

**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 Gwala (SC) – NPA representative  
Adv Yanela Ntloko- NPA representative  
Adv KD Moroka (SC) – DoJ representative  
Adv Tlotlego Tsagae (DoJ representative)  
Adv Ebenezer Propy (for SAPS)  
Adv Nwabisa Mtshizana (for Ex-NDPP's Officials)  
Adv Bridgette Nthambeleni (for Adv Jiba)  
Adv Vivian Rikhotso (for Adv Menzi Simelane)  
Adv Varney (SC) – The Calata Group  
Adv D Pillay – The Calata Group  
Mr Siphon Tlhaole – The Calata Group  
Adv Irene de Vos for President Cyril Ramaphosa

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**DAY 34**

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PROCEEDINGS ON 17 APRIL 2026

CHAIRPERSON: Good morning. Mr Semenya.

ADV SEMENYA: Chairperson, good morning, and Commissioners. We have Advocate Mhaga as a witness today, and I surmise Mr Gwala will be the one leading his evidence.

CHAIRPERSON: Yes, is that so Mr Gwala?

ADV GWALA: That is correct, Chairperson.

CHAIRPERSON: Thank you. Advocate Mhaga, are you going to take an oath or affirmation?

10 ADV MHAGA: Good morning, Chairperson, I will take an oath, thank you.

CHAIRPERSON: You will take an oath?

ADV MHAGA: Yes, Chairperson.

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".

ADV MHAGA: So help me God. Thank you.

EXAMINATION BY ADV GWALA: Thank you, Chairperson. Mr Mhaga, what are your full names?

20 ADV MHAGA: My name is Mthunzi Columbus Mhaga.

ADV GWALA: You are currently employed by the National Prosecuting Authority, is that correct?

ADV MHAGA: That is correct, Chairperson.

ADV GWALA: In what capacity?

ADV MHAGA: I am the Special Director of Public Prosecutions.

ADV GWALA: Since when?

ADV MHAGA: I was appointed as such in June 2020 and later confirmed permanent on June 2023 by the President.

ADV GWALA: Today you appear before this Commission pursuant to a notice in terms of Rule 3.3, is that correct?

ADV MHAGA: That is correct, Chairperson.

ADV GWALA: In terms of that notice, you are required to submit an affidavit, is that correct?

ADV MHAGA: That is correct, Chairperson.

10 ADV GWALA: And you have done so?

ADV MHAGA: I did, Chairperson.

ADV GWALA: Your affidavit appears in the bundle in pages 14 to 57.

ADV MHAGA: That is correct, Chairperson.

ADV GWALA: You have familiarised yourself with the contents of that affidavit before coming to testify today?

ADV MHAGA: That is correct, Chairperson.

ADV GWALA: You confirm the contents thereof?

ADV MHAGA: I do, Chairperson.

20 ADV GWALA: And the signature appearing in page 37 is your signature?

ADV MHAGA: That is correct, Chairperson.

ADV GWALA: Is there a correction that you would wish to make on your statement or affidavit?

ADV MHAGA: Yes, Chairperson. I think it is paragraph 24.

ADV GWALA: Yes.

ADV MHAGA: That would be page 20 of the bundle.

ADV GWALA: Yes, what is the correction you would like to make?

ADV MHAGA: I say there on line three:

"That the deceased Mr Zokhwe was shot by the security branch members at Cegcuwana Administrative Area in Mthatha."

But it is Ngolo Administrative Area, not Cegcuwana because Cegcuwana is in Ngqamakhwe where he would have been murdered.

ADV GWALA: Thanks Advocate Mhaga for the... (intervenes)

10 ADV MHAGA: Ngolo is N-G-O-L-O, Administrative Area in Mthatha.

ADV GWALA: All right.

ADV MHAGA: That is paragraph 24 of page 29 of the bundle.

ADV GWALA: Yes. In paragraph two of your affidavit, you state that you deposed to these facts which fall within your personal knowledge. How have you acquired the knowledge of the facts that you are going to depose to, sorry, that you are testifying about today?

ADV MHAGA: I acquired the personal knowledge in my time, firstly as a State Advocate in Mthatha, Director of Public Prosecutions Office, followed by a State, as a Senior State Advocate in the Priority  
20 Crimes Litigation Unit in Pretoria at the National Office of the NPA. The National Prosecuting Authority.

ADV GWALA: All right. When was it when you were in Mthatha?

ADV MHAGA: That would have been 2000, sorry, 1999 until 2006.

ADV GWALA: All right. During that period when you were in Mthatha, did you have an occasion to deal with TRC-related cases?

ADV MHAGA: Oh yes, I did.

ADV GWALA: At that stage you were in the office of the [indistinct].

ADV MHAGA: Yes, that is correct.

ADV GWALA: As a State Advocate?

ADV MHAGA: Yes, Junior State Advocate.

ADV GWALA: All right.

ADV MHAGA: Which is an entry level for a prosecutor prosecuting in the High Court.

ADV GWALA: Yes. But when did you join the NPA for the first time?

10 ADV MHAGA: I joined the NPA in a very unique way because I was the first volunteer public prosecutor. Because after graduating at the University of Transkei with a B.Uris and LLB, I struggled to find employment in the profession either as an attorney or candidate attorney or as a prosecutor. So I decided to approach the Senior Prosecutor in Butterworth Magistrate Court to offer my services voluntarily without being paid.

ADV GWALA: Not even a stipend?

ADV MHAGA: No, not at all. I was struggling to get employment because I did not have the necessary experience. I only attended  
20 one interview which I faked dismally. So I then was absorbed as a volunteer prosecutor. I did some screening and then I was admitted. That is how I gained entry into the prosecutorial profession.

ADV GWALA: Can I... (intervenes)

ADV MHAGA: In 1999, June.

ADV GWALA: Right. Can you take us through the progression within

the NPA?

ADV MHAGA: Three months into my stint as a volunteer prosecutor, where I gained a lot of experience in how prosecution works, I was appointed a temporary prosecutor in Lady Frere. I think sometime in September of 1999, the same year.

ADV GWALA: Lady Frere is in the Eastern Cape?

ADV MHAGA: Not far from Queenstown. I spent some time there, I think three months or so, then I was absorbed permanently in Mthatha District Court as a public prosecutor.

10 ADV GWALA: Ja.

ADV MHAGA: After that, I spent about, I think about seven months as a district court prosecutor. I was then, because there was capacity constraints, or there were capacity constraints at the Regional Court, I was asked to go and assist there. So I was promoted within seven months in the District Court to prosecute at the Regional Court.

ADV GWALA: Ja. And from there you went to the Office of the DPP?

ADV MHAGA: In 2002, I think around September, the then Director of Public Prosecutions, Mr Humphrey Lusu, expressed a desire to get young and agile state advocates, because there were capacity  
20 constraints as well. So I was firstly recruited, I think beginning of 2002, but the magistrate I used to appear before, who is now a retired Judge Beshe, said I was not ready at the time to go to the High Court, because the judges were not patient and they were not there to teach me how to prosecute.

So disappointed as I was, because I was excited to go to the

High Court. I continued at the Regional Court, and then in September, the call came again that I should apply. There were vacancies. And this time around, I went to her again and she says, the offer is back, and says, now you are ready, you can go. So I was appointed, attended interviews, applied, and I was successful in September 2002 as a state advocate junior, at a junior level.

ADV GWALA: Right let us deal with your [indistinct] and when you were in Mthatha, DPP's office. And, Chairperson and members of the Commission, in the affidavit, that will span from paragraph 23.

10 CHAIRPERSON: 23.

ADV GWALA: 23.

CHAIRPERSON: Ja.

ADV GWALA: Okay. You told us earlier on that when you were in the office of the DPP, you had occasions where you dealt with a case that is related to TRC matters. And you mentioned the case of Tyani and Gumengu. Can you please expand on that case, on the circumstances of that matter?

ADV MHAGA: Chairperson, I was in the general prosecution when I started. And I then got allocated cases for a second court of the High  
20 Court, sitting in Butterworth, in the Eastern Cape, in the former Transkei. And among the cases that I had to handle was the attempted murder and murder of a former Umkhonto weSizwe Sthembele Zokhwe. The two accused were members of the Transkei Security Branch of Police. Mr Aaron Tyani and Phumelele Gumengu they had shot him and left him for dead at Ngolo Administrative Area

in Mthatha, at a quarry owned by the late [indistinct] who used to own bush parks at the time. He survived that attack and then was eventually murdered in January 1988.

Now, the difficulty I had in that case was that they had stage the, oh sorry they had applied for amnesty in 2000 and it was denied to both of them, which paved the way for the prosecution of the case. I do not know if I should proceed.

ADV GWALA: Yes.

ADV MHAGA: I then struggled to find evidence to rebut a version that  
10 they had concocted that was tantamount to staging the scene, because they shot him inside his parents' home in Ngqamakhwe and presented a version that they shot him while he was trying to throw a hand grenade at them.

ADV GWALA: So, can you backtrack a little bit?

ADV MHAGA: Yes.

ADV GWALA: There was an attempted murder first and later there was a murder case.

ADV MHAGA: The attempted murder took place when they were trying to arrest him. He was operating around the Transkei as an  
20 MKK so they tried to arrest him and they ran to a quarry and they shot him, left him for dead, was picked up by local people and they took him to Mthatha General Hospital. He survived.

January 1988, they abducted him from a saloon in a building called Pages in Butterworth and they took him to his parents' home where they alleged that he had said there are hand grenades in his

room that he had kept. When they arrived at the house, they removed the handcuffs and made him go to the room. And when he got to the room, they shot him and then they took two hand grenades and they detonated them to stage the scene to look like they had shot him while he was trying to throw those hand grenades at them.

ADV GWALA: Yes.

ADV MHAGA: That was the murder count. The attempted murder related to the 1987 August shooting at the quarry in Cegcuwana Mthatha.

10 ADV GWALA: All right. What were the challenges that you encountered in dealing with this murder?

ADV MHAGA: Now remember that they were the only ones in the room. No one else was there. Fortunately, the Advocate Dumisa Ntsebeza SC, we call him [indistinct] and [indistinct] and the late Judge President Sangoni were human rights lawyers at the time and advocate Zwaim Zaluba, who is now practicing in the Eastern Cape Bishops' Society of Advocates. They organised a forensic expert called Dr Klatzow, David Klatzow, who reconstructed the scene and was able to compile a comprehensive forensic report that disproved  
20 their concocted version to say there is no way that he would have been shot while trying to throw a hand grenade. This scene was staged.

ADV GWALA: Was that for purposes of the criminal prosecution?

ADV MHAGA: Yes, it was. I found the report inside the docket and the docket statements were still written in a blue pen at the time. So I

then approached my supervisor, Mr Nigel Carpenter, to say I need this witness, without which we will not sustain a conviction. Dr Klatzow, I got linked with him by [indistinct] that is our Advocate [indistinct] SC, and he demanded payment at a rate of an expert. Because he was not going to give factual evidence, he was not a factual witness, he was an expert witness. And we were used to paying witness fees for ordinary witnesses. So my supervisor was not persuaded that the State could pay that money, so the case was going to collapse. That was the first challenge.

10 ADV GWALA: Yes.

ADV MHAGA: How I overcame that was that sometime before the trial could start, while I was still doing preparatory work, Advocate Vusumuzi Pikoli, who was then National Director, had visited our office, accompanied by Dr Silas Ramaite SC, and his special advisor, Ms Kalyani Pillay who has since passed on. Whilst he was doing rounds of introduction, he approached me and I introduced myself. He asked if I am related to the late Theodore Mhaga, who was killed by a white man called Kolinsky, who was Chief of Security at the University Fort Hare in 1979, which led to the biggest student uprising  
20 in 1979 at the time, and I confirmed that was my uncle.

And I used that opportunity to tell him that, look, NDPP, I am doing this case, and I cannot get this forensic expert, and this case will collapse. And the mother of the deceased had approached the then National Director, Bulelani [indistinct] for assistance. He then linked me up with his special advisor. She intervened, and a memo

was prepared. Without the assistance of anyone in the DPP office, my boss, my supervisor, anyone. And then eventually he was paid, and I travelled to consult, and he testified as a witness in that case, and presented that evidence that was able to assist in the prosecution, successfully convicting the accused and sentencing them by the late Judge Pheko, who was the Judge President of the Mthatha Division of the High Court, to 20 years in prison.

ADV GWALA: Yes

ADV MHAGA: But that was not the only challenge. The second  
10 challenge, Chairperson, was that... (intervenes)

ADV GWALA: You are now at paragraph 29, as I can see. That is the second challenge.

ADV MHAGA: Yes, thank you very much. It is just that the affidavit... (intervenes)

ADV GWALA: Yes, yes, no, no, no, you are doing well.

ADV MHAGA: Okay, thank you so much. So, I remember at the time there were no computers in 1987. Doctors who examined patients used a typewriter. So when I went to the docket, I found a medical report in respect of the attack or shooting in Ngolo in 1987, which was  
20 compiled by Dr Mzileni in Mthatha General Hospital. I traced him and I was assisted by Radeem again, because I had been linked to Radeem by my friend, who I stayed within Mthatha the late Sobatu Jojo.

ADV GWALA: Radeem would be [indistinct].

ADV MHAGA: Yes, sorry that is how we call him, unfortunately. I'll

get used to saying Advocate Ntsebeza. He was my lecturer as well, so I call him Radeem all the time. So, and then he advised... So I went to my supervisor, Nigel Carpenter again, to say I want to consult with Dr Mzileni on this typewriter prepared medical report. He says, no, consult with him over the phone. And I said, but this is a very crucial witness. I will have to examine him. And he had prepared this in 1987. It is now 2005. You say, I must talk to this person over the phone. He says, yes. Frustrated as I was, I called Radeem again. Radeem said, talk to Mr Lusu. I went to Mr Lusu, DPP. He

10 overruled advocate Nigel Carpenter, who was my supervisor, and authorised my travel into Military Hospital 1 in Pretoria, where I consulted with Dr Mzileni. He came to court in Butterworth and testified convincingly and assisted us in securing a conviction in that case. I understand this was the third TRC case after Ferdie Barnard and Eugene de Kock conviction or prosecution.

ADV GWALA: What would have informed these frustrations that you were going through? Remember, this inquiry is about whether there had been influence on the investigations and prosecution of the TRC cases. Were these challenges that you are mentioning related to

20 such influences or pressure?

ADV MHAGA: I would not say that. Okay, one of the things that I had to do, I think I had an investigator, Aron Hanise, who is late now from Butterworth. But I did a lot of work myself as a prosecutor because he was not familiar with people like Radeem, Bralu and Judge Sangoni and others that I interacted with at the professional

level. So that was another challenge, that the investigative capacity and his investigative prowess were not at a level of this kind of cases. But I had to assist him, leverage on my friendship within the profession. That was another challenge.

But I take the view that Nigel Carpenter's obstructive conduct or failure to assist was symptomatic of a person who is not sensitive to the importance and the need to prioritise cases that related to the conflict of the past. These were activists whose fruits of liberation we are enjoying today. And at the time, I thought he treated these cases  
10 like your ordinary murder that happened at a tavern or something like that, without casting aspersions on him.

I do not think this was a deliberate, obstructive conduct, but an ignorance or a person who is oblivious to how strategically these matters need to be brought at the centre of the prosecution strategy within the National Prosecuting Authority.

ADV GWALA: Yes. You have now dealt with what you state from paragraph 23 of paragraph 33.

ADV MHAGA: Yes.

ADV GWALA: Was that the only case that you dealt with that is TRC-  
20 related when you were in the office of the DPP in Mthatha?

ADV MHAGA: That is correct, Chairperson.

ADV GWALA: After that, you were then transferred to the National Office in Pretoria.

ADV MHAGA: I got a call from, I am sure you want me to tell you how that happened.

ADV GWALA: That is fine.

ADV MHAGA: Thanks Chairperson. I got a call from Advocate Anton Ackerman, SC, who... (intervenes)

ADV GWALA: Sorry. For that, Chairperson and members of the Commission were commencing from paragraph 54.

CHAIRPERSON: Yes.

ADV GWALA: You can continue.

ADV MHAGA: Okay. He was the head of the Priority Education Unit at the National Office of the NPA in Pretoria. He called me and  
10 invited me to a meeting in East London. And I informed my supervisor and I travelled there. He indicated that he has had a conversation with Advocate Pikoli, who was impressed with the meticulous manner in which I prosecuted the Umkhonto we Sizwe [indistinct] murder case and had been, without me knowing, following the media coverage of the case because it was my first time to see myself on TV SABC TV at the time.

And Sunday Times, Daily Dispatch, Drum Magazine had even done a feature on the case. So, he wanted me to come and prosecute other cases in Pretoria at the National Office. And I agreed  
20 because I never even thought that I would ever be in the bright lights of Gauteng coming from the dusty streets of Mthatha. So, excitedly, I agreed. That is how I ended up in 2006 at the PCLU.

ADV GWALA: Yes, you were attached to the PCLU. Can you give us the structure that you found at the PCLU in terms of the reporting lines?

ADV MHAGA: Okay, I must mention that I do not cover that in the affidavit, but I will outline it. I found there was a Special Director Advocate, Anton Ackerman. A Special Director is at the level of a Provincial Director of Public Prosecutions and then there will be a Deputy National Director, then the NDPP. That is the position that I am currently occupying of a Special Director. Below him were two Deputy Directors of Public Prosecutions, Dr Pretorius and Advocate Ackerman. Chris Ackerman, I think, has testified before this inquiry.

There was also, at my level as a Senior State Advocate,  
10 there was Susan Bukau, Advocate Sean Abrahams, and myself and the secretary to assist all of us in administration.

ADV GWALA: And to whom were you reporting?

MR MHAGA: Was reporting directly to Advocate Ackerman.

ADV GWALA: Yes. And that is the time you also had to deal with various TRC-related matters?

ADV MHAGA: When I got there, I was assigned a number of cases, which I list some of them in the affidavit. I think it is... (intervenes)

ADV GWALA: Before you get to there.

ADV MHAGA: Ja.

20 ADV GWALA: The cases that you list, in paragraph 36 of your statement, you start with the challenges that you encountered when you joined the unit.

ADV MHAGA: Okay. When I got to PCLU... (intervenes)

ADV GWALA: You are free to read from the statement... (intervenes)

ADV MHAGA: I will just narrate it is fine.

ADV GWALA: Ja.

ADV MHAGA: I still remember the issues. When I got there, unlike in Mthatha Chairperson, where there was an investigating officer dedicated or allocated to a specific case, at the National Office at PCLU, there was not a single case that I was allocated that had an investigating officer. So I raised this with Anton, sorry Advocate Ackerman that I am constrained now because there are no investigators here. How do I go about it? But because I am this kind of a person who never goes to a senior with a problem, I always  
10 propose challenges. I am solution-driven in my approach, even in my unit at the NPA.

So I said to him, let us do, let us allow the advocate allocated the case to do some preliminary inquiries. Because there were files, and in some letters, there were dockets. So you could peruse the files and identify pointers that you could follow from an investigative point of view. But in the absence of investigators, we came to an agreement or an arrangement that I could do preliminary inquiries.

ADV GWALA: And what would that entail?

ADV MHAGA: It would entail following up on that which you consider  
20 could lead to relevant and admissible evidence in a subsequent prosecution. That could be investigated at a time when SAPS or DSO or whatever law enforcement agency would provide the investigators.

ADV GWALA: In other words, this preliminary investigation would be done by the prosecutor?

ADV MHAGA: It would be done by the prosecutor. But in my case, because remember at the time, the Scorpions had adopted what you call prosecution-led investigation. And the Specialised Commercial Crimes Unit had adopted prosecution-guided investigation. So prosecutors could lead the investigation, but with limited restraint or limited capacity in terms of interacting with whoever would have been of assistance in that case.

So I then leveraged on the friendship or relationships that I had established with some investigators in the Eastern Cape on matters that fell within the Eastern Cape. But in Gauteng, I would be  
10 assisted by former members of MK and former members of APLA and members from public interest organisations who are representing the victims in doing that preliminary inquiry.

ADV GWALA: Yes. Chairperson and members of the Commission, that would have been paragraph 36 and 37 of the affidavit. Yes, you can continue.

ADV MHAGA: I can mention that in the Eastern Cape, the officers who assisted me is Sipiwo Pahlane. Sipiwo Pahlane a member of the missing persons task team. I do not know if this has been  
20 covered. Missing persons task team is the unit within the PSCLU that traced up-to-date era victims who had disappeared during the conflict of the past.

That was not necessarily prosecution-driven, but they would find them, exhume them, were buried as paupers, and then hand them over to the families once DNA links the bones or the remains. And

then there would be a reburial. So he was one of the investigative capacity members there.

So he assisted me. Bongani Maqashalala is now the Deputy Provincial Commissioner in the Western Cape, but he was a detective in Butterworth. And Aron Hanise, who had assisted me in the Jani MK murder. So those are the colleagues that used to assist me.

ADV GWALA: Can you just take us to paragraph 38 and 39? You can read it if you so wish.

ADV MHAGA: Okay.

10 "It was extremely difficult to manage and deal with TRC cases due to the absence of investigative officers dedicated to this work. In the absence of any formal arrangement with SAPS, I would approach detectives with whom I had worked while prosecuting in the Eastern Cape, requesting their assistance in cases that fell within their regions.

In some instances, I would compile reports based on available information, which consisted mainly of statements and transcripts from the TRC hearings. In a  
20 few cases, I prepared reports based on interviews conducted with surviving witnesses, many of whom were already elderly by that time."

ADV GWALA: Yes. If I take you to paragraph 48, we will come back to the establishment of the TRC.

ADV MHAGA: Which paragraph?

ADV GWALA: If I take you to paragraph 48.

ADV MHAGA: Okay.

ADV GWALA: You mentioned there the cases that you have dealt with.

ADV MHAGA: Yes.

ADV GWALA: And this is at the time when you were at the PCLU.

ADV MHAGA: Yes, this is among the cases, the list is not exhaustive.

ADV GWALA: The list is not exhaustive.

10 ADV MHAGA: Yes.

ADV GWALA: All right. Just take us through the cases that you list in paragraph 48.

ADV MHAGA: I handled the murder of the late University of Transkei student activist, Batandwa Ndondo. The request to reopen investigation into the death of the late SACP leader, Chris Hani. The robbery and murder of a police officer at a Willowvale Police Station by members of Azanian People's Liberation Army, APLA. I also handled the murder and disappearance of Boiky Thlapi in the North-West. I also dealt with the Highgate hotel attack and the St. James  
20 massacre and many others.

ADV GWALA: All right, we will get into the details of some. Can you take us through the matter of PEBCO three, you deal with that in paragraph 49.

ADV MHAGA: The PEBCO three is one case that I handled, I even appeared in court in Port Elizabeth. It related to three activists of

PEBCO who were Port Elizabeth Black Civic Organisation in 1985, who were killed by Askaris and the security branch members.

ADV GWALA: Sorry to interject, which year is this if you remember?

ADV MHAGA: It was 2006 when I dealt with the matter.

ADV GWALA: All right.

ADV MHAGA: In August when I appeared in court.

ADV GWALA: Right.

ADV MHAGA: But upon investigations, the accused were three and then the main accused died and were left with two. They then applied  
10 for judicial review of the decision of the Amnesty Committee that denied them amnesty and the matter had to be withdrawn pending the determination of that review application. That is how the matter ended until I left PCLU.

But I am [indistinct] yesterday oh sorry Advocate Shabnam Singh would have dealt with it yesterday. I am not sure if he dealt with it.

ADV GWALA: Yes, what you have covered now is paragraphs 49 to 51.

ADV MHAGA: Yes.

20 ADV GWALA: Can you take us through paragraph 52, wherein you deal with the Highgate hotel case?

ADV MHAGA: The Highgate hotel attack matter was in East London in the Eastern Cape. And I also did not have an investigating officer. In those circumstances, I did build a network assisted by a number of investigators that I have mentioned there. And I also came across

information from the file that the Pan-African Congress of Azania, the PAC armed wing, APLA, had claimed responsibility for it.

I then took liberty to meet two individuals who, I was told, were commanders of APLA. Despite the fact that there was a statement distancing themselves from the attack, I felt that if there was information to follow up, I could follow it up. I met with them in East London, Mthura Mama and Jimmy Jones. I think that was the combat name that he was using. And they were not of any assistance to me.

10 I also met with Dumisani Ncamazna, who had been pardoned for a TRC-related matter. I think he had attacked King Williamstown Golf Course. And I went there with Advocate Ackerman, SC, at the Fort Glamorgan prison. And in that meeting, he refused to speak until Advocate Ackerman had left. And then I met, I spoke, I had a discussion with him, but also he was not of any assistance. I had also met with the families of... (intervenes)

ADV GWALA: Why did you refuse to speak until Ackerman left?

ADV MHAGA: I asked him, and he said, look, I am a Pan-Africanist, I do not trust this one. But it was out of those prejudices that he had  
20 against him, because of his colour, obviously. So he was not of assistance to me at the time. I met with the victims, they gave me some pointers, which I followed up, but they all came to naught.

And then I had to go back to Pretoria and combine the report. And I think before I combined the final report, I met with the families at Forte to give them feedback in East London campus. And

they were satisfied with the... (intervenes)

ADV GWALA: At Forte, you mean University?

ADV MHAGA: University of Forte, sorry, campus in East London. They were satisfied with the feedback I was giving them, and I went back to Pretoria. I never got involved in that matter until I left PCLU in July 2009.

ADV GWALA: But do you know what has become of that case?

ADV MHAGA: Last year, September 2025, after the NDPP had authorised a formal inquest into the matter, I was subpoenaed to  
10 testify as a witness to give an institutional account of what I did in handling that matter.

ADV GWALA: Sorry to interject, are you saying the formal inquest was authorised by the NDPP?

ADV MHAGA: Yes, it was. No, no, no, sorry. It had been authorised by the Minister, because remember, if an inquest is relating to deaths of more than one person, it requires a ministerial approval. And if it has being reopened, it also requires an NDPP to send a formal submission to the Minister, requesting her to approve that formal inquest. So that one followed that line.

20 ADV GWALA: Ja. Prior to the inquest that we are talking about, which occurred last year, was there an inquest that was granted in this matter?

ADV MHAGA: No.

ADV GWALA: That was the first inquiry.

ADV MHAGA: As far as I am concerned, I am subject to correction. I

think how Advocate Vani would know, I am not sure.

ADV GWALA: All right, continue then.

COMMISSIONER KGOMO: Can I just find out from you on a general issue? Do you think it is sound law that it is not left to the National Director of Public Prosecutions to authorise the opening of an inquest, but it should be done by a politician, the Minister? And in the process, does it not cause delay or further delay? What is your view? You have been in this institution for a long time.

ADV MHAGA: The Minister's role, in so far as it relates to her  
10 exercise of final responsibility for the NDP in terms of 1796 of the  
Constitution, I do not know to what extent it covers prosecutorial-  
related matters. Because this one is not necessarily a prosecutorial  
decision. An inquest is presided over or adjudicated by a presiding  
officer, a member of the judiciary. So I am not sure if when the  
Chairperson is talking of a delay, because you would have to...  
(intervenes)

COMMISSIONER KGOMO: I am not the Chairperson.

ADV MHAGA: Oh, sorry. The Honourable Judge talks about a delay.  
I do not have empirical data of delays, and therefore I would only  
20 comment on the need to reconsider that approach or legislative  
framework or legal framework if there had been problems in getting  
approvals through the Minister. Or that process appears to be  
cumbersome. Having been in the NPA, it has been a seamless  
process, and as such, I do not think there is even a room to consider  
reviewing the legal framework. I take the view, Chairperson, that you

only consider a review of a legislation if there are problems that hamper administration of justice, and in this instance, I do not have evidence to that effect.

COMMISSIONER KGOMO: Thank you.

ADV GWALA: I asked you, what has become of that matter? You were now... (intervenes)

ADV MHAGA: Oh yes, here was a judgment delivered after I testified in December 2025, and the... (intervenes)

ADV GWALA: In other words, there was an inquest?

10 ADV MHAGA: Yes, there were inquest proceedings.

ADV GWALA: Were you called to testify?

ADV MHAGA: I was called to testify. After my testimony, I received a judgment that I have attached in the bundle at page 45.

ADV GWALA: Yes.

ADV MHAGA: And after I testified, going through the judgment, I then picked up that the Judge commended or noted the work that I did under difficult circumstances. If regard is had to paragraph 135 and 136 of the judgment. If I am allowed, I can read out the relevant paragraph.

20 ADV GWALA: Yes, please. Just give us the page.

ADV MHAGA: Page 82 of the bundle and 38 of the actual judgment.

And paragraph 135 reads as follows:

"Advocate Mthunzi Mhaga, a special director and head of the Legal Affairs Division in the National Prosecuting Authority, testified that between 2006 and 2009, he was

based at the Priority Crimes Litigation Unit working on the TRC cases. More particularly, he worked on the Highgate matter between 2006 and 2007.

Mhaga confirmed that during these years, the NPA had no investigative support and was unable to investigate TRC cases, including the Highgate case. Nonetheless, he attempted to carry out informal or preliminary investigations himself to try and get the case off the ground. Even though he possessed no investigative powers and enjoyed none of the resources of the police, unsurprisingly, he was unable to make any progress."

So this talks to the arrangement that we had with Advocate Ackerman SC, that I could not sit idly in my office and get paid every month without doing work because there is no investigative capacity. The judge notes here that under those difficult circumstances, I had to get the cases off the ground, which I did. And unsurprisingly, I could not make much progress.

ADV GWALA: Ja. Now you have covered from paragraph 52 to paragraph 59. In paragraph 60, there is the next case that you deal with. Can you take us through that?

ADV MHAGA: In 2006, I also was allocated the case of State versus Khwezi Ngoma and others. These were four students at the Butterworth College of Education in the Eastern Cape that were undergoing teacher's course. They were also recruited as members of APLA. At the time, there was a slogan that read, Chairperson,

"PASO by day, APLA by night". So the PAC had a student wing, which was Pan-African Student Organisation, which is now PASO. And some of the students at tertiary education level were given crash courses and operated as APLA members at night, but during the day they were at school. So it was a slogan on a campaign that they were undergoing, or that they had coined.

So they attacked a police station in my hometown called Willowvale in the Transkei. And they stole arms and killed a police officer. So when I got this case, which also did not have an  
10 investigating officer, I asked PO Pahlane to assist me and Aron Hanise. We traced some of the witnesses. We realised that we do not have much of a strong case, but *prima facie* we could take the matter to court. Fortunately for us, Ms Nothemba Mlonzi, who was an attorney from Mlonzi Incorporated Attorneys, approached the NPA formally making representations that we enter into negotiations for a plea and sentence agreement in terms of Section 105A of the Criminal Procedure Act, which provides for the State or the accused to initiate plea bargaining. In America they call it plea bargaining, but  
20 in South Africa we call it plea and sentence agreement, where the accused would plead guilty to the offenses and we agree on an appropriate sentence to be imposed.

But you consult the victims, you consult the investigating officer, but the view of the victims is not binding on the prosecutor. And the court, if it finds the conviction and the sentence to be in accordance with the law, would then convict accordingly. That is

what happened here, but I required the authorisation of the NDPP, which granted Advocate Pikoli. And I need to mention that they had not applied for amnesty. And in contextualising this, I would like to ask for permission to read Paragraph 61 of the Affidavit, if I am allowed.

ADV GWALA: Yes.

ADV MHAGA:

10 "The four accused persons were members of the Pan-African Student Organisation, PASO, a student movement affiliated to the PAC and studied towards a teacher's course at the then Butterworth College of Education. They were also newly recruited members of APLA, who had not applied for amnesty before the TRC, because the leadership of the PAC expressed significant discontent with the TRC process. The PAC argued that its struggle was just, while the TRC held that even in a legitimate struggle, the PAC was bound by international humanitarian law."

20 So, I am sure the Chairperson will be interested in why we entered into the pre-bargain and why the NDPP acceded to the representations by Ms Mlonzi. We took into account that these were students that were militarised at the time, the exuberance of youth, with being misled to a certain extent to treat the TRC process with disdain.

They were gullible, they were vulnerable, and we were

amenable to not disrupting their future or careers as prospective teachers, not downplaying the seriousness of the offense that they committed. But the plea and sentence agreement arrangement, it is more of a trade-off sometimes when you are a prosecutor as a prosecutorial strategy. You look at the strength of the case, you look at the duration and the resources that you are likely to channel towards that prosecution. In circumstances where the accused legal representative or the accused are prepared to cooperate and assist the prosecution.

10           So, holistically, we looked at all those issues and said, rather than risking a prolonged trial that is protracted, risking getting acquittal because we are the *prima facie* case that had some issues, and these personal circumstances of the accused and the peculiarity of the case, we needed to adopt a balanced and objective view. And that is why we motivated the National Director to authorise the plea and sentence agreement, which was endorsed by the then Judge Miller in Mthatha. And they were sentenced to 10 years, wholly suspended for five years.

ADV GWALA: Yes. The next case, sorry, you have now taken us up  
20 to from paragraph 60 to 63. The next case you deal with from paragraph 64 is the murder of Maya P. Can you take us through that case?

ADV MHAGA: Can I read it through?

ADV GWALA: Yes, please.

ADV MHAGA:

"I also briefly dealt with the brutal murder of three underground guerrillas of Mkhonto weSizwe, who operated in the Transkei under the command of the late Masizi Maqhekeza. They were Zonwabela Mayapi, the younger brother to former MK death row prisoner Phumzile Mayapi, Gift Mgibe, and Zolile Sangoni, the younger brother to the late Judge President Sangoni. They were murdered by Askaris, who had infiltrated the African National Congress and MK in collaboration with the Transkei Security Police on 5 February 1988 near Nqadu butchery in Mthatha.

We conducted a preliminary investigation with the assistance of a retired member of the Missing Persons Task Team, Mr Sipiwo Phalane. This case, unfortunately, suffered the same fate as other TRC cases due to lack of dedicated investigative capacity."

ADV GWALA: Then you were also involved in the case of Reverend Chikane.

ADV MHAGA: Whilst I was at PCLU, I was asked to accompany Advocate Anton Ackerman to a meeting with Reverend Chikane, who was a victim in a poisoning attempted murder case involving the former Minister Adrian Flock, van der Merwe and another security branch officer.

ADV GWALA: Who asked you to accompany him?

ADV MHAGA: I, Chairperson I am not sure whether Advocate Pikoli

or Anton Ackerman, but I think it must have been Advocate Pikoli, because I was working on TRC cases. But this was a case that Advocate Ackerman SC was handling. I was not involved in the prosecution or whatever nature or manner in the handling of the case. But I was asked to accompany him to the meeting.

The Reverend Chikane was then the Director General in the former President Mbeki's office. The purpose of the meeting was to obtain his views and confirmation that he had been consulted in the prosecution of the matter. At a time when Advocate Ackerman SC  
10 had taken a decision, supported by the then NDPP Advocate Pikoli to enter into plea and sentence agreement in terms of Section 105 of the Criminal Policies Act. I have already explained the provisions of the Act. So I was there accompanying him.

I played no role in the conversation or discussions. Reverend Chikane was non-committal in expressing a view on the prosecution or otherwise of the matter. As a result, he did not sign the letter.

ADV GWALA: What letter?

ADV MHAGA: There was a letter that was prepared by Advocate  
20 Ackerman, which was a confirmation that he had been consulted, which required his signature, which would have been proof that he had been consulted. Because remember, in 105A, the victim or the contributor must have been consulted. The Act does not say he must support the prosecution or not support the prosecution. The Criminal Procedure Act says he must be consulted, but his or her view is not

binding on the prosecutors.

ADV GWALA: Yes.

ADV MHAGA: So I think Anton took the view that he must have documentary evidence for that effect. He was non-committal and had indicated that he leaves the matter at the hands of the prosecuting authority to deal with it as it deemed fit. I am paraphrasing. That is not exactly the words that he used. I did not even take notes on that day because the meeting did not take that long. I was not participating. I was a passive passenger if we were in a vehicle in  
10 that meeting. And then after the meeting, we briefed Advocate Pikoli about it, the outcome thereof.

COMMISSIONER KGOMO: Can you, had you read the draft letter?

ADV MHAGA: The draft letter?

COMMISSIONER KGOMO: Yes.

ADV MHAGA: I had sight of it after the meeting, not before, because everything was in the file that was contained, also re-carried by Advocate Ackerman. So I was not privy to the letter before the meeting.

I only saw it after the meeting.

20 COMMISSIONER KGOMO: Yes. I cannot recall. The letter may have crossed our eyes, but as far as you can remember, how did it read?

ADV MHAGA: I have no recollection. I have not even, I do not know you guys saw it.

COMMISSIONER KGOMO: It is long ago.

ADV MHAGA: It was 2007. I am not sure if it was in January or October. I think it must have been the beginning of the year.

COMMISSIONER KGOMO: Yes.

ADV MHAGA: Ja. And I struggled to get documents because our document management has a bit of challenges with information that dates back.

COMMISSIONER KGOMO: Yes. Thank you.

ADV GWALA: Nonetheless, it was for him to confirm that he had been consulted.

10 ADV MHAGA: That is my recollection, and I think Advocate Ackerman SC also talks about it somewhere. I do not know if it is here or in an affidavit, but I think he confirms that he was there to consult him.

ADV GWALA: No, that is fine. You have now covered paragraphs 67 to 70. Let us now proceed to paragraph 71. When you deal with the request to reopen the Hani murder case, can you take us through?

ADV MHAGA: In October [indistinct] six, through the office of the NDPP we received correspondence that they had received from the Young Communist League or which is a youth wing of the South  
20 African Communist Party. They were requesting the NPA to look into reopening the murder investigation of the late SACP leader, Mr Chris Hani.

Anton Ackerman asked sorry Advocate Ackerman SC asked me to have a meeting with the YCL delegation. I travelled to Braamfontein in their offices and met with their leadership, which,

present in the meeting, was the current Minister of Higher Education, Buti Manamela, and their spokesperson, Castro Ngobese. Skumboso, and I do not remember the other three members.

And we explained, I explained to them that there had been a prosecution that was successful in this case, and in the absence of evidence that is new, that was not there during the proceedings, it would be difficult and inappropriate to reopen the investigations. But as and when there is new relevant and admissible evidence or sufficient evidence that would warrant reopening of the investigations,  
10 we would have to re look at the matter, but that would have to serve before the law enforcement. In this case, or in the context of South African criminal justice system, that would be the SAPS, South African Police Service. We ended the meeting on that note.

In as much as we were sympathetic to the wild-held view that not all was told, or not all was uncovered during the murder trial of [indistinct] Lewis and Glenda Lewis, we took the view that legally, as lawyers, advocates [indistinct] always taught me when I was at university that you are as good as your evidence. So in the absence of new relevant and admissible evidence, we would not be justified in  
20 carrying out any reopened investigations, but they accepted that.

I do not know if Shabnam covered this, because I understand there was also a request for an inquest, I think sometime last year, from the family or the SACP as well.

ADV GWALA: Yes. The case of Thlapi?

ADV MHAGA: Thlapi was a matter that I took over as well, which

related to the disappearance of Boiky Thlapi, who was a member of a civic organization in Klerksdorp. They had attended a night vigil or a funeral of a fellow comrade who had been killed. They were arrested while travelling there, and they were kept until they were released 14 days later. But Boiky Thlapi was never released and disappeared without trace up to date.

In the absence of investigating officers, I wrote a letter that is annexed to this affidavit and marked annexure MCM4 to the commander of the Serious and Violent Crimes Unit in Klerksdorp in  
10 September of 2007 to request that police conduct clearly defined investigations in that matter. I do not recall receiving a response to that letter until I left the PCLU in June or July 2009.

ADV GWALA: You do not know what became of that letter?

ADV MHAGA: I do not know, honestly. But in 2024, I was approached by members of the DPCI, the HAWKS, who are part of the TRC unit working with Shapnum asking, they had a report that I had prepared in that matter, and they said they wanted to consult with me. They never made a follow-up. I do not know what happened or what came of it.

20 COMMISSIONER KGOMO: Yes, Mr Mhaga, the letter that you referred to, I see it is dated the 5 September. There is no year. Can you... (intervenes)

ADV MHAGA: I do not know how it happened that I did not put the year, yet I signed it.

COMMISSIONER KGOMO: Yes. It does not matter, but can you

recall more or less what year it was?

ADV MHAGA: It was 2007, Chairperson.

COMMISSIONER KGOMO: Okay.

ADV MHAGA: I remember that very well because the report that was presented to me by the member of the HAWKS, it had a date, 2007, the report I would have compiled.

COMMISSIONER KGOMO: Yes.

ADV GWALA: Chairperson and members of the Commission, I am advised that that letter is at the back of your bundle.

10 CHAIRPERSON: Yes.

ADV GWALA: And I am also advised that we have been sitting for an hour. I do not know if you would want to direct that we take an adjournment. Otherwise, I do not need an adjournment.

CHAIRPERSON: Yes. Your witness might need a comfort break.

ADV GWALA: Yes.

CHAIRPERSON: So we will reconvene at 11.45.

ADV GWALA: Thank you Chairperson.

INQUIRY ADJOURNS

INQUIRY RESUMES

20 CHAIRPERSON: Thank you, Mr Gwala.

ADV GWALA: Thank you Chairperson and members of the Commission. Mr Mhaga, let us go to paragraph 74 and can you just summarise there the outcome of what happened in that matter of Batandwa Ndondo?

ADV MHAGA: Some time in 2006 we received a request from a

brigadier who was the Head of TRC Investigations, former Head of TRC Investigations and a cousin to Batandwa Ndondo who was a student activist at the then University of Transkei which has now become the E-University Walter Sisulu, to look into his murder. He had been murdered on 24 September 1985 by Security Branch and Vlakplaas askaris.

He was lured into an ambush by then in Cala in town in broad daylight. They forced him into a kombi that they were travelling in. When he realised that they were not necessarily members of MK, they were askaris who had infiltrated the ANC and the military wing of the ANC, he tried to jump out of the moving vehicle and they shot him to die. They, people that ...[intervenues]

ADV GWALA: Sorry Mr Mhaga.

ADV MHAGA: Yes.

ADV GWALA: We have over time spoken of askaris, we know what askaris are but does the public know what askaris are? Tell them.

ADV MHAGA: The askari, the name askari is a term that is used to describe members of sometimes South African Defence Force or police officers who joined the ANC or the APLA or AZANLA, pretending to be genuine members of those liberation movements or military wings who then use their proximity to them to sell them out. They worked for the police but appeared to be members of the liberation movement who served the apartheid regime at the time.

So they operated mainly from Vlakplaas which was led by Eugene de Kock, so they would operate all over South Africa and

there were some that were operating in the Transkei. They tried to root out political activism of those members of MK and APLA that were working underground, operating in the Transkei.

ADV GWALA: Thank you.

COMMISSIONER KGOMO: This resembles Judas Iskariot from the Bible. [Laughs].

ADV MHAGA: What if I am not a Christian? [Laughs].

ADV GWALA: Yes, you were still taking us through but what was the outcome of what you had to do in the Batandwa Ndondo's matter?

10 ADV MHAGA: Upon receipt of the request by the brigadier, I enlisted the services of Sipiwo Phalane from the Missing Persons Task Team and we travelled to the Eastern Cape, and there we discovered that when we got hold of the docket and all the information, that the implicated persons after an inquest, some of them had died and three had applied for amnesty that is Eugene de Kock, Shabalala and Dandala who was a Section Commander.

And Dandala was the only one who was alive and Shabalala had died, Eugene de Kock had been granted amnesty and Shabalala had been granted amnesty. But because of the investigative  
20 capacity, we could not make inroads into that case, it suffered the same fate as other TRC cases like the Mayapi murder.

I understand now the matter is back on the roll, it was resurrected but I need to mention that not resurrected, it was reactivated and I understand that the groundwork that we had done with Sipiwo Phalane contributed to the breakthrough that Shubnum

and our colleagues in the Eastern Cape managed to get the matter placed on the roll as a prosecution process that is underway.

ADV GWALA: Yes. We will skip paragraph 75 and 76 for a moment and can you take us through paragraph 77 further? There you deal with the period between 2007 to 2009.

ADV MHAGA: I prefer to read this one.

ADV GWALA: Yes, sir.

ADV MHAGA:

10                   “77. From late 2007 until approximately June 2009, there was a marked decline in progress on TRC-related matters. As a result, the TRC Task Team became largely dysfunctional and my role within that structure was effectively rendered redundant. This position is confirmed by Adv Chris Macadam in paragraphs 55 to 58 of his affidavit submitted to this Commission. To the best of my knowledge and based on my direct involvement at that time, this decline was not attributable to any political interference.

20                   78. This was a professionally difficult period for me, characterised by a lack of professional work. In an effort to maintain my courtroom proficiency, I requested my former DPP, Mr Lusu, to permit me to undertake circuit court work in the Transkei. That arrangement endured for a limited period.

Upon my return to Pretoria, I requested Adv Ackermann SC to facilitate my secondment to the Specialised Commercial Crime Unit in Pretoria, in order to broaden my experience beyond the general prosecution work I had undertaken in Mthatha and at the PCLU.

10 79. My tenure at the SCCU was brief. I was thereafter persuaded by the Head of Communications, Ms Bulelwa Makeke, together with Dr Ramaite SC, to assume the position of National Spokesperson for the NPA following the departure of Mr Tlali Tlali to the Department of Justice. That transition marked my complete departure from the TRC Task Team and its work. From that point onward, I had no further involvement in the TRC-related matters until 2025, when I was requested by NPA leadership to assist in coordinating the work of all Commissions of Inquiry on behalf of the NPA.”

20 ADV GWALA: And that would be, that would include this Commission?

ADV MHAGA: If I can just outline and contextualise this, in the NPA currently when I left the Bar, when I practiced in 2017 until 2020 to rejoin the NPA, I became the Special Advisor to the former NDPP Adv Shamila Batohi.

After that, July 2023, a Deputy National Director of Public Prosecution, Adv Mokhatla resigned and I was asked to take over civil litigation in the NPA, but the President needed to approve that, so the President was approached, he appointed me permanently as a Special Director of Public Prosecutions responsible for the Legal Affairs Division which is the unit that I am Head now. Their mandate is to manage and coordinate all civil litigation work of the NPA nationally, all the provinces report to me on national, on civil litigation.

In addition to that, I advise or I provide on behalf of the unit,  
10 legal advice and legal support to the National Director, the EXCO which is the Executive Committee of the NPA and all business units in the NPA. In addition to that, I then coordinate the work of facilitating legal representation for current and former NDPPs and senior official who require assistance to appear before all Commissions of Inquiry, therefore I am the coordinator on behalf of the NPA and the liaison for all of them.

Madlanga Judicial Commission of Inquiry, the TRC  
Commission of Inquiry, the Ad Hoc Committee Tribunal or Session  
and to a limited extent, the Nkabinde Inquiry, so any approach that is  
20 to be adopted in those inquiries, I coordinate that, I seek legal team, put it together, get mandate from the leadership upon a thorough interrogation of that which needs to be presented at each of these Commission of Inquiry. That is the role that I played.

The issue that relates to spokesperson is just an add on because at some stage in my life I had been a spokesperson. So the

leadership said we require someone with legal knowledge and experience in communicating the work of the NPA because it is a bit complex, the issue that we deal with. So in order to, for the public to follow our work, let us get someone who is legally qualified but simplify it for the benefit of the public and be educational in his approach.

So it is an add on, but my main position after resigning from government in 2017 to undergo pupillage and practice and the reason I resigned was because when you are an advocate and people see  
10 you on TV, they think you are just a spokesperson with no legal powers, you are just called advocate but you have not done pupillage and I felt I was betraying or committing fraud in the profession if our people call me advocate and I have not done pupillage.

So I wanted to be like Adv Vas Soni, I wanted to be like you, I wanted to be like Gwala so that people can respect me within the profession. So I resigned in my comfortable job and undergone that militarised pupillage for eight months and then I passed it outright, I did not even do orals, then I practiced for two years until I was dragged, screaming and kicking back to the NPA.

20 ADV GWALA: Mr Mhaga, I want us to go to the and just put your finger there, back to paragraph 40. Therein you deal with the establishment of the TRC Task Team, otherwise known as Interdepartmental Task Team.

ADV MHAGA: Ja.

ADV GWALA: We will deal with that shortly.

ADV MHAGA: Okay.

ADV GWALA: But before we do so, I want to take you back to the meeting with Rev Chikane.

ADV MHAGA: Okay.

ADV GWALA: I am going to read an extract from his book and ask your comment if you are able to comment as to your recollection of what happened. Chairperson and members of the Commission, I am not certain if this extract has made it to your bundle, not this bundle, it is certainly not in the bundle that we are working on.

10 CHAIRPERSON: Yes.

ADV GWALA: But I am not sure if it in the past it has.

CHAIRPERSON: It has not.

ADV GWALA: It has not? May I be permitted though just to read? It is not a long read.

CHAIRPERSON: Yes.

ADV GWALA: And then after that we will then submit the ...[intervenes]

CHAIRPERSON: In due course?

ADV GWALA: Yes Chairperson and members of the Commission.

20 Mr Mhaga, there is a book, I do not know if you have seen it before, it is written by Rev Frank Chikane.

ADV MHAGA: *Eight days in September?*

ADV GWALA: It, the one that says, *The Things that Could Not be Said*.

ADV MHAGA: Okay.

ADV GWALA: Yes.

ADV MHAGA: No, I do not know about it.

ADV GWALA: Yes. My junior is whispering something but I cannot hear what she is saying. I am going to provide the chapter and the page, but it is not appearing now on the screen that I am looking at. He writes in reference to that meeting that you had, he writes:

10                    “As part of the consultative process relating to the case of *S v Van der Merwe and Others*, Adv Ackermann, the Special Director of Priority Crimes Litigation Unit and his assistant, visited me as the victim.”

I guess when he says his assistant, he refers to you because you are the only two people that went there.

ADV MHAGA: I am not sure about the assistant because I was not Anton's assistant.

ADV GWALA: It does not matter, there were two people that went there. He mentions Adv Ackermann and the other person is mentioned as the assistant, so that must be you.

ADV MHAGA: Well I will take what you say, but I do not agree I was his assistant.

20    ADV GWALA: Yes, I knew you were not going to agree with that. And it is, then he continues to say:

“Instead of just consulting me as the victim, he entered into an acrimonious argument with me about the approach of the government on post-TRC matters and guidelines. From this interaction it was clear that he

was radically opposed to the guidelines as agreed upon by Cabinet and the Parliament of the Republic of South Africa. In fact, he seemed to be more interested in prosecution for the sake of it rather than management of this difficult post-TRC process.”

What is your recollection and your comment perhaps in what Rev Chikane says in his book?

ADV MHAGA: My understanding of the word acrimonious is a bit of an aggressive person. Throughout our interaction on that day the  
10 meeting I attended, I did not observe any confrontational or acrimonious interaction between the two, though I was not participating in the discussion that was unfolding.

ADV GWALA: All right. He goes on though to say:

“What I detested most was that my case was being used to fight their battles with the government. In pursuit of this objective, a draft letter which was constructed in a manner that would enhance their position in the prescribed forum with other department was presented to me for my signature.

20 What was more disgusting for me was that when I refused to sign the draft letter, Adv Ackermann then threatened to use section 205 of the Criminal Procedure Act against me to force me to surrender all the information he claimed I had received from Mr Vlok on my poisoning.

I dared him to do so and reminded him that this was tried against me during the apartheid days and it did not work, and that there is no reason why it would work now. He backed off and left his colleague who was with him as my witness in this regard.”

COMMISSIONER KGOMO: And you are the witness now?

ADV MHAGA: Sorry, Judge?

COMMISSIONER KGOMO: And you are the witness now?

ADV MHAGA: Eish, I only know that I am a witness today. One day  
10 I am the assistant, then I am the witness. I will be honest, I do not recall threats being made in that conversation or in that meeting. Anton’s personality is a person who is aggressive and how do I put it, he can be abrasive in his approach and posture, he is not necessarily measured but on that day we were offered tea and cookies, it was a relaxed conversational engagement which did not last very long when Rev Chikane was non-committal in signing the letter.

In as far as the threats are concerned, I do not recall  
witnessing any threats on that day. Even when Adv Mpshe  
confronted us with a letter that he would had yet written, I made it  
20 clear that in my presence at the meeting I attended, unless there were other meetings that Anton and the reverend would have had, I did not witness threats, I did not witness any acrimonious argument on the day as far as I recall.

ADV GWALA: But was there a request that was made that he surrender some information that could have been with him?

ADV MHAGA: I do not recall that because we were there to obtain his confirmation of being consulted in respect of the section 105A plea and sentence agreement.

ADV GWALA: Were you fully briefed as to the purpose of your visit before you actually visited?

ADV MHAGA: Not fully briefed, I was told Anton is handling this matter and there is going to be a plea and sentence agreement, we are there to consult him to confirm that. No, I had not, I was not even privy to the docket, I was not even privy to the draft section 105 agreement, I was just a passive passenger there, I did not even take notes because I had not been fully briefed.

I was told go with Anton and accompany him to this meeting, then I got there and I had never been to the Union Building, I was just a raw boy from Transkei, so there was a bit of intimidation even in the setup there.

ADV GWALA: But what did you understand the role, your role to be?

ADV MHAGA: I did not understand it, I was not even briefed.

ADV GWALA: Okay.

COMMISSIONER KGOMO: As a passenger?

20 ADV GWALA: I was indeed Judge, because it was not even my case. I did not even know what were the grounds for the plea and sentence agreement, I was never even further involved in it. I did not even go to court with him.

ADV GWALA: Yes, all right. I was taking you to paragraph 40 of your statement. This is going to tie in with what you say later in your

affidavit regarding General Commissioner Jacobs. Perhaps in order for us to understand what is said, to be said by Commissioner Jacobs, we need to go back to the notice in terms of Rule 3 of the Rules of this Commission. That one is found at pages, I will read it for you the part, the portions that I want us to, I want you to bear in mind. It is found in pages 1 to page 6.

ADV MHAGA: Yes, I am there, Chairperson.

ADV GWALA: You will have received this correspondence from, this notice from the, on behalf of the evidence leaders from the  
10 Commission. I do not want to read everything but I just want us to go to paragraph 6 of the, that notice. It says:

“6. The Commission’s evidence leaders intend to present the evidence of General Philippus Christoffel Jacobs who in the opinion of the evidence leaders, possesses information that relates to allegations against you as set out in paragraph 9 below.”

That is paragraph 9 of this letter and sorry, of this notice, and is relevant to the Commission’s work. We will skip paragraph 9, sorry  
20 7, and go to paragraph 8:

“The evidence in para [then there is an error reference there, I think it should read paragraph 9] is an extract.”

So the paragraph would read:

“9. The evidence in paragraph 9 is an extract from the affidavit of Mr Jacobs with corresponding

paragraphs numbering, and implicates or may implicate, you in allegations regarding efforts or attempts to halt or suppress the investigation or prosecution of TRC matters. The complete affidavit of Mr Jacobs is available on Commission's website."

Then paragraph 9 is important, paragraph 9 gives the particulars of implications, what implicates you in the evidence of Jacobs, General Jacobs, sorry. At paragraph 21 of Mr Jacobs' statement the following appears:

10

"21. As appears from in annexure PCJ2 [that would be the annexure in his affidavit], the ITT [which is the Interdepartmental Task Team] comprised of senior officials from various state institutions. Among them were Adv Anton Ackermann, Adv Ramaite with Adv Pikoli being one of the principals of the Committee. Adv Mthunzi Mhaga [that would be yourself] also from the NPA, was responsible for taking the minutes of the meeting of the ITT."

20

Paragraph 48 of Jacobs' affidavit:

"48. I wish to inform the Commission that the correspondence being referred to by Adv Ackermann, attached hereto as PCJ12, was in fact an email correspondence exchanged

between Adv Mhaga and I consequent to a meeting of the ITT held on 4 December 2006. This was informed by the suggestion made by Assistant Commissioner Lekalakala that the committee members needed to consult with their principals before the trial report was submitted to the NDPP. This is much clear when regard is had to the following facts:

Then paragraph 49 of Jacobs' statement:

10 49. "At 11:33 on 6 December 2006, I sent an email to Adv Mhaga stating that:

'I am waiting to brief the National Commissioner on the draft report. I will revert to you once I have spoken to him. Provisionally I wish to indicate that from the SAPS side we are still not happy with how the Chikane matter is reflected. There was a definite decision that the Rev Chikane must be consulted again, that his wishes need to be reflected, that the issue be reported to our principals and that they must make a recommendation to the NDPP on the matter. Kindly rectify this in your report'."

20

Then paragraph 50 still of General Jacobs states the following:

“50. Adv Mhaga replied at 14:28 as follows:

‘Thanks for your input but I would like you to establish whether the National Commissioner has met with the Rev Chikane to verify Josia’s contention that he is not interested in prosecution. According to Anton, Rev Chikane wants prosecution so the National Commissioner needs to substantiate such a belief.’”

10 If I can pause here, in this paragraph reference is made to Josia, who is Josia?

ADV MHAGA: Josia Lekalakala was a representative of the police in the TRC Task Team which is referred to here as the Interdepartmental Task Team, Chairperson.

ADV GWALA: All right and then the quotation continues. Paragraph 51:

“I then responded.”

This is General Jacobs:

“I then responded to Adv Mhaga at 16:48 as follows:

20 ‘I have conveyed to you and the Committee the view of the National Commissioner. It was decided in the Committee that this route will be followed in respect of the Chikane matter. Whether you are in agreement with our view or not is irrelevant. Kindly reflect our

recommendation in your report so that the Committee of Directors General may consider it'."

Lastly a reference is made to paragraph 52 of that affidavit:

"Adv Mhaga then responded on 7 December 2006 as follows:

'Your concern has been noted. However I am still waiting for the other inputs on the whole report if there are any'."

10 It is on this basis of these allegations that it is said that you are implicated on the Terms of Reference of this Commission. Is that your understanding?

ADV MHAGA: That is correct, Chairperson.

ADV GWALA: All right. It is against this background that you were to prepare the affidavit that was controverting?

ADV MHAGA: That is correct, Chairperson.

ADV GWALA: Let us then go back to the paragraph that I said you must put your hand or your finger on.

CHAIRPERSON: Which is which paragraph?

20 ADV GWALA: Paragraph 40, Chairperson. Sorry, I was still paging back ...[intervenes]

CHAIRPERSON: Yes.

ADV GWALA: To the paragraph, yes. We will deal with this paragraph and pass on to the allegations that are made later on, but I will be taking you to those paragraphs. In paragraph 40 you refer,

you start referring to the establishment of the TRC Task Team and that team is known and is stated in your affidavit that it was the Interdepartmental Task Team.

ADV MHAGA: That is correct, Judge.

ADV GWALA: And in short it is referred to as ITT?

ADV MHAGA: That is correct Chairperson, but I refer to it in the affidavit and then as the TRC Task Team.

ADV GWALA: Yes and it is what General Jacobs refers to as the ITT?

10 ADV MHAGA: That is correct as I have said.

ADV GWALA: All right. Can you take us through then Adv Mhaga, what was, can you start with the establishment of this Task Team as you do in paragraph 40 of your affidavit?

ADV MHAGA: I was invited to a meeting at the boardroom of the then NDPP Adv Pikoli, to a meeting. In the, in attendance were the principals from the Department of Justice, Adv Simelane was the DG, Mr Loyiso Jafta from the Presidency, Mr Manala Manzini from the then National Intelligence Agency.

20 There was no representative from the SAPS. The President was my, was on behalf of the NPA, Adv Ackermann SC, Dr Ramaite SC and I. There were members, Mr Lekalakala and General Jacobs from the SAPS. From the Department of Justice it was Marilyn Rashwishwi, Yvonne Mabule ...[intervenes]

ADV GWALA: In that same meeting?

ADV MHAGA: In the same meeting yes, as officials.

ADV GWALA: I understood you to say there was no representative from the SAPS?

ADV MHAGA: In terms of the principals, like the National Commissioner was not there.

ADV GWALA: All right.

ADV MHAGA: But now I am talking about the officials.

ADV GWALA: All right.

ADV MHAGA: Yes.

10 ADV GWALA: I did not hear you mentioning Adv Pikoli, was he not in that meeting?

ADV MHAGA: Oh yes, he was chairing the meeting, it was in his boardroom.

ADV GWALA: Ja.

ADV MHAGA: Yes, so there was also Yvonne Mabule and Brian Koopedi from the National Intelligence Agency as it then was. There was also Mr Nhlanhla Ngidi from the DSO, the Scorpions before their disbandment and we formed the core of the officials at an operational level and at a strategic level it was the principals that I have listed above.

20 ADV GWALA: So what was the purpose of that meeting?

ADV MHAGA: It was to discuss the prosecutions and the investigations of TRC cases.

ADV GWALA: And what became of that meeting?

ADV MHAGA: A resolution was taken upon discussion of that topic or agenda item, that there should be an establishment of an

Interdepartmental Task Team made up of officials that would report to the committee of DGs or the principals.

ADV GWALA: And the people who constituted that Task Team are those that you set out in paragraph 41?

ADV MHAGA: Yes, all of them.

ADV GWALA: Yes, all right.

ADV MHAGA: And I was the, oh sorry, let me just wait for you to lead me.

ADV GWALA: Yes. Yes, your role?

10 ADV MHAGA: Okay, I was the designated Secretariat for the Task Team and Dr Ramaite was the convenor thereof.

ADV GWALA: You were not the Secretary?

ADV MHAGA: Secretariat but I write there Secretary for [indistinct].

ADV GWALA: All right, take us through then what was the mandate of that Task Team?

ADV MHAGA: It was to obtain investigative assistance from the SAPS and the DSO to conduct an audit of all TRC cases that required further investigations and to make a determination on which matters were right for prosecution, that that decision would be taken  
20 by prosecutors in the PCLU and/or the NPA.

ADV GWALA: So did you... Continue.

ADV MHAGA: There was also, the main objective Chairperson, was to manage and coordinate an investigative team, investigative process, tapping into the member or entity members' expertise.

SAPS would provide detectives to investigate, NIA would

obviously come in with their intelligence [indistinct] and give an approach to the collaborated investigative method and the DSO would come in as well from an investigative, because DSO remember, it had both intelligence and detective services, investigative service in one role. And this would then fit into an effective prosecution of all the TRC cases, so you had the mandate, you then had the objectives.

ADV GWALA: Ja. If my understanding of the Rule 3 notice is correct, it focuses on the role that you played in that Task Team. Is  
10 that your understanding as well?

ADV MHAGA: It is my understanding but I had to get clarity for that to be clarified by the Commission, because it was just the allegation at the time and I enquired exactly what, what is it that I am required to submit in the affidavit in addition to the allegations made and I was told that I should cover the role I played in the Task Team and the role I played generally in the prosecution of the TRC cases in the PCLU.

ADV GWALA: Ja, you have now covered the role that you played generally ...[intervenes]

20 ADV MHAGA: Yes.

ADV GWALA: In the PCLU. Now we are to focus on your role in the ITT.

COMMISSIONER KGOMO: You need to speak up a bit, Mr Gwala.

ADV GWALA: You have covered the role that you played generally in the prosecution of the TRC cases, now we are turning our focal

point to the role that you played in that ITT.

ADV MHAGA: Okay.

ADV GWALA: You have told us so far that you were the designated Secretariat?

ADV MHAGA: That is correct.

ADV GWALA: And whenever there was a meeting you would take, you would record the minutes.

ADV MHAGA: I would prepare the minutes during the deliberations of the main things and my focus merely was on the outcomes  
10 because I was not a trained minute taker, I was not a PA, your Executive Assistant, so I did not really know how to take minutes, so I would compile what we would describe as minutes, depending on or reflecting the outcomes or the deliberations in the meeting.

In addition to that, if there were specific reports that required attention of the Committee of Principals, and that would be required to be submitted to the NDPP or the Committee of Principals, I would be the one that prepares those reports, but I would circulate them amongst the members for comments and inputs, amendments, reviews or whatever and then Anton and Dr Ramaite would review  
20 and settle that, because it would be in the name of the convenor.

I would also be responsible for arranging the meetings of the Task Team, but I would be guided by the convenor because as the Secretariat I would not be in a position to dictate to members when we should meet, the convenor would guide me and then I would sent emails, prepare agenda and submit any reports that would have been

required to serve before the meeting of the ITT.

ADV GWALA: Yes. In paragraph 46, just to mention and to pass on it, in paragraph 46 you mentioned that Adv Ackermann was removed from handling TRC cases. Can you take us through that? In particular what I want to know is, in as much as he was taken out of the TRC cases, would he be furnished with reports regarding the TRC cases?

ADV MHAGA: He remained my line manager Chairperson, and remained the Head of the PCLU and therefore I felt obliged to  
10 continue briefing him on the work of the TRC Task Team, because no one gave me instructions to exclude him, despite the fact that I was informed by Dr Ramaite that he would no longer be part of the TRC Task Team, but no one said do not brief Ackermann, because I have been with him throughout this journey and as my supervisor he had to know where I was, what I was doing, what, when.

ADV GWALA: Yes.

ADV MHAGA: And this situation continued even during the tenure of Adv Mpshe SC as the Acting NDPP towards I think end of 2007 until Adv Simelane was appointed as an NDPP.

20 ADV GWALA: Yes. Now you mentioned that you were the minute taker, whether you were the Secretary or the Secretariat.

COMMISSIONER KGOMO: Secretariat, he does not like being a Secretary.

ADV MHAGA: Thank you very much, Judge.

ADV GWALA: Secretariat. The first record appears in page 38 of

your statement. Chairperson and members of the Commission, I, in our preparation we noticed that the electronic pagination is hidden by the manuscript pagination just after page 37. I do not know if that was corrected in your bundles, but we made an attempt to do that so that it is not page 195 immediately after 37, it should be page 38.

I do not know if it has been corrected in your bundles, but the next page after the end of Mr Mhaga's affidavit which ends at page 37, it should be page 38 and not page 197 which appears in manuscript.

10 CHAIRPERSON: Yes.

ADV GWALA: Thank you, Commissioner.

CHAIRPERSON: It is reflected as page 38.

ADV GWALA: Thank you, Chairperson and the members of the Commission. That, those were the in page 38, Mr Mhaga, those would be the minutes of the meeting of 16 November 2006. Is that correct?

ADV MHAGA: That is correct, Chairperson.

ADV GWALA: And those are the minutes of the Task Team?

ADV MHAGA: That is correct.

20 ADV GWALA: Of the TRC cases?

ADV MHAGA: That is correct, Chairperson.

ADV GWALA: All right. You, sorry may I...?

CHAIRPERSON: Yes, you may take the advice.

ADV GWALA: Yes, before I forget what my intelligent junior tells me, the, how many minutes, sorry, how many meetings if you recall that

you attended of the Task Team?

ADV MHAGA: S'joe, I do not recall, it was 2007. It is now 2026.

ADV GWALA: Have you been able to secure all the minutes that ...[intervenes]

ADV MHAGA: No, not at all, so some minutes are missing.

ADV GWALA: Yes.

ADV MHAGA: Even the reports sometimes. I only got a file on even one of the matters that did speak to 2015 onwards, nothing before that, in one or some of the matters, so the document management is

10 not really what we desire.

ADV GWALA: So what we have is not the complete ...[intervenes]

ADV MHAGA: Not at all.

ADV GWALA: Minutes, okay.

ADV MHAGA: Ja, I just extracted those that I could get hold of.

ADV GWALA: Yes, but this one was a minute taken on the meeting, in the meeting of 6 November 2006?

ADV MHAGA: That is correct, Chairperson.

ADV GWALA: Yes. Present in that meeting, Commissioner Jacob was present and you were present?

20 ADV MHAGA: That is correct, Chairperson.

ADV GWALA: And other members?

ADV MHAGA: Yes, as reflected on page 38 of the bundle.

ADV GWALA: Yes. Can you summarise these minutes? I would not want you to read them through, if you are able to give us a summary of what was happening?

ADV MHAGA: I am unable to summarise them because...

ADV GWALA: Okay, just read it.

ADV MHAGA: It is just too long, about two pages.

ADV GWALA: Okay, just read them through then.

ADV MHAGA: Okay:

“Minutes of the meeting of Task Team on TRC cases,

16 November 2006-

Members present:

Dr Ramaite

10 Adv Ackermann SC

Adv Chris Macadam

Comm Jacobs

Yvonne Mabule

Marilynn Raswiswi

Nhlanhla Ngidi

Mthunzi Mhaga

Apologies:

Brian Koopedi

Josias Lekalakala

20 Minutes of the last meeting” ...[intervenes]

COMMISSIONER KGOMO: Sorry, can I just...?

[Caucusing]

CHAIRPERSON: Mr Gwala, we already have these minutes on record.

ADV GWALA: Yes.

CHAIRPERSON: And it forms part of the transcript of the record before us.

ADV GWALA: Yes.

CHAIRPERSON: Is it really necessary for ...[intervenes]

ADV GWALA: To read it ...[intervenes]

CHAIRPERSON: Adv Mhaga to go through them again?

ADV GWALA: No, then with that Chairperson, I will go back to the affidavit.

CHAIRPERSON: Yes.

10 ADV GWALA: To where he deals with what happened, what was happening insofar as the allegations that are made.

CHAIRPERSON: Yes.

ADV GWALA: Then Chairperson and members of the Commission, I am taking the witness to paragraph 80 of the affidavit, of his affidavit. What do you say to the assertion that you are implicated or may be implicated?

ADV MHAGA: It caused me anxiety, it caused me panic, it induced a sense of shock within my family. My own daughter was concerned that I would be one of the Mdlanga Commissions of Inquiry and all of  
20 that ...[intervenes]

COMMISSIONER KGOMO: Can you speak up, please?

ADV MHAGA: She thought I would be one of – having watched the Mdlanga Commission, so the assumption was that I am one of the implicated individuals as well, so even when I spoke to my family yesterday back home in [Indistinct], I said I am appearing, to say. “Let

us pray for you”, you know, so the word implicated, it has a negative connotation but allow me Chairperson to just read how I view the allegations against me and the receipt of the Rule 3.3 notice.

ADV GWALA: Please do.

ADV MHAGA: Thank you, Judge.

ADV GWALA: And tell us from which paragraph are you reading.

ADV MHAGA: Paragraph 80 I state as follows:

10 “80. At the outset, I wish to express my reservations at being called before this Commission to address or respond to what I understand to be a concern raised by General Jacobs regarding a proposed amendment to the minutes of the TRC Task Team. Upon perusal of the Rule 3.3 notice served on me on 6 March 2026, I respectfully raised this concern with the Secretariat of the Commission, enquiring whether there were other issues I was required to address. I did so because I took the view that what I was being called upon to respond to, fell outside the scope  
20 of the Commission’s Terms of Reference.”

Paragraph 81 I state the following:

“81. Upon a closer reading of General Jacobs’ statement, I found no suggestion in his evidence that I was in any way implicated in delaying the investigation or prosecution of TRC cases. Yet

the notice states that his evidence ‘implicates or may implicate you in allegations regarding efforts or attempts to halt or suppress the investigation or prosecution of TRC matters’. I have scrutinised the specified paragraphs 21, 48, 49 and 50 – and I am unable to discern any basis for such a characterisation.”

I proceed to paragraph 82:

10 “82. I am therefore left to wonder: which parts of the quoted paragraphs implicate me in efforts or attempts to halt or suppress the investigation or prosecution of TRC matters? With respect to Chairperson, such an inference would be entirely inconsistent with my record. I have, in this statement, set out in detail the work I undertook under difficult circumstances to investigate and prosecute TRC cases. The suggestion that I would have sought to impede such work is on the evidence of my own conduct, untenable.

20 83. Nevertheless, out of respect for the work of the Commission established by the President, I have complied with the notice by submitting this statement, and I have expressed my willingness to appear before the Commission should it be considered necessary.”

I pause there, Chairperson.

ADV GWALA: Perhaps let us just deal with your response to the allegations which you said in paragraphs 84 and further.

ADV MHAGA:

10 “84. In response to the contents of the four paragraphs, I confirm that I sent the emails to which General Jacobs refers. The context in which I wrote those emails was a genuine attempt to seek clarity on the veracity of what General Jacobs sought to have included in the minutes I had prepared.

20 85. My concern was this: he wished me to include information that had been reported to him by a third party, without any confirmation of its accuracy. Specifically, the information pertained to an allegation that the late Mr Jackie Selebi had reported that Rev Chikane had expressed a view against prosecution in a matter where he himself was the victim – the case against the late Adriaan Vlok and others. I raised this concern because Adv Ackermann SC had reported to me, on the basis of his direct engagement, that Rev Chikane in fact supported the prosecution of Adriaan Vlok and his co-accused. The two versions were irreconcilable, and I considered it improper to

record in official minutes an unverified account that contradicted what I had been told by a senior colleague who had direct knowledge of the matter.

86. When General” ...[intervenes]

ADV GWALA: Sorry.

ADV MHAGA: Yes?

ADV GWALA: Before you leave paragraph 85, in the first line you talk of information related to someone by a third party. Can you  
10 unpack on that?

ADV MHAGA: What I mean is that General Jacobs says to me, “Adv Mhaga, Josias Lekalakala reports that the late Commissioner Jackie Selebi tells him that the Rev Chikane had told him that he was against prosecution”. Now I am called upon to write an official report that which is coming from a third party in circumstances where a person who claims to have had a direct or personal knowledge of the position of Rev Chikane, is in the meeting with a contrary view.

ADV GWALA: The person being Anton ...[intervenes]

ADV MHAGA: Anton Ackermann. So as a lawyer I sought, I think I  
20 was too cautious, I must say, I considered that it would be inappropriate of me to take that position in circumstances where this remains unverified. He says, “So-and-So told me that, So-and-So is against prosecution”, so that was, those were the reservations I had.

But when he said, “Despite your reservations Adv Mhaga, please record it”, I took note of it and waited for other colleagues to

make inputs and I think I finalised the report and took into account what he had said. But I think I may have been too cautious in my approach.

ADV GWALA: Ja, the last statement that you made is what you say in paragraph 86, that is when he insisted you ...[intervenes]

ADV MHAGA: Yes, I forwarded the [indistinct].

ADV GWALA: Yes and your concluding remark insofar as this aspect is concerned is in paragraph 87.

ADV MHAGA: Yes:

10           “87. With respect, I take the view Chairperson, that the conduct described above cannot reasonably be construed as efforts or attempts to halt or suppress the investigation or prosecution of TRC matters, as the notice suggest. I am therefore unclear why this issue has been singled out for attention, and I trust that my appearance before the Commission will afford an opportunity to clarify any misunderstanding that may have arisen.”

20           If I may just add Chairperson, with respect, the, I had opened by saying this caused anxiety and pain to me and my family. I expected that because I think more than six people had mentioned to me throughout the condition, that the kind of letter that Adv Batohi and Adv Mothibe and other DPPs had received which were not through 3.3 notices, would have been sent to me to say, “Mr Mhaga,

you are mentioned throughout, we require your assistance to outline the work you did on TRC, the work you did as a prosecutor in TRC cases”.

I would be of great assistance to the Commission, but to characterise what General Jacobs had said as a concern over how I recorded the minutes which I think he did not even repeat when he testified here on Wednesday, was to me of concern and I thought the Commission or the evidence leaders could have approached it differently to say, “We require your assistance” like they did with other  
10 people, instead of causing unnecessary panic on my side, because imagine if that had leaked to the media, the headline would be “Mthunzi Mhaga implicated in the Judge Khampepe Commission”.

And it leaves a bitter taste to me and my family and colleagues that hold me in high regard and who respect me, because now that I am explaining it, some of them are not even watching but they may have known that I was implicated.

So I took the view with respect that it would have sat well with me if I have been asked to be of assistance, especially that I am the coordinator of all these Commissions, I have spoken to each, I  
20 have a good relationship with Adv Vas Soni, all of them, “That please come and assist us, depose your affidavit and outline all your work”.

So that is the thing that really disturbed me and I decided that I must place it on record without complaining, without casting aspersions on anyone or expressing a displeasure, but just saying out of concern, I think the matter could have been handled differently.

Thank you.

ADV GWALA: Whether you are implicated or not, a finding is going to be made by the Commission at the conclusion of the hearing. Perhaps you can leave it there, but your point is that you have not found any reason to be implicated.

ADV MHAGA: You see what hurts me, is the fact that I demonstrated with evidence and even if you go to the internet, you will find cases that I have prosecuted. In fact, under difficult circumstances I had to tap into friendships both professionally and  
10 personally to investigate and prosecute these cases in circumstances where I was not getting assistance.

So for me to be said to be implicated, it took me off, it really was beyond me and it gave me sleepless nights, it caused me unnecessary anxiety. So I have demonstrated and I have been cooperating with [indistinct], I have been repeating with the Secretary, everyone in this Commission has had interactions with me, but I have made available resources in the NP to assist in circumstances where even when the Commission started, would each reach out to me and said, "Mthunzi, please get us your former colleagues" and I said,  
20 "Officially it may not be possible because if I do not cooperate, you would ask me to account for it".

So these are the details, I gave them emails, phone numbers, contact them. I even made it a point that I provide them with legal representatives to assist them, so that is why I am saying I want to place it on record that I am hurt for the work that I did, that

now on record there would be a characterisation of the word implicate and there may be a finding that is made against me

It has an impact on myself as a person, it has an impact on my career pathing, it has an impact on my credibility as a lawyer.

ADV GWALA: All right, can you take us through paragraph 88?

ADV MHAGA:

10 “88. I remain committed to the work that the NPA is mandated to do as a prosecutorial component within the criminal justice system and would never act in a manner that seeks to undermine its commitment to hold those accused of criminality accountable and efforts to uphold the rule of law. We owe it to our liberators who perished at the hands of the ruthless apartheid government to effectively investigate and prosecute those who mercilessly inflicted unbearable pain to the families of our departed heroes and heroines who did not live to enjoy the fruits of their sacrifices.”

20 ADV GWALA: All right. Mr Mhaga, are you currently involved in any of the TRC matters?

ADV MHAGA: I am not involved in any way, because there is a TRC component that was established by the former NDPP Adv Pikoli at the time I was her special advisor.

ADV GWALA: Before I move to ...[intervenes]

CHAIRPERSON: Pikoli? You have made a mistake by saying

Pikoli. Batohi?

ADV MHAGA: I meant to say Adv Batohi, sorry, sorry. Thank you very much, Chairperson. So that component headed by my colleague who was testifying here yesterday, Adv Shubnum Singh, is responsible for that. But from time to time when they require advice, I, they come to me as Head of Legal Services and I provide that advice.

Even the colleagues in the NPA in the Eastern Cape, when they want to link up with some former activists from both APLA, MK,  
10 for assistance they would ask, "Hey, do you have still have contacts of this person and that person?" I assist here and there on ad hoc basis, but it is not a structured role that I am discharging.

ADV GWALA: When last were you involved with the TRC cases?

ADV MHAGA: My testimony in September 2025 at the Highgate Hotel inquest.

ADV GWALA: All right.

COMMISSIONER KGOMO: Perhaps you must take a sip of water.  
[Laughs].

ADV MHAGA: Do I appear tired, Judge? [Laughs]. Thank you very  
20 much Judge, for that very considerate...

ADV GWALA: Let us then conclude. This Commission's task is to investigate in general whether there were any, there was any influence or pressure exerted on the NPA in particular, because you are from the NPA. In relation to the TRC cases which would have led to the stoppage of the prosecution of those cases, what would you

like to tell your Commission, the Commission insofar as it concerns you? Are you aware of any such influence?

ADV MHAGA: I covered that in paragraph (c) of my affidavit from paragraph 16 to paragraph 21. I do not propose to read that, but I propose later on to read from paragraph 19 to 21. But I can state that Chairperson, during my time serving as a Secretariat of the Interdepartmental Task Team on TRC, prosecuting cases in the PCLU that related to TRC, I was not aware or I am not aware of any efforts or attempts to either stop or frustrate or suppress  
10 investigations on prosecution of TRC cases.

In respect of the matters that I handled, the slow pace in effectively investigating and prosecuting these cases can be attributed to resource constraints. I served in the TRC Task Team that is reflected for recorded purposes as the ITT, as the Secretariat. I compiled minutes, I would be given some cases, dockets and all of that, but there was never a dedicated investigative capacity that was allocated or signed to the cases that I handled, which frustrated the progress of those cases at the time.

I am not aware of any pressure that would have been  
20 exerted on myself or any person that would have shared that with me by either the member of the Executive or within the NPA or a functionary or anyone during my term or stint at the PCLU until I left to be a spokesperson.

ADV GWALA: If there was it would have constituted a criminal offence, is it not?

ADV MHAGA: Can I then go straight to how I characterise that from a legal point of view?

ADV GWALA: Yes please and tell us which paragraph you are reading ...[intervenes]

ADV MHAGA: It is paragraph – it is the last sentence on paragraph 18. That is page 19 of the bundle.

ADV GWALA: Yes.

ADV MHAGA:

10                   “18. In practice, should any person external to the NPA, including any member of the Executive, seek to influence the outcome of a particular prosecution or investigation, such conduct would be incompatible with the Constitutional and Statutory Framework and would constitute a grave breach of the rule of law.”

In paragraph 19 I say:

20                   19. Such conduct would be in violation of section 32(1)(b) of the NPA Act which states as follows  
Chairperson:  
‘No organ of state and no member or employee of an organ of state nor any other person shall improperly interfere with, hinder or obstruct the prosecuting authority or any member thereof in the exercise, carrying out or performance of its, his or her powers, duties and functions’.

Then I proceed to paragraph 20. I state the following:

10 20. Throughout my career within the NPA, I have never been approached by any political office-bearer, executive member, or any person acting on their behalf, who sought to influence, direct or interfere with the conduct of any prosecution, investigation or prosecutorial decision with which I was involved. Nor have I witnessed any such interference directed at my colleagues within the units in which I served. All decisions pertaining to the institution, continuation, or withdrawal of prosecutions in matters that came before me were taken strictly on the merits of the evidence and in accordance with the applicable legal principles, guided by the NPA's Prosecution Policy and directives."

Then I end with paragraph 21:

20 21. I accordingly state under oath that I have no knowledge of any political interference within the NPA during any period of my employment. Had such interference occurred, it would have been in contravention of the provisions of the NPA Act and considered a criminal offence. Section 41(1) of the NPA Act provides as follows:

'Any person who contravenes the provisions of

section 32(1)(b) shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 10 years or both such fine and such imprisonment'."

ADV GWALA: Sorry, you do not end with that paragraph, you end with paragraph 76.

ADV MHAGA: Please bear with me. Oh yes, paragraph 76 is on, it is page 34 of the bundle:

10           "76. I can state that during my time handling TRC cases and serving in the "TRC Task Team", I never experienced any attempt or efforts to influence or pressure me to stop investigating or prosecuting TRC cases. However, I consider the conduct of my former supervisor, Nigel Carpenter, with regards to the case of *S v Aaron Tyani* and Phumelele Gumengu to have been obstructive."

ADV GWALA: You have dealt with that earlier.

ADV MHAGA: Yes, I have already and I have given a context to it.

20   ADV GWALA: Yes. Is there any comment you wish to make?

ADV MHAGA: Nothing.

ADV GWALA: Thank you very much Chairperson and members of the Commission, that would be the evidence of this witness.

CHAIRPERSON: Thank you. Ms Moroka?

ADV MOROKA: Thank you, Chairperson. Mr Mhaga, if I may refer

you to paragraph 40 of your affidavit, well the title, the heading is, "Establishment of the TRC Task Team".

ADV MHAGA: Yes.

ADV MOROKA: And you then explain at 43 what the mandate of the Task Team was.

ADV MHAGA: Yes.

ADV MOROKA: We have heard evidence, we were trying to look for it Chair and I will refer you to that, to the specific reference in Ackerman SC's evidence to the effect that this Task Team was the  
10 beginning of the interfered, the political, he calls it political interference with prosecutions. Would you agree with that characterisation?

ADV MHAGA: To the extent that he personally has knowledge of that, to that effect, I think he would be best placed to unpack it but personally I have no such experience.

ADV MOROKA: Adv Macadam also explained in his evidence that he was of the view that the Task Team was formed to be of assistance so that help from other departments could be assort and help could be gained from all of these other individuals who were part  
20 of the Task Team. Would you agree with that characterisation?

ADV MHAGA: I agree Chairperson, because if you look at paragraph 44 of my affidavit, I allude to that.

ADV MOROKA: And if we can then go to that paragraph, you say that it was to facilitate a coordinated and collaborative investigative process, but quite a number of witnesses have indicated that part of

the challenge and you have also done that, was resource constraints and more specifically, investigative capacity. And you then say that the Task Team was formed so that these entities would and you would be able to help. It does not seem that that worked?

ADV MHAGA: It did not work Chairperson, to the extent that it was designed to. As a result, I was rendered redundant which is why I ended up requesting to go back to the Transkei to do some work and then I came back to go to the SCCU. I had hopes that the member entities would facilitate allocation of investigators to those cases  
10 which was not forthcoming in respect of the cases that I was handling, Chairperson.

ADV MOROKA: You talked about to obtain dedicated capacity from SAPS and DSO.

ADV MHAGA: Yes.

ADV MOROKA: And DSO falls under ...[intervenes]

ADV MHAGA: The NPA.

ADV MOROKA: NPA.

ADV MHAGA: Yes.

ADV MOROKA: Are you able to be of assistance and to explain  
20 what really were the problems, why was it difficult to be able to do that?

ADV MHAGA: The difficulty Chairperson, I have, is that I was the lowest ranking person or official in the Task Team in all the interactions on TRC cases at the time. I did not sit at managerial level or in managerial engagements or interface. The only meeting I

attended was that of principals, was the one of 20 2006 which set up the Interdepartmental Task Team, so I am not sure what occasioned the difficulty in providing investigators. I would interact with Anton to say, "But for how long are we going to be struggling like this?"

But before there could be any resolution, he was no longer part of the Task Team and then Chris Macadam came back. Even when Chris Macadam came back, there was no movement until frustratingly I asked to be seconded to other units because I realised that in most prosecutorial powers I was getting rusty, so I decided to  
10 leave the idling in the office and playing with my phone and my laptop, so ja.

COMMISSIONER KGOMO: In summary you were not the decision maker?

ADV MHAGA: I was not Judge, and no information was flowing from here to my level to ease the uncertainty and the unsettling personal frustration that I endured as a prosecutor at the time.

ADV MOROKA: But as the Secretariat and taking down all these minutes, you were not able to say from the discussions that went ahead, what the issues were in those meetings with specific  
20 reference to your investigative capacity?

ADV MHAGA: There were promises and those promises were never fulfilled.

ADV MOROKA: Thank you, Chair.

CHAIRPERSON: Thank you, Ms Moroka. I think this should be an appropriate time to adjourn for lunch and reconvene at 14:00.

INQUIRY ADJOURNSINQUIRY RESUMES

CHAIRPERSON: Ms Rikhotso.

ADV RIKHOTSO: Thank you, chair. Ms Moroka has asked all the questions I needed to ask, so no clarifications.

CHAIRPERSON: Thank you. Ms Nthambelene.

ADV NTHAMBELENE: Thank you, chair. Thank you, chair. I think the question was slightly answered, but I would still go on and ask it to a certain extent. Good afternoon, Adv Mhaga.

10 ADV MHAGA: Good afternoon, ma'am.

ADV NTHAMBELENE: You have testified about the period in which you were involved with PCLU matters, which is the year 2006, where the account that you have given us was that you experienced challenges with those matters. And later on, you further alluded to the period between 2009 and 2007, where you mentioned that there was an issue with regards to the TRC task team, where you say, thank you, where you say that the team became dysfunctional. Do you care to maybe explain the extent of the dysfunctionality? Is it maybe tied back to the challenges that you experienced, or is it to  
20 speak to the issue of ineffectiveness of the team altogether?

ADV MHAGA: Chairperson, the frequency of meetings deteriorated, and the expected provision of investigators for cases that had been allocated to me was not realised. As a result, the work of the TRC task team was impacted negatively, so basically, that is what happened. That is a characterisation of the problems that besieged

us, which culminated in me asking to be moved to another unit, or to the Transkei, and then later to the secondment Specialised Commercial Crimes Unit. I do not know if I have covered the question adequately.

ADV NTHAMBELENE: Ja, I think you have, but maybe if I may just enquire further. Were there no TRC matters at that current time, or was it just that the mandate with which the TRC was proposed with was just not being able to be operated, or maybe being effectively addressed?

10 ADV MHAGA: The approach or the arrangement between, or agreed or approved or endorsed by Adv Ackerman of a preliminary inquiry that I had been conducting in respect of the matters allocated to me was not sustainable.

And therefore, the establishment of the task team had been intentionally designed to tap into the entity members' expertise in providing investigators. So it would have made sense for me now to carry on the preliminary inquiries in circumstances where there were promises of investigators to be allocated.

20 That is why I am referencing this, or prefaced it by saying the promised allocation of investigators hampered the work of effectively investigating and prosecuting the matters, coupled with the dysfunctionality of the TRC, which was occasioned by the deteriorating frequency of holding or convening the meetings of the inter-departmental task team. So it boils down to one thing, there were resource constraints.

ADV NTHAMBELENE: Thank you so much. Thank you, chair.

CHAIRPERSON: Ms Mtshizana.

ADV MTSHIZANA: Thank you, chair. On behalf of (indistinct), we have no follow-up questions.

CHAIRPERSON: Thank you. Ms Propy, Mr Propy.

ADV PROPHY: Thank you, chair, Just three points, if I may. Afternoon, advocate.

ADV MHAGA: Good afternoon, sir.

10 ADV PROPHY: Just briefly, three points that I wish to canvass with you. I will begin with the easier of the three, that in respect of your evidence that related to your former supervisor, Mr Carpenter, your evidence in respect of his insensitivity and the obstacles, in respect of that insensitivity, during your time on the PCLU, did you ever experience that again?

ADV MHAGA: Okay, are you distinguishing between the time I was in Umtata and at PCLU?

ADV PROPHY: Correct, because I understood your evidence to be that that was during your time in Umtata.

ADV MHAGA: Yes.

20 ADV PROPHY: So when you joined the PCLU, did you experience what you experienced with Mr Carpenter again?

ADV MHAGA: No, I did not experience any lack of support internally.

ADV PROPHY: Then in relation to the Reverend Chikane meeting, I just want to give you context and a chronology so that you can understand the premise of my question. The evidence before the

Commission is in respect of the ITT minutes on 6 November. The ITT agrees to park the Chikane matter until feedback of his attitude is obtained. Then you and Adv Ackerman have a meeting with him on the 22 January. Then my question is, the next meeting after your meeting with Reverend Chikane is on the 29 January. In that meeting, do either you or Adv Ackerman then give the ITT the feedback based on your meeting that happened the week before?

ADV MHAGA: I am not sure if he did, but the fact that the prosecution proceeded and was concluded, one would then conclude  
10 that there may have been a feedback.

ADV PROPHY: Let me put it contextually for you, maybe to be of assistance, just how we remedy. I do not know if you want to have sight of it, but the minutes of the meeting for 29 January 2007, the members continued to engage on this aspect of Reverend Chikane and feedback, which is why I am asking, if his feedback was discussed on 29, did either of you give them the feedback in that meeting?

ADV MHAGA: The feedback I recall was in respect of the former National Director Adv Pikoli. I am not sure, unless I can be pointed to  
20 minutes that follow our interviews with him.

ADV PROPHY: Then the last point is in relation to the investigation. The question I have is, how do we reconcile paragraph 47 of your statement. If you want to just have a read so that you can understand contextually.

ADV MHAGA: Yes.

ADV PROPHY: That while SAPS was on the ITT, there was no investigation, and that continued during your tenure at PCLU. If we then have regard to the same minutes that I had referenced, being 29 January, I can read it to you, is that:

10                   "Commissioner Jacobs informed the meeting that he is waiting for feedback from the Provincial Commissioners on the appointment of investigators. Some had responded and provided him with a list of investigators. He also requested a list of SAPS dockets in possession of the PCLU."

So the minutes would then reflect that there was an appointment of investigators.

ADV MHAGA: Can you read that again, because I do not get a sense that ...[intervenes]

CHAIRPERSON: Where are you reading that from?

ADV PROPHY: It is the minutes of 29 January ...[intervenes]

CHAIRPERSON: Where, on which page?

ADV PROPHY: Page 42.

20   CHAIRPERSON: Refer the witness to the relevant page.

ADV PROPHY: Page 42.

ADV MHAGA: Of the bundle?

ADV PROPHY: Of the bundle.

ADV MHAGA: Okay.

ADV PROPHY: Previously it was referred to as, ignore the pagination

of 175, and the actual pagination is page 42. It is where the minutes begin, the minutes of the task team meeting, 29 January 2007.

ADV MHAGA: Oh yes, I am there. Can you point me to the paragraph?

ADV PROPHY: The very last paragraph before the meeting was then closed, beginning, "Com Jacobs".

ADV MHAGA: Your question is couched as ...[intervenes]

COMMISSIONER KGOMO: Let us read that paragraph first.

ADV MHAGA: Okay. Do I read it?

10 COMMISSIONER KGOMO: Yes, please.

ADV MHAGA: It reads as follows:

"Commissioner Jacobs informed the meeting that he is waiting for feedback from Provincial Commissioners on the appointment of investigators. Some had responded and provided him with a list of investigators. He also requested a list of SAPS dockets in possession of the PCLU."

Now your question is ...[intervenes]

20 CHAIRPERSON: Your question then, Mr Propy, if you could just pose your question again.

ADV PROPHY: Yes, how do we reconcile the feedback that was given in the ITT with your paragraph 47 that, despite SAPS being part of the ITT, there was no appointment of investigators?

ADV MHAGA: There were no investigators that were provided to the

cases that I dealt with, despite this. But if you read this paragraph, it does not say these investigators were provided to the cases in respect of which dockets were obtained from the PCLU. It says, if you read correctly:

"On awaiting feedback on the appointment of investigators, some had responded and provided him (Commissioner Jacobs) with a list of investigators. He requested a list of SAPS dockets in possession of the PCLU."

10 He does not then continue to say investigators were then allocated to dockets, and these dockets were within the realm of or in possession of the PCLU. So there is nothing to reconcile, in the sense that I am saying, despite SAPS having been part of the task team, there were no investigators.

The fact that he got feedback that investigators are appointed, he has given a list of investigators, but it does not translate to say these investigators were then allocated to dockets in respect of which a list was provided to him from PCLU. And you can then say, here is, Mr Mhaga, a list of investigators assigned to PCLU cases.

20 How do you reconcile that with what you say in paragraph 47? I do not know if I am clear.

ADV PROPHY: I will just wrap it up with then, flowing from this, is it possible when you had previously said that some information did not flow from your seniors down to you, being the lowest ranking, could the appointment of investigators be one of them?

ADV MHAGA: Can you come again, I do not understand?

ADV PROPHY: Previously you had answered my colleague that some information was not given from your seniors down to you in your rank. What I am asking is, could the appointment of investigators have been one of those aspects that have been communicated to your seniors, but did not make its way down?

ADV MHAGA: The fact that it served before the TRC testing, this particular one came to my attention because I recorded that. When I spoke of being the lowest, and that at a managerial level I would not  
10 be involved, I was responding to a question that said, what was the reason for the investigating officers not to be supplied or provided to your cases.

And I said I do not know, because I was not sitting at a level where there would be discussions on the capacity constraints, and then I would be given feedback that, A, we are struggling because of A, B, C, and D. And if you look at this paragraph, it talks to what Commissioner Jacobs' work he had undertaken to source the investigating officer.

It does not then move further to say, in respect of the PCLU  
20 cases that have been provided in the audit that was conducted, investigator, Officer Mhaga, was assigned to Boiki Tlhapi, investigating officer Hloko was assigned to Bathandwa Nondo. If we have that information, then I would reconsider my response.

ADV PROPHY: And then just lastly, was this the last meeting of the ITT?

ADV MHAGA: I am not sure.

CHAIRPERSON: Mr Propy, the last to last.

ADV PROPY: The absolute last, chair, thank you.

CHAIRPERSON: Thank you. Mr Varney.

ADV VARNEY: Thank you, chair, we do have some questions by way of follow-up. Adv Mhaga, let me first say that we agree with your contention that you should not have been listed as a person of interest and served with a rule 3.3 notice. We do not see any justification for regarding you in that light.

10 ADV MHAGA: Thank you, chairperson.

ADV VARNEY: We think you should have been asked to come in terms of rule 7.1, where the Commission has authority to ask people to come through. And as I understand it, if you had been asked, you would have come voluntarily.

ADV MHAGA: That is correct, chairperson.

ADV VARNEY: Before I commence with questions for clarification, we listened with interest about the work you did in the Tlhapi, sorry, the Tiani ...[intervenes]

ADV MHAGA: Tjiane and Kumengo [?].

20 ADV VARNEY: Yes, okay, Tiani ...(intervenes)

ADV MHAGA: Tjiane.

ADV VARNEY: Okay, I am not going to try the pronunciation just to save time ...(intervenes)

CHAIRPERSON: Just say Cha.

ADV VARNEY: Cha.

ADV MHAGA: Tjiane.

ADV VARNEY: Tjiane, okay.

ADV MHAGA: Not Tiani, Tjiane.

ADV VARNEY: Okay, Tjiane.

ADV MHAGA: Yes.

ADV VARNEY: Okay, I have got it. So on behalf of the families, we want to thank you for your resilience and not accepting no as an answer, and working around where you had to, in particular that case which resulted in injustice. And we also want to thank you for your  
10 work at the PCLU for trying to work around the lack of investigative support, and doing what you could until you found it impossible to carry on.

So let us then turn to the cases that you dealt with at the PCLU, and to try and deal with my questions in the order in which you were led by my friend, Mr Gwala. So if we can turn to page 27 from paragraph 49 onwards, you deal with cases you attempted to take forward at the PCLU.

In relation to the Pebco 3 case, you were not quite sure what had happened to it, but you suggested that Adv Singh had clarified  
20 the outcome in her evidence yesterday, And, in fact, she did, and she advised that there will be a reopened inquest taking place in October of this year.

She also indicated that the two suspects were in a frail state, and unfortunately one in fact died in the last two weeks. So if I just look at the date, we are looking at a period of roughly 20 years to get

to the reopened inquest, which hopefully will happen later this year.

And just to save time, I am just going to put some of these questions to you, and then you can comment at the end. Now, the next case, the Highgate Hotel case, and I suppose I should disclose that you and I were involved.

ADV MHAGA: Yes, we were, and we went through this route.

ADV VARNEY: Yes, indeed. Commissioner Kgomo put an interesting question to you, and you said that I might be able to shed some light on it in relation to the role of the Minister in the reopening. And as I  
10 understand the Commissioner's inquiry, that could potentially induce some delay. Because the NDPP makes a decision and then the Minister also has to make a decision, and the reopened inquest cannot go ahead.

On my understanding of the rationale is that for the reopened inquest, it goes into the High Court, a judge has to be allocated, and then the Minister has to come and make that decision. And then if he or she authorises it, then to direct the Judge President in the Division to make a judge available, that is my understanding.

ADV MHAGA: Yes, that is correct, chairperson.

20 ADV VARNEY: Although I do say I do agree with Commissioner Kgomo though that this might introduce an unnecessary extra layer, which adds a lot of time and sometimes delay. We have had cases, which I am not going to go into, where we had to wait sometimes a year or more for a ministerial decision.

ADV MHAGA: I am not sure if I should comment or not.

ADV VARNEY: Yes, you can comment.

ADV MHAGA: Well, in the absence of myself being privy to such delays, it is in context in which I responded to Commissioner Kgomo that I normally take the posture that you do not break that, do not fix that which is not broken. Until such time that I be placed in a position where I am presented with evidence that this approach causes delays and impacts negatively in facilitating reopening of inquiries, I am unable to express a view that there needs to be a reconsideration of that framework.

10 ADV VARNEY: Okay, to save time, we will separately provide you with cases where there has been a delay.

ADV MHAGA: No, that is fine, because I head Legal Affairs Division, and we are responsible for formulating proposals for any amendment that seems to impede the prosecution in the NPA, so if we have that session offline, I do not have a problem with it.

ADV VARNEY: Okay, and, of course, we are not suggesting that that delay is on the part of the NPA. That section of the delay rests with the Minister's office.

20 ADV MHAGA: Well, I am not aware of that, so I am unable to comment on it.

ADV VARNEY: So in relation to the Highgate Hotel case, you mentioned it was a reopened inquest. In fact, it was the first inquest held in that case, which also explains why the families in that matter were deeply concerned at the delay of some 32 years. You tried your best, as you pointed out from the judgment, to get this case off the

ground, even though you did not have investigators, and the families thank you for those efforts.

ADV MHAGA: Thanks, I appreciate it, chairperson.

ADV VARNEY: But since your involvement, we are looking at another, and since you left for the Commercial Crimes Branch, then another 19 odd years lapsed before that inquest took place. And then turning to the Ngoma case, Kwezi Ngoma on page 30. This was a successful case that I think we can also attribute to you. I understand from your evidence in this matter the suspects have been refused  
10 amnesty, or rather, they refused to approach the TRC to apply for amnesty.

ADV MHAGA: Let us characterise it this way, because that is what is on record, they did not apply. So they did not refuse to apply, but they did not apply.

ADV VARNEY: They did not apply.

ADV MHAGA: Which paved the way for me to initiate the prosecution.

ADV VARNEY: Right. As I understand it from your paragraph 62, the attorneys approached the Umtata DPP office, and that ultimately led  
20 to the plea and sentence agreement.

ADV MHAGA: That is correct, chairperson.

ADV VARNEY: So would I be right in saying that in this particular case, because of those special circumstances, you did not have to investigate the case per se, or you did not need investigation officers?

ADV MHAGA: The approach with formal representations followed the

preliminary inquiry that I conducted with Sphiwe Phahlane, who was a member of the Missing Persons Task Team based in the Eastern Cape. So we would travel and try to get, we got the docket, try to trace witnesses, and all of that. So it did not happen, the submissions or the representations did not precede the preliminary inquiry. The representation submissions to the NDPP were preceded by that preliminary inquiry we conducted.

ADV VARNEY: Okay.

10 ADV MHAGA: Then we took a posture that says at least there is some evidence, albeit not as strong as we would have hoped. Fortunately for us, we were then approached to say let us enter into a plea and sentence agreement, and it curtailed a protracted prosecution process.

ADV VARNEY: But again, the preliminary inquiries, you in fact conducted those yourself?

ADV MHAGA: Yes, yes, yes.

ADV VARNEY: And then if we turn to the Myapi case on the next page, you say:

20 "This case suffered the same fate as other TRC cases due to a lack of dedicated investigative capacity."

Do you know what happened in this case? Was it ever resolved?

ADV MHAGA: It was never resolved. When I was preparing the affidavit, I had a conversation with the brother to Sonwabile Myapi,

that is the former death row inmate, Mr Phumzile Myapi, and he expressed his frustrations at the fact that there was not even a docket, there was not even records of an inquest ever being held. And I asked if (indistinct) could assist, and he says, no, we do not want to reopen healed wounds, you know, so let it slide. But (indistinct) had committed to say we can look into the matter.

When we travelled there with Sphiwe Phahlane, we met (indistinct) Stofile, who was instructing attorney who had followed up on the matter with the late Judge President Sangoni. You know, we  
10 could not find the docket at the police station, we could not find any records whatsoever.

And this happened in broad daylight, because the MK cadres were travelling from a butchery after having braaied meat, and they were escorted by a vehicle that had security branch at Askari, he said they were flagged down, they stopped, and there was a flurry of bullets on them and they died in broad daylight.

Why there was no docket, why there was no inquest, we up to date do not know, we are not sure why. I am still trying to engage with Phumzile Myapi to say, please, even if you do not inform the  
20 family, but can you give us permission to look into the matter. I am still awaiting feedback.

ADV VARNEY: Thanks for that clarification. Let us skip the Chikane matter for the moment and turn to the Hani murder case. Am I right in saying that the Hani investigation, prosecution, and ultimately result, we saw the convictions of Walus Clive Derby-Lewis, and that all took

place in the 1990s.

ADV MHAGA: That is correct, chairperson.

ADV VARNEY: And then the last two cases, on page 33, disappearance of Boiki Tlhapi, 1986 ...[intervenes]

COMMISSIONER KGOMO: And the correct spelling there has to be T-L-H-A-P-I, Tlhapi, it is a fish.

ADV MHAGA: That is correct.

ADV VARNEY: Thank you for that correction, commissioner. We did hear from Adv Singh yesterday that a decision to reopen that inquest  
10 has been taken, and it may happen later this year, although no dates have been set as yet.

ADV MHAGA: Oh, all right, I note that.

ADV VARNEY: Yes. And if one looks at the time lapse when you tried to get on top of this matter, we are looking at a period of roughly 19 years. And then the last matter in your list, that of the murder of Bathandwa Ndondo, I understand that the accused are due to appear in court in November, or rather, they did appear in court in November 2025. Do you have a recollection of that?

ADV MHAGA: My understanding is that there is one accused,  
20 Dandala, because remember, the other one, Tshabalala, passed on, and then Eugene De Kock was granted amnesty, and even Tshabalala had been granted amnesty. Solly Dandala, was denied amnesty.

ADV VARNEY: Right. So when you were busy with this matter and that first court appearance, we are looking at a period of roughly

19 years. So I would like your comment on that time difference when you tried to get these cases off the ground and when some of them, you know, action was eventually taken. We are looking at a period of roughly 19 to 20 years in most of them.

ADV MHAGA: I am not in a position to dispute that because I have not calculated at the time, but you are probably right.

ADV VARNEY: But do you have any comment on the length of time it has taken to get these matters off the ground?

ADV MHAGA: I have no comment.

10 ADV VARNEY: So a question that we have put to Adv Batohi, as well as Adv Singh, we asked for comment on the fact that between 2003 and the present date there has only been roughly seven or eight convictions in the TRC cases. Do you have any comment on that?

ADV MHAGA: I can only account for 2005, when I started getting involved in TRC cases, until June 2009, when I ceased to have anything to do with the TRC cases. Anything beyond that or even preceding 2005, I am not in a position to comment.

20 ADV VARNEY: Yes, and we are not asking you to comment or explain. Just do you have any reaction to the small number of convictions?

ADV MHAGA: I choose not to, I leave that to the panel to determine the impact of that. That said, I would have hoped to continue working on the cases, but I have expressed the frustrations and the reasons behind the slow pace of movement in those matters. I cannot take it beyond that.

ADV VARNEY: Yes, and we will not press you on that, and certainly we regret that you were unable to continue working on those cases. You made mention of this former supervisor of yours, Nigel Carpenter, who you put it in rather polite terms, I think, that he obstructed your work on these particular matters. Would you describe him as an "old order" type of prosecutor?

ADV MHAGA: I do not think I possess the expertise or the personal capacity to classify him. I have expressed a view that I describe his conduct being symptomatic of a person oblivious to the sensitivity, the importance and the need to prioritise strategically cases that relates to the conflict of the past. That is why in this commission I have not said he was deliberately obstructive, but he was not supportive of my work, and the conduct that he has displayed was obstructive because of his approach in these matters. I even said he looked at them as your ordinary cases that you would prosecute in the regional court or the high court.

COMMISSIONER KGOMO: And besides, you would not have a sample of cases enough for you to characterise him in the terms that the counsel is asking you, because it seems that is "one swallow that cannot make a summer".

ADV MHAGA: That is correct, chairperson. This was the only case that the Eastern Cape had done in TRC cases. I do not know his approach generally on these cases. I am confining myself with the experience I encountered with him in respect of this particular case.

COMMISSIONER KGOMO: Yes, Mr Varney.

ADV VARNEY: Thank you, commissioner. In your evidence-in-chief you mentioned that at the time you joined the PCLU, at that point in time you were the lowest ranking member, and that you, because you were not at managerial level, you were not attending managerial type meetings. So would I be correct in saying that you would not have attended meetings at the level of the NDPP and the executive of the NPA, and perhaps meetings with the Minister of Justice?

ADV MHAGA: There was not a single one that I attended, that is correct, chairperson. And just to correct, when I outlined the structure at PCLU, I said there was special director, Ackerman, deputy directors of Public Prosecution and senior State advocates, and that was Adv Shaun Abrahams, Adv Susan Bukau and myself, and I. So we were the lowest ranking prosecutors in the scheme of things, I was not the only one.

ADV VARNEY: Right, and it follows also that correspondence and documents that perhaps flowed between the Minister's office and the NDPP and others above you, you would not necessarily have sight of.

ADV MHAGA: I would have sight when, as the secretariat of the ITT, we would be called upon to account on work done for Adv Pikoli to prepare a report for the Minister. Or I recall vividly that the letter of complaint against Adv Ackerman SC from Reverend Chikane to Minister Mabandla, I do not know if he was Mr Mabandla or, then it was brought to our attention by Adv (Indistinct) to say, gentlemen, please respond to this.

So that one I was privy to, but I may have seen others

because I was responsible for generating reports. Because I remember when I outlined the mandate of the TRC, as I said, we had to do an audit of cases for further investigations on those that were ripe for prosecution. So I would be privy to some of the documents, but I cannot say this document and that. But the one that I definitely recall, it was an audit report and the Reverend Chikane complaint.

ADV VARNEY: Thank you. Incidentally, the Minister of Justice at that time, Mabandla, was Brigitte Mabandla, Ms Mabandla.

ADV MHAGA: That is my recollection.

10 ADV VARNEY: Then if we can turn to page 25 of your statement, dealing with the establishment of the TRC task team at paragraph 40. And you point out that you were invited to that meeting in October 2006, and you give the list of attendees, including the principals and the officials. One of the principals was Mr Loyiso Jafta from the Presidency. Did you know why a member of the Presidency was attending a task team meeting dealing with the prosecution of the TRC cases?

ADV MHAGA: I do not know, chairperson.

20 ADV VARNEY: And then if we move down to your paragraph 43, you point out that one of the mandates of this task team was to obtain or generate the dedicated investigative capacity from the SAPS and the DSO. And I think you give the answer in your paragraph 47 that, notwithstanding the mandate, no investigating officers were assigned to the TRC cases while you were at the PCLU. You confirmed that?

ADV MHAGA: That is what I said, I confirm, chairperson.

ADV VARNEY: Ja. I am just trying to read my own handwriting here, which is quite difficult. All right, let us then turn to the next page. At paragraph 46 of your affidavit you point out that at some stage, Adv Ackermann SC was removed from handling the TRC cases. Did you get to know why he was removed?

ADV MHAGA: There was no formal communication. I got this from, I think, Dr Ramaite when I would arrange meetings, and they said, no, no, Anton is no longer part of this. I did not enquire why, ja, so I do not know, but I heard evidence that was presented before this  
10 Commission on some reasons, but I am unable to comment on that.

ADV VARNEY: Right, thank you. Then let us turn to, in fact, if we can go back somewhat to page 24. In fact, I think we have dealt with the investigative aspects sufficiently, so let us skip that. Can I refer you to page 34 of your statement?

ADV MHAGA: Yes, I am there, chairperson.

ADV VARNEY: So you have dealt extensively about this period 2007 to 2009, so I am not going to dwell on it. You have explained why you asked to be relocated to the Specialised Commercial Crime Unit, so that you could broaden and strengthen your experience because you  
20 were not getting that experience at the PCLU for the reasons you have given. But you do say in the last sentence of paragraph 77:

"To the best of my knowledge, and based on my direct involvement, at the time this decline was not attributable to any political interference."

So I understand nobody in particular instructed you not to do

the cases, you tried your best to do the cases. But then subsequently in the Rodrigues case, did you hear about the Rodrigues case?

ADV MHAGA: Oh yes, I am the one who briefed Adv (Indistinct) to compile an opinion following that judgment of the SCA.

ADV VARNEY: Right, because in that case affidavits from former NDPP Pikoli, as well as former PCLU head, Ackerman, were put up, and they alleged political interference. And you will recall that Adv Pretorius made a statement on behalf of the NPA, in which he did not dispute the interference. And he stated at some length that the  
10 NPA could not be held responsible because the interference was subjected and imposed on them. Do you have any reason to dispute the evidence of Adv Pikoli, Ackerman and Pretorius?

ADV GWALA: Commissioner, chairperson and members of the Commission, I believe this is cross-examination now. It is not seeking to clarify any of what the witness has testified on.

CHAIRPERSON: Yes. Mr Varney.

ADV VARNEY: Well, it is evidence on which he has testified because he said that he was not aware of any political interference that took place while he was at the PCLU, and he is familiar with the Rodrigues  
20 case in which that evidence was set out. So I think it has a legitimate question for this Commission to hear whether he disputes any of that evidence.

CHAIRPERSON: Yes, I think it borders on cross-examination, Mr Varney, I will not allow it.

ADV VARNEY: Yes, I will move on. Now, if we can turn to page 36,

and, in fact, from paragraph 60 on page 35 you deal with those general exchanges you had with General PC Jacobs, and you were responding then to the rule 3.3 notice which alleged that you had been implicated.

In your commenting on paragraph 65 dealing with the question as to whether Reverend Chikane had expressed a view on the prosecution, and the allegation made by the late Jackie Selebi that he had not wanted a prosecution, you made the statement that in that regard in your interactions with PC Jacobs that you were too  
10 cautious. Can you explain why you think you were too cautious at the time?

ADV MHAGA: I explained here, commissioner, sorry, chairperson, that he was asking me to include in an official report a report from a third party in circumstances where he says Mr Lekalakala tells us that the late Commissioner Jackie Selebi says Reverend Chikane is against prosecution. So I was cautious to include such information in circumstances where there was a contrary view from a person who had a direct involvement in the matter, being the prosecutor in the matter. So I sought to get a substantiated verified position that this  
20 was so. Because you have got now four people in circumstances where Commissioner Jacobs says Mr Lekalakala says the late Commissioner says Reverend Chikane says ...[intervenes]

COMMISSIONER KGOMO: Hearsay to the fourth degree.

ADV MHAGA: I mean, I am a lawyer, so when I prepare a legal document that now is serving before this Commission, I must be able

to justify how I concluded and wrote that. So that was the discomfort that I had, that was the cautious approach I took, which I feel, and I have explained that I do not think it was untoward.

But Commissioner Jacobs persisted that, despite my reservations, he holds a different view, I hold a different view. He is an elder, he is a senior, I had to give in and stop pushing back. I said, I note that, let me just get what the other members are saying, and then I will put it in.

I am not sure if it was eventually put in, because I do not  
10 have the records, but nothing turned on it, because the prosecution proceeded, the accused were convicted, sentenced, and the matter was finalised.

ADV VARNEY: Now, that was, I understand, in December of 2006. At least, according to your emails ...(intervenes)

ADV MHAGA: The minutes, ja.

ADV VARNEY: Ja, we checked that exchange that you had with Jacobs, it was in December of 2006. And then just a few weeks later, in early February of 2006 ...[intervenes]

ADV MHAGA: 2007.

20 ADV VARNEY: Sorry, 2007, were you aware of correspondence that Jackie Selebi addressed to Pikoli and several other principals on that question of whether the NPA, whether the NDPP, rather, could make a decision without hearing first from the Directors General Forum?

ADV MHAGA: What I recall was a conversation we had in the TRC task team, where a view was taken that before the NPA could take a

decision to prosecute, the matter would have to serve before the committee of principals. And I think Mr Pikoli at the time took the view that this would be tantamount to encroaching on his prosecutorial decision-making powers.

And there was therefore a view that that stance would not find legal standing, and as such, I do not think anything turned on it. So those discussions, in the way you described them, particularly the one that you were referring to, I do not recall them. But I recall this specific discussion because it was a conversation we would have had  
10 as the functionaries and the officials in the TRC task team.

ADV VARNEY: Yes, and it was that question that prompted Adv Pikoli to approach the Minister and to write his memo where he complained that his independence was being undermined?

ADV MHAGA: Well, I would not know if that triggered that, but I am telling you about what I would have been part of, the conversation that served before the task team unit.

ADV VARNEY: Did you agree with Mr Pikoli's concerns?

ADV MHAGA: To the extent that it would have amounted to a prosecutorial decision, taking into account or being influenced by  
20 deliberations from elsewhere, it would have caused me discomfort, because the decision to prosecute is that of the prosecutor. But there is nothing wrong in the member entities expressing a view on the prosecutorial process, but the decision maker remains that which is empowered by the Constitution and the NPA, that being the NDPP, the DPP, or any prosecutor.

ADV VARNEY: Yes, I suppose the concern of Mr Pikoli was he was required to wait for the DGs to speak to him first.

ADV MHAGA: That is the conversation that I had at the time.

ADV VARNEY: Yes. No further questions, chairperson.

CHAIRPERSON: Thank you, Mr Varney. Mr Semenya.

ADV SEMENYA: Chairperson, thank you, and Adv Mhaga, good afternoon.

ADV MHAGA: Good afternoon, counsel.

ADV SEMENYA: Maybe let us open by making this statement to you,  
10 that the 3.3 notice caused you and your family anxiety and panic,  
caused you sleepless nights, and you were hurt by it. We want to  
make it very plain, it is regrettable and regretted, and for my part, I  
apologise that those were the consequences. You accept that, you  
accept the regret I mention about what it did to cause you that pain,  
and the pain to your family as well?

ADV MHAGA: Well, the apology is accepted, but the way you sound  
is like there is a follow-up statement that you want to make, that you  
now withdraw that rule 3.3 notice in light with what Adv Varney had  
suggested.

20 ADV SEMENYA: Without debate, though, the rule does mention or  
may implicate the individual. So there is that right, that rule, you  
accept that to be correct?

ADV MHAGA: I accept the wording to be that, but I do not accept the  
connotation, negative as it is, that it not there, because it says, "The  
evidence implicates". That is a positive statement. And then you

proceed to say, "or may", because it then gives an impression that the crafter of the communication has examined the allegation and came to a conclusion that implicates a positive statement. Then proceed to say, "or may". So any person reading that as a layman sees a Madlanga Commission witness sweating there in the witness box.

ADV SEMENYA: Well, that is the reason I am saying I do not want to engage on a debate on it, but regrettable, regretted, and I offer an apology for the harm it may have caused you and your family. Let us move on, on perhaps a lighter note. You say bra D, and you also say

10 bra Lu. That would be Mr Stofile, right?

ADV MHAGA: Yes.

ADV SEMENYA: In Umtata, right?

ADV MHAGA: Yes, that is correct.

ADV SEMENYA: An attorney, an activist even.

ADV MHAGA: Yes, that is correct.

ADV SEMENYA: And if you informally refer to me, you would say?

ADV MHAGA: Bhuti Ish.

ADV SEMENYA: Bra Ish. Okay, I want us now to accept that you have been around the block as a member of the NPA over many  
20 years, and have acquired incredible experience. That would be fair to say?

ADV MHAGA: I will accept the compliment, chairperson.

ADV SEMENYA: It is actually meant to with all seriousness, because I want to try and demonstrate with you what impressions I have about your ability. And I might add to the apology that there was no

intention to impugn the integrity, competence, professional standing of anybody. Do you note that?

ADV MHAGA: I would love if it is directed to me, not to say anybody.

ADV SEMENYA: Sorry?

ADV MHAGA: I would love if it has directed at me, not to anybody.

ADV SEMENYA: I can even still say anybody, but particularly impugning your integrity was never the intention.

ADV MHAGA: Thank you very much, chairperson, I accept.

ADV SEMENYA: All right. Now, let me go to the cases you did and  
10 you referred to in your affidavit. Shall we start with Chaney, State  
versus Chaney?

ADV MHAGA: Yes, I am there, chairperson.

ADV SEMENYA: Which would have been page, which is page 20 and  
...(intervenes)

CHAIRPERSON: Page?

ADV SEMENYA: Twenty of the statement from paragraph 23, right.

ADV MHAGA: I am there, chairperson.

ADV SEMENYA: Okay. What I want to engage you on is that this is  
in 2005.

20 ADV MHAGA: That is correct.

ADV SEMENYA: And you are working as a prosecutor, I guess, right?

ADV MHAGA: Yes, in general prosecution within the DPP office in  
Umtata.

ADV SEMENYA: And you were alive to the fact that the President  
had spoken in 2003 on matters in the TRC.

ADV MHAGA: No, I was not, chairperson.

ADV SEMENYA: By 2005 you are not aware of the address by the President?

ADV MHAGA: No, I was in the Transkei general prosecution, I saw a case before me, I proceeded. Not that I was ignorant, but I was not following what was happening at the time.

ADV SEMENYA: No, fair enough, fair enough. All I am seeking to convey is, as a matter of official record, that address to the joint parliament by the then President, Mr Mbeki, happened, at least let us  
10 move from the premise.

ADV MHAGA: No, I accept what you say.

ADV SEMENYA: What I find exciting is, you managed to obtain a conviction, and at the time that was good law to prosecute a matter of this kind, correct?

ADV MHAGA: That is correct, chairperson.

ADV SEMENYA: And you managed to realised that that fit within the parameters of the law.

ADV MHAGA: That is correct, chairperson.

ADV SEMENYA: And I say to you that is despite the address done by  
20 the then President to the joint sitting of parliament. That is what makes it significant for me, do you accept that?

ADV MHAGA: It would help if I could be reminded of the address.

ADV SEMENYA: It would help?

ADV MHAGA: If I could be reminded of the address.

ADV SEMENYA: No, we will get to that address in due course. All I

said ...[intervenes]

ADV MHAGA: (Indistinct) asked about it, continuing, and, you know, I am answering questions that are premised on the address, and I am not taken through it. I am not sure if that is fair.

ADV SEMENYA: I do not mind taking you there.

ADV MHAGA: Please.

ADV SEMENYA: Please trust the system for a little while.

ADV MHAGA: Okay.

ADV SEMENYA: And there is yet another one, which is a 105A, and  
10 that is the Kwezi Ngoma, which you deal with in paragraph 30.

ADV MHAGA: I am in page 30 of your statement.

ADV SEMENYA: From paragraph 60.

ADV MHAGA: Yes, chairperson.

ADV SEMENYA: There too we are talking about 2006, correct?

ADV MHAGA: That is correct.

ADV SEMENYA: And section 105A is good law in 2006, correct?

ADV MHAGA: That is correct, chairperson.

ADV SEMENYA: And it does not hinge on anything, I will get to that  
20 point, it does not hinge on anything that the President would have  
said. Please take it as correct from me and I can assure you. If my  
proposition to you is wrong in terms of, yes, the Commission would  
call me to order. Please move for now on the basis that this was  
good law, even despite the address by the President, then President.  
Can we move from the premise?

ADV MHAGA: I accept it was good law, and still the difficulty is that I

need to be reminded what the President said, but it is fine, we will proceed.

ADV SEMENYA: Okay, so this 105A plea and sentence agreements were also good before the TRC even happened, right?

ADV MHAGA: If I may get clarity, when you "TRC", what do you mean?

ADV SEMENYA: Well, the Truth and Reconciliation Commission that we know ...(intervenes)

ADV MHAGA: Process.

10 ADV SEMENYA: Process, yes, all right. You accept that?

ADV MHAGA: Ja, I accept that, chairperson.

ADV SEMENYA: And despite, as I say, the speech by the then President, it remained good law to even eventuate in the plea and sentence agreement of Commissioner Van der Merwe and Vlok, Minister Vlok at the time, right?

ADV MHAGA: Yes, in as far as the matter that was handled by Adv Ackerman SC. yes.

ADV SEMENYA: Yes, and it never changed from being good law before or after the TRC process. Am I right?

20 ADV MHAGA: That is correct, chairperson.

ADV SEMENYA: I also go to the next one in your list. I may even hazard to say even that of (indistinct), which is on the last page of the document, could never have been a battle with, for now, the resources available for its investigation and prosecution, fair to say?

ADV MHAGA: Can you come again, chairperson?

ADV SEMENYA: With available adequate resources, evidence collated of a kind sufficient, as you used the phrase, could have been prosecutable if the evidence was there, correct?

ADV MHAGA: It could have been prosecutable.

ADV SEMENYA: Okay, now I want to take you back, now that you are in the environment of the NPA and you are sufficiently immense over a significant period of time, or I may just interrupt myself and say your period, in fact, the far amount of time professionally you have had was with the NPA, fair to say?

10 ADV MHAGA: Come again, chairperson?

ADV SEMENYA: A fair amount of your working life has been with the NPA.

ADV MHAGA: That is correct, chairperson.

ADV SEMENYA: And for a very short stint you were with the Department of Justice?

ADV MHAGA: That is correct, chairperson.

ADV SEMENYA: And yet another short stint as a pupil?

ADV MHAGA: That is correct, chairperson.

ADV SEMENYA: For which you say you forged good forensic skills.

20 ADV MHAGA: That is correct, chairperson.

ADV SEMENYA: I was never that lucky as you were. But anyway, the point I am making is, I want us to have the benefit of your insight and experience. You would know as a matter of history that we were at a pacifist come 1990, et cetera, as a nation, to go down very badly. Is that fair to say?

ADV MHAGA: That is correct, chairperson.

ADV SEMENYA: And as a country, we decided that we ought not opt for a Nuremberg-type of settlement, you can accept that?

ADV MHAGA: That is correct.

ADV SEMENYA: But rather as a country we would have a view regarding crimes of the past, correct?

ADV MHAGA: That is correct.

ADV SEMENYA: And we would find a mechanism to address that for the purposes of finding reconciliation, you agree with that, correct?

10 ADV MHAGA: That is correct.

ADV SEMENYA: Now, as a country, we saw that there is gross human rights violations as a result of the struggle and the governance of apartheid, et cetera, right?

ADV MHAGA: That is correct, chairperson.

ADV SEMENYA: And we decided to have the Truth and Reconciliation Act, which would help facilitate that reconciliation for the country.

ADV MHAGA: That is correct.

20 ADV SEMENYA: So there would be people and a process where, if they were guilty of any of those human rights violations, they would then apply to the Truth and Reconciliation Commission, correct?

ADV MHAGA: That is the situation, correct.

ADV SEMENYA: And if they are good in their applications, i.e., amongst others, they make full disclosure, they would be amnestied, correct?

ADV MHAGA: That is correct, chairperson.

ADV SEMENYA: I do not know what "amnesty" would mean as an adjective, but they would be granted amnesty, right?

ADV MHAGA: That is correct.

ADV SEMENYA: And the TRC went through its process, and I will bring the evidence later, that more or less 90% of the applications that they saw, the individuals were granted amnesty. You can accept that for now, if it tends to be good evidence later.

ADV MHAGA: Can you come again on the question?

10 ADV SEMENYA: Almost 90% of the applications for amnesty were granted.

ADV MHAGA: I do not have that statistical account, chairperson ... (intervenes)

ADV SEMENYA: No, I accept that.

ADV MHAGA: I am unable to confirm or deny that.

ADV SEMENYA: No, no, I accept that. I am saying, subject to that predicate being proved right, can we move on that basis that 90% of those who applied would have been granted amnesty?

ADV MHAGA: I note what you are saying, chairperson.

20 ADV SEMENYA: Okay. Now, there would obviously be a category of people who did not apply and qua reasoning did not obtain any amnesty for their crimes. You accept that (indistinct) that that follows?

ADV MHAGA: That is correct.

ADV SEMENYA: And the law would deal differently with those who

applied and got amnesty, and those who applied but did not get any amnesty as a category.

ADV MHAGA: That is correct, chairperson.

ADV SEMENYA: And would deal differently, as your case that you did amply demonstrates, you do not apply, you are prosecutable, and in one of the instances a conviction would result, correct?

ADV MHAGA: That is correct, chairperson.

ADV SEMENYA: Now, the amphibian word "TRC cases" sometimes is used loosely. Would you accept that?

10 ADV MHAGA: In the absence of a better description, you might be correct.

ADV SEMENYA: Ja, I think the nomenclature really is being used not with any particular precision.

ADV MHAGA: Ja, that is correct, that is why when you said TRC, I was like, I may need to get clarity on which TRC, is in the process or TRC cases.

ADV SEMENYA: I am a bad student because I learned from you. You call them "TRC case minutes".

ADV MHAGA: All right.

20 ADV SEMENYA: But the point I am trying to drive at with your help is that it also identifies those cases of people who did not apply, correct?

ADV MHAGA: Yes.

ADV SEMENYA: It is used in that context, it is a TRC case even for those people who did not apply.

ADV MHAGA: Because it relates to the conflict of the past, it then becomes a matter that I can characterise as a TRC case, because you would have applied, but you did not, or you should have applied, but you did not.

ADV SEMENYA: Ja, that is why I am saying it has a nomenclature heading/label that seems to be used fairly loosely.

ADV MHAGA: Ja, the words you use, I studied bantu education, so I was struggling with the preface that you make.

ADV SEMENYA: I claim that credit then earlier than you did. Okay,  
10 now it is obvious that there were cases that were stifled, at least to use your language, after 2009, right?

ADV MHAGA: I am not clear.

ADV SEMENYA: You may ...(intervenes)

ADV MHAGA: Because I said I last handled cases in June 2009. Now you made reference to beyond 2009, so I may need clarity on what I would have said.

ADV SEMENYA: Well, I am using another word, an adjective that you yourself used in your statement to say it was dysfunctional. Can I stick with that word then?

20 ADV MHAGA: In the context of the TRC task team, yes, it was rendered dysfunctional.

ADV SEMENYA: It is only in the context of TRC that you see all of us here.

ADV MHAGA: I accept that.

ADV SEMENYA: Work with me here.

ADV MHAGA: I think I am.

ADV SEMENYA: Okay.

ADV MHAGA: But I have to seek clarity here and there, because I would give answers.

ADV SEMENYA: You are most welcome. In fact, to read the paragraph which would appear on page 34, paragraph 77, you cover the period 2007 to 2009, and you say:

"From late 2007 until approximately June of 2009  
there was a marked decline."

10 Again note the language you use:

"There was a marked decline in progress on the  
TRC-related matters."

ADV MHAGA: Yes.

ADV SEMENYA: You still stand by that, correct?

ADV MHAGA: You are asking if I still stand by that?

ADV SEMENYA: *Aah*, Mr Mhaga, you heard the question. Do you still stand by that?

ADV MHAGA: I stand by it, it is here in my affidavit.

ADV SEMENYA: That is why I am saying so:

20 ADV SEMENYA:

"As a result, the TRC task team..."

It continues, your statement:

"Became largely dysfunctional."

Again, very precise words that you seek to convey, right.

ADV MHAGA: Yes.

ADV SEMENYA: Now, I want to come to this element as quick as I should. You offer an opinion that all of this may be a consequence of lack of provision of investigative assistance given to the TRC, correct?

ADV MHAGA: That is correct, chairperson.

ADV SEMENYA: I have heard that expression being used quite a lot in our consultations and evidence here, but I want to unpack what that means. It cannot relate to the fact that the investigation and prosecution of these TRC cases required skill sets that were not  
10 available in the country, that is not what is thought to be conveyed.

ADV MHAGA: Not at all, chairperson.

ADV SEMENYA: Yes. And what that expression means cannot mean that the country, as a whole, had no capacity to provide this critical intervention to follow the cases, correct?

ADV MHAGA: That is correct.

ADV SEMENYA: I have in your bundle of documents included a document, which is a recommendation of the TRC. And I want us to explore ...(intervenes)

ADV MHAGA: Which bundle, chairperson?

20 ADV SEMENYA: Ja, I will get there, I will get there.

ADV MHAGA: Oh, okay.

ADV SEMENYA: There is a bundle of documents which we attached to the file that we were to engage Adv Mpshe with.

ADV MHAGA: It is the April bundle 7 to 10, it is a paginated 21, and at the foot of the page ...(intervenes)

ADV SEMENYA: It is 595. I would prefer foot of the page, and not the bottom of the page. Are you there?

ADV MHAGA: Because this one has written "Master file 2", 17 April 2026, statements from 17 April 2026.

ADV SEMENYA: Can I do this? I am going to ask my learned junior to bring the document to you for identification.

COMMISSIONER KGOMO: Mr Semenya, just remind me, you are referring to ...(intervenes)

10 ADV SEMENYA: The TRC report, a small extract of the TRC report  
...(intervenes)

CHAIRPERSON: It starts at page 14.

ADV SEMENYA: On the top of the page, that is what it says.

CHAIRPERSON: On top, page 14.

ADV SEMENYA: Yes.

ADV MHAGA: Okay, I am there.

ADV MOROKA: If we could just have assistance from Mr Semenya. We have an index, Madam Chair, document. Is it 162 at the top, is that the document?

ADV SEMENYA: Is Ms Moroka (indistinct)?

20 CHAIRPERSON: Ms Moroka, are we now on the same page?

ADV MOROKA: We are on the same page, chair, but we are trying to find out, we have got the document, we are trying to understand where it says, Madam Chair (indistinct).

CHAIRPERSON: I think ...(intervenes)

COMMISSIONER KGOMO: Should you not wait a bit?

CHAIRPERSON: Mr Semenya is about to get to that part.

ADV MOROKA: Oh, of the record, chair?

CHAIRPERSON: Of the document that he has referred us to.

ADV MOROKA: Okay, thank you.

ADV SEMENYA: It says at page 14: "Findings and recommendations", and it is a TRC report.

ADV MOROKA: I was trying to understand the difference, this is a different issue, chair, as I have explained before, we have a document overload, so I wanted to know whether this is a new document or  
10 whether we have it in the records somewhere so that we can locate it in the records? If it has a new document, we accept that.

ADV SEMENYA: Well, the document is not new, but can I proceed?

CHAIRPERSON: Yes.

ADV SEMENYA: Mme Moroka?

ADV MOROKA: Yes, you may, chair.

ADV SEMENYA: Oh, thank you. Can I invite the Commission to go and look at page 21 of the document? You will find it at the top of the page, and I want specifically to refer to paragraph 24, which I propose, Adv Mhaga, if you also have it, I propose to read it. You  
20 have it?

ADV MHAGA: Yes, I have got it, thanks.

ADV SEMENYA: As it would read:

"The liberation movements were cognisant of this at the time of negotiations. They were, however, also sharply aware of the fact that prosecutions

could endanger the peace process, hence the need for an accountable amnesty provision which did not encourage impunity, while at the same time taking account of the rights of victims. Furthermore, it has always been understood that where amnesty has not been applied for..."

Can I read that for emphasis:

10 "...understood that where amnesty has not been applied for, it is incumbent on the present state to have a bold prosecution policy in order to avoid any suggestion of impunity or of contravening its obligations in terms of international law."

You have got that, right?

ADV MHAGA: Ja, I have got that.

ADV SEMENYA: I want to suggest to you that it singles out for treatment those people who did not take advantage of the process by applying it, correct?

ADV MHAGA: Ja, it appears to be so.

20 ADV SEMENYA: Yes, and axiomatically it must be so, because there are others who have applied.

ADV MHAGA: That is a correct proposition.

ADV SEMENYA: And the others would have been given amnesty through that process agreed to by the country, correct?

ADV MHAGA: That is correct, chairperson.

ADV SEMENYA: And those who refused, again axiomatically, it must

have meant they must have been treated according to what the law says must happen, correct?

ADV MHAGA: That is correct.

ADV SEMENYA: So you would expect from this recommendation no stagnation in relation to matters TRC. The ones who did not apply know they are to face the law, correct?

ADV MHAGA: That is the approach I took in the cases that I heard.

ADV SEMENYA: Sorry?

ADV MHAGA: That is correct.

10 ADV SEMENYA: Yes. And those who applied but were refused amnesty too, the law would tell them that.

ADV MHAGA: They would fall into that category.

ADV SEMENYA: And that is why you got the results you did in respect of that. Now, I want to come back to the question of capacity. And I want to do that behind a document which is a SAPS document which purports to explain the toing and froing about who must investigate what. And I have before you, I would guess, a letter dated 26 September 2003. It is significant to take cognisance of the period 2003. Of course you know the mandate of this Commission is to  
20 enquire into matters of stopping, no stopping, attempts since 2003, right?

ADV MHAGA: That is correct, chairperson.

ADV SEMENYA: If you do have that letter, you will see it has addressed to Adv Ackerman SC.

ADV MHAGA: That is correct, chairperson.

ADV SEMENYA: And by Divisional Commissioner of Detective Services, Mr JF De Beer, right?

ADV MHAGA: That is correct, chairperson.

ADV SEMENYA: I want to share with you what this document tells us to be in part the impasse relating to these investigators. It says:

"Investigation of TRC cases.

Your letter dated 20 August 2003, as well as the preceding discussion between ourselves have a reference."

10 Well, it has illegible. We agree perhaps it says:

"At our meeting, as agreed at our meeting, I have discussed your request for the assistance of the South African Police Service to investigate cases from the TRC processes with the National Commissioner. It is evident from your letter that the investigation and prosecution of these cases were referred to the National Director of Public Prosecutions by the President.

20 Our understanding was that this referral was politically inspired. As you know, a large number of cases to be investigated are those of ex-policemen. It is therefore understandable that you first endeavoured to have these cases investigated by the Directorate for Special Operations, DSO. From your letter, it is firstly not

clear why the DSO do not have the legal mandate to investigate the cases emanating from the TRC."

Are you with me so far?

ADV MHAGA: Yes, I am following, chairperson.

ADV SEMENYA:

10 "And secondly, why it was not possible to obtain a Presidential proclamation to provide such mandate if it was lacking. Your letter only states that:

'In March 2002 consideration was given to the issue of a presidential proclamation but problems were encountered in this regard.'

You are aware of the fact that the capacity created for the D'Oliveira Committee is presently with DSO..."

And over the page it continues:

20 "In view of the nature of investigations, the fact that the President has referred it to the National Director, and that it seems to be common cause that the initial understanding was that the DSO would have investigated it, the opinion is held that you or the National Director should approach the President and confirm the instruction of the President on who he wants to investigate these

cases.

If the President indicates that the South African Police Service should be involved in investigations, the instruction should be obtained in writing. Upon receipt of such instruction, the South African Police Service shall, of course, assist, and the terms of reference, as well as the issues, such as logistics, the number of investigators, command can be discussed, as well as other relevant issues. You are therefore requested to approach the President on the matter, whereafter we can take the matter further, if necessary."

10

I want to say to any reader it would convey the meaning that SAPS is saying we are not giving investigators, not because the country does not have the resources, correct?

ADV MHAGA: That is the meaning, yes.

ADV SEMENYA: And I will engage the SAPS on this when the time comes. It does not look like an insurmountable difficulty to attend to the mandate and instruction of the TRC, a final report, as adopted by Parliament, correct?

20

ADV MHAGA: That is correct.

ADV SEMENYA: Instead it says I have the resources, but I gather that the proper approach to unlock those resources would rely on you going to the President to have a proclamation.

ADV MHAGA: That is what it says, chairperson, that is correct.

ADV SEMENYA: And then we have heard from the NDPP, I think it is Adv Ngcuka. His attitude to this is nonsensical, I am not going to the President. You do not have to comment, I am just giving you background and information. There will be arguments somewhere down the road that this type of impediment was capable of easy resolution so that the required resources, investigators... I do not know whether the rain interferes or does not.

CHAIRPERSON: Yes. We will proceed, just raise your voice.

10 ADV SEMENYA: What it does say is definitely not that the country lacked resources to deploy investigators in these matters, right?

ADV MHAGA: That is correct.

ADV SEMENYA: We should look elsewhere for an explanation, even for that matter a justification why no investigators and resources could be sourced.

ADV MHAGA: That is correct.

ADV SEMENYA: Okay. Now ...(intervenes)

CHAIRPERSON: Mr Semenya, before you leave this document, shall we allocate an exhibit number?

20 ADV SEMENYA: The document appears in the Calata bundle 1, in the Calata bundle 1.

CHAIRPERSON: Ja, exhibit?

ADV SEMENYA: Calata bundle 1.

CHAIRPERSON: (Indistinct).

ADV SEMENYA: The same letter appears. I just do not want to,

perhaps, if we can avoid it, give it an exhibit different from where it appears in the record. But I can give it an exhibit if that is more expedient.

CHAIRPERSON: Yes, yes, please give it an exhibit?

ADV SEMENYA: Oh, we added it to his affidavit, I am told.

CHAIRPERSON: Yes.

ADV SEMENYA: As the last page.

CHAIRPERSON: Thank you.

ADV SEMENYA: So I am trying to interrogate with the benefit of your  
10 experience whether this explanation that TRC cases were not moving  
as they could or should have moved was a function of lack of  
resources. It must be properly understood that that explanation lacks  
cogency, and I want to qualify why I come to that conclusion. We  
have had the evidence of Ms Singh that since 2021 they achieved  
more than was achieved since 2003 to that date. Even though the  
numbers, if we accept them to be seven, more was achieved since  
2021 than was achieved between 2003 to that year. You can accept,  
let me put it this way, you have no knowledge contradictory to the  
proposition I am putting here?

20 ADV MHAGA: Your statement was loaded, loaded in the sense that  
you made a conclusion that the resource constraint was not  
necessarily effective, and then you moved to compare ...(intervenes)

ADV SEMENYA: No, no, no...

ADV MHAGA: I do not know if I should not finish what I have raised  
...(intervenes)

CHAIRPERSON: Yes, you may finish, Adv Mhaga.

ADV MHAGA: Ja, it is quite intimidating, chairperson, when the person (indistinct) ...(intervenes)

CHAIRPERSON: Yes, you are protected.

ADV MHAGA: Please, may I be protected? So I am saying there was somewhere in your statement, chairperson, when you spoke of resource constraints not being cogent. And then you moved to compare that period 2003 up to when (indistinct) then started, and the period 2021 up to date.

10           So I am not sure how I should break the response, whether I should make it to respond to the non-cogency of the constraint, of the resource constraints, and also move to accept that there was more movement beyond 2021, and not the same as 2003 up to 2021. So I seek clarity on that, chairperson, because I was listening carefully when you started. That is why I am saying the statement was loaded, so if I can have a break down.

ADV SEMENYA: Okay, let us deconstruct it. I used to the word "lacks cogency", and I sought in the second part to give you an explanation of why I used "lack of cogency". If you are content, that  
20 is ...(intervenes)

CHAIRPERSON: Mr Semanya, please rephrase your question?

ADV SEMENYA: I am trying to, chair.

CHAIRPERSON: Yes.

ADV SEMENYA: You hold a view that this explanation of lack of resources is cogent?

ADV MHAGA: I have not expressed a view. I sought ...(intervenes)

ADV SEMENYA: Oh, okay.

ADV MHAGA: I sought to get clarity on what to respond to, because when I made the statement, chairperson, with respect, that it is loaded, it is because it is twofold. Now I am seeking clarity, do I respond to the cogency, or do I respond to an observation that there was no movement beyond 2021 compared to 2003 and before that? That is the clarity that I was seeking, with respect. I did not express any view so far on what you have said.

10 ADV SEMENYA: Okay, I will rephrase the question. That explanation, at least you and I agreed, is that, in part, progress was impeded for want of investigators to facilitate the investigation and prosecution, at least that statement is correct?

ADV MHAGA: That is correct, chairperson, that is what I have said.

ADV SEMENYA: Yes. I propose to break it and see if I can use your experience to see how valid that explanation is. And I am suggesting, if you know of reasons why that would justify the period this Commission is enjoined to investigate. Do you have any reasons for justification of that, or not?

20 ADV MHAGA: I have expressed a view in my affidavit that during that time there were resource constraints that I point to lack of investigative capacity, which caused a marked decline in the progress of investigation and prosecution of TRC cases. I do not know if I am answering you, because I agree with you, that is the explanation, and that is the point that I am putting across.

ADV SEMENYA: And please bear with me, I am trying to explore whether that is even good as an explanation. Well, I used the word "cogency", but I am trying to explore that and benefit from your experience.

ADV MHAGA: Okay.

ADV SEMENYA: That the country had the resources to put police investigation in a subject which the NPA conceded to be priority crime, right? I am suggesting to you, you had those resources as a country.

10 ADV MHAGA: In my experience, I did not have those resources.

ADV SEMENYA: That it is because, and I am suggesting ... (intervenes)

ADV MHAGA: They did not reach me.

ADV SEMENYA: Sorry?

ADV MHAGA: They did not reach me in allocation of cases that I was seized with, that resource did not reach me.

20 ADV SEMENYA: I think I agree with you on that point. That the country did not have those resources is the proposition I am battling with, and I thought with your experience you might give us more to work with. We have, I normally do not explain myself, but I think here I should, as evidence leaders, I want to be comfortable that I can put that proposition as an admission at the end of the Commission's work. And I want to say, either Adv Mhaga could offer no opinion, or his opinion was X.

ADV MHAGA: I have an opinion based on my experience, which

informs the conclusion that the lack of progress for the periods that I have mentioned can be attributed to resource constraints insofar as lack of investigative capacity on the cases that I experienced. And it needs to be clear that when I say "resource constraints", I am not generalising, but I am talking to the experience in respect of the cases that I handled.

If there is a general view, unfortunately I am not in a position to account for that. And in my affidavit I am clear that I can state that it can be attributed to lack of resources, because that was my  
10 personal experience on the matters I handled.

ADV SEMENYA: Yes, okay. I accept that resources given to you, but it cannot be an explanation to explain the delays if they are ever established, that it applies to all TRC cases. That is the only point I am making.

ADV MHAGA: It applies to the cases I handled.

ADV SEMENYA: I propose we now deal with the address by the President on the 15 April 2003, immediately upon accepting the final report of the Truth and Reconciliation Commission ...(intervenes)

COMMISSIONER KGOMO: Yes, Mr Semenya, before you move  
20 away, I do not know whether we have it on record that this letter was written, the letter that we have dealt with was written on the 26 September 2003 by Divisional Commissioner, Detective Service, JF De Beer, just to make that clear, if I missed it.

ADV SEMENYA: Yes, no, I did describe the document, its date, and who it came from, and who it was addressed to.

COMMISSIONER KGOMO: Okay, thank you.

ADV SEMENYA: Thank you, commissioner. In the bundle you have there is a document, which is the speech, which is the speech by the then President. You will find it at page 30 of that, there will be another number, 593, but that appears to be the transcript of that speech. I propose to deal with various excerpts to it without...

COMMISSIONER GABRIEL: Mr Semanya, an index would have helped.

ADV MHAGA: I cannot differ more.

10 CHAIRPERSON: Do you have the page?

ADV MHAGA: He said, counsel said page 30 of the bundle I have.

CHAIRPERSON: Yes.

ADV MHAGA: But I am there now, chairperson.

CHAIRPERSON: Yes.

ADV SEMENYA: If you go to page 34 at the top of the document, I just want to deal with a few excerpts of the report, I mean of the address. And if you go to the foot of the page, and for my purposes, I would like to start with the penultimate paragraph, which commences: "The balance that the TRC struck" Are you there with me?

20 ADV MHAGA: Are you on page 34 of the bundle, chairperson?

ADV SEMENYA: Ja, at the top of that page is 34, but there is pagination 597.

ADV MHAGA: I do not think I have the same document as yourself.

CHAIRPERSON: I think the pagination is incorrect. Just go before the other page that you have, there will be a page 30.

ADV MHAGA: I was on page 30 initially, chairperson.

CHAIRPERSON: Does it say 594, 593?

ADV MHAGA: I have 604 at the bottom and on page 30 on the top in the bundle I have.

CHAIRPERSON: No, just assist him, Mr Semenya.

ADV SEMENYA: Yes, chair, I will have my learned junior ... (intervenes)

CHAIRPERSON: Because the index is a little problematic.

ADV SEMENYA: Point taken.

10 ADV GWALA: Chairperson, whilst the witness is being assisted, we may also (indistinct). Perhaps if our colleague can tell us which bundle he is talking about?

CHAIRPERSON: The shared bundle.

ADV GWALA: Page 592 at the bottom, I am taking it from what the chairperson says. I am being assisted.

ADV SEMENYA: All right, the speech is pretty long, and perhaps what I read may lack context without reading the document in full. If you come against that difficulty, please tell me. I propose to read on page 34, right in the middle of the speech, to try and see what the  
20 President intended to convey to the joint sitting of Parliament. Do you have the penultimate paragraph to page 34?

ADV MHAGA: Starting with:

"The balance that the TRC Act struck among these compelling demands."

CHAIRPERSON: Competing.

ADV MHAGA: Competing, sorry.

ADV SEMENYA: Are you there?

ADV MHAGA: Yes, I am there, chairperson, thank you.

ADV SEMENYA:

10 "The balance that the TRC Act struck among these competing demands was reflected in the national consensus around provision of amnesty. In instances where perpetrators had provided the true facts about the particular incidents, and restorative justice which would be effected in the form of reparations, given that a significant number of people did not apply for amnesty. What approach does government place before the national legislature and the nation on this matter?"

So I extrapolate from that that what was a concern, amongst many maybe, that the then President had is that there were too many people who did not apply, correct?

ADV MHAGA: I note what you say.

20 ADV SEMENYA: All right, I continue.

"Let us start off by reiterating that there shall be no general amnesty."

So it has very clear that general amnesty was not part of the deal, correct?

ADV MHAGA: I note what you say, chairperson.

ADV SEMENYA: I do not understand what you mean by noting it.

Have I read it correctly?

ADV MHAGA: I see that what is written here.

ADV SEMENYA: Thank you:

10 "Any such approach, whether applied to specific categories of people or regions of the country would 'fly in the face' of the TRC process, and subtract from the principle of accountability, which is vital not only in dealing with the past, but also in the creation of a new ethos within our society."

I have read it correctly?

ADV MHAGA: Yes, chairperson.

ADV SEMENYA: All right:

"Yet, we also have to deal with the reality that many of the participants in the conflict of the past did not take part in the TRC process."

I will stop there and say it elucidates what the then President is seeking to be addressed, correct?

ADV MHAGA: That is correct, chairperson.

20 ADV SEMENYA:

"Among these are individuals who were misled by the leadership to treat the process with disdain. Others themselves calculated that they would not be found out, either due to poor TRC investigations, or what they believed, and still

believe is too complex a web of concealment for anyone to unravel. Yet, other operatives expected the political leadership of the State institutions to which they belonged to provide the overall context against which they could present their cases, and this was not to be. The reality cannot be avoided."

Do you see that?

ADV MHAGA: I see that.

10 ADV SEMENYA:

"Government is of the firm conviction that we cannot resolve this matter by setting up yet another amnesty process, which in effect would mean suspending constitutional rights of those who were at the receiving end of gross human rights violations."

Then says the document to us of the President to the nation:

20 "We have therefore left the matter in the hands of the National Director of Public Prosecutions for it to pursue any cases that, as is normal practise, it believes deserves prosecution and can be prosecuted. This work is continuing."

Do you see that?

ADV MHAGA: I see that, chairperson.

ADV SEMENYA: And I say to you that it explains how you were able

in 2005 to be prosecuting within the tramlines of the law at the time.

ADV MOROKA: Yes.

ADV SEMENYA: This the then President recognises, correct?

ADV MHAGA: I see that, ja.

ADV SEMENYA: Yes:

10 "However, as part of this process and in the national interest, the National Director of Public Prosecutions, working with our intelligence agencies, will leave its door open for those who are prepared to divulge information at their disposal and to cooperate in unearthing the truth, for them to enter into agreements that are standard in the normal execution of justice."

I want to suggest to you what the President there is saying is, section 105 A of the Criminal Procedure Act is one such instrument.

ADV MHAGA: I will agree with you.

20 ADV SEMENYA: Yes. And also I may even add sections 205 of the Criminal Procedure Act about those opportunities available to co-perpetrators to spy on the bigger "fish", as it is ...(intervenes)

ADV MHAGA: In a 204.

ADV SEMENYA: In the 204, yes, of the "bigger fish" is such instrument as well, right?

ADV MHAGA: I will accept that.

ADV SEMENYA: So the President, I suggest to you and to any

reader, may have been referring to such examples.

ADV MHAGA: All right.

ADV SEMENYA: And it then continues:

10 "This is not a desire for vengeance, nor would it  
compromise the rights of citizens who may wish  
to seek justice in our courts. It is critically  
important that, as a government, we should  
continue to establish the truth about networks that  
operate against the people. This is an obligation  
that attaches to the nation's security today, for  
some of these networks will pose a real or latent  
danger against our democracy. In some  
instances, caches of arms have been retained,  
which lend themselves to employment in criminal  
activity."

I suggest what that conveys is that there is still a threat to  
national reconciliation, which all these efforts were intended to  
realise, correct?

ADV MHAGA: I agree with your assertion.

20 ADV SEMENYA: And therefore giving this as an assignment to the  
NPA, together with the then NIA, the Intelligence Services, right. And  
can I invite you now to look at page 37 of 600, it is just two pages'  
events. Are you there?

ADV MHAGA: I am there, chairperson, yes.

ADV SEMENYA: I wanted to read out to what would be paragraph 5

from the top of the page, a sentence starting: "What we have identified today".

ADV MHAGA: I am there, chairperson, yes.

ADV SEMENYA: All right:

10 "What we have identified today arising out of the report of the TRC forms part of the panoply of programmes that define the first steps in a journey that has fully begun. South African society is changing for the better. The tide has turned, and the people's contract for a better tomorrow is taking shape."

Let me stop here to share with you what I read in the address. Nothing in this address appears to be an invitation for the formation of an ITT, interdepartmental ...(intervenes)

COMMISSIONER KGOMO: Interministerial.

ADV SEMENYA: They call it interministerial or interdepartmental ...(intervenes)

CHAIRPERSON: Interdepartmental, it is interdepartmental.

ADV SEMENYA: Task team.

20 CHAIRPERSON: Task team.

ADV MHAGA: I do not see it here, chairperson.

ADV SEMENYA: Yes, in fact, there is a reference to whether an instrument, like legislative solution, can be found if they were to look there, correct?

ADV MHAGA: Can you come again with that proposition?

ADV SEMENYA: In fact, there is reference to whether to resolve this problem, something like a legislative intervention would survive.

ADV MHAGA: Well, I have no view on that, but I take what you say.

ADV SEMENYA: Yes. And happily, all of these bodies, whether you call it DG's forum or you call it ITT or you call it other designations, came to the conclusion that there is no legislative instrument to accommodate so-called "those who did not apply" and those who are at risk of being a threat to our democratic architecture that the country has designed for itself. You can accept that as well, unless you have  
10 information to contradict it?

ADV MHAGA: Can you come again with that statement?

ADV SEMENYA: You do not have information to contradict the proposition that I am suggesting to you that served in the various ITT, interdepartmental, and some may even called it "amnesty task team", et cetera, came at one point to a conclusion that there will be challenges to the bill, it was called the "amnesty bills". That got abandoned. Please accept I am correct until I am otherwise corrected.

ADV MHAGA: I do not know about it.

20 ADV SEMENYA: Yes, okay.

ADV MHAGA: I am unable to comment, unfortunately.

ADV SEMENYA: Okay. The other thing that seems to muddy the understanding of these matters is that, in many instances they are referred to as "victims", like your Chikane matter, like your Calata matter, those individuals were actually victims. So reading

documents as though the victims were the cases, no?

ADV MHAGA: I do not understand your ...(intervenes)

ADV SEMENYA: Well, to speak more specifically, I would imagine it is State versus Van der Merwe, Vlok and others, and not a Chikane matter.

ADV MHAGA: Can you ...(intervenes)

ADV SEMENYA: I know the subject is about Reverend Frank Chikane in my example, but I am saying if I were to go to the police station to look for a file, a docket, I should not expect that name on  
10 the docket as the name of the docket, correct?

ADV MHAGA: Which name, chairperson?

ADV SEMENYA: In my example I am just using the poisoning of, or attempt, the poisoning of Reverend Chikane.

ADV MHAGA: Well, it depends on the profound nature of the case, for example, the Reverend Chikane matter, if you mention it, because of the high profile stature of the complainant or the victim, if you say a Chikane matter, it might be easy to find it. But you can also say State versus Van der Merwe and former Minister Adrian Vlok, you can also get it. So I would understand a person when you say I am looking for  
20 the Chikane matter because of the name has gained prominence in the case.

ADV SEMENYA: The so-called moratorium relating to TRC, you cannot find any justification on the law as it obtained why a moratorium would have been justified, can you?

ADV MHAGA: I only got to hear about it being said, but I have never

engaged on it, because remember, when I was in the Transkei, I was not aware of any such processes. I was approaching these as prosecution, but I attached sensitivity to them because they related to conflict of the past.

ADV SEMENYA: And that is why I am saying a moratorium where the law is extent, where the law still applies is difficult to justify, am I right?

ADV MHAGA: I am not in a position to comment on that without being privy to that moratorium, and I think I need to be factual when I  
10 respond.

ADV SEMENYA: Now, let us be hypothetical now. In the face of an existing law, you cannot interfere with its legal standing by a moratorium. That, as a matter of fact or law, I beseech you to give us the benefit of your experience.

ADV MHAGA: That would amount to making a legal conclusion, and unfortunately I am not in a position to express that view.

ADV SEMENYA: Okay. Ordinarily, given your experience, dockets that are destroyed, among many documents that have been destroyed, some are possible of reconstruction. Would that be a fair  
20 proposition to make?

ADV MHAGA: With my experience, you can always reconstruct a lost or misplaced docket.

ADV SEMENYA: Now, maybe my last part, in short, again, I want to give you a hypothetical example, and please accept I know, in 2005 only do you become part of the PCLU, right?

ADV MHAGA: 2006, chairperson. In 2005 I was in Umtata prosecuting the (indistinct) case.

ADV SEMENYA: Let us make it 2006 for the purpose of my question. The hypothesis is this, if a member of the executive says to the NPA, where there is a pending arrest of some people, and the member of the executive says to the NPA stop, do not do it. That would be inconsistent with the independence of the NPA, is that fair to say?

ADV MHAGA: Any effort that seeks to hinder a prosecution that includes that which you have described would be what I described as  
10 a violation of the NPA Act.

ADV SEMENYA: Ja, if would invite section 41 of the NPA Act.

ADV MHAGA: Yes, and if you are in that position, you should act as such.

ADV SEMENYA: And the law tells us ...(intervenes)

ADV MHAGA: Sorry?

ADV SEMENYA: And the law will tell us that it is a criminal offence to do that, correct?

ADV MHAGA: yes, I have outlined that in the affidavit.

ADV SEMENYA: Chair, those are the questions we have for the  
20 witness.

CHAIRPERSON: Thank you.

COMMISSIONER GABRIEL: Mr Mhaga, thank you. You have given us chapter and verse of the cases you worked on at the PCLU, and in almost each one of them you point to the fact that there were difficulties, and that you could not take it further because of a lack of

investigative capacity.

ADV MHAGA: That is correct, chairperson.

COMMISSIONER GABRIEL: Right. So in that time, I would say if you were called at the end of 2005, presumably you joined the PCLU around about 2006.

ADV MHAGA: Yes, yes.

COMMISSIONER GABRIEL: So in that time, 2006 to 2009, did the position remain the same, the lack of investigative capacity?

ADV MHAGA: It did, and I allude to that in my affidavit to say there  
10 was a marked decline ...(intervenes)

COMMISSIONER GABRIEL: A marked decline.

ADV MHAGA: Because of that source constraint, which I described as lack of investigative capacity in the cases I handled.

COMMISSIONER GABRIEL: So in that time there was no investigation of the cases?

ADV MHAGA: In the cases that I handled, yes.

COMMISSIONER GABRIEL: Well, to your knowledge, as a member of the PCLU, were there investigations in any of the other cases being handled by the PCLU?

20 ADV MHAGA: I am not aware of any. MacAdam would attest or talk to that because he had some cases that was handled, but the bulk of the cases were handled by myself.

COMMISSIONER GABRIEL: By yourself. And there were no, there was no investigation. So investigations stopped, and you say you could not take your preliminary enquiries any further?

ADV MHAGA: Counsel, the difficulty is that that approach was not sustainable in circumstances where in the ITT there were commitments made that there will be investigating officers. And counsel there was asking me about the minutes where Commissioner Jacobs were saying, yes, there are some appointed, give us the lists of the dockets from PCLU, but that did not come to fruition ... (intervenes)

COMMISSIONER GABRIEL: Right, so in that time...

ADV MHAGA: That is why I am saying I could not do that which we  
10 have agreed with Anton.

COMMISSIONER GABRIEL: It is impossible. So in that time prosecution stopped, certainly with respect to the matters that you were dealing with.

ADV MHAGA: That is correct, chairperson.

COMMISSIONER GABRIEL: Okay, thank you very much.

CHAIRPERSON: Mr Gwala, any re-examination?

ADV GWALA: No, thank you, chair.

CHAIRPERSON: Thank you. Adv Mhaga, we thank you for having  
20 agreed to come and give evidence before this Commission, despite the concerns that you have registered before this Commission.

ADV MHAGA: Thanks, chairperson.

CHAIRPERSON: You are now excused as a witness, and we thank you for your evidence before us.

ADV MHAGA: Thanks, chairperson.

CHAIRPERSON: Adv Semenya.

ADV SEMENYA: Chair, that would be the business for the day, and Monday is a *dies non*. May we then have the hearing postponed to Tuesday?

CHAIRPERSON: No, it is a Wednesday.

ADV SEMENYA: Wednesday, sorry.

CHAIRPERSON: What is the date on Wednesday?

ADV SEMENYA: 22 of April.

CHAIRPERSON: These proceedings are adjourned until the 22 April at 10 o'clock. We adjourn.

10 INQUIRY ADJOURNS UNTIL 22 APRIL 2026

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## CERTIFICATE OF VERACITY

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

### JUDICIAL COMMISSION OF INQUIRY INTO TRC

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- *Where no information provided, names transcribed phonetically.*
- *Grammar errors types verbatim.*



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