I said the meeting descended to chaos, because to me it did descend to chaos in the sense that the orderly way in which I could ask somebody to raise a
20 hand and everybody just started speaking at the same time.

Started speaking at the same time, said no this is not right, it is not going to happen, this is not... and in fact other stood up, not necessarily to leave, stood up and paced about next to the chairs where they had been sitting. It was a big problem, you know. I said no but guys, we need to deal with this. He said, no, no...

Adv Ackermann tried to justify, to explain the need for those prosecutions.

And from a prosecutor's standpoint, to me, like okay, if there is a crime, there is a complainant and it meets the necessary evidentiary burden as a prosecution. But what was an issue for me was that, but it looks like you are not talking about these issues that we are supposed to be discussing.

You seem to be talking about people who complained about how they were treated outside of South Africa. How is that, you know.

10 And the debate was those kind of matters in any event, if you want them dealt with, we must get a mandate for dealing with it.

The cluster must get a formal mandate from cabinet; you guys must do the necessary paperwork to take those issues to cabinet for discussion so that we report, that it appears that there are new issues now or that the cluster is mandated to look into. So that we know if it really has gone that far, but they understanding is that it is not those types of matters.

COMMISSIONER KGOMO: Mr Simelane, I am trying to follow the list, was there something like 'us and them', sort of slate like lists and
20 how would one say define the 'us' and the 'them' or this list or the other. I am just interested to know even whether it could have been along racial lines or political lines. Could you help, if you can?

ADV SIMELANE: no, it was not the list of the type where you can say there are slates. It was just one list. To me it looked like it was on the basis that the highest decision making structure of the ANC in

Lusaka, whoever was in that structure, were the people on that list.

On the basis that assumed it is people that would have given command orders for certain activities to take place obviously in South Africa. So those who are within the TRC matters. Also that even there in exile, if there was an issue about, of discipline that needed to be carried out, there would have been an approval for it by people in that particular structure, if not that whole structure.

So to the extent that somebody is complaining about how that person was treated in camp, that structure would have had the
10 responsibility either to protect or it would have given a command that something happened. So that would have been the basis of prosecutorial culpability if the complainant was able to give those relevant facts and there was evidence to that effect.

So it was just one list. So there was not another list to compare to in that particular sense. But the 'us' and 'them' was coming in, in the context that who are you to be telling us about this list? So for me it clearly related to how he was perceived.

And he had been perceived as an apartheid prosecutor, to say we are not going to be told by you how you are going to deal with
20 issues that affects us in this way. And in fact you are actually demonstrating to us now who exactly you are by introducing what you are now introducing to us. Even worse, you now even have a list.

So basically to me that discourse seemed to confirm what we had been informally discussing earlier, with the views expressed about why people did not want Ackermann, because of how they

perceived him based on what they personally knew or what they have been informed of or what they heard even, either in exile or when they got home or on both occasions.

But it seemed quite clearly and it seemed to be established that there is a history that they had with Ackermann or with individuals who were associated with Ackermann of the 'them' being the apartheid regime officials, if I can use that term. So that is the 'us' and 'them' that I see. But the list itself it was just one list.

10 So naturally it descended to, you know, you are prosecuting our leaders, so you are actually fighting with us. Now that conversation was also in the context of the broader political debate about TRC matters in the country and the agenda for relation building, reconciliation, to say you know, you had that as an agenda of government which everybody in the country is asked to buy into, nobody is forced.

20 But we are asked through persuasion, moral persuasion, whatever persuasion to say however you feel about the past, we are trying to go forward on a nation building, so please cooperate with that bigger project in the best interest of everybody. And I think that still continues to this day.

So it was always understood that there were always going to be sceptics, there were always going to be those who are just completely opposed and we know there were people who opposed. You remember the AWB carried on with its activities in the different political formations, there were always on a regular in the media talks

that suggested or gave an impression that others are not fully with the programme, but people were cooperating.

So the fact that there was no ...[indistinct] and protests does not mean that behind the scenes there were no efforts to undermine the nation building projects. Just like we all can sit here and not assume or believe that there may be others who are still undermining nation building projects for whatever political reasons, we do not know.

10 As a cluster we simply worked on the basis that we assess things and risk on a worst case scenario basis. That we assume the worst, so that if the cluster has to plan and ...[indistinct] departments in the cluster has to plan, they must plan on the worst case scenario basis.

And naturally those in intelligence, even had more information than we knew some of us in the cluster, you know, probably even never know. So they handled that as best as they could. So the idea was to prevent a situation where there could be anything of the type that results in some form of armed conflict or physical, a form a violence on both sides.

20 Even normal community projects, they were looked at with an elevated eye because the assessment had to be whether, you know, is it just a normal protest or is it the type of protest that is linked to other bigger and broader issues.

So as a cluster we would take regular guidance from NIA about those things and to the extent that they would be foreign,

alleged foreign involvement, security service would take care of that. And we would get assurances there is nothing to worry about. That is why there have been no reports.

Only when there is a need to report something will it come through, but for now just accept that we look into those issues as far as our mandates is concerned and there is nothing to report. So there is nothing actionable that requires your attention as a cluster. So when this thing came up in this meeting, that naturally also came up to say we are dealing with an apartheid prosecutor here, we have
10 a problem, it is not going to happen. So everybody turned to the NDPP to say no, but we cannot have this particular problem, you know.

ADV MASUKU: Thank you.

ADV SIMELANE: I cannot remember whether he was asked to say no, but you know about the list or not. But the mood was such that if Ackermann had sprung the list, he must have surprised the NDPP without his knowledge, or there was going to be an explanation to the cluster about why the PCLU was going to be dealing with those matters.

20 So both of them must have known that the list would be produced to further explain in the hope that people would be persuaded to understand. It just did not turn up that way, actually if that was the plan, it then backfired because it achieved the complete opposite. So there again Adv Pikoli said okay, no that is fine, if that is the case I am going to remove him.

I agree I am going to remove him, but you must know that if I need his counsel, I am going to ask him. So for me it was like, oh, thank God, he has agreed. So because it is done. And the removal, it is not removal of Adv Ackermann from being head of the PCLU. It was remove him from being in charge of TRC matters.

So in the menu of issues of the mandates of the PCLU, whatever the mandate was, if it is five issues, this one of TRC just remove him so that our people do not have to work and be led by somebody they have this kind of views about. That is all it was about.

10 So as soon as Adv Pikoli agreed that no, it is fine, you know, if people feel that way, he will reluctantly remove him. He was clearly reluctant, because he was clear that he does not think it was necessary. Just like the others did not understand why he does not think it is necessary.

But the purpose of the meeting was not to explore people's thoughts in that sense, it was just to see what is the cause, if this is your deal breaker for you, if he is now removed as... or he would be removed as promised, then that should be the end of the issue.

20 And then that is how the meeting ended, because it was already not a pleasant meeting ...[indistinct] we have agreed there is nothing else, you know, but there were humming and ...[indistinct] the meeting is over, let us end it. And that is how the meeting ended.

So as I say in my statement, that decision in that meeting, I then took to the cluster meeting where I reported that the mandates I was given as co-chair of the DG is to go and engage with this issue

that affects cooperation is now resolved, because we managed to secure from Adv Pikoli that Adv Ackermann would be removed from this TRC matters in light of the views.

So going forward we can expect that the issue of cooperation will not be an issue for us to be concerned about, because we now expect cooperation between the two. So whatever was causing the police to not put people forward, that decision, that resolution can be accepted to me that going forward the police would do, so.

That is basically what happened. So for me that was the end
10 of my mandate by the cluster that go and attend to this issue with the DGs. That was the end of it. It was just a pure administrative issue, nothing to further deal with. So I sat back like every other DG going forward and dealt with the normal work of the cluster, although we still did continue to discuss in that forum of DGs the various matters. I do not know if I have...

ADV MASUKU: Yes, thank you for that, Mr Simelane. But can I then suggest to you that the discussion around Ackermann, if it were to be regarded as interference with the NPA, it would only be interference to the extent that he intended to prosecute the... he intended to
20 prosecute people who were involved in the liberation struggle. Would I be right?

ADV SIMELANE: Personally my observation is that with these TRC matters, as I said, you know the people that one was dealing with, many of them were politicians in their own right, first and foremost. The fact that they became DGs would have been a function of how

they were deployed politically. That is my sense.

So they were politicians in their own right and had their views politically in their own right. In fact some of them were senior members within the political party in the ANC anyway.

So what one got was views from people who will deal with issues of their departments and the cluster in the context of their positions as directors general, but in those conversations they would introduce things that they would have had discussions on outside of government within a political party in whatever formations that, you
10 know, within the political party and shared that information.

Naturally it was enriching, but some of it did not have anything to do or was too relevant for decisions that we needed to take. But it assisted to understand the thinking politically into these particular matters. So some of the thinking went, you know, when people deal with these types of matters, there would be wild allegations, wild.

Wild of the type that I do not think they are worth mentioning here, but we do know and I think Mr Ngcuka did give an indication of how a wild allegation affected him at some point. So there were wild allegations made up by different people of the type.

20 ADV MASUKU: Ja, but I think... [intervenes]

ADV SIMELANE: You know, so in the sense that... [intervenes]

CHAIRPERSON: Mr Masuku, I do not think your question has been answered.

ADV MASUKU: Yes, that is what I was trying to follow up on.

CHAIRPERSON: Yes, I think you must try and...

ADV MASUKU: Preen it.

CHAIRPERSON: Take control of your witness, because at times he goes astray in answering your direct question.

ADV MASUKU: Yes.

CHAIRPERSON: Yes, you may put your question directly.

ADV MASUKU: Thank you, Chair. The question I was asking you, Mr Simelane, was to the extent that there are allegations, there is an allegation that the DGs were interfering with the work of the prosecutors in the TRC matters. The example you have given us
10 appears to be an example in which the target of prosecution were members of the, were people who have been involved in the apartheid struggle. In other words, Ackermann... [intervenes]

CHAIRPERSON: Is it not the liberation movement?

ADV MASUKU: The liberation movement, yes. In other words there were no... the discussion as you, the evidence you have given does not suggest that there were discussions around the prosecution, for example of former apartheid generals and that was, that is what this group of DGs were concerned about. They were more concerned about how Ackermann had decided or had given them the view that
20 he would be prosecuting, amongst others this particular group of people which was in the list. Would I be correct to say that to the extent there was the allegation of interference in prosecution, it was not Ackermann prosecuting apartheid generals, but it was Ackermann prosecuting those that were involved in the liberation struggle.

ADV SIMELANE: Ja. In the context of that discussion and the list

that he produced, it was felt that that is what he was doing. But in the context of the cases he had also mentioned that fell within the mandate that he was prosecuting, that group understood that that work is ongoing anyway. But none of which was being interfered with as far as at least that, as far as I recall that group thought, those prosecutions were going to go ahead. But the new one that he had introduced in that particular debate was what they were engaging with to understand why.

ADV MASUKU: Okay. So can you perhaps just give an indication of
10 the precise problems, other than the fact that the, this group of DGs felt that the, they felt that the support that was being withdrawn, or that was not being given to the NPA was based on a lack of trust. Were there any other factors that would have impeded for that, that came from the DGs that would have impeded Mr Ackermann from prosecuting former apartheid generals for example or former apartheid agents who were, who had not been given the amnesty by the TRC amnesty committee.

ADV SIMELANE: Not as far as I know. But what I recall and
20 understood the cluster programme to be relating to as far as cooperation was concerned, was the numbers of, and I gave you this I think in my second, in my supplementary statement on pages, paragraphs 52 to paragraph 58. Ja, in a way. So what really was expected as far as cooperation is concerned is naturally the numbers that the NPA would have indicated in its... I do not remember a number specifically, but it would have been an issue about the

numbers of people, the quality of the people in terms of their ranks, their experience to do the work necessary, that would have enabled the matters to be dealt with. So those issues were being discussed in the context of it would have been important to assess that it is the right kind of people that would attend to the matter without creating any difficulties.

ADV MASUKU: Now Mr Simelane, I do want us to go back to the notice and the specific allegations that were raised in that notice for your attention. Commissioners, the, we can now start referring to the
10 bundle, the Simelane bundle, starting with the notice. But the specific portion of notice that I intend to look at is paragraph, page 3 which says particulars of implication. And then it says the knives are out for Pikoli and then there is a whole allegations that are set out there. Mr Simelane, you would have read that, those allegations. Right?

ADV SIMELANE: I read the notice.

ADV MASUKU: The notice. And you would have read the allegations, specifically allegations on which you were asked to respond.

ADV SIMELANE: Yes.

20 COMMISSIONER KGOMO: Sorry, you are referring to what paragraph?

ADV MASUKU: The notice.

COMMISSIONER KGOMO: The notice, yes.

ADV MASUKU: Yes.

CHAIRPERSON: Page 3.

ADV MASUKU: Page 3.

COMMISSIONER KGOMO: Page 3, okay, I am there. Where is...
[intervenes]

ADV MASUKU: Under the paragraph, particulars of... [intervenes]

COMMISSIONER KGOMO: Yes, knives are out for Pikoli, yes, okay.

ADV MASUKU: Yes.

COMMISSIONER KGOMO: Thank you.

ADV MASUKU: Now if you look at paragraph 260, the allegation in
260, it says:

10 “Shortly after the Chikane plea and sentence
 agreement had been confirmed in court, a
 newspaper article appeared in the Rapport
 newspaper of 19 August 2007 in which it was
 claimed that the NPA was preparing to prosecute
 ANC leaders. According to Pikoli, the claim was
 made on the basis of a note that Ackermann had
 prepared more than four years previously, when
 he first looked at the universe of possible cases.
 That note was forged to suggest it was made
20 recently and that Ackermann was targeting the
 ANC leadership. A copy of this newspaper article
 is annexed.

The NPA responded by way of a press statement
dated 21 August 2007 in which the allegations
made in the Rapport were denied. A copy of this

press statement is annexed hereto marked FA37”

And the pages is numbered there. Now you in your evidence you have explained that at some point, one west, by reference to the west wing meeting that you did see a list produced by Ackermann of ANC leadership who would have been the target of prosecution by him. You recall that evidence, right?

ADV SIMELANE: Ja, I recall the list that he produced in terms of which he said they will prosecute this side and that side.

ADV MASUKU: Right. And then the next paragraph 261 it says: at
10 this time and this implicates directly you:

“At this time, the then Director-General of the Department of Justice, Menzi Simelane, had approached Pikoli and raised concerns about Ackermann’s handling of the TRC cases. He asked Pikoli to relieve Ackermann from his duties in respect of those cases. Pikoli declined to do so.”

From what you have said, from the evidence you have given, is that statement correct?

20 ADV SIMELANE: Which statement?

ADV MASUKU: The statement in paragraph 261 which I have just read.

ADV SIMELANE: No, it is not correct. The last sentence is, the second last sentence is not correct. I did not ask him to relieve Ackermann, I told him what the meeting discussed and what would be

said in that meeting.

ADV MASUKU: Right. And of course if the applicants in that case had asked you to comment on that, you would have provided the context in which this was said, right?

ADV SIMELANE: I would have provided them information about what I specifically told Adv Pikoli.

ADV MASUKU: Yes. And then they say:

10 “After the newspaper article was published, Pikoli
 was summoned to a meeting of the subcommittee
 of the Justice, Crime Prevention...”

... [intervenes]

ADV SIMELANE: Sorry, can I say something because I do not like the way this is going. Statement in paragraph 261 was read in the context of paragraph 260 and it suggest that it took all together. I know nothing about paragraph 260. I only heard... [intervenes]

ADV MASUKU: You do not have... [intervenes]

ADV SIMELANE: Ja, 260. The first time when I heard about any forged letter or whatever was in this forum. At the time that we were discussing these issues, I am not aware of that thing.

20 ADV MASUKU: Yes.

ADV SIMELANE: So the two was separate, they do not follow each other. What is in the notice seems to suggest that 261 is related to 260.

ADV MASUKU: Yes.

ADV SIMELANE: I am saying it is not, I do not know what 260 is

about. What I know is 261 to the extent of giving the correction.

ADV MASUKU: Okay.

ADV SIMELANE: So I do not know if the list that was produced by Ackermann in the meeting is the same as this thing referred to in 261.

ADV MASUKU: Okay. And then in 262, it says:

10 “After the newspaper article was published, Pikoli was summoned to a meeting of the subcommittee of the Justice, Crime Prevention and Security (JCPS) Cabinet Committee on post TRC matters, which was held on 23 August 2007.”

And then it says:

“This meeting was attended by several cabinet ministers, directors-general and Selebi. Cabinet Ministers included the Minister for National Intelligence Services Ronnie Kasrils, Minister Mabandla, and Minister Skweyiya amongst others.”

Were you in this meeting?

ADV SIMELANE: No.

20 ADV MASUKU: Did you know anything about this meeting?

ADV SIMELANE: No.

ADV MASUKU: Right. And then if you look at paragraph 262:

“The fact that there was a special Cabinet Committee on the post TRC cases speaks volumes. The existence of such a high-level

committee devoted to a particular class of criminal cases pointed the importance of these cases to Cabinet, and that the cases had become the subject of political intervention.”

What is your comment on that?

ADV SIMELANE: I am not sure what comment is sought from me, that is an opinion of somebody else and I do not think I need to comment on somebody else’s opinion.

ADV MASUKU: You, well the reason I asked the question is because
10 you gave a... your evidence on the Cabinet subcommittee was that there was a, which was a, which was mirrored by the committee of the cluster of the DGs. It is in that context that I was hoping that you would comment on whether you find it a complete oddity that there would be a Cabinet interest, or especially Cabinet committee that looks at these particular cases? It is really your view, but if you do not want to say anything about it, that is fine.

ADV SIMELANE: No, I do not think it would be amiss if Cabinet on a matter of that type deemed it necessary to have a committee specifically for those matters. It sometimes does happen. Those
20 types of subject matter committees are referred to as inter-ministerial committees, IMCs. So for example if South Africa is going to host an international conference, there would be an IMC that would oversee the preparations towards that particular conference. So I do not know if this Cabinet committee on post TRC matters seems to be referring to that committee. But there was an IMC on TRC matters. So I do

not know if it is the same thing that is referred to, but there was an IMC.

ADV MASUKU: And then if we go to paragraph 264, it records Pikoli's account of this meeting in his Nkadimeng 2 affidavit. Is that the, those at the meeting immediately demanded answers from him about TRC matters. You were not in this meeting so you cannot really comment on it.

ADV SIMELANE: Yes.

ADV MASUKU: We will go past that. But you were asked to, the
10 basis of your, of the notice was that you should pay attention to that particular paragraph. And then paragraph 265, they referred to a meeting of 28 August 2007:

“On 28 August 2007, Pikoli received a faxed letter
(dated 8 August 2007) from the Minister, which is
annexed hereto. She referred to the meeting held
on 23 August 2007 and noted that SAPS held a
different view in respect of the forgery of certain
NPA documents. She complained that she had
not been advised of the decision to investigate
20 and wanted to know the basis thereof.”

Are you aware of this letter of...

ADV SIMELANE: I am not.

ADV MASUKU: Were you ever involved in advising the minister at all
on this... [intervenes]

ADV SIMELANE: No.

ADV MASUKU: Then in paragraph 266 it says:

“Pikoli responded to the Minister’s letter by way of a letter dated 29 August 2007, a copy of which is annexed. In this letter Pikoli referred to the 23 August 2007 meeting.

Which there is a quote:

10 “Which I considered to be most unpleasant. Despite the information I put before the committee, I am both surprised and disappointed to see that I now stand accused of misleading, alternatively having lied to the subcommittee members.”

Did you ever advise the minister on this particular complaint by Mr Pikoli?

ADV SIMELANE: No.

ADV MASUKU: And then paragraph 267 it says:

20 “Pikoli confirmed that there was no investigation by the NPA “against the 37 ANC leaders including the President of this country, contrary to the assertions of the National Commissioner of Police”. He added that it is:

“Clear that my account of the position as it relates to the NPA’s handling of the post TRC matters has been completely ignored.”

Do you have any comment about it? About that paragraph?

ADV SIMELANE: No.

ADV MASUKU: But were you aware in your time as DG of any position taken by the NPA in respect of the 37 ANC leaders?

ADV SIMELANE: No.

ADV MASUKU: And then in paragraph 268:

10 “Pikoli reminded the Minister that his predecessor had satisfied himself that there was no basis for the leadership of the ANC to be investigated and he had briefed the then Minister of Justice, as well as the President. Pikoli also advised the Minister that all the dockets relating to the TRC cases, which had been stored at the Office of the DPP in Pretoria, had been handed over to the SAPS in 2004.”

Are you in a position to make any comment about that?

ADV SIMELANE: No.

ADV MASUKU: And the reason I read this, Mr Simelane, is because the evidence leaders wanted you, they say you are implicated because of these particular paragraphs that I am reading to you and it
20 comes back to your earlier remark at the beginning of your statement.

And then in paragraph, with reference to paragraph 269:

“Pikoli concluded his letter by requesting an urgent meeting with the minister. Pikoli also requested an opportunity to appear before the National Security Council “to give a true account

of this issue”.

Are you aware of that engagement between Pikoli and the minister?

ADV SIMELANE: No.

ADV MASUKU: Do you know of any whether the minister acceded to Mr Pikoli’s request to address the National Security Council?

ADV SIMELANE: I do not know. I do not know if it was mentioned in passing at some point, I do not recall it.

ADV MASUKU: Then:

“The Minister did not respond to Pikoli’s...

10 The last paragraph, 270:

“The minister did not respond to Pikoli’s requests and the meetings never took place. On 27 September 2007 Pikoli was suspended from office by...

... [intervenes]

COMMISSIONER KGOMO: 27?

ADV MASUKU: Sorry.

20 “On 23 September 2007 Pikoli was suspended from office by President Mbeki. Shortly after his suspension he learned that Ackermann had been relieved of his duties in relation to the TRC cases.”

Did you have anything to do with that, or do you know anything about the paragraph, the allegations made in paragraph 270?

ADV SIMELANE: No. I am aware that at some point, I cannot

remember the date, if that is the date, then... but I do remember that there was a suspension of Adv Pikoli at the time.

ADV MASUKU: And then the shortly after, the part that talks about Ackermann having been relieved of his duties in relation to the TRC cases, it appears to have come as Mr Pikoli... sorry, as the allegation in the Calata affidavit suggest, shortly after the suspension of Mr Pikoli on 23 September 2007. Would you have any recollection of when Mr Ackermann was suspended?

ADV SIMELANE: No.

10 ADV MASUKU: And at this time in 2007 you were still the DG of the department?

ADV SIMELANE: Yes.

ADV MASUKU: And you would have had no, nothing to do with the suspension. You would have... I mean he was not reporting to you, he was not in your department; you would have had no power to suspend him. Am I putting it correctly?

ADV SIMELANE: To suspend who?

ADV MASUKU: Ackermann, Mr Ackermann.

ADV SIMELANE: No.

20 ADV MASUKU: Who would have had the authority to suspend Mr Ackermann?

ADV SIMELANE: Whoever in the NPA was responsible for him.

ADV MASUKU: The NDPP, I suppose. The National Director of Public Prosecution.

ADV SIMELANE: Well it depends, because the other thing that must

be remembered is that the NPA is a programme of the department, so the head of department is responsible for Public Service Act and Public Service Regulation enforcement and those regulations. So if it would have been misconduct on the basis of that, it would have been the DG would have done it.

ADV MASUKU: Ja.

ADV SIMELANE: So it would have been me.

ADV MASUKU: But you did not suddenly...

ADV SIMELANE: There was never any matter regarding
10 Mr Ackermann that would have required disciplinary measure in that sense.

ADV MASUKU: Yes. And then in paragraph 271 and this would require your response:

20 “According to Ackermann, he was summoned to the office of Adv Mokotedi Mpshe, who had been appointed acting NDPP. Mpshe advised Ackermann that he was relieved of his duties in relation to the TRC cases with immediate effect. In his affidavit (FA8), Ackermann asserted that he had “no doubt that Adv Mpshe received a political instruction to remove me from these cases.” Ackermann advised Mpshe that removing him from the TRC cases “would not make the cases go away.” That statement has also proved to be prescient.”

Do you recall, I mean what is your comment on that question, because you are aware that in fact that political instruction alleged to have been given to Mpshe possibly came from you?

ADV SIMELANE: Possibly came from?

ADV MASUKU: From yourself as the DG. We will get to that allegation, but it, you are now aware having listened to the evidence of the evidence, or was read the papers of the, some of the statements that were presented here. The allegation was that it was you, in fact it is Ackermann who said that in his evidence.

10 ADV SIMELANE: No, it should not have come from me.

ADV MASUKU: So you did not have any... did you have any discussion with Mr Mpshe about Mr Ackermann?

ADV SIMELANE: I do not recall it. I do not recall it.

ADV MASUKU: And then paragraph 272:

“Writing in his 2015 affidavit in Nkadimeng 2, Pikoli observed the following:

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

The political interference or meddling that I have set out in this affidavit is deeply offensive

to the rule of law and any notion of independent prosecutions under the Constitution. It explains why the TRC cases have not been pursued. It also explains why the disappearance and murder of Nokuthula Simelane was never investigated with any vigour and why the pleas of her family and her representatives were ignored.”

Do you have any comment about that particular allegation?

10 ADV SIMELANE: No.

ADV MASUKU: Are you aware of any political interference or meddling in the cases that involved the TRC cases?

ADV SIMELANE: No.

ADV MASUKU: Then paragraph 273 and then the paragraph there is, it says:

“Ackermann concluded similarly in his 2015 affidavit:

20 “There is little doubt in my mind that the investigation and prosecution of the TRC cases have been effectively stopped by machinations that took place at a level above that of the NPA. Such interference serves to explain why the Simelane matter, as well the bulk of the TRC cases, have not been seriously investigated or prosecuted. In so doing the

rule of law has been undermined and a deep injustice has been committed against the family of the late Nokuthula Simelane, as well as the families of other victims of apartheid era crimes.”

Do you have any comment about that?

ADV SIMELANE: No.

ADV MASUKU: Mr Simelane, you would have no comment at all about whether the investigation and prosecution of the TRC cases
10 have been effectively stopped by machinations that took place at a level above that of the NPA?

ADV SIMELANE: I would not be aware. I was not involved in any of that, so I would not know.

ADV MASUKU: And then paragraph 274:

“Now with Pikoli and Ackermann out of the way, government was in a position to appoint compliant officials to lead the NPA and take charge of the TRC cases. Going forward the TRC cases were now firmly frozen and no
20 amount of lobbying and agitating by families and their representatives would move the new leadership of the NPA to act.”

Mr Simelane, would you say that... I mean would you agree with that statement?

ADV SIMELANE: In relation to my appointment, I do not agree with it.

I do not know about the others.

ADV MASUKU: Why do you not agree with it?

ADV SIMELANE: Because there was no matter that was presented to me by way of a report that said the matter is ready for prosecution and it was never prosecuted. Secondly there was no matter that was submitted to me in which it was indicated that the matter is ready for prosecution. In the reports that the different units gave or would have given was that these matters remained under investigation.

ADV MASUKU: Yes. And then the next paragraph deals with the
10 Ginwala inquiry and then says:

“The years following the suspension from office of
Pikoli and the removal of Ackermann from the
TRC cases were marked by an almost total
absence of activity on the TRC cases.”

ADV MASUKU: Was that your experience when you were either the
DG or sorry, at this time you were now the NDDP?

ADV SIMELANE: At the time that I was DG during Adv Pikoli's
suspension, I do not know, because I was the DG. By the time that I
was in the NPA as deputy National Director and later as NDDP, I do
20 not agree.

ADV MASUKU: Why do you not agree?

ADV SIMELANE: Because as I indicated earlier in relation to 274, the
reports that were submitted to me verbally or in writing, if the way I
just do not recall, they indicated that the matters are under
investigations.

ADV MASUKU: And then it says that:

“On the same day that Pikoli was suspended on 23 September 2007, the President announced the creation of the Ginwala inquiry into fitness of Pikoli to hold the office of the NDDP in terms of Section 12(6)(a) of the NPA Act. Dr Freddy Ginwala was appointed on 28 September 2007 to head the inquiry.”

You remember that inquiry?

10 ADV SIMELANE: Yes.

ADV MASUKU: And then it says:

“According to Dr Ramaite...”

That is paragraph 277:

“Then the acting NDDP...”

Sorry.

“According to Dr Ramaite, the then acting NDDP, when the President established the Ginwala inquiry, the SAPS declined to further investigate the matters, pending the conclusion of the commission.”

20

Were you aware of that decision?

ADV SIMELANE: No.

ADV MASUKU: This was disclosed on, in his 31 January 2013 letter to Thembi Nkadimeng.

“The reference to a decision to refuse to further

investigate is a misnomer since the SAPS had already refused to investigate the TRC cases as far back as to 2003. There was no legal or other basis for the SAPS to continue refusing to investigate the TRC cases pending the outcome of the Ginwala inquiry.”

I do not think I should ask you to comment on that one, because it is not important.

“In the Ginwala inquiry, the...”

10 That is the next paragraph 278.

“In the Ginwala inquiry the government made a number of complaints against Pikoli, one of them being that Pikoli's handling of the post TRC cases did not show sensitivity to victims and the appreciation of the public interest that were mandated by the prosecution policy.”

Do you recall that allegation?

ADV SIMELANE: Yes, I remember it to the extent that it was contained in the government submission.

20 ADV MASUKU: And can you perhaps tell us about this government submission, if you have any...

ADV SIMELANE: What do you want to know about it?

ADV MASUKU: Well you have mentioned... you have made reference to it. You said to the extent that this was contained in the government submission and I just want the picture of what that would

have...

ADV SIMELANE: That was put together?

ADV MASUKU: Ja.

ADV SIMELANE: No, they in terms of the Ginwala process, government put together a submission. Ginwala did not issue the evidence ...[indistinct] you can correct me, Adv Semanya. Because I recall that at the time there was no guidelines issued about how the parties were going to interact with that commission. So what was decided was that the government would put a submission and
10 therefore all the officials, including myself, we are required to contribute information that could form part of that submission. So in relation to my area of work that is what I did. We put together information and one government submission was then put together that was signed off for submission. It contained different allegations from different places, different departments if I can do that.

ADV MASUKU: To the extent that your department or your input was reflected there, did you say that Pikoli's handling of the TRC, of the post TRC cases did not show sensitivity to victims?

ADV SIMELANE: No.

20 ADV MASUKU: And appreciation of the public interest that were mandated by the prosecution policy.

ADV SIMELANE: No, I did not say that.

ADV MASUKU: And then paragraph 279:

“It was alleged that the NPA concluded plea bargains with van der Merwe and others, the

Chikane case, without discussing them with the
ITT.”

What was the ITT?

ADV SIMELANE: I do not know what the ITT was, I do not remember it.

ADV MASUKU: Or informing the... is that not interdepartmental task team?

ADV SIMELANE: I know it is an interdepartmental task team, I am not sure if it was called the ITT, so I do not know if that ITT refers to
10 the same thing.

ADV MASUKU: Okay.

ADV SIMELANE: But there was an interdepartmental task team, it may be that.

ADV MASUKU: Yes. And then it says:

“Or informing the minister notwithstanding the potential impact on national security. The nub of the matter was of course Pikoli's decision to move ahead with the prosecution of Vlok and others in the face of opposition from the political level.”

20 Was it your understanding that Mr Pikoli's decision to prosecute Vlok and others was the reason for his... for this inquiry being constituted?

ADV SIMELANE: No, I know nothing about any decision to prosecute Mr Vlok by the NPA and anything related to it.

ADV MASUKU: And then paragraph 280:

“In the evidence tendered by the government on

an add-on complaint was the outrage expressed by Chikane about the lack of truth revealed by the plea bargain in the relation to the apartheid state's clandestine programme of killing through nefarious means, such as poisoning. It is likely that this concern was included to dress up the main complaint with some moral indignation, since the lack of truth of apartheid era violations was hardly a concern of those behind the removal of Pikoli."

What is your response to that allegation?

ADV SIMELANE: I do not have a response to this allegation. I know nothing about it.

ADV MASUKU: The allegation that this complaint by Chikane, Reverend Chikane... I would like your comment on the last paragraph of that allegation.

"It is likely that this concern was included to dress up the main complaint with some moral indignation since the lack of truth of apartheid era violations was hardly a concern of those behind the removal of Pikoli."

Is that something that you can comment on?

ADV SIMELANE: No, I cannot comment. I do not know about it, those who were behind the removal of Pikoli, I do not know who they are and I do not know what they their thinking was.

ADV MASUKU: Okay. And then paragraph 281:

“Dr Ginwala was moved to say in her findings that:

“This complaint also touches very closely on the constitutional guarantee of independence of the NPA to prosecute or not to prosecute and to do so without fear, favour or prejudice.”

And then the next paragraph says:

10 “Nonetheless, Dr Ginwala did not take this burning issue further as the government abandon its complaint against Pikoli in respect of the TRC matters. The likely reason was to curtail cross-examination of the role of the government in relation to the cases.”

I would ask you to comment, Mr Simelane. But I think that would be unfair. Let us... would you want to comment, Mr Simelane, on that paragraph that I just read?

ADV SIMELANE: If you recall, if you want to link this to the earlier question, the way the government's submission was dealt with by the
20 Ginwala inquiry was that there was a single government submission, but after the submission of that submission, there was a meeting between the various legal representatives representing the different parties, including government and the commission.

After which an instruction was given by Dr Ginwala that in light of the contents, if I recall at the time that were raised by Adv Pikoli

that the government submission contains a lot of information and it does not show from whom or from which department some of the allegations are made. That should be broken down and dealt with differently.

So the decision that came out we were told, is that Dr Ginwala then said each department must put an affidavit in relation to what it is saying or alleging. So I put an affidavit that related to the issues of the role of the DG in terms of the Public Service Act and in terms of the, what you call the PFMA.

10 Then others dealt with other, then the minister if I recall, submitted her affidavit that dealt with something else. That is how the submission as dealt with, because it was felt that it does not clarify who is alleging what and therefore it could not be responded to by Adv Pikoli.

So everybody then had to, to the extent they wanted to say something, they needed to do so by way of an affidavit. So I put an affidavit, the other officials from other departments put their own affidavits.

ADV MASUKU: Thank you.

20 ADV SIMELANE: I do not know if that helps.

ADV MASUKU: Ja. But I am going to take you straight to 284, paragraph 284 which says:

“Dr Ginwala reserved her harsh criticism for Adv Simelane who at the time had been DG, director-general of the DOJ since 2005. She found that

he had given contradictory evidence and deliberately withheld important information from the commission, thereby attempting to mislead it. She also impugned his conduct as director-general of the DOJ on various grounds.”

Do you have a comment on that?

ADV SIMELANE: Yes, I do. I tried to be kind to Dr Ginwala because she is late, the comment that she made I think was unlawful and unfair, because all of us here in the commission know the law. That if
10 anybody or a deciding authority is going to make adverse comments about an individual, that individual is first afforded a right to comment to those adverse comments.

I was not given an opportunity to comment. Otherwise if I had been given that right, I would have assisted Dr Ginwala to understand how wrong she was in a number of respects, in terms of her conclusions. If you read her report in this particular area where she says this, she actually refers to a government submission.

So some of the areas that she says were areas where there were contradictions, relates to what is contained in the government
20 submission, but which is not contained in my affidavit. So she convolute, in other words in my mind she attributes the putting together of the submission to an individual, which is myself; which is not true, because that is not how it happened.

ADV MASUKU: But I let you answer that question, because the next question I wanted you to deal with is whether there has been an effort

by those requesting you to respond to this allegation, to link it to the terms of reference of this particular commission. Does this have anything to do with whether the harsh criticism was about the handling of the TRC matters at all?

ADV SIMELANE: Nobody has spoken to me about the terms of reference of this commission in relation to that paragraph.

ADV MASUKU: And your assessment of the terms of commission... the terms of reference of this commission, in relation to that paragraph, would you say that it is relevant and to this commission?

10 ADV SIMELANE: No, it is not.

ADV MASUKU: Why do you say that?

ADV SIMELANE: I do not see how. If it is relevant and it can be demonstrated how, I do not have a problem dealing with this, I just do not see... I do not see how.

ADV MASUKU: Yes, I mean I would imagine that these comments were made in the context of an inquiry into the fitness of Adv Pikoli and not in the context of this inquiry, which is looking at what it is that was done by government in order to stop the TRC, the investigations and the prosecutions of the TRC cases.

20 ADV SIMELANE: I do not know. The issue of prosecution of TRC cases, I do not recall in the Ginwala inquiry me dealing with it in my affidavits.

ADV MASUKU: If it was in there?

ADV SIMELANE: I did not deal with it in the affidavits. I do not recall how I would have dealt with it at all. I dealt with the Public Service

Act issues and I dealt with the PFMA issues only in my affidavits. The other issues were dealt with by others who submitted their affidavits as well.

COMMISSIONER GABRIEL: Can you recall Adv Simelane, who dealt with the TRC cases issue or charge?

ADV SIMELANE: I do not know. It could have been different people; it depends on the context in which it have been raised. If it would have been raised at the context of an issue talking to intelligence, it would have been the DG or the DDG for the intelligence who was
10 assigned to deal with that particular aspect.

If the minister was dealing with or dealt with it in the context of an overall irretrievable breakdown assessment, she would have dealt with it. If somebody else would have dealt with it in the context of what they would have been to courts to deal, it would have been dealt with that person.

But for me I did not have a basis to deal with it, because the issues were not qua the department, because the NPA was running with them and we were fine with it. And the reparations aspect we were running with them and we were fine with it. So it was nothing
20 that as the DG of Justice, I was affected the TRC matters. So I would not have dealt with them, it would have been other people.

ADV MASUKU: Mr Simelane, perhaps for the sake of expediency, I want you to just... the main theme of rest of the allegations that I would read and that do not mention your name, but mention political interference as a main reason why there is a belief that the TRC

investigations and prosecutions were stopped. You have made a comment on that, but just for good measure could you respond to whether you believe that it is correct that there was a view in the government or actions by government or decisions by government that interfered with the investigations and prosecutions of the TRC cases?

ADV SIMELANE: I cannot speak on behalf of the government, because I do not speak for government, but in relation to myself and my role as the DG there was none. In relation to the department and
10 my relationship with the minister and the deputy minister, there was none. In my role as the co-chair of the JCBS cluster, there was none.

ADV MASUKU: Yes, I know you said you ...[indistinct] and you are correct that you do not speak for government, but you at the beginning of evidence you painted a picture of how interdepartmentally there was a cooperation and collaboration. And it is in that context I was eliciting a comment on whether you believe that there was a concerted effort to try and undermine the prosecution or investigation of this case. But you have given your answer; I cannot take it any further than that.

20 ADV SIMELANE: I would not have known, but on page 40 in paragraph 52 up to... [intervenes]

ADV MASUKU: On page 40?

ADV SIMELANE: Yes, of my supplementary statement up to paragraph 50... it can be paragraph 58. What I outlined there in the context of what I described earlier, is an indication of how at least

overtly it would have been improbable for anybody to interfere with prosecutions without being detected or investigations without being detected.

Because in the scheme of things what would have happened as I described there, is that after the cluster accepted the feedback that the forum of the DGs gave it, about what the meeting concluded regarding the removal from TRC matters of Adv Ackermann.

Regular progress feedback would then come via either the police in respect of investigative capacity, they were going to provide
10 or it would have come via myself on behalf of the NPA *vis-à-vis* what that contribution has amounted to in the progress of the investigation of matters.

The issue eventually never came up, because the proposal by the police or that we were expecting would come from the police about how they contribute, it never got to be submitted and done or at least processed by the cluster and discussed, because other things got in the way.

There was a Khampepe Commission of an inquiry, there was the Ginwala commission inquiry, there was the suspension of Adv
20 Pikoli, there was the prosecution of the commission. So the issue never got, as I recall it, has never got closed completely, because what would have happened is that there would have been a proposal from the police to the co-DG's would have discussed it, satisfy themselves that they can back it.

Then the police as ...[indistinct] department would have

brought it to the cluster of discussion and decision by the whole cluster and then it would have gone to the ministers, to say is how the police propose they are going to be of assistance. That is the capacity they would have provided.

So that would have been interrogated and any other issue of concern would have discussed alongside that. Alongside that process the interdepartmental task team would have also communicated, at least the SAPS representative would have been seconded there, would have communicated that as well accordingly in
10 the departmental task team that Adv Pikoli was in charge of.

And then they would have dealt with issues in that way. That is how ordinarily the flow of things should have been after the meeting with Adv Pikoli and Mr Ackermann. I do not recall it happening. It may have happened and I do not recall it, but I do not recall it, because it would have involved that kind of detail. I do not know if...
[intervenes]

ADV MASUKU: Okay, ja.

ADV SIMELANE: Assist with that... [intervenes]

COMMISSIONER KGOMO: Sorry, Mr Simelane, because you are
20 zoomed in on paragraph 58, I think maybe it is important that you just read it into the record, this is paragraph 58.

ADV SIMELANE: Page 42?

ADV MASUKU: Ja, page 42. Let me just correct one thing. I think I gave you... I cited the wrong paragraph, the paragraphs where I referred to paragraph 52 to 58, those are not the paragraphs that I

want to refer you to, but I will come to them. What I wanted to refer to with the paragraphs in the supplementary statement on page 56, paragraph 50 to paragraph 54, in terms of what I am saying now, how the process would have been dealt with. So to the extent that I have caused that confusion, I apologise for it. But in respect of paragraph 58...

COMMISSIONER KGOMO: Well if it is the incorrect paragraph, then you need not read it... [intervenes]

ADV SIMELANE: Oh okay, that is fine... [intervenes]

10 COMMISSIONER KGOMO: Into the record. Yes.

ADV MASUKU: Mr Simelane, you saw and you responded to the notice by giving that first statement which is written draft on top.

ADV SIMELANE: Ja.

ADV MASUKU: You stand by everything... [intervenes]

ADV SIMELANE: I stand by it, ja.

ADV MASUKU: By everything that you say... [intervenes]

ADV SIMELANE: [Indistinct]

ADV MASUKU: In that paragraph.

ADV SIMELANE: [Indistinct] supposed to remove the draft, ja.

20 ADV MASUKU: Right. And then you submitted subsequently a supplementary affidavit and you explained the purpose of why you submitted that supplementary affidavit. I will just take you to the areas I believe you have not... that I just need you to deal with and not ask you to deal with everything that you said in supplementary affidavit. If you go to paragraph 26 of your supplementary affidavit.

There the allegation made in the Calata affidavit was that the, your appointment as NDPP doing the TRC cases and you have responded to that below. Would you want to say anything more than what you have just said you have, you said in response to that allegation?

ADV SIMELANE: No, I think that suffices and I think from my recollection of Adv Chris Macadams' evidence, it supports that. Because you will recall that in the evidence of Mr Macadam and I think in one of his affidavits he does indicate that at some point around 2009 there was a lost docket which was later located in the
10 police and worked on it started around 2010 going forward, until the matter could be taken further around 2013 / 2014 thereabouts. So it goes back to my point that in my time that I was there, about two years in the NPA, there was no prosecutable matter that was ever presented to me by anybody. I would have said it must not go ahead, so but...

ADV MASUKU: So the allegation by Calata, by Mr Calata is that there was... there is evidence that was, according to him there is evidence that you assigned Adv Ackermann to other work so as to prevent him from dealing with the TRC cases. What do you say to
20 that?

ADV SIMELANE: I did not deal with... is it Mr Ackermann or Mr Macadam?

ADV MASUKU: No, Macadam.

ADV SIMELANE: I did not deal with Mr Macadam at all, never spoke to him, never dealt with him.

ADV MASUKU: But did you assign him any cases?

ADV SIMELANE: No, I have never assigned him any work. He would have been assigned work by his immediate supervisor and I am aware that he was assigned other work by his supervisor as part of the PCLU work. So in other words its work that is demanded of the PCLU that needed to be done. And I am imagining that his supervisor would have amongst others, in distributing the work included him to attend to some matters. That would have been the contents. But I am not aware and I was never told that anything that anybody in that
10 unit that they were asked to work with, that related to their work had any impact on any matter they were working on, especially TRC matters.

ADV MASUKU: Is there anything you want to say about the evidence of Mr Ackermann? You deal with it in, on paragraph, from paragraph 39. On page 52.

ADV SIMELANE: Ja.

ADV MASUKU: Is there anything else you want to say?

ADV SIMELANE: I will not say much other than the fact that, I mean I heard Mr Ackermann when under cross-examination and I accept, as
20 I accepted then his explanation, it did not surprise me because really we do not know each other. I do not know him, he does not know me.

I did not assign him any work and he never reported to me, so it was clear from day one to me that he was talking to things he really did not know about. I think that may have been discussed offline with other people and he owned them and made them appear as if that

come from me. He clearly did not know.

So when he indicated that, you know, he did not know I was a messenger I think is the term he used, that is fine. The issue that I want to deal with... so I am happy to accept that, you know, I am not going to... my personal views of him I will keep to myself. But other than that, I accept his explanation.

The issue I want to deal with is this issue of the Rwandan intelligence officials, because that does not make sense to me. It really does not make sense to me, because as I say in the statement,
10 in light of what I already had heard about him from the other colleagues in the cluster, I would not have wanted to be in the room with him alone.

I would have considered that a risk to me, because he is not the person that it was communicated could be trusted in that sense. So I would not have done that. So if him and I would have met and chatted about anything of the type that he described, it would have been in the presence of other people and in the context of work being done.

So I am saying that because I am not ruling out the presence
20 of Rwandan intelligence officers in our environment, firstly. Because it was known in the cluster that they were operating in the country, for other reasons that are not relevant to this forum.

But what I do recall involving that particular country in the context of the NPA work was the work that was done towards prosecuting individuals that had attempted to assassinate a Rwandan

general who was based in the country. I think his name was General Nyamwasa who was shot in Sandton in an assassination attempt.

That matter was prosecuted in my time in the NPA, or at least the beginning of the prosecution in that time and he was not the prosecutor of that matter. If I recall, I think Mr Shaun Abrahams was the lead prosecutor in that matter.

Obviously he would have been supervised by Mr Ackermann and Dr Ramaite as his supervisors. That is the only matter involving Rwandan general that I do recall. So any discussion of that matter would not have necessarily come to me other than by way of giving
10 me an update that the matter is progressing normally in the courts.

I do not remember that discussion, because the matter progressing normally in the courts anyway. But as separate to that a specific matter involving two Rwandan intelligence officers could only have been in the context of that particular case, to the best of my recollection. So that is why I could not remember it. If there is information that can remind me, maybe I will remember it, but that is what I do recall.

ADV MASUKU: Yes. And then just to, Chair and Commissioners, we
20 apologise that reference to Adv Pikoli's book comes in later than the evidence has already been given on the, on a reference that we needed to make in that book. But I forgot my book back in Cape Town and I do get it from Mr Varney this morning and so we just got the document now printed by the commission which we are grateful. The part I would have liked the commission to have regards to, or

rather ...[indistinct] talk to... is the part that deals with Mr Ackermann ...[indistinct] to recall a meeting with Mr Simelane as testified to and it starts on page 218, the paragraph that starts with:

“Ackermann was looking at taking a balanced approach.”

Mr Simelane, are you there?

ADV SIMELANE: Yes, top of the page, yes.

ADV MASUKU: Top of the page? Can you just read that, because it reminds, it sort of resonant with the evidence you gave about what
10 you believe Mr Ackermann did in that meeting that you spoke about.

COMMISSIONER KGOMO: Can you give an indication, he is reading from the top up to which part? I am not minuting him to any...
[intervenes]

ADV MASUKU: It will be just up to police two, that sentence.

COMMISSIONER KGOMO: Yes.

CHAIRPERSON: This paragraph?

ADV MASUKU: That paragraph, yes. Thank you, Chair.

COMMISSIONER KGOMO: Yes, okay thank you.

ADV SIMELANE:

20 “Ackermann was looking at taking a balanced approach with the idea that if he was going to be objective and prosecute those from the ANC, he would then have to look at prosecuting the old order police too.”

ADV MASUKU: So would that resonate with your recollection of that

meeting in the west wing that you testified to?

ADV SIMELANE: Well I followed the evidence around this 34 ANC leaders and so forth and how it was explained by Mr Ackermann here, so I do not know if this is the same 34 that talks to the list that he gave. I thought I spoke about that.

But what it does show to me, without straying, because I do not want to stray, without saying anything more it does suggest to me that the prosecution of ANC members on the one side, for whatever they would have done and if it is the 34 and it is the same people that
10 were in leadership in exile, it is consistent with an idea that there was a thought...

Because I do not know if it was factually true that it was going to be done, but there was a thought on the part of some that those could be prosecuted for whatever crimes that there were, if there was that idea. So much so that if that was going to happen and to demonstrate the objectivity, they then would have needed to be equally a prosecution of the old order police too. So in that context it appears to be related.

ADV MASUKU: Thank you, Mr Simelane. Mr Simelane, I think this is
20 where we... is there anything else that you think the commission should know from your side?

ADV SIMELANE: No.

ADV MASUKU: Chair and Commissioners, that is the evidence of Mr Simelane.

CHAIRPERSON: Oh, does that conclude... [intervenes]

ADV MASUKU: That concludes the... [intervenes]

CHAIRPERSON: Your evidence in chief.

ADV MASUKU: Evidence, yes. That is correct.

CHAIRPERSON: Thank you. I think this would be an appropriate time to take a lunch adjournment and reconvene at 14:00.

ADV MASUKU: As the Chair pleases.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Ms Moroka?

10 ADV MASUKU: Chair, can I just before clarification questions, there is just one aspect I would like Mr Simelane to clarify before I, just one aspect relating to his answer on the Chikane, on his knowledge of the Chikane complaint.

CHAIRPERSON: Okay, you may proceed to do so, Mr Masuku.

ADV MASUKU: Thank you, thank you, Chair. Mr Simelane, you recall the question I asked you about, it was in relation to paragraphs 279 in the notice, which relates to a complaint that Reverend Chikane made against those handling the TRC matters. When I asked if you knew anything about that matter, you said no, but I think you wanted
20 to give better context.

ADV SIMELANE: Yes, no, when I said I did not know anything about it, what I meant was I did not know the details of what the NPA was engaging with Mr Chikane and the other generals about, that detail I did not know. What we did know as a forum is that he was unhappy about how he felt he was being treated by them. That was reported,

and that is how it became part of what substantiated what others felt about Mr Ackermann, to say the way he is running the TRC unit and he is dealing with people is unfair because they complain about it. So, by the time there was a formal letter by Reverend Chikane to the Minister, we already knew they would complain about something like that, but the details of when they were meeting him about what and what they were discussing there, I do not know anything about. It was not a matter that was reported to me.

ADV MASUKU: Thank you, Mr Simelane. That is all, Chair.

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

ADV MOROKA: No clarification questions, Chair. Neither do the Police have any clarification questions, but we both reserve our rights to apply for cross ...[intervenes]

CHAIRPERSON: Thank you, to apply for cross-examination.

ADV MOROKA: Thank you, Chair.

CHAIRPERSON: Yes, you are standing in for Ms Rantho?

ADV MOROKA: They had a personal emergency, Chair.

CHAIRPERSON: Yes, thank you. Mr Gwala?

20 ADV GWALA: Thank you, Chairperson. I have some questions just to clarify. Mr Simelane, you know that I am representing the NPA, so my questions just relate to what the NPA would or would not have done. In page 40 of your statement in your bundle...

ADV SIMELANE: Sorry, page?

ADV GWALA: 40, yes. If you have found the page, you will tell me. I

want us to talk about what you say in paragraph 53 of that statement, of your statement.

ADV SIMELANE: Yes.

ADV GWALA: Thank you. The sum total of what you say in that statement, in that paragraph, is that the NPA did have investigation capacity. Do I understand your...?

ADV SIMELANE: I can clarify that.

ADV GWALA: Please.

ADV SIMELANE: When Mr Ackerman, in the meeting we had in the
10 West Wing, gave an indication of how they work, the impression that I got, I do not know if the others had the same impression, so this is my impression, because it described that they were obtained, they were meeting with people throughout the country, who were ostensibly complaining; and that they were meeting with those people and taking their statements in terms of which they were able to compile a file of the type that they felt that they were going to prosecute on.

To me, that suggests that you have some capacity to conduct some investigation, because he never described it in the context ordinarily we would understand it, or I would understand it,
20 where he says there is a matter at police station X about an assault or an attempted murder and the IO, investigating officer has brought that matter to the relevant DPP office in the normal course for consideration for prosecution. It is not how he presented it.

He presented it such that the impression you could get is that somehow the PCAU is able to conduct some form of investigation

of the type that it enables it to be put in a position where it makes a decision. What I did know, at least as a matter of fact, is that the NPA actually did not have capacity to conduct any form of investigation, because it did not have the people to do that. So if they were doing it, it would be a capacity that is structured in the way that it suits themselves, but that suggested that at least they could investigate something.

ADV GWALA: But when they meet those people, as he would have reported, they would meet them as prosecutors, not as investigators.

10 Would that be correct?

ADV SIMELANE: Well, I do not know in what capacity they would meet them, in the sense that they are prosecutors, that is what we would know. So if they are meeting people, and the way they described it, it would indicate that they travelled throughout the country, wherever people went. Others would come to them, or they would go to people.

And in the context of what he was describing, including instances that happened, for example, outside of South Africa, he indicated that they would verify. So in your mind, when you are
20 listening to that, it tells you that there is some way in which those individuals are able to search and verify and find information. So in that context, it suggested that there is some element of capacity that enables them to be able to reach those conclusions, which ordinarily they should not have in light of the fact that they do not have, as far as we knew, the DSO had been established at least by the time, by

around that time.

ADV GWALA: Yes. But to your knowledge, was it within their mandate to do the investigation?

ADV SIMELANE: Well, it depends on how they work. Remember that at that time, the big debate around the NPA was prosecutor-led investigations. I think you have heard of that phrase. And many people interpret it differently. Some in the NPA who are advocates for that model say that those are prosecutor-led investigations, which suggest that they want the prosecutor to take the lead. Some who
10 oppose that model would say that is not how it is supposed to be.

So it depends how, at the time, they would have elected to deploy that particular philosophy in terms of the investigation. But in the ordinary course, what I would expect them to do is not lead an investigation, but a police official would lead an investigation that they would support, that may not necessarily be interpreted by some as really prosecutor-led.

ADV MOROKA: Maybe I do not want, I do not want us ...[intervenes]

COMMISSIONER KGOMO: Just a moment. Was a distinction drawn between prosecution-led and prosecution-guided? It seems some
20 people wanted to draw some distinction or is it a distinction without a difference?

ADV SIMELANE: We never discussed that in the cluster, either as a forum or as the cluster as a whole. But in the charter, when things were discussed in general, what was understood, prosecutor-guided are what we know in the normal course, that the matter goes to the

police station, detectives investigate, they go back and forth to the prosecution to get guidance about what further evidence to obtain. That is prosecution-guided.

Prosecution-led, as advocated during the time that the Scorpions were there, and when they were dissolved, others continued to advocate, where investigations, where prosecutors in a way lead and take charge of the investigation, and then instead of guide, but inform investigators what to go and find. Somebody would say it does not really make much of a difference, but the small
10 difference that it makes is that primarily an investigator ends up taking a back seat to be guided by a prosecutor, whereas in prosecution-guided, It is actually the other way around. The owner of the investigative docket becomes a police official.

COMMISSIONER KGOMO: Thank you.

ADV GWALA: But at the time when you were at the NPA, they did not have the capacity to investigate?

ADV SIMELANE: No, they did not, they did not.

ADV GWALA: When you say, I asked you if they had a mandate, you say it would depend. It would depend on what?

20 ADV SIMELANE: What I have just described, they did not have a mandate as in law, if I can put it that way, as far as I recall at least, they did not have a legal mandate to conduct investigations.

ADV GWALA: I thought [indistinct].

ADV SIMELANE: But when prosecutors, some of them do get investigations, people do more than sort of sit and just wait to be

informed what is there. So their manner of guiding others would interpret it as going a little bit overboard.

ADV GWALA: Still in paragraph 53, you make an example about the case of Reverend Chikane. The impression I get is that you suggest that the visit by the NPA to Reverend Chikane was informed by their investigation. Would you not take it as follows, that when they visited Reverend Chikane, they were actually doing a consultation to consult him with the victim as opposed to them exercising their capacity to investigate?

10 ADV SIMELANE: It also could be that, yes.

ADV GWALA: I am asking this question, Mr Simelane, because as I understood from the evidence of Mr Ackermann SC, and also in the statement that is submitted by Mr Mthunzi Mhaga, which you have probably have not seen yet, they say, the sum total of what they say is that they did not have investigation capacity. So what appears in your statement then seemed to be against what they are saying. Hence, I wanted those clarities.

COMMISSIONER KGOMO: You want clarification?

ADV GWALA: I am done, Judge Kgomo.

20 COMMISSIONER KGOMO: Or are you proving it?

ADV GWALA: No, no, no. I did not want a situation where at the end of the day when another evidence is submitted, it is contradictory to the other and then we do not intend to cross-examine the witness. So, we wanted to place that so that he can comment if he has got a comment. I do not want it to elevate it to the level of a cross-

examination. I was hoping that he can just comment on that, unless you disallow.

CHAIRPERSON: I will disallow it, Mr Gwala.

ADV GWALA: Yes.

CHAIRPERSON: Yes.

ADV GWALA: No, I accept that, I accept that Commissioner. We may have to, if needs be, we may have to apply for cross-examination.

CHAIRPERSON: Yes, you may do so.

10 ADV GWALA: But we hope it will not get to that stage. Thank you. We will be done then.

CHAIRPERSON: Thank you, Mr Gwala. Mr Varney?

ADV VARNEY: Chair, we have applied to cross-examine this witness.

CHAIRPERSON: Yes. Thank you. Mr Semenya?

ADV SEMENYA: Chair, may we defer, with your permission, questioning of the witness for now?

CHAIRPERSON: Advocate, is there any re-examination? Mr Masuku? I gather there is none.

20 ADV MASUKU: No, there is none. There is none, Chair.

CHAIRPERSON: Thank you. Thank you. Advocate Simelane, there is an application for cross-examination that has to be adjudicated by the Chair, and there is an indication that there are further applications for your cross-examination by the other parties. For now, you are excused as a witness. You may be recalled for your cross-

examination.

ADV SIMELANE: I understand.

CHAIRPERSON: You are excused as a witness.

ADV SIMELANE: Thank you

CHAIRPERSON: Mr Masuku, that should be the conclusion of the proceedings?

ADV MASUKU: Yes, that would conclude the proceedings.

CHAIRPERSON: Thank you. Mr Semenya?

ADV SEMENYA: Correct, Chair.

10 CHAIRPERSON: Yes. We adjourn for the day. We will reconvene tomorrow at 10 o'clock.

INQUIRY ADJOURNS TO 1 APRIL 2026

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