

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

**HELD AT:**

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

**BEFORE:**

**COMMISSIONERS:**

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

**EVIDENCE LEADERS:**

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

**REPRESENTATIVES**

Adv Varney (SC) – The Calata Group  
Adv D Pillay – The Calata Group  
Ms A Thakor – The Calata Group  
Mr Siphon Tlhaole – The Calata Group  
Adv T Masuku (SC) (for Adv Menzi Simelane)  
Adv Vivian Rikhotso (for Adv Menzi Simelane)  
Adv KD Moroka (SC) – DoJ representative  
Adv Motlalepule Rantho (for SAPS)  
Adv Bridgette Nthambeleni (for Adv Jiba)  
Adv Irene de Vos for President Cyril Ramaphosa  
Adv Yanela Ntloko- NPA representative

**5 MAY 2026**

**DAY 39**

**PAGES 1 – 146**



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PROCEEDINGS ON 5 MAY 2026

CHAIRPERSON: Mr Semenya?

ADV SEMENYA: Good morning Chair and Commissioners, we have today set down for the cross-examination of Adv Simelane and I take it Mr Varney will be commencing with it.

CHAIRPERSON: Yes, thank you. Mr Varney, that is confirmed?

ADV VARNEY: Yes, I confirm that, Commissioners.

CHAIRPERSON: Yes. Adv Simelane, you are reminded that you are still under your former oath.

10 ADV SIMELANE: Ja.

MENZI SIMELANE: still under oath

CHAIRPERSON: Thank you. Mr Varney.

ADV VARNEY: As the Chairperson pleases. Chairperson, Commissioners, before we commence, just to give you and the parties an indication of the organisation of the bundles, we did circulate a main bundle yesterday morning and then I think late last night we also circulated a supplemental bundle of just a handful of documents.

20 We thought we keep them separate so that there is no confusion about which bundle to use and we have provided one extra document in the form of a letter which I believe is some, a loose document before you which we will come to in due course. And I understand that the witness also has copies of these bundles before him.

CHAIRPERSON: Yes, is the supplementary bundle, the one that

starts at page 715?

ADV VARNEY: I believe that is the case, yes.

CHAIRPERSON: Thank you.

CROSS-EXAMINATION BY ADV VARNEY: Chairperson.

Adv Simelane, I first want to thank you for the cooperation that you provided to this Commission and also for making yourself available for cross-examination this morning, it is appreciated.

ADV SIMELANE: Thank you.

10 ADV VARNEY: Just to give you a sense of how I will deal with the cross this morning, it is essentially broken up into, into three parts. I am going to take you back to your main statement that you filed with the Commission in October last year.

ADV SIMELANE: Yes.

ADV VARNEY: And we will deal with matters arising from that statement. We will then move to your supplementary statement which you filed, I believe in March of this year.

ADV SIMELANE: Yes.

20 ADV VARNEY: And then lastly we will deal with your evidence-in-chief and we will make certain references to the transcript in that regard.

ADV SIMELANE: Okay.

ADV VARNEY: And then there might be other questions that ...[intervenes]

ADV SIMELANE: Sure.

ADV VARNEY: I might have to come back to, so it is essentially in

three or four parts. So let us then turn to your statement of the 27 October 2025 and Commissioners, that is in the bundle at pages 23 to 43 and if we can jump immediately to paragraph 16, you will notice... I will just wait for you to get to paragraph 16.

ADV SIMELANE: Yes.

ADV VARNEY: And in that paragraph you mentioned that you attempted to locate two officials that worked in the TRC Unit in the Department, but without success. You mentioned that they left the Department some years ago and so because you were not able to  
10 contact them, you had to proceed largely from memory. Are you able to give us the names of those officials?

ADV SIMELANE: Yes, I remember one, Dr Khotso de Wee.

CHAIRPERSON: If you can raise your voice, Adv Simelane.

ADV SIMELANE: Yes, Dr Khotso de Wee and that one gentleman, I cannot remember his name but he worked under him. I was going to get his details from Dr De Wee if I was able to contact him.

ADV VARNEY: Okay and as far as you know, is Dr De Wee still alive?

ADV SIMELANE: Yes, he is. As far as I know he is alive, yes.

20 ADV VARNEY: Okay so he could be traced and we will ask the evidence leaders if they can ...[intervenes]

ADV SIMELANE: Ja.

ADV VARNEY: Attempt to trace him.

ADV SIMELANE: I had his number but I do not have it anymore, but ja, if you trace him...[intervenes]

ADV VARNEY: All right. No, I am sure it will not be too difficult to trace him.

ADV SIMELANE: Ja.

ADV VARNEY: And if we can then move to paragraph 17 to 19, and I appreciate the fact that these different meetings you referred to happened many years ago, but we would like to probe with you the approximate dates on, of the two Cluster meetings you referred to. So for example in paragraph 19 in the first line you say:

“At the Cluster meeting subsequent to the one above...”

10 And I am assuming that the one above is a meeting you referenced in paragraph 18, so on the same page you say:

“I recall one meeting where he indicated that the NPA was engaging with the police.”

Am I right in saying that that is the other Cluster meeting you are referring to?

ADV SIMELANE: Ja, no, I do not really remember the sequence *per se*, but what I was trying to indicate there is that the meeting that I referred to in 19, followed the earlier meeting where the debate actually started about the agenda item of TRC. That is what I am  
20 simply trying to say, that there was a meeting where there was a general discussion, there was a mode of an issue there but the issues were introduced, but at the subsequent meeting it was almost like a follow-up of the issues.

ADV VARNEY: Okay. Now you do not have the records, I am not going to ask you the dates of those meetings, you have indicated that

you do not know the exact dates, but can we attempt to narrow it down to the year in which, the years in which those two meetings would have taken place?

ADV SIMELANE: It would be around 2006.

ADV VARNEY: Around 2006?

ADV SIMELANE: 2006, yes.

ADV VARNEY: Okay and actually that is what I thought because in paragraph 10, so a few paragraphs earlier you do mention that, that you started with the TRC Unit around 2006 and 2007, so we can  
10 assume that these meetings would have happened in the same year as ...[intervenues]

ADV SIMELANE: 2006 ja. Well it talks of it because I joined the Department in June 2005 mid-year, so pretty much a live part of 2005 I just tried to find my way around the Department. I only got properly to grip with things around 2006.

ADV VARNEY: Noted, thank you. All right, then focusing on these paragraphs and of course this now deals with the meetings of DGs Justice Crime Prevention and Security Cluster meetings. Can you remind us why there was a need for the TRC cases and the  
20 composition of the prosecution team to be discussed at these DG Cluster meetings?

ADV SIMELANE: Ja, well I think in my last in chief I did explain how the Cluster System works, so if the item is on the agenda of the Cluster, its full details are discussed for clarity. It is basically kind of an oversight of a programme, so when you are doing an oversight of

a programme, you look at its full details. You do not decide to do anything about it, but it, you have to interrogate everything about it so that when the DGs then comment about that particular issue, they have to comment on the full spectrum, depending on what they want to talk about.

For example if the curiosity is about the composition of the prosecuting team, it would be whoever would be curious about it, would have to indicate why they are interested in that particular issue, so it could be somebody either objecting to an official concern for  
10 whatever reasons that they may have, or it could be about a lack of adequacy of the team which we know would sometimes comment on.

So it is really always more to prove such that when the DGs make decisions which become recommendations to Ministers, we all would be able to say we have a full appreciation of what is going on and therefore the decision is made on that basis. That would really be the reason, it is an oversight and it is monitoring of a programme.

ADV VARNEY: Thank you. Well we will return to the question of the composition shortly but in this case it appears that the oversight was more about you know, an oversight of the programme but it included  
20 oversight of individual TRC cases. Would that have been an appropriate function for that, that Cluster?

ADV SIMELANE: Yes. Yes, it is oversight of the programme as a whole for general reporting about how it is running, but it would as in all programmes, it naturally does involve the specificity of how the programme is being run again from a variety of perspectives. I did

mention if I recall, that the Cluster has in its operational component, it is referred to as JOINTS [spelled].

So in other words, for the operational programmes of policing, intelligence policing, defence and so forth, there is JOINTS parts of the Cluster that runs that kind of work and it reports to, to the DGs. The DGs is more oversights and you know, policy, commentary and so forth, but not operations.

But JOINTS comments on operations, so when that gets done, those are the people who feeds to the DGs how the programme runs on the ground. So when the DGs therefore comment on the general oversights but also on the specificities of an issue, it would have received, the team or DGs would have received information from teams like JOINTS and so forth, amongst others. So it always involved even the specificity of a programme.

ADV VARNEY: Yes and in this case which we will return to later, in terms of specificity it included the DGs in assisting on making a recommendation in each TRC case before it goes ahead.

ADV SIMELANE: No, no, it never, it never got, it never got to that stage at all. In fact that discussion never got ...[intervenes]

20 ADV VARNEY: Yes, well we will return ...[intervenes]

ADV SIMELANE: [Indistinct], ja.

ADV VARNEY: To it. I agree that it, the DGs Cluster never got there because Adv Pikoli objected to it, but we will come back to that in due course. I am on paragraph 19. In the middle of the paragraph you mentioned that:

“It became clear to the Cluster that there was 'an issue' relating to lack of coordination between the police and the NPA.”

So what was the issue around the lack of coordination between the police and the NPA?

ADV SIMELANE: What I recall about this is that in the discussion of general progress, all of the departments, mine included, would report in the normal course, that there is an Interdepartmental Task Team, the work is continuing and then other departments would comment  
10 likewise. So in one of these instances the police were commenting that on their parts they are engaging with the NPA, but there is a dispute between them around sending team members for the reasons that I described.

So when we then zoomed on that issue, that one it was indicated that look, as the police we do have a difficulty in that we are not finding each other with the, with the NPA on the composition of the teams and then obviously the debate followed from there as to why and that is when it was indicated that there were objections from some of the members on the police side and on the intelligence side  
20 about some officials of the NPA and the PCLU.

ADV VARNEY: So the objections to the team members, was it objections to the NPA Team?

ADV SIMELANE: Well it was specifically rounded up to an objection, primarily it was about Mr Ackermann.

ADV VARNEY: Okay. All right, well then let us turn to that and that

is set out from paragraph 20 of your affidavit onwards. So just to summarise, paragraph 20 it points out that there was this unhappiness about the presence of Ackermann as the leading person on the TRC cases because of his alleged links to the persons that was alleged were likely to be investigated and prosecuted. And of course he was accused of being an 'apartheid prosecutor'.

Let me first ask you, why was the presence of the lead prosecutor on the TRC cases, why was that any business of the DG Cluster?

10 ADV SIMELANE: Well it was not the business of a DGs Cluster, but it had an impact on the work of the DGs Cluster. It had an impact because the programme was not moving at a pace that we would have liked it to move and the reasons that were given especially from the police side, is that the National Commissioner was having difficulties with his members, similarly with the Acting Head of NIA at the time was having difficulties.

At least that is what they reported, with his members who when they were wanting to put names forward for people that would go and assist the NPA, they indicated that they were meeting some  
20 resistance from their own members. Of course they did not indicate who those members were but what we understood and made to understand, is that there is a reluctance on the part of some of their members to being forwarded to working with the NPA on account of the presence of Mr Ackermann primarily.

It was not him only, I mean they also mentioned Mr Chris

Macadam and Tori Pretorius, but we were able to just reduce the issue to Mr Ackermann being the one they appeared to have the biggest problem with.

ADV VARNEY: So as you understood, what was the view of the SAPS at that time that until the issue around Ackermann had been resolved, that they would be unable to assist?

ADV SIMELANE: Well they did not say until it is resolved they would be unable, but it just became apparent that it looks like there is not going to be movement on this matter satisfactorily up until at least  
10 this issue is discussed and resolved.

ADV VARNEY: Okay. Now can we hone in on the person at this DG Cluster meeting who were unhappy with Ackermann leading the TRC cases and the persons who described him as an 'apartheid prosecutor'? Do you recall who raised those concerns?

ADV SIMELANE: Yes, it was the former National Commissioner, the late Mr Selebi. It was also the late Secretary of Defence, Mr Masilela. It was also the late Mr Manzini, the Heads of those Departments. Well they would say their members were informing them that to be the position, but from the way they engaged I also got the impression  
20 that it was also them who had that particular feeling.

ADV VARNEY: Okay, just to get those names on the record, we have a Secretary of Defence between the years 1999 and 2008 as January, Masilela. Is that correct?

ADV SIMELANE: Yes.

ADV VARNEY: So he was one of the ...[intervenes]

ADV SIMELANE: Yes.

ADV VARNEY: Persons and then the Correctional Services Commissioner, we have one Linda Mti who was the Commissioner between 2004 and 2007?

ADV SIMELANE: Yes, yes, but from his Department we did not get any, there was no issue about them cooperating because I do not think they were, they were involved, but was just part of the discussion like other DGs.

ADV VARNEY: All right and then National Intelligence Service, are  
10 we correct in saying that at that meeting it would have been Manala  
Manzini?

ADV SIMELANE: Yes.

ADV VARNEY: The DG of NIS?

ADV SIMELANE: Yes.

ADV VARNEY: Okay. Now did these individuals at this meeting, did they disclose who the persons were to be investigated with whom Ackermann allegedly had links?

ADV SIMELANE: No.

ADV VARNEY: And was any proof ever put up that Ackermann had  
20 dubious links with these individuals? I think they were described as  
apartheid operatives.

ADV SIMELANE: No, I do not remember.

ADV VARNEY: And in terms of the accusation that he was an apartheid-era prosecutor, was anything put up to give examples as to how he had conducted himself as a prosecutor during the apartheid

days?

ADV SIMELANE: No, there is nothing specific, so there was no reference to any case he had done or anything of the sort. The general reference is, was in his capacity as basically a prosecutor in an office wherever he was, similarly with Mr Macadam in that case.

I think reference to Mr Macadam was that at some point he was working in KZN out of Pietermaritzburg, so it was generally information presented as information being mentioned that because of what the members would have been talking to, to those DGs and  
10 their departments, would basically saying as their experience or experience of people they knew in relation to those individuals.

ADV VARNEY: All right but they did not have any specific experiences in relation to Ackermann?

ADV SIMELANE: No and the Cluster did not then ask for that as well specifically.

ADV VARNEY: So am I right in saying that the nub of the issue was he had been a prosecutor in South Africa pre-1994 and that was the issue?

ADV SIMELANE: It was a bit more than that, it was that he was a  
20 prosecutor pre-1994 but that he specifically worked for you know, the apartheid government as in that sense and we all understood that it was basically putting not a favourable light in that sense.

ADV VARNEY: So the problem you had with Ackermann, am I right in saying that you or at least the DG Cluster would have had the same problem with any prosecutor who had worked for the apartheid

government in the apartheid days?

ADV SIMELANE: Well I cannot say it is the view of the Cluster, it is the view of those who were involved in that discussion and that is how they presented it in the Cluster, but it was not about every other prosecutor. I do not remember a discussion of every other prosecutor. I remember this discussion being centred around specifically the individuals mentioned.

ADV VARNEY: So you know, the problem we have with that account is that at the meeting and subsequently those who raised their  
10 concerns with Ackermann failed to put up anything specific, they failed to point to the individuals which he allegedly had links with, they failed to point to any specific conduct of his as a prosecutor pre-1994.

So certainly from our client's perspective, you know the question is, were those the actual reasons? Were there not other reasons which bothered them?

ADV SIMELANE: Ja, not as far as I know, none were indicated to us at the time.

ADV VARNEY: Okay let us move to the next few paragraphs, 21  
20 and 22. In paragraph 21 you were then tasked as Co-Chairperson to go ahead and meet with Adv Ackermann and to essentially tell him the views expressed at the meeting, that Ackermann should not be involved in the TRC cases and that Pikoli should remove him and consider appointing somebody else to handle the cases.

Just for the record, Adv Pikoli confirms that in his evidence

before this Commission on the 13 March. We do not have to go there, I will just quote it quickly but it is for the record at the transcript for the 13 March 2026, page 154, line 16. Pikoli says:

“It is correct that Adv Simelane came to my office to have Anton Ackermann removed and I told him in no uncertain terms that this is not going to happen, I am not going to remove Anton Ackermann.”

Is that also your recollection?

ADV SIMELANE: Ja, well I did not go to his office to have  
10 Ackermann removed, I went to his office to indicate that a meeting is requested with him and what we would discuss and then as a courtesy I gave him a heads-up that this is what would be discussed at the meeting because this is the view we had.

ADV VARNEY: Although that was not a matter of courtesy, I understand from paragraph 1 you say you were tasked by the meeting to go and speak to Pikoli?

ADV SIMELANE: No, if you see, I was tasked as Co-Chair to go and indicate to Adv Pikoli what the concern was and that the view held by the police and the Intelligence Services is that it was not supported  
20 that Ackermann lead this process. So what I was saying there, that I was telling you that the meeting that is being requested with him, because the meeting that last take place, is that it must be a meeting of those DGs in the Cluster who felt that way, right, and therefore it was not going to be my meeting with Adv Pikoli only.

So me telling him that that meeting that has been requested

with the DGs we discussed, was a courtesy so that he is aware and he is able to prepare accordingly obviously, that when he comes to that meeting he should expect that that type of thing would be raised with him and then he would have prepared accordingly, however he would have prepared.

ADV VARNEY: Yes and if I can ask, you yourself, did you support the view of those in the meetings, SAPS and NIA, that Ackermann should be removed from the TRC cases?

10 ADV SIMELANE: I did not disagree with it, I did not necessarily also support it, but I felt that if it was necessary for the programme to move, then it needed to be discussed and it needed to be resolved and that was going to take place in the Cluster when the matter was basically tabled for discussion and obviously it never got to, to that particular point because it was resolved.

ADV VARNEY: So do you regard yourself as something of a messenger, you were simply passing on the views expressed at the Cluster meeting?

20 ADV SIMELANE: Not in that sense because, ja partly, yes, a messenger but not really a messenger, because we are the Co-Chair of the Cluster. So substantively we are dealing with the issues and we are leading those types of discussion, so I was not a messenger in the sense that we were just passing a message, but I was required to engage substantively with the issues to assist the Cluster, find a solution to the problem.

ADV VARNEY: And of course as Co-Chairperson of the Cluster,

you, were you not somehow dutybound to act in the Cluster's interest?

ADV SIMELANE: I beg your pardon?

ADV VARNEY: As Co-Chairperson of the Cluster, were you not dutybound to act in the interest of the Cluster in terms of what it wanted to achieve?

ADV SIMELANE: Yes, absolutely. You have to and remember that the interests of the Cluster, I did indicate if you recall how the Cluster, what the Cluster composition looks like and for that Cluster its only  
10 job is to have oversight and monitor programmes. The separate issue of the DGs that from the police and Intelligence Services, Defence, that had a specific problem, was not a Cluster issue but it affected the Cluster.

So what the Cluster was saying was, to the extent that our programme is not moving forward because it is affected by a lack of cooperation, firstly individually those departments must find a way of explaining what is the difficulty with cooperation, but to the extent that that now affects the Cluster, then as Co-Chair I was asked to say, "Please engage with colleagues" because if you recall again, I  
20 indicated that those within the Cluster, there were then those core Security Departments that formed themselves, I think it was referred to in evidence as a Forum.

So those DGs can be Co-Chair and those DGs meet and discuss this issue that is impacting on the cluster in this particular manner and then, "Co-Chair, can you and those DGs also meet with

the NDPP to discuss this particular matter and actually find out what the actual problem is, engage with the issue and then come back and reports to the Cluster what the issue is?" That is what I was mandated to do, yes.

ADV VARNEY: Now you mentioned in paragraph 21, you are talking about Ackermann's history, because of his history there was unhappiness especially on the part of the police and the Intelligence Services. What was that history that you passed on to Pikoli?

ADV SIMELANE: No I did not, I did not pass on any history to him.

10 What I indicated was exactly what the other DGs would indicate, that their members complain about his past involvement as a prosecutor, basically again prosecuting what they would refer to as comrades when they came into the country, deployed on whatever mission, his role as a prosecutor in basically prosecuting those who would have been arrested at the time. But they did not indicate the specifics of which they were, but it was in that context. At least that is how we all understood it.

ADV VARNEY: Yes and at that time and subsequently to this day, they have never put up a particular matter in which Ackermann  
20 prosecuted, a comrade perhaps on a problematic manner?

ADV SIMELANE: No, not that I am aware of.

ADV VARNEY: All right, then let us move on to paragraphs 23 and 24, and this then deals with a meeting in the West Wing of the Presidency and you mentioned that this was not a regular Cluster meeting including all the departments, and you indicate that present

were members mentioned in paragraph 19, and we have gone through those individuals. We will not repeat that. And you state that:

10           “I remember these ones because they were most vocal about the concerns of their departments. From their contributions in the preparatory meeting, they indicated their concerns to be informed in part by their and their members' personal experiences with the operatives of the apartheid government as commissars and  
10           commanders in exile, and also in part from a lot of comments and reports that they were receiving from their members in their department and outside of government.”

          So in that discussion dealing with these personal experiences with the operatives of the apartheid government and the comments in the reports referred to, were any of them connected to Ackermann and if so, could you elaborate?

ADV SIMELANE:   No, not that I recall, not that it was mentioned. None of them specifically indicated how they interacted with  
20           Ackermann, the only account that they were giving was that that is what they were receiving from their members. So pretty much anecdotal stuff and our concern was that whether it was true or not, it was not something that concerned the Cluster.

          The only issue was how is that affecting the Cluster and how it was affecting the Cluster is that you are not able to send members

in the manner that it was expected would happen because of the way they feel. So the issue was, is there a way in which that issue can be resolved and what basically is required to resolve it? That is what I was then asked as Co-Chair to go and assist, enquire into and establish and report back on.

ADV VARNEY: But you agree that if any of the members had personal experiences in relation to Ackermann, they would have raised them?

ADV SIMELANE: I do not know if they would have raised them, but  
10 they did not, not that I recall.

ADV VARNEY: Yes, so as much as [indistinct] in that meeting, although they raised personal experiences and referred to reports and the like, and none of them were connected to Ackermann. Now in that context what was the basis to move against Ackermann, if there was absolutely nothing on him?

ADV SIMELANE: What is the basis to move against Ackermann?

ADV VARNEY: Well the basis to seek his removal when there was nothing to justify his removal?

ADV SIMELANE: Well I am not sure that one can only look at it in  
20 that particular way. What you do have and I think we dealt with the issue of TRC matters and all the impacts it had on different people based on their experiences, if the issue here was that we are not able as for example, the National Commissioner or Head of Intelligence Services or Secretary of Defence, as Head of Department I am not able to forward names because those members I proposed to forward

or I discussed for forwarding, are reluctant to go or others were refusing to go.

That is what the Cluster had to attend to and assist those Heads of Departments' address and attempts to. So if their view was that in the past somewhere in the history of the struggle their experiences with the apartheid regime was that they had an experience that involved Mr Ackermann, they did not have to disclose it for us to properly assess and consider the issue, but if they felt it is their experience that made them uncomfortable to again physically  
10 and emotionally work with that individual, then the Cluster has to consider those particular views and then make a decision based on that.

So at this particular point at least this was a meeting to explore how that particular issue can be resolved and if indeed it was just the only issue or if there were others, but at least what was required at this particular point in time, at that point, was that at least have a meeting and talk about it and then come back to the Cluster and give us feedback and then we take it from there as the Cluster.

ADV VARNEY: So you mentioned that there was not a duty to  
20 disclose anything about Ackermann, but surely the opposite is true, if, if a Cluster was seeking his removal, there was a duty to disclose what the, what the members knew about Ackermann and why they felt that he was particularly problematic in that position?

ADV SIMELANE: No, the Cluster never sought removal and I do not know if ...[intervenes]

ADV VARNEY: Sorry, removal from the TRC cases, not removal from the PCLU.

ADV SIMELANE: Ja, that is not the Cluster position, it has never been the Cluster position. That aspects never got to that stage where it was discussed. The people that sought the removal of Mr Ackermann from TRC cases, were the ones I have mentioned.

The only issue that – the Cluster was not concerned about Mr Ackermann or anybody for that matter, the Cluster was only concerned about whether the programme is running as expected but  
10 when the Cluster became aware that it is not running as expected because there is still this lack of cooperation, then the Cluster said, “Can this issue be looked into?”

And then those particular DGs because they were the ones specifically affected and were contributing to the impasse, they needed to meet with the NDPP and engaged on that issue. They are the ones who were seeking for Mr Ackermann to not be a lead in TRC matters, so it is not the Cluster. That is the first thing. So whether or not they were to disclose, would have been up to them if they wanted to disclose.

20 You know, some of the issues would have been personal as it were. But also, we never got to a discussion, “That please produce the information”. We were still only at a stage where they indicated their views and that needed to be communicated as the reason and then we needed to discuss it.

ADV VARNEY: Now let us turn to paragraph 24 and here you

indicate that the members raised concerns and dismay about the alleged change and attitude of Adv Pikoli. And then you state in the middle of that paragraph 24 that, and you give an example I suppose, because like them he shared the same views and as DG had penned a memo for the Cluster, motivating for the dissolution of the DSO.

Now Mr Pikoli disputes that he called for the dissolution of the DSO or penned any such memo. What is your response to his denial?

ADV SIMELANE: I cannot really note it because I do not know, but  
10 that is what those individuals had said.

ADV VARNEY: Okay.

ADV SIMELANE: Ja.

ADV VARNEY: And this memo that he apparently or allegedly produced, is there a copy of that? That memo, can it be produced?

ADV SIMELANE: No, they actually never produced the memo, they just spoke about the memo that he had written on their behalf. It is something they jointly had discussed ...[intervenes]

ADV VARNEY: Yes.

ADV SIMELANE: At some point yes, but they never actually  
20 produced it so I never even saw it.

ADV VARNEY: Okay, so it was not produced then and as far as we know, it has never been produced?

ADV SIMELANE: Yes, absolutely no, no, I have never seen it.

ADV VARNEY: And also in the same paragraph, you mentioned that some of these members, you call them personalities, they knew each

other and some indicated from the time they grew up together in the same area as Gqeberha. Now Mr Pikoli also disputes, that he says of the people there he did not grow up with any of them in Gqeberha.

ADV SIMELANE: Yes, what I was saying there is that in the discussion around how to engage with the issues, almost all of them in a way were surprised that what they said was Adv Pikoli's change in attitude and tone and they were saying they are surprised because prior to his appointment while he was with them as DG of Justice, that all engaged was these issues and they had all understood that they  
10 are in sync, in other words they understand what needs to be done.

So with his, what they felt was a change or what they thought was on his part a change in approach, they were then surprised and they were not sure why and in one of the instances they, they indicated that it is possible that maybe it is because he is isolated, because they had understood that part of him going to the NPA was to obviously capacitate it and that he would be assisted with additional capacity from the outside so that he is able to deal with the environment.

And that apparently either did not happen or took long to  
20 happen and therefore they felt that it is possible that he is isolated. But to deal with his change of tone or attitude as the case may be, they were discussing that somebody either must be found or those guys who at least know him from Gqeberha.

I cannot remember the township in PE, but there is a popular township in PE where Adv Pikoli comes from, so there was a view

that at least offline a soft approach would be to find people or amongst themselves who would have grown up with them. At the time I understood that maybe they were referring to Adv here, sorry, to Mr Mti who was also from the Eastern Cape, but I do not know if they are referring to him but that is what I thought.

But the discussion was that let us rather find somebody who can talk to him offline and just find out what his concerns could be that has occasioned a change into, so that is what that, that is the context of that particular [indistinct], ja.

10 ADV VARNEY: Yes. So Adv Pikoli, he has made a denial, he said I have mentioned ...[intervenes]

ADV SIMELANE: [Indistinct].

ADV VARNEY: No, he denies any change in his approach. Do you have any reason to dispute Pikoli's denials?

ADV SIMELANE: No, no, I do not know because I do not know what they discussed, I was not there.

ADV VARNEY: All right, then let us do a bit of a jump, let us move to the next group of paragraphs, 27 ...[intervenes]

20 COMMISSIONER KGOMO: Mr Varney, before you move away ...[intervenes]

ADV VARNEY: Yes Commissioner, ja?

COMMISSIONER KGOMO: [Indistinct] Simelane, can one use in these contexts in paragraph 24, can one use isolated and surrounded in the same sentence? They seem to name different things. You spoke particularly of isolated but you have not said much about

surrounded. Can you say something about that?

ADV SIMELANE: I think I put those in inverted commas because I am trying to indicate what, what almost one understood to being said. It was more like a crypted, a crypted message on their parts to say he is isolated, this is what they had understood his deployment to the NPA would entail which is him going and then support is provided.

And in that context the way they were saying he is isolated or surrounded, it is almost as if he was, he could not be able to move on his own independently and that, because he is now in that  
10 environment, it was a possibility that you know, he would have been pressured by that environment to be aligned with it, which those DGs would have felt was inconsistent with what they discussed and agreed with him much earlier before going there.

So it was really a crypted message that they say he is isolated because he is by himself or surrounded because the environment around which he was now working, did put him in a position where it was not easy for him to stick to what he had agreed with these colleagues prior to him moving there.

COMMISSIONER KGOMO: Yes, thank you.

20 ADV VARNEY: Thank you, Commissioner. Let us move to paragraph 27, and you start in that sentence by saying:

“In the meeting, which had only one agenda item, the approach was informal.”

What was the agenda item or the one agenda item?

ADV SIMELANE: No, it was to find out basically what the issue is

between the NPA and the police primarily that was leading to the lack of cooperation.

ADV VARNEY: Was it not obvious that the main issue was the presence of Ackermann?

ADV SIMELANE: The presence of Ackermann in the meeting?

ADV VARNEY: Not in the meeting but as the lead TRC cases, prosecutor at the PCLU?

ADV SIMELANE: Yes, I mean that where you – I understood that that issue would be, would be raised that Ackermann would be the  
10 problem but one would not want that to be, to be presumptuous. The issue was, we needed to put it on the table then. There is a lack of cooperation that is being reported in the Cluster and what has also been reported to the Cluster is that this lack of cooperation arises because of the following things and specifically then Mr Ackermann.

So the idea for me as Co-Chair was to first have both sides present in the meeting confirming that, because we had not heard a view of the NPA that that was the position and remember, the Cluster meeting, I would have been as Head of Department of Justice, I would have been speaking on behalf of the NPA based on the reports  
20 that they would submit to me. They did not have an opportunity to speak for themselves and an official that would have come with me to that Cluster meeting from the NPA would have naturally confirmed that.

So all that the Cluster had really, was a version which was one-sided, so the purpose of the meeting was to get the other side of

the story if indeed that is the problem as experienced by the NPA. So the starts and the introduction of the issue would be that, that there is a lack of cooperation, this is what has been reported to the Cluster by these departments, “NDPP, can we have your perspective, well first that there is lack of cooperation and what in your view as the NPA is causing that?”

ADV VARNEY: In terms of the timing of this meeting, you mentioned that it was likely 2006. Do you have a sense whether it was early 2006, maybe mid or towards the end of the year?

10 ADV SIMELANE: No, that would be very, very difficult for me to say precisely, no.

ADV VARNEY: Okay.

ADV SIMELANE: It could have been anytime then.

ADV VARNEY: But typically these Cluster meetings, I imagine that would have been recorded and minuted?

ADV SIMELANE: Ja, the formal Cluster meetings are always formal, there is a formal agenda. They are like Board meetings, they are also, their programme is spread out throughout the year, they are formally scheduled meetings. Those are compulsory, they cannot be  
20 missed.

ADV VARNEY: All right but as far as you are aware, you or the Commission had not been able to get hold of a minute or record of this particular meeting?

ADV SIMELANE: No, I did not ask, personally I did not ask for those minutes. No, I did not feel that I needed them.

ADV VARNEY: So, so it might be available but you have not asked for them?

ADV SIMELANE: No, I personally have not, ja. There would, they should be available because they, those are formal documents so they get archived in terms of appropriate legislation.

ADV VARNEY: Okay.

ADV SIMELANE: So whether they can locate them as quickly, I do not know but they should be there.

ADV VARNEY: Well it does sound like it is quite key meetings, so  
10 we will ask the evidence leaders to make efforts to locate those minutes.

ADV SIMELANE: Sorry not, not this meeting by the way.

ADV VARNEY: Oh, not this meeting?

ADV SIMELANE: No, no, no, this meeting, you must remember this was not a Cluster meeting.

ADV VARNEY: Okay.

ADV SIMELANE: This was a meeting of the certain DGs of the Cluster, who were asked to meet informally with the NDPP and find out what the problem is and then come back to the Cluster and  
20 formally reports to the Cluster. It is that meeting that would be ...[intervenes]

ADV VARNEY: Oh, I see.

ADV SIMELANE: Yes, no that ...[intervenes]

ADV VARNEY: Sir, sir ...[intervenes]

ADV SIMELANE: That meeting was not minuted. The one in the

West Wing, no, that was one was not minuted, it was really an informal meeting.

ADV VARNEY: Okay but you know, normally they would not, you know, meetings were they informal or formal, senior government officials, would it not be minuted in some form or record kept of any nature?

ADV SIMELANE: No, no, no, not, it is not this one, no, no, no, not this one. It is not a formal meeting, it is a, it is a meeting outside basically if you want to call it that, it was not a formal meeting. The  
10 formal Cluster meetings involving all the DGs of the Cluster, those ones are minuted, those ones are formal.

ADV VARNEY: Okay. Now you state at paragraph 28 that:

“Adv Pikoli was accompanied by Adv Ackerman SC.”

And you also recall:

“At some point that Mr Mthunzi Mhaga, Adv Shaun Abrahams and Adv Macadam in the meeting or possibly a later one.”

Now Pikoli states he disputes that he ever attended such a meeting with Ackermann. What is your response to Pikoli’s denial?

20 ADV SIMELANE: No, I stand by my statement. Ackermann was in the meeting. What I just could not remember which is why I put it like that is, is whether Mr Mhaga and Mr Abrahams and Macadam were in that meeting themselves specifically, but all I can say is that Adv Pikoli did not come alone to that meeting. I just do not remember whether the others were there, but Mr Ackermann was in that

meeting.

ADV VARNEY: Ja and Chairperson, it is almost 11:00, would this be an appropriate time for the ...[intervenes]

CHAIRPERSON: Yes.

ADV VARNEY: Tea adjournment?

CHAIRPERSON: We will adjourn for tea and reconvene at 11:15.

ADV VARNEY: As the Commission pleases.

#### INQUIRY ADJOURNS

#### INQUIRY RESUMES

10 CHAIRPERSON: Thank you, Mr Varney.

ADV VARNEY: As the chairperson pleases. Adv Simelane, before tea time we were, just to remind ourselves where we were, we were dealing with the meeting in the West Wing.

ADV SIMELANE: Yes.

ADV VARNEY: And we were referring to various aspects arising from paragraphs 27 through to 29. And just to wrap up those particular paragraphs, I just want to put to you what Ackerman SC testified in relation to his presence at this West Wing meeting. Commissioners, this is from his transcript on the 5 March 2026 at page 48, line 20.

20 Adv Ackerman says he did not attend the West Wing meeting, and he even goes so far as to say that he has never been in the West Wing. What is your response to his denial?

ADV SIMELANE: I do not agree because he was at that meeting.

ADV VARNEY: Okay, then if we can turn to paragraph 29. You indicate that at the meeting you then informed Adv Pikoli of the

discussions of the cluster. They then confirmed the message that I had communicated to Adv Pikoli in our meeting.

And then in paragraph 30 it is indicated that Adv Pikoli stuck to his position exactly as he had stated in your meeting. And he indicated that since Ackerman was head of the PCLU, he was responsible for the TRC cases and he would not remove him.

In paragraph 31 you then say that the mood of the meeting changed and there was tension. Was that because Pikoli had stated that perhaps in uncertain terms that he would not remove Ackerman  
10 from the TRC cases?

ADV SIMELANE: Yes, I would say so, I mean, there was tension before the meeting. I think everybody was uneasy because of, well, obviously the way things had panned out up to and until that meeting. But yes, when he expressed himself and he indicated, yes, one could feel that, okay, there is tension now as a result of his response.

ADV VARNEY: So then you also indicate that, and this is in paragraphs 32 through to 34 and 35, that Ackerman allegedly spoke about the PCLU investigations. And in particular from paragraph 34 he described various cases against individuals in the ANC, and that  
20 some of these cases were ready for prosecution. And that at this point there was consternation, you mentioned that the meeting descended into some disorder.

And this was because, as you say, in paragraph 35, no one in the cluster was aware of those investigations, and I think we can assume that those investigations were the ones against the ANC. So

the question is, there appeared to be an expectation in the cluster that they be kept informed of specific investigations, like the ones allegedly against the ANC, but they were not. Am I correct in saying that the cluster had that expectation that they would be kept apprised of such investigations?

ADV SIMELANE: No, you would not be correct. I think what my recollection, what surprised everyone, and me included was that there was an issue that was introduced that seemed to be not consistent with what we understood TRC cases to be about. We understood  
10 TRC cases to be those that did not get amnesty.

But when Mr Ackerman briefly explained what they were doing, it was for the first time, well, at least that I did, that there was that kind of work being undertaken by the NPA. So it was that surprise basically along the lines that where is this issue coming from, because it is not the one that we had understood it to be.

That basically was that, not that there was an expectation that the cluster would need to know about every investigation, as it were, whether that one or even the other ones. The only expectation of the cluster was that progress on the TRC cases would come in the  
20 normal course of reports that get submitted to the cluster by the Department.

ADV VARNEY: But is it not true that, you know, if you say that when we speak about the TRC cases, it is essentially those cases in which amnesty was not applied for, not granted?

ADV SIMELANE: Yes.

ADV VARNEY: But am I correct in saying that that cuts all ways, it does not matter which political faction had been denied amnesty?

ADV SIMELANE: Yes, it would cut all ways.

ADV VARNEY: So then where would the departure be in relation to those particular investigations, assuming that that is what he said?

ADV SIMELANE: Well, I think at the time the issue with these ones is that, you know, when he presented, he indicated that, you know, what the people they had spoken to were coming to them about, were reporting what had taken place in, for example, in the camps. So it is  
10 not something that the cluster had discussed at any point in time and had been receiving reports on.

So this was for the first time kind of account, and for that to have been brought in that meeting is what was a surprise. Maybe if it had come via the normal reports, it would have been a different story. But there had not been, prior to that announcement, there had been no prior reporting to the cluster about those kinds of cases.

ADV VARNEY: But why should the cluster be surprised, given that the TRC did look into violations that took place in the camps, and so that was on the agenda of the TRC?

20 ADV SIMELANE: I suppose because it had not been reported before. If, for example, it was something that had been reported, like all the other cases that were reported in the progress reports, it would have been a normal thing. This one just came out of the blue, and we had not been briefed about it at any stage whatsoever.

ADV VARNEY: Yes. So, in fact, there was an expectation that if the

PCLU was busy with such cases, that they should have reported that to the cluster at some point.

ADV SIMELANE: As part of the normal problem, yes, not necessarily on a case-by-case, that this case, this is where it is at. It would be a report of how many cases, maybe which locations, what briefly they would be about, but not the details of each case.

ADV VARNEY: Now, you mentioned that once these investigations had allegedly come to light, that the meeting descended into some disorder. Can you describe what kind of disorder that was?

10 ADV SIMELANE: Well, in the sense that basically everybody started speaking at the same time, you know, people no longer focused on the order that the meeting had been following, where the chair was allowed to recognise people to speak. Everybody started speaking and they started talking to each other, basically not paying attention. So it became a bit chaotic, and it disturbed the flow of the meeting, that is what I mean.

ADV VARNEY: So Pikoli states that, you know, he has not attended any cluster meeting that descended into disorder. What is your response?

20 ADV SIMELANE: In this meeting he definitely was present, because that meeting took place with him.

ADV VARNEY: All right, let us then turn to paragraph 36, and you state in the first sentence:

"The argument being made, as I can recall, that  
Ackermann was referring to was not part of a

known POA approved by cabinet on post-TRC matters, and that if the PCLU was conducting those investigations, why is that issue being included in the one that was an approved program for clusters?"

So essentially you are saying that those kinds of investigations were not part of the POA approved by cabinet on post-TRC matters. Firstly, for the uninitiated, what is a POA?

ADV SIMELANE: It is a program of action.

10 ADV VARNEY: Okay, and more specifically, what is a cabinet POA?

ADV SIMELANE: It is basically the annual program of each of the clusters. Every year after cabinet lekgotla, all of the clusters would have the programs that they are running through their departments, and they are all consolidated in what is called a program of action for that calendar year.

ADV VARNEY: Yes. And so there was one on post-TRC matters. Do you have a sense or recognition as to approximately when that POA was decided upon or issued?

ADV SIMELANE: Well, there is a POA for every year, so post-TRC  
20 matters would have been in each POA in each year.

ADV VARNEY: And as far as you are aware, those particular kinds of investigations were never in the cabinet POA on the TRC matters?

ADV SIMELANE: That is how it was understood, that is how I understood it, that if there were cases of the type that he was describing against a particular person in the camps, that was not

understood to be necessarily within the same TRC matters that everybody understood within the POA.

ADV VARNEY: And do you know who was involved in drafting that particular POA?

ADV SIMELANE: No, no, not specifically individually.

ADV VARNEY: But would it not have been individuals in the DG cluster or individuals the DG cluster would have delegated such tasks?

ADV SIMELANE: No, if I recall correctly, it would come from the  
10 Presidency, because every department contributes input in terms of programs that each department would propose to be conducted in that particular year. And then after discussions in the lekgotla, then they are prioritised, and after they are prioritised, then they are communicated to each of the departments.

ADV VARNEY: So the President does the drafting ...(intervenes)

ADV SIMELANE: (Indistinct).

ADV VARNEY: But they depended on inputs from departments?

ADV SIMELANE: Yes, generally departments do make inputs, yes.

ADV VARNEY: Am I right in saying that once drafted, it is then tabled  
20 at a cabinet meeting for approval?

ADV SIMELANE: It is usually approved, after the lekgotla, it is usually approved because it is agreed. I am just not sure if it actually goes back to cabinet again, but it will be formally communicated to each of the clusters as a cluster programme, yes.

ADV VARNEY: Yes. Although it is called a cabinet POA, presumably

it has to be approved at some point by cabinet.

ADV SIMELANE: Ja, it may very well, but I just do not recall specifically if it goes in that way.

ADV VARNEY: And that once it is approved by cabinet, then it becomes effectively a cabinet decision or directive.

ADV SIMELANE: Yes, yes.

ADV VARNEY: And am I right in saying that once it is approved, that it is then at least politically and administratively binding on departments?

10 ADV SIMELANE: Yes, the department must implement what is within their core mandates, yes.

ADV VARNEY: Yes. Would it also be binding on the NPA?

ADV SIMELANE: Yes, it would, because the NPA is part of the Department.

ADV VARNEY: Did you ever get to see the POA on the TRC matters?

ADV SIMELANE: Yes, we would see it, yes, every DG would definitely see it.

20 ADV VARNEY: And you can confirm that the cases that Ackerman was talking about was not part of that POA?

ADV SIMELANE: I do not recall the specifics. The POA would not have case-specific matters, it would have just subjects, so to talk about TRC matters, that is the kind of program it would be. Then the departments would then break that down in accordance to sub-themes within that major theme, that is how it would work.

ADV VARNEY: Yes. Although you are quite definitive in your statement that the cases that Ackerman was describing were not part of the approved POA.

ADV SIMELANE: Yes, because it was not understood that those kinds of cases would fall within the broader TRC cases.

ADV VARNEY: Now, can I ask, why should cabinet through a POA or any other device, why should they be deciding what matters, like TRC cases, be investigated and prosecuted?

ADV SIMELANE: I am not aware that cabinet would discuss cases or  
10 TRC cases, but it would discuss the post-TRC. If you remember, I did indicate that when the TRC finished its work, the report was obviously submitted to the President, and it would have been discussed in cabinet, and then it would have been agreed that it must be implemented. So the programme of action would follow progress on that particular report, that is how it would be, yes. It would not be a discussion of a specific case.

ADV VARNEY: No, we are not talking about specific cases, we are talking about types or categories of cases. And this is where, you know, the families will be asserting that the political meddling in these  
20 cases, they will say, you know, it did start at the very top with these kinds of directives through this POA being issued by cabinet.

ADV SIMELANE: No, that would definitely be incorrect, because that is not what cabinet would decide, at least as far as I know how cabinet works.

ADV VARNEY: Yes, well, it is an argument that we will be making on

behalf of the families. Let us turn to paragraph 37, and here you point out that Ackerman sought to provide additional clarity, that they could not ignore complaints, and that the approach would be, you know, they would start on one side and then move to the other side.

And then the example of a list of members from the Political Military Council, the highest decision-making structure of the ANC in Lusaka, was subject to the PCLU investigations. I suppose my first question is, you know, was it any business of the DG cluster to look at prosecutorial strategy of the NPA or PCLU?

10 ADV SIMELANE: No, it never did, and it never asked for a strategy. But it would have commented on it based on what would come out in the reports, yes.

ADV VARNEY: Yes, well, you know, when we talk about strategy, I suppose we are really talking about case selection. And case selection, I think, is at the heart of the dispute that, or the disorder that arose in this meeting. Would that not be correct?

ADV SIMELANE: You can call it that, but it was more about whether what Mr Ackerman was describing was something that fell within what they ought to have been doing, or at least within what we understood  
20 was their task they were supposed to do. So the manner in which he presented it, as I said, it is information that had never been reported in any of the progress reports. So I think that is what created the problem, hence the questions too.

ADV VARNEY: So, Mr Pikoli said that the claim that Ackerman said that, you know, he will prosecute one member of the liberation

movement and then proceed to prosecute one from the apartheid security sector, he denies that that was said at the meeting by Ackerman or anyone else. In fact, he says that this was the allegation, that the late SAPS Commissioner Selebi used to make against the PCLU.

ADV SIMELANE: I do not know what Mr Selebi used to say about the PCLU because I was not there, but at this meeting that I am referring to, he definitely said that.

ADV VARNEY: Okay. Now, you also mentioned in paragraph 37,  
10 well, you made reference to the fact that the NPA had a list of the members of this Political Military Council. I think the correct term is Political and Military Committee, based in Lusaka. And, in fact, in the same paragraph but on the next page you say that:

"The list was produced and alleged to be of the members of the Political Military Council, and it was passed around for everyone to see."

Who produced that list?

ADV SIMELANE: Mr Ackerman produced it, if I remember correctly.

ADV VARNEY: So that, I suppose that was an explosive list in a  
20 sense, because it included the highest ranking ANC members on the council in Lusaka. Did you ever retain a copy of that list?

ADV SIMELANE: No, personally I did not get a copy. I am not aware if a copy was made, but it was passed around for people to have a look at it.

ADV VARNEY: Yes, but it must have become immediately quite a

well-known list. It is odd that we do not have a copy of that particular list anyway. Well, let me put it this way, do you not agree that it is strange and odd that such an explosive list, and there is no copy to be found?

ADV SIMELANE: Well, that is strange, because it was there, it was produced. Somebody who must have had it and filed it somewhere, so, yes, it is strange that it cannot be produced all of a sudden.

ADV VARNEY: Yes. So. you know, we have a bit of a problem with the timing about the concern raised about the NPA possibly acting  
10 against the most senior ANC leadership, because, after all, we are dealing with a meeting that took place sometime in 2006.

And I want to put to you, I want to put to you a media statement that was released by the NPA, in fact, it was the NDPP, Bulelani Ngcuka, and it is at page 723 of the cross-examination bundle, sorry, supplementary bundle.

Sorry, it is not page 723. That is from the bundle it came from, but it is the first page in the NPA supplementary bundle. Oh, my apologies, it is actually page 723 of the cross-examination bundle. Do you have a copy in front of you?

20 ADV SIMELANE: Is it this one in yellow? Yes, I have got it.

ADV VARNEY: Okay. It is titled, "NPA Media Release", dated 15 May 2004, and the title is: "The NPA closes the file on 37 ANC leaders." I am not going to read the whole thing into the record, it is already before the Commission. The first paragraph simply says:

"The NPA has decided not to launch any

investigation into 37 ANC leaders who were refused amnesty by the TRC."

And it was issued under the instruction of then NDPP, Bulelani Ngcuka, and it sets out the detail of why the NPA is not going to be prosecuting the ANC leadership. Now, that received some publicity back in 2004. So I must put it to you that you and your colleagues on the cluster must have been aware that the decision had already been taken in previous years not to prosecute the ANC leadership. And yet, here your account of this meeting in 2006 deals  
10 with attempts to go after the ANC, which simply cannot be correct.

ADV SIMELANE: Well, I did not know about this particular media release and this issue as reflected in this media release being discussed because I was not there. But when I joined the cluster, it also was not an issue that was raised with me or that ever came up, such that I could have known about it.

I only got to know about this in these proceedings. But the issue here is that it was Mr Ackerman that introduced the issue of a list in a meeting that was there to discuss something completely different. And all I was describing in my statement was the reaction of  
20 those present in that meeting to the production of that list.

As to why he did it, I do not know, but he had been asked to comment, to brief those present about the work of the PCLU, which is what he did. Why he then went further to produce the list and express himself in the manner that he did, I have no idea.

ADV VARNEY: Because, you know, aside from the public media

release, you know, the evidence of Mr Ackerman and Adv Pikoli before this Commission is that there were no developments from the decision taken in 2004 not to prosecute the ANC leadership. And they repeated themselves on numerous occasions that that had not changed. So in the light of that, we must put it to you that that caused serious doubt on the veracity of your account of this particular meeting.

ADV SIMELANE: No, what I put in the statement is, firstly, the existence of the meeting, and secondly, what happened in the  
10 meeting, that is correct.

ADV VARNEY: Yes.

ADV SIMELANE: That is exactly, it happened exactly as I have described.

ADV VARNEY: Well, you will understand that in our arguments to this Commission we will be arguing that this account cannot be accepted in the light of the known facts in relation to the decision to prosecute the ANC leadership. I am just putting that to you so that you are aware, and you can respond if you want to.

ADV SIMELANE: No, it is fine, I do not understand what you will be  
20 arguing, yes.

ADV VARNEY: Let us move to paragraph 39. Oh, sorry, this is not back in your main statement.

ADV SIMELANE: Yes.

ADV VARNEY: Now, you allege there that, and I think in the second last sentence, that:

"Adv Pikoli then indicated that if the members insisted on the removal of Ackerman from the TRC cases, then he will remove him, but that he will seek his counsel any time if he needed it."

Now, Adv Pikoli disputes that he ever said that he will remove him, but then just seek his counsel, he denies that. What is your response to his denial?

ADV SIMELANE: No, I hear that, but that is exactly what he said at the meeting.

10 ADV VARNEY: Then let us turn to paragraph 40. You state that:

"It became no longer conducive to continue with the meeting because the focus had become this list."

You then point to the agreement that had been reached, the agreement that is in dispute. And you then say that:

"The NPA and the police, as responsible parties for these matters, would then continue with their mandates and take the processes forward accordingly in the normal course to the cluster."

20 Now, I want to put it to you that that is difficult to accept, you know. We just heard that this explosive list of the most senior NC members had been put up, which the NPA were apparently proceeding with. And yet you state that the purpose of the engagements had been achieved, and that the NPA could simply continue in the normal course. Surely it could not have been left just

to let them carry on as before.

ADV SIMELANE: Okay, I am not sure what you mean, but what I am saying there is that the purpose for which the meeting was set up was achieved. Because there was an outcome from that meeting, which was an agreement by Mr Pikoli that he would then remove Mr Ackerman from the TRC cases, except that he would use him whenever you needed him.

So the purpose of that meeting basically was achieved, and there was no longer a need to discuss the issues further. What I  
10 mean thereby, saying the matters between the two departments, not the two departments, between the NPA and the police would then go on as normal, is that, based on what had been reported to the cluster, which occasioned the meeting, that there is lack of cooperation because of Mr Ackerman.

Now that it was agreed by Mr Pikoli that he would then remove him, then what was the cause of the disagreement would have fallen away. Therefore, cooperation would be expected going forward, that is what I mean by that when I say, "In the normal course".

20 ADV VARNEY: Okay, I suppose my surprise was that, you know, one had a list of cases that did not form part of the cabinet approved POA, so I just found it difficult to believe that the NPA could be left to carry on in the normal course, but you have answered that. Let us move on to paragraph, hold on, let us stay with paragraph 41, because I think you do then indicate what was going to be happening in relation to

those cases. And you say in 41, about the first line, you say:

"Investigations would be conducted on a program that was not considered as part of the approved POA and approved by cabinet. Further, that these activities linked to the post-TRC matters is not appropriate, since they were not the same and were not previously discussed as part of the TRC matters. Their inclusion, therefore, would be inappropriate unless specifically approved.

10 In addition to that, the President and some members of cabinet were under investigation possibly without their knowledge, and that the investigations that Ackermann referred to members of the prosecutions, then at a minimum the members of the cluster needed to report these developments."

So, firstly, if senior individuals, you know, like cabinet members, are being investigated, do they need to be told about investigations in which they are suspects?

20 ADV SIMELANE: Well, they do not have to be told by the person investigating them, but anybody else who is aware of it can tell them, there is no bar to that.

ADV VARNEY: You see, the concern being expressed here is that senior members of government are being investigated without their knowledge. So there does seem to be an expectation that it should

come within their knowledge, they should be told.

ADV SIMELANE: Ja, not that there is anything wrong with letting them know, but in this particular context we felt that it is important that they are aware that, firstly, there are these kinds of matters. Because we needed to discuss them to be certain for ourselves that indeed there are matters that fall within the TRC matters as we knew them and as they were being reported.

And because these ones were not being reported, so we therefore needed to be certain that what we were informed by Mr  
10 Ackerman is appropriate work that the cluster should be concerned with. And then, obviously, in the normal course of the departments in the cluster and the cluster's work, that needed to be reported formally so that it is known.

COMMISSIONER KGOMO: At what point should these senior members be informed that they are being investigated?

ADV SIMELANE: At what point?

COMMISSIONER KGOMO: Yes, at what point should they be informed? Was it discussed at what point?

ADV SIMELANE: Well, for purposes of the cluster, it does not matter  
20 at what point. It is simply to report that there are investigations underway, and this is the context in which those investigations arise. It is part of the program, if it is part of the program, or it is not part of the program, if it is not part of the program, and you leave it at that. The focus is not to inform an individual what an investigation into them looks like, because the cluster would not have that information,

it would not know.

So all that was being reported here is that there was a meeting. What would have been reported is that there is a meeting of this nature that took place, this was the context of that particular meeting, and this is what came out of that meeting, so that everybody knows. So this is just an account of how the DGs after that meeting sort of debriefed us.

COMMISSIONER KGOMO: Yes, thank you.

ADV VARNEY: Thank you, commissioner.

10 COMMISSIONER GABRIEL: Can I ask a question? What would the purpose be of such a report?

ADV SIMELANE: The purpose is to inform in the normal course the cluster reports on everything. So, in other words, if any work is done operationally that relates to the work of the cluster, a report must be produced to demonstrate that the cluster is doing its work.

COMMISSIONER GABRIEL: So I understand you to say that the NPA had to report on operational matters.

ADV SIMELANE: No, it is not the NPA reporting. The NPA does its work however it does its work, but this cluster would need to report as  
20 part of progress of TRC matters.

COMMISSIONER GABRIEL: On the operational matters of the NPA?

ADV SIMELANE: On the progress of the TRC matters. So it would be operational matters in the sense that we would say the NPA has provided, or I would say as the DG of Justice, here is a Department of Justice report, in respect of TRC matters, he has the report from the

NPA, and this is what it says.

However, the NPA would have reported it so that everybody knows that at least the program is going forward. So what the cluster would be interested in is, are there cases currently running in court being prosecuted, how many and in which locations? And, naturally, if they were, they would be public, so they indicate maybe it is State versus whoever it is.

Others, they are not in court, but they are at an advanced stage, and they are likely to enter the court roll in six months' time, it would be that kind of reporting. But what the cluster gets a picture of is that there is movement. What had happened before is that there is no movement because there is no cooperation, hence this meeting.

COMMISSIONER GABRIEL: Thank you.

ADV VARNEY: Thank you, commissioner. Then in respect of the reporting, let us move to paragraph 42, because you do say the first reporting was to the ministers of the cluster. Can you recall approximately when this, and I am assuming that it was a meeting or a briefing, as you state in that paragraph, when was that approximately, or how long after that West Wing meeting did this take place?

ADV SIMELANE: I cannot remember exactly, but it was not too long. I think it was maybe, at the most, it would be about a month.

ADV VARNEY: Okay. And am I right in saying that as one of the DGs, you would have been present at that meeting?

ADV SIMELANE: I was present in that meeting.

ADV VARNEY: Ja, and you do give an account in paragraph 42 what the concerns were, that these kinds of investigations fell outside of the POA, and you say in particular:

"Because these matters were not included, they would require a separate discussion and decision by cabinet."

Now, why would cases like this, and, I mean, we are talking serious crimes, mostly murder, kidnapping, and the like, why would there be a need for cabinet to revisit this and have a discussion and  
10 take a fresh decision?

ADV SIMELANE: There would be a revisit, I mean, the investigation as far as police and the NPA would continue in the normal course, I mean, nobody tells them what to investigate and what not to investigate. But as a formal addition to a program that is already approved, is that anything additional would need to be reported, that this is what we wish to add so that it is supported or agreed, and naturally to be motivated.

If it is in addition, that would be described as complementary, and therefore necessary. It is that kind of reporting that would be  
20 known, because there are consequences to the program. There would be a budget and those kinds of things.

ADV VARNEY: Yes, but that does not quite align with what you say in paragraph 42, the second line:

"The Ministers enquired about these investigations by the NPA and whether..."

And I highlight here:

"...the decisions taken on the post-TRC matters included them. The DG's respond in saying that the new matters were not included, and that would require a separate discussion and decision by cabinet."

So we are talking here that a decision by cabinet was needed.

ADV SIMELANE: Yes, in the sense that if these were matters that  
10 were not forming part of the TRC matters that were approved originally, and there were matters that were being introduced as part of the TRC, so they needed to follow the same line of approval in terms of reporting to cabinet that these are the matters, they followed in those...

We would have needed to explain, for example, to say why were they not there initially, if they were not there initially, and there would be an explanation to that, and therefore approval for them to be included would be required.

ADV VARNEY: Yes, and again, that is our problem with that  
20 approach, because, you know, here you have cabinet effectively taking decisions in relation to the category of cases to be investigated and prosecuted. Surely, that is not business of the cabinet?

ADV SIMELANE: I am not sure it is about the category of cases. What would have needed to be approved is that these are cases that are parts of the overall TRC cases. To the extent that the view is that

they were not initially included when they should have been included, therefore, what would be required is that there be confirmation and approval that they be included in the normal course so that there is no work that is done outside of cabinet approval. It generally does not work like that.

ADV VARNEY: Why would you need cabinet approval to investigate serious crimes, such as murder, kidnapping, torture, and the like? Surely that is not needed.

10 ADV SIMELANE: Of course it is not needed, but what would be needed here, and that is why I am explaining the context, that in the same way that cabinet approved the programme in the first place when the TRC closed and the report was submitted. And if there were matters there that were not mentioned, that should have been mentioned in that report.

Now that information about them was known and made known in the way that it was, the view of the DGs was that that information must now be reported as well to the cluster so that when it goes to cabinet, then those matters are presented there so that they are known firstly that they are there.

20 And if there is a reason to explain why they were not there initially, whatever the case may be, that will be done, and therefore that they continue to be investigated like all the others. So, in other words, incorporate them into the programme that is already running, so that they go ahead. That is all that was proposed there.

ADV VARNEY: Yes, well, I must put it to you, Adv Simelane, that on

behalf of the families we will argue that this is evidence of political meddling in prosecutions of serious crimes from the highest level, including the cabinet. All right, let us move on, let us turn to paragraph 43. And in paragraph 43, well, the question of Ackerman's position was also discussed, that is in paragraph 42, but let us move on to save time.

The other issue that the ministers enquired about was whether there was a framework in terms of which all post-TRC prosecutions were being dealt with. And the DGs indicated there was  
10 no separate framework, and that the prosecution policy of the NPA was the one that was being utilised. I assume that is the normal prosecution policy.

And then, because of the nature of the post-TRC matters, the Minister suggested that the Minister of Justice engage with the NDPP about having a framework that focuses solely on the post-TRC matters, because they were unique, sensitive and important. Why did the ministers feel that there needed to be a separate policy or legal framework for these serious crimes as opposed to other crimes?

ADV SIMELANE: I do not want to speak on their behalf, but my  
20 sense of the issues is that the post-TRC matters were always viewed different to every other normal criminal matter, in that normal criminal matters really did not entertain anybody unless there is a specific issue that arises from that particular matter or those types of matters.

But these ones were specific because they were part of the broader programme of reconciliation, amongst others, and I suppose

because TRC matters were highly political, having regard to their origins, as it were, and where the country was going as far as the future is concerned.

So particular attention was paid all the time to what was happening in those kinds of matters. So dealing with them and the manner of dealing with them was always a sensitive issue for the victims, society in general, and also in relation to those who would be subject to investigation and prosecution.

ADV VARNEY: But back in 2006, by now the TRC had been wound  
10 up for several years, the amnesty process had been wound up also for some years. Surely the crimes in question, and again I do not want to harp on the matter, but murder, kidnapping, torture and the like, surely they should have just been treated as normal serious crimes at that point in time.

ADV SIMELANE: No, I do not agree that they are normal. There is nothing normal about TRC matters, they are not normal like any other murder or kidnapping. There is a context to them, and rightly or wrongly, or whether one agrees or disagrees with those involved, there is a manner in which matters of that type needed to be  
20 approved because of the impact that they would also have on society in general. So they would need some kind of attention to make sure that they are done properly.

ADV VARNEY: But do courts not always take context into account?

ADV SIMELANE: No, sure, that is for the other branch of government to do that. There is nothing wrong with that, it does not mean that

any other branch should not equally have the same kind of interest.

ADV VARNEY: But you are talking about now the prosecutorial decision-making process.

ADV SIMELANE: No, I am not talking about the prosecutorial decision-making process. It is the impact of any investigation, whether or not it results into a prosecution, that is of interest. If it does result into a prosecution, it is also of interest for that particular papers. Because overall TRC matters are different because of the impact they have on the other work of the cluster.

10 ADV VARNEY: So why I say prosecutorial discretion or decision-making whether to prosecute or not, is because in your paragraph 43 you talk about:

"The enquiry about a legal framework, and that the DGs point out that currently it is the prosecution policy that is in place, and that prosecution policy deals primarily with the discretion of prosecutors to prosecute or not."

ADV SIMELANE: Yes, it talks about that, but it also talks about the manner in which they do that work, which is a policy issue and not  
20 necessarily a decision to prosecute or a decision to not prosecute. So how the work is done is not necessarily reserved for any one group. The rest of society is required, or at least is entitled to comment thereto.

So what I understood, at least by that, at least in my view, I do not know about others, is that when dealing with these matters, for

the reasons that I have described, there would have needed to be a certain sensitivity that enables everybody to at least be satisfied that there would not be societal repercussions of a negative nature because of either the manner in which matters were handled or whatever outcome of decisions.

ADV VARNEY: Now, we have a big problem with timing again in relation to your evidence, because here we are talking about the liberations that are taking place in or around 2006. Now, the efforts to come up with new guidelines were a minimum, so the efforts to come  
10 up with new guidelines, that started as early as February 2004, and granted, that was before you became DG in 2005.

But there is evidence before this Commission that the DG's forum created an amnesty task team, and they proposed new guidelines, which became amendments to the prosecution policy, and these were in fact promulgated in December 2005.

So it does seem that those guidelines or the prosecution policy amendments were already in place when the Ministers raised. Whether there was a special framework in place and they were told, well, there is just a prosecution policy, and then they called for a  
20 special legal framework for these cases. But that was already in place from December of 2005.

ADV SIMELANE: Ja, well, maybe I could be, that would have escaped me or those who were in the meeting, but that would have been the context in which that point would have been raised, to say how that was the case.

And I am sure if maybe there was an opportunity to remind them, those that were present, that indeed this was the position, they would have either taken care of it or there would have been an engagement further about whether it adequately deals with it, with the issues.

So, in other words, there would have been a want to assess whether it is assisting the processes or not. And if yes, obviously it is not an issue, but if not, in what respect and how to further make improvements.

10 ADV VARNEY: Well, I must put it to you that it is difficult to accept that the implementation or the promulgation in December of 2005 could easily have escaped, you know, your attention, the DG of Justice and others in that cluster, and it does cast some doubt on the veracity of this evidence.

COMMISSIONER KGOMO: That is where institutional knowledge or memory comes in, Mr Simelane, because someone must have been present, was present when those things were formulated and promulgated. So that is the point that I would also want to understand. No one with institutional memory to say, no, but look,  
20 you are "reinventing the wheel", the wheel is existing".

ADV SIMELANE: No, certainly, thank you, chair, no, certainly that is the point. If somebody remembered, that would have been the right time to do it. So I just recall the meeting in this particular way, but I understand the point, yes.

COMMISSIONER GABRIEL: Mr Varney, before you move on.

Adv Simelane, remind me again, you were the DG of Justice between 2005 to 2009?

ADV SIMELANE: Yes.

COMMISSIONER GABRIEL: Right. So we know that the prosecution, the amendments to the prosecution policy were promulgated around December 2009. So they would have been in effect while you were the DG ...(intervenes)

ADV MOROKA: Apologies, chair, I think that timing is wrong.

COMMISSIONER GABRIEL: Timing?

10 ADV MOROKA: The dates that you mentioned now, you said 2009.

COMMISSIONER GABRIEL: 2005 to 2009. Have I got that right or wrong?

ADV SIMELANE: No, I thought, chair, you said 2005 to 2009 I was the DG, and I said yes.

COMMISSIONER GABRIEL: Yes.

ADV SIMELANE: From 1 June 2005 to end of 2009 I was the DG, yes.

COMMISSIONER GABRIEL: You were the DG.

ADV SIMELANE: Yes.

20 COMMISSIONER GABRIEL: Okay.

ADV MOROKA: You talked about promulgation.

COMMISSIONER GABRIEL: Oh, no, no, the amendments to the prosecution policy, I think they came into effect in December 2005 or early 2006.

ADV SIMELANE: If I recall from the evidence, it was December

2005.

COMMISSIONER GABRIEL: 2005, right. Now, earlier you told us that these TRC matters were, quote, "highly political". Explain what you mean by that to me?

ADV SIMELANE: Well, the best way to, I suppose to attempt to do it would be to say why would you have a TRC, a Truth and Reconciliation Commission, why would you need that as a country? What would occasion a need for such a thing to exist in the first place?

10           So you would have to then go back, and these ones, it is pretty clear that TRC matters relate to the past of the country, which we do not have to deal with. we know what it is. And that even post the democratic dispensation, there were many other groupings within the country, known and unknown, that continued their activities for their ideological reasons even before, in other words, the activities that they did before 1994, the democratic dispensation, they continued thereafter.

          Except that this time around, because it is a democracy, they would engage in those activities underground. Those would have  
20   been intelligence reports, and there was always continued monitoring of those groupings, whoever they were, on all sides, not just on the side of the liberation movements.

          Because it was also accepted that the democratic dispensation, although we had it, not everyone was necessarily either in agreement with it or happy with the manner in which it was

achieved. Just as much as nobody, not everybody was happy with the manner in which the TRC matters were dealt with to this day. So in a sense, those remain political, and will always be political for the rest of our natural existence because of that particular factor.

So the cluster, as part of its work on a government programme, had to sell the idea of a better future, even to people who did not want to hear the message. In other words, if you are in government, myself, for example, as a bureaucrat and HOD, I implement a programme I do not like, because that is why I am there.

10           If you do not like it, you leave, but if you are there, you do your job and sell it as best as you can, even if you do not like it. In the same way that you implement a decision that is taken by a majority, whether you like it or not, you implement it as if you were advocating for it, when in fact you were not, so these remained political in that sense.

What was always complex about them, and remains complex today, and may be not necessarily a subject of this particular commission, is that there was a problem with Askaris, in the sense that Askaris were double agents, that is what it basically means.

20           In that, I think I say it in the statement, that with the amalgamation of various homeland governments into what I call Pretoria government, everybody found themselves having to work with people they were not really sure about in that sense. So that is the political nature inherent in any matter TRC.

COMMISSIONER GABRIEL: So would that explain then the political

interest in the prosecution of these matters?

ADV SIMELANE: Yes, the interest is not just so much that there is a prosecution. Who is prosecuted becomes important for other reasons, in that what constituency does that person carry with them. So if it was a general, for example, who held certain strong views about the democratic dispensation, the security interest would be about how those aligned with that individual would likely respond to such a decision.

10 And if there is going to be a prosecution, what it would require is that alongside it there are plans to manage any fallout that may happen in society. That is the idea always with the TRC matters, just so that it is known.

COMMISSIONER GABRIEL: I see.

ADV SIMELANE: Yes, ma'am.

COMMISSIONER GABRIEL: Thank you.

ADV VARNEY: Thank you, commissioner. Adv Simelane, let us move on to paragraph 44. Here you state:

20 "The ministers were advised that the nature of the possible security risk inherent in the matter necessitated that they consider reporting to the National Security Council (NSC). They indicated they would consider that."

What were the security risks inherent in these matters that warranted possible reporting by the Ministers to the National Security Council?

ADV SIMELANE: Well, it is basically what I have just described for the chair now, for the commissioner now, that if indeed there were going to be prosecutions across the board, in the normal course, there would always be a threat assessment that gets done by the Intelligence Services, both from Crime Intelligence to State Security and Defence Intelligence.

In the normal course it gets done anyway, but over and above that, there would be a risk that would be done consequent to a particular activity that is taking place in terms of assessing what impact it would have so that the necessary logistics are activated to  
10 mitigate whatever outcome the risk assessment would give.

So that, and again because of the level at which this involved, which is political leaders across all political parties, as it were, it is at a national level. So a body like the National Security Council would need to be generally apprised of what is happening and what the thinking is, and where things are likely to go for its own processes in terms of what it would then require for itself in terms of managing society and social cohesion.

And that may include indicating to government that there  
20 must be political engagements, again with a view to designing programmes that would assist society to be reminded of a future going forward than the past. Because issues are emotional, you know, it is psychological, it is psychological warfare, you play with society to keep it reminded of the bigger cause.

So any prosecution of any one or two people, either way it

goes, would require that kind of intervention in order to appeal to those who would have sympathy for those being prosecuted. That there is a bigger picture that we have all signed off on, and therefore, everybody should allow the system to work and trust the courts basically to do their job and make determinations.

That would have been the idea of reporting, and that is basically how things get assessed. It is not about the specifics of each one. These ones, because they are TRC matters, they may involve even that particular element to say, well, it is X person, it is that person, and therefore the stakeholders need to be engaged.

If it is the church, the Dutch Reformed Church, or whatever the case may be, you know, those get activated. So the issue is much broader, it is not just qua security, it is also on the social side. I do not know if I assisted. Sorry for being too wide.

ADV VARNEY: Thank you. So I want to put to you the testimony of Adv Pikoli, because he also testified on the question of risk and threat arising out of TRC prosecutions. And, commissioners, I am going to be quoting from the transcript of Pikoli's evidence on the 13 March 2026, at page 442.

And Mr Pikoli spoke about the threats and risks in the context of the intention of the NPA to prosecute former police officers and senior officials in the Chikane matter. I am sure you are familiar with that matter. And the question put to Mr Pikoli was that:

"The reason that those Ministers were so concerned about the Chikane matter going

ahead, and needless to say, other TRC matters, was that a prosecution like that would give rise to calls for prosecutions of ANC cadres themselves."

And Pikoli answers as follows, and I quote:

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

20 So Pikoli is saying that the real risk or threat was that Ackerman and the PCLU going ahead against former police officers would give rise to calls to prosecute also ANC cadres. What is your response to his version?

ADV SIMELANE: Well, I can comment from what I saw in these proceedings. I have no objection to his assessment of the information

in front of him and what he thinks of it. That is his view, and it does not appear an incorrect view to me. It appears quite accurate, because in the press release that you showed me earlier, and it was said here in evidence, there was reference of a private group that was looking at private prosecution.

And that is precisely the point, that however normal government work was being done, there was always a risk that there would be others in society who would have their own reactions to that, or have their own interest to pursue their own agendas, whatever  
10 those agendas may be.

But the overall impact of all of that is that it would impact on the government programme of social cohesion and post-TRC prosecutions. So if indeed what Mr Pikoli described, according to him, is what appeared to be likely going to happen because of those that were raising those things, he has actually correct.

That is part of the risk assessment, and that is part of what the DGs in the cluster considered, and also what the cluster would have had to consider in terms of a risk assessment. So even the NSC would have then given a mandate to Security Services to say do  
20 a threat assessment about what the likely impact of anything that is being undertaken is going to be anywhere in the country.

And if there indeed is that kind of thinking somewhere, and it appears on the record that there actually was that kind of thinking, then that would have needed to be taken into account. And the problem with this kind of approach of a private prosecution of

post-TRC matters is basically privatising the kind of work that should actually never be privatised, if you think about it.

In that it is best that type of matter is handled by government, whether you agree with it or not, because at least we can all accept that government is acting within the Constitution on behalf of everybody.

But when a private person starts, or a private grouping starts engaging in private prosecutions on those kinds of matters, what you are likely going to have, you are going to have others responding to them, and they may not necessarily respond with an intent to prosecute, then they may have other intentions.

So those are the risks that the cluster would, as part of its job, would inherently have to consider, and flag and note in this location there is something like this happening. So it became part of that kind of problem, and in the context where people had people from different groupings, nobody would have some accuracy about how the information is flowing.

So at the minimum, there would need to be some guidance from some, at least formal structures, like Intelligence Services, advising of what they see so that those issues are considered. So I am imagining that Mr Pikoli was speaking to that kind of threats, and I am saying I agree with him that his assessment would actually be at least accurate at a minimum as worthy of reflecting.

ADV VARNEY: Yes, just anecdotally on the question of private prosecutions, it reminded me of the judgment of Judge Legodi when

he set aside the prosecution policy amendments, because the Minister of Justice had argued that the amendments did not undermine justice, because even when there was a refusal to prosecute on the criteria listed, families could still seek to bring a private prosecution. And he made the point that the primary responsibility of prosecutions was not with private people, but with the State.

ADV SIMELANE: Yes.

ADV VARNEY: And you agree with that?

10 ADV SIMELANE: Yes.

ADV VARNEY: So, yes, and in fact, that is, you know, the view of Ackerman and Pikoli as they have testified before this Commission, is that their attempts to go after apartheid era officials were essentially stymied because it could potentially give rise to calls for prosecutions against ANC people, that is what they have repeatedly said.

ADV SIMELANE: That is fine, if that is what they have said. I will begin to see the evidence of that, but I understand why they would say that. I do not necessarily agree.

ADV VARNEY: Yes, well, we will get to that in due course. All right,  
20 let us jump to paragraph 53 of your main statement. Now, here you state that:

"The NPA quite clearly had investigative capacity  
in respect of the TRC cases."

And you give the example of the NPA having met with Reverend Chikane. Can it be clearly said that the NPA had any

investigative capacity, I mean, under law, are they allowed to investigate?

ADV SIMELANE: As at when the DSO was dissolved, they had, but after that they definitely did not have in law.

ADV VARNEY: Yes. Now, certainly the DSO was the exception. That was an entity that was imbued with investigative power, and they had their own investigators on board.

ADV SIMELANE: Yes.

10 ADV VARNEY: But the PCLU was separate, it was part and parcel of the NPA itself. You accept that they had no investigative authority or capacity?

ADV SIMELANE: No, remember that during, well, of their own, no, definitely no, but because they were in the NPA, they could be assisted by the DSO whenever, that could have been, yes.

ADV VARNEY: Yes. Well, I do not want to go down that particular road because those controversies, I think, happened before you became DG. But you are aware that through the 2000s they struggled to get investigative support?

ADV SIMELANE: Yes.

20 ADV VARNEY: And you also accept that under law, strictly speaking, they are not allowed to investigate?

ADV SIMELANE: Well, it depends. They are not allowed to investigate in the way we understand investigations because the police would do that work for them. That is why they needed the police. But they were certainly able to reach people and take their

statements and their affidavits and get them commissioned.

So that in itself, in other words, in some cases, from what Mr Ackerman had described, they were able to do what otherwise would have been done by an investigating officer. So that is what I referred to, that in a way, although in law they did not have to, but they were able to be industrious enough to obtain what they needed to be able to do the minimum.

ADV VARNEY: Yes, and I like the word "industrious", because I think that does describe how individuals in the PCLU, such as  
10 Adv Ackerman, Adv Mthunzi Mhaga, they were quite industrious in trying to do what they could in the absence of investigators ... (intervenes)

ADV SIMELANE: Yes, no, I accept that.

ADV VARNEY: As you say, like having statements commissioned and carrying out enquiries that they could. And, in fact they did take some cases forward, even when they did not have investigators on board, I think to their credit. Would you...? (intervenes)

ADV SIMELANE: Yes, that is correct, that is correct.

ADV VARNEY: But both Ackerman and Mhaga and MacAdam as well  
20 said that they could only take it so far. And we heard very compelling evidence from Adv Mhaga, he tried very hard to take it as far as he could, and he did knock up one or two successes, but eventually, without investigators he was not able to take it further.

And he testified that out of frustration he asked to be removed so that he could get court experience in the Transkei, and he

eventually asked to be seconded to the Commercial Crimes Unit.

Does not that give an indication of the struggles that they had?

ADV SIMELANE: No, the struggle for the reasons that was indicated, that we understood, and that is why, at least at a minimum, the issue had to be resolved between the NPA and the police, which is what we did. It is just that it could not go further beyond that because of other events.

ADV VARNEY: Yes ...(intervenes)

CHAIRPERSON: But then, sorry to interpose, Mr Varney, what then  
10 did you mean by saying: "They did have investigative capacity"?

ADV SIMELANE: What I meant is that if they wanted a statement from somebody, from their own evidence and what they told us, they were able to go and get that particular statement so that they could (indistinct) ...(intervenes)

CHAIRPERSON: And is that the capacity you are alluding to ...(intervenes)

ADV SIMELANE: That is what happened.

CHAIRPERSON: Because investigation, as you know, as a lawyer, goes far beyond that.

20 ADV SIMELANE: That is what I am talking to, in the sense that, chairperson, in the sense that at least they will be able, for want of a better expression, to "move the needle" to the extent that they could with what they had. But indeed, a lot more will depend on capacity they did not have that they needed.

CHAIRPERSON: So they did not have a particular capacity, you

acknowledge that?

ADV SIMELANE: Yes, yes, that is correct, they did not have it, yes.

CHAIRPERSON: Yes.

ADV VARNEY: Thank you, chairperson. Let us move to paragraphs 55 and 56, and here you state that:

"In terms of the NPA..."

And I assume you meant to say the NPA Act:

"...the authority to take a decision to prosecute  
this in the DPP with jurisdiction and no one  
else..."

10

And you give the example of the DPP in Pretoria. But am I not right in saying that, in relation to the TRC cases, that the proclamation which was issued setting up the PCLU vested prosecuting authority in the PCLU, or more specifically in the Special Director of Public Prosecutions? Commissioners, we do have the proclamation as part of the bundle, it is at page 722. Do you accept that in relation to the TRC cases it was the PCLU that actually had authority to prosecute?

ADV SIMELANE: Yes, specifically, yes.

20 ADV VARNEY: So the comment in paragraph 55 that it vested in the DPPs and nobody else, at least in respect of the TRC cases, that is not quite correct, at least at that time?

ADV SIMELANE: Yes, it is not quite correct, except that naturally for the work that the PCLU would be doing in the courts, the DPPs with jurisdiction would also provide whatever additional assistance that the

PCLU would need.

ADV VARNEY: And in addition to that, the actual amendments to the prosecution policy, and that is actually in bundle 1, it is annexed as FA27, page 537. And just to save time, I am going to... I think you do have bundle 1, I think the other big file. And you are aware, of course, that the amendments dealt exclusively with the TRC cases?

ADV SIMELANE: You said page 5?

ADV VARNEY: It is page 537.

ADV SIMELANE: I do not know if I have the right bundle. I do not  
10 think I have it.

ADV VARNEY: Bundle 1 is the other big bundle with you.

ADV SIMELANE: Yes, I have got appendix A, sorry.

ADV VARNEY: Yes.

ADV SIMELANE: 537, yes, appendix A.

ADV VARNEY: And if you turn to part B, which says:

"Procedural arrangements which must be adhered to in the prosecution process in respect of crimes arising from conflicts of the past."

Now, that is at 539.

20 ADV SIMELANE: Yes.

ADV VARNEY: And I will just quote to you paragraph 7:

"The NDPP must approve all decisions to continue an investigation or prosecution or not, or to prosecute or not to prosecute."

So the amendments to the prosecution policy seems to be

vesting authority in the NDPP himself to decide to prosecute or not.

Do you have any comment on the fact that the prosecution policy appears to be vesting that authority in the NDPP himself?

ADV SIMELANE: To continue an investigation, yes.

ADV VARNEY: Yes, to continue an investigation or prosecution  
...(intervenes)

ADV SIMELANE: Or to prosecute or not to prosecute, yes.

ADV VARNEY: And then, comma, "Or to prosecute or not to prosecute".

10 ADV SIMELANE: Yes.

ADV VARNEY: Is that not in conflict with the NPA Act and the Constitution?

ADV SIMELANE: That it does that?

ADV VARNEY: Yes.

ADV SIMELANE: It seems to reserve only to him, to an NDPP?

ADV VARNEY: Yes.

ADV SIMELANE: I think it would, I think it would, because if I recall, I have not read it in a while now, but if I recall, I think the decision to prosecute, at least to initiate the prosecution also vests with DPPs.

20 ADV VARNEY: Yes, that is correct, and indeed it is one of the reasons why the amendment policy was seen as manifestly unconstitutional. And then let us turn to paragraphs 57 to 59.

ADV SIMELANE: Can I close this bundle? Can I close this bundle?

ADV VARNEY: You can close the bundle, yes, yes. Sorry, we are back to your October 25 statement, apologies for that. So in these

paragraphs you deal with the question of interference, and you state that:

"You know, if any prosecutor was stopped by me, I imagine that this would have been reported to the Minister."

And you are not aware of any such matter being reported to the Minister. And then you also say in paragraph 59 that you are not aware of the DG cluster being involved in stopping or attempting to stop any prosecution. Now, you were part of the, of that DG cluster.

10 Am I not correct in saying that in February of 2007 some members of the DG's forum or cluster, whatever you wish to call it, took the view that the NDPP would have to wait for a recommendation from the task team, and then the DG's before proceeding in any TRC case? Does that not amount to interference in the discretion and work of the NPA?

ADV SIMELANE: No, definitely not, no, it does not.

ADV VARNEY: So even though the hands of the NDPP are being tied in a sense, because, at least in the views of the SAPS, the NIA, and as I understand, the DOJ as well, he had to wait to hear, the  
20 matters have to be discussed in those fora, and he had to wait for a recommendation before he could act. And indeed he was severely criticised for doing so, because at least in the one case he went ahead without the recommendation, namely the Chikane matter.

ADV SIMELANE: I do not agree. I think the issue, as I recall, we discussed it. I know the National Commissioner engaged separately

with the NPA through Mr Jacobs as their proposer. But what we were discussing was how to engage with the processes, where we would be able to indicate the views of the cluster, if the cluster obviously agreed with the approach that it was intended to be presented to it.

And the idea was to put all the risk elements and risk factors on the table so that whatever decision the NPA takes, it takes it knowing of all of the factors that pertain and the impact. That is what the DGs were discussing.

ADV VARNEY: So I want to put the then National Commissioner's letter, National Commissioner Jackie Selebi's letter to you. It is at 10 page 715 and 16 of the cross examination bundle. It is dated the 6 February 2007.

ADV SIMELANE: 715?

ADV VARNEY: Seven, one, five, so it will be towards the back. It will be in the supplementary bundle towards the back.

ADV SIMELANE: Yes, I have it.

ADV VARNEY: And you are aware, of course, that the same letter was addressed to Adv Pikoli, as NDPP, and the other members of the DG's, and this particular one was it was addressed to you. So in the 20 first paragraph he talks about being briefed on the last meeting of the task team. He then makes reference to the Chikane matter. where he says:

"A decision on prosecution was taken without consultation with the respective departments."

In paragraph 3 he writes:

"I have insisted that the complainant be consulted in terms of the guidelines on the basis that the Directors General will have an opportunity to provide input before a decision on prosecution is taken."

He then says he has under the impression that there is no common understanding on the process to be followed, and the last paragraph on the page:

10 "My understanding was that the officials designated on the task team by the DGs will provide recommendations to the Directors General, who will as a collective advise the NPA as the decision maker on prosecutions."

And we turn to the next page. He refers to a report that he says should be discussed by the DGs. The next paragraph:

20 "Although I did not insist on the meeting of the DGs after each meeting of our officials, I deem it necessary that the substantive reports and recommendations of the officials should be discussed by the Directors General before a decision is made, and that decision is a prosecutorial decision."

So I want to put it to you that it is abundantly clear that Jackie Selebi, as the then Commissioner, had in mind that before the NPA could make a prosecutorial decision in a TRC matter, it had to be

discussed by the officials in the task team, as well as by the Directors General, and a recommendation had to be made first. You would agree that that is exactly what this letter is saying?

ADV SIMELANE: I understand that is what he had in mind, yes.

ADV VARNEY: Yes. And then you responded to that letter, and this is the letter that is, I think freestanding. I think a copy should be on your desk.

ADV SIMELANE: Yes, I have got it, thank you.

ADV VARNEY: It is a letter from yourself to the National  
10 Commissioner, it is dated the 7 February 2007. You refer to the  
Commissioner's letter. You state:

"I am in agreement with the sentiments contained  
in your letter. Indeed, I was also expecting that  
the Directors General would be consulted formally  
in a meeting of the decisions regarding TRC  
cases."

I am not going to read the rest, but it is apparent that you  
agreed with the National Commissioner on that question.

ADV SIMELANE: Yes, on the consultation process, yes.

20 ADV VARNEY: Yes. So the response of Adv Pikoli, as I think you  
are probably familiar with, is that this constituted an unwarranted  
interference in the work of the NPA, and undermined the  
independence of his office, and, in fact, he did report this question to  
the Minister. He did so in February of 2007. Commissioners, that  
secret memo that he wrote to the Minister is in bundle FA33, page

553. And in that... I will just wait for you to ...(intervenes)

COMMISSIONER GABRIEL: Sorry, what bundle was that?

ADV VARNEY: It is in bundle 1.

COMMISSIONER GABRIEL: Bundle 1.

ADV VARNEY: Ja. It is a long memo, I am not going to read it into the record, but the gist of his secret internal memo dated 12 February of 2007 to the Minister, he says there is clearly a misunderstanding, and this is a paragraph 5.1 on page 562:

10 "There is a clear misunderstanding regarding the role of the task team and the role of the relevant State Departments referred to in the amended prosecution policy."

He says in the same paragraph:

"The National Director should never be in a position where his constitutional duty is dependent on the recommendation of such a task team or relevant department. Such a procedure would be unconstitutional."

Do you not agree with Adv Pikoli's concern?

20 ADV SIMELANE: I do not agree with his concerns. I think his concern is legitimate in that if that was his interpretation of what he thought was going to happen or was happening, he is entitled to have that view and share it. It is just a pity we never got to meet and actually have a discussion about what the issues were that were going to be discussed by the DGs and presented to him for

recommendation purposes. But it was definitely not to get in the way of a decision to prosecute or not to prosecute, or to investigate or to not investigate.

ADV VARNEY: Yes, but, Adv Simelane, surely the letter of the Commissioner, which we have discussed, says just that, that the NPA, before it can make a decision is dependent on a recommendation from those bodies, and that that procedure is manifestly unconstitutional. Does it not violate the constitutional independence of the NPA?

10 ADV SIMELANE: I do not agree with you. We have not discussed this letter. Maybe let us discuss it. If you look at the context of that letter, it deals with general concerns about which we have already discussed. And the chair and the commissioners ask questions about the broader context issues, and those issues remain at every stage. That is the first thing.

The second thing is that the letter of, I am not speaking on his behalf, it is just my interpretation, the letter of the National Commissioner also talks about the task team, his own understanding of what the task team was supposed to do.

20 But generally what I do recall is that the members of the task teams that were sent forward were to communicate and engage our issues, like myself as the DG, they would do the same into the task team, feed into it, engage and give feedback, which would be discussed in the cluster one way or the other. So the task team members were already doing that kind of work of engaging.

So this was a continuation that once all the feedback in a way has been received and the other departments have done their work and they have produced reports, we should be in a position as the DGs to discuss those particular reports, make an assessment of their impact, and then be in a position to inform the NPA and the NPP about what we particularly see.

And our preference was that we would meet with the NPA, him or whoever he would designate for that purpose, to engage in those particular issues, and ideally prior to them taking the decision.

10 It would not make sense to engage after the decision is taken, because in most cases the "horse would have bolted".

So if there are security risks that need to be mitigated, ideally you want to deal with mitigation factors before a decision is taken. Because once a decision is taken, it becomes a public issue, and those who need not be alerted of what is happening then become alerted, and that may undermine security and intelligence.

So the idea was to make him and the NPA aware that, by the way, before you take your decision, it would be of great assistance to yourselves if we you aware of what we see from our end. So that is

20 what was intended in this communication, to say let us have a discussion about it and let us convey that firstly as DGs and agree.

That is why the meeting was proposed to take place, so that once we concretise that, then have a framework in terms of which that is communicated to the NPA. But what would have happened is that that proposal, in other words the National Commissioner, if we had

agreed a hundred percent, he would have then had to put a proposal together that would have submitted to the cluster, so that the cluster gives approval for that kind of work, and then it goes forward.

The fact that he then at the same time engaged and communicated to the NPA is another issue. I would have preferred that he did not do that, but he chose to do it. But even then, with that in mind, in my view, respectfully, that is not a problem, because all that was required is that everybody meets and discuss what the issues would be likely to be, what the implications would be, and  
10 whether then that would work or not.

So whether there will be agreement on it is something we can only speculate about, but at least at a minimum there ought to have been an engagement, and that we were entitled to do by law.

ADV VARNEY: Yes, but nothing of that changes the stark fact that his decision was dependent on the inputs or recommendations of outside bodies, and the Constitution and the NPA Act does not permit that. Do you accept that?

ADV SIMELANE: No, I do not accept that it was dependent.

ADV VARNEY: Okay.

20 ADV SIMELANE: I do not accept, it could never be dependent, because he could make a decision whenever an NDPP makes a decision. We would plead and insist that at least talk to us so that these issues are put on the table. For argument's sake, let us say an NDPP would have said, it did not happen in this case, but just hypothetically, let us say an NDPP says I do not even want to hear

from anybody, I am not interested.

We would have then had as a cluster to respond to it in terms of what the implications are of that kind of environment. And invariably what it would have meant is that, in addition to planning for other people, we now would have had to plan for one of our own in case they move in a way that is in a way unexpected.

So the idea is that if at least everybody is in sync, and what I would have expected to hear is that somebody would say, well, it is fine, make your decisions, but ideally, in order so that you are not affected, whatever you have to say, your report must reach us by  
10 such-and-such a time, for argument's sake. That would have been quite in order for me, because that is all the DGs were talking about. But to say you have no say whatsoever at all, I think that in itself is not constitutional.

ADV VARNEY: Yes, well, I must put it to you that your explanation, you know, amounts to a fair measure of sugar-coating, but none of it can get around the stark fact that in the Commissioner's letter in two places he said plainly and clearly that the inputs had to be made before a prosecutorial decision is made. And as a result of that, Adv  
20 Pikoli, the NDPP, and I am going to quote to you two paragraphs, he says paragraph 5.2 on page 563, and this is in bundle 1, that separate bundle if you want to look at it:

"5.2 I have now reached a point where I honestly believe that there is improper interference with my work, and that I am

hindered and obstructed from carrying out my functions on this particular matter. Legally, I have reached a dead end.

5.3 It would appear that there is a general expectation on the part of the Department of Justice and Constitutional Development, SAPS and NIA that there will be no prosecutions, and that I must play along. My conscience and oath of office that I took does not allow that."

10

What is your response?

ADV SIMELANE: No I can understand what he has saying, and that is his view, that is how he experienced the communication. All I am simply saying is that he jumped to that conclusion. It certainly is not what was intended, as far at least as I recall. That is not how I am interpreting the letter by the National Commissioner and the context within which all of these issues were being discussed anyway.

And a simple engagement with the colleagues, you know... He says he thinks there is a great misunderstanding. Well, maybe there was, but on his part it appears to clearly be one, hence his communication, because that is how we experienced that communication. That is not how I experienced the communication. and that is not what I understood the National Commissioner to be talking to.

20

What was always intended is that all the risks that pertain, as

I described to the Commissioner in explaining the national security issues, it was always important. And to this day it remains important, that if there are issues of that nature, it is important that the NPA and the decision makers become aware of what the implications of their decision is likely to be on the rest of society.

There is no interest on the part of the cluster on the actual decision to prosecute those individuals, but on the subsequent implications those things do matter, and they have to be taken into account. And there is plenty of examples to look at where such things  
10 have been done in the past, and even though they are done sometimes, they do not necessarily achieve what is intended, which is to prevent them from happening.

Things just do happen because society has its own views, but those things must be mitigated by some people, and as DGs in our areas of work, then we were responsible for making sure that that happens. I was responsible for making sure that the NPA is assisted to work, so I had my own fights with my own DG colleagues to say this must happen, because I spoke for the NPA in the cluster.

They had their own considerations which they had to take  
20 into account, so all that is needed was just adults in a room to sit and talk. It just did not work as we would have like naturally, but that is the context of this communication.

ADV VARNEY: Chairperson, it is 01:00 PM. Would this be an appropriate time for the lunch adjournment?

CHAIRPERSON: Yes. We will take a lunch adjournment and

reconvene at 2 o'clock.

ADV VARNEY: As the Commissioner pleases.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Mr Varney.

ADV VARNEY: As the commission pleases, I just want to check, Commissioners, can I be heard? The rain is so loud, I am hoping that...

CHAIRPERSON: You can barely be heard.

10 ADV VARNEY: Okay, I will try to raise my voice as loud as I can.

CHAIRPERSON: Yes.

COMMISSIONER KGOMO: You must compete with the elements.

ADV VARNEY: Yes. Commissioner, if only I could, then all my problems in the world will be solved. Adv Simelane, before we adjourned for lunch we were about to wrap up your statement of October last year. So I just have one more question in relation to paragraph 58, can I just check Adv Simelane, can you hear me?

ADV SIMELANE: I can hear you, yes, barely but ja, I can. 58, yes.

20 ADV VARNEY: So once you have paragraph 58, you will see that you comment on the 'suggestion being made that a request to remove Ackerman from playing an active role in the investigation and prosecution post-TRC cases is tantamount to stopping prosecution' and in that paragraph you reject that suggestion. The families take a different view, they see the removal of Adv Ackerman from the TRC cases, at least from the side of the operations, as one of the several

factors that served to undermine the TRC cases. Now the last matter that Ackerman pursued before he was removed from the TRC cases was the Chikane prosecution which resulted in a plea bargain in August of 2007. Now if the removal of Ackerman was not tantamount to undermining the prosecutions, how does one explain that following the Chikane case in 2007 there was not a single prosecution or a TRC related inquest that was held between 2007 and 2016, a period of some 9 years.

ADV SIMELANE: Well the prosecutors must explain that, because  
10 the prosecutors are the ones that, and they would have told you that they are the ones who are responsible for taking a decision to prosecute, after which decision is taken, they are the ones who are responsible for placing the matter on the roll, on the court roll or removing it, as the case may be. Only they do that and nobody else. I am not aware of any case; that is during my involvement, where a matter was decided to be prosecuted and somebody stopped it. Or a matter where it was about to be placed on the roll and somebody caused for it to not be placed on the roll. So I am not aware of facts that actually stopped the act of doing what a prosecution official does.  
20 If there were, I would be able to comment on that. That is my first comment on that suggestion. The second suggestion regarding the removal of Mr Ackerman per se, it could never in my respective view cause for any matter, even a matter he was himself handling, to not be able to proceed. It may delay it, because a replacement would have to be found, who would need to catch up. These things happen

all the time. In normal cases in court, counsel gets changes, a new counsel catches up with the papers. So that is what should have happened. I do not recall in my time where it was indicated that somebody in the NPA or the NPA itself could not prosecute a matter solely on account of Mr Ackerman being removed from leading cases. The contrary though is that his presence was a source of concern for many others and I think the matter of Mr Chikane indicates that. So I dispute a statement that suggest that Mr Ackerman's removal is a *sine quo non* for matters not proceeding in any way whatsoever. I

10 find that difficult to believe.

ADV VARNEY: Yes. Thank you, of course in argument we will be making the point that it contributed to the undermining of the cases and I should add that the only question why, the only reason why the matter in 2016 was enrolled, that was in relation to the disappearance and murder of Nokhutula Simelane, was because Thembi Simelane brought an application in 2015 to compel a decision in that matter. Do you recall that application?

ADV SIMELANE: I was not involved, I only recall from reading it in the media, yes.

20 ADV VARNEY: Yes.

ADV SIMELANE: I was not in the system.

ADV VARNEY: You heard subsequently, I am sure, that...  
[intervenes]

ADV SIMELANE: Yes, I was aware... [intervenes]

ADV VARNEY: She did bring an application to... [intervenes]

ADV SIMELANE: There was some ...[indistinct]

ADV VARNEY: Compel the decision. Just as a matter of interest, what is your reaction to the fact that a family such as the Nokutula Simelane family had to bring a substantive application to court to extract a decision out of the NPA?

ADV SIMELANE: Personally I think it is regrettable that families and any other group of people, individuals included who feel aggrieved by TRC processes are put in a position where in respect of their matters there is no closure to this day. That I find regrettable, that it would  
10 need to go that far.

ADV VARNEY: On that score we agree with you.

ADV SIMELANE: Yes.

ADV VARNEY: Before we move to your supplementary affidavit, this morning we had a discussion around whether the pursuit of cases against former apartheid officials would open the door to calls for cases against the ANC. And I think your response was well, you are not aware of any such evidence. I just want to put one extract to you and this is in Bundle 1, so it is the other big file. Bundle 1 at page 97, paragraph 225.

20 ADV SIMELANE: Yes.

ADV VARNEY: And in fact let us start on the previous page 96 at paragraph 224 and here we are relying on the affidavit of Mr Calata who made out this affidavit is relying on Adv Pikoli's affidavit that he filed in support of the 2015 application brought by the Simelane family and he then quoted from the affidavit he filed before the Ginwala

Commission. So paragraph 224 he says that later in 2006 Pikoli was summoned to a meeting which was convened at the home of Minister Zola Skwiyiye, the then Minister of Social Development and was attended by various other cabinet ministers and others, including Minister of Police Ngakula, Minister of Defence Lekota, Thoka Didiza Acting Minister of Justice and a Mr Jafta. And the subject matter was the Chikane prosecution. And if we can turn to paragraph 225, and I quote:

10                    “At this meeting it became clear that there was a  
fear that cases like the Chikane matter could  
open the door to prosecutions of ANC members.”

And then he quote from Pikoli’s affidavit before the Ginwala Commission and I am only going to quote one paragraph. And incidentally Commissioners, that affidavit is in Bundle 2 at page 1 and the quote is at page 12 and the paragraph in question is as follows and this is Pikoli’s recollection of that meeting:

20                    “The Minister of Social Development was  
concerned about the impact of the decision to  
prosecute on the ranks of ANC cadres who were  
worried that a decision to prosecute on the  
Chikane matter would then give rise to a call for  
prosecution of the ANC cadres themselves,  
arising out of their activities pre-94.”

So according to Adv Pikoli back in 2006, a cabinet minister was raising those concerns. Your response?

ADV SIMELANE: I cannot respond, I do not understand this concern, but because I do not know anything about this meeting and its context, I will not be able to comment.

ADV VARNEY: Yes.

ADV SIMELANE: Yes.

ADV VARNEY: It is only put to you because you said you were unaware of any evidence to support this contention and so I am putting this extract to you to show that there is evidence supporting that contention.

10 ADV SIMELANE: I understand.

ADV VARNEY: Alright, then let us turn to your supplementary affidavit, that is your affidavit dated 28 March 2026. Commissioners in the cross-examination bundle, that is between pages 44 and 62.

COMMISSIONER KGOMO: 44 and 62?

ADV VARNEY: Yes. And let us jump to paragraphs 22 to 25 and there you deal with the allegation that, or contention that you instructed acting NDPP Mpshe to remove Adv Ackerman from the TRC cases. And I just want to put to you an extract from the testimony of Adv Mpshe and this has been distributed, I believe it is  
20 lying on your desk. It is the transcript of the evidence of Adv Mpshe before this commission on 7 April 2026.

ADV SIMELANE: I do not have it here.

ADV VARNEY: It is a loose document like this.

ADV SIMELANE: Oh this one, ja okay. Thank you.

ADV VARNEY: And the Commissioners also have a copy.

COMMISSIONER KGOMO: Yes.

CHAIRPERSON: Page?

ADV VARNEY: And it is page 55, Chairperson. And Adv Salukazana who was leading Adv Mpshe, towards the top of the page says, I want to direct you to the statement, the one that starts

10 I want to direct you to the statement, one, that starts with "I can only speculate". Is the speculation reasonable that the probabilities are high that Mr Simelane asked you to remove Mr Ackermann?

And Adv Mpshe responds:

20 "The speculation as he states for me recalling, is not improbable and I would substantiate that. It is because that that happened to me as well in passing, it was not in a meeting, it was not written anywhere, but I recall I was with Adv Simelane who just remarked to me and said, "Hey Chief, why you are keeping Ackerman there?" So that is why I say that speculation may be closer to what happened."

So there you have Adv Mpshe saying that you did have an encounter with him, where you did ask why he was still keeping Adv Macadam in charge of the TRC cases. Do you recall that?

ADV SIMELANE: No, I do not recall that. No.

ADV VARNEY: Okay. Do you dispute it?

ADV SIMELANE: I would not dispute it, I just do not recall it. But maybe I can explain. If it would have happened, it would have happened having made an observation that what Mr Pikoli had agreed he was going to do, had not happened. That would have been the context. But I do not think it happened, because I would have had no reason to raise it, because we had achieved as a cluster what we wanted to achieve, so anything else after that meeting had not been brought to my attention either in the cluster or in the forum of DGs that would have necessitated that that matter be followed up.

10 So I would not have done it. That is why I do not remember it specifically.

ADV VARNEY: Well the issue would still have been in play because as I understand it, the liberations that you are referring to was back in, in or around 2006. And Adv Macadam, at least Adv Ackerman was still in charge of the TRC cases well into 2007 and indeed it is the evidence of Mpshe that he was only relieved of his duties in November of 2007 and in fact Adv Mpshe thinks it might only have been early in 2008. So certainly through 2007 that issue was still alive.

20 ADV SIMELANE: No, the issue that would have concerned me that would have needed to be alive then, would be a complaint to the cluster that cooperation between the NPA and the police continues to be a problem. After the meeting that we had, that issue never arose such that it needed to be followed up on. So I would have had no reason to follow up on the matter on my own just like that. I do not

think so. And if it had also arisen, it could have been Mpshe himself that maybe would have wanted to find out from me where the debate comes from. I am just trying to speculate why him and I would have had to talk about a matter that I had considered at least have been resolved, based on what was discussed in the meeting. I just do not recall it specifically.

ADV VARNEY: Yes. Well we note that you do not recall it and you do not dispute it and in fairness I must put it to you that we will be putting it to the commission that the evidence of Adv Mpshe in relation to that  
10 encounter should be accepted.

ADV SIMELANE: That is fine, I note that.

ADV VARNEY: Earlier when we were talking about the question of delivery on the TRC cases and I made the point that there had been no enrolments in court or inquest in relation to TRC cases between 2007 and 2016. And you pointed out and I take the point that you were not there for that full period, although you were NDPP between 2009 and 2012.

ADV SIMELANE: Yes.

ADV VARNEY: But according to our records, no prosecution was  
20 launched while you were NDPP or inquest reopened in the years 2009 to 2012.

ADV SIMELANE: Yes, not to my recollection. But what I was aware is that work was being done on those matters. At least that were there, that were mentioned.

ADV VARNEY: Yes, but that is a period of some three years, what

explains in three years that there is no enrolment and no inquest proceedings while you were NDPP?

ADV SIMELANE: Well the reports that one got in the normal course is that matters are currently under investigation from the various individuals. So none was ready of the type that needed to go forward, at least I was not informed that there was anyone that was ready that they PCLU were not enrolling in court. That would have been the only reason why, so my assumption is that like in all matters they remain subject to investigation or some other form of processing.

10 ADV VARNEY: But given that you must have been aware that these were old cases and had been subject to much discussion when you were Director General of Justice, certainly towards the end of your term, did you not raise a concern or raise the alarm as to why no cases were being enrolled or launched?

ADV SIMELANE: No, I do not think there was a need to even go that far. The important thing was that work was being done on them and I had no complaint in front of me against any official for not doing their work properly. You know the kind of complaint that would have required me to get involved and intervene. The relevant deputy  
20 national director was briefing me and was attending to the matters. I imagine he would have mentioned if there was, what I can call a problem to be attended to. So the fact that there was that history, yes, it is problematic in the ordinary course of events, but the fact that some progress was being made, to me at least was sufficient to leave the matters as they were and await the finality of those matters.

ADV VARNEY: Let us jump to paragraph 45 in your supplementary affidavit. And there the question of the vetting of Ackerman, you discuss it. Ackerman had mentioned that he must have been vetted, but you say at about the fifth line, you take no issue on this aspect.

10           “I simply stated that a vetting at this time or that time of our country would not have prevented him from being appointed. It must be recalled that government and those in political leadership across all parties had implored on South Africa to accept despite the pain of the past and embrace reconciliation and to work towards nation building.”

Now the concern I have with that statement is that if in fact...  
[intervenes]

CHAIRPERSON: If I may interpose there, Mr Varney, what paragraph are you?

ADV VARNEY: Oh, I beg your pardon, it is paragraph 45.

CHAIRPERSON: 45?

ADV VARNEY: Of the supplementary affidavit.

20   CHAIRPERSON: Yes.

ADV VARNEY: And that quote is about from line five or six down.

CHAIRPERSON: I have got here in paragraph 45 it is the heading, under government structures the JCPS clusters. So we are not on the same page.

ADV VARNEY: It is page 54 of that bundle.

CHAIRPERSON: Yes. There is a duplication of paragraphs.

ADV VARNEY: Oh, is there duplication? My apologies.

CHAIRPERSON: Yes.

ADV VARNEY: So my question, Adv Simelane, is are you suggesting that Ackerman's background was overlooked because of the need to pursue reconciliation and nation building. Particularly since your evidence in your main statement is that there were serious question marks hanging over Ackerman's background as an alleged apartheid prosecutor and someone who had links with apartheid operatives.

10 Surely a vetting process would pick up those issues before somebody is appointed to probably one of the most sensitive prosecutorial positions in the country at that time?

ADV SIMELANE: You want me to comment?

ADV VARNEY: Yes, please.

ADV SIMELANE: Oh. No, my comment here is in relation to, at least what appear to me to be Mr Ackerman making an issue of the fact that there was some vetting. In fact there was not necessarily a vetting as far as I know. He thinks, from what I followed he was saying that those in the cluster were opposed to him, should not have  
20 and were unfair in being opposed to him, because according to him he was vetted. And if he had, if there was a problem with his vetting of the type that it was deemed he should not be appointed, he would not have been appointed. So he say he must have been vetted. So all I am simply indicating here is that you can be vetted and still be appointed even if there are reservations. A vetting on its own, even if

you do not necessarily pass it, does not mean you would not necessarily be ultimately appointed, there would be other considerations that are taken into account by those that are responsible for the appointment to have done that. But I am simply putting the point that if he was vetted, he would know that he was vetted, because a vetting of the type he was suggesting he has, which is a top clearance, top secret clearance would require that he undergoes a polygraph. So nobody forgets going through a polygraph. So he should not have said... if he had gone through a polygraph, he would not have said 'I must have been vetted'. He would have said 'I was vetted'. But what I am simply indicating here is that that is fine, but that is not the biggest issue, the vetting or otherwise is irrelevant. He could have been vetted, gone through a polygraph, passed, got a top secret clearance and still his colleagues refuse to work with him for reasons that would have needed to be described. So what would have happened in this case, assuming Adv Pikoli had not agreed to remove him, what would have happened and I do not know if I cover it in this statement, the matter would have gone to the cluster. It would have been reported to the cluster that there is a problem and then the cluster in its deliberations is likely would have wanted to know the details you were asking me earlier. To say okay, those who are so fundamentally opposed, is there a way in which they can take everybody to their confidence about what is so fundamental an issue. It likely would have gone there. But I am saying it did not go there because Adv Pikoli in a way was

magnanimous and accommodated everybody just so that the issue could move forward. But if he had not, it would have gone to the points that you are asking for. That is all I am trying to explain around what vetting in my assessment meant in that context of what you are saying.

ADV VARNEY: But do you accept that the concerns raised in relation to Adv Ackerman as to why he should not be in charge of the TRC cases, that they are... that they were baseless concerns?

10 ADV SIMELANE: No, concerns of that nature to me can never be baseless.

ADV VARNEY: And yet you and your colleagues have not put up a shred of evidence to indicate why Ackerman should be disqualified from handling those cases, except for general claims about having prosecuted under apartheid.

20 ADV SIMELANE: Well I would not have had to put up that kind of evidence, because I was not the one necessarily opposed to him. I was just a facilitator of a meeting, firstly. Secondly, if the... as I said, if the issue had developed to the point of being discussed in great detail, that kind of information would have needed to be brought up. Whether they would have done so or not, I do not know. But there would have been a requirement to say let us engage, please produce information. Simply because just because people oppose somebody, you do not just run with it. I mean you give due process, you engage, that kind of thing. All I am simply saying is that here we were actually lucky in the debate of the issue in that Adv Pikoli accommodated

those who were concerned. If he had not, then the issues you are talking about would have been ultimately gotten to. But it can never be baseless and from what I recall in the engagements, there are many things I would not say here, but people were pretty serious about ensuring that Mr Ackerman does not proceed.

ADV VARNEY: Yes, but as we sit here today...

ADV SIMELANE: Ja.

ADV VARNEY: Not a single fact has been put up and yes I know this is coming from your colleagues, but at the time not a single example,  
10 not a single fact, simply nothing was put up to warrant his removal. And so the conclusion is inescapable since no facts were put up. The decision to remove him was based on absolutely nothing, it was absolutely baseless and there is no getting around that.

ADV SIMELANE: Well that is not true, it is not accurate. And you, it is not possible that anyone can reasonably reach the type of conclusion that you are suggesting in the concepts of what you have discussed about TRC matters. In the sense that lack of trust alone is enough for anybody to raise as a type of concern that nobody would want to engage with anybody. And that trust here is based on the  
20 facts that Mr Ackerman was an apartheid prosecutor who had reached in his career one of the highest levels of appointment under the apartheid government. That is a fact. So those who engaged with the system at the time, who experienced being prosecuted under an Attorney General of any province for that matter, assisted by a deputy attorney general in the name of Adv Anton Ackerman would

lack trust in people that engage with that system. That is sufficient on its own to make sure that Mr Ackerman does not come anywhere close to matters of this type. So that is a fact.

ADV VARNEY: Well the facts do not seem to support that, because as far as we are aware, by 1994 Ackerman was simply a senior state advocate, he was not particularly high in the NPA.

ADV SIMELANE: I am not sure that we are speaking about the same Ackerman, because Mr Ackerman as head of the PCLU was a special director.

10 ADV VARNEY: Yes, he became a special director... [intervenes]

ADV SIMELANE: Yes.

ADV VARNEY: In 2004, but we are talking about his status by the end of apartheid.

ADV SIMELANE: Well what was understood is that he was that senior in an AGs office. I mean again that can be double checked, but the fact of the matter is that his seniority and his level of engagement in prosecutions, irrespective of a court, it can be regional court even, was of a nature that he dealt with matters that affected liberation movement fighters. And that is enough for those who were  
20 involved in those processes to not trust him enough to want to work with him going forward.

ADV VARNEY: Incidentally you mentioned that Pikoli agreed to remove him from the cases. Is there any evidence that Pikoli took that step, to your knowledge?

ADV SIMELANE: Well I am not aware, I was never informed if he

followed through on his decision. But for purposes for which I was tasked, it was enough that he agreed to do so and the meeting ended, because we had to deal with... I had to deal with something else as far as the cluster is concerned and not Mr Ackerman, he was not my subject.

ADV VARNEY: Well as I understand it, the meetings in question, according to your evidence were in or about 2006 and throughout 2007 only towards the end of 2007 was he relieved. So in fact there is no evidence that Adv Pikoli removed him from the cases, because it  
10 was actually only Adv Mpshe who removed him from the TRC cases.

ADV MASUKU: Sorry Chair, sorry, I think it is not a correct presentation of the evidence given by Adv Pikoli himself when he spoke about how he managed the problem that he was facing with Mr Ackerman being the head of the TRC cases. The evidence of Pikoli is in the transcript, I will just find the specific area, but in the transcript Adv Pikoli specifically said that in order to keep this noise off the, off his back, he decided to remove him. And Dr Ramaite was then, became the head of the, the lead, the leader of the TRC cases in the PLC. So it is not correct that what my learned friend is putting  
20 to the... and I would find the paragraph in the transcript of... I had it yesterday, that transcript I read it yesterday, because I anticipated that he would ask that question.

CHAIRPERSON: Yes, Mr Masuku... [intervenes]

ADV MASUKU: So I will put that... [intervenes]

CHAIRPERSON: I think you will be able to deal with it in re-

examination. But let the witness respond, I am sure he would be able to respond to the question.

ADV MASUKU: Chair, the only problem is being asked on incorrect facts. It is incorrect to put it to the witness.

CHAIRPERSON: Yes.

ADV MASUKU: That this was the fact. When in fact it was not the fact. That is what I am objecting to. I can deal with it in re-examination.

CHAIRPERSON: Yes.

10 ADV MASUKU: But it is not appropriate to lead, to cross-examine a witness on incorrect facts.

CHAIRPERSON: Mr Varney?

ADV VARNEY: Well I invite my learned friend, Mr Masuku, to find that evidence and put it up in re-examination, because we are not aware of it.

ADV MASUKU: I can actually do it now if that would help to...  
[intervenes]

CHAIRPERSON: Yes.

ADV MASUKU: For you not to lead... [intervenes]

20 CHAIRPERSON: That will help.

ADV MASUKU: Ja. So if you go to the transcript of Pikoli which is on day 22, on 13 March 2023. In that transcript on page 153, just on top of 153, you will see that he says, Adv Pikoli says:

“No, the issue here is that also I did earlier  
indicate that I had to choose my battles carefully,

I did not want to cause any further delays, but I never removed Ackerman, Anton Ackerman from the cases. But what I did so that I am able to eliminate this obstacle, Ackerman, and also knowing him to be, you know, abrasive and can, you know, cause you friction, you know, because you know a hardcore prosecutor can cause that and I regard him as such. Tactically for things to proceed, I am fine. Dr Ramaite to whom he reported would attend those meetings and he would be the one who takes a lead in the... he would be the one who takes the lead in the discussions so that it is not Anton who is the face of the post-TRC prosecution, because that animosity would have continued and it would have caused further delays. So I never removed him, because anyway I did not have any authority because he was a special director appointed by the President.”

20 ADV VARNEY: Chairperson, the text speaks for itself.

CHAIRPERSON: Yes.

ADV VARNEY: I do not want to waste time.

CHAIRPERSON: Yes.

ADV VARNEY: Him responding to it, because it is quite evident he did not remove... [intervenes]

CHAIRPERSON: Yes.

ADV VARNEY: Ackerman from the cases. He simply said that Dr Ramaite would attend those meetings.

CHAIRPERSON: Would attend the meetings. Mr Masuku, I am going to rule your objection out of order and I will ask the witness to respond to the question that has been put by Mr Varney.

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

CHAIRPERSON: You may rephrase your question.

ADV VARNEY: Perhaps, ja, I suppose we do need to wrap that up.

10 So the evidence of Adv Pikoli is that he never removed Ackerman from the TRC cases and the evidence of Adv Mpshe is that he was the one who ultimately removed Ackerman from the cases. Do you accept that?

ADV SIMELANE: No, I accept that.

ADV VARNEY: Thank you.

ADV SIMELANE: The point of the matter though and I think I must reemphasise this, for me that was never the issue that was the issue for the other DGs insofar as it affected their cooperation. The issue of the cluster was whether or not the program continues. And if it is a  
20 result of lack of cooperation of the type I described that the program was not moving, let that be resolved. But as soon as that was resolved the way Adv Pikoli said, well he made a commitment which as you say from the evidence, he did not follow up on. To me that is not relevant, because it did not result in the issue being raised again in the cluster of lack of cooperation. So if there was cooperation

afterwards, the job was done as far as the cluster was concerned, other issues had to be attended to by the departments with those, with whom it was engaged, like the NPA.

ADV VARNEY: Okay, let us move on. I am going to be referring to paragraphs 51 through to 55 of the supplementary statement.

COMMISSIONER KGOMO: Mr Varney.

ADV VARNEY: Yes?

COMMISSIONER KGOMO: I thought I could wait with my question, but Adv Simelane, what I cannot understand clearly is, let us say we

10 accept for present purposes the version of Reverend...

ADV VARNEY: Chikane

ADV SIMELANE: Sorry?

ADV VARNEY: Chikane.

COMMISSIONER KGOMO: Reverend Chikane, I am sorry. That there was an acrimonious event that happened and Mr Mpshe who took the decision as NDPP or acting NDPP, accepted that version. It seems that was the trigger or least part of the trigger why he was removed, but I cannot understand why he was not only removed from dealing with Reverend Chikane's matter and that he could go ahead

20 with the other matters. To me it makes absolutely no sense, because throughout all the evidence it seems that that is the, at least the basic reason. So it does trouble me that he could have been removed to deal with only one aspect, sort of administrative aspect and not the prosecutorial aspect of the matter. Does it make sense to you?

ADV SIMELANE: Well it does make sense to me. I think I have

explained what issue concerned the cluster and it never arose again and that would have been the end of my involvement. But to the point that Ackerman was then not removed, I have indicated that that did not seem to create a cooperation problem, because that issue was never brought again. So that is the end of what the cluster is concerned.

So what are you left with? What you are left with is the normal course of events, do your investigations, do your prosecutions and move forward. So the decision on who prosecutes is up to the  
10 NPA, so it would have been up to the others who were still opposed to Mr Ackerman, if they still were, to say despite what was agreed in our meeting, we see that Mr Ackerman is still involved and we have a problem.

If they do not say that, the cluster does not have to be involved, because as far as the cluster is concerned that issue does not exist anymore, let the matters carry on. And the issue of who the NPA allocates to conduct a specific prosecution is up to the NPA, so if he was allocated to prosecute, he is allocated to prosecute. There is nothing anybody can do about it.

20 The complainants in Mr Chikane or anybody for that matter who would have needed or wanted to complain about that, would have been entitled to complain and the NDPP would have had to deal with that complaint as it arose. So the choice of who prosecutes does not concern me and would not have been the business of the cluster anyway.

So if Mr Ackerman was asked to continue leading that particular prosecution; that was one thing. What the cluster, the DGs in the cluster had a problem with was that he leads on TRC matters, not that he be removed as the head of the PCLU. So if he was no longer leading on TRC matters, such that those departments felt they could then start a process of cooperating.

That was the problem solved as far as the cluster is concerned. Then the detail as to what happened was not the cluster's business, so the cluster would not have concerned itself with that. So I do not have... personally I do not have a problem with Mr Ackerman.

And I do not have a problem with Mr Ackerman conducting specific prosecutions, because that would not have had an impact on cooperation, unless made an issue by whichever department and that never was brought to the cluster. So personally I do not have a problem with...

COMMISSIONER KGOMO: Yes, thank you. Mr Varney.

ADV VARNEY: Thank you, Commissioner. Adv Simelane, let us move on to paragraph 52 and 53 of your supplementary statement.

20 So if I may paraphrase and please correct me if I do not get it right, you say that:

“In a discussion of any proposal for which the support of the cluster would have been required, the cluster would have been interested in whether any support was meaningful for the purposes for

which it was required...”

And the rest of that paragraph you referred to, I suppose the types of support, including carrying out of investigations. And then in paragraph 53 you point out in the first sentence:

“Discussion by the cluster would not seek to support what is being submitted, even if supported by a few DGs, if it had shortcomings.”

Now the work of the PCLU on these cases and we have to remind ourselves what these cases were, they were almost all of them I think, without exception were murder and kidnapping cases. Why should the support, particularly the investigative support for such cases, why would that be questioned? In particular the proposition posed as to whether any support was meaningful for purposes for which it was required and potentially if that request for support had shortcomings, it might be withheld. What possibly would cause the cluster to question why support was needed to investigate murders and kidnappings, let alone meaningful support?

ADV SIMELANE: In respect of the TRC matters?

ADV VARNEY: Yes.

ADV SIMELANE: Well I can tell you that this happens in respect of all matters, even matters that are not TRC matters, to this day. Part of the work of the cluster is monitoring that... through joints is monitoring that the criminal justice system functions effectively. So capacity at all levels gets discussed, including the judiciary.

So it would matter that if an issue of lack of cooperation had

been raised initially as a problem and now it is reported that it is no longer a problem, because of whatever agreement would have been reached and that cooperation is now place, the cluster would in its ordinary course of work require to know how that support is being provided.

So each department that provide support would account, firstly via the interdepartmental task team, in other words what your member from social development is contributing to the task team that would be required to be reported on, to see if it definitely assists the  
10 program. And there would be reports about what else is needed that is not there, so that another department could be asked to contribute a member.

So in this case, assuming all the departments were contributing correctly with their members, the cluster would be interested to know if it is adequate. So the NPA could say 'they have given us 100 members, by they are all constables and they are all new straight out of college'. The number is right, but the quality we are not able to work with, because we have to manage these people.

That would have been an issue for the cluster, to say why  
20 are you approaching it that way, where are the experienced people at different levels? That is what I am talking about there. To say that they, the police would not have determined on their own what kind of assistance they provide.

The cluster would have made contributions to what they could provide. So the police could come and say, 'sorry, we only

have two colonels that we can spare, we do not have more'. There would have been a debate about whether that is sufficient and the NPA would have indicated if it is sufficient or not.

That is the kind of engagement that would be there. But if it takes place at the cluster level, it is an indication that the cooperation is still not as best as it should, because it is not an issue that should come to the cluster, it is too operational for that purpose.

ADV VARNEY: Yes and I think there is no dispute between us that during those years there was struggle to get investigative support.

10 And I do not want to waste time going into the evidence that this commission has heard, but there were attempts to appoint police officers. You know, say for example a letter has been distributed to us, I do not know whether it is on your table, from assistant Commissioner Jacobs dated 6 December 2006. Where he requests provincial... [intervenes]

ADV SIMELANE: Yes, yes, yes.

ADV VARNEY: To appoint one officer in those five regions. And yet as far as we know, there is evidence to suggest that they were appointed and even if they had been appointed, whether they did any  
20 work. Because through the 2000s, it is the evidence of Adv Ackerman and Macadam and Mhaga that they struggled to get investigative support. And I suppose for us lay people, you know a murder takes place down the road, or somebody is kidnapped, detectives and prosecutors do not normally go cap in hand to the DGs or to the minister saying you know, 'we need support to investigate these

cases'. It happens in the normal course and the question is why should this not happened in the normal course?

ADV SIMELANE: Well I am not sure what between the police and NPA happened, but after that meeting that we had in the west wing, there was no issue again of lack of cooperation that was brought by the NPA to me as the DG, which I needed to take to the cluster. And for all intents and purposes there would not have been an issue on which the cluster needed to intervene. So my role would have ended at that particular stage, everything else would have been handled by those who were involved directly with it.

ADV VARNEY: And at paragraph 54, you say that:

“Even if the DGs accepted and proceeded with the proposal, it would still have to be submitted to the ministers, for them to note to see if there are any aspects they wanted to contribute towards...”

It just sounds extraordinary that basic investigations into serious crimes have to jump through these hurdles all the way through to the minister's cluster.

ADV SIMELANE: You are saying it sounds?

20 ADV VARNEY: Yes, I am making the point; I am putting it to you...  
[intervenes]

ADV SIMELANE: Yes.

ADV VARNEY: That it is extraordinary that where you have very serious crimes, particularly old ones that that should be given some priority as in these cases, that for support it has to go up the chain of

command, the DGs cluster and as you point out in paragraph 54, it still also have to go to the ministers cluster.

ADV SIMELANE: No, it happens on a daily basis on many matters. In this particular instance I think we have discussed *ad nauseam*, the nature of TRC matters and the necessity of consistent reporting. So the ministers would have really been informed for them to note that this is the kind of progress that is being made.

That is all I am indicating there, but in the normal course of events if there are any matters, whether it is... now I am talking about  
10 none-TRC related matters, they need to deploy the military somewhere to provide capacity to the police, if there is an issue of youngsters involved with drugs in any locations that requires specific attention.

All of those issues the cluster as a normal program deal with and deals with and those issues do get reported as far as cabinet. Depending on what is required, sometimes it may just be to note that there a problem of Neyaope in Umlazi for argument's sake.

And as a result of that, this is what is happening around that area. That small, what appears small does find itself to cabinet, so  
20 that is not extraordinary. That is how the system works, that is what I am trying to say.

ADV VARNEY: No indeed and I can certainly understand if one wanted to deploy the military and the expenditure of such resources that you would have to go up the chain of command. But here we are not talking about those kinds of resources or that kind of programme,

we are talking about individual murder cases. And actually although the TRC referred a few hundred cases, the shortlist that the NPA came up with was quite small. I do not have the exact numbers in front of me, but of the cases that they wished to go ahead it only numbered around 20-odd or thereabouts. So we are not talking about a massive expenditure here. Why did so few cases have to go up the political chain of command?

ADV SIMELANE: I am not sure that is accurate. As far as I am aware, I do not recall any case that had to go up political chain of  
10 command for it to be attended to. I mean the matters were attended to and I think if you recall the evidence of Chris Macadam, you know where at some point the docket was missing, it was found in 2010, they started working on it.

Those things do happen in respect of all matters; those matters do not necessarily get reported with that specificity up, upwards on the chain of command, even up to the cluster. What gets reported in general is whether progress is being made, how far it is being made, if there are any hurdles where the cluster needs to intervene.

20 That is the kind of reporting I am talking about. The cluster does not deal with too much operational matters, unless an issue is being presented as an operational problem that the DGs are now required to resolve. Otherwise at the level of joints and interdepartmental task teams that is where matters get resolved. The cluster is never that operational.

ADV VARNEY: Sir, I get the impression that you are suggesting that the delivery, the performance in respect of the TRC cases was adequate and satisfactory. Are you saying that?

ADV SIMELANE: No, no, not that it was adequate, no.

ADV VARNEY: Are you saying that it was poor or inadequate?

ADV SIMELANE: No, I mean for TRC matters it will not be adequate. The fact that we are here just demonstrates that it could never have been adequate. That that is the problem.

ADV VARNEY: Yes, indeed. On that score we are in agreement.

10 ADV VARNEY: Alright, let us move on. In paragraphs 56 and 57, you point out that where there is no agreement in the cluster, in other words a stalemate, I think is the word you used in paragraph 56, the cluster would then report to the ministers for their intervention. And in various departments, SS I assume is secret service, near I suppose DHA is the Department of Home Affairs, I am not sure what DI is. But they... [intervenes]

ADV SIMELANE: Defence intelligence.

ADV VARNEY: But they would then make their inputs.

ADV SIMELANE: Yes.

20 ADV VARNEY: And if it was not possible to resolve it at the level of Ministers, then what would be required is a formal memorandum to cabinet. And you speak below about the joint cabinet memorandum, which would have been discussed in the JCPS cabinet subcommittee first, and then on to the cabinet. But now in this case, there was a stalemate. There was an impasse that simply was not resolved. So

did that escalation take place?

ADV SIMELANE: There was no stalemates. What I am referring to there is that after the decision that was taken by Advocate Pikoli to remove Mr Ackerman, although it turns out it was not necessarily implemented. What I am saying is that what was then expected is that cooperation between the police and the NPA on their own would continue and would happen. And the programme would run ordinarily. But assuming that there was no agreement and therefore the problem continued, then the police would have put their proposal  
10 as the letter from the late National Commissioner sought to do. That kind of suggestion would have been discussed in the cluster to see if the cluster accepts it. If the cluster did not accept it, that would be the end of it. But if the cluster did accept it and it would then be implemented, but assuming there's a problem with it such that there is division within the cluster. The cluster, because it cannot order departments to do things or to not do things. What the cluster would do and does do in the normal course is to simply report the matter to the Ministers to say we have a problem in the cluster. Despite deliberations, we cannot resolve it. And this is the nature of the  
20 problem. And these are the options that are in dispute. And Ministers are requested to intervene. That is how it would be dealt with. That is all I am simply indicating how things would have progressed had issues not ended in that meeting.

ADV VARNEY: Yes. Well, let us take the support of the SAPS because in paragraph 57, you say, "That at least as I recall, SAPS did

not submit a proposal to the DG's cluster".

ADV SIMELANE: Yes.

ADV VARNEY: And obviously the matter did not get on to the agenda. You say, "What you recall regarding how the meeting between the DG's and the NDPP ended and the subsequent briefing to the Ministers". Then you point out that there were other developments in the country, such as which affected the departments, Justice, SAPS, NIA, DI and SS, such as the Khampepe Commission of Inquiry into the DSO presumably, the Ginwala Inquiry and then the  
10 legislative process of the DSO. So it does seem as if, at least according to your knowledge, that question was never resolved.

ADV SIMELANE: Yes, as a proposal in that sense, it was never resolved. But also what did not come back on the part of the NPA as it had come before was that they have a problem that they were not attended to. So the issue was almost just never came up again. And I think with the other things, I think everybody's attention then got distracted in that sense.

ADV VARNEY: Okay, that wraps up your supplementary statement. There are just a couple of things arising from your testimony that I  
20 wish to canvass with you. So in your evidence-in-chief, if I can draw to your attention in the transcript pages 39 and 40. And that would be from page 645 of the bundle. And it started about line 20, which is towards the bottom, page 39. I will just quote a couple of lines.

"But they had an attitude. So the attitude towards Ackerman was deeply resentful, if I can describe that

kindly. I could use worse words, but I think it was deeply resentful. They literally wanted nothing to do with him, you know. In fact, there were times when I feared for him, because one did not know what people would end up eventually doing, because the way they felt so strongly about an individual."

And then you mentioned other names such as Oliveira, Ackerman, and McAdam. So are you saying that you actually feared for Ackerman's safety, just given the sentiments expressed?

10 ADV SIMELANE: Not really feared for his safety, but it would not have excluded one to wonder with that level of resentment by people in that type of environment, because it is an environment of people that are trained, with, you know, in the manner that they are trained. So if they express the kind of resentment against an individual in meetings, still with restraint, yes. So you never know what else they discuss elsewhere. So you do, there is always a concern in the security cluster when they are strongly held views about such things.

ADV VARNEY: Yes, well, it does seem actually that you had a concern about his safety, because as you said, you never know what  
20 they could do.

ADV SIMELANE: Ja, but I mean, it did not get to the point where anybody needed to do anything about it, but it needed to be noted, that it needed to be put to a stop at some point.

ADV VARNEY: Now, earlier you spoke about trust. If I can refer you to page 48, of your transcripts at the bottom of the page, you state

that:

"So for me, it was very clear, and in the way in which a grouping of people engaged, the trust was central issue.

If you were not trusted in any way, not even just with a task, if you are not trusted to be in the room, it is a problem."

And actually, later in your evidence, you refer to that theme, the question of trust, and having somebody there who is trusted. Now, I want to put it to you that, from the family's perspective, it  
10 seems that when you refer to trust, you are referring to a person who will do what is expected of him, and who will do what the DG cluster requires of him. Is that not ultimately what this is about?

ADV SIMELANE: No, no, that is completely incorrect. Completely incorrect. I mean, I do not even think the context suggests that kind of thing. That is not how the cluster worked. What I am talking about there is that a security environment is such that, although your colleagues, I mean, you are not buddies, you are actually colleagues, and you do not know each other more often than not. So if people are going to work, and are going to agree about how they are going to  
20 work, it becomes important that they have the level of cooperation that is informed by them trusting that they will do their work as required.

So even as DGs, I mean, we needed to trust each other to the level that we could engage quite freely, and speak freely. Because sometimes it does happen that if people do not feel safe in a

space, they just keep quiet, or they do not engage in the manner that is helpful, because of however they feel. So the task is to make sure that everybody feels safe enough to be able to do their job as best as they can. That is the trust I am referring to.

ADV VARNEY: And let us move to the next page. And that is at line, it is about line seven or six. You mentioned:

"That the only person that I could call or who could call me was Commissioner Selebi."

Am I right in saying that you and Selebi, at least in relation to  
10 the TRC cases, were like minded, you shared the same approach?

ADV SIMELANE: No, what I am indicating there is that because we were coaches, we were required to generally keep tabs of the work of the cluster. So every time anybody would have needed to follow up on an issue of the cluster, they would go through either me or through him. So for example, the Secretary of Defence would not necessarily call me.

ADV VARNEY: And then if we can turn to the bottom of page 42 of your evidence-in-chief, you make reference to:

20 "The National Security Standpoint, and the fact that there were people obviously the debate as well was that the people of the system they were describing were now within the, they were working with them, we were all in the same system. So those were in special branch were still there in the police."

I suspect that the transcript did not capture your precise

wording, but I think what you were saying there was that one had to be careful because old order people were still in the system. For example, special branch individuals were still in the police. Is that roughly correct?

ADV SIMELANE: Yes, not just special branch, special branch and those who worked in the homeland governments were also there. So there was the general in the same way that others would have expected that those who came from the non-statutory forces were also integrated into the system. Those who were in the SDU self-  
10 defence units, self-protection units were integrated into the system were there. So everybody in a way still functioned in a manner that people would want to be as comfortable as possible and as safe as possible because they did not know who they were dealing with and what the background of that individual was or would have been.

ADV VARNEY: Yes. Now, would it surprise you to hear that Advocate Ackerman actually shared those concerns? He was very concerned about working with police officers who were former security branch officers. And in fact, on at least one occasion, he objected to a certain police officer being involved in TRC cases  
20 because he was a former security branch officer.

ADV SIMELANE: No, I heard that in his evidence here in the proceedings, yes.

ADV VARNEY: Yes.

ADV SIMELANE: So it would not surprise me in the sense that everybody involved would be dead aware, situationally aware. And I

think it is quite telling that he himself was situationally aware, so which means he was quite alive to those kinds of issues from his experience.

ADV VARNEY: Yes, but is that not consistent with the various claims that were made against him?

ADV SIMELANE: Is it not consistent with?

ADV VARNEY: Consistent with the claims that he was an apartheid-era prosecutor with dubious links.

ADV SIMELANE: So what would be consistent with that?

10 ADV VARNEY: The fact that Advocate Ackerman objected to working with a police officer who was a former security branch officer on these cases.

ADV SIMELANE: Yes I agree.

COMMISSIONER KGOMO: Are you referring to Brits?

ADV VARNEY: I am indeed referring to Brits, exactly.

COMMISSIONER KGOMO: Thanks.

ADV VARNEY: Yes. Ja. So there was, I believe he was a Senior Superintendent, Brits, and he was the officer in question that Advocate Ackerman objected to.

20 ADV SIMELANE: Ja, I do not know about how anybody felt about him. It was never brought during my time. All I am simply saying that I understand why he would feel that way, because it means he would have had knowledge just as much as others would feel similarly in that way with the knowledge they would have on others.

ADV VARNEY: Okay, let us move on. So if I can direct your

attention to page 78 of the transcript, in the bundle that is at page 684. And this deals in relation to your handling of the TRC cases. Well, you were, I believe, while you were in NDPP, but let me just check. Yes, Advocate Masuku puts a paragraph to you about the cases being firmly frozen and asked whether you agree with it. And your explanation in disagreeing is because, and this is the top of page 78"

10 "Because there was no matter that was presented to me by way of a report that said the matter is ready for prosecution, and it was never prosecuted. Secondly, no matter was brought to you that is ready for prosecution."

I suppose that is duplication.

"And the reports that the different units gave would have given that these matters remained under investigation."

So while you were NDPP, all the matters were under investigation and no case was brought to you that was ready for prosecution. So the question is, did you ask your team why there were no matters ready for prosecution while you were NDPP?

20 ADV SIMELANE: No, no, I did not have to, because in the reports they explained that matters are under investigation, and they would explain challenges that they would have encountered of this and the other. So I quite understood that despite those challenges, at least they were making an effort to going forward.

ADV VARNEY: And then I want to refer you to a memorandum that was prepared by Advocate Mpshe. And I believe that this is, is it a

standard bundle I have heard, is it in the record? It is at page 717 of the bundle. It is in the supplementary bundle.

ADV SIMELANE: Yes, I have it.

ADV VARNEY: You have got the document in front of you?

ADV SIMELANE: Yes, yes, I do, yes, thank you.

ADV VARNEY: So it is addressed to the then Minister of Justice, Mr Serti, from Advocate Mpshe the then acting NDPP, dated 17 February 2009. And the subject is TRC Task Team. In paragraph one, you will see that Advocate Mpshe says:

10           "The purpose of this memo is to inform the Minister of my intention to reconvene the TRC Task Team."

To save time, I am not going to go through it. He provides background and a briefing. And he sets out under the briefing on page two, paragraph 3.4, nine matters that he says are on hand at present. Besides the case of Nokuthula Simelane, that is the one at 3.44, we have discussed that already, that the Simelane family had to go to court to get a decision there. But in the rest, and perhaps to be fair to you, we should identify them.

20           3.4.1 is the PEBCO 3 matter. Secondly, Anton Lubowski assassination. Three is the Cradock 4. Five, Heidelberg Tavern in St. James Church. Six, Philip Powell. Seven, Samora Michelle. Eight, murder of Rick Turner. And nine, allegations against former General Basie Smit. So besides the Nokuthula Simelane matter, are you aware of any of these cases going ahead?

ADV SIMELANE: I do not remember specifically if any matter went

ahead. But I am aware that they were being attended to. If you mean go ahead, as in it started in court, enrolled, and the trial run.

ADV VARNEY: Indeed.

ADV SIMELANE: Not that I can recall.

ADV VARNEY: Yes. Well, we can tell you that with PEBCO 3, sadly that that matter is only being heard as a reopened inquest in October of this year. And there is only one surviving suspect in that matter. In Cradock 4, the majority of the suspects have passed on. And we were currently busy with a reopened inquest. But for the rest, we  
10 were not aware of any developments.

I want to draw your attention to the bottom of page four. Because there is a note there from yourself. And I think because it is your handwriting, you would probably be best to read it into the record.

ADV SIMELANE: Sure.

ADV VARNEY: Advocate Simelane, sometimes you write like a doctor. Could you just read that into the record so we were all on the same page?

ADV SIMELANE: Ja, I will try.

20 "It may be useful that the Minister first discuss these matters with the IMC Ministers so that the acting NDPP can be advised how to proceed, especially on what the mandate of the NPA is on these matters."

ADV VARNEY: Thank you.

ADV SIMELANE: If at all.

COMMISSIONER GABRIEL: What are the words that follow?

ADV SIMELANE: If at all.

COMMISSIONER GABRIEL: If at all.

ADV VARNEY: If at all yes.

ADV SIMELANE: Yes.

ADV VARNEY: So why did you feel the need to write this note that this must be raised with the Minister first?

"He may then want to raise it with the IMC Ministers."

Is that the Inter-Ministerial Committee?

10 ADV SIMELANE: Yes, the Inter-Ministerial Committee, yes.

ADV VARNEY:

"So that the acting NDPP could be advised on how to proceed, especially on what the mandate of the NPA is on these matters, if at all."

Because again, it seems to us that you are suggesting that at a political level, the Minister and possibly the IMC Ministers need to advise the NDPP, the acting NDPP on how to handle them.

20 ADV SIMELANE: Yes, it was for them to make their own comments if there is anything they wanted to know. So in the same way that the cluster would report upwards for noting or for comment, that is what that note basically was suggesting to the Minister or recommending to him.

ADV VARNEY: But you agree there was no real need for the Ministers to make comments on these matters and how they should be taken forward?

ADV SIMELANE: No, I do not agree. There is a need all the time for political leadership to comment on issues that affect the nation.

ADV VARNEY: All right. Finally, I want to put to you a sentence from the finding of the Ginwala Commission Report about the referral of the handling of the TRC cases by then NDPP Pikoli. Commissioners, this is in bundle one at page 114, paragraph 281. And I will just read this into the record and then seek your comment.

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

Would you agree with the finding of the Ginwala Commission on that aspect that the referral of the complaint of the TRC cases touches closely on the guarantee of independence of the NPA to prosecute or not?

ADV SIMELANE: Sorry, we are reading on page 114, paragraph?

ADV VARNEY: Okay, so it actually starts at the bottom of page 114, paragraph 281. And then the balance of the quote is at the top of page 115.

20 ADV SIMELANE: Ja, which complaint is that?

ADV VARNEY: The complaint is the referral by the government of the TRC cases, the handling of Advocate Pikoli of the TRC cases to the Ginwala Commission.

ADV SIMELANE: It is going to be difficult for me to explain that because I would have to understand what that complaint was or what

was alleged in that charge. I do not seem to recall the specificity of it and how it was framed. So I do not know because I do not want to comment on something I have not seen because that comment that you have just, that finding that you have just read suggests that if there is the complaint by government in respect of TRC matters against Advocate Pikoli touches very close on constitutional guarantees. Is that how you want to say?

ADV VARNEY: Well, I am quoting what the Chairperson of that commission wrote in her finding. And you will recall that the various  
10 complaints that have been raised were also put before the Ginwala Commission. For example, that Advocate Pikoli was insensitive in his handling of these cases, failed to consult and the like.

ADV SIMELANE: Right.

ADV VARNEY: And so that complaint was ultimately dropped during the course of the proceedings, but nonetheless, the Ginwala Commission was moved to make that finding that the complaint itself touches on the independence of the NPA to prosecute or not.

ADV SIMELANE: I would rather not comment on that.

ADV VARNEY: Okay.

20 ADV SIMELANE: Thank you.

ADV VARNEY: No further questions, Chairperson.

CHAIRPERSON: Thank you, Mr Varney. Mr Semenya.

CROSS-EXAMINATION BY ADV SEMENYA: Thank you, Chair. Just perhaps a few questions. Might I invite you to go to page 722 that is in this bundle for cross-examination?

ADV SIMELANE: Bundle for cross-examination, 722?

ADV SEMENYA: 722 at the top of the page.

ADV SIMELANE: Yes.

ADV SEMENYA: All right. What the reader of this document will see at the top is a Code of Arms of the country, right?

ADV SIMELANE: Yes.

ADV SEMENYA: Also see that it is the office of the President of the Republic, yes?

ADV SIMELANE: Yes.

10 ADV SEMENYA: What they will also see when they look at the foot of the page, they will see that it is dated 24 March 2003. Correct?

ADV SIMELANE: Yes.

ADV SEMENYA: It will also be obvious to the reader that this is a proclamation by the President of the Republic of South Africa. I must be right, hey?

ADV SIMELANE: Yes, that is the proclamation.

ADV SEMENYA: And it relates to the National Prosecuting Authority Act of 1998. But most importantly, the reader will see that it consents the determination of powers, duties, and functions of a special  
20 director of public prosecutions. I am reading it correctly, hey? I am reading it correctly.

ADV SIMELANE: Yes.

ADV SEMENYA: And it says under Section 130(1)(c) of the National Prosecuting Authority Act 1998, in parentheses it says what it says "

"Hereby confer, impose, and assign the following

powers, duties, and functions on or to Anton Rousseau Ackerman, SC, a Special Director of public prosecutions appointed in terms of the set provisions."

So we do know this is an appointment letter for Advocate Anton Rousseau Ackerman to this, as a Special Director, correct?

ADV SIMELANE: Yes.

ADV SEMENYA: It continues to say:

10 "To exercise the powers, carry out the duties, and perform the functions necessary within the office of the National Director of Public Prosecutions as directed by the National Director."

That would be the NDPP, right? Yes.

ADV SIMELANE: Yes.

ADV SEMENYA: And I want to emphasise what follows"

"In particular, to head the Priority Crimes Litigation Unit, and to manage and direct the investigation and prosecutions of crimes contemplated in the implementation of the Rome Status."

20 Rome Statue, and it continues, but I want to deal with this. It is given the power to investigate, right? What is not stated in the letter is how that investigation is to be conducted. Correct? Neither does it prescribe how the prosecution should be done, right?

ADV SIMELANE: Yes.

ADV SEMENYA: And then it says all of those, but it includes at the last line of that paragraph A:

"Or such other priority crimes to be determined by the National Director."

So we do know from this proclamation that the National Director can include in that list of other crimes described some other priority crimes, right?

ADV SIMELANE: Yes.

ADV SEMENYA: On record we know that include that the TRC, that the NDPP included under the PCLU. You are familiar with it, are you not?

10 ADV SIMELANE: Yes, I saw that on the record, yes.

ADV SEMENYA: And at the foot of the page, it is signed by the President as well as PM Maduna, who then was the Minister of Justice, correct?

ADV SIMELANE: Yes, I see that.

ADV SEMENYA: I have placed before us, well, we as the evidence leaders, placed the document my learned colleague referred to a little earlier. And I want to suggest to you that it gives us a clue how investigators were ultimately to be procured for the purposes of dealing with these matters. It is that document, PCJ 18, that you  
20 were shown. Do you see that?

ADV SIMELANE: Yes.

ADV SEMENYA: Now, let us deal with this because I am going to suggest ultimately, it tells us how those prosecutors I mean investigators were to be procured. The insignia there is that of the SAPS and it says so on the side of it. You agree?

ADV SIMELANE: Yes.

ADV SEMENYA: And we know it is in 2006, December, 6th, December, 2006. You agree?

ADV SIMELANE: Yes, that is the date.

ADV SEMENYA: Addressed to various Provincial Commissioners. You see that at the top, A, B, C, D and E, right?

ADV SIMELANE: That depicts that it is addressed to them. If that is what it is, yes, I see that.

ADV SEMENYA: Correct. And if you go over the page, you will find  
10 JF de Beer, who is the Divisional Commissioner, Detective Services, right? We have had that evidence. But most importantly, it addresses all those Provincial Commissioners to say, I read from paragraph two:

"

You requested to make the following officers available as indicated from stroke against your province. Inter-departmental committee appointed to deal with these matters."

And we know what those matters are because they are in the heading. The heading would tell us:

20 "Investigating officers to assist in the finalising cases emanating from the TRC commission."

TRC. You see that?

ADV SIMELANE: Yes.

ADV SEMENYA: So the document in its own simple reading would tell us how those investigators were to be secured. You will not argue

with that, would you?

ADV SIMELANE: Well, I do not know if these were the investigators that were contemplated in what was discussed in the cluster.

ADV SEMENYA: No, no, no. For what the letter is saying, I have not changed its meaning, have I?

ADV SIMELANE: Well, I understood you to be putting to me that this document demonstrates how investigators were to be appointed.

ADV SEMENYA: No, I am saying it says what it says, but we can now glean that the investigators for finalising those matters, to assist  
10 in the finalising of those matters, it relates to the TRC matters. The document says so. I do not think we should debate that. Correct?

ADV SIMELANE: Well, the document says what it says in the heading, yes. I agree with that.

ADV SEMENYA: Yes. Now, we to date do not know that there was ever an investigating officer for these TRC cases since 2006, December. That is a pretty long time you would concede that to, right?

ADV SIMELANE: You are saying there has never been an investigating officer since that time?

20 ADV SEMENYA: I am saying the commission does not have any investigating officer under the PCLU at that time. To up to 2021, I will tell you what is the difference. You have no information to negate that proposition, right?

ADV SIMELANE: I am not sure if I am hearing you. To say...  
(intervenes)

ADV SEMENYA: I said. Yes.

ADV SIMELANE: I am trying to understand the commission, which is this commission.

ADV SEMENYA: Yes.

ADV SIMELANE: Right, you are saying this commission?

ADV SEMENYA: Does not have information that indeed the PCLU did appoint an investigator and now cover certain periods.

ADV SIMELANE: [Indistinct]... (intervenes)

ADV SEMENYA: You have no information to negate that, do you?

10 ADV SIMELANE: No, I do not know that.

ADV SEMENYA: Correct. Now, the points I am making with you and I want your concurrence if you can, is that without investigators, there would not have been progress in the investigation and prosecution of those matters. It follows by way of reasoning, I think.

ADV SIMELANE: Yes.

ADV SEMENYA: Okay. We see traction happening since 2021, but it is because of other factors. We know Macadam, Advocate Macadam, retires. You can take it as a given unless you know differently.

20 ADV SIMELANE: No, I do not know. I am assuming he must have retired by now, yes.

ADV SEMENYA: Yes. And also what you might not know is that Advocate Singh gets involved in TRC cases and some traction begins to happen after the departure of Advocate Macadam. You can negate that information, can you?

ADV SIMELANE: No, I do not know. I was not in the NPA at the

time.

ADV SEMENYA: And I am making this because as the evidence leaders, we want to request certain factual findings to be done that even during your period, you are not aware of any investigator for TRC cases at all, right?

ADV SIMELANE: No, I was not informed that there is an investigator appointed, yes.

ADV SEMENYA: Yes. You used the word to the, there were certain matters that were not prosecutable.

10 ADV SIMELANE: Sorry, I used, beg your pardon?

ADV SEMENYA: There were matters that were not prosecutable in some of these TRC cases.

ADV SIMELANE: I do not know, I did not say that.

ADV SEMENYA: Well, the context is you would find it in the transcript of your evidence if you come with me to page 93.

ADV SIMELANE: 93 of the?

ADV SEMENYA: Of the transcript, your evidence.

ADV SIMELANE: Oh, my, okay.

ADV SEMENYA: I think the date is the 26 March. This year, 31  
20 March. Are you there?

ADV SIMELANE: Yes.

ADV SEMENYA: Just about line 11, you continue to say:

"So it goes back to my point. That in my time that I was there, about two years in the NPA, there was no prosecutable matter that was ever presented to me by

anybody. I would have said it must not go ahead. So,  
but..."

Do you see that?

ADV SIMELANE: Yes.

ADV SEMENYA: They become not prosecutable, at least in part because there are no investigations regarding those. Is that a fair inference?

ADV SIMELANE: Not really, because as I indicated, the team was conducting the work of those investigations. Whether or not there  
10 was a specific individual appointed to investigate is something else. I am not aware of that, but the reports that I received were that those matters were proceeding in terms of the NPA engaging the police.

ADV SEMENYA: And I will not contest that on paper that is what is given as a report to you. All I am saying is, with the evidence collected by this commission, we are yet to see one single investigator appointed for the PCLU to discharge its mandate up to the leaving of Advocate Macadam in 2021. You have no information to again say that, I take it.

ADV SIMELANE: I can only speak for the period that I was there,  
20 yes.

ADV SEMENYA: There are no further questions. No further questions to the witness.

CHAIRPERSON: Thank you, Mr Semenya.

COMMISSIONER GABRIEL: Just one follow-up, Mr Simelane, Advocate Simelane. PCJ 18, the letter dated 6 December 2006. Now

this would have been, during your time, addressed to the Provincial Commissioners about officers to be appointed. To your knowledge, were these officers actually appointed?

ADV SIMELANE: I do not know, I would not know I am seeing this letter for the first time today. I have not seen it before.

COMMISSIONER GABRIEL: Okay, thank you.

ADV SIMELANE: Thank you.

CHAIRPERSON: Mr Masuku.

RE-EXAMINATION BY ADV MASUKU: Thank you, Chair, thank you,  
10 Commissioners. I have a few re-examination questions. And Mr Simelane, I will focus mainly on the issue, on the interference questions. And they will arise from your understanding of the allegation that work of the cluster, the DG cluster, and some of the DGs. And you can comment on whether the Executive, the Members of the Executive were also involved in it.

In terms of your understanding of interference with the work of the NPA or prosecutorial independence, you would accept that such an allegation would have been very serious in light of Section 32 of the NPA Act, would you agree with that?

20 ADV SIMELANE: Yes.

ADV MASUKU: Because that Section 32 specifically says that, if I may just read it. Oh my gosh, I had it with me here. Ja, thank you. Right, Section 32(1)(b) says:

"Subject to the Constitution and this Act, 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."

You recall that section?

ADV SIMELANE: Yes.

ADV MASUKU: And then the penalty for this contravention of Section 32(1)(b) is set out in Section 41 of the NPA Act. I will just read it.

10 "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 to both such fine and imprisonment."

You recall that?

ADV SIMELANE: Yes vividly yes.

ADV MASUKU: Now, so if there are good faith, one of, ja, good faith allegations that a particular official of an organ of state, particular officials of the organ of state are interfering with prosecutorial  
20 independence in the sense provided for in Section 32(1)(b), they would be essentially committing a potential, a crime that is punishable under Section 41. Am I correct?

ADV SIMELANE: Yes.

ADV MASUKU: And there is a, you would accept that there is a, there would be a duty on a prosecutor or the NDPP to act if such

interference takes place and to point out that this interference is in fact a criminal offence. Would that be your understanding as well?

ADV SIMELANE: Yes, they will be entitled to do that.

ADV MASUKU: Right, but to your knowledge, the, there were certain DGs, and this is something that has almost become common cause. Certain DGs expressed views about Ackerman and his position as the leader of the TRC prosecutions. You recall that?

ADV SIMELANE: Yes, I do recall.

ADV MASUKU: And as you testified, some of them expressed very  
10 strong views about Ackerman being the face of the leadership. You recall that?

ADV SIMELANE: Yes, being the face of TRC cases, yes.

ADV MASUKU: TRC cases ja.

ADV SIMELANE: Yes.

ADV MASUKU: When that was brought to the attention of the NDPP at the time, the NDPP disagreed with those views, suggestions, or opinions of those DGs, is that correct? \

ADV SIMELANE: Yes, they disagreed.

ADV MASUKU: Now, what would you say about an allegation that  
20 suggests that that disagreement that they had, or that disagreement, or that their views and their position in relation to Mr Ackerman amounted to interference in terms of Section 32(1)(b)?

ADV SIMELANE: Well, I think if the view was strongly held in that way, one of the options available was to make it known to those individuals that their conduct is being experienced in that particular

manner, so that if there is any misunderstanding, that is corrected. Or if it is still not corrected, despite it being explained, then they would have been entitled to be charged and prosecuted for this.

ADV MASUKU: Right. And if a prosecutor felt very strongly about the nature of the conduct that constitutes a contravention of Section 32(1)(b), they would have to exercise their powers to bring a charge against that person interfering, right?

ADV SIMELANE: Yes.

ADV MASUKU: Because I am sure you accept that interference in  
10 terms of Section 32 of the NPA Act requires more than just engagement and disagreement, right?

ADV SIMELANE: Yes, yes.

ADV MASUKU: It requires improper influence over a decision-making process, right?

ADV SIMELANE: Correct.

ADV MASUKU: Now, can I then ask the following questions? You have not been confronted, and if you have, please point that out. You have not been confronted with evidence that either yourself as a DG or other DGs acting within the cluster are instructed the NDPP to  
20 initiate, withdraw, or reverse a prosecution. Have you been confronted with such facts?

ADV SIMELANE: No.

ADV MASUKU: Have you been referred to a document or evidence from the DG, from the cluster, or from yourself as DG at the time, instructing Mr Advocate Ackerman or Macadam's or any prosecutor,

including the NDPP, to initiate or withdraw or reverse a prosecution?

ADV SIMELANE: No, no, I have not.

ADV MASUKU: Now, to the extent that there was a collaborative approach which involved certain bureaucrats in the form of DGs expressing their views or their opinions or recommendations to the NDPP. I want to take you to Section 22 of the NPA Act, and I would like your comment on that. That section provides the following. Section 22 deals with the powers, duties, and functions of the National Director, and it says:

10            "The National Director as the head of the prosecution authority shall have the authority over the exercise of all the powers, performance of all the duties and functions conferred or imposed on or assigned to any member of the prosecuting authority by the Constitution, this Act, or any other law."

And I want to go to subsection four, which says:

20            "In addition to any other powers, duties or functions conferred or imposed or assigned to the National Director by Section 179 or any other provision of the Constitution, this Act, or any other law, the National Director is head of the prosecuting authority."

And you can go to sub paragraph C, so it would be Section 22, 4C, which says that:

"Shall may consider such recommendations, suggestions, and requests concerning the prosecuting

authority as he or she may receive from any source."

You see that? Oh, you hear that?

ADV SIMELANE: Yes, I do hear it.

ADV MASUKU: Right, so it seems to me, if one were to look at that provision of the NPA Act, it is not, it was not an act of interference as provided for in Section 32(1)(b), when the relevant stakeholders in government, such as the Director Generals and the cluster, were expressing recommendations, suggestions, or requests concerning the prosecuting authority that were received by the NDPP. Would  
10 you accept that?

ADV SIMELANE: I would accept that.

ADV MASUKU: That the recommendations or the comments or the views of the, or even the actions of the Director Generals that you spoke about.

ADV SIMELANE: Yes.

ADV MASUKU: In relation to the NPA and their engagement with the National Director of Public Prosecution at the time.

ADV SIMELANE: Yes.

ADV MASUKU: Would fall under the protection of Section 22(4)(b),  
20 4C, which says that:

"The NDPP may consider such recommendations, suggestions, and requests concerning the prosecuting authority as he or she may receive from any source."

ADV SIMELANE: Amongst others, yes.

ADV MASUKU: Yes. So you would accept that there is no

prohibition against the NDPP receiving any recommendations, any suggestions from any source, including this, the NDPP, sorry, including the Director Generals and the cluster?

ADV SIMELANE: Yes, no, there would not be. It was already happening with the Interdepartmental Task Team anyway.

ADV MASUKU: Now, to your knowledge, as a Director General, I think you have already testified on that and I think I will after posing the question, I will probably just, ja, require a yes or no answer. Were there any allegations brought to you as a Director General or as  
10 NDPP by Mr Ackerman, Mr Macadam, or indeed any prosecution in the PLC, or indeed while you are DG by the NDPP that they addressed to you about interference in their work?

ADV SIMELANE: No, they also would not have come to me in any event because as DG, I would have nothing to do with prosecutorial matters.

ADV MASUKU: Yes, but I mean, to the extent that they believe that you were interfering with the work.

ADV SIMELANE: No, nothing was brought to me.

ADV MASUKU: Nothing was brought to you. Now, it was put to you  
20 at some point, sorry, during cross-examination by my learned friend, Mr Varney, that the complaints about Mr Ackerman had no factual backing. You recall that?

ADV SIMELANE: Yes.

ADV MASUKU: That the views that were expressed about him did not refer to specifics. It was just general based on Mr Ackerman's

history as a prosecutor under the apartheid government, the apartheid state. You recall that?

ADV SIMELANE: Yes.

ADV MASUKU: Right. If I were to refer you to Reverend Chikane's complaint about his case and the manner it was handled, would you not regard that, you recall that complaint of Reverend Chikane?

ADV SIMELANE: Yes, I recall that he was unhappy about how he was, he was treated by the PCLU.

ADV MASUKU: Right. Would you not consider that to have been  
10 evidence that pointed to a very major victim, or one of the victims of the, direct victims of the apartheid crimes, that related to the conduct of Mr Ackerman in the prosecution of a case directly relevant to him?

ADV SIMELANE: Yes, it is something that should be of extreme concern to the cluster, because the idea would have been if a victim of the type of conduct against him complained about the manner in which a structure designed to attend to those matters was doing, it would be inimical to what is expected. And the concern would be if there is one matter of the type, it would be key to ensure that it is not something that gets repeated in other matters.

20 ADV MASUKU: Right.

ADV SIMELANE: So when somebody complains, it does become a concern.

ADV MASUKU: Yes. And then the last issue relates to a question put to you, related regarding the, regarding the prosecutions of the TRC, the nature of the TRC cases, and why those prosecutions

required a particular way of handling. If you recall, the allocation put to you was that, why was it necessary for DGs to be concerned about these particular TRC cases? Why should they not have been prosecuted as normal cases? And they were called very serious cases, and indeed they were serious cases. You recall that question?

ADV SIMELANE: Yes.

ADV MASUKU: Right. And your answer was that, look, I mean, the nature of the cases was such that, you know, they had to fit into a national discourse on reconciliation and just dealing with the past in  
10 the best way the country could. But I want to ask another question that could aid your answer that you gave, which relates to the sentences that you are aware of, of cases that went through the case.

One case of Blani? the case of Blani, who committed a murder of two people. That person got an imprisonment sentence that was suspended. Would that be normal in a prosecution of a murder of two people, and they get a suspended sentence of a suspended prison sentence? Would that be normal in a normal prosecution?

ADV SIMELANE: It would raise eyebrows. Why? Especially if it is a  
20 plea and sentence arrangement. But I mean, each case would depend on its facts, but there would certainly be something asked about that.

ADV MASUKU: Yes, but people would understand that the TRC cases are a little symbolic in the sense that, you know, you are not looking for a concomitant, that word Chair.

CHAIRPERSON: Concomitant.

ADV MASUKU: Yes. Yes, a sentence, in the sense of the crime was murder, and the sentence must meet the gravity of the crime. And if you look at the conviction of the apartheid operatives who poisoned Reverend Chikane and attempted to murder him, the sentence there was also a prison sentence which was suspended. You recall that?

ADV SIMELANE: Yes.

ADV MASUKU: And that was acceptable, in a way, because of the nature of the TRC cases, is that incorrect?

10 ADV SIMELANE: Yes, it was accepted for that reason, but also informed by the views of the victim in that sense.

ADV MASUKU: So the allegation that was put to you that these are really serious crimes, and why was the prosecution system activated to deal with these crimes normally, misses the point you are raising about the nature of the TRC cases. Is that not correct?

ADV SIMELANE: Yes, it is correct. They are not the same.

ADV MASUKU: Chair those would be the cross-examination, no sorry the re-examination questions. Oh sorry, sorry before I do that let me ask... That would be all thank you.

20 CHAIRPERSON: Thank you Mr Masuku. Mr Simelane.

ADV SIMELANE: Yes Ma'am.

CHAIRPERSON: We thank you once more for having agreed to come and give evidence before this Commission. You are now excused as a witness.

ADV SIMELANE: Thank you.

NO FURTHER QUESTIONS

CHAIRPERSON: These proceedings are adjourned until the 7 May  
2026 at 10:00.

INQUIRY ADJOURNS UNTIL 7 MAY 2026

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## CERTIFICATE OF VERACITY

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

### JUDICIAL COMMISSION OF INQUIRY INTO TRC

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